

R/o. Brandavan Apart, 1st Floor,
Prashanti Nilaya, Niraj Building,
Behind D.F.O. Office,
M.G. Road, Karwar
and others.

[D-1, 2 By Sri. KRD, Adv.]
[D-3 By Sri. VBN, Adv.]
[D-4 By Shri. DAN/GVN, Advs.]

I.A.No.VI

Applicants/Defts.No.1&2: 1. Shri. Prashant S/o. Pundalik Naik &
2. Smt. Savita D/o. Pundlik Naik.

Vs.

Opponent/Pltff.: 1. Smt. Kavita D/o. Pundlik Naik
@ W/o. Babu Nailadi Rayarmane.

ORDERS ON I.A. NO.VI

This is an application filed by the defendants No.1 and 2 under the provisions of Order VII Rule 11(a) to (d) R/W. Sec.151 of C.P.C. and Section 11(2) of Karnataka Court Fees and Suit Valuation Act, 1958 to reject the plaint on the ground that the suit is not sustainable due to non-existence of cause of action to file this suit. The suit is not maintainable for non-payment of court fee for the relief claimed by the plaintiff seeking cancellation of sale deed

dated 16.11.2012 executed by defendants No.1 and 2 in favour of defendant No.4 U/sec.38 of Karnataka Court Fees and Suit Valuation Act. The relief relating to cancellation of sale deed dated 16.11.2012 being filed after lapse of 3 years from the date of registration is also barred by law of limitation. The suit of the plaintiff is also not maintainable for non-impleading the sisters and brothers of defendant No.3 and other co-owners. The suit of the plaintiff is also not maintainable without seeking the relief of declaration that she is the natural daughter of late Shri. Pundalik and Smt. Sarojini. These are the matter which goes to the root of the maintainability of the suit and unless heard these matters before trial, the precious time of the court cannot be saved. The points raised in the application are directly relating to maintainability of the suit which is required to be considered before recording the evidence. Hence, this application.

2. The plaintiff has resisted the application by filing objections contending that after the death of mother of plaintiff, defendants No.1 and 2 without the knowledge of plaintiff have obtained surviving member's certificate from Tahasildar, Karwar and got the mutation of the lands under

M.E.No. MR-H-11 in Madhewada Village and Baad-I village of Karwar Taluk. After the mutation, the land bearing Survey No.191/A1B is converted into non-agricultural land within a span of small period. The consent of plaintiff was not taken. The plaintiff has not signed on any documents. The Deputy Commissioner, Karwar has passed the order to convert land for non-agricultural land which is void and not binding on the plaintiff for assessment of the court fee.

3. It is further stated that after converting the land bearing Survey No.191/A1B, the defendants No.1 and 2 have alienated the same under sale deed dated 16.11.2012 to an extent of 4 gunthas along with Mangalore Tiled House to defendant No.4 for a sale consideration of Rs.9,79,000/-. But, the said land is situated in the heart of the Karwar city and its market value per guntha is Rs.10 Lakhs and the market value of the house is Rs.8 Lakhs. Therefore, the valuation of the court fees raises in the written statement U/sec.11(2) of Karnataka Court Fees and Suit Valuation Act is improper. The plaintiff need not pay the court fee on the actual market value of the sale consideration. Therefore, the plaintiff has rightly valued the suit for payment of court fee

under the provisions of Section 35(2) of the Karnataka Court Fees and Suit Valuation Act.

4. It is further stated that the limitation will not affect the plea of the plaintiff as regards the transaction of the sale deed has not signed by the plaintiff. The defendant No.4 has appeared before the court through his learned counsel, but, has not filed the written statement and the defendant No.4 will have no defence. The defendants have failed to furnish the names of necessary parties to be impleaded in this suit and as such, there are no such parties to implead in this suit. It is on these grounds, the plaintiff has prayed for dismissal of the application.

5. I have heard the arguments on both the sides and perused the pleadings and documents produced by both the parties.

6. Now the points that would arise for my consideration are as under :

1. Whether the defendants No.1 and 2 have made out sufficient grounds to

come to the conclusion that the plaint does not disclose the cause of action, the plaintiff has under valued the relief claimed in the plaint and failed to correct the valuation and the suit of the plaintiff is appears to be barred by any law and therefore, the plaint is liable to be rejected as contemplated under the provisions of Order VII Rule 11(a) to (d) of C.P.C.?

2. What order?

7. On considering the arguments canvassed on both the sides and materials placed on record including the mandatory provisions of law, now, my answers to the above points are as under:

Point No.1 : In the **affirmative**.

Point No2 : As per final order,
for the following:

REASONS

8. **Point No.1:-** The learned counsel for the defendants No.1 and 2 has argued with force that the plaint averments do not indicate the cause of action to file the suit and therefore, the suit is not sustainable due to non-existence of cause of action. The plaintiff has not properly valued the suit and therefore, the suit is not maintainable for non-payment of court fee for the relief claimed by the plaintiff seeking cancellation of sale deed dated 16.11.2012 executed by the defendants No.1 and 2 in favour of defendant No.4 under the provisions of Section 38 of Karnataka Court Fees and Suit Valuation Act.

9. It is further contended that the sale deed is dated 16.11.2012. But, the plaintiff has filed the suit before the court in the year 2019. Therefore, the suit filed after lapse of 3 years from the date of registration is also not maintainable as it is barred by limitation. The plaintiff also failed to implead the sisters and brothers of defendant No.3 and other co-owners who are necessary parties to the suit.

Therefore, the suit is bad for non impleading of all the sisters and brothers of defendant No.3 and other co-owners. All these important points and matters goes to the very root of the maintainability of the suit and therefore, it is necessary to consider all these questions of law to save the precious time of the court and when the suit is prima-facie not maintainable under any of the ground as stated in Order VII Rule 11 of C.P.C. the plaint is liable to be rejected.

10. In support of his submission, the learned counsel for the defendants No.1 and 2 has relied upon a decision reported in ***ILR 2019 KAR 4739*** in between ***M/s. Durga Projects and Infrastructure Pvt. Ltd., vs. Sri. S. Rajagopala Reddy and others***, wherein, while dealing with the provisions of Order 7 Rule 11(a), (c) and (d) R/W. Sec.151 of C.P.C. and Section 58 of Limitation Act, the Hon'ble High Court of Karnataka has held that the plaintiff is duty bound in law to disclose the material facts in terms of Order 6 Rule 2 of C.P.C. Omission of a single material fact leads to an incomplete cause of action and in such a case plaint becomes bad. If it is a bogus and irresponsible

litigation, the jurisdiction under Order 7 Rule 11 of CPC can be exercised.

11. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 2020 Supreme Court 3310** in between **Dahiben vs. Arvinbhai Kalyanji Bhannali (Gajra)(D) Thr. LRs and others**, wherein, while dealing with the provisions of Order VII Rule 11(a) and (d) of C.P.C. and Articles 58 and 59 of Limitation Act and Section 54 of Transfer of Act, the Hon'ble Supreme Court has held that in a suit for cancellation of sale deed on the ground of alleged non-payment of part of sale consideration, the non-payment of sale consideration cannot be ground for cancellation of sale deed because of availability of other remedies for recovery of balance consideration. When the suit is vexatious, merit-less and does not disclose right to sue, then the plaint is liable to be rejected under Order 7 Rule 11(a) as barred by limitation.

12. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 2019 SC 1430** in between **Raghendra Sharan Singh vs. Ram**

Prasanna Singh (Dead) by LRs., wherein the Hon'ble Supreme Court has held that if a suit for declaration is filed after more than 22 years of execution of registered gift deed and when plaintiff not praying for any declaration to set aside gift deed, then the suit would be clearly barred by limitation under Article 59 of Limitation Act and is averments in plaint cleverly drafted to bring suit within period of limitation, then the plaint is liable to be rejected. On the same principles, the learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 2005 Jharkhand 100** in between **Mangra Dhobi and another vs. Khedua Baraik and others**.

13. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **2003 SAR (Civil) 86** in between **Saleem Bhai and others vs. State of Maharashtra and others**, wherein it is held that the trial court can exercise the power under Order VII Rule 11 of C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendant at any stage before the conclusion of the trial. On the same principles, the learned counsel for the defendants No.1 and 2 also

relied upon a decision reported in **ILR 2017 KAR 3473** in between **The State of Karnataka through the Deputy Commissioner, Bidar and others vs. Shri. V. H. Agarkhed and another** and **AIR 2009 SC 3115** in between **Shyam Lal alias Kuldeep vs. Sanjeev Kumar and others**.

14. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 1993 Jammu and Kashmir 14** in between **Triro vs. Dev Raj and others**, wherein while dealing with the provisions of Section 102 of Indian Evidence Act, 1872, the Hon'ble High Court of Jammu and Kashmir has held that in case of delay in filing of suit and when the defendants pleading bar of limitation and when plaintiffs conscious of their belated action, then the onus is on plaintiffs to show that their suit was within time.

15. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 1998 SC 2276** in between **P. K. Ramachandran vs. State of Kerala and another**, wherein, it is held that the law of limitation has to be applied with all its rigour prescribed by

stature. The court has no power to extend period of limitation on equitable grounds.

16. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **ILR 2009 KAR 1524** in between **Shanthappa and others vs. Channabasavaiah and others**, wherein, the Hon'ble High Court of Karnataka has held that Article 110 of Limitation Act provides for a period of limitation of 12 years for a person excluded from a joint family property to enforce a right to share therein, and the said period begins to run from the date of knowledge of plaintiff of such exclusion.

17. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **ILR 1986 KAR Page 979** in between **Ramakrishna Setty vs. Property Manager, CSI**, wherein, while dealing with the provisions of Section 19 of the Karnataka Court Fees and Suit Valuation Act, 1958, the Hon'ble High Court of Karnataka has held that by enacting Section 19 of the Act, the Legislature has clothed the court with wide powers to enquire regarding court fee and market value of the properties. In the

procedure laid down in that Section, it is the court's satisfaction and not the satisfaction of the parties which is of importance. The court fee is a matter of public revenue; where public revenue is likely to be affected, the court has been given wide powers to prevent it.

18. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **ILR 2009 KAR 887** in between **Veeragouda and others vs. Shantakumar @ Shantappagowda**, wherein, while dealing with the provisions of Order 14 Rule (2) of C.P.C., the Hon'ble High Court of Karnataka has held that the object of Order XIV Rule 2 is to avoid piece meal trial and consequential protracted litigation. It would stop unnecessary remand and thus a source of protraction of litigation. It would avoid waste of time and unnecessary expenses to the parties. Therefore, the rule is, the court shall pronounce judgment on all issues. The only exception is where issues relates to "jurisdiction of the court" or "a bar to the suit created by any law for the time being in force", which are purely issues of law, and the case or any part

thereof may be disposed of in answering that issue, the court may try that issue first i.e., as a preliminary issues.

19. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **ILR 2010 KAR 2288** in between **Smt. Damegunta Rajeshwaramma and another vs. Smt. Jayalakshamma and others**, wherein, while dealing with the provisions of Section 38 of Karnataka Court Fees and Suit Valuation Act, 1958, the Hon'ble High Court of Karnataka has held that value of the property referred in Section 38 of the Act is nothing but actual value of the property. The court fee has to be determined on the basis of the value of the property as on the date of the suit and not on the consideration shown in the document.

20. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **2010(5) KCCR 3461 (DB)** in between **T. N. Sharath vs. Ujwal and others**, wherein, while dealing with the provisions of Section 35 of Karnataka Court Fees and Suit Valuation Act, 1958, the Hon'ble High Court of Karnataka has held that in

case of suit for cancellation of settlement deed as well as the sale deed, its valuation ought to have been based on the market value as on the date of its filing, instead of as provided for under Section 35 of the Act. On the same principles, the learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 2010 Madhya Pradesh 36** in between **Smt. Israt Jahan vs. Rajia Begum and others**.

21. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **1976(2) Kar. L.J. Page 209 in between Chikkathammiah vs. Shikkahutchiah and others**, wherein, while dealing with the provisions of Order 7 Rule 7 of CPC and Section 38 of Karnataka Court Fees Act,1958, the Hon'ble High Court of Karnataka has held that in a suit filed by sons for declaration of title and injunction alleging sale not binding and alleging that the property was the joint family property, then the suit would not maintainable unless the plaintiff sought for cancellation of the sale deed.

22. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **2013(1) KCCR 570** in between **Mr. V. Prabhakar vs. Mr. K. Raja and others**, wherein, while dealing with the provisions of Sections 24 and 38 of Karnataka Court Fees and Suit Valuation Act, the Hon'ble High Court of Karnataka has held that in order to determine the proper Court fee payable by the plaintiff, we have to first ascertain the substantial relief sought for in the plaint. In a multifarious suit, while determining the proper Court fee payable on the plaint, the Court has to see the nature of the suit and the reliefs claimed.

23. The learned counsel for the defendants No.1 and 2 also relied upon a decision reported in **AIR 2005 SC 2897 in between N. V. Srinivasa Murthy and others vs. Mariamma (Dead) by proposed L.Rs. and others**, wherein, while dealing with the provisions of Order 7 Rule 2 of C.P.C., the Hon'ble Supreme Court has held that when the plaintiff borrowing money from defendant and sale deed to secure loan executed and re-conveyance on repayment agreed and when repayment made by the plaintiff, receipt

with oral promise of re-conveyance obtained from defendant and when subsequently mutation of land under sale deed made in favour of defendant and suit thereupon filed by plaintiff for declaration that he is absolute owner and for injunction, then the suit in fact is based on sale deed and not on order of mutation.

24. Per contra, the learned counsel for the plaintiff has vehemently contended that after the death of mother of plaintiff, the defendants No.1 and 2 have obtained Surviving Certificate from Tahasildar, Karwar and got the mutation of land vide M.E.No.MR-H-11 in Madhewada Village and Baad-I village of Karwar Taluk. After the mutation, the land bearing Survey No.191/A1B of Baad-I villaged has been converted into non-agricultural land within a span of small period during which the consent of the plaintiff has not been taken and the plaintiff also not signed on any documents. The Deputy Commissioner, Karwar has granted permission to convert the agricultural land into non-agricultural land without verification and therefore, it is void and not binding on the plaintiff.

25. It is further contended that after conversion of land bearing Survey No.191/A1B, the defendants No.1 and 2 have alienated the said land under sale deed dated 22.11.2004 to an extent of 4 guntas along with Mangalore Tiled House to defendant No.4 for a sale consideration of Rs.9,79,000/-. But, the said land is situated in the heart of Karwar city and its market value per guntha is Rs.10 Lakhs and the market value of the house is Rs.8 Lakhs. But, the defendants No.1, 2 and 4 have not taken the signature of the plaintiff. Therefore, the valuation of the court fees raised in the written statement U/sec.11(2) of Karnataka Court Fees and Suit Valuation Act is improper and therefore, the plaintiff need not pay court fee on the actual market value of the sale consideration.

26. It is further contended that the plaintiff has not signed the alleged sale deed dated 16.11.2012. Therefore, the limitation will not affect the plea of plaintiff, as the defendants No.1, 2 and 4 have not brought the matter to the knowledge of plaintiff. The defendants failed to furnish the names and address of the parties to be impleaded in this suit and as such, there are no such parties to implead in

this suit. Therefore, all the questions raised by the defendants with respect to cause of action, limitation, valuation of suit and payment of court fee are not sustainable under law and therefore, it is necessary to frame the issues and to proceed with the case and the application is liable to be dismissed with costs.

27. In support of his submission, the learned counsel for the plaintiff has relied upon a decision reported in **2016(1) KCCR 370** in between **Rajeshwari and others vs. G. Sundaramurthy and others**, wherein, while dealing with the provisions of Section 35(2) and 38(1) of Karnataka Court Fees and Suit Valuation Act, 1958, the Hon'ble High Court of Karnataka has held that plea that court fee and valuation to be decided on averments of plaint only is not sustainable and court fee is required to be paid on market value of property in respect of which relief is sought under provisions of Section 35(2) and 38(1) of the Act.

28. The learned counsel for the plaintiff has also relied upon a decision reported in **2019(3) KCCR 2664** in

between **Smt. C. Janakamma vs. Dr. C. L. Narayana and another**, wherein, while dealing with the provisions of Karnataka Court Fees and Suit Valuation Act, the Hon'ble High Court of Karnataka has held that in case of suit for partition and separate possession by wife against her husband and the plaintiff is not in possession of suit property, then the plaintiff is required to value the relief sought for as provided under Section 35 of the Act.

29. The learned counsel for the plaintiff has also relied upon a decision reported in **2018(3) KCCR 2280** in between **Sri. K. L. Venugopal and another vs. Smt. Vimala K. Venugopal and others**, wherein, while dealing with provisions of Sections 11 and 24(b) of Karnataka Court Fees and Suit Valuation Act, 1958, the Hon'ble High Court of Karnataka has held that in a suit for declaration that alleged sale deed is null and void and for permanent injunction, plaintiffs have averred that they are the owners in possession and enjoyment of suit schedule property and plaintiffs were not parties to alleged sale deed, then the plaintiffs need not pay the court fee on the actual market value of the sale consideration.

30. The learned counsel for the plaintiff has also relied upon a decision reported in **2014(4) KCCR 3519** in between **Ravindra Siddappa Shavi vs. Sunanda Kom. Narayan Shavi and others**, wherein, while dealing with the provisions of Section 11 of Karnataka Court Fees and Suit Valuation Act, the Hon'ble High Court has held that in case of deficiency of court fee, the said issue ought to have been tried and decided as a preliminary issue in view of mandate of Section 11 of the Karnataka Court Fees and Suit Valuation Act, 1958 and ordered to be reject the plaint under Order 7 Rule 11(b) of C.P.C. is a procedural impropriety in not treating the said issue as a preliminary issue and directing the plaintiff to pay difference of court fee is not proper.

31. The learned counsel for the plaintiff has also relied upon a decision reported in **ILR 2011 KAR 4044** in between **Mr. S. Sheshappa vs. Mrs. Hilda Manorama Devadatta and another**, wherein, while dealing with the provisions of Section 24(A) of Karnataka Court Fees and Suit Valuation Act, 1958, the Hon'ble High Court of Karnataka has held that the payment of court fee has relevance for the

purpose of determining the pecuniary jurisdiction of the courts.

32. In the light of the arguments canvassed on both the sides, I have carefully gone through the principles laid down in the above cited decisions including the provisions of Order VII Rule 11 of C.P.C, Section 11, Section 35 and 38 of Karnataka Court Fees and Suits Valuation Act, Section 3 of Limitation Act and Article 59 of Limitation Act.

33. Now, keeping the arguments canvassed on both the sides and the principles laid down in the cited decisions and also mandatory provisions of law in mind, let us consider as to whether the defendants could able to made out grounds to come to the conclusion that the plaint does not disclose the cause of action and the plaintiff has under valued the relief claimed in the suit and the suit of the plaintiff is appears to be barred by any law and therefore, the plaint is liable to be rejected as contemplated under the provisions of Order VII Rule 11(a) to (d) R/W. Sec.151 of C.P.C. and Section 11(2) of Karnataka Court Fees and Suit Valuation Act, 1958.

34. As per the provisions of Order 7 Rule 11(a) of code of civil procedure, the plaint shall be rejected where it does not disclose the cause of action. As could be seen from para No.1 of the plaint, the plaintiff has averred the names and addresses of the parties to the suit and mode of service of suit summons and notices etc. In para No.2 of the plaint, the plaintiff has averred about filing of suit for partition of suit schedule properties and genealogy of the family of the plaintiff and defendants. In para No.3 of the plaint, the plaintiff has averred about the place of situation of the suit schedule properties and extent and quantum of proposed share of plaintiff and defendants over the suit schedule properties.

35. In para No.4 of the plaint, the plaintiff has averred about the death of Smt. Sarojini Pundalik Naik, consequential change of Khata from the name of Smt. Sarojini Pundalik to the defendants No.1 and 2, obtaining of Surviving Certificate from Tahasildar, Mutation of entries. Conversion of land into non-agricultural land without the knowledge of plaintiff and alienation of property without the knowledge of plaintiff by the defendants No.1 and 2 in

favour of defendant No.4 under the sale deed., passing of sale consideration of Rs.9,79,000/- and valuation of suit schedule properties.

36. Further, in para No.5 of the plaint, it is averred about the securing of sale deed from the office of Sub-Registrar, Karwar, issuance of notice to defendants regarding alienation of suit schedule properties, refusal of notice by the defendants No.1, 2 and 4 and filing of appeal bearing No.RTS.A.SR./No.13/2016-17, visit of revenue authorities and postal authorities to residential house and evasive reply given by defendants. In para No.6 of the plaint, it is averred about the place of situation of suit property and with respect to jurisdiction of the court to try the suit.

37. In para No.7 of the plaint, the plaintiff has averred about the approximate market value of the suit properties. In para No.8 of the plaint, it is averred about the market value of the non-agricultural land with big Mangalore tile house, the share of the plaintiff and payment of court

fee U/sec.35(2) of the Karnataka Court Fees and Suit Valuation Act.

38. The defendants have specifically dispute the cause of action for the plaintiff to institute this suit by contending that the plaintiff did not choose to disclose the cause of action to file the suit and therefore, the plaint has to be rejected by virtue of Order VII Rule 11(a) of C.P.C.

39. It is pertinent to note here that in the entire plaint, the plaintiff has not stated about nature of suit properties. In other words, the plaint does not disclose as to whether the suit schedule properties are the joint family properties of plaintiff and defendants or co-parcenary properties of plaintiff and defendants or self acquired properties. The plaint is very much silent in this regard.

40. Be that as it may. In the entire plaint, the plaintiff has not stated as to how and in what manner, she has acquired the suit properties. The plaint is also very much silent as to whether the suit schedule properties are belong to her father or grandfather. So, it is crystal clear that the plaint is very much vague in nature and not specific with

respect to nature of suit schedule properties, its acquisition etc.

41. There is no specific pleadings about the demand for partition by the plaintiff, the date on which the demand was made and the date on which the defendants have refused to effect the partition and from whom the suit schedule properties have been acquired and also its nature of acquisition. So, the alleged cause of action to institute the suit is appears to be highly doubtful.

42. The plaintiff has not specifically pleaded about the correct cause of action. The non-existence of cause of action goes to the very root of the case made out by the plaintiff. The plaintiff is duty bound under law to disclose the material facts in terms of Order VI Rule 2 of C.P.C. and omission of a single material facts leads to an incomplete cause of action and in such a case plaint becomes bad. The plaintiff has suppressed the material facts before the court in respect of cause of action. Under these circumstances, the plaint is not maintainable for want of cause of action.

43. As per the provisions of Section 35 of the Karnataka Court Fees and Suits Valuation Act, in a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff whose title to such property is denied, or who has been excluded from the possession of such property, fee shall be computed on the market value of the plaintiff's share.

44. In para 8 of the plaint, the plaintiff has averred that the land situated in Baad-I village is a non-agricultural land with big Mangalore tiled house and its market value is Rs.48 Lakhs and the total market value for both the properties comes to Rs.57 Lakhs and the plaintiff's share is Rs.17 Lakhs and hence, Court fee of Rs.200/- is paid by the plaintiff U/sec.35(2) of the Karnataka Court Fees and Suits Valuation Act.

45. But, it is pertinent to note here that even according to plaintiff that the defendants No.1 and 2 have alienated the suit schedule properties in favour of defendant No.4 under the registered sale deed dated 16.11.2012. So,

it is crystal clear that the plaintiff is not in possession of the suit schedule properties and she has been excluded long back. The defendants have specifically denied the ownership and joint possession and enjoyment of the plaintiff over suit schedule properties. It is not the case of the plaintiff that she is in joint possession and enjoyment of the suit properties along with defendants. No pleadings as such forthcoming in the plaint averments in this regard. Under these circumstances, the plaintiff is required under law to pay the court fee on the market value of her share. But, she has not done so. Hence, the court fee paid by the plaintiff in respect of partition and separate possession of $\frac{1}{3}$ rd share in the suit schedule properties is not proper and correct.

46. The plaintiff has also sought for cancellation of sale deed in respect of alienation of suit schedule Sl.No.3 property and suit schedule 'B' property by the defendants No.1 and 2 in favour of defendant No.4. But, the plaintiff has not valued the suit and also not paid the court fee in respect of cancellation of sale deed executed by defendants No.1 and 2 in favour of defendant No.4.

47. As per the provisions of Section 38 of the Karnataka Court Fees and Suits Valatuion Act, 1958, in a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be that if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed and if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property and if the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

48. But, the plaintiff neither valued the suit nor paid any court fee in respect of cancellation of sale deed executed by defendants No.1 and 2 in favour of defendant No.4 as contemplated under the provisions of Section 38 of Karnataka Court Fees and Suit Valuation Act. It is pertinent to note here that the plaintiff has sought for cancellation of registered sale deed dated 16.11.2012. As admitted by the plaintiff, the property sold to defendant No.4 by defendants No.1 and 2 is Rs.48 Lakhs. Under these circumstances, the plaintiff is liable to pay the court fee on the market value of the suit properties relating to land and house sold by defendants No.1 and 2 in favour of defendant No.4. But, the plaintiff has not paid the court fee in respect of cancellation of sale deed.

49. Though the defendants have taken a specific contention that the plaintiff has not properly valued the suit and also not paid the sufficient court fee, the plaintiff has failed to value the suit properly and also failed to pay the court fee within time and therefore, the plaint is liable to be rejected as contemplated under the provisions of Order VII Rule 11(b) and (c) of C.P.C.

50. The provisions of Article 59 of the Limitation Act, 1963 provides and prescribes 3 years to file a suit to cancel or set aside an instrument or decree or for the rescission of a contract. The time begins to run when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

51. The provisions of Section 3 of Limitation Act, 1963, mandates that subject to the provisions contained in sections 4 to 24 of the Act, every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

52. As per the provisions of Order VII Rule 11(d) of C.P.C., the plaint shall be rejected; where the suit appears from the statement in the plaint to be barred by any law.

53. The plaintiff has pleaded that after the death of Smt. Sarojini Pundlik, the defendants No.1 and 2 got changed the khata into their names by obtaining surviving membership certificate from the Tahasildar vide MR No.H-11

of Madhewada village in respect of Survey No.191/A1B vide Mutation No.188/2004-05 and thereafter converted the land bearing Survey No.191/AB of Baad-I village into non-agricultural land and thereafter, alienated 4 gunthas of land along with Mangalore tiled house in favour of defendant No.4 for Rs.9,79,000/-.

54. So, it is crystal clear that even according to plaintiff that the mutation was effected in the year 2004 and the defendants No. 1 and 2 have alienated the property in the year 2012 in favour of defendant No.4. The plaintiff is required under law to institute the suit within three years as contemplated under the provisions of Article 59 of Limitation Act. But, she has not done so. On the other hand, the plaintiff has filed the suit in the year 2019 which is barred by limitation.

55. The plaintiff has not specifically pleaded as to whether the suit filed by her is well within time or not. The plaintiff is required under law as per the principles of pleadings to plead as to whether the suit is filed within time or not. But, the plaintiff has not done so. It is not the case of

the plaintiff that she does not aware or do not know the alienation of property by defendants No.1 and 2 to defendant No.4. The sale deed, for which, the cancellation is sought for by the plaintiff was executed on 16.11.2012 by the defendants No.1 and 2 in favour of defendant No.4. As per the sale deed, the mutation was effected vide MR No.163 and their names have been entered in the revenue records. As per the provisions of Section 3 of Transfer of Property Act, registration of any document relating to immovable property before the office of Sub-Registrar is amounts to notice to the general public at large. Hence, the limitation starts to challenge the registered sale deed from 16.11.2012 and completes on 15.11.2015. Under these circumstances, the very suit of the plaintiff filed in the year 2019 is barred by limitation.

56. Under these circumstances, the arguments of the learned counsel for the plaintiff that the plaintiff has disclosed the cause of action in the plaint and the plaintiff is in joint possession and enjoyment of the plaint and therefore, she has valued the suit and paid the court fee of Rs.200/- U/sec.35(2) of Karnataka Court Fees and Suit

Valuation Act, which is proper and correct and the plaintiff do not aware about the alienation made by the defendants No.1 and 2 in favour of defendant No.4 in respect of suit schedule Sl.No.3 property and suit schedule 'B' property and therefore, she could not have filed the suit within limitation and after came to know about the alienation and mutation entry, the plaintiff has filed this suit in the year 2019 which is well within time and plaintiff need not pay the court fee for cancellation of sale deed U/sec.38 of Karantaka Court Fees and Suits Valuation Act is not sustainable under law and therefore, cannot be accepted and the decisions cited in this regard also not applicable to the present facts and circumstances of the case.

57. On the other hand, there is some legal and considerable force in the submission of the learned counsel for the defendants that the plaintiff has not disclosed the cause of action in the entire plaint and the plaintiff is not in joint possession and enjoyment of the suit property, but, she was already excluded from the property much prior to 2012 and therefore, the plaintiff is required under law to pay the court fee on the market value of the properties

U/sec.35 of Karantaka Court Fees and Suits Valuation Act and the plaintiff also sought for cancellation of sale deed and therefore, she is required under law to pay the court fee on the market value under the provisions of Karantaka Court Fees and Suits Valuation Act and the plaintiff has not pleaded as to whether the suit is well within time or not and she is aware about the mutation entry and alienation made by defendants No.1 and 2 in favour of defendant No.4 in the year 2012 itself, but, the plaintiff has not filed the suit well within time and therefore, the plaint is liable to be rejected for non-disclosure of cause of action and for non-payment of sufficient court fee and also barred by law and the decisions cited in this regard also applicable to the present facts and circumstances of the case.

58. Hence, for the reasons discussed above, this court is of the considered view that the plaint does not disclose the cause of action for the plaintiff to file this suit and the plaintiff also failed to value the suit properly and also failed to pay the proper court fee and the suit of the plaintiff is also barred by law and therefore, it is liable to be rejected. **Hence, I answer point No.1 in the affirmative.**

59. **Point No.2**:- In view of my findings on point No.1, I proceed to pass the following:

:ORDER :

I.A.No.VI filed by the learned counsel for the defendants No.1 and 2 under the provisions of Order VII Rule 11(a) to (d) R/W. Sec.151 of C.P.C. and Section 11(2) of Karnataka Court Fees and Suit Valuation Act, 1958 is hereby allowed.

Consequently, the plaint is hereby rejected for want of cause of action, for non valuation of suit and insufficient court fee and also barred by law of limitation.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **20th day of September, 2021**)

(N.M. Ramesha)
Prl. Senior Civil Judge,
Karwar.