



CNR: KAHC010117552022

NC: 2026:KHC:39166
RSA No. 437 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 437 OF 2022 (DEC/INJ)

BETWEEN:

1. THIMMEGOWDA
S/O LATE B.V. NARAYANAPPA
SINCE DECEASED HIS LR'S

1(A). SMT. ANITHAMMA
W/O LATE THIMMEGOWDA
AGED ABOUT 45 YEARS

1(B). THANUJA N.T
D/O LATE THIMMEGOWDA
AGED ABOUT 26 YEARS

1(C). NAGENDRA N.T
S/O LATE THIMMEGOWDA
AGED ABOUT 24 YEARS

2. MUNEGOWDA
S/O LATE B.V. NARAYANAPPA
AGED ABOUT 40 YEARS

ALL ARE RESIDING AT
NAGAMANGALA VILLAGE,
KUNDANA HOBLI, DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT.

...APPELLANTS

(BY SMT. SOWMYASHREE G, ADVOCATE FOR
SRI. SRINIVASA REDDY R.V, ADVOCATE)

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



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AND:

1. P. KRISHNAMURTHY
S/O LATE PUTTANANJAPPA
AGE MAJOR
R/AT TINDLU VILLAGE,
KUNDANA HOBLI,
DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT.
2. VENKATESH
S/O LATE G. MUNISHAMAPPA
AGE MAJOR
R/AT NAGAMANGALA VILLAGE
KUNDANA HOBLI, DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT.

...RESPONDENTS

(BY SRI. G.A. SRIKANTE GOWDA, ADVOCATE FOR C/R2)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 02.02.2022 PASSED IN RA.No.15101/2019 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, DEVANAHALLI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 03.08.2019 PASSED IN OS No.332/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, DEVANAHALLI. ALLOWING THE I.A.NO.4 FILED UNDER ORDER VII RULE 11(a), (b), (d) OF CPC FOR REJECTION OF PLAINT.

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



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CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard.

2. Plaintiffs second appeal challenging the rejection of the plaint in O.S.No.332/2017 dated 03.08.2019 which was confirmed by the First Appellate Court in RA No.15101/2019 dated 02.02.2022.

3. Facts of the case are as under:

3.1. A suit in O.S.No.332/2017 came to be filed for the following relief and in respect of the following immovable property (hereinafter referred to as suit property):

PRAYER

"Wherefore, the plaintiffs pray that this Hon'ble Court be pleased to pass a judgment and decree of:

a. Declare that the plaintiffs are the absolute owner of the schedule property

b. Declare the alleged sale deed vide document No.203/82-83, dated 21.05.1982 obtained by the 1st defendant and the subsequent sale deed No.1563/82-83 dated 02.02.1983 executed by the



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1st defendant in favour of the 2nd defendant in respect of the schedule property registered in the office of Sub-Registrar, Devanahalli are not binding on the plaintiffs.

- c. Grant permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the schedule property by the plaintiffs.*
- d. To grant such other relief/s as this Hon'ble Court deems fit to grant in the circumstances of the case, to meet the ends of justice and equity.*
- e. To award the plaintiffs the costs of this suit, in the interest of justice and equity."*

SCHEDULE

"All the piece and parcel of the land measuring to an extent of 4 acres (including kharab of 4 guntas) in Sy.No.52/4 (Old Sy.No.52) of Nagamangala village, Kundana Hobli, Devanahalli Taluk, Bengaluru Rural District and bounded on:

East by – Government Road

West by – Land belonging to Shamanna

North by – Government Kharab Dongra

South by – Munihanumantharayappa's land"

3.2. In the plaint, it is contended that suit property was granted to Venkataswamappa who is the grandfather of the



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plaintiffs by grant order bearing No.DLND SR 830/1966-67 dated 29.12.1967. Venkataswamappa had two wives namely Thimmanarasamma who is the first wife. Through her he had a son namely B.V.Narayanappa. After the death of first wife, Venkataswamappa married Nagarathnamma. Through her two sons were born namely N.V.Manjunath and Umesh.

3.3. It is further contended by the plaintiffs that Venkataswamappa had mortgaged the suit property to a cooperative society and subsequently, mortgage was redeemed. Revenue records stood in the name of Venkataswamappa.

3.4. It is further contended that on 21.05.1982, a sale deed has been executed by B.V.Narayanappa who was the son born to Venkataswamappa through the first wife in respect of the suit property and said sale was illegal sale.

3.5. It is further contended that B.V.Narayanappa having executed the sale deed, did not transfer any right, title or interest in respect of the suit property as there was a subsisting mortgage. Said property was again sold to



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defendant No.1 who in turn illegally sold the property in favour of defendant No.2 and therefore, suit was filed seeking that the sale deeds are null and void and declare that plaintiffs are the owners of the suit property.

4. Pursuant to the suit summons, defendant No.2 entered appearance and filed an application under Order VII Rule 11(a), (b) and (d) of Code of Civil Procedure seeking rejection of the plaint.

5. In the affidavit annexed to the said application, it has been contended that suit is not maintainable and plaint is to be rejected as plaintiffs have sought for cancellation of the sale deed after 34 years of its execution.

6. They also contended that uncle of the plaintiffs had already filed a suit in O.S.No.954/2006 wherein mother of the plaintiffs and N.V.Manjunath were parties and said suit also came to be dismissed by rejecting the plaint under Order VII Rule 11 of Code of Civil Procedure and thus the suit filed by the plaintiffs is clearly barred by limitation and suffers for want of cause of action.



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7. Plaintiffs objected the said application by filing detailed objection statement by contending that sale deed dated 21.05.1982 is obtained by defendant No.1 fraudulently. Therefore, no rights have been flown under the said sale deed and as such, sale made by defendant No.1 in favour of defendant No.2 did not transfer any right, title or interest in respect of the suit property and thus sought for dismissal of the application.

8. Learned Trial Judge after hearing the parties, noted the rival contentions of the parties and allowed the application filed by defendant No.2 and rejected the plaint *inter alia* holding in paragraph Nos.19 and 20 as under:

"19. The defendant no.2 has further contended that the plaintiffs uncle N.V.Manjunath has filed a suit in O.S No. 954/2006 against the defendant no.2 herein, for partition challenging the sale deeds dated: 21-5-1982 and 2-2-1983 in the year 2006 itself and the said suit, the plaint came to be rejected under the provisions of Order VII rule 11 of CPC, in the said suit the plaintiff's mother was also one of defendant. The plaintiffs have stated in their objections that they did not have knowledge of the above said proceedings. Though while considering that under Order VII Rule 11 the Court has to consider only the plaint averments however the



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earlier Order passed by this Court on the same subject matter ought to be considered. In the said suit the plaintiffs paternal uncle contended that Late Venkataswamappa had two wives i.e., after death of his wife Smt. Thimmanarasamma, he married Smt. Nagarathnamma. Late Venkataswamappa had one son by name B.V.Narayanappa through his first wife. N.V.Manjunath and one Umesh sons were born to his second wife. This fact is suppressed by the plaintiff in the genealogical tree and the plaint. The plaintiffs have not exactly pleaded how they derived absolute right over the suit property. Even while explaining cause of action, the plaintiffs have not explained when they have derived the absolute right. The plaintiffs have deliberately suppressed material facts and the real cause of action is not out in the plaint but only something illusory had been stated to get out of the scope of Order 7 rule 11 CPC such clever pleadings and suppression of facts is impermissible under Law.

20. In view of the decision of the Hon'ble Apex Court in Civil Appeal No.2960/2019 it is observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation. Further held there, It is required to noted that the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the



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Limitation Act and therefore only a declaration is sought to get out of the provisions of the Limitation Act more particularly Article 59 of the Limitation Act. In cases of Sham Lal Alias Kuldip; N.V.Srinivas Murthy as well as Ram Prakash Gupta considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC."

9. Being aggrieved by the rejection of the plaint, it is the plaintiffs who filed an appeal before the First Appellate Court in RA No.15101/2019.

10. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappraisal of the material on record, dismissed the appeal filed by the plaintiffs and upheld the rejection of the plaint.

11. Relevant portion of the judgment of the First Appellate Court is in paragraph Nos.22 to 24 which are culled out hereunder for ready reference:



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22. The Hon'ble High Court of Karnataka in M/s. Durga Projects and Infrastructure Pvt. Ltd., Bengaluru v. S. Rajagopala Reddy reported in [2019] 04 KCCR 3891 it has held that the limitation could be a ground to rejected the plaint, if it clear from the meaningful reading of the plaint that claim is barred by limitation. The relevant para is extracted here under which reads thus :-

"As regards limitation, in para 38 of the plaint it is clearly stated that the cause of action arose on 18.03.2007, 29.03.2007 and 15.06.2016. 18.03.2005 is the date when the first defendant executed a sale deed in favour of third defendant. That means, the cause of action first arose on 18.03.2005. This is a suit for declaration and possession. Just because possession is claimed, 12 years period of limitation is not available. Unless the sale deeds are set aside and the plaintiffs' title is declared, they are not entitled to possession. Declaration is the main relief in the circumstances pleaded. Article 58 of the Limitation Act is applicable and therefore the limitation is to be reckoned from the first date; the subsequent dates pleaded do not extend the limitation period. In the case of Khatri Hotels Private V/s Limited Union of India [MANU/SC/1054/2011: [2011] 9 SCC 126], it is held as below.



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"30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

23. In the instant case, the plaintiffs sought to declare that the sale deed dated 21.05.1982 executed in favour of defendant No.1 and subsequent sale deed dated 02.02.1983 executed by the defendant No.1 in favour of defendant No.2 as not binding on them. As rightly argued by the learned counsel for the 2nd respondent, even if presume that the suit schedule property was ancestral, the alienation made by father should be challenged within 12 years from the date possession delivered as it provided under Article 109 of the Limitation Act. Therefore, I am of the view that, on meaningful of reading of the plaint, palpably the claim of the plaintiffs is barred by limitation.

24. As discussed supra, the subsequent sale deed executed by the defendant No.1, as it evident from the registered



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document, it was in the knowledge of ancestors of the plaintiffs i.e., grandfather and his children. They have not challenged the alienation and since the property was granted in favour of father of the plaintiffs by the Government, in the hands of plaintiffs father, it would be the absolute property and the plaintiffs being the children, they cannot challenge such alienation made by their father."

12. Being further aggrieved by the same, plaintiffs have filed the present second appeal on following grounds:

- *"The impugned orders passed by the courts below are highly Arbitrary, illegal and perverse and further the courts below have utterly failed to apply minds while passing the impugned orders and same have been passed in a very mechanically manner and as such same are liable to be set aside.*
- *That, the impugned orders passed by the courts below are contrary to law, facts and circumstances of the case and as such the same are liable to be set aside.*
- *The courts below ought to have seen that, it is the specific case of the appellants that, the fact of fraud played by the respondent No.1 in creating the alleged sale deed dated: 21-05-1982 registered vide document No: 203/82-83 and the subsequent sale deed executed by the 1st respondent in favour of the 2nd respondent vide registered sale deed dated 02-02-1983, registered*



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vide document No: 1563/1982-83, came to their knowledge in the 2nd week of November 2011, when the 2nd respondent tried to obstruct the appellant from cutting and removing the eucalyptus tree standing in the schedule property and immediately after coming to know about the alleged sale deeds obtained by the respondent No.1 and 2, they approached the revenue authorities and after obtaining the revenue records standing in the name of 2nd respondent, have approached the Assistant Commissioner, Doddaballapura Sub-Division, Doddaballapura, challenging the revenue entries, illegally obtained by the 2nd respondent and the Assistant Commissioner has registered the case in case No: RA (D) 401/2011-12 and thereafter on 09-05-2014, has passed an order rejecting the appeal filed by the appellants, holding that the dispute pertaining to the schedule property is civil in nature and directed the parties to approach competent civil court for redressal of their grievance pertaining to the schedule property. Being aggrieved by the said order passed by the Assistant Commissioner, the appellants have filed Revision Petition before the Deputy Commissioner, Bangalore Urban District, Bangalore, in R.P. No. 50/2014-15 and the same is still pending for adjudication. Though the appellants have filed the above said revision petition challenging the order passed by the Assistant Commissioner and the same is pending for adjudication before Commissioner, Bangalore Rural District, Bangalore, the the Deputy 2nd respondent taking advantage of the fact that, the



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appeal filed by the appellants before the Assistant Commissioner has been rejected, had been tried to interfere with peaceful possession and enjoyment of the appellants and further the 2nd respondent had also tried to alienate the schedule property in favour of third parties and under these circumstances, the appellants have immediately filed O.S. No: 332/2017 before the court below and hence from the date of knowledge and also during the pendency of the proceedings before the competent revenue authorities, the said suit has been filed and hence the courts below are not justified in rejecting the plaint filed by the appellants, holding that the same are barred by limitation neither as per the Article 59, 109 of the Limitation Act and as such the impugned orders are liable to be set aside.

- *The courts below ought to have seen that, in the case of P.V. Gururaja Reddy and another Vs. P. Neeradha Reddy and others, reported in A.I.R. 2015 S.C. 2485, the Hon'ble Supreme Court of India has held that: -*

In Para-5 and 6:

Para-5: Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out



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whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

Para-6: In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provisions of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII rule 11 the stand of the defendants in the written statement would be altogether irrelevant.

And in the case of Bhauram Vs. Janak singh and others reported in A.I.R. 2012 S.C. 3023, the Hon'ble Supreme Court of India has held that: -

In Para-8 and 9:



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Para-8: The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant. (vide C. Natrajan vs. Ashim Bai and Another, (2007) 14 SCC 183, Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others, (2007) 10 SCC 59, Hardesh Ores (P) Ltd. vs. Hede and Company, (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others, (2006) 3 SCC 100, Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others, (2004) 3 SCC 137, Saleem Bhai and Others vs. State of Maharashtra and Others, (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Chirst Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012 (6) JT 149.

Para-9: As rightly pointed out by learned counsel for the respondents, the questions, the questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that only the averments in the plaint can be looked into while deciding the application under Order VII Rule 11. This aspect has been rightly dealt with by the High Court.



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In view of the law laid down by the Hon'ble Supreme Court of India in the above said cases, the impugned order passed by the court below cannot be sustainable in the eye of law, as the same is opposed to the above said rulings of the Hon'ble Supreme Court of India and as such the same are liable to be set-aside.

- *The impugned orders passed by the court below are also contrary to the judgments of Hon'ble Supreme Court of India, reported in Civil Appeal No: 4665/2021, in Sri Hari Hanumandas Totala Vs. Hemanth Vittal Kamath and others, has held that: -*

In the last portion of the Para-18:

Para-18. "while holding that "recourse to Order 7 Rule 11" by the appellant was not appropriate, this Court observed that the Trial Court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decided them in the first instance. The Court held that this course of action would help the appellant avoid lengthy proceedings."

Para-19. In a more recent decision of this Court in Shakti Bhog Food Industries Ltd. v. Central Bank of India and anothers, a three Judge bench of this Court, speaking though Justice AM Khanwilkar, was dealing with the rejection of a plaint under Order 7 Rule 11 by the Trial Court, on the ground that it was barred by



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limitation. The Court referred to the earlier decisions including in Saleem Bhai v. State of Maharashtra, Church of Christ Charitable Trust (supra), and observed that;

"18. It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any state of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averment. These principles have been reiterated in Raptakos Brett & Co. Ltd., v. Ganesh Property, (1998) 7 SCC 184 and Mayar (H.K.) Ltd. v. Vessel M. V. Fortune Express, (2006) 3 SCC 100." Para-

20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;



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The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

And in the judgment passed in Shakthi Bhog Food Industries Ltd., Vs. The Central Bank of India, the Hon'ble Supreme Court has held that: -

in Para-20 and 21:

Para-20. Similarly, in S.S.Rathore (supra), the Court was dealing with a case governed by Article 58 of the 1963 Act, which specifically provides that time begins to run when the right to sue "first" accrues. In Ram Prakash Gupta (supra), the Court dealt with a case governed by Article 59 of the 1963 Act, which provides that the suit could be filed when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him. The Court opined that the knowledge mentioned in the concerned plaint could not be termed as inadequate and incomplete. The Court reversed the judgment of the Civil Judge and the High Court rejecting the plaint. This Court also noted that while deciding the application under Order VII Rule 11 of the CPC, few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import. Even in that case, the trial Court and the High Court had failed to advert to the relevant averments, as stated in the plaint,



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which approach was disapproved by this Court. In the present case, as noticed earlier, the trial Court had failed to advert to and analyze the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July, 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February, 2005.

Para-21. Taking overall view of the matter, therefore, we are of the considered opinion that the decisions of the trial Court, the first appellate Court and the High Court in the fact situation of the present case, rejecting the plaint in question under Order VII Rule 11 (d) of the CPC, cannot be sustained. As a result, the same are quashed and set aside.

Para-22. In view of the above, this appeal succeeds and the plaint stands restored to the file of the trial Court to its original number for being proceeded in accordance with law. All contentions available to both parties are kept open including the issue of limitation to be decided along with other issues on the basis of plea taken in the written statement and the evidence produced by the parties in that behalf uninfluenced by the observations made in the present judgment on factual matters. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.



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And as such the impugned orders passed by the courts below are liable to be set aside.

- *The courts below ought to have seen that, admittedly after the land was granted in favour of one Sri. Venkataswamappa, the grand-father of the appellants herein, had mortgaged the schedule property in L.C.S. Co-operative Bank Ltd., in the year 1968 itself and the respondents have not produced a single piece of papers to show that, when the said loan has been cleared and the mortgage in favour of the L.C.S. Co-operative Bank Ltd., has been discharged and since the alleged sale deeds have been obtained by the 1st and 2nd respondents during the said mortgage and in view of Sub-Section 2 and 3 of Section 32 of Karnataka Co-operative Societies Act 1959, the same are void, the relevant provisions are read as follows:-*

Section 32(2):

(2) No person shall transfer any property which is subject to a charge under sub-section (1) except with previous permission in writing of the co-operative society which holds the charge.

(3) Notwithstanding anything contained in any law for the time being in force any transfer of property made in contravention of the provision of sub-section (2) shall be void.



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However, the courts below without taking into consideration, the said aspect of the matter, have passed the impugned orders and as such the same are liable to be set aside.

- *The courts below ought to have seen that, the 2nd respondent himself in Para-D of the written statement filed in O.S. No: 332/2017, has taken up a contention which reads as follows: -*

"It is submitted that, the execution of sale deed dated 21-05-1982 and 02-02-1983 are within the knowledge of Venkataswamappa, N.V.Manjunath and B.V. Narayanappa and they are also well aware of the transfer of title and the delivery of possession in favour of this Defendant long back I the year 1983 itself. It is submitted that, as per Article 110 of the Limitation Act, the period of limitation is 12 years to challenge the Sale Deeds made by the father with respect to the joint family property but the Plaintiffs have filed this suit after a period of 33 years, further in the Plaint, there is no explanation regarding the delay of 33 years in approaching this Hon'ble Court. Hence, for the said reason, the suit is not maintainable and it is liable to be dismissed as barred by law of limitation."

However, the trial court has passed the impugned order thereby rejecting the plaint filed by the appellants herein on the ground that, the suit is barred by limitation as per Article 59 of the limitation Act and the



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first appellant court has passed the impugned order rejecting the appeal filed by the appellants and confirmed the order passed by the lower court holding that the suit filed by the appellants is hopelessly barred by limitation as per Article 109 of the Limitation Act, which clearly shows that the impugned orders have been passed by the courts below without application of mind and also by misconstruing the facts and circumstances and also the provisions of the Limitation Act. Hence, the impugned order passed by the courts below are liable to be set-aside.

12.As could be seen from the para-24 of the order passed in Appeal No. 15101/2019, which reads as follows:

Para 24:

As discussed supra, the subsequent sale deed executed by the respondent No.1, as it evident from the registered document, it was in the knowledge of ancestors of the plaintiffs i.e., grandfather and his children. They have not challenged the alienation and since the property was granted in favour of father of the plaintiffs by the Government, in the hands of plaintiffs' father, it would be the absolute property and the plaintiffs being the children, they cannot challenge such alienation made by their father.



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the above said discussion made by the first appellate court in the impugned order clearly indicates that, the first appellate court has passed the impugned order thereby rejecting the appeal filed by the appellants by misconstruing the fact that the schedule property was belongs to father of Appellants', though the schedule property is the Ancestral Property of the appellants and the same is also admitted by the 2nd respondent in his written statement. Hence the impugned orders passed by the courts below are suffers from severe non appreciation of the true facts as such same are liable to be set aside.

- *The trial courts below ought to have seen that none of the ingredients of provisions of order VII Rule 11 (a) (b) and (d) are attributable to the facts and circumstances of this case. However, the courts below on an erroneous consideration of some of the averments made by the respondents in the affidavit filed by them in support of their application has passed the impugned order which is opposed to all canons of law as such the same is liable to be set aside.*
- *The courts below ought to have seen that when the appellants have specifically denied the execution of the sale deed dated 02-02-1982 in favour of the 1st respondent either by their grandfather or by their father and when the appellants have specifically pleaded that they have been peaceful possession and enjoyment of the schedule property after the death of*



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their father and grandfather, the trial courts ought not to have passed the impugned order holding that in the sale deed dated 02-02-1983 executed by the 1 respondent, the grandfather, father and uncle of the appellants have affixed their signature as witness and further the sale deed dated 02-02-1982 and the sale deed dated 02-02-1983 were executed during their life time, without adjudicating and recording detailed evidence with regard to genuineness or otherwise of the said sale deeds. Hence the impugned order passed by the courts below is erroneous and same is liable to be set aside.

- *The courts below erred in passing the impugned orders on the ground that one Sri N.V. Manjunath has filed O.S. No. 954/2006 against the respondent No.2 herein for partition challenging the sale deeds dated 21-05-1982 and 02-02-1983 in the year 2006 itself and the said suit came to be rejected under the provisions of Order VII Rule 11 of CPC, though in the said suit neither these appellants nor their father were party to the said proceedings and further in para 'L' of the written statement filed by the 2nd respondent has categorically stated that the schedule property was exclusively fallen to the share of the father of appellants in the oral partition and in view of the said admission, Manjunath who had filed O.S. No. 954/2006 had no manner of right, title and as such the order passed in the said suit, rejecting the IA filed by said Manjunath under Order VII Rule 11 will not bind on the*



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appellants and further the same is also immaterial for adjudication of right of the appellants in the present suit. Hence the impugned orders passed by the courts below is liable to be set aside.

- *The courts below ought to have seen that in the plaint filed by the appellants have categorically explained the cause of action in detail and when such being the case, the courts below on an erroneous consideration and also non consideration of the facts and circumstances have passed the impugned orders which are illegal, arbitrary and same cannot be sustainable in the eye of law.*

- *The courts below ought to have seen that even assuming but not conceding that the father of the appellants had executed sale deed in favour of respondent No.1, in view of the statement made in para 'L' of the written statement that there was a partition among the family members of their grandfather Venkataswamappa and in the said oral partition the suit schedule property was exclusively fallen to the share of father of the appellants, the appellants are entitled for their share in the schedule property as the same is the ancestral property of the appellants. If this were to be considered by courts below, would not have passed the impugned orders and hence the same are liable to be set aside."*



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13. Learned counsel for the legal representatives of appellant No.1 reiterating the grounds urged in the appeal memorandum would contend that both the Courts have wrongly rejected the plaint of the plaintiffs resulting in miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

- i. "Whether under the facts and circumstances of the case, the courts below are justified in passing the impugned orders?"*
- ii. Whether the courts below are justified in passing the impugned orders contrary to the various ruling of the Hon'ble Supreme Court of India?*
- iii. Whether the courts below are justified in passing the impugned orders by placing much reliance on various provisions of the Limitation Act, contrary to the various judgments of Hon'ble Supreme Court of India?*
- iv. Whether under the facts and circumstance of the case, the courts below are justified in dismissing the suit without considering the pleadings and documents of the appellant/plaintiff?"*



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14. She would further contend that orders passed by the Courts below are highly arbitrary, illegal and perverse.

15. She would also contend that the Courts below ought to have noted the fact that specific case of the appellants is that fraud played by defendant No.1 in getting the sale deed executed on 21.05.1982 where under no rights have been flown to sell it in favour of defendant No.2 and thus sought for admitting the appeal.

16. She would invite the attention of this Court to the judgment of the Hon'ble Apex Court in the case of ***P.V.Guru Raja Reddy and another v. P. Neeradha Reddy and Others*** reported in ***AIR 2015 SC 2485*** wherein in paragraph Nos.5 and 6, it has been held as under:

"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of



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power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant."

17. She also supports her arguments by placing on the judgment of the Hon'ble Apex Court in the case of **Bhau Ram v. Janak Singh and Others** reported **AIR 2012 SC 3023** wherein in paragraph Nos.8 and 9 it has been held as under:



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"8. The appeal filed by Kamla Devi and others was registered as Civil Appeal No. 118-S/13 of 1987. By an order dated 2-12-1987, the Additional District Judge allowed the appeal and dismissed the suit filed by Reshmoo Devi for possession as barred by limitation. The appellant herein, who was substituted as LR, filed the second appeal being RSA No. 113 of 1988 before the High Court which was allowed by the High Court on 25-5-2000 [Bhau Ram v. Kamla Devi, RSA No. 113 of 1988, order dated 25-5-2000 (HP)] . Against that order, Kamla Devi and others filed a special leave petition before this Court which was dismissed.

9. Involving the same issue, Attar Singh filed a suit being Suit No. 424/1 of 99/97 in the Court of the Sub-Judge IV, Shimla which was dismissed for default on 23-2-2001 but the same was restored vide order dated 14-8-2002. He again filed Civil Suit No. 10/1 of 2004 before the Civil Judge (Jr. Division II) Rohru, Shimla for possession of the suit land belonging to Reshmoo Devi. During the course of proceedings, the appellant herein filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on certain grounds. By order dated 17-11-2004, the Civil Judge allowed the application and dismissed the suit filed by Attar Singh."

18. She tried to draw the further support from the judgment of the Hon'ble Aped Court in the case of **Sri Hara**



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Hanumandas Totala v. Hemanth Vittal kamath and Others in Civil Appeal No.4665/2021 ***and Shakti Bhog Food Industries Ltd., v. Central Bank of India and Another.***

19. It is also her argument that question of limitation is a mixed question of law and facts and therefore, there could not have been treated as a preliminary issue to reject the plaint and thus sought for admitting the appeal on the aforesaid substantial questions of law.

20. Per contra, learned counsel for contesting respondent No.2 supports the impugned judgments.

21. Learned counsel would contend that though question of limitation is a mixed question of law and facts, in the case on hand, it is crystal clear that sale deed dated 21.05.1982 is sought to be nullified by filing a suit in the year 2017 which is *per se* barred by limitation.

22. He invites the attention of the Court that mother of the plaintiffs being a party-defendant in the suit filed by the uncles of the plaintiffs in O.S.No.954/2006 cannot now plead that they were not aware of the sale deed executed on



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21.05.1982 and thus in the case on hand, suit is *per se* barred by limitation.

23. He also emphasize that the suit filed by uncle of the plaintiffs stood dismissed by rejecting the plaint and uncle of the plaintiffs did not further pursue the matter and as such, second suit for the same relief is impermissible and thus sought for dismissal of the appeal.

24. Having heard the arguments of both the parties, this Court perused the material on record meticulously.

25. On such perusal of the material on record, it is to be noted that the property was admittedly granted to Venkataswamappa. He had two wives namely Thimmanarasamma. Through her Venkataswamappa had a son by name B.V.Narayanappa.

26. It is found from the plaint averments that after the death of Thimmanarasamma, Venkataswamappa said to have married Nagarathnamma. Through her, two children were born namely N.V.Manjunath and Umesh. Admittedly, in genealogical



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tree, these aspects are not shown and there is a suppression of the material facts.

27. Learned Trial Judge has noted the same in paragraph No.19 of its order.

28. Sale deed is admittedly executed on 21.05.1982. Defendant No.1 subsequently sold the very same property by another sale deed dated 02.02.1983 in favour of defendant No.2.

29. Pertinently, uncle of the plaintiffs filed a suit way back in the year 2006 in O.S.No.354/2006.

30. It is also to be noted that mother of the plaintiffs was a party-defendant in the said suit and said suit also came to be dismissed by rejecting the plaint and uncle of the plaintiff further prosecute the matter. At least, in the year 2006, plaintiff had come to know that there was a sale deed which was executed in favour of defendant No.1.

31. Furthermore in respect of pleading fraud, Order VI Rule 4 of Code of Civil Procedure mandatorily contemplates to



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plead nature of fraud. No such pleading is forthcoming in the plaint that has been filed by the plaintiffs.

32. What is the fraud that has been played while executing the sale deed in favour of defendant No.1 is not even whispered in the entire plaint. A registered document of the year 1982 being challenging in the year 2017 by simply contending that the sale deed is executed fraudulently would not meet the requirements of the pleadings as is contemplated under Order VI Rule 4 of Code of Civil Procedure.

33. No doubt, there cannot be any dispute with regard to the principles of law enunciated by the Hon'ble Apex Court and relied on by learned counsel for the appellants referred to *supra*.

34. But in the case on hand, since the sale deed dated 21.05.1982 is sought to be nullified in the year 2017 especially when mother of the plaintiffs was aware of a similar suit which also came to be dismissed by rejection of the plaint in the year 2006, in the case on hand, question of limitation is *per se* deducible from the plaint averments and the Court proceedings.



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35. Thus, this Court is of the considered opinion that there is no merit in any one of the substantial questions of law raised in the appeal memorandum.

36. Accordingly, the following:

ORDER

- i. Admission declined.
- ii. Appeal ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

KAV
List No.: 1 Sl No.: 61