

KABC0A0018142024



**IN THE COURT OF THE LXXII ADDL. CITY CIVIL &
SESSIONS JUDGE AT MAYO HALL BENGALURU,
(CCH-73)**

Present:

Sri. Sreepada N,
B.Com., L.L.M.,
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 2nd day of June 2025

O.S.No.25497/2024

Plaintiff:- **Sri. V. Deepak Kumar,**
S/o M.P. Vijayakumar,
Aged about 50 years,
R/at No.316, 8th Main Road,
B.C.C.Layout, Chandra Layout,
Vijayanagar, Bengaluru-560 040.

[By Sri. Anil Ramachandra - Adv.,]

V/s

Defendants: **1. Sri. M.P. Vijaya Kumar,**
S/o M. Puttappa,
Aged about 78 years,
2. Suchitra. V,
D/o M.P. Vijaya Kumar,
Aged about 48 years,
R/at No.667, Nanjangud Road,
T. Narasipura, Mysore District,
Mysore-571 124.

3. Navitha.V,

*D/o M.P. Vijaya Kumar,
Aged about 44 years,*

*No.1 & 3 R/at No.14, 1st Main Road,
Basaveshwara Layout, Vijayanagar,
Bengaluru-560 040*

***[By Sri. M.D. Raghunath Adv., for D.1 to
D.3]***

i.	<i>Provision under which the application is filed</i>	<i>U/Or.7 Rule 11(a) & (d) of CPC</i>
ii.	<i>Relief sought for</i>	<i>Rejection of plaint</i>
iii.	<i>The date on which the application is filed</i>	<i>15.11.2024</i>
iv.	<i>Number of the application</i>	<i>01</i>
v.	<i>The date on which the objections are filed by different opponents</i>	<i>7.1.2025</i>
vi.	<i>The date on which the orders were passed on the said application</i>	<i>2.6.2025</i>

*LXXII ADDL. CITY CIVIL AND SESSIONS JUDGE,
Mayohall Unit: Bengaluru.*

**Order on I.A. No.1/2024 filed
U/Or.7 Rule 11 (a) & (d) of CPC**

*The counsel for Defendant No.1 to 3 has filed
IA.No.1/2024 under Order 7 Rule 11(a) & (d) of CPC
and prayed this Court to dismiss the plaint as the*

plaint is barred by time and lack of cause of action in the interest of justice.

2. In the affidavit filed along with this application the Defendants have contended that the Plaintiffs have filed this suit for partition and separate possession of his 1/4th share in respect of the Suit Schedule Properties and to declare that the Gift Deed dtd: 23.9.2013 executed by Sri. Vijaya Kumar M.P in favour of Suchitra V and Navitha, Sale Deed dtd:23.1.1982 executed by M.P. Vijaya Kumar in favour of M.P. Suresh, Sale Deed dtd: 22.4.1992 executed by M.P. Suresh in favour of M.N. Triveni are invalid/void and non-est, illegal and not and the Plaintiff is not bound by it and for accounting of the profits of the business and for costs and other reliefs.

3. Further contended that in that effect the Plaintiff is challenging the legality and correctness of the Sale Deed, commencing from 23.1.1982 to 22.4.1992, Gift Deed dtd: 23.9.2013 without impleading the purchaser of the property. All the deeds were executed more than 12 years ago. Even according to the plaint averments, the age of the

Plaintiff is 50 years. The Sale Deed dtd: 23.1.1982 took place when he was a minor aged about 8 years and the Sale Deed dtd: 22.4.1992 took place when he was aged about 18 years. If there was cause of action, the suit should have been filed immediately within 03 years from the date of cause of action. The Defendant has not placed any material to show that it is a joint family property and though there is recital in the plaint with regard to joint family, the Plaintiff has not impleaded his brothers. The Plaintiff with an oblique motive has filed this suit so as to cause unlawful harm to the Defendants. The suit of the Plaintiff is manifestly vexatious one without merit, and as such the whole suit is liable to be rejected. Further contended that the suit to seek partition would be extinguished after lapse of 12 years. From the plaint averments, they falsely contend that they came to know only on the date of issue of notice. By taking the plaint as a whole into consideration, it is evident that the plaint is founded on pleas unsupported by any material on record. The initiation of proceedings is nothing but abuse of process of law. Hence, prayed to allow the application.

4. The counsel for the Plaintiff resisted this application by denying the contents of the application in toto.

5. Heard both sides.

6. Now the points that would emerge for the consideration of this Court are as follows:

7. Now the points that would emerge for the consideration of this court are as follows:

1) Whether the IA No.1/2024 filed U/Or. VII Rule 11(a) & (d) of CPC by the Defendant No.1 to 3 deserves to be allowed?

2) What order?

8. My findings on the above points are as under:

Point No.1 : In the Negative.

Point No.2 : As per final order for the following :

REASONS

9. **Point No.1 :-**

Before appreciating the contention of both the parties, it is necessary to refer couple of rulings of the Hon'ble Apex Court as to the parameters, while

considering the application filed under Order VII Rule 11 of CPC. The **Honb'le Apex Court, in a ruling reported in (2007) 14 SCC 183 (C Natarajan V/s Ashim Bai and Anr.)**, at para No.8 was pleased to observe thus:-

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence.

10. In another ruling of the Honb'le Apex Court, reported in **(2007) 5 SCC 614 (Hardesh Ores (P) Ltd., V/s Hede & Company)**, wherein at para No.25 the Honb'le Apex Court, observed thus:-

“25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not

dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense."

11. Keeping in view of the broad principles laid down by the Hon'ble Apex Courts, let me appreciate the arguments canvassed by the parties.

12. The Plaintiff has filed the above suit for the relief of partition and separate possession of his 1/4th share in the Suit Schedule Properties and also

for the relief of declaration to declare that the Gift Deed dtd: 23.9.2013, Sale Deed dtd: 23.1.1982, Sale Deed dtd: 22.4.1992 are illegal and not at all binding on the Plaintiff's share etc.

13. The Defendants in their written statement have taken up contention that the suit filed by the Plaintiff is not at all maintainable and the court fee paid by the Plaintiff is not proper and correct. The suit is bad for non-joinder of necessary parties and also taken up specific contention that the suit filed by the Plaintiff is barred by law of limitation as the Plaintiff has not at all challenged the alleged Gift Deed and Sale Deeds within the period of limitation etc. Now the Defendants by way of this application contended that the suit of the Plaintiff is liable to be dismissed as barred by time and lack of cause of action. Further taken up contention that according to the plaint averments itself the age of the Plaintiff is now 50 years and the Sale Deed took place on 23.1.1982 when he was 08 years and another Sale Deed took place on 22.4.1992 when he was 18 years and if there was any cause of action the suit should have been filed immediately within 03 years from the

date of cause of action. Further it is also the argument of the Learned Counsel for the Defendants is that the suit to seek partition should be extinguished after lapse of 12 years, but falsely contended that he came to know about the alleged Deeds only after issuance of notice etc. Therefore, on all these grounds the Defendants have prayed to dismiss the suit as barred by time and lack of cause of action.

14. In support of his arguments the Learned Counsel for the Defendants has relied upon the following decisions:

- 1. ILR 2022 KAR 2231 M/s Metropoli Overseas Limited V/s Sri. H.S. Deekshit and Others.*
- 2. CRP No.4/2024 dtd: 15.7.2024 Ameeta Ganesh V/s Anjanadevi.*
- 3. 2025 INSC 434 – 2025 0 (SC) 578 Uma Devi V/s Anand Kumar.*

15. It is the argument of the Learned Counsel for the Plaintiff herein is that the Defendant No.1 who is the father of Plaintiff had sent a legal notice dtd:

4.6.2021 stating that he has gifted the property bearing No.14 to his daughters i.e., Defendant No.2 & 3 in the year 2013. On coming to know about the said Gift Deed from the notice sent, he came to know about the said Deed. However, the Plaintiff is in joint possession and enjoyment of the Suit Property. Further it is the argument of the Learned Counsel for the Plaintiff is that the Plaintiff has sought for partition of the Suit Property and there is no prescribed limitation for filing the suit for partition. Even with respect to declaration in respect of Gift Deed dtd: 23.9.2013 is concerned the suit is well within the time, as the same is executed without the knowledge of the Plaintiff. The Plaintiff came to know about the said Deed when he received the legal notice from the Defendant No.1 on 4.6.2021. Therefore, from the date of knowledge only he has filed the suit within the time prescribe by law.

16. In support of his arguments the Learned Counsel for the Plaintiff has relied upon the following decisions:

1. (2015) 8 SCC 331 between P.V. Guru Raj Reddy and another vs P. Neeradha Reddy and Other).

2. (2018) 6 SCC 422 between Chottaben and Another V/s Kriitbhai Jalkrushnabhai Thakkar and Other.
3. AIR 2020 SCC 2721 between Shakti Bhog Food Industries Ltd., V/s Central Bank of India and Anr.
4. (2022) 8 SCC 401 between Saranpal Kaur Anand V/s Praduman Singh Chandhok and others.
5. AIR 1958 SC 1042 between Kakumanu Pedasubhayya and Anr. V/s Kakumanu Akkamma and Anr.
6. Judgment passed in RFA No.2374/2024 dtd. 8.1.2025 between Anand Kumar and Others V/s Chandrashekhar P.M.
7. Manu/SC/1433/2024 between Daliben Valjibhai and Ors. V/s Prajapati Kodarbhai Kacharbhai and Ors.

17. I have gone through the above rulings and the principles of the above decisions are aptly applicable to the case on hand and the contention of

the Learned Counsel for the Plaintiff. In the first decision the Hon'ble Apex Court has clearly held that the condition prescribed to exercise all powers under Order VII Rule 11 of CPC is concerned, the Court has to read the plaint averments as a whole to find out whether it discloses any cause of action or the suit barred under any law. Here in this case, on careful perusal of the plaint averments it is clear that the plaint has been clearly discloses the cause of action as the Plaintiff has categorically contended that he came to know about the execution of the Gift Deed when he received the legal notice from the 1st Defendant on 4.6.2021, till then he was not aware about the same. From the date of the knowledge of the same, within the prescribe time he filed the suit. Therefore, at this stage, it is not proper on the part of this Court to dismiss this suit as the plaint is barred by law and lack of cause of action etc.

18. Similarly, in the second decision the Hon'ble Apex Court has clearly held that the Court has to find out whether any triable issues are in the plaint with respect to the plea made by the Plaintiff in the plaint. Admittedly, the Defendants have taken up specific

defense that the suit is barred by law of limitation. On the other hand, the Plaintiff has categorically contended that when he came to know about the alleged Gift Deed recently, within the period of limitation he filed the present suit. The Plaintiff is contending that after he getting knowledge about the said Gift Deed immediately filed the instant suit within 03 years. Therefore, this Court is of the opinion that the issue regarding suit being barred by limitation has triable issue in fact situation of the present suit. Therefore, according to the principles of the above ruling, when the triable issues are involved the plaint cannot be rejected under Order VII Rule 11 of CPC.

19. In the third decision also the Hon'ble Apex Court held that "if the prima-facie suit is not barred by limitation the plaint cannot be rejected under Order VII Rule 11 of CPC." Further the Hon'ble Apex Court held in the above decision that "the Plaintiff become aware about the discrepancies in July 2000, has sent the legal notice on 28.11.2003 and again on 7.1.2005, but no reply received from the Bank and plaint filed on February 2005 is well within the

limitation of 03 years, so plaint cannot be liable to be rejected.” The principles of the above decisions is aptly applicable to the facts of this case. Here in this case also the Plaintiff specifically contended that though the Gift Deed had taken place in the year 2013, but the Defendant No.1 has intimated him through notice about the execution of the Gift Deed in favour of Defendant No.2 & 3 on 4.6.2021. Thereafter the Plaintiff has also issued legal notice to the Defendants on 18.4.2023, but he did not receive any reply from the Defendants, then within the period of limitation only he filed the present suit etc. So this Court opines that in view of the above contention of the Plaintiff and the principles of above decision, this Court opines that prima-facie it appears that after Plaintiff came to know about the alleged Gift Deed within the period of limitation had filed this suit.

20. Similarly in other decisions of the Hon’ble Apex Court and Hon’ble High Court of Karnataka also it is clearly held that “when the Plaintiff came to know about the knowledge about the documents executed behind his back, the cause of action arose

to him to file the suit for partition and declaration. Even the Hon'ble High Court of Karnataka in the last decision referred above has clearly held that 'according to Article 109 of Limitation Act 12 years limitation is available for the Plaintiff to challenge the partition from the date of his knowledge.' Further also held that in order to decide the application under Order VII Rule 11 of CPC, the Court should not looked into the averments made in the written statement, but should refer the contents of the plaint." As discussed above, the Plaintiff has specifically contended that till he receiving legal notice from the Defendant No.1 on 4.6.2021 he is not aware about the alleged Gift Deed dtd: 23.9.2013 and thereafter he has issued legal notice, but the Defendants did not reply to the said notice and as such he filed the suit etc. That apart, even otherwise, the suit being filed by the Plaintiff for the relief of partition and declaration and it can be filed within the period of 12 years from the date of alleged Gift Deed dtd: 23.9.2013 according to Article 109 of the Limitation Act. Further it is also clear from the fourth decision relied upon by the Learned Counsel for the

Plaintiff that instead of rejecting the plaint under Order VII Rule 11 of CPC the Court may frame the preliminary issue with regard to limitation of the suit and decide the same. Therefore, looking to the principles of the above decisions relied upon by the Learned Counsel for the Plaintiffs, this Court opines that the decisions relied upon by the Defendants are not helpful to the present facts and circumstances of this case.

21. As rightly argued by the Learned Counsel for the Plaintiff and also in view of the principles of the two decisions which relied by this Court in the beginning of the Point No.1, 'while considering the application for rejection of plaint, the Court has to see only the plaint averments and not the defense of taken by the Defendants in their written statement.' Further as discussed above, the question as to whether the suit is barred by limitation or not would, therefore, depending upon the facts and circumstances of each case for the said purpose also the Court has to looked into averments made in the plaint and at this stage the Court would not be entitled to consider the case of the defense. As

aforesaid, on perusal of whole averments made in the plaint, it appears that prima-facie this Court cannot say that the suit is barred by law of limitation and lack of cause of action. Thus looking from any angle, the Defendants have failed to establish that the above plaint is barred by time and lack of cause of action. **Accordingly, I answer Point No.1 in the Negative.**

22. Point No.3:

In view of my above findings on the above point, the application filed by Defendants deserves to be dismissed. Hence, I proceed to pass the following:

ORDER

I.A.No.1/2024 filed by the Defendant No.1 to 3 U/Or. VII Rule 11(a) & (d) of the CPC., is hereby rejected. No order as to costs.

Posted for issues by : 12.6.2025.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open court on this the **2nd day of June 2025.**)

[Sri. Sreepada N.]
LXXII Addl.City Civil & Sessions
Judge, Bengaluru. (CCH-73).