



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

REGULAR FIRST APPEAL NO. 345 OF 2026 (PAR)

BETWEEN:

1. SMT. R.SHAKUNTALA
W/O. LATE P.A.RAMACHANDRA
D/O. LATE B.M.GOVINDASWAMY
AGED ABOUT 81 YEARS
R/AT NO.149, 36TH CROSS,
7TH MAIN ROAD, 5TH BLOCK,
JAYANAGAR,
BENGALURU-560 041
2. SMT. G.SARASWATHI
W/O. LATE H.VENKATESH
D/O. LATE B.M. GOVINDASWAMY
AGED ABOUT 80 YEARS
R/AT NO.338, 8TH CROSS,
11TH MAIN ROAD, R.B.I. LAYOUT
J.P.NAGAR, 7TH PHASE,
BENGALURU-560 070
3. SMT. G.SULOCHANA
W/O COL. K.V.NARAYANSWAMY
D/O. LATE B.M. GOVINDASWAMY
AGED ABOUT 75 YEARS
R/AT NO.302, SHREE HOMES ELEGANCE
5TH CROSS ROAD, VIJAYA BANK LAYOUT
BILEKAHALLI, BENGALURU-560 076

...APPELLANTS

(BY SRI. ZULFIKIR KUMAR SHAFI, ADVOCATE)

Digitally
signed by
HEMALATHA
J
Location:
HIGH
COURT OF
KARNATAKA



AND:

1. A. SARASWATHI
W/O. LATE G.ANANTHASWAMY
AGED ABOUT 72 YEARS,
2. G.SATHYANARAYAN
S/O. LATE G.ANANTHASWAMY
AGED ABOUT 42 YEARS
3. G.SHESHADRI
S/O. LATE G.ANANTHASWAMY
AGED ABOUT 40 YEARS

SL.NO.1 TO 3 RESIDING AT

NO.88, 11TH MAIN ROAD
11TH CROSS ROAD, AVALAHALLI,
3RD STAGE, GIRINAGAR
BENGALURU-560 085

4. G.PRABHAKARA
S/O LATE B.M. GOVINDA SWAMY,
AGED ABOUT 73 YEARS
R/AT NO.74, 6TH MAIN ROAD
NEAR ASHOKA HEIGHTS
MAHALAKSHMI LAYOUT
MAHALAKSHMIPURAM
BENGALURU-560 084
5. G.KUMARASWAMY
S/O. LATE B.M. GOVINDASWAMY
AGED ABOUT 72 YEARS
R/AT NO.SY.NO.6/1 AND 6/2
SOUTH END ROAD
BASAVANAGUDI
BENGALURU-560 004
6. S.RAJESHWARI
W/O. LATE SATYANARAYANA
D/O.LATE B.M.SREENIVASMURTHY
AGED ABOUT 81 YEARS
R/AT NO.1169, 26TH A MAIN ROAD
9TH BLOCK, JAYANAGAR
BENGALURU-560 041



7. B.S.VENKATESH
S/O. LATE B.M.SREENIVASMURTHY
AGED ABOUT 54 YEARS
R/AT 461, 21ST CROSS ROAD
NEW DIAGONAL ROAD
3RD BLOCK, JAYANAGAR,
BENGALURU-560 011
8. N. LEELAVATHI
W/O. LATE B.M.NARAYANSWAMY
AGED: MAJOR
R/AT.NO.20(33), VANIVILAS ROAD
OPP: VASAVI CONVENTION CENTRE
BASAVANAGUDI
BENGALURU-560 004
9. J.SWARNA
D/O. LATE B.M. NARAYANASWAMY,
D/O. P.A.JAGANNATH AND LATE VIJAYALAKSHMI
AGED ABOUT 47 YEARS
R/AT NO.46, LAKSHMI RESIDENCY
PHASE 2, ADDE VISHWANATHAPURA
RAJANKUNTE, BENGALURU NORTH
10. J.SOWMYA
D/O. LATE B.M. NARAYANASWAMY
AGED ABOUT 45 YEARS
R/AT NO.20(33),
VANI VILAS ROAD
OPPOSITE VASAVI CONVENTION CENTRE
BASAVANGUDI, BENGALURU-560 004
11. J.AJAY
S/O. LATE B.M.NARAYANASWAMY
AGED ABOUT 40 YEARS
R/AT NO.20(33), VANI VILAS ROAD
OPPOSITE VASAVI CONVENTION CENTRE
BASAVANGUDI, BENGALURU-560 004
12. N.VISHWANATHA
S/O. LATE B.M.NARAYANSWAMY
AGED ABOUT 68 YEARS



R/AT NO.20(33), VANI VILAS ROAD
OPPOSITE VASAVI CONVENTION CENTRE
BASAVANGUDI, BENGALURU-560 004

13. N.VASANTHALAKSHMI
D/O. LATE B.M.NARAYANSWAMY
AGED ABOUT 71 YEARS
R/AT NO.20(33), VANI VILAS ROAD
OPPOSITE VASAVI CONVENTION CENTRE
BASAVANGUDI, BENGALURU-560 004
14. N. VENKATESH
S/O. LATE B.M.NARAYANSWAMY
AGED ABOUT 62 YEARS
R/AT NO.10, WEST COTTROAD
ROYAPETTHA, CHENNAI-600014
15. L.PREMKISHORE
S/O. LATE B.M.LAKSHMANAMURTHY
AGED ABOUT 72 YEARS
R/AT PRISHA ORCHID APARTMENT
FLAT NO.20602, B BLOCK, 6TH FLOOR,
THANISANDRA MAIN ROAD
BANGALORE NORTH, BANGALORE
16. B.L.SARALA
W/O. B.R.VIJAYANARASIMHAN
D/O. LATE B.M.LAKSHMANAMURTHY
AGED ABOUT 71 YEARS
R/AT ANURAGA, NO.12/1A,
RV LAYOUT, KUMARA PARK WEST
BENGALURU-560 020
17. L. SAILESH
S/O. LATE B.M.LAKSHMANAMURTHY
AGED ABOUT 66 YEARS
R/AT SHREYAS, NO.90,
2ND MAIN ROAD, 31ST CROSS,
7TH BLOCK, JAYANAGAR,
BENGALURU-560 082
18. M/S. RAJARAJESHWARI BUILDICON PVT. LTD.,
A COMPANY INCORPORATED UNDER



NC: 2026:KHC:17665
RFA No. 345 of 2026

THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
NO.67/1, 'SRI RANGA',
NETTAKALLAPPA CIRCLE
BASAVANAGUDI
BENGALURU-560 004

...RESPONDENTS

(BY SRI. L.M.CHIDANANDAYYA, ADVOCATE FOR
CAVEATORS/RESPONDENT NOS.1 TO 4;

SRI. ASHOK B. PATIL, ADVOCATE FOR CAVEATOR/RESPONDENT
NO.14)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE
ORDER DATED 12.01.2026 PASSED ON I.A II/2025 IN
O.S.NO.2664/2023 ON THE FILE OF THE C/C XLIII ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU, ALLOWING THE
I.A.NO.II/2025 FILED UNDER ORDER VII RULE 11(a) AND 11(d)
READ WITH SECTION 151 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL JUDGMENT

The plaintiffs in O.S No.2664/2023 have filed this appeal
challenging an Order dated 12.01.2026 passed on I.A.
No.II/2025 by the C/C XLIII Additional City Civil and Sessions
Judge, Bengaluru, by which the plaint was rejected in exercise
of power under Order VII Rule 11(a) and 11(d) of the Code of
Civil Procedure, 1908.



2. The parties shall henceforth be referred to as they were arrayed before the Trial Court. The appellants herein were the plaintiffs while the respondents herein were the defendants.

3. The suit in O.S No.2664/2023 was filed for partition and separate possession of one sixth share out of one fourth share in the suit schedule property. The suit property is land bearing Sy. Nos.6/1 and 6/2 situate at Dasarahalli Village, Bengaluru South Taluk, measuring 05 Acres 02 guntas.

4 (i). The plaintiffs claimed that their grandfather, namely Mr.B. Munivenkatappa, was the absolute owner of the land in Survey Nos.6/1 and 6/2 situate at Dasarahalli Village, Uttarahalli Hobli, Bengaluru South Taluk, he having purchased it in terms of two sale deeds dated 17.02.1937 and 20.12.1937. Out of the aforesaid extent, 01 Acre 02 guntas of land was acquired for the purpose of formation of a road by the erstwhile City Improvement Trust Board (CITB). Therefore, what remained in the aforesaid land in Sy. Nos.6/1 and 6/2 was 05 Acres 02 guntas, which is the suit schedule property. They claimed that their grandfather had 5 sons. During his lifetime, he had started the business of sale of kerb and monumental



stones under the name and style "Narayanswamy and Sons". In the year 1953, the plaintiffs' grandfather conveyed the suit schedule property in favour of the Partnership Firm - M/s. Narayanswamy and Sons, which then consisted of him (Mr. B. Munivenkatappa) and his five children as Partners. They claimed that therefore, all the assets of the Firm belonged to the joint family. The plaintiffs also claimed that in view of the deed of conveyance dated 30.09.1953, the Partnership Firm was a "Hindu Undivided Family Firm", which consisted of their grandfather and his sons. They claimed that the Firm suffered severe losses and was unable to carry on business. Hence, it decided to sell the suit schedule property to M/s.Reva Jeethu Builders and Developers. After obtaining necessary permissions from the State Government, a sale deed was executed in favour of M/s.Reva Jeethu Builders and Developers.

(ii) The validity of the permission granted by the State Government was questioned before this Court in W.P.Nos.8546-8548/1987, which culminated in an order passed by the Hon'ble Supreme Court of India on 30.03.1993, which invalidated the permission granted by the State Government



and consequently held the sale deed dated 30.09.1987 executed in favour of M/s. Reva Jeethu Builders and Developers as null and void. They claimed that M/s. Reva Jeethu Builders and Developers then filed O.S.No.2265/1996 for recovery of the consideration amount paid to the partners of the firm. They alleged that all documents of title of the suit property are in the custody of M/s. Reva Jeethu Builders and Developers. They claimed that the firm ran into rough weather and was unable to do business. They alleged that the fact that the firm belonged to the Hindu Undivided Family (HUF) was already established in a suit and that the same had attained finality.

(iii) The plaintiffs claimed that after the death of their grandfather - Mr. B. Munivenkatappa, his four sons namely, Mr. B.M. Govindaswamy, Mr. B.M. Srinivas Murthy, Mr. B.M. Narayan Swamy and Mr. B.M. Lakshman Murthy, became the joint owners of the suit schedule property. They further contended that their father - Mr. B.M. Govindaswamy died on 11.01.1987 leaving behind the plaintiffs, defendant Nos.4 and 5 and Mr. G. Anantha Swamy (father of defendant Nos.1 to 3). The defendant Nos.1 to 3 are the legal heirs of deceased - Mr. G. Anantha Swamy. Defendant Nos.6 and 7 are the legal heirs



of Mr. B. M. Srinivas Murthy. Defendant Nos.8 to 14 are the legal heirs of deceased - Mr. B. M. Narayan Swamy. Defendant Nos.15 to 17 are the legal heirs of deceased - Mr. B. M. Lakshman Murthy. Mr. B.M. Rama Murthy, the other son of Mr. B. Munivenkatappa, had executed a deed of relinquishment in the year 1972 and had relinquished all his right, title and interest towards the suit property by receiving another joint family property situated at Mysuru. The plaintiffs therefore, claimed that they, the defendant Nos.1 to 17 constituted a joint family and they were in possession of the suit property. They claimed that in view of the pendency of O.S.No.2265/1996 filed by M/s. Reva Jeethu Builders and Developers, the katha of the suit property was not transferred to the name of the plaintiffs and defendant Nos.1 to 17. They claimed that they are entitled to 1/4th share in the suit schedule property and were shocked to know that the defendant No.4 without their notice and knowledge had negotiated the sale of the suit property to defendant No.18 and had executed an agreement of sale. Therefore, they filed the instant suit claiming their share in the suit schedule property.



5. The suit was contested by the defendants. An application was filed by the defendant Nos.8 to 11, 13 and 14 under Order VII Rule 11(a) and (d) of CPC to reject the plaint. The said application was considered and rejected by the Trial Court in terms of an order dated 25.10.2024.

6. (i) Later, another application was filed by the defendant No.4 under Order VII Rule 11(a) and (d) read with Section 151 of CPC to reject the plaint. It was claimed in the application that the suit property is not the property of the family, but is the property of the firm - M/s. Narayanaswamy and Sons and therefore, the relief sought for in the plaint for partition of the suit property is not maintainable. He admitted that the property in question was earlier owned and possessed by Mr. B. Munivenkatappa and that he conveyed the same to M/s. Narayanaswamy and Sons in terms of a conveyance dated 03.09.1953. He also admitted that the firm was reconstituted on 01.04.1971 and he was inducted as a partner with 1/16th share. Likewise, his brother - Mr. G. Ananthaswamy was also inducted as a partner on 01.04.1971. He claimed that the firm enjoyed the suit property as its owner and all the children of Mr. B. Munivenkatappa were residing separately and they were



having their own business entities and properties. He claimed that the father of the plaintiffs and the defendant Nos.4 and 5 had partitioned the properties owned by him in terms of a deed dated 25.03.1975, in which the plaintiffs got their share and from the date of partition, all the children of Mr. B.M. Govindaswamy were living separately. He further admitted that the suit property was sold to M/s. Reva Jeethu Builders and Developers in the year 1987, which was ultimately set aside by the Hon'ble Supreme Court of India. He also claimed that a dispute arose amongst the partners of M/s. Narayanaswamy and Sons in O.S.No.2277/1994 and the same was settled amicably in terms of which, the defendant No.4 and Mr. G. Ananthaswamy (father of defendant Nos.1 to 3) got 2 acres 2 guntas of land as their share in the suit schedule property. He claimed that he and his brother are in possession and enjoyment of the said extent. He also claimed that since the compromise decree in O.S.No.2277/1994 was not given effect to, Execution Petition No.1013/1999 was filed and the Court Commissioner appointed to survey and demarcate their share, identified the property and handed over possession of 2 acres 2 guntas.



(ii) The defendant No.4 contended that the plaintiffs, who had already taken their share in the partition effected on 25.03.1975, had made a false claim that they are entitled to a share in the suit property. He contended that in order to claim partition, the suit property must be a property that belongs to the family or a coparcenary and as on the date of the suit, the suit property belonged to the firm and was not the property of the family. He claimed that he and his brother being the legal representatives of Mr. B.M. Govindaswamy were in possession of the property from 06.07.1999 and hence, the suit for partition is not maintainable. Therefore, he contended that the suit did not disclose a clear cause of action and hence, it was liable to be rejected under Order VII Rule 11(a) and (d) of CPC.

(iii) The defendant No.4 further contended that assuming without admitting that the suit property is coparcenary property of the family of late Mr. B. Munivenkatappa, the plaintiffs at that particular point of time were not coparceners in the Hindu family and hence, were not entitled to any share in the suit property. He referred to proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005 and stated that the plaintiffs are not entitled to a share in the



properties of the family, in which a partition had already taken place prior to the year 2005. In any event, it was contended that once the properties of the family were partitioned on 25.03.1975, a fresh suit for partition after 40 years is barred by the law of limitation. He also contended that the plaintiffs have not challenged the compromise decree in O.S.No.2277/1994 dated 06.01.1999 and hence, the suit for partition is not maintainable and is also barred by the law of limitation. Further, he claimed that the plaintiffs though knew the filing of O.S.No.2277/1994 had deliberately suppressed the said fact. Therefore, he contended that the plaint is liable to be rejected as it did not disclose a cause of action and was hopelessly barred by the law of limitation.

7. This application was contested by the plaintiffs who claimed that the defendant Nos.8 to 11, 13 and 14 had earlier filed an application for rejection of the plaint and that the Trial Court after considering the material on record, had rejected the said application vide Order dated 25.10.2024. They claimed that they specifically mentioned the cause of action to file the suit and they also mentioned about the agreement of sale dated 22.06.2022 entered into between defendant No.4 and



defendant No.18 and also that cause of action arose on 26.03.2023 when they approached the defendant Nos.1 and 17 and demanded their legitimate share in the suit property and the defendants refused to partition the suit property and on various other dates thereafter. Hence, they contended that the suit filed by them was based on adequate cause of action and therefore, the plaint cannot be rejected under Order VII Rule 11(a) of CPC. They also contended that for rejection of a plaint, it is only the averments made in the plaint that have to be taken into consideration and not the assertions made by the defendants in the written statement or in the application for rejection of the plaint. They also claimed that the question of limitation urged by the defendant No.4 was a mixed question of law and fact and the same had to be tried and decided by the Trial Court after the parties adduced evidence.

8. The Trial Court after considering the application as well as the objections and the arguments canvassed, allowed the application in terms of the impugned order dated 12.01.2026 primarily on the following grounds:-



- (a) the properties of late Mr. B. Munivenkatappa were divided vide partition deed dated 25.03.1975 and in view of proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005, a suit for partition of the suit property is not maintainable.
- (b) as per the averments of the plaint, the defendant No.4 and his brother got 2 acres 2 guntas from out of the total extent of the suit schedule property in the compromise decree way back in the year 1999. Further, the plaintiffs have not challenged the compromise decree passed in O.S.No.2277/1994.
- (c) the agreement of sale executed by the defendant No.4 in favour of the defendant No.18, which was enclosed along with the plaint disclosed that the properties of Mr. B. Munivenkatappa were partitioned on 25.03.1975 and that all his children were residing separately and these facts were not pleaded in the plaint by the plaintiffs.
- (d) the plaint is silent about partial partition and as the partition of the properties of the family had taken



place prior to 2005, the same cannot be subject to reopening.

9. Being aggrieved by the said order, the plaintiffs are before this Court.

10. The learned counsel for the plaintiffs submitted that the suit property, undisputedly belonged to Mr. B. Munivenkatappa and he had transferred the said property to the firm. He contends that after the death of Mr. B. Munivenkatappa, the firm was continued by his children. Therefore, the property of the firm continued to be the property of the family. He contends that after the death of the father of the plaintiffs, the plaintiffs and defendant Nos.4 and 5 were entitled to an equal share in the suit schedule property and therefore, the suit filed by the plaintiffs was just and lawful. He further submitted that the partition dated 25.03.1975 was not in respect of the properties of the firm, but was in respect of a certain property situated in Mysuru and thus, the rights of the plaintiffs were not impacted even if proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005 is applied. He submitted that the Trial Court without considering the



assertions made in the plaint, went astray in referring to certain assertions made by the defendant No.4 in the application for rejection of plaint and held that there was no cause of action for the suit. He contends that a perusal of the partnership deed itself would indicate that after the death of the father of the plaintiffs or any partner, the partnership firm was bound to value the share and distribute the value amongst the legal heirs of the deceased partner and if any member of the family is a partner of the firm, that share would be allotted to the partner. He therefore, contends that the plaintiffs have some semblance of right as the legal representatives of B.M.Govindaswamy and hence, the suit could not have been rejected on the ground that it did not disclose cause of action. He also submitted that the plaintiffs were not parties to O.S.No.2277/1994 and were unaware of the settlement brought about amongst the defendants and the allotment of 2 acres 2 guntas to the defendant No.4 and father of defendant Nos.1 to 3. He submits that plaintiffs are not parties to the said suit and therefore, any arrangement entered into between the defendants is not binding upon the plaintiffs and cannot be used to non suit the plaintiffs. He further contended that the



question whether the plaintiffs are entitled to a share in the suit property or not and the question whether the property belong to the firm or to the HUF, are all questions of fact and law, which have to be thrashed out after trial and not by way of an interlocutory application. He also contended that the Trial Court has misdirected itself in holding that the suit is barred by law of limitation unmindful of the fact that the plaintiffs and defendant Nos.4 and 5 being the legal heirs of late Mr. B.M. Govindaswamy are entitled to an equal share in the suit property and that there is no partition amongst the plaintiffs and the defendant Nos.4 and 5 and therefore, the suit could not be rejected on the ground that it was barred by the law of limitation.

11. Per contra, the learned counsel for defendant No.4 submitted that there is no concept of HUF firm as pleaded by the plaintiffs in the suit. He contends that Mr. B. Munivenkatappa had conveyed the suit properties to the firm for consideration on 03.09.1953 and therefore, for all practical purposes, the property continued to be the property of the firm and consequently, the plaintiffs who were not partners in the firm could not claim that the property belonged to a family firm



and that they were entitled to a share therein. He invited the attention of the Court to Section 14 of the Indian Partnership Act, 1932 and contends that subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm or acquired, by purchase or otherwise and for the purposes and in the course of business of the firm. He therefore, contends that at no rate, the suit properties can be construed as properties of the family and hence, the suit filed by the plaintiffs on the premise that the properties belong to the HUF firm is ill-designed. In support of this contention, he relied upon the judgment of the Hon'ble Supreme Court of India in ***Sachin Jaiswal vs. M/s. Hotel Alka Raje and Others [(2025) 2 SCR 1396]***. He also invited the attention of the Court to Section 5 of the Indian Partnership Act, 1932 and contended that the relation of partnership arises from contract and not from status as members of Hindu undivided family carrying on a family business, and they cannot be construed as partners in such business. He therefore, contends that the plaintiffs cannot don the clothes of a partner and claim that they are interested in the suit schedule property and stake their



claim by seeking partition. He further submits that the plaintiffs were aware of the settlement of a dispute between the partners of the firm in O.S.No.2277/1994 in terms of which, the defendant Nos.4 and father of defendant Nos.1 to 3 derived 2 acres and 2 guntas as their share at a settlement entered into in the year 1999. He contends that the plaintiffs have not claimed their right in the suit property from the year 1993 till the year 2023 and therefore, the suit is highly belated and the Trial Court was right in rejecting the plaint.

12. I have considered the submissions made by the learned counsel for the plaintiffs and the learned counsel for the defendant No.4.

13. The rejection of a plaint in exercise of power under Order VII Rule 11 of CPC is a drastic order and therefore, the Courts are bound to tread cautiously while considering such applications. The underlying object of Order VII Rule 11(a) of CPC is to ensure that the defendants are not unnecessarily harassed by mischievous proceedings or proceedings which are on the face of it fraudulent or sham. When the plaint *ex-facie* does not disclose a cause of action or if the cause of action



mentioned in the plaint is a result of clever drafting, the Courts would not hesitate to exercise power under Order VII Rule 11 of CPC to shoot down a litigation. Therefore, a duty is cast on the Court to determine whether a plaint discloses a clear cause of action by scrutinising the averments in the plaint. It is also well settled that while considering an application Order VII Rule 11 of CPC, the Court is bound to only look into the averments made in the plaint and not the averments or assertions made by the defendants in the written statement and the application for rejection of the plaint. The test for exercising power under Order VII Rule 11 of CPC is that if the averments made in the plaint are taken on its face value in conjunction with the documents relied upon, does it throw up a cause of action or is it barred under law? If the answer to the above question is in the affirmative, the Courts must not exercise its power under Order VII Rule 11 of CPC. In addition, whenever the plaint is *ex-facie* mischievous and is designed to harass the defendants, the Court also would exercise jurisdiction under Order VII Rule 11 of CPC.

14. Having extracted the settled position of law, if we apply the same to the facts of this case, it is seen from the



averments made in the plaint that the plaintiffs specifically admitted that the suit properties belonged to Mr. B. Munivenkatappa, their grandfather, who transferred it to the firm on 30.09.1953. Consequently, the firm became the owner of the suit property. It needs to be noted that the partners of the firm were none other than the children of Mr. B. Munivenkatappa. The question whether after the death of the father of the plaintiffs, they were entitled to their father's share in the assets of the firm along with the defendant Nos.4 and 5, is a question of fact that has to be thrashed out by the Trial Court after a trial assuming that Section 6 of the Hindu Succession (Amendment) Act, 2005 is not applicable to the facts of the case of the plaintiffs. The fact that the firm belongs to the HUF appears to be judicially established in another proceeding and the same has attained finality, makes it all the more clear that the firm belongs to the HUF and that the plaintiffs being the legal heirs of Mr. B.M. Govindaswamy are entitled to a share therein. The Trial Court instead of considering the application filed by defendant No.4 from this standpoint has blindly applied Section 6 of the Hindu Succession (Amendment) Act, 2005 in holding that the plaintiffs



are not entitled to raise a claim after 40 years from the date of the partition dated 25.03.1975. This, at any rate, could not have been held while considering an application that too, under Order VII Rule 11 of CPC. This was essentially a question of fact and law that had to be thrashed out by the Trial Court after a full-fledged trial.

15. Likewise, the question whether the suit was barred by limitation or not, was also a question of fact and law that the Trial Court must have considered after a full-fledged trial, more particularly when the defendant Nos.4 claimed that he and father of defendant Nos.1 to 3 had derived an extent of 2 acres 2 guntas in the suit property in terms of a settlement entered into in O.S.No.2277/1994. Therefore, the question whether the defendant Nos.4 and father of defendant Nos.1 to 3 had received 2 acres 2 guntas out of the suit schedule property as a nominee of all the legal representatives of Mr. B.M. Govindaswamy or in their individual capacity as partner, is a question that has to be considered by the Trial Court. If the answer to the above question is in the affirmative, then the plaintiffs are entitled to a share in the suit schedule property. The Trial Court has misdirected itself in virtually deciding a



question of law and fact at an interim stage without going into the contentions of both the parties and therefore, the impugned order passed by the Trial Court deserves to be interfered with.

16. Accordingly, the appeal is **allowed**. The impugned order dated 12.01.2026 passed by the XLIII Additional City Civil and Sessions Judge, Bengaluru, in O.S.No.2664/2023, on I.A.No.II/2025 filed by the defendant No.4 under Order VII Rule 11(a) and (d) read with Section 151 of CPC, is set aside. The suit filed by the plaintiffs in O.S.No.2664/2023 before the Trial Court is restored. The parties are directed to appear before the Trial Court on **24.04.2026**.

17. It is made clear that any observations made by this Court in the course of this judgment is intended only for the purposes of considering this appeal and shall not be construed as if this Court has decided any disputed question of fact or law and any finding recorded on facts or law shall not come in the way of the Trial Court deciding the suit on merits. It is also made clear that this judgment shall not come in the way of CRP No.47/2025 filed by the defendant Nos.8 to 11, 13 and 14, which is pending consideration before this Court.



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18. In view of disposal of the appeal, pending I.As., if any, do not survive for consideration and the same stand disposed off.

Sd/-
(R. NATARAJ)
JUDGE

SMA - from para No.1 to para No.4(i)
PMR - para No.4(ii) to end
List No.: 1 Sl No.: 35