



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH DAY OF AUGUST 2025

PRESENT

THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

REGULAR FIRST APPEAL NO. 100058 OF 2020 (PAR/POS)

BETWEEN:

SMT. KALYANI W/O. VASANT KALAL
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
R/O. NO. 45, 5TH CROSS,
LOKAPPANA HAKKALA, (NEAR MASJID),
VIDYA NAGAR, HUBLI.

...APPELLANT

(BY SRI. A.C.CHAKALABBI AND
SRI. S.G.NANDLOOR, ADVOCATES)

AND:

1. DRAXAYANI ARJUN KALAL
REPORTED TO BE DIED REP. BY HER LR's.,

1(A). ARJUN S/O. GURUNATH KALAL
AGE: 61 YEARS, OCC: BUSINESS,
R/O. KALAL PLOT VINAY KULKARNI LAYOUT,
NEAR CHARNTIMATH GARDEN MATTI
PARAPPA KOOT DHARWAD,
TQ AND DIST: DHARWAD.

1(B). SANTHOSH S/O. ARJUN KALAL
AGE: 34 YEARS, OCC: BUSINESS,
R/O. KALAL PLOT VINAY KULAKARNI LAYOUT,
NEAR CHARNTIMATH GARDEN MATTI
PARAPPA KOOT DHARWAD,
TQ AND DIST: DHARWAD.

1(C). GURURAJ S/O. ARJUN KALAL
AGE: 34 YEARS, OCC: BUSINESS,
R/O. KALAL PLOT VINAY KULAKARNI LAYOUT,



NEAR CHARNTHIMATH GARDEN MATTI
PARAPPA KOOT DHARWAD,
TQ AND DIST: DHARWAD.

2. AKSHATA D/O. SATISH KALAL
AGE: 32 YEARS, OCC: HOUSE MANAGEMENT,
R/O: LINE BAZAR, OPP. TO THAKUR PEDHA
SHOP, DHARWAD-580001.
3. LAKSHMI D/O. SATISH KALAL
AGE: 21 YEARS, OCC: STUDENT,
R/O: LINE BAZAR, OPP. TO THAKUR PEDHA
SHOP, DHARWAD-580001.
4. ABHISHEK D/O. SATISH KALAL
AGE: 19 YEARS, OCC: STUDENT,
R/O: LINE BAZAR, OPP. TO THAKUR PEDHA
SHOP, DHARWAD-580001.
5. ARAVIND S/O. ARJUN KALAL
AGE: 38 YEARS, OCC: BUSINESS,
R/O: MASALAGAR ONI, LINE BAZAR,
DHARWAD.
6. PREMAKANT S/O. ARJUN KALAL
AGE: 60 YEARS, OCC: BUSINESS,
R/O: SOUDHAGAR CHAWL, LINE BAZAR,
DHARWAD-580001.
7. RAJESAB MAULASAB GIDADANNAVAR
AGE: 64 YEARS, OCC: AGRICULTURE,
R/O: TARIHAL, TQ: HUBBALLI
DIST: DHARWAD-580026.

...RESPONDENTS

(BY SRI. AAYUSH G.BHAT, ADVOCATE FOR R2 TO R4;
SRI. SHRIHARSH A.NEELOPANT, ADVOCATE FOR R6;
SRI. J.S.SHETTY, ADVOCATE FOR R7;
NOTICE TO R1(A), (B), (C) AND R5 ARE SERVED)

THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER 41
RULE 1 OF CPC 1908 AGAINST THE JUDGMENT AND DECREE DATED
24.10.2019 PASSED IN O.S.NO.418/2014 ON THE FILE OF THE III
ADDITIONAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL
MAGISTRATE, DHARWAD, DISMISSING THE SUIT FILED FOR
PARTITION AND SEPARATE POSSESSION.



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

CORAM: THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR
AND
THE HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR)

This appeal arises out of the impugned judgment and decree dated 24.10.2019 passed in O.S.No.418/2014 on the file of the III-Additional Senior Civil Judge and C.J.M., Dharwad¹, whereby the said suit filed by the appellant/plaintiff for partition and separate possession of her legitimate share in the suit schedule properties was dismissed by the Trial Court.

2. Heard the learned counsel for the appellant and the learned counsel for respondents 2 to 4, 6 and 7 and perused the material on record.

3. The material on record discloses that the appellant/plaintiff instituted the aforesaid suit against the respondents/defendants for partition and separate

¹ Hereinafter referred to as 'the Trial Court'



possession of her legitimate share in the suit schedule properties and for other reliefs.

4. In the said suit, the defendants 2 to 4 and 5 filed their separate written statements and sought for dismissal of the suit.

5. It is a matter on record that in addition to the aforesaid suit in O.S.No.418/2014 filed by the appellant/plaintiff against the respondents/defendants, defendants 2 to 4 also instituted one more suit in O.S.No.249/2012 for partition and separate possession, declaration etc., in relation to the very same suit schedule properties. The remaining parties were arrayed as defendants in the said suit.

6. Similarly, the aforesaid plaintiffs in O.S.No.249/2012 filed one more suit in O.S.No.419/2014 for declaration, injunction and other reliefs in relation to the very same suit schedule properties only against the



banks i.e., defendants 1 to 5 and respondent No.5 – Aravind.

7. The Trial Court before whom all the three suits were pending, clubbed and consolidated all the suits and recorded common evidence and disposed of all the three suits vide impugned judgment and decree, whereby, the suit in O.S.No.418/2014 filed by the appellant in RFA.No.100058/2020 and other two suits in O.S.No.249/2012 and O.S.No.419/2012 filed by respondents 2 to 4 in the present appeal were dismissed by the Trial Court.

8. While the appellant/plaintiff in O.S.No.418/2014 has filed the present appeal aggrieved by the impugned judgment and decree, respondents 2 to 4 herein who were the plaintiffs in the other two suits, O.S.No.249/2012 and O.S.No.419/2014 have instead filed one more suit in O.S.No.64/2021 against the appellant and other persons for partition and separate possession of their alleged share



in the suit schedule properties and the said suit is pending adjudication as on today.

9. During the pendency of the present appeal, the appellant/plaintiff has filed an application, I.A.No.1/2025 under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908² for permission to produce additional evidence as per the list annexed to the application. Respondents 2 to 4 and respondent No.6 do not oppose/contest the said application. However, respondent No.7, who claims to be the alienee in respect of one of the items of the suit schedule properties, has vehemently opposed/contested the said application.

10. After having heard the learned counsel for the parties, the following points arise for consideration in the present appeal.

- (i) Whether the application I.A.No.1/2025 filed by the appellant/plaintiff under Order XLI Rule 27 read with Section 151 of CPC for

² Hereinafter referred to as "CPC" for short



permission to produce additional evidence
deserves to be allowed?

- (ii) Whether the impugned judgment and decree passed by the Trial Court warrant interference by this Court in the present appeal?

Regarding Point No.(i) :

11. A perusal of the material on record, in particular the impugned judgment and decree will indicate that, the Trial Court has rejected the claim of the appellant, who is the plaintiff in O.S.No.418/2014 as well as an identical claim put forth by respondents 2 to 4, who were the plaintiffs in O.S.No.249/2012 and O.S.No.419/2014 on the ground that, there are discrepancies and absence of clarity in relation to the schedule, measurements, boundaries, description, etc., in respect of the suit schedule properties. In this context, the appellant has produced various documents comprising of revenue records, property records, city survey records about 15 documents along with the application for production of additional evidence.



Though the said application is vehemently opposed by the learned counsel for respondent No.7, in light of the consent given on behalf of respondents 2 to 6 coupled with, fact that, the Trial Court has rejected the claim of the appellant/plaintiff as well as the identical claim of respondents 2 to 4 on the ground that, there were discrepancies and absence of clarity as regards, description, identity, location, boundaries, measurements, schedule, etc., in respect of the suit schedule properties as well as fact that, the said documents are relevant germane and necessary for the purpose of adjudication of the issues in controversy between the parties, we deem it just and appropriate to allow I.A.No.1/2025 and receive the documents by way of additional evidence produced by the appellant/plaintiff in the present appeal.

12. It is also pertinent to note that respondents 2 to 4 having noticed the findings of the Trial Court, instead of filing a separate appeal have chosen to file one more suit in O.S.No.64/2021 purporting to clarify and explain all the



discrepancies etc., noticed in the impugned judgment and decree. Under these circumstances, we are of the view that, I.A.No.1/2025 filed by the appellant/plaintiff deserves to be allowed and documents produced by the appellant/plaintiff deserve to be taken on record.

13. It is also significant to note that since valuable proprietary and possessory rights in relation to immovable properties are involved, it would be necessary to permit production of additional evidence by the appellant/plaintiff, especially when respondent No.7 would have an opportunity to impeach the said documents during trial. Although learned counsel for respondent No.7 would urge various contentions on the merits of the documents sought to be produced by the appellant/plaintiff along with I.A.No.1/2025, since respondent No.7 would have an opportunity to cross-examine the parties and their witnesses, it cannot be said that any prejudice would be caused to the respondent No.7, if I.A.No.1/2025 is allowed and documents are received on record.



14. Learned counsel for respondent No.7 would also invite our attention of the Trial Court records in order to point out that, after being impleaded as additional defendant No.7 to the suit, suit summons was not served upon him and no opportunity was provided to respondent No.7 to file written statement and contest the suit on merits. As stated supra, since the additional documents are directed to be received on record, an opportunity would have to be necessarily given to respondent No.7 to file his written statement and contest the suit on merits putting forth all his contentions in relation to the property alleged to have purchased by him. Viewed from this angle also, it cannot be said that permission to produce additional documents would cause any prejudice or hardship to respondent No.7 if appellant is permitted to produce additional documents as sought for in I.A. No.1/2025. I.A.No.1/2025 is accordingly allowed and point No.(i) formulated above is answered accordingly in favour of the appellant.



Regarding Point No.(ii) :

15. The next point that arises for consideration is, the procedure to be adopted by this Court upon allowing I.A.No.1/2025 filed by the appellant/plaintiff under Order XLI Rule 27 read with 151 of CPC. In this regard, it would be necessary to extract Order XLI Rule 28 and 29 of CPC. Which reads as under:

"28. Mode of taking additional evidence.—

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded.— *Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified."*

16. As is clear from the aforesaid provision, it is open for this Court to take the additional evidence itself or set aside the impugned judgment and decree and remit



the matter back to the Trial Court with a direction to reconsider the matter afresh by permitting the parties to adduce additional, oral and documentary evidence in support of their respective claims and by filing pleadings/additional pleadings in support of their claims. In the instant case, as stated earlier, the Trial Court has rejected the claim of the appellant and respondents 2 to 4 primarily on the ground that, description, location, identity, measurements, schedule, etc., of the suit schedule property contained discrepancies and was unclear and as such, the Trial Court dismissed the claim of the appellant/plaintiff. Further, respondents 2 to 4 have already instituted another suit in O.S.No.64/2021, which is pending on the file of the III Additional Senior Civil Judge and JMFC, Hubballi.

17. It is an undisputed fact that respondent No.7 has not filed his written statement in the instant suit. It is also matter of record that, the impugned judgment and decree was passed by the III Additional Senior Civil Judge



and CJM, Dharwad, while the suit in O.S.No.64/2021 filed by respondents 2 to 4 is presently pending before the III Additional Senior Civil Judge and JMFC, Hubballi. It is needless to state that, the additional pleadings of the parties and additional evidence would be required for the purpose of adjudication of the disputes in controversy between the parties, which necessarily has to be done by the Trial Court, after reconsideration in accordance with law. Under these circumstances, we deem it just and appropriate to set aside the judgment and decree passed in O.S.No.418/2014 and remits the matter back to the Trial Court for reconsideration afresh in accordance with law by issuing certain directions.

18. It is necessary to state that since O.S.No.64/2021 filed by respondents 2 to 4 is pending before the III Additional Senior Civil Judge and JMFC, Hubballi, the present suit in O.S.No.418/2014 would have to be withdrawn from the III Additional Senior Civil Judge and CJM, Dharwad and transferred to the Court of III



Additional Senior Civil Judge and JMFC, Hubballi, to be consolidated, clubbed and disposed of along with O.S.No.64/2021 in accordance with law.

19. In the result, following:

ORDER

- (i) The appeal is hereby ***allowed***.
- (ii) The judgment and decree dated 24.10.2019 passed in O.S.No.418/2014 by the III Additional Senior Civil Judge and CJM, Dharwad is hereby set aside and matter is remitted back to the Court of III Additional Senior Civil Judge and JMFC, Hubballi for reconsideration afresh in accordance with law.
- (iii) The present suit in O.S.No.418/2014, which was dismissed by the III Additional Senior Civil Judge and CJM, Dharwad is directed to be withdrawn from the said Court and shall be transferred to the Court of III Additional Senior Civil Judge and JMFC, Hubballi to be consolidated,



clubbed, heard and disposed of along with O.S.No.64/2021, in accordance with law.

- (iv) The III Additional Senior Civil Judge and JMFC, Hubballi shall reconsider O.S.No.418/2014 along with O.S.No.64/2021 and dispose of both the suits in accordance with law without being influenced by the findings and observations recorded in O.S.No.249/2012 and O.S.No.419/2014, since the impugned common judgment and decree encompasses all the three suits.
- (v) All rival contentions on all aspects of the matter between all the parties are kept open and no opinion is expressed on the same.
- (vi) Liberty is reserved in favour of all the parties to file pleadings/additional pleadings and also adduce evidence/additional evidence in support of their respective claims.



- (vii) The parties to the present appeal are directed to appear before the III Additional Senior Civil Judge and JMFC, Hubballi on 30.08.2025.

Sd/-
(S.R. KRISHNA KUMAR)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

YAN/EM
Ct:vh
List No.: 1 Sl No.: 70