

KACN210003072024



IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C GUNDLUPET

6th August 2026

Present

Smt.NOORUNNISA B.A., L.L.B.,
Senior Civil Judge and J.M.F.C.
RA 19/2024

Appellants/ Defendant No.2 and 3	1	Mahalingappa S/o Patel Shambappa, Aged about 81 years
	2	Channabasappa S/o Patel Shambappa, aged about 75 years, Both are residing at Devarahalli village, Hangala Hobli, Gundlupet Taluk (Sri.P.S.G., Advocate)
Versus		
Respondents/ Plaintiffs	1	Shivamma D/o late Patel Shambappa, W/o Marappa, Aged about 80 years residing at Bettahalli village, Kasaba Hobli, Gundlupet taluk
	2	Savitramma D/o late Patel Shambappa, W/o late Subbappa, Aged about 65 years
	3	Rathnamma D/o late Patel Shambappa, W/o Doddathammappa, Aged about 57 years Both are residing at

	Devarahalli village, Hangala Hobli, Gundlupet Taluk (Sri.G.R., Advocate)
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Date of institution of the appeal	16.03.2024
Nature of appeal	Prays to call for the record in O.S. No.94/2020 DD 27.06.2023 from the Hon'ble Additional Civil Judge and JMFC., Gundlupet and to set aside the Judgment
Date of Nature of decree	Decree dated 27.06.2023 passed by the Hon'ble Additional Civil Judge and JMFC., Gundlupet, in O.S No.94/2020 for the relief of Partition
Date of Judgment	06.08.2026
Total Duration	2 years, 3 months, 22 days

(Noorunnisa)
Senior Civil Judge & JMFC.,
Gundlupet

JUDGMENT

This appeal is filed by the defendants No.2 and 3 under Section 96 R/w Order XLI Rule 1 and Section 151 of the CPC., challenging the judgment

and decree dated 14.06.2023 passed in O.S. No.94/2020 by the learned Additional Civil Judge and JMFC. For the purpose of convenience, the parties are referred to as per their rank before the Trial Court.

2.The brief facts of the Plaintiffs' case are as follows: The Plaintiffs submit that Patel Shambhappa S/o Puttappa and Defendant No.1 Ningamma are the parents of the Plaintiffs and Defendant Nos.2 and 3. They had three daughters namely Shivamma, Savithramma and Rathnamma, who are the Plaintiffs herein, and two sons namely Mahalingappa and Channabasappa, who are Defendant Nos.2 and 3 respectively. The Plaintiffs submit that the suit schedule properties are the joint family properties of the Plaintiffs and the Defendants. During his lifetime, late Patel Shambhappa was in possession and enjoyment of

the suit schedule properties. After his death, the Plaintiffs and the Defendants, being his only legal heirs, succeeded to his estate and became entitled to their respective shares in the suit schedule properties. The Plaintiffs further submit that even though all the revenue records were standing in the name of late Patel Shambhappa, Defendant Nos.1 to 3, without the knowledge or consent of the Plaintiffs, got the khatha and other revenue records changed to their names by colluding with each other. The Plaintiffs submit that such mutation does not affect their lawful rights in the suit schedule properties. The Plaintiffs submit that they are entitled to 3/6th share in the suit schedule properties. Defendant Nos.1 to 3 have no exclusive right to sell, alienate or create any encumbrance over the suit schedule properties without the consent of the Plaintiffs.

3.The Plaintiffs further submit that they requested the Defendants several times to partition the suit schedule properties and allot their legitimate share. However, the Defendants refused to effect partition and denied the Plaintiffs' lawful share. On the other hand, the Defendants have been making attempts to alienate and encumber the suit schedule properties. The Plaintiffs submit that they caused a legal notice dated 05.02.2020 to be issued to the Defendants demanding partition of the suit schedule properties. The said notice was duly served on the Defendants. Thereafter, the Plaintiffs again got issued another legal notice through their Advocate on 03.03.2020 demanding their legitimate share in the suit schedule properties.

4.In spite of service of the notices, the Defendants neither effected partition nor allotted

the Plaintiffs' share and are still making attempts to alienate and encumber the suit schedule properties. The Plaintiffs submit that the cause of action for the suit arose on 05.02.2020, when the first legal notice was issued, again on 03.03.2020, when the second legal notice was issued, and thereafter when the Defendants refused to partition the suit schedule properties and attempted to alienate the same. The cause of action arose within the jurisdiction of this Hon'ble Court. Hence, the Plaintiffs have no other alternative except to file the present suit for partition and separate possession of their 3/6th share in the suit schedule properties.

5. Upon service of summons, Defendant No.1 appeared through her learned counsel and filed her written statement, wherein she denied the averments made in the plaint except those

specifically admitted. Upon service of summons, Defendant Nos.2 and 3 also entered appearance through counsel; however, they failed to file their written statements within the time prescribed.

6. Defendant No.1 has admitted the relationship between the parties as stated in the plaint, namely that she is the mother of the Plaintiffs and Defendant Nos.2 and 3. She has further contended that she is also entitled to a 1/6th share in the suit schedule properties and has sought partition and separate possession of her said share.

7. Based on the rival contentions of both parties, the Hon'ble Trial Court framed the following issues:

1. Whether the Plaintiffs prove that the suit schedule properties are joint family and ancestral properties of the Plaintiffs and Defendants?

2. Whether the Plaintiffs prove that they are entitled for the relief as prayed for?
3. What order or decree?

8. In order to substantiate their case, Plaintiff No.1, namely Shivamma, examined herself as PW.1 and produced thirteen documents, which were marked as Ex.P1 to Ex.P13. Defendant No.1 did not choose to adduce any oral or documentary evidence. Defendant Nos.2 and 3 also did not lead any evidence.

9. On perusal of the records of the Trial Court, it is seen that the learned Trial Judge, by judgment and decree dated 27.06.2023, decreed the suit filed by the Plaintiffs. Aggrieved by the said judgment and decree, the appellants/Defendant No.2 and 3 have preferred the present appeal on 16.03.2024. Though the appeal was not filed within the

prescribed period of limitation, this Court has condoned the delay in filing the appeal. Consequently, the appeal is taken up for consideration on merits.

10.The appellants in the appeal memo submitted as under: The judgment and decree passed by the learned Prl., Civil Judge and JMFC, Gundlupet, in O.S. No.94/2020 dated 27.06.2023 are contrary to the facts, evidence and law and therefore liable to be set aside. The Trial Court failed to consider that the suit schedule properties were already partitioned among the appellants and respondents under a family partition dated 06.12.1999, and thereafter each of them has been in separate possession and enjoyment of their respective shares. The Trial Court failed to appreciate that, under the said partition, land bearing Sy. No.47 measuring 3 acres 31 guntas of

Hosahalli Village was allotted to the share of the respondents. The Trial Court ought to have considered that the respondents, after obtaining the said property in the partition, sold the same under a registered sale deed dated 05.09.2003, and thereafter the revenue records were also mutated in favour of the purchaser under M.R. No.6/2000-01. Therefore, the respondents had already enjoyed and alienated the property allotted to their share. The Trial Court has failed to consider that the respondents have suppressed the earlier partition and the subsequent sale of the property and have obtained the decree on incomplete and incorrect facts. The appellants had entered appearance before the Trial Court through their counsel. However, due to unavoidable circumstances, they could not file their written statement or contest the suit effectively.

Consequently, the true facts and relevant documents could not be placed before the Trial Court. Had the appellants been given an opportunity to file their defence and produce the relevant documents relating to the partition and subsequent sale transactions, the Trial Court would not have passed the impugned judgment and decree. The impugned decree has resulted in serious prejudice to the appellants, as it affects the properties that had already fallen to their share in the earlier partition and causes irreparable loss and hardship to them. The judgment and decree are therefore liable to be set aside, and the matter deserves to be reconsidered after giving the appellants an opportunity to place all relevant facts and documents before the Court. The appellants crave leave of this Hon'ble Court to

urge such other grounds as may be necessary at the time of hearing of the appeal.

11. Heard the argument of the appellants' and respondents' counsel. The appellants' counsel argued on the grounds of the appeal memorandum and prays to allow the appeal. The respondents' counsel argued and justified the judgment passed by the trial court.

12. Perused the entire material on record, also perused the trial court judgment. The following points are arises for my consideration:

1. Whether the appellant has proves that there are sufficient grounds to interfere in the trial court judgment and matter is to be remanded back to the trial court?
2. What order?

13. My answers to the above points are as follow:

Point no.1 In the Affirmative

Point no.2 As per the final order for the following

REASONS

14.Point No.1: I have carefully considered the rival submissions and perused the records of the Trial Court. It is evident from the records that Defendant No.1 appeared before the Trial Court and filed her written statement. Defendant Nos.2 and 3 also entered appearance through counsel. However, they did not file their written statement. Thereafter, the plaintiffs examined Plaintiff No.1 as PW1 and produced documents marked as Ex.P1 to Ex.P13. Since Defendant Nos.2 and 3 not filed written statement and they neither cross-examined PW.1 nor adduced any oral or documentary evidence in support of their defence. On the basis of the unrebutted evidence

adduced by the plaintiffs, the learned Trial Court proceeded to decree the suit.

15.It is true that the Trial Court committed no procedural error in proceeding with the suit after Defendant Nos.2 and 3 not filing the written statement. However, the appellants have now approached this Court contending that they could not contest the suit due to unavoidable circumstances. They seek permission to file their written statement and contest the matter on merits. It is their specific case that they have a substantial defence regarding the nature of the suit schedule properties and the alleged earlier partition, which could not be placed before the Trial Court.

16.A suit for partition stands on a different footing from an ordinary civil suit. The rights of all co-sharers are to be finally determined in such

proceedings. Therefore, every co-sharer should ordinarily be afforded a reasonable opportunity to place his or her defence before the Court. The right to file a written statement, cross-examine the witnesses of the opposite party and adduce evidence is a valuable right. Denial of such opportunity may result in failure of justice, particularly in a family dispute concerning partition of ancestral properties.

17. In the present case, the evidence of PW.1 remained completely unchallenged only because Defendant Nos.2 and 3 did not contest the proceedings. Consequently, the Trial Court had no occasion to consider the defence now sought to be raised by the appellants. Whether the defence put forward by the appellants is ultimately true or false is a matter that has to be decided only after they are permitted to file their written statement

and both parties are afforded an opportunity to adduce evidence. This Court is not expected to record any finding on the merits of such defence at this stage.

18.It is well settled that under Order XLI Rules 23 and 23-A of the CPC., the Appellate Court possesses ample power to remand a matter where a re-trial is necessary for effective adjudication of the dispute. Even though the Trial Court has framed issues and disposed of the suit on merits, if the Appellate Court finds that the dispute has not been effectively adjudicated after giving adequate opportunity to the parties, the matter can be remanded in the interest of justice.

19.In the present case, the decree has been passed solely on the basis of the plaintiffs' un rebutted evidence. Defendant Nos.2 and 3 have not filed their written statement, have not cross-

examined PW.1 and have not adduced any evidence. Having regard to the nature of the suit and the consequences flowing from a preliminary decree in a partition suit, this Court is of the considered opinion that the appellants deserve one effective opportunity to contest the proceedings. Such an opportunity would enable the Trial Court to adjudicate the rights of all the parties comprehensively on the basis of the pleadings and evidence placed by both sides.

20. In this regard, reference may be made to the decision of the Hon'ble Orissa High Court reported in **AIR 1998 Orissa 278**, wherein it has been held that the Appellate Court may remand a matter where important issues have not been effectively adjudicated or where the interest of justice requires a fresh trial. The Hon'ble Supreme Court in **Municipal Corporation,**

Hyderabad v. Sunder Singh, (2008) 8 SCC 485, has also held that remand is justified where the matter has not been properly tried or material evidence requires consideration. Likewise, in **Jagannath v. Arulappa, (2005) 12 SCC 303,** it has been observed that where a party has not been afforded an adequate opportunity to adduce evidence, the proper course is to remand the matter for fresh disposal.

21. Having regard to the facts and circumstances of the case, this Court is satisfied that remanding the suit would advance the cause of justice. No irreparable prejudice would be caused to the plaintiffs, as they would have full opportunity to rebut the defence of Defendant Nos. 2 and 3 and adduce additional evidence, if necessary. On the contrary, refusal to grant such

an opportunity may result in serious prejudice to the appellants and may lead to failure of justice.

22. Accordingly, the judgment and preliminary decree dated 27.06.2023 passed in O.S. No.94/2020 are hereby set aside. The suit is remanded to the Trial Court for fresh disposal in accordance with law. Defendant Nos.2 and 3 shall be permitted to file their written statement within the time to be fixed by the Trial Court. The Trial Court shall thereafter afford sufficient opportunity to all the parties to amend their pleadings, if necessary, adduce oral and documentary evidence, cross-examine the witnesses, consider the additional documents produced by the appellants, and dispose of the suit afresh on its own merits and in accordance with law, without being influenced by any

observations made in this judgment. **Accordingly, I answer Point No.1 in the Affirmative.**

23.Point No.2: As per the above discussion, I proceed to pass the following:

ORDER

The appeal filed by the appellants/defendant No.2 and 3 is hereby allowed.

The judgment and decree passed by the Additional Civil Judge and JMFC., Gundlupet in O.S. No.90/2020 is hereby set aside and remanded the case to the trial court with a direction as stated above and give an opportunity to the defendants to file written statement and lead evidence, either orally or documentary to prove their respective case and to dispose the case a fresh in accordance with the law.

It is directed to the appellants, respondents and their respective

counsels to appear before the trial court on 01.09.2026 without waiting any notice from the Hon'ble trial court.

It is directed to appellants, respondents and their respective counsel to cooperate the trial court to dispose of the suit without seeking further adjournments.

It is directed to the trial court to dispose the case expeditiously in accordance with the law.

Send back the trial court records along with the copy of the judgment forthwith.

(Dictated to the Stenographer directly on the computer, typed by him and corrected by me and then pronounced in the open Court on this 6th August 2026)

(Noorunnisa)
Senior Civil Judge & JMFC,
Gundlupet

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