

**COMMON ORDERS ON I.A.s NO.10 AND 11 FILED U/Sec. 3**  
**AND ARTICLE 109 OF LIMITATION ACT**

The advocate for the defendants No. 8, 9 and 11 have filed the above applications respectively and sought to dismiss the suit against them on the grounds that the plaintiff has filed the above suit against the defendants for the reliefs of partition and separate possession in respect of suit schedule properties. The plaintiff is the wife of B.P. Mahendra, who is the brother of the defendant no.1. The Mahendra and defendant no. 1 are the members of the joint family and the husband of the plaintiff has relinquished his right in favour of defendant no.1 along with other brothers and sisters under the registered relinquishment deed. Accordingly, defendant no.1 was enjoying the Item No.5 of the suit schedule properties as its absolute owner. The another brother of defendant no.1 who is residing in abroad has also executed the power of attorney in favour of defendant no.1 to deal with the Item No.5 of the suit schedule properties. As such, the defendant no.1 has entered into an agreement of sale in respect of Item no. 5 of the suit schedule properties under the sale agreement dated 16.06.2011. Subsequently, the said property was purchased under the registered sale deed dated 24.06.2011. Now the vendee is in possession of the item no.5 of the suit schedule properties.

2. Whereas, now the plaintiff has filed the instant suit claiming her 1/4th share in the item no.5 of the suit schedule

properties along with other properties. Whereas, the suit of the plaintiff is barred by limitation as the plaintiffs ought to have filed the suit within three years from the date of attaining majority. Accordingly, the suit has to be dismissed by treating the fact of limitation as preliminary issue and accordingly sought to allow the application.

3. On the other hand, the plaintiff has filed objections and contented that the application filed by the defendants no.8, 9 and 12 are not at all maintainable either in law or on facts of the case and hence it has to be rejected. The limitation is a question of law and fact. The defendants have sworn to a false facts, to gain undue advantage against the plaintiff. Moreover in a partition suit, question of limitation is not at all applicable and the same has to be considered along with the merits. The plaintiff is not a party to the sale agreement and has not questioned the sale. Hence the question of limitation does not arise and accordingly sought to dismiss the application with the cost.

4. Heard both the advocates. Perused the material on record.

5. The points that arise for my consideration are:

1. **Whether the applications deserve to be allowed?**
2. **What Order?**

6. My findings on the above Points are:

**Point No.1:** In the **Negative**

**Point No.2:** As per final order

for the following:

## **R E A S O N S**

7. **Point No.1:** The material on record reveals that the plaintiff has come up with the instant suit against the defendants for the reliefs of partition and separate possession of her share through her deceased husband, who is the alleged brother of the defendant No.1. Further, the averments of the applications reveal that the alleged purchasers have no dispute in respect of the said fact. Further, on plain perusal of the averments, it reveals that the defendants No.8, 9 and 12 though filed applications separately under different provisions of Limitation Act, they are claiming the same relief with the similar set of facts alleging that the sale deed has not been challenged within the prescribed period of limitation and accordingly, suit of the plaintiff is barred by limitation.

8. However, the relief column of the plaint falsify the said contention of the defendants No.8, 9 and 12 as the relief column of the plaint is silent in respect of the sale deed. Further, the alleged provision of Sec. 3 and Article 109 of the Limitation Act, which are in respect of Bar of limitation and alienation by a father and its limitation. Whereas, admittedly, the plaintiff is not at all challenging

any alienation more particularly alienation by the father of the defendant No.1, as she is a daughter-in-law to the family of the defendant No.1. Apart from that as mentioned supra, she is claiming her share through her husband. That further, the cause of action to institute the suit is shown as 01.01.2013 and on 05.06.2013, the date on which the defendants alleged to have refused the demand of the plaintiff to effect partition. Hence, the suit of the plaintiff, which was filed on 12.06.2013 is well within the period of limitation and accordingly, the contentions of the defendants No.8, 9 and 12 hold no water. Further, the fact of limitation being the mixed question of law and fact, it cannot be treated as a preliminary issue.

9. Apart from that the defendants No.8, 9 and 12 have maintained these frivolous applications and all along prolonged the matter without there being any stuff in their applications. Accordingly, this court is of the considered opinion that the defendants have failed to make out grounds. In the circumstances, the point No.1 is answered in the **Negative**.

10. **Point No.2:** For the aforesaid findings, I proceed to pass the following:

### **O R D E R**

The IAs 10 and 11, filed U/S 3 and Article 109 of Limitation Act are hereby dismissed with cost of Rs.200/- each.

Plaintiff's evidence finally as last  
chance by 14.03.2018.

Prl. Senior Civil Judge & J.M.F.C.,  
Hunsur.