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IN THE COURT OF THE SENIOR CIVIL JUDGE, BHATKAL, AT BHATKAL.

PRESENT: KANT KURANE

B.Com.,LL.B.(Spl.)

SENIOR CIVIL JUDGE, BHATKAL.

REGULAR APPEAL NO. 02/2026.

DATED THIS 06th DAY OF MARCH-2026.

BETWEEN:

1. SMT. FATHIMA W/O: PETER OLIVER, DAUGHTER OF BASTHEW GOMES
AGED ABOUT: 65 YEARS, OCCU.: NOT MENTIONED,
R/O: KANNEKOPPA, MANEMANE, SIDDAPUR TALUK,
UTTAR KANNADA.

-----**APPELLANT.**

**[ORIGINAL APPLICANT/PROPOSED DEFENDANT No.45 IN I.A No. VI IN O.S
No.50/2022]**

**[BY SRI. RAJWARDHAN N.N & SRI. NAGESH G. GUDDIMANE ADVOCATES FOR
APPELLANT]**

AND:

1. MRS. RITA EVARIST GOMES
AGED ABOUT: 75 YEARS, OCCU.: NOT MENTIONED
R/O: CHANDRAHITLU , CHURCH ROAD,
MURDSHAWAR, BHATKAL.
2. MR. PASKAL EVARIST GOMES
AGED ABOUT: 48 YEARS, OCCU.: NOT MENTIONED
R/O: CHANDRAHITLU , CHURCH ROAD,
MURDSHAWAR, BHATKAL.

3. MR. FRANCIES EVARIST GOMES
AGED ABOUT: 44 YEARS, OCCU.: NOT MENTIONED
R/O: CHANDRAHITLU , CHURCH ROAD,
MURDSHAWAR, BHATKAL.
4. MRS. PRACILLA LUVES D'SOUZA GOMES
AGED ABOUT: 42 YEARS, OCCU.: NOT MENTIONED
R/O: GOKARNA, BANKIKODLU, KUMATA.
5. MR. TONY EVARIST GOMES
AGED ABOUT: 41`YEARS, OCCU.: NOT MENTIONED
R/O: CHANDRAHITLU , CHURCH ROAD,
MURDSHAWAR, BHATKAL.
6. MRS. ANTHIKA @ ANDRIK C/O: MODTHIN GOMES
AGED ABOUT: 63 YEARS, OCCU.: NOT MENTIONED
R/O: MAVINKURVE, KARIKAL, BHATKAL.
7. MRS. JUJEPIN W/O: JOHN GOMES
D/O: MODTHIN GOMES
AGED ABOUT: 40 YEARS, OCCU.: NOT MENTIONED
R/O: ROSHAN MOHALLA, KASARKODI.
8. NIRMALA D/O: MODTHIN GOMES
AGED ABOUT: 33 YEARS, OCCU.: NOT MENTIONED
R/O: MAVINKURVE, KARIKAL, BHATKAL.
9. MR. PASCAL S/O MODTHIN GOMES.
AGED ABOUT 42 YEARS,
R/O MAVINKURVE, KARIKAL. BHATKAL .
10. MR. ALBERT S/O MODTHIN GOMES,
AGED ABOUT 37 YEARS,
R/O MAVINKURVE KARIKAL. BHATKAL

11. SMT. APOLINA DIAS W/O ANTHON DIAS,
AGED ABOUT 53 YEARS. R/O TARIBAGIL,
MALKOD. HONNAVAR
12. SMT. ASHA W/O PRAKASH DIAS,
AGED ABOUT 45 YEARS.
R/O NATHAGERI. HONNAVAR.
13. SMT. SANTAN LOPES W/O FARASK LOPES,
AGED ABOUT 49 YEARS.
R/O AXOLLI, MUNDGOD. MUGWA, VTC,
HONNAVAR
14. SMT. MILAGRIN NORONHA W/O ALPRED,
AGED ABOUT 51 YEARS,
R/O. 189 HOSAD, RANGINMOTE, HONNAVAR
15. SRI. ANDREG S/O AANAND ANORT,
AGED ABOUT 47 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MAVALLI, MURDESHWAR. BHATKAL.
16. SMT. SUNITA RODRIGUES,
AGED ABOUT 40 YEARS,
R/O H.NO.285 C-3, KALOVADDOM,
COVELOSSIM, SOUTH GOA,
NOW AT CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL.
17. SRI. ESPERANCE ROLT,
AGED ABOUT 58 YEARS.
R/O H.NO.719/A, BELA CASA GREEN HILLSN,
CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR. BHATKAL.

18. SRI. MADTA B. GOMES,
AGED ABOUT 44 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL TALUK
19. SMT. MARY D'SOUZA,
AGED ABOUT 63 YEARS.
R/O H.NO.127 B, VAILAN KANNI NIVASA,
KOLAVERY VILLAGE, NEAR ST. ROSE,
GROTTO SANTACUZ E,
MUMBAI. KALIAN 400098.
20. SRI. JOHN L. GOMES,
AGED ABOUT 63 YEARS,
R/O MAVINKURVE, KARIKAL, BHATKAL
21. SRI. SANTHAN RODRIQUES W/O BALTIDAR,
AGED ABOUT 57 YEARS,
R/O CHURCH ROAD, TALAMAKLAI,
MANKI, HONNAVAR
22. SMT. CHRISTHIN D'SOUZA
W/O RUZAR D'SOUZA,
AGED ABOUT 70 YEARS,
R/O AREANGADI, HONNAVAR
23. SMT. TERESA TELLIS W/O SAVADOX TELLIS,
AGED ABOUT 58 YEARS.
R/O KARKI NAKA, HONNAVAR
24. SRI. FRANCIS L. GOMES,
AGED ABOUT 60 YEARS.
R/O CHANDRAHITLU,
CHURCH ROAD. MURDESHWAR, BHATKAL

25. SRI. BASTAV S. GOMES,
AGED ABOUT 68 YEARS.
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHARKAL
26. SMT. MARRY W/O. MIRANDA,
AGED ABOUT 67 YEARS,
R/O BEROLLI, NAGARA, HONNAVAR
27. SRI. VIJAY COSTA GOMES,
AGED ABOUT 33 YEARS,
R/O CHANDRAHITLU. CHURCH ROAD,
MURDESHWAR. BHATKAL.
28. SRI. VILFORD COSTA GOMES,
AGED ABOUT 31 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL
29. SRI. VITAN COSTA GOMES,
AGED ABOUT 28 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL.
30. SRI. RICHEL COSTA GOMES,
AGED ABOUT 28 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL
31. SRI. PERPET SALVADAR LOUIS,
AGED ABOUT 73 YEARS,
R/O MATTADHITLU, DIVGIRI, BHATKAL
32. SMT. KOSAV W/O ALIS FERNANDES,
AGED ABOUT 68 YEARS,
R/O MAGODU, KODANI, HONNAVAR

33. MRS. MERRY FARASK D'SOUZA,
AGED ABOUT 66 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL
34. DUMGI PASKAL GOMES,
AGED ABOUT 63 YEARS.
R/O CHANDRAHITLU. CHURCH ROAD,
MURDESHWAR, BHATKAL.
35. SRI. JIMMY PASCAL GOMES,
AGED ABOUT 38 YEARS,
R/O CHANDRAHITLU. CHURCH ROAD.,
MURDESHWAR, BHATKAL
36. SRI. SARITA S. LEEMA,
AGED ABOUT 40 YEARS,
R/O OLD FISH MARKET, KUMTA
37. SRI. SILVAN S/O PASCAL,
AGED ABOUT 34 YEARS,
R/O CHANDRAHITLU, CHURCH ROAD,
MURDESHWAR, BHATKAL.
38. SRI. ANDRES MANVEL MANDOZ,
AGED ABOUT 73 YEARS,
R/O MAVINAKURVA, HONNAVAR
39. MERRY SANTA TELIS,
AGED ABOUT 70 YEARS,
R/O NEAR BUS STAND,
MURDESHWAR. BHATKAL.
40. SMT. RESHMA W/O RAGHAVENDRA POOJARI,
AGED ABOUT 43 YEARS,
R/O NEAR BUS STAND,
MURDESHWAR, BHATKAL

41. SRI. NAVEENA S/O SANTA TELIS,
AGED ABOUT 41 YEARS,
R/O NEAR BUS STAND,
MURDESHWAR, BHATKAL.
42. SMT. ROMITA W/O NOOYEL JOSHEPH.
AGED ABOUT 38 YEARS,
R/O NEAR BUS STAND,
MURDESHWAR. BHATKAL.
43. SILVIYA D/O SANTA TELIS,
AGED ABOUT 36 YEARS,
R/O NEAR BUS STAND. MURDESHWAR,
BHATKAL
44. SELITA D/O SANTA TELIS,
AGED ABOUT 29 YEARS,
R/O NEAR BUS STAND,
MURDESHWAR, BHARKAL
45. SRI. PASKAL S/O BASTHEW GOMES,
AGED ABOUT 61 YEARS, R/O 3-13A,
AMBADABETTU HOUSE, SHIVALLI VILLAGE,
MOODUPERAMPALLI, KUNJIBETTU, UDUPI
46. SRI. FRANCIS BASTHEW GOMES,
AGED ABOUT 47 YEARS,
R/O KANNEKOPPA, MANMANE, SIDDAPUR
47. SRI. ANTHONY S/O BASTHEW GOMES,
AGED ABOUT 50 YEARS,
R/O KANNEKOPPA, MANMANE, SIDDAPUR
48. SRI. PAVALU S/O BASTHEW GOMES,
AGED ABOUT 57 YEARS,
R/O KANNEKOPPA, MANMANE, SIDDAPUR.

49. SRI. PHILIF S/O BASTHEW GOMES,
AGED ABOUT 58 YEARS,
R/O KANNEKOPPA, MANMANE, SIDDAPUR.
50. SRI. SANTHYAKA S/O BASTHEW GOMES,
AGED ABOUT 62 YEARS,
R/O HAKKALAGERI/KANNEKOPPA,
MANMANE, SIDDAPUR.
51. SMT. MARRY W/O JUJE D'SOUZA,
AGED ABOUT 65 YEARS,
R/O APPSARAKONDA, KASARGOD, HONNAVAR.
52. SMT. RENUKA @ IRI W/O BALKRISHNA,
AGED ABOUT 54 YEARS, R/O 31" WARD,
BHAGAT SINGH NAGAR, HOSAPETTE, BALLARI.

-----**RESPONDENTS.**

[ORIGINAL PLAINTIFF NO.1 AND DEFENDANTS O. S. No. 50/2022]

DATE OF APPEAL FILED.	09/02/2026.
NATURE OF THE APPEAL	APPEAL AGAINST THE IMPUGNED ORDER DATED: 24/11/2026, SUIT DISMISSED AS NOT PRESSED IN O.S No. 50/2022 ON THE FILE OF ADDL. CIVIL JUDGE, BHATKAL.
DATE OF ORDER	06/03/2026.
RESULT OF THE APPEAL	AS PER MY FINAL ORDER.
DURATION FOR DISPOSAL	YEAR, MONTHS, DAYS, -00- -00- -25-

Sd/-

KANT KURANE

SENIOR CIVIL JUDGE, BHATKAL

ORDER ON MAINTAINABILITY OF APPEAL

The appellant is before this Court by filing Regular Appeal Under Order XLIII Rule 1 and 2 R/w Sec. 96 of CPC., challenging the legality and correctness of impugned order dated: 24/11/2026, **dismissing the suit of plaintiffs "as not pressed" without considering the IA No. VI filed by appellant Under Order I Rule 10 R/w Sec. 151 of CPC,** in O S No. 50/2022, on the file of Additional Civil Judge, Bhatkal.

2. In the present Appeal, the appellant was the proposed defendant No.45/applicant in view of IA No. VI filed under Order I Rule 10 R/w Sec. 151 of CPC, in O.S No. 50/2022 on the file of Addl. Civil Judge, Bhatkal. Hence, for the purpose of easy understanding and for more convenience, the ranks of parties are referred to as they were referred to in the original suit No. 50/2022.

3. The brief factual matrix leading to the case is under:

The respondent No. 45 to 50 were plaintiffs in OS No.45/2022 on the file of Additional Civil Judge, Bhatkal and they have filed suit for the relief of declaration and partition against present Appellant and against the other respondents in respect of suit schedule properties.

4. The respondent No.45 to 50, who are plaintiffs in OS No. 50/2022 have sought a declaration, declaring that oral partition dated 12/2/1993 in MR No.A-4248 is not binding upon the share of the respondent No.45 to 50 and

also sought for declaration, to declare that two Gift Deeds dated 18/12/2003 pertaining to suit schedule properties are not binding upon the share of the respondent No.45 to 50/ plaintiffs.

5. On perusal of order sheet in OS NO. 50/2022, it is seen that defendant No.31, 33 and defendant No.39 to 41, who are respondent No.31, 33 and 39 to 41 of this Appeal have appeared through their Counsel and that of defendant No. 1 to 30, 32, 34 to 38 are placed ex-parte.

6. Further , on perusal of records placed by the Appellant, it is seen that during the pendency of the suit, the Appellant/Applicant/proposed defendant No.45 has filed I.A.No.VI U/O I Rule 10(2) R/W Sec. 151 of CPC, seeking relief to implead her as proposed defendant No.45.

7. Further, on perusal of records placed by the Appellant, it is noticed that after filing the I.A.No.VI by the appellant, the present plaintiffs/respondent No.45 to 50 have filed not pressed memo on 24/11/2025, requesting to the Court to dismiss the suit as not pressed in view of amicable settlement of suit between the plaintiffs and defendants. Furthermore, on perusal of order sheet in OS NO.50/2022 on the file of Addl. Civil Judge, Bhatkal, it indicates that after the hearing the I.A.No.VI, the Trial Court has dismissed the suit of the plaintiffs as "not pressed", observing that when plaintiffs have filed not pressed memo to close their suit, then the question of considering the I.A.No.VI, does not arise at all and the proceedings of suit was closed.

8. Aggrieving the order passed by the Trial Court in its Order dated 1/12/2025, the present appellant/proposed defendant No.45 in OS No.50/2022 has filed this appeal amongst the following grounds:

1. The impugned order passed by the Trial Court is perverse and violated the provision of under Order I Rule 10 of CPC as the appellant is necessary and proper party with having interest in the suit schedule property. Hence, the Trial Court has no power to permit the plaintiffs to withdraw the suit.

2. The dismissed via not pressed memo and order XXIII Rule 1 of CPC is illegal as it binds only the consenting parties. The exparte settlement executed without noticed to the appellant cannot be extinguished the vested rights under the provision of Indian Succession Act, which the daughters are entitled equal share in the property.

3. The Order suffers from non application of minds and violation of principles of audi-alterama partem as the appellant's application were on recalled and denied in considering at all.

4. That any alleged out of Court settlement entered by the plaintiffs/ respondent No.45 to 50 behind the back of the appellant is not binding. The Trial Court has committed grave error in endorsing such settlement in directly by dismissing the suit.

5. The Trial Court has improperly exercised jurisdiction with material irregularity by not adjudicating the impleading application first and permitting the plaintiffs to repeat substantive rights through procedural abuse.

6. It is submitted that the Trial Court has not noticed the judicial findings over the question of law raised by the appellant. It is submitted that the Trial Court has blind towards the innocent and uneducated appellant in discourage her honest efforts in proving the case, thereby, called serious injustice by rejecting I.A.No.VI.

7. The impugned order is non-speaking and mechanical order passed without reasons, discussion of objections or application of judicial mind.

8. The order of Trial Court is the result of weak understanding and non-application of its mind to the law of the land and to the issues involved in this case.

9. The order passed by the Trial Court is perverse, capricious, unsustainable and illegal and same is liable to be set aside.

10. The Trial Court has failed to understand the principles involved in the case. On such other grounds that are argued at the time of main submission. Hence, prays to allow the appeal by setting aside the impugned order "closed as not pressed" and prays to issue

direction to the Trial Court to restore the suit and issue the direction to the Trial Court to first adjudicate the impeading the application filed by the appellant on merit and declare that any alleged settlement entered into without the appellant consent is not binding on her rights.

9. On institution of appeal by the appellant, this Court has registered the appeal in the aforesaid number and on the first hearing of the appeal, this Court has raised the question in respect of maintainability of appeal filed Under Order XLIII Rule 1 R/W Section 96 of CPC.

10. Heard arguments of learned Counsel for the appellant on maintainability of appeal and perused entire material records placed before the Court.

11. On close reading of material records available on hand, the points would arise for consideration are as under:

P O I N T S:

Point NO.1: Whether Appellant proves that the “dismissal of suit as not pressed” is come under the definition of “decree” and hence, appeal is maintainable Under Order XLIII [XLI] Rule 1 and 2 R/W Sec. 96 of CPC ?

Point NO.2: What Order?

12. On close reading of entire material records, my findings to the above points are:

FINDINGS:

POINT No.1 : **In the Negative.**

POINT No.2 : As per my final order for the following:

REASONS:

13. POINT NO.1: The present appeal is under Order XLIII Rule 1 of CPC., which is required to be file under correct proviso under Order XLI Rule 1 and 2 R/w U/sec. 96 of CPC.

14. This present appeal is filed by the appellant, challenging the legality and correctness of impugned order dismissal of suit as “not pressed” by the Trial Court.

15. The appellant has preferred this Appeal on several grounds, stating that the Trial Court has committed grave error while permitting the plaintiffs to get dismissal of their suit as “not pressed”. Further, it is stated that the appellant has moved an application before the Trial Court Under Order I Rule 10 of CPC seeking relief to implead her as defendant No.45. But, the Trial Court without hearing and without application of mind has permitted the plaintiffs to get their suit dismissed as not pressed.

16. Admittedly, the appellant has preferred this appeal mainly on the ground that he has aggrieved the order passed by the Trial Court, dismissing the suit as “not pressed”. Hence, the question before the Court is only whether

dismissal of suit as “not pressed” is come under the definition of ‘decree’ defined U/sec. 2(2) of CPC and the question before the Court is whether appellant has right to file appeal U/sec. 96 of CPC as suit dismissed for not pressed. So, before touching to the merits of the case, it is better to know the definition of decree and proviso under Sec. 96 of CPC. For easy understanding the definition of decree, and proviso Under Sec. 96 of CPC is extracted below:

Sec. 2(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 3* section 144, but shall not include—**

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Section 96 of CPC Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed 2[ten thousand rupees.]

17. On plain reading of Sec. 2(2) of CPC decree means it is a formal expression of an adjudication which so far as regards the Court expressing it, exclusively determined the rights of the party with regard to all or any of the matters controversy in the suit and may be either preliminary or finally. It shall be deemed to include the rejection of plaint and determination of any question within Sec. 144 but shall not include, any adjudication from which an appeal lies as an appeal from an order or any order for dismissal for default. To constitute the decree they must be formal expression of an adjudication and there must be determined the rights of the party either preliminary or finally.

18. Furthermore, to constitute definition of decree, there must be formally recorded in writing in the manner prescribed by law and there must be a judicial determination of the matter by the Court and the decision must arise from a suit instituted by the presentation of plaint and there must determine the substantive rights of the parties and the decision must final and conclusive regarding the Court passes it

19. On plain reading of Sec. 96 of CPC, it is clear that an appeal shall lie from every decree passed by any Court exercising original jurisdiction of the Court authorized to hear the appeals from decision of such Court. An appeal may lie any from an original decree passed *ex parte* and no appeal shall lie from decree passed by the Court with the consent of the party and no appeal shall lie except on question of law from a decree in any suit of the nature cognizable by the Courts of Small Causes when amounts or value of the subject matter of the original suit does not exceeds Rs.10,000/-. On close reading of above provision, it is crystal clear that the appeal shall be preferred only from the original decree.

20. On conjointly reading of Sec.2(2) and Sec. 96 of CPC, it is noticed that the parties are permitted to file the appeal only aggrieving the decree of the Court.

21. The present appeal is filed by the appellant U/sec. 96 of CPC aggrieving the impugned order, dismissing the suit as "not pressed". So, the dismissal of suit as "not pressed" by the Court is not come under the preview

and definition U/sec. 2(2) of CPC. Because there is no formal expression of the Trial Court and the rights of the parties are not determined either preliminary or finally. So, when the dismissal of suit as "not pressed" is not come under the preview of Sec. 2(2) of CPC, then the appellant has no right to prefer an appeal U/sec. 96 of CPC.

22. On perusal of records placed by the appellant, it is seen that the OS 50/2022 was filed by the plaintiffs against the defendants for the relief of partition and it is noticed that during the pendency of suit, the appellant has filed application Under Order I Rule 10 of CPC, seeking relief to implead her as defendant No.45 as she is having interest and share in the suit schedule property. But, when the appellant has filed application U/O I Rule 10 of CPC, then the plaintiffs of the above suit have filed memo before the Trial Court, requesting to dismiss their suit as "not pressed" as the matter is settled out of the Court.

23. It is settled principle of law that in every partition suit, every plaintiff is defendant and every defendants are plaintiffs. On perusal of order of Trial Court, it is seen that the Trial Court has dismissed the suit as "not pressed" on the basis of memo filed by the plaintiffs and it is noticed that Trial Court has not considered the application filed by the appellant and directly dismissed the suit as "not pressed". So, under such circumstances, the appellant has right to exhaust remedy by following law and procedure.

24. In addition to the oral arguments, the learned Counsel for the appellant has placed his reliance the judgment **of Hon'ble High Court of Karnataka in its Civil Rev. Petition 144/2025 held between Smt. Sheshmma W/o. Late. K. Nagaraj Rao and others V/s. Sri. Ramesh Kumar late. P. Ramachandra Rao.** With due respect, I have carefully gone through the above decision. On close reading of above decision, it is seen that the said judgment of Hon'ble High Court is not applicable to this appeal as subject matter of this appeal is differs to the judgment of the Hon'ble High Court of Karnataka. So, the above said decision is not helpful to the appellant.

25. In my ultimate analysis, dismissal of suit as "not pressed" is not decree and it is not come under the definition of decree defined U/sec. 2(2) of CPC. So, when the dismissal of suit as "not pressed" is not come under the definition of decree, then the appellant has no right to prefer appeal before this Court U/O XLI Rule 1 and 2 R/W sec. 96 of CPC. Hence, the appeal filed by the appellant is not maintainable. Therefore, I answer Point No.1 **in the Negative.**

26. POINT NO.2: In view of the reasons assigned supra, I proceed to pass the following:

ORDER

The appeal filed Under Order XLIII Rule 1, which is required to file an appeal Under Order XLI Rule 1 and 2 R/w Sec. 96 of CPC filed by the appellant/ proposed

defendant No.45 in O.S No. 50/2022 on the file of Addl. Civil Judge, Bhatkal is hereby DISMISSED with costs as the appeal is not maintainable.

The liberty is left to the appellant to exhaust the proper remedy by following due procedure of law under proper provisions.

The I.As pending, if any, are stands disposed off.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 6th day of March -2026)

