

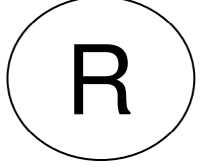


NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2026

PRESENT



THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

REGULAR FIRST APPEAL NO. 1595 OF 2021 (PA/DE/IN)

BETWEEN:

1 . SMT. KALYANI
WIFE OF PRASANNA KUMAR
DAUGHTER OF LATE NAGARATHNA
AGED ABOUT 48 YEARS
RESIDING AT NO.91/3
NETHAJI ROAD
1ST CROSS
1ST BLOCK
THYAGARAJANAGAR
BENGALURU-560 028

2 . SMT. SHUBHA
WIFE OF MADAN MOHAN
DAUGHTER IN LAW OF
SMT. SRIMATHI
AGED ABOUT 56 YEARS
RESIDING AT NO.91/3
NETHAJI ROAD
1ST CROSS, 1ST BLOCK
THYAGARAJANAGAR
BENGALURU-560 028

Digitally signed by
SUMATHY KANNAN
Location: HC
COURT OF
KARNATAKA

...APPELLANTS

(BY SRI. KALYAN BASAVARAJ, ADV. A/W
SRI. PRAJAWAL K. ARADHYA, ADV.)



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

AND:

- 1 . M/S. KANYAKUMARI BUILDERS PVT. LTD.
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT, 1956
HAVING ITS OFFICE AT RAHEJA CHAMBERS
LINKING ROAD AND MAIN AVENUE
SANTA CRUZ (WEST)
MUMBAI-400 054
REP BY ITS AUTHORIZED SIGNATORY
SRI. ADITHYA RAHEJA
- 2 . M/S. GALLERIA MALL DEVELOPERS PVT. LTD.
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT, 1956
HAVING ITS OFFICE AT RAHEJA CHAMBERS
LINKING ROAD AND MAIN AVENUE
SANTA CRUZ (WEST)
MUMBAI-400 054
REP BY ITS AUTHORIZED SIGNATORY
SRI. ADITHYA RAHEJA
- 3 . M/S. PANCHAMUKHI INVESTEMENTS PVT LTD.
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT, 1956
HAVING ITS OFFICE AT NO.54/28
K.S. GARDEN
BENGALURU-560 027
REP BY ITS MANAGING DIRECTOR
SRI. R. A. GARG
- 4 . LATE SMT. USHA GOPINATH
WIFE OF LATE GOPINATH

VIDE ORDER DATED 04.09.2024
CAUSE TITLE IS AMENDED
R5 TO 7 ARE THE LRS OF RESPONDENT NO.4
- 5 . SRI. H. SRINIVAS
SON OF LATE GOPINATH
AGED ABOUT 60 YEARS



6 . SMT. H. JAMUNA
WIFE OF SRI. UMESH PANTH
DAUGHTER OF LATE H. GOPINATH
AGED ABOUT 52 YEARS

7 . SRI. H. CHANDRASHEKAR
SON OF LATE H. GOPINATH
AGED ABOUT 54 YEARS

8 . SMT. H. SUNANDA
WIFE OF LATE VARADACHAR
AGED ABOUT 81 YEARS

RESPONDENT NOS.4 TO 8
ARE RESIDING AT NO. 65, F2
SAI RESIDENCY
II MAIN
7TH CROSS
SARVABHOUMA NAGAR
CHIKKALLASANDRA
BENGALURU-560 068

9 . LATE SRI. D. S. PRAKASH RAO
SON OF D. N. SUBBU RAO,

(VIDE ORDER DATED 04.01.2024
CAUSE TITLE IS AMENDED)

9 (A) SMT. S. RAMAMANI
W/O LATE D.S. PRAKASH RAO,
AGED ABOUT 67 YEARS

9(B) SRI. BHASKAR RAO
S/O LATE D.S. PRAKASH RAO,
AGED ABOUT 37 YEARS

9(C) D.P. RAKSHITHA
D/O LATE D.S. PRAKASH RAO,
AGED ABOUT 27 YEARS



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

ALL ARE R/AT 698/A, PLOT NO.405
SHUBODHAYA RESIDENCY
23RD MAIN
KENCHENAHALLY
R.R.NAGAR
BENGALURU

- 10 . SMT. GIRIJA SHANKAR
WIFE OF LATE D. SHANKAR
DAUGHTER OF LATE D. N. KRISHNA RAO
AGED ABOUT 64 YEARS
RESIDING AT NO.701/A
13TH CROSS
7TH MAIN
SRINIVASA NAGAR
BENGALURU
- 11 . SRI. D. VIJAYAKUMAR
SON OF LATE SEETHARAMA RAO
SON OF LATE D. N. SATHYANARAYANA RAO
AGED ABOUT 48 YEARS
RESIDING AT NO.55
SREE LAKSHMI
NEXT TO ROOPA ELECTRICALS
SARASWATHINAGAR
VIJAYANAGAR
BENGALURU-560 040
- 12 . LATE SMT. SARASWATHI BAI
WIFE OF LATE SRINIVASA RAO

SINCE DEAD
HER LRS WERE BROUGHT
ON RECORD ON 29.03.2010
13. SRI. S. NAGARAJ
SON OF LATE A. SRINIVASA RAO
AGED ABOUT 62 YEARS
14. SRI. S. NARAHARI RAO
SON OF LATE A. SRINIVASA RAO



AGED ABOUT 55 YEARS

15. SRI. S. VENKOJI RAO
SON OF LATE A. SRINIVASA RAO
AGED ABOUT 51 YEARS
REPENDENT NO.12 TO 15 ARE
RESIDING AT NO. 28/1
8TH CROSS
VENKATAPURA VILLAGE
KORAMANGALA POST
BENGALURU-560 034
- 16 . SMT. B. BHAVANI
WIFE OF SRI. VENKATESH VITTAL
DAUGHTER OF LATE A. BABU RAO
AGED ABOUT 44 YEARS
RESIDING AT NO.8
1ST CROSS, 1ST MAIN
KRISHNAPPA LAYOUT
SRINAGAR
BENGALURU-560 050
- 17 . SMT. B. GAYATHRI
WIFE OF SRI. PRAKASH
DAUGHTER OF LATE A. BABU RAO
AGED ABOUT 43 YEARS
NO. 883, 5TH CROSS
13TH MAIN
HANUMANTHNAGAR
BENGALURU-560 019
- 18 . SMT. B. SANDHYA
WIFE OF K. N. UDAYSHANKAR
DAUGHTER OF LATE A. BABU RAO
AGED ABOUT 41 YEARS
NO.213
10TH CROSS
K.G. NAGAR
BENGALURU-560 010
- 19 . SRI. B. APPAJI RAO
SON OF LATE A. BABU RAO



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

AGED ABOUT 53 YEARS
RESIDING AT NO.26/281
PWD COLONY
CHAMARAJANAGAR-571 313

20 . SMT. SHYAMALA BAI
WIFE OF LATE A. BABU RAO
AGED ABOUT 73 YEARS

21 . SRI. B. SUNDER RAO
SON OF LATE A. BABU RAO
AGED ABOUT 48 YEARS

22 . SRI. B. NAGESH
SON OF LATE A. BABU RAO
AGED ABOUT 45 YEARS

RESPONDENT NO.19 TO 22 ARE
RESIDING AT NO. 28/1
8TH CROSS
OPP. VENKATESHWARA TEMPLE
BENGALURU-560 034

23 . SMT. B. POORNIMA
WIFE OF SRI. M. S. JAGADISH
DAUGHTER OF LATE A. BABU RAO
AGED ABOUT 39 YEARS
RESIDING AT NO. 223
16TH CROSS
MARUTHINAGAR
YELAHANKA
BENGALURU

24 . M/S. DUO ASSOCIATES (BUILDERS) PVT. LTD.
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT, 1956
HAVING ITS OFFICE AT NO. 28
ULSOOR ROAD
BENGALURU-560 042
REP BY ITS DIRECTOR
SRI. A. M. SHARATH CHANDRA



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

- 25 . M/S DUO ASSOCIATES
A REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT NO. 28
ULSOOR ROAD
BENGALURU-560 042
REP BY ITS PARTNERS
SRI. A. M. SHARATH CHANDRA
SRI. PAHANI MAHESH
- 26 . SRI. T. C. ASHOK
SON OF SRI. T. C. ASHWATHNARAYANA
AGED ABOUT 46 YEARS
RESIDING AT FLAT NO. 63
ROAD NO.72
PRASHANTH NAGAR
JUBILEE HILLS
HYDERABAD
- 27 . M/S. PACIFICA HOTELS
(BENGALURU PROJECT) PVT. LTD.
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT, 1956
HAVING ITS OFFICE AT AMRAPALASH BUNGALOW
BEHIND FUN REPUBLIC
RAMDEVNAGAR
AHMEDABAD-580 015
REP. BY ITS DIRECTOR
RAKESH ISRANI
- 28 . SRI. MUSHTAK AHMED
SON OF LATE MOHAMMED HANEEF
AGED ABOUT 58 YEARS
NO.12, BENSON ROAD
BENSON TOWN
BENGALURU-560 046
- 29 . KENDRA UPADYAYARA SANGHA
NO.24, 1ST FLOOR
SUBBARAMA CHETTY ROAD
BASAVANAGUDI
BENGALURU-560 004
REP BY ITS PRESIDENT



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

30 . SMT. USHA REDDY
WIFE OF DR. G.V. REDDY
AGED ABOUT 51 YEARS

31 . DR. G. V. REDDY
SON OF LATE GOVINDAPPA
AGED ABOUT 55 YEARS

RESPONDENT NO.30 & 31 ARE
RESIDING AT NO. E-14,
SHANKAR MUTT ROAD
SHANKARPURAM
BASAVANAGUDI
BENGALURU-560 004

32 . SRI. C. S. DWARAKANATHA RAO
SON OF LATE SMT. LALITHA BAI AND
LATE C. L. SOMASUNDAR RAO
SINCE DEAD BY HIS LRS
(VIDE ORDER DATED 30.09.2024
CAUSE TITLE IS AMENDED)

32(A) SMT. KRISHNAVENAMMA V.
W/O LATE C.S. DWARAKANATHA RAO
AGED ABOUT 81 YEARS

32(B) SRI. D. PRASAD
S/O LATE C.S. DWARAKANATHA RAO
AGED ABOUT 56 YEARS

32(C) SRI. D. MANJUNATH
S/O LATE C.S. DWARAKANATHA RAO
AGED ABOUT 54 YEARS

32(D) SRI. D. SUDHAMANI
S/O LATE C.S. DWARAKANATHA RAO
AGED ABOUT 52 YEARS

ALL ARE R/AT NO.338, ANJANI EXTENSION
K.M.KRISHNA REDDY HOUSE ROAD
CHINTAMANI (CMC)
CHINTAMANI



CHIKKABALLAPURA
KARNATAKA

- 33 . SMT. SHANTHA
WIFE OF LATE KRISHNAMURTHY
AGED ABOUT 55 YEARS
DOOR NO. 'C' 38
DWARAKA KRISHNA
K. M. KRISHNA REDDY
HOUSE STREET
CHINTHAMANI
CHIKKABALLAPURA TALUK
KOLAR-563 125
- 34 . KUM. DEEPU
SON OF LATE KRISHNAMURTHY
AGED ABOUT 30 YEARS
- 35 . KUM. DIVYA
DAUGHTER OF LATE KRISHNAMURTHY
AGED ABOUT 27 YEARS
- 36 . KUM. DEEPTHI
DAUGHTER OF LATE KRISHNAMURTHY
AGED ABOUT 24 YEARS
- 37 . SMT. LEELA BAI. C. S.
WIFE OF KESHAVA MURTHY
DAUGHTER OF LATE SMT. LALITA BAI AND
LATE C. L. SOMASUNDAR RAO
AGED ABOUT 55 YEARS
- 38 . SRI. C. S. RAVINDRANATH
SON OF LATE SMT. LALITA BAI AND
LATE C. L. SOMASUNDAR RAO
AGED ABOUT 53 YEARS

RESPONDENT NO.34 TO 38 ARE
RESIDING AT DOOR NO. 'C' 38
"DWARAKA KRISHNA NILAYA"
EXPRESSION MINISTER
SRI. K. M. KRISHNA REDDY



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

HOUSE STREET
CHINTHAMANI
CHIKKABALLAPURA TALUK
KOLAR-563 125

39 . SMT. K. R. KAMALA BAI
WIFE OF LATE C. S. RAMA RAO
DAUGHTER IN LAW OF LATE SMT. LALITA BAI AND
SOMASUNDAR RAO
AGED ABOUT 66 YEARS

40 . SMT. C. R. UMA DEVI
WIFE OF SRI. R. UDAYKUMAR
DAUGHTER OF LATE C. S. RAMA RAO
AGED ABOUT 46 YEARS

SMT. C. S. NIRMALA
SINCE DEAD
LRS. WERE BROUGHT ON RECORD ON 03.12.2014
W/O SRI RAGAVENDRA RAO
D/O LATE C.S.RAMA RAO

41 . SRI. RAGHAVENDRA
AGED ABOUT 55 YEARS

42 . SRI. PRASAD
AGED ABOUT 27 YEARS

RESPONDENT NO.41 & 42 ARE
RESIDING AT NO. G-574
6TH CROSS, HAL NEW TOWNSHIP
BENGALURU-560 027

43 . SRI. C. R. NAGENDRA
SON OF LATE C. S. RAMA RAO
AGED ABOUT 42 YEARS

44 . SMT. C. R. SANDHYA
WIFE OF SRI. JAYASIMHA
DAUGHTER OF LATE C. S. RAMA RAO
AGED ABOUT 40 YEARS



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

- 45 . SRI. C. R. ANANTHA PRASAD
SON OF LATE C. S. RAMA RAO
AGED ABOUT 38 YEARS
- 46 . SMT. C. R. JYOTHI
WIFE OF SRI. DINESH SHUKLA
DAUGHTER OF LATE C. S. RAMA RAO
AGED ABOUT 36 YEARS
RESPONDENT NO.43 & 46 ARE
RESIDING AT NO.G-574
6TH CROSS
HAL NEW TOWN SHIP
BENGALURU-560 027
- 47 . SMT. V. UMADEVI
WIFE OF C. S. RAVINDRANATH
DAUGHTER OF LATE SUBBA RAO AND NAGUBAI
- 48 . SRI. V. JAGADISH
SON OF LATE SUBBA RAO AND NAGUBAI
AGED ABOUT 46 YEARS
- 49 . SMT. V. CHANDRA MOULI
SON OF LATE SUBBA RAO AND NAGUBAI
AGED ABOUT 44 YEARS
- 50 . SMT. V. PADMAVATHI
WIFE OF SUDARSHAN
DAUGHTER OF LATE SUBBA RAO AND NAGUBAI
AGED ABOUT 42 YEARS
- 51 . SMT. V. BHAVANI SHANKAR
DAUGHTER OF LATE SUBBA RAO AND NAGUBAI
AGED ABOUT 40 YEARS
- 52 . SMT. V. SHASHIKANTH
SON OF LATE SUBBA RAO AND NAGUBAI
AGED ABOUT 38 YEARS
- RESPONDENT NO.47 TO 52 ARE
RESIDING AT NO. 118-A
BLOCK NO.9



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

CENTRAL SILK BOARD QUARTERS
BTM LAYOUT
BENGALURU-560 068

53 . SMT. G. SHANTHA
WIFE OF LATE C. S. LAKSHMANA RAO
AGED ABOUT 59 YEARS

54 . SMT. C. L. CHAMPA
WIFE OF SRIDHAR
AGED ABOUT 35 YEARS

55 . SMT. C. L. KUMUDA
WIFE OF NAGARAJ
AGED ABOUT 33 YEARS

56 . SRI. V. NAGARAJ
SON OF VENKATESH AND
LATE VIMALA BAI
AGED ABOUT 35 YEARS

RESPONDENT NO.53 TO 56 ARE
RESIDING AT C/O. V. NAGARAJ
NO. 80, 1ST CROSS
NEAR KASI VISWESHWARAIHAH TEMPLE
AGARA
BENGALURU

57 . SMT. H. N. SARVAMANGALA
WIFE OF LATE SHANKAR NARAYANA RAO
AGED ABOUT 63 YEARS

58 . SMT. H. N. SUJATHA
WIFE OF B. V. RAMU
AGED ABOUT 60 YEARS

59 . SRI. H. N. RAMESH
SON OF H. D. NARAYANA RAO
AGED ABOUT 55 YEARS

60 . SRI. H. N. GURURAJ
SON OF H. D. NARAYANA RAO



AGED ABOUT 52 YEARS
RESPONDENT NO.57 TO 60 ARE
RESIDING AT NO. 100, 1ST FLOOR
GANESH MANDIR ROAD
THYAGARAJA NAGAR
BENGALURU-560 028

61. SRI. H. N. MADHAVA MURTHY
SON OF H. D. NARAYANA RAO
AGED ABOUT 50 YEARS

SRI. H. N. PRASANNA
SON OF H.D. NARAYANA RAO
SINCE DEAD
LRS IS BROUGHT ON RECORD 27.09.2014

- 62 . SMT. B. V. VIJAYALAKSHMI
WIFE OF LATE H. N. PRASANNA KUMAR
NO. 78, 4TH MAIN, 5TH CROSS
THYAGARAJANAGAR
3RD BLOCK
BENGALURU-560 028

- 63 . SMT. H. N. SHANTHALA
WIFE OF MURALI
DAUGHTER OF H.D. NARAYANA RAO
AGED ABOUT 40 YEARS

RESIDING AT NO. 100, 1ST FLOOR
GANESH MANDIR ROAD
THYAGARAJA NAGAR
BENGALURU-560 028

- 64 . SMT. PARIMALA
W/O. LATE B.K. ANANDA RAO
DAUGHTER OF LAW OF LATE SMT. RADHA BAI
AGED ABOUT 50 YEARS
RESIDING AT NO. 295
"SRIVADIVIJAYA", CQAL LAYOUT
C BLOCK
SAHAKARNAGAR
BENGALURU-560 002



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

- 65 . SMT. VASANTH
WIFE OF LATE SURESH
AGED ABOUT 41 YEARS
- 66 SRI. ARJUN
SON OF LATE SURESH
AGED ABOUT 23 YEARS
- 67 SRI. NARAYANA SWAMY
SON OF K. BORAI AH
HUSBAND OF LATE NAGARATHNA
AGED ABOUT 54 YEARS
RESPONDENT NO.65 TO 67 ARE
RESIDING AT NO. 91/3
NETHAJI ROAD
1ST CROSS, 1ST BLOCK
THYAGARAJANAGAR
BENGALURU-560 028
- 68 SMT. SAVITHRI BAI
D/O LATE APPAJI RAO
W/O LATE KUMAR CHANDRA DAYK
AGED ABOUT 94 YEARS
- 69 SRI M.V. SUBRAMANIAN
S/O LATE AHALYA BAI AND
LATE M.S. VENKATARAMAN
GRAND SON OF M. APPAJI RAO
AGED ABOUT 60 YEARS
- RESPONDENT NO.68 & 69 ARE
R/AT NO.329, 1ST FLOOR
4TH AVENUE TEACHER'S COLONY
KORAMANGALA
BENGALURU 560 034
(VIDE ORDER DATED 23.10.2024
CAUSE TITLE IS AMENDED)
- 70 NORMA DEVELOPERS PRIVATE LTD.,
A COMPANY INCORPORATED
UNDER INDIAN COMPANY ACT 1956
AND VALIDLY EXISTING



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

UNDER COMPANIES ACT 2013 HAVING
REGISTERED OFFICE AT: NO.4-5,
SIGMA CORPORATE PARK,
NR. MANN PARTY PLOT
BODAKDEV, AHMEDABAD
GUJARAT-380 054
REPTD BY ITS AUTHORISED SIGNATORY
MANOJ BARAI S/O KOSHORE BARAI

71 PELAGSUS INFRASTRUCTURE PRIVATE LTD
A COMPANY INCORPORATED UNDER
INDIAN COMPANIES ACT 1956 AND
VALIDLY EXISTING UNDER
COMPANIES ACT 2013
HAVING REGISTERED OFFICE AT:
NO.4-5, SIGMA CORPORATE PARK
NR. MANN PARTY PLOT
BODAKDEV, AHMEDABAD
GUJARAT-380 054
REPTD BY ITS AUTHORISED SIGNATORY
MANOJ BARAI S/O KOSHORE BARAI

72 VISTRA ITCL (INDIA) LTD
(FORMERLY IL & FS TRUST COMPANY LTD)
REGISTERED OFFICE AT:
FINANCIAL CENTRE PLOT C-22
G-BLOCK
BANDRA KURLA COMPLEX
BANDRA EAST
MUMBAI-400 051
REPTD BY ITS AUTHORISED SIGNATORY
MR. MANTHU KUMAR
S/O ASHOK SAW

...RESPONDENTS

(BY SRI. G.NATARAJ, ADV. FOR R5-R8, R9(A TO C),
R10, R11, R32(A-D), R33 TO 36, R40, R41, R43 TO 46, R53
TO 56 AND R62; SRI. UDAY HOLLA, SENIOR COUNSEL FOR R70
& R71; NOTICE TO R1-7, R12-20, R22, R23, R25, R27-32, R37-
39, R42, R47-52, R57-61, R63-69 D/W V.O.D.04.01.2024;
NOTICE TO LRS OF R4 D/W V.O.D. 4.9.2024;
NOTICE TO R26 D/W V.O.D. 16.4.2025;
R21 AND 72 ARE SD; NOTICE TO R24 H/S. V.O.D. 23.10.2024)



THIS RFA IS FILED UNDER SECTION 96 OF CPC, 1908, AGAINST THE ORDER DATED 14.10.2019 PASSED ON IA No.24 IN OS No.3208/2008 ON THE FILE OF THE VII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-19), ALLOWING THE IA No.24 FILED UNDER ORDER VII RULE 11(a) TO (d) OF CPC.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.04.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **MS. JUSTICE TARA VITASTA GANJU.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal is filed by the appellant/plaintiff impugning an order dated 14.10.2019 passed on I.A.No.24 in O.S.No.3208/2008 by the VII Additional City Civil and Sessions Judge, Bengaluru (hereinafter referred to as the 'Impugned Order').

2. By the Impugned Order, an application under Order VII Rule 11 (a) to (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), seeking rejection of



the plaint filed by Defendants 24 and 26 / Respondent Nos.1 and 2, has been allowed. The learned Trial Court has found that the suit does not disclose any cause of action and with respect to the suit schedule properties the plaint averments do not show how the title has been transferred to the plaintiffs. It has further been held that the plaintiffs have not given any details with regard to the fraud played on them and the claim being on the great-grandmother's property of the plaintiffs, would be barred by limitation.

2.1 The challenge before this Court is by the appellants/plaintiffs. For the sake of convenience, the appellants are referred to as plaintiffs while the contesting respondents are referred to as the defendants.

3. At the outset, it is requisite to set out some facts that are relevant facts to the matter in issue, which were not brought to the notice of the Court.

4. The suit remained pending before the Trial Court from 2008 to 2019, when on an application filed by one of the Defendants, the plaint was rejected as against all



Defendants. An examination of the plaint reflects that the suit that was filed was for partition, declaration as well as permanent injunction with respect to the suit schedule Item Nos.1 to 4 properties. The prayers in the plaint are set out below:

"WHEREFORE, the plaintiffs most humbly pray that this Hon'ble Court be pleased to pass judgment and decree against the defendants:

a) **For partition of the Schedule Properties by metes and bounds and to put the plaintiffs No. 1 to 21, No. 22 to 28 No. 29 to 34 in separate possession of their legitimate 1/7th share each, in the Schedule Property,**

b) To declare that the **judgment and decree dated 22-09-1995 passed in O.S. No.7339/1993 and judgment and decree dated 10-04-2002 passed in O.S. No. 7077/1998, by the Hon'ble City Civil Judge, Bangalore, as void-ab-initio and not binding on the plaintiffs,**

c) Consequentially to declare that the following sale deeds, **Developmental Agreements, Joint Development Agreements, having executed by the defendant No. 9 to 20 in favour of defendant No. 21 to 31 and interse between them, in pursuance to the said judgments and decrees are not binding on the plaintiffs:**

I) Sale Deed dated 13-12-1995, which is registered as Document No. 8459/1995-96,

II) Joint Development Agreement on 09-02-2005 which is registered as Document No. 28259/2004-05,

III) Joint Development Agreement on 17-06-2005 which is registered as Document No. 4359/2005-06,



IV) Joint Development Agreement on 06-01-2007
which is registered as Document No. 25460/2006-07,

V) Sale deed dated 04-09-2007 which is registered as
Document No.3100/2007-08,

VI) Joint Development Agreement dated 04-09-2007,
which is registered as Document No. 3097/2007-08,

VII) Joint Development Agreement on 11-01-2008,
which is registered as Document No, 5799/07-08,

VIII) Registered Final Decree in O.S. No. 7077/1998,
which is registered as Document No. 1512/2002-03,
dated 08-05-2002,

IX) Registered Final Decree in O.S. No. 7077/1998,
which is registered as Document No. 11697/2003-04,
dated 17-07-2003,

X) Sale deed dated 08-07-2005, which is registered
as Document No.5270/2005-06,

XI) Sale Deed dated 24-06-2006, which is registered
as Document No.10333/2006-07,

XII) Sale Deed dated 24-06-2006, which is registered
as Document No.10334/2006-07"

d) Granting permanent injunction restraining the defendant No. 21 to 28, 30 and 31, their agents, power of attorney holders and anybody acting on their behalf from alienating in any way either by way of sale, agreement of sale, development agreement, mortgage, lease, etc., of the Schedule property to any third parties;

e) Granting permanent injunction restraining the defendant No. 21 to 28, 30 and 31, their agents, power of attorney holders and anybody acting on their behalf from putting up any type of construction on the Schedule Property or any portions thereof;

f) Grant such other relief/s as this Hon'ble Court deems fit in the circumstances of the case, including costs of this suit, in the interest of justice and equity."

[Emphasis Supplied]



4.1 Item Nos.1 to 4 of the suit schedule property as set out in the plaint, are extracted below:

"Item No.1

*All that part and parcel of the property measuring about **8 acres curved out of Sy. No. 19/1, 20/5 and 27/3 of Roopena Agrahara Village, Begur Hobli, Bangalore South Taluk, Bangalore, now fallen within the administrative jurisdiction of Bruhath Bangalore Mahanagara Palike and known as HSR Layout, Bangalore and bounded on the:***

East by : Lands in Sy.No.45,
West by : Remaining portion of Sy.No.25/1 &
Sy.No.27/4
North by : Property of K.S.R.P.
South by : 100 feet Ring Road.

Item No. 2

*All that part and parcel of the land bearing **Sy. No. 27/3, measuring to an extent of 1 Acre 6 guntas and 19/1 measuring to an extent of 06 guntas of Roopena Agrahara Village, Begur Hobli, Bangalore South Taluk, Bangalore,** and bounded on the:*

East by : Remaining portion of
Sy.No.19/1 & 27/3,
West by : Private Property,
North by : K.S.R.P. Property &
South by : 100 feet Ring Road.

Item No. 3

*All that part and parcel of **the residential site bearing No. 122, CMC Khatha No. 247, Ward No. 15, formed in Sy. No. 19/1, 20/5 and 27/3 in the layout formed by Kendra Upadyayara Sangha, situated at Roopena Agrahara Village, Begur Hobli, Bangalore South Taluk, previously within the administrative jurisdiction of Bommanahalli** CMC, now fallen within the administrative jurisdiction of Bruhath Bangalore Mahanagara Palike and known **as HSR Layout, Bangalore,** measuring to East to 40 feet and North to*



South 60 feet in all measuring 2400 Sq. Ft and bounded on the :

East by : Road
West by : Site No.123,
North by : Site No. 121 &
South by : Road

Item No. 4

*All that part and parcel of the residential site **bearing No. 123, CMC Khatha No. 248, Ward No. 15, formed in Sy. No. 19/1, 20/5 and 27/3 in the layout formed by Kendra Upadyayara Sangha, situated at Roopena Agrahara Village, Begur Hobli, Bangalore South Taluk**, previously within the administrative jurisdiction of Bommanahalli CMC, now fallen within the administrative jurisdiction of Bruhath Bangalore Mahanagara Palike and known as HSR Layout, Bangalore, measuring to East to 40 feet and North to South 60 feet in all measuring 2400 Sq. Ft and bounded on the:*

East by : Site No.122,
West by : Site No.124,
North by : Site No. 120 & 119, &
South by : Road."

[Emphasis Supplied]

5. Thus, the suit was filed for partition of the suit schedule properties Item Nos.1 to 4 and to declare the Judgment dated 22.09.1995 passed in O.S.No.7339/1993 and the judgment dated 10.04.2002 in O.S.No.7077/1998 being void *ab-initio* and not binding on the plaintiffs. In addition, a declaration was also sought with respect to the sale deeds and Joint Development Agreements executed by some of the defendants not binding on the plaintiffs. An



injunction was also sought for against Defendant Nos. 21 to 28 and 30 and 31 from alienating or creating third party rights or undertaking any construction on the suit schedule properties.

6. During the pendency of the suit, an application dated 30.05.2008 under Order VII Rule 11(a) (b) (c) and (d) came to be filed by Defendant No.21 being I.A.No.5 of 2008. The Defendant raised several grounds in this application which included:

- (i) Plaintiff is barred by Order II Rule 2 CPC;
- (ii) Plaintiff is not properly valued in terms of Section 24(d) and Section 35(2) of the Karnataka Court Fees and Suits Valuation Act, 1958;
- (iii) That all properties have not been included in the partition suit. Hence, the plaintiff is liable to be rejected;
- (iv) The suit is bad for non-joinder of necessary parties;
- (v) That the claim is barred by limitation since the cause of action arose in 1932;



(vi) That under an agreement dated 17.03.1992, the family members of (A. Srinivas Rao) and (A. Babu Rao) have handed over possession of the schedule property to Defendant No.21/Respondent No.3 and thus, the plaintiffs have lost their right to seek remedy from this Court;

(vii) That the decree passed in 1995 and 2003 has attained finality and was not challenged by the plaintiffs until today; and

(viii) That the plaintiffs lastly have no right to seek a partition.

6.1 In reply to this application, the plaintiffs filed their objections dated 05.06.2008, wherein it was stated that the suit for partition and declaration cannot be decided on the basis of the grounds referred in the application and would require a full-fledged trial. In addition, it was also stated that the court fee had been affixed, correctly on the plaint.

7. Subsequently on 29.03.2010, defendant Nos.24 and 26 filed an application under Order VII Rule 11 of the CPC. This application was numbered as I.A.No.8/2010. The copy



of this application and affidavit is not available in the Trial Court Record. However, the order dated 04.01.2011 as passed by the learned Trial Court reflects the contents of this affidavit. It is apposite to set out the relevant extract below:

"This application is by defendants No.24 and 26 U/o 7 Rule 11 of C.P.C., seeking rejection of a plaint.

2. One Sri. Aditya Raheja, the Director of defendant Nos.24 and 26 has filed an affidavit seeking the grounds for rejection on the following facts:-

That there is no cause of action for the suit, that basis of settlement deed is lost, because of enactment of Karnataka Village Officers Abolition Act, 1961. No mutation documents to prove clear title for 150 acres of land in favour of fore fathers of plaintiff. The above land got vested in State Government. The averments as to Jakkasandra property does not relate to suit property at all. As such, proceedings in LAC No.821/1980 are not helpful to the plaintiffs to establish right of Smt. Nagubai. The proceedings between defendant No.29 and the plaintiffs are pertaining to Jakkasandra village and not relevant to the suit property. Further, plaintiffs do not plead specifically that Hon'ble Supreme Court allowed SLP No.18843/2007 to implead Smt. Nagubai in this proceeding. It appears to have not been allowed by the Hon'ble Supreme Court. Thus, there is no cause of action for the suit. The plaint does not disclose how plaintiffs acquired any title to suit property. **There is a decree for specific performance against defendants No.9 to 12 herein, in O.S.No.7339/1993, so, the present suit is barred by law of limitation.** The plaintiff shall file an application U/s 151 of C.P.C., by way of miscellaneous proceedings to set aside the judgment and decree in O.S.No.7339/1993. They cannot file the present suit. The plaintiffs have not disclosed on which date they came to know about the execution of these various documents. Thus, the cause of action is vague.



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

The present defendants No.24 and 26 invested huge money to purchase suit property and develop it as is evident in the plaint documents. If the application is not allowed, the defendants will be put to irreparable loss and injury and hardship. Thus, the defendants No.24 and 26 pray for allowing I.A.No.8 and to reject the plaint.

3. The Advocate for plaintiff files the following objections:-

*That the application is false and baseless, which is contrary to the pleadings of the parties, the application is filed with an oblique motive to drag on the proceedings, because, the plaintiffs have specifically and categorically pleaded cause of action in the plaint. The Court took notice of the same and registered this suit and ordered summons and notice to the defendants. The suit is at the stage of service of notice to the defendants. **But, the present application has been filed resulting into postponement of completion of preliminary stage of service of notice.** The claim made by the parties to the suit cannot be adjudicated without there being a full pledged trial. Thus, there is a clear proviso that unless and until there is specific prohibition under any law, the plaint cannot be rejected at the inception at the instance of the defendants. The plaint averments alone shall be the criteria and germane while considering such an application. **The Hon'ble Supreme Court, allowed the impleading application in SLP 18843/2007, which has been reported in the form of 2010 AIR SCW 1519, which prima facie make out a case for plaintiffs that they have definite share in the suit property. Thus, the present application is liable to be dismissed.***

[Emphasis Supplied]

7.1 Thus, the grounds taken by the Defendant Nos.24 and 26 in this application were:

- (i) No cause of action in view of enactment of Karnataka Village Offices Abolition Act;



- (ii) No documents for mutation since the land has got vested in the Government;
- (iii) The proceedings of the LAC are not helpful to establish the plaintiffs' right;
- (iv) The proceedings between Defendant No.29 and the plaintiffs are pertaining to Jakkasandra village and are not relevant to the suit property;
- (v) In addition, it was also contended that the suit is barred by limitation in view of the Judgment and Decree against Defendant Nos.9 to 12 in O.S.No.7339/1993.

8. The plaintiffs filed objections contending that these applications are merely being filed to prolong the case and even service was not completed. In addition, the plaintiffs contended that the Supreme Court allowed an application impleading the plaintiffs in SLP No.18843/2007, in proceedings before the Reference Court, which shows that the plaintiffs have a definite share in the suit schedule property.

9. The learned Trial Court on 04.11.2011 after examining the contentions of both parties passed a detailed order



dismissing this application (I.A.No.8) and held that disputed questions of fact cannot be examined in an application under Order 7, Rule 11 of the CPC. In addition, it was held that in terms of Article 59 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act'), since the plaintiffs have pleaded that they only came to know about the decree passed in O.S.No.7339/1993 in the year 2008, the plaintiffs would have to be given a chance to show knowledge of this decree. The learned Trial Court also found that where fraud and collusion are referenced in the plaint, the plaint cannot be rejected. The learned Trial Court also held that after a meaningful reading of the plaint that the case is not a fit case for rejection of the plaint on the ground that no cause of action is disclosed and that the plaintiffs have *prima facie* satisfied the Court that their great-grandmother Smt. Nagubai had interest in the suit property.

The relevant extract of this order is set out below:

"33. The next contention is that, **since Smt. Nagubai being a widow had no right to independently own and manage the properties, as she might have died prior to Act of 1956.** I am of the opinion that, these contentions **do touch the merits** of the case and whether Smt. Nagubai had independent right or not to be considered after recording the evidence. Date of death of Smt. Nagubai is required, which is relevant for determination of this



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

question. Neither plaintiff nor the contesting defendants have chosen to produce the death certificate of Smt. Nagubai. Even assuming that plaintiffs have deliberately suppressed it, nothing prevented contesting defendants, to produce death certificate for substantiating their contention. **Since, that is not the case herein, it is not a fit case to reject the plaint on the ground that plaint does not disclose any cause of action or right to sue. On the other hand, a close reading or on a meaningful reading of the plaint, I am prima facie satisfied to say that the plaintiffs have shown that their great grand-mother Smt. Nagubai had some interest in the suit property, that is why, "in 1995," de-notification her name finds a place for survey No. 19/1.**

34. Viewed from this angle, the contentions raised by these defendants are really not acceptable. **Plaint is not liable to be rejected, for want of alleged cause of action.** On the other hand, **plaintiffs have narrated the manner in which, they had knowledge of activities of the defendants in April 2008, May 2008, for filing the present suit, because, the contesting defendants threatened the plaintiffs who were questioning construction activities** over the suit property by way of suit, they are challenging the **alienations of 2005, 2007, 2008 in the present suit for partition, same is prima facie acceptable, plaint cannot be thrown on the ground of limitation.** Thus, all these contentions shall have to be reserved while considering the suit on merits. Thus, I answer point for consideration in the negative.

35. Point No.2:- In the result, I pass the following:

ORDER

I.A.No.8 filed U/o 7 Rule 11 of C.P.C., is hereby dismissed.

No costs."

[Emphasis Supplied]

10. By a separate order also dated 04.01.2011, I.A.No.5 filed by Defendant No.21 also under Order 7 Rule 11 CPC



was dismissed by the learned Trial Court. It was held that the plea of limitation would be mixed question of fact and law and that the other issues raised would require evidence. It was further held that where disputed questions of fact are raised, the plaint cannot be rejected under Order 7 Rule 11 CPC.

11. The orders dated 04.01.2011 passed deciding I.A.No.5 and I.A.No.8 were challenged by the defendant Nos.21, 24 and 26 in petitions under Articles 226 and 227 of the Constitution of India being CRP No.44/2011 and W.P.Nos.9082-9083/2011. These petitions were heard and decided by the learned Single Judge of this Court. By an order dated 04.10.2012, both orders dated 04.01.2011 were set aside with directions that after an application for amendment of the plaint is decided, the Defendant Nos.21, 24 and 26 can pursue their applications under Order 7, Rule 11 of CPC afresh. The relevant extract of the order passed by the learned Single Judge, is set out below:

*"3. On hearing learned counsel for parties and after going through records, **I am of the considered opinion the learned trial Judge has failed to notice that in a suit for partition, existence of partible estate***



supported by necessary documents is the essential ingredient of cause of action. In the circumstances, impugned order cannot be sustained.

4. Therefore, I pass the following:-

ORDER

CRP No.44/2011 and WP Nos.9082-9083/2011 are accepted. The impugned order is set aside. The matter is remanded to the trial court. The plaintiffs are at liberty to seek amendment of plaint as is permissible by law. **After the application for amendment of plaint is decided, defendants 21, 24 & 26 can pursue their application for rejection of plaint as is permissible by law. The contentions raised herein are kept open."**

[Emphasis Supplied]

12. However, this was not done by Defendant Nos.24 and 26, as thereafter, the defendants 24 and 26 on 20.10.2016 filed another application under Order VII Rule 11(a), (b), (c) and (d) of the CPC, being I.A.No.24.

13. An examination of the order-sheet of the Trial Court record reflects that I.A.No.24 was taken up on 20.10.2016 and thereafter the said I.A. was listed for hearing on 03.12.2016, 07.01.2017, 04.02.2017, 22.02.2017 and 15.03.2017. Thereafter, by order dated 26.07.2017, the learned Trial Court heard the parties on I.A.No.8.



Subsequently, on 12.08.2017 the Trial Court had fixed I.A.No.8 and IA No. 24 for hearing on 04.09.2017.

13.1 The order sheet of the learned Trial Court further reflects that I.A.No.8 was taken up for hearing, however, no final decision in the matter on I.A.No.8 is available from the record. Subsequently, on 14.10.2019, I.A.No.24 is allowed by the learned Trial Court, which order has no reference to the earlier application or the previous proceedings, or the order passed by the High Court on 04.10.2012.

14. An examination of the application I.A.No.24 states that the plaint has no cause of action. In addition, it was stated in this application that although the plaintiffs admit to having knowledge about the Judgment and Decree passed in 1995 they seek to set aside the same, the said prayer is barred by limitation. It was stated therein by the defendants that the plaintiffs would have to file a separate suit if they want the said judgment and decree to be set aside. The application also contains an averment that as per the plaint, that whatever lands were belonging to the



plaintiffs' forefathers have already been acquired by the State Government. Other lands which have been referred to are lands in Kudlu Village and Jakkasandra Village, which have nothing to do with the lands *qua* the suit schedule property. It is also contended that the plaintiffs do not show on what basis they have any right, title or interest in the suit schedule property. Thus, it was stated the plaint be dismissed. The relevant extract is below:

*"5. I say and submit that from the above, there can be no doubt that whatever lands which were belonging to the Plaintiff forefathers have already been acquired by the State Government and a portion of which has already been **allotted to the Defendant No.29. The proceedings between Defendant No.29, the State Government and the third parties to which the Plaintiff is admittedly not a party** is pending adjudication before the Hon'ble Supreme Court. When the rights of the Plaintiff is not even adjudicated by the Hon'ble Supreme Court, there cannot be any circumstances for the Plaintiff to file a fresh Suit at this juncture.*

*6. I further say and submit that in para No.15, the Plaintiff claims that **Item No.1 of the Suit Schedule Property** is derived from the earlier recitals of the Plaint and this does not turn out to be true, **as paras 1 to 13 of the Plaint are with regarding to the lands in Kudlu Village and Jakkasandra Village and nothing to do with lands in Roopena Agrahara in which Plaintiff** is not even a party.*

*7. I say and submit that Plaintiff while making averments in para 15 to bring in item no.1 of the Suit Schedule Property do not show on what basis they have any right and or therein. **There is no clear statement by them anywhere in the Plaint as to how they have acquired any title to the Suit Schedule Property.***



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

8. I say and submit in para 16, the Plaintiff admits to having knowledge of a Judgment and Decree passed in O.S. No.7339/1993 dated 22.09.1995 in pursuance to Defendant Nos.9 to 12 not having performed their obligations under an Agreement with the Defendant No.21. The Plaintiff seems to set aside a Judgment and Decree of this Hon'ble Court which has been passed in the year 1995 and that the same is expressly barred by the Law of Limitation.

9. I say and submit that in this regard even if the plaintiff wants to set aside the said Judgment and Decree, he will have to file an Application under Section 151 of the Code of Civil Procedure 1908 in the very same case by filing a Civil Miscellaneous and not filing a fresh suit.

10. I am advised to submit that this Hon'ble Court cannot in a fresh Suit set aside its own Judgment and Decree passed in an earlier suit."

[Emphasis Supplied]

14.1 In reply to this Application, the plaintiffs have contended that the defendants are merely protracting the proceedings and instead of letting the suit proceed for trial. The objections also reference the earlier application filed and the order passed by the High Court, which has been concealed in the Application. It is also contended that specific averments under Order 7, Rule 11 (a) to (d) of the CPC, have not been made. The relevant extract is below:

"The plaintiffs above named beg to submit as under:

1. That the application filed by the defendant under Order 7 Rule 11(a to d) of the Code of Civil Procedure is not maintainable either in law or on facts of the case. The



HC-KAR

averments made in the affidavit are false and incorrect and contrary to the pleadings and the defendant is called upon to strict proof of the same. **The defendant with sole oblique motive to drag the proceedings has filed the application.** The plaintiffs have specifically and categorically stated the cause of action to the suit in the plaint and this Hon'ble Court taking cognizance of the said cause of action was pleased to order for issue of notice. The defendant has sworn to a false and incorrect affidavit contending averments as true and correct, inspite of being aware that the same is false and frivolous and thus endangered in committing an offence of perjury and the defendant is liable to be punished accordingly.

2. The defendant has not made out any grounds for rejection of the plaint under the said proviso and the defendant has failed to understand the scope of the suit and the reliefs sought **therein and thus by mistaken Identity has filed the above application in order to protract the proceedings. The defendant instead of cooperating with the court for early adjudication of the suit has led the application to mislead this Hon'ble Court to pass the orders in tune with the defendant.**

xxx

xxx

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4. The defendant instead of facing the trial is unnecessarily filing the applications with distraction of truth. The application supported by affidavit does not disclose any ground or reason to reject the plaint at this stage and the averments do not satisfy the requirement of law. The defendant has raised merits of the case which has to be adjudicated only upon full-fledged trial. **That the defendants have earlier filed similar application and the same was dismissed and thereafter the defendants have taken up the matter in Appeal before the Hon'ble High Court in MFA and the same was remanded with certain directions, but the order passed by this Hon'ble Court remained intact.** The defendants have suppressed the said fact and also the fact that the Plaintiffs have filed application for amendment of pleadings as per the direction of the



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

Hon'ble High Court and the said application is pending adjudication before this Hon'ble Court.

5. That the claim of the parties to the suit being for partition **and declaration, the same cannot be adjudicated upon an application without there being a full-fledged trial and the only** option of adjudication of the rights of the property is to direct the parties is to face the trial and to establish their rights. That apart the said proviso is very clear that unless and until there is specific prohibition under any law, the plaint cannot be rejected at the inception at the instance of the defendants. **That to adjudicate the application, the plaint averments will alone be the sole criteria and germane, which is well settled principles of law.**

6. That proviso Order 7 Rule 11 envisages clause (a) to (d) under which circumstance the plaint could be rejected. But the defendants have not made out any such case under which the plaint has to be rejected. That the plaintiff has not made out **any specific allegation that the plaint is manifestly vexatious or without merit or has disclosed that the plaintiff has no right to sue and that it is not a fit case for trial.** Unless and until such contentions and grounds are raised in the application, the application cannot be considered by this Hon'ble Court. It is also well settled law that while dealing with such application, the Court shall be very cautious and shall not be exercising such powers unless and until the Court finds that the plaint averments are vexatious and frivolous. That apart, at the instance of the defendant, the plaint cannot be rejected and the only aid that can be taken by this Hon'ble Court is to go through the averments specifically made out in the plaint and any ground or averments found in the written statement or application is of no consequence for considering the application for rejection of the plaint. That the application filed by the defendant is vexatious and frivolous and the grounds urged in the application is to be decided after full-fledged trial and not on the basis of the present application."

W[Emphasis Supplied]



15. An examination of both I.A.No.24 and I.A.No.8 show that I.A.No.24 is an improved version of I.A.No.8. The same grounds that were taken in I.A.No.8 have been taken in I.A.No.24. However, the order of the learned Single Judge in CRP No.44/2011 and W.P.Nos.9082-9083/2011 permitted the plaintiffs to re-agitate their applications after the remand. This was not done. It is also not clear from the record as to whether the plaint was amended and whether the plaint annexed along with the appeal is the original plaint which was dated 12.05.2008. None of these facts have been examined by the learned Trial Court.

16. There is another aspect of this matter. The plaint as filed, seeks multiple prayers against different defendants. However, the application filed is only by two defendants, namely defendant Nos.21 and 24/26. The plaint however seeks several reliefs against the defendants and the reliefs against each of these defendants is also different.

16.1 A review of the plaint shows that it contains averments that the plaintiffs have obtained rights from their great grandmother late Smt. Nagubai alias Nagubayamma. The



land which belonged to the predecessors of the plaintiffs got vested in the State Government. While an application for re-grant was made, the BDA notified most of these lands for formation of the HSR Layout and the name of Smt. Nagubai is reflected as a Khatedar. It further states that although the plaintiffs participated in proceedings, before the Land Acquisition Officer, the Reference Court rejected the plaint. This order was challenged by the LRs of Smt. Nagubai in MFA No.988/1982 before this Court. The High Court in the said petition, set aside the order passed by the Reference Court and the appeal was allowed in so far as it relates to the claim of the LRs of Smt. Nagubai. It was held that the plaintiffs have got 1/7th share along with Sri. Srinivas Rao and family. This aspect of the matter has not been examined by the learned Trial Court in the Impugned Order. The relevant extract of the plaint is set out below:

*"8. The Plaintiffs submits that upon enactment of Village Officer's Abolition Act, the lands which were with the fore fathers of the plaintiffs got vested with the state Government. The inamdars made an application for re-grant of the lands before the Special Deputy Commissioner for Inams Abolition, Bangalore. **That in the meanwhile, when the re-grant proceedings were***



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

pending, the Bangalore Development Authority notified most of the family lands for acquisition for the purpose of formation of H.S.R. Layout and outer ring road and acquired the same, under gazette notification, wherein the name of Smt. Nagubai @ Nagubayamma is reflected as Khatedar. That apart the BDA while passing the award has also referred the claims of Smt. Nagubai @ Nagubayamma. But unfortunately, the BDA has passed awards in favour of a dead person namely Smt. Nagubai @ Nagubayamma. That some of the family members including the grand mother of plaintiff filed application u/s 18 of Land Acquisition Act for enhancement of compensation before the Land Acquisition Officer. That upon the grand mother of the plaintiff having claimed the award amount, the land acquisition officer after passing the award has referred the applications filed by the landlords' u/s. 18, 30 & 31, 27 of Land Acquisition Act, to the Civil Court in L.A.C. No. 821/1980, as there were rival claimants.

9. That however, the reference Court rejected the claim of grandmother plaintiff i.e. daughter of Smt. Nagubai @ Nagubayamma and the said order was challenged before the Hon'ble High Court by the LRs of Smt. Nagubai Nagubayamma in M.F.A. No. 988/1982 i.e. some of the plaintiffs and defendants herein. That the Hon'ble High Court was pleased to set aside the order passed by the reference Court and the appeal was allowed, in so far as it related to rejection of claim of the LRs of Smt. Nagubai @ Nagubayamma. The copy of order in MFA is herewith furnished as Document No. 7. Thereafter, remand, the reference court has disposed off the LAC petition No. 821/rerecognizing the rights of grandmother i.e. the daughters of LRs of Smt. Nagubai @ Nagubayamma and has declared that the LRs of Smt. Nagubai @ Nagubayamma have got specific 1/7th share along with Sri. Srinivasa Rao and his family members in the lands that came to be acquired by the Government in favour of Bangalore Development Authority. The order passed in the said LAC is



herewith furnished as Document No. 8. The said order is unchallenged and has attained finality.

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11. That in the meanwhile, the Special Deputy Commissioner, was pleased to re-grant the lands in favour of the Inamdar, vide order dated 23-06-1982. Subsequently all the revenue entries were mutated in the names of the Inamdars in respect of the lands that were re-granted. Thereafter some of the legal heirs of original inamdars have questioned the grant made in favour of Sangha and the constitutional propriety of the Government, before the Hon'ble High Court of Karnataka in Writ Petition No. 11412/1990 and the said Writ Petition was dismissed and upon appeal, the appeal also came to be dismissed, which was numbered as W.A. No. 7574/1996. That the appellants therein have preferred a Special Leave Petition before the Hon'ble Supreme Court of India in SLP No. 2833/1999 and the SLP was disposed off with a direction to the petitioners in W.P. No. 11412/19980 to approach the Government of Karnataka for modification of the grant order, made in favour of the Association.

[Emphasis Supplied]

16.2 In addition, a reference is made in the plaint to the suit for specific performance in O.S.No.7339/1993 being filed by Defendant No.21 against Defendants 9 to 12. These orders have been annexed with the plaint. However, there is no discussion on this aspect in the Impugned Order either.



16.3 The learned Trial Court has only held that there are no pleadings as to why the plaintiffs kept silent for two generations or the alleged fraud played by Defendants 7 to 12, even though in the plaint, knowledge has been stated to have been obtained by the plaintiffs in the year 2008.

17. It is settled law that rejection of a plaint under Order VII Rule 11 CPC is permissible only when plaint on its face and without considering the defence fails to disclose any cause of action upon a meaningful reading if any triable issue arises from the pleadings, the suit cannot be rejected summarily. The Court is required only to confine itself to the averments in the plaint. In this regard, it is relevant to refer to a recent judgment of the Supreme Court in ***Vinod Infra Developers Ltd. v. Mahaveer Lunia***¹. The relevant extract is below:

"8. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit

¹ 2025 SCC OnLine SC 1208



cannot be summarily rejected. Keeping in mind this settled principle of law, we proceed to examine whether the High Court was justified in rejecting the plaint under Order VII Rule 11 CPC."

[Emphasis Supplied]

17.1 The Supreme Court in ***Kum. Geetha v. Nanjundaswamy***² has held that the Court has to examine the plaint and documents annexed with the plaint to see whether the statements made in the plaint if taken to be true, could that plaint succeed. The Court cannot at this stage examine the matter on merits. The Supreme Court in this case after examining the precedents under Order 7 Rule 11 of the CPC held that, the Court will only examine whether the plaint discloses, a cause of action. The relevant extract below:

"6. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order 7 Rule 11 CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

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9. If the statements in the plaint are taken to be true, the joint family properties may enure to the benefit of its members and they may well be available for partition. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, we are not concerned with the

² (2024) 14 SCC 390



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

correctness of the averments, except to state that the plaintiffs have the carriage of the proceedings, and have to discharge the heavy burden of proving their case. **Insofar as the application under Order 7 Rule 11CPC is concerned, this Court will proceed only that far, to examine whether the plaint discloses a cause of action, and no further.**

10. **The High Court committed an error by examining the merits of the matter. It pre-judged the truth, legality and validity of the sale deed under which Defendants 4 to 14 claim title.** This is not to say that the plaintiffs have any less burden to prove their case or even that their case is probable. **Simply put, the High Court could not have anticipated the truth of the averments by assuming that the alleged previous sale of the property is complete or that it has been acted upon. The approach adopted by the High Court is incorrect and contrary to the well-entrenched principles of considering an application under Order 7 Rule 11 CPC.** Under these circumstances, we set aside the judgment and the order [Nanjundaswamy v. Vekataswamappa, 2015 SCC OnLine Kar 9770] passed by the High Court and dismiss the application under Order 7 Rule 11 CPC, and restore the suit even with respect to properties mentioned under Schedule A of the plaint.

11. **There is yet another reason why the judgment [Nanjundaswamy v. Vekataswamappa, 2015 SCC OnLine Kar 9770] of the High Court is not sustainable. In an application under Order 7 Rule 11 CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Magsud Ahmad v. Mathra Datt & Co. [Magsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. [Madhav Prasad Aggarwal v. Axis Bank Ltd., (2019) 7 SCC 158 : (2019) 3 SCC (Civ) 516]**

[Emphasis Supplied]



18. In this regard, it is also relevant to refer to a judgment of the Supreme Court in the case of **Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar**³. The relevant portion of the said judgment is set out below:

"15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (½) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a

³ (2018) 6 SCC 422



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.

16. The High Court on the other hand, **has considered the matter on the basis of conjectures and surmises and not even bothered to analyse the averments in the plaint, although it has passed a speaking order running into 19 paragraphs. It has attempted to answer the issue in one paragraph which has been reproduced hitherto (in para 10). The approach of the trial court, on the other hand, was consistent with the settled legal position expounded in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557], Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100] and also T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467].**

17. These decisions have been noted in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612], where this Court, in para 11, observed thus : (SCC p. 714, para 11)

"11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

'9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a



direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.'

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 stage 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 scrutinise 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 averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property* [*Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7 SCC 184] and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [*Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*, (2006) 3 SCC 100]."

18. The High Court has adverted to *Church of Christ Charitable Trust and Educational Charitable Society* [*Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612], which had the occasion to consider the correctness of the view taken by the High Court in **ordering rejection of the plaint in part, against one defendant, on the ground that it did not disclose any cause of action qua that defendant.** The High Court has also noted the decision relied upon by the contesting respondents in *Mayur (H.K.) Ltd.* [*Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*, (2006) 3 SCC 100], which has restated the settled legal position about the scope of power of the Court to reject the plaint under Order 7 Rule 11(d) CPC.

19. **In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution** and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral



property of the appellants. **We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC.**

[Emphasis Supplied]

19. In the present case, the plaint has raised several triable issues, which include as to whether the plaintiffs have any right, title or interest in the suit schedule property and whether the Defendants 9 to 12 have defrauded the plaintiffs. These issues would require trial and thus the plaint cannot be summarily be rejected.

20. In addition, the plaint seeks different reliefs against different defendants, it is settled law that a plaint cannot be rejected in part or against only some defendants. While sitting in Co-ordinate Bench in the Delhi High Court, one of us (Tara Vitasta Ganju J.), has dealt with Order VII Rule 11, CPC on partial rejection of plaint in the case of ***Navigators Logistics Ltd. v. Kashif Qureshi and Others***⁴. In the said judgment, while relying on the judgment of the Supreme

⁴ 2024 SCC OnLine Del 8244



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

Court in ***Navilan Merchants (P) Ltd. v. Sejal Glass Ltd.***

& Ors⁵, it was held that the provision of Order VII Rule 11 of the CPC necessarily means that the plaint must be rejected as a whole if it does not disclose a cause of action. There is no provision in the CPC for rejection of a plaint in part.

20.1 It was further held that where only a part of the plaint is to be rejected, an Application under Order VI Rule 16 of the CPC would apply to strike out those pleadings which are otherwise unnecessary or abuse of the process of the Court. While relying on the judgment of the ***Sejal*** case, the Supreme Court held that once a part of the plaint cannot proceed, the other part also cannot proceed and the whole plaint must be rejected. However, if the plaint survives against certain Defendants then Order VII Rule 11 of the CPC will have no Application and the whole suit will proceed to trial. It was thus held that the examination of the plaint has to be made with great care so as to ascertain whether the plaint can be rejected as a whole against all Defendants.

⁵ (2018)11 SCC 780



The relevant extract of the **Navigators** case is set out below:

"42. The Supreme Court in *Sejal Glass Limited v. Navilan Merchants Private Limited* has held that **Order VII Rule 11 of CPC refers to "a plaint" and that necessarily means the plaint as a whole. It has been held that it is only where a plaint as a whole does not disclose a cause of action, the provisions of Order VII Rule 11 of CPC can be made applicable. It was further held that there is no provision in the CPC for rejection of a plaint in part.** The relevant paragraphs of the said judgment are as follows:

"3. In our view, the impugned judgment [*Navilan Merchants (P) Ltd. v. Sejal Glass Ltd.*, 2016 SCC OnLine Del 6580] is wrong on principle. Order 7 Rule 11 of the Civil Procedure Code, 1908 which reads as follows:

"11. Rejection of plaint. - The plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the Court, for reasons to be recorded, is satisfied



that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

What is important to remember is that the provision refers to the “plaint” which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order 7 Rule 11 springs into being and interdicts a suit from proceeding.

4. It is settled law that the plaint as a whole alone can be rejected under Order 7 Rule 11. In *Maqsud Ahmad v. Mathra C.R.P. 281/2024* Page 5 of 7 *Datt & Co.*; [*Maqsud Ahmad v. Mathra Datt & Co.*, 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021], the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms : (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

“4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code.”

[Emphasis is ours]

42.1 In the *Sejal Glass Limited* case the Supreme Court also held that **where only a part or portion of the plaint is to be rejected, an Application under Order VI Rule 16 of CPC would apply and that part of the pleadings would be struck out which are unnecessary, frivolous, vexatious or otherwise abuse of the process of the Court.** The relevant extract is set out below:

“8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against



the other defendants. **This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.**

9. If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order 6 Rule 16 CPC would apply.

Order 6 Rule 16 states as follows:

"16. Striking out pleadings - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading –
(a) which may be unnecessary, scandalous, frivolous or vexatious, or
(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
(c) which is otherwise an abuse of the process of the Court."

It is clear that Order 6 Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court."

[Emphasis is ours]

xxx

xxx

xxx

44. As stated above, the Application under Order VII Rule 11 of CPC was filed only by two of the Former Employees. **The Supreme Court in Sejal Glass Limited case has clarified that even though a plaint may contain averments and contentions against different Defendants, it was not as if separate suits have been filed. If the Plaintiff chooses to file one plaint, merely because several causes of action against several Defendants were brought together in one plaint, the plaint would still remain as one plaint and the**



HC-KAR

NC: 2026:KHC:32064-DB
RFA No. 1595 of 2021

rejection of the plaint would be as a whole. The relevant paragraphs of the said judgment is extracted below:

"5. Similarly, in *Bansi Lal v. Som Parkash* [AIR 1952 Punj 38], the High Court held : (AIR p.39, para 7)

"7. But **the real question which arises in this appeal is whether there can be a partial rejection of the plaint.** Mr. Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has relied on the statement of the law given in Mulla's Civil Procedure Code at p. 612 where it is stated: "This rule (Order 7 Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on *Raghubans Puri v. Jyotis Swarupa* [ILR (1906-07) 29 All 325], *Venkata Rangiah Appa Rao v. Secy. of State* [1930 SCC OnLine Mad 123] and *Maqsud Ahmad v. Mathra Datt & Co.* [1936 SCC OnLine Lah 337] In reply to this argument Mr. Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. **The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint C.R.P. 281/2024 Page 7 of 7 must be as a whole and not as to a part.** I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly."

[Emphasis is ours]

44.1 Undisputably, the prayers as have been set out by the Appellant are against all the Respondents. Since it is settled law that the plaint has to be rejected as a whole, the examination of the plaint has to be made with great care by the Court, and it has to be examined as to whether on a meaningful reading of the entire plaint, it can be said that no



cause of action has arisen or that the *plaint* is barred by law."

[Emphasis Supplied]

21. One of the contentions raised by the Defendant Nos.24 and 26 in its application that the prayer seeking to set aside the Judgment and Decree passed in the year 1995 is barred by limitation in O.S.No.3208/2008. The Supreme Court in ***Vidya Devi alias Vidya Vati (Dead) by LRs. vs. Prem Prakash and Others***⁶ has held that no period of limitation has been prescribed by the Legislature for filing a suit for partition as partition is an incident attached to the property. There is always a running cause of action for seeking partition by one of the co-sharers, when such co-sharer decides not to keep his share joint with other co-sharers. The Court explained that filing of a partition suit is wholly dependent upon the will of the co-sharer and it is because of this reason, the Legislature could not have possibly provided the period of limitation in partition suits. The relevant extract of the Vidya Devi case is set out below:

"20. The legislature has not prescribed any period of limitation for filing a suit for partition because partition is an incident attached to the property and

⁶ (1995) 4 SCC 496



HC-KAR

there is always a running cause of action for seeking partition by one of the co-sharers if and when he decides not to keep his share joint with other co-sharers. Since the filing of the suit is wholly dependent upon the will of the co-sharer, the period of limitation, specially the date or time from which such period would commence, could not have been possibly provided for by the legislature and, therefore, in this Act also a period of limitation, so far as suits for partition are concerned, has not been prescribed. This, however, does not mean that a co-sharer who is arrayed as a defendant in the suit cannot raise the plea of adverse possession against the co-sharer who has come before the court as a plaintiff seeking partition of his share in the joint property.

21. Normally, where the property is joint, co-sharers are the representatives of each other. The co-sharer who might be in possession of the joint property shall be deemed to be in possession on behalf of all the co-sharers. As such, it would be difficult to raise the plea of adverse possession by one co-sharer against the other. But if the co-sharer or the joint owner had been professing hostile title as against other co-sharers openly and to the knowledge of other joint owners, he can, provided the hostile title or possession has continued uninterruptedly for the whole period prescribed for recovery of possession, legitimately acquire title by adverse possession and can plead such title in defence to the claim for partition."

[Emphasis Supplied]

22. The plaint before the Court seek partition and 1/7th share of the suit schedule property. It has been contended that Defendant Nos.9 to 12, in pursuance of Judgment and Decree in O.S.No.7339/1993 have executed a sale deed on 13.12.1995, conveying absolute right, title and interest of part of the suit schedule property with defendant No.21. It



has been stated that since the Judgment and Decree was passed in the year 1995 which was more than 13 years ago, the plaint has to be rejected as being barred by limitation. The plaint, however, sets out that the cause of action to file the suit arose on 10.03.2008 when the plaintiffs demanded partition and separate possession of the suit schedule property. It further sets out that when the first plaintiff visited the schedule property on 05.05.2008, it was surprised to notice that Defendant Nos.21 to 27, 28, 30 and 31 were putting up multistoried buildings on the suit schedule property. Thus, it is the contention of the plaintiffs that the knowledge of these actions was only in the year 2008 and that is when the present suit was filed.

23. The question as to when the cause of action arose, is in dispute and involves a determination on facts. It is settled law that disputed questions of fact could only be ascertained once a trial in the matter is held.

24. An Application under Order VII Rule 11 of the CPC can only be decided on a demurrer, unless there are glaring averments in the plaint which show that a suit is barred by



limitation, the Court will not be inclined to dismiss a suit on the ground of limitation at threshold.

24.1 In ***Balasaria Constructions (P) Ltd v. Hanuman Seva Trust and Others***⁷, the Supreme Court has held that the suit cannot be barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence as the question of limitation is a mixed question of fact and law. The relevant extract of ***Balasaria Constructions*** case is set out below:

*"8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, **we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact.** Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure."*

[Emphasis Supplied]

25. In view of the foregoing discussions, this Court finds that the Impugned Order cannot be sustained and is set-

⁷ (2006) 5 SCC 658



aside. However, the Defendant Nos.24 and 26 are permitted to agitate all the grounds taken in their application under Order VII Rule 11 of the CPC, before the learned Trial Court.

26. The parties shall appear before the learned Trial Court on **09.07.2026**.

27. Given the pendency of the suit, since the year 2008, the learned Trial Court is directed to ensure that the suit is decided in an expeditious manner and as far as possible within the next six months.

28. It is clarified that this order has been passed without prejudice to the rights and contentions of all the parties, which are kept open to be agitated before the learned Trial Court.

29. The appeal is **disposed of** in the foregoing terms. All pending applications stand closed.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(TARA VITASTA GANJU)
JUDGE

KS/YN