

KADW050036122024



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
CJM, DHARWAD**

PRESENT

Sri. Venkanna B. Hosamani, B.Com., LL.B.,(Spl.).
Prl. Senior Civil Judge & CJM,
Dharwad

Dated this the 18th day of August, 2026

R.A. No. 57/2024

- Appellant/s:**
1. Kumari Kavita D/o Mahanteshgouda Agasimani,
Age: 18 years, Occ: Student,
R/o Shivalli, Dharwad.
 2. Kumari Savita D/o Mahanteshgouda Agasimani,
Age: 16 years, Occ: Student,
R/o Shivalli, Dharwad.
 3. Kumari Vijayalaxmi D/o Mahanteshgouda Agasimani,
Age: 14 years, Occ: Student,
R/o Shivalli, Dharwad.
 4. Kumari Puja D/o Mahanteshgouda Agasimani,
Age: 13 years, Occ: Student,
R/o Shivalli, Dharwad.
 5. Smt. Girijavva W/o Mahanteshgouda Agasimani,
Age: 40 years, Occ: Household work,
R/o Shivalli, Dharwad.

Since appellants No.1 to 4 are minors represented by their mother as minor guardian.

(By Sri. R. Hegde, Adv.)

Vs.

- Defendant/s**
1. Sri. Shankaragouda S/o Ganganagouda Agasimani,
Age: 60 years, Occ: Agriculture,
R/o Shivalli, Dharwad.
 2. Sri. Mahanteshagouda S/o Ganganagouda Agasimani,
Age: 50 years, Occ: Agriculture,
R/o Shivalli, Tq: Dharwad.
 3. Sri. Ninganagouda S/o Ganganagouda Agasimani,
Age: 48 years, Occ: Agriculture,
R/o Shivalli, Dharwad.
- (R1 & R3 By Sri. S.S. Patil, Adv.)
(R2 – In person.)

Date and nature of the decree or order appealed against	The Judgment and decree passed in O.S. No.341/2020 by the II Addl. Civil Judge and JMFC-II, Dharwad on 30.05.2024.		
Date of the institution of the Appeal	01-08-2024		
Date on which the Judgment / order was pronounced	18-08-2026		
	Year/s	Months	Days
Duration of the Appeal	02	00	17

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.

JUDGMENT

The Appellants / plaintiffs by invoking Order 41 Rule 1 of the CPC filed this Appeal and prayed this court to set aside the Judgment and Decree in O.S. No.341/2020 dated 30-05-2024 passed by the learned II Addl. Civil Judge & JMFC-II, Dharwad.

2. In order to avoid confusion and for the sake of convenience, I will be referring to the ranks of the parties as urged before the Trial Court.

3. The brief facts of the plaint are as follows:

The suit properties belonged to the original propositus Ganganagouda who died in the year 2004. Smt. Parvatevva who is the wife of said late Sri. Ganganagouda also died in the year 2019 leaving behind the defendants No.1 to 3. The defendant No.2 married the plaintiff No.5 and out of their wedlock, the plaintiffs No.1 to 4 begotten. The suit properties are the ancestral properties of plaintiffs and defendants and they are in common possession and

enjoyment. However, the plaintiffs and defendants are residing separately along with their family. The defendants No.1 to 3 are trying to prepare a false and bogus partition deed in collusion with each other. The defendant No.1 is the kartha of their family and has denied to give the shares of the plaintiffs. Hence, the plaintiffs have filed the suit.

4. After service of summons, the defendant No.2 has not appeared before the Trial Court. Hence, he was placed *exparte*. The defendants No.1 and 3 have appeared before the Trial Court through their counsel, but they have not filed the written statement. Hence, the written statement of defendants No.1 and 3 has been taken as not filed.

5. In order to prove the case of the plaintiffs, the plaintiff No.5 examined herself as P.W.1 and got examined one witness by name Sri. Shankarappa Chitti as P.W.2 in support of their case and got marked 9 documents as Ex.P1 to P9.

6. On the basis of the available materials, the Trial Court court had framed the following points :

POINTS

1. Whether the plaintiffs prove that the suit properties are the ancestral properties ?
2. Whether the plaintiffs prove that they are entitled for 5/6th share in 1/3rd share of the defendant No.2 in the suit schedule properties ?
3. Whether the plaintiffs are entitled to relief sought for?
4. What order or decree?

7. After hearing the arguments on merits of the case, the Trial Court has dismissed the suit of the plaintiffs by answering the above points in the Negative.

8. Being aggrieved with this impugned Judgment and Decree, the plaintiffs / Appellants are before this forum and have filed this appeal on the following one amongst other grounds.

1) That the judgment and decree of the lower court towards the dismissing the suit is arbitrary, capricious and perverse in nature. Therefore the same is not maintainable in the eye of law or on facts. Hence the same is deserves to be set-aside.

2) That the trial court has utterly failed to appreciate the materials placed before it along with its facts and circumstances of the both parties to the proceedings by filtering the truth, there by the injustice is being caused by the lower court towards dismissing the suit of the plaintiff by-passing the judgment in the present fashion.

3) That the Trial Court has utterly failed to appreciate about the pleadings of the parties to the suit in the case, the main contention with regard to the status of the Plaintiffs with the said defendant no-2, which has not been properly appreciated by the trial court when rest of the admitted acts and facts of the parties including the Ex.P-1 and 2 and in the absence of the pleading of the defendants in respect of its denial is very fatal to the judgment of the trial court. Therefore the very judgment passed by the lower court itself is illegal and unsustainable one.

4) That the very observation made by the trial court as admittedly a property is said to be ancestral property when it is held as undivided property through four generations of the undivided family, the very observation made in page no-7 vide para no-11 of the judgment is bad in law as the Ex-P1 and P-2 clearly shows that the suit properties are inherited the very defendants and the very plaintiffs no-1 to 4 are the children who have born to the defendant no-2 and the plaintiff no-5 who are the legally wedded husband and wife respectively, is liable to be set aside.

5) That, the Trial Court has utterly failed to consider about the very ingredients to attract the provision under Hindu succession Act, and when it being the joint Hindu family and the properties are rest to the parties to the proceedings without digesting the matter as the properties involved in the suit are joint family properties to the suit and the very plaintiffs are also the joint Hindu family members of the same very dismissal of the suit by the trial court is not only erroneous but also unsustainable one.

6) The very observation made by the trial court in respect of point no-1 and 2 as framed is not

correct and proper which requires its interference by modifying the judgment. Therefore the same is liable to be set aside.

7) That very presumption by throwing the very justice and equity in the air by the trial court is very hopeless judgment. Hence in any angle of law or on facts the very judgment of trial court is unfair and unsustainable is liable to be set aside.

8) The trial court has failed to exercise its judicial power within the ambit of law and facts, the very judgment which is foreign to the case in hand cannot be accepted as it is unknown to the settled principles of law. Therefore the very failure to consider those facts is glaring negligence on the part of the trial court which requires by the court for necessary interference to set aside the judgment in question.

9) Non determination of the right of the parties to the suit by the trial court is not just and proper and answering the issue no-1 to 2 in common is without any sound and acceptable proof or support is capricious one liable to be set-aside.

10) The findings on issues drawn by the trial court by answering the issue no- 1 to 2 as negative is

bad in law. Therefore it is just and necessary to answer in affirmative but not in the present fashion, as it is the patent wrong committed by the trial court without applying its settled principles of law and its developments and also the circumstances of the case as well as its own observation in the judgment it requires its interference by the appellate court to do the needful in the interest of justice and equity.

11) The very dismissal of the suit against the plaintiffs by the trial court, in the absence of any denial by the any defendants in respect of status of the plaintiffs with the very defendant no-2 is unknown to the law. Therefore the very judgment of the trial court is not only incomplete but also incorrect one, is liable to be set-aside.

12) That, without considering the very admission of P-W1 along with the exhibited documents of Plaintiff side in the mere stray presumption of law even by discarding the very cordial principles, when the trial court has proceeded to pass the impugned judgment is with an ulterior motive but not with any judicious mind.

13) No proper findings by assigning the proper and valid reasons are being assigned by the trial court while passing its judgment.

14) The requisite court fee as paid by the appellants in the suit is being paid in this appeal.

15) The appeal of the appellants is delayed by 17 days from the date of decree even by deducting the grace period from the date of decree till its receipt, the necessary application is appended to the appeal with leave.

9. The appellants / plaintiffs have filed I.As No.5 and 6 U/o 41 Rule 27 R/w Section 151 of CPC along with documents seeking permission of this Court to permit them to file these documents, as the said documents are very much necessary to decide this case on merits. It is further contended that earlier the plaintiffs have not furnished the said documents before the Trial Court and now they have secured the documents and requested to allow the I.As No.5 and 6.

10. The plaintiffs have filed the I.A No.4 U/s 5 of the Limitation Act and requested to condone the delay of 17 days in preferring this Appeal for the reasons stated in the annexed affidavit.

11. In the annexed affidavit, the deponent / appellant No.5 has stated that after Judgment in O.S No. 341/2020, she intends to change the advocate, hence she was searched for new advocate. Therefore there was a delay of 17 days occurred in preferring this Appeal and requested to allow her application in the interest of justice and equity.

12. Admittedly, the plaintiff No.5 / appellant No.5 and defendant No.2 are wife and husband and plaintiffs No.1 to 4 are children of plaintiff No.5 and defendant No.2. Looking to the relationship between the plaintiffs and defendants and also nature of the suit, I am of the opinion that, it is just and proper to condone the delay and decided the case on merits holding that, if the delay is condoned no prejudice will be caused to the defendants.

13. Heard the arguments on both the sides and Sri. R.H advocate for appellants filed written arguments. I have carefully examined the materials placed on record.

14. On the basis of the pleadings and other documents, following points would arise for my consideration:

1) Whether the appellants / plaintiffs have made out sufficient grounds to interference with the Judgment passed by learned Trial Court in O.S No. 341/2020?

2) Whether the appellants / plaintiffs have made out sufficient grounds to allow I.As No.5 and 6 and permit them to produce the additional evidence?

3) What order or decree?

15. After carefully going through the materials available on record and also considering the facts and circumstances of the case and on re-appreciation of both oral and documentary evidence, my findings to the above points are in the following:

Point No.1 : in the Affirmative,

Point No.2 : in the Affirmative,

Point No.3 : As per my final order

for the following :

REASONS

16. **Points No.1 and 2:** Since these points are inter-linked with each other, they are taken together for common discussion in order to avoid repetition of facts and reasons.

17. The counsel for the respondents No.1 and 3 Sri. SSP during the course of arguments, argued that there was earlier partition took place between the defendant No.2 and his brothers in O.S No. 24/2020 itself. The plaintiffs and defendants in O.S No. 24/2020 have compromised the said suit by filing an application U/o 23 Rule 3 of CPC and Court was accepted the said compromise petition and drawn the Final Decree in the suit properties. The plaintiffs / appellants have hide the said partition and filed the false suit before the Trial Court and also false Appeal before this Court and he requested to dismissal of the Appeal and

further he has argued that, if the Court comes to the conclusion to allot the share in the properties of the defendant No.2, the other defendants are no objections.

18. Admittedly, the suit filed by the plaintiffs in O.S No.341/2020 has been dismissed by the learned Trial Judge wherein the Trial Court has held the specific contention of the plaintiffs that the suit properties are the ancestral properties of plaintiffs and the properties are said to be ancestral properties and when it is held as an undivided properties through four generations of the undivided family. However, there is no evidence in support of their contention to show that the suit properties are the ancestral properties of plaintiffs and defendants. The main ground for dismissal of the suit is that the plaintiffs have not furnished any documents to establish that the suit properties are the ancestral properties of themselves and defendants. The plaintiffs have produced the two record of rights i.e., Ex.P1 and P2 pertaining to the Sy. No. 192/1 and 192/2. Only on the basis of record of rights, the Court

cannot decide that whether the suit properties are the ancestral properties or joint family properties or self acquired properties of the parties to the suit.

19. Now the advocate for the appellants Sri. R.H argued his case and also filed written arguments on 04/08/2026 and contended that the appellants No.1 to 4 are the legitimate children of respondent No.2 and they are naturally entitled for the share in the properties. Further, he argued that to prove this fact the appellants / plaintiffs have furnished the documents along with I.As No.5 and 6 and requested to consider the said documents and remand the case for fresh trial.

20. As quoted supra, the plaintiffs have furnished only record of rights pertaining to the Sy. No. 192/1 and 192/2. Now the plaintiffs have furnished the mutation entries along with I.As No.5 and 6, in my opinion, it is just and proper to consider the said documents. Further, I am of the opinion that, if the case is remanded back to the Trial Court for considering the documents of the plaintiffs and

opportunity has to be given to the defendant No.2 to prove his case, it suffice the justice.

21. Admittedly, defendants have not filed the written statement in O.S No. 341/2020 and defendant No.2 was placed exparte. Hence, at this stage, it is just and proper to give one opportunity to the said defendants also to prove their case. Accordingly, I am of the opinion that the interference of this Court is very necessary for remand of the case with a direction to Trial Court to consider the documents furnished by the appellants/ plaintiffs before this Court and hear the matter afresh and pass the necessary Judgment basing on available materials.

Accordingly, I have answered points No.1 and 2 in the Affirmative.

22. **Point No.3:-** In view of the above discussions and my answers to the above points, I proceed to pass the following :

ORDER

**The appeal preferred by the
appellants / plaintiffs under Order 41**

Rule 1 of the CPC is hereby allowed with costs.

In the result, the Judgment and Decree passed by the learned II Addl. Civil Judge & JMFC-II, Dharwad in O.S No. 341/2020 dated 30-05-2024 is hereby set aside and this case is remanded back to the Trial Court for fresh disposal.

It is hereby directed to both the parties to appear before the Trial Court without waiting for fresh notice on 21/09/2026.

The interim applications if any, are treated as disposed off.

The Trial Court is hereby directed to dispose off the case as early as possible.

Send back the LCR with a copy of this judgment to the Trial Court forthwith as a matter of information and for ready reference.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in the Open Court on this the 18th day of August 2026)

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.