

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

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.369/2019

Dated this the 09th day of April - 2026

Plaintiff : Smt. Manjula W/o Ramesh Kundagol and
another

.Vs.

Defendants : Smt. Shobha W/o Suresh Karki and others

PARTIES TO IA

Applicants : Smt. Savita W/o Siddarth Itagi

.Vs.

Opponent : Smt. Shobha W/o Suresh Karki and others

ORDER ON IA

This I.A. is filed by the Advocate for defendant No.3A U/O. 7 R. 11, O. 2 R. 2 R/w 151 of CPC also R/w Sec. 58 of Limitation Act, also R/w Sec. 132 of K.L.R. Act praying to reject the suit of the plaintiff as it is hit by law of limitation and O. 2 R.2 R/w 151 of CPC in the ends of justice and equity.

2. In support of the application defendant No.3A sworn affidavit stating that, the plaintiffs have filed suit in OS No. 73/2011 which came to be dismissed on 08.12.2014 by

this same Court after completion of trial. In the earlier the suit OS No. 73/2011 the prayer of the plaintiffs is for the relief of partition and the present case also for the relief of partition and declaration declaring that, the registered document is null and void. The plaintiff not pleaded anything with regard to existence of joint family properties and their contribution to acquire the suit property. The relief sought in OS No. 73/2011 and the relief sought in the present suit and parties are also one and the same. Therefore, the suit is hit by principles of res-judicata and O. 2 R. 2 of CPC, because even having knowledge about the existence of all properties, the plaintiffs have filed OS No. 73/2011 and in the said suit itself the plaintiffs must have included all the properties mentioned in the schedule of this present suit, but plaintiffs did not do so. Further the execution of Gift Deed by their mother Smt. Devika in favour of her grand daughter in the year 2015 and suit was filed in the year 2019. Within 3 years, the plaintiffs have not challenged the Gift Deed executed by their mother. The plaintiff has not produced documents in respect of suit properties. Therefore, the suit of the plaintiff is hit by Sec. 132 of KLR Act. Therefore, the suit of the plaintiff is barred by limitation may be dismissed.

3. The Advocate for plaintiff filed objection and contended that, the application filed by defendant No.3A is not maintainable in law nor on facts. The contents of the affidavit is false and untenable. The application is filed after

completing the half of the evidence and no plea of limitation was raised in the written statement and moreover no issue on the limitation was framed by this Court. The evidence of the parties commenced and plaintiff evidence is closed and DW.1 cross was done in three times. The question of limitation in the partition suit is a mixed question of law and fact and cannot be decided without full-fledged trial. Hence, prays to dismiss the application.

4. I have heard both side on this I.A. Perused the pleadings of the parties, I.A. and affidavit. The following points arise for my consideration:

1. Whether the defendant No. 3A has made out grounds to allow the application ?
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:** The plaintiffs have filed the suit against the defendants for the relief of partition and separate possession in respect of suit properties. The defendants appeared and filed written statement. Issues have been framed. The plaintiff examined PW.1 and marked certain documents and defendant led evidence and got marked

certain documents as exhibit D series. When the case is posted for further defendant evidence, the Advocate for defendant No.3A has filed this application on the ground that, the suit of the plaintiffs is barred by law of limitation on the ground that, the plaintiffs have filed the suit in OS No. 73/2011 and the said suit was dismissed on 08.12.2014. The plaintiffs have not pleaded their contribution to acquire the suit properties. The Will deed and Gift deed executed by late Somappa having knowledge by the plaintiffs. Therefore, suit is barred by law of limitation.

7. On perusal of plaint averments, the plaintiffs have filed this suit against the defendants for partition and separate possession in respect of suit properties and declaring that, the Gift Deed dated 24.11.2014 and Will deed dated 18.09.2014 are not binding upon the plaintiff and claiming 1/5th share in the suit properties.

8. No doubt as per averments of plaint, the Will deed and Gift Deed after lapse of 3 years from the registration of Will deed and Gift Deed, the suit has been filed. In view of Hon'ble High Court of Karnataka in **RFA No. 2798 of 2025** in between M/s Sammy's Dream Land Co. Pvt. Ltd vs. Shri Muniswamappa wherein it is held that, A registered Sale Deed creates a presumptive of constructive notice to the public, and the limitation period for filing a suit begins from the date of registration. Clever drafting of a

plaint to create an illusion of cause of action will not prevent rejection U/O. VII R. 11 of CPC. No doubt the Will deed and registered deed are the registered document creates a presumptive of constructive notice to the public and the limitation period for filing a suit begins from the date of registration. Here the plaintiff apart from Gift Deed and Will deed, they have pleaded that, the suit properties are ancestral properties of plaintiffs and defendants and they are having 1/5th share in the suit properties. The partial plaint cannot be rejected. Therefore, the judgment of Hon'ble High Court of Karnataka not applicable to the case on hand.

9. The question of limitation is mixed question of law and fact. Only on the point of limitation this Court cannot reject the plaint. So, whether such clause is there or not or whether such condition is there or not can be decided only after full pledged trial. The question of limitation being mixed question of law and fact, the same cannot be considered at this stage.

10. I have perused all the citations. The facts and circumstances of the said citations are not applicable to the facts and circumstances of the present case. 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. Hence, considering the plaint

averments I hold that defendant No.3A has not at all made out the case to reject the plaint. The full pledged trial is required to consider the case on merits. Hence, I answer point No.1 in **Negative**.

11. **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 filed by the defendant No.3A U/O.

7 R. 11, O. 2 R. 2 R/w 151 of CPC is rejected.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **09th day of April - 2026**)

Sd/-
(Yamanappa Karehanumanthappa)
Pri. Senior Civil Judge, Hubballi.