HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CIVIL REVISION PETITION NO. 475 OF 2023 (IO)

BETWEEN:

1. SRI. PUTTAMALLANAYAKA,
S/O MALLANAYAKA
AGED ABOUT 68 YEARS,
R/AT BILLIKERE VILLAGE AND POST,
HUNSUR TALUK,
MYSURU DISTRICT - 571 103

...PETITIONER

(BY SMT. LAKSHMIDEVI, ADVOCATE FOR
SRI. PRASANNA V.R., ADVOCATE)

AND:

1. SRI. KRISHNA. N.
S/O LATE NARAYANA AND SMT. SAROJAMMA
AGED ABOUT 39 YEARS,

2. SRI. MUTHA N.
S/O LATE NARAYANA AND SMT. SAROJAMMA
AGED ABOUT 42 YEARS,

BOTH ARE R/AT BASAVANAPURA VILLAGE,
BELAWADI POST, YELAWALA HOBLI,
MYSURU TALUK, MYSURU DISTRICT - 571 130

...RESPONDENTS

(BY SRI. VYSHAAK, ADVOCATE FOR
SRI. BHARGAVA D. BHAT, ADVOCATE FOR R1
R2 IS SERVED AND UNREPRESENTED)

Digitally signed by SHARADAVANI B
Location: High Court of Karnataka

THIS CRP IS FILED UNDER SECTION 115 OF CPC, AGAINST THE ORDER DATED 01.07.2023 PASSED ON I.A NO.3 IN OS.NO.294/2022 ON THE FILE OF THE V ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MYSURU, REJECTING THE I.A.NO.3 FILED UNDER ORDER 7 RULE 11(d) R/W SEC.151 OF CPC FOR REJECTION OF PLAINT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Heard Smt. Lakshmidevi, learned counsel for the revision petitioner and Sri. Vaishak, learned counsel for the respondent.

2. Third defendant in O.S. No.294/2022 on the file of Senior Civil Judge, Mysuru is the revision petitioner challenging the dismissal of the application filed under Order VII Rule 11 of the Code of Civil Procedure.

3. Facts in the nutshell which are utmost necessary for disposal of the present revision petition are as under :

3.1 A suit for partition came to be filed by the first respondent against the revision petitioner and two others in respect of following property (hereinafter referred to the 'suit property').

SCHEDULE

Site property bearing No.1145, measuring to an extent of East to West 9.00 meters and North tot South 12.00 meters, situated at 2nd phase, 4th stage, Vijayanagar, Devaraja Mohalla, Mysuru, bounded on the :

East by	:	*Site property bearing No.1136*
West by	:	*Site property bearing No.1134*
North by	:	*Road*
South by	:	*Site Property bearing No.1144.*

3.2 It is the contention of the plaintiff that Sri. Narayana was allotted the suit property by Mysore Urban

Development Authority, Mysuru under the Land loser quota. Therefore it is the joint family property of Sri. Narayana and his son Venkatesha, who is no more, who left behind first defendant Smt. Sarojamma, second defendant Mutha N. and plaintiff Krishna.

3.3 It is further contented that clandestinely, the suit property was sold by Narayana to third defendant (revision petitioner) by way of registered sale deed and the said sale did not bind the shares of the plaintiff and Defendants No.1 and 2 and sought for decree of partition.

3.4 Pursuant to the suit summons, third defendant entered appearance and filed written statement denying the claim of the plaintiff.

3.5 Third defendant also filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint as Narayana during his lifetime has sold the property to the third defendant by way of

registered said deed and therefore, the suit is *per se* not maintainable.

3.6 The said application was opposed by the plaintiff by filing detailed written objections.

3.7 Learned trial Judge after hearing the parties, dismissed the application filed by the third defendant by way of impugned order.

4. Validity of the said order is called in question in this revision petition on following grounds:

- *The Order impugned passed by the Trial Court is opposed to law, facts and materials on record.*

- *The Trall Court has falled to exercise Its jurisdiction vested under Order VII Rule 11(d) r/w Section 151 of Code of Civil Procedure, 1908.*

- *The Trial Court has acted in material irregularity while rejecting the application for rejection of Plaint, resulting miscarriage of justice.*

- *The Trial Court has failed to frame the proper points for consideration and failed to appreciate the question*

involved in the case in its proper perspective and order Impugned suffers from surmises and conjectures.

- *The order impugned suffers from non-appreciation of the facts pleaded in the Plaint and defense raised by the Defendant with reference to Order 7 Rule 11(d) of CPC.*

- *There is no dispute that the Plaintiff has pleaded in his Plaint that the grand-father of the Plaintiff was allotted with the Suit Schedule Property by the Mysore Urban Development Authority, Mysore, under land looser quota, which narration itself would make it clear that the said property was the self-acquired property of the grand-father of the Plaintiff. Further, the Plaintiff in his plaint averred that his grand-father sold the Suit Schedule Property in favour of the 3rd Defendant, though the Plaintiff has not disclosed the name of his grandfather and his date of death so as to avoid the probable defense from the Defendants, though he claimed that his father Narayana died on 14.07.2018 leaving behind the Plaintiff, 1st Defendant and the 2nd Defendant. However, the facts remain that the Defendant No.3 has admittedly purchased the Suit Schedule Property in terms of Sale Deed registered dated.06.02.1997 itself for valuable consideration, copy of the said Sale Deed has been produced by the Plaintiff himself while presenting the Plaint which itself would demonstrate that the Suit is hopelessly time barred and the Suit Schedule Property being allotted/granted to one Muthalah, stated to be the grandfather of the Plaintiff and as the said grantee*

himself sold the property, the Plaintiff and his father could not succeed the same and therefore, at no point of time the property was a joint family/ancestral property.

- *Therefore, the Trial Court has erred in law in rejecting the Application filed by the 4th Defendant.*

- *Though it is true that while considering the Application under Order 7 Rule 11 of CPC, the Court is required to see only the Plaint averments and whatever the defense raised in the Written Statement cannot be looked into, the facts and circumstances under which the Plaint is presented and the very narration of the Plaint discloses that the Suit Schedule Property alleged to be granted to the grandfather of the Plaintiff as claimed, and further the grantee himself sold the property as early as in the year 1997, even in the absence of contents in the Written Statement, the Court can reject the plaint in view of the fact that, the Suit is barred by law of limitation and the Plaintiff has no cause of action in view of alienation made by the grantee as admitted by the Plaintiff, which established the fact that either the Plaintiff or his father did not succeed the estate of the grantee upon his death. Therefore, there is no reason to proceed with the suit based on the mere assertion in the Plaint.*

- *It is well settled law that merely because a triable case is made out by the Plaintiff in the Plaint, the suit cannot be proceeded with when the Court cannot pass a decree in view of admission in the Plaint itself and the suit itself is*

not maintainable having regard to the fact and circumstances pleaded in the Plaint and in such event, the Plaint is liable to be rejected at the threshold in exercise of power vested under Order 7 Rule 11 of CPC.

- *Though the Trial Court has taken pain in writing the Order relying various judgments of the Hon'ble Supreme Court, in view of the admission in the Plaint that the grandfather of the Plaintiff who granted with property sold the same to the 4th Defendant, it is very difficult to believe the version of the Plaintiff that the property was a joint family/ancestral property and when the Plaintiff himself admitted that his grandfather has alienated the property during his life time, by placing the copy of the Sale Deed dated 06.02.1997, the Plaintiff could not have waited till 2022 to raise his little finger, which Itself demonstrates that the sult is hopelessly time barred and in the absence of any acquisition of right, title and Interest, the Plaintiff cannot maintain the suit and therefore, the Trial Court ought to have appreciated the prayer and rejected the plaint.*

5. Smt. Lakshmidevi, learned counsel for the petitioner reiterating the grounds urged in the revision petition vehemently contented that the suit property was the individual property of Narayana and same was sold by him by way of registered sale deed in favour of the third

defendant. Therefore, suit for partition filed by the plaintiff is *per se* not maintainable and thus sought for allowing the revision petition.

6. Per contra, counsel for respondent supports the impugned order.

7. Having heard the arguments of both sides, this Court perused the material on record meticulously.

8. On such perusal of the material on record, it is crystal clear that the land was allotted to Sri. Narayana - common prepositus under the Land loser scheme.

9. Whether at all, the first defendant's husband namely Venkatesha and father of the plaintiff and second defendant also had a share in the land which has been lost whereby the present suit property came to be allotted in favour of Narayana or not could not have been decided by the Trial Court by holding a mini enquiry on the application filed under Order VII Rule 11 of the Code of Civil Procedure and rightly dismissed the same.

10. Ultimately, if the plaintiff fails in establishing that the suit property is a joint family property, defendant is entitled for costs including the exemplary costs under Section 35(A) of the Code of Civil Procedure.

11. Thus, the impugned order does not require interference in this revision petition.

12. Hence, following order :

ORDER

(i) Revision Petition is dismissed.

(ii) All the contentions are kept open to be urged in the trial in accordance with law.

Sd/-
(V SRISHANANDA)
JUDGE

SNC
ct:SG
List No.: 1 Sl No.: 37