

IN THE COURT OF THE CIVIL JUDGE & JMFC, AT YADGIR**PRESENT: Shri. MALLIKARJUNA R MADAWAL. LL.M****DATED THIS 7th DAY OF OCTOBER, 2020****O.S.No. 131/2017**

BETWEEN

PLAINTIFFS...

1. Shivappa
S/o Basavaraj Menasin,
Age: About 19 Years,
Occ: Agriculture,
R/o: Nandepalli village,
Tq: Gurumitkal, Dist: Yadgiri.
2. Siddamma
D/o Basavaraj Menasin,
Age: About 25 Year,
Occ: Agri. & House hold,
R/o: Nandepalli village,
Tq: Gurumitkal, Dist: Yadgiri.
Now r/o at: Mumbai (M.H)
3. Gangamma
D/o Basavaraj Menasin,
Age: About 28 Years,
Occ: Agri. & Household,
R/o: Nandepalli village,
Tq: Gurumitkal, Dist: Yadgiri.
Now r/o at: Bangalore.

(By Shri. S.K,Advocate)

AND

DEFENDANTS...

1. Savaramma
W/o Manikappa Gyang,
Age: About 70 Years,
Occ: Agri. & Household,
R/o: Nandepalli village,
Tq: & Dist: Yadgir. (Dead),
 - a. Tirupati S/o Manikyappa Gyang,
Age: 38 Years, Occ: Agriculture,

- b. Nagamma W/o Shivashankar Gyang,
Age: 45 Years, Occ: Agriculture,
 - c. Anilkumar S/o Shivashankar Gyang,
Age: 22 Years, Occ: Agriculture,
 - d. Mahehkumar S/o shivashankar Gyang,
Age: 20 Years, Occ: Agriculture,
 - e. Yallamma D/o Shivashankar Gyang,
Age: 18 Years, Occ: Agriculture,
LR's No.a to e are R/o: Nandepalli village
Tq: Gurumitkal, Dist: Yadgir.
 - f. Renukamma D/o Shivashankar Gyang,
(W/o: Mogalappa)
Age: 40 Years, Occ: Agriculture,
R/o: Gorgenoor village,
Tq: & Dist: Yadgir.
 - g. Laxmi D/o Manikyappa Gyang,
(W/o: Oblayya Gudse, Kavaliger)
Age: 38 Years, Occ: Agriculture,
R/o: Magnoor village,
Tq: Maktal, Dist: Mahaboob Nagar (T.S.)
2. Anand S/o Manikappa Gyang,
Age: 38 Years, Occ: Agriculture,
R/o: Nandepalli village,
Tq: Gurumitkal, Dist: Yadgir.

(Def.No.1 a to g: M.K.V.A, Advocate)

(Def.No.2: S.H.G, Advocate)

ORDERS ON ISSUE No.8

The suit is one for Declaration of title, rectification of revenue records, to declare the sale deed dated 13.07.1981 as null and void, alternative relief of recovery of possession and a consequential relief of Permanent Injunction.

2. Issue No.8, reads as follows:

“Whether the suit is barred by limitation?”

3. Heard both counsels on Issue No.8 which is taken up as preliminary issue. Perused the plaint, written statement and the documents.

4. The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

5. Filtering out the unnecessary details the background of the case to answer the above issue, as follows. One Balappa is the grand father of the plaintiffs. He died leaving behind sole survivor by name Basavaraj. Even Basavaraj died leaving behind the plaintiffs as his survivors. The suit schedule properties are the ancestral properties and were standing in the name of their grand father till 1974. It is in the year 1974-75 one Neelakantappa who is noway related to their family got colluded with the revenue officials, mutated his name in revenue records and sold the suit properties under a registered sale deed dated 13.07.1981 to one Manikappa Gyang who is the husband of defendant No.1 and father of defendant No.2 and vide MR No.14 dated 22.03.1982 the name of Manikappa came to be mutated. Subsequent to his death, the defendant No.1 being the wife got her name mutated in the revenue records. It is the case of the plaintiffs that his grand father has not alienated the suit properties to Neelakantappa and therefore said Neelakantappa did not have any right and interest to execute the sale deed in favour of Manikappa. Thus the sale deed dated 13.07.1981 and mutation entry dated 22.03.1982 are illegal.

The plaintiffs being the grand children of Balappa and children of Basavaraj have become the owner of the suit properties. Hence this suit seeking declaration of title besides challenging the sale deed.

6. I have carefully perused the averments in the plaint, documents relied upon. On a reading of those, it is clear that the Plaintiffs have admitted the execution of the registered Sale Deed dated 13.07.1981 in favour of husband of Defendant No.1. The case made out in the Plaint is that even though sale deed came to be executed by Neelakantappa in favour of Manikappa, he did not have right to do so. That the father of plaintiff died in the year 2014, since the plaintiff No.1 was minor then, he could not secure the documents. After once he attained majority, he secured all the relevant documents where he got to know that the alienation made by Neelakantappa is illegal and the instant suit in the year 2017. In the back drop of above pleadings, the issue of limitation came to be framed.

7. The counsel for the plaintiff vehemently contended that the issue of limitation cannot be tried as preliminary issue. Therefore before proceeding further, let me counter the said contention. No doubt, the issue of limitation could not be tried as a preliminary issue provided if it is a mixed question of law and fact. To deal with a issue of mixed question of law and fact a detailed enquiry is called for. But how in cases where from the plain reading of the plaint averments if it appears that the suit barred by limitation? To answer this it is fruitful to refer order 7 rule 11 (d), which states that the plaint can be rejected

if it barred by any law. The limitation act being one such law, stipulates the limitation period to institute the suit. If the suit is not instituted well within the limitation period as envisaged under the limitation act, then it amounts to barred by law of limitation. In this backcloth, I place reliance on Order VII Rule 11(d) in which expression has been used that plaint has to be rejected if any law bars it as per the averments made in the plaint. In *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs.*, AIR 2019 SC 1430, it was held as under:

"7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the Courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. It is required to be noted that it is not in dispute that the original Plaintiff himself executed the gift deed along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the Plaintiff. It is the case of the Plaintiff that the gift deed was a showy deed of gift, and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the Plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the Plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the Appellant herein original Defendant who filed

the suit in the year 2001 for partition, and the said suit was filed against his brothers to which the Plaintiff was joined as Defendant No. 10. It appears that the summon of the suit filed by the Defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the Defendant No. 10 Plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e., the period from 1981 till 2001/2003, the suit property was mortgaged by the Appellant herein original Defendant and the mortgage deed was executed by the Defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the Plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (AIR 1977 SC 2421) (supra) and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC.”

8. In the light of the above ratio, I proceed to examine the case on hand. Even from the averments in the plaint, it appears that during these 33 years i.e., the period from 1981 till 2014, neither their grand father Balappa nor their father Basavaraj either disputed or challenged the said sale deed or the revenue entries. It is only after lapse of 36 years the said sale deed came to be challenged, in the instant suit, that too by the plaintiffs.

9. One more interesting aspect which this court cannot lose sight is, as the date of alienation, none of the plaintiffs were born. Though the plaintiffs have contended that immediately after attaining majority the said alienation is challenged by way of this suit still, the plaint is silent as to what is their date of birth and as to when exactly they attained majority. On a reading of the plaint, it is clear that the cause of action arose on the date of execution of the sale deed, which event occurred in the year 1981. The time period to challenge the said sale deed is three year from right to sue first accrues and not mere right to sue accrues as per article 58 of Limitation act. The plea taken in the plaint that they learnt of the alleged transaction in 2017, on receipt of the Sale Deed, is to create an illusory cause of action, so as to overcome the period of limitation which is wholly misconceived, since the receipt of the sale deed would not constitute the cause of action for filing the suit. The plea raised is rejected as being merit less and devoid of any truth.

10. The conduct of the Plaintiffs in not taking recourse to legal action for over a period of 36 years from the execution of the Sale Deed in 1981, challenging the alienation, also reflects that the institution of the present suit is an after-thought. The Plaintiffs apparently filed the suit after the property was further sold to husband of defendant No.1, to cast a doubt on the title of Manikappa to the suit property. In the decision stated supra the Apex Court has held the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

11. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, I am of the opinion that by clever drafting

the Plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation.

12. For what has been observed above, I proceed to pass the following

ORDER

Issue No.8 is answered in the affirmative. Acting, under order 7 rule 11 of CPC, the plaint is hereby rejected.

(Typed directly on computer, corrected by me and then pronounced in the open court on this 7th day of October, 2020)

Sd/-
(Mallikarjuna R M)
Civil Judge & JMFC
Yadgir.