

IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
C/c. Addl. Civil Judge & JMFC. Tarikere.

O.S.No.308/2016
Dated this 28th day of January 2019
ORDER ON IA

The defendants have filed this application under Order 7 Rule 11(d) of CPC to reject the plaint as barred by law.

2. It is averred in the affidavit annexed to the application that, the plaintiff has filed the present suit questioning the gift deed dated 05.05.2008. Hence, the suit is barred by limitation. Further he claimed that, he purchased the suit schedule property in the name of his father and under Muhammadan Law, the person who purchased the property has got absolute right to dispose the same during his lifetime. His father has no source to purchase the suit schedule property. Even if it is considered as his father purchased the suit schedule property out of his own earnings, the said property becomes his self-acquired property. The plaintiff has filed this suit after lapse of 8 years and hence, the suit is barred by limitation. Hence, he prayed to reject the plaint as barred by law.

3. The plaintiff has resisted the application by filing his objection statement wherein he stated that, the plaint cann't

be rejected as barred by law. He filed this application only to drag on the proceedings. Hence, he prayed to dismiss the application with exemplary cost.

4. Heard on IA.

5. On the basis of the application, objection statement and the plaint, the points which arise for consideration of this Court are as follows:-

- 1) Whether the 2nd defendant has made out grounds to reject the plaint U/Or.7 Rule 11(d) of CPC?
- 2) What order?

6. Perused the application along with the objection statement and the plaint. Now my findings on the above points are as follows:-

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| Point No.1 : | In the Negative. |
| Point No.2 : | As per the final order
for the following: |

REASONS

7. **Point No.1:** The plaintiff has filed this suit for partition and separate possession of his share in the suit schedule property and to declare that, the gift deed dated 05.05.2008 executed by his father in favour of the 2nd defendant is not binding on his share. The 2nd defendant after his appearance and after recording the evidence of PW.1, he came up with the present application U/Or.7 Rule 11(d) of CPC to reject the plaint as barred by law.

8. It is the claim of the 2nd defendant that, the plaintiff has challenged the gift deed dated 05.05.2008. Hence, he prayed to reject the plaint as barred by limitation. Per-contra, the plaintiff submitted that, the plaint can't be rejected as barred by law.

9. I have perused the plaint averments in detail. It is the claim of the plaintiff that, his father purchased the suit schedule property under the registered sale deed dated 26.02.1997. He further alleged that, during his lifetime, the 2nd defendant by playing fraud and taking advantage of old age of his father got transferred the right over the suit schedule property under the registered gift deed dated 05.05.2008. Hence, the 2nd defendant prayed to reject the plaint barred by limitation. It is well established that, the factom of limitation is mixed question of fact and law. Hence, it needs to be adjudicated on merits. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plaint can't be rejected as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Further, the decisions relied upon by the counsel for the 2nd defendant which are passed in RFA.No.561/2017 and Civil Appeal No.4841/2012 are not applicable to the present case, since facts and circumstances of the present case and the above said decisions are different. From these

reasons, this Court is of the opinion that, the 2nd defendant has not made out any grounds to reject the plaint. Accordingly I answers point No.1 in the Negative.

10. **Point No.2:** In view of the foregoing reasons and conclusion arrived at point No.1, the application filed by the defendants deserves to be rejected. Hence, I proceed to pass the following:

ORDER

The application filed under Order 7 Rule 11(d) of CPC is hereby dismissed.

Cost shall follow the event.

**Sd/-
(PAVITHRA.M.D)
C/c ADDL. CIVIL JUDGE AND
J.M.F.C., TARIKERE.**