

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

REGULAR FIRST APPEAL NO.254 OF 2013 (PAR)

BETWEEN:

1. SMT.UMA RAMAIAH,
D/O LATE SRI.B.R.RAM,
AGED ABOUT 70 YEARS,
R/AT NO.27/2, 1ST MAIN ROAD,
JAYAMAHAL, BANGALORE-560 046.

2. SMT.RAJANI RAMAIAH,
D/O LATE B.R.RAM,
AGED ABOUT 55 YEARS,
R/AT NO.27/2, 1ST MAIN ROAD,
JAYAMAHAL, BANGALORE-560 046.

3. SMT.PRABHA,
W/O SRI L.VISHWANATHAN,
AGED ABOUT 76 YEARS,
R/AT 1ST BLOCK, JAYANAGAR,
BANGALORE-560 011.

4. MRS.VEENA KUPPALI,
W/O SRI HEMACHANDRA,
AGED ABOUT 59 YEARS,
R/AT NO.3785, GROVE AVENUE,
PALO, CA 94303, USA.

REP. BY POWER OF ATTORNEY HOLDER,
SMT.UMA RAMAIAH, (APPELLANT NO.1),
D/O LATE SRI.B.R.RAM,
AGED ABOUT 70 YEARS,
R/AT NO.27/2, 1ST MAIN ROAD,
JAYA MAHAL, BANGALORE-560 046.

5. SRI.S.T.SUBBU,
S/O LATE THAMMAIAH,
AGED ABOUT 81 YEARS,

R/AT BULL TEMPLE ROAD,
BANGALORE-560 018.

...APPELLANTS

(BY SRI.M.S.VARADARAJAN, ADVOCATE)

AND:

1. SMT.SARASWATHI GOPINATH,
W/O LATE SRI.B.G.GOPINATH,
AGED ABOUT 63 YEARS
2. SRI.ROHITH,
S/O LATE SRI.B.R.GOPINATH,
AGED ABOUT 38 YEARS
3. SMT.SUSHMA,
D/O LATE SRI.B.R.GOPINATH,
AGED ABOUT 35 YEARS

ALL ARE R/AT NO.27/2, 1ST MAIN ROAD,
JAYAMAHAL, BANGALORE-560 046.

...RESPONDENTS

(BY SRI.C.M.NAGABHUSHANA, ADVOCATE FOR R1 AND R2;
SRI.K.P.ASOKUMAR, ADVOCATE FOR R3)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 07.11.2012 PASSED IN O.S.No.6732/2006 ON THE FILE OF THE XXII ADDITIONAL CITY CIVIL JUDGE, BENGALURU, DISMISSING THE SUIT FOR PARTITION, SEPARATE POSSESSION AND DECLARATION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **JAYANT BANERJI J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE K. V. ARAVIND

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

This plaintiffs' appeal is filed seeking to set aside the judgment and order dated 07.11.2012 passed by XXII

Additional City Civil Judge, Bengaluru in O.S.No.6732/2006 whereby, while deciding issue No.11 which is "Whether the suit is barred by time?", the trial Court observed that the suit is barred by time and consequently the suit was dismissed.

2. It appears from the record that earlier, by means of an order dated 22.09.2011, the trial Court had decided the aforesaid issue No.11 holding that the suit is not barred by time and answered issue No.11 in negative. The order dated 22.09.2011 was challenged in an appeal by the defendants successfully before this Court and the matter was remanded to the trial Court to decide the issue afresh. Thereafter, by the impugned order dated 07.11.2012, it was held that the suit was barred by time and the suit was accordingly dismissed.

3. The plaintiffs filed a suit seeking a decree of partition by metes and bounds and for separate possession of the plaintiffs' 17/24th share in the suit schedule property, by holding that the alleged Will dated 03.03.1956 is not binding on the plaintiffs. Further prayer was made for granting mandatory injunction to render accounts, to pay money after reconciling the accounts, to deposit the rents in respect of the schedule property before the Court, prohibitory injunction for restraining the defendants from alienating, altering, encumbering or

creating any third party rights in respect of the suit schedule property and for award of costs of the suit. The suit schedule property is described as follows:

"SCHEDULE PROPERTY

All that piece and parcel of the Immovable property bearing Municipal No.495, situated at Jamma Masjid Road also called as Old Poor House Road, Bangalore within the limits of Ward No.79 of Bangalore Mahanagara Palike, Bangalore, comprising of site dimension as per the Sketch and in all measuring 735.4 Sq.,mts., in area and is bounded on:-

East By : Private Property
West By : O.P.H. Road
North By : Private Property, and
South By : private Property.

Comprising of Multi Storied commercial building containing tenements used for Restaurants and lodging."

4. The plaint case to the extent it is relevant for purpose of decision of the instant appeal is as follows:

That plaintiff Nos.1 to 4 are the children of late Sri B.R.Ram, son of late B.C.Ramalingam. Plaintiff Nos.1 and 2 are stated to be unmarried. The said Sri B.R.Ram had a son by the name of Sri Gopinath, who had died leaving behind him defendant Nos.1 to 3 as his heirs. The said Sri B.R.Ram had one more daughter by the name of Smt.Shara Subbu, who expired on 13.02.2002, leaving behind her husband- plaintiff No.5. It was stated that late Sri B.C.Ramalingam had acquired

an immovable property bearing No.495, Old Poor House Road, also called as Jamma Masjid Road, Bangalore, which is the suit schedule property through a registered partition deed dated 04.07.1940. Sri B.C.Ramalingam died intestate, leaving behind his only son Sri.B.R.Ram. Sri B.R.Ram inherited the suit schedule property and he died intestate on 30.09.2001 leaving behind the plaintiffs and the defendants as heirs in respect of the properties.

5. It is stated that the suit schedule property had been let out during the lifetime of Sri B.R.Ram to one Sri V.Ramamurthy for a period of thirty seven years. It is stated that the scheduled property is occupied by the tenant whose leasehold right would expire on 31.12.2010. It is stated that the suit schedule property continues to be in the lawful and joint possession of the plaintiffs and the defendants as on that date.

6. It is stated that plaintiff Nos.1 and 2 filed a suit bearing O.S.No.9264/1997 which is pending in the file of the City Civil Judge, Bangalore (CCH-07) against their father and defendant Nos.1 and 2 herein for the relief of partition of another immovable property in respect of which the defendants contended that there existed a settlement deed; that for the

relief of partition in O.S.No.9264/1997, plaintiff Nos.1 and 2 had not included the suit schedule property as they were made to believe that during subsistency of the leasehold rights, the property cannot be partitioned; that during the year 2000, the father of the plaintiffs filed a suit for partition in respect of the suit schedule property, bearing O.S.No.990/2000 against plaintiff Nos.1 to 4 with the deceased daughter Smt. Sharasubbu, and against defendant Nos.1 and 2 seeking partition of the suit schedule property. The said suit came to be dismissed on 18.08.2005 for not taking steps to bring the legal representatives of the deceased plaintiff therein on record.

7. In paragraph 11 of the plaint, it is stated that the cause of action to file the suit arose when the suit schedule property devolved on the father of plaintiff Nos.1 to 4 during the year 1957 and the father of plaintiff Nos.1 to 4 filed O.S.No.990/2000 in the year 2000 for partition of the suit schedule property; when their father Sri B.R.Ram died intestate on 30.09.2001; on 18.08.2005 when O.S.No.990/2000 was dismissed for not taking steps to bring the legal representatives of Sri B.R.Ram on record and on all subsequent dates when defendant Nos.1 to 3 have failed to concur with the plaintiff's demand for partitioning the scheduled property.

8. A written statement was filed by the defendants-respondents which was amended. It is stated therein that in O.S.No.9264/1997, which was filed for an identical relief of partition, the plaintiffs had specifically stated that the cause of action accrued to them on 11.11.1997, and even according to that, the present suit filed after a long lapse of nine years, is barred by limitation. It is stated that even otherwise, the plaintiffs have, in paragraph No.11 of the plaint, alleged that the cause of action arose on 30.09.2001, when their father Sri B.R.Ram died and from that date also, the suit is not within time, as such, it deserves to be dismissed on the ground of limitation.

9. In the written statement, it is stated that O.S.No.990/2000 which was filed by their father was dismissed on 18.08.2005 for not taking steps to bring the legal representatives on record and therefore, the present suit is not maintainable under Order XXII Rule 9 of CPC.

10. It is also stated, inter alia, that in 1958 the husband of defendant No.1, got the khata of the suit schedule property made in his name when his grandfather Sri B.C.Ramalingam died and ever since then was exclusively enjoying the same as absolute owner of the property, continuously adverse to the

interest of the plaintiffs to their knowledge which had the effect of repudiating their rights, paying the municipal taxes till 11.06.1987 when he died and thereafter, his wife Smt. Saraswati Gopinath continues to enjoy the suit schedule property as absolute owner, adverse to the interest of the plaintiffs to their knowledge, paying municipal taxes and got the khata made in her name on 17.07.1989.

11. It is stated that it is false to say that suit property was leased out by Sri B.R.Ram as the karta of the family. Sri Gopinath claimed to be the owner on the basis of the Will dated 03.03.1956 made by Sri B.C.Ramalingam in favour of his only grandson Sri Gopinath. Since Sri Gopinath was the owner of the schedule property and a high ranking personnel in the Defence Sector and was working at a far off place, he had executed a Power of Attorney in favour of his father Sri B.R.Ram to manage the schedule property and on the strength of the same, Sri B.R.Ram leased the schedule property on behalf of his son and was managing it. It is stated that the plaintiffs were aware of the legal position at the time of filing of O.S.No.9264/1997.

12. The point for determination that arises in this appeal is "***whether the suit is barred by limitation?***".

13. By an order dated 22.09.2011, it was held by the trial Court that recording of khata in the name of anybody would not result in denial of title or right of the real holder. It was observed that there is no plea raised by the defendants that plaintiffs were at any time ousted from suit property. It was held that Article 113 of the Schedule to the Limitation Act would apply in the case. There being no denial of title of the plaintiffs, the suit was held to be well within time and the plaintiffs got the right to sue only on the death of Sri B.C.Ram on 30.09.2001.

14. Against the aforesaid order dated 22.09.2011, C.R.P.No.282/2011 was filed before this Court which came to be allowed by means of an order dated 16.04.2012 whereby the order of the trial Court dated 22.09.2011 was set aside and the matter was remanded to the trial Court for reconsideration in accordance with law, leaving all contentions of both parties open.

15. It is thereafter, after remand, that the impugned order dated 07.11.2012 came to be passed. Issue No.11 being "whether the suit is barred by time?" which was answered in the affirmative by the trial Court. It was noted that the plaintiffs admitted the earlier proceedings in O.S.No.9264/1997

filed by plaintiff Nos.1 and 2 herein against their father Sri B.R.Ram as well as defendant Nos.1 and 2 herein seeking partition in which the present suit property was not included. It was also not disputed by the plaintiffs that their father in the year 2000 had filed a suit for partition in O.S.No.990/2000 against plaintiff Nos.1 to 4 herein and his daughter Smt.Shara Subbu as well as defendant Nos.1 and 2 herein and that the father of the plaintiffs died during pendency of the suit and the suit came to be dismissed on 18.08.2005. It is stated in the order that it is also not in dispute that defendant Nos.1 and 2 in the said suit of O.S.No.990/2000 had set up the Will dated 03.03.1956 in their written statement whereby the suit property was bequeathed by Sri B.C.Ramalingam in favour of his grandson Sri Gopinath. It was held that therefore the plaintiffs were very much aware of denial of their title by these defendants over the suit schedule property. It was further noted that in paragraph 11 of the plaint wherein the cause of action is shown by the plaintiffs, they had stated that the cause of action arose on 30.09.2001 when their father Sri B.R.Ram died and since infringement continued even after Sri B.R.Ram's demise, as such, the present suit was filed on 27.07.2006. The suit in O.S.No.990/2000 came to be abated in the month of

February 2002 itself, after the death of Sri B.R.Ram on 30.09.2001 during pendency of the suit. It was further noted that even in the prayer made, the plaintiffs have prayed for decree of partition by metes and bound and sought for declaration to hold that the alleged Will dated 03.03.1956 is not binding on them.

16. Therefore, the conclusion was drawn that the suit filed by the plaintiffs is barred by time. It was held that the plaintiffs have slept over the matter much after abatement till the year 2006 when they filed the present suit long after the expiry of three years from the date of accrual of the cause of action. Therefore under Article 113 of the Limitation Act, 1963, the plaintiff should have filed the suit within three years from the date of accrual of cause of action which was not done by them. Accordingly, it was ordered that the suit is barred by time and the suit was dismissed.

17. The appellants have relied upon the judgment of a Co-ordinate Bench of this Court in ***S.K.Lakshminarasappa, since deceased by his L.Rs., vs. Sri B.Rudraiah and others***¹ to contend that for a suit for partition filed by co-sharers and coparceners, no period of limitation is prescribed for filing of

¹ ILR 2012 KAR 4129

such a suit and another judgment in the case of ***K.Laxmanan v. Thekkayil Padmini***².

18. On the other hand, learned Counsel for the respondents have relied upon the judgment in ***Krishna Pillai Rajasekharan v. Padmanabha Pillai***³ to contend that the Supreme Court has held that where the suit for partition is primarily and predominantly filed for that relief and the relief of redemption being sought for only pursuant to the direction made by the High Court in its order of remand, the limitation for the suit would be governed by Article 120 of the Limitation Act, 1908. It is contented that Article 120 of Limitation Act, 1908 is *pari materia* Article 113 of Limitation Act, 1963. It is contented that in the said judgment, it is also held that the starting point of limitation for a suit of partition is when the plaintiff has notice of his entitlement to partition being denied. Further, a three-judge bench decision of the Supreme Court in ***Shakti Bhog Food Industries Ltd. v. Central Bank of India***⁴ is relied on to contend that if the limitation for filing a suit is not covered by any specific Article of the Limitation Act, 1963, then it would fall within the residuary Article 113.

² AIR 2009 SC 951

³ AIR 2004 SC 1206

⁴ (2020) 17 SCC 260

19. The other judgments relied on by learned Counsel for the respondents are:

- (i) **Commissioner of Wealth Tax v. Chander Sen**⁵
- (ii) **Mrs. Mallika & Ors. vs Mr. Chandrappa & Ors.**⁶
- (iii) **Makhan Singh v. Kulwant Singh**⁷.
- (iv) **Sri Y.S Gurunanjappa & Ors. v. Smt. Sunanda & Ors.**⁸.
- (v) **State of Punjab v. Gurdev Singh**⁹
- (vi) **Bhubaneswari Bewa v. State of Orissa**¹⁰
- (vii) **Lachmi Narain v. Muhammad Yusuf**¹¹
- (viii) **Churya v. Baneshwar**¹²
- (ix) **Puthyia Purayil Kanan's Widow Kozipurath Chemmarathi v. Potinhare Koyattan Balan**¹³

20(i). The limitation for filing a suit for partition does not begin to run unless and until a cause of action arises. In the case of **Krishna Pillai Rajasekharan Nair** the Supreme Court was considering a matter arising out of a suit filed by the appellant-plaintiff, who was an assignee from certain non-redeeming co-mortgagors of a share in 'C' schedule property, seeking relief of declaration of title with recovery of possession and in the alternative, the relief of partition. The trial Court

⁵ AIR 1986 SC 1753

⁶ ILR 2007 KAR 3216

⁷ AIR 2007 SC 1808

⁸ RSA No.394/2005 DD 29.05.2008

⁹ AIR 1992 SC 111

¹⁰ AIR 1979 Orissa 171

¹¹ ILR 1920 Volume XLII Allahabad 540

¹² ILR 1926 Volume XLVIII Allahabad 334

¹³ AIR 1997 SC 2440

decreed the suit on 07.12.1973 upholding the plaintiff's entitlement to 9/12th shares in the suit property but subject to payment of ₹208/- to reimburse the first defendant by way of contribution towards the amount spent by him in redeeming the property. A preliminary decree determining the share of the plaintiff and his entitlement to partition was passed. The trial Court's decree was upheld by the first appellate Court dismissing the appeal preferred by defendant No.1. In the second appeal preferred by defendant No.1, the High Court allowed the appeal and set aside the decrees of the first appellate Court and the trial Court.

(ii) It was urged before the High Court on behalf of defendant No.1 that the property being subject to mortgage and defendant No.1 having subrogated himself in place of the original mortgagee, the suit filed by the plaintiff barely for declaration, partition and recovery of possession, was not maintainable and it was necessary for the plaintiff to have sought for the relief of redemption. It was submitted on behalf of defendant No.1 that even if the relief of redemption of mortgage was not specifically sought for, the suit in substance was one for redemption and so it was barred by time under Article 148 of the Limitation Act, 1908. The appeal was allowed

by the High Court, the decree was set aside and the case was remanded to the trial Court with a direction to allow the parties an opportunity of amending the pleadings so that the plaintiff could seek the relief of redemption and the defendant could raise the plea as to bar of limitation.

(iii) Pursuant to the order of remand, the pleadings were amended. The suit was once again decreed by the trial Court and the first appellate Court. In the second appeal preferred by defendant No.1, the High Court formed an opinion that defendant No.1 had redeemed the property on behalf of the entire family and therefore, after the payment of mortgage money and recovering back the possession from the mortgagee, nothing had remained to be redeemed. The plaintiff was entitled to declaration of title and other reliefs prayed for by him.

(iv) The learned Judge of the High Court, in the second appeal, entertained serious doubts about the correctness of the view taken by the learned Single Judge in the earlier order of the High Court remanding the case to the trial Court, but felt bound and helpless by the observations and directions made in the earlier judgment. He allowed the appeal and dismissed the

suit while setting aside the judgments and decrees of the two Courts.

(v) Feeling aggrieved by the judgment of the High Court, a Special Leave Petition was filed by the plaintiff before the Supreme Court. The Supreme Court proceeded on the factual premise that out of the co-mortgagors, all having entitlement to a share each in the suit property, one of them had redeemed the property by paying the entire mortgage money and had singularly entered into possession over the entire mortgage property. Consequent upon redemption, it is the other co-owner of the property that is the plaintiff who was then asking for partition of the property commensurate with his share. The Supreme Court proceeded to examine inter alia whether a suit for partition filed by the plaintiff was maintainable and noted that it would determine the question of limitation as well.

(vi) After considering a catena of its decisions, it was observed by the Supreme Court that the limitation for a suit for contribution would become relevant only when the redeeming co-mortgagor sues the non-redeeming co-mortgagor for enforcing the latter's obligation to make contribution. A suit filed by a co-owner cum co-mortgagor for partition and

separate possession against the redeeming co-mortgagor and subject to payment of contribution would remain a suit for partition though the defendant in possession of the property would be justified in insisting that the property was not liable to be partitioned unless the plaintiff contributed his share of the money paid for redemption and incidental expenses. To the latter case, wherein the suit has been filed not by the party claiming contribution, but the right to claim partition was being set up only as a defence in equity, the limitation provided for filing a suit for contribution cannot apply. Thereafter, the doctrine of subrogation was considered and it was held that the suit filed in that case being a suit for partition primarily and predominantly and the relief of redemption having been sought only pursuant to the direction made by the High Court in its order of remand, the limitation of the suit would be governed by Article 120 of the Limitation Act, 1908 with the starting point of the suit for partition, being when the plaintiff has notice of his entitlement to partition being denied.

21. It is noted from the above judgment in the case of ***Krishna Pillai Rajasekharan Nair*** that the issue with regard to exclusion from joint family property of a person did not arise therein. Therefore, the provision of Article 127 of the Limitation

Act, 1908 did not arise for consideration. It could be pertinent to quote Articles 120 and 127 of the Limitation Act, 1908 which are as follows:

	Description of suit	Period of Limitation	Time from which period begins to run
120	Suit for which no period of limitation is provided elsewhere in this schedule	Six years	When the right to sue accrues
127	By a person excluded from joint family property to enforce a right to share therein	Twelve years	When the exclusion becomes known to the plaintiff

22(i). In the case of ***Shakti Bhog Food Industries Ltd.*** the appellant had filed suit on 23.02.2005 for a decree for rendition of true and correct accounts in respect of the interest/commission charged and deducted by the respondent bank for the specified period and also for recovery of the excess amount charged by the respondent bank with interest. The plaint came to be rejected by the trial Court under Order VII Rule 11(d) of CPC on the ground that it was barred by a law of limitation as it was filed beyond the period of three years prescribed in Article 113 of the Limitation Act, 1963. The trial Court adverted to a decision of the High Court of 2012 wherein it was held that exchange of correspondence between the parties cannot extend the limitation period for institution of a

suit, once the right to sue had accrued, which in that case had accrued in October 2000, which was also asserted in the plaint. The view taken by the trial Court commended to the District Court in the first appeal and also the High Court in the second appeal, which was challenged before the Supreme Court.

(ii) The Supreme Court considered the expression used in Article 113 of the Limitation Act 1963, "when the right to sue accrues". It was noted that the Article 113 of the Limitation Act 1963 being a residuary clause which had been invoked by all the three Courts in that case did not specify happening of a particular event, but merely referred to the accrual of cause of action on the basis of which the right to sue would accrue. It was further observed that it is well established position that the cause of action for filing a suit would consist of the bundle of facts and that, further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. The Supreme Court noted the distinction in Articles 58 and 113 of the Limitation Act 1963 with regard to the 'time from which period begins to run'. In Article 58 it was, "when the right to sue first accrues", whereas in Article 113 it is "when the right to sue accrues". After noting several decisions of the Supreme Court as well as of the Privy Council, particularly in

the case of ***Rukhmabai v. Lala Laxminarayan***¹⁴ wherein it was observed that whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardises the said right. The Supreme Court held that the principle underlying the dictum “when the right to sue accrues” must apply *proprio vigore* to Article 113 of the Limitation Act, 1963.¹⁵

(iii) The Supreme Court considered the background of the correspondence between the appellant and the respondent bank and observed that they were also invoked as giving rise to cause of action. Whether that plea taken by the appellant was genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents. It is relevant to refer to paras 22 and 23 of the said judgment, which read as follows:

“22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional

¹⁴ AIR 1960 SC 335

¹⁵ The expression “when the right to sue accrues” is also used in Article 120 of the Limitation Act, 1908.

office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.

23. Reverting to the argument that exchange of letters or correspondence between the parties cannot be the basis to extend the period of limitation, in our opinion, for the view taken by us hitherto, the same need not be dilated further. Inasmuch as, having noticed from the averments in the plaint that the right to sue accrued to the appellant on receiving letter from the Senior Manager, dated 8-5-2002, and in the particular letter dated 19-9-2002, and again on firm refusal by the respondents vide advocate's letter dated 23-12-2003 in response to the legal notice sent by the appellant on 28-11-2003; and once again on the follow-up legal notice on 7-1-2005, the plaint filed in February 2005 would be well within limitation. Considering the former events of firm response by the respondents on 8-5-2002 and in particular, 19-9-2002, the correspondence ensued thereafter, including the two legal notices sent by the appellant, even if

disregarded, the plaint/suit filed on 23-2-2005 would be within limitation in terms of Article 113.”

(iv) The Supreme Court noted that the trial Court and the High Court had failed to advert and analyze the averments in the plaint. But selectively took notice of the assertions in the plaint in question and then proceeded to reject the plaint being barred by law of limitation. It was therefore held that rejection of the plaint under Order VII Rule 11(b) of CPC could not be sustained.

23(i). In the case of ***Mohinder Kumar Mehra v. Roop Rani Mehra***¹⁶ before the Supreme Court, the facts were that the appellant's father, late Sri O.P. Mehra, along with his wife (respondent No.1) and three minor sons came to Delhi from Lahore after partition. Sri O.P.Mehra died in 1951. Respondent No.1 and her sons were held entitled to compensation under the order of the Settlement Commissioner, New Delhi dated 14.08.1956. Respondent No.1 was declared as highest bidder in a public auction for a house in Lajpat Nagar, area measuring 300 square yards, which amount was adjusted from the claim to which respondent No.1 and her sons were held entitled. Another property was also allotted in the name of respondent

¹⁶ (2018) 2 SCC 132

No.1 of area measuring 200 square yards at Nizamuddin, New Delhi. The property at Nizamuddin was sold by respondent No.1 in the year 2000. On 04.11.2009 the appellant filed suit No.2082/2009 against the respondents seeking partition of the suit property, described in Appendix A. In Appendix A, only property mentioned was that of Lajpat Nagar, New Delhi. The written statement was filed by the respondent and issues were framed by the Court. 10.08.2010 was fixed for recording the evidence of the plaintiff. However the plaintiff prayed for time for producing evidence. On 17.01.2011, the plaintiff filed an application under Order VI Rule 17 of CPC praying for amendment of the plaint. By the application, the plaintiff sought to add certain pleadings and prayer claiming share in the sale proceeds received by defendant No.1 from sale of the property of Nizamuddin.

(ii) The application filed by the plaintiff was objected to by the defendants stating that several opportunities was given to the plaintiff to lead evidence and last opportunity was given on 08.12.2010 to file his evidence by 28.01.2011. It was further pleaded that in the sale document of Nizamuddin property, the plaintiff himself was a witness. It was also stated

that the relief sought to be amended is barred by time and is altogether a separate cause of action.

(iii) The plaintiff filed a rejoinder stating that he came to know that the plaintiff had undivided share in the property at Nizamuddin only in November 2010. On 14.02.2014, an order was passed directing that amendment application shall be considered at the time of final hearing of the suit. However, pursuant to an order passed by the Division Bench of the High Court, the learned Single Judge was directed to decide the amendment application. In the meantime on account of pecuniary jurisdiction of the case, the suit was transferred to the Court of Additional District Judge, Saket. The Additional District Judge took up the amendment application and vide order dated 24.10.2016 rejected the amendment application. The trial Court took the view that the suit for recovery of money of his share could have been filed by the plaintiff within three years from the date of sale. The trial Court held that the amendment sought was barred by time, hence the application was rejected.

(iv) A writ petition under Article 227 was filed by the plaintiff against that order which was dismissed by the High Court against which the appeal was filed before the Supreme

Court. Before the Supreme Court, learned Counsel for appellant relied on Article 110 of the Limitation Act, 1963 to submit that the limitation for enforcing a right to share in a joint family property is twelve years, hence the claim was not barred by time. The Supreme Court noted that the amendment application was filed before the evidence in the trial was led by the plaintiff. It was held that looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in that case, no prejudice could be said to have been caused to the defendant since the evidence in the trial was led subsequent to the filing of the amendment application. It was observed that it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the proviso to Order VI Rule 17 of CPC. Thereafter, the Supreme Court considered one of the main reasons given by the trial Court in rejecting the amendment application that the claim was barred by limitation. The provision of Article 110 of the Limitation Act, 1963, which is *pari materia* Article 127 of the Limitation Act, 1908, was considered. It was noted that the case before the Supreme Court was not simply a case of recovery of money. The plaintiff's claim was to enforce a right to share in the

Nizamuddin property which was sold in the year 2000 and according to the plaintiff the limitation was twelve years as per Article 110 of the Limitation Act, 1963. The Supreme Court observed as follows:

"27. In the facts of the present case, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether the plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within twelve years, were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment in the facts of the present case, it was too early to come to a conclusion that limitation was only three years and not twelve years as claimed by the plaintiff. The High Court on the one hand refrained from expressing any opinion and on the other hand, has expressed his agreement with the view taken by the Additional District Judge rejecting the application as barred by time."

(Emphasis supplied)

24. From perusal of the aforesaid judgments of the Supreme Court, it is clear that the question of limitation is a mixed question of fact and law.

25. The question involved in ***Shakti Bhog Food Industries Ltd.*** was whether under Order VII Rule 11 (d) of CPC, could the plaint be rejected on the ground of suit being barred by limitation. However in the instant case, a separate

issue was framed after exchange of pleadings between the parties as to whether the suit is barred by limitation. This issue was decided as a preliminary issue after remand by the High Court and before evidence was led. However, we note that the learned Judge of the trial Court, in the impugned order, has relied only upon the admitted and undisputed case between the parties as has been noted above. The trial Court has referred to the Will dated 03.03.1956 set up by defendant Nos.1 and 2 in the previous suit bearing O.S.No.990/2000, whereby the suit property was stated to have been bequeathed in favour of the grandson of Sri B.C.Ramalingam to one Sri Gopinath. Late Sri Gopinath was the husband and father of defendant Nos.1 and 2 respectively. Thus, it was held that the right to sue of the plaintiffs would accrue on the date when the written statement of the defendants was filed. Admittedly, the suit has been filed beyond the limitation of three years provided in Article 113 of the Limitation Act, 1963.

26. The plaintiffs claim to be the coparceners of the defendants. They base their claim on the fact that way back in the year 1940, a partition took place between the aforesaid Sri Ramalingam and others on the basis of which a partition deed, which was duly registered. The fact that the suit schedule

property came to the share of Sri Ramalingam under the registered partition deed of 1940 is not denied by the defendants. Therefore the aspect whether Article 110 of the Limitation Act, 1963 would apply in the facts and circumstances of the present case, which provision provides the period of limitation of twelve years, would require adjudication by the trial Court while deciding issue No.11, as it is a mixed question of law and fact, and which would require evidence to be led. The issue No.11 could not have been decided by the trial Court prior to the evidence having been led in the trial. The point for determination is accordingly answered. We find support from the judgment of the Supreme Court in case of ***Mohinder Kumar Mehra.***

27. For the reasons aforesaid, we **allow** the appeal, set aside the impugned order of the trial Court dated 07.11.2012 in O.S.No.6732/2006 and remand the matter to the trial Court. The parties shall appear before the jurisdictional trial Court on 04.06.2026. If the Court is not available on that day, they shall appear on the next working day. The issues have been framed, so the trial Court is required to fix a date to proceed with recording of evidence of the parties. Thereafter, the trial Court,

after due consideration would proceed to decide the aforesaid issue No.11 pertaining to limitation along with the other issues.

Pending IAs, if any stand disposed of, accordingly.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

KSR