

ORDER

Heard the petitioner's counsel and also the counsel appearing for the respondents.

2. The factual matrix of the case of respondent No.1 before the Trial Court while filing the suit in O.S.No.231/2019 contend that, one Nanjareddy had three sons, Ramareddy, Lingareddy and Munireddy of Agaram Village, Begur Hobli, Bangalore. The said family possessed vast properties in and around Agara Village and in Bangalore City. There was a family partition amongst the members of the Nanjareddy Family by virtue of O.S.No.1/1915-16 on the file of the Court of District Judge at Bangalore dated 8.10.1923, which got culminated in Final Decree proceedings vide FDP dated 14.5.1928.

3. In terms of the said proceedings shares of the respective parties therein were determined and definite shares were allotted to the parties therein as per the schedule appended. The plaintiff herein falls in the branch of Munireddy who had three sons and plaintiff is the grandson of Nanjunda S/o Munireddy. Late Munireddy got a definite share as per the

judgment and decree and FDP proceedings and the said Munireddy died during the pendency of the suit leaving behind his three sons without getting an inch in suit schedule property towards his share of 1/3rd which was declared by the Court towards his legitimate share, which declaration remained unassailed in the preliminary decree which too came to be culminated in the Final Decree Proceedings and there was a cordial relationship with the parties and possession was continued with Ramareddy and its members and bonafidely believed them and there was no room for suspicion and their behavior also never raised any doubts in the minds of the plaintiffs' family. But now they have declined to give a share. Hence, filed a suit for the relief of partition of 1/3rd legitimate share.

4. The defendant appeared and filed statement of objections, defendant No.4 also had filed an application under Order 7 Rule 11 of CPC for rejection of plaint contending that suit is barred by law. The plaintiff is trying to enforce and execute the decree passed in favour of his grand father

Nanjundareddy in Final Decree Proceedings dated 14.5.1928 passed in O.S.No.1/1915-16 on the file of the District Judge, Bangalore and such claim is not maintainable and suit is barred under Section 47 of CPC. The plaintiff is trying to enforce and execute the decree passed in favour of his grand father Nanjundareddy. The present suit is filed after lapse of 90 years and therefore same is hopelessly barred by limitation and no cause of action. The plaintiff also appeared and filed the objection statement before the Trial Court. The Trial Court formulated the point whether plaint does not disclose the cause of action to file the suit and it is barred by law. The Trial Court having considered both pleadings of the plaintiff and also the grounds urged in the application and statement of objections filed by the plaintiff comes to the conclusion that Section 47 of the CPC does not attract and also the suit is not barred by limitation. The Trial Court given the finding that plaintiff has sought for relief of partition with respect of the property fallen to the share of Munireddy and hence the contention of the plaintiff that suit is barred by law will not holds good. The plaint averments also reveals that partition among the legal heirs of

deceased Munireddy has not been effected and plaintiff being the legal heirs of deceased Munireddy is entitled to a share and hence there is a cause of action for the suit and rejected the application under Order 7 Rule 11 (a) and (d) of CPC with cost of Rs.500/-. Being aggrieved by the said order, the present revision petition is filed.

5. The counsel would vehemently contend in his argument that when the decree was passed in 1923 and also FDP was culminated vide order dated 14.5.1928, already there was a decree of partition and preliminary decree was passed and final decree was also passed and hence, no question of once again filing the suit for the relief of partition and according to the plaint averments itself is clear that already there was a partition and final decree was passed and once again cannot file any suit for the relief of partition and hence there is no any cause of action to file a suit for partition once again.

6. The counsel also vehemently contend that, if physical possession was not delivered in terms of the preliminary decree and final decree and he has to seek for an order to execute the

decree. The plaintiff knowing fully well that the decree has to be enforced within the time stipulation and the same is barred by law, once again filed the suit for the relief of partition. The counsel also brought to notice of this Court Section 47 of CPC and there is a bar to file a suit, only executing Court can examine the issue involved between the parties and he cannot file a separate suit and under the provision of Section 47 of CPC, separate suit is barred. The counsel also vehemently contend that suit does not disclose any cause of action to seek for a partition again and nothing stated what is transpired between the parties from 1928. The counsel would vehemently contend that, it is a case of suppression of material facts and property has already been changed to the hands of different persons and the present 4th defendant is in possession of the property that he had purchased the same and revenue records are also standing in the name of the defendant and nothing stated with regard to the revenue records from 1928 to till date, no pleading of joint possession while seeking for the relief of partition, the suit is barred by limitation and within 12 years ought to have filed the appropriate proceedings to enforce the decree and the same is

not done. The counsel would vehemently contend that the suit is filed by a clever drafting and the relief is illusory.

7. The counsel in support of his argument relied upon the judgment of the Apex Court reported in **2019 SCC OnLine KAR 3090** in the case of **Durga Projects and Infrastructure Pvt. Ltd. Vs. S. Rajagopala Reddy and Others** and referring this judgment the counsel would vehemently contend that this Court while allowing the application under Order 7 Rule 11 a, c and d r/w Section 151 of CPC comes to the conclusion that the clever drafting of plaint and suppression of material facts itself is a ground for rejection of plaint. Plaintiff is duty bound in law to disclose the material facts in terms of Order 6 Rule 2, omission of a single material facts leads to an incomplete cause of action and in such a case plaint becomes bad. If it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the CPC can be exercised.

8. The counsel also relied upon the judgment in the case of **Dr.Dhiranji Lal (D) by Lrs. Vs. Hari Das (D) by Lrs.** reported in **(2005) 10 SCC 746**. Referring this judgment, the counsel

would vehemently contend that the rules of limitation and the purpose of limitation is also held that meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. The counsel also referring this judgment contend that Article 136 is starting point of period of limitation for execution of decree (for partition), when decree becomes enforceable, whether from the date the decree is made or when it is engrossed on stamp paper, held, decree becomes enforceable from the date it is made and not when it is engrossed on stamp paper, starting point of limitation cannot be made contingent upon engrossment of the decree on stamp paper which is an uncertain act within the domain and purview of the party.

9. The counsel also referring this judgment would vehemently contend that, the date of decree is a starting point for enforcement of a decree and in the case on hand, for 90 years kept quiet and now come up with a suit for partition even though there was already a decree and hence, same is barred by limitation.

10. The counsel also relied upon the judgment passed by this Court in **RSA No.1837/2017 dated 26.5.2023** and brought to notice of this Court the principle of doctrine of acquiescence and this Court held that when the party kept quiet for a longer period without seeking the appropriate relief and the conduct of indifference or acquiescence and held that, it is settled law that an estoppel may arise as against persons who have not willfully made any misrepresentation, and whose conduct is free from fraud or negligence, but as against whom inferences may reasonably have been drawn upon which others may have been induced to act. If a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to it being committed, he cannot afterward be heard to complain of the act. This is the proper sense of the term acquiescence, under such circumstances, that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct. The counsel referring

this judgment would contend that the plaintiff had acquiesced his right keeping quiet for a period of 90 years and hence, not entitled for any relief and plaint is liable to be rejected.

11. The counsel relying upon the judgment of the Apex Court in the case of **Canara Bank Vs. P.Selathal and Others** reported in **2020 SCC OnLine SC 245**, wherein also the Apex Court held that suits filed after a period of 15 years from the date of mortgage and after a period of 7 years from the date of passing of decree by DRT. In the plaint, it is averred that plaintiffs came to know about mortgage and judgment and decree passed by DRT only six months back. However, said averments can be said to be too vague. Nothing has been averred when and how plaintiffs came to know about judgment and decree passed by DRT and mortgage of property. Only with a view to get out of the law of limitation and only with a view to bring suit within period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. The counsel referring this judgment would also vehemently contend that, for a period of 90 years kept quiet and

now to avoid the limitation and to get out of the law of limitation clever drafting has been made in the plaint and hence, suit is barred by limitation and no cause of action.

12. Per contra, the counsel appearing for the respondents would vehemently contend that the Trial Court while rejecting an application has given the reason that the suit is not barred by limitation and also there is a cause of action and legal heirs of said Munireddy are having a right in respect of the property and entitled for the relief of partition and not committed any error in passing such an error. The very contention of the petitioner's counsel cannot be accepted.

13. The counsel in support of his arguments relied upon the judgment of this Court in the case of **S.K.Lakshminarasappa, since deceased by his L.Rs. Vs. Sri.B.Rudraiah and Others** reported in **ILR 2012 KAR 4129** and brought to notice of this Court paragraph Nos.45 and 46, wherein discussed with regard to filing of suit for partition which was dismissed for default. The Court observed that, the reason is that the right to enforce a partition is a continuous right, which

is a legal incident of a joint tenancy and which enures so long as the joint tenancy continues. Cause of action is continuous in partition cases which subsists so long as the property is held jointly. The counsel referring this judgment also vehemently contend that, the High Court observed that the property continues to be joint. The co-sharers right to seek partition of the property held jointly, continues. It is a recurring cause of action. The cause of action comes to an end only after partition of the property held in joint, is severed and the share to which each co-sharer is entitled to, is put in possession of their respective share. The counsel referring this judgment would vehemently contend that, the same is aptly applicable to the case on hand since possession has not been handed over to the respondent in terms of the decree passed in the earlier suit.

14. The counsel also in support of his argument relied upon the judgment in the case of **Mayar (H.K.) Ltd. and Others Vs. Owners & parties, Vessel M.V. Fortune Express and Others** reported in **(2006) 3 SCC 100**, wherein also the Apex Court in detail discussed with regard to Order 7 Rule 11

and also Order 6 Rule 16, wherein held such rejection is permissible only if the suppressed fact is material, in the sense that had it not been suppressed it would have had an effect on the merits of the case, whatever view the Court may have taken, to obtain such rejection defendant must show that plaintiff could not possibly succeed on the basis of the pleadings and in the circumstances of the case, given the suppression of the facts in question.

15. The counsel also relied upon the judgment reported in (2006) 5 SCC 658 in the case of **Balalaria Construction (P) Ltd. Vs. Hanuman Seva Trust and Others**, wherein also the Apex Court while discussing Order 7 Rule 11(d) comes to the conclusion that suit is barred by limitation, cannot be rejected as barred by limitation without proper pleadings, framing of issues of limitation and taken the evidence. Question of limitation is a mixed question of law and fact and ex facie on reading of the plaint, suit cannot be held to be barred by limitation.

16. The counsel also relied upon the judgment of this Court reported in **2017 SCC OnLine Kar 6782** in the case of

Prameela N. Vs. L.Mahadevaiah, wherein also dealing with Order 7 Rule 11 an observation is made that the Court is not obliged to look into the case of the defendant and the pleadings of the defendant, but the Court is bound to look into the whole plaint averments and on meaningful and complete reading of the plaint if the Court is of the opinion that, there is no cause of action or the cause of action pleaded is illusory then also the Court can reject the plaint.

17. It is also observed that when the plaintiff pleads that the sale deed is not binding upon her and she continues to be the joint owner of the said property with first defendant, again this has to be tested whether she has to seek for cancellation or for setting aside the sale deed or simply she can seek that the sale transaction is not binding upon her.

18. Having heard the petitioner's counsel and also counsel appearing for the respondents, the points that would arise for consideration of this Court are:

- i) Whether the Trial Court committed an error in rejecting application filed under Order 7 Rule 11 (a) and (d) of CPC?

ii) What Order?

19. Having perused the pleadings found in the plaint, it is not in dispute that earlier a suit was filed for the relief of partition and preliminary decree was granted in O.S.No.1/1915-16 before the Court of District Court at Bangalore and the said decree was granted on 8.10.1923 and the same was culminated in final decree proceedings vide FDP dated 14.5.1928.

20. Having perused the averment of the plaint in paragraph No.2 it is clear that suit was filed for the relief of partition and preliminary decree was passed and final decree was also passed. It is also settled law, in view of principles laid down in the judgment referred supra that while the Court considering an application under Order 7 Rule 11 of CPC, look into the averments of the plaint and not the defence, and defence is immaterial.

21. Having perused the plaint averments it is clear that already suit was filed since the family propositus Nanjareddy having three sons Ramareddy, Lingareddy and Munireddy and

also pleading is clear that there was a family partition among the members of the Nanjareddy by virtue of the decree. Hence, it is clear that there was a partition among the family members and plaintiff is the grand son of Nanjunda S/o Munireddy and also it is specific case of late Munireddy got a definite share as per the judgment and decree and FDP proceedings and also specifically pleaded that suit schedule properties are subject matter of the said proceedings which fell to the share of late Munireddy, but he died leaving behind his three sons. But the fact is that, already there was a decree of partition and final decree was also attained its finality. There is a force in the contention of the petitioner's counsel that physical possession is not delivered in terms of the judgment and decree, option is to seek for an order to execute the decree. But instead of executing the decree, filed one more suit for the relief of partition and hence, one more suit is barred by law only to enforce the decree by filing execution petition. It has to be noted that the Apex Court also in the judgment referred by the petitioner's counsel in the case of *Dr.Chiranjilal (D) by Lrs.* referred supra made it clear that starting point of period of limitation for execution of decree (for

partition) and the same become enforceable from the date of decree and not engrossing the same on the stamp paper and engrossing of the stamp paper is uncertain. Starting point of limitation cannot be made contingent upon engrossment of the decree on stamp paper which is an uncertain act within the domain and purview of the party. Hence, it is clear that, in order to avoid law of limitation one more suit is filed for the relief of partition. If possession is not delivered in terms of the preliminary decree and final decree, ought to have enforced the same within the period of limitation and the same is not been done and in order to oust the law of limitation, the present suit is filed.

22. The judgment of the Court in *Canara Bank Vs. P.Selathal and Others* referred supra is also clear that only with a view to get out of the law of limitation and only with a view to bring suits within a period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaint on limitation. The said judgment is apply

applicable to the case on hand, since the same is not been enforced by filing execution petition after the decree.

23. The other contention of the petitioner's counsel is also that the plaintiff acquiesced their right, the doctrine of law of acquiescence is applicable to the facts of the case on hand and relied upon the judgment of this Court referred supra in *G.Nagaraju Vs. Mr.Ramesh and others case*, the same was discussed earlier with regard to the application of law of acquiescence and the said judgment is also aptly applicable to the case on hand since the plaintiffs have acquiesced their right, kept quiet for a period of 90 years even though the final decree was passed on 14.5.1928. The suit is also hopelessly barred by limitation by filing a separate suit.

24. This Court also would like to refer Section 47 of CPC which reads as follows:

47. Questions to be determined by the Court executing decree-(1) *All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to*

the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

25. Having referred Section 47 of CPC, it is clear that when there was a decree between the parties and relating to the execution, discharge of satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. In the case on hand, already there was a decree in respect of the Munireddy's share and pleading of the plaintiff also clear that share has been determined and final decree also was drawn on 14.5.1928 and instead of executing the final decree by filing execution petition, a separate suit is filed before the Court and hence, it is clear that it is nothing but clever drafting of the plaint while filing the suit for the relief of seeking once again for partition.

26. The Supreme Court also referred supra in *Canara Bank* case held that, it is nothing but clever drafting to file the suit for the relief of partition once again and the same is illusory and nothing is there to determine the issues between the parties

since suit has been decreed and final decree has been passed, only enforcement of the decree was pending even according to the contention of the plaintiff. When such being the case, in order to avoid the limitation for execution of the decree, the present suit is filed once again seeking for the relief of partition and hence, there is a force in the contention of the counsel for the revision petitioner that there is no cause of action to file a suit and even on perusal of the plaint also, cause of action is pleaded of the year 1923 and 1928 and subsequently demands as and when made by the plaintiff's family repeatedly, and also when plaintiff met defendant Nos.4 to 11 along with well wishers and when the defendant denied in 2018 and no specific averment is made and also no question of making any demand, when already there was a decree, there is a preliminary decree and final decree, as stated in paragraph No.10 of the plaint itself mentioned in the cause of action and when such being the case, it is a fit case as observed by the Apex Court that in order to bring the suit within the law of limitation once again for the relief of partition, the same has not been examined by the Trial Court.

27. No doubt, the counsel appearing for the respondent relied upon the judgment of this Court in *ILR 2012 Kar 4129 referred supra* brought to notice of this Court paragraph Nos.45 and 46, wherein discussed with regard to the fact that, it is a recurring cause of action. The cause of action comes to an end only after partition of the property held in joint, is severed and the share to which each co-sharer is entitled to, is put in possession of their respective share.

28. The case involved is a case of dismissal of the suit. But here is a case already determined the rights of the parties and preliminary decree was passed and final decree was also passed and no doubt it is the contention that possession was not delivered, but the same ought to have been enforced by filing an execution petition and to seek for an order to execute the decree and comes to know about the same is barred by limitation, the present suit is filed cleverly drafting the plaint and the same is nothing but illusory.

29. No doubt the counsel is also relied upon the judgment of the Apex court reported in *Mayor(H.K) case* referred supra,

the judgment is also very clear that to obtain such rejection defendant must show that plaintiff would not possibility succeed on the basis of the pleadings and in the circumstances of the case, even the suppression of the facts in question. But in the case on hand also it is very clear that there was a preliminary decree and final decree and the same is not enforced within the limitation as held in the judgment of the Apex Court relied upon by the petitioner's counsel.

30. No doubt, the other judgment of the High Court in *Prameela N. Vs. L.Mahadevaiah* referred supra, it is clear that defence of the defendant cannot be looked into while considering Order 7 Rule 11 and the same is also a settled law and very clear that under Order 7 Rule 11(a) and (d), there must be cause of action and also if it is barred by limitation within the meaning of Order 7 Rule 11 (d) of CPC, the same cannot be entertained.

31. Having perused the plaint averments, I have already pointed out that it is clear that already there was a partition by granting preliminary decree. Final decree was also passed on

14.5.1928 and instead of filing execution petition and obtain possession, after lapse of 90 years, once again suit is filed for the relief of partition and nothing is there to determine, when already a share of Munireddy was granted in the earlier suit and the present plaintiff claims that he is the legal heir of Munireddy's Branch and when there was a decree of partition and final decree in favour of Munireddy's Branch, ought to have been enforced within the period of limitation and instead, filed one more suit for partition and hence the Trial Court fails to take note of the said fact into consideration that there is no cause of action to file a suit and also not discussed anything with regard to the limitation aspect also, though point is raised by the Court whether the plaint does not disclose the cause of action to file the suit and it is barred by law and committed an error in considering the very plaint averments made in the application and also erroneously comes to the conclusion that Section 47 of the CPC does not press into the aid of the defendant, but fails to take note of the very proviso of Section 47 of CPC and there must be a separate suit and the right has to be adjudicated only

in execution petition. But instead of filing execution petition, filed a separate original suit and the same has not been appreciated.

32. Regarding law of limitation also, the Trial Court committed an error in coming to the conclusion that the law of limitation urged by the petitioner was not considered and comes to an erroneous conclusion that suit is not barred by limitation and the very approach is erroneous and hence it requires interference. Hence, I answer the point as affirmative.

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

ORDER

Revision petition is allowed.

The impugned order is set aside. Consequently, the application filed under Order 7 Rule 11(a) and (d) of CPC before the Trial Court is allowed and as a result plaint is rejected.

**Sd/-
JUDGE**

AP