



**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, K.R.NAGARA**

**Present : Aravindra B.C., B.A., L.L.B.,
Senior Civil Judge & J.M.F.C.,
K.R.Nagar.**

Dated : This the 01st day of August, 2026

R.A. No.17/2025

**Appellant : Sri. Chandregowda,
S/o Late Sannappajigowda,
Aged about 54 years,
R/at: Narachanahalli village,
Mirle Hobli, Saligrama Taluk,
Mysuru District.**

**(By: Sri. K.S.D., Advocate)
(Defendant No.3 in Trial Court)**

-V/s-

**Respondents: 1. Sri. Mallikarjuna,
S/o Late Sannappajigowda,
Aged about 56 years.**

**2. Sri. Mallegowda,
S/o Late Sannappajigowda,
Aged about 60 years.**

**3. Sri. Rajegowda,
S/o Late Sannappajigowda,
Aged about 58 years.**



All are R/at:
Narachanahalli village,
Mirle Hobli,
Saligrama Taluk,
Mysuru District.

(R1 by Sri. K.N.S., Adv.)

(R2 In person)

(R3 Absent)

(R1 is the Plaintiff in Trial Court)

(R2 is the defendant No.1 in Trial Court)

(R3 is the defendant No.2 in Trial Court)

Date of judgment under appeal	: 01.03.2025
Nature of the suit and Order appealed against	: For Partition and Separate Possession
Date of the Institution of the appeal	: 20.03.2025
Date on which the judgment was pronounced	: 01.08.2026
Duration of Appeal	: Year/s Month/s Day/s 01 04 12

(Aravindra B.C.)

**Senior Civil Judge and JMFC,
K.R.Nagar.**

:: J U D G M E N T ::

The present regular appeal is filed by the appellant/
defendant No.3 challenging the judgement and decree dated



01.03.2025 passed in OS No.309/2018 by the court of the Prl. Civil Judge and JMFC, K.R.Nagar (for short the learned Trial Court) where under the suit for partition and separate possession filed by the plaintiff has been decreed.

2. The appellant herein was the defendant No.3, the respondent No.1 was the plaintiff and the respondent No.2 and 3 were the defendant No.2 and 3 before the Trial Court. For the purpose of brevity and convenience, this court refer the parties in this appeal as per their ranks before the Trial Court.

3. The plaintiff has filed the suit against the defendants seeking the relief of partition and separate possession of 1/4th share in the plaint schedule property and also prayed to grant such other reliefs for which the plaintiff is found entitled to.

4. As per the plaint averments, the plaintiff and defendants are the joint family members and the suit schedule property is the joint family property of plaintiff and



defendants. The plaintiff and defendants are the children of Late Sannappajigowda @ Sannaswamygowda and Late Sannaputtamma. The suit schedule property is the ancestral property of Sannappajigowda @ Sannaswamygowda. The father of plaintiff and defendants, Sannappajigowda @ Sannaswamygowda was executed Will dated 17.11.1999 in favour of plaintiff and defendants. In the said Will it is stated that the plaintiff and defendants are equally and separately entitled share over the suit schedule property. Such being the case, due to illiteracy of the plaintiff and defendant No.1 and 2, the defendant No.3 has colluded with the revenue officials and transferred the katha of the suit schedule property into the name of defendant No.3 without knowledge of the plaintiff and defendant No.1 and 2. Hence, the plaintiff has approached the defendants to allot his legitimate share over the schedule property. But, the defendants have refused to allot his legitimate share over the suit schedule property. Hence, the cause of action was



arisen and filed the present suit for the aforesaid reliefs against the defendants before the Trial Court.

5. After presentation of the plaint, the suit was registered before the Trial court and the suit summons have been issued to the defendants. In response to the suit summons, the defendant No.2 and 3 have appeared before the Trial Court through their counsels and the defendant No.3 has filed written statement and the defendant No.2 has not filed written statement. In spite of service of summons, the defendant No.1 has not appeared before the Trial Court. Hence, he has been placed *ex parte*.

6. In the written statement, the defendant No.3 has denied all the averments made in the plaint. It is definite case of the defendant No.3 is that the suit schedule property originally belongs to Sannappajigowda. He was disposed the property to his male children on 17.11.1999 by executing deed of Will. He was died on 27.06.2013. As per the Will, 'A' schedule property was fallen to share of Sannappajigowda,



'B' schedule property was fallen to share of defendant No.1,
'C' schedule property was fallen to share of defendant No.2,
'D' schedule property was fallen to share of plaintiff and 'E'
schedule property was fallen to share of defendant No.3.

7. Further, contended that the property which allotted to Sannappajigowda was allotted to the daughter of Javaramma. Now the defendant No.3 is in possession of the said property. The plaintiff has suppressed the said facts before the court. Hence, the suit of the plaintiff is not maintainable. Further, the plaintiff has not made all the necessary parties to the suit. Hence, prays for dismissal of the suit of the plaintiff with cost.

8. On the basis of the rival pleadings of the parties, the Trial Court has framed the following issues;

- 1. Whether the plaintiff proves that himself and defendant No.1 to 3 constitute Hindu undivided joint family and the suit schedule property is their joint family property ?**



- 2. Whether the defendant No.3 proves that the Will dated 17.11.1999 is a forged document ?**
- 3. Whether the defendant No.3 proves that the suit is bad for partial partition ?**
- 4. Whether the defendant No.3 proves that the suit is bad for non-joinder of necessary party ?**
- 5. Whether the defendant No.3 proves that there was a prior partition in their family with respect to suit schedule property ?**
- 6. Whether the plaintiff is entitled for 1/4th share in the suit schedule property by meets and bounds as prayed for ?**
- 7. What order or decree ?**

9. Before the learned Trial Court to substantiate the case of the plaintiff, the plaintiff himself entered into the witness-box and examined as P.W.1. The plaintiff has got marked the 10 documents at Exs.P1 to P10 and closed his side evidence.



10. On the other hand, the defendant No.1 himself examined as DW.1 and got marked 6 documents as Ex.D1 to D6 and closed their side evidence.

11. After closure of the evidence of the plaintiff and defendant's side and after hearing the arguments of learned counsel for the plaintiff and defendants, the learned Trial Court has decreed the suit of the plaintiff and ordered and decreed that the plaintiff is entitled 1/4th share over the suit schedule property. Being aggrieved by the judgment and decree passed by the Trial court, the appellant has preferred this Regular Appeal on the grounds mentioned in the appeal memo.

12. This court heard the arguments of Sri. K.S.D. and Sri. K.N.S., learned counsels appearing for the appellant and respondent No.1 respectively. This court has given anxious consideration to the submissions of the both sides. Meticulously perused the Trial Court Records.



13. Having heard the learned counsel appearing for the parties and taking into consideration the grounds urged in the memorandum of appeal, the following points arise for consideration:

- 1. Whether the findings recorded by the Trial Court on issues is just and proper ?**
- 2. Whether the judgment and decree of the Trial Court is erroneous and liable to be interfered with ?**
- 3. What order ?**

14. The findings on the above points are as follows:-

Point No.1 : In the Negative
Point No.2 : In the Affirmative
Point No.3 : As per final order,
For the following:

REASONS

15. **Point No.1 and 2:-** These points are inextricably mixed up with each other. Therefore, this court would like to



discuss them together so as to avoid repetition of discussion and confusion.

16. Before discussing the facts of the case, this court glance the order sheet of the Trial Court. The order sheet of the Trial Court shows that the plaintiff was filed a suit against the defendants for the relief of partition and separate possession with respect to the suit schedule property. In spite of service of summons, the defendant No.2 and 3 were appeared before the Trial Court through their counsels. But, the defendant No.2 and 3 have not filed written statement at earlier stage. Thereafter, when the case posted for arguments, the defendant No.3 has filed application under Section 151 of C.P.C. seeking permission to file the written statement. The Trial Court has permitted to the defendant No.3 to file the written statement. After that, the issues were framed. Prior to filing of the written statement of defendant No.3, the plaintiff himself examined as PW-1 and got marked 10 documents.



17. Further, the record shows that the Trial Court has framed six issues as stated above. Further, the trial court has treated the issue No.3 to 5 as a preliminary issues. Further, the record shows that the case was posted for arguments on issues No.3 to 5. As per order sheet dated 07.09.2022, the defendant No.3 is examined as DW-1 and got marked documents at Ex.D1 to D5. The evidence of the defendant No.3 is only with respect to the preliminary issue No.3 to 5. Thereafter, the case was posted for cross-examination of DW-1 on preliminary issue No.3 to 5. But, the DW-1 has not been subjected to the cross-examination by the plaintiff. Further, the record shows that the case was posted for enquiry on preliminary issue No.3 to 5. But, the plaintiff has not lead evidence on preliminary issue No.3 to 5.

18. Further, important aspect is to be noted that the Trial Court has mentioned in the order sheet dated 13.02.2024 stated that inspite of sufficient opportunity, both counsels have not addressed on arguments on preliminary



issues. Hence, preliminary issues are considered with the along with the merits of the case and case was posted for cross-examination of DW-1. Further, the order sheet dated 28.03.2024 when case called out, the DW-1 is present and plaintiff is absent. In his absence, the cross-examination of DW-1 is taken as nil and case was posted for arguments on merits. Thereafter, the Trial Court has pronounced the judgement and decreed the suit of the plaintiff by holding that the plaintiff has entitled 1/4th share as per the Will dated 17.11.1999 along with the defendants.

19. Further, important aspect is to be noted that the Trial Court has not been recorded oral evidence of the parties on issues. Further, the Trial Court has treated issue No.3 to 5 as a preliminary issues. The issue No.3 is relating to partial partition, issue No.4 is *non-joinder* of necessary parties and issue No.5 is relating to the partition.

20. The order 14 Rule 2 of CPC provides that the court pronounced the judgement on all issues. As per sub Rule 2



of 14(2) of CPC provides that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdictional of the court, or a bar to the suit created by any law for the time being in force. In the present case on hand, the issue No.3 to 5 are not comes under the provision of Under Order 14 Rule 2(2) of CPC. Further, the Trial Court has not recorded evidence on issue No.1 and 2 also as per law.

21. According to plaintiff, he was entitled 1/4th share as per Will dated 17.11.1999. Further, the plaintiff has not proved the said Will as contemplated under Section 63 of Indian Succession Act and 68 of Indian of Evidence Act. Further, important aspect is to be noted that the Trial Court has not given sufficient opportunity to the parties to lead evidence to prove their pleadings. In the absence of such evidence, the Trial Court has pronounced the judgement.



22. Now the question arises before this 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 are 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.Electronic 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
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23. 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 ex parte decree.

24. From the materials available on record, it emerges that the case on hand is covered under the above Points. 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 CPC. Since the parties have not adduced their evidence, hence 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 CPC. The power of remand is conferred on appellate courts under Order XLI Rule 23A 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*** in the matter between ***P.Purushottam Reddy And Another Vs. M/S. Pratap Steels Ltd.,*** Wherein the Hon'ble Supreme Court of India has laid 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.

25. 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 both parties are at liberty to adduce the oral and documentary evidence in order to establish their pleadings.

26. It is noteworthy that the judgment of the Trial Court is based upon the incomplete evidence of the parties. It is also essential since the Court must lean in doing full and complete justice in the case which is necessary to decide the real controversy between the parties. The suit is pertaining



to immovable property and rights thereon. The suit involves the question of title both parties is in dispute. As such a suit, as far as possible, must see a logical conclusion and should not get decided on technical grounds. However, after passing of the judgment, the defendant No.3 has preferred this appeal seeking another opportunity to contest the case on merits. In this back trope, whether another opportunity could be granted has to be considered.

27. On perusal of the entire records of the Trial Court it seen that, the parties have not lead evidence on all issues. Further, the Trial Court has not given opportunity to the parties to lead evidence in accordance with law. The appellant is made out sufficient grounds to remand back the matter to the Trial Court to give opportunity to the parties to lead the evidence and consider the oral and documentary evidence of the parties. Under the such circumstances, the order of remand is made with a view of giving one opportunity to both parties to put-forth their case. In this



view of the matter, it is proper to interfere with the judgment of Trial Court. **Accordingly, this court answered to the point No.1 is in the Negative and point No.2 is in the Affirmative.**

28. **Point No.3**:- In view of the findings on the above points, the following order is passed:-

ORDER

The Regular Appeal filed by the Appellant/Defendant No.3 under Order 41 Rule 1 R/w Section 96 of CPC is allowed.

The judgment and decree passed in O.S.No.309/2018 on the file of Addl. Civil Judge and J.M.F.C dated 01.03.2025 is set aside and the matter is remand back to the Trial Court with a direction to decide the matter to give opportunity to both parties and dispose the matter in accordance with law.

Both the parties are directed to appear before the Trial Court on 15.09.2026 without further notice in this



regard and co-operate with the Trial Court for speedy disposal of the matter.

Office is directed draw decree accordingly and send the Trial Court records along with copy of the Judgment passed in this appeal, well in advance to the Trial Court for suitable action in furtherance of this order.

(Dictated to the stenographer directly on computer, computerized by her, corrected by me and then pronounced in the open court on the 01st day of August - 2026)

(Aravindra B.C.)
Senior Civil Judge and JMFC,
K.R.Nagara.