



CNR: KAHC010059372025

NC: 2026:KHC:48759
CRP No. 70 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION NO. 70 OF 2025 (IO)

BETWEEN:

1. SMT. V.VIJAYALAKSHMI
W/O LATE J.SREENIVAS
AGED ABOUT 53 YEARS,
RESIDING AT NO.149, 9TH MAIN,
6TH SECTOR H S R LAYOUT
BANGALORE-560 102
2. SMT.SAHANA
D/O LATE J.SREENIVAS,
W/O SRI. VINAY
R/AT 183/A, 56TH CROSS,
4TH BLOCK, RAJAJINAGAR
BANGALORE-560 010

...PETITIONERS

(BY SRI. VIVEKANANDA H.S., ADVOCATE)

AND:

SRI. K.N.NAGABHUSHAN
S/O LATE K.N.NARAYANA SWAMY,
AGED ABOUT 62 YEARS,
RESIDING AT NO. 495,
19TH MAIN, 4TH T BLOCK JAYANAGAR
BANGALORE -560 011

...RESPONDENT

(BY SRI.S.G.MUNISWAMY GOWDA, ADVOCATE FOR
SRI.R.MURALIDHARA, ADVOCATE AND
SMT.ANITHA K.C., ADVOCATE)



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THIS CRP FILED UNDER SECTION 115 OF CPC, AGAINST THE ORDER DATED 19.12.2024 PASSED ON I.A NO.2 IN OS.NO.1747/2022 ON THE FILE OF THE LII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE,REJECTING THE I.A.NO.2 FILED UNDER ORDER 7 RULE 11(a)(d) OF CPC FOR REJECTION OF PLAINT.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

The present civil revision petition is filed aggrieved by the orders passed on IA.No.2/2022 in OS.No.1747/2022 dated 19.12.2024 by the LII Addl. City Civil & Sessions Judge, Bengaluru, the defendant Nos.7 and 8 are before this court.

2. The respondent herein had filed a suit seeking declaration that the plaintiff is the absolute owner of the schedule 'A' property in terms of the registered Will dated 08.05.2014. To direct defendant Nos.4 to 8 to deliver possession of the suit schedule 'A' property in favor of the plaintiff. Consequently, pass a decree holding that the release deed dated 02.05.2015, i.e., executed by B.Venkatamma, represented by her power of attorney holder, in favor of defendant Nos.4 to 6, is null and void and not binding on the



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rights of the plaintiff. Further sought a decree holding that the registered gift deed dated 18.01.2016, executed by B.Venkatamma in favor of defendant Nos.4 to 6, is null and void, and questioning the sale deed dated 06.08.2020, executed by defendant Nos.4 to 6 in favor of J.Sreenivas, as null and void. Further sought a decree directing defendant Nos.9 and 10 to release deposits in savings account and fixed deposit. Further, permitting the plaintiff to fulfill the conditions imposed on the plaintiff in the registered Will dated 08.05.2014, by directing defendant Nos.1 to 6 to receive the amounts from the plaintiff, or alternatively, to permit the plaintiff to deposit the same before the court.

3. In the said suit, defendant Nos. 7 and 8 have filed an IA seeking rejection of the plaint. The main grounds urged, basing on which the said application is filed, are that prayers (a) to (g) and the relief sought at prayer (h) cannot be sought in the said suit, and that the plaintiff, without complying with clause 5 (a) to (g) of the Will, cannot seek the declaration. Another ground relates to the cause of action. According to them, the cause of action arose on 10.06.2021, when B.



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Venkatamma died, and the plaintiff's rights accrued by virtue of the registered Will dated 08.05.2014, and subsequently well within the jurisdiction of the Court. According to the defendant, the cause of action arose much earlier, in the year 2016, when release deeds were executed, and there is no cause of action for filing the suit, and the plaint has to be rejected.

4. The trial court, by impugned order, has rejected the said application. While rejecting the application, the court observed that, on perusal of the documents, it is a well-established proposition of law that the plaint can be rejected on any of the grounds enumerated in Clauses 'A' to 'E' of Order VII Rule 11 of CPC, but no plaint can be rejected on the basis of a defense taken by the defendants in the written statement; that should be established only on the pleadings of the plaint. Whatever contentions raised by the defendants in the present application are matters for adjudication at trial, and those contentions cannot be a ground for rejection of the plaint. On perusal of the plaint averments, it prima facie shows that there is a cause of action on the part of the plaintiff to institute the suit against the defendants, and there is no bar to file the suit



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against the defendants, and accordingly the application was rejected.

5. Learned counsel appearing for the defendant submits that the respondent herein had earlier filed OS.No.874/2016, on the file of the CCH-18, seeking permanent injunction restraining defendants Nos. 2 to 4 from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, and a declaration that the release deed obtained by defendants Nos. 2 to 4 from the GPA holder, dated 04.05.2015, and the gift deed dated 18.01.2016, obtained by defendants Nos. 2 to 4 from the first defendant, are not binding on the plaintiff. It is submitted that the said suit was dismissed by order dated 14.01.2020. Against that, the respondent herein has preferred RFA.No.764/2020, filed before this court, which was disposed of, whereby the court granted permission to the petitioner by exercising discretion Order XXIII Rule 1(3) of CPC. It is submitted that the trial court made certain observations in the judgment in OS.No.874/2016. Those observations are still staring at the petitioner. By merely granting liberty to the plaintiff in the said RFA, those observations still remain on



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record, and no order has been sought to expunge those remarks. The second submission is that, as per the Will executed, on the basis of which the respondent is seeking a declaration of his title, he has to perform certain functions as per clause 5 of the Will. As per the same, he has to pay certain amounts. It is the case that, so far, the plaintiff has failed to comply with any of the conditions laid down in the said Will; hence, there is no cause of action for him to file the present suit. Further, the next submission is that the release deed is of the year 2016, and in the cause of action column, it is stated that the cause of action accrued in 2021, after the death of B.Venkatamma. It is the case that, this is not the cause of action, and the cause of action arose in 2016. Hence, even on that count, the plaint has to be rejected. The plaintiff is a stranger who is not in possession of the property, has failed to adhere to the conditions laid down in the Will, and cannot maintain a suit for declaration. It is submitted that, on all these counts, the plaint needs to be rejected. These aspects were not appreciated by the court. The court, analyzing the provisions under Order VII Rule 11 of CPC, in a mechanical manner,



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dismissed the petition without referring to the facts of the case. It is stated that, though liberty is given, he cannot file a suit when the suit itself is barred by limitation. A cause of action that accrued in 2016 cannot be the basis for a suit in the year 2022, and it is barred by limitation.

6. Learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of ***N. Kasturi Vs. D. Ponnammal and Ors.***¹ He relied on para No.15 which reads as follows:

"15. The intention of the testator and the effect of the dispositions contained in the Will must be decided by construing the Will as a whole and giving the relevant clauses in the Will their plain grammatical meaning considered together. In construing a Will it is generally not profitable or useful to refer to the construction of other Wills because the construction of each Will must necessarily depend upon the terms used by the Will considered as a whole, and the result which follows on a fair and reasonable construction of the said words must vary from Will to Will. Therefore, we must look at the relevant clauses carefully and decide which of the two rival constructions should be accepted."

Learned counsel has further relied on the judgment of the Delhi High Court in the case of ***Vikrant Kapila & Anr. Vs.***

¹ 1961 AIR 1302



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Pankaja Panda & Ors.² He relied on para Nos.27 and 28

which reads as follows:

"27. As per basic settled principles of law, it is the foremost duty of the Court to carefully give a purposeful meaning to the words and logical interpretation to the language of a Will to infer and draw the real intention of the testator. As meaning is sought to be given to the intention of the testator to what he must've meant, when he was alive, after his demise, due importance has to be given to the surrounding circumstances, the background, the status and relations with the family and society of the testator. The purpose must be to derive the real intention of the testator and recognize the dispositive rights of the beneficiaries for reaching a conclusion as far as practically possible. The Court is to look behind the cloak and lift the veil.

28. As far as possible, a Will has to be read as a whole and in case of contradictions, inconsistencies, variations or like, they have to be brought to variance with each other on a level playing field. The intention ought to be inferred from the words and the language used in the Will without reading into them or drawing any preconceived notion and without tinkering with the basic structure of the Will for deciphering their true literal meaning. The words in the Will ought to be given a plain, simple and grammatical meaning as per Dictionary without any if(s) or but(s). We find support in N. Kasturi vs. D. Ponnammal & Ors. 31 wherein it has been held as under: "It is obvious that a court cannot embark on the task of construing a Will with a preconceived notion that intestacy must be avoided or vesting must not be postponed. The intention of the testator and the effect of the dispositions contained in the Will must be decided by construing the Will as a whole and giving the relevant clauses in the Will their plain grammatical meaning considered together. In construing a Will, it is generally not

² 2022:DHC:4153-DB



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profitable or useful to refer to the construction of other Wills because the construction of each Will must necessarily depend upon the terms used by the Will considered as a whole, and the result which follows on a fair and reasonable construction of the said words must vary from Will to Will. Therefore, we must look at the relevant clauses carefully and decide which of the two rival constructions should be accepted.””

Learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LRs & Ors.***³ He relied on para Nos. 24, 24.2 to 24.4 and 26 to 28, which reads as follows:

“24. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.2. In T.Arivandandam v. T.V.Satyapal [T.Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should

³ (2020) 7 SCC 366



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exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing...."

24.3. Subsequently, in ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Rama Chandra Murthy v. Syed Jalal [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation Will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

XXX

26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:

<i>"Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>58.to obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>
<i>59. To cancel or set aside an instrument or decree or for the rescission of</i>	<i>Three years</i>	<i>When the facts entitling the plaintiff to have the instrument tor decree canceled, or setaside or the contract rescinded first</i>



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a contract		become known to him"
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The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In Khatri Hotels (P) Ltd. v. Union of India [Khatri Hotels (P) Ltd. v. Union of India, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] this Court held that the use of the word "first" between the words "sue" and "accrued", would mean that if a suit is based on multiple causes of action, the period of limitation Will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit Will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."

Learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of ***N. Asha Devi Vs. R***



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Aravind Kumar & Anr.⁴ He relied on para No.10, which reads as follows:

"10. The cause of action, as seen from the above, according to us, arose on the first communication cancelling the Joint Venture Agreement dated 20.04.2016. The further communications between the appellant and the respondent only highlights the dispute, arising from the cancellation, and does not create a fresh cause of action in any event. The suit was filed in October 2022, grossly delayed from year 2016 itself; even 22.11.2016, the last but one of the dates in the above extract. The contention of the respondent/plaintiff seems to be that on 08.06.2022, they issued a public notice cautioning third parties from purchasing the plaint schedule properties. This does not create a fresh cause of action, since the publication was in self-interest, which itself was grossly delayed."

Learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of **Colonel Shrawan Kumar Jaipuriyar @Sarwan Kumar Jaipuriyar Vs. Krishna Nandan Singh and Anr.** reported in **Civil Appeal No. 6760/2019** He relied on para No.9, which reads as follows:

"9. In the aforesaid background, it is to be held that the plaint does not disclose any cause of action for the relief prayed, that is, a direction to the second respondent to execute and register a sale deed in favour of the first respondent and to put the first respondent in possession. There does not exist any legal right which the plaintiff or the first respondent is entitled to invoke and enforce. For a right to exist, there must be a correlative duty which can be

⁴ 2026 INSC 908



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enforced in a law suit. A right cannot exist without an enforceable duty. Ownership means a bundle of rights which would normally include the right to exclude and transfer the property in a manner one wants, subject to contractual obligations as agreed or statutory restrictions imposed on the owner. In the present case, the pleadings fail to establish violation of a statutory right or breach of a contractual obligation which creates an enforceable right in the court of law. In the absence of any such right or even a claim, the plaint would not disclose cause of action."

Learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of **Smt. Arifa & Ors. Vs. Abhiman Apartment Co-Operative Housing Society Ltd & Ors.**⁵ He relied on para No.7, which reads as follows:

"7. The limitation would commence from the date of execution of the agreements, the first two of which were in the year 1998. Though the two sale deeds in favour of the Society were thus executed, when the first suit was pending, the plaintiff did nothing to challenge the said conveyance. In the earlier suit the defendant in the written statement had specifically pleaded about the conveyances and the plaintiff admitted his knowledge of all the conveyances while verifying the 'record of rights'. No cause of action can be claimed on the liberty reserved, which is only on just exceptions including limitation, which in any event has to go by the period prescribed in the statute of limitation. The High Court has further found that there can also be no resort to Section 14 of the Limitation Act, since the suit already laid was not before a wrong forum but was not properly framed. Even when a suit is withdrawn with leave of the Court to file a fresh suit, under Order 23 Rule 1 of the CPC limitation applies with full force as per Rule 2 of Order 23."

⁵ 2025 INSC 875



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7. Learned counsel appearing for the respondent submits that in the earlier suit, they have questioned the release deed and sought for a declaration that the same is null and void. The said suit is dismissed and against that RFA is filed. During pendency of the RFA, the defendant No.1 died. The court has observed that as per the Will, the defendant can enjoy the property during her lifetime. Hence, there was no cause of action for the plaintiff as on that day during the lifetime of defendant No.1. The appellate court in the RFA has held that considering the fact that now the cause of action accrued to the petitioner and gave liberty to file the suit. The RFA was disposed of on 07.03.2022, and on 09.03.2022 the respondent/ plaintiff had filed the suit; hence, the question of limitation will not arise. It is submitted that as per the Will, a particular property is bequeathed in favor of the petitioner, subject to fulfilling certain conditions. Defendant No.1 in the earlier suit, who has only a life interest, had executed a gift deed and release deed in favor of her daughters when she had no right or title in the said property. In those circumstances, fulfilling the condition and then filing a suit would not arise. It is submitted



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that the suit is filed is well within limitation. The cause of action, as rightly stated, arose after the death of defendant No.1 in the earlier suit. The Court has rightly considered all these aspects and rightly dismissed the petition, and there are no grounds to interfere.

8. Having heard the learned counsel on either side, perused the material on record. As observed by this Court in the preceding paragraphs, the suit is filed seeking a declaration of title, and certain documents are not binding. Relief is sought with regard to the bank account, and direction is sought to the respondents to accept the money, so that the plaintiff can fulfill his arguments. In the said suit, the defendant filed an application under Order VII Rule 11 of the CPC.

9. First, coming to the contention of the petitioner with regard to the limitation, this Court has perused the order passed in **RFA No.764/2020** dated **07.03.2022**. It is very much relevant to look at paragraph Nos.7 and 8, which read as thus:

"7. It is brought to the notice of this Court that the present suit is filed only to injunct the respondent from alienating the suit schedule property. The



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emphasis on which the suit is dismissed is that during the lifetime of defendant No.1, there was no cause of action to file the present suit. Now a memo is filed reporting death of defendant No.1. Therefore, this Court has to accept the contention of the appellant that there is a fresh cause of action. If there is a fresh cause of action on account of death of defendant No.1, it is open for the appellant to seek appropriate remedy basing his claim on the cause of action that has accrued to him during the pendency of this appeal.

8. I have meticulously examined the averments made in the affidavit filed in support of I.A.No.1/2021. Since the appellant has specifically stated in paragraph 4 of the affidavit that there is a fresh cause of action, I am of the view that this is a fit case to exercise discretion and grant leave as envisaged in sub-Rule (3) of Rule 1 of Order XXIII of CPC."

10. The Court has accepted the contention that a fresh cause of action arose after the death of the 1st defendant in the earlier suit. The Court has granted the appellant/plaintiff liberty to file the suit and within two days from the date of disposal of the same the plaintiff has filed the present suit. On a bare reading of the plaint, the plaintiff has made out a cause of action for filing the suit. Whether the permission granted by the Court to seek cancellation of a release deed of the year 2016, or any other issues that can be considered by the Court, is on the merits of the matter and is a question of fact and law, which can only be considered by the Court during the course of



the trial. At this stage, looking at the plaint and the plaint averments, this Court is of the view that there is a cause of action for the plaintiff to file the instant suit.

11. The second submission is with regard to the Will. It is the case that certain conditions are laid down in the Will, and because the plaintiff has not complied with them, he cannot file the suit. The property bequeathed in favor of the plaintiff, which he is seeking declaration by filing the suit, which has already been sold, and also seeking permission to deposit amount and direction to accept the amount. In this factual backdrop, when he has filed the suit at the threshold on the ground that he has not complied with the conditions as per the Will and the suit is not maintainable is far-fetched, and this court cannot appreciate the same. All these aspects have to be considered by the trial Court during the course of the trial. In an application filed under Order VII Rule 11 of CPC, a court would not conduct a mini trial and decide all these kinds of issues raised by the plaintiff. Though the trial court has not given elaborate reasons for rejection of the plaint, from the respective contentions of both the parties, this is not the case



where the court can reject the plaint at the threshold under Order VII Rule 11 of CPC, as all the issues that are raised either have to be dealt with during the course of the trial and are mixed questions of fact and law. In those circumstances, the trial court has rightly rejected the application, and this Court finds no reason to interfere.

12. Accordingly, this Court is passing the following:

ORDER

- i. Accordingly, the Civil Revision Petition is ***dismissed.***
- ii. It is made clear that this Court has not expressed any opinion on the merits of the matter and the observations that are made are for the disposal of this petition. The trial Court, uninfluenced by any of the observations made by this Court, shall decide the suit in accordance with law.



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iii. Pending I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

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List No.: 1 SI No.: 32
*MR/AK