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**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & JMFC., AT:
MAGADI.**

Present:

Sri.Hanumanth Satwik.,LL.M,
Addl. Senior Civil Judge & JMFC., Magadi

Dated : This the 16th day of February 2023

O.S.No.232/2017

Plaintiffs : Sri. Aman Ulla & Anr.,

(By **Sri. S.U.** Advocate)

--V/s--

Defendants : Sri. Noor Ahamed & 27 Ors.,

(D1, 2, 4 to 7, 9, 11 to 14 by **Sri. M.S.S.** Advocate)

(D21, 27 & 28 **Exparte**)

(D22, 23 & 26 by **Sri. D.R.** Advocate)

ORDER ON IA NO.VII

The present suit is for declaration and permanent injunction.

2. The present application has been filed by defendant no.22, 23 & 26 U/O.VII Rule 11(a & d) of C.P.C. praying this court to reject the plaint as it is barred by Law. Defendant no.23 in his affidavit filed

accompanying the application narrated the case of the plaintiffs. It is the case of defendant no.22, 23 & 26 that the present suit is not maintainable. None of the requirements of the suit for partition is attracted in view of the plaint averments. The prayers and reliefs are sought only against defendant no.22 to 26. As per the plaint averments, defendant no.22 to 26 are no way concerned to the family of the plaintiffs. The plaint averments show that the suit schedule property is not in the name of any of the members of the joint family of the plaintiffs. No documents have been produced to show that the suit schedule property is the joint family property at any point of time. The present suit is filed to avoid payment of court fees and to harass them. The present suit is not maintainable against defendant no.22 to 26, since they are not the family members of the plaintiffs and defendant no.1 to 21. Further, there is no cause of action to file the present suit against them. The cause of action mentioned in the plaint is only invented just to file the present suit. The plaintiffs did not approach the court with clean hands. The plaint averments clearly reflect that the plaintiffs filed false and frivolous suit against them. The present suit is barred by Law of Limitation. As per the plaint averments, the registered partition took place among the family members in the year 1936. The present suit is speculative and it is filed to harass them for unlawful

gain. The averments made in the plaint are not definite. There is no clarity in the plaint averments. In this regard, defendant no.22, 23 & 26 pray as above.

3. The plaintiffs in their objections admitted their case as narrated in the application. The plaintiffs denied the rest of the application averments. The plaintiffs contended that there are no grounds to allow the application. They in their plaint clearly mentioned the cause of action for filing the suit and also mentioned about the devolvement of the suit schedule property to their family. The application is not maintainable, unless and until a full-fledged trial take place. The present application is barred by Law of Limitation. The present application is filed to drag the proceedings. In this regard, the plaintiffs pray to reject the application.

4. Heard the arguments of learned counsel for defendant no.22, 23 & 26. In spite of giving sufficient opportunity to the plaintiffs to address arguments, the plaintiffs failed and hence the arguments of the plaintiffs was taken as nil.

5. Considering the contentions of the parties, following points arise for my consideration.

1. Whether defendant no.22, 23 & 26 have made out sufficient grounds to reject the plaint as the plaint does not disclose cause of action?
2. Whether defendant no.22, 23 & 26 have made out grounds to reject the plaint as it is barred by Law?
3. What order?

6. My findings for the above points are as under.

- Point No.1 : In the negative
Point No.2 : In the negative
Point No.3 : As per final order
For the following;

REASONS

7. **Point No.1 & 2:-** For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion. It is the case of defendant no.22, 23 & 26 that the present suit is not maintainable. There is no cause of action to file the present suit. The present suit is barred by law of Limitation. In this regard, I have perused the application. Be it stated, defendant no.22, 23 & 26 pray to reject the plaint against them. Be it noted, defendant no.22, 23

& 26 are not seeking rejection of plaint against all the defendants. It is trait law that the plaint cannot be rejected in part. Thus, in view of the settled principle of Law, I am of the view that the present plaint cannot be rejected, in part, only against defendant no.22, 23 & 26.

8. Even otherwise, on perusal of the plaint in its entirety and considering the issues that are required to be answered in the present suit, I am of the view that the plaint discloses cause of action. Further, the question of limitation in the facts and circumstances of the present case is the subject matter of trial, which cannot be decided without their being evidence on record. So also, the contentions raised by defendant no.22, 23 & 26 to reject the plaint are triable in nature.

9. The learned counsel for defendant no.22, 23 & 26 in support of his case relied on the following decisions;

- i. T. Arvindandam Vs. T. V. Satyapal & Anr., (1997) 4 Supreme Court Cases 467.**
- ii. Colonel Shrawan Kumar Jaipuriyar Alias Sarwan Kumar Jaipuriyar V/s. Krishna Nandan Singh & Anr., cited in AIR Online 2019 SC 2176.**
- iii. Raghawendra Sharan Singh V/s. Ram Prasanna Singh (Dead) by L.Rs., cited in AIR 2019 Supreme Court 1430.**
- iv. C. S. Ramaswamy V/s. V. K. Senthil & Ors., cited in**

AIR 2022 SC 4724.

I have perused the decisions relied upon by the learned counsel for defendant no.22, 23 & 26. I have applied the principles of Law laid down in the said decisions while deciding the application under consideration.

10. Thus in the case at hand, the plaint cannot be rejected, in part, only against defendant no.22, 23 & 26 as sought for in the application. Further, the contentions of defendant no.22, 23 & 26 are the subject matter of trial. That apart, for the reasons stated above, the plaint discloses cause of action. Furthermore, the question of limitation in the facts and circumstances of the present case is triable in nature. In these circumstances, considering the application, objection and the plaint, I am of the view that defendant no.22, 23 & 26 failed to show that the plaint is liable to be rejected as it does not disclose cause of action. Further, defendant no.22, 23 & 26 failed to show that the plaint is liable to be rejected as it is barred by Law. In these circumstances, point no.1 & 2 are answered in the negative.

11. **Point no.3:-** In view of reasons on point no.1 and 2, I proceed to pass the following,

ORDER

**IA No.VII filed U/O. VII Rule 11(a & d) of C.P.C. by
defendant no.22, 23 & 26 is hereby rejected on cost
of Rs.200/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **16th day of February, 2023.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**