



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CIVIL REVISION PETITION NO.269 OF 2023 (IO)

BETWEEN:

SRI K SRINATH HEBBAR
S/O LATE K SRINIVAS HEBBAR
AGED ABOUT 56 YEARS
R/AT SUNANDHA
MERCARA HILL ROAD
BENDORE
MANGALURU-575002.

...PETITIONER

(BY SRI HAREESH BHANDARY T, ADVOCATE)



AND:

1. SRI N MAHALINGESWARA BHAT
AGED ABOUT 72 YEARS
S/O N KRISHNA BHAT
R/AT KRISHNA JAIN COMPOUND
KAPRIGUDDA, FALNIR POST
MANGALURU-575001.
2. MR N SHANKARANARAYANA BHAT
AGED ABOUT 65 YEARS
S/O N KRISHNA BHAT



ABIKATTA HOUSE
ENMAKAJE VILLAGE
PERLA POST-671552
KASARAGOD DISTRICT.

3. MRS SHARADA
AGED ABOUT 70 YEARS
D/O N KRISHNA BHAT
W/O B N SUBRAMANYA BHAT
BUNDADKA VILLAGE
MANIMOLE -671554
KASARAGOD DISTRICT.

4. MRS HEMAVATHI
AGED ABOUT 69 YEARS
D/O N KRISHNA BHAT
W/O VISHWANATHA BHAT
PRAKASH NILAYA
PERMUDE-671321
KASARAGOD DISTRICT.

5. MRS RUKMINI
AGED ABOUT 67 YEARS
D/O N KRISHNA BHAT
W/O P SUBRAMANYA BHAT
ALLODI 671321
BELA VILLAGE
KASARAGOD DISTRICT

6. MRS N MEENAKSHI
AGED ABOUT 62 YEARS
D/O N KRISHNA BHAT
W/O VENKAPPA BHAT
NELLITHADI HOUSE
KUMBD AJE POST - 671551
KASARAGOD DISTRICT.

(No.1 TO 6 ARE REP. BY THEIR



GPA HOLDER MR ABHISHEKA N
S/O MAHALINGESHWARA BHAT
AGED ABOUT 38 YEARS
FALNIR POST
MANGALURU-575001)

7. SMT B SHARADHA RAO
AGED ABOUT 80 YEARS
W/O B RAMANANDA RAO
R/O KADRI MALLIKATTA
KANKANADY POST
MANGALURU-575002.
8. SMT B PRASANNA
AGED ABOUT 59 YEARS
D/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
9. SMT B SHASHI PRABHA
AGED ABOUT 57 YEARS
D/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
10. SMT B SAUKHAVANI
AGED ABOUT 55 YEARS
D/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
11. SRI GANESH RAO
AGED ABOUT 53 YEARS
S/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA



- KANKANADY POST
MANGALURU-575002.
12. SRI B BHASKAR RAO
AGED ABOUT 51 YEARS
S/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
13. SRI B RAJANEESH RAO
AGED ABOUT 49 YEARS
S/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
14. SRI B BABU RAO
AGED ABOUT 47 YEARS
S/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
15. SMT B MAMATHA
AGED ABOUT 45 YEARS
D/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.
16. SRI B PRASHANTHA RAO
AGED ABOUT 41 YEARS
S/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.



17. SRI B SRIKANTHA RAO
AGED ABOUT 39 YEARS
S/O B RAMANANDA RAO
R/O KADRI, MALLIKATTA
KANKANADY POST
MANGALURU-575002.

SRI BHAVANI SHANKAR RAO
SINCE DECEASED BY HIS LEGAL
REPRESENTATIVES

18. B SHARATH KUMAR
AGED ABOUT 64 YEARS
S/O LATE BHAVANI SHANKAR RAO
R/AT NO.491, GURUDEEPA
8TH CROSS, RASHI RESIDENCY
2ND STAGE, KADABAGERE POST
OFF MAGADI ROAD
BENGALURU-562130.

19. SMT RENUKA
AGED ABOUT 62 YEARS
D/O LATE BHAVANI SHANKAR RAO
W/O SRI Y S SURENDRA
R/AT NO.2662
ASHRAYA 12TH MAIN
E BLOCK II STAGE RAJAJINAGAR
BENGALURU-560010.

20. SRI NATESH RAO
AGED ABOUT 87 YEARS
S/O LATE B BABU RAO
R/AT PLOT NO.107
3RD MAIN, 4TH CROSS
PRAKASH NAGAR
BENGALURU-560021.



21. SRI SHIVASWAMY RAO
AGED ABOUT 77 YEARS
S/O LATE BABU RAO
R/AT NO.64 A G S OFFICE
CO OP HOUSING SOCIETY LAYOUT
WEST OF NEW B E L ROAD
BENGALURU-560054.
22. SRI T N RAJA
AGED ABOUT 65 YEARS
S/O T M NARASIMHA
R/AT NO.B-405 ANRALA-18
BANNERGHATTA ROAD
BENGALURU-567076.

...RESPONDENTS

(BY SRI RAVISHANKAR SHASTRY, ADVOCATE FOR
R1 TO R6;
SRI B SHARATH KUMAR, ADVOCATE FOR R18(A);
SRI M K VENKATARAMANA, ADVOCATE FOR R22)

THIS CRP IS FILED UNDER Section 115 OF CPC
PRAYING TO SET ASIDE THE ORDER DATED 07.01.2022
PASSED ON I.A.No.7 IN O.S.No.129/2015 ON THE FILE OF
THE I ADDITIONAL SENIOR CIVIL JUDGE AND CJM,
MANGALURU AND ETC.

THIS PETITION COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:



ORDER

This petition is filed challenging the order dated 07.01.2022 passed on I.A.No.7 in O.S.No.129/2015 on the file of the I Additional Senior Civil Judge and CJM, Mangaluru.

2. This petition is listed for admission. Heard the learned counsel appearing for the respective parties.

3. Defendant No.16 has filed an application under Order VII Rule 11(d) of CPC before the Trial Court praying to reject the plaint and in support of the application, memorandum of facts is signed by defendant No.16 contending that in paragraph 1 of the plaint it is stated that the father of the plaintiff late Krishna Bhat had acquired 1/4th right in the plaint schedule property as per sale certificate dated 28.01.1983 issued in his favour in Ex.No.62/1979. Admittedly, the father of the plaintiff had not sued for partition of the suit schedule properties and separate possession of his alleged 1/4th share based on the sale certificate within the limitation hence, the suit is



hopelessly barred by time as can be seen in the plaint itself and thus, the suit is not maintainable based on the plaint averments. Hence, it attracts Order VII Rule 11 (d) of CPC.

4. This application is resisted by the plaintiffs by filing the statement of objections contending that admittedly, the father of the plaintiff namely, Krishna Bhat has not sued for partition of the suit schedule property but he sought for the relief of possession within the period of limitation hence, the suit is not hopelessly barred by time and the allegation made by the defendants is baseless. It is contended that the plaintiffs have stated in the plaint that only on 13.03.2015, they came to know about the partition deed dated 27.05.2004 and the suit was filed on 30.05.2015, hence, the question of limitation does not arise and sought for the relief of partition as well as disposal of the property.



5. The Trial Court having considered the grounds urged in the application as well as in the statement of objections, in paragraphs 16 and 17, discussed in detail with regard to the ratio laid down by the Apex Court which have been mentioned in paragraph 15 and in paragraph 17 comes to the conclusion that the issue of limitation is a question of law and facts and cause of action is a bundle of facts and same requires to be considered during the trial and hence, certainly the suit is not barred by limitation and same cannot be decided in an application filed under Order VII Rule 11 of CPC. Accordingly, dismissed the application. Hence, the present petition is filed before this Court.

6. The counsel for the revision petitioner would vehemently contend that the specific grounds are urged in the application that sale certificate is dated 28.01.1983 and suit is not filed by the father and suit is filed by the children of Krishna Bhat questioning the partition as well as the sale and the Trial Court has not applied its mind



and committed an error in coming to the conclusion that limitation has to be decided during the course of trial considering that the same is a mixed question of facts and law and the very approach of the Trial Court is erroneous and hence, it requires interference.

7. Per contra, the learned counsel appearing for the respondents would vehemently contends that similar question raised in W.P.No.6187/2022 by defendant No.15 wherein also this Court held that limitation is mixed question of law and fact, comprises bundle of facts to be decided in the trial and the finding of the Trial Court is just and proper and the same does not call for interference and accordingly, dismissed the writ petition. The counsel for respondent No.22 submits that he is the vendor of defendant No.15.

8. The counsel for the appellant would vehemently contend that the grounds are urged with regard to that the suit is barred by limitation and the said fact cannot be decided at the threshold unless the averment does not



disclose the same in the plaint. The counsel for the respondents would vehemently contend that in the plaint, it is specifically pleaded with regard to that on 13.03.2015, they came to the know about the partition deed dated 27.05.2004 and they are not the parties to the said partition deed as well as to the sale deed and they are not having knowledge about the same. The Trial Court also considered the said fact and comes to the conclusion that the law of limitation is a mixed question of fact and law and the same has to be considered during the trial and this Court also in the writ petition held that the application filed under Order VII Rule 11 cannot be decided at the threshold when the question of fact and law involved in the matter. Hence, this Court is of the opinion that the Trial Court has not committed any error in considering the material on record when there is a specific pleading in the plaint showing the cause of action which arose on 13.03.2015, when the plaintiffs came to know about the execution of the partition deed. When such pleading is made, it is also a question of fact and law and the Court



has to consider the same during the trial. Hence, I do not find any merit in the revision petition and the impugned order does not suffer from legality and its correctness.

9. In view of the discussions made above, I pass the following:

ORDER

The revision petition is dismissed.

**Sd/-
JUDGE**

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