



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

DATED: THIS THE 30th DAY OF OCTOBER 2025

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No:49/2024

BETWEEN :

Smt.Padmamma,
Aged about 71 years,
W/o late Krishnaiah,
D/o late Siddaiah,
R/o Muthigepura Village,
Halase Post, Kasaba Hobli,
Mudigere Taluk.

Presently R/o Baggasagodu Village,
Banakal Hobli, Mudigere Taluk.

... Plaintiff

(By Sri.K.C.Chandrashekar, Adv.,)

AND :

- 1.** Sri.Duggaiah,
Aged about 43 years,
S/o late Siddaiah.
- 2.** Smt.Motamma,
Aged about 41 years,
D/o late Siddaiah.
- 3.** Sri.Annappa,
Aged about 39 years,
S/o late Siddaiah.
- 4.** Sri.Rudresh,



Aged about 37 years,
S/o late Siddaiah.

All are R/o Muthigepura Village,
Halase Post, Kasaba Hobli,
Mudigere Taluk.

...Defendants

**(D1 & 2:Exparte,
(D3 By Sri.H.K.Devaraj, Adv.,)
(D4 By Sri.Prathap Kumar.H.M, Adv.,)**

ORDERS ON PRELIMINARY ISSUE

The plaintiff has filed the present suit for partition and separate possession of the suit schedule property. On service of summons, the defendant No.3 has filed the written statement wherein contended that the plaintiff had earlier filed a suit in OS.No.15/2012 on the file of this Court with respect to the suit property and the said suit came to be dismissed on 20.09.2016. The plaintiff without preferring appeal against the said order, has filed the present suit suppressing the said fact and therefore, the above suit is not maintainable.

2. On basis of the above averments, this Court has framed the issues on 10.07.2025, among which the issue No.3 is treated as preliminary issue which reads as follows:-

**Issue No.3 : Whether the above suit is barred
by the doctrine of res-judicata?**

3. In an enquiry on the preliminary issue, both side counsels have submitted their respective arguments.



4. This court, having heard the arguments addressed by the respective counsels, has also perused the entire materials on record. The answers of this Court on the above Preliminary Issue/Issue No.3 is in **Negative** for the following:

REASONS

5. As noted earlier, this is a suit for partition and separate possession of the suit schedule property on an assertion that the said property is the joint family property of the plaintiff and defendants, wherein the plaintiff claims to have got legitimate share. On the other hand, the defendant No.3 disputes the maintainability of the suit on the ground that the earlier suit in OS.No.15/2012 on the file of this Court, filed by the plaintiff with respect to the suit property came to be dismissed on 20.09.2016. On perusal of the case status of OS.No.15/2012 in the CIS, it is no doubt the said suit came to be dismissed on 20.09.2016, but the dismissal is for the reason of non-prosecution. Hon'ble Apex Court, in the case of **Amruddin Ansari (Dead) Through LR's & Ors. V/s Afajal Ali & Ors.**, reported in **2025 LiveLaw (SC) 488** has held that the dismissal of a suit for default does not fulfill the requirement of term "judgment" or "decree" as there is no adjudication and thus, the same shall not operate as *res-judicata*. Further, it is settled position of law that the dismissal of earlier suit does not affect the right to seek partition, as the cause of action remains valid and on going. Under the circumstances, the contention of defendant No.3 with respect to non-maintainability of the present suit in view of dismissal of earlier suit, holds no water and accordingly, preliminary issue is answered in '**Negative**'.



6. For the forgoing reasons, this Court is of view to pass the following:

ORDER

While answering the Issue No.3/Preliminary Issue in Negative, it is order that the above suit is maintainable and not hit by the *res-judicata*.

**For plaintiff evidence by:
06.11.2025.**

(Dictated to the Stenographer, directly typed by him on computer, corrected and then pronounced by me in the open court on this the 30th day of OCTOBER 2025, at Mudigere.)

(Vishwanath A.)
Prl. Civil Judge & JMFC.,
Mudigere.

* - * - *

VP

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android or iOS