

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

REGURAL FIRST APPEAL NO.8 OF 2026 (PAR-DEC)

BETWEEN:

SMT. MANORANJINI @ MANORANJITHAM M.
D/O LATE P. MOHAN SWAMY @ P. MOHAN
AGED ABOUT 71 YEARS
R/AT No.77
NAGAPPA REDDY LAYOUT
R.M. NAGAR
BENGALURU-560 016

...APPELLANT

(BY SRI. B.M. SIDDAPPA, ADVOCATE)

AND:

- 1 . SRI. MADAN GOPAL
S/O LATE P. MOHAN SWAMY @ P. MOHAN
AGED ABOUT 76 YEARS
- 2 . SRI. CHANDRASHEKAR
S/O LATE P. MOHAN SWAMY @ P. MOHAN
AGED ABOUT 72 YEARS
- 3 . SRI. VIJAY KUMAR
S/O LATE P. MOHAN SWAMY @ P. MOHAN
AGED ABOUT 69 YEARS

ALL ARE R/AT No.14/3
RAMAKRISHNAPPA ROAD
COX TOWN

FRASER TOWN
BENGALURU

- 4 . SRI. DEENA
S/O LATE ARUL AND HEMALATH
AGED ABOUT 54 YEARS
- 5 . SMT. NIRMALA
D/O LATE ARUL AND HEMALATH
AGED ABOUT 50 YEARS
- 6 . SRI. SUNDAR
S/O LATE P. MOHAN SHANTHA KUMAR
AGED ABOUT 40 YEARS
- 7 . SMT. LILLY
W/O LATE P. MOHAN SHANTHA KUMAR
AGED ABOUT 37 YEARS
- 8 . SMT. PARIMALA
W/O LATE P. MOHAN SHANTHA KUMAR
AGED ABOUT 58 YEARS
- 9 . SRI. RAJU
S/O LATE NATHANIAL MOSES
AGED ABOUT 43 YEARS
- 10 . SRI. SURI
S/O LATE NATHANIAL MOSES
AGED ABOUT 40 YEARS
- 11 . SMT. SHANTHI
W/O LATE NATHANIAL MOSES
AGED ABOUT 56 YEARS
- 12 . SMT. JESSY
W/O LATE PUTTARAJ PRASANNA
AGED ABOUT 55 YEARS
- 13 . SRI. JAMES
S/O LATE PUTTARAJ PRASANNA
AGED ABOUT 45 YEARS

- 14 . SRI. JAGAN
S/O LATE PUTTARAJ PRASANNA
AGED ABOUT 43 YEARS
- 15 . SRI. KIRAN
S/O LATE PUTTARAJ PRASANNA
AGED ABOUT 41 YEARS
- 16 . SMT. MONICA
D/O LATE PUTTARAJ PRASANNA
AGED ABOUT 40 YEARS
- 17 . SMT. BHAVANI
W/O LATE ANDREW SUDARSHAN KUMAR
AGED ABOUT 44 YEARS
- 18 . SMT. SHAMLA
D/O LATE ANDREW SUDARSHAN KUMAR
AGED ABOUT 23 YEARS
- 19 . SRI. SANJAY
S/O LATE ANDREW SUDARSHAN KUMAR
AGED ABOUT 18 YEARS
- 20 . SRI. XAVIER
S/O LATE KASTHURI AND HARRY
AGED ABOUT 58 YEARS

ALL ARE RESIDING AT No.45
CHINAPPA LAYOUT
2ND CROSS
POST OFFICE ROAD
KALKERE MAIN ROAD
R.M. NAGAR
BENGALURU

- 21 . M/S. SAMYAK BUILDERS
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT No.405
SAMIKSHI ENCLAVE
5TH BLOCK, HBR LAYOUT
BENGALURU

REP. BY ITS PRO
MRS. G. KAVITHA RAJAGOPAL NAIDU
W/O G.K. RAJAGOPAL NAIDU
AGED ABOUT 39 YEARS

...RESPONDENTS

(BY SRI. M. MADAN GOPAL, ADVOCATE FOR C/R1 TO R3;
SRI. RAGHAVENDRA C., ADVOCATE FOR C/R21)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, AGAINST THE ORDER DATED 04.11.2025 PASSED ON I.A.No.2 IN OS. No.26376/2024 ON THE FILED OF THE LEARNED XXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYOHALL, BENGALURU CITY (CCH-29) ALLOWING THE I.A.No.2/25 FILED UNDER ORDER VII RULE 11(A) AND (D) R/W SEC.151 OF CPC.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.04.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

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

This Regular First Appeal is filed challenging the Order dated 04.11.2025 passed by the XXVIII Additional City Civil and Sessions Judge (CCH-29) Mayo Hall, Bengaluru in Original Suit No.26376/2024, wherein the application filed by defendant No.1 was allowed and the plaint was rejected under Order VII Rule 11 (a) and (d) read with Section 151 of the Code of Civil Procedure, 1908.

2. We have heard Shri. B.M Siddappa, learned counsel appearing for the appellant, Shri. M. Madan Gopal, learned counsel appearing for caveator/respondent No.1 and respondents No.2 and 3 and Shri. Raghavendra C, learned counsel appearing for caveator/respondent No.21.

3. The suit was filed seeking partition and separate possession of the suit schedule 'A' and 'B' properties by metes and bounds, with allotment of 1/10th share to the plaintiff, to declare that any document in favour of defendant No.21 in respect of suit schedule 'B' property

would not be binding on the plaintiff's share and to declare that the documents executed by defendants No.1 to 3 in favour of third parties concerning suit Schedule 'A' and 'B' properties are not binding to the share of the plaintiff.

4. The plaint averments are as follows:-

The plaintiff is the daughter of Late Shri. P. Mohan Swamy, son of Late Shri. Puttarangaiah and defendants No.1 to 20 are his sons, daughters-in-law and grandchildren. The plaintiffs and defendants No.1 to 20 are the legal heirs of Late Shri. P. Mohan Swamy. During his lifetime, Late Shri. P. Mohan Swamy acquired certain properties under a registered Partition Deed. Upon his demise, the plaintiff and defendants No.1 to 20 succeeded to his estate comprising suit Schedule 'A' and 'B' properties.

Defendants No.1 to 3, by falsely representing themselves as the only surviving legal heirs of Late P. Mohan Swamy, have created documents and third party interests in respect of the suit schedule properties with the intention of depriving the plaintiff of her lawful share. Portions of the suit Schedule 'B' property were dealt with in

favour of defendant No.16, without the knowledge or consent of the plaintiff and neither defendants No.4 to 15 nor the plaintiff are signatories to such transactions.

Though, the revenue records stand in the names of defendants No.1 to 3, they have illegally transferred portions of the suit Schedule properties. The plaintiff has an equal proportionate undivided right, title and interest in the suit Schedule 'A' and 'B' properties by virtue of succession and inheritance. Accordingly, the plaintiff and defendants No.1 to 20 are co-owners and are deemed to be in joint possession of the suit schedule properties.

A Joint Development Agreement has been entered into with Defendant No.21 in respect of suit Schedule 'B' property, allegedly with the object of defeating the lawful rights and share of the plaintiff in the suit schedule property. When the plaintiff demanded partition, defendants No.1 to 20 made all efforts to alienate the suit Schedule 'A' and 'B' properties.

5. Defendant No.1 filed an application under Order VII Rule 11(a) and (d) read with Section 151 of CPC seeking

rejection of the plaint on the ground that it discloses no cause of action and that the suit is barred by law. It was contended that the suit has been instituted with a *mala fide* intention to deprive defendants No.1 to 3 of their lawful rights over suit schedule properties and to defeat the decree passed in O.S.No.1719/1997. The suit is based on misrepresentation, suffers from mis-joinder and non-joinder of necessary parties and does not disclose any cause of action. The claim of the plaintiff is barred by law of limitation. The plaintiff had already relinquished her rights in respect of the suit schedule 'A' and 'B' properties in O.S.No.1719/1997, whereby the said properties were allotted to defendants No.1 to 3 along with other properties.

6. It was further contended that the plaintiff has no locus-standi to institute present suit, having relinquished her rights earlier. Late Shri. P. Mohan Swamy never acquired the suit schedule 'A' and 'B' properties nor left any estate to devolve upon the plaintiff or defendants No.3 to 20. Instead, the suit schedule properties were acquired by Late Shri. Puttarangaiah, grandfather of defendants No.1 to 3, who

executed a registered Partition Deed dated 25.08.1956, under which the suit Schedule properties were allotted to defendants No.1 to 3, then minors, with Shri. P. Mohan Swamy only acting as care taker during their minority. The plaintiff has suppressed material facts, including the decree passed in O.S.No.1719/1997. Defendants No.1 to 3 being absolute owners, alienated suit Schedule 'A' property in favour of defendant No.21 in the year 2001, after which the property was developed and sold to various purchasers. Relying on the registered Partition Deed dated 25.08.1956 and the compromise decree in O.S.No.1719/1997, defendant No.1 sought for rejection of the plaint and dismissal of the suit.

7. The learned counsel appearing for the plaintiff filed objections contending that the application filed by defendant No.1 is not maintainable either in law or on facts. It was submitted that a mere reading of the application and accompanying affidavit shows that the principal ground urged is that the suit is barred by limitation. However, it is settled that limitation, particularly in a suit for partition, is a

mixed question of law and facts which cannot be decided without trial and recording of evidence.

8. It was further contended that the plaintiff has no knowledge of O.S.No.1719/1997 and has not signed either the plaint, vakalat or the compromise petition in the said proceedings. The contention of defendants No.1 and 2 that Late Shri. P Mohan Swamy left no estate is a disputed question of fact which can only be adjudicated upon after full trial and evidence. The suit schedule properties are ancestral in nature and that the plaintiff and defendants No.1 to 20 are entitled to equal shares. A suit seeking relief of partition and separate possession cannot be rejected at the threshold by invoking Section 27 of the Limitation Act. The compromise petition in O.S.No.1719/1997 is disputed and therefore cannot form the basis for rejection of the plaint.

9. The trial Court upon examining the plaint averments and the registered Partition Deed dated 25.08.1956, held that the suit schedule properties described

in suit Schedule 'B' property were not allotted to Late P. Mohan Swamy as his share, but were expressly granted as absolute properties to his minor sons - defendants No.1 to 3. The Partition Deed further provided that until minors attained majority, their father, Shri. P Mohan Swamy would only manage the properties as their natural guardian. Suit Schedule 'A' property was allotted to Shri. Padmanabha, son of Shri. Rangappa. The trial Court noted that nowhere in the Partition Deed was Shri. P. Mohan Swamy shown as having acquired the suit Schedule 'B' property in his own right.

10. In view of the clear recitals in the registered Partition Deed, the trial Court found that the plaintiff's claim that Late Shri. P Mohan Swamy had acquired the suit Schedule properties and that all his legal heirs inherited equal shares was contrary to the documentary record. It was also noted that Late Shri. P. Mohan Swamy had never challenged the partition during his lifetime or asserted any claim over the suit properties. Since, Late Shri. P. Mohan Swamy had not acquired the suit Schedule properties under the Partition Deed, the trial Court held that no real cause of

action arose for seeking partition. Accordingly, I.A.No.2 filed under Order VII Rule 11(a) and (d) read with Section 151 of the Code of Civil Procedure, was allowed and the plaint was rejected.

11. It is contended by the learned counsel appearing for the appellant that the suit is one for partition and separate possession, wherein the relationship between the parties is admitted. It is undisputed that the suit properties originally belonged to the plaintiff's grandfather, who had five sons and that Late Shri. P. Mohan Swamy was the fourth son. The trial Court has misread the contents of the Partition Deed in concluding that Late Shri. P. Mohan Swamy was only appointed as caretaker of defendants No.1 to 3 and was not allotted any share. Such a recital itself creates suspicion and requires adjudication through a full-fledged trial to ascertain the true intention of the parties to the partition deed.

12. It is further contended that the trial Court erred in dismissing the suit at the threshold under Order VII Rule

11(a) and (d) read with Section 151 of the Code of Civil Procedure by relying solely on the recitals in the Partition Deed and holding that since Late Shri. P. Mohan Swamy had not been allotted any share, the plaintiff could not claim succession to the suit Schedule properties and therefore had no cause of action. The issue involved mixed questions of law and fact which could not have been decided without recording evidence. The plaintiff ought to have been given an opportunity to establish the circumstances under which the deed came to be executed and to prove that Late Shri. P. Mohan Swamy had, in fact acquired rights under the said partition.

13. It is also contended that the trial Court proceeded on mere assumptions in observing that Late Shri. P. Mohan Swamy was aggrieved by the contents of the Partition Deed, he ought to have challenged it during his lifetime. It is submitted that this was based on surmises unsupported by any material on record. On the contrary, the burden lay on the defendants to explain why no share was allotted to Late Shri. P. Mohan Swamy and how shares were directly allotted

to defendants No.1 to 3 who were minors at the relevant time, especially when other children were alive.

14. Relying on the compromise petition produced by the defendants in OS No.1719/1997 wherein the relief sought was also partition and separate possession and the present plaintiff had been arrayed as defendant No.1, this fact indicated that the properties said to have been allotted to Late Shri. P. Mohan Swamy under the 1956 Partition Deed was treated as available for partition in the earlier proceedings. Therefore, the contrary stand now taken by the defendants that no share had been allotted to Late Shri. P. Mohan Swamy under the 1956 Partition Deed raised disputed questions requiring trial. The trial Court by examining disputed facts and documents in detail had not conducted a full-fledged trial while deciding an application under Order VII Rule 11(a) and (d) read with Section 151 of the Code of Civil Procedure, which is impermissible in law.

15. We have considered the contentions advanced. We have also given our anxious consideration to the order of

the Trial Court with specific reference to the plaint, the documents produced therewith as well as the application filed by the respondents herein under Order VII Rule 11(a) and (d) read with Section 151 of CPC. We notice that the suit was filed seeking the following reliefs:-

- "i. For the partition of the suit schedule A & B property by metes and bounds of allotting 1/10th share therein and put her in separate possession of the same.*
- ii. Declaring that any document in favour of defendant No: 21 with respect to the suit schedule B property is not binding on the plaintiff share.*
- iii. Declare that the documents executed by the defendant No:1 to 3 cob with respect to suit schedule A & B property in favour of 3rd parties are not binding to the share of plaintiff.*
- iv. Award the costs of the proceedings."*

16. It was the specific contention in the plaint that the plaintiff is the daughter of Late P. Mohan Swamy S/o. Puttarangaiah and that she is laying claim to the property as a legal heir of the said P. Mohan Swamy. She claimed to be the eldest daughter by the first wife of P. Mohan Swamy. The specific contention in the plaint is that Mohan Swamy

had acquired Schedule 'A' and 'B' properties by a registered Deed of Partition dated 25.08.1956. It was contended that defendants No.1 to 3, who are her brothers had alienated some extent of property without her consent and her request for partition of the properties was not exceeded to by the defendants. It is essentially on these grounds that partition was sought. The defendant No.1 filed an application under Order VII Rule 11(a) and (d) read with Section 151 of CPC admitting that suit 'A' and 'B' schedule properties were acquired by Late Puttarangiah, who was the grandfather of the plaintiff and defendants No. 1 to 3. The execution of the registered Deed of Partition dated 25.08.1956 was also admitted. However, it was contended that as per the registered Deed of Partition dated 25.08.2006, suit 'A' and 'B' schedule properties were allotted to defendants No.1 to 3, who were minors at that time and P. Mohan Swamy was named as caretaker of the properties during the minority of defendants No.1 to 3. It was further stated that the plaintiff had relinquished her rights in suit Schedule 'A' and 'B'

properties in O.S.No.1719 of 1997 and Schedule 'A' property was alienated in favour of defendant No.21 in the year 2001. It is contended that the said property was developed and sold to various persons and the plaintiff was aware of this fact. It was further contended that the suit is hopelessly barred by limitation.

17. The trial Court found that even in case the plaintiff had a contention that the compromise entered into in O.S.No.1719 of 1997 is vitiated by fraud, the only remedy available to the plaintiff would be to approach the Court that to pass the compromise decree and not a fresh suit. The trial Court also took note of the Partition Deed dated 25.08.1956, which was produced along with the plaint with a typed copy. It was found that Puttarangaiah, the owner of the property had five sons and four daughters. All four daughters were married. The Partition Deed was entered into between Puttarangaiah and his sons namely, Rangappa, Venkatappa, Dasappa, Mohan Swamy and Narayana. The properties mentioned in 'B' schedule to the said Partition Deed were given to the minor sons of Mohan Swamy and

that Mohan Swamy was to manage the properties till the minor sons attain majority. The trial Court clearly found that the plaintiff's specific case was that Mohan Swamy had acquired the suit schedule properties under the Partition Deed dated 25.08.1956. However, on a reading of the plaint averments and the Partition Deed, it was found that no such property had been allotted to Mohan Swamy in the partition and that the property was allotted to his minor sons, who are defendants No.1 to 3 in the suit. In the above circumstances, it was found that the plaintiff has no cause of action to maintain the suit and the plaint is liable to be rejected.

18. The Apex Court in ***Sree Surya Developers & Promoters v. N. Sailesh Prasad*** reported in ***(2022) 5 SCC 736***, has clearly held that an independent suit challenging a compromise decree would be barred in view of Order XXIII Rule 3-A of CPC.

19. Further, the Apex Court in ***Dahiben v. Arvinbhai Kalyanji Bhanushali (Gajra) and Others*** reported in **(2020) 7 SCC 366**, it has held as follows:-

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

x x x x x

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

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

x x x x x

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

20. Further, in the case of **C.S. Ramaswamy v. V.K. Senthil and Others** reported in **2022 SCC OnLine SC 1330**, the Apex Court held as under:-

"32. *Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have*

tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC."

21. Having considered the contentions advanced on either side as well as the plaint and the Partition Deed, we find no material whatsoever to differ from the findings of the learned Trial Judge. We find that the Partition Deed specifically allots the properties in favour of the minor sons of Mohan Swamy and Mohan Swamy was intended to be only a caretaker till they attain majority. In view of the specific averment in the plaint, that the plaintiff claims as a legal heir of Mohan Swamy, who was allotted the properties under the Partition Deed dated 25.08.1956, we are of the opinion that in the absence of allotment of the suit schedule properties to Mohan Swamy by the Partition Deed dated

25.08.1956, the plaintiff had no cause of action to maintain the suit. Therefore, in agreement with the finding of the learned Trial Judge, the appeal being devoid of merits cannot succeed.

22. In the circumstances, the appeal fails and the same is accordingly ***dismissed***.

There is no order as to costs.

All pending interlocutory applications shall also stand *disposed of*.

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

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

cp*