

**IN THE COURT OF THE PRI., CIVIL JUDGE & JMFC., AT
CHINTHAMANI**

PRESENT:

SRI. SHIVAKUMARA G.J, B.A.L.L.B.

Prl. Civil Judge & J.M.F.C.,
Chinthamani.

O.S. No 153/2021

Dated on this the 7th day of April 2022.

PLAINTIFFS:-

- 1. Smt. Navitha.N,**
W/o Manjunatha,
D/o Narayanaswamy,
Aged about 28 years,
R/at T. Rambarahalli Village,
Kudun Hobali,
Devanahalli Taluk,
Bengaluru Rural District.
- 2. Sowmya. N,**
D/o Narayanaswamy,
Aged about 26 years,
- 3. Kavya. N,**
D/o Narayanaswamy,
Aged about 24 years,
- 4. Manoj.N,**
S/o Narayanaswamy,

All are residing at
Mutukadahalli Village,
Kaiwara Hobli,
Chintamani Taluk.

(By Sri. S.E.G. Advocate)

V/s

DEFENDANTS:

- 1.Sri. Narayanaswamy,**
S/o late Eerappa,
Aged about 56 years,
- 2. Sri. Veera Kempanna,**
S/o Muninagappa,
Aged about 58 years,
- 3. Smt. Umadevi,**
W/o late H.M. Narayanaswamy,
Aged about 48 years,
- 4. Sri. M.V. Narayanaswamy,**
S/o Late Venkatappa Shetty,
Aged about 65 years,
- 5. Sri. Venkataswamy,**
S/o Late Govindappa,
Aged about 70 years,

All are residing at
Mutukadahalli Village,
Kaiwara Hobli,
Chintamani Taluk.

(By Sri. M.M.R. Advocate for D2)
(By Sri. S.R.N. Advocate for D4)
(By Sri. N.S. Advocate for D3 and D5)
(D1 is Placed Ex-Parte)

ORDER ON IA No. II

This is an application filed by the defendant No.2
U/O. VII Rule 11(d) of CPC to reject the plaint as this
suit is barred by limitation.

2. The brief facts of the defendants case is that :

This suit is filed by the plaintiffs for the relief of partition and separate possession over the suit properties and it is specifically contended that the 2nd defendant has purchased the suit item No.1 property through registered sale deed on 26.08.2003. And as the suit is filed for partition beyond statutory limitation prescribed of 3 years. The suit is barred by law of limitation. And the plaint is not maintainable. Hence, he prayed for allowing the application and to reject the plaint.

3. For this application the learned counsel appearing for the plaintiffs filed objection and contended that the application is not maintainable either in law or on facts and the application is liable to be dismissed in limine. The issues yet to be framed on the point of limitation which requires a complete evidence. The defendant has not disclosed how the suit is barred by time. Hence also the plaint can not be rejected. The defendant No.2 is

filed this application to drag on the proceedings. Hence, he prayed for dismissal of the application.

4. I have heard the arguments of both Plaintiffs and defendant No.2 counsels.

5. Now the only point for consideration before this court is as follows:

Point No.1 : Whether the defendants have made out a ground to reject the plaint as contended ?

Point No.2 : What order ?

6. My answer to the above point is as follows:

Point No.1 : **Negative**

Point No.2 : As per final order
for the following :

R E A S O N S

7. Point No.1 :- As this is a suit filed by the plaintiffs for the partition and separate possession of the suit schedule properties where in the plaintiffs have claim the

suit schedule properties are the ancestral properties and they have demanded for partition in the month of may 2021. And at that point of time the defendants have attempted to disturb the possession and enjoyment of the property such facts to be proved by the plaintiffs which to a cause of action. It may be a contention of the defendant No.2 that 2nd defendant has purchased the property through a registered Sale Deed dated 26.08.2003 as on the date of the filling of the suit i.e 28.06.2021 1st plaintiff is aged about 58 years, 2nd plaintiffs is 26 years, 3rd plaintiff 24 years and the 4th plaintiff is aged about 22 years. Hence, the suit is barred by law of limitation. But as per well established principles of law, Point of limitation can not be decided without recording evidence. Because it is mixed question of law on facts. And it is also a well established principles of law while considering the rejection application the plaint should consider any amount of defence taken in the Written Statement can not be looked into.

8. In view of the decision reported in **2006 (5) SCC 658 Balasaria construction (P) ltd V/S Hanuman Seva trust**, where in the Hon'ble Apex court a has specifically held that the limitation point is a mixed question of law on facts and on that ground the plaint can not be rejected. And it has to be disposed on merits after conclusion of the evidence. And parties may be allowed to agitate on this point. Admittedly, this is a suit filed for partition in the year 2021. And there is no issue regarding limitation and now the case is posted for Issues. And the plea of defendants can be consider while disposing the case on main matter, after conclusion of trial. And as rightly pointed out by the plaintiffs counsel, the application has been filed only to drag on the proceedings. And there are no bonafide reasons and genuine reasons to consider the application filed by the defendant No.2. Under such circumstances, I have no hesitation to answer the point No.1 in the negative. And 2nd defendant have not made out any grounds to allow

the application. Hence, I answer the point No.1 to the **Negative.**

9. Point No.2 :- In view of the above reasons, I pass the following:

O R D E R

IA No. II filed by the 1st defendant
U/O.7 Rule 11(d) of CPC is hereby
rejected, as no merits.

(Typed by me in my laptop, corrected, initialed and then pronounced by me
in the open court on this the 7th Day of April 2022)

(SHIVAKUMARA.G.J)
Prl.Civil Judge & JMFC.,
Chinthamani.

**Order Pronounced in the Open Court
(Vide Separate Order)
O R D E R**

IA No. II filed by the 1st defendant
U/O.7 Rule 11(d) of CPC is hereby
rejected, as no merits.

**(SHIVAKUMARA.G.J)
prl.Civil Judge &JMFC.,
Chinthamani.**

The matter is reffered to mediation and office is directed send records to the mediation,

both the parties are directed appear before the mediation on 12.04.2022.

For appearance of parties before this court call on 02.06.2022

(SHIVAKUMARA.G.J)
prl.Civil Judge &JMFC.,
Chinthamani.