

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

Reserved on 08.08.2016

FRIDAY, THE 12th DAY OF AUGUST 2016

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

C.S. No. 334 of 2015

AND

O.A. No. 445 and 446 of 2015

AND

A.NO.4391 of 2015

C.S. No.334 of 2015.

1. Mrs. Rehana,
No.29-B, Madhuras Flats,
Jain Colony, Nanganallur,
Chennai- 600 061.
2. Mr.Noor Jahan,
No. 38, Gujji Main Road,
Anna Nagar East,
Chennai - 600 102.
3. Mrs. Shireen Fathima,
No. 13-B, Gujji 2nd Street,
Anna Nagar East,
Chennai - 600 075.
4. Mrs. Nasereen Fathima,
No. 19, Deva Naicker Street,
Paumai Nagar, Pammal,
Chennai - 600 102.
5. Mrs, Noor Jahan Begum,
No. 64/46, Fakir Sahib Street,
Triplicane, Chennai - 600 005.
6. Ms.Mujeeba Sultana
7. Mohamed Mohsin Sheriff,
6 & 7 residing at :
No. 29, F-1, Fathima Arcade,
Gujji 1st Street, Anna Nagar,
Chennai 600 102.

.. Plaintiff's

1. Mrs. Naunihal Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
2. Mr. Mukhram Sheriff,
No.18/14, Khambar Street,
Metha Nagar,
Chennai - 600 029.
3. Mr. Moazam Sheriff,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
4. Munavar Sheriff,
No.66, Spur Tank Road,
Baba Foundations,
(Next to Larima Delights)
Chetpet,
Chennai - 600 031.
5. Mustafa Sheriff,
New No. 51, Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
6. Murthuza Sheriff,
No.29, Sai Sang Apartments,
S.S. Foundations,
Police Commissioners Office Road,
Egmore, Chennai - 600 008.
7. Mrs. Munira Begum,
New No.51 Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
8. Mrs. Shamshad (Babu),
No.975, 8th Main,
2nd Block, 1st Stage,
HBR Layout, Bangalore- 560 043.
9. Mrs. Majida Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.

10. Mrs. Hamed Banu (Mukthiyar)
No.48, SBI Colony, 12th Street,
Nanganallur, Chennai - 600 061.

11. Mrs. Rafat Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

12. Moinudeen Sheriff,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

13. Mazharuddin Sheriff,
Flat No.4A, Jamal Manzil, No.45,
Sait Colony 1st Street,
Egmore, Chennai - 600 008.

14. Mrs. Muthara Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

15. Mrs. Muhashira Begum,
F-4, Nityatha Apartments,
No.1147, Trichy Road,
Coimbatore - 641 045.

16. Mrs. Mashuda Begum,
18-21-28, 5B, Ganzi Bazaar,
Sangadi Gunta, Guntur-3,
Andhra Pradesh.

17. Mrs. Masura Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

18. M/s. Ramky Wavoo Developers
Private Limited,
having its registered office at
Level 5, Diamond Dune,
No. 323, Poonamallee High Road,
Chennai - 600 029.

.... Defendants

Civil suit praying that this Hon'ble Court be pleased

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to

(a) Directing division of the Plaint schedule

properties into three shares by metes and bounds with reference to good and bad soil and allotting of 1/3rd share to the plaintiffs 1 to 7 herein jointly and put the same in plaintiffs possession.

(b) Granting permanent injunction, restraining the defendants, or any one claiming through them or authorized by them from in any manner intermeddling or encumbering or alienating or creating any mortgage, lease, charge or joint development in respect of the Plaint Schedule properties till the final partition takes,

(c) For appointment of an advocate commissioner to effect division of the Plaint Suit properties in the aforesaid manner.

(d) For costs of the suit.

O.A.No.445 of 2015:

1. Mrs. Rehana,
No.29-B, Madhura Flats,
Jain Colony, Nanganallur,
Chennai- 600 061.
2. Mr.Noor Jahan,
No. 38, Gujji Main Road,
Anna Nagar East,
Chennai - 600 102.
3. Mrs. Shireen Fathima,
No. 13-B, Gujji 2nd Street,
Anna Nagar East,
Chennai - 600 102.
4. Mrs. Nasereen Fathima,
No. 19, Deva Naicker Street,
Paumai Nagar, Pammal,
Chennai - 600 075.

5. Mrs, Noor Jahan Begum,
No. 64/46, Fakir Sahib Street,
Triplicane, Chennai - 600 005.
6. Ms. Mujeeba Sultana
7. Mohamed Mohsin Sheriff,
6 & 7 resideing at :
No. 29, F-1, Fathima Arcade,
Gujji 1st Street, Anna Nagar,
Chennai 600 102. ... Applicants

- VS -

1. Mrs. Naunihal Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
2. Mr. Mukhram Sheriff,
No.18/14, Khambar Street,
Metha Nagar,
Chennai - 600 029.
3. Mr. Moazam Sheriff,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
4. Munavar Sheriff,
No.66, Spur Tank Road,
Baba Foundations, सतयमेव जयते
(Next to Larima Delights)
Chetpet,
Chennai - 600 031.
5. Mustafa Sheriff,
New No. 51, Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
6. Murthuza Sheriff,
No.29, Sai Sang Apartments,
S.S. Foundations,
Police Commission's Office Road,
Egmore, Chennai - 600 008.

7. Mrs. Munira Begum,
New No. Old No.24,

Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.

8. Mrs. Shamshad (Babu),
No.975, 8th Main,
2nd Block, 1st Stage,
HBR Layout, Bangalore- 560 043.

9. Mrs. Majida Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.

10. Mrs. Hamed Banu (Mukthiyar)
No.48, SBI Colony, 12th Street,
Nanganallur, Chennai - 600 061.

11. Mrs. Rafat Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

12. Moinudeen Sheriff,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

13. Mazharuddin Sheriff,
Flat No.4A, Jamal Manzil, No.45
Sait Colony 1st Street,
Egmore, Chennai - 600 008.

14. Mrs. Muthara Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

15. Mrs. Muhashira Begum,
F-4, Nityatha Apartments,
No.1147, Trichy Road,
Coimbatore - 641 045.

16. Mrs. Mashuda Begum,
18-21-28, 5B, Ganzi Bazaar,
Sangadi Gunta, Guntur-3,
Andhra Pradesh.

17. Mrs. Masura Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

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18. M/s. Ramky Wavoo Developers

Private Limited,
 having its registered office at
 Level 5, Diamond Dune,
 No. 323, Poonamallee High Road,
 Chennai - 600 029.

.... Respondents

Original Application praying this Hon'ble Court be pleased to pass an order of interim injunction, restraining the respondents 1 to 18/defendants 1 to 18 their men, agents and servants or any one claiming through them from alienating or encumbering or dealing with the property either by way of lease, mortgage or joint development or otherwise either in one lot or in pieces and either divided or undivided pending disposal of the suit, in respect of the property more fully described in the Schedule thereunder.

O.A.No.446 of 2015:

1. Mrs. Rehana,
 No.29-B, Madhura Flats,
 Jain Colony, Nanganallur,
 Chennai- 600 061.
2. Mr.Noor Jahan,
 No. 38, Gujji Main Road,
 Anna Nagar East,
 Chennai - 600 102.
3. Mrs. Shireen Fathima,
 No. 13-B, Gujji 2nd Street,
 Anna Nagar East,
 Chennai - 600 102.
4. Mrs. Nasereen Fathima,
 No. 19, Deva Naicker Street,
 Paumai Nagar, Pammal,
 Chennai - 600 102.
5. Mrs.Noor Jahan Begum,
 No. 64/46, Fakir Sahib Street,
 Triplicane, Chennai - 600 005.
6. Ms.Mujeeba Sultana

7. Mohamed Mohsin Sheriff,
6 & 7 resideing at :
No. 29, F-1, Fathima Arcade,
Gujji 1st Street, Anna Nagar,
Chennai 600 102.

.. Applicants

- VS -

1. Mrs. Naunihal Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
2. Mr. Mukhram Sheriff,
No.18/14, Khambar Street,
Metha Nagar,
Chennai - 600 029.
3. Mr. Moazam Sheriff,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
4. Munavar Sheriff,
No.66, Spur Tank Road,
Baba Foundations,
(Next to Larima Delights)
Chetpet,
Chennai - 600 031.
5. Mustafa Sheriff,
New No. 51, Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
6. Murthuza Sheriff,
No.29, Sai Sang Apartments,
S.S. Foundations,
Police Commissioners Office Road,
Egmore, Chennai - 600 008.
7. Mrs. Munira Begum,
New No.51 Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.

8. Mrs. Shamshad (Babu),
No.975, 8th Main,
2nd Block, 1st Stage,
HBR Layout, Bangalore- 560 043.

9. Mrs. Majida Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.

10. Mrs. Hamed Banu (Mukthiyar)
No.48, SBI Colony, 12th Street,
Nanganallur, Chennai - 600 061.

11. Mrs. Rafat Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

12. Moinudeen Sheriff,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

13. Mazharuddin Sheriff,
Flat No.4A, Jaml Manzil, No.45
Sait Colony 1st Street,
Egmore, Chennai - 600 008.

14. Mrs. Muthara Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

15. Mrs. Muhashira Begum,
F-4, Nityatha Apartments,
No.1147, Trichy Road,
Coimbatore - 641 045.

16. Mrs. Mashuda Begum,
18-21-28, 5B, Ganzi Bazaar,
Sangadi Gunta, Guntur-3,
Andhra Pradesh.

17. Mrs. Masura Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

18. M/s. Ramky Wavoo Developers
Private Limited,
having its registered office at
Level 5, Diamond Dune,

No. 323, Poonamallee High Road,
Chennai - 600 029.

.... Respondents

Original Application praying this Hon'ble Court may be pleased to pass an order of interim injunction, restraining the respondents 1 to 18/defendants 1 to 18 from in any manner altering the physical features of the property either by themselves or anyone claiming through them pending disposal of the suit, in respect of the property more fully described in the schedule thereunder.

A.No.4391 of 2015:

1. Mrs. Naunihal Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
2. Mr. Mukhram Sheriff,
No.18/14, Khambar Street,
Metha Nagar,
Chennai - 600 027.
3. Mr. Moazam Sheriff,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
4. Munavar Sheriff,
No.66, Spur Tank Road,
Baba Foundations,
(Next to Larima Delights)
Chetpet,
Chennai - 600 031.
5. Mustafa Sheriff,
New No. 51, Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.

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6. Murthuza Sheriff,
No.29, Sai Sang Apartments,

S.S. Foundations,
Police Commissioners Office Road,
Egmore, Chennai - 600 008.

7. Mrs. Munira Begum,
New No.51 Old No.24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
8. Mrs. Shamshad (Babu),
No.975, 8th Main,
2nd Block, 1st Stage,
HBR Layout, Bangalore- 560 043.
9. Mrs. Majida Begum,
New. No.51, Old No. 24,
Nafeesa Towers Ceebros,
Halls Road, Egmore,
Chennai - 600 008.
10. Mrs. Hamed Banu (Mukthiyar)
No.48, SBI Colony, 12th Street,
Nanganallur, Chennai - 600 061.
11. Mrs. Rafat Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.
12. Moinudeen Sheriff,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.
13. Mazharuddin Sheriff,
Flat No.4A, Jamal Manzil, No.45
Sait Colony 1st Street,
Egmore, Chennai - 600 008.
14. Mrs. Muthara Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.
15. Mrs. Muhashira Begum,
Flat No.4, Nityatha Apartments,
No.1147, Trichy Road,
Coimbatore - 641 045.

16. Mrs. Mashuda Begum,
18-21-28, 5B, Ganzi Bazaar,

Sangadi Gunta, Guntur-3,
Andhra Pradesh.

17. Mrs. Masura Begum,
No.13/7, Satyamaurthy Road,
Chetpet, Chennai - 600 031.

.... Applicants /Defendants 1 to 17

- VS -

1. Mrs. Rehana,
No.29-B, Madhura Flats,
Jain Colony, Nanganallur,
Chennai- 600 061.
2. Mr.Noor Jahan,
No. 38, Gujji Main Road,
Anna Nagar East,
Chennai - 600 102.
3. Mrs. Shireen Fathima,
No. 13-B, Gujji 2nd Street,
Anna Nagar East,
Chennai - 600 102.
4. Mrs. Nasereen Fathima,
No. 19, Deva Naicker Street,
Pasumai Nagar, Pammal,
Chennai - 600 075.
5. Mrs, Noor Jahan Begum,
No. 64/46, Fakir Sahib Street,
Triplicane, Chennai - 600 005.
6. Ms.Mujeeda Sultana

7. Mohamed Mohsin Sheriff,
6 & 7 resideing at :
No. 29, F-1, Fathima Arcade,
Gujji 1st Street, Anna Nagar,
Chennai 600 102.

... Respondents / Plaintiffs 1 to 7

8. M/s. Ramky Wavoo Developers
Private Limited,
having its registered office at
Level 5, Diamond Dune,
No. 323, Poonamallee High Road,
Chennai - 600 029.

... Respondent / Defendant

Application praying this Hon'ble Court may be pleased to reject the plaint in C.S. No.334 of 2015 as barred by limitation.

This suit along with these applications coming on this day before this court for hearing the court made the following order:

A.No.4391 of 2015 has been filed by the applicants/ defendants 1 to 17 seeking to reject the plaint in C.S.No.334 of 2015.

2. Heard Mr.R.Parthasarathy, learned counsel appearing for the applicants/defendants 1 to 17 and Mr.R.Thiagarajan, learned counsel appearing for respondents 1 to 7/plaintiffs.

3. For the sake of brevity, the plaintiffs and the defendants in C.S.No.334 of 2015 are arrayed as such.

4. Analysis of background facts are in need to understand the case.

4.1. The suit properties originally belonged to late Haji Mohamed Abdul Azeez, who died in the year 1945. He had two wives viz., late Fathima Bi (first wife) and late Mahaboob Bi (second wife). Fathima Bi had a son and daughter by name late Abdul Khader and Ansar Bi, predeceased Fathima Bi. The respondents 1 to 7/plaintiffs are the legal heirs of late Abdul Khader.

4.2. Late Mahaboob Bi had two sons and three daughters. One daughter late Mariam Bi predeceased her.

The respondents 1 to 17, who are applicants herein, are the legal heirs of the two sons viz., Late H.A.G.Dastagir

Sheriff and late Mohamed Sheriff.

4.3. A deed of partition was entered into between Abdul Khader, who was the predecessor in title of the plaintiffs on the one hand and Mahaboob Bi and her children viz., two sons and two daughters on the other hand. This document has been registered as Document No.974/1945. The deed makes a mention that a dispute arose on the plaintiffs on an earlier oral Wasiath and thus, it was felt to have the said partition deed through the mediators. Both movable and immovable properties have been allotted to each group claiming through both the wives of the deceased Haji Mohamed Abdul Azeez.

4.4. The suit has been filed inter alia alleging that the partition deed dated 31.05.1945 is invalid in the eye of law. The following are the averments contained in para 20 of the plaint:

"20. The plaintiffs state that the partition deed effected on 31.05.1945 is not legal since it is not in consonance with the Sariath Law and hence, this partition deed is invalid in the eyes of law, the reasons being (1) the oral Wasiath is not valid since it is not executed in the present of two male witnesses (2) The entire property was invalidly and illegally and fraudulently distributed and

taken away between the second wife's children (3) There was major undervaluation in the assessment of the properties and this was purely done in order to benefit the children of the second wife of the deceased (4) The aggregate of the shares is 1 and 1/8th instead of 1, meaning fraudulent distribution."

Thus, the said partition referred to above is questioned on very many grounds. It is apposite to refer para 16 of the plaint.

"The plaintiffs are questioning the partition deed dated 31.05.1945 registered as document No.974 of 1945 in the office of the Sub Registrar, Periamet, Chennai. Thus, the division of the properties effected under the partition deed is not valid in the eyes of law."

4.5. As per the plaint, the second wife of late Haji Mohamed Abdul Azeez executed a registered settlement deed on 19.05.1949 in favour of her two sons, which was followed by a partition deed dated 16.02.1970 registered as document No.261/70. It is also alleged that the earlier oral Wasiath was done under the influence of late Mahaboob Bi being the second wife of the deceased.

4.6. The father of the first plaintiff viz., Abdul Khader, who was the signatory to the partition deed dated 31.05.1945 died in the year 1971. More than 60 years after the said deed the defendants entered into a joint venture agreement on 15.11.2012 with the developer over the property which is also the subject matter of the deed of partition dated 31.05.1945.

4.7. Now, at this juncture, the present suit has been filed claiming the cause of action from the year 1945 onwards till the exchange of notices in the year 2014. According to the plaintiffs, in all these years, they were hoping for an amicable settlement. Thus, the suit has been laid for the following relief:

"(a) Directing division of the plaint schedule properties into three shares by metes and bounds with reference to good and bad soil and allotting of 1/3rd share to the plaintiffs 1 to 7 herein jointly and put the same in plaintiffs possession,

(b) Granting permanent injunction, restraining the defendants, or any one claiming through them or authorized by them in any manner intermeddling or encumbering or alienating or creating any mortgage, lease, charge or joint

development in respect of the plaint schedule properties till the final partition takes,

(c) For appointment of an advocate commissioner to effect division of the plaint suit properties in the aforesaid manner,

(d) for such further or other reliefs and

(e) for costs of the suit."

5. Submissions of the Plaintiffs:-

The learned counsel appearing for the plaintiffs submits that cause of action is available as per the averments made in the plaint. The plaint has to be read on a whole and the issues are to be decided only at the time of disposal of the suit. Even a frivolous suit can be maintained. There is no necessity to challenge the registered partition deed dated 31.05.1945. As disputed question of facts are involved, the application filed has to be rejected. In support of his contention, reliance has been made on the following decisions.

**1. KOLLI VENKATA MOHAN RAO AND ANOTHER
Vs. J.M.PATRICIA AND OTHERS ((2015) 2
CTC 67) ;**

**2. SURJIT KAUR GILL AND ANOTHER VS.
ADARSH KAUR GILL AND ANOTHER ((2014) 16
Supreme Court Cases 125); and**

3. JOHN KENNEDY AND ANOTHER VS. RANJANA

AND OTHERS ((2014) 15 Supreme Court Cases 785).

6. Submissions of the Defendants:-

The learned counsel appearing for the defendants 1 to 17 submits that the suit is not maintainable for not having a prayer for declaration instead of a mere partition and separate possession. Even otherwise, such a suit is barred by limitation as the document was executed on 31.05.1945. The plaint averments also show that subsequent developments have occurred. There is no cause of action available in the suit. The suit is liable to be dismissed for partial partition. The plaintiffs have sold the properties allotted under the deed of partition. Thus, both the parties have acted upon the deed of partition. The question of limitation being one of law can be a factor for considering the application under Order VII Rule 11 of the Code of Civil Procedure, 1908. To buttress his submissions, the following decisions are relied upon.

1. **ANATHULA SUDHAKAR VS. P.BUCHI REDDY (DEAD) BY LRS. AND OTHERS ((2008) 4 Supreme Court Cases 594);**
2. **VASUMATHI H.SHAH VS. PUSHPA RAJU (2015 (3) CTC 54);**
3. **Order passed by this Court in O.S.A.No.191 of 2015 dated 22.09.2015 (Mrs.PUSHPA RAJU Vs. Mrs.VASUMATHI H. SHAH) ;**

4. T.ARIVANDANDAM VS. T.V.SATYAPAL ((1977) 4 Supreme Court Cases 467); and SOPAN SUKHDEO SABLE AND OTHERS V. ASSISTANT CHARITY COMMISSIONER AND OTHERS ((2004) 3 Supreme Court Cases 137) .

7. The narration of facts are not disputed, particularly, with reference to the execution of the documents and their contents. The suit is filed only for partition and separate possession. The averments as referred supra would clearly show that challenge is made only to the deed of partition dated 31.05.1945. Such a challenge without a prayer for declaration cannot be maintained. The fact that the deed has been signed by the ancestors of the plaintiffs is not in dispute. The plaintiffs are only claiming under the Mohammedan Law and thus, they do not have an independent right, though being the children of the deceased Abdul Khader. The plaintiffs want to raise the issues, which have become stale. This Court is of the view that in all fairness, the plaintiffs ought to have filed a suit for declaration especially when the very entitlement itself is being questioned in the teeth of an undisputed registered document. Thus, applying the ratio laid down by the Apex Court in **ANATHULA**

SUDHAKAR VS. P.BUCHI REDDY (DEAD) BY LRS. AND OTHERS ((2008) 4 Supreme Court Cases 594), this Court is of the

considered view that the suit as filed is not maintainable especially a serious cloud has been raised over title.

8. Even assuming that the suit is maintainable, the next question which would come up for consideration is that of limitation. An issue pertaining to a limitation can either be a mixed question of fact and law or pure law. It depends upon the facts and circumstances of the case. Therefore, this Court is not inclined to go into various judgments relied upon by both sides.

9. In the case on hand, the execution of the registered partition deed dated 31.05.1945 is not in dispute. The document itself says the circumstances under which it was executed giving reasons for the non acceptance of the oral Wasiath. Therefore, the oral Wasiath has got no relevancy. It is curious to note that even during the life time of late Abdul Khader being a party to the said deed, there was no challenge. On the contrary, the properties allotted to him were dealt with as that of his own and disposed of. The plaint also proceeds to state that the predecessor of the defendants has executed a settlement deed in the year 1945 followed by another one in 1970, which were registered. A mere fact that the defendants have entered into a joint venture with the third party cannot be a ground for cause of action, not being a material fact. Thus, as the suit is hopelessly barred by limitation, this Court is of the considered view that

there is no mixed question of fact and law involved in the case on hand.

10. Coming to the prayer sought for in the plaint, obviously the plaintiffs do not want to pay the heavy Court fee, which might arise in the event of a prayer for declaration. There is no explanation for seeking partition only for the schedule mentioned property in the plaint leaving others. Therefore, the suit is also hit by the doctrine of partial partition though the same cannot be a sole ground for rejection.

11. The scope of Order VII Rule 11 of Code of Civil Procedure is well known. The Court has to see the plaint averments as a whole. No other contra material is required to be seen at that stage. The exercise of the power depends upon facts and circumstances of the case. When on facts if it is found that there is no cause of action, apart from hit by limitation, then the Court has to exercise its power under Order VII Rule 11 of Code of Civil Procedure instead of driving the parties to go through the rigour of trial. Accordingly, the Application No.4391 of 2015 stands allowed.

12. In view of the order passed by this Court in

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A.No.4391 of 2015 in C.S.No.334 of 2015, the suit in

C.S.No.334 of 2015 stands dismissed. Consequently,
O.A.Nos.445 and 446 of 2015 are closed.

sd/.M.M.S.J
12.08.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/06.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



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