

**Reserved on : 27.03.2026**  
**Pronounced on : 12.06.2026**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CIVIL REVISION PETITION No.63 OF 2025 (IO)

**BETWEEN:**

1. SRI P.A.MANJUNATH  
S/O S.APPAIAH,  
AGED ABOUT 63 YEARS.

2. SMT. VANAIAKSHI  
W/O SRI P.A.MANJUNATH  
AGED ABOUT 59 YEARS

BOTH RESIDING AT NO.7  
VARTHUR ROAD, NEAR BUS STOP  
PANATHUR, BENGALURU EAST  
BENGALURU - 560 103.

3. SMT. ASWINI P.M.,  
D/O SRI P.A.MANJUNATH  
W/O ANIL KUMAR B.M.,  
AGED ABOUT 33 YEARS,  
RESIDING AT NO.10,  
BUDIGERE ROAD  
JALA HOBLI ,BEGATUR



BENGALURU – 562 149.

4. SMT. NAVEEN P.M.,  
D/O SRI P.A.MANJUNATH  
W/O CHETHAN K.,  
AGED ABOUT 36 YEARS,  
RESIDING AT NO.1/1, 2<sup>ND</sup> CROSS  
NEAR GANESHA TEMPLE,  
MAHADEVPURA  
BENGALURU – 562 048.
  
5. SRI SURENDRA P.M.,  
S/O SRI P.A.MANJUNATH  
AGED ABOUT 32 YEARS,  
RESIDING AT NO.7,  
VARTHUR ROAD, PANATHUR,  
NEAR BUS STOP, BENGALURU EAST  
BENGALURU – 560 103.

ALSO RESIDING AT:  
NO.304, A BLOCK  
ISHA CASABLANCA APARTMENT  
PANATHUR, BENGALURU – 560 103.

... PETITIONERS

(BY SRI VIKRAM HUILGOL, SR.ADVOCATE A/W  
SRI MURALI N., ADVOCATE)

**AND:**

1. MAMATHA  
W/O LATE P.A.BABU,  
AGED ABOUT 45 YEARS

2. BABY PARINITHA B.,  
D/O LATE P.A.BABU  
AGED ABOUT 17 YEARS.
3. BABY LIKITHA B.,  
D/O LATE P.A.BABU,  
AGED ABOUT 15 YEARS.

RESPONDENT NO.2 AND 3 ARE MINORS  
HENCE THEY ARE REPRESENTED BY THEIR  
NATURAL GUARDIAN AND MOTHER MAMATHA  
THE RESPONDENT NO.1 HEREIN.

ALL RESIDING AT NO.962,  
NEAR SHARADA VIDYA MANDIR  
VARTHUR, BENGALURU – 560 087.

... RESPONDENTS

(BY SRI G.KRISHNAMURTHY, SR.ADVOCATE A/W  
SRI MUNIRAJU K., ADVOCATE FOR R-1;  
R2 AND 3 ARE MINORS REPRESENTED BY R-1)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE 1908, PRAYING TO CALL FOR RECORDS IN O.S.25803/2024 ON THE FILE OF THE 74<sup>TH</sup> CIVIL AND SESSIONS JUDGE, MAYO HALL (CCH 75) AT BANGALORE AND SET ASIDE THE ORDER DATED 16.01.2025 ON I.A.NO.III FILED BY THE PETITIONERS HEREIN (DEFENDANT) UNDER ORDER VII RULE 11(a) AND (d) OF CODE OF CIVIL PROCEDURE, 1908.

THIS CIVIL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.03.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioners/defendants are before this Court calling in question an order dated 16-01-2025 passed in O.S.No.25803 of 2024 by the LXXIV Additional City Civil & Sessions Judge, Mayohall Unit, Bengaluru whereby an application I.A.No.III filed under Order VII Rule 11(a) and (d) of the CPC seeking rejection of the plaint comes to be rejected.

2. Heard Sri Vikram Huilgol, learned senior counsel appearing for the petitioners and Sri G. Krishnamurthy, learned senior counsel appearing for respondent No.1.

3. Facts, in brief, germane are as follows: -

Petitioners 5 in number are defendants 1 to 5 and respondents 3 in number are plaintiffs 1 to 3. Defendant No.1/1<sup>st</sup> petitioner and P.A. Babu are the children among others of late Appaiah and Eramma. The properties of Appaiah and Eramma were divided between the members of the family by a registered partition deed dated 17-11-2004. P.A. Babu received a sum of ₹1,00,000/-

in lieu of his share in the Hindu undivided joint family properties. In the year 2006, 1<sup>st</sup> plaintiff and P.A. Babu got married. Babu died intestate. After the death of Babu, the plaintiffs demanded Hindu undivided joint family properties to be partitioned. Several disputes between the members of the family galore, which also led to registration of a FIR which comes to be stayed at the hands of this Court. After the said proceedings, the respondents/plaintiffs institute O.S.No.25803 of 2024 to restrain the petitioners from alienating or creating third party rights in the suit schedule properties. An interim order comes to be passed in the said suit. In terms of the interim order, walls of the properties were painted with the number of the suit. Defendants/petitioners then file their written statement in O.S.No.25803 of 2024 and also seek vacation of the interim order. During the subsistence of the said application, I.A.No.III is filed by the defendants seeking rejection of plaint under Order VII Rule 11 (a) and (d) of the CPC. The concerned Court hearing the parties to the *lis*, rejects the application I.A.No.III filed for rejection of the plaint. It is this rejection that has driven the defendants to this Court in the subject petition.

4. The learned senior counsel appearing for the petitioner would vehemently contend that O.S.No.25803 of 2024 is filed for partition of the properties which exclusively belong to the defendants in terms of the partition that took place in the year 2004 which is 20 years prior to the filing of the suit. The plaintiffs, according to the petitioners, do not have any locus to challenge the partition deed and seek partition through the subject suit as P. A. Babu through whom plaintiffs are now wanting to seek partition is a signatory to the registered partition deed dated 17-11-2004, which was executed two years prior to the marriage between the 1<sup>st</sup> plaintiff and P.A. Babu. He would, therefore, submit that permitting the suit again to be tried by the wife and children of P.A. Babu, without any right whatsoever, would become an abuse of process of law, as the property partitioned belonged to the defendants. It is un-understandable as to how the plaintiffs can now file a suit and seek division of the property of the defendants. He would submit that the concerned Court has mechanically rejected the application on the ground that it is purely mixed question of law and fact and the defence of the defendants cannot be looked into at that stage.

5. Per contra, the learned senior counsel appearing for the respondents/plaintiffs would vehemently refute the submissions by contending that at the stage of examination of an application under Order VII Rule 11, the Court has to consider only the averments in the plaint and not the defence of the defendants. The plaint indicates clear cause of action. The cause of action is demand of share in the suit schedule properties. He would submit that partition can be reopened, if it is prima facie proved that it is unjust at whatever length in time of the earlier partition taking place. Limitation would not be applicable to the prayer pertaining to the partition deed, since it was executed by fraud. The plaintiffs become aware of the partition deed only after the defendants file their written statement. Therefore, it becomes mixed question of law and fact.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts, link in the chain of events and dates are all a matter of record. The 1<sup>st</sup> defendant/P.A.Manjunath

and one P.A. Babu are the children of late Appaiah and Eramma. P.A. Babu was the husband of the 1<sup>st</sup> plaintiff and father of plaintiffs 2 and 3. On 17-11-2004 the properties of Appaiah and Eramma were divided between family members then subsisting by registered partition deed. The partition deed is appended to the petition. It is not in dispute that the deed of partition is executed on 17-11-2004.

Parties to the partition deed are as follows:

- “(1) SRI S.APPAIAH,  
Aged about 85 years,  
S/o Late Shamanna.
- (2) SMT. ERAMMA,  
Aged about 75 years,  
W/o Sri S.Appaiah.
- (3) SRI P.A. MANJUNATH,  
Aged about 44 years,  
S/o Sri. S.Appaiah
- (4) SRI P.A. RENUKANANDA,  
Aged about 40 years,  
S/o Sri. S.Appaiah.
- (5) SRI P.A. BABU,  
Aged about 30 years,  
S/o Sri. S.Appaiah.
- (6) SMT. P.A.SHOBHA,  
Aged about 38 years,  
D/o Sri. S.Appaiah.  
W/o Sri V.M.Muniraju.
- (7) SMT. P.A. SHAMANTHA,  
Aged about 35 years,

D/o Sri. S.Appaiah  
W/o Sri E.Nagaraj.

- (8) SMT. P.A. KANAKA,  
Aged about 32 years,  
D/o Sri. S.Appaiah  
W/o Sri H.Muniraju.”

P.A.Babu, a member of the family and husband of plaintiff No.1 and father of plaintiffs Nos.2 and 3 was also a signatory to the partition deed. It is a registered partition deed partitioning the properties that were available at the hands of Appaiah and Eramma during their life time. At that point in time, P.A. Babu was not married. He gets married two years after the partition. It is not that the partition deed did not give any property to P.A. Babu. P.A. Babu after the partition did not choose to question the said partition and was happy with what he got in the partition. 20 years passed by. P.A. Babu died intestate. After the death of P.A. Babu, his wife and children demand partition of the properties belonging to the petitioners/defendants. The demand took violent turn and a crime was registered. The crime so registered comes to be stayed at the hands of this Court in Writ Petition No.3464 of 2023.

8. The plaintiffs then file a suit for partition and separate possession of ½ share in the suit schedule properties. The suit

schedule properties are of the defendants in O.S.No.25803 of 2024. They also seek permanent injunction to restrain these petitioners from alienating or creating third parties right in the suit schedule properties. The averments in the plaint is necessary to be noticed. They read as follows:

".... ....

4. The Plaintiffs respectfully submits that, one Sri.Appaiah was the propositus of the Hindu Undivided Joint Family and after his death, his wife by namely Smt Eramma and children by namely P A Renukananda Babu and P A Manjunath are continued in the joint family and the first defendant being elder member of the family is managing the affairs of Hindu Undivided Joint Family as a Kartha and Smt. Eramma was also died intestate leaving behind Plaintiffs and Defendants in the Joint Family.

.... ....

10. The Plaintiffs respectfully submits that, the cause of action to file this suit is arise on 20/09/2020, on that day P A Babu died and subsequently when the demands were made and finally on 05/07/2024 one the defendants have refused to effect the partition by meets and bounds and subsequently within the jurisdiction of this honorable court.

11. The Plaintiffs have not filed any other Suit on the same cause of action and there is no pendency of any legal proceedings and litigations either in fast or at present concerning any part of the subject matter of the Suit/ Petition in any court within the knowledge of Plaintiffs.

12. The suit is one for Partition and Separate Possession and other reliefs a fixed court fee is paid on this plaint as per Section 35(2), 26(c) of The Karnataka Court Fees and Suit Valuation Act 1958.

**WHEREFORE**, the Plaintiffs most respectfully pray that this Hon'ble Court may kindly be pleased to grant and pass:

- a) Decree of Partition by declaring that the Plaintiffs have jointly entitled to the 1½ Share in the suit Schedule Property and put them into Separate Possession of their respective shares in the suit Schedule Properties.
- b) To grant Decree of injunction, restraining the Defendants and their henchmen's, agents, assignees or anybody claiming under them in dealing or creating third party rights, alienating the Plaintiffs shares in the suit Schedule Properties by way of Permanent Injunction.
- c) For decree of mesne profits.
- d) To grant such other order or relief as this Hon'ble Court deems fit to grant in the circumstances of the case in the interest of justice and equity."

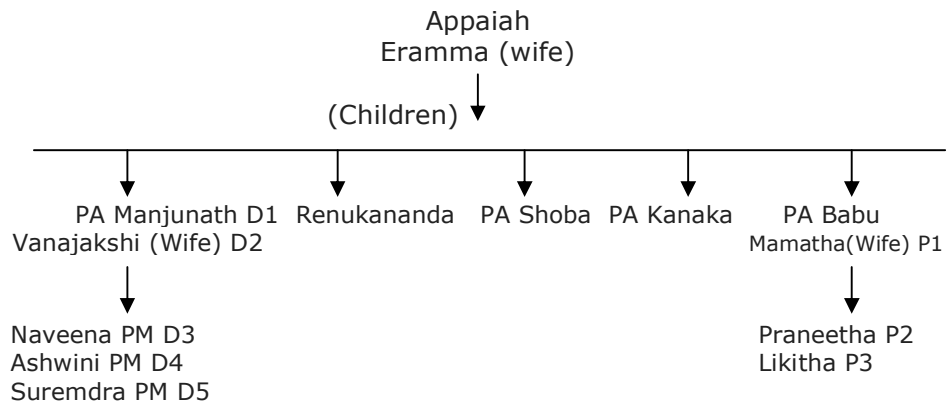
The plaint makes a bald demand for partition. All that is narrated is the registered partition deed that took place 20 years ago is a fraud. An ex-parte interim injunction is granted restraining the present petitioners from alienating the properties. It is then, the petitioners come to know filing of the suit. An application is then preferred under Order VII Rule 11 CPC seeking rejection of the

plaint, on the ground that it is barred by limitation and does not project any cause of action. The affidavit filed in support of the application reads as follows:

"... .."

5. I state that the Plaintiffs have averred in the Plaint that the suit schedule properties belonged to Sri Appiah who was the propositus of the Hindu Undivided Joint Family and after his death, Smt. Erramma, Sri PA Renukananda Babu, and PA Manjunath succeeded to the estates. The Plaintiffs have further averred in the Plaint that the 1<sup>st</sup> Defendant being the kartha of the family, was managing the suit schedule properties and after the death of Smt. Erramma, the suit schedule properties have fallen to the share of the Plaintiffs and Defendant.
6. I state that the Plaintiffs have averred in the Plaint that there was no partition in respect of the suit schedule properties. The Plaintiffs have further averred in the Plaint that the Defendants have refused to give share the suit schedule properties to the Defendants on the pretext that the 1<sup>st</sup> Defendant did not give birth to male children.
7. It is brought to the kind attention of this Hon'ble Court that the Plaintiffs have deliberately and intentionally concealed the existence of the Registered Partition Deed dated 17/11/2004. In fact, late Appiah, late Erramma during their lifetime and along with their children, entered into a Registered Partition Deed dated 17/11/2004 even prior to the marriage of the 1<sup>st</sup> Plaintiff.
8. I state that the Plaintiffs are claiming their rights over the schedule properties through PA Babu (husband of 1<sup>st</sup> Plaintiff) and it is not out of the context that the deceased husband of the 1<sup>st</sup> Plaintiff is also a signatory to the said Registered Partition Deed dated 17/11/2004 which was executed prior to his marriage with the 1<sup>st</sup> Plaintiff.

9. I state that the Plaintiffs have averred in the Plaint that Sri Appiah who was the propositus of the Hindu Undivided Joint Family consisting of Sri Appiah, Smt. Erramma, PA Manjunath, Sri PA Renukananda Babu, and PA Babu. The Plaintiffs have not only suppressed the existence of the Registered Partition Deed dated 17/11/2004 but also, they have wantonly suppressed the existence of other family members namely Smt. PA Shoba, Smt. Shamantha and Smt. Kanaka. Since they are not impleaded as parties to the suit, the suit is bad in law for non-joinder of necessary parties, hence the suit is liable to be dismissed in limine. The genealogical tree of Sri Appiah, Smt Erramma, is drawn hereunder for kind perusal of this Hon'ble Court.



10. It is trite law that the registration of document is a constructive notice to a person or interest or any part thereof and section 3 of the Transfer of Property (Explanation 1), lays down that the Registration of document is a constructive notice. The Hon'ble Supreme Court in case of Suraj Lamp & Industries P Ltd. v. State of Haryana, (2009) 7 SCC 363 has held that the object of the Explanation to Section 3 is to safeguard the interests of a party who has already acquired a good title under a previous registered instrument. It enables people to find out whether any particular property, has been subjected to any legal obligation or liability. In the present case the Registered Partition Deed dated 17/11/2004 is a deemed knowledge to the Plaintiffs, therefore, the Plaintiffs are estopped from claiming any such rights over the suit

schedule properties as the Registered Partition Deed dated 17/11/2004 had already been partitioned prior to the marriage of 1<sup>st</sup> Plaintiffs. The Plaintiffs, at this belated stage and after a lapse of 20 years, cannot deny the fact that they had no knowledge of the Registered Partition Deed dated 17/11/2004.

11. I further state that as admitted in the Plaint the Plaintiffs are now intending to seek a relief of partition over the suit schedule properties which was divided amongst the family members under a registered instrument, 20 years ago. which is unsustainable in law.
12. I state that under no stretch of imagination the prayer sought by the Plaintiff could be granted at the hands of this Hon'ble Court as the same hopelessly barred by limitation.
13. I state that the continuation of proceedings in the instant suit will not yield any relief to this Plaintiff and on the contrary, it would lead to waste of valuable time of time of this Hon'ble Court. The Plaintiff has filed this frivolous suit to defeat my legitimate right and thus trying to illegally knock off the suit schedule property.
14. I state the Plaintiff has filed the instant suit after a lapse of 20 years from the date of Registered Plaintiff Deed dated 17/11/2004 which is hopelessly barred by law of limitation. Therefore, the plaint is liable to be rejected on the ground of limitation and the relief is available to the Plaintiffs in the eyes of law. Hence, this Hon'ble may be pleased to reject the Plaint.
15. I state that by clever drafting, the plaintiffs are seeking to overcome the question of limitation and create an imaginary cause of action. In fact, the Plaintiffs have no right to sue and, clever drafting has created the illusion of a cause of action. The Hon'ble Supreme Court in catena of cases has held that the Plaint is liable to be rejected when it is vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting.

16. I state that the cause of action alleged in the Plaint is bald, false, imaginary and unacceptable in the eyes of law. It is alleged in Para 10 of the Plaint that the Cause of Action arose in the 20/09/2020 when PA Babu died and subsequently when defendants refused to affect partition is all bald.
17. I state that the Plaint and the reliefs claimed thereof is clearly barred and untenable in law. Any further proceedings in the present suit would lead to wastage of the valuable time of this Hon'ble Court. Hence, it is just and necessary to allow this application and thereby reject the Plaint as the same is barred by law and for not paying appropriate court fee...."

Objections are filed to the said application. The concerned Court, by the impugned order, rejects the application on the score that it is a pure question of law and fact, by the following order:

".... ....

8. Plaintiffs have filed the instant suit against the defendants for the relief of partition and separate possession of their ½ share in the schedule properties as well as consequential relief of permanent injunction restraining the defendants in dealing or creating third party rights, alienating the plaintiffs' share in the schedule properties.

9. In nutshell, the case of the plaintiffs is that, they never known about the alleged partition deed dated 17.11.2004 and other deeds which are referred in their written statement and the same was created by the defendant No.1 to grab the shares of the deceased husband of plaintiff No.1 and after going through alleged partition deed dated 17.11.2004 it is found that under the alleged partition deed P.A.Babu was not allotted any immovable property even though the several properties available in the said deed and the deceased P.A.Babu was illiterate by taking advantage of the same, the defendant No.1 got the alleged partition deed and interestingly 99% properties

was taken to the share of 1<sup>st</sup> defendant, thereby the alleged partition deed dated 17.11.2004 is void and not binding on them and the said partition is required to be reopened for equal distribution of the properties. This IA is neither in conformity nor consonance with the contemplated rules.

10. 1<sup>st</sup> Defendant is contending that, there is no cause of action to file the suit. The plaintiffs have deliberately and intentionally concealed the existence of the registered partition deed dated 17.11.2004. In fact, Late.Appaiah, Late.Eramma during their lifetime and along with their children, entered into a registered partition deed dated 17.11.2004 even prior to the marriage of 1<sup>st</sup> plaintiff. The plaintiffs are claiming their rights over the schedule properties through P.A.Babu/husband of 1<sup>st</sup> plaintiff and it is not out of the context that P.A.Babu is also a signatory to the said registered partition deed dated 17.11.2004. They have wantonly suppressed the existence of other family members namely Smt.P.A.Shobha, Smt.Shamantha and Smt.Kanaka. Since they are not impleaded as parties to the suit, the suit is bad in law for non-joinder of necessary parties. The plaintiffs without application of mind and without considering the rules and statute established by law has filed this suit due to personal grudge and vendetta.

11. It is settled principle of law that, while considering the application U/O.7 Rule 11 of CPC, the Court has to take into consideration only the averments of the plaint and not the defence put forth by the defendant. When such is the position of law, I am of the view that, having regard to the cause of action stated in the plaint, the suit cannot be dismissed on the count of limitation.

12. 1<sup>st</sup> Defendant contends that, there is no cause of action for the suit. In para No.10 of the plaint, the plaintiffs has stated about the cause of action to the suit. When such is the case, the contention of the 1<sup>st</sup> defendant that, there is no cause of action for the suit and the plaint is to be rejected due to want of cause of action, is not sustainable.

13. It is admitted fact that plaintiff is a member of Hindu Undivided Joint Family and schedule properties are Hindu Undivided Joint Family properties. In this case, the plaintiffs produced documents. But it is contention of defendant No.1 that

as admitted in the plaint the plaintiffs are now intending to seek a relief of partition over the schedule properties which was divided amongst the family members under a registered instrument, 20 years ago, which is unsustainable in law.

14. Perusal of the record, it is clear that plaintiffs and defendants are the members of Hindu Undivided Joint Family. So, whether the alleged partition deed dated 17.11.2004 is void under the eyes of law and not binding on them or not it requires trial and perusal of the record. Here in this case the plaintiffs claiming the relief of partition and separate possession of their ½ share in the schedule properties and also plaintiff claiming the relief of permanent injunction against the defendants. The perusal of the documents produced by the plaintiffs itself explain everything and no where in the document does it imply or state that the plaintiffs are guilty of causing undue harassment to the defendants. Perusal of the records, it clearly goes to show that plaintiffs are the members of the Hindu Undivided Joint Family. Averment of the plaint only looked into and defence of the defendants cannot be taken into consideration while disposing the application u/O VII Rule 11 of CPC.

15. I have perused the citation reported in Special Leave to Appeal No.19018/2022 between Gurdev Singh v/s Harvinder Singh. Wherein it is held as follows:

'Code of Civil Procedure, 1908; Order VII Rule 11 -Rejection of Plaint - The case on behalf of the petitioner is that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 CPC.'

16. I have perused the citation relied on by the counsel for the plaintiffs. With due respect it is stated that the facts and circumstances of the present case are aptly applicable to the facts and circumstances of the cases cited by the plaintiffs. In view of my aforesaid findings on fact, I am of the view that, defendants have failed to establish any of the grounds stated u/O VII Rule 11 of CPC for rejection of plaint. In view of the above, I answer the point for consideration **in Negative** and pass the following:

**ORDER**

IA No.III filed by the defendants u/O VII Rule 11 (a) & (d) of CPC r/w Sec .5 of the Limitation Act is rejected.

No order as to costs.”

9. It is no doubt true that there can be any number of partition suit seeking partition of Hindu undivided properties. In the case at hand, P.A. Babu, the father of plaintiffs 2 and 3 and husband of plaintiff No.1 was himself a signatory to the partition deed of the year 2004, a registered partition deed. It is not that he did not get anything in the partition deed so entered into. For 20 years if P.A. Babu had no grievance about the partition and was in peaceful enjoyment of the property that came to him in the partition; after his death, 20 years later to the partition, his children and the wife are now wanting to seek further partition of the property that has already been partitioned and belonging to the defendants. This, in the considered view of this Court, ought to have been looked into by the concerned Court. Limitation, no doubt, would be a mixed question of law and fact, if evidence is required to be considered. In the case at hand, it is a registered partition deed to which the father of plaintiffs 2 and 3 and husband

of plaintiff No.1 P.A.Babu was a signatory and the plaintiffs being fully aware of the said fact, cannot now seek to question it and if this is permitted, every partition that had stood concluded long ago would be reopened.

10.1. The Apex Court in the case of **RAMISETTY VENKATANNA v. NASYAM JAMAL SAHEB**<sup>1</sup> has held as follows:

".... ....

23. We have heard learned counsel appearing on behalf of the respective parties at length. We have also gone through the averments made in the plaint. On going through the averments, it appears that the suit is essentially based upon the premise that there was an error in partition deed dated 11.03.1953 and in partition deed survey number 706/A9 was wrongly mentioned. Therefore, it is the case on behalf of the plaintiffs that Sarambee and other descendants including the vendors of the appellants never had any right to effect transactions in respect of the land in survey number 706/A9. However, it is required to be noted that despite the above, very cleverly the plaintiffs have not sought any relief with respect to partition deed dated 11.03.1953. Deliberately and purposely, the plaintiffs have not prayed any relief with respect to partition deed dated 11.03.1953 though it is the case on behalf of the plaintiffs that there was an error in partition deed dated 11.03.1953. It is to be noted that pursuant to the partition deed dated 11.03.1953, after the demise of the original land owner Nasyam Jamal Saheb, his five children namely, 1) NasyamJafar Saheb; 2) NasyamDasthagiri Saheb; 3) Nasyam Ibrahim Saheb; 4) Sarambee; and 5) Jainabee got partitioned the properties under a registered partition deed dated 11.03.1953. Under the registered partition deed, predecessor in interest of plaintiffs, N. Ibrahim Saheb got 1 acre and predecessor in interest of vendors

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<sup>1</sup> 2023 SCC OnLine SC 521

of the appellants Sarambee got 1 acre 16 cents. All the parties to the registered partition deed acted upon the said partition deed. **That thereafter, further transaction took place and Sarambee executed a registered gift deed dated 24.01.1968 in favour of her eldest daughter Kareembee – mother of the vendors of the appellants to an extent of lands measuring 58 cents. That thereafter, two sons of Kareembee who became co-owner on the death of Kareembee executed the registered sale deed dated 24.08.2010 in favour of the appellants in Survey No. 706/A9 to an extent of land measuring 58 cents for a valid sale consideration. Since 2010, the appellants are in possession of the land purchased vide registered sale deed dated 24.08.2010. Without challenging partition deed dated 11.03.1953 and even subsequent gift deed dated 24.01.1968, the plaintiffs have instituted the present suit with the aforesaid prayers which is nothing but a clever drafting to get out of the limitation. If partition deed dated 11.03.1953 was to be challenged which as such, the plaintiffs are attempting to do virtually, the suit would be hopelessly barred by limitation having being instituted after lapse of 61 years from the partition deed.**

24. In the case of T. Arivandandam (supra) in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed as under: -

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by

examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.”

10.2. The Apex Court, later, in the case of **UMA DEVI v. ANAND KUMAR**<sup>2</sup> has held as follows:

“... ..

**14. Applying this settled principle of law, it can safely be assumed that the predecessors of the plaintiffs had notice of the registered sale deeds (executed in 1978), flowing from the partition that took place way back in 1968, by virtue of them being registered documents. In the lifetime of Mangalamma, these sale deeds have not been challenged, neither has partition been sought. Thus, the suit (filed in the year 2023) of the plaintiffs was prima facie barred by law. The plaintiffs cannot reignite their rights after sleeping on them for 45 years.**

**“15.** The learned Senior Counsel for the appellant-defendants, Mr Sundaram, relied upon the decision of this Court in *Shri Mukund Bhavan Trust v. Chhatrapati UdayanRajePratapsinh Maharaj Bhonsle* [*Shri Mukund Bhavan Trust v. Chhatrapati UdayanRajePratapsinh Maharaj Bhonsle*, (2024) 15 SCC 675 : 2024 SCC OnLine SC 3844] to substantiate the contention that the suit was barred by limitation. It was observed as follows : (SCC paras 22 & 25)

“22. When a portion of the property has been conveyed by court auction and registered in the first instance and when another portion has been conveyed by a registered sale deed in 1952, there is a constructive notice from the date of registration and the presumption under Section 3 of the Transfer of Property Act, comes into operation. The possession, in the present case, also has been rested with the appellant before several decades, which operates as notice of title.

...

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<sup>2</sup> (2025) 5 SCC 198

23.-24. \*\*\*

25. Continuing further with the plea of limitation, the Courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order 7 Rule 11."

**16.** In *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] , this Court laid down the scope of Order 7 Rule 11CPC : (SCC pp. 178-79, para 7)

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of

action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

**17.** In *Dahiben v. Arvindbhai Kalyanji Bhanusali* [*Dahiben v. Arvindbhai Kalyanji Bhanusali*, (2020) 7 SCC 366: (2020) 4 SCC (Civ) 128] , it is stated as under : (SCC p. 377, para 23)

“23. ... 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.”

**18.** In our considered opinion, the trial court had rightly allowed the application of the appellant-defendants under Order 7 Rule 11CPC, holding that the suit filed by the plaintiffs was a meaningless litigation, that it did not disclose a proper cause of action and was barred by limitation. There were thus no justifiable reasons for the appellate court to have remanded the matter to the trial court.”

10.3. The Apex Court, again, in the case of **NIKHILA**

**DIVYANG MEHTA v. HITESH P. SANGHVI**<sup>3</sup> has held as follows:

“.... ....

**26.** In the present case, the plaintiff not only categorically states that he acquired knowledge of the Will and the Codicil in the first week of November, 2014 but also that the cause of action for the suit first arose on 04.02.2014 and lastly on 21.10.2014. The suit was filed

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<sup>3</sup> 2025 SCC OnLine SC 779

**on 21.11.2017. As such on the own averments of the plaintiff, the suit was instituted beyond limitation attracting Order VII Rule 11 (d) CPC.**

**27.** The submission that limitation is a mixed question of law and fact and that it cannot be decided without allowing the party to lead evidence is of no substance. **In the present case, we have earlier noted that the suit was admittedly instituted on 21.11.2017 whereas according to the plaintiff averments the cause of action first arose on 04.02.2014. Even assuming that the cause of action last arose in the first week of November, 2014, the suit ought to have been filed by 07.11.2017. The suit was filed on 21.11.2017. It was *ex-facie* barred by limitation for which, no evidence was required to be adduced by the parties. The above issue is purely an issue of fact and in the admitted facts as per the plaint, allegations stand concluded for which no evidence is needed.**

**28.** The other contention that the plaintiff acquired knowledge of the Will and Codicil in the first week of November, 2014, but that was not a complete knowledge as probably he could read the same subsequently. In dealing with the submission, the appellate Court distinguished between "*having knowledge*" and "*full knowledge*" to hold that the suit is not barred by limitation as the limitation would reckon from the date of full knowledge. It is a complete fallacy to make any distinction between "*knowledge*" and "*full knowledge*". First of all, the limitation has to run from the date when the cause of action first accrued and not any subsequent date for the cause of action. According to the plaintiff himself, the cause of action for the suit had arisen much earlier. Secondly, the plaintiff has not pleaded any date on which he acquired complete knowledge and that such argument is only an afterthought and appears to be a simple creation of the first appellate Court."

(Emphasis supplied at each instance)

**The pronouncement of the Apex Court in RAMISETTY *supra* serves as a salutary reminder that the judicial process**

**cannot be permitted to become a refuge for claims which are long extinguished in law, but are sought to be resurrected through the alchemy of artful pleadings. The Apex Court has unequivocally held that, where clever drafting creates a mere mirage of a cause of action, concealing beneath its veneer an action hopelessly barred by limitation, the Court must pierce the veil of such pleadings and reject the plaint at its inception. The law does not countenance the resurrection of stale claims through the device of inventive drafting.**

**11. The facts that fell for consideration before the Apex Court bear resemblance to those obtaining in the present case. There, a suit for partition was instituted in the year 2023 without any challenge whatsoever to a partition deed executed on 11-03-1953 and a subsequent gift deed dated 24-01-1968. The Apex Court holds, such an attempt to unsettle the rights that had attained finality decades earlier, cannot be permitted to be resurrected.**

**12. The case at hand stands on an even weaker footing. A registered partition deed dated 17-11-2004 forms the bedrock of the rights and possessions enjoyed by the parties for over two decades. Significantly, the said deed has never been challenged by any of its executants. Having accepted the partition, acted upon it, enjoyed the properties allotted thereunder, and derived every conceivable benefit flowing from it, the plaintiffs now seek to reopen a concluded chapter of family history, by projecting a wholly illusory cause of action. Their assertion that they became aware of the partition deed only upon the filing of the written statement is not merely implausible; it is a contention that defies both logic and human conduct. One cannot partake of the fruits of a partition throughout one's lifetime and yet profess ignorance of the very instrument that conferred those benefits.**

**13. The plea sought to be advanced by the plaintiffs is, therefore, not a case of clever drafting alone; it is an endeavour to create an artificial cause of action where none**

**exists. The issuance of a legal notice cannot breathe life into a claim that had long ago perished. The judgments of the Apex Court in UMA DEVI and NIKHILA DIVYANG MEHTA further fortify this position. Those decisions reiterate the settled principles governing the exercise of jurisdiction under Order VII Rule 11 of the CPC and emphasize that the Court, while examining a plaint, must ascertain whether a real and subsisting cause of action is disclosed and whether the action is barred by any law. The provision is intended precisely to prevent the judicial process from being burdened by litigations, which are dead on arrival.**

14. Turning to the judgments relied upon by the learned counsel appearing for the respondents, this Court finds that the principles enunciated therein have little bearing on the facts of the present case. There can indeed be no dispute with the proposition that more than one suit for partition may be maintainable where joint family properties continue to remain undivided and the rights of coparceners have not crystallized. Such a principle, however, has no application to properties that already stand partitioned under a

registered instrument and whose title has been accepted, acted upon, and perfected over the course of decades.

15. The present suit is not the one seeking division of undivided family property; it is an attempt to reopen and unsettle a partition that has stood unquestioned for over twenty years. The rights of the parties have long since crystallized. **Possession has followed title. Enjoyment has followed possession. Finality has followed acceptance.**

16. Therefore, this Court is of the considered view, that the concerned Court ought to have allowed the application filed by the petitioners-defendants under Order VII Rule 11(a) and (d) of the CPC. Its refusal to do so, has resulted in the continuation of a proceeding, which is ex-facie barred by limitation and bereft of a legally sustainable cause of action.

17. For the aforesaid reasons, the following: -

**ORDER**

- (i) Civil Revision Petition is **allowed**.
- (ii) Application filed by the petitioners/defendants under Order VII Rule 11 CPC in I.A.No.III is allowed. The plaint in O.S.No.25803 of 2024 stands rejected.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

bkp  
CT:MJ