



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO.418 OF 2023 (DEC/INJ)

BETWEEN:

1. SHRI.M.SHASHIKUMAR
S/O SHRI MUNI REDDY
AGED ABOUT 39 YEARS
2. SMT.NALINI
W/O SHRI M.SHASHIKUMAR
AGED ABOUT 35 YEARS

BOTH ARE R/O NO.196
8TH CROSS, BEGUR ROAD
HONGASANDRA
BENGALURU - 560068

...APPELLANTS

(BY SRI.PRADEEP H.S., ADVOCATE FOR
SRI.SHANMUKHAPPA, ADVOCATE)

AND:

SRI.K.JAGANNATHA
SINCE DECEASED BY HIS LRS

1. SMT.NAGARATHNA S.J
W/O LATE SHRI K.JAGANNATHA
PRESENT AGED ABOUT 68 YEARS





2. SHRI.GUNA NANJAN S J
S/O LATE SHRI K.JAGANNATHA
PRESENT AGED ABOUT 51 YEARS

BOTH ARE RESIDING AT NO.358
19TH F MAIN, 10TH 'A' CROSS
UDAYA KUMAR PARK
RAJAJINAGAR, 1ST 'N' BLOCK
BENGALURU - 560010
3. SHRI.CHITTARANJAN
S/O LATE SHRI.K.JAGANNATHA
PRESENT AGED ABOUT 48 YEARS
R/O NO.008, "SAHANA APARTMENTS",
SSSIHMS QTRS, EPIP AREA
WHITEFIELD
BENGALURU-560066
4. SHRI.MANORANJAN.S.J
S/O LATE SHRI K.JAGANNATHA
PRESENT AGED ABOUT 47 YEARS
R/O NO.358, 19TH 'F' MAIN
10TH 'A' CROSS
UDAY KUMAR PARK
RAJAJINAGAR, 1ST 'N' BLOCK
BENGALURU-560010
5. SMT.S.J.SAI PRABHA
D/O LATE SHRI K.JAGANNATHA
PRESENT AGED ABOUT 43 YEARS
R/O NO.67, 4TH MAIN, 1ST CROSS
OPP: BTM WATER TANK
MARUTHI HBCS LAYOUT
BTM 1ST STAGE
BENGALURU-560029
6. SHRI.SAI RANJAN.S.J
S/O LATE SHRI K.JAGANNATHA



PRESENT AGED ABOUT 37 YEARS
R/O NO.358, 19TH 'F' MAIN
10TH 'A' CROSS
UDAYAKUMAR PARK
RAJAJINAGAR, 1ST 'N' BLOCK
BENGALURU-560010

7. SHRI.B.M.KRISHNA REDDY
S/O LATE SHRI.MUNISWAMAPPA
R/O NO.79, NEW THIPPASANDRA
BEML MAIN ROAD
BENGALURU-560008
8. SHRI.L.GOVINDRAJ
S/O LAXMANA GOWDA
PRESENT AGED ABOUT 50 YEARS
R/O NO.10/1, AMBALIPURA VILLAGE
BELLANDUR GATE,
SARJAPURA MAIN ROAD
BENGALURU-560034

...RESPONDENTS

(BY SRI.NANJUNDA SWAMY N, ADVOCATE FOR R.1 TO R.6;
SRI.KIRAN KUMAR H, ADVOCATE FOR R.8;
APPEAL AGAINST R.7 IS ABATED
VIDE ORDER DATED 23.08.2025)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST
THE JUDGMENT AND DECREE DATED 15.10.2015 PASSED IN
O.S.NO.766/2004 ON THE FILE OF THE XIV ADDITIONAL CITY CIVIL
JUDGE, BENGALURU DECREETING THE SUIT FOR DECLARATION,
MANDATORY INJUNCTION AND POSSESSION AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM



ORAL JUDGMENT

The appellants, who are *pendente lite* purchasers, have preferred the present appeal assailing the judgment and decree dated 15.10.2015 passed in O.S.No.766/2004 on the file of the learned XIV Additional City Civil Judge at Bengaluru (CCH-28).

2. A memo dated 24.02.2026 is filed along with a certified copy of the order passed in Misc. No.363/2023 by the XIV Additional City Civil and Sessions Judge, Bengaluru (CCH-28). On perusal of the said order, it is evident that the decree impugned in the present appeal has been set aside by the Trial Court. The Trial Court, having entertained a petition under Order IX Rule 13 of the Code of Civil Procedure, 1908, has allowed the same and consequently recalled the *ex parte* decree.

3. In view of the setting aside of the *ex-parte* decree, the very foundation of the present appeal no longer subsists. The decree under challenge having been



annulled by the competent Court of first instance , the appeal pending before this Court does not survive for consideration and has been rendered infructuous.

4. The memo filed by the learned counsel for the appellants is accordingly taken on record.

5. The submission made on behalf of the plaintiff that the order passed in the miscellaneous petition under Order IX Rule 13 CPC is itself under challenge in a separate proceeding cannot detain this Court in the present appeal. So long as the order setting aside the *ex-parte* decree remains in force, the decree impugned herein ceases to exist in the eye of law.

6. Even assuming that the *ex-parte* decree has been *set-aside* at the instance of one of the co-defendants by invoking Order IX Rule 13 of the Code of Civil Procedure, 1908, the legal consequence remains the same. Once the Trial Court allows a petition under Order IX Rule 13 CPC and recalls the *ex-parte* judgment and decree, the decree



impugned in the present appeal ceases to exist in the eye of law.

7. An appeal under Section 96 of CPC is maintainable only against a subsisting decree. When the very decree under challenge has been set aside by the Court which passed it, there remains no operative adjudication capable of being examined in appellate jurisdiction. The appeal cannot survive in vacuum.

8. Therefore, notwithstanding the fact that the application under Order IX Rule 13 CPC was filed by another defendant, the setting aside of the *ex-parte* judgment and decree obliterates the foundation of the present appeal. Consequently, the appeal does not survive for consideration and is rendered infructuous.

Accordingly, the appeal stands dismissed as having become infructuous.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**