IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 813 OF 2018 (PAR/INJ)

BETWEEN:

1. A PUSHPA RAJ
DECEASED BY HIS LRS

1A) MRS VIOLTE ESTHER,
AGED ABOUT 73 YEARS,
WIDOW OF THE DECEASED PUSHPA RAJ

1B) MRS. SHYLA KUMARI RATHNAM,
AGED ABOUT 50 YEARS,
D/O LATE PUSPA RAJ,

1C) MR.RAJ KUMAR PUSHPA RAJ,
AGED ABOUT 48 YEARS,
S/O LATE PUSHPA RAJ,

1D) MR DAVE KUMAR PUSHPA RAJ,
AGED ABOUT 46 YEARS,
S/O LATE PUSHPA RAJ, '
1A TO 1D ARE RESIDING AT,
NO.33, KENCHAPPA ROAD,
1ST CROSS, FRAZER TOWN,
BENGALURU - 560 005.

2. A. BHAKTHI NATHEN
DECEASED BY HIS LRS

2A) MRS A LOURDUMARY,
AGED ABOUT 70 YEARS,
WIDOW OF LATE BHAKTHI NATHEN,

2B) B RAJESH,
AGED ABOUT 37 YEARS,
S/O LATE BHAKTHI NATHEN,

2C) B DINESH,
AGED ABOUT 35 YEARS,
S/O LATE BHAKTHI NATHEN,
ALL ARE R/AT NO. 33/1, KENCHAPPA ROAD,
1ST CROSS, BENGALURU - 560 005.
(CAUSE TITLE AMENDED AS PER
ORDER DATED 15.11.2022)

…APPELLANTS

(BY SRI BONNY KARYAPPA, ADVOCATE FOR
APPELLANTS NO.A1 (A & D) AND A2 (A, B & C))

AND:

1. SMT A MARIA ARUL SELVI,
AGED ABOUT 60K YEARS,
D/O. ANTHONY CRUZ,
R/AT. NO.8, KENCHAPPA ROAD CROSS,
BENGALURU - 560005.

2. SMT. MARIA SEELA UBAGARI,
AGED ABOUT 57 YEARS,
D/O. ANTHONY CRUZ,
C/O. SR. S.M. ZIAULLA,
AL. AMEEN CLINIC,
RAHMATHANAGAR, KOLAR - 563 101.

3. A. NIRMALA MARY,
AGED ABOUT 55 YEARS,
D/O. ANTHONY CRUZ,
R/AT. NO.24,
GANAPATHIPURAM MAIN ROAD,
RADHNAGAR, CHROMEPET,
CHENNAI - 600044.

4. SRI. A. ARUL SAGAYA RAJ
AGED ABOUT 53 YEARS,

S/O. ANTHONY CRUZ,
R/AT. NO.143, RADANAGAR,
MAIN ROAD, CHROMEPET,
CHENNAI - 600044.

5. SMT. JASINTHA,
AGED ABOUT 38 YEARS,
W/O. LATE. MARIA SELVAN,
(WHO IS THE DAUGHTER IN
LAW OF THE DECEASED ANTHONY CRUZ)
R/AT. NO.8, KENCHAPPA,
ROAD CROSS, BENGALURU - 560005.

6. MISS. A . MARY JASINTHA LILLY
AGED ABOUT 45 YEARS,
D/O. ANTHONY CRUZ,
R/AT. C/O. G. RADAHKRISHNAN,
NO.167, KANARAJ NAGAR MAIN ROAD,
SEEPLANATHAN POST, NEYVELI - 607 802.

7. SRI A. JERAD MARY JAYANTH
AGED ABOUT 43 YEARS,
S/O. ANTHONY CRUZ,
R/AT. NO.58, RAMASWAMY LAYOUT,
NEW BIBENAHALLI,
5TH CROSS, BENGALURU - 560038.

MISS. A. PAULINE
(DECEASED) BY HER LR

8. SMT. MARIA ARCHANA,
AGED ABOUT 41 YEARS,
D/O. LATE. PAULINE AND SRI. MARIA SUSAI,
R/AT. NO.12, 2ND CROSS, 3RD STAGE,
PRAKRUTHI TOWNSHIP, BABUSAPLAYA,
BENGALURU - 560043.
(AMENDMENT CARRIED OUT AS PER
COURT ORDER DATED 29.01.2026)

9. MISS. JAYASHEELA

AGED ABOUT 70 YEARS,
D/O. SRI. P.M. ARUL DAS,
R/AT. NO.14, ARVIND NAGAR,
YADAVA LAYOUT, UDAYANAGAR,
NEHRU ROAD, KAMMANAHALLI,
BENGALURU - 560084.

…RESPONDENTS

(BY SRI RAJESH MAHALE, SENIOR ADVOCATE A/W
SRI ABDUL MAJID, ADVOCATE FOR R1 TO R7 AND R9,
V/O/DT 01.08.2025 APPEAL AGAINST IN R/O R8
IS DISMISSED)

THIS RFA IS FILED UNDER SEC.96 R/W.ORDER 41 RULE 1 AND 2 OF CPC.,AGAISNT THE JUDGMENT AND DECREE DATED 06.02.2018 PASSED IN OS NO.15768/2005 ON THE FILE OF THE IV ADDL.CITY CIVIL AND SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU DECREEING THE SUIT FOR PARTITION AND PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

Learned counsel for the appellants is permitted to carry out necessary amendment in the cause title.

2. This appeal is against the decree for declaration and partition. Defendants No.1 and 2 are in appeal before this Court challenging the judgment and decree in O.S.No.15768/ 2005 on the file of the IV Additional City Civil Judge, Mayo

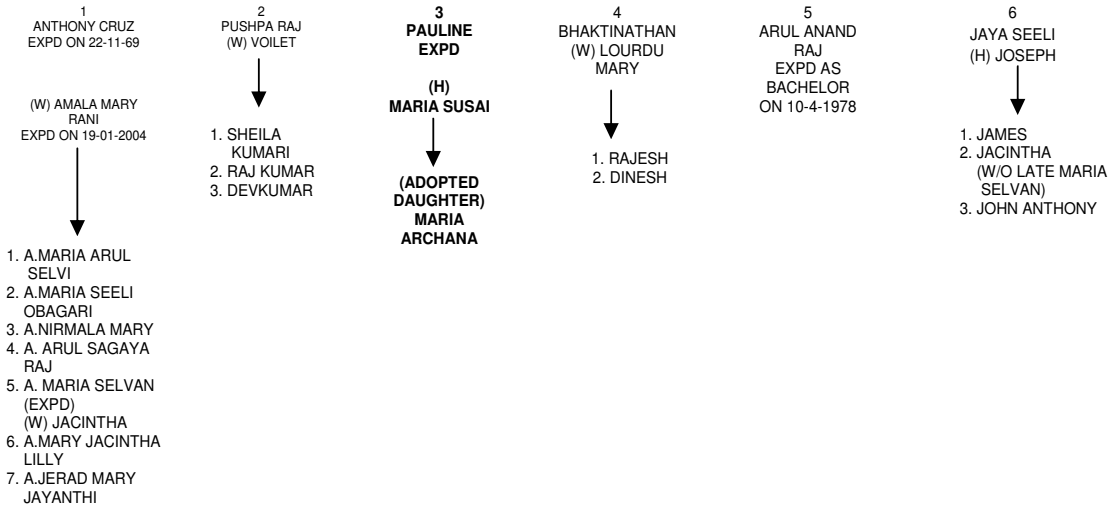
Hall Unit, Bengaluru.

3. The admitted relationship of the parties is as under:

GENEALOGY RECORDS OR FAMILY TREE

P.M. ARUL DOSS - EXPD ON 25-01-1974

(WIFE - RAJAMANI AMMAL - EXPD ON 23-11-1992



4. One P.M. Arul Doss was the propositus and he died on 25.01.1974. His wife Rajamani Ammal died on 23.11.1992. The couple had 4 sons namely; Anthony Cruz, Pushpa Raj, Bhaktinathan, Arul Anand Raj and two daughters namely Pauline and Jaya Seeli.

5. Among the sons of propositus P.M. Arul Doss,

Anthony Cruz predeceased P.M. Arul Doss and died on 22.11.1969.

6. The propositus P.M.Arul Doss executed a Will dated 26.09.1961 bequeathing his properties in favour of his four sons and also two daughters. The bequest in respect of four sons was in respect of Item No.1 property and the bequest in favour of the two daughters is in respect of Item No.2 property.

7. The suit is filed for partition, separate possession and permanent injunction by the children of elder son Anthony Cruz against the remaining children of P.M.Arul Doss. The suit is filed claiming share in respect of all the properties. During the course of evidence, the plaintiffs made a statement that their claim is only confined to Item No.1 property to the extent of share held by Arul Anand Raj, who died issueless and who was one of the joint beneficiaries under the Will executed by P.M.Arul Doss.

8. As far as Item No.2 is concerned, the plaintiffs

contend that the alleged release deed dated 07.07.1980 by their mother in favour of the defendants No.3 & 4/daughters of propositus is not binding on the share of the plaintiffs. The suit is decreed by taking note of the restricted prayer made by the plaintiffs during the course of evidence.

9. Learned counsel appearing for the defendants/ appellants would submit that, the suit could not have been decreed by holding that the alleged Will is not proved. It is his submission that nobody disputed the execution of the Will and the Court could not have held that the Will is not proved.

10. It is further submitted that the Trial Court should have specified that, the decree is passed only in respect of Item No.1 property to the extent of share of Arul Anand Raj who had 1/4th undivided share in the suit schedule property and without specifying this the Court could not have granted a decree in respect of Item No.1 property.

11. As for as Item No.2 property is concerned, learned counsel for the defendants/appellants fairly submits that, if

the decree confers any benefit to the defendants, the defendants are ready to accept the said decree in respect of Item No.2 property.

12. Learned Senior Counsel appearing for the contesting respondents would submit that, though the suit is filed claiming share in respect of entire properties covered under the aforementioned Will of P.M. Arul Doss, later, the plaintiffs have confined their claim only to the share held by Arul Anand Raj, who died issueless and the plaintiffs and remaining defendants would be the sharers under Section 47 of Indian Succession Act, 1925.

13. As far as Item No.2 property is concerned, it is urged by the learned Senior counsel that the beneficiary under the alleged release deed dated 07.07.1980 has admitted that remaining members of the family are also beneficiaries and are also entitled to a share in the property. Thus, he would contend that the decree does not require any modification.

14. The Court has considered the contentions raised at the Bar and perused the records.

15. The following points arise for consideration:

(i) *Whether the Trial Court is justified in granting the decree for declaration and partition by awarding 1/20th share to the plaintiffs in Item No.1 property?*

(ii) *Whether the Trial Court is justified in holding that the release deed dated 07.07.1980 executed by the wife of P.M.Arul Doss, the propositus is not binding on the plaintiffs?*

16. It is noticed that, while the suit is filed, the plaintiffs sought a share in the entire Item No.1 property and when the evidence was led, the plaintiffs restricted their claim to share in the Item No.1 property held by deceased Arul Anand Raj, who died issueless.

17. It is relevant to notice that both the parties to the suit are claiming right over the property under the Will executed by propositus P.M. Arul Doss. Thus, there is no

dispute relating to the execution of the Will. This being the position, the Trial Court could not have held that the Will is not proved.

18. It is to be noticed that whether the Will was executed or not was not the issue before the Trial Court at all. Both the parties claimed under the Will. Hence, to that extent the finding is set aside.

19. As far as the decree granting a 1/20th share in the Item No.1 property is concerned, it is to be noticed that deceased P.M. Arul Anand Raj had only 1/4th undivided share in Item No. 1 property. Since he is survived by three brothers and two sisters, each brother and sister will have 1/20th share. The plaintiffs represent the branch of one of the sons namely Antony Cruz. Thus, the decree granting a 1/20th share in *_Item No.1_* property is in accordance with law.

20. It is further clarified that remaining shares have to be divided equally among the branches of Pushpa Raj, Pauline, Bhaktinathan and Jaya Seeli.

*Page No.10 is retyped and replaced vide chamber order dated 16.04.2026.

21. As far as decree in respect of Item No.2 property is concerned, no further clarification is required. Hence, the following:

ORDER

(i) The appeal is ***dismissed*** with aforementioned clarification.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

CHS
List No.: 1 Sl No.: 28