IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22nd DAY OF APRIL, 2026

R

PRESENT

HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

REGULAR FIRST APPEAL NO.862 OF 2023

BETWEEN:

1. SRI. NARASIMHA MURTHY
AGED ABOUT 46 YEARS
S/O LATE RAMAIAH

2. SRI. KRISHNA MURTHY
AGED ABOUT 44 YEARS
S/O LATE RAMAIAH

3. SRI. LAKSHMIPATHY
AGED ABOUT 41 YEARS
S/O LATE RAMAIAH

APPELLANTS ARE RESIDING AT
ANUGONDANAHALLI VILLAGE
ANUGONDANAHALLI HOBLI
HOSKOTE TALUK – 560 067
BENGALURU RURAL DISTRICT

...APPELLANTS

(BY SRI. BHADRINATH R., ADVOCATE)

AND:

1. SRI. MALLESH
AGED ABOUT 63 YEARS
S/O LATE NARASIMAIAH

2. SRI. SRINIVAS
AGED ABOUT 61 YEARS
S/O LATE NARASIMAIAH

3. SRI. KRISHNAPPA
AGED ABOUT 59 YEARS
S/O LATE NARASIMAIAH

4. SRI. RAMESH
AGED ABOUT 57 YEARS
S/O LATE NARASIMAIAH

5. SMT. GIRIJAMMA
AGED ABOUT 74 YEARS
D/O LATE PANDITH NARASIMAIAH

6. SRI. SHAJI PHILIP
AGED ABOUT 66 YEARS
S/O M C PHILIP

RESIDING AT NO.150, MANAMEL
LAVELLE ROAD
BENGALURU – 560 001

7. SRI. CHERIAN PHILIP
AGED ABOUT 61 YEARS
S/O M C PHILP
R/AT NO.33
ST. MARKS ROAD
BENGALURU – 560 001

...RESPONDENTS

(BY SRI. C.K.NANDAKUMAR., SENIOR COUNSEL FOR
SRI. RUKKOJI RAO H. S., ADVOCATE FOR C/R6 & R7;
SRI. K.J.JAGADEESHA, ADVOCATE FOR R1 TO R4;
R5 IS SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 24.02.2023 IN O.S.NO.424/2022 PASSED BY THE IV ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, ON THE APPLICATION (I.A.NO.2) FILED BY THE RESPONDENTS/ DEFENDANTS NO.6 & 7 UNDER ORDER VII RULE 11 (a), (b) & (d)

OF THE CODE OF CIVIL PROCEDURE IN REJECTING THE PLAINT AND CONSEQUENTLY TO ALLOW THIS APPEAL BY DISMISSING APPLICATION FILED BY THE RESPONDENTS/DEFENDANTS NO.6 & 7 IN O.S.NO.424 OF 2022 BEFORE THE TRIAL COURT AND ETC.

THIS APPEAL, HAVING BEEN RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal has been filed seeking to challenge the judgment and decree dated 24.02.2023, in O.S.No.424/2022, passed by the IV Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru (hereinafter referred to as the ‘Impugned Judgment’). By the Impugned Judgment, a suit filed for partition and declaration was dismissed by the learned Trial Court under Order VII Rule 11 (a), (b) and (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘the CPC’), holding that the plaint does not disclose any cause of action and the suit has been filed with insufficient Court fees and is barred by limitation.

2. Briefly, the facts of the case are that a suit was filed by the appellants/plaintiffs seeking relief of 1/5th share and partition by metes and bounds in the suit schedule property, being agricultural land bearing Survey No.52, measuring to an extent of 47 acres, situated at Kattugollahalli village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru Bounded on (hereinafter referred to as the 'suit schedule property'):

East by	:	Property belongs to Kattugollahalli Siddappa
West by	:	Marasandrada Yelle
North by	:	Government Banjaru Land
South by	:	Manduru Gramada Yelle

2.1 In addition, a declaration was also sought that the three Sale Deeds dated 30.05.1980 and two release deeds dated 04.12.2020 are not binding on the appellants/plaintiffs.

3. It was averred in the suit that one Pandit Narasimhaiya is the predecessor-in-interest of the family of the appellants/plaintiffs and defendants No.1 to 5, had two wives. The first wife had one child and the second wife had seven children. The appellants/plaintiffs were stated to be the grandchildren of the said Pandit Narasimhaiya, being the son of his son Ramaiah. It was stated that the appellants/plaintiffs

and defendants Nos.1 to 5 are members of a Hindu Undivided Joint Family.

4. During the pendency of the suit, an application was filed by respondents/defendants No.6 and 7, under the provisions of Order VII Rule 11 of the CPC setting out three grounds. Firstly, that the suit is barred by limitation, secondly, the suit does not disclose any cause of action and thirdly, that the appellants/plaintiffs have failed to pay adequate court fee. It was contended in the application that the declaration that was sought for, were in respect of three Sale Deeds of the year 1980 and two Release Deeds of the year 2020 and no challenge to these Sale Deeds after 42 years can be maintained. In addition, it was also stated that the appellants/plaintiffs have failed to pay adequate Court fee under Section 35(1) of the Karnataka Court Fees Act, 1958 (hereinafter referred to as 'KCF Act'), since the title of the appellants/plaintiffs is disputed. It was further stated that the suit schedule property was alienated by Pandit Narasimhaiya, the grandfather of the appellants/plaintiffs on 15.03.1944, which was 78 years ago.

5. In reply to the said application, the appellants/plaintiffs contended that the cause of action to file the suit only arose on 18.12.2021, when the respondents/defendants gained knowledge thereof. In addition, it was contended that the Sale Deeds are forged and fabricated. The appellants/plaintiffs also averred that the Court fee is paid is in accordance with law.

6. The learned Trial Court after examining the contentions of the parties, raised the following issue:

> *"Do Defendants 6 and 7 prove that, plaint does not disclose cause of action, insufficient court fees is paid and suit is barred by law of limitation, accordingly, plaint to be rejected?"*

7. The learned Trial Court thereafter examined the plaint, the provisions of Order VII Rule 11 of the CPC, as well as the provisions of the Hindu Succession Act, 1956 and relying on the judgment of the Supreme Court in the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)***[1], held that the court fee should have been assessed as per Section 35(1) and 38 of the KCF Act. In addition, it was held that since no material was produced to show that the cause of action arose in the month of December'2021 and since the Sale Deeds

[1] (2020) 7 SCC 366

were executed in the year 1944, the suit is hopelessly barred by limitation.

8. This Court has heard the learned counsel appearing for the appellants/plaintiffs and respondents/defendant Nos.1 to 4, as well as the learned Senior Counsel appearing for respondent Nos.6 and 7. None appears for the respondent No.5 despite service.

9. The learned counsel for the appellants/plaintiffs contends that the appellants/plaintiffs were Members of a Hindu Undivided Joint Family and that the suit schedule property was an ancestral property. Sri.Pandit Narasimhaiya, the predecessor-in-interest of the appellants/plaintiffs was cultivating seasonal crops in the suit schedule property. After his death, the property continued to be cultivated by the appellants/plaintiffs, who succeeded to the estate of their grandfather from their father Sri.Ramaiah. However, the respondents/defendant Nos.6 and 7 forged and fabricated documents to defraud the appellants/plaintiffs. In addition, it was contended that in terms of Articles 58 and 59 of the Limitation Act, 1953 (hereinafter referred to as 'Limitation

Act'), the cause of action arose only when the appellants/plaintiffs came to know about the fraud.

10. The learned Senior Counsel appearing for the respondents/defendants on the other hand seeks to rely upon the documents filed by him before the learned Trial Court to submit that Pandit Narasimhaiya was the owner of the suit schedule property and by Sale Deed dated 15.03.1944, registered as Document No.1576 in Book I, Volume 571, pages 232 to 233 in the Office of the Sub Registrar, Hoskote, conveying 47 Acres, in Survey No.52 of Kadugollahalli Village, (hereinafter referred to as 'Sale Deed of 1944'), he transferred his rights in favour of one Sri.Muni Reddy and thereafter Sri.Muni Reddy further conveyed those rights by way of registered documents. He submits that the title chain in the property forms part of the Release Deed dated 04.12.2020, which was placed on record by the appellants/plaintiffs.

10.1 The learned Senior Counsel further submits that there has been no challenge made to the Sale Deed of 1944. In addition, it is contended that the appellants/plaintiffs have been unable to show how they have rights in the suit schedule property, given the fact that their predecessor-in-interest (grandfather) has already sold the property. It is averred that the plaint does not even refer to any details about the fraud played in relation to Sale Deed of 1944 and it does not challenge to the Sale Deed of 1944 at all. The plaint only challenges the three Sale Deeds of 1980 and the Release Deeds dated 04.12.2020. In terms of Articles 58 and 59 of the Limitation Act, the suit should have been filed within 3 years from the date the documents sought to be challenged were executed and the suit filed in 2022 is barred by limitation.

11. The question of law that arises before this Court for consideration is:

> *"Whether the learned Trial Court had erred in rejecting the plaint by allowing the application under Order VII, Rule 11 of the CPC?"*

12. It is undisputed that the suit schedule property belonged to the grandfather of the appellants/plaintiffs. It is contended that the property was sold by the grandfather in terms of the Sale Deed of 1944 to Sri.Muni Reddy, and thereafter by virtue of registered instruments of sale, the property was sold and was eventually bought by the respondents No.6 and 7, by

virtue of three registered Sale Deeds dated 30.05.1980, executed by Sri.M. Ramu and Smt. Muniyellamma respectively in respect of 15 acres each, in Survey No.52, situated at Kattugollahalli village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru. It is also not disputed that the said respondents/defendants No.6 and 7 have on 04.12.2020 executed the Release Deed of 2020 in respect of the suit schedule property on 04.12.2020 (hereinafter referred to as 'Release Deed').

13. The application filed by defendant/respondent Nos.6 and 7 under Order VII Rule 11 of CPC, sets out that the suit is barred by limitation, as well as does not disclose a cause of action. It further, sets out that the appellants/plaintiffs have failed to pay adequate court fee and that they have suppressed material facts. The relevant extract of the application is set out below:

> *"e) Plaintiffs have failed to pay adequate court fee:*
>
> *13. **The Plaintiffs are liable to pay court fee on the market value of the their share as stipulated under Section 35(1) of the Karnataka Court Fees Act, 1958.** Therefore, the suit is also liable to be dismissed on this ground also.*
>
> *f) Suppression of material facts:*

*14. **<u>The Plaintiffs have failed to disclose that Pandith Narasimaiah had alienated the suit Schedule Property on</u>** 15.03.1944. Further, 12 transactions have occurred after the alienation made by Pandith Narasimaiah which has also not been disclosed by the Plaintiffs. The Plaintiffs are aware of all these facts as the Defendants have disclosed the same in the proceedings pending before the Spl. Tahsildar in Case No. RRT/D/274/2021-22 and Case No.RRT/D/515/2021-22. **<u>Even otherwise, the RTC Extracts clearly show all the transactions and therefore, the said transactions were within the knowledge of the Plaintiffs and they have deliberately suppressed the material facts</u>** to obtain interim order from this Hon'ble Court. **<u>Hence, the plaintiffs have deliberately suppressed the said facts as without challenging all the alienations since 1944, they cannot challenge only the transactions pertaining to the year 1980. Thus, the suit</u>** is liable to be dismissed for suppression of material facts and approaching this Hon'ble Court with unclean hands.*

[Emphasis Supplied]

13.1 It is further contended that for a challenge to obtain a declaration of a document, the limitation would expire within three years from when the right to sue first accrues and since the Sale Deeds were registered in the year 1980, the challenge should have been made within three years from that date. The relevant extract is below:

"a) <u>Suit is barred by limitation:</u>

*4. We are advised to submit that when a suit is ex-facie barred by limitation, the **<u>Plaint can be rejected under Order VII Rule 11 (d) of CPC.</u>** In the instant case, the Plaintiff has sought the following reliefs :*

*a. **<u>Partition and separate possession.</u>***

b. ***Declaration that 3 Sale Deeds dated 30.05.1980 and 2 Release Deeds dated 04.12.2020 are not binding on the Plaintiffs.***

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7. *While the Plaintiffs have averred that they got to know about the registered Sale Deeds dated 30.05.1980 only recently, it is settled law that the registration of Sale Deed is constructive notice of its existence to everyone concerned.* ***Therefore, the impugned Sale Deeds having been registered in the year 1980****, the* ***Plaintiffs or anyone claiming under them had to challenge the Sale Deeds within a period of 3 years in terms of Article 58 of the Limitation Act as held by*** *the Karnataka High Court in Metropoli Overseas Limited v. Sri H.S. Deekshit & Others).*

8. ***The Plaintiffs cannot challenge the said Sale Deeds after a period of 42 years as the same is barred by limitation. Once the challenge to Sale Deeds in 1980 fail and there cannot be any challenge to documents executed on the strength of the said Sale Deeds****. Therefore, even the challenge to the Release Deeds dated 04.12.2020 is not maintainable as they are based on the ownership rights acquired through the Sale Deeds by the Defendant Nos. 6 & 7. Hence, the plaint is liable to be rejected for being barred by limitation."*

[Emphasis Supplied]

14. In reply, appellants/plaintiffs have contended that the cause of action only arose on 18.12.2021, when the respondents/defendants No.6 and 7 filed a frivolous application with an intention to defraud the appellants/ plaintiffs and 'grab the suit schedule property'. It is further stated that the appellants/plaintiffs have the rights in the suit schedule property being the grandchildren of the said Pandit Narasimhaiya. In addition, it is contended that Pandit

Narasimhaiya never registered any document conveying the suit schedule property and that respondent Nos.6 and 7 do not have any document signed by the family members of the appellants/plaintiffs. The relevant extract is set out below:

> *"3. It is submitted that, it is clearly mentioned in para 13 of the plaint that,* ***the cause of action arose to file the suit is on 18-12-2021, by knowingfully and purposefully the present false and frivolous application is filed by the defendants No. 6 and 7 only with an mala fide intention to defraud against the plaintiffs and also the to grab and knock the valuable property of the plaintiffs which heir father having acquired*** *the same in his name and it is clearly shows that the father of the plaintiffs by name Pandith Narasimaiah is the kartha of the family and he has acquired the schedule property which is the larger extent of the same* ***and during his life time he never registered any of the documents in any names in respect of the suit schedule property, and the alleged*** *documents of the sale deed in the names of the defendants No. 6 and 7 are created, forged and fabricated only for unlawful gain on the same on this ground alone the application filed by the defendants No. 6 and 7 is liable to be dismissed.*
>
> *4. It is submitted that, the suit is filed by the plaintiffs when the fact known to them that the alleged documents registered in the names of the defendants No.6 and 7 it is clearly mentioned in the plaint averments with regard to the same, therefore the question of limitation does not arise at all. Therefore it is clearly shows that the application filed by the defendants No. 6 and 7 is misconceived and also by misrepresentation to this Hon'ble Court, and further the plaintiffs are having their respective right, title and interest over the suit schedule property****, and further the plaintiffs nor the family members are not at all the parties to the said alleged sale deeds which are registered in the names of the defendants No. 6 and 7, and the suit is for the relief of partition and separate possession without*** *determining the rights of the plaintiffs in the suit schedule property the application of the defendants No. 6 and 7 is not maintainable and the same liable to dismissed.*
>
> [Emphasis Supplied]

15. The learned Trial Court examined the application and found that since the scheduled property was granted to Pandit Narasimhaiya during his lifetime and he had originally pledged the property and thereafter, releasing the pledge, sold the entire suit schedule property to Sri.Muni Reddy for a sum of Rs.1,000/- on 15.03.1944. A finding was also given that the suit schedule property was a separate property and not an ancestral property of Pandit Narasimhaiya.

16. This Court has also examined the plaint filed. The plaint adverts to the fact of the relationship of the appellants/ plaintiffs with Pandit Narasimhaiya and asserting the fact that he was cultivating the suit schedule property, also states that the plaintiffs have absolute rights over the property. The plaint further sets out that the suit schedule property is the ancestral Joint Family Property and that the appellants/plaintiffs are the successors of Pandit Narasimhaiya and entitled to succeed to their estate. The plaint references the RTC's *qua* the suit schedule property and also reference that the appellants/plaintiffs came to know recently that respondents/ defendants No.6 and 7 created documents in their names and have taken over the suit

schedule property. It further sets out that these documents are forged and fabricated and the defendants/respondents No.6 and 7 are trying to create further documents in the name of third parties.

16.1 In addition, paragraph No.11 of the plaint, sets out the cause of action has arisen in the month of December 2021 when the appellants/plaintiffs requested respondents/ defendants No.1 to 5 for a partition of the suit schedule property. The relevant extract is below:

> *"11. The plaintiff submits that, recently the plaintiffs came to know that without dividing the legitimate share of the plaintiffs, the defendants are making un lawful acts in the same, after knowing the facts in the month of December 2021, **the plaintiffs have requested with the defendants for effect partition and division of the suit schedule property for their 1/5th legitimate share in the suit schedule property, but the defendants are not ready to the same,** and there after many panchayaths has been conveyed in the presence of the elders and well wishers of the both the parties, but all the panchayaths are vent in vain, hence without any alternative remedy the plaintiff is constrained to file the above suit for partition and separate possession of their legitimate 1/5th share each in the suit schedule property."*
>
> *xxx xxx xxx*
>
> *13. The cause of action for the suit is arose on 18-12-2021, and all further subsequent dates and events, when the plaintiff demanded for their legitimate 1/5th Share each in the Suit Schedule Property."*
>
> [Emphasis Supplied]

17. The appellants/plaintiffs have filed several documents including two release deeds dated 04.12.2020, before the Court. Both Release Deeds dated 04.12.2020 are executed between Mr.Shaji Philip and Mr.Cherian Philip (respondent Nos.6 and 7) and reference the registered Sale Deed executed by Pandit Narasimhaiya as part of Schedule-E *qua* the suit schedule property. The relevant extract of one such Release Deed is set out below:

> ***"THIS DEED OF RELEASE made and executed on this FOURTH DAY OF DECEMBER TWO THOUSAND TWENTY (04/12/2020) BETWEEN:***
>
> ***Mr. SHAJI PHILIP.***
> *Aged about 63 years,*
> *S/o. Mr. M.C.Philip,*
> *Residing at 'Manamel',*
> *No.150, Lavelle Road,*
> *Bangalore-560 001.*
>
> *Hereinafter called as 'the RELEASOR (which expression wherever it so requires shall mean and include his legal heirs, representatives, administrators, executors, assignees, etc..) OF THE FIRST PART AND IN FAVOUR OF*
>
> ***Mr. CHERIAN PHILIP.***
> *Aged about 58 years,*
> *S/o. Mr. M. C. Philip,*
> *Residing at No. 33,*
> *St. Marks Road,*
> *Bangalore-560 001.*
>
> *Hereinafter called as 'the RELEASEE! (which expression wherever it so requires shall mean and include his legal heirs, representatives, administrators, executors, assignees, etc.,) THE SECOND PART:*
>
> *WHEREAS the RELEASOR and the RELEASEE are brothers and they are absolute joint owners in possession and*

enjoyment of agricultural lands bearing Sy. No. 52 measuring 47 Acres 17 Guntas and 8.0 Guntas of 'A' Kharab and Sy. No. 55 measuring 5 Acres 32 Guntas and 5.0 Guntas of 'A' Kharab in total admeasuring 53 Acres 22 Guntas situated adjacent to each other at Kattugollahalli Village, Bidarahalli Hobli, Bangalore East Taluk (Previously Hoskote Taluk), Bangalore District (more fully described in the Schedule 'A' hereunder and hereinafter referred to as the Schedule 'A' Property). The Sketch is produced along with this Release Deed for registration of these presents for better use and enjoyment of both the RELEASOR and the RELEASEE."

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AND WHEREAS the RELEASOR desires to relinquish the Schedule 'B' Property out of Schedule 'A' Property, which is coloured in LIGHT BLUE Colour in the Sketch attached to this Release Deed in favour of his younger brother, i.e., the RELEASEE herein and the RELEASEE to enjoy the Schedule 'B' Property as absolute owner.

SCHEDULE 'E'
The following Documents are handed over by the RELEASOR to the RELEASEE:

1. Sale Deed dated 30.05.1980 executed by Sri M. Ramu, in favour of Shaji Philip and Cherian Philip, registered as Document No. 709/1980-81, Pages 21-25, Volume No. 1591 of Book-I, in the Office of the Sub Registrar, Hoskote, conveying 15 Acres in Sy. No. 52 of Kattugollahalli Village.

2. Sale Deed dated 30.05.1980 executed by Smt. Muniyellamma in favour of Shaji Philip and Cherian Philip, registered as Document No. 710/1980-81, Pages 25-29, Volume No. 1591 of Book-I, in the Office of the Sub Registrar, Hoskote, conveying 15 Acres in Sy. No. 52 of Kattugollahalli Village.

3. Sale Deed dated 06.01.1966 executed by Sri.M.Mohammed Abubacker and Sri.M.Mohammed Sultan, in favour of Sri.M.Ramu, registered as Document No. 3502 in Book I, Volume 1143 pages 2 to 5, in the Office of the Sub

Registrar, Hoskote, conveying 15 Acres in Survey No.52 of Kattugollahalli Village.

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10. Certified Copy of Sale Deed dated 15.03.1944 executed by Sri Pandit Narasimhiah in favour of Sri. Muni Reddy, registered as Document No. 1576 in Book I, Volume 571 *pages 232 to 233, in the Office of the Sub Registrar, Hoskote, conveying 47 Acres in Survey No.52 of Kattugollahalli Village.*

IN WITNESS WHEREOF the RELEASOR & the RELEASEE, have set their respective hands to this DEED OF RELEASE on the day, month and year first mentioned hereinabove."

[Emphasis Supplied]

18. Since these Release Deeds form part of the documents annexed with the plaint and the documents were filed along with the plaint, the appellants/plaintiffs cannot feign ignorance of knowledge of such documents. In any event, as on the date of Sale by the late Pandit Narasimaiah, the appellants/plaintiffs who claim to be in their 40's, would not even have been born. The alienation of the suit property thus occurred by the owner of the suit schedule property, Pandit Narasimhaiya in the year 1944, even prior to the birth of the appellants/plaintiffs. Thereafter, the properties were transferred hands several times, with Sale Deeds executed for over eight decades now.

19. In addition, the allegation of fraud that has been made in the plaint is completely vague and unspecified. The plaint generally discusses that they came to know that respondent No.6 and 7 created documents in their names and without the consent and knowledge of the appellants/plaintiffs have forged and fabricated documents to defraud the appellants/plaintiffs. There are no particulars given in the plaint as to the details of the fraudulent conduct of the respondents.

20. The learned Trial Court found that the suit schedule property was granted to the appellant/plaintiff on 31.03.1939 and thus it was his separate property. On 28.08.1943, the suit schedule property was pledged by Pandith Narasimaiah and after its release, it was sold to Sri.Muni Reddy for a sum of Rs.1,000/-. Thus, the self-acquired property of the grandfather of the appellants/plaintiffs was sold by him in the year 1944 by virtue of a registered instruments. Subsequently, the property was further sold/transferred by registered instruments and purchased by respondent Nos.6 and 7 by virtue of three registered sale deeds of the year 1980.

21. The Supreme Court in the ***Dahiben*** case has while discussing the law in deciding an application filed under Order VII, Rule 11(d) of the CPC has held that this remedy is a special remedy empowering the Courts to dismiss matters at the threshold. It has further been held that the reason for such a remedy is that the Court would not permit the plaintiff to unnecessarily protract the proceedings in a sham litigation and to waste judicial time. Although the power under Order VII, Rule 11 of the CPC is a drastic one, it requires the conditions enumerated to be strictly adhered to. The plea taken by the respondents/defendants cannot be examined at this stage and for testing the provision, the averments made in the plaint have to be read in their entirety, and if on a meaningful reading of the plaint, if it is found that the plaint is vexatious, then the Court will be justified in the use of this provision. It was further held that the provision is mandatory in nature. The relevant extract of the ***Dahiben*** case is set out below:

> ***"23.2. <u>The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold,</u>*** *without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced,* ***<u>if it is satisfied that the action should be terminated on any of the grounds contained in this provision.</u>***

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.***

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23.5. *The power conferred on the court to terminate a civil* ***action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.***

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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.

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. *This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

> *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

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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.***
>
> ***23.14.*** *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .*
>
> ***23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.***"
>
> [Emphasis Supplied]

21.1 The Supreme Court in ***Dahiben*** case has further held that where a suit appears from the averments of the plaint, to be barred by any law, it shall be rejected in terms of Order VII, Rule 11(d) of the CPC. Thus, a suit which is barred by limitation would also come within this definition. It was further held that where the plaintiff files a case with a clever drafting to make out an illusory 'cause of action' to bring the suit within the period of limitation, the provisions of Order VII, Rule 11 of the CPC, would come into play and where a plaintiff deliberately did not mention the date of registration of the

Sale Deed, since it would be evident that the suit was barred by limitation, the omission was such that, so as to mislead the Court on this issue. The suit was thus held to be barred by limitation. The relevant extract of ***Dahiben*** case is set out below:

> *"**28.** A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.*
>
> ***29.17.** The plaintiffs deliberately did not mention the date of the registered sale deed dated 2-7-2009 executed by them in favour of Respondent 1, since it would be evident that the suit was barred by limitation. The prayer however mentions the date of the subsequent sale deed i.e. 1-4-2013 when the suit property was further sold by Respondent 1 to Respondents 2 and 3. The omission of the date of execution of the sale deed on 2-7-2009 in the prayer clause, was done deliberately and knowingly, so as to mislead the court on the issue of limitation.*
>
> ***29.18. <u>The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15-12-2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the plaintiffs. The plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order 7 Rule 11(d) CPC</u>.***

[Emphasis Supplied]

22. Thus, where from a plain reading of the plaint, no 'cause of action' is disclosed and or the suit is barred by limitation, the Court would not permit the appellants/plaintiffs to unnecessarily protract the proceedings in the suit and would put an end to such litigation at the threshold itself.

23. The plaintiff has filed a suit seeking partition for a declaration with respect to three Sale Deeds all dated 30.05.1980 and two Release Deeds both dated 04.12.2020, that they are not binding on the appellants/plaintiffs and for mesne profits. Article 58 of the Limitation Act provides for the limitation for a suit for declaration and states that the limitation for such a suit is when the right to sue first accrues. Article 59 to the Schedule to the Limitation Act provides that to cancel or set-aside an instrument, the period of limitation is three years, when the facts entitling the plaintiff to have the instrument set-aside first becomes known to him. Articles 58 and 59 of the Limitation Act are extracted below:

Description of suit	***Period of limitation***	***Time from which period begins to run***
58. To obtain any other declaration.	*Three years*	*When the right to sue first accrues.*
59. To cancel or set aside an instrument or	*Three years*	*When the facts entitling the plaintiff to have*

decree or for the rescission of a contract.		*the instrument or decree cancelled or set aside or the contract rescinded first become known to him."*

24. As stated above, the appellants/plaintiffs have averred in the plaint that the 'cause of action' has arisen on 18.12.2021 and thus the suit is within limitation. However, from the documents annexed with the plaint, more specifically, Schedule E to the Release Deed, it can be seen that there is a Sale Deed executed and registered in the year 1944 by the predecessor-in-interest in title of the appellants/plaintiffs and thereafter several Sale deeds have been executed. Thus, the title to the suit schedule property stood transferred in the year 1944 itself by the predecessor-in-interest of the appellants/plaintiffs by virtue of a registered instrument.

25. Given the foregoing admitted facts and the fact that there was no challenge to these Deeds executed from 1944 upto 1980, it cannot be said that the suit has been filed within time. The contention of the appellants/plaintiffs that they were not aware of the Sale Deeds of 1980 also cannot be

believed. The plaint that has been filed has been filed for cancellation of the three Sale Deeds of 1980 and the Release Deeds of 2020 and these Release Deeds and Sale Deeds refer to the several registered Sale Deeds dated 15.03.1944 onwards. In any event, since the grandfather of the appellants/plaintiffs has executed a registered instrument in the year 1944, the challenge by the appellants/plaintiffs in the present suit to a subsequent sale deed cannot be maintained unless all the other Sale Deeds are challenged as well.

26. In view of the aforegoing discussions and from an examination of the plaint and the documents filed by the appellants/plaintiffs. This Court upholds the rejection of the plaint by the learned Trial Court. Accordingly, this Court is not inclined to interfere with the finding of the learned Trial Court that the suit is barred by limitation.

27. In view of the fact that the plaint has been rejected on the ground of limitation, this Court does not deem it apposite to examine the other challenges raised by the respondents. The appeal is accordingly ***dismissed***. All pending applications stand closed.

27.1 However, the costs imposed, payable by the appellants/plaintiffs to the respondent Nos.6 and 7/defendant Nos.6 and 7, shall stand reduced to Rs.10,000/- (Rupees Ten Thousand) to be paid within a week from today.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(TARA VITASTA GANJU)
JUDGE

JJ
List-4, Sl.No.4