



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

REGULAR FIRST APPEAL NO. 1055 OF 2021 (PAR)

BETWEEN:

SMT. LEELAVATHI,
D/O LATE KALE GOWDA,
W/O LATE CHANDRASHEKAR,
AGED ABOUT 54 YEARS,
R/AT BASAVANAHALLI VILLAGE,
RAMANATHPURA HOBLI, ARKALAGUD
TALUK, HASSAN DISTRICT-573 102.

...APPELLANT

(BY SMT. KAVYASHREE K, ADVOCATE FOR
SRI T SESHAGIRI RAO, ADVOCATE)

AND:

1. SRI B T KRISHNEGOWDA,
S/O LATE B.T.THIMMEGOWDA,
AGED ABOUT 77 YEARS.

1(a) RADHAMANI,
AGED ABOUT 72 YEARS,
W/O B.T KRISHNEGOWDA,
BASVANAHALLI VILLAGE,
ARAKALGUDU TALUK,
RAMNATHPURA HOBLI,
HASSAN DISTRICT.

1(b) ASHA JYOTHI BASAVANAHALLI,
AGED ABOUT 55 YEARS,





D/O B.T KRISHNEGOWDA,
13525, VICTORY BOULEVARD APARTMENT,
VAN NUYS, SAN FRANCISCO,
CA-91401, USA.

- 1(c) USHA B.K,
AGED ABOUT 46 YEARS,
W/O ABHISHEK ASHOK KUMAR NARASIMHAIAH,
DOOR NO. 407, 4TH FLOOR, 4TH CROSS,
MANITO COMMANDERS MARVEL APARTMENT,
DUO MARVEL LAYOUT, ANANTPURA GATE,
BANGALORE-560 064.
- 1(d) SRINIVAS B.K,
AGED ABOUT 49 YEARS,
S/O LATE B.T. KRISHNEGOWDA,
#MIG 252, 6TH B MAIN ROAD,
B SECTOR, YELAHANKA NEW TOWN,
BANGALORE-560 064.
2. SRI B.T.GOVINDEGOWDA,
S/O LATE B.T.THIMMEGOWDA,
AGED ABOUT 75 YEARS.
3. SMT. PADMAMMA @ PADMA,
D/O LATE B.T.THIMMEGOWDA,
W/O LATE N.S.SOMANNA @ SOMEOWDA,
AGED ABOUT 72 YEARS.

RESPONDENT NOS. 1 TO 3 ARE
R/AT HOLE BEEDI, 'RAGHU NILAYA',
KUSHALNAGARA POST,
SOMWARPETE TALUK
KODAGU DISTRICT-571 236.

4. SMT. SHRIMATHI,
W/O LATE PARBHAKARA,
D/O LATE B.T.THIMMEGOWDA,
AGED ABOUT 58 YEARS.



5. SMT. ARUNDHATHI @ INDUMATHI B P,
D/O LATE PRABHAKARA,
AGED MAJOR.

RESPONDENT NOS. 4 AND 5 ARE
R/AT BASAVANAHALLI VILLAGE,
RAMANATHAPURA HOBLI,
ARAKALAGUD TALUK
HAASAN DISTRICT-573 102.

6. SRI DEVARAJU K P,
S/O LATE K.P.PUTTARAJU
AND LATE KAMALA,
AGED ABOUT 55 YEARS,
R/AT DOOR NO.454,
1ST CROSS, 4TH MAIN, MARUTHI
TEMPLE ROAD, KUVEMPU NAGAR,
MYSURU-570 023.

7. SRI MAHESHA K P,
S/O LATE K.P.PUTTARAJU AND
LATE KAMALA,
AGED ABOUT 47 YEARS,
R/AT DOOR NO.454,
1ST CROSS, 5TH MAIN, MARUTHI
TEMPLE ROAD, KUVEMPU NAGAR,
MYSURU-570 023.

PRESENTLY R/AT FLAT NO.403,
MANASA MAYURA APARTMENT,
165-166/1, 2ND MAIN, 5TH CROSS,
YADAVAGIRI, MYSORE-570 020.

8. SMT. SUNITHA K.V.,
D/O LATE VENKATESHA AND LATE KAMAKSHI,
W/O SRI PRAKASHA,
AGED ABOUT 50 YEARS,
R/AT DOOR NO.293, 8TH MAIN,
'B' BLOCK, VIJAYANAGARA,
3RD STAGE, MYSURU-570 017.



9. SMT. VINUTHA K.V.,
D/O LATE VENKATESHA AND LATE KAMAKSHI,
W/O JAYARAJ,
AGED ABOUT 48 YEARS,
R/AT DOOR NO.533, 14TH MAIN, 'B' BLOCK,
VIJAYANAGARA, 3RD STAGE,
MYSURU-570 017.
10. SMT. KAVITHA K.V.,
D/O LATE VENKATESHA AND
LATE KAMAKSHI,
W/O GURURAJ,
AGED ABOUT 46 YEARS,
R/AT DOOR NO.340, 17TH MAIN,
'B' BLOCK, VIJAYANAGARA, 3RD STAGE,
MYSURU-570 017.
11. SRI MANJUNATHA K.V.,
D/O LATE VENKATESHA AND
LATE KAMAKSHI,
AGED ABOUT 44 YEARS,
R/AT DOOR NO.533, 14TH MAIN,
B BLOCK, VIJAYANAGARA, 3RD STAGE,
MYSURU-570 017.
12. SMT. PREMA B.K.,
D/O LATE B.T.KALEGOWDA,
W/O RAMACHANDRA,
AGED ABOUT 67 YEARS,
R/AT SIDDAPURA VILLAGE,
HEBBAL HOBLI, K.R.NAGARA TALUK
MYSURU DISTRICT-571 602.
13. SMT. JAYALAKSHMI @ SAKAMMA B.K.,
W/O BOREGOWDA,
D/O B.T.KALEGOWDA,
AGED ABOUT 65 YEARS,
R/AT ATTIGUPE VILLAGE,
BOREGOWDANA KOPPAL
GAVADAGERE HOBLI,



HUNSUR TALUK,
MYSURU DISTRICT-571 105.

14. SMT. VAIJAYANTHI B.K,
W/O PUTTARAJEGOWDA,
D/O LATE B.T.KALEGOWDA,
AGED ABOUT 62 YEARS,
R/AT ATTIGUPE VILLAGE,
BOREGOWDANAKOPAL,
GAVADAGERE HOBLI,
HUNSUR TALUK,
MYSURU DISTRICT-571 105.
15. SMT. MANI B.K,
W/O SOMEGOWDA,
D/O LATE B.T.KALEGOWDA,
AGED ABOUT 59 YEARS,
R/AT 2/188, VINAYAKA BADAVANE,
WARD NO.II, K.R.NAGARA TALUK,
MYSURU DISTRICT-571 602.
16. SMT. NETHRAVATHI B.K,
W/O LATE RAMESHA,
D/O LATE B.T.KALEGOWDA,
AGED ABOUT 55 YEARS,
R/AT 2/188, VINAYAKA BADAVANE,
WARD NO.II, K.R.NAGARA TALUK
MYSURU DISTRICT-571 602.
17. SRI KUMARA,
FATHER'S NAME NOT KNOWN,
MAJOR,
TENANT RUNNING A PROVISION STORE
UNDER NAME AND STYLE "HARISH
PROVISION STORES"
AT GROUND FLOOR,
D.NO.641, KERALAPURA VILLAGE,
RAMANATHAPURA HOBLI, GANDHI CIRCLE,
ARAKALAGUD TALUK, HASSAN DISTRICT-573 102.



18. RAMESHA,
FATHER'S NAME NOT KNOWN,
MAJOR,
TENANT RUNNING BAKERY,
UNDER NAME AND STYLE "SLR BAKERY
AND SWEETS" AT GROUND FLOOR,
D NO.641, KERALAPURA VILLAGE,
RAMANATHAPURA HOBOLI, GANDHI CIRCLE,
ARAKALAGUD TALUK, HASSAN DISTRICT-573 102.
19. MOOLARAM,
FATHER'S NAME NOT KNOWN,
MAJOR,
TENANT RUNNING FANCY STORES,
UNDER NAME AND STYLE "ANKUR FANCY
AND GIFT STORES" AT GROUND FLOOR,
D NO.641, KERALAPURA VILLAGE,
RAMANATHAPURA HOBOLI, GANDHI CIRCLE,
ARAKALAGUD TALUK, HASSAN DISTRICT-573 102.
20. MAHESH,
FATHER'S NAME NOT KNOWN,
MAJOR,
TENANT RUNNING PHOTO STUDIO,
UNDER NAME AND STYLE "SHAILI STUDIO
AND VIDEO" ON FIRST FLOOR,
D NO.641, KERALAPURA VILLAGE,
RAMANATHAPURA HOBOLI, GANDHI CIRCLE,
ARAKALAGUD TALUK, HASSAN DISTRICT-573 102.
21. GEETHA AND SHRIDHARA,
FATHER'S NAME NOT KNOWN,
MAJORS,
TENANTS RUNNING BEAUTY PARLOUR,
UNDER NAME AND STYLE "SINCHANA BEAUTY
PARLOUR" ON FIRST FLOOR,
D NO.641, KERALAPURA VILLAGE,
RAMANATHAPURA HOBOLI, GANDHI CIRCLE,
ARAKALAGUD TALUK, HASSAN DISTRICT-573 102.



22. RAVI,
FATHER'S NAME NOT KNOWN,
MAJOR,
TENANT RUNNING TAILORING SHOP,
WITHOUT NAME BOARDS IN MIDDLE SHOP
PREMISES OF FIRST FLOOR,
D NO.641, KERALAPURA VILLAGE,
RAMANATHAPURA HOBLI,
GANDHI CIRCLE,
ARAKALAGUD TALUK,
HASSAN DISTRICT-573 102.

...RESPONDENTS

(BY SRI A RAVISHANKAR, ADVOCATE FOR R-1 (a to d) TO R-3,
R-17 TO R-22;
SRI M C JAYAKIRTHI, ADVOCATE FOR R-4 & R-5;
SRI H.K REVANASIDDAPPA, ADVOCATE FOR R-8 TO T-16;
R-6 & R-7 ARE SERVED)

THIS RFA IS FILED UNDER SEC. 96 OF CPC., 1908
AGAINST THE ORDER DATED 01.09.2021 PASSED ON IA.NO.
VI IN OS.NO.82/2019 ON THE FILE OF THE SENIOR CIVIL
JUDGE AND JMFC., ARAKALAGUD, ALLOWING THE IA.NO.VI
FILED UNDER ORDER VII RULE 11 OF CPC., FOR REJECTION OF
PLAINT.

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

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL)

This appeal is filed by the appellant-plaintiff challenging the order dated 01.09.2021 passed on IA.No.VI in O.S.No.82/2019 by the Senior Civil Judge & JMFC, Arakalagud (for short, '***the trial Court***').

2. Smt.Kavyashree K., learned counsel for Sri.T.Seshagiri Rao, learned counsel for the appellant submits that defendant Nos.1 to 4 filed an application for rejection of plaint on the ground that the earlier suit between the same parties was adjudicated. It is submitted that the said application was allowed, plaint was ordered to be rejected.

3. Per contra, Sri.A.Ravi Shankar, learned counsel for respondent Nos.1 to 3, 17 to 22 fairly submits that the issue with regard to *res judicata* is required to be considered as a preliminary issue by the trial Court and he concedes the legal position and further submits that the matter may be remitted back to the trial Court to consider



the issue of *res judicata* as a preliminary issue by disposing of this appeal.

4. Sri.M.C.Jayakirthi, learned counsel for the respondent Nos.4 & 5 supports the aforesaid submission of Sri.A.Ravi Shankar, learned counsel and submits that they would co-operate with the trial Court for deciding the issue on merits.

5. We have heard the arguments on both sides and perused the material available on record.

6. It is to be noticed that the appellant filed a suit in O.S.No.82/2019 for the relief of partition and separate possession; in the said suit, defendant Nos.1 to 4 filed an application - IA No.VI under Order VII Rule 11 of CPC seeking rejection of plaint on the ground of *res judicata*. Various contentions have been advanced by the parties, however, it is to be noticed that contesting respondents i.e., defendant Nos.1 to 4 in the suit, who filed an application, fairly conceded that the issue of *res judicata* is



required to be treated by the trial Court as a preliminary issue. In view of the said specific submission, without going into the merits of the case, we propose to allow the appeal. Hence, the following:

ORDER

- i. Appeal is ***allowed***.
- ii. The order dated 01.09.2021 passed on IA.No.VI in O.S.No.82/2019 by the Senior Civil Judge & JMFC, Arakalagud, is hereby set aside. Consequently, IA.No.VI is rejected.
- iii. The trial Court is directed to consider the suit on merits by framing the issue of *res judicata* as a preliminary issue and provide an opportunity to all the parties to the suit.
- iv. The parties undertake to appear before the trial Court on 08.04.2026.



- v. Taking note of the fact that the suit is of the year 2019, the trial Court shall dispose of the suit as expeditious as possible.
- vi. Pending applications, if any, are disposed of.

It is made clear that this Court has not expressed any opinion on merits of the case.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**