IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C., AT SIRA.

Dated this the 18th day of September 2014.

PRESENT

SRI. R.RAVI, B.Sc., LL.B.,
SENIOR CIVIL JUDGE & J.M.F.C., SIRA.

ORIGINAL SUIT NO.71/2014

Plaintiffs :

1. P.R.Ramakrishnappa, A/a 60 years.
2. P.R. Mukundappa, A/a 65 years.

Both the plaintiffs are sons of late P.R.Rangadasappa, R/o Kamagondanahalli, Gowdagere Hobli, Sira Taluk.

(By a Pleader Sri.J.A.)

V/s

Defendants:

1. P.R.Muddanna, S/o late P.R.Rangadasappa, A/a 62 years, R/o Kamagondanahalli, Gowdagere Hobli, Sira Taluk.
2. P.R.Ranganathappa, S/o late P.R.Rangadasappa, Aged about 64 years.
3. P.R.Sreerangappa, S/o late P.R.Rangadasappa, Aged about 58 years.

Defendant no.2 & 3 are R/o Alur, near Babbur, Hiriyur Taluk, Chitradurga District.

4. C.Bharathi, W/o late Chandrabhan Singh, A/a 70 years.

5. C. Ajith Singh, S/o late Chandrabhan Singh, A/a 45 years.
Both the defendants no.4 & 5 are R/o D.No.1183/71, 2nd Floor, 9th Main, Srirampuram, Bangalore – 560 021.

6. Shamantha Singh, W/o Lokanatha Singh and D/o late Chandrabhan Singh A/a 48 years, R/o D.No.39, 3rd Main, Basaveshwara Layout, Nagashettyhalli, Near Raghavendra Medicals, Bangalore – 560 094.

7. Jayashree Singh, W/o Mohan Singh, Daughter of late R.Chandrabhan Singh, A/a 50 years, R/at C/o Deft. No.5

8. General Manager, Town Co-Operative Bank Ltd., Main Road, Sira Town.

(D.1 by a Pleader Sri.K.U.,D.2 & 3 by a Pleader Sri.T.R.S., D.4 to 7 by a Pleader Sri.B.D.M. & D.8 by a pleader Sri.G.S.S.)

IN I.A.NO.2

Applicants : C.Bharathi & Others
Defendants

V/S

Opponent: P.R.Ramakrishnappa & Another
Plaintiffs

ORDERS ON I.A.NO.2

This is an application one filed by the defendant no.4 to 7 U/o 7 rule 11 r/w Sec.151 of CPC.

2. The case of the above defendants is that on 11.08.1975 one P.R.Rangadasappa has purchased the suit property from defendant no.8 by paying part sale consideration amount of Rs.26,000/- and due to financial crisis he was unable to pay the remaining sale consideration amount of Rs.31,000/- and hence the defendant no.8 again put the suit property for sale. In the meanwhile that on 10.12.1979 the above said P.R.Rangadasappa and their sons namely the plaintiff no.1 & 2 and defendant no.1 to 3 have sold the suit property in favour of the father of above defendants namely R.Chandrabhan Singh through a registered agreement of sale and in fact through the above said registered agreement the said P.R.Rangadasappa and his sons have received the above part sale consideration amount of Rs.26,000/- from the said R.Chandrabhan Singh and further

consented the said R.Chandrabhan Singh to pay the remaining balance sale consideration amount of Rs.31,000/- to the defendant no.8 and get the regular sale deed and in pursuance of the same the said R.Chandrabhan Singh has paid the said balance consideration amount of Rs.31,000/- to the defendant no.8 and since he was expired then the defendant no.8 has executed a regular registered sale deed on 09.05.1994 in favour of the wife of said R.Chandrabhan Singh. And before this the said R.Chandrabhan Singh had filed a suit in O.S.15/1990 on the file of Civil Judge and JMFC., against his sister Laxmibai for recovery of the possession of suit property as she was in permissive possession and the said suit was decreed on 15.12.2004 and against which the LR's of above said Laxmibai have preferred an appeal R.A.No.1272/2005 on the file of this court and the said appeal was allowed by this court on 15.11.2007 and against which the LR's of R.Chandrabhan Singh i.e. the present defendant no.4 to 7 have preferred R.S.A.No.431/2008 before the Hon'ble High Court of Karnataka and by a judgement dated 20.12.2013 the above appeal was allowed

and against the above judgment LR's of Laxmibai have preferred a S.L.P.No.9021/2014 before the Hon'ble Supreme Court of India and the same was dismissed on 15.04.2014. Thus the subject matter of O.S.No.15/1990 is finally concluded by the Hon'ble Supreme Court of India in S.L.P.No.9021/2014. And since the present plaintiffs and defendant no.1 to 3 of this suit have guarded and watched the proceedings of O.S.No.15/1990 upto final decision made by the Hon'ble Supreme Court of India and since the plaintiffs have also filed a I.A. under order 1 Rule 10(2) of CPC and another I.A. under order 21 rule 97 of CPC in Ex.No.8/2014 which is pending before the Civil Judge and JMFC at Sira and since the registered agreement of sale deed dated 10.12.1979 and registered sale deed dated 09.05.1994 are not at all challenged or questioned or cancelled within a stipulated period of three years then the present suit is barred by law of limitation and since the plaintiffs and defendant no.1 to 3 have got every knowledge about the proceedings of O.S.No.15/1990, R.A.No.127/2005 & R.S.A.No.431/2008, S.L.P.No.9021/2014 then the present suit is rather barred by

principle of res-judicata and since .the plaintiffs and defendant no.1 to 3 have not at all produced any scrap of paper or document to show that they are the lawful owners in possession and enjoyment of the suit schedule property on the date of suit or earlier to it then they have not complied the provisions of order 7 rule 3, Rule 11(D) and other provisions of CPC and thus there is no cause of action for the plaintiffs to file the suit and accordingly prayed for rejection of the plaint.

3. On the other hand the plaintiffs have filed their objections and contended that the above application is not maintainable in law and further submitted that earlier though some of the defendants were parties in earlier proceedings still the above said Rangadasappa and his sons i.e. plaintiffs and defendant no.1 to 3 were not at all made parties by other defendants who were plaintiffs then and hence this plaint cannot be rejected on that score and since the assertion of defendants are untenable then their application itself is not at all maintainable and accordingly prayed for dismissal of the above application.

4. And I have heard the arguments of both sides and perused the entire materials placed on record and the points that would arise for my consideration are as follows;

1. Whether the defendant no.4 to 7 have made out a case that there is no cause of action for the plaintiffs to file this suit?
2. What Order?

5. And my answers to the above points are as follows;

POINT NO.1: In the Affirmative;

POINT NO.2: As per final order for the following

R E A S O N S

6. Point no.1: On careful perusal of para 11 of the plaint one can find that the plaintiffs have sought the following relief :-

"The plaintiffs respectfully pray that the Hon'ble Court be pleased to pass judgement and decree for partition and separate possession of 1/5th share of each plaintiff and defendants 1 to 3 and to hold that judgement and decree passed in O.S.No.15/1990 on the file of leaned Civil Judge(J.D.) and J.M.F.C., at Sira and the sale deed executed

by defendant no.9 in favour of defendant no.4 dated:09.05.1994 is not binding on the legitimate shares with costs and such other reliefs in the circumstances of the case in favour of the plaintiffs and against the defendants 4 to 9 in the interest of justice. " , which is rather fatal to the case of the plaintiffs as the present case is allegedly filed against the defendant no.1 to 8 only and no party is arrayed as defendant no.9.

7. And interestingly the plaintiffs at para 9 of the plaint have specifically pleaded that " Cause of action for the suit arose on or about one week back at Sira Town, when the defendants no.1 to 3 refused to comply the demands of the plaintiffs", which is rather fatal to the case of the plaintiffs as they have not at all set up any specific case and cause of action against the contesting defendant no.4 to 7 and thus as per Order 7 rule 11(a) of CPC the present suit of the plaintiffs against the defendant no.4 to 7 requires to be rejected in limine.

8. And even with regard to the alleged cause of action against the defendant no.1 to 3 is concerned, the same also

requires to be rejected as the above said para 9 of the plaint does not show what was the demand put forth by the plaintiffs which resulted in the refusal by the defendant no.1 to 3.

9. And even otherwise on careful perusal of the first part of the prayer column one can find that the plaintiffs have not at all specifically sought the alleged relief of partition and separate possession in respect of the suit schedule property but on the other hand it simply shows that the plaintiffs are allegedly claiming 1/5th share of each to plaintiff and defendant no.1 to 3, which is once again rather fatal to the case of the plaintiffs as the above prayer does not show in what thing or property the plaintiffs are allegedly claiming their share.

10. At this stage it is interesting to note that at para 2 of the plaint though the plaintiffs have specifically pleaded "that the suit schedule property is the undivided joint Hindu family of plaintiffs and defendant no.1 to 3 and they succeeded to the same by inheritance to the estate left out by their deceased father P.R.Rangadasappa who died in the year 2001 leaving behind the plaintiffs and defendant no.1 to 3", the same do

not hold any water as the above pleadings does not show how the said P.R.Rangadasappa has acquired the suit property and how it became the joint family property of plaintiffs and defendant no.1 to 3.

11. And even otherwise contrary to the above pleadings the plaintiffs at para 3 of the plaint have further pleaded that their father P.R.Rangadasappa has acquired the suit property under a registered sale deed dated:11.08.1975 from its previous owner for valuable consideration accompanied by delivery of possession during the life time of P.R.Rangadasappa while he purchased the suit schedule property under public auction conducted by the defendant no.9 had paid part of consideration amount of Rs.26,000/- and thus defendant no.9 issued sale certificate on condition that remaining amount of Rs.31,000/- shall be paid in due course but on account of financial crisis he was unable to make the balance clear and thus the defendant no.9 had again put the suit schedule property for sale and in that sale one R.Chandrabhan Singh son of late Ram Singh the husband of defendant no.4 and father of defendant no.5 to 8 had

purchased the same and got sale deed but by that time he was no more and hence, defendant no.4 to 8 got Registered the sale deed into their names, which is once again rather fatal to the case of the plaintiffs because as discussed above no party is arrayed as defendant no.9 in the present case and defendant no.8 is none other than the general manager of Town Co-Operative Bank Sira.

12. And even contrary to the above pleadings the plaintiffs at para 4 of the plaint have further pleaded that all the facts explained at para 3 of the plaint was not at all brought to the knowledge of P.R.Rangadasappa and so also to the plaintiffs and defendant no.1 to 3.

13. And so if the facts of para no.3 of the plaint were not at all within the knowledge of the plaintiffs and defendant no.1 to 3 then there is nothing on record to show how the P.R.Rangadasappa has acquired the suit schedule property and how the cause of action will arose for the plaintiffs to file the suit against the contesting defendant no.4 to 7 in respect of the suit schedule property.

14. But it is interesting to note at this stage that though the plaintiffs at para 4 of the plaint have contended that they do not know the facts of para no.3 of the plaint still contrary to the same the plaintiffs themselves have produced a notarized copy of a sale certificate which shows that on 19.12.1971 the above said P.R.Rangadasappa has participated in the auction sale of suit property and as such he was issued a sale certificate dated:11.08.1975 by the defendant no.8.

15. And even the above said sale certificate is of no help to the case of the plaintiffs as it is neither an original document nor a registered one and more over as per order 7 rule 14 of CPC plaintiffs have neither sued nor relied upon the above document and further they have also not at all stated in whose possession or power it is.

16. And even otherwise page 2 of the above said sale certificate clearly says like this " ¤ÃªÀÅ ¤ªÀÄä ¸ÀéAvÀ Rað¤AzÀ ZÁ¥À PÁUÀzÀªÀ£ÀÄß ºÁdgÀÄ¥Àr¹ ¤ªÀÄä ºÉ¸ÀjUÉ PÀæAiÀÄ jf¸ÀÖgï ªÀiÁr¹PÉÆ¼Àî§ºÀÄzÉAzÀÄ F ªÀÄÆ®PÀ

w½AiÀÄ¥Àr¹gÀÄvÉÛ“ , which is once again rather fatal to the case of the plaintiffs as the above terms clearly shows that neither the plaintiffs nor their father P.R.Rangadasappa have acquired any title and ownership over the suit schedule property through any registered sale deed.

17. And in fact the encumbrance certificate one produced by the plaintiffs themselves clearly shows that on 10.12.1979 the above said P.R.Rangadasappa and his sons namely plaintiffs and defendant no.1 to 3 have sold the suit schedule property through a registered agreement of sale in favour of the husband of defendant no.4 namely R.Chandrabhan Singh.

18. It is once again interesting to note at this stage that though the above said P.R.Rangadasappa and plaintiffs and defendant no.1 to 3 have sold the suit property in favour of R.Chandrabhan Singh through a registered agreement of sale still the plaintiffs have neither pleaded the execution of the above registered document nor even produced the copy of the same.

19. But on the other hand the above said the registered agreement of sale 10.12.1979 one produced by the defendant no.4 to 7 clearly shows like this :-

“ ¸À£ï MAzÀÄ ¸Á«gÀzÀ MA¨sÉå£ÀÆgÀ J¥ÀàvÉÆÛA§vÀÛ£ÉÃ E¸À« r¸ÀA§gï ªÀiÁºÉ vÁjÃRÄ ºÀvÀÛgÀ®Äè. ²gÁ mË£ï ªÀÉÄÃUÀ¼À ¥ÉÃmÉAiÀÄ°è ªÁ¸ÀªÁVgÀÄªÀ gÀd¥ÀÇvï ªÀÄvÀzÀ ¥ÀsªÀw ¹.gÁªÀÄ ¹AUï gÀªÀgÀ ªÀÄPÀÌ¼ÀÄ Dgï.ZÀAzÀæ¨sÁ£ï ¹AUïjUÉ ²gÁ vÁ®ÆèPÀÄ UËqÀUÉgÉ ¸ÀªÀÄävÀÄ PÁªÀÄUÉÆAqÀ£À ºÀ½îAiÀÄ ªÁ¸À¸ÀÜgÁzÀ PÀÄAanUÀgÀ fgÁ¬ÄÛ PÀ¸ÀÄ©UÀ ¥ÀsªÀw ¥ÀÇ£Á gÀAUÀ¥Àà£ÀªÀgÀ JgÀqÀ£ÉÃ ªÀÄUÀ ¸ÀÄªÀiÁgÀÄ J¥ÀàvÉÆÛA¨ÀsvÀÄÛ ªÀµÀðzÀ ¦.Dgï.gÀAUÀzÁ¸À¥Àà ªÀÄvÀÄÛ EªÀgÀ ªÀÄPÀÌ¼ÁzÀ MAzÉ£ÉÃ ¸ÀªÀiÁgÀÄ ªÀÄÆªÀvÀÛ£Á®ÄÌ ªÀµÀðzÀ gÀAUÀ£ÁxÀ¥Àà ¦.Dgï. JgÀqÀ£ÉÃ ¸ÀÄªÀiÁgÀÄ ªÀÄÆªÀvÉÛgÀqÀÄ ªÀµÀðzÀ

¦.Dgï. ªÀÄÄPÀÄAzÀ¥Àà. ªÀÄÆgÀ£ÉÃ ¸ÀÄªÀiÁgÀÄ ªÀÄÆªÀvÀÄÛ ªÀµÀðzÀ ¦.Dgï. ªÀÄÄzÀÝtÚ , £Á®Ì£ÉÃ ¸ÀÄªÀiÁgÀÄ E¥ÀàvÉÛAlÄ ªÀµÀðzÀ ¦.Dgï. gÁªÀÄPÀÈ¥ÀÚ¥Àà ªÀÄvÀÄÛ LzÀ£ÉÃ ¸ÀªÀiÁgÀÄ E¥ÀàvÉÛgÀqÀÄ ªÀµÀðzÀ ¦.Dgï. ²æÃgÀAUÀAiÀÄå DzÀ £ÁªÀÅUÀ¼É®ègÀÆ ¸ÉÃj §gÉ¹PÉÆlÖ ¹ÜgÀ ¸ÀévÀÄÛ PÀæAiÀÄ PÀgÁgÀÄ. DzÁV PÀæAiÀÄ ¸ÀéwÛ£À ªÉÄÃ¯É ²gÁ mË£ï PÉÆÃ-D¥ÀgÉÃnÃªï ¨ÁåAQ£À°è ¥ÀqÉ¢gÀvÀPÀÌ DzsÁgÀ ¸Á® wÃgÀÄªÀ½ ªÀÄvÀÄÛ EvÀgÀ PÀÄlÄA§zÀ ¸Á®UÀ¼À wÃgÀÄªÀ½UÁVAiÀÄÆ ªÀÄvÀÄÛ ªÀåªÀ¸ÁAiÀÄÁ©üªÀÈ¢Ý PÁAiÀÄðUÀ¼À£ÀÄß ªÀiÁrPÉÆnÖgÀÄªÀÅzÀPÁÌVAiÀÄÆ ¸ÀºÁ ²gÁ mË£ï PÉÆÃ-D¥ÀgÉÃnÃªï ¨ÁåAQ£ÀªÀgÀÄ §»gÀAUÀ ºÀgÁdÄ ªÀÄÆ®PÀ «¯ÉÃªÀiÁrzÀ ²gÁ mË£ï ºÀ¼ÉÃ §¸ï ¸ÁÖåAqï §½¬ÄgÀvÀPÀÌ ªÀÄÄ¤¹¥À¯ï ºÀ¼ÉÃ

C¸É¸ïªÉÄAmï ºÀgÁf£À ªÉÃ¼É 2008 £ÀAvÀgÀ 2276 ºÁ° ZÁ°Û 4086 £ÉÃ £ÀA§gÀÄ ¥ÀÇªÀð - ¥À²ÑªÀÄB33 Cr, GvÀÛgÀBzÀQëtB 82 Cr ªÀÄvÀÄÛ ¥ÀÇªÀðzÀ PÀqÉ wæPÉÆÃuÁPÁgÀzÀ LzÀÄ Cr eÉÆ¯Éè EgÀÄªÀ ¸ÉÖlÄ ¸ÉÃjzÀ Dgï.¹.¹. ªÀÄvÀÄÛ vÀÁgÀ¹, ªÀÄAUÀ¼ÀÆgÀÄ ºÉAZÀÄ ºÉÆ¸ÁgÉ »A¨sÁUÀzÀ CAUÀ¼À ¸ÀºÁ ¸ÉÃjgÀvÀPÀÌ ¸ÀévÀÄÛ EzÀPÉÌ ZÀPÀÄÌ§A¢ ¥ÀÇªÀðPÉÌB £ÁgÁAiÀÄt¸Áé«Ä zÉÃªÀ¸ÁÜ£ÀzÀ ¨Á§ÄÛ qÁB CfÃeï CºÀªÀÄäzï SÁ£ïgÀÄ ¥ÀqÉ¢gÀvÀPÀÌ ¤ªÉÃ±À£ÀUÀ¼ÀÄ, ¥À²ÑªÀÄPÉÌB ¸ÉÃzÀÄªÀ ¨Á« ªÀÄvÀÄÛ SÁ° ¤ªÉÃ±À£À , GvÀÛgÀPÀÌB eÁfPÀnÖ gÀ¸ÉÛ , zÀQëtPÉÌB PÀ£ïdgïªÉ¤ì UÀ°è. F ªÀÄzsÉå ªÉÄÃ®ÌAqÀ ¦.Dgï. gÀAUÀzÁ¸À¥Àà£ÁzÀ £Á£ÀÄ vÁB19.12.77 gÀ°è ¨ÁåAQ£À ºÀgÁf£À°è DSÉågÀÄ ¸ÀªÁ®ÄzÁgÀ£ÁV ¥ÀqÉzÀÄPÉÆAqÀÄ

£ÀªÀÄäUÀ¼À ¸Áé¢üÃ£Á£ÀÄ¨ÀsªÀzÀ°ègÀÄªÀ ¸ÀévÀÛ£ÀÄß ¤ªÀÄUÉ F ¢£À LªÀvÉÛÃ¼ÀÄ ¸Á«gÀ gÀÆ¥Á¬ÄUÀ½UÉ ±ÀÄzÀÞ PÀæAiÀÄPÉÌ PÉÆqÀ®Ä M¦à PÀæAiÀÄ ¤µÀÌ¥Éëð ªÀiÁrPÉÆlÖ PÀæAiÀÄzÀ ªÉÆ§®V£À ¥ÉÊQ ²gÁ mË£ï PÉÆÃ-D¥ÀgÉÃnÃªï ¨ÁåAQ£À°è ªÀiÁrgÀvÀPÀÌ DzsÁgÀ ¸Á®zÀ C¸À®Ä FªÀgÉV£À §rØ ¸ÉÃj £ÁªÀÅ PÀlÖ¨ÉÃPÁVgÀvÀPÀÌ ¨ÁQAiÀiÁUÀÄªÀ ªÉÆ§®UÀÄ ªÀÄÆªÀvÉÆÛAzÀÄ ¸Á«gÀ gÀÆ¥Á¬ÄUÀ¼À£ÀÄß ¤ÃªÉÃ ¥ÁªÀw ªÀiÁr wÃgÀÄªÀ½ ªÀiÁqÀvÀPÀÌ §UÉÎ ¤ªÀÄä ªÀ±ÀPÉÌ ©lÄÖPÉÆlÖ G½zÀ ªÉÆ§®UÀÄ E¥ÀàvÁÛgÀÄ ¸Á«gÀ gÀÆ¥Á¬ÄUÀ¼À£ÀÄß ¥ÀÇgÁ F ¢£À F PÉ¼ÀUÉ PÀÆqÀ ¸ÁQëUÀ¼À ¸ÀªÀÄPÀëªÀÄ £ÀUÀzÁV ¤«ÄäAzÀ £ÁªÀÅ vÉUÉzÀÄPÉÆAqÀÄ ¸ÀzÀj PÀæAiÀÄzÀ ¸ÀévÀÛ£ÀÄß F ¢£ÀªÉÃ ¤ªÀÄä ¸ÀÄ¥ÀyðUÉ ¸ÀºÁ ªÀ»¹PÉÆnÖgÀÄvÉÛÃªÉ. E£ÀÄß

ªÀÄÄAzÉ PÀæAiÀÄzÀ ¸ÀéwÛ£À ªÀÄvÀÄÛ EzÀgÀ°ègÀ§ºÀÄzÁzÀ CµÀÄÖ ¨sÁUÀUÀ¼À ¥ÀÇtð ºÀPÀÄÌ zÁj ªÀÄvÀÄÛ ªÀiÁ°ÃPÀvÀéUÀ¼ÀÄ EªÀjUÉ ¸ÉÃgÀvÀPÀÌzÀÝÁVgÀÄvÀÛªÉ.

²gÁ mË£ï PÉÆÃ-D¥ÀgÉÃnÃªï ¨ÁåAQ£À ¸Á®ªÀ£ÀÄß ¥ÀÇgÁ ¤ÃªÀÅ wÃgÀÄªÀ½ ªÀiÁr ¸ÀzÀj ¸ÀévÀÛ£ÀÄß ªÉÃ®ÌAqÀ ¨ÁåAQ£À ªÀÄÆ®PÀªÁUÀ° CxÀªÁ £À«ÄäAzÁUÀ° PÀæªÀÄªÁzÀ PÀæAiÀÄ jf¸ÀÖgï ¥ÀvÀæªÀ£ÀÄß ¤ªÀÄä Rað¤ÃAzÀ ¸Á® wÃgÀÄªÀ½¬ÄAzÀ ªÀiÁr¹PÉÆ¼Àî§ºÀÄzÉA§ÄzÁVAiÀÄÆ E£ÀÄß ªÀÄÄAzÉ ¸ÀzÀj ¸ÀéwÛ£À°è £ÀªÀÄäUÀ½UÉ AiÀiÁªÀ ºÀPÀÄÌ ¨sÁzÀåvÉUÀ¼ÀÄ EgÀÄªÀÅ¢®èªÉAvÀ®Æ F PÀgÁgÀÄ §UÉÎ K£ÉÃ vÀAmÉ vÀPÀgÁgÀÄ §AzÁUÀÆå £ÁªÉ £ÀªÀÄä ¸ÀéAvÀ Rað¤AvÀ®Æ §UÉ ºÀj¹PÉÆqÀÄvÉÛÃªÉAvÀ®Æ M¦à §gÉ¹dPÉÆlÖ ¹ÞgÀ

¸ÀévÀÄÛ PÀæAiÀÄ PÀgÁgÀÄ“ , which is once again rather fatal to the case of the plaintiffs as the contents of the above material registered agreement of sale clearly shows that the above said Ranganathappa and his sons namely plaintiffs and defendant no.1 to 3 have authorized the defendant no.8 to execute a regular registered sale deed of suit property in favour of the husband of defendant no.4.

20. And the encumbrance certificate one produced by the plaintiffs further shows that in consonance with the above registered agreement of sale the defendant no.8 has executed a regular registered sale deed of suit property on 09.07.1994 in favour of the wife of the above said R.Chandrabhan Singh, who is the defendant no.4 in the present case. When that is so the plaintiffs are neither having any title and possession over the suit property nor having any cause of action to file this suit in respect of the suit property against the defendants.

21. And further the second part of the plaint prayer to hold the judgment & decree of O.S.No.15/1990 and the above sale deed dated: 09.04.1994 is not binding on the plaintiffs is concerned, the same once again do not hold any water as the

plaintiffs have not at all set up any cause of action for the above reliefs at para 9 of their plaint.

22. And in fact the judgement and decree copy of O.S.No.15/1990 one produced by the plaintiffs themselves clearly shows that the plaintiffs are very much following the above proceedings of the above case as the judgement copy of above suit was got obtained on 03.02.2005. When that is so the present suit of the plaintiffs to hold the above judgment and decree of O.S.No.15/1990 dated:15.02.2004 and the sale deed of defendant no.4 date:09.04.1994 are not at all binding on the plaintiffs is rather hopelessly time barred and as such the present suit of the plaintiffs requires to be rejected as per order 7 rule 11(d) of CPC.

23. On this point in a ruling of (2007) 5 SCC 614 the Hon'ble Apex Court of India has clearly held that " The language of order 7 rule 11 of CPC is quite clear and unambigious. The plaint can be rejected on the grounds of limitation only when the suit appears from the averments in the plaint to be barred by any law. 'Law' within the meaning of

order 7 rule 11(d) of CPC must include law of limitation as well. "

24. And more over on careful perusal of above judgement of O.S.No.15/1990 one can find that the present defendant no.4 to 7 have specifically contended that they have purchased the suit property through a registered agreement sale dated:10.12.1978 from P.R.Rangadasappa accompanied by delivery of possession and further contended that the defendants of the above case have requested the defendant no.4 to 7 of the present case to permit them to live in the suit schedule house on a monthly rent of Rs.250/-. And whereas the defendants of the above said O.S.No.15/1990 have also specifically contended that the above said P.R.Rangadasappa has agreed to sell the suit schedule house in the year 1975 for a sum of Rs.57,000/- and by virtue of the close relationship the above defendants got written the deed dated:10.12.1979 in the name of the plaintiff of above case with an understanding that when a sale deed is executed it would be executed in the name of the defendants and accordingly the relevant issues are framed and after trial the contention of the defendants is

negatived and the above case was decreed in favour of the plaintiffs i.e. defendant no.4 to 7 of the present case.

25. And being aggrieved by the above judgement & decree of O.S.No.15/1990, the defendants have preferred a regular appeal in R.A.No.127/2005 before this court and this court by an order dated:15.11.2007 has allowed the above appeal & dismissed the above said suit bearing O.S.No.15/1990.

26. And being aggrieved by the above judgement and decree of R.A.No.127/2005 the plaintiffs of the above suit (defendant no.4 to 7 of present suit) have preferred regular second appeal in RSA No.431/2008 before the Hon'ble High Court of Karnataka. And by an order dated: 20.12.2013 the Hon'ble High Court of Karnataka has set aside the above judgement and decree of R.A.No.127/2005 and restored the trial court judgement of O.S.no.15/1990.

27. And in fact at para 9 of the above Judgement of RSA 431/2008 The Hon'ble High Court of Karnataka has clearly observed and held that "Though the first appellate court observed stating that the plaintiffs have produced the documents to prove the title over the suit property, it held that

as the plaintiffs have not claimed the relief of declaration of their title, the possession of the suit property cannot be given to the plaintiffs. This approach of the first appellate court is erroneous for the reason that when the plaintiffs were in possession of the suit property on the basis of the registered sale agreement at Ex.P.3 and had produced the sale certificate Ex.P.4, their possession was proved on the basis of the aforesaid document. During the pendency of the suit, the bank has executed the sale deed Ex.P.5 in the name of the wife of the deceased plaintiff and the perusal of this material which has been placed on record, the plaintiffs have a better title, whereas the defendants do not have any such documents/s and have no right to remain in possession of the suit property. When the plaintiffs had proved that the deceased plaintiff gave the possession of the suit property to the defendants, they have right to recover the possession as they have better title to the suit property to that of the defendants. The deceased plaintiff had paid a total sum of Rs.57,000/- to P.R.Rangadasappa and to the bank and had obtained the sale agreement Ex.P.3 and later a sale deed as per Ex.P.5 and on

the face of these documents, he could base his claim for possession. A relief of declaration of title is not at all essential as the defendants have no such document/s to claim their title to this property and they have no right to be in possession of the suit property."

28. And further being aggrieved by the above judgment of RSA 431/2008, the defendants have preferred a special leave petition before the Hon'ble Supreme Court of India in Petition for Special Leave to appeal (Civil) No.9021/2014 and the same was dismissed on 15.04.2014.

29. And since the judgement copy of O.S.15/1990 one produced by the present plaintiffs clearly shows that the same was obtained on 03.02.2005 itself and since the materials placed on record by the defendant no.4 to 7 clearly shows that the plaintiffs and defendant no.1 to 3 have guarded and watched the proceedings of O.S.no.15/1990 upto the final decision of the Hon'ble Supreme Court of India then the present suit of the plaintiffs is rather time barred and also hit by the principles of estoppel & res-judicata.

30. And in fact that the law of estoppel contained in Sec.115 of the Indian Evidence Act 1872 clearly says like this:-

115. Estoppel- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing.

31. On the point of estoppel in a ruling of AIR 1965 SC 1812 the Hon'ble Supreme Court of India has clearly held that " The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith".

32. And on the point of res-judicata in a ruling of AIR 1975 SC 551 it has been clearly held that " It is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue shall be between the same parties or between parties under whom they or any of them claimed".

33. So in view of the above dictums and also the discussion made above I am of the opinion that since the

defendant no.4 to 7 have clearly made out a case that on 11.08.1975 one P.R.Rangadasappa has purchased the suit property from defendant no.8 by paying part sale consideration amount of Rs.26,000/- and due to financial crisis he and the plaintiffs and defendant no.1 to 3 have sold the suit property in favour of the father of defendant no.5 to 7 namely R.Chandrabhan Singh namely the defendant no.4 through a registered agreement of sale deed dated 10.12.1979 and in the above registered deed they have also consented to get the regular registered sale deed from defendant no.8 and in consonance of the same the wife of R.Chandrabhan Singh got the registered regular sale deed of suit property from defendant no.8 on 09.05.1994 and further made out a case that since the plaintiffs and defendant no.1 to 3 have got every knowledge of the proceedings of O.S.15/1990, R.A.127/2005, RSA 431/2008 and S.L.P.No.9021/2014, wherein the title of the suit property in favour of defendant no.4 to 7 has attained finality then the present suit of the plaintiffs is rather time barred and also hit by the principles of estoppel and res-judicata and thus there is no cause of action for the plaintiffs

to file this suit against them. And further since the plaintiffs have also neither made out that they are the alleged owners of the suit schedule property nor even made out their alleged possession over the suit schedule property and more over since the plaintiffs have not at all produced any original title deeds of the suit schedule property and since they have also not at all set up any case and cause of action against the contesting defendant no.4 to 7 then as per order 7 rule 11(d) of C.P.C. the present suit of the plaintiffs against the defendant no.4 to 7 is requires to be rejected in limine and accordingly I have answered this point in the Affirmative

34. **POINT NO.2:** In view of the discussion on above point no.1 and further holding it affirmative, I proceed to pass the following

ORDER

The I.A. No.2 one filed by the defendant no.4 to 7 U/o 7 rule 11 r/w Sec.151 of C.P.C. is hereby allowed and since there is no cause of action for the plaintiffs to file the suit then the plaint one filed by them is hereby rejected with cost.

Draw decree accordingly.

(R.RAVI)
Senior Civil Judge
and J.M.F.C., Sira.