

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10th DAY OF JUNE, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR FIRST APPEAL NO.545 OF 2020 (DEC/POS)

BETWEEN:

1. KAMBAYANDA DEVAIAH
S/O. LATE KALAPPA
AGE 52 YEARS
SINCE DEAD BY HIS LR'S

1(A) SMT. NALINI
W/O. LATE KAMBAYANDA
DEVAIAH @ DEVAIAH K.K.
AGED ABOUT 55 YEARS

1(B) SRI MUTHANNA
S/O. LATE KAMBAYANDA
DEVAIAH @ DEVAIAH K.K.
AGED ABOUT 30 YEARS

1(C) SMT. VACHANA DECHAMMA
D/O. LATE KAMBAYANDA
DEVAIAH @ DEVAIAH K.K.
AGED ABOUT 25 YEARS

ALL ARE RESIDENTS OF
NALADI VILLAGE
KAKKABBE POST
MADIKERI TALUK
KODAGU DISTRICT-571 201.
(AMENDMENT CARRIED OUT AS PER THE ORDER
DATED 5-2-2026)

2. KAMBAYANDA APPACHU
S/O. LATE KALAPPA
AGE 49 YEARS.
3. KAMBAYANDA BELLIAPPA
S/O. LATE KALAPPA

Digitally
signed by
ANJALI M
Location:
High Court
of
Karnataka

AGE 43 YEARS
APPELLANT NOS.2 AND 3 ARE
RESIDENTS OF NALADI VILLAGE
KAKKABBE POST
MADIKERI TALUK
KODAGU DISTRICT-571 201.

...APPELLANTS

(BY SRI M. DEEPAK A/W. RUDRESH R.S., ADVOCATES)

AND:

1. B.T. KARIYAPPA
AGE 67 YEARS
S/O. LATE B. THIMMAIAH
RESIDING AT VANIVIHAR
NAPOKLU POST
MADIKERI TALUK
KODAGU DISTRICT-571 201.
2. UNIQUE MERCANTILE INDIA PRIVATE LIMITED
F/7 VISHAL
NEAR DINESH HALL
INCOME TAX, ASHRAM ROAD
AHAMADABAD-380 009
STATE OF GUJARATH INDIA
REPRESENTED BY KASHYAP P. SHAH
GENERAL MANAGER
BUSINESS DEVELOPMENT
UNIQUE MERCANTILE INDIA PRIVATE LIMITED.
3. BELLAMKONDA VENKATA SUBBA RAO
AGE 72 YEARS
S/O. VENKATESWARALU
10/428-D, AGRAHARAM ROAD
GODALUR BAZAAR (P.O)
PIN-6432112, GODALUR TALUK
NILGIRI DISTRICT
TAMIL NADU-578 281.
4. BELLAMKONDA RAJENDRA
AGE 42 YEARS
S/O. VENKATA SUBBA RAO
10/428-D, AGRAHARAM ROAD
GODALUR BAZAAR (P.O)
PIN-643 212, GODALUR TALUK
NILGIRI DISTRICT
TAMILNADU-578 281.

BELLAMKONDA RAMDEVI
DEAD HER LRS ARE ON RECORD AS
RESPONDENT NOS.3 AND 4.

5. B.N. PRABHAKAR
AGE 67 YEARS
S/O. MADHAVAN
VELLARUNNIL HOUSE
PORAKKADI VILLAGE
MYLAMBADI POST
SULTHAN BATHERI TALUK
AND DESHAM WYNAD DISTRICT
KERALA-578 201.
6. K.M. RAJAMOHAN
AGE 62 YEARS
S/O. MADHAVAN
KALLADIYIL HOUSE
MYLAMBADI POST
KRISANIGIRI VILLAGE
MEENANGADI WYNAD DISTRICT
KERALA-578 201.
7. P. RAVI
AGE 55 YEARS
S/O. MADHAVAN
VELLAKUNNIL HOUSE
PORAKKADI VILLAGE
MYLAMBADI POST
MEENANGADI WYNAD DISTRICT
KERALA-578 201.
8. V. PITHAMBARANAGE
AGE 57 YEARS
S/O. MADHAVAN
PORAKKADI VILLAGE
KOLERI POST
WYNAD DISTRICT
KERALA-578 201.
9. MATHEW SEBASTIN
AGE 62 YEARS
S/O. V.V. MATHEW.
10. VARKEY MATHEW
AGE 66 YEARS
S/O. V.V. MATHEW.

11. JOHNEY MATHEW
AGE 61 YEARS
S/O. V.V. MATHEW.

12. AUGUSTINE MATHEW
AGE 64 YEARS
S/O. V.V. MATHEW

RESPONDENT NOS.9 TO 12 ARE
RESIDENTS OF LISIE ESTATE
NALKERI VILLAGE
VIRAJPET TALUK
KODAGU DISTRICT-571 211.

13. SMT. BHAGYAVATHI
AGE 55 YEARS
W/O. A.P. BOPAIAH
LUCKY PRINCY ESTATE
SUNTIKOPPA POST
SOMWARPET TALUK
KODAGU DISTRICT-571 201.

14. SMT. CHONDAMMA
AGE 51 YEARS
W/O. B.S. PONNAPPA
BENGOOR VILLAGE
KAKKABE POST, MADIKERI TALUK
KODAGU DISTRICT.

15. K.K. SUBBAIAH
AGE 46 YEARS
S/O. LATE KALAPPA.

16. K.C. PONNAPPA
AGE 40 YEARS
S/O. LATE CHERAMANNA

RESPONDENT NOS.15 AND 16 ARE
RESIDENTS OF NALADI VILLAGE
KAKKABE POST
MADIKERI TALUK
KODAGU DISTRICT-571 201.

17. DEPUTY COMMISSIONER
GOVERNMENT OF KARNATAKA
KODAGU DISTRICT
MADIKERI TOWN AND POST
MADIKERI TALUK

KODAGU DISTRICT-571 201.

18. STATE OF KARNATAKA
LAND REVENUE DEPARTMENT
REPRESENTED BY
CHIEF SECRETARY
VIDHANA SOUDHA
BENGALURU-560 001.

...RESPONDENTS

(BY SRI SHIVAPRASAD SHANTHANA GOWDAR, ADVOCATE FOR
SRI ANAND MUTTALLI, ADVOCATE FOR R-1;
SRI G.S. ARUNA, H.C.G.P. FOR R-17 AND R-18;
R-2 TO R-4, R-7, R-13 TO R-15 ARE SERVED AND UNREPRESENTED;
VIDE ORDER DATED 26-6-2024 SERVICE OF NOTICE TO R-5, R-6
AND R-8 TO R-12 ARE HELD SUFFICIENT AND UNREPRESENTED;
VIDE ORDER DATED 5-2-2026 NOTICE TO R-16 IS DISPENSED WITH)

* * *

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER XLI
RULE 1 OF CPC, PRAYING TO SET ASIDE THE ORDER AND DECREE
ON I.A.NO.3 FILED UNDER ORDER VII RULE 11(D) OF CPC DATED
02-12-2019 PASSED BY THE SENIOR CIVIL JUDGE, MADIKERI,
KODAGU DISTRICT AND CONSEQUENTLY RESTORE THE PLAINT AND
CONTINUE THE TRIAL PROCEEDINGS IN O.S.NO.16 OF 2019 ON THE
FILE OF SENIOR CIVIL JUDGE, MADIKERI, KODAGU DISTRICT.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED ON 3-6-2026, COMING ON FOR PRONOUNCEMENT, THIS
DAY, **VENKATESH NAIK. J**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

The present appeal has been filed seeking to challenge the judgment and decree dated 02.12.2019 in O.S.No.16/2019 passed by the learned Senior Civil Judge, Madikeri, Kodagu District and consequently to set-aside the order passed on I.A.No.3 filed under Order VII Rule 11(d) CPC read with Section 151 CPC and to restore the plaint and continue the trial proceedings in the suit. By the impugned judgment, the suit filed for declaration of their limited right in the suit properties, possession, cancellation of registered sale deeds referred to in the plaint was dismissed by the trial Court under Order VII Rule 11(d) of the Code of Civil Procedure, 1908(hereinafter referred to as CPC), holding that, the suit is barred by law of limitation.

2. Briefly, the facts of the case are that, a suit was filed by the appellants/plaintiffs seeking relief of declaration of their title, possession and cancellation of registered sale deeds dated 02.06.1971, 17.05.1999, 23.03.2006, 16.09.2006, 22.11.2006 and registered sale agreement dated 14.10.2014 are void and illegal documents and consequently for cancellation of these documents. The suit schedule properties comprising of

Schedule 'A' property bearing Sy.No.12/1A(New Survey 12/6) measuring 25 acres, Schedule 'B' property bearing Sy.No.12/1B(New Survey No.12/7) measuring 25 acres, Schedule 'C' property bearing Sy.No.12/D(New Survey No.12/8) measuring 23.14 acres, Schedule 'D' property bearing Sy.No.12/4 measuring 14.70 acres, Schedule 'E' property bearing Sy.No.12/3, measuring 1.60 acres and Schedule 'F' property bearing Sy.No.12/5B(Old Sy.No.12/5) measuring 5.30 acres, are situated at Naladi Village, Madikeri Taluk, District Kodagu.

3. In the plaint, the plaintiffs have averred that their father Kalappa had inherited the aforesaid lands, which were privileged jamma bane lands. The holders of these lands have no absolute right and only limited rights were vested in them to enjoy the properties given under Coorg Land Revenue Act. Therefore, the alienation of any jamma bane lands is illegal, void ab-initio and thus, the sale deed executed by plaintiffs' father Kalappa and others in respect of suit properties in favour of defendant Nos.10 to 13 on 02.06.1971 is void, as the plaintiffs were minors as on the date of sale transactions. Further, defendant Nos.10 to 13 sold the schedule properties to defendant Nos.6 to 9 under the sale deeds dated 23.03.2006

and 17.05.1999. In-turn, defendant Nos.6 to 9 sold the schedule properties in favour of defendant Nos.3 to 5, who in-turn have sold the schedule properties in favour of defendant No.1 on 22.11.2006.

4. Soon after institution of the plaint, defendant/respondent No.1 appeared through his counsel and he filed an application I.A.No.3 under Order VII Rule 11(d) r/w 151 CPC contending that he had purchased the suit properties from defendant Nos.3 to 5. Defendant Nos.3 to 5 happened to have purchased the suit schedule properties from defendant Nos.6 to 9, who have purchased from defendant Nos.10 to 13, who purchased the suit properties under registered sale deed dated 02.06.1971 from the plaintiffs' grandmother Muthawwa, their father Kalappa, Cherumanna, Thayakka, Ponnanna, Bhagyavathi, Poovaiah, Chondamma, Appacha and Subbaiah and so also subsequent sale deeds have not been challenged, thus, the suit of the plaintiffs is barred by time. Accordingly, prayed to reject the plaint.

5. The trial Court considering the content of the plaint and prayer sought, has allowed I.A.No.3 filed by defendant No.1,

under Order 7 Rule 11(d) CPC and consequently, rejected the plaint.

6. We have heard the learned counsel for the appellants/plaintiffs and learned counsel for the respondents/defendants and after examining the contentions of the parties, the following issues arises for our consideration in this appeal:-

1. Whether the suit of the plaintiffs is barred by law of limitation?
2. Whether the judgment and decree passed by the trial Court requires to be interfered with?

7. In this case, defendant No.1 has taken the contention that the grand-mother of the plaintiffs, father of the plaintiffs and others executed sale deed dated 02.06.1971 in favour of defendant No.10 to 13 and parted with their possession, who in turn, sold the schedule properties in favour of defendant Nos.6 to 9 and so also defendant Nos.6 to 9 sold the schedule properties in favour of defendant Nos.3 to 5 and finally, they sold the schedule properties in favour of defendant No.1. Therefore, there was change of four sale transactions and all

revenue documents stood in the name of defendant No.1 in respect of the schedule properties and he is in possession of suit schedule properties.

8. Whereas, the learned counsel for the appellants/plaintiffs contended that their father Kalappa had inherited the schedule properties which were privileged jamma bane lands and the holders of these lands have no absolute right and only limited right was accorded to enjoy the properties under Coorg Land Revenue Act. In this regard, the learned counsel for the appellants/plaintiffs relied upon the decision reported in **ILR 1993 KAR 2959** in the case of ***Cheekere Kariyappa Poovaiah vs. State of Karnataka*** and contended that privileged jamma bane holders are not owners thereof and have limited rights in these lands, wherein jamma bane lands privilege is saved under Section 79(2) of Karnataka Land Revenue Act, which interalia protects the privileged, subject to general or special order of the State Government and the privilege could only be extinguished in the manner provided under Section 79(2) of Karnataka Land Revenue Act. Therefore, learned counsel for the appellants/plaintiffs contended that in the present case by executing the sale deeds and creating revenue records to the schedule properties, jamma bane

privilege cannot be extinguished and such documents become void ab-initio and therefore, the provisions of Limitation Act, 1963 has no application.

9. The learned counsel for the respondents/defendants on the other hand seeks to rely upon the documents filed by the plaintiffs before the trial Court and submitted that originally the schedule properties were allotted to one Muthawwa, who is the grand-mother of the plaintiffs. Smt. Muthawwa-grand-mother, the father of the plaintiffs and others sold the schedule properties under registered sale deed dated 02.06.1971 in favour of defendant Nos.10 to 13, who sold in favour of defendant Nos.6 to 9 and in turn defendant Nos.6 to 9 sold the schedule properties to defendant Nos.3 to 5. Ultimately, defendant Nos.3 to 5 conveyed the schedule properties by way of registered documents in favour of defendant No.1. Thus, the learned counsel submits that four registered transactions have taken place in respect of the schedule lands and the plaintiffs are unable to show how they have rights in the schedule properties, and the fact that, their predecessor in title had already sold the schedule properties. Admittedly, the plaint does not disclose any allegation of fraud in relation to the earlier sale deeds and the fact that the earlier sale transactions

are not challenged and the plaintiffs have challenged the sale deed dated 02.06.1971 alone. In terms of Article 58 and 59 of The Limitation Act, 1963, the suit should have been filed within three years from the date, the documents sought to be challenged were executed and the suit, which was filed in the year 2019 is barred by limitation.

10. In this case, the plaintiffs have taken the contention that at the time of execution of sale deed dated 02.06.1971, they were minors. As per Article 60 of the Limitation Act, in order to set -aside a transfer of property made by the guardian of a ward, the plaintiffs ought to have filed suit within three years, from the date of attaining majority. The suit was filed in the year 2019. As on 2019, the age of the plaintiffs is recorded as 52 years, 49 years and 43 years respectively. It appears that after lapse of 25 years after attaining majority, the plaintiffs have filed the suit for declaration. In order to save the limitation, the plaintiffs have contended that, on 14.01.2019, 25.01.2019 and 28.02.2019, some legal notice and reply notices were exchanged between the parties. Mere sending legal notice to the respondents cannot create a cause of action, without denial of title of defendant No.1 and there is no mandate in the law to give notice to the opposite party before

filing a suit for declaration. As per Article 58 of the Limitation Act, to obtain any other declaration, three years is the limitation, when the right to sue first accrues.

11. In the instant case, the plaintiffs have sought for possession of suit properties from the defendants. As per Article 65 of the Limitation Act, in order to seek possession of immovable property or any interest therein based on title, the suit has to be instituted within twelve(12) years. Whereas, the plaintiffs, have sought only limited rights of their ownership, thus, the provision of Article 65 of Limitation Act does not come to the aid of the plaintiffs.

12. As per the contention of the appellants/plaintiffs, as on 02.06.1971, they were minors when the sale deed was executed by their father and others and plaintiff No.3 was not at all born, who is said to have been born in the year 1976. The perusal of plaint discloses that the plaintiffs' father had limited rights in the schedule properties, who executed sale deed on 02.06.1971, however, one Muthawwa, Cherumanna, Thayakka, Ponnanna, Bhagyavathi, Poovaiah, Chondamma, Appacha and Subbaiah have executed sale deed in favour of

defendant Nos.10 to 13, but, the legal representatives of these vendors have not been made parties to the suit.

13. According to the appellants/plaintiffs, their father executed a sale deed on behalf of his two minor sons viz., Plaintiff Nos.1 and 2 as guardian. Article 60 of the Limitation Act provided that to set-aside the alienation made by the guardian of a ward, three years limitation is stipulated after attaining the majority by the ward.

14. The plaintiffs have relied upon Poovaiah's case to seek the relief of cancellation of sale deeds. Admittedly, the **Poovaiah's** case was delivered in the year 1992 and the sale deed in question was executed on 02.06.1971 and therefore, the **Poovaiah's** case cannot be applied retrospectively to invalidate a sale deed that was executed long prior to the pronouncement of that judgment. Further, the plaintiffs are not able to establish that the Coorg Land Revenue Act prohibited to alienate the jamma land.

15. The application filed by defendant No.1/respondent No.1 under Order VII Rule 11(d) of CPC, sets out that the suit is barred by limitation.

16. The Trial Court examined the application and found that since the scheduled property was granted to Muthawwa and during her lifetime, her children and herself sold the schedule property to defendant Nos.10 to 13.

17. This Court has also examined the material available on record. The plaint adverts to the fact of the relationship of the appellants/ plaintiffs with original grantee Muthawwa and asserting the fact that she was cultivating the suit schedule property, also states that the plaintiffs' father had rights over the property.

18. The Hon'ble Supreme Court in the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali*** reported in **AIR 2020 SC 3310** while discussing the law in deciding an application filed under Order VII, Rule 11(d) of the CPC has held that this remedy is a special remedy empowering the Courts to dismiss the matters at the threshold. It has further been held that the reason for such a remedy is that the Court would not permit the plaintiff to unnecessarily protract the proceedings in sham litigation and to waste judicial time. Although the power under Order VII, Rule 11 of the CPC is a drastic one, it requires the conditions enumerated to be strictly adhered to. The plea taken by the respondents/defendants cannot be examined at this

stage and for testing the provision, the averments made in the plaint have to be read in their entirety, and if on a meaningful reading of the plaint, if it is found that the plaint is vexatious, then the Court will be justified in the use of this provision. It was further held that the provision is mandatory in nature. The relevant extract of the **Dahiben's** case is set out below:

"23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

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XXX

XXX

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

XXX

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23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

XXX

XXX

XXX

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter

must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

[Emphasis Supplied]

19. The Hon'ble Supreme Court in **Dahiben** case has further held that where a suit appears from the averments of the plaint, to be barred by any law, it shall be rejected in terms of Order VII, Rule 11(d) of the CPC. Thus, a suit which is barred by limitation would also come within this definition. It was further held that where the plaintiff files a case with a clever drafting to make out an illusory 'cause of action' to bring the suit within the period of limitation, the provisions of Order VII, Rule 11 of the CPC, would come into play and where a plaintiff deliberately did not mention the date of registration of the Sale Deed, since it would be evident that the suit was barred by limitation, the omission was such that, so as to

mislead the Court on this issue, the suit was thus held to be barred by limitation.

20. The Coordinate Bench of this Court in the case of ***Sri. Narasimha Murthy v. Sri. Mallesh*** reported in **2026 SCC Online Kar 2580** (RFA No.862/2023 disposed of on 22.04.2026) was of the same view and held that if the suit is barred by limitation and the plaintiffs failed to challenge the initial sale deed, under such circumstances, the suit cannot be maintained, unless all the other sale deeds are challenged.

21. In the facts and circumstances of the case and decisions cited supra, it is admitted fact that there was no challenge to earlier sale deeds executed after 1971. Thus, it cannot be said that the suit has been filed within time. The contention of the appellants that they came to know about the earlier sale deeds, only after exchange of legal notice and reply notice between the parties, the same cannot be taken into consideration for limitation purpose. In any event, since the grandmother, father of the appellants/plaintiffs have executed a registered instrument on 02.06.1971, the challenge by the appellants/plaintiffs in the present suit to a subsequent sale

deed cannot be maintained unless all the other Sale Deeds are challenged as well.

22. In view of the foregoing discussions and from an examination of the plaint and the documents filed by the appellants/plaintiffs, we uphold the order passed by the Trial Court. Accordingly, this Court is not inclined to interfere with the findings of the Trial Court that the suit is barred by limitation. Hence, we find no merit. Accordingly, we pass the following:-

ORDER

The appeal is dismissed.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

MN/-