

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT:
ANKOLA**

Dated this the 10th day of July 2023

PRESENT :

Sri. MANOHARA M.

LL.M.

Senior Civil Judge and JMFC, Ankola.

ORIGINAL SUIT No.1/2023

Plaintiffs: Smt Seetabai W/o Ramachandra Naik and Ors

-Vs-

Defendants : U.F.M Shri Dayanand Krishna Naik and Ors

I.A.No.III

APPLICANTS: U.F.M Shri Dayanand Krishna Naik and Ors

Versus

RESPONDENTS: Smt Seetabai W/o Ramachandra Naik and Ors

**Order on IA No.III under Order VII Rule 11 R/W Section
151 OF CPC**

The application is filed by defendant No.1 praying to reject the plaint.

2. In support of this application, the defendant No.1 has sworn to an affidavit stating that this suit is filed for partition stating that the suit schedule properties are the

ancestral properties. But they are self acquired properties. After death of his father, the same were granted in the name of his mother namely Smt. Janaki W/o Krishna Naik by Land-Tribunal on 19/01/2000. No persons except him are having any right and interest over the suit schedule properties. The suit schedule properties were originally the tenanted land of his father Krishna Ajjanna Naik which were acquired as per Mumbai Tenancy Act. The suit schedule properties are not joint ownership properties. The suit is barred by limitation in view of the completion of 23 years. Hence, this application is filed.

3. The plaintiff filed objection stating that there is no reason to reject the plaint. The defendants admitted that the original propositor was Purush Khemu Naik and his son is Ajjanna. It is also stated that he had five sons and one daughter. There is no reference regarding partition by metes and bounds in the written statement. As there is no authorized and registered document as to partition, there is sufficient reason to decide this suit. As the document produced in respect of Sy.No.46-3A shows the name of Krishna Ajjanna Naik as a manager, the said property is also to be included. Hence, it is prayed to dismiss the application.

4. Having heard both side and having perused the plaint, IA No.VIII, WS and other materials following points arise

for consideration.

1. Whether plaint is liable to be rejected as prayed for?

2. What order?

5. My answer to the above points are as under:-

Point No.1 : In the negative

Point No.2 : As per the final order for the following:

REASONS

6. Point No.1: There is no dispute that the Purush Khemu Naik was the original propositor of the family of plaintiffs and defendants, and Ajjanna is his son, and the said Ajjanna had five sons and one daughter. The ground stated in the affidavit to reject the plaint is that the suit schedule properties are not the ancestral properties, and they are the tenanted lands of the father of defendant No.1 Krishna Ajjanna Naik, and after death of the father of defendant No1, the suit schedule properties were granted in the name of mother of defendant No.1 on 19/01/2000 by Land-Tribunal, and hence, they are the self acquired properties of defendant No.1, and 23 years was elapsed from the date of grant, and hence, this suit is barred by limitation. The question of the ancestral property or self acquired property is to be decided only on merit. The evidence is required to decide the same. The question of limitation is

a mixed question of law and facts. The grounds urged in the affidavit to reject the plaint are not the grounds stated in the Order VII Rule 11 of CPC. Consequently, I answer point No.1 in the negative.

7. Point No.2: In view of my reasons on Points No.1, I proceed to pass the following:

O R D E R

**IA No.III filed by the
defendant No.1 under Order VII
Rule 11 R/W Section 151 of
CPC is hereby rejected.**

(Dictated to the Stenographer, transcribed by him, transcription corrected by me and then pronounced in the open court on 10th July 2023)

**(MANOHARA M.)
Senior Civil Judge, Ankola**