

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 7<sup>TH</sup> DAY OF JULY, 2022

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

**CIVIL REVISION PETITION NO.13 OF 2019****BETWEEN:**

1. SMT.DRAKSHAYANAMMA  
W/O LATE SHRI.CHANNABASAPPA  
PRESENT AGED ABOUT 66 YEARS.
2. SMT.G.C.PRASHANTH  
S/O LATE SHRI.CHANNABASAPPA  
PRESENT AGED ABOUT 43 YEARS.
3. SHRI.G.C.PRAMOD  
S/O LATE SHRI.CHANNABASAPPA  
PRESENT AGED ABOUT 39 YEARS.
4. SMT.G.C.SOWMYA  
W/O SHRI.CHIDANANDA  
D/O LATE SHRI.CHANNABASAPPA  
AGED ABOUT 34 YEARS.

ALL ARE RESIDING AT: N.R.BUILDING  
DOOR NO.4, 5<sup>TH</sup> CROSS  
MAHALAKSHMI NAGAR  
GUBBI TOWN  
TUMAKURU DISTRICT - 571112.

...PETITIONERS

(BY SRI.PRADEEP., ADVOCATE FOR  
SRI.SHANMUKHAPPA., ADVOCATE)

**AND**

1. SHRI.GIRISH.G  
S/O LATE.GURUMALLAPPA  
PRESENT AGED ABOUT 57 YEARS.
2. SHRI.MALLESH.G  
S/O LATE.GURUMALLAPPA  
PRESENT AGED ABOUT 55 YEARS.

3. SHRI.JAGADEESH.G  
S/O LATE.GURUMALLAPPA  
PRESENT AGED ABOUT 53 YEARS.

ALL ARE RESIDING AT: HOSAPETE  
GUBBI TOWN  
TUMAKURU DISTRICT - 571112.

...RESPONDENTS

(BY SRI.M.B.CHANDRACHOODA., ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CODE OF  
CIVIL PROCEDURE 1908.

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

**ORDER**

Sri.Pradeep., learned counsel on behalf of  
Sri.Shanmukhappa., for petitioners has appeared in  
person.

Sri.M.B.Chandrachooda., learned counsel for  
respondents has appeared through video conferencing.

2. The matter is listed today for admission.
3. For the sake of convenience, the parties are  
referred to as per their rakings before the Trial Court.

4. The facts are quite simple.

The plaintiff brought action against the defendants on the file of Additional Senior Civil Judge and JMFC, Gubbi in O.S.No.22/2014 and sought the relief of declaration declaring them as the owners of the schedule land bearing Sy.No.69/1 measuring 32 Guntas situated at Rayawara Village, Kasaba Hobli, Gubbi Taluk besides seeking an order of injunction.

On service of summons the defendant appeared and filed written statement and sought for the dismissal of the suit. They also filed an application in I.A.No.7 under Order 7 Rule 11(d) of CPC for rejection of plaint on the ground that there is a delay of 11 years in filing the suit. The Trial Court rejected the application vide order dated:03.11.2018. It is this order which is challenged in this Civil Revision Petition on various grounds as set out in the Memorandum of Civil Revision Petition.

5. Learned counsel for petitioners and respondents have urged several contentions.

6. Heard, the contentions urged on behalf of the respective parties and perused the petition papers with care.

7. The short point which requires consideration is whether the Trial Court is justified in rejecting the application?

Suffice it to note that the plaint is bound to be rejected by the Court in the following circumstances:

1. If the plaint doesn't mention a cause of action [(Order VII Rule 11(a)].
2. The relief claimed in the plaint is undervalued [(Order VII Rule 11(b)].
3. Relief has been stated in the plaint clearly but the paper on which the plaint is written is not properly stamped [(Order VII Rule 11(c)].
4. If the suit is barred by any Statute [(Order VII Rule 11(d)].

In the present case, the defendants moved an application under Order 7 Rule 11 of CPC to reject the plaint. The true copy of the application filed before the Trial Court is furnished. I have perused the same with

care. The third defendant has stated that the suit is barred by limitation.

As is well known that the relevant facts which need to be looked into for deciding an application for rejection of the plaint are averments made in the plaint. For the purpose of deciding an application under Clause (a) to (d) of Order VII Rule 11 of CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement or in the application would be wholly irrelevant.

A good deal of argument was canvassed on rejection of plaint at the threshold as barred by limitation. Learned counsel for petitioner has drawn the attention of the Court to Order VII Rule 11 of Code also.

I have considered the submission with care.

It is perhaps well to observe that the plea with regard to Clause (d) is concerned, the law is well settled that the plaint cannot be rejected or the suit cannot be dismissed as barred by limitation without proper

pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint it cannot be held that the suit is barred by time.

In my considered view, while considering the application under Order VII Rule 11 of CPC, the Court is not required to take into consideration neither the defense set up by the defendant in his written statement nor the averments made in the application for rejection of the plaint.

On facts and in all the circumstances of the case, the Trial Judge is justified in rejecting the application. I find no reason to interfere with Judge's order. Accordingly, the Civil Revision Petition is ***dismissed*** at the stage of admission itself.

TKN

**Sd/-  
JUDGE**