

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR FIRST APPEAL NO.1820 OF 2023 (PAR)

C/W

REGULAR FIRST APPEAL NO.297 OF 2024 (PAR)

IN RFA No.1820/2023

BETWEEN:

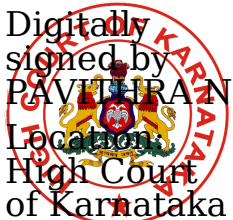
1. SMT. REETHAMMA
WIFE OF THE LATE
SRI C. MARIYAPPA
AGED ABOUT 85 YEARS

DIED ON 31.07.2024 BY LR'S VIDE ORDER DATED
22.06.2024

- 1(a) SRI. JOSEPHINE M.
D/O LATE SRI C. MARIYAPPA
AGED ABOUT 63 YEARS
W/O SRI JOSEPH
RESIDING AT NO.67
MOTHER THERESA ROAD
MARIYANNAPALYA
H.A. FARM POST
BENGALURU-560 024

- 1(b) SMT. ROSEMARY M.
D/O LATE SRI C MARIYAPPA

Digitally
signed by
PAVITHRAN
Location
High Court
of Karnataka



AGED ABOUT 70 YEARS
W/O LATE SRI D.S.R. REDDY
RESIDING AT 1713
FLAT NO.404
KBR ELITE APARTMENTS
3RD MAIN ROAD
COFFEE BOARD LAYOUT
KEMPAPURA
BENGALURU-560 024

1(c) SMT. MONICA M.
D/O LATE SRI C. MARIYAPPA
AGED ABOUT 65 YEARS
W/O SRI JOSEPH
RESIDING AT NO.86
LAWRENCE ROAD
7TH CROSS, KAMMANAHALLI
BANGALORE-560 084

1(d) SRI M. LEO ALIAS LEO REDDY
S/O LATE SRI C. MARIYAPPA
AGED ABOUT 62 YEARS
RESIDING AT 17/1A
3RD MAIN ROAD
COFFEE BOARD LAYOUT
HEBBAL KEMPAPURA
H.A. FARM POST
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1(e) SMT. ELIZABETH F.
W/O LATE SRI RAVINDRA KUMAR M.
AGED MAJOR
RESIDING AT NO.118
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- 1(f) MR. ABHILASH
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...APPELLANTS

(BY SRI. ROMARIO, ADVOCATE ALONG WITH
 SMT. SUNITHA H. SINGH, ADVOCATE)

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9. SRI SUDARSHAN KARLE
S/O LATE L. T. KARLE
AGED ABOUT 68 YEARS
R/AT NO.101, 7TH CROSS
2ND MAIN, I BLOCK
RMV II STAGE
BENGALURU-560 094

10. SRI MAHENDRA KARLE
S/O LATE L. T. KARLE
AGED ABOUT 66 YEARS
R/AT NO.21, ADITI
1ST MAIN, RMV II STAGE
BENGALURU - 560094

ALSO BOTH RESPONDENTS NOS.9 AND 10
HAVE THEIR REGISTERED OFFICE AT
KARLE PROPERTIES
NO.151, INDUSTRIAL SUBURB
OPP. METRO CASH AND CARRY
YESHWANTHPURA
BENGALURU-560 022

11. M/S KARLE HOMES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT-1956
HAVING ITS CORPORATE OFFICE AT
NO.151, INDUSTRIAL SUBURB
YESHWANTHPUR
BENGALURU-560 022

REPRESENTED BY ITS DIRECTOR:
SRI SUDARSHAN KARLE

12. SMT. DEVAMMA
D/O SRI NANJEGOWDA
AGED ABOUT 65 YEARS
RESIDING AT BACHALLI VILLAGE
MARALAVADI HOBLI
KANAKAPURA TALUK
BANGALORE RURAL DISTRICT-562 117
13. SMT. L. YASHODAMMA
D/O LINGEGOWDA
AGED ABOUT 62 YEARS
RESIDING AT THOKASANDRA VILLAGE
KANAKAPURA TALUK
BANGALORE RURAL DISTRICT-562 121
14. SMT. K. K. SUNITA
D/O KEMPAIAH
AGED ABOUT 55 YEARS
RESIDING AT NO.733
PATEL MUNIVENKATAPPA LAYOUT
NAGAVARA, BENGALURU-560 045
15. THE BANGALORE DEVELOPMENT AUTHORITY
A STATUTORY BODY HAVING
ITS OFFICE AT T. CHOWDAIAH ROAD
KUMARA PARK WEST
BENGALURU-560 020
BY ITS COMMISSIONER

...RESPONDENTS

(BY SMT. S. SUSHEELA, SENIOR COUNSEL ALONG WITH
SRI. CHANDAN GOWDA PATIL, ADVOCATE FOR R1 AND R2;
SRI. N. GURUVA REDDY, ADVOCATE FOR R3 TO R8;
SRI. MANMOHAN P N., ADVOCATE FOR R9 TO R11;
SRI. G.A.GOPI, ADVOCATE FOR R15;
R14 IS SERVED AND UNREPRESENTED;

VIDE COURT ORDER DATED 20.06.2024
SERVICE OF NOTICE TO R12 & R13 ARE DISPENSED WITH)

THIS RFA IS FILED UNDER SEC.96 R/W ORDER 41 RULE 1 OF CPC., AGAINST THE ORDER DATED 22.08.2023 PASSED ON IA NO.3 OF 2021 IN OS NO.4471/2021 ON THE FILE OF LXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COURT HALL NO.66, BENGALURU., ALLOWING THE IA. NO.III FILED UNDER ORDER VII RULE 11(a) AND (d) OF CPC., FOR REJECTION OF PLAINT.

IN RFA NO. 297/2024

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BANGALORE-560 024

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D/O LATE SRI C. MARIYAPPA
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W/O SRI JOSEPH
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7TH CROSS KAMMANAHALLI
BENGALURU-560 084

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YESHWANTHPURA
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A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
HAVING ITS CORPORATE OFFICE AT NO.151
INDUSTRIAL SUBURB
YESHWANTHPUR
BENGALURU-560 022
REP. BY ITS DIRECTOR
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BY ITS COMMISSIONER

...RESPONDENTS

(BY SRI. MANMOHAN P. N., ADVOCATE FOR R2 AND R9 TO R11;
SRI. N. GURUVA REDDY, ADVOCATE FOR R4 TO R8)

THIS RFA IS FILED UNDER SEC.96 R/W ORDER 41 RULE 1
OF CPC., AGAINST THE JUDGEMENT DATED 22.08.2023 AND
DECREE DATED 16.09.2024 PASSED ON IA NO.3/2021 IN OS
NO.4471/2021 ON THE FILE OF LXV ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU, COURT HALL NO.66, ALLOWING
THE IA NO.3 FILED U/O VII RULE 11(a) AND (d) OF CPC FOR
REJECTION OF PLAINT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

RFA No.1820/2023 is filed by plaintiffs No.1 and 2 and RFA No.297/2024 is filed by defendants No.1 and 2 challenging the Order dated 22.08.2023 passed by the LXV Additional City Civil and Sessions Judge, Bangalore City (CCH-66) ('trial Court' for short) in O.S.No.4471/2021, whereby the application filed by defendants No.9 to 11 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 ('CPC') was allowed and the plaint was rejected on the ground that it disclosed no cause of action and was barred by limitation. Consequently, the claim of defendants No.1 and 2 for share in the schedule properties was also dismissed.

2. We have heard Smt. S. Susheela, learned senior counsel as instructed by Shri. Chandan Gowda Patil, learned counsel appearing for respondents No.1 and 2 in RFA No.1820/2023 and for the appellants in RFA No.297/2024; Shri. Romario, learned counsel appearing for the appellants in RFA No.1820/2023; Shri. N. Guruva Reddy, learned counsel appearing for respondents No.3 to 8 in RFA No.1820/2023 and for respondents No.4 to 8 in RFA No.297/2024; Shri. Manmohan P.N, learned counsel appearing for respondents No.9 to 11 in RFA No.1820/2023 and for respondents No.2 and 9 to 11 in RFA No.297/2024 and Shri. G.A. Gopi, learned counsel appearing for respondent No.15 in RFA No.1820/2023.

3. For the sake of convenience, the parties are referred to as per their rankings before the trial Court.

4. The suit was filed seeking the following reliefs:-

"25. The plaintiffs Nos.1 and 2 therefore prays that this Hon'ble Court may be pleased to pass a judgment and decree:

25.1 for the partition and consequent division by metes and bounds of the Schedule A & B properties amongst the parties hereto in accordance with law,

25.2 to identify, quantify and allot to the plaintiffs Nos. 1 and 2 their undivided 1/3rd [33.33 per cent] and 1/6th [11.11 per cent] share of the Schedule A & B properties and put them in actual possession of their so allotted shares,

25.3 to order the concerned defendants to pay the plaintiffs Nos. 1 & 2 their legitimate share of the past mesne profits, as well as current and future mesne profits, the actual amount being as would be quantified by this Hon'ble Court in accordance with law, and

25.4 to grant her costs of these proceedings and such other and further reliefs as may be deemed fit in the interests of justice, equity and good conscience."

5. The plaint averments essentially were as follows:-

Late Shri. C. Mariyappa, a Roman Catholic, who was married to Smt. Reethamma - plaintiff No.1, had six children, namely, plaintiff No.2 (daughter), defendants No.1 to 3 and 8 (sons), and Late Shri. Ravindra Kumar, whose legal heirs were arrayed as defendants No.4 to 7, Shri. C. Mariyappa, was the sole and absolute owner of Schedules 'A' and 'B' immovable properties. Shri. C. Mariyappa acquired occupancy rights in respect of items No.1 and 2 of Schedule 'A' property, pursuant to the Order dated 16.12.1986 passed by the Land Tribunal, Bengaluru North Taluk. He was also the absolute owner of item No.3 of Schedule 'A' property

and item No.6 of Schedule 'A' property, was purchased under a registered Sale Deed dated 15.12.1969.

On 14.02.1997, he executed a registered Will bequeathing a portion of item No.6 of Schedule 'A' property in favour of plaintiff No.2 and defendant No.2. Thereafter, the sons, by exercising undue influence, procured Gift Deeds in respect of the remaining portions of item No.6 of Schedule 'A' property, including the portion covered under the Will, thereby depriving the plaintiffs of their lawful share. Also, the sons created an unregistered Partition Deed dated 21.07.1980, purporting to divide items No.1 to 5 of Schedule 'A' property amongst themselves, without the knowledge or consent of Shri. C. Mariyappa or the plaintiffs.

Pursuant thereto, the sons have executed registered Sale Deeds dated 20.06.2003 in respect of items No.1 and 2 of Schedule 'A' property in favour of defendants No.9 and 10, without the knowledge or consent of Shri. C. Mariyappa. Defendant No.3 has executed a General Power of Attorney in favour of defendants No.12 and 13, who in turn conveyed item No.3 of Schedule 'A' property to defendant No.14 by a

registered Sale Deed dated 08.01.2003. Defendant No.11, M/s. Karle Homes Private Limited, represented by defendant No.9, subsequently developed a substantial portion of item No.1 of Schedule 'A' property by constructing the apartment complex.

The sale consideration arising from the alienation of items No.1 and 2 of Schedule 'A' property was utilised by the sons for the joint purchase of Schedule 'B' property. Shri. C. Mariyappa died intestate on 24.06.2011, leaving behind plaintiffs No.1 and 2 and defendants No.1 to 8 as his legal heirs. Despite repeated demands for partition, defendants No.3 to 8 postponed the same on one pretext or another. On 09.03.2018, defendants No.3 to 8 induced the plaintiffs to execute what they believed to be documents relating to partition, but which, in fact, turned out to be a registered Release Deed. It was only thereafter that the plaintiffs became aware of the alleged unregistered Partition Deed dated 21.07.1980 and the alienations made in respect of Schedule 'A' properties.

The unregistered Partition Deed did not create or transfer any right, title, or interest in favour of defendants No.3 to 8 Schedule 'A' property and that Shri. C. Mariyappa continued to remain the sole and absolute owner of the Schedule 'A' properties throughout his lifetime. Upon his death intestate, his estate devolved under Section 33(a) of the Indian Succession Act, 1925, whereby plaintiff No.1 inherited an undivided one-third share and each of the six children inherited an undivided share in the remaining estate. The suit was instituted seeking partition and separate possession of Schedules 'A' and 'B' properties by metes and bounds, mesne profits and other consequential reliefs.

6. Defendants No. 9 to 11 filed IA No.III filed under Order VII Rule 11(a) and (d) read with Section 151 of the Code of Civil Procedure, 1908 praying to reject the plaint as being barred by limitation, by Special Economic Zones Act, 2005 and Specific Relief Act, 1963 and for the reason that the plaintiffs have no cause of action. The averments were to the effect that Schedule 'A' properties were the absolute

properties of Late Shri. C. Mariyappa. Items No.1 and 2 of Schedule 'A' properties were sold by Late Shri. C. Mariyappa during his lifetime in favour of defendants No.9 and 10 by registered Sale Deed dated 20.06.2003. There was a prior partition in the family on 21.07.1980 and item No.3 of Schedule 'A' properties was sold by defendant No.3, who was the allottee of the same, in favour of defendant No.14 and subsequently by defendant No.14 to M/s. Karle Infra Private Limited.

7. It is submitted that all the properties had already been partitioned on 21.07.1980 and since the properties which fell to Late Shri. C. Mariyappa's share were alienated by him in the year 2003 itself. There was no property available as on the date of Late Shri. C. Mariyappa's death to be partitioned between his children. Objections were filed by the plaintiffs contending that the question whether the relief sought in the suit can be granted or not is to be decided only after a trial and the application is not maintainable.

8. The trial Court considered the question whether defendants No.9 to 11 had made out sufficient ground to allow the application filed under Order VII Rule 11(a) and (d) and held in the affirmative. It was found that the plaint averments clearly disclosed a partition on 21.07.1980 and the existence of Sale Deeds dated 08.01.2003 and 20.06.2003 as well as Release Deed by the plaintiffs dated 09.03.2018. The contention raised in the Order VII Rule 11 application that the properties were situated in Special Economic Zones and as such the plaint was incompetent was rejected. However, it was found that the plaint itself admitted that there was a partition on 21.07.1980. It was also found that the plaintiffs were aware of Sale Deeds executed in the year 2003 in respect of items No.1 and 2 properties in schedule 'A' by Late Shri. C. Mariyappa during his lifetime. Shri. C. Mariyappa died on 24.06.2011. Item No.3 property in Schedule 'A' was sold by defendant No.3 in favour of defendant No.14 on 01.06.2003. Late Shri. C. Mariyappa did not question the said sale during his lifetime. Subsequent alienations had also happened.

9. In the circumstances, it was found that the suit for partition filed in the year 2021, that is, 41 years from the date of the prior partition, eighteen years from the Sale Deeds in respect of Schedule 'A' properties and more than three years and five months from the date of execution of registered Release Deed by the plaintiffs dated 09.03.2018 is hopelessly barred by limitation.

10. The learned counsel appearing for plaintiffs No.1 and 2/appellants in RFA No.1820/2023 contends that the trial Court failed to consider the plaint and accompanying documents in their entirety and instead proceeded on an erroneous assumptions of fact and law. The trial Court failed to apply the settled principle that, while considering an application under Order VII Rule 11 CPC, the Court must confine itself exclusively to the averments contained in the plaint and the documents produced therewith, without reference to the defence, written statement, or materials relied upon by the defendants. The plaint, on a meaningful and holistic reading, disclosed a clear cause of action and several triable issues and therefore could not have been

rejected at the threshold. The plaint specifically pleaded fraud, fabrication, illegality and lack of enforceability in respect of the alleged Partition Deed dated 21.07.1980. The trial Court erred in placing reliance upon the disputed, unregistered, unstamped, and allegedly fabricated document despite the plaintiffs having specifically challenged its validity. The allegations of fraud, the statutory restrictions on alienation of granted lands, the minority of some alleged beneficiaries, and the subsequent registered transactions executed by Late Shri. C. Mariyappa and his legal heirs all raise substantial questions requiring adjudication after trial.

11. The trial Court further failed to appreciate that Late Shri. C. Mariyappa died intestate and that the plaintiffs, as his widow and daughter, possess subsisting rights as legal heirs. The plaint disclosed a continuing cause of action, including the plaintiffs' subsequent discovery of the alleged Partition Deed and unauthorised alienations, as well as the existence of residual properties remaining in the name of Late Shri. C. Mariyappa. The trial Court committed a procedural error in deciding the application for rejection of

plaint without first considering the plaintiffs' application for amendment, which sought to clarify the pleadings regarding the disputed Partition Deed, residual properties and impugned alienations. The impugned order, by rejecting the plaint at the threshold and without permitting a full-fledged trial on the numerous disputed questions of fact and law, is liable to be set aside.

12. The learned counsel appearing for the appellants in RFA No.1820/2023 has placed reliance on the following decisions:-

- ***G. Nagaraj and Another v. B.P. Mruthunjayanna and Others*, reported in **2023 LiveLaw (SC) 311**;**
- ***H.S. Deekshit and Another v. M/s. Met Ropoli Overseas Limited and Others*, reported in **2022 LiveLaw (SC) 703**;**
- ***Dahiben v. Arvindhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others*, reported in **(2020) 7 SCC 366**;**
- ***Shaukathussain Mohammed Patel v. Khatunben Mohmmedbhai Polara*, reported in **(2019) 10 SCC 226**;**
- ***Sajjan Singh v. Jasvir Kaur and Others*, reported in **2023 LiveLaw (SC) 517**;**

- ***Gurdev Singh v. Harvinder Singh*, reported in 2022 LiveLaw (SC) 963;**
- ***Chhotanben and Another v. Kiritbhai Jalkrushnabhai Thakkar and Others*, reported in (2018) 6 SCC 422;**
- ***Salim D. Agboatwala and Others v. Shamalji Oddhavji Thakkar and Others*, reported in 2021 SCC OnLine SC 735;**
- ***Khirasa and Others v. Shanta and Others*, reported in 2022 SCC OnLine Kar 1476;**
- ***Madhav Prasad Aggarwal and Another v. Axis Bank Limited and Another*, reported in (2019) 7 SCC 158;**
- ***Sri. Aralappa v. Sri Jagannath and Others*, reported in ILR 2007 KAR 339, and**
- ***Srihari Hanumandas Totala v. Hemant Vithal Kamath and Others*, reported in (2021) 9 SCC 99.**

13. The learned senior counsel appearing for defendants No.1 and 2/appellants in RFA No.297/2024 contends that the trial Court failed to confine its consideration to the plaint averments and documents produced therewith and impermissibly relied upon the defence of the contesting defendants, including their

pleadings and contentions, while deciding the application for rejection of plaint. The trial Court erroneously relied upon the disputed, unregistered, unstamped, fabricated and fraudulent document dated 21.07.1980, despite the specific plea of fraud raised in the plaint. Questions relating to fraud, validity, effect, and enforceability of the said document constitute disputed questions of fact requiring adjudication at trial and could not have been decided at the threshold stage.

14. The trial Court failed to appreciate that the properties acquired by Late Shri. C. Mariyappa under the land reforms legislation was subject to statutory restrictions on alienation and that the alleged Partition Dated 21.07.1980, apart from being disputed, could not divest his ownership rights. The trial Court also ignored subsequent registered transactions, including the Gift Deed and Release Deed, which *prima facie* demonstrate the continued ownership and inheritance rights of the parties. The finding that the suit was barred by limitation is erroneous, as limitation in the facts of the present case is a mixed question

of law and fact. The trial Court failed to consider the allegations of fraud, the applicability of Section 17 of the Limitation Act, the exclusion of limitation during the COVID-19 period, and the settled principle that a suit for partition by a co-sharer is ordinarily not barred by limitation.

15. It is further contended that the trial Court further erred in holding the suit to be not maintainable on the ground that certain Sale Deeds were not specifically challenged. Such questions pertain to the merits of the suit and could not have been adjudicated while considering an application under Order VII Rule 11 CPC. The trial Court failed to consider the plaint averments and documents, particularly those relating to the residual Schedule 'C' properties, which *prima facie* continued to stand in the name of Late Shri. C. Mariyappa and were available for partition. The trial Court also misread and misconstrued the pleadings relating to the alienations made by defendant No.3 and failed to appreciate that questions regarding title, authority, fraud and validity of transfers are triable issues requiring a full-fledged trial. The trial Court failed to appreciate that the

plaint disclosed substantial and triable issues entitling the plaintiffs to seek partition and separate possession of their lawful shares.

16. The learned counsel appearing for defendants No.9 to 11/respondents No.3 to 8 in RFA No.1820/2023 and respondents No.4 to 8 in RFA No.297/2024 contends that the suit is *ex facie* barred by limitation, having been instituted after an inordinate and unexplained delay. The partition and subsequent alienations were duly reflected in the revenue records and RTCs for several decades, thereby giving actual or, constructive notice to the plaintiffs. The plaintiffs have acquiesced in the transactions and developments concerning the suit properties, including the construction and sale of a large residential apartment complex by defendant No.11 after obtaining statutory approvals and have approached the Court after substantial third-party rights have accrued. The allegations of fraud, lack of knowledge, and absence of consent in relation to the Sale Deeds of 2003 are false and contrary to the record. The

Sale Deeds were executed by Late Shri. C. Mariyappa through his GPA holder.

17. Late Shri. C Mariyappa never challenged the transactions during his lifetime. The plaintiffs have suppressed material facts and have failed to challenge the registered Sale Deeds, the Partition Deed dated 21.07.1980, the Release Deed dated 09.03.2018, and other consequential transactions. Since, Late Shri. C. Mariyappa had alienated the properties during his lifetime, the properties were not available for succession upon his death and therefore the plaintiffs acquired no inheritable right therein. The schedule properties having already been alienated and developed, the relief of partition is wholly misconceived. Defendants No.9 and 10 are *bona fide* purchasers for valuable consideration, having acquired the properties after due diligence and long prior to the institution of the suit.

18. The learned counsel appearing for defendants No.9 to 11 has placed reliance on the following decisions:-

- ***Dahiben v. Arvindhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others***, reported in (2020) 7 SCC 366;
- ***T. Arivandandam v. T.V. Satyapal and Another***, reported in (1977) 4 SCC 467;
- ***Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Legal Representatives***, reported in (2020) 16 SCC 601;
- ***Uma Devi and Others v. Anand Kumar and Others***, reported in (2025) 5 SCC 198;
- ***M/s. Sammy's Dream Land Co. Pvt. Ltd. v. Shri Muniswamappa***, by Order dated 02.02.2026 passed in **RFA No.2798 of 2025 (DEC)**;
- ***Dilboo (Smt) (Dead) by LRS and Others v. Dhanraji (Smt) (Dead) and Others***, reported in (2000) 7 SCC 702;
- ***Khatri Hotels Private Limited and Another v. Union of India and Another***, reported in (2011) 9 SCC 126;
- ***Venkataraja and Others v. Vidyane Dourer Adjaperumal (Dead) through Legal Representatives and Others***, reported in (2014) 14 SCC 502;
- ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v. Chandran and Others***, reported in (2017) 3 SCC 702;

- ***Lalitha Theresa Sequeria (Since Died) by Legal Representatives v. Dolfy A Pias Alias Adlophys Joseph Pais and Another***, reported in **(2014) 10 SCC 731**, and
- ***Narasimha Murthy and Others v. Mallesh and Others***, reported in **2026 SCC OnLine Kar 2580**.

19. Having considered the contentions advanced, in the light of the plaint averments, we are of the opinion that the rejection of the plaint is on the basis of the essential averments made in the plaint itself. As stated earlier, the fact that there was a partition in the year 1980 is disclosed in the plaint, though, it is contended that the said partition was unregistered and was fraudulent. Further, the fact that Late Shri. C. Mariyappa, who was admittedly the owner of the property had sold two items of property in the year 2003 by registered Sale Deeds is also averred in the plaint. The Sale of item No.3 schedule 'A' property by defendant No.3 in favour of defendant No.14 is also averred in the plaint. Further, the execution of Release Deed in the year 2018 by the plaintiffs themselves is also not disputed.

20. The Apex Court in **Dahiben's** case (supra), has held as follows:-

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

x x x x x

23.8. *Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

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

x x x x x

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

Further, in the case of **T. Arivandandam's** case (supra), the Apex Court held as follows:-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

Further, in the case of **Raghwendra Sharan's** case (supra), the Apex Court held as follows:-

"7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant.

Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in T. Arivandandam and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC."

21. In the light of the judgments of the Apex Court, we are of the opinion that the order of the trial Court rejecting the plaint on the ground that it is barred by limitation, cannot be said to be erroneous. Even in case partition of the year 1980 is not known to the plaintiffs, the registered Sale Deeds of the year 2003 cannot have any such protection. The Apex Court in ***Suraj Lamp and Industries Private Limited through Director v. State of Haryana and another*** reported in **(2009) 7 SCC 363**, has clearly held that execution of a registered document is constructive notice to all the World that such a conveyance has been registered and that lack of actual knowledge cannot be pleaded by any party, much less by a member of the family. Further, the plaintiffs have also executed a

registered Release Deed in respect of the properties in question on 09.03.2018.

22. In the above factual circumstances, we are of the opinion that no good grounds have been raised to justify any interference in the Order of the trial Court. The appeals therefore fail and the same are accordingly ***dismissed.***

All pending interlocutory applications shall stand *disposed of* in both the appeals.

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

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

cp*