

KAMS310000702013



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.  
AT HUNSUR**

**Dated this the 11<sup>th</sup> day of January, 2024**

**Present:**

**Smt. Pooja Belakeri, B.A., LL.M.**  
Addl.Civil Judge & J.M.F.C.,  
Hunsur.

**O.S./232/2013**

<b><u>PLAINTIFFS :</u></b>	1)	Venkatamma, D/o late Dasashetty, Aged about 80 years,
	2)	Dasashetty, S/o late Marishetty, Aged about 45 years,  Both are R/at Ullenahalli Village, Bilikere Hobli, Hunsur Taluk, Mysuru District.

**// Vs //**

<b><u>DEFENDANTS:</u></b>	1)	Honna Nayaka, S/o late Nanja Nayaka, Aged about 40 years,
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	2)	Chikka Nayaka, S/o late Nanja Nayaka, Aged about 38 years,
	3)	Sanna Nayaka, S/o late Nanja Nayaka, Aged about 36 years,
	4)	Devamma, W/o late Nanja Nayaka, Aged about 70 years,
	5)	Kamma, W/o late Chikka Nayaka, Aged about 68 years,
	6)	Kala Nayaka, S/o late Chikka Nayaka, Aged about 38 years,
	7)	Ravi Nayaka, S/o late Chikka Nayaka, Aged about 36 years,
	8)	Kala Nayaka, S/o late Honna Nayaka, Aged about 80 years,  All are R/at Ullenhalli, Bilikere Hobli, Hunsur Taluk, Mysuru District.
	9)	K.V. Sathyanarayana Shetty, S/o late Venkatakrishnaiah Shetty, Aged about ___ years (not mentioned), No.152, 3 <sup>rd</sup> Cross Road, Indiranagar, Mysuru.
	10)	Jayamma, W/o late Venkatesh, Aged about 70 years,
	11)	Devaraju, S/o late Venkatesh, Aged about 50 years,
	12)	Shanthamma, D/o late Venkatesh, Aged about 48 years,

	13)	Puttaraju, S/o late Venkatesh, Aged about 46 years,
	14)	Kumara, S/o late Venkatesh, Aged about 44 years,  Def.Nos.10 to 14 are R/at 185, Ward No.22, Madhunahalli Village, K.R. Nagara Taluk, Mysuru District.

**PARTIES TO I.A. NO.10**

<b>APPLICANT / DEFENDANT No.9</b>	:	K.V. Sathyanarayana Shetty  <p style="text-align: right;">(By Sri <b>KCR</b>, Adv.)</p>
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**V/s**

<b>OPPONENTS/ PLAINTIFFS</b>	:	Venkatamma & another  <p style="text-align: right;">(By Sri <b>MRS / LVS</b>, Adv.)</p>
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**ORDERS ON I.A. NO.10**

The applicant/defendant-9 has filed the present application U/o 7 Rule 11 R/w Sec.151 of CPC praying to reject the plaint.

2. It is stated in the affidavit that plaintiffs have filed the present suit against defendant-9 and other defendants for the relief of partition and separate possession with

respect to suit schedule property. The suit schedule property was mortgaged on 03.04.1968. Later without cancelling the said mortgage deed there is sale transaction with respect to suit schedule property on 14.02.1970. Further on the basis of sale deed dated 04.02.1970 the vendor has sold the suit schedule property in favour of defendant No.9 on 07.03.1998, 25.02.2004, 09.06.2004. Hence, through this application it is contended by the defendant-9 that the suit is barred by law of limitation. Hence, prays to reject the plaint.

3. On the other hand the plaintiff has filed the objection stating that the defendant-9 has filed false affidavit already the plaintiff has examined as PW-1 when the case was posted for defendant evidence the present application is filed to drag the matter. Hence, prays to dismiss the application with cost.

4. Heard the arguments.

5. The following points would arise for my consideration:-

**Point No.1: Whether the Defendant-9 proves that, the I.A. filed under Order 7 Rule 11 R/w Section 151 of C.P.C. deserves to be allowed?**

**Point No.2: What order?**

6. My findings on the above points are as under;

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

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

### **REASONS**

**7. Point No.1:-** It is settled position of law that while rejecting the plaint on the basis of plaint averments the court has to decide. But not on the averments/defence taken by the defendants. Keeping this principle, I have carefully perused the plaint averments. It is the case of the plaintiffs that plaintiff-1 is the D/o Late Dasa Shetty who is having another son by name Late Venkatesha. It is stated in the suit schedule property is their ancestral property. On 03.04.1968 the plaintiff No.1 along with her brother Late Venkatesha they have mortgaged the suit schedule property in favour of husband of defendant No.4 and father of defendant No.1 to 3. Without cancelling the said mortgage deed, the brother of plaintiff No.1 without the knowledge of plaintiff has sold the suit schedule property in favour of husband of defendant No.4. It is contended that as the suit schedule property is her ancestral property she has half share over the said property. The sale has been made

without her knowledge and there are subsequent purchaser who is defendant No.9, hence she has filed the present suit for relief of Partition and Separate Possession with the sale deeds with respect to suit schedule property does not bind on her share.

8. On these pleadings it is contended by the defendant No.9 that the suit is barred by law of limitation. Because the mortgage deed was entered on 03.04.1968. The present suit is filed in the year 2013 and there is lapse of 30 years in questioning the sale deeds. On bare perusal of the said dates it appears that there is lapse of 30 years. But in law of limitation the limitation starts from date of knowledge. Because in the present plaint averments it is clearly stated the cause of action has arose on 01.09.2012 when the plaintiff has acquired knowledge of all the transaction and issued legal notice to defendants. Under such circumstance, the question of time limitation being the mixed question of law and fact. Without evidence at this stage the court can not come to conclusion. After enquiry only the court can determine whether the suit is barred by limitation or not. But on careful perusal of the plaint at this stage there are no merits to allow the present application. Hence, I answer **Point No.1** in the **Negative**.

**9. Point No.2:-** In view of the above discussions, I proceed to pass the following:-

**ORDER**

**I.A.No.10 filed by the Applicant /  
Defendant-9 under Order 7 Rule 11 R/w  
Section 151 of C.P.C., is hereby rejected.**

(Dictated to the Stenographer, transcript computerised by him revised, corrected and then pronounced by me in the open Court on this the **11<sup>th</sup> day of January 2024**)

**(Pooja Belakeri)**  
Addl. Civil Judge & J.M.F.C.,  
Hunsur.