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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.06.2023
Pronounced on	30.08.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

A.No.4613 of 2022 in
C.S.No.872 of 2016

1.R.Venkatraman
2.Mrs.S.Padmavathi

... Applicants / 53 and 54 defendants

Vs.

1.Mrs.Devika
2.Mrs.Chandrika
3.Mrs.Vinodhini
4.Mr.Ravichandran (deceased)
5.Mr.Desingu (deceased)
6.Mr.Udhayakumar
7.Mrs.Renuka
8.Mr.Ramu
9.Mrs.Devi
10.R.Kala
11.R.Prem Kumar
12.R.Sowmiya
13.D.Gomathi
14.D.Ramya
15.D.Dharani
16.D.Harish

(respondents 10 to 16 are brought on record as legal heirs of the deceased
4th and 5th respondents as per order dated 01.03.2023 in A.No.984/2023).

... Respondents / Plaintiffs



PRAYER : This Application has been filed under Order XIV Rule 8 of O.S.Rules r/w. Order VII Rule 11 of C.P.C., to reject the plaint with exemplary costs.

For Applicants : Mr.V.Raghavachari, Senior Counsel for

Mr.S.Ramesh

For Respondents : Mr.T.Paranthaman

ORDER

This application has been filed by the defendants 53 & 54 to reject the plaint.

2. The respondents / plaintiffs filed a suit in C.S.No.872 of 2016 for partition and allotment of 1/4th share in the suit schedule property along with the relief of declaration in respect of sale deed, ratification deeds standing in favour of the applicants commencing from 27.11.2008 to 09.10.2015.

The averments made in the application are as follows:

3. So far as these applicants are concerned, the plaintiffs have sought relief in respect of the alienation pertaining to the reliefs under Para 27(c)



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to (m). The suit schedule property is a land comprised in S.No.188/4, Block No.62, Kuppam Beach Road, Tiruvanmiyur and it measures 35968 Sq.ft. The plaintiffs claim that the suit property belonged to their great grand father Muniappa Chettiar and he had two sons viz., Kalathi Chettiar and Murugasamy Chettiar. Since Kalathi Chettiar was ill, his shares were managed by Murugasamy Chettiar. Kalathi Chettiar had two sons viz., Appu Chettiar and Narayanaswamy Chettiar. The plaintiffs claim title through the lineage of Muniappa Chettiar under Kalathi Chettiar Branch.

3.1. Murugasamy Chettiar had five sons viz., Venugopal, Gopalaswamy, Karuppan, Jayaraman & Panchanathan. The applicants who are the defendants 53 & 54 had purchased the entire suit schedule property from the legal heirs falling under the branch of Murugasamy Chettiar and excluded the plaintiffs and other legal heirs under the branch of Kalathi Chettiar. Subsequent to the purchase, the applicants attempted to obtain patta and during that time, the plaintiffs lodged a complaint with the Tahsildar.



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3.2. The defendants 53 & 54 who are the applicants herein had filed a suit in O.S.No.7780 of 2009 on the file of the XI Assistant City Civil Court, Chennai for permanent injunction as against the 1st and 2nd plaintiffs with regard to certain alienation and possession and the said suit was decreed on 12.08.2011 and the first appeal filed in A.S.No.117 of 2012 was dismissed on 20.08.2013. The second appeal in S.A.No.1176 of 2014 was also dismissed on 22.12.2014. After the said suit was filed, the plaintiffs came to know about the alienations made in favour of the applicants and they came to know about the partition deeds of the legal heirs of Murugasamy Chettiar on 30.05.1917.

3.3. It is claimed by the plaintiffs that the legal heirs of Murugasamy Chettiar had no right to deal with the suit property among themselves by ignoring the branch of Kalathi Chettiar. The lands have been acquired through the acquisition proceedings from 1975 to 2008 and on which, the plaintiffs were not the parties to the proceedings.



3.4. The plaintiffs are aware of the alienations made in the form of partition deed as early as on 30.05.1917 by the legal heirs of Murugasamy Chettiar. The plaintiffs had the knowledge about the partition deed in the year 2009 when the suit in O.S.No.7780 of 2009 has been filed. The registered partition deed has been considered as parent document in all land acquisition proceedings. The same has been referred to and an award was passed in favour of the legal heirs of Murugasamy Chettiar.

3.5. The applicants also traced their title through the partition deed of the year 1917. The plaintiffs being the neighbours of the vendors of the applicants did not make any adversarial claim after they came to know about the partition deed of the year 1917. Even if it is assumed that the partition deed came to the knowledge of the plaintiffs only in the year 2009, no proceedings have been taken within three years. Hence it is barred by limitation. Even if it is assumed that the plaintiffs derive their title through the legal heirs of Kalathi Chettiar from Muniappa Chettiar, the suit for partition will not be maintainable without seeking the relief of



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declaration in respect of the partition deed of the year 1917. Having known that such a suit will be barred by limitation, the plaintiffs have ignored the same. So the suit as pleaded will be lacking in cause of action for partition.

3.6. The alienations in question are not void but the plaintiffs have chosen to set aside the same by making certain pleadings. In such case, they ought to have been filed within the period of limitation. But the plaintiffs failed to do so. The suit which has been filed in the year 2016 is beyond four years from the expiry of limitation. Even by going with the pleadings of the plaintiffs, the suit is hopelessly barred by limitation. During the proceedings of O.S.No.7780 of 2009 itself, the plaintiffs were aware about the necessity to seek declaratory relief. But they have contested the suit filed by the applicants for safeguarding their possession, in which findings have also been rendered on the issue of title along with the possession. Hence the plaintiffs cannot take up the very same issue once again in an another suit. In the earlier suit in O.S.No.7780 of 2009 itself it is held that the plaintiffs are not in a



possession and the plaintiffs contested the suit up to the Second Appeal and lost the same. Hence the valuation pleaded in the plaint is also not correct.

3.7. The property in question is a subject matter of land acquisition in the year 1975. The legal heirs of Murugasamy Chettiar has challenged the acquisition proceedings by filing a writ petition and that was allowed. Subsequently, when they claimed No Objection Certificate from the Tamil Nadu Housing Board to develop the property, the Tamil Nadu Housing Board rejected the application by taking advantage of some typographical error in the prayer of the writ petition, challenging the acquisition proceedings. The clerical error occurred in mentioning the extent of the property as 0.81 Cents instead of 0.81 Acres.

3.8. The legal heirs of Murugasamy Chettiar had taken a writ petition in W.P.No.9488 of 2004 for seeking a direction to Tamil Nadu Housing Board to grant No Objection Certificate to the entire extent of 81 Cents and the said writ petition was allowed. The appeal preferred by the Tamil Nadu Housing Board was allowed. However the legal heirs of



Murugasamy Chettiar went upto the Supreme Court by filing Special Leave Petition in SLP No.2352 of 2007 and got the leave granted.

3.9. The Appeal filed by the legal heirs of the Murugasamy Chettiar in C.A.No.4926 of 2008, restored the order of the Single Judge in the Writ Petition and directed the Tamil Nadu Housing Board to grant No Objection Certificate for 81 cents. The acquisition proceedings spanned over a period of 33 years. But the plaintiffs never participated and pursued the same. At the instigation of the plaintiffs, their cousin brothers filed O.S.No.7218 of 2012 for similar declaratory relief on the file of the XVIII Assistant City Civil Court, Chennai. However, the said suit was dismissed for non-prosecution. A fictitious story of a fictitious person called Muniappa Chettiar is created to upset the settled title of the vendors of the applicants for more than 130 years. It is an another round of litigation filed by the plaintiffs and hence it is liable to be rejected.



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4. Counter of the Respondents / plaintiffs in brief:-

The application filed by the applicants to reject the plaint is not maintainable. The interested defendants have not been brought as parties in this application. When considering the application for rejection of the plaint, the relevant factors for consideration are the averments made in the plaint and the documents filed along with the plaint. The pleadings made in the plaint will disclose a clear cause of action that the suit is not barred by law. The plaintiffs believe firmly about the title of the ancestor Muniappa Chettiar and they have come forward with the partition and declaration with regard to the alienations.

4.1. Originally, the suit property was owned by Muniappa Chettiar who had two sons viz., Kalathi Chettiar and Murugasamy Chettiar. It is the defendants who have to explain how they got title over the suit property. The plaintiffs came to know about the existence of the partition deed dated 30.05.1917 in the year 2008, 2009 and 2012 only upon receipt of the notice dated 07.09.2015 issued by the first applicant. Only through



the notice dated 07.09.2015, the first applicant and S.Sundararaman questioned the right, title and interest of the plaintiffs in the suit property.

So the plaintiffs have filed the suit immediately during August 2016 seeking partition and separate possession along with other legal heirs. The plaintiffs have pleaded the cause of action in this regard and that would show how the case is made out. Since the plaintiffs 3 to 9 derives cause of action from the notice dated 07.09.2015, the suit is well within the period of limitation. The plaint cannot be rejected, since there are other plaintiffs also in the suit. None of the plaintiffs are the parties to the sale deeds of the year 2008, 2009 and the ratification deeds of the year 2012 and therefore, the said documents are ignored by the plaintiffs.

4.2. The knowledge of the plaintiffs 1 and 2 about the sale deed of the year 2008 through the proceedings in O.S.No.7780 of 2009 cannot be made against the plaintiffs 3 to 9 who derived knowledge only from the notice dated 07.09.2015. The plaintiffs have not claimed any right under the persons who executed the sale deeds and ratification deeds and therefore, the right, title and the interest of the plaintiffs in the suit



property and their claim for partition could not be extinguished. However the relief of declaration has been made by way of abundant caution.

4.3. In fact in the partition deed dated 30.05.1917 itself the parties had admitted that the suit property should not be divided when their father was alive. So the suit property has been shown as a separate schedule in the partition deed and it has not been partitioned. Since the suit property was not dealt in the partition deed, there is no necessity for the plaintiffs to seek any relief in the partition dated 30.05.1917. The claim for exclusive ownership for the suit property by the defendants 53 and 54 is false and baseless. The cause of action for the plaintiffs 3 to 9 had arisen only when they came to know that they were denied their right through notice dated 07.09.2015. Hence the suit is maintainable.

4.4. The defendants 53 and 54 have not obtained any declaration for their title before any competent Court and no title deed in the name of the alleged predecessor Murugasamy Chettiar have ever been filed by the applicants to establish that the suit property was the self-acquired



property of the Murugasamy Chettiar. O.S.No.7780 of 2009 filed by the applicants was not the suit for declaration of title but the same is the suit for injunction. Admittedly, no issue is framed in the suit regarding the title of the suit property. The respondents 3 to 9 are not the parties to the said suit. The relief of partition need not be consequential to the relief of declaration because the primary cause of action is only for partition. Since the plaintiffs have made out a fit case, the defendants 53 & 54 cannot claim that the plaint is liable to be rejected.

5. The arguments of the learned counsels for both sides are in the line of their submissions made in the affidavit and the counter affidavit.

6. In support of the contentions of the learned counsel for the applicants, the following decisions were cited:

(i) T.R.Boopalan and Others Vs. Tamil Nadu Housing Board and others, reported in (2008) 12 SCC 525.

(ii) Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust, reported in (2012) 8 SCC 706.



(iii) *Shakti Bhog Food Industries Ltd., Vs. Central Bank of India and Another*, reported in (2020) 17 SCC 260.

(iv) *Dr.L.Ramachandran and Another Vs. K.Ramesh and others*, reported in 2015 4 LW 585.

(v) *Sulochana Amma Vs. Narayanan Nair*, reported in (1994)2 SCC14

7. On the side of the respondents, this Court's attention was drawn to the decision of the Hon'ble Supreme Court in the case of ***Krishna Pillai Rajasekharan Nair Vs. Padmanabha Pillai (dead) by LRs and others*, reported in 2004 12 SCC 754.**

8. The suit is in respect of the extent of 81 Cents (35,968 Sq.ft) comprising in S.No.188/4 situated at Tiruvanmiyur Village, Mylapore - Triplicane Taluk, presently Velacherry Taluk, Chennai District. The case of the plaintiffs is that the plaintiffs and the defendants 55 to 70 together and the defendants 1 to 51 viz., the vendors of the defendants 53 & 54 are the two branches of late Muniappa Chettiar who had two children viz., Kalathi Chettiar and Murugasamy Chettiar. During the life time of



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Kalathi Chettiar and Murugasamy Chettiar, the property was jointly enjoyed by his both sons along with their father. Since Kalathi Chettiar was suffering from ill health, Murugasamy Chettiar was managing the whole of the properties. Kalathi Chettiar had two sons and the plaintiffs are the lineage of the two sons of the Kalathi Chettiar.

9. It is the claim of the plaintiffs that the legal heirs of the Murugasamy Chettiar sold the property to D53 & D54 without the participation of the legal heirs of the other branch. Since the plaintiffs came to know about the subsequent alienations and the denial of title by the defendants 53 & 54 through their legal notice dated 07.09.2015, have filed this suit for claiming partition and permanent injunction and declaration of various instruments executed between the defendants suppressing the interest of the plaintiffs, as null and void.

10. The Core contention of the defendants 53 & 54 is that the plaintiffs 1 and 2 were the parties to earlier proceedings in the suit in O.S.No.7780 of 2009 filed by the defendants 53 and 54 for seeking the



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relief of permanent injunction and in the said suit itself, a finding has been rendered that the plaintiffs 1 and 2 did not have any title to the suit property. The first and second appeals filed by challenging the judgment made in O.S.No.7780 of 2009 were dismissed. So it is claimed by the applicants that the earlier suit proceedings shall be treated as *res judicata*.

11. It is submitted by the learned Senior Counsel for the applicants that the applicants have invited the issue as to the title to be decided in the suit filed in O.S.No.7780 of 2009 and got a finding and the same will operate as *res judicata*. In this regard the learned Senior Counsel for the applicants thought it fit to refer the following Judgment of the Hon'ble Supreme court held in ***Sulochana Amma Vs. Narayanan Nair, reported in (1994) 2 SCC 14. The relevant paragraphs are extracted hereunder:***

"5. Section 11 of CPC embodies the rule of conclusiveness as evidence or bars as a plea as issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties



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or their privies in a court competent to try Such subsequent suit in which the issue has been directly and substantially raised and decided in the judgment and decree in the former suit would operate as res judicata. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue, which directly and substantially had arisen in the former Suit between the same parties or their privies, been decided and became final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy, as well as private justice. They would apply, therefore, to all judicial proceedings whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil courts.

7. The Calcutta High Court took a very narrow view limiting the scope of Explanation VIII to the decisions of the courts of special jurisdiction like probate, insolvency, land acquisition courts, Rent



Controller, Land Revenue Tribunal etc. The Kerala, Orissa and Madras High Courts have taken a broader view, which view now stands approved by this Court in the aforesaid decision. Take an instance, if the scope of Explanation VIII is confined to the order and decree of an insolvency court, the scope of enlarging Explanation VIII would be defeated and the decree of civil courts of limited pecuniary jurisdiction shall stand excluded, while that of the former would be attracted. Such an anomalous situation must be avoided. The tribunal whose decisions were not operating as res judicata, would be brought within the ambit of [Section 11](#), while the decree of the civil court of limited pecuniary Jurisdiction which is accustomed to the doctrine of res judicata, shall stand excluded from its operation. Take for instance, now the decree of a Rent Controller shall operate as res judicata, but a decree of a District Munsif (Civil Judge) Junior Division, according to the stand of the appellant, will not operate as res judicata, though the same officer might have decided both the cases. To keep the litigation unending, successive suits could be filed in the first instance in the court of limited pecuniary jurisdiction and later in a court of higher jurisdiction,



and the same issue shall be subject of trial again, leading to conflict of decisions. It is obvious from the objects underlying Explanation VIII, that by operation of the non-obstante clause finality is attached to a decree of civil court of limited pecuniary jurisdiction also to put an end to the vexatious litigation and to accord conclusiveness to the issue tried by a competent court, when the same issue is directly and substantially in issue in a later suit between the same parties or their privies by operation of [Section 11](#). The parties are precluded from raising once over the same issue for trial."

12. Section 11 Code of Civil Procedure enumerates the conditions to consider something as *res judicata*. For the sake of convenience, Section 11 is extracted hereunder:

"11. Res Judicata:-

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent



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suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

13. In order to make out a case for *res judicata*, the applicants have to prove before this Court that the matter in issue was directly or substantially an issue in the earlier suit between the same parties or between the parties under whom the plaintiffs claim and litigate under the same title in a competent Court. Despite the earlier Court had heard and finally decided the issue, the applicants traced the claim of *res judicata* from the earlier suit filed in O.S.No.7780 of 2009 before XI Assistant City Civil Court, Chennai against the plaintiffs 1 and 2. The earlier suit is for the relief of permanent injunction against the plaintiffs 1 and 2. In the said suit, the applicants have denied the title of the plaintiffs 1 and 2. However the applicants did not file the earlier suit for the relief of declaration and neither the plaintiffs 1 and 2 have filed any counter suit for declaration and recovery of possession.



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14. There is no full fledged trial in respect of the issue as to the title between the parties and further none of the parties who are interested in the suit properties have also been impleaded as parties. According to the genealogy furnished, Kalathi Chettiar had two sons Appu Chettiar and Narayanasamy Chettiar. The plaintiffs 1 and 2 are the lineage of Appu Chettiar and rest of the plaintiffs are the lineage of Narayanasamy Chettiar who is the another son of Kalathi Chettiar.

15. The defendants 53 & 54 have not filed a proper suit for title in order to assert their claim against the legal heirs of the other branch *viz.*, Kalathi Chettiar Branch. Under such circumstances, the favourable decree obtained by the defendants 53 & 54 for the relief of permanent injunction cannot be considered as final in respect of the title as against all the legal heirs of Kalathi Chettiar. Hence the applicants cannot plead that the issue as to the declaration of title that has arisen in the suit had been the issue in any of the earlier suits either directly or indirectly and on which, a finding has been given after hearing the parties.



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16. Further, the parties to the suit are not same in the earlier suit and they did not derive title. Though the plaintiffs 1 and 2 derive title from the common ancestor Kalathi Chettiar, the plaintiffs 1 and 2 cannot represent the whole lineage of Kalathi Chettiar who had two sons. Hence the suit cannot be hit by *res judicata* as submitted by the learned Senior Counsel for the applicants / defendants 53 and 54.

17. The next contention of the learned Senior Counsel for the applicants is on the point of limitation. To canvass his point on limitation, the learned Senior Counsel for the applicants relied on the judgment of the Hon'ble Supreme Court held in ***Shakti Bhog Food Industries Ltd., Vs. Central Bank of India and Another, reported in (2020) 17 SCC 260. And the relevant paragraphs of the Judgment is extracted under:***

"17. The expression used in [Article 113](#) of the 1963 Act is “when the right to sue accrues”, which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of



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a specified event. Whereas, *Article 113* being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

18. Concededly, the expression used in *Article 113* is distinct from the expressions used in other Articles in the First Division dealing with suits such as *Article 58* (when the right to sue “first” accrues), *Article 59* (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded “first” become known to him) and *Article 104* (when the plaintiff is “first” refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in *Article 113* as – when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression “when the



right to sue accrues” in [Article 113](#) of the 1963 Act. Inasmuch as, it would also cover cases falling under [Section 22](#) of the 1963 Act, to wit, continuing breaches and torts.”

18. It is also claimed by the applicants that the suit does not disclose any cause of action and putting the defendants to undergo the ordeal of trial in the suits of vexatious nature is an unnecessary exercise and it would also waste the time of the Court. And to support the said contention the Judgment rendered by this Court in ***Dr.L.Ramachandran and Another Vs. K.Ramesh and others, reported in 2015 4 LW 585*** has been cited. The following paragraphs approves the above contention:

"23.We may hasten to add that is a settled legal position that in all cases of preliminary objection, the test is to see whether any of the relief prayed for could be granted to the party if the averments made in the petition are proved to be true and for the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such and the Court cannot probe into the facts on the basis of the controversy raised in the counter.



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25. *The learned single Judge referred to three decisions of the Hon'ble supreme Court in the cases of RAM PRAKASH GUPTA, KAMALA and C.NATARAJAN (referred supra) and all of which have been rendered considering the scope of order 7 Rule 11 (d) CPC and how the Court has to construe such Application.*

26. *In terms of Order 7 Rule 11 (d) CPC, the Plaintiff shall be rejected where the suit appears from the statement in the Plaintiff to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal principle deducible are that, if the Plaintiff does not disclose the cause of action or is barred by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaintiff is liable to be rejected on the*



ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well."

19. But the position of law on the point of cause of action and the resultant point on limitation can be distinguishable on facts of each case. It is needless to state that the cause of action of the suit has to be seen only on the basis of the averments made by the plaintiffs. As stated already, except the plaintiffs 1 and 2, the other plaintiffs did not face any trial against the defendants 53 & 54 in respect of the suit property by raising any claim for title or possession. And the earlier cause of action on which the applicants had filed a suit against the plaintiffs 1 and 2, can not be considered as a suit, which had covered the rest of the cause of action arising in favour of the other plaintiffs against the other defendants. Unless all the interested parties are added and decided in respect of all the claims raised by respective parties, it cannot be claimed that the earlier suit was a comprehensive suit and its judgment would



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bind all the parties to the present suit. Further, the question of limitation is a mixed question of fact and law and hence, the Court has to frame an issue on limitation and try the same along with the other issues involved in the suit.

20. Among several cause of actions, the plaintiffs have averred that they derive cause of action directly from D53 & D54 who had chosen to send legal notice on 07.09.2015 by denying the title of the plaintiffs. The suit has been filed in the year 2016. Hence, it is *prima facie* shown to be a case within the period of limitation. Hence in all probabilities and possibilities, this cannot be considered as a suit liable to be rejected on the grounds alleged by the applicants.

21. In view of the above stated reasons, this application filed to reject the plaint is dismissed.

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Speaking Order
Neutral Citation : Yes
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R.N.MANJULA, J

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