



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 2168 OF 2025 (PAR)

BETWEEN:

SRI. RAMALINGEGOWDA
S/O. LATE KEMPEGOWDA,
AGED ABOUT 63 YEARS,
R/A. PICHANAKERE VILLAGE,
KOTTAGALU POST, HAROHALLI HOBLI,
KANAKAPURA TALUK, RAMANAGARA.

...APPELLANT

(BY SRI. N.N. RAJ URS, ADVOCATE)

AND:

1. SMT. PARVATHAMMA
W/O. LATE KEMPE GOWDA,
AGED ABOUT 83 YEARS,
2. SMT. KAMALAMMA
D/O. LATE KEMPE GOWDA,
AGED ABOUT 68 YEARS,
3. SRI. APPAJIGOWDA
S/O. LATE KEMPE GOWDA,
AGED ABOUT 66 YEARS,
4. SMT. SHIVALINGAMMA
D/O. LATE KEMPE GOWDA,
AGED ABOUT 60 YEARS,





5. SMT. PADMA
W/O. LATE SIDDAIAH,
AGED ABOUT 54 YEARS,
(ALL ARE R/A. PICHCHANAKERE VILLAGE,
KOTTAGALU POST, HAROHALLI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT)

...RESPONDENTS

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 13.12.2019 PASSED IN
OS NO.94/2018 ON THE FILE OF C/C SENIOR CIVIL JUDGE
AND JMFC, KANAKAPURA., DECREERING THE SUIT FOR
PARTITION AND SEPARATE POSSESSION.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

Having heard the learned counsels appearing for the parties at considerable length, this Court indicated to the appellant that in an appeal preferred under Section 96(2) of the Code of Civil Procedure, 1908 (for short, 'CPC'), the ground that sufficient opportunity was not afforded resulting in an ex parte decree cannot be gone into. It is well settled that against an ex parte decree, the defendant



has two distinct and independent remedies. Firstly, he may invoke the provisions of Order IX Rule 13 of the CPC seeking to set aside the ex parte decree on establishing sufficient cause for his non-appearance. Secondly, he may prefer a regular appeal under Section 96(2) of the CPC and assail the decree on merits, contending that even in the absence of a written statement or defence, the plaintiff has failed to establish his case and is liable to be non-suited. However, the question of want of opportunity or sufficient cause for non-appearance cannot be adjudicated in a Section 96(2) appeal.

2. At this stage, learned counsel for the appellant has filed a memo seeking permission of this Court to withdraw the present appeal with liberty to avail the remedy available under Order IX Rule 13 of the CPC.

3. The memo is taken on record.

4. In view of the same, the appeal stands dismissed as withdrawn. It is, however, made clear that such



withdrawal shall not operate as a bar or impediment for the appellant in pursuing his remedy under Order IX Rule 13 of the CPC, in accordance with law.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

HDK
List No.: 1 SI No.: 12