

Subject: Civil Revision Petition challenging the Trial Court's order dismissing an application filed under Order VII Rule 11 of the CPC for rejection of the plaint.

Headnotes:

Civil Procedure Code – Rejection of Plaint – Order VII Rule 11 – Limitation Act – Application for Rejection of Plaint – Civil Revision Petition against Trial Court's order dismissing application under Order VII Rule 11 CPC – Suit filed by mother against daughters and son seeking cancellation of gift deed, partition deed, and sale deeds – Plaintiff executed gift deed out of love and affection, without allegations of fraud or coercion – Suit filed 15 years after execution of gift deed – Held, suit barred by limitation – Order VII Rule 11 application allowed – Trial Court's order set aside – Civil Revision Petition allowed. [Paras 1-19]

Limitation Act – Barred Claims – Analysis – Held – Plaintiff's suit to challenge gift deed, partition deed, and sale deeds filed beyond prescribed limitation period – Plaintiff admitted execution of gift deed out of love and affection without alleging fraud or coercion – Suit filed 15 years after gift deed execution barred by limitation – Trial Court's reasoning on recurring cause of action not accepted – Suit prayers regarding deeds of 2002, 2004, 2005, and 2010 held barred by limitation. [Para 14-17]

Decision – Rejection of Plaint – Court finds that Trial Court erred in dismissing application under Order VII Rule 11 – Suit prayers clearly barred by limitation – Civil Revision Petition allowed – Trial Court's order set aside – Plaint rejected. [Para 18-19]

Referred Cases:

- Shaukathussain Mohammed Patel v. State of Karnataka (2023) 4 SCC 332
- K.S. Bhatia v. K.S. Rana (2021) 7 SCC 617
- M. Sathyanarayana v. State of Karnataka (2019) 10 SCC 512

- Shantilal Harichand Jain v. Laxmibai J. Jain (2018) 3 SCC 570

Representing Advocates:

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Sri. Nagaraj S. Jain for R-1

Sri. S. Gangadhara Aithal for R-4

Sri. B. Pramod for R-7

ORDER

1. J. Vasanth Kumari—the 1st defendant is before this Court challenging the rejection of her application filed under Order VII Rule 11 of the Civil Procedure Code, 1908 (“**the CPC**”) praying for rejection of the plaint filed by her mother—Saraswathamma.
2. Saraswathamma instituted a suit in O.S.No.1492/2019 against her three daughters namely—J. Vasanth Kumari (defendant No.1), J.Shashikala (defendant No.2), J.Pushpalatha (defendant No.3), and her son Muralidhar (defendant No.4) apart from four other defendants.
3. In this suit, she sought four prayers.
 - a. The first prayer was for cancellation of the gift deed dated 01.07.2004 which she had executed in her daughter—J.Vasanth Kumari’s favour.
 - b. The second prayer was for a declaration that the partition deed dated 26.06.2002 executed on 26.06.2002 between herself and her four children was not binding on her.
 - c. The third prayer was for a declaration that the sale deed dated 02.04.2005 executed by her daughter—J.Vasanth Kumari (the beneficiary of the gift in favour of defendants 5 and 6) was not binding on her.
 - d. The fourth prayer was for a declaration that the sale deed dated 24.02.2010 executed in favour of the 7th defendant was not binding on her.

4. As could be seen from the above, the prayers in the suit were in relation to a partition deed dated 26.06.2002 executed between herself and her children; a gift deed dated 01.07.2004 executed by her in favour of J.Vasanth Kumari; a sale deed dated 02.04.2005 executed by J.Vasanth Kumari in favour defendant Nos. 5 and 6; and, *lastly*, a sale deed dated 24.02.2010 executed in favour of defendants 7 and 8. In other words, the prayers in the suit related to instruments of the year 2002, 2004, 2005 and 2010. However, the suit was admittedly filed in the year 2019.
5. It was the case of Saraswathamma that item No.1 was the property of her husband and on his death, she had succeeded to said property. It was her further case that item No.2 was the property belonging to her father and on his death, by virtue of being the sole legal heir, she had inherited the property. She also claimed that on the death of her husband, her husband's property was mutated in her name. She also stated that her husband owned item No.3—house property and that he also owned another property bearing Sy.No.279 measuring 14 guntas and on the death of her husband, her name has been entered in respect of these properties.
6. She stated that after her husband's death, she had obtained the permission of the Deputy Commissioner for using said land for non-agricultural purpose as provided under Section 95 of the Karnataka Land Revenue Act, 1964. She submitted that the entire family had a very good relationship with her even after the death of her husband in the year 2016. She, thereafter, made the following averments in the plaint:

“12. The plaintiff submits that, on love and affection and intention to look after the plaintiff in old age, she had executed the registered gift deed dated 01/07/2004 infavour of the 1st defendant on the above said schedule property item No.1 to 3.

13. It is submits that, the plaintiff had received the summons from this Hon'ble Court that, the defendant No.2 and 3 has filed the suit for partition against the plaintiff and other defendants in OS No.2116/2016. In the said case the plaintiff has filed her written statement. After that she came to know that without the knowledge of plaintiff and fraudulently on the plaintiff, the defendant No.1 to 4 has took the partition the above said properties on 26/05/2002 colluded by the defendant No.1 to 4. These are all things are not have knowledge and not at all participated in the said partition. The plaintiff further submits that the said partition is not at all the

knowledge to the plaintiff and the defendant No.1 to 4 have played fraud with the plaintiff and got the partition. In the said partition shows that the plaintiff have the share only rent of the property bearing khata No.1812, property No.107/55, which is hare of the 4th defendant as per the above said partition. But till today she has not been received any rent from any one. It is clearly shows that, the defendant No.1 to 4 are played fraud among the 26/06/2002 is not binding upon the plaintiff. It is further submits that, if the plaintiff have the knowledge about the said partition she doesn't come forward to execute the above said gift deed in favour of the 1st Defendant and the 1st defendant have got the share in the schedule properties and executing the gift deed was done not arise. These are all facts only came to know that when the 1st defendant has filed her written statement in OS No.2116/2016 before this Hon'ble court. The plaintiff is the old aged lady and she believed her children in all the way and all angle. But the children are spoiled her life and faith.”

7. As could be seen from the above averments, Saraswathamma categorically admitted that she had executed the registered gift deed dated 01.07.2004 in respect of three items of the suit schedule property in favour of her daughter—J.Vasanth Kumari (defendant No.1).
8. It is also apparent from the above pleadings that she did not attribute fraud, coercion, undue influence or any kind of wrongdoing on the part of her daughter in securing the gift deed.
9. As already stated above, the suit was filed in the year 2019 in respect of the gift deed dated 01.07.2004. It is therefore clear from the reading of the plaint averments itself that the suit for declaration that the gift deed executed by her on 01.07.2004 in favour of her daughter was hopelessly barred by limitation, since the suit was filed 15 years after the execution of the gift deed which was not even alleged to have been obtained by fraud.
10. For this reason, reliance placed by the counsel for the respondents on the judgment rendered by the Supreme Court in ***Shaukathussain Mohammed Patel***¹ would be of no avail since the Supreme Court therein had decided on the aspect of limitation on finding the element of fraud and deception.

¹ Shaukathussain Mohammed Patel v. Khatunben Mohmmmedbhai Polara, (2019) 10 SCC 226.

11. Saraswathamma, in paragraph 13 of her plaint, also admitted that her other two daughters—J.Shashikala and J.Pushpalatha had filed a suit for partition against her and the others in O.S.No.2116/2016 and in this case, she had filed a written statement, following which she realised that, without her knowledge, her children had partitioned the properties on 26.05.2002 by colluding with each other and she had not participated in this partition.
12. At the outset, it is to be stated that the fact that Saraswathamma was a party to the partition deed was not specifically denied and she did not contend that she did not execute the partition deed but she only stated that she had not participated in the partition.
13. *Firstly*, it may be stated here that the partition deed, being of the year 2002, could not be challenged by filing a suit in the year 2019, and, *secondly*, this partition would become irrelevant by virtue of her own admission in paragraph 12 of the plaint that she had executed the registered gift deed on 01.07.2004 in favour of her daughter—J.Vasanth Kumari. In other words, even if the partition deed of the year 2002 is ignored, for the sake of argument, the fact that Saraswathamma admits that she had executed the registered gift deed in the year 2004 whereby she gifted the suit properties to her daughter—J Vasanth Kumari, would, by itself, indicate that she had lost all her rights over the suit properties in the year 2004 itself. It is obvious that if she had any grievance about the gift deed, she ought to have instituted the suit within a period of *three years* from the date of execution of the above said gift deed.
14. It may also be pertinent to state here that she admitted in her plaint that she had executed the gift deed out of love and affection to her daughter, and, more importantly, she did not plead an element of fraud, coercion or undue influence against her daughter in the matter of the execution of the gift deed. Since the suit has been filed 15 years after the execution of this gift deed, per the plaint averments itself, it is clear that the prayer in the suit was barred by the law of limitation.
15. It may also be pertinent to state here that the challenge to the other two sale deeds of the year 2005 and 2010 were also barred by limitation, by virtue of the suit being filed in the year 2019.
16. The Trial Court, however, without noticing these facts, has rejected the application filed by J.Vasanth Kumari under Order VII Rule 11 of the CPC — *firstly*, on the ground that the averments in the plaint could be adjudicated

only after a full-fledged trial; and *secondly*, on the ground that there was a recurring cause of action till the properties were partitioned, as a result of which the cause of action would survive.

17. It may be pertinent to state here that Saraswathamma did not even seek partition in her suit, but she only sought a declaration that the gift deed executed by her and the partition deeds of the year 2004 and 2002 were to be cancelled and declared as not binding on her. Therefore, the reasoning of the Trial Court that Saraswathamma had a recurring cause of action cannot be accepted.
18. I am thus of the view that the application filed by J.Vasanth Kumari under Order VII Rule 11 of the CPC seeking rejection of the plaint filed by Saraswathamma would have to be necessarily allowed and the plaint filed by her, therefore, stands rejected.
19. The Civil Revision Petition is accordingly ***allowed***.

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