

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

**PRESENT: Smt. Namrata Rao.K.S  
B.A.L, L.L.B., M.B.L  
Addl., Civil Judge and J.M.F.C.,  
Channapatna.**

**Dated: This the 20<sup>th</sup> day of September 2018**

**O.S.No.210/2015**

**PLAINTIFF:**

**Sri. Chikkamarigowda Dead by LR'S**

- a) Smt. Lakshamma  
W/o Late Chikkamarigowda  
Aged about 42 years,
- b) Ku. Dakshayani  
D/o Late Chikkamarigowda  
Aged about 25 years,
- c) Ku. Vidya  
D/o Late Chikkamarigowda  
Aged about 25 years,

All are R/a:  
Nidagodi Village,  
Virupakshipura Hobli,  
Channapatna Taluk,  
Ramanagara District.

**(By Sri. R.V.K., Advocate)**

V/s

**DEFENDANTS:**

1. Sri. L. Lingegowda  
S/o Late Lingegowda @ Ningegowda  
Aged about 58 years,

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2. Smt. Ningamma  
W/o Late Lingegowda @ Ningegowda  
Aged about 76 years,
3. Smt. Shashikala  
W/o Kariyappa  
Aged about 30 years,
4. Master. Raghu  
S/o Late Kariyappa  
Aged about 11 years,
5. Ku. Rani  
D/o Late Kariyappa  
Aged about 11 years,

The defendant No.4 and 5 are minors. Hence they have represented by their mother, next friend guardian Smt. Shashikala, the D3.

D1 to 5 are R/a:  
Nidagodi Village,  
Virupakshipura Hobli,  
Channapatna Taluk,  
Ramanagara District.

6. Smt. Sannamma  
W/o Channaveeregowda  
D/o Late Lingegowda @ Ningegowda  
Aged about 56 years,  
R/a: No. 218,  
Ramrahim Nagara, 8<sup>th</sup> Cross,  
Maddur Town,  
Mandya District.
7. Smt. Chikkamoga  
W/o Late Karigudegowda  
D/o Late Lingegowda @ Ningegowda  
Aged about 54 years,

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D/o Late Lingegowda @ Ningegowda  
Aged about 54 years,  
R/a: Kanchanahalli Village,  
Kanakapura Taluk,  
Ramanagara District.

8. Smt. Dundamma  
W/o Marigowda  
D/o Late Lingegowda @ Ningegowda  
Aged about 50 years,  
R/a: Siddapura Village,  
Virupakshipura Hobli,  
Channapatna Taluk,  
Ramanagara District.

9. Smt. Sakamma  
W/o Handi Shivanna  
D/o Late Lingegowda @ Ningegowda  
Aged about 48 years,  
R/a: Channasandra Village,  
Maddur Taluk,  
Mandya District.

**(By Sri. K.T.V., Advocate for D1,  
Sri. M.C.S., Advocate for D9,  
Sri. S.T.J., Advocate for D3 & D5,  
Exparte for D2, D6 & D8)**

**PARTIES TO I.A.No.IV**

**Applicant :** Sri. Chikkamarigowda Dead by LR'S  
and others ..... Plaintiff

-V/s-

**Respondent:** Sri. L. Lingegowda  
and others .....Defendant

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R/a: Kanchanahalli Village,  
Kanakapura Taluk,  
Ramanagara District.

8. Smt. Dundamma  
W/o Marigowda  
D/o Late Lingegowda @ Ningegowda  
Aged about 50 years,  
R/a: Siddapura Village,  
Virupakshipura Hobli,  
Channapatna Taluk,  
Ramanagara District.

9. Smt. Sakamma  
W/o Handi Shivanna  
D/o Late Lingegowda @ Ningegowda  
Aged about 48 years,  
R/a: Channasandra Village,  
Maddur Taluk,  
Mandya District.

**(By Sri. K.T.V., Advocate for D1,  
Sri. M.C.S., Advocate for D9,  
Sri. S.T.J., Advocate for D3 & D5,  
Exparte for D2, D6 & D8)**

**PARTIES TO I.A.No.IV**

**Applicant : Sri. Chikkamarigowda Dead by LR'S  
and others ..... Plaintiff**

-V/s-

**Respondent: Sri. L. Lingegowda  
and others .....Defendant**

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**ORDERS ON I.A. No.IV under Order VII Rule 11 of CPC**

The defendant has filed this application to reject the plaint. In the affidavit accompanying the said application, the defendant has stated that the suit schedule property is not properly valued and the court fee paid is insufficient, there has already been a a partition and therefore no cause of action arise and is certainly barred by limitation.

2. The plaintiff in his statement of objections has stated that there are no grounds to reject the plaint as the court fee paid is as per section 35(2) of the Karnataka Court fees and Suit valuation Act, 1958. Further in a partition suit, the law of limitation does not apply and the plaint does disclose cause of action and pray to dismiss the application.

3. I have given a careful consideration to the arguments advanced by the counsel for both parties.

4. In the premise of the rival contentions, the short point that arise for my consideration is:

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***“Whether the plaint deserves to be rejected on the grounds mentioned in the application?”***

And my answer to the above point is in the **NEGATIVE** for the following assigned;

**REASONS**

**5. Point No.1:** The defendant prays to reject the plaint on the following grounds:

- a) The plaint does not disclose the cause of action
- b) The Court fee paid is insufficient
- c) The suit is barred by limitation.

6. The counsel for the defendant has relied upon the decision laid down in

1. ***Lakshmi and ors Vs Neelamnu and other in CRP No. 138/2014***

The Hon'ble High Court of Karnataka laid down that the amendment to the section 6 of the Hindu Succession Act is not applicable to the alienations made prior to the date 20.12.2004.

2. ***MuniLakshmamma Vs Venkatamma in RFA 561/2017***

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The sum and substance of the judgment is that in a suit for partition , if the properties are sold to a third party way back and the sale deed is not challenged, then the suit is barred by the law of limitation and also devoid of cause of action.

**3. Soumik Sil Vs Subhash Chandra Sil reported in (2015) 5 SCC 732**

The ratio of the dictum is that the court has to look into only the plaint and the plaint while deciding on the application under order 7 Rule 11 CPC.

7. I have gone through the averments in the plaint carefully. At first the question of limitaiton is a mixed question of fact and law and it needs a trial to decide. Now let me apply the ratio in *MuniLakshmamma Vs Venkatamma in RFA 561/2017* to the case on hand. Firtstly, the property is not sold to any third party and is with the defendant No.2 only. Hence the question of seeking the relief of challenging the sale deed does not arise. Hence I am inclined to hold that the ratio in the above case is not applicable to the case on hand. Moreover, the affidavit supporting

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the application does not set this ground as one to reject the plaint. This judgment was delivered for the first time at the time of the arguments by the counsel for the defendant.


8. The another ground on which the defendant seeks to the reject plaint is that the suit is not valued properly and the court fee paid is insufficient. Notably, the suit is for partition and hence section 35 of the Karnataka Court Fees and Suit Valuation Act, 1958 applies. Admittedly relationship is not in dispute. Needless to say, the possession by one coparcenor is possession by all the other coparcenors. Now from the materials available on record, it is impossible to say whether any one of the coparcenor especially plaintiff was oosted from the suit schedule property. This aspect needs trial. Hence the contention of the defendant that the plaint is liable to be rejected for want of proper court fee does not hold water.

9. The another ground on which the defendant prays to reject the plaint is that the suit is bad on the point of limitaiton. At the outset, it is significant to state that the ~~conundrum~~ of

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limitation is mixed question of law and facts. From the averments in the plaint, it cannot be said prima facie that the suit is bad for limitation and therefore I am inclined to reject this assertion of the defendant.

10. The counsel for the defendant vehemently argued that the plaint does not disclose the cause of action. It is the contention of the defendant No.1 that as already oral partition has taken place, the question of partitioning the properties once again does not arise and therefore the plaint is devoid of cause of action. I have given a careful consideration to the arguments advanced by the counsel for the defendant. Whether there was an earlier partition or not is a question of fact. If at all an earlier partition was entered into then the same has to be unveiled in the trial. Until and unless the same gets discovered from the evidence adduced by either side, it is impossible to arrive at any conclusion. Hence merely on the say of the defendant, this court cannot hold that the plaint does not disclose cause of action.

  
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11. Besides, cause of action is a bundle of facts which has to be carved from the entire reading of the plaint and on meaningful reading of the plaint, it does disclose cause of action.

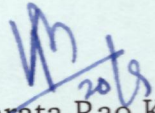
12. Therefore considering all the materials before me, I am inclined to hold that the defendant has not shown any ground to reject the plaint. Accordingly, I answer the Point in the Negative and make the following :-

**ORDER**

The I.A. No.IV is dismissed.

No Order as to costs in view of the parties  
being the relatives.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the open court this the 20<sup>th</sup> day of September, 2018)

  
(Namrata Rao.K.S)  
Addl., Civil Judge & J.M.F.C,  
Channapatna.