



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C., AT CHANNAPATNA.**

: PRESENT :

SMT.SHUBHA, B.A.L., L.L.B.,
Senior Civil Judge & JMFC.,
Channapatna.

DATED THIS THE 08th DAY OF DECEMBER 2023

O.S.No.01/2020

PLAINTIFFS:

1. Smt.Gowramma and Others.

(By Sri.R.V., Advocate)

V/S

DEFENDANTS:

1. Sri.Yogesha and Others.

**(Defendant No.1 is
exparte and Defendant
Nos.2 to 4 are
represented by Sri.H.D.S.,
Advocate)**

IN I.A.No.II

APPLICANTS/DEFENDANTS:

1. Sri.Yogesha and Others.



V/S

OPPONENTS/PLAINTIFFS :

1) Smt.Gowramma and Others.

ORDERS ON I.A No.II

The above application i.e., I.A.No.II is filed on behalf of the applicants/defendants under Order VII Rule 11 read with Section 151 of Civil Procedure Code praying this court to reject the plaint as not maintainable as per provisions of amended Section 6(A) of the Hindu Succession Act and also Limitation Act, in the interest of justice and equity.

2. The above application is supported with the affidavit of the Defendant No.2 wherein he has submitted that Eshwaraiah and his son defendant No.1 had sold the schedule property by executing Registered Sale Deed on 10.08.1998 in favour of Veerabhadraiah the father of defendant Nos.2 to 4. That pursuant to sale, Veerabhadraiah the father of the defendant Nos.2 to 4, was in actual and physical possession of the suit schedule property



and the katha has been mutated into his name. That after his death, katha of the suit schedule property has been made out in the name of defendant No.2 to 4 and have been continuing in possession. That the sale much prior to Amendment to Section 6 of the Hindu Succession Act and as per Amended Act, any transaction prior to December 2005, through a registered document cannot be questioned by the coparceners. That the sale deed executed by the Kartha of the family, plaintiffs have no right to question the same. That the sale is of the year 1998 and suit is filed after lapse of two decades. Therefore, no cause of action accrues for the Plaintiffs. That the plaint is therefore liable to be rejected. That no loss or prejudice will be caused to the Plaintiffs if the plaint is rejected, but if the same dismissed, they will be put to great loss and injury which cannot be compensated by any means. Hence they prayed to allow the application.

3. On the other hand the Plaintiffs have filed objections and denied the averments made in the affidavit as false and submitted that the application



is not maintainable either in law or on facts and liable to be dismissed in limine. That the Defendants have suppressed the material facts as such the Defendants are not entitled to any orders at the hands of this court. That the Plaintiffs have filed the above suit for the relief of partition and separate possession of their legitimate share in the suit schedule property. That they have requested the Defendant No.1 to effect the partition and put them into their legitimate share in suit schedule property and when the Defendant No.1 declined to effect partition, the above suit is filed against the Defendants. From the date of knowledge the suit is filed in time. That the application filed by the Defendants does not stand in the eye of law and have no merits and liable to be dismissed. Hence, prayed to dismiss the application.

4. I have heard the arguments of learned advocate for the plaintiffs/applicants and opponents/defendants on I.A. No.II. Now the points that arise for my consideration are:



POINTS

1) Whether there are any grounds to reject the plaint for the reasons mentioned in the I.A.No.II?

2) What order ?

5. My findings to the above points are as follows:-

Point No.1 : In the Negative

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

REASONS

6. **POINT NO.1** :- The above application i.e., I.A.No.II is filed on behalf of the applicants/defendants under Order VII Rule 11 read with Section 151 of Civil Procedure Code praying this court to reject the plaint as not maintainable as per provisions of amended Section 6(A) of the Hindu Succession Act and also Limitation Act, in the interest of justice and equity.

7. In this case, the contention of the Plaintiffs is that from the date of knowledge of the said Sale Deed, they have filed this suit within limitation. It is settled principle of law that the limitation is a mixed question of law and fact. Whenever, the



court has to decide with regard to the limitation aspect, it has to record the evidence and then only the court can decide whether the suit is within limitation or not.

8. In this case, the learned Advocate for the Defendants relied on the Judgment of **Hon'ble High Court of Karnataka in Civil Revision Petition No.100136 of 2022 dated 29.03.2023 (Murlidhar and Others vs. Shwetha and Others)**, wherein considering the facts of that case, the court held that, the alienation of the year 1954 which is much prior to the commencement of the amended act, is saved under the proviso to Section 6 of the Act.

9. But in the present case on hand, the Plaintiffs have contended in the above application that, from the date of knowledge of said alienation, they have filed this suit. Even though the date of knowledge of the Sale Deed is not specifically mentioned in the plaint, but in the plaint shows that demand for partition was made in the year 2019 and the suit was filed in the year 2020. Therefore, within 3



years, the Plaintiffs have filed this suit. It is settled principle of law that the suit cannot be dismissed at the threshold without giving sufficient opportunity to prove the same. If the suit of the Plaintiffs is dismissed at this stage, for the reason that it is barred by law. The Plaintiffs may have to file another suit which will lead to multiplicity of proceedings.

10. In this case, the date of knowledge of the Plaintiffs with regard to the execution of the Sale Deed by Eshwaraiah and Defendant No.1 in favour of Veerabhadraiah has to be decided. Admittedly, the said Sale Deed does not contain the signature of the Plaintiffs. Therefore, the above aspect has to be determined by the court only through full pledged evidence. Moreover, in the said Sale Deed the property is referred as ancestral property. When there is a recital in the Sale Deed that, the said property is a ancestral property, the consent of Plaintiffs ought to have been taken by the said Eshwaraiah and Defendant No.1. It appears either the Plaintiffs were not informed about the said Sale Deed or they have not objected for the Sale Deed.



But the fact is that the said property is mentioned to be a ancestral property. Therefore, all the above facts have to be decided by this court in an full pledged trial. Hence, at this stage, there are no grounds to reject the plaint. The above judgment is not applicable to the present case on hand. Hence, I have answered above **point in the Negative.**

11. **POINT NO.2:-** In view of my findings given on Point No.1 and for the reasons discussed herein above paragraphs, I proceed to pass the following:-

ORDER

The I.A. No.II is filed on behalf of the Defendant Nos.2 to 4 under Order VII Rule 11 read with Section 151 of Civil Procedure Code is hereby dismissed.

(Dictated to the Typist Copyist on computer, then corrected, initialed and pronounced by me in the open court on this the **8th day of December 2023**)

(SHUBHA)
**Senior Civil Judge & JMFC.,
Channapatna.**