



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 36 OF 2013
(DEC/INJ)

BETWEEN:

1. YELLAPPA
S/O SANNA HANUMANTHAPPA
AGE 62 YEARS

1(A) DHARMAPPA
S/O LATE YELLAPPA
AGED ABOUT 42 YEARS

1(B) HOLEYAPPA
S/O LATE YELLAPPA
AGED ABOUT 36 YEARS

BOTH ARE R/O HIREMAGADI
KOLAGI POST, SORABA TQ
SHIVAMOGGA DISTRICT.

VIDE ORDER DATED 19.06.2024 LEGAL
REPRESENTATIVES OF 1ST APPELLANT ARE
BROUGHT ON RECORD

2. HANUMANTHAPPA
S/O SANNA HANUMANTHAPPA
AGED ABOUT 59 YEARS

3. THILAKAPPA
S/O SANNA HANUMANTHAPPA





AGED ABOUT 56 YEARS

3(A) NIRMALA
W/O LATE TILAKAPPA
AGED ABOUT 54 YEARS

3(B) ARAVIND T M
S/O LATE TILAKAPPA
AGED ABOUT 30 YEARS

3(C) PRIYANKA T M
D/O LATE TILAKAPPA
AGED ABOUT 28 YEARS

3(D) SRIVINAS T M
S/O LATE TILAKAPPA
AGED ABOUT 26 YEARS

VIDE ORDER DATED 19.06.2024 LEGAL
REPRESENTATIVES OF APPELLANT No.3 ARE
BROUGHT ON RECORD.

4. SHIVAMURTHAPPA
S/O SANNA HANUMANTHAPPA
AGED ABOUT 56 YEARS

5. SHANMUKAPPA
S/O SANNA HANUMANTHAPPA
AGED ABOUT 50 YEARS

6. SMT. YELLAMMA
W/O SANNA HANUMANTHAPPA
AGED ABOUT 89 YEARS

ALL ARE R/O HIEMAGAGADI
VADDIGERE POST, KOLAGI POST
SARABHA TALUK
SHIMOGA DISTRICT.

VIDE ORDER DATED 19.06.2024 APPELLANT No.1
TO 5 ARE ORDERED TO BE TREATED AS LEGAL



REPRESENTATIVE OF DEGASSED APPELLANT No.6

7. SMT. BASAMMA
W/O ERAPPA
AGED ABOUT 52 YEARS
R/O TATHURU VADDIREGE
SORABHA TALUK
SHIMOGA DISTRICT.

...APPELLANTS

(BY SRI. M R RAJAGOPAL, SENIOR COUNSEL FOR
SRI. H N BASAVARAJU., ADVOCATE
V/O DATED 19.06.2024 A1 TO A5 ARRE TREATED AS
LEGAL REPRESENTATIVES OF DECEASED A6)

AND:

1. SHEKARAPPA
S/O KENGAPPA
AGED ABOUT 56 YEARS
2. PRAMESHWARAPPA
S/O KENGAPPA
AGED ABOUT 54 YEARS

SINCE DECEASED BY HIS
LEGAL REPRESENTATIVE'S
- 2(A) SMT. RENUKAMMA
W/O LATE PARAMESHWARAPPA
AGED ABOUT 58 YEARS
- 2(B) GEETHA
D/O LATE PARAMESHWARAPPA
W/O DANAPPA
AGED ABOUT 39 YEARS
- 2(C) SMT. SUNITHA
D/O LATE PARAMESHWARAPPA
W/O KOTEPPA
AGED ABOUT 33 YEARS



2(D) GAYATHRI
D/O LATE PARAMESHWARAPPA
W/O THIMMAPPA
AGED ABOUT 30 YEARS

2(E) SRI MANJUNATHA
D/O LATE PARAMESHWARAPPA
AGED ABOUT 35 YEARS

ALL ARE R/AT HIREMAGODI VIDDIGERE
HNAVATTI HOBLI, SORABHA TALUK
SHIMOGGA DISTRICT-577212.

(AMENDED AS PER THE COURT ORDER
DATED 13.11.2024)

3. ERAPPA
S/O KENGAPPA
AGED ABOUT 52 YEARS

4. HANUMANTHAPPA
S/O KENGAPPA
AGED ABOUT 50 YEARS

5. SMT PUTTAMMA
W/O KENGAPPA
AGED ABOUT 77 YEARS

6. HANUMANTHAPPA
S/O DODDAHUNUMANTHAPPA
AGED ABOUT 67 YEARS

ALL ARE RESIDING AT
HIREMAGADI-VADDIGERE
HNAVATTI HOBLI, SORABHA TALUK
SHIMOGA DISTRICT.

...RESPONDENTS

(BY SRI. MAHESH R UPPIN., ADVOCATE FOR R1,
R2(A TO E), R3, R4 AND R6;
V/O DATED 20.02.2019 APPEAL AGAINST



DECEASED R5 IS DISMISSED AS ABATED)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT & DECREE DTD 01.08.2012 PASSED IN R.A.NO.373/2009 ON THE FILE OF THE ADDL. DISTRICT JUDGE, SHIMOGA, PARTLY ALLOWING THE APPEAL AND PARTLY SETTING ASIDE THE JUDGEMENT AND DECREE DTD 15.9.2009 PASSED IN OS.NO.289/2007 ON THE FILE OF THE CIVIL JUDGE (SR.DN) & JMFC., SORABA.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellants challenging the judgment and decree dated 01.08.2012 passed in RA No. 373 of 2009 by the Additional District and Sessions Judge, Shivamogga, and the judgment and decree dated 15.09.2009 passed in O.S.No.289 of 2007 on the file of learned Senior Civil Judge, Soraba.
2. For convenience, the parties are referred to based on their ranking before the trial Court. The appellants were the defendants and the respondents were the plaintiffs.



3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit for declaration of title and permanent injunction. It is the case of the plaintiffs that one Erappa was the original propositus. He had a wife by name Basamma. Erappa and Basamma had 4 children, namely Dodda Hanumanthappa, Sanna Hanumanthappa, Kengappa and Ningamma. The plaintiffs are the sons and widow of one Kengappa, who happens to be the son of Erappa and they are plaintiff No1 to 5 in O.S.No.289/2007. Defendants are the legal heirs of deceased Hanumanthappa. The plaintiffs have filed a suit for declaration to declare that A schedule properties are the properties of plaintiff No.6 and C schedule properties are the schedule properties of the defendants and D schedule properties are the properties of Kengappa. Now it was inherited by the plaintiff Nos. 1 to 6. According to the plaint contents, a joint family constituted one Erappa and his three sons earlier to



1946. During 1946, Dooda Hanumanthappa declared severance from the joint family who took his share i.e., B schedule properties which is inclusive of 3 acres 8 guntas of dry land and 1 acre of wet land comprised in Survey No. 23. The remaining extent was retained by the joint family which consisted of Erappa and his 2 sons excluding Dooda Hanumanthappa. On 27.04.1948, two properties were acquired i.e. Survey No. 193 and 199 in the name of Sanna Hanumanthappa. During 1949, Propositus Erappa and his wife Basamma both passed away leaving behind the plaintiffs and defendants and their estate was inherited by two sons namely Sanna Hanmanthappa and Kengappa. Sanna Hanmanthappa and Kengappa jointly sold the land to an extent of 14 acres under a registered sale dated 30.05.1948 in favour of one Mallappa and remaining extent was continued as a joint family property and there was a zubani(oral) partition during 1959 in the said partition C schedule properties fell to the share of



sannabasappa and D schedule properties fell to the share of Kengappa.

5. There was a suit *inter se* between the defendants in OS No. 219 of 2002 which was ended with a compromise, according to the plaintiffs, it is a collusive decree. The said decree passed in OS No. 219 of 2002 is not binding on the plaintiffs. Hence the plaintiff constrained to file a suit for declaration of title and perpetual injunction etc.
6. The defendant No.3 filed a written statement and other defendants adopted the written statement filed by defendant No.3. Defendant No.3 admitted a relationship between the parties to the suit and also oral partition in 1946 and there was no change of revenue records. It is contended the propositus had only land in Survey No. 23 and one Hanumanthappa was given A schedule is shared in the family property. They denied the contents of the plaintiffs. Admitted regarding filing of a suit in OS No. 219 of 2002 and compromising it. The defendants contended that there was a prior partition in 1946



between late Kengappa and Sanna Hanumanthappa. Survey No. 23 was equally divided and there was severance of status as on the date of filing the suit. Hence, the suit filed by the plaintiffs is not maintainable. Hence, prays to dismiss the suit.

7. The trial Court, based on the pleadings of the parties framed the following issues:

- i. Whether the plaintiffs prove that the plaintiff Nos.1 to 5 are the owners and in possession of D schedule property, plaintiff No.6 is the owner and in possession of A schedule property?*
- ii. Whether the plaintiffs alternatively prove that the schedule properties are ancestral and joint family properties?*
- iii. Whether the plaintiffs are entitled the relief?*
- iv. What decree or order?*

8. The plaintiffs to substantiate their case, plaintiff No.4 was examined as PW1 and marked 42 documents as



Exhibit P1 to P42. Defendant No.3 was examined as DW1 and got marked 11 documents as Exhibit D1 to D11. The trial Court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence decreed the suit of the plaintiffs as prayed for vide judgment dated 15.09.2009.

9. The defendants, aggrieved by the judgment and decree passed in O.S.No.289 of 2007 preferred appeal in RA No. 373 of 2009 on the file of the Additional District and Sessions Judge, Shivamogga.

10. The first appellate court, after hearing the learned counsel for the parties, framed the following points for consideration:

- i. Whether the plaintiffs prove the prior partition of 1946 as alleged by them?*
- ii. Whether the plaintiffs prove that land in Sy.No.193 and 199 were also joint family properties of late sanna hanumanthappa and late kengappa?*



- iii. Whether the defendants prove that lands in Sy.No.193 and 199 were self-acquired properties of sanna hanumanthappa?*
- iv. Whether plaintiffs prove the prior partition of 1959?*
- v. Whether the judgment and decree of the trial Court giving declaration in favour of the plaintiffs, is bad in law?*
- vi. Whether judgment and decree of the trial Court is otherwise illegal and liable to be set aside and modified?*
- vii. What decree or order?*

11. The first appellate court, allowed the appeal in part with cost and the judgment and decree passed in O.S. No. 289 of 2007 dated 15.09.2009 was partly set aside and the suit of the plaintiffs was partly decreed by granting a decree for permanent injunction in favour of the plaintiffs' No.1 to 5 about D schedule property and in favour of plaintiff No.6 about A schedule property, restraining the defendants from interfering with the possession of the said properties by the plaintiffs. The



suit of the plaintiffs for declaration of title about A and B schedule properties was dismissed and declaration that the compromise decree passed in O.S.No. 219 of 2002 on the file of Senior Civil Judge , Soraba, not binding on the plaintiffs, was upheld.

12. The defendants, aggrieved the impugned judgments filed this Regular Second Appeal.

13. Heard Sri M.R.Rajagopal, learned senior counsel for the defendants.

14. The learned senior counsel for the defendants submits that the first appellate court being the final fact finding court is required to re-appreciate the entire evidence and has to answer each issue framed by the trial court and has to frame the proper points for consideration in compliance with order XLI Rule 31 of the CPC. He further submits that the first appellate court has not answered all the issues framed by the trial court and also has not framed the proper points for



consideration. To buttress his arguments he places reliance on the Judgment of the Hon'ble Apex court in the case of ***H. Siddiqui dead by LRs Vs. A. Ramalingam reported in (2011) 2 KCCR 1389.*** Therefore, he submits that the judgment passed by the first appellate court is contrary to the exposition of law laid down by the Hon'ble Apex court in the case referred supra and accordingly, on these grounds, prays to allow the appeal and remit the matter for afresh consideration to the first appellate court.

15. *Per contra*, the learned counsel for the plaintiffs supported the impugned judgment passed by the first appellate court and submits that the first appellate court has rightly re-appreciated the entire evidence on record and passed the judgment. The judgment and decree passed by the first appellate court is in compliance with order XLI Rule 31 of the CPC. Accordingly, on these grounds, prays to dismiss the appeal.



16. Perused the records, and considered the submissions of the learned counsel for the parties.

17. This court admitted the appeal on 30.07.2021 to consider the following substantial questions of law.

"Whether the finding recorded by the courts below granting the decree of injunction based on the pleading on record, denying the relief of declaration is just and proper?"

18. This court reframed the substantial question of law on 13.02.2026 as follows:

"Whether the courts below have committed an error in passing the impugned judgments, in view of the admitted facts regarding the relationship between the parties and nature of the suit schedule properties. Both the courts below could have moulded a relief under Order VII Rule 7 of the Code of Civil Procedure, 1908 and could have granted a decree for partition and separate possession?"

Reg. Substantial question of law:

19. It is undisputed that the plaintiffs filed a suit for declaration and permanent injunction and in alternate,



for partition. The defendants filed a written statement raising several grounds. The trial court after recording the evidence of the parties, and after appreciating the verbal and documentary evidence, decreed the suit of the plaintiffs vide judgment dated 15.09.2009. The defendants aggrieved by the judgment and decree passed by the trial court in O.S. No. 289/2007, filed an appeal in R.A.No.373 / 2009 on the file of the learned Addl. District and Sessions Judge, Shimogga.

20. I have perused the judgment passed by the first appellate court. It is evident that, the first appellate court has not discussed the verbal evidence of both parties, it has extracted only the contentions of both the parties. The first appellate court has not appreciated the verbal and documentary evidence on record in its entirety. The first appellate court has passed the impugned judgment without complying the requirements of Order XLI Rule 31 of the CPC.



21. To consider the case on hand, it is necessary to examine Order XLI Rule 31 of Code of Civil Procedure. Order XLI Rule 31 of CPC provides that the first appellate court is required to frame the proper points for determination, the decision thereon, the reasons for the decision and whether the decree appealed from is reversed or varied, and the relief to which the appellant is entitled.
22. From the perusal of the judgment passed by the first appellate court, it is evident that the first appellate court has not properly framed the points for determination and has not answered all the issues framed by the trial court by reappreciating the entire evidence.
23. The Hon'ble Apex Court in the case of ***H. Siddiqui dead by LRs Vs. A. Ramalingam*** reported in **(2011) 2 KCCR 1389**, had an occasion to deal with the requirements of the provisions of Order XLI Rule 31 of the CPC. The Hon'ble Apex Court has observed that the



said provisions provide guidelines for the first appellate Court as to how the Court has to proceed and decide the appeal. It is further observed that the provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. It must be evident from the judgment of the first appellate Court that the Court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record.

24. In paragraph No.18 of the judgment of the Hon'ble Apex Court, after considering its several judgments, observed thus:

"18. It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record the mere general expression of concurrence with the trial Court judgment rather it must give reasons for its decision on each point independently to that of the trial



Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions.

(emphasis supplied)

25. From the perusal of the judgment of the first Appellate Court, it is crystal clear that the first Appellate Court has only recorded the general expression, it has not re-appreciated the entire evidence on record, and has not framed the proper points for consideration. The judgment passed by the first Appellate Court is not in compliance with Order XLI Rule 31 of the CPC, and is contrary to the ratio laid down in the case of **H. Siddiqui (D) by LRs** (referred supra). Thus, the matter requires reconsideration by the first Appellate Court. The judgment and decree passed by the first Appellate Court is required to be set aside.

26. Since this court is of the opinion that the matter requires consideration afresh by the first appellate



court, the substantial question of law is answered accordingly.

27. In view of the above discussion, I proceed to pass the following order:

ORDER

1. The Appeal is ***allowed***.
2. The impugned judgment passed by the first appellate court is hereby ***set aside***.
3. The matter is remitted to the first appellate court for consideration afresh.
4. The First Appeal in R.A.No.373 of 2009 is ***restored*** to its file.
5. The first appellate court is directed to pass the judgment in compliance with the provisions of Order XLI Rule 31 of the CPC.
6. The parties are directed to appear before the first appellate court on ***10.04.2026*** without awaiting any further notice.



7. The registry is directed to transmit the records to the first appellate court, forthwith.
8. Pending application(s), if any, shall stand disposed off.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS (Online)
CT:KHV/NJ