

KAMS300001342021



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl.Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 27th day of July 2026

FDP No.03/2021

Petitioner: Smt.Karagamma, W/o Late Kalegowda,
Aged about 60 years,
R/at Yemmeloppal village,
Somanahally Post, Kasaba Hobli,
Hunsur Taluk.

-Vs-

Respondents: 1. Smt.Chikkathayamma, W/o Late Nagaraju,
Aged about 38 years,
R/at Yemmeloppal village,
Somanahally Post, Kasaba Hobli,
Hunsur Taluk.

2. Smt.Sudha, W/o Swamy,
Aged about 31 years,
R/at R.Thunga village, Doddabyalalu
Post, Ravandur Hobli,
Periyapatna Taluk.

3. Bavani, S/o Late Nagaraju,
Aged about 29 years,

4. Prabha, S/o Late Nagaraju,
Aged about 26 years,

No.3 and 4 are residing at Hallur
Muddanahally vilalge, Panchavalli
Post, Kasaba Hobli, Periyapatna Taluk.

5. Shivanna, S/o Late Javaregowda,
Aged about 56 years,
R/at Yemmeloppal village,
Somanahally Post, Kasaba Hobli,
Hunsur Taluk.
6. Susheela, W/o Mallesha,
Aged about 46 years,
R/at Yemmeloppal village,
Somanahally Post, Kasaba Hobli,
Hunsur Taluk.
7. Nethra, W/o Kumara,
Aged about 28 years, R/at Kallikoppalu
village, Gavadagere Hobli, Hunsur Taluk.
8. Smt.Ashwini, W/o Ananda,
Aged about 26 years, R/at # 262/2,
Gokula Badavane, Hunsur Town.
9. Puttaswamygowda, S/o Late Kullegowda,
Aged about 60 years,
10. Smt.Sakamma, W/o Late Annegowda,
Aged about 66 years,
11. Krishnegowda, W/o Late Annegowda,
Aged about 56 years,
No.9 to 11 are residing at Yemmeloppal
village, Somanahally Post, Kasaba Hobli,
Hunsur Taluk.
12. Smt.Lakshamma, W/o Chandregowda,
Aged about 54 years,
13. Smt.Mallamma, W/o Huchegowda,
No.12 and 13 are residing at
Mallinathapura village, Bilikere Hobli,
Hunsur Taluk.

14. Smt.Yashodha, W/o Late Nanjegowda,
Aged about 51 years, R/at Yemmeloppal
village, Somanahally Post, Kasaba Hobli,
Hunsur Taluk.
15. Smt.Kamalamma, W/o Doddegowda,
Aged about 49 years,
R/at Purasomanahally village,
Somanahally Post, Hakki Hebbal Hobli,
K.R.Pete Taluk, Mandya District.

1.	Provision under which the application is filed	:	Under Order IX Rule 6 of CPC
2.	Relief sought for	:	To set aside the order dated 18.07.2024
3.	The date on which the application is filed	:	12.06.2025
4.	Number of the application	:	IA.No.VII
5.	The date on which the objections are filed by different opponents	:	14.07.2025
6.	The date on which the orders passed on the said application	:	27.07.2026

ORDERS PASSED ON IA NO.VII

The learned counsel for the 5th respondent filed the present application under Order IX Rule 6 of CPC to set aside order of placing the 5th respondent exparte dated 18.07.2024.

2. The application is supported with the affidavit of the 5th respondent wherein he has stated that the petitioner filed the petition for division of her share in the suit schedule properties and till now he has not been served with the notice

of the case and upon consultation with his counsel he came to know that the notice issued to him returned unclaimed and noting the same on 18.07.2024 he has been placed exparte. It is further stated that, now the case is posted for hearing and if the application is not allowed he will be put to more hardship and inconvenience. On the other-hand no hardship will be caused to the other-side. Hence, prayed to allow the application.

3. On the other-hand learned counsel for the petitioner filed the objection contending that, the application is not maintainable under law or on facts. Respondents No.5 and 9 had appeared through their counsel and filed the written statements and contested the suit in OS No.154/2014 which came to be decreed in accordance with law. Hence, prayed to dismiss the application.

4. Thereafter, heard arguments addressed by learned counsels for the petitioners and 5th respondent. Further learned counsel for the 5th respondent filed written arguments and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the 5th respondent has made out sufficient grounds to set aside the order of placing him exparte dated 18.07.2024?
2. What order?

5. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:** This final decree proceedings has been initiated by the petitioner as per the preliminary decree for partition passed by this court in OS No.154/2014 dated 25.01.2018 wherein it is held that, the petitioner is entitled for 1/20th share in the suit schedule properties. After filing the petition this court issued notice to the respondents and respondents No.14 and 15 appeared through their counsel and remaining respondents have been placed exparte. When the case is posted for hearing on IA's the 5th respondent came up with this application challenging the orders dated 18.07.2024. On the said date the notice issued to the 5th respondent returned as unclaimed and since respondent No.5 remained absent, as per procedure he has been placed exparte. Now the present application is filed under Order 9 Rule 6 of CPC to set aside the order dated 18.07.2024. The objection filed the petitioner goes to show that it is only formal objection. At this stage it is necessary to look into the provision of law invoked by the 5th respondent i.e., Order 9 Rule 6 of CPC and said provision reads as hereunder:

Procedure when only plaintiff appears.

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then:

(a) When summons duly served- if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard exparte.

(b) When summons not duly served- if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

7. Admittedly, the above provision of law is not applicable to this case. However, the provision should have been invoked by the 5th respondent is Order 9 Rule 7 of CPC. It is the settled principles of law that, mere quoting wrong provision is not fatal to the case. Admittedly, the 5th respondent herein is 5th defendant in OS No.154/2014. Admittedly, he has contested the said suit by filing the written statement. If the order of placing him exparte is not set aside great injustice will be caused to the 5th respondent and not to the petitioner. The very right of the 5th respondent to contest the petition will be curtailed. His presence of very much necessary for disposal of the case. The delay caused could be compensated by imposing costs. Hence, this court comes to the conclusion that, the 5th respondent has made out sufficient grounds to set aside of the order of placing him exparte dated 18.07.2024. Accordingly, point No.1 is answered in the affirmative.

8. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.VII filed by the 5th respondent under Order IX Rule 6 of CPC is hereby allowed with costs of Rs.300/-.

Accordingly, the order of placing 5th respondent exparte dated 18.07.2024 is hereby set aside and he is permitted to contest the case.

(Dictated to the Stenographer directly on the computer, same is then corrected and pronounced by me in the open court on this the 27th day of July, 2026.)

Sd/-

(Anitha)

Prl.Senior Civil Judge and JMFC.,
Hunsur.