

RESPONDENTS:1. Farida Naseebha Khanam
W/o Abdul Rehman, A/a 69 years,

2. Rasheed Fahima, W/o Sadathulla Khan
A/a 66 years, R/at Door No.26,
Chamundinagar Main Road,
R.T. Nagar, Bengaluru.

3. Waheeda Haseena Khanam, Dead by Lrs.,

a) Aleem Ulla Shariff, H/o Late Waheeda
Haseena Khanam, A/a 68 years,

b) Noor Ain, D/o Late Waheeda Haseena
Khanam, A/a 43 years,



- c) Sufiya Naz, D/o Late Waheeda Haseena Khanam, A/a 38 years,

Respondents No.3(a) to (c) are R/at No.15, Behind KSRP Police, Training Center, Near Kannada School, Krishnanagara Main Road, Tumakuru City.

4. Mujeeb Unnisa, W/o Late Mohammed Musthafa Khan, A/a 60 years, R/at 12th Cross, SIT Extension, Tumakuru.

[By Sri. M.A., Advocate)

Date and nature of the Decree or Order appealed against	Judgment and decree dated 06.01.2017 pronounced by the learned Addl.Sr.Civil Judge & CJM, Tumakuru in O.S.No.60/2008.		
Date of institution of the appeal	01.09.2025		
Date of Judgment pronounced	03.08.2026		
Duration of the appeal	Year/s	Month/s	Day/s
	00	11	02

(SHILPA K.S.)

VI Addl.District & Sessions Judge,
Tumakuru.



/ J U D G M E N T /

This is an appeal directed against the judgment and decree passed by the learned Addl.Sr. Civil Judge & CJM, Tumakuru, in O.S.No.60/2008 dt.06.01.2017.

2. The parties are referred to their original ranking for the convenience sake.

3. The averments of the plaint is as follows :

That one L.Mohamed Mustafa Khan was the propositus of the family of plaintiffs and defendants who was full and absolute owner in possession of the suit schedule property. He had two wives namely Mahamooda Khanum the mother of plaintiffs No.1 to 3 and first defendant and second wife namely Mujeebunnisa the second defendant. The said L.Mohamed Mustafa Khan died on 25.05.2004 leaving behind plaintiffs and defendants as his legal heirs. After his demise, plaintiffs and defendants were in possession and enjoyment of the



suit schedule property as tenants in common. That the defendants in collusion with the municipal officials have got changed katha of the suit schedule property in their names to defeat and defraud the legitimate share of plaintiffs. The plaintiffs questioned the illegal activities of the defendants and also demanded to allot their legitimate share in the suit schedule property. In this regard, the plaintiffs have convened many panchayaths, but the defendants have not heeded the words of the panchayathdars, instead they have attempting to dispose off the suit schedule property. Hence the suit filed.

4. After service of summons the defendants No.1 and 2 have appeared through their counsel and only defendant No.2 has filed written statement.

5. The averments of the written statement of the defendant No.2 is as under : -



It is admitted that L.Mohamed Mustafa Khan had two wives namely Mohamooda Kanum and the second defendant. It is also admitted that the said L.Mohamed Mustafa Khan died intestate leaving behind plaintiffs and defendants. That this defendant is in possession and enjoyment of the suit schedule property after the death of her husband. The katha stands in her name and also paying taxes to the CMC, Tumkur. The deceased husband of this defendant owned several properties in his name and the suit schedule property is one of the property of her late husband. During his life time he left the suit schedule property in lieu of her mahar. As per the promise made by her husband, deposited the amount as mahar and promised to give the house to this defendant, as he married her in younger age. The plaintiffs and defendant No.1 have no manner of right, title, interest or muchless possession over the suit schedule properties at any point of time. This defendant had filed a suit against defendant No.1 for permanent injunction in O.S.No.228/07 and obtained Injunction order against him with respect to suit schedule property.



The plaintiffs have not inserted the property of one Abdul Rahaman Khan, morefully described as written statement house property constructed in Site No.3 measuring 40 x 40 feet in Sy.No.45/3 of Kasaba Hobli, Tumkur Village, Tumkur Taluk and put for partition. The said property is also the property of plaintiffs and defendants. This suit is bad for partial partition and not maintainable and prays to dismiss the suit with exemplary costs.

6. The trial court based upon the pleadings have framed the following :-

ISSUES

1. Whether defendant No.2 proves that suit property was given to her in lieu of mahar and thus she is the exclusive owner of the same ?
2. Whether plaintiffs are entitled for 100/45th share in suit properties ?
3. Whether plaintiffs prove cause of action ?
4. What order or decree?



7. In order to prove the case, the plaintiff No.3 examined as P.W.1, and got marked Ex.P.1 to Ex.P.3 and closed their side.

By way of rebuttal the defendant No.2 examined as DW1 and got marked Ex.D1 to Ex.D.34 and closed their side.

8. After hearing both sides the learned trial court has decreed the suit by holding the issues in affirmative against the defendants.

9. Highly aggrieved by the judgment and decree of the learned trial court in O.S.No.60/2008 the appellant/defendant No.1 has preferred the present appeal on the following grounds :-

a. That the appellant is the defendant No.1 in the trial court and respondents No.1 to 3 are the plaintiffs in the trial court. The respondent No.3 died leaving behind respondents No.3(a to c) as her legal heirs. The



respondent No.4 was the defendant No.2 before the trial court and now in F.D.P she has been transposed as respondent No.4 and accordingly the appellant only contesting the matter.

b. That the trial court has not given sufficient opportunity to the defendant No.1 to file his written statement. The respondents have colluded with each other and managed to obtain decree. The plaintiffs before the trial court have not included other family properties and they have obtained the decree against the suit schedule property by suppressing the real facts before the trial court.

c. That the trial court has not given sufficient opportunity to the defendant No.1 to adduce evidence and to produce documents and to tender his witness for cross examination to establish his case. Hence the matter has to be remanded back for fresh disposal and the suit is liable to be dismissed by allowing this appeal.



d. That the trial court has answered the issues No.2 and 3 in affirmative instead of answering them in the negative. Hence the reasonings given for answering the said issues are also not in accordance with law. Hence the judgment and decree of the trial court is liable to be set aside and the suit of the plaintiffs is liable to be dismissed.

e. That the trial court has answered the issue No.1 in negative instead of answering the said issue in affirmative. The reasonings given for answering the said issue is also not in accordance with law and the trial court has not given opportunity for the defendant No.1/appellant to prove the said issue with documents and additional witnesses, who are well known about the family of the plaintiffs and defendants and also about the suit schedule properties. Hence the judgment and decree of the trial court is liable to be set aside by dismissing the suit of the plaintiffs.



f. That the trial court has not considered the facts that, the suit of the plaintiffs is bad for non inclusion of necessary parties, without observing the said facts, the trial court has decreed the suit of the plaintiffs.

g. That the trial court has not given opportunity to the defendant No.1 for cross examination of PW.1 and hence the judgment and decree of the trial court is liable to be set aside by dismissing the suit of the plaintiff.

h. That the trial court has wrongly come to the conclusion while answering issues framed before the trial court and the answering with respect to the said issues have to be modified and hence the judgment and decree of the trial court is liable to be set aside and the suit of the plaintiff is liable to be dismissed.

i. The impugned Judgment and decree do not supported by the sound principles of law and the reasons assigned by the trial court are not proper, well sounded and



against to the admitted principles. Hence, the judgment and decree is not sustainable and the same is liable to be set-aside in the limine.

j. The appellant submits that, the impugned Judgment and Decree suffers from legal infirmities. As such the same cannot be allowed to stand in law is liable to be set aside by dismissing the suit of the plaintiff.

k. That the order of the trial court is capricious, perverse against to principle of natural justice and it is in need of interference and hence the judgment and decree of the trial court is liable to be set aside.

l. That the respondents have colluded with each other and they have filed the final decree proceedings in F.D.P.6/2021 and it was allowed on 15-03-2025. That now the respondents are making hectic efforts to execute the said final decree and during that time the appellant has came to know about the judgment and decree. The court



commissioner in F.D.P has not visited the spot and taken the measurement and submitted the report before the court. Hence the said final decree is also liable to be set aside.

10. So also after service of the notice the respondents No.1 to 4 have appeared before this court through their counsel but not filed cross objections.

11. I have secured the trial court records. Heard both sides. Perused the trial court record, pleadings, evidence, and available material placed on record before the court.

12. The following points that would arise for my consideration are :

1. Has the plaintiffs proves that they and the defendants constitute tenants in common and entitled for share in the suit properties ?
2. Has the defendant No.2/respondent No.4 proves that the suit property was given to her as mahr and



hence she is the absolute owner of the suit property which cannot be divided ?

3. Has the appellant proves that the judgment and decree passed in O.S.No.60/2008 dt.06.01.2017 is capricious, perverse and illegal and liable to be set aside ?

4. Is interference by this court is necessary ?

5. What order or award ?

13. My findings to the above points are as under :

Point No.1 : In affirmative

Point No.2 : In negative

Point No.3 : In negative

Point No.4 : In negative

Point No.5 : As per final order for the following

REASONS

14. **Points No.1 and 2** : These points will be taken at one stretch for my consideration in order to avoid repetition of facts as they are inter related with each other.



The plaintiffs have filed this suit for the relief of partition and mesne profits. The same was opposed by the defendant No.2 before the trial court stating that the suit property was her absolute property which was given as Mahr. It is pertinent to note that there is no dispute that, L.Mohamed Mustafa Khan was the propositus of the family of the plaintiffs and defendants. Even the relationship among the plaintiffs and the defendants are not under dispute. It is also not disputed that said L.Mohamed Mustafa Khan was the full and absolute owner in possession of suit schedule property.

15. In order to prove the same, the plaintiff No.3 was got examined himself as PW.1 by reiterating all the averments of the plaint in his affidavit. In his cross examination he has admitted that, “ಅಬ್ದುಲ್ ರೆಹಮಾನ್ ಖಾನ್ ನನ್ನ ತಾತನ ತಮ್ಮನಾಗಬೇಕು. ದಾವಾಸ್ವತ್ತಿನ ಪಕ್ಕದಲ್ಲಿ ಆತನ ಮನೆ ಇದೆ ಎಂದರೆ ಸರಿ. ಅಬ್ದುಲ್ ರೆಹಮಾನ್ ಖಾನ್ ಗೆ ನನ್ನ ತಂದೆ ಮಾತ್ರ ವಾರಸುದಾರರು ಎಂದರೆ ಸರಿ.



ಅಬ್ದುಲ್ ರೆಹಮಾನ್ ಖಾನ್ ಗೆ ಸೇರಿದ ಮನೆಯನ್ನು 2ನೇ ಪ್ರತಿವಾದಿ ಬಾಡಿಗೆಗೆ ಕೊಟ್ಟಿದ್ದಾರೆ ಎಂದರೆ ಈಗ ಖಾಲಿ ಇದೆ. ಸದರಿ ಸ್ವತ್ತು 2ನೇ ಪ್ರತಿವಾದಿಯ ಸ್ವಾಧೀನದಲ್ಲಿದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಸ್ವತ್ತನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ಸೇರಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ಸ್ವತ್ತಿನಲ್ಲಿ ನನಗೆ ಮತ್ತು ಪ್ರತಿವಾದಿಗಳಿಗೆ ಹಿಸ್ಸ ಇದೆ ಎಂದರೆ ಸರಿ . ಅಬ್ದುಲ್ ರೆಹಮಾನ್ ಖಾನ್ ರವರಿಗೆ ಸೇರಿದ ಮನೆಗೆ ನಾನು, ಪ್ರತಿವಾದಿಗಳು ಮತ್ತು ಇಬ್ಬರೂ ಅಕ್ಕಂದಿರು ವಾರಸುದಾರರಾಗಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ಪ್ರತಿವಾದಿಗಳು ದಾವಾಸ್ವತ್ತಿನ ಜಂಟಿ ಸ್ವಾಧೀನಲ್ಲಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಈ ಎರಡೂ ಸ್ವತ್ತುಗಳು ಬಿಟ್ಟರೆ ನಮ್ಮ ನಡುವೆ ವಿಭಾಗ ಮಾಡಿಕೊಳ್ಳಲು ಬೇರೆ ಸ್ವತ್ತುಗಳು ಇಲ್ಲ. ಮೇಲ್ಕಂಡ ಎರಡೂ ಸ್ವತ್ತುಗಳಿಗೆ 2ನೇ ಪ್ರತಿವಾದಿಯೇ ಕಂದಾಯ ವಾವತಿಸುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ದಾವಾಸ್ವತ್ತಿಗೆ ನಾವು ಕಂದಾಯ ವಾವತಿಸುತ್ತಿದ್ದೇವೆ. ಕಂದಾಯ ರಸೀದಿ ಹಾಜರು ಮಾಡಿಲ್ಲ.”

16. Further the PW.1 has got marked the death certificate of L.Mohamed Mustafa Khan as per Ex.P.1. The Ex.P.2 and 3 are the copy of the sale deed and assessment register standing in the name of L.Mohamed Mustafa Khan with respect to the suit property. So on perusal of these documents it is true that the late L.Mohamed Mustafa Khan was the absolute owner of the



suit property and propositus of the plaintiffs and defendants.

17. Per contra the defendant No.2 got examined herself as DW.1 by reiterating all the averments of the written statement in her affidavit. In her cross examination she has admitted that, “ನನ್ನ ಯಜಮಾನರು ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆಯ ಆಯುಕ್ತರಾಗಿದ್ದರು ಎಂದರೆ ಸರಿ. ಅವರಿಗೆ ರೂ.8,000/- ಪಿಂಚಣಿ ಬರುತ್ತಿತ್ತು. ಅವರು ಮರಣ ಹೊಂದಿದ ನಂತರ ನನಗೆ ರೂ.2,600/- ಪಿಂಚಣಿ ಬರುತ್ತದೆ. ದಾವಾಸ್ವತ್ತನ್ನು ಹೊರತುಪಡಿಸಿ ನನ್ನ ಯಜಮಾನರಿಗೆ ಯಾವ ಯಾವ ಸ್ವತ್ತು ಇದೆ ಎಂದರೆ ಅವರಿಗೆ ಬೇರೆ ಕಡೆ ಸ್ವತ್ತು ಇದೆ ಆದರೆ ಅವುಗಳ ವಿವರ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನ್ನ ಯಜಮಾನರಿಗೆ ಸೇರಿದ ಸ್ವತ್ತು ತಿಪಟೂರಿನಲ್ಲಿ ಇತ್ತು ಎಂದರೆ ಸರಿ. ಅದನ್ನು ನಾನು ಮಾರಾಟ ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ ಮಾರಾಟ ಮಾಡಿ ನನ್ನ ಯಜಮಾನರು ಮಾಡಿದ್ದ ಸಾಲ ತೀರಿಸಿದ್ದೇನೆ. ಯಾರ ಬಳಿ ಸಾಲ ಮಾಡಿದ್ದರು ಎಂದರೆ ಸಾಲ ಕೊಟ್ಟವರ ಹೆಸರು ಗೊತ್ತಿಲ್ಲ.

ನಿಖಾ ನಾಮದಲ್ಲಿ ನನಗೆ ಕೊಡಬೇಕಾದ ಮೆಹರ್ ಬಗ್ಗೆ ನಮೂದು ಇದೆ ಎಂದರೆ ಸರಿ . ನಿಖಾ ಸಂದರ್ಭದಲ್ಲಿ ಮೆಹರ್ ಅಥವಾ ಚಿನ್ನದ ಆಭರಣಗಳನ್ನು ಕೊಡಬಹುದು ಎಂದರೆ ಆ ಸಂದರ್ಭದಲ್ಲಿ ನನ್ನ ಯಜಮಾನರು ಏನನ್ನೂ ಕೊಟ್ಟಿಲ್ಲ. ನಿಖಾ



ಸಂದರ್ಭದಲ್ಲಿ ನನಗೆ ರೂ.5,000/- ಗಳು ನಿಗದಿಪಡಿಸಿದ್ದರು ಎಂದರೆ ಸರಿ. ಮೆಹರ್ ಬದಲಾಗಿ ದಾವಾಸ್ವತ್ತನ್ನು ಕೊಡುತ್ತೇನೆಂದು ಮಾತುಕತೆಯಾದ ಬಗ್ಗೆ ಬರವಣಿಗೆಯಾಗಿದೆ. ಆತನ ಮರಣಾನಂತರ ದಾವಾಸ್ವತ್ತನ್ನು ನನಗೆ ಕೊಡಬೇಕೆಂದು ಪತ್ರ ಬರೆದುಕೊಟ್ಟಿದ್ದಾರೆ. ಸದರಿ ಪತ್ರಕ್ಕೆ ಯಾರು ರುಜು ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ, ಖಾಲಿ ಹಾಳೆಯಲ್ಲಿ ಪತ್ರ ಬರೆದುಕೊಟ್ಟಿದ್ದಾರೆ. ದಿ:28.12.1970 ರಲ್ಲಿ ನನ್ನ ಯಜಮಾನರು ಸ್ವಂತ ದುಡಿಮೆಯಿಂದ ದಾವಾಸ್ವತ್ತನ್ನು ಖರೀದಿಸಿದ್ದರು ಎಂದರೆ ಸರಿ. ನನ್ನ ಯಜಮಾನರು ತೀರಿಕೊಳ್ಳುವವರೆಗೂ ದಾವಾಸ್ವತ್ತಿನ ಖಾತೆ ಆತನ ಹೆಸರಿನಲ್ಲೇ ಇತ್ತು ಎಂದರೆ ಸರಿ. ನನ್ನ ಯಜಮಾನರ ಜೀವಿತ ಕಾಲದಲ್ಲಿ ಮತ್ತು ಆತನ ಮರಣಾನಂತರ ನಾನು ಮತ್ತು ಮೊದಲನೆಯ ಪ್ರತಿವಾದಿ ದಾವಾಸ್ವತ್ತಿನಲ್ಲೇ ವಾಸವಾಗಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ಅ.ದಾ.ಸಂ.228/07 ರಲ್ಲಿರುವ ದಾವೆಯನ್ನು ಮೊದಲನೆಯ ಪ್ರತಿವಾದಿಯ ವಿರುದ್ಧ ಮಾತ್ರ ದಾಖಲಿಸಿದೆ ಎಂದರೆ ಸರಿ. ದಾವಾಸ್ವತ್ತು ನಿವೇಶನ ಸಂಖ್ಯೆ 2 ಆಗಿದೆ ಎಂದರೆ ಸರಿ. ಮದುವೆಯ ಕಾಲದಲ್ಲಿ ಅಬ್ದುಲ್ ರೆಹಮಾನ್ ಜೀವಂತವಾಗಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ . ಆತನಿಗೆ ಹೆಂಡತಿ ಮತ್ತು ಮಕ್ಕಳಿಲ್ಲ. ಸದರಿ ಸ್ವತ್ತಿನ ಖಾತೆ ಈಗಲೂ ಅಬ್ದುಲ್ ರೆಹಮಾನ್ ರವರ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದರೆ ಸರಿ .”

18. The Dw.1 has got marked 34 documents like tax paid receipts as per Ex.D.1 to 15 standing in the name of L.Mohamed Mustafa Khan which are not under dispute.



The Ex.D.16 to 26 are the copies of order sheet, plaint, written statement, issues, depositions, orders on interim applications, objections in O.S.No.228/2007 which was filed for the relief of permanent injunction filed by the defendant No.1 against defendant No.1 with respect to suit schedule property which is also not under dispute.

19. The Ex.D.27 is the copy of the NCR and OPD chit standing in the name of the defendant No.2 along with the endorsement issued by the concerned police to the defendant No.2 as per Ex.D.28. So these documents reveals that the defendant No.2 has got lodged the complaint for the assault caused to her. The Ex.D.29 to 31 are the tax paid receipt and assessment register standing in the name of the defendant No.2. As per settled principle of law merely payment of tax in the name does not brings any title over the immovable property.



20. The Ex.D.32 is the reply legal notice issued by the defendant No.2 to the Revenue officer. The Ex.D.33 and 34 are the copies of the sale deeds for the year 1970 and 1979. So from these documents it can be gathered that the propositus namely L.Mohamed Mustafa Khan was the owner of the suit property. Even the plaintiffs have proved their relationship with the late L.Mohamed Mustafa Khan.

21. The DW.1 has stated that at the time of her marriage, Rs.5,000/- was fixed as Mahr, but her husband has not paid the said amount. Hence he had agreed to give suit property in writing towards Mahr. Hence the burden to prove this lies on the defendant No.2. The defendant No.2 has further permitted to produce the photo copy of the deed alleged to be executed by her husband. *The section 285 of the Mohammadan law defines Mahr or dower as a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. It*



belongs exclusively to the wife which serves as a personal financial security and is a legal right that cannot be taken away by anyone.

22. It is pertinent to note that as the relationship of the defendant No.2 is not disputed, but the burden lies on her to prove that the suit property was given to her as Mahr. It is true that the defendant No.2 neither produced Nikhanama nor the deed stated to have been executed by her husband in her favour. Even the defendant No.2 has not states the names of witnesses signed to the alleged deed. Even those witnesses were not got examined in support of her contention. Hence in absence of all these as rightly observed by the trial court the defendant No.2 is not able to prove that the suit property was given by her husband as Mahr.

23. Further the defendant No.2 contended that the suit is bad for partial partition as the plaintiffs have not



included the written statement schedule property in this suit. But to prove the existence of the said written statement schedule property the defendant No.2 has not produced any cogent evidence. Even the trial court had rightly observed that under the Mohammedan Law the heirs of deceased Mohammedan succeed to a definite fraction of every part of his estate. The shares of heirs under the Mohammedan law are definite and known before the actual partition. Therefore, on partition of properties belonging to a deceased Muslim, there is division by metes and bounds in accordance with law in the specific share of each heir being held determined by law, under the Mohammadan law, partial partition of only some items of the family property is permissible.

24. So under these circumstances as rightly observed by the trial court that as the plaintiffs are claiming 45/100th share in suit schedule properties and they have proved



their case. The trial court rightly observed that parties are governed by Mohammedan Law. As per their personal law, wife without issue is entitled for 1/4th share out of estate of deceased Mohammedan. As such, 2nd defendant being 2nd wife of deceased L.Mohamed Mustafa Khan, is entitled for 1/4th share in suit schedule property. Whereas, plaintiffs and defendant No.1 being daughters of son of said L.Mohamed Mustafa Khan, are entitled for share in the remaining 3/4th share at the ratio of 1:2 i.e., 1 share for daughter and double share for the son. So this comes to 15/100th share each or together entitled for 45/100th share in suit schedule property. Hence I answered the point No.1 in affirmative and point No.2 in negative.

25. **Points No.3 & 4** : These points will be taken at one stretch for my consideration to avoid repetition of facts as they are inter related with each other.



26. The appellants have filed I.A.No.1 U/s 5 of limitation Act to condone delay of 08 years 08 months in filing the appeal as there was delay in obtaining the certified copies and as the appellant was unaware about the judgment and decree. The same was opposed by the other side. It is true that in support of this application no evidence is produced by the appellant. But in the given circumstances if the said delay is condoned no hardship would be caused to the other side. Hence I.A.No.I is allowed on costs of Rs.1,000/-.

27. Further the appellants have filed I.A.No.II U/O.41 R.5 of CPC to stay the operation and execution of the orders of the trial court. The same was opposed by the other side. But when the main matter is itself disposed off then the question of staying the orders of the trial court does not arise at all. Hence I.A.No.II is dismissed on without costs.



28. According to the defendant No.1/appellant the impugned order passed by the trial court in O.S.No.60/2008 is illegal, capricious and contrary to the provisions of law as no opportunity is given to him to prove his case. But it is pertinent to note that the defendant No.1 after filing vakalat before the trial court has not filed the written statement or adduced any evidence. The defendant No.1 has remained aloof as though he is not connected with the case. Even in the appeal he has not produced any documents apart from saying to set aside the judgment and decree of the trial court. According to the appellants the learned trial judge while appreciating the facts has not considered the documents and has come to wrong conclusion. On perusal of the entire orders and its findings is based on the correct observation of law and facts and it has taken into consideration of all the facts and circumstances and appreciated the facts in a proper and



right perspective and came to right conclusion. Therefore the findings of the trial court seems to be reasonable and acceptable. No illegality or infirmity found in the orders of the trial court. Hence interference by this court is not required. Under these circumstance the appellant is not successful in proving his case and I answered the **points No.3 and 4 in negative.**

29. **Point No.5:** In view of my above finding on the above points I proceed to pass the following:

ORDER

Appeal is dismissed.

The impugned judgment and decree passed by the trial court in O.S.No.60/2008 dt.06.01.2017 is hereby confirmed.

Parties are directed to bear their own costs.

The I.A.N0.I filed U/s 5 of Limitation Act is hereby allowed on costs of Rs.1,000/-.



The I.A.No.II filed U/O.41 R.5 of CPC is hereby dismissed on without costs.

Draw decree accordingly.

Transmit the trial court records with the copy of the appeal judgment.

(Dictated to the Stenographer Grade-I directly on computer, got typed by her, corrected, initialed and then pronounced by me in open court on 03.08.2026)

(SHILPA. K.S.)
VI Addl. District Judge, Tumakuru.