

KAHV010035872025



**IN THE COURT OF I ADDL. DISTRICT & SESSIONS
JUDGE, AT HAVERI.**

DATED THIS THE 4th DAY OF AUGUST, 2026

PRESENT

**SRI. N.M.Ramesha, B.com, LL.B., LLM
I Addl. District & Sessions Judge, Haveri.**

Regular Appeal No.38/2025

Appellant : Shri. Basavaraj P Pujar
@ Gorappanavar,
Age: 47 years,
Occ: Advocate, Priest,
R/o: Vidyanagar,
P.B. Road, Haveri,
Haveri taluk and district.

(In person)

V/s

Respondents 1 Siddappa P Pujar @
Gorappanavar,
Age: 58 years,
Occ: Business,
R/o: Vidyanagar,
P.B. Road, Haveri.

2 Smt. Malati W/o
Mallarappa Bogali,
Age: 60 years,
Occ: Household,

R/o: Vidyanagar,
P.B. Road, Haveri.

- 3 Smt. Vidyalakshmi W/o
K. Harish, Age: 56 years,
Occ: Household,
R/o: D.No.3680/14
Housing Board Colony,
Davanagere.
 - 4 Smt. Anita W/o Siddalingappa
Honnappanavar,
Age: 54 years,
Occ: Household,
R/o: Ashwini Nagar,
Near Maitri Hotel, Haveri.
 - 5 Smt. Saroja W/o Satish
Majjagi, Age: 50 years,
Occ: Household,
R/o: Jog Yallapur,
Dharwad taluk and
district.
 - 12 Kavita W/o Siddappa Pujar,
Age: 50 years,
Occ: Household,
R/o: Vidyanagar,
P.B. Road, Haveri.
- (Sri. A.C. Neeralagi., Adv.,
for R-1 and R-12)
(Respondent Nos.2 to 5
absent)

JUDGMENT

The appellant has filed this appeal against the respondents under the provisions of Section 96 R/w Order 41 of CPC, to set aside the final order passed by the Learned Prl. Senior Civil Judge & CJM., Haveri in

O.S.No.14/2008 dated 25.07.2025 in dismissing the suit as not maintainable by allowing the appeal and to pass any other reliefs which the Court deems fit and proper.

2. The appellant was the plaintiff and the respondents were the defendants before the Trial Court. Therefore, for the sake of convenience and clarity, the parties are referred to as per their ranks assigned before the Trial Court.

3. The facts leading to filing of this Appeal and the facts constituting the case of the plaintiff is as under:

One Sri. Kariyappa who is the propositus of the family of plaintiff and defendants died on 05.10.1979 and his wife Smt. Neelamma also died on 23.12.1995 leaving behind them Smt. Renukaa. The 1st defendant, plaintiff and defendant Nos.2 to 5 are the sons and daughters of Smt. Renuka and Sri. Puttappa Ningappa Gorappanavar. Smt. Renuka and Puttappa Gorappanavar are unheard since more than 7 years from 12.03.1993. The defendant Nos.6 to 12 are the tenants of the plaint schedule premises.

4. It is averred in the plaint that the suit schedule properties are the joint family properties of plaintiff and defendant Nos.1 to 5 and they are in joint possession and enjoyment of the suit schedule properties and therefore, the plaintiff is entitled for 5/9th share in the suit schedule properties.

5. It is further averred in the plaint that Smt. Neelamma had executed a Will in respect of her $4/9^{\text{th}}$ share in the suit schedule properties in favour of the plaintiff and therefore, the plaintiff is entitled for $5/9^{\text{th}}$ share in the suit schedule properties and he is also entitled for $1/9^{\text{th}}$ share and $1/3^{\text{rd}}$ share in the suit schedule properties. But, the defendants have been utilizing the rent derived from suit schedule properties without giving share to the plaintiff.

6. It is further averred in the plaint that, the 1st defendant has voluntarily thrown his adopted properties into the common stock of the joint family of plaintiff and defendant Nos.1 to 5 and therefore, the said properties are also become the joint family properties of plaintiff and defendants and they are in joint possession and enjoyment of the suit schedule properties. But, inspite of repeated request and demands, the defendants did not choose to effect the partition. This is stated to be the cause of action for the plaintiff to file this suit seeking partition and separate possession of $1/9^{\text{th}}$ share in the suit schedule properties and to effect the partition by appointing a Court Commissioner and to hand over his possession over the suit schedule properties and to direct the defendant Nos.6 to 11 to deposit the rent of the suit schedule properties before the Court.

7. On service of suit summons, the defendants have appeared before the Trial Court and filed their

separate written statement denying the material averments made in the plaint. The plaintiff has been called upon to prove the material averments made in the plaint. The suit is stated to be filed on false averments. The suit is stated to be not maintainable either under law or on facts. The alleged cause of action is stated to be imaginary one. The right, title and share of the plaintiff over the suit schedule properties has been specifically denied by the defendants. The plaintiff has not come to Court with clean hands, but suppressed the material facts before the Court. Therefore, he is not entitled for any share in the suit schedule properties.

8. It is the specific case of the defendants that, the 1st defendant is the adopted son of one Kariyappa Pujar and his wife Smt. Neelamma Kariyappa Pujar under the adoption deed dated 17.95.1977. Therefore, the 1st defendant is the absolute owner in possession and enjoyment of the suit schedule properties. The plaintiff has not included all the properties and not impleaded all the parties to the suit and therefore, the suit of the plaintiff is not only bad for partial partition, but also bad for non-joinder of necessary parties.

9. It is the further case of the defendants that, the Court has no pecuniary jurisdiction to try the suit and the Court fee paid by the plaintiff is stated to be insufficient as he is not in possession and enjoyment of

the suit schedule properties and he has been excluded from the plaint schedule properties.

10. It is the further case of the defendants that, the defendant No.2 has 1/6th share in the suit schedule properties. The defendant No.4 being the member of the joint family, has 1/6th share in the suit schedule properties. According to defendant No.12 that, neither the plaintiff nor the defendant Nos.1 to 5 have any right, title, interest or share in the suit schedule properties and therefore, the plaintiff is not entitled for any share in the suit schedule properties. It is on these among other grounds, the defendants have prayed for dismissal of the suit of the plaintiff with cost.

11. Based on the above rival pleadings of both the side, the Trial Court has framed the following issues and additional issues.

ISSUES

- 1 Whether the plaintiff proves that, properties as shown in plaint para No.2(a) to (e) have been in joint possession and enjoyment of himself and defendants No.1 to 5?
- 2 Whether the plaintiff proves that, Neelamma had executed a Will in respect of her 4/9th share in the properties shown as plaint para No.2(a) to (e) in favour of the plaintiff?
- 3 Whether the plaintiff proves that he has 5/9th share in the properties shown as plaint para No.2(a), 2(d) and 2(f)?

- 4 Whether the plaintiff proves that he has 1/9th share in the properties shown as plaint para No.2(b) and 2(e) and he has 1/3rd share in the properties shown as plaint para No.2(c)?
- 5 Whether the 1st defendant proves that he is the adopted son of one Kariyappa Pujar and his wife Smt.Neelamma Kariyappa Pujar by means of adoption dated 17.5.1977?
- 6 Whether the 1st defendant proves that he is the absolute owner of the suit schedule properties?
- 7 Whether this suit is bad for partial partition?
- 8 Whether this suit is bad for non joinder of necessary parties?
- 9 Whether this Court has no pecuniary jurisdiction to try this suit?
- 10 Whether Court fee paid is insufficient?
- 11 Whether 4th defendant proves that she also has 1/6th share in the properties shown as plaint para No.2(c), 2/9th share in the properties shown as plaint para No.2(a) and 2(b)?
- 12 Whether the plaintiff is entitled to the relief as prayed?
- 13 What order or decree ?

Note: Issues No.9 and 10 are treated as preliminary issues.

ADDITIONAL ISSUES FRAMED ON 27.02.2012

- 1 Whether the 2nd defendant proves that she has 1/6th share in the suit schedule properties?

ADDITIONAL ISSUES FRAMED ON 23.11.2013

- 1 Whether plaintiff proves that defendant No.1 has voluntarily thrown his adopted properties into the common stock of the joint family of plaintiff and defendants No.1 to 5?

ADDITIONAL ISSUES FRAMED ON 13.07.2018

- 1 Whether the defendant No.12 proves that either plaintiff or defendant Nos.1 to 5 have no right, title or interest over the suit schedule 2(g) property as pleaded in para No.6 of the written statement?

12. As could be seen from the Trial Court records, the parties to the suit have filed as many as 35 interim applications, out of them, I.A.Nos.1 to 32 have been disposed off.

13. It is at this stage of the proceedings and when the case was set down for trial and later on when the case was set down for hearing on I.A.Nos.33 to 35, the Trial Court has proceeded to pass the final order to the effect that the suit filed by the plaintiff against the defendants is not maintainable in the present form and accordingly, dismissed the suit of the plaintiff as not maintainable in the present form.

14. The plaintiff being aggrieved by the order of dismissal of the suit by the Trial Court on the maintainability, has preferred this Appeal under the

provisions of Section 96 R/w Order 41 of CPC., on the following grounds:

15. The final order passed by the Trial Court is unjust and opposed to all cannons of law and liable to be set aside. The entire observation made by the Trial Court is not sustainable as it is made on account of its own fiction without giving an opportunity to the plaintiff to adduce his oral evidence and to produce the documentary evidence. When the case was posted for hearing on I.A.Nos. 33 to 35, the Trial Court without plea of maintainability of the suit by the defendants, has suo motto proceeded to pass the order and dismissed the suit as not maintainable, which is illegal, perverse and revisable one. The plaintiff has produced the certified copy of order in O.S.No.284/2011 and O.S.No.379/202 before the Trial Court, but the Trial Court has wrongly observed that there is no suit in respect of declaring death of father of plaintiff as civil death. The Trial Court has wrongly observed that, the 1st defendant has transferred some properties in the name of his wife defendant No.12, which is contrary to the facts and circumstances of the case. On the other hand, the 1st defendant has purchased the suit schedule 2 (G) property in the name of his wife defendant No.12 from the joint family properties and therefore, the plaintiff has filed an interim application to implead the party and property, which have been allowed and therefore, the

order passed by the Trial Court is erroneous and against the facts and circumstances of the case. The Trial Court has wrongly observed that, the plaintiff has failed to produce the form No.7 filed by Kariyappaa before the Land Tribunal and regarding payment of revenue fees, which are contrary to the documents produced by the plaintiff before the Trial Court.

16. The Trial Court has wrongly observed that, the plaintiff has not produced any documents to show that he has acquired the suit schedule properties by way of inheritance. The Trial Court has not given an opportunity to the plaintiff to lead oral evidence and documentary evidence. Sri. Kariyappa is none other than the maternal grandfather of the plaintiff who was rendering Pujari service of Sri Mailaralingeshwar as per the provision of Karnataka Certain Inam Abolition Act and the Land Tribunal has granted the properties. One Sri. Mallarrappa Tammanna Sannappanavar has illegally challenged the order before the Hon'ble High court of Karnataka in W.P.No.25856/1993, which was allowed on technical grounds regarding the jurisdiction of the order and the Hon'ble High Court has remanded the matter to the Spl. Deputy Commissioner Haveri, for disposal in accordance with law and review petition No. 152/2003 was filed before the Hon'ble High Court of Karnataka, which was came to be allowed and the matter has been remanded to the Land Tribunal Haveri.

Therefore, the plaintiff and defendant Nos.1 to 5 have acquired the legal rights over the land bearing R.S.No.253 under the provisions of Right of Karnataka Certain Inam Abolition Act. But the plaintiff and the defendant Nos.1 to 5 have not acquired any right under the Karnataka Land Reforms Act and therefore, question of filing form No.10 does not arise and therefore, the observation made by the Trial court is highly illegal, perverse, which leads to miscarriage of justice.

17. The Trial Court has wrongly observed that Smt. Neelamma during her lifetime has executed a registered Will in favour of the plaintiff and what was the necessity to execute the 1st Will in the name of her son-in-law, which is contrary to the plaint averments and the Trial Court has failed to go through the registered cancellation deed placed before the Trial Court. The Trial Court has wrongly observed with respect to pendency of the W.P.No.103502/2019. But, the Hon'ble High Court of Karnataka has disposed off said Writ Petition on 26.02.2024. The Trial Court has wrongly observed that W.P.No.105346-348/2009 is against to the factual situation. The order passed by the Trial Court without providing an opportunity to the plaintiff to lead evidence is not sustainable under law and on facts. The Trial Court has suo motto proceeded to dismiss the suit on the question of maintainability, which is not permissible either under law or on facts.

18. The defendant Nos.1, 3 and 5 have filed I.A.No.17 in O.S.No.14/2008 to stay the original suit stating contrary to the facts asserted in para 9 of appeal memo and said I.A.No.17 has been rejected by the Trial Court and therefore, a Writ Petition No. 82216/2013, was filed before the Hon'ble High Court of Karnataka, which was came to be allowed in part and stayed the suit regarding suit schedule 2(b) property till conclusion of the enquiry pending before the Land Tribunal and Hon'ble High Court has directed the Trial court to expeditiously dispose off the suit at any rate within a period of one year. Subsequently, the plaintiff has filed Writ Petition No.105352/2015 challenging the order passed on I.A.No.27 which was came to be allowed and the proceedings in O.S.No.14/2008 has been stayed with reference to item No.2(a) and 2 (b) properties and to recommence the trial after the proceedings concluded before Land Tribunal Haveri. The plaintiff has filed an interim application to implead the properties and parties and I.A.Nos.28 to 31 were came to be rejected by the Trial Court and hence, the plaintiff has filed W.P.No.103502/2019 and W.P.No.105346-348/2019 regarding I.A. Nos.28 to 31 which were came to be disposed off by the Hon'ble High Court on 26.02.2024 and therefore, the order passed by the Trial Court in dismissing the suit of the plaintiff as not maintainable is illegal, capricious and perverse and hence, liable to be

set-aside by allowing the appeal. It is on these among other grounds, the plaintiff has prayed for allow the Appeal.

19. After presentation of appeal, it was ordered to be registered as R.A.No.38/2025 vide order dated 22.08.2025 and the notice were ordered to be issued to the respondents.

20. On service of notice on appeal, the respondent Nos.1 and 12 have appeared before this Court through their respective Learned counsels and contested the appeal.

21. But, inspite of service of notice on appeal, the respondent Nos.2 to 5 did not turn up before the Court and remained absent.

22. The appellant who appeared in person before the Court has filed memo and got the appeal dismissed as against the respondent Nos.6 to 11 as not pressed vide order dated 26.09.2025

23. The records of the Trial Court were secured vide dated 22.04.2026.

24. I have heard the arguments of both the side and perused the entire records.

25. Now the points that would arise for my consideration are as under:

1. Whether the Trial Court was justified in dismissing the suit of the plaintiff as not maintainable without trial, without answering issues and additional issues and without providing an opportunity to the parties to the suit to adduce their respective oral and the documentary evidence and without plea of maintainability of the suit by the defendants ?
2. Whether the Trial Court has committed any error either under law or on facts ?
3. Whether the order passed by the Trial Court calls for any interference by this Court or not ?
4. What order?

26. On considering and assessing the materials placed on record, now my answers to the above points are as under:

Point No.1 : In the **Negative**,

Point No.2 : In the **Affirmative**,

Point No.3 : In the **Affirmative**,

Point No.4 : As per final order

for the following:

REASONS

27. POINT Nos.1 TO 3: These 3 points are interrelated, interconnected and inter linked with each other. Findings on point No.1 has great bearing on points No.2 and 3 also. These 3 points revolve round the aspect of justification on the part of Trial Court in dismissing the suit of the plaintiff as not maintainable without trial,

without appreciation of pleadings of both the parties, without answering issues and additional issues and without plea of maintainability of the suit by the defendants and interference of this Court to the order passed by the Trial Court. Therefore, for the sake of convenience, clarity and also to avoid repetition of facts being narrated separately, these 3 points are taken up together for common discussion.

28. The appellant/plaintiff who appeared before the Court in person, has argued with force that, based on the pleadings of both the parties, the Trial Court has framed the issues and additional issues and several interim applications have been filed, out of which, I.A.Nos.1 to 32 were disposed off and I.A.Nos.33 to 35 are still pending before the Court and when the case is set down for hearing on I.A.Nos.33 to 35, the Trial Court on its own without hearing the arguments of both the side on the question of maintainability of the suit and without the plea of maintainability from the defendants and without disposing of I.A.Nos.33 to 35, the Trial Court has proceeded to dismiss the suit as not maintainable only on the ground that Writ Petitions are pending before the Hon'ble High Court of Karnataka and matter is also pending before the Land Tribunal and therefore, the suit is not maintainable in the present form, which is not recognized under law and the Trial Court has committed error both under law and on facts.

29. It is further contended by the appellant/plaintiff that, the Trial Court has failed to provide an opportunity to the parties to the proceedings to lead their respective oral and the documentary evidence and to argue the case on merits and without answering issues and additional issues, the Trial Court has hurriedly proceeded to dismiss the suit as not maintainable which is against to the law, facts and probabilities of the case.

30. It is further contended by the appellant/plaintiff that, the Hon'ble High Court of Karnataka has pleased to stay the further proceedings with a direction to proceed with the case after conclusion of proceedings before Land Tribunal, but the Trial Court without complying the directions of the Hon'ble High Court of Karnataka and without conducting trial and without providing an opportunity to the parties to the suit to lead their respective oral and the documentary evidence, has proceeded to dismiss the suit of the plaintiff as not maintainable without trial and without hearing the arguments of both the side and without plea of maintainability from the defendants side and therefore, the order passed by the Trial Court is liable to be set-aside by allowing the appeal and the matter is required to be remanded to the Trial Court with a direction to provide an opportunity to both the parties to lead their respective oral and the documentary evidence and then to proceed with the case in accordance with law after compliance of

the directions of the Hon'ble High Court of Karnataka and hence, the appeal is deserves to be allowed.

31. Per-contra, the Learned Counsel for the contesting respondents/defendants though not agreed with the order passed by the Trial Court has vehemently contended that, the Trial Court neither passed the judgment nor drawn the decree and therefore, in the absence of judgment and decree, the appeal is itself not maintainable as per Section 96 R/w Order 41 Rule 1 and 2 of CPC., and hence, the appeal is liable to be dismissed.

32. It is further contended by the Learned counsel for the contesting respondents/defendants that, the dispute has been pending before the Land Tribunal and therefore, by virtue of pending of dispute before the Land Tribunal, Haveri and in view of the order passed by the Hon'ble High Court of Karnataka in Writ Petitions, the very appeal is not maintainable and the suit is also not maintainable and therefore, the appeal is deserves to be dismissed with cost.

33. In the light of the arguments canvassed by both the side, I have carefully perused the pleadings of both the parties, documents and the materials placed on record.

34. Now keeping the arguments canvassed by both the side and keeping the rival pleadings of both the parties and the material placed on record in mind, let us consider as to whether the Trial Court was justified in

dismissing the suit of the plaintiff as not maintainable in the absence of such plea from the defendants side without providing an opportunity to parties to the suit to lead their respective oral and the documentary evidence and without answering issues and additional issues which were framed based on the pleadings of both the side and whether the order passed by the Trial Court calls for any interference by this Court or not.

35. As could be seen from the order passed by the Trial Court on 25.07.2025, the Trial Court has observed in its order that, the father of the plaintiff was not found even after 7 years and therefore, the plaintiff ought to have filed the civil suit regarding declaring the death of his father Puttappa and no such suit has been filed and all these lacunas are included in this case and therefore, the plaintiff cannot sought relief in the suit properties as a share holder as one of the legal heir of his father Puttappa and mother Renuka and before declaring the civil death of his father Puttappa, he cannot file a suit for partition as one of the class-I legal heir his father Puttappa.

36. The Trial Court has also observed that, when the suit properties has been granted by the Land Tribunal Haveri, the plaintiff has utterly failed to file Form No.10 issued by the competent authority in respect of inheritance and in the absence of documents, the suit cannot be maintainable and there is also pendency of

W.P.No.103502/2019 and W.P.No.105346-348/2009, which have been filed by the plaintiff against the defendant No.1 and when the stay has been granted in the above said writ petitions, this court is having no jurisdiction to grant the relief to the plaintiff in respect of suit schedule properties, because those writ petitions are pertaining to the order passed in respect of application filed U/o 1 rule 10(2) of CPC and based on these findings and observations, the Trial Court has proceeded to hold that the suit filed by the plaintiff against the defendants is not maintainable in the present form and accordingly dismissed the suit.

37. I am of the considered view and opinion that the procedure adopted by the Trial Court for dismissal of suit as not maintainable is not only against to the provisions of Code of Civil Procedure, but also against to the principles of natural justice and this procedure adopted by the Trial Court has not been recognized under civil jurisprudence.

38. Because, firstly, if the premise on which the plaintiff has instituted this suit against the defendants is seen, then it can be gathered from the plaint averments and the documents placed on record that, the plaintiff has specifically contended that suit schedule properties are the joint family properties of himself and defendants and they are in joint possession and enjoyment of the suit schedule properties and Smt. Neelamma has

executed a Will in respect of her 4/9th share in the suit schedule properties and therefore, he is having legitimate share in the suit schedule properties.

39. It is also the case of the plaintiff that, the 1st defendant has voluntarily thrown his adopted properties into common stock of the joint family of plaintiff and defendant Nos.1 to 5 and therefore, they are also joint family properties and therefore, he is having share in the suit schedule properties.

40. Further, it can be gathered from the pleadings of contesting defendants that, according to defendants that the 1st defendant is the adopted son of one Kariyappa Pujar and his wife Smt. Neelamma Kariyappa Pujar by way of adoption deed dated 17.05.1977 and therefore, the 1st defendant is the absolute owner in possession and enjoyment of the suit schedule properties and the plaintiff has not included all the properties and also not impleaded all the necessary parties and therefore, the suit is bad for partial partition and also bad for non-joinder of necessary parties.

41. It is also the pleadings of the contesting defendants that, the Court has no pecuniary jurisdiction to try the suit and the Court fee paid by the plaintiff is stated to be insufficient as he is not in possession and enjoyment of the suit schedule properties along with defendants.

42. It is also the case of the 4th defendant that, she is also entitled for 1/6th share in the suit schedule properties. According to defendant No.2 that, she is also entitled for 1/6th share in all the suit schedule properties. According to defendant No.12 that neither the plaintiff nor the defendant Nos.1 to 5 have got any right, title, interest or share over the suit schedule properties.

43. It is pertinent to note here that, as per the provisions of Order 14 Rule 1 and 2 of CPC., the material facts and law affirmed by one party and the material facts and law denied by other party gives rise to framing of material issues. Therefore, the Trial Court based upon the rival pleadings of plaintiff and defendants and based on the documents has framed as many as 13 main issues and as many as 3 additional issues.

44. As could be seen from the Trial Court records that the parties to the suit have filed as many as 35 interim applications, out of which, 32 interim applications have been disposed off by the Trial Court. As could be seen from the Trial Court records, that the remaining I.A.Nos.33 to 35 are still pending before the Trial Court for consideration. As could be seen from the order sheet dated 26.06.2025, that when the case was set down for trial and thereafter, when the case was set down for hearing on I.A.Nos.33 to 35, the Trial Court has directly posted the case for hearing on maintainability of the suit. Accordingly, the Trial Court has dismissed the

suit of the plaintiff as not maintainable vide order dated 25.07.2025.

45. None of the defendants have put forth their plea of maintainability of the suit. No issue has been framed with regard to maintainability of the suit in the present form. Even according to the Learned counsel for both the side, the Trial Court neither heard the arguments of plaintiff side nor heard the arguments of defendants side with respect to maintainability of the suit in the present form and the Trial Court on its own has proceeded to posted the case for hearing with regard to maintainability of the suit and dismissed the suit of the plaintiff as not maintainable without trial and without hearing the arguments on the point of maintainability. Under these circumstances, the very procedure adopted by the Trial Court is against to the principles of natural justice and also not recognized under civil jurisprudence.

46. The Trial Court has framed issues based on the material facts and law affirmed by one party and material facts and law denied by other party. Therefore, when the case was set down for trial, the Trial Court was expected to proceed for trial. In other words, when the case was set down for trial, prudence was prevailed on the Trial Court to provide an opportunity to the plaintiff and defendants to adduce oral evidence and to produce documentary evidence and then to hear the arguments of both the side

and then to answer and give findings on all the issues and additional issues. But the trial court has not done.

47. When I.A.Nos.33 to 35 are still pending before the trial court for consideration, then the prudence was prevailed on the Trial Court to hear the arguments on I.A.Nos.33 to 35 and then to pass necessary orders on I.A.Nos.33 to 35 and then to proceed for trial by providing an opportunity to both the parties to lead their respective oral and the documentary evidence. But, the Trial Court has not done so. Under these circumstances, the order passed by the Trial Court is against to the law of procedure.

48. Be that as it may, whether the plaintiff has been in possession and enjoyment of the suit schedule properties along with defendants or not and whether Smt. Neelamma had executed a Will in respect of her 4/9th share in the properties to the plaintiff or not and whether the plaintiff is entitled for share of either 1/9th or 1/3rd of the suit properties or not is a matter which requires evaluation of evidence to be recorded at the trial.

49. Further, whether the 1st defendant is the adopted son of Sri.Kariyappa Pujar and Smt. Neelamma Kariyappa Pujar by virtue of adoption deed dated 17.05.1977 or not and whether the 1st defendant is the absolute owner in possession of the suit schedule properties or not is also a matter which requires evaluation of evidence to be recorded at the trial. Further,

whether the suit of the plaintiff is bad for partial partition and bad for non-joinder of necessary parties is also a matter which requires evaluation of evidence to be recorded at the trial.

50. Further, whether the defendants No.2 and 4 are also entitled for 1/6th share each in the suit schedule properties or not is also a matter which requires evaluation of evidence to be recorded at the trial. Further, whether the defendant No.1 has voluntarily thrown his adopted properties in the common stock of the joint family of plaintiff and defendant Nos.1 to 5 or not is also a matter which requires evaluation of evidence to be recorded at the trial. Further, whether the defendant No.12 has got right, title or share in the suit schedule properties and whether the plaintiff and the defendant Nos.1 to 5 are not entitled for any share in the suit schedule properties or not is also a matter which requires evaluation of evidence to be recorded at the trial.

51. But, the Trial Court without trial and without providing an opportunity to the parties to the suit and without disposal of I.A.Nos.33 to 35, has proceeded to dismiss the suit as not maintainable which is against to the principles of natural justice and law of procedure contemplated under the provisions of Code of Civil Procedure.

52. Be that as it may, even according to observation made by the Trial Court that the matter is still pending

before the Land Tribunal Haveri and the Hon'ble High Court of Karnataka has pleased to grant stay. As could be seen from the Trial Court records that the Hon'ble High Court of Karnataka in W.P.No.103502 of 2019 and W.P.No.105346-348/2019 dated 21.02.2019, has granted interim stay of further proceedings in O.S.No.14/2008 pending on the file of Prl. Senior Civil Judge and CJM., Haveri.

53. As could be seen from the order passed by the Hon'ble High Court of Karnataka in W.P.No.82216/2013 dated 18.03.2014, the Hon'ble High Court of Karnataka has pleased to allowed the writ petition in part and allowed in part of the order passed by the Trial Court dated 12.08.2013 in so far as dismissing I.A.17 filed under Section 132 and 133 of the Karnataka Land Reforms Act, 1961 and proceedings before the Trial Court in so far as adjudication relates to item No.2(b) of the plaint schedule property stands stayed and in view of the fact that suit is pending from 2008 and it is at the stage of trial, Trial Court is directed to expeditiously dispose of the suit at any rate within a period of one year from date of receipt of certified copy of order and also by keeping in mind order XVII of C.P.C and impose cost as provided there under in the event of either of the parties not co-operating with trial court in expeditious disposal of the suit.

54. Further, as could be seen from the order passed by the Hon'ble High Court of Karnataka in W.P.No.105352/2015 (GM-CPC), the Hon'ble High Court of Karnataka has pleased to allowed and stayed the proceedings in O.S.No.14/2008 even with reference to item No.2A also and the suit to recommence after the proceedings conclude before the Land Tribunal with respect to suit items 2A and 2B.

55. But, the Trial Court neither complied the directions of the Hon'ble High Court of Karnataka nor heard the arguments of both the parties on I.A.Nos.33 to 35 or provided an opportunity to both the parties to lead their oral and documentary. But, on the other hand, the Trial Court without disposal of I.A.Nos.33 to 35 which are still pending for consideration and without complying the order of Hon'ble High Court of Karnataka and without providing an opportunity to both the parties to lead their respective oral and the documentary evidence and also without hearing the arguments of both the side on the question of maintainability of the suit, has proceeded to dismiss the suit of the plaintiff as not maintainable which is not in accordance with law and facts.

56. On the other hand, at the cost of repetition, it is to be noted here that the very procedure adopted by the Trial Court in dismissing the suit of the plaintiff as not maintainable without answering issues and additional issues is not in accordance with law, but in-fact, it is

against to the principles of natural justice. Under these circumstances, this Court has no option but to remand the matter to the Trial Court with a direction to restore the suit bearing O.S.No.14/2008 to its original file and dispose of I.A.Nos.33 to 35 at the first instance in accordance with law and then to provide an opportunity to parties to the proceedings to lead their respective oral and the documentary evidence after complying the direction of the Hon'ble High Court of Karnataka and then to hear the arguments of the case on merits and give a specific finding on each and every issues which are framed based on the material facts and law affirmed by one party and denied by other party and then to proceed with the case in accordance with law. Hence, for the reasons discussed above, I answer point No.1 in the **negative** and point Nos.2 and 3 in the **affirmative**.

57. POINT NO. 4 : In view of my findings on point Nos.1 to 3, I proceed to pass the following.

ORDER

The Appeal filed by the appellant/plaintiff under the provisions of Section 96 R/w Order XLI of C.P.C against the respondents/defendants is allowed.

No order as to cost.

Consequently, the order passed by the Trial Court on 25.07.2025 in O.S.No.14/2008 in dismissing the suit of the plaintiff as not maintainable in the present form is hereby set-aside.

The matter is remanded back to the Trial Court with a specific direction to restore O.S.No.14/2008 to its original file and then to hear the arguments of both the side on I.A.Nos.33 to 35 at the first instance and dispose of the same in accordance with law and then to provide an opportunity to both the parties to lead their respective oral and the documentary evidence after complying directions of the Hon'ble High Court of Karnataka and then to hear the arguments and give a specific finding on each and every issues which are framed based on the material facts and law affirmed by one party and material facts and law denied by other party and then to proceed with the case in accordance with law.

It is made it clear that, since the matter is relates to the year of 2008, which is admittedly more than 18 years old case, both plaintiff and defendants and their respective Learned counsels are specifically directed to approach before the Trial Court on 24.08.2026 without fail without expecting any fresh suit summons or notice and assist the Trial Court in disposal of the case as expeditiously as possible without fail.

Draw decree accordingly.

Office to send the copy of the judgment to the Trial Court forthwith through E-mail without any amount of delay.

The Office is also directed to send the Trial Court records to the Trial Court along with copy of judgment forthwith without any amount of delay.

*(Dictated to the Stenographer, transcribed and typed by him, corrected, signed and then pronounced in the open court on this the **4th day of August, 2026.**)*

(N.M. Ramesha)
I Addl. District and Sessions Judge,
Haveri.