

KAMS500001052020



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC  
NANJANGUD**

**Present : Sri. Kamalaksha D., B.A., LL.B.,**  
Senior Civil Judge & J.M.F.C.,  
Nanjangud.

**Dated this the 4<sup>th</sup> day of March 2026**

**O.S./22/2020**

**Plaintiffs** Ningamma and others

**-V/s-**

**Defendants** : H.G.Mahadevappa and others

**I.A. XIV**

**Applicant** : Uddandappa

.. defendant No.2  
(By Sri. M.J.S., Adv.)

**-V/s-**

**Opponents** : Ningamma and others

... plaintiffs  
(By Sri. M.A.S., Adv.)

**ORDER ON I.A.XIV**

The counsel for the defendants No.2 to 6 has filed this application under Section 151 of C.P.C. along with the memorandum of facts to consider additional issue No.2 framed on 06.08.2025 before considering other issues, thereby dismiss the suit of the plaintiffs.

2. In the memorandum of facts the learned counsel for the defendants No.2 to 6 submits that, the plaintiffs have filed the suit for the relief of partition and separate possession. The defendants have agitating the suit by filing written statement and they have taken contention that the suit of the plaintiffs is highly time barred. The court has framed the additional issue in this regard. Since this is a legal plea and if answered in favour of the defendants, it will be decided finally. The defendants have furnished documentary evidence to show how the suit of the plaintiffs is time barred one. Hence, this application.

3. Per contra the counsel for the plaintiffs filed objections stating that this is a practice of defendants No.2 to 6 to prolong the matter as much as possible, because the suit of the plaintiffs cannot be decided on the question of limitation at this juncture without looking into the documents of other side coupled with oral evidence. The present application is filed only to prolong the precious time of the court and a deliberate attempt of the defendants to prolong the matter. The defendants also filed this application to avoid the legitimate share. Hence, prayed to reject the application.

4. Heard both sides on the additional issue. The additional issue No.2 framed by this court on 06.08.2025 runs as below:

“Whether the 4<sup>th</sup> defendant further proves that suit of the plaintiffs is barred by limitation?”

5. The above issue is answered as negative, for the following :-

**REASONS**

6. The contention of the learned counsel for the defendants No.2 to 6 that the suit of the plaintiffs has to be dismissed, because it is highly time barred one. The application is filed by the learned counsel for the defendants with memorandum of facts. It is just mentioned in the application that the suit of the plaintiffs will be decided if additional issue No.2 is considered at this juncture, because it is highly time barred one. The learned counsel for the defendants No.2 to 6 has not explained how the plaintiffs' suit is to be decided on the question of limitation, because he has not mentioned when the time start to calculate the length of limitation. At this juncture, I would like to refer the judgment of the Hon'ble High Court of Karnataka to say that whether partition suit may be dismissed on the question of limitation. Though the Hon'ble Supreme Court discussed the matter in the application under Order VII Rule 11(d) of C.P.C. but the same principle of law may be applied in the present matter,

because the Hon'ble Supreme Court also discussed the question of limitation to decide the matter. The said decision has come in the judgment of **Shri Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another** reported in **(2025) AIR (SC) Civil 392**. In that case, the Hon'ble Supreme Court has discussed as below:

*“Claims for possession and title to immovable property under Article 65 of Limitation Act 1963, must be initiated within 12 years. Where possession has been with adverse parties for over a century, the plaintiff’s claim for possession and title is barred by limitation. Vague and unsubstantiated allegations of fraud do not suffice to overcome the bar of limitation. Fraud allegations must be specific and clearly articulated; otherwise they cannot revive a time-barred claim.”*

7. Again it is worth to refer the judgment of our Hon'ble High Court of Karnataka reported in **2025 (4) Kar.L.R. SN 179** in the case of **Hongeppa Vs. Mrs.Kamamma and others**. In that matter the Hon'ble High Court of Karnataka has held that, *“it is not in dispute that suit schedule properties are the ancestral properties. The First Appellate Court taken note of the fact that other*

*female members were made as parties in the partition deed, but plaintiff was excluded in giving any share, thus, the First Appellate Court taken note of the discrimination made by the family members - When Order 7 Rule 11(d) is invoked, that is, barred by law, the same is a mixed question of fact and law - The issue of law and limitation cannot be decided in an application filed under Order 7, Rule 11(d) of C.P.C.”* So, though the learned counsel for the defendants No.2 to 6 has filed separate application under Section 151 of C.P.C. to consider additional issue to decide the suit on the question of limitation, the present decision of the Hon'ble High Court of Karnataka decided in the above case may be referred to say that the suit of the plaintiffs cannot be decided the question of limitation, because both are mixed question of law and facts. So, it may be said that the suit of the plaintiffs cannot be dismissed by deciding the additional issue framed to decide the suit on the question of limitation, because limitation is mixed question of law and facts. A trial is definitely

required to figure out that the suit of the plaintiffs is time barred one or not.

8. However, the Hon'ble Supreme Court in the case of **R.Nagaraj (dead) through L.Rs. and another Vs. Rajmani and others** reported in **2025 INSC 478 : 2025 AIR SC 2215** has held that, suit can be dismissed as time barred even if no specific issue regarding limitation was framed. So, the Hon'ble Apex Court of India has held that suit of the plaintiffs can be decided if issue of limitation is not framed. But in the present matter issue regarding limitation was framed. But as discussed above, the question of limitation in suit particularly in partition suit is to be decided in trial, because it is mixed question of fact and law. The right of share in family property is statutory generated right, that cannot be taken away merely on the question of limitation, because it definitely cause injustice to the plaintiff if he or she entitled to get share. If plaintiffs are permitted to proceed with the matter, it will definitely give benefit to both the parties because if plaintiffs prove

the nature of the schedule property as joint family property they will get share, otherwise their suit may be dismissed, then it will definitely help the defendants to decide the matter ultimately and effectively. Hence, for the above said reasons i.e., the question of limitation is mixed question of law and facts, it may be concluded that it is not proper stage to decide the suit of the plaintiffs on the question of limitation. Hence, I answer additional issue No.2 in the negative and proceeds to pass the following :

**ORDER**

I.A.XIV filed by the defendants No.2 to 6 under Section 151 of C.P.C. to consider the additional issue No.2 dated 06.08.2025 on the question of limitation is dismissed. No order as to cost. The suit of the plaintiffs is maintainable.

*(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 4<sup>th</sup> day of March 2026).*

(Kamalaksha D.)  
Senior Civil Judge, Nanjangud.