

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,**

**AT DODDABALLAPUR.**

Dated this the 14<sup>th</sup> day of February, 2018

PRESENT: Sri.M.B.KULKARNI,  
B.Sc., LL.B (Spl)  
Senior Civil Judge & JMFC.,  
Doddaballapur.

**O.S.No.247/2013**

- Plaintiff: 1. Smt. Munithayamma,  
W/o Late M.Muniyappa,  
A/a 75 years,
2. Smt. Hanumakka,  
W/O Late M.Muniyappa,  
A/o 70 years,
3. Smt. Nagamma,  
W/o Late M.Muniyappa,  
A/a 56 years,

All are R/at: Varadanahalli village,  
Veerapura post,  
Kasaba Hobli,  
Doddaballapur Taluk.

(Reptd by advocate Sri.A.Raviprakash for  
P1 & P2, Sri.H.M.Manjunath for P3.)

**V/s.**

- Defendants: 1. Sri. Ramanjanappa,  
S/o Munirajappa @ Rajanna,  
A/a 36 years,  
R/at: Yellapura village,  
Veerapura post,  
Kasaba Hobli,  
Doddaballapur Taluk.

2. Sri. J.T.Vinod Kumar,  
S/o Thammannappa,  
A/a 30 years,  
R/at: Yellupura village,  
Veerapura post,  
Kasaba Hobli,  
Doddaballapur Taluk.
3. Sri. Maruthi,  
S/o Late Anjanappa,  
A/a 45 years,  
R/at: Varadanahalli village,  
Veerapura post,  
Kasaba Hobli,  
Doddaballapur Taluk.
4. Sri. C.Ramesh,  
S/o late Chikkasubanna,  
A/a 50 years,  
R/at: Bashettihalli village,  
Kasaba Hobli,  
Doddaballapur Taluk.
5. Sri. Anandkumar,  
S/o Narayanappa,  
A/a 55 years,  
R/at: Kasuvanahalli village,  
Veerapura post,  
Kasaba Hobli,  
Doddaballapur Taluk.

(Reptd by advocate Sri.L.Manohar Kale for D1,  
Sri. B.S Mallikarjunaiah for D3 and D5, D2 and  
D4- Exparte.)

Date of Institution of the suit : 30-07-2013

Nature of the suit : Partition

Date of the commencement

recording of the evidence : --

Date on which the  
Judgement is Pronounced : 14-02-2018

Yr/s Month/s Day/s

Total Duration 04 06 14

**(M.B.KULKARNI)**

Senior Civil Judge,  
Doddaballapur.

**ORDER ON I.A.No.VII (Preliminary issue)**

This is the suit filed by the plaintiff for cancellation of register Partition deed dated 20-02-2008 registered in the office of Sub-Registrar, Doddaballapura in respect of suit property and also for permanent injunction against the defendants restraining them from interfering with the peaceful possession and enjoyment of plaintiffs over the suit property.

2. After filing suit the defendants appeared through their counsel and filed their written statement taking their own defence and defendant No.5 filed I.A.No.VII under Order 7 Rule 11 (a) & (d) of CPC for rejection of plaint since suit is not maintainable under law of limitation and there is no cause of action for this suit as prayed for.

3. **Description of suit property**

Part and parcel of property bearing Survey No. 41/1 measuring 4-0 acres 0-21 guntas including 10 guntas of karab of Varadanahalli

village, Kasaba Hobli, Doddaballapur Taluk, bounded on, East by: House of Huchappa now in possession of his son Byregowda, West by: Varadanahalli Road, North by: Land of Doddanagappa and South by: Kolipura-Juttanahalli Road.

4. In the enclosed affidavit of I.A.No.VII it is averred by the defendant No.1 that he is the son of Sri.Munirajappa who is the brother of Muniyappa. His uncle Late Muniyappa has no issues and defendant No.1 is the adopted son of the plaintiffs and Sri.Muniyappa. The plaintiffs No.1 to 3 are the wives of late Muniyappa. During life time of Late Muniyappa he had purchased suit property under two different sale deeds measuring 4-0 acre 0-21 guntas in Sy.No.41/1 and after his death his first wife i.e., plaintiff No.1 Smt.Munitayamma has become absolute owner of the said property. Thereafter a partition was effected in their joint family on 20-02-2008 which is registered in the office of Sub-Register, Doddaballapura having document No.7986/2007-08 and under that partition deed the defendant No.1 got 1-0 acre of land in Sy.No.41/1 referred above. As per the said partition deed the Taluka Surveyor surveyed the suit property and prepared sketch and demarcated boundaries of the plaintiff's land and defendant No.1 properties and handed over the possession to the different sharers. Since, then the defendant No.1 is in peaceful possession and enjoyment of his share and he got Hiduvali Certificates and Patta Books as revenue documents in his name. Such being the facts the plaintiffs in colluding with defendant No.2 filed this false suit to harass the defendant No.1 and to grab the property fallen to the share of defendant No.1. Such suit is filed after lapse of 5 years from date of

Registered partition deed and suit is barred by limitation. Hence, prayed to reject the plaint as this suit has no cause of action.

5. The plaintiff has filed objections to I.A.No.VII contending that the said application is not maintainable either in law or on facts. It is further contended that the so called alleged partition deed dated 20-02-2008 is obtained by the defendant No.1 by practicing fraud undue influence and mis-representation. Hence, the said partition deed is not binding on the plaintiffs. It is further contended that the plaintiff No.1 and 2 are illiterate persons and put their LTM to such suit document (Registered partition deed dated 20-02-2008) and plaintiff No.3 has studied up to 7<sup>th</sup> standard and she is not qualified to examine the correctness of the partition deed. Therefore, taking undue advantage of illiteracy and innocence of plaintiffs the defendant No.1 manipulated illegal partition deed referred above. Hence, the said partition deed is not binding on the plaintiffs. Therefore, they have filed this suit for cancellation of such partition deed. The cause of action of this suit arose on 08-07-2013 at 9.00 am when the defendants came to suit property and tried to dispossess the plaintiffs from suit property. Hence, prayed to dismiss I.A.No.VII.

6. Heard both sides on I.A.No.VII and perused material placed on record.

7. In the light of the above, the following preliminary issues arise for my consideration.

1. Whether the defendant No.1 proves that the suit is barred by limitation and there is no

cause of action for this suit and as such the  
plaint requires to be rejected as per I.A.NoVII  
filed under Order 7 Rule 11 (a) and (d) of CPC?

2. What order?

8. My findings to the above issues are as under:

Issue No.1: In the Affirmative.

Issue No.2: As per final order.

### **REASONS**

9. **Issue No.1**: It is not disputed by the parties to the suit that the plaintiffs are the wives of Sri.Muniyappa and 1<sup>st</sup> plaintiff is his senior wife. It is also not disputed by the parties that the suit property bearing Sy.No.41/1 totally measuring 4-0 acres 0-21 guntas of Varadanahalli Village, Doddaballapura Taluk was purchased by Late Muniyappa under two different sale deeds dated 12-04-1984 and died intestate leaving behind plaintiffs No.1 to 3 as his legal heirs. But what is disputed by the plaintiffs is that defendant No.1 is not the adopted son of plaintiffs and he has no right to get any share in the suit property.

10. On the other hand it is the defence of the defendant No.1 that he is nephew of Late M.Muniyappa and he is adopted by Late Muniyappa during his lifetime and as per the said relationship the plaintiff No.1 has executed registered partition deed allotting 1-0 acre of land to the defendant No.1. Such so called alleged partition deed dated 20-02-2008 is disputed by plaintiffs on the ground that it is affected by coercion undue influence and mis-representation and fraud. Whether really such partition deed is affected by coercion undue influence or fraud etc., can be decided only by holding full

pledged trial but before holding trial there must be cause of action for filing suit and suit must be filed within limitation period. Now let me examine whether suit is filed within limitation period and is their cause of action for such suit.

11. The careful perusal of the objections filed by the plaintiffs to I.A.No.VII in Para No.4 reveals that the plaintiffs have clearly admitted that they have put their LTM to the registered Partition deed dated 20-02-2008 and further taken defence that since they are illiterate persons who do not understand the contents of the partition deed as per the say of the defendant No.1 they have put their signatures to the said partition deed. Such admission is sufficient for the proof of the execution of partition deed in question. It is pertinent to note here that as per the Indian Contract Act if any person enters into agreement with another person to do or not to do anything which is enforceable under the law and puts his signature to such document of contract as a man of ordinary sense and prudence, he is not permitted to withdraw his words of commitment on the ground of illiteracy or lack of knowledge. It is duty of every person to examine the correctness of document before putting his signature to such document of contract and once a persons puts signature to a document is presumed under law that he has put such signature with full knowledge willfully and he cannot be permitted to withdraw his consent to such transactions. Such principles of law are applicable to the facts of the case on hand and the when the suit document i.e., registered partition deed dated 20-02-2008 is not challenged by the plaintiffs within three years i.e., on or before 20-02-2011, the suit is barred by law of limitation and as such there is no cause of action for this suit.

12. In this connection it is necessary to quote the necessary citations of our Hon'ble Supreme Court

1. AIR 1977 Supreme Court Page 2421
2. 2008 SCC Page 58
3. AIR 2011 Chatisgar Page No.138

On the basis of above citations it is held by superior courts that when the suit is barred by law and not maintainable and plaint can be rejected. Hence, with these observations I.A.No.VII is maintainable and plaint is liable to be rejected. Since suit is not maintainable. Hence, I answered Issue No.1 in the affirmative.

13. **Issue No.2**: on the basis of my above reasons and in the result I proceed to pass the following;

**ORDER**

The I.A.No.VII is hereby allowed and plaint of this suit is rejected, since suit is barred by limitation and there is no cause of action for this suit.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 14<sup>th</sup> day of February, 2018)

**(M.B.KULKARNI)**  
Senior Civil Judge,  
Doddaballapur.