

KABG410012582021



**IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.**

Present: SRI. ZAHEER ATANUR

B.Sc, LL.B.,

C/c II Addl.C.J & JMFC, Chikodi

Dated this the 12th Day of June, 2026

Civil Misc. No.3/2021

Petitioner.

- 1.** Smt. Parwati W/o Mahadev Khot
Age: 47 Years, Occ: Agriculture &
Home Maker
R/o : Karoshi, Tq: Chikodi,
Now residing at House No.5 Ram Nagar
(Prabhuwadi) Chikodi, Taluka
Dist: Belagavi.
- 2.** Shri. Sagar S/o Mahadev Khot
Age: 27 Years, Occ: Agriculture &
Now Serving Indian Army,
R/o : Karoshi, Tq: Chikodi,
Now residing at House No.5 Ram Nagar
(Prabhuwadi) Chikodi, Taluka
Dist: Belagavi.
By his GPA Holder (Mother) applicant/
Petitioner No.1.

Smt. Parwati W/o Mahadev Khot
(By Sri. K.R.T Advocate)

Vs

Respondent.

- 1.** Smt Sumitra W/o Bimarao Gouli
Age: 69 Years, Occ: Home Maker
R/o : Hebbal,
Tq: Gadhinglaj, Dist: Kolhapur.
- 2.** Shri. Sangappa S/o Balavant Hebbale
Age: 58 Years, Occ: Agriculture
R/o : Karoshi,
Tq: Chikodi, Dist: Belagavi.
- 3.** Shri. Basavant S/o Balavant Hebbale
Age: 78 Years, Occ: Agriculture
R/o : Karoshi,
Tq: Chikodi, Dist: Belagavi.
- 4.** Shri. Bapurao S/o Balavant Hebbale
Age: 74 Years, Occ: Agriculture
R/o : Karoshi,
Tq: Chikodi, Dist: Belagavi.
- 5.** Shri. Gangadhar S/o Balavant Hebbale
Age: 72 Years, Occ: Agriculture
R/o : Karoshi,
Tq: Chikodi, Dist: Belagavi.
- 6.** Shri. Santram S/o Balavant Hebbale
Age: 60 Years, Occ: Agriculture

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R/o : Karoshi,

Tq: Chikodi, Dist: Belagavi.

(Res. No.1, 3 to 6 by Shri. M.B.P Adv)

(Res. No.2, by Shri. Y.S.G Adv)

ORDER

The Petitioners have filed the petition U/O IX Rule 13 r/w section 151 of CPC to set aside the ex-parte decree passed in OS.NO.360/2017 dated 06.02.2021.

2. Brief facts of the Plaintiff's case are as follows:

That, the respondent No.1 (original plaintiff) has filed the suit vide OS.No.360/2017 before this court seeking relief of partition and separate possession of 1/6th share in the suit properties against the respondent No.2 to 6 and these petitioners. But the said suit itself is not maintainable and after filing of the said suit, the summons was issued to the defendant and on 02.02.2018 the defendant No.2 and 5 were placed *ex-parte* and the defendant No.3 was personally present and prayed time to engage counsel and on 28.04.2018 the court re-issued the summons and the

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defendants No.6 and 7 were placed *ex-parte*. The summons issued to defendant No.1 is returned with shara that addressee is not in such address and case was adjourned for steps against defendant No.1 and the summons to the defendants No.6 and 7 were never served and as such they did not appeared before the Court and the acknowledgment do not bear the signature of defendant No.1, 6 and 7. But the respondent colluding with each other have got managed to sign on the postal acknowledgment. But on 05.05.2018 she went to Bangalore and the defendant no.7 was serving in Indian Army and when the summons were issued to the defendant No.6 and 7 they were not in station and no body was there in house. But the defendants colluded with each other, managed to serve summons to others and obtained *ex-parte* decree against the petitioners. As soon as the petitioners got knowledge about the decree passed by this Court, they have preferred this instant petition and contended that the suit filed by the respondent No.1 is not maintainable for partial partition.

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3. Notice is served upon the respondents, respondent No.1 has appeared through her counsel Sri MBP, filed objections and contended that, the petition is not maintainable in the eyes of law and denied the entire petition averments. Further it is contended that, the petitioner has filed this petition on the ground of wait and see principle. Since the summons in O.S. No.360/2017 is duly served on the petitioners and they have deliberately remained absent due to which they were placed *ex-parte* and this Court has proceeded with the suit culminating in delivering the Judgment and Decree which cannot be modified or altered or set aside by this Court. This petition is filed after lapse of 5 years. Accordingly prays to dismiss the petition with cost.

4. The petitioner No.1 is examined as PW-1 and produced documents at Ex.P-1 to 11. Cross-examination of PW1 and respondent evidence is taken as nil.

5. Heard counsel for petitioners and perused the records.

6. On the basis of contention of petition the following points arise for determination of this court:

1. Whether the petitioners have made out sufficient grounds to set aside the ex-parte decree passed in OS.NO.360/2017 dated 06.02.2021?

2. What order?

7. The above points are answered as under:

Point No.1 : In the ***Affirmative***

Point No. 2: As per final order,for the following :

REASONS

8. **Point No.1**: The petitioner to establish her case examined herself as PW1 and filed her affidavit in lieu of examination-in-chief and reiterated petition averments.

9. Ex.P1 is the Certified Copy of Preliminary Decree passed in OS No.360/2017, Ex.P2 is the Certified Copy of Judgment, Ex.P3 is the Certified Copy of Complaint, Ex.P4 is the Certified Copy of Order Sheet, Ex.P5 & P6 are the Certified Copy of Acknowledgment, Ex.P7 to P9 are the

Postal Receipts, Ex.P10 is the Certified Copy of Postal Cover, Ex.P11 is General Power of Attorney executed by petitioner No.2 in favour of petitioner No.1.

10. A careful perusal of Ex.P5 and P6 Acknowledgments would indicate that the signatures are differing as that of petitioners which clearly goes to show that the summons are served upon other persons than the petitioners. Moreover, the respondents have not contested the petition. Thus, the evidence of PW1 remained un-rebutted and un-impeached. As such there is no ground to disbelieve the same. It is specific contention of the petitioners is that, the petitioner No.1 was at Bangalore and petitioner No.2 was at Jhansi on his duty when summons was issued, subsequently the petitioners being vendee of properties were unaware of *ex-parte* decree passed in OS.No.360/2017 dated 06.02.2021. Therefore it is just and proper to give an opportunity to the petitioners to contest the suit on merits. Therefore, the Judgment and Decree passed in OS No.360/2017 dated 06.02.2021 is to be set aside and the

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petitioners are accorded opportunity to put forth their case.

Accordingly, this Court answers point No.1 in the

Affirmative.

10. Point No.2 : In view of afore stated reasons, this

Court proceeds to pass the following:

ORDER

The petition filed under Order IX Rule 13 of CPC by the petitioner is allowed.

The ex-parte Judgment and Decree dated 06.02.2021 passed in O.S.No.360/2017 is hereby set aside.

The suit O.S.No.360/2017 is hereby restored and petitioners are accorded opportunity to contest the suit by filing written statement.

Office to keep copy of the order in records of O.S.No.360/2017 with a note in that regard.

(Dictated to the Stenographer directly on computer, typed by Stenographer, corrected by me and then pronounced in the Open court on this 12th day of June, 2026)

(Zaheer Atanur)
C/c II ADDL. CIVIL JUDGE & JMFC,
CHIKODI.

ANNEXURE**Witnesses examined on behalf of petitioner :**

PW1 : Smt. Parwati W/o Mahadev Khot

Documents exhibited on behalf of petitioners :

Ex.P1 : Certified Copy of Decree in OS No.360/2017

Ex.P2 : Certified Copy of Judgment

Ex.P3 : Certified Copy of Complaint

Ex.P4 : Certified Copy of Order Sheet

Ex.P 5 & 6 : Certified Copy of Acknowledgment

Ex.P 7 to 9 : Postal receipts

Ex.P10 : Certified Copy of Postal Cover

Ex.P11 : General Power of Attorney

List of witnesses and documents on behalf of respondents:

-NIL-

(Zaheer Atanur)
C/c II ADDL. CIVIL JUDGE & JMFC,
CHIKODI.