

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL  
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,  
B.A. LL.B.,  
I Additional Senior Civil Judge and JMFC.,  
Hubballi.

O.S. No.233/2003

Dated this the 20<sup>th</sup> day of November, 2025

Plaintiff/s : Shri. Jayaprakash Gangadharappa  
Tenginkai and others.

.Vs.

Defendant/s : Shri. Jyotiba Krishnappa Benakatti  
and others.

**PARTIES TO I.A. No.XXVII**

Applicant/s : Smt. Archana S. Shah  
Through GPA Holder.

.Vs.

Opponent/s : Smt. Parvatedevi W/o Parasappa  
Tammanavar.

- i. Provision under which : Under Order VII Rule 11 of  
application is filed CPC
- ii. Relief sought for : Seeking for rejection of the  
counter claim filed by the  
defendant No.9.
- iii. The date on which : 16.09.2025  
application is filed

- iv. Number of the : XXVII application
- v. The date on which : 08.10.2025 objections are filed by different opponents
- vi. The date on which : 20.11.2025 orders were passed on the said application

**ORDERS ON I.A. No.XXVII**

The defendant No.13 has filed an I.A. No.XXVII under Order VII Rule 11 of C.P.C., seeking for rejection of the counter claim filed by the defendant No.9.

- 2. The defendant No.9 has filed objections.
- 3. Heard arguments and the defendant No.13 filed written argument.
- 4. The points for consideration are as follows:
  - 1. Whether the defendant No.13 has made out grounds enunciated under order 7 Rule 11 to reject the counter claim filed by the present defendant No.9?
  - 2. What order ?
- 5. My findings on the above points are as follows:

Point No.1 : In the Affirmative.

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

**REASONS**

6. **Point No.1:** *The present application is supported by affidavit. It is stated by the GPA holder of the defendant No.13 that, the above said counter claim is filed by defendant No.09 after lapse of more than 25 years of execution of registered sale deeds in favor of defendants No.10 to 13 and counter claim is hopelessly barred by limitation in as much as under Articles 58 and 59 of the limitation act, any challenge to an instruments or declaration has to be filed within three years from the date of knowledge. That defendant's No.1 to 8 are brothers and sisters and hence defendant No.9 very well knew the facts of the original suit bearing 233/2003. That if order sheet of O.S. No.233/2003 is perused it is clear that as per orders dated:22.02.2010 till 21.02.2019 of said order sheet it is clearly written that S.N. Patil Advocate is appearing for defendant No.9. Hence defendant No.9 knowing fully well the facts of the case has approached the Court after more than two decades, which is wholly barred by limitation. The registered GPA and registered sale deeds carry a presumption of validity under the law. The burden is on the defendant to prove fraud, forgery or impersonation, which has not been pleaded or substantiated by any cogent evidence. Mere bald denial is not sufficient in*

*law. The counter claim is a clear after thought and abuse of process of law filed only to delay the proceedings and harass the purchasers of properties to gain illegally. Hence, prayed to allow the I.A.*

*7. The objections of the defendant No.9 is that the application filed by the applicant is untenable under the eyes of law and entire real and true facts and circumstances of this suit, as such the present application for rejection of counter claim is not maintainable in the eye of law. The facts of time of limitation of 25 years is not applicable in this case, as the defendant No.9/counter claimant, she has come to the knowledge of her ex-parte and so also the present counter claimant is one of the co-owner, coparcerner along with other defendant No.1 to 8 in the Hindu undivided joint family and suit properties which was inherited after the death of her father late Krishnappa Benakatti. The Hindu Undivided joint family properties was not yet divided till today among all the sharers. And hence she has filed this counter claim in this suit as she is not the signatory to the alleged sale deeds as well as to alleged GPA, which the defendant No.13 is claiming. That, it is important to note that presently in this IA, the defendant No.13 has not only deposing for bogus sale deeds which are in his wife's name, but he also deposing for the defendants No.10 to 12 as he has*

*deposed the same without being having any sort of authority and on this point also the present application be rejected.*

8. *It is further submitted that the provisions of Articles 58 and 59 of the Limitation Act is not applicable as the alleged sale deeds/instrument are not signed by the defendant No.9/counter claimant, which is clearly mentioned in the counter claim. And hence the facts of the counter claim doesn't comes under the situation explained in the said Articles of Limitation Act as mentioned in the present IA. That the reasons stated in the interim application and affidavit filed to set aside the Orders of placing the counter claimant / defendant No.9 as ex-parte is clearly establishes the rights to contest this suit as per law, as such the present application for rejection of plaint does not survive in law. In this suit the Original defendant No.9/counter claimant not appeared personally or through her advocate that too by the name shri. S.N. Patil advocate upto the date of filing her application for setting aside Ex-parte order. The entire Order sheet specifically speaks about the same. It is further submitted that, it is pertinent to note that the defendant No.13 has not objected to the interim application filed by the counter claimant/defendant No.9 for permitting her to appear in this suit and also to contest this suit, as such the present interim application*

*for rejection of counter claim is not maintainable in the eye of law. It is further submitted that the entire contents of para no. 5 of the affidavit are not accepted by the counter claimant, this Court has primarily put the burden upon the defendant No.10 to 13 to prove their bonafideness and those bonafideness needs to be proved by cogent evidence of documentary and oral evidences and not shifting the burden upon the counter claimant to prove the non genuineness of the alleged documents. The present interim application for rejection of counter claim is filed with malafide and bad intention, only to harass the innocent, lawful coparcerner and joint owner, whose share of property is sought now by way of partition in this counter claim. Hence, prayed to dismiss the I.A. with costs.*

9. *During the course of arguments the counsel for defendant No.13/opponent No.14 of counter claim have relied upon the decision of Hon'ble Supreme Court of India reported in 2025 INSC 434, wherein it the Hon'ble Supreme Court of India held that a plaint can should be rejected under Order 7 Rule 11(d) of CPC if, upon a meaningful reading of the plaint itself, it is evidence that the suit is hopelessly barred by limitation while limitation is often a mixed question of law and fact, where the plaints averments, read with documents relied upon and judicially noticeable facts (like revenue*

*records indicating prior partition and registered sale deeds) clearly show the suit to be time barred, the Court should reject the plaint the threshold to prevent protraction of sham litigation.*

*Further, held that registration as constructive notice, registration of a document such as a sale deed relating to immovable property operates as constructive notice of the transaction to the world from the date of registration – parties claiming rights in the property including family members, or presumed to have notice of such registered instruments, unless specific grounds like fraud, coercion or minority or established to rebut this presumption.*

*Further, held that clever drafting and suppression of facts, if clever drafting of a plaint creates an illusion of a cause of action are seeks to mask the fact that the suit is barred by law. The court must see through the drafting and reject the plaint under Order 7 Rule 11, suppression of essential facts regarding knowledge of prior registered deeds and partitions can contribute to the conclusion that the suit is vexatious and barred.*

*10. On perusal of the entire averments made in the application along with objections and written arguments filed by the defendant No.13, it is noticed to the Court that this is the suit filed by the plaintiff for*

*specific performance of contract in respect of the suit schedule property against the defendants.*

11. *When the matter is set down for written statement of defendant No.9 by setting aside exparte dated:24.02.2004, the defendant No.9 filed written statement along with counter claim. Then the defendant No.13 filed present application seeking rejection of counter claim of defendant No.9. It is admitted fact that the matter was set down for written statement of defendant No.9 after setting aside the exparte order which was passed on 24.02.2004. Instead of filing written statement the defendant No.9 filed counter claim also along with her written statement, in her counter claim taken contention that recently she came to know that there is a suit pending against her along with her brothers and sisters in respect of suit schedule properties, that after going through the documents in the present matter she was surprised to know that there is a GPA executed and registered in the name of Sri. C.V. Rattihalli, Advocate Hubballi. That the counter claimant after enquiry with her brothers she has to come to know that the suit was pending the said document of GPA certified copy produced by the defendant No.13/opponent No.14 after 20 years of filing of the suit and in this suit original GPA is not produced by the defendant No.10 to 13. Further, she was shocked to*

*know that the suit properties were sold in the year 2000 itself to defendant No.10 to 13 i.e., to opponent No.12 to 14 by GPA holder, where the counter claimant was confirmed that she has not visited nor appeared before any Sub-Registrar office to execute the GPA nor signed any short of documents. That, after enquiry with her brothers she has learnt that the GPA is just the certified copy and not original and their signatures are not identifiable in the said GPA which is produced by Sub-Registrar after the I.A. was filed by the GPA holder of defendant No.13 before the Court. In this stage the core question before the Court is whether the counter claim filed by the defendant No.9 is within limitation.*

*12. Admittedly, in the present counter claim the defendant No.9 seeks a declaration that the document i.e., GPA executed in the name of Sri. C.V. Rattihalli, Advocate Hubballi is not binding upon her legal share and also prayed for cancellation of the said instrument. Then, the claim is governed by Article 58 and 59 of the Limitation Act, 1963. As per Article 58 declaration that a document is void or not binding the limitation is three years, cancellation of an instrument as per Article 59 is also three years. Thus, ordinarily a challenge to a deed executed in 21.10.1997 should have been filed within three years from the date she came to know of it, but in the present counter claim and on perusal of the certified*

*copy of GPA it is noticed to the Court that the defendant No.9 herself is a party to the document, when she is the party and said document is registered one then within three years she has to question it, in this aspect the decision relied by the defendant No.13 is aptly applicable to the case on hand. Further, the fact that the defendant No.9 was set aside ex parte and later allowed to contest does not automatically extend or revive limitation for a substantive claim that had already become time barred under the Limitation Act.*

*13. Setting aside the ex parte merely allows her to defend the suit and cause action to the counter claim i.e., challenging the document for the year 1997 itself was already barred by limitation before she entered the proceedings. The Court cannot revive a dead claim in such circumstance.*

*14. On the face of the pleadings / counter claim of the defendant No.9 it attacks a document of 1997 without showing any continuing cause of action or date of knowledge, then under Order 7 Rule 11 (d) of CPC the counter claim can be rejected as per barred by law of limitation.*

*15. On perusal of the counter claim it does not depicts that the date of knowledge specifically, in this regard without pleading the counter claim liable to be rejected under Order 7 Rule 11(d) of CPC. Therefore, the*

counter claim is barred by law of limitation and the defendant No.9 merely challenges the 1997 document without showing when she first became aware of it. Hence, it is the course open to the Court is to reject the counter claim under Order 7 Rule 11(d) of CPC as time barred. Therefore, on considering above said facts and circumstances as well as the dictum of the decision and written arguments filed by the defendant No.13 it is noticed to the Court that the counter claim of the defendant No.9 is time barred one.

16. In this regard I would like to refer the following decisions as follows:-

**The decision of Hon'ble Supreme Court of India, Division Bench, in Civil Appeal No 4841 of 2012 in between the Church of Christ Charitable Trust and Educational Charitable Society, Represented by its Chairman – Vs. Ponniamman Educational Trust R/by its Chairperson/Managing Trustee** – wherein it is held that,

7. It is also useful to refer the Judgment in T. Arivandandam Vs. T.V. Satyapal and another, wherein while considering, i.e., Order VII Rule 11 and the duty of the trial court in considering such application, this court has reminded the trial judges with the following observations:

5. ... The learned Munsif must remember that if on a meaningful for 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 11 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, CPC An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at first hearing so that bogus litigation can be shot the first down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....*

*It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11 If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.*

*10. It is useful to refer the judgment in Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others., wherein a three Judge Bench of this Court held as under:*

*28. By "cause of action" it is meant every fact,*

*which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court, **Cooke v Gill 1873 LR 8 CP 107**). In other words, a bundle of facts which it is necessary for the Plaintiff to prove in order to succeed in the suit.*

*It is mandatory that in order to get relief, the Plaintiff has to aver all material facts. In other words, it is necessary for the Plaintiff to aver and prove in order to succeed in the suit.*

*17. In view of the conduct of the Plaintiff, bereft of required materials as mandated by the statutory provisions, the plaint is liable to be rejected at this stage itself as the cause of action pleaded in the plaint is vitiated. Learned senior Counsel for the Respondent vehemently contended that inasmuch as in the application for rejection of plaint, the Ist Defendant has not impleaded the 2nd Defendant, the said application is liable to be dismissed on the ground of non-joinder of the 2nd Defendant, who is a necessary party. On the other hand, learned senior Counsel for the Appellant submitted that 2nd Defendant is not a necessary party to the application for rejection of plaint and according to him non-joinder of the 2nd Defendant does not affect the merit of the application as the Plaintiff alone is a necessary party to the application for rejection of plaint. The stand taken by the*

*Appellant, who has filed the application for rejection of the plaint, is sustainable and acceptable. We have already adverted to the averments in the plaint and we have held that the plaint has not shown a complete cause of action of privity of contract between the Plaintiff and the first Defendant or on behalf of the 1st Defendant. To reject the plaint even before registration of the plaint on one or more grounds mentioned in Order VII Rule 11 of the Code, the other Defendants need not necessarily be heard at all as it does not affect their rights. As a matter of fact, this Court in Saleem Bhai (supra) held that the plaint can be rejected even before the issuance of summons. This Court has taken a view that the trial Court can exercise its power under Order VII Rule 11 of the Code at any stage of the suit I.e before registering the plaint or after issuance of summons to the Defendants or at any time before the conclusion of the trial. We respectfully agree with the said view and reiterate the same. On the other hand, when the Plaintiff itself persists in not impleading a necessary party in spite of objection, the consequences of non-joinder may follow. However, the said objection should be taken in the trial Court itself so that the Plaintiff may have an opportunity to rectify the defect. The said plea cannot be raised in this court for the first time. This position has been reiterated in State of U.P.*

*Vs. Ram Swarup Saroj... We hold that a plea as to the non-joinder of the party cannot be raised for the first time before this Court if the same was not raised before the trial Court and has not resulted in failure of justice. In the case of non-joinder, if the objection is raised for the first time before this Court, the Court can always implead the party on the application wherever necessary. However, in the case on hand, for the disposal of application filed for rejection of the plaint under Order VII Rule 11, 2nd Defendant is not a necessary party, hence he need not be impleaded Accordingly, we reject the said objection of the Respondent herein.*

*20. Finally, learned senior Counsel for the Respondent submitted that in view of a decision of this Court in Roop Lal Sathi Vs. Nachhattar Singh. rejection of the plaint in respect of one of the Defendants is not sustainable. We have gone through the facts in that decision and the materials placed for rejection of plaint in the case on hand. We are satisfied that the principles of the said decision does not apply to the facts of the present case where the Appellant-1st Defendant is not seeking rejection of the plaint in part. On the other hand, the 1st Defendant has prayed for rejection of the plaint as a whole for the reason that it does not disclose a cause of action and not fulfilling the statutory provisions. In addition to the same, it is brought to our notice that this*

*contention was not raised before the High Court and particularly in view of the factual details, the said decision is not applicable to the case on hand.*

***Further I would like to relied upon the decision of Hon'ble High Court Karnataka reported in (2022) 1 KCCR 13 in between Metropoli Overseas Ltd., Vs. H.S. Deekshit wherein it is held that,***

*2. The plaint in O.S. No.237/2020 has been filed seeking for the following reliefs:*

*A) To pass the judgment and decree of partition directing the defendants to effect partition out of the suit schedule property by meets and bounds with the separate possession to the extent of 1/3rd share each plaintiff, in all to the extent of 2/3rd share together out of the suit schedule property by meets and bounds.*

*B) To pass the judgment and decree of declaration to declare that the below mentioned documents are not binding upon the shares of the plaintiffs out of the suit schedule property.*

*1) The agreement to sell dtd. 3/2/1995 registered in the office of the sub-registrar at Nelamangala as document no 2282/1994 in favour of the defendant no 3 alleged to be*

*executed by the defendant no 1 and 2.*

*2) The GPA dtd. 15/2/1995 registered in the office of the sub-registrar at Nelamangala as document no 102/1995 alleged to have been executed by the defendants no 1 and 2 in respect of the suit property in favour of the defendant no 3.*

*3) The sale deed dtd. 20/7/1995 as document no 801/1995-96,*

*4) The sale deed dtd. 20/7/1995 as document no 807/1995-96,*

*5) The sale deed dtd. 19/7/1995 as document no 846/1995-96,*

*6) The sale deed dtd. 19/7/1995 as document no 850/1995-96,*

*7) The sale deed dtd. 19/7/1995 as document no 924/1995-96. The above referred 5 sale deeds were registered in the office of the sub registrar at Nelamangala executed by Pawan kumar Dalmia in favour of the defendant No.3 in respect of the suit schedule property.*

*C). To pass the judgment and decree of perpetual injunction restraining the defendant no 3 its agents, servants, henchmen or anybody claiming through it or under it from in any way interfering with the peaceful possession and enjoyment of the suit schedule property permanently. D) For cost of the suit*

*and to pass any other relief/reliefs which this Hon'ble Court deems it fit to grant under the circumstances of the case "*

*3. In the application under Order VII Rule 11(a) and (d) of the Civil procedure Code (CPC), it was contended that:*

*3.1. Even according to the plaint, the relief sought for as regards declaration relating to the sale deeds of the year 1995 to be not binding on the plaintiffs, the suit is barred by limitation as the same is filed in the year 2020;*

*3.2 Even a perusal of the cause title to the suit in O.S No.227/2020 indicates that the plaintiffs and defendant Nos 1 and 2 were residing under the same roof. Therefore, the plaintiffs were aware of the transaction executed by the defendant Nos 1 and 2 and as such, apart from the suit being an abuse of the process of the Court, the suit is barred by limitation since the plaintiffs were aware of the execution of the sale deeds;*

*3.3. Apart therefrom, there are various other allegations made as regards subsequent to the execution of sale deeds, confirmation deeds have been executed by defendant Nos. 1 and 2 and their father and as regards the sale deed executed in favour of defendant No.3, the permission/ sanction was obtained by defendant No.3 etc.*

7. Sri K.G. Raghavan, learned senior counsel appearing for the petitioner would contend that:

7.2. The suit has been filed for the relief of declaration that the five sale deeds (two of them dtd. 20/7/1995 and three of them dtd. 19/7/1995) are not binding upon the plaintiffs, 25 years after the execution and registration of the said sale deeds. Therefore, the registration of the sale deeds amounted to constructive knowledge to one and all and plaintiffs are deemed to have knowledge of the same.

13. The points that would arise for determination by this Court are:

i) Whether a plaint can be rejected under Order 7 Rule 11(d) of CPC on the ground of the suit being *ex facie* barred by limitation or in all cases limitation would be a mixed question of law and fact requiring trial?

ii) Whether registration of a sale deed in respect of alleged joint family property would amount to constructive notice to all members of the joint family?

iii) Whether in a suit for partition and declaration that certain sale deeds are not binding would the main relief be a declaration or partition?

iv) Would the limitation period for such a suit be under Article 109 or 110 of the

*Limitation Act and when would the period for limitation starts running?*

*v) Whether the order passed by the trial Court requires any interference?*

*vi) What Order?*

15. ANSWER TO POINT No.1: *Whether a plaint can be rejected under Order 7 Rule 11(d) of CPC on the ground of the suit being exfacie barred by limitation or in all cases limitation would be a mixed question of law and fact requiring trial?*

15.1 *Extensive arguments have been advanced by the counsels and several citations have been relied upon It is trite law that generally limitation is a mixed question of both facts and law and that the Apex Court and this Court have in catena of cases held that limitation per se cannot be a ground to exercise powers under Order 7 Rule 11 of CPC.*

15.2 *Having said so, the Apex Court has also held in Hardesh Ores (P) Ltd's case (supra) that law within the meaning of clause (d) of Order 7 Rule 11 of CPC must include law of limitation as well. The Apex Court in Balsaria Construction (P) Ltd case has held that since exfacie the plaint could not be said to be barred by time, trial was required, thereby implying that if it was exfacie evident that the suit was barred by limitation, powers under Order VII*

*Rule 11 could be exercised.*

15.3 *The Apex Court in Sopan Sudhdeo Sable's case [supra] has held that the Court ought to have exercised powers under Order 7 Rule 11 of CPC if the Court is of the opinion that the suit is bogus or irresponsible litigation. The Apex Court in Raghwendra Sharan Singh's case [supra] has also held that if the Courts were to find that the suit is clearly barred by law of limitation, the same could be rejected under Order 7 Rule 11(d) of CPC.*

15.4. *In view of the above, I answer Point No.1 by holding that when a meaningful reading of the plaint discloses that **suit is exfacie barred by limitation powers could be exercised under** order 7 Rule 11(d) of CPC by the Court concerned to reject the plaint.*

15.5 *It is only when there are serious disputed questions of fact that powers under Order 7 Rule 11(d) of CPC cannot be exercised for rejection of the plaint on the ground of the suit being barred by limitation.*

16. *ANSWER TO POINT NO.2: Whether registration of a sale deed in respect of alleged joint family property would amount to constructive notice to all members of the joint family?*

16.1. *The purpose of registration of sale deed is to put to notice the members of the*

*general public about a particular document having been registered and or a transaction having occurred.*

*16.2. A registration of a document makes it a public document and such registration is also reflected in the Encumbrance Certificate relating to the said property, thereby indicating that there is an encumbrance created on the property.*

*16.3. Constructive notice is a notice which treats a person who ought to have known a fact, as if he actually does know it It is the knowledge which the court imputes to a person upon a legal presumption so strong that it cannot be allowed to be rebutted, that knowledge must have been obtained by the person had he made all the relevant inquiries.*

*16.4. In terms of Explanation 1 to Sec 3 of the Transfer of Property Act, if a transaction relating to the immovable property needs to be effected by a registered instrument, under law, then the registration of the document will be deemed as Constructive Notice. The notice of such instrument will be deemed from the date of registration of such instrument Sec 3 of the Transfer of Property Act is extracted hereunder for easy reference.*

*18. ANSWER TO POINT No.4: Would the limitation period for such a suit be under Article*

*109 or 110 of the Limitation Act and when would the period for limitation start running?*

*18.1. The contention of Sri K.G.Raghavan, learned Senior counsel is that in the present case, Article 58 applies insofar as the declaration that the sale deeds are not binding.*

*18.2. As regards the relief of partition he contends that it is Article 109 of Limitation Act which would be applicable Sri Ashwathanarayan, learned counsel for plaintiffs would contend that it is Article 110 which would apply insofar as the relief of partition is concerned and since the relief of declaration is only a consequential relief, the period of limitation for partition would subsume the period of limitation for declaration.*

*18.3. Sri K.G Raghavan, learned Senior counsel relied upon the decision of the Apex Court in Khatri hotels case to contend that since in the present case Article 58 of the Limitation Act is applicable, the period of limitation is to be calculated from the date on which the right to sue first accrued.*

*18.4. His contention is that even if there are multiple causes of actions, the period of limitation would have to commence from the date on which the right to sue first accrued In the present case, though there is a relief of partition which has been sought for, there is*

*also a declaration sought for in respect of sale deeds executed and registered on 19/7/1995 and 20/7/1995, therefore, the suit is barred by limitation.*

*18.18. It cannot be believed that the plaintiffs were not aware of the sale deeds executed, more so when plaintiffs and defendant No.1 are residing in the same house. There is no particular action taken by the Plaintiffs against Defendant No. 1 and 2 for the alleged act of theirs, they continue to reside together and the relationship between them is amicable.*

*18.25. The entire reading of the plaint would only indicate that the relief is for Partition and setting-aside the alienation made by their father. There is no relief as regards the exclusion of the plaintiffs from the joint family, nor is the relief of partition predicated on the exclusion. This stand of the Plaintiffs is also contradictory in that on the one hand the Plaintiffs claim that the Defendants no.1 and 2 have not executed the sale deeds and on the other they claim that the execution of sale deed amounts to their exclusion from the family, which fact came to their knowledge only in the year 2019 on the suit summons being served. Both these contentions apart from being contradictory are also mutually destructive.*

18.27. In terms of Article 109, as aforesaid 12 years has to be taken from the date of possession of the property has been taken. There is a clear recital in the sale deed that the possession has been handed over on the date of sale. It is also the assertion of defendant No 3 that defendant No 3 is in possession exercising ownership rights. Thus even as per this, the period of 12 years would have to be calculated from the year 1995 which expired in the year 2007. Looked at from any angle, the suit is ex facie barred by law of limitation.

19. ANSWER TO POINT NO.5: Whether the order passed by the trial court requires any interference?

19.1. The trial Court has rejected the application filed under Order 7 Rule 11 of CPC on the ground that there are disputed questions of facts and law which are required to be determined after trial.

19.2. In answer to point Nos.1 to 4 have dealt with various aspects relating thereto. It is clear from the reasoning given to the answers above that registration of a sale deed would constitute a constructive notice.

19.7. The above facts are clearly apparent from the face of records and reading of The plaint. The dates are categorically mentioned in

*the plaint and it is only the application of the relevant provision of law which is to be made. Thus, in terms of the decision of the Apex Court in Sopan Sudhdeo Sable's and Raghwendra Sharan Singh's case [supra], a Court would have necessary jurisdiction to reject a plaint **under Order 7 Rule 11 of the CPC on the ground that the plaint is exfacie barred by limitation so as to nip frivolous litigation at the bud, prevent abuse of the process of Court and also dismiss bogus and irresponsible litigation.***

19.8. *In the present case, **the plaintiffs and defendant No. 1 are admittedly residing in the same address which has been confirmed on enquiry** made to the counsels for defendants No 1 and 2, as also of the plaintiff.*

19.9. *It is after the suit filed by the plaintiffs in O.S.No.237/2020 that defendants No. 1 and 2 have also filed another suit. This would also establish collusion between the plaintiffs and defendants No.1 and 2 Defendants No.1 and 2 having sold property in the year 1995 have now set up the plaintiffs to file the above suit in 237/2020 when defendant No.3 apparently has sought develop the property which fact of development has been confirmed by all the counsels during the*

*course of argument.*

*19.10. It is after the plaintiffs have filed the suit in O.S. No 237/2020, defendants No 1 and 2 have also filed another suit. The sequence of events would indicate that the present suit, as also the suit filed by defendants No 1 and 2 are an abuse of process of the court and the process of this court is sought to be made use of to create obstacles for defendant No.3. This court cannot permit such an action being taken by dishonest litigations. This would also require the plaintiffs to be mulked with costs, they having sought to misuse and abuse the process of this court.*

***Further I would like to relied upon the decision of Hon'ble High Court of Karnataka Dharwad Bench reported, dt:29-03-2023 in Civil Revision Petition No.100136/2022 in between Muralidhar S/o G. Sathyanarayana Shetty and others Vs. Shweta D/o G. Karappa W/o M. Prakash wherein it is held that, "while considering the application filed under Order VII Rule 11(a) and (d) of the CPC, the plaint avernments only meets to be looked into and even in the absence of any objections or application filed by the defendants, the court***

***suomoto look into the avernments in the plaint and were the suit appears from the statement in the plaint to be barred by limitation.***

***12. Amended Section 6 of the Hindu Succession Act, 2005 specifies that the daughter becomes a coparcener by birth, however, proviso to Section 6 of the said Act specifies that nothing shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.***

***13. Admittedly, as the alienation as contented by the plaintiffs themselves was made in the year 1954 much prior to the commencement of the Amended Act and the said alienation has been saved under the proviso to Section 6 of the Act, the present suit for partition and separate possession is not maintainable in respect of item No.1 of the suit schedule properties. The Trial Court, ignoring the provisions of law, has passed the impugned order and the same is not sustainable. Accordingly, this Court is of the considered view that the application filed by defendant Nos.2 to 6 needs to be allowed and consequently, the application filed under***

**Order VII Rule 11(a) and (d) read with Section 151 of CPC needs to be allowed.**

17. On perusal of the suit, it is noticed to the court that, the counter claimant is clearly stated in para No.5 page No.16 of her counter claim that after marriage she started to live with her husband in her matrimonial home and she is not the resident of Unkal after her marriage, but she used to just come and go to her parental house after the death of father of counter claimant and her brothers were looking after the properties left over by her father and also taken contention that she become the joint owner along with her brothers and sisters. In such circumstance, how can she say that recently she came to know that there is a suit pending against her and recently she came to know that the alleged GPA, moreover she has not specifically stated on what date the fraud upon her is came to her knowledge in this regard para No.6 page No.16 of her counter claim does not disclose any specific date. Hence I am of the considered opinion that, the proviso of Sec-6 of the Hindu Succession Act is applicable to the counter claim of the defendant no-9. Hence the defendant No.13 /opponent No.14 has establish the prima-facie case in their favour, after considering all these facts, this court has answered **point No.1 in the Affirmative.**

18. **Point No.2** :- *On the basis of my reasons on point No.1, I proceed to pass the following :*

**ORDER**

*The I.A. No.XXVII filed by the defendant No.13/opponent No.14 under Order VII Rule 11 of CPC praying for reject the counter claim filed by the defendant No.9 is hereby allowed.*

*Consequently, counter claim of the defendant No.9 is hereby dismissed with cost of Rs.5,000/-.*

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **20<sup>th</sup> day of November, 2025**)*

*sd/-*

*(Smt. Sarvamangala K.M.)  
I Addl. Senior Civil Judge and JMFC.,  
Hubballi.*