

KARN410000182017



**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 17th day of June 2022

O.S.No.6/2017

Plaintiffs : 1. Smt. Vijayalakshmi,
W/o. Late. Govindaraju,
Since dead by her L.Rs.,

(a) Sri. N. Lakshmi Narasimhaiah,
H/o. Late. Vijayalakshmi,
Aged about 66 years,

(b) Smt. Rekha L.,
D/o. Late. Vijayalakshmi,
W/o. Murthy,
Aged about 26 years,

P1(a & b) are R/at:
Huluvenahalli Village,
Chunchanakuppe Post,
Bangalore South Taluk,

Also R/at: No.17, 7th Main,
Kengunte, Malathahalli,
Bangalore Vishwavidyalaya,

Bangalore – 560 056.

2. Smt. Anusuya,
Aged about 59 years,
D/o. Late. Govindaraju,
R/at: Hluvenahalli Village,
Chunchanakuppe Post,
Bangalore South Taluk,

(By **Sri. C.V.K.** Advocate)

--V/s--

- Defendants** :
1. Sri. G. Sheshakumar,
S/o. Late. Govinda Raju,
Aged about 65 years,
 2. Sri. G. Rajashekar,
S/o. Late. Govinda Raju,
Aged about 58 years,

D1 & 2 are R/at:
Hluvenahalli Village,
Chunchanakuppe Post,
Bangalore South Taluk,

3. Sri. M. R. Lakshmanappa,
S/o. Ramaiah,
Aged about 62 years,
R/at: No.162, 2nd Main,
Kengeri New Town,
Bangalore – 560 060.
4. Mrs. Vidyarani Goyal,
W/o. Kailash Chand Goyal,
Aged about 72 years,
Since dead by her L.Rs.,

(a) Sri. Satish Kumar Goyal,

Aged not known,
S/o. Late. Kailash Chand Goyal,

(b) Sri. Anil Kumar Goyal,
S/o. Late. Kailash Chand Goyal,
Aged about 37 years,,

Both D4(a & b) are R/at: No.41,
2nd Main, 39th Cross, 8th Block,
Jayanagar, Bangalore – 560 082.

(Defendant no.1 & 2 are placed **exparte**)
(Defendant no.3 **dismissed**)
(Defendant no.4(a & b) by **Sri. T.M.P. Advocate**)

ORDER ON IA NO.VII

The present suit is for declaration, partition and separate possession and for permanent injunction.

2. The present application has been filed by L.Rs., of defendant no.4 U/O.VII rule 11 (a) & (d) of C.P.C. praying this court to reject the plaint. L.R.No.4(a) of defendant no.4 in his affidavit filed accompanying the application submitted that it is an admitted fact that on 26.03.1996 the suit schedule property was alienated by the Kartha in favour of defendant no.3 and in turn defendant no.3 alienated the suit schedule property in favour of defendant no.4 vide Sale Deed dated: 14.09.2005. The plaintiffs are now

debarred under Section 6(1) of Hindu Succession (Amendment) Act, 2005 from questioning the sale deeds. The alienation took place in favour of defendant no.3 is before 20.12.2004. As such, the suit against defendant no.3 and 4 is barred. In this regard, L.Rs., of defendant no.4 pray as above.

3. The plaintiffs in the objections contended that Mitakshara Coparcenary Law contributed discrimination on the ground of gender. It was oppressive and negated the Fundamental Right of equality guaranteed by the Constitution of India. The application filed by the L.Rs., of defendant no.4 is not maintainable. The present application is filed with an oblique motive to defeat their rights. Defendant no.4 earlier filed similar application. They have filed objections to the said application. As such, the present application does not survive for consideration. In this regard, the plaintiffs pray to reject the application.

4. Heard both counsel.

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

1. Whether the L.Rs., of defendant no.4 have made out grounds to reject the plaint as the plaint does not disclose cause of action ?
 2. Whether the L.Rs., of defendant no.4 have made out grounds to reject the plaint as it is barred by law of limitation?
 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**:- It is the case of L.Rs., of defendant no.4 that it is an admitted fact that on 26.03.1996 the suit schedule property was alienated by the Kartha in favour of defendant no.3 and in turn defendant no.3 alienated the suit schedule property in favour of defendant no.4 vide Sale Deed dated: 14.09.2005. The plaintiffs are now debarred under Section 6(1) of Hindu Succession (Amendment) Act, 2005 from questioning the sale deed. The alienation took place in favour of defendant no.3 before

20.12.2004. As such, the suit against defendant no.3 and 4 is barred.

8. In the case at hand, L.Rs., of defendant no.4 submits that as the alleged alienation in favour of defendant no.3 took place before 20.12.2004, the plaintiffs are debarred from questioning the same. Be it stated, in the present case the plaintiffs are the sisters of defendant no.1 and 2. This being the case, it is necessary to determine whether the plaintiffs have rights over the suit schedule properties in the background of Hindu Succession (Karnataka Amendment) Act, 1990. Further, this issue can be determined only by taking evidence and during trial. This being the case, I am of the view that this contention of the L.Rs., of defendant no.4 is of no avail to them at this stage of the case.

9. The present application is for rejection of plaint. It is settled principles of law that while deciding an application for rejection of plaint only the plaint averments has to be looked into. Further, it is trait of law that the cause of action is a bundle of facts. On the bedrock of the settled principles of law, if the plaint is read in its

entirety, I am of the view that the plaint does disclose cause of action.

10. The learned counsel for L.Rs., of defendant no.4 in support of his case relied on the following decisions;

1. Beereddy Dasaratharami Reddy V/s. V. Manjunatha and anr., cited in AIR 2022 SC 65.

2. Lakshmi & ors., V/s. Neelamma and ors., cited in 2016(2) KCCR 1311.

I have perused the decisions relied upon by the learned counsel for the L.Rs., of defendant no.4. Be it stated, in the case at hand, it is necessary to examine the application of Hindu Succession (Karnataka Amendment) Act, 1990 to the facts of the case, which is triable in nature. Further, the facts alleged in the plaint disclose cause of action. Furthermore, the facts and circumstances present in the case at hand are different from the facts and circumstances present in the decision relied upon by the learned counsel. In this view of the matter, with due respect to the decisions, I am of the view that they are not applicable to the facts and circumstances of the present case.

11. The learned counsel for the plaintiff in support of his case relied on the following decisions;

1. Arunachala Gounder (dead) by L.Rs., V/s. Ponnusamy and ors., (Civil Appeal No.6659/2011).

2. Vineetha Sharma V/s. Rakesh Sharma and ors., (Civil Appeal No. Diary No. 32601/2018).

I have perused the decisions relied upon by the learned counsel. I have applied the principles of Law stated in the said decisions while deciding the point under consideration.

12. Thus, in the case at hand it is necessary to examine the application of Hindu Succession (Karnataka Amendment) Act, 1990 to the facts of the case, which is triable in nature. Further, the reading of the plaint, give an indication that there is a cause of action for filing the suit. As such, I am of the view that the plaint discloses cause of action. In this view of the matter, L.Rs., of defendant no.4 failed to show that the plaint does not disclose cause of action and it warrants rejection. Resultantly, point no.1 is answered in the negative.

13. **Point No.2** : -It is the case of L.Rs., of defendant no.4 that

alienation of the suit schedule property in favour of defendant no.3 took place on 26.03.1996. Further, defendant no.4 purchased the suit schedule property on 14.09.2005. Furthermore, the present suit came to be filed in the year 2017. As such, the present suit is barred by Law of Limitation.

14. Be it stated, the present suit is one for partition, declaration and permanent injunction. Having regard to the case of L.Rs., of defendant no.4 Article 58 of the Limitation Act, 1963 is attracted to the present case. The said articles read as below;

Description of suit	Period of limitation	Time from which period begins to run
58. To obtain any other declaration	3 years	When the right to sue first accrues.

15. In the present case the plaint shows that defendant no.1 and 2 alienated the suit schedule property in favour of defendant no.3 without their knowledge. The plaintiffs were not aware of the execution of sale deed in favour of defendant no.3. When the plaintiffs approached defendant no.1 and 2 seeking share in the suit schedule property they came to know about the alienation made in favour of defendant no.3. Thus, having regard to the case of the plaintiff to determine whether the present suit is barred under law of Limitation, it is necessary to first decide when the right to sue accrued on the plaintiffs. Be it stated, having regard to the case of the plaintiffs, I am of the view that the questions as above stated can be answered only by taking evidence and in a full fledged trial, at this stage of the case the said questions cannot be determined.

16. In the case at hand the questions as to Limitation can be determined by taking evidence and in a full fledged trial. So also, regard being had to the facts stated in the plaint, it is clear that evidence is necessary to determine whether the present suit is barred by law of limitation. In these circumstances, I am of the

view that the L.Rs., of defendant no.4 failed to show that the present suit is barred under law of limitation and hence the plaint is liable to be rejected. Consequently, point no.2 is answered in the negative.

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

ORDER

**IA No.7 filed U/o VII rule 11(a) & (d) r/w
Sec.151 of C.P.C. by the L.Rs., of defendant no.4
is hereby rejected on cost of Rs.100/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **17th day of June, 2022.**)

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