

**IN THE COURT OF ADDITIONAL CIVIL JUDGE AND J.M.F.C.,
CHALLAKERE**

Present: **Sri. GOWDA JAGADEESHA RUDRE.**

B.Com., L.L.B.

Addl. Civil Judge and JMFC., Challakere.

DATED ON THE 03rd DAY OF NOVEMBER-2022

O.S. No.91/2014

1. Gangappa & others **.....PLAINTIFF.**

V/S

1. Govindappa & Others. **....DEFENDANTS.**

PARTIES IN I.A. No.8/2022

**1. Govindappa S/o Late Thimmaiah
Yane Chakkali Thimmaiah,
Aged about 65 years,
Agriculturist,
R/o Ramajogihalli village,
Challakere taluk & Others.** **APPLICANTS/DEFENDANTS.**

(By Sri. G.S., Advocate)

V/S

**1. Gangappa S/o Late Yallappa,
Aged about 62 years,
Agriculturist,
R/o Ramajogihalli village,
Challakere taluk & Others.** **OPPONENT/ PLAINTIFF.**

(By Smt. B.T.S., Advocate for Plaintiff)

ORDERS ON I.A.No.8

This suit is of the year 2014 and this application is pressed into service by the Defendants when the matter was set down for cross examination of P.W.1.

2. Defendants filed this application U/O 7 Rule 11(a and d) of CPC seeking rejection of the plaint for the reason non disclosure of cause of action and as barred by limitation.

3. Defendant no.4 sworn to an affidavit for himself and also on behalf of remaining Defendants wherein, he contended that their ancestor was one Gangappa and suit properties were belong to him. All his 5 children partitioned the suit properties long ago. The Defendants are in peaceful possession and enjoyment of their shares as per the oral partition held on 31.12.1973 and registered partition held between Defendant no.1 to 7 on 04.06.2011. The ancestor of the Plaintiffs are all together different therefore, they are not entitled to seek partition in the suit property. Plaint does not disclose cause of action and suit is barred by law of limitation. If the application is not allowed they will be put to irreparable loss and hardship. Hence, he prays to allow the application.

4. The Plaintiffs filed their objection inter-alia contending that the application is not maintainable either under law or in facts. The Court has already framed issues and stage of the case is set down for cross examination thus, the application is devoid of merits. The suit properties are ancestral and joint family properties of Plaintiffs and Defendants and no partition of any kind has been taken place. The Plaintiffs have pleaded cause of action at para 15 of the plaint and suit of the Plaintiff is within the law of limitation.

5. Heard the arguments of learned advocate appearing for the plaintiffs, defendants and perused the materials on record.

6. Now, the points that arise for consideration are as follows:

1. Whether the plaint does not disclose cause of action and suit is barred by limitation which warrants to rejection of plaint?

2. What order?

7. My findings to the above points are as under:

Point No.1: Negative

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

REASONS

8. **Point No.1:** This suit is filed for the relief of partition and separate possession of suit property bearing Re. Sy. No.63 measuring 40 acres 06 guntas inclusive of 16 guntas of kharab land situated at Ramajogihalli of Challakere Taluk with consequential reliefs that registered partition deed dated 07.03.2012 and Gift Deed dated 10.01.2013 are not binding upon the share of the Plaintiffs. It is averred that they are descendants of common ancestor Ganga. The ancestor Ganga had 5 children namely 1) Thippaiah @ Thippaga, 2) Kollarappa, 3) Parasappa, 4) Chakkali Thimmaiah and 5) Katteyallappa. The Plaintiffs are representing the branch of Thippaiah @ Thippaga whereas Defendants are representing the branch of Parasappa, Chakkali Thimmaiah and Katteyallappa. Suit property is ancestral and joint family properties of Plaintiffs and Defendants and no partition of any kind has been taken place.

9. On the other hand Defendants contends that the ancestor of the Plaintiffs and Defendants are different and suit property is already

been partitioned among the Defendants. The Plaintiffs are having no manner of right to seek partition.

10. It is the well settled position of the law that, while considering the application U/O 7 Rule 11 of CPC, Court is not required to taken into consideration of the defense set up by the Defendant in his written statement or other documents. The question whether plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself and not the defense set up in the written statement. While considering the application the strength or the weakness of the case of the Plaintiff is not to be examined. With this prelude the Court has perused the plaint averments in details.

11. It is well settled proposition of law that, the cause of action means bundle of rights which plaintiff has to prove in order to get a decree from the Civil Court. The cause of action, as a matter of fact is not merely a formality. But, after reading the plaint averments meaningfully a clear right to sue defendants for the reliefs should be there. Here the plaintiffs have stated as to the relationship of them with Defendants. The plaint averments and family tree clearly at this stage shows that the ancestor of the Plaintiffs and Defendants was one Ganga and parties to the suit hails from said Ganga/ancestor. A perusal of the plaint averments, it appears that, the cause of action is clearly pleaded in para 15. Hence, Court is of the opinion that Plaintiff has pleaded cause of action to file this suit.

12. So far as, defence of limitation to file this suit is concerned it is noted that this suit is filed seeking partition and separate possession. It is well settled law that legislature has not prescribed any period of limitation for filing a suit for partition because partition an incident

attached to the property and there is always a running cause of action for seeking partition by one of the co-sharers. Since, filing of the suit is wholly dependent upon the will of the co-sharer, the period of limitation, specifically the date or time from where such period would commence, could not have been possibly providing for by the legislature and therefore, no such prescription is made in the law of limitation, as far as suits for partition are concerned. The question of limitation to seek partition arises only when Defendants takes defense about the ouster from the family. Here it is not the said defense. It is also settle law that law of limitation is a mixed question of law and facts and therefore, the same is required to be considered after looking in to the evidence that could be adduce by the parties in a full fledged trial. For the forgoing reasons Court is of the opinion that application deserves to be rejected. **Hence, this court has answers Point No.1 in the Negative.**

13. **Point No.2:** In view of the discussions, this Court proceeds to pass the following:

ORDER

I.A.No.8 filed by the Defendants U/O 7
Rule 11 (a and d) R/w Sec.151 of CPC is hereby
rejected.

No order as to cost.

(Order dictated to the Typist in open court directly on computer and computerized by her, corrected and then pronounced by me in the Open Court on this the 03rd day of November – 2022.)

(Gowda Jagadeesha Rudre)
Addl. Civil Judge & JMFC,
Challakere.