

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:
Sri. Yamanappa Karehanumantappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.437/2024
Dated this the 9th day of April - 2025

Plaintiffs : Mahadevappa S/o. Basappa Bammigatti
and another.

.Vs.

Defendants : Shivappa S/o. Basappa Bammigatti and
others.

PARTIES TO I.A. No.I

Applicant : Mahadevappa S/o. Shivappa Kumbar @
(Deft. No.7) Hosamani.

.Vs.

Opponents : Mahadevappa S/o. Basappa Bammigatti
and another.

ORDER ON IA No.I

The Advocate for defendant No.7 has filed application U/o.VII Rule 11 r/w. Section 151 of C.P.C. praying this Court to reject the plaint for want of cause of action and also suit is barred by law of limitation in the interest of justice and equity.

2. Along with the application the defendant No.7 has filed affidavit stating that there is no cause of action to

file the suit. The plaintiffs and defendants do not belong to the family of this defendant. The genealogy is entirely wrong. The suit filed by plaintiffs is hopelessly barred by law of limitation. At no point of time the plaintiffs and defendants No.1 to 6 were ancestors in joint possession of the suit properties. The defendant No.7 and his ancestors were in joint possession and absolute owners of the suit property. The grand mother of plaintiffs and defendants No.1 to 6 has sold the suit property to one Veerabhadrapa and Hanamappa represented by natural guardian mother Basavva Bidargaddi, who is the grand mother of defendant No.7 on 26.11.1929 as per ME entry No.91. After the death of Hanamappa his wife Fakkiravva got married to Laxmappa and his name is entered on 30.12.1937 as per ME entry No.151 and ME No.172 dated 24.11.1940 as per apsat watni the land was allotted to the defendant No.7's grand mother of 4 acres 4 guntas and defendant No.7 and his elders are cultivating the suit property since last 95 years. Hence, the suit of the plaintiffs is hopelessly barred by limitation and not maintainable. Hence, prayed to allow the application.

3. The Advocate for plaintiffs has filed objection to the application and denied the entire averments made in the affidavit of defendant. Further he contended that the plaintiffs have filed this suit for partition and separate possession. The suit properties are ancestral properties of plaintiffs and defendants No.1 to 6. The plaintiffs have shown the cause of

action to file the suit. The defendant No.7 has illegally entered his name to the suit property. The defendant No.7 has only entered his name through mutation entry. The law of limitation can be looked only on the averments of the plaint. The plaintiffs have filed this suit within law of limitation. Hence, prayed to reject the application.

4. Heard both side. Perused the materials on record. The following points arise for my consideration:

1. Whether defendant No.7 has made out a ground that there is no cause of action to file this suit and barred by law of limitation?
2. What order?

5. My answer to the above points are as under.

Point No.1 : In the Negative.

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

REASONS

6. **Point No.1:** It is well settled law that while passing order on I.A. U/o.7 Rule 11 of C.P.C. court has looked into the averments of plaint only, not the contents of written statement.

7. According to defendant No.7 the suit of the plaintiffs is barred by law of limitation. There is no cause of action to file the suit on the ground that the defendant No.7 and his ancestors were in joint possession and absolute owners of the suit property. The grand mother of plaintiffs

and defendants No.1 to 6 has sold the suit property to one Veerabhadrapa and Hanamappa represented by natural guardian mother Basavva Bidargaddi, who is the grand mother of defendant No.7 on 26.11.1929 as per ME entry No.91. After the death of Hanamappa his wife Fakkiravva got married to Laxmappa and his name is entered on 30.12.1937 as per ME entry No.151 and ME No.172 dated 24.11.1940 as per aptsat watni the land was allotted to the defendant No.7's grand mother of 4 acres 4 guntas and defendant No.7 and his elders are cultivating the suit property since last 95 years. Accordingly to plaintiffs defendant No.7 has illegally entered his name to the suit property. The defendant No.7 has only entered his name through mutation entry. The law of limitation can be looked only on the averments of the plaint. The plaintiffs have filed this suit within law of limitation.

8. It is well settled position of law that while considering the application U/o.7 Rule 11 of C.P.C. the Court has to consider the averments of the plaint and plaint alone. Except the plaint the Court cannot consider the written statement or affidavit filed by the parties to reject the plaint. The Hon'ble Apex Court in **(2003) 1 SCC 557, between Saleem Bhai vs State of Maharashtra** and in landmark judgment **T. Arvindam vs T.V. Satyapal (1977) 4 SCC 467**, held that while deciding to accept or reject the plaint U/o.VII Rule 11 of CPC what can be seen by the court is only the averments made in the plaint. Defence in written statement

of the defendant cannot be looked into. The Hon'ble Supreme Court recently in **(2020) 7 SCC 366, between Dahiben -vs- Arvindbhai Kalyanji Bansali**, explained relevant principles under VII Rule 11 and explained that "The true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application U/o.VII Rule 11 of CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

9. The said ruling is recently considered by Hon'ble Apex Court in **Geeta -vs- Nanjundaswamy, 2023 SCC Online SC 1407, decided on 31.10.2023**. So, this Court has to keep in mind the said settled position of law.

10. The main contention of the defendant No.7 is that the suit is without cause of action. But in the plaint plaintiffs have specifically pleaded that their father or father of defendants No.1 to 6 have not sold the suit property to the family of defendant No.7. The grand father of defendant No.7 Laxmappa has entered his name by colluding with officials of Tahasildar. This fact was come to the knowledge of plaintiffs on 10.02.2023. So, the para No.11 is shown as cause of action for filing of the suit. Entire averments of the plaint are read as it is, it appears that there is a cause of action to file the suit. The contention of the defendant No.7 is that the plaintiffs and defendants No.1 to 6 are no way

concern to his family. The contention of the plaintiffs is that the suit property is ancestral and joint family property of plaintiffs and defendants No.1 to 6 and plaintiffs have got $\frac{1}{2}$ share in the suit property. Therefore, they filed the present suit for partition. So, I hold that there is a cause of action to file the suit and at this stage it cannot be said that suit is without any cause of action.

11. The next contention of the defendant No.7 is that suit is barred by law of limitation. It is well settled position of law that question of limitation is mixed question of law and fact. On this point I rely upon the citation reported in **(2018) 6 SCC 422, Chhotanben and another -vs- Kiritbhai Jalkrushnabhai Thakkar and others**, wherein Hon'ble Apex Court held as under:

“Civil Procedure Code, 1908 – Or.7 R.11(d) – Application for rejection of plaint – Adjudication as to – Relevant considerations therein – Plea as to rejection of plaint on ground of suit being barred by limitation – Tenability – Existence of triable issue with respect to that plea – Effect.

As per plaint of present suit, (i) plaintiff's (appellants herein) and original defendants No.1 and 2 were in joint ownership and possession of ancestral property in question which was inherited by them from their predecessor (father), (ii) plaintiff's had half-share in that property, (iii)

without knowledge of plaintiffs, defendants 1 and 2 transferred said property vide a registered sale deed dt. 18.10.1996 in favour of defendants 4 to 6 after forging signatures/ thumb impressions of plaintiffs as witnesses on that deed, (iv) plaintiffs got knowledge about that fraudulent deed when on getting information from their community members they immediately enquired about the matter and obtained a certified copy of registered sale deed from office of Sub-Registrar concerned, and (v) on getting knowledge about said fraudulent transaction, plaintiffs immediately filed instant civil suit (in year 2013) and that too within two days from refusal by original defendants 1 and 2 to refrain themselves from interfering with peaceful enjoyment of use and possession of ancestral property by plaintiffs.

In said suit, defendants 5 filing an application under Or.7 R.11(d) C.P.C. for rejection of plaint on ground that suit was barred by limitation having been of averments in plaint, held, which of the articles from amongst Arts.56, 68, 59, 65 or 110 or any other article of Limitation Act, 1963 will apply to present case was to be considered at appropriate stage – **Thus, issue regarding suit being barred by limitation was a triable issue in fact situation**

of present case – Consequently, plaint could not be rejected at the threshold in exercise of power under Or.7 R.11(d) CPC – Thus, affirming decision of trial Court in this regard, view taken by High Court to the contrary reversed.”

So, by considering the said citation and considering the averments of the plaint I hold that the question of limitation is mixed question of law and fact and only on the ground of limitation the plaint cannot be rejected. So, at this stage only on the basis of averments of the plaint it cannot be said that the suit is barred by law of limitation.

12. So, considering the materials on record I hold that the application is filed by the defendant No.7 only in order to drag on the matter. Hence, the said application is devoid of merits and liable to be rejected. Accordingly, I answer point No.1 in **Negative**.

13. **Point No.2:** In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER

The I.A. No.I filed by the defendant No.7 U/o.VII Rule 11 of r/w. Section 151 C.P.C. is rejected.

The costs shall following the events.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the 9th day of April - 2025)

(Yamanappa Karehanumantappa)
Prl. Senior Civil Judge, Hubballi.