

KABK730012682021



R.A./59/2011

**IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE,
BAGALKOT TO SIT AT: JAMKHANDI, AT: JAMKHANDI.**

* * *

Before: Sri. Mahamed Imthiyaz Ahamed
B.Sc, B.Ed, L.L.B.,

I Addl. District & Sessions Judge,
Bagalkot to sit at Jamkhandi

Dated: this the 05th day of February, 2026
Regular Appeal No.59/2011

Appellants:

Smt.Tayawwa W/o. Lachhappa Tungal
& others.

(By Sri.G.K.Mathad Advocate)

-Vs-

Respondents:

Smt.Indirabai W/o. Hanamappa Tungal
& others.

(By Sri.M.B.Tanksali. Advocate)

**:: ORDER ON MEMO FILED BY THE COUNSEL FOR THE
APPELLANT DATED 12-12-2025::**

Basically the plaintiffs who are the appellants in the instant appeal have filed a suit vide O.S.No.123/1998 against the defendants/instant respondents on the file of Principal Senior Civil Judge & JMFC, Jamakhandi for the relief of

partition and separate possession and also for injunction and mense profits. The learned Principal Senior Civil Judge & JMFC, Jamakhandi has decreed the suit of the plaintiffs in part vide judgment dated 28-02-2011.

2. Being aggrieved by the judgment dated 28-02-2011 in O.S. No.123/1998 passed by the learned Principal Senior Civil Judge & JMFC, Jamakhandi the plaintiffs being appellants filed the instant appeal before this court.

3. It is pertinent to note that during the pendency of the instant appeal the appellants filed IA No.V under order XXII rule 2 r/w. Sec. 151 of CPC praying that the right to sue survives against the surviving defendants after the death of respondent No.2 and 7, praying to effect a entry in order sheet and appeal shall be proceeded at the instance of the applicants against the surviving defendants/respondents. This application came to be rejected by my predecessor in office by the impugned order dated 31-05-2016.

4. Being aggrieved by the order passed on IA No.V under order XXII Rule 2 r/w. Sec. 151 of CPC the appellants preferred Writ Petition before the Hon'ble High Court of Karnataka to

quash the impugned order dated 31-05-2016 passed in R.A. No.59/2011 vide Writ Petition No.106146/2016 (GM-CPC).

5. The Hon'ble High Court of Karnataka allowed the Writ Petition No.106146/2016 (GM-CPC) vide order dated 07-01-2025. The said order of Hon'ble High Court of Karnataka reads as follows:

:: O R D E R ::

- (i) Writ Petition is allowed.**
- (ii) The order dated 31-05-2016 passed by the Additional District and Sessions Judge, Bagalkote sitting at Jamakhandi on IA No.V in R.A.No.59/2011 is set aside. Consequently I.A.No.V in R.A.No.59/2011 is allowed. It is held that the right to sue survives against surviving defendants after the death of respondent Nos.2 and 7 and their shares, if any, would devolve on the other respondents making it part of the appeal proceedings.**
- (iii) However, it is made clear that allowing of I.A.No.V would not come in the way of the legatee filing necessary application to bring himself on record as a legal representative of deceased respondent No.7. In the event of such an application being filed, the same**

would be required to be dealt with by the first appellate court as per the observations by holding enquiry under Rule 5 Order XXII of the Code of Civil Procedure.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

6. After receiving order of Hon'ble Hon'ble High Court of Karnataka in Writ Petition No.106146/2016 dated 07-01-2025 when the case is set down for the arguments the applicant Hanamant has filed IA No.VIII through his advocate under order XXII Rule 4 r/w. Order I Rule 10(2) r/w sec. 151 of CPC to implead him as LR of deceased respondent No.7 on record being respondent No.7(A) contending that the respondent No.7 and her husband Tirupati who is respondent No.2 died issueless. The respondent No.7 before her death executed a Will bequeathing her share/right in respect of R.S.No.19/1 measuring 23 acres 11 guntas of Babaladi village and two house properties situated at Bidari village in Jamakhandi taluka bearing Gram Panchayat No.51/1 and 52/2 and also the amount due to her from one Siddappa Machakanur in respect of which O.S.No.147/2010 was filed before Civil Court at Mudhol

on 09-03-2013. It is also contended that the respondent No.7 died on 07-06-2013. After her death the applicant became owner and in possession of the immovable properties referred above and the applicant got entered his name in revenue records as well as in the panchayat records on the basis of Will executed by respondent No.7 on 09-03-2013. It is also the contention of the applicant that the Will dated 09-03-2013 is duly executed Will and the said Will is duly attested. The respondent No.7 when she was mentally and physically sound voluntarily out of her own free will executed the Will. The applicant being legatee/LR of the deceased respondent No.7 is entitle to come on record on the above grounds prayed to allow the application.

7. The counsel for the applicant also filed memo with copy of Will.

8. The counsel for the appellant opposed the IA No.VIII by filing written objections that the application is not maintainable. The application is filed on the baseless and false affidavit without there being any independent document which requires to be relied on along with the application itself. So on this count alone the application deserves to be dismissed. It is also

contended that the contents of application prima-facie goes to show that without there being a document purported to be executed by the respondent No.7 before her death is neither shown in connection with the alleged Will not produced the legal document before this court. Hence the contention taken in the affidavit are all false and the application is not maintainable. The application is filed with a intention to dupe the legitimate share of the deceased respondent No.2 and 7 of the instant appeal taking undue advantage of their death and also collusion between the respondent No.4 and present applicant in respect of the legitimate share of the deceased respondent No.2 and 7. It is also contended that the false claim is put up by the applicant on the basis of the alleged Will as contended in para 3 of the affidavit. On the above grounds prayed to reject the application.

9. The counsel for the appellants filed memo dated 12-12-2025 stating that in view of the principles laid down by the Hon'ble Apex Court of India in a decision reported in **Swami Vedvyasanand Ji Maharaj (D) through LRs -Vs- Shyam Lal Chauhan & Ors in Civil Appeal Nos.5569-5570 of 2024**, refer the matter to the trial court for deciding question on IA No.VIII

as per the directions made in Writ Petition No.106146/2016 of Hon'ble High Court of Karnataka.

10. The counsel for the respondent No.7(A) submitted answer to memo dated 12-12-2025 filed by the appellants contending that the memo is misconceived in law and it is not sustainable. It is stated that the case law referred is limited to the point that LR brought on record does not automatically become heir of the deceased so as to inherit the property. The law laid down in the said ruling that he can represent the deceased representing his estate in a suit proceedings before the court and the same view is also expressed in **Jaladi Sugana -Vs- Satya Sai Central Trust (2008) 8 SCC 521**. In the instant case the Hon'ble High Court of Karnataka directed this court to consider the application filed by the proposed legatee by holding enquiry under order XXII Rule 5 CPC. Where there is a specific direction to this Hon'ble court being the First Appellate Court it cannot remand the case to decide whether the proposed impleader is LR of deceased respondent No.7. The Appellate Court has all the powers which the trial court can exercise by virtue of Section 107 of CPC. Even order XXII Rule 5 itself gives direction to the

Appellate Court either to decide whether a person is a LR of deceased by holding enquiry or to direct the said enquiry being done by any subordinate court. Hence by looking at the legal provisions and the specific directions given by the Hon'ble High Court of Karnataka, there is no need to refer the matter to the trial court for the decision on IA No.VIII. Accordingly prayed to reject the memo.

11. In the instant case on hand the Hon'ble High Court of Karnataka in Writ Petition No.106146/2016 allowing the IA No.V it has been made clear that allowing IA No.V would not come in the way of legatee filing necessary application to bring himself on record as a legal representative of deceased respondent No.7. Now in view of the above order of Hon'ble High Court of Karnataka the applicant Hanamant has filed IA No.VIII under order XXII Rule 4 r/w. Order I Rule 10(2) r/w. Sec. 151 of CPC to bring him on record as legal representative of deceased respondent No.7 claiming to be the legatee under the Will executed by the respondent No.7. It is also pertinent to note that said IA No.VIII filed by the applicant is opposed by the counsel for the appellants. The Hon'ble High Court of Karnataka also

ordered that in the event of such application being filed the same would be require to be dealt with by the First Appellate Court as per the observations by holding enquiry under order XXII Rule 5 of the Code of Civil Procedure. So the above order of Hon'ble High Court of Karnataka clearly reveals that the First Appellate Court has to hold the enquiry under order XXII Rule 5 of CPC.

12. The learned counsel for the appellants prayed to refer the matter to the trial court to decide the question on IA No.VIII as per the directions made in the Writ Petition No.106146/2016 of Hon'ble High Court of Karnataka and also in view of the principles laid down by the Hon'ble Apex Court in a case of **Swami Vedvyasanand Ji Maharaj (D) through LRs -Vs- Shyam Lal Chauhan & Ors.**

13. At this stage I feel it appropriate to extract provision of law under Order XXII rule 5 of CPC, which reads as follows:

“Order XXII Rule 5. Determination of question as to legal representative.- Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a

deceased defendant, such question shall be determined by the Court:

(Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into consideration in determining the question.)”

14. The above provision of law makes it clear that where a question arises as to whether any person is or is not the legal representative of plaintiff or a defendant the said question shall be determined by the court and the proviso to Order XXII rule 5 provides that where such question arises before an Appellate Court, the appellate court may before determining the question direct any subordinate court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons thereof and the appellate court may take the such evidence into consideration in determining the question. As per the above proviso the said question has to be determined by the Appellate Court but the discretion has given to the Appellate Court to direct any subordinate court to try the

question and return the records together with evidence if any recorded at such trial with findings and reasons thereof to enable the Appellate Court to take into consideration the same in determining the question.

15. In a decision cited by the learned counsel for appellants in **Civil Appeal No.5569-5570 of 2024 in between Swami Vedvyasanand Ji Maharaj (D) through LR -Vs- Shyam Lal Chauhan and Ors**, also the Hon'ble Supreme Court of India, held at para 14 and 17 of the order as follows:

14. Order 22 Rule 5 of CPC reads as follows:

“ Determination of question as to legal representative.- Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and

reasons therefor, and the Appellate Court may take the same into consideration in determining the question.”

This Rule mandates that in case of death of plaintiff or defendant, if a question arises as to whether any person is or is not the legal representative of the deceased party, the court shall first determine such a question. Proviso of this Rule is only an enabling provision where the appellate court may before deciding the question can refer the matter to a subordinate court to try and record its findings which may be considered by the Appellate Court while taking a final call on the issue.

17. Proviso to Rule 5 does not say that the Appellate Court can direct the subordinate court to decide the question as to who would be the legal representative, it only provides that the Appellate Court can direct the subordinate court to try the question and return the records to the Appellate Court, along with the evidence and the subordinate court has then to send a report in the form of a reasoned opinion based on evidence recorded, upon which the final decision has to be made ultimately by the Appellate Court, after considering all relevant material. While dealing

with the report sent by the subordinate court under Order 22 Rule 5 of CPC, the Appellate Court may consider the findings of the subordinate court and then give its reasons before reaching any conclusion. The words ‘the Appellate Court may take the same into consideration in determining the question’ used in the proviso to Rule 5 gives discretion to the Appellate Court to make its own separate opinion notwithstanding the opinion of the subordinate court. The proviso cannot be construed to be a delegation of the powers of the Appellate Court to substitute the deceased party, but is merely to assist it in ultimately deciding the issue of substitution. Thus, the Appellate Court ‘may’ take into consideration the material referred by the subordinate court under Rule 5 of Order 22, CPC along with the objections, if any, against the report while deciding on the substitution of the appellant.”

16. The perusal of the order XXII Rule 5 of CPC and the order of Hon’ble Supreme Court of India referred above makes it clear that it is not mandatory to refer the matter to the trial court for deciding the question of IA No.VIII filed under Order XXII Rule 4

of CPC as sought by the counsel for the appellants. But if such question arises before an Appellate Court before determining the said question the Appellate Court may direct any subordinate court to try the question and to return the records together with evidence, if any to enable the Appellate Court to take same into consideration in determining the question.

17. As far as the instant case is concerned the Hon'ble High Court of Karnataka has clearly passed the order in Writ Petition No.104161/2016 (GM-CPC) dated 07-01-2025 as follows:

:: O R D E R ::

- (i) xxx
- (ii) xxx
- (iii) However, it is made clear that allowing of

I.A.No.V would not come in the way of the legatee filing necessary application to bring himself on record as a legal representative of deceased respondent No.7. **In the event of such an application being filed, the same would be required to be dealt with by the first appellate Court as per the observations by holding enquiry under Rule 5 Order XXII of the Code of Civil Procedure.**

18. In view of the above order of Hon'ble High Court of Karnataka as the instant applicant filed IA No.VIII Under Order XXII Rule 4 R/w. Order I Rule 10(2) r/w. Sec. 151 of CPC seeking to implead him as legal heir of deceased respondent No.7 being respondent No.7(A) on the ground that he is a legatee under the Will executed by the respondent No.7 and as the said contention is denied by the appellants the enquiry has to be conducted under order XXII Rule 5 of CPC in respect of the IA No.VIII filed by the applicant i.e. proposed respondent No.7(A).

19. It is also pertinent to note that the instant regular appeal is of the year 2011 and as the Hon'ble High Court of Karnataka has directed this court in its order in Writ Petition No.106146/2016 (GM-CPC) dated 07-01-2025 that in the event of such an application being filed the same would be require to be dealt with by the First Appellate Court as per the observations by holding enquiry under order XXII Rule 5 of the Civil Procedure Code this court has to conduct a enquiry under order XXII rule 5 of CPC in respect of the IA No.VIII filed by the applicant/ proposed respondent No.7(A) under order XXII rule 4 of CPC and no grounds are forthcoming to refer the matter to the trial court

for deciding the question on IA No.VIII. On the basis of my above reasons I proceed to pass the following..

:: O R D E R ::

The memo dated 12-12-2025 filed by the advocate for the appellants to refer the matter to the trial court for deciding the question of IA No.VIII is hereby **rejected**.

Call on for enquiry under order XXII Rule 5 of CPC on IA No.VIII filed by applicant proposed respondent No. 7A Under order XXII rule 4 r/w. Order I rule 10(2) r/w. Sec. 151 of CPC by: 09-02-2026.

(Dictated to the stenographer, script transcribed & typed by him, corrected, signed by me and then pronounced in the open court on this the **05th day of February- 2026**)

**(Sri. Mahamed Imthiyaz Ahamed.)
I Addl. District & Sessions Judge,
Bagalkot, to sit at Jamkhandi.**