



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

MISCELLANEOUS FIRST APPEAL NO.100560 OF 2023 (CPC)

BETWEEN:

1. SHRI. APPANNA S/O. GANGAPPA HADAPAD,
AGE. 71 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
2. SHRI. ANNAPPA S/O. GANGAPPA HADAPAD,
AGE. 59 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
3. SMT. KAMALAWWA W/O. GIRIMALLA HADAPAD,
AGE. 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. SHEGUNASHI, TQ. ATHANI,
DIST. BELAGAVI-591304.
4. SHRI. SIDDU S/O. GANGAPPA HADAPAD,
AGE. 56 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
5. SHRI. DHAREPPA S/O. GANGAPPA HADAPAD,
AGE. 53 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.

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6. SHRI. NINGAPPA S/O. GANGAPPA HADAPAD,
AGE. 51 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.

...APPELLANTS

(BY SRI. S.S. GHULAPPANAVAR, ADVOCATE)

AND:

1. SHRI. APPANNA S/O. KALAPPA BADIGER,
SINCE DECEASED BY HIS LRS
- 1(A). SMT. ANUSUYA W/O. APPASAB BADIGER,
AGE. 83 YEARS, OCC. HOUSEHOLD,
R/O. MADABHAVI, TAL. ATHANI,
DIST. BELAGAVI.
NOW RESIDING AT H.NO.507, PATIL GALLI,
KILLA, TQ. GOKAK, DIST.BELAGAVI-591307.
- 1B) SMT. NEENA W/O. SHANKARANAND PATTAR,
AGE. 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. H.NO.507, PATIL GALLI, KILLA GOKAK,
DIST. BELAGAVI-591307.
2. SMT. SUVARNA W/O. IRAPPA BADIGER,
AGE. 28 YEARS, OCC. HOUSEHOLD WORK,
R/O. HULAGABALI, TQ. ATHANI,
DIST. BELAGAVI-591304.
3. SHRI. KALAPPA S/O. RAMU BADIGER,
AGE. 22 YEARS, OCC. AGRICULTURE,
R/O. GUNDEWADI, TQ. ATHANI,
DIST. BELAGAVI-591304.
4. KUMARI. SHANTA D/O. RAMU BADIGER,
AGE. 17 YEAS, OCC. HOUSEHOLD WORK,
R/O. ATHANI, TQ. ATHANI,
DIST. BELAGAVI-591304.



5. KUMARI. KALPANA D/O. RAMU BADIGER,
AGE. 13 YEARS, OCC. HOUSEHOLD WORK,
R/O. ATHANI, TQ. ATHANI,
DIST. BELAGAVI-591304.
6. SHRI. CHANDU S/O. KADAPPA BADIGER,
AGE. 00 OCC. AGRICULTURE,
R/O. GUNDEWADI, TQ. ATHANI,
DIST. BELAGAVI-591304.
7. KUMARI. SAVITRI D/O. CHANDU BADIGER,
AGE. 11 YEARS, OCC. NIL,
R/O. GUNDEWADI, TQ. ATHANI,
DIST. BELAGAVI-591304.
8. SHRI. SUBHASH D/O. DHAREPPA HADAPAD,
AGE. 39 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
9. SHRI. SHIVANNA S/O. DHAREPPA HADAPAD,
AGE. 36 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
10. SMT. SHOBHA S/O. DHAREPPA HADAPAD,
AGE. 33 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
11. SMT. REKHA KALLAPPA NAIL @ GASTI,
AGE. 34 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
12. SMT. CHANDRALEKHA W/O. SANJAY CHAVHAN,
AGE. 25 YEARS, OCC. HOUSEHOLD WORK,
AGE. KOLHAPUR, TQ. AND DIST. KOLHAPUR,
13. SHRI. ASHOK ANNAPPA BERD,
AGE. 32 YEARS, OCC. AGRICULTURE,



R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.

14. SHRI. MAHADEV S/O. ANNAPPA BERAD,
AGE. 25 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.
15. SHRI. MANOHAR S/O. ANNAPPA BEREAD,
AGE. 34 YEARS, OCC. AGRICULTURE,
R/O. MADBHAVI, TQ. ATHANI,
DIST. BELAGAVI-591304.

...RESPONDENTS

(BY SRI. D.V. PATTAR, ADVOCATE FOR R1 (A AND B);
NOTICE TO R2, R4, R6 AND R7 ARE SERVED;
NOTICE TO R3 AND R5 ARE HELD SUFFICIENT V/O DATED
26.03.2026;
NOTICE TO R8 TO R15 ARE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/O. 43
RULE 1(T) R/W SEC 104 OF THE CODE OF CIVIL PROCEDURE,
PRAYING TO A) PASS AN ORDER ALLOWING THE PRESENT
APPEAL AND SETTING ASIDE THE ORDER DATED 06.03.2021,
PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE ATHANI, IN
R.A. NO.01/2011 BY ALLOWING THE APPLICATION FOR
RESTORATION OF THE REGULAR MISCELLANEOUS FIRST APPEAL
AND ETC.,.

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



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

The appellants have filed this appeal challenging the order dated 06.03.2021 passed by the Principal Senior Civil Judge, Athani in R.A.No.1/2011 vide Annexure-A.

2. Brief facts leading rise to the filing of this appeal are as follows.

The respondents filed a suit for partition and separate possession of the suit properties against the appellants and others in O.S.No.345/1989. The said suit was decreed vide judgment and decree dated 01.12.2010. The appellants preferred an appeal in R.A.No.1/2011. The first appellate court dismissed the said appeal for non-prosecution. The appellants filed an application under Order 41 Rule 19 of CPC for re-admission of the appeal. The first appellate court rejected the said application by passing the impugned order. Hence, this appeal.



3. Heard the arguments of the learned counsel for the appellants and the learned counsel for the respondents.

4. Learned counsel for the appellants submitted that the first appellate court committed an error in rejecting the application filed for re-admission of appeal on the ground that the appellants have not filed an application on 10.02.2020. He submitted that the finding recorded by the first appellate court is arbitrary and erroneous. Hence, on these grounds, he prays to allow the appeal.

5. *Per contra*, learned counsel for the respondents supported the impugned order, and accordingly, prays to dismiss the appeal.

6. Perused the records and considered the submission of the learned counsel for the parties.

7. It is an undisputed fact that the appellants aggrieved by the judgment and decree passed in O.S.No.345/1989 preferred an appeal in R.A.No.1/2011.



The case was posted on 10.02.2020 for taking steps regarding respondent Nos.6 and 7. When the case was called out, the counsel for the appellants remained unrepresented before the first appellate court. The first appellate court noting the absence of the learned counsel has dismissed the appeal for non-prosecution. Further, the appellants filed an application under Order 41 Rule 19 of Code of Civil Procedure on 11.02.2020 and the same was put up on 02.03.2020 wherein the appellants have shown a cause for non-appearance of the counsel on the previous date. Admittedly, the counsel was appearing for the appellants filed an application in IA No. 11 under Order 41 Rule 19 of CPC vide Annexure-E, and filed a memorandum of facts stating that the appeal was posted on 08.02.2020 for the return of appeal notice, but on that day, it was declared as a holiday. Thereafter, the court was pleased to call the appeal on 10.02.2020 and on the said day, the appeal was dismissed on non-prosecution. It is stated that the appellants are very much eager to proceed with the



appeal and they are having a good chance in succeeding the appeal.

8. The said application was opposed by respondent No.1 by filing objections. The first appellate court had adjourned the matter on 08.02.2020, and it was declared as a holiday, thereafter, the matter was called on 10.02.2020. On the said date, the learned counsel for the appellants could not appear before the first appellate court. The first appellate court taking note of the absence of the learned counsel has dismissed the appeal for non-prosecution. The appeal involves right of the parties in the immovable properties. If the appeal is dismissed for non-prosecution, the appellants will be put to hardship. The first appellate court ought to have allowed I.A.No.11 filed under Order 41 Rule 19 for readmission of appeal rather passing the impugned order. In view of the above discussion, I proceed to pass the following:

ORDER



- i) The appeal is allowed.
- ii) The impugned order dated 06.03.2021 passed by the Principal Senior Civil Judge, Athani in R.A.No.1/2011 is hereby set aside.
- iii) The I.A.No.11 filed under Order 41 Rule 19 r/w Section 151 of CPC is hereby allowed.
- iv) The Appeal in R.A.No.1/2011 is restored to its original file.
- v) The parties are directed to appear before the first appellate court on 24.04.2026 without awaiting any further notice.
- vi) Pending applications, if any, shall stand disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE