

KASM600001452026



**IN THE COURT OF V ADDL. DISTRICT AND
SESSIONS JUDGE, SHIVAMOGGA,
(SITTING AT SAGAR)**

Dated this the 27th Day of July, 2026.

PRESENT

Sri. Ravindra R. B.A.L., LL.M.
V Addl.District & Sessions Judge,
Shivamogga. (Sitting at Sagar).

R.A No.10013/2026

Appellant/s: Umapathi
S/o Late Veerabhadrappe,
Aged about 50 years,
R/at Magodu, No.41,
Sri Krupa, Keriappa Layout,
Dollars colony,
Devasandra, Bengaluru.

(By Sri. Shivakumar K.R., Advocate)

V/s.

Respondents : 1. B.V. Pashupathi
S/o Veerabhadrappe,
Aged about 56 years,
R/at Magodu, Besuru,

Hulidevarabana post,
Avinahalli Hobli,
Sagara taluk,
Shivamogga District.

2.Nanjundappa
S/o Late Gangadharappa,
Aged about 62 years,

3.Gowrav
S/o Nanjundappa,
Aged about 31 years,

4. Advik
S/o Nanjundappa
Aged about 30 years,
Respondents no.2 to 4 are
R/at No.149, 8th Cross,
Maruti layout,
Dasarahalli Main road,
Bengaluru.

(R.1 By Sri. K.V.Praveen Advocate)
(R.2 Absent)
(R.3 and 4 By Sri. Keshavamurthy G.B. Advocate)

Date and nature of the Judgment and Decree appealed against	Against the impugned order dated 02.12.2025 passed by the Prl Civil Judge & JMFC, Sagar in FDP No.5/2024.
Date of institution of the appeal.	17.03.2026

Date of Judgment 27.07.2026

Duration of appeal	Year/s	Month/s	Day/s
	00	04	10

(Ravindra R)

V Addl.District & Sessions Judge,
Shivamogga. (Sitting at Sagar).

JUDGMENT

This Appeal is preferred by the Appellant/plaintiff under Order 41 Rule 1 R/w Section 96 of C.P.C questioning the legality and correctness of the impugned order dated 02.12.2025 passed by the Principal Civil Judge & JMFC, Sagar, in FDP No.05/2024, wherein the trial Court has ordered to draw the final decree.

2. The facts of the case in nutshell are that:

The plaintiff/ appellant filed a suit in O.S.No.148/2016 against the defendants seeking for partition and separate possession of his 1/4th share in the suit schedule properties by metes and bounds. The said suit came to be decreed and it was declared that the plaintiff is entitled for 1/4th share in the suit

schedule properties. Aggrieved by the said Judgment and Decree, the defendant no.1 filed an appeal in R.A.No.52/2020 before the Additional Senior Civil Judge & JMFC, Sagar, challenging the said Judgment and Decree passed by the trial court. The appellate Court dismissed the said appeal and confirmed the Judgment and Decree passed by the trial court. Pursuant thereto, the plaintiff filed petition in FDP No.05/2024 seeking for final decree based on the preliminary decree. On 27.06.2025, due to the death of the defendant no.2, the trial court modified the preliminary decree by declaring that the plaintiff and defendant no.1 are entitled for $\frac{1}{3}^{\text{rd}}$ share and defendant no.4 and 5 together are entitled for $\frac{1}{3}^{\text{rd}}$ share in the suit schedule properties. The plaintiff filed an application for appointment of court commissioner to submit the scheme of partition with respect to suit schedule properties. The said application was allowed by the trial court and ADLR of Sagar, was appointed as a court commissioner for submission of scheme of partition with respect to suit schedule properties. Thereafter, the Court Commissioner submitted report. After verifying the

same, the trial Court passed impugned order to draw the final decree as per the Commissioner's report.

3. Aggrieved by the said impugned order dated 02.12.2025 passed by the trial Court the appellant/plaintiff has preferred this appeal on the following grounds:

The trial Court has erred in passing the impugned order without considering the objections filed by the appellant/plaintiff to the court commissioner's report. The trial court has not allotted the block no.4 property either to the plaintiff or to the defendants. The court commissioner has not submitted a scheme of partition by dividing the 1/3rd portion in the suit schedule properties as per the preliminary decree. If the properties are not divided separately, it will be against the preliminary decree passed by the trial court. Even though the plaintiff had filed objections to the commissioner's report, the trial court accepted the scheme of partition submitted by the court commissioner and passed the final decree. Hence, the said

impugned order passed by the trial court is against the law. The trial Court failed to allot properties to both the plaintiff and the defendants as per the preliminary decree. On the above said grounds the appellant has prayed this court to allow this appeal and set aside the impugned order dated 02.12.2025 passed by the trial Court.

4. After service of notice, the respondent No.1, 3 and 4 appeared before the court through their counsels. Despite service of notice, the respondent no.2 failed to appear before the court and he was placed absent.

5. The appeal has not been filed within the stipulated time. Hence, the appellant has filed an application to condone the delay of 10 days in preferring the appeal against impugned order.

6. Heard arguments of both the parties. Perused the L.C.R. and materials available on record.

7. The following points arise for my consideration:

1) Whether the application filed by the appellant to condone the delay of 10 days in filing the appeal deserves to be allowed?

2) Whether the impugned order dated 02.12.2025 passed by the trial court is erroneous, improper and calls for interference by this Court?

3) What order?

8. My answers to the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: As per final order, for the following-

REASONS

9. **POINT NO.1:-** The appeal has not been preferred on time.

Hence, the appellant has sought this Court to condone the delay of 10 days in preferring the present appeal. In the delay application, it has been contended that the appellant was unwell and he was suffering from heart disease and he has undergone Angioplasty. Due to the aforesaid bonafide reasons, there is a delay of 10 days in filing the appeal.

10. The above reasons put forth by the appellant appears to be bonafide. Further, technicalities should not come in the way of dispensation of justice. Hence, in view of the above said circumstances, the delay in filing the present appeal needs to be condoned. Hence, the application filed by the appellant to condone the delay in filing the appeal deserves to be allowed. Accordingly, this point is answered in Affirmative.

11. **POINT NO.2:-** The main ground urged by the appellant/plaintiff is that the trial court has not allotted specific 1/3rd share to each of the parties as per the preliminary decree. The trial court has passed the impugned order without considering the objections filed by the appellant to the scheme of partition submitted by the court commissioner report.

12. On the other hand, the respondent no.1/defendant no.1 submitted before the court, that both the parties compromised the matter by filing joint memo in RSA NO.1197/2024 before

the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka accepted the Joint Memo filed by both the parties and disposed the matter as per the terms of the settlement entered into by both the parties.

13. Perusal of the records reveal that, that the respondent no.1/defendant no.1 filed appeal in R.S.A No.1197/2024, challenging the Judgment and Decree dated 16.02.2024 passed in R.A.No.52/2020, wherein the first appellate confirmed the Judgment and Decree passed by the trial court. Before the Hon'ble High Court of Karnataka, both the parties filed Joint Memo in the Lok Adalat held on 13.09.2025 and the matter was decreed as per the terms of the Joint memo.

14. As per the terms of the Joint Memo, the defendant no.4 and 5 agreed to not take any share in the suit schedule properties and grant their share to plaintiff and defendant no.1. The defendant no.1 was allotted 2 acre 22 guntas of land and plaintiff was allotted 2 acre 16 guntas of land in the suit

schedule properties. Further, the plaintiff and defendant no.1 agreed to divide the property by metes and bounds in FDP No.5/2024 pending before the trial court.

15. It appears that, certified copy of the said order dated 13.09.2025 passed by the Hon'ble High Court of Karnataka in RSA No.1197/2024 was not produced before the trial court. Since the said compromise order passed by the Hon'ble High Court of Karnataka was not produced before the trial court, the trial court passed the impugned order as per the preliminary decree. As stated earlier, the parties have amicably settled the matter between them and filed joint memo before the Hon'ble High Court of Karnataka in RSA No.1197/2024 and the same was accepted by the Hon'ble High Court. As per the terms of the compromise, the plaintiff and defendant no.1 have agreed to divide the suit schedule properties by metes and bounds in FDP No.5/2024. But the compromise order was not brought to the notice of the trial court and the trial court passed the impugned order by dividing the properties as per the preliminary decree. In

view of the aforesaid circumstances, the matter has to be remanded back to the trial court to dispose the FDP as per the terms of the compromise agreed by the parties. Hence, the impugned order passed by the trial court calls for interference by this Court. Accordingly, point no.2 is answered in the **Affirmative.**

16. **POINT NO.3:-** In view of the above discussion, I proceed to pass the following:

ORDER

The application filed by the appellant U/sec.5 of the Limitation Act is hereby allowed and delay is condoned in filing the appeal.

The Regular Appeal filed by the appellant/ plaintiff U/O 41 Rule 1 r/w section 96 of CPC is hereby allowed.

The impugned order dated 02.12.2025 passed by the learned trial Court in FDP No.05/2024 is hereby set aside.

Consequently, the matter is hereby remanded back to the trial Court to dispose the FDP as per the terms of settlement agreed by the parties before the Hon'ble High Court of Karnataka in RSA No.1197/2024.

Draw Decree accordingly.

Send a copy of this judgment along with T.C.R to the trial Court.

(Typed to my dictation by Stenographer directly on Computer, corrected by me and then pronounced in the open Court on this the 27th Day of July, 2026)

(Ravindra R),
V Addl.District & Sessions Judge,
Shivamogga. (Sitting at Sagar).