

KAMD400008702024



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
MALAVALLI.**

Present : Sri. Mahendra. M., B.A., L.L.B.,
Senior Civil Judge and J.M.F.C,
Malavalli.

Dated : This 13th day of July - 2026

REGULAR APPEAL No.48 of 2024

(O.S.No:127/2014 before Principal Civil Judge & JMFC.,
Malavalli)

Appellant/ Defendant No.6:	Sri. K.N.Somappa S/o K.M.Nanjappa Aged about 65 years, R/at Dugganahalli Village, Kirugavalu Hobli, Malavalli Taluk, Mandya District.
	(Represented by Sri. V.N., Advocate)
	Vs.
Respondents/ Plaintiff and Defendants:	1. Smt. Nagamma W/o Late M.S.Nanjundaiah Dead by Lrs already on recorded 2. Smt. Majula.D.N D/o Late M.S.Nanjundaiah W/o Late Nijalingegowda Aged about 60 years

	R/at No.12, 12th Cross, Billekalli, Someshwara Layout, Bannerughatta Road, Bengaluru.
	3. Smt. Sunanda W/o Annappa Aged about 58 years R/at No.153, 32nd Cross, Jayanagara, Near Sanjay Gandhi Hospital, Bengaluru.
	4. Smt. Shantha.D.N W/o Krishna D/o Late M.S.Nanjundaiah Aged about 56 years R/at Hittanahalli Koppalu Village, Kirugavalu Hobli, Malavalli Taluk, Mandya District.
	5. Smt. Jayamani W/o Nagaraju D/o Late M.S.Nanjundaiah Aged about 50 years R/at Dugganahalli Village Kirugavalu Hobli, Malavalli Taluk, Mandya District.
	6. Sri. K.N.Ramanna S/o Late K.M.Nanjappa Aged about 80 years
	7. Smt. Lakshamma D/o Nanjegowda @ Kundanna Aged about 70 years
	R6 and 7 are R/at Dugganahalli Village Kirugavalu Hobli, Malavalli Taluk, Mandya District.

	8. Smt. Rudramma W/o Nanjegowda @ Pethambura Aged about 68 years R/at Nuggahalli Koppalu, Bannur Hobli, T.Narasipura Taluk, Mysuru District. 9. Sri. Nanjundegowda S/o Late K.M.Nanjappa Aged about 66 years R/at Dugganahalli Village Kirugavalu Hobli, Malavalli Taluk, Mandya District. 10. Smt. Premamani.K.N W/o Prakasha R/at Door No.82, Kanaka Badavane, Mathru Nilaya, 1st Main, Kumaraswamy Layout, BSK 2nd Stage, Bengaluru City.
	(Represented by Sri N.P., Advo for R1 to 5) (R6 to 10 Absent)

DATE OF PRESENTATION OF THE REGULAR APPEAL :	04.11.2024
NATURE OF APPEAL :	Against the Judgment and Decree passed in Original Suit No.127/2014 dated 06.06.2024 by the learned Principal Civil Judge & JMFC, Malavalli.
NATURE OF SUIT BEFORE TRIAL COURT :	Declaration and Permanent Injunction

JUDGMENT PRONOUNCED :	13.07.2026
DURATION OF REGULAR APPEAL:	Year/s Month/s Day/s 01 08 09

**(Sri. Mahendra M.)
Senior Civil Judge & JMFC.,
Malavalli.**

JUDGMENT

This Regular Appeal is filed by the Appellant/Defendant No.6 being aggrieved by the Judgment and Decree dated: 06.06.2024 in O.S.No:127/2014 passed by the Learned Principal Civil Judge & J.M.F.C., Malavalli.

2. For the sake of convenience, the parties to the Appeal are referred to in the same rank as before the Trial court in O.S.No:127/2014.

3. **The averments of the Plaint in brief are as follows:**

One Lingegowda is the propositus and he was died leaving behind him 2 sons by name Somappa and K.M.Nanjappa. Both of them died. The first son died leaving behind him his wife plaintiff No.1 and 4 daughters. Similarly, the second son of Late Lingegowda by name K.M.Nanjappa and his wife Boramma died leaving behind 3 sons and 4 daughters. The father-in-law of plaintiff No.1 coming from Kantharajipura, Shravanabelagola in Hassan District in connection with doing business he came to Dugganahalli Village. The husband of the plaintiff No.1 and defendants also came to be settled in Dugganahalli Village permanently and acquired properties also.

4. The plaintiffs further submitted that, the husband of the plaintiff No.1 and the defendants have been living separately enjoying their respective properties. The husband of the plaintiff No.1 purchased 1 acre of land in Sy.No.66/4B under registered sale deed dated 25.10.1967 from Smt.Mallamma W/o Late Venkatasetty of

Dugganahalli village. Subsequently, the husband of the plaintiff No.1 also purchased 1 acre of land in Sy.No.66/B of Dugganahalli Village from Venkataramaiah under registered sale deed dated 01.02.1968. Thus, including the kharab land of 11 guntas, the husband of the plaintiff No.1 was in possession and enjoyment of 2 acre 11 guntas. Accordingly, katha transferred and made out in his name from 1974 to 1976. Subsequently, katha transferred into the name of plaintiff No.1.

5. The plaintiffs further submitted that, in spite of said facts and circumstances, even though the plaintiffs have not given consent for change of katha in respect of above said properties in favour of anybody. The defendant No.4 behind the back of plaintiffs and without consent colluded with revenue officials and obtained illegal katha under IHC MR No.11/1984-85. However, at the instance of plaintiffs, panchayath was conveyed in the village and panchayathdars advised the defendant No.4 to re-convey the above lands in favour of plaintiffs from

the name of 4th defendant. In spite of repeated request made by the plaintiffs with 4th defendant, he is refused to request of the plaintiffs. The 4th defendant got transferred the katha in respect of said lands in the name of his mother Smt.Boramma under Form No.20. The said Boramma died on 11.09.2001. The plaintiffs filed an appeal before Assistant Commissioner, Mandya by challenged the illegal katha accepted in the name of 4th defendant in R.Mis No.48/2014. **Hence, filed this suit.**

6. The suit summons duly served upon the defendants. The defendant No.1, 2 and 5 are appeared before Trial Court through their counsel and defendant No.3, 5 and 6 are absent and placed ex-parte. The defendant No.1, 2 and 4 filed their **written statement in brief as follows:**

These defendants have specifically denied the averments of the plaint. These defendants further contented that, the suit of the plaintiffs is not

maintainable either in law or on facts, the same is liable to be dismissed in limine. These defendants further contented that, the suit of the plaintiffs is bad for non-joinder of necessary parties and barred by law of limitation. These defendants admitted the relationship with plaintiffs. Since, the husband of the plaintiff No.1 and defendant No.1 while living joint family from the joint family fund purchasing the suit schedule property in the name of husband of plaintiff No.1. In the oral partition between the husband of plaintiff No.1 and defendants, the suit schedule property fallen to the share of defendant No.4. Until the lifetime of deceased K.M.Nanjappa was enjoying the suit schedule property. After the death of M.S.Nanjundaiah with the consent of plaintiff No.1, the katha of the suit schedule property transferred in favour of Nanjundegowda under IHC MR No.11/1984-85. The oral partition took place in the year 1969. Since the date of oral partition, the defendants are enjoying the suit schedule property. The property old

Sy.No.66 of Dugganahalli Village measuring 2 acres 12 guntas was purchased in the name of M.S.Nanjundaiah.

Hence, prayed that, dismiss the suit of the plaintiffs with cost.

7. The Trial court has been framed the following issues:

ISSUES

- 1. Whether the plaintiff proves that, she is the absolute owner in possession of the suit schedule property as stated in the suit ?**
- 2. Whether the plaintiff further proves that, the mutation entries made in favour of the defendant No.4 and others are not binding upon the plaintiff ?**
- 3. Whether the plaintiff proves the alleged interference as alleged in the suit ?**
- 4. Whether the plaintiff is entitled for all the reliefs as sought in the suit ?**
- 5. Whether the defendant No.1, 2 and 4 proves that, the suit bad for both mis-joinder and non-joinder of necessary**

parties as stated in the written statement ?

6. Whether the suit is barred by limitation ?

7. What order or decree?

8. In order to prove their case, the plaintiff No.1 herself examined before the Trial Court as PW1 and got marked ExP1 to 13. The witness namely Sri.Mahadevappa examined himself as PW2 on behalf of the plaintiffs. The defendants have failed to step into the witness box to give their evidence. The defendants also failed to cross examine the PW1 and 2. The Trial court heard the arguments of the Learned Counsel for the Plaintiffs and answered Issue No.1 to 4 in the Affirmative, issue No.5 and 6 in the Negative and decreed the suit of the Plaintiffs with costs.

9. Being the aggrieved by the said Judgment and Decree, the Appellant/Defendant No.6 has filed the present Appeal for the following among other grounds:

The Judgment and Decree passed by the Trial Court is perverse, capricious, arbitrary and against to the principles of natural justice, hence the same is liable to be set aside. The Trial Court Judgment and Decree suffers from irretrievable defects resulting in miscarriage of justice and it is necessary to set aside the same. The Trial court erred passing the impugned Judgment and Decree even though the respondents have failed to prove their case by producing both documentary as well as oral evidence. The plaintiffs specifically narrated in the plaint in para No.2 and 3 that, they were in joint family even though on behalf of plaintiffs the same is not proved by them. The Trial court has not at all taken into consideration of the Exp2 and 3, the defendant No.1 is the signatory to the said documents then it shows that, there is a joint family was in existence. The plaintiffs suppressed the real facts and obtained ex-parte decree. The Trial court in page No.23 of Judgment has come to the conclusion that, through Durasthi 92 guntas was

reduced to 56 guntas without any orders. The Trial court has failed to appreciate the initial burden of proving issues is on the plaintiffs. On account of collusion of the respondents, the appellant was kept for proceedings and the respondent No.6 taken an responsibility to conduct the case. Whenever, the appellant inquired about the status of the suit, he came to know that, the suit was decreed. Hence, the Appellant/Defendant No.6 has sought for allowing the Appeal or given opportunity to the defendant No.6 to lead evidence and cross examine the PW1 and 2 by remand the matter before Trial court.

10. Thus, in view of the above Appeal grounds having heard the arguments addressed by the learned counsels for the Appellant and respondents. This court by considering the materials available on record, the following points arise for the consideration of this court.

POINT No.1: Whether the Judgment passed by the Trial Court in OS.No:127/2014 dated: 06.07.2024 is

perverse, capricious, erroneous, illegal and against the materials placed on record?

POINT No.2: Whether the impugned Judgment and Decree passed by the learned Trial judge requires to be interfered with?

POINT No.3: Whether the matter has to be remanded to Trial court give opportunity to the appellant/defendant No.6 to cross examination of PW1 and 2 and adduce the evidence of defendant No.6 side and dispose the suit on merits ?

POINT No.4: What Order?

11. The findings of this court on the above points are as under:

POINT NO.1 : IN THE AFFIRMATIVE

POINT NO.2 : IN THE AFFIRMATIVE

POINT NO.3 : IN THE AFFIRMATIVE

POINT No.4 : As per the final order, for the following;

REASONS

12. **POINT No.1 to 3:** These Points are interconnected; hence in order to avoid the repetition of facts, hence the above said points are taken up for common discussion.

13. The Plaintiff No.1 was examined before the Trial Court as PW1 and filed affidavit evidence in lieu of her examination in chief, wherein she has deposed in consonance with the plaint averments. PW1 in support of her oral evidence has got marked ExP1 to 13. The witness namely Sri.Mahadevappa examined himself as PW2 on behalf of the plaintiffs by filing affidavit evidence in lieu of his examination in chief and almost reiterated the plaint averments.

14. The documents are produced by the PW1 that ExP1 is the Genealogical tree affidavit, ExP2 is the sale deed dated 25.10.1967, ExP3 is the sale deed dated 01.02.1968, ExP4 to 8 are the handwritten RTCs, ExP9 is

the mutation register extract, ExP10 is the computerized RTC, ExP11 is the death certificate, ExP12 and 13 are the Patta and receipt book.

15. Let us discuss about the relief sought by the plaintiffs in the suit. After perused the plaint it is reveals that, the plaintiffs have filed this suit against the defendants for the relief of declaration declare that, the plaintiffs are the absolute owners in possession and enjoyment of the suit schedule property by canceling the katha made out in the name of defendant No.4 and subsequently, in the name of his mother Smt.Boramma, it is not binding on the vested right of plaintiffs over the suit schedule property and seeking permanent injunction restraining the defendants from interference with their peaceful possession and enjoyment of the suit schedule property. The burden lies on the Plaintiffs to prove averments of the plaint.

16. The Trial Court by considering the evidence of PW1 and 2 and considering the not cross-examination by the defendants have come to the conclusion that, the plaintiffs are succeeded to prove the averments of the plaint. Accordingly, the Trial court has decreed the suit of the plaintiffs. This being the state of affairs, the defendant No.6 has filed the appeal before the court. One of the ground, urged by the Appellant/Defendant No.6 herein is that, the Trial Court has not provided sufficient opportunity to the Appellant herein to cross-examination of the PW1 and 2 and adduce the evidence of defendant No.6 side.

17. This Court has carefully perused the order sheet of the Trial Court and after perusal of the same it appears to this Court that, the plaintiff No.1 was examined as PW1 on 09.09.2022 and got marked ExP1 to 13. The PW2 was examined on 11.12.2023. After examination of PW1, the case was posted for further chief of PW1. During this period, one applicant has filed interim application as IA

No.III on 25.11.2022. The said application came to be allowed on 01.06.2023. On 23.06.2023, again case was posted for further chief of PW1. On 03.08.2023, the learned counsel for the plaintiffs submitted that, no further chief of PW1. Accordingly, the case was posted for cross examination of PW1. On 05.10.2023, the PW1 was present. The defendants and their counsel absent. The Trial court on the same day taken as cross-examination of PW1 nil and posted the case for plaintiffs further evidence. On 11.12.2023, the witness examined on behalf of the plaintiffs. On that day, also the defendants and their counsel are absent. The Trial court on the same day taken as cross-examination of PW2 nil and posted the case for defendant evidence. On 13.02.2024, the defendants are absent. The Trial court taken as defendants evidence nil and case was posted for arguments on merits. On 22.03.2024, the Trial court heard the arguments from the learned counsel for

plaintiffs and posted the case for Judgment. Accordingly, on 06.06.2024, pronounce the Judgment.

18. It is clear that, the Trial court not given sufficient opportunity to the defendants to contest the suit by cross-examination of PW1 and 2 and adduce their evidence.

19. After considering the order sheet and submission of the counsel for the appellant to the appeal herein it appears to this court that, the Appellant herein has made out grounds for remanding the matter to the Trial court for deciding the matter a fresh in accordance with law. The opportunity given to defendant No.6 to cross examination of PW1 and 2 in the interest of justice and equity and ends of justice. Hence, the Judgment and decree has to be set a side and accordingly, the matter is remanded the Trial court for deciding the same in accordance with law.

20. Now, the question before the Court is, whether the matter in dispute merits remand to the Trial Court for fresh disposal. In order to determine the matter in dispute, this court relies upon the ratio laid down in the following decisions. For the sake of brevity, the ratio of the following decisions is summarized below.

Sl.No	Names of the Parties	Citation
01.	Municipal Corporation, Hyderabad Vs. Sunder Singh	2009(1) Civil Court Cases 136(SC)
02.	Bank of India Vs.M/S.Mehta Brothers & Ors.	2009(4) Civil Court Cases 244(SC)
03.	Mahesh Yadav & Anr. Vs. Rajeshwar Singh & Ors.	2009(1) Civil Court Cases 332(SC)
04.	Balaram Pandey Vs. Board of Revenue & Ors	2012(4) Civil Court Cases 150(All)
05.	Gurmeet Chand & Anr. Vs Ajit Singh	2013(2) Civil Court Cases 260(P&H)
06.	Rishi Pal Vs.Sunita & Ors	2013(3) Civil Court Cases 728 (P&H)
07.	M/S.N.K.Electronics Vs Narinder Kumar	2013(4) Civil Court Cases 373(P&H)
08.	Prakash Road Lines Vt.Ltd., The Oriental Fire and General Insurance Co., & another	1989(1) Kar.L.J.118

09.	Rajagopala Rao B. Vs.Vysa Rao and others	1988(1) Kar.L.J.287
10.	Smt.Aisha Bi and Another Vs. M.Shamsher Khan	ILR 2001 KAR 546

21. The summary of the law lay down in the above decisions is as under:

1. A New plea cannot be raised by an appellant for the first time in appeal;

2. The Judgment passed by the Trial Court must be sustained where the defendant has not supported the assertion made in the written statement by leading evidence.

3. In all cases where no written statement has been filed by the defendants it is neither necessary nor appropriate to direct the plaintiff to adduce evidence in support of the facts pleaded by him in an indiscriminate manner. The Court has to pronounce the judgment and decree the suit, if the facts pleaded do not admit of any inbuilt inconsistency giving rise to two different versions of the fundamental facts. But

even for doing so, the Court has to pass the judgment containing the relevant facts and the reasons for granting the relief.

4. The Appellate Court shall not remand the matter routinely; a remand may be ordered when the Court considers it necessary.

5. An exparte decree can be set aside against all or any of the other defendants regardless of the fact whether they appeared, contested or not. If the decree is indivisible Court is at liberty to set aside the decree not only against the defendant who applied for setting aside exparte decree against him, but also against all or any of the other defendants.

6. When exparte decree is passed, defendant has more than one remedy. He may file a suit contending that the decree was obtained fraudulently, he may file an application under Order IX Rule 13 CPC for setting aside the exparte decree, he may prefer an appeal from the exparte

judgment and decree or in a given case he may also file a review application.

7. When facts of the case was not considered and the reasons not recorded for decreeing the suit, and where the decree was passed merely for the reason that there was no contest an exparte decree may be set aside.

8. An exparte decree may be set aside where their advocate assured the appellants that they would be informed about the out come of the case but not informed as assured by the advocate about the passing of decree exparte.

9. An exparte decree may be set aside where an exparte decree was passed based on bald statement of the plaintiff and where no other evidence was let in by the plaintiff.

10. An exparte decree may be set aside when the advocate for the appellants did not appear before the trial court and did not communicate the appellants; the lack of knowledge of

exparte judgment on the part of appellant constitutes sufficient cause to set aside the exparte decree.

22. If the impugned judgment and decree were to be set aside, then this Court has to examine the applicability of Order XLI Rule 24 and 25 of CPC. Since the defendant No.6 has not cross-examination of PW1 and 2 and not adduce evidence from his side. This Court cannot pronounce judgment on insufficient materials available on record. The only provision applicable to the case on hand is Order XLI Rule 23-A of CPC. The power of remand is conferred on appellate courts under Order XLI Rule 23 A of CPC. In this regard, it is useful to refer to the following decision of Hon'ble Supreme Court of India reported in:

AIR 2002 SC 771

**P.PURUSHOTTAM REDDY AND ANOTHER:
Appellant**

Vs.

**M/S. PRATAP STEELS LTD.: Respondent
Wherein the Hon'ble Supreme Court of
India has lay down the law as under:**

10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act, 1976, there were only two provisions contemplating remand by a Court of appeal in Order 41 of CPC. Rule 23 applies when the trial Court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate Court notices an omission on the part of the trial Court to frame or try any issue or to determine any question of fact which in the opinion of the appellate Court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand inasmuch as the subordinate Court can try only such issues as are referred to it for trial and having done so, the evidence recorded, together with findings and reasons therefore of the trial Court, are required to be returned to the appellate Court. However, still it was a settled position of law before 1976 Amendment that the Court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand if such a remand was considered pre-eminently necessary ex

debito justitiae, though not covered by any specific provision of Order 41 of the CPC. In cases where additional evidence is required to be taken in the event at any one of the clauses of sub-rule (1) of Rule 27 being attracted, such additional evidence, oral or documentary, is allowed to be produced either before the appellate Court itself or by directing any Court subordinate to the appellate Court to receive such evidence and send it to the appellate Court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate Court hearing an appeal against a decree if (i) the trial Court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate Court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because, as held in Mahendra vs. Sushila (AIR 1965 SC 365, at p. 399), it is well settled that inherent powers can be availed of ex debito justitiae only in the absence of express provisions in the Code. It is only in exceptional cases where the Court may

now exercise the power of remand dehors the Rules 23 and 23A. To wit, the superior Court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20, Rule 3 or Order 11, Rule 31 of the CPC and hence it is no judgment in the eye of law in may set aside the same and send the matter back fro re-writing the judgment so as to protect valuable rights of the parties. An appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.

23. In view of the law laid down by the Hon'ble Supreme Court of India, this court is of the opinion that the present case deserves reconsideration by the Learned Trial Court. Hence the Appellant/Defendant No.6 is at liberty to cross examination of PW1 and 2. The defendant No.6 also given liberty to adduce oral and documentary evidence before the Trial court.

24. On a careful consideration of the materials available on record, it is evident that the Learned Trial Judge has not appreciated the materials available on record in a proper perspective, hence the said Judgment and Decree is perverse, capricious, erroneous, illegal and against the materials placed on record. The learned Trial court has misdirected itself while appreciating the facts of the case and applying the law as applicable to the facts of the case and committed the error while passing the judgment. **With these observations, this court has answered Point No.1 to 3 in the Affirmative.**

25. POINT No.4 : In view of the findings on Point No.1 to 3, this court proceeds to pass the following.

ORDER

The Regular Appeal filed by the Appellant/Defendant No.6 against the Judgment and Decree Dated: 06.06.2024 passed by the Learned Principal Civil Judge & JMFC, Malavalli in O.S.No.127/2014 is hereby allowed with costs of Rs.8,000/-.

Accordingly, the Judgment and decree dated 06.06.2024 passed by the learned Principal Civil Judge and JMFC, Malavalli in O.S.No.127/2014 is hereby set a side.

The matter is remanded to the Trial Court with a direction to readmit the suit under its original number in the register of suits and proceeds to determine the suit after affording opportunity to the defendant No.6 to cross examination of PW1 and 2 and to lead his evidence and his witness evidence if any and also the defendant No.6 is given liberty to adduce oral and documentary evidence if any. All the contentious issues framed by the Trial court are left open for fresh trial.

The Appellant/Defendant No.6 is directed to pay the cost of Rs.8,000/- to the respondent No.1 to 5/Plaintiffs.

Draw decree accordingly.

The parties to the appeal/suit are directed to the appeared before the learned Trial court on 13.11.2026 to receive further instructions without awaiting notice from the learned Trial court.

The plaintiffs counsel is directed to keep present of the PW1 and 2 before Trial court without any fail within reasonable time.

Return the TCR to the Trial Court along with a copy of the Judgment.

(Dictated to the stenographer, directly typed by her on the computer, order corrected and then pronounced by me in the open Court on this the **13th day of July, 2026**)

**(Sri. Mahendra M.)
Senior Civil Judge & JMFC.,
Malavalli.**