

KABR410004622025



IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC AT

DODDABALLAPURA.

Dated this the 1st day of April 2026

PRESENT : SMT. SHILPA.H.A.

B.A.L., LL.B.,

Senior Civil Judge & J.M.F.C.

Doddaballapura.

O.S.No.385/2025

Plaintiffs:1.

SMT. H.M. SAVITHRI

D/o Late H.S. Mahadev,

W/o Gopal. R,

Aged about 68 years,

R/at, Sri. Nilaya,

Gangadharapura,

Doddaballapura Town.

(By Sri. N.S.M., Advocate for plaintiff)

V/s

Defendants: 1. SRI. H.M. BHASKAR

S/o Late H.S.Mahadev,

Aged about 60 years,

R/at, No.889, Cinema Road,

Doddaballapura Town,

Phone No.98453 75555.

- 2. SMT. H.N. SUNITHA**
W/o Late H.M. Narendra,
Aged about 52 years,
Phone No. 96864 62495.
- 3. SRI. H.N. MADHU**
S/o Late H.M. Narendra,
Aged about 29 years,
- 4. KUMARI. H.N. MANASA**
D/o Late H.M. Narendra,
Aged about 26 years,
Defendant No. 2 to 4 are
R/at, No.147, Kaustubha Nilaya,
N.S. Infocity-2,
Scout Camp Road,
Raghunathapura 562163,
Doddaballapura Taluk.
- 5. SRI. LAKSHMISHA. D.A**
S/o H.M. Krishnaveni and
D.R. Ashwathanarayana,
Aged about 40 years,
R/at, No.248, Amruthavarshini,
Karkhane pete,
Chikkaballapura Town,
Phone No. 98869 66579.
- 6. SMT. SRIDEVI. D.A**
D/o H.M. Krishnaveni and
D.R. Ashwathanarayana,
W/o Dayanand,
Aged about 37 years,
R/at, Fort Road,
Opp. Prabhu Electronics,
Doddaballapura Town,
Phone No.97397 82095.

- 7. SMT. H.M. SHAMALA**
D/o Late H.S. Mahadev,
W/o Late B.N. Arasaraju,
Aged about 64 years,
R/at, No.555, 26th main,
2nd stage, B.T.M. Layout,
Bengaluru-560076,
Phone No. 94486 84137.
- 8. SMT. H.M. GEETHA**
D/o Late.H.S. Mahadev,
W/o Indushekhar.S,
Aged about 62 years,
R/at, No.15, Madhuvana,
C.M.C. Layout,
Near Vokkaligara Bhavana,
Rojipura, Gangadharapura,
Doddaballapura,
Phone No. 90368 04145.

**(By Sri. T.C.P., Advocate for defendant No.1 to 4
and defendant No.5 to 8 placed exparte)**

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ORDER ON I.A.No.I & II

Plaintiff has filed I.A.No.I under Order 39 Rule 1 and 2 R/w Sec.151 of CPC., seeking an order of Temporary Injunction restraining the defendant No.1 to 4 from alienating or creating 3rd party interest over the suit schedule properties till the disposal of the suit.

Defendant No.1 to 4 have filed I.A.No.2 under order under Order 7 Rule 11 (a) & (d) of CPC for rejection of plaint.

2. FACTS IN BRIEF:

| Sl No. | Sy No. | Acre-guntas | Situated at |
|--------|---|--|--|
| 1 | Old khata No.728/734/894/ 734 D.No.538, 944/943/D.No.734, 1054-1054-D.No.943, New No.1259/1054/ 1263-1259/1054 | East to West 42 feet, North to South 67 feet | Cinema Road. |
| 2 | Old Sy.No.61, New Sy.No.61/1 | 29.00 acres | Koogonahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk. |
| 3 | 71/2 | 2 acre 37 guntas excluding 0.3 guntas kharab | Tigalebagaytu Village, Kasaba Hobli, Doddaballapura Taluk. |
| 4. | Old Khata No. 838/174/1119/953 D.No.707, 1191/1182 D.No.953, 1346/1346 D.No.1182, New Khata No.132/1346/148-132- 1346 | East to West 85 feet, North to South 28 feet | Cinema Road, Doddaballapura Town. |
| 5. | Old Khata No.837/173/1118/952 D.No.706, 1190/1181 | East to West 58 feet, North to | Doddaballapura Town. |

| | | | |
|-----|--|---|---|
| | D.No.952, 1345/1345 D.No.1181, New Khata No.131-1345-147-131- 1345 | South 48 feets | |
| 6. | Khata No.1109-1117- 926 | East to West 96 feet, North to South 227 feets | Cinema Road, Doddaballapura Town. |
| 7. | Sy.No.73/5 | 2.00 acre excluding 0.04 guntas kharab | Kallanayakana halli Village, Thondebavi Hobli, Gowribidanuru Taluk. |
| 8. | Old Khata No.2655/2, property No.2280/2.5405/10-2, property No.2280/1,5405/10-1, present Khata No.2655/1,2280/1,540 5/10-1 and 2655/2, 2280/2, 5405/10-2 | 100X65 feet and Old Khata No.2655/1, 110X65, East to West 210 feet, North to South 65 feet totally 13650 Sq feet. | 4 th Ward, 2 nd Division, Rojipura, Doddaballapura Town. |
| 9. | Old Sy.No.106, New Sy.No.106/3 | 0.13.12 guntas | Rojipura Village, Kasaba Hobli, Doddaballapura Taluk. |
| 10. | 24/7 | 1 acre 20 guntas | Darrgapura Village, Kasaba Hobli, Doddaballapura Taluk. |

3. Plaintiff has filed this suit for the relief of partition and separate possession, seeking 1/6th share and to declare the

Registered release deed dated:20.10.2007 is null and void and not binding on the share of the plaintiff. It is the case of the plaintiff that the propositus H.C.Subbanna has 5 children namely Ramakrishna, Mahadeva, Radhamohan, Chikkanna and Suresh. During the life time of Subbanna he himself and his children have partitioned Joint family properties under unregistered partition deed in the year 1984. The said partition deed was not acted upon and hence Subbanna has executed the Will on 05.07.1984 by bequeathing 1/4th share each to his children. The children of Subbanna have partitioned the properties as per the Will dated:25.07.1984 on 17.11.2007 through Registered partition deed. The plaintiff being the daughter of Mahadev is entitle for 1/6th share in the property allotted to the share of her father. The defendant No.1 and deceased Narendra by misusing the innocence of the plaintiff has fraudulently created the release deed dated:26.10.2007 and subsequently they have partitioned the Joint family properties on 17.11.2007 showing that plaintiff has received a sum of Rs.1 lakh towards her share but said amount is not paid to the plaintiff. Suit schedule properties are Ancestral and Joint Family properties which was allotted to the

share of her father and hence she is entitle for 1/6th share in the suit schedule properties through partition and separate possession by metes and bounds.

4. The Plaintiff has sworn to an affidavit in support of I.A.No.1 and reiterated the averments of plaint and further contended that defendants are making hectic efforts to alienate the suit schedule properties and change the nature of the same and hence in order to avoid multiplicity of proceedings an order of Temporary Injunction is required. Plaintiff has made out prima-facie case and balance of convince lice in her favour. Hence, prays to allow the I.A in the interest of justice and equity.

5. Defendant No.1 to 4 have filed written statement and adoption memo and denied entire plaint, I.A and affidavit averments as false and further contended that the present suit for partition and separate possession is not maintainable either in law of on facts. The suit is bad for mis-joinder and non-joinder of parties and barred by law of limitation. On 21.07.2007 the plaintiff, mother of defendant No.5 & 6 and defendant No.7 & 8 have executed registered release deed in favour of defendant No.1

and thus there is no Joint family status in existence. Item No.8 to 9 are the self acquired properties of defendant No.1 having purchased the same out of his own income from the date of registered release deed executed by the plaintiff, defendant No.1 to 4 are in physical possession and enjoyment over the suit schedule properties. There is no cause of action and suit is barred by law of limitation and hence prays to dismiss the IA.No.1 and reject the plaint in the interest of justice and equity.

6. Plaintiff has filed objection to this I.A and denied entire I.A and affidavit averments as false and reiterated the averments of plaint and further contended that she along with defendants are members of Hindu undivided joint family and suit schedule properties are their ancestral and joint family properties and defendant No.1 to 4 have created release deed by misrepresenting the plaintiff and she has not received Rs.1,00,000/- as mentioned in the document. There is cause of action and suit is within time. Hence, prays to dismiss the I.A. in the interest of justice and equity.

7. Heard both sides on I.A.No.1 and 2.

8. The points that arises for my consideration are as under:

Point No.1 : Whether the plaintiff has made out of prima-facie case for grant of temporary injunction ?

Point No.2 : Whether balance of convenience lies in favour of the plaintiff?

Point No.3 : Whether the irreparable loss or hardship will be caused to the plaintiff, if injunction is not granted?

Point No.4 : Whether the defendant No.1 to 4 have urged valid grounds for rejection of plaint under order 7 Rule 11 of CPC?

Point No.5: What order?

9. My findings on the above said points are as under:

Point No.1 : **In the Negative**

Point No.2 & 3: **Does not arise for consideration**

Point No.4 : **In the Affirmative**

Point No.5 : **As per final orders for the following:**

REASONS

10. POINT NO.1 & 4. Since these two points are inter-related, they are taken up together for common discussion.

Plaintiff has filed this suit for partition and separate possession and contended that suit schedule properties are her ancestral and joint family properties and she along with defendants are in joint possession and enjoyment over the suit schedule properties. In support of her case she has relied upon G-Tree, RTC's, Will dated:25.07.1984, Registered release deed dated:26.10.2007 and other revenue documents. On perusal of the G-Tree it goes to show that One Mahadev and Shantamma have got 6 children namely Krishnaveni, Savitri ie., the plaintiff, Shamala, Geeta, Bhaskar ie., defendant No.1 and Narendra ie., the father of defendant No.3 & 4 and wife of defendant No.2. The said relationship is not denied by the defendants. As per the partition deed dated:17.11.2007 there was partition between the Ramakrishna, Radha Mohan, Chikkanna, Bhaskar and Narendra who are defendant No.1 and husband of defendant No.2 in which it is mentioned that Ancestral and Joint Family properties were inherited by the children of Subbanna through Will dated:25.07.1984 executed by said Subbanna. In the said partition 'B' schedule was allotted to the share of defendant No.1 and Narendra who are brothers of plaintiff.

11. As per the recitals of the release deed dated:26.10.2007, plaintiff has relinquished her share in favour of her 2 brothers by receiving Rs.1 lakh towards her share. The plaintiff has challenged this document stating that she has not received any amount and the said release deed was obtained by her brothers by misrepresentation and fraud. In para No.9 of the plaint she has specifically pleaded that defendant No.1 and deceased Narendra have invited the plaintiff and mother of defendant No.5 & 6 and defendant No.7 & 8 and stated that they are trying to partition deed Joint family properties as per the Will and required the plaintiff to consent before the Tahasildar to partition the same between the male members and as per their request she has consented her brothers to partition the Joint family properties along with other children of H.C.Subbanna. These averments clearly states that plaintiff had knowledge about partition between the male members in the year 2007 and she has affixed her signature to the document by consenting for partition. When she is consenting for partition between the male members, it has to be presumed that she had knowledge about partition between her brothers and she had witnessed the same and affixed her

signature to the registered document before the sub-registrar and failed to challenge the same for a period of 18 years. Hence, when plaintiff was signatory to the registered released deed dated:26.10.2007,she has to seek for cancellation of said document within the period of limitation. But the present suit is filed after lapse of 18 years and that to she has not sought any relief for cancellation of the same but only sought the relief that the said document is null and void and not binding on her. When the plaintiff being the signatory is denying the said document, she ought to have sought the relief for cancellation of registered document by paying requisite court fee. But in this case plaintiff has failed to seek such relief and paid court fee. Apart from that as per the documents relied by the plaintiff there was partition between Ramakrishna, H. R.Gopal, H. S.Radha and her son, Chikkanna and his son Ranganath, Bhaskar and his son Narendra under registered partition deed dated:17.11.2007 but plaintiff has not challenged the said partition in this suit. Hence, to conclude plaintiff being signatory to the registered release deed dated:26.10.2007, she has neither sought cancellation of the said

document nor challenged the said deed within the period of limitation.

12. Since plaintiff has pleaded that the release deed is created and she has not received any amount, she has to specifically mention when she came to know about alleged misrepresentation and fraud and when the cause of action has arisen for her to file this suit. But on perusal of the entire plaint averments she has not whispered when she came to know about alleged fraud committed by her brothers and when the cause of action has arisen to challenge the registered document. In para No.12 of the plaint she has only mentioned the date that in the 1st week of October 2024, she had demanded partition and the cause of action arose at that time. She has further stated that the cause of action arose subsequently on when she came to know about the fraud played by the defendants in creating the release deed. But, she has not specifically mentioned when she came to know about alleged fraud and when actually the cause of action had arisen to challenge the release deed dated:26.10.2007. On perusal of the contentions taken in para No.9 of the plaint, it clearly establishes that plaintiff had knowledge about the

partition in the year 2007 which took between the male members and she had consented for the partition of Joint family properties among her brothers and children of H.C. Subbanna. Therefore, if the plaintiff intends to challenge the partition deed as well as release deed she ought to have challenged the same within the period of limitation. Plaintiff has not challenged the partition deed but she has only challenged the release deed of the year 2007 after lapse of 18 years. When she is signatory to the said document, she ought to have challenged the same within 3 years. As per the averments mentioned in para No.9 of the plaint she had knowledge about partition in the year 2007 and as per the request she had signed some documents consenting her brothers to partition the Joint family properties. As per these averments Joint family properties were partitioned among her brothers in the year 2007 within the knowledge of plaintiff and therefore cause of action arose in the year 2007 itself to seek partition or to challenge the partition deed. But the plaintiff kept quiet for a period of 18 years for the best reason known to her. Therefore the suit is hopelessly barred under article 58, 59 & 110 of the limitation Act. Therefore, the plaint does not disclose the cause

of action and the one mentioned in para No.12 of the plaint appears to be imaginary cause of action and the suit is also hopelessly barred by time.

11. Order VII Rule 11 reads as under;- The plaint shall be rejected in following cases:-

- (a). where it does not disclose a cause of action;**
- (b). where the relief claimed is undervalued and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**
- (c). where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and plaintiff, on being required by the Court to supply there requisite stamp paper with a time to be fixed by the Court, fails to do so;**
- (d). Where the suit appears from the statement in the plaint to be barred by any law;**
- (e). Where it is not filed in duplicate.**

(f). Where the plaintiff fails to comply the provisions of Rule 9.

The Hon'ble Supreme Court of India in the citation reported in (2020) 3 Indian Civil Cases 448 it is held that -

“The plaint averments and suit documents required to be taken into consideration for considering the application under order 7 Rule 11 for rejection of plaint”.

In the judgment rendered by Hon'ble Supreme Court of India in the case of H.S. DEEKSHIT & ANR. versus M/S. METROPOLI OVERSEAS LIMITED & Ors. reported in 2022 Live Law (SC) 703, it was held that:-

“The averments in the plaint alone are to be examined while considering an application for rejection of plaint and No other extraneous factor can be taken into consideration”.

The Hon'ble Supreme Court of India in the case of DAHIBEN VERSUS ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD

THROUGH LEGAL REPRESENTATIVES AND OTHERS reported in (2020) 7 SCC 366 it was held that;-

"C. Civil Procedure Code. 1908- Or. 7 R. 11 (a) - Cause of action-Meaning-Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting-Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of court, it should exercise its drastic power under R. 11 to reject the plaint-Words and Phrases - " Cause of action"

In the judgment rendered by Hon'ble High Court of Karnataka Smt.Mallamma and other Vs Sri.Mallegowda @ Karigowda and others reported in ILR 2022 KAR 992 it was held that:-

" The remedy under Order 7 Rule 11 is an independent and special remedy which empowers the court to summarily dismiss the suit at the threshold if it is satisfied that

any of the grounds contained in Order 7 Rule 11 is made out”.

In the decision rendered Hon'ble Supreme Court of India in the Khatri Hotels Private Limited V/s. Union of India and another wherein it is held that:-

" The meaning of when right to sue first accrues" is Successive violation of right which will not give rise to fresh cause of action as per Limitation Act, 1908.

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right

to sue first accrued". In the case of Hardesh ores private limited verses Hede and company reported in 2007(56 AIC 25) and also in the Hon'ble Supreme Court of India in the case of DAHIBEN VERSUS ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS reported in (2020) 7 SCC 366 it was held that:-

" Cause of action- meaning court has to find whether plaint discloses real action created by clever drafting. Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of court, it should exercise its drastic power under R. 11 to reject the plaint."

In AIR 1977 Supreme Court 2421 in the case of T.Aravindanandam Vs.T.V.Satyapal and Another on 14 October it was held that:-

“The learned Munsiff must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 1 of CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under order X of CPC. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus of litigation can be shot down at the earliest stage.”

In (2005) Supreme Court Cases 548 in the case of N.V.Srinivasa Murthy and others Vs. Mariyamma(dead) by proposed LRs and others it was held that:-

"After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidable of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts." it was further held that:-

"In our views, the present cause of action, on the ground that from the averments in the plaint, the suit is apparently barred by law within the meaning of clause (d) of Order 7 Rule 11 of the Code of Civil Procedure."

In the Judgment rendered by the Hon'ble Supreme Court of India in 2023 SAR Civil 79 it was held that:-

" Though the point of limitation is mixed question of law and fact, if meaningful reading of the plaint discloses that suit is ex-

facie barred by limitation then Powers could be exercised Under Order 7 Rule 11 (d) of CPC by the Court to reject the plaint."

The principles laid down in the above said citation aptly applies to the case on hand. While considering application under order 7 Rule 11 of CPC court has to consider only contents of the plaint and documents relied by him and not the contention taken by the defendants or his documents. As already discussed above plaintiff had knowledge about the partition between the family members in the year 2007 itself and inspite of that she has neither challenged the partition deed nor sought her legitimate share for a period of 18 years. Even plaintiff was signatory to the registered release deed dated:26.10.2007, if she is denying its contents then she ought to have sought the relief for cancellation of said document but she has only sought the said document is null and void and not binding on her. Since plaintiff has neither challenged the partition deed dated:17.11.2007 nor sought cancellation of registered release deed dated:26.10.2007, the present suit is not maintainable. It is settled principal that the issue with regard to limitation is a

mixed question of law and fact which requires trial. The averments of the plaint and documents relied by the plaintiff clearly establishes that Ancestral and Joint Family properties were partitioned in the year 2007 and she has consented for partition among her brothers. As per the plaint averments Joint family was severed in the year 2007 within the knowledge of plaintiff. She had also admitted her signature in the release deed executed in the year 2007. If she is intending to challenge the release deed, she ought to have sought the relief of cancellation of release deed within the period of limitation. As already discussed above the cause of action mentioned in the plaint appears to be illusory cause of action and the suit is also barred under Article 58, 59 & 110 of the limitation Act.

In the citation reported in **2022(4) Civil Court cases 643 in the case of Narayanasing and Ors V/s Ratanlal and Ors** it was held that issue of limitation is a question of law and fact and it was further held that if the plaint averments discloses that the suit is ex facie barred by law then the plaint can be rejected. When there is no cause of action and the suit is ex-

facie barred by time then there is no question of going for trial and plaint shall have to be rejected at threshold. Since there is no cause of action to file the suit and the suit is hopelessly barred by law of limitation, the plaint shall be rejected under 7 Rule 11(a) & (d) of CPC., Since the suit is not maintainable, there is no cause of action to the suit and the suit is barred by limitation, there is no prima-facie case got grant an order of Temporary Injunction. Hence, I Answer **Point No.1 in the Negative and Point No.4 in the Affirmative.**

12. POINTS No.2 & 3: Since both the points are interconnected in order to avoid repetition of facts they are taken together for discussion. Since, plaintiff has failed to make out prima-facie the question of balance of convenience and irreparable loss and injury doesn't arises for consideration. Accordingly, I answer **Point No.2 and 3 does not arise for consideration.**

13. POINT NO.5: In view of my findings on Point No.1, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC., is hereby dismissed.

I.A.No.II filed by the defendant No.1 to 4 under Order 7 Rule 11 (a) & (d) R/w Sec. 151 of CPC., is hereby allowed.

Consequently plaint is hereby rejected for want of cause of action and barred by law of limitation.

No order as to cost.

Draw decree Accordingly.

(Dictated to the Stenographer transcribed, typed and printout taken by her, corrected by me and then pronounced in the open court on this the 1st day of April 2026)

(SHILPA.H.A)
Senior Civil Judge & JMFC.,
Doddaballapura.