



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

REGULAR FIRST APPEAL NO. 200069 OF 2026 (PAR/POS)

BETWEEN:

SUDHADEVI
D/O BASAVANTAPPA BORAGE,
AGE : 67 YEARS,
OCC: AGRICULTURE AND HOUSE HOLD WORK,
R/O: H.NO.601, BESIDE VIDYA BHARATI SCHOOL,
LINGESHWAR COLONY, MAHALABAGAYAT DARGA,
VIJAYAPURA – 586 103.

...APPELLANT

(BY SRI. BHARAMAGOUDA KENCHANA GOUDA PATIL, ADVOCATE)

AND:

DAVALASAB S/O DHULESAB JAMBAGI
(SINCE DECEASED BY HIS LRS)

1. MOHAMMAD SHAFIQ S/O DAVALSAB JAMBAGI

(SINCE DECEASED BY HIS LRS)

1.A. WASIM S/O MOHAMMADSHAFIQ JAMBABI,
AGE : 44 YEARS, OCC: BUSINESS,
R/O: JAMBAGI CHAWL, UPLI BURZ ROAD,
VIJAYAPURA – 586 103.

2. ROSHANBI W/O MAKTUMSAB GALAGALI
(SINCE DECEASED BY HER LRS)

2.A. ZULEKHA W/O ADAMSAB CHANEGAON,
AGE: 81 YEARS, OCC: HOUSE HOLD WORK,





R/O: POOT NO.25, FDP-27/2012 TIDAKE COLONY,
TRIMBAK ROAD, NASIK DIST: NASIK,
STATE MAHARASHTRA NASIK 422 003.

- 2.B. MUMTAZ W/O ABDUL RAZAK ALURKAR,
AGE : 79 YEARS, OCC: HOUSE HOLD WORK,
R/O: AL AMEEN ROAD, SHASTRI NAGAR,
OPPOSITE SAINIK SCHOOL GATE,
VIJAYAPURA - 586 103.
- 2.C. RAZIYA BEGUM W/O MOHAMMED HUSAIN HUNGUND
AGE : 83 YEARS, OCC; HOUSEHOLD WORK,
R/O: HABIB NAGAR, PLOT NO.7,
VIJAYAPURA - 586 103.
- 2.D. MEHARUN W/O ABDULIJABAR SINDAGI,
AGE : 77 YEARS, OCC: HOUSE HOLD WORK,
R/O: HOUSE NO.11 AND 2ND MAIN
KARNATAKA LAYOUT II STAGE, BASAVESHWAR NAGAR,
BENGALURU - 560 075.
- 2.E. NAZEER AHMED GALAGALI,
AGE : 65 YEARS, OCC: BUSINESS,
R/O: KUMBAR GALLI, VIJAYAPURA - 586 103.
- 3. ABDULGAFOOR S/O DHULESAB JAMBAGI
(SINCE DECEASED BY HIS LRS)
- 3.A. MAHEBOOBI W/O KHONMEERSAB KAVARE
(SINCE DECEASED BY HER LRS)
- 3.A.1. KHONMEERSAB S/O ABDULKLHADAR KAVARE,
AGE : 29 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA - 586 103.
- 3.A.2. TOUFEEQAHEMAD S/O KHONMEERSAB KAVERE,
AGE : 29 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA - 586 103.
- 3.A.3. TASREEN TAJ D/O KHONMEERSAB KAVERE,
AGE : 29 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA - 586 103.



ALL ARE R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.

- 3.B. AMEENABI SHANMURTUZA QUADRI
AGE : 48 YEARS, OCC : H.H.WORK,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.
- 3.C. MD. ASLAM ABDUL GAFOOR JAMBAGI,
AGE : 53 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.
- 3.D. JAMEELA NASRUDDIN SHAIKH,
AGE : 45 YEARS, OCC : H.H.WORK,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.
- 4. ABDUL LATIF S/O DHULESAB JAMBAGI,
AGE : 72 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.
- 5. ABDUL GANI S/O DHULESAB JAMBAGI,
AGE : 70 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.
- 6. MAHEBOOBPASHA S/O DHULESAB JAMBAGI,
AGE : 60 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAWL, H.NO.3,
VIJAYAPURA – 586 103.
- 7. AYAZ S/O DHULESAB JAMBAGI
(SINCE DECEASED BY HIS LRS)
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.
- 7.A. NOORBANU W/O AYAZ JAMBAGI,
AGE : 78 YEARS, OCC : HOUSEHOLD,
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.
- 7.B. NISARAHMED AYAZ JAMBAGI,
AGE : 50 YEARS, OCC : BUSINESS,
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.



- 7.C. AKTAR W/O MUNEERAHMED MULLA,
AGE : 48 YEARS, OCC : BUSINESS,
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.
- 7.D. IMAMUNISSA W/O MOHAMMEDRAFI KERUR,
AGE : 45 YEARS, OCC : TEACHER,
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.
- 7.E. SHAIRABANU W/O JILANI HALLI,
AGE : 42 YEARS, OCC : HOUSEHOLD WORK,
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.
- 7.F. GAJALA D/O AYZA JAMBAGI,
AGE : 40 YEARS, OCC : HOUSEHOLD WORK,
H.NO.3 UPLI BURUZ ROAD, VIJAYAPURA – 586 103.
- 7.G. ANJUM W/O BASHEERAHMEED CHIMMALAGI,
AGE : 37 YEARS, OCC: HOUSEHOLD WORK,
H.NO.3, UPLI BURUZ ROAD, VIJAYAPURA 586103.
R/O: JAMBAGI CHAWL, H.NO.3, UPLI BURUZ ROAD,
VIJAYAPURA 586103.
8. HAJRABI W/O ABDULLAYIF BAJAGAR,
AGE : 73 YEARS, OCC: H.H.WORK,
R/O: BARA-IMAM GALLI, JAMKHANDI – 587 301.
9. MALANBI W/O RAJESAB MANIYAR
(SINCE DECEASED BY HIS LRS)
- 9.A. HOORPASHA S/O RAJESAB MANIYAR,
AGE : 45 YEARS, OCC: BUSINESS,
R/O: KHAJAPOORA COMPOUND OPP : HUBLI RESIDENT
(MEHMA HOTEL) BHAIRYABEVARCOPPA,
HUBLI – 560 025.
- 9.B. REEHANA W/O MANSOOR BIALGI,
AGE ; 42 YEARS, OCC: KHAJAPORA COMPOUND,
OPP ; HUBLI RESIDENT (MEHMA HOTEL)
BHAIRYABEVARCOPPA, HUBLI – 560 025.
10. VAZIRAHMED S/O HUSSAIONSAB PATAVEKAR,
AGE: 73 YEARS, OCC: BUSINESS,
R/O: KHAJAPOORA COMPOUND OPP : HUBLI RESIDENT
(MEHMA HOTEL) BHAIRYABEVARCOPPA,
HUBLI – 560 025.



11. MD HUSAIN @ SAIDQ S/O VAZIRAHMED PATAWEGAR
(SINCE DECEASED BY ITS LRS)
- 11.A. PARVEEN W/O MD.HUSAIN @ SADIQ PATWEGAR,
AGE : 35 YEARS, OCC : H.H.WORK,
R/O: NAVBAG VIJAYAPURA – 586 103.
- 11.B. ZAREENA @ FARAZANA D/O VIZIRAHMED PATWEGAR,
AGE: 40 YEARS, OCC: H.H.WORK,
R/O: ALMEL TQ: SINDAGI – 586 128.
12. NAJMA W/O KHUTABODDIN INAMDAR,
AGE: 46 YEARS, OCC: H H WORK,
R/O: TAKKE ROAD, OPP : FIRE FIGHTER OFFICE,
VIJAYAPURA – 586 103.
13. NASEEMA W/O MD RAFEEQ PATEL,
AGE: 41 YEARS, OCC: H H WORK,
R/O: MIRAJ BALAVANT RAI SCHOOL BACKSIDE,
HUTAN VILLA, MIRAJ (MH) 416 410.
14. JUBEDA W/O AZIZSAB ATTAR
(SINCE DECEASED BY HER LRS)
- 14.A. RUBINA D/O AZIZSAB ATTAR,
AGE: 48 YEARS, OCC: H H WORK,
R/O: PUNE, A.H. ATTAR,
A2/3 BRANAMABEG B.T.KAVADE ROAD,
MUNDAWA PUNE – 411 036.
15. DAVALSAB S/O DHULESAB JAMBAGI
(SINCE DECEASED BY HIS LRS)
- 15.A. MOHAMMADISHAQ S/O DAVALSAB JAMBAGI,
AGE : 60 YEARS, OCC; BUSINESS,
R/O: JAMBAGI, CHAL UPLI BURZ H.NO.5,
VIJAYAPURA – 586 103.
16. MOHD. SHAFIQ DAVALSAB JAMBAGI
(SINCE DECEASED BY HIS LRS)
- 16.A. FIROZ S/O MOHD SHAFIQ JAMBAGI,
AGE : 30 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAL UPLI BURZ H.NO.5,
VIJAYAPURA – 586 103.



- 16.B. MUDDASAR S/O MOHD SHAFIQ JAMBAGI,
AGE : 29 YEARS, OCC : BUSINESS,
R/O: JAMBAGI CHAL UPLI BURZ H.NO.5,
VIJAYAPURA – 586 103.
- 16.C. FARDEEN S/O MOHD SHAFIQ JAMBAGI,
AGE : 19 YEARS, OCC : STUDENT,
R/O: JAMBAGI CHAL UPLI BURZ H.NO.5,
VIJAYAPURA – 586 103.
17. MOHAMMAD RAFIQ S/O DAVALSAB JAMBAGI
(SINCE DECEASED BY HIS LRS)
- 17.A. NISHAD W/O MOHAMMADRAFIQ JAMBAGI,
AGE: 50 YEARS, OCC: H.H.WORK,
R/O: JAMBAGI CHAL UPLI BURZ H.NO.5,
VIJAYAPURA - 586 103.
- 17.B. RAHIL S/O MOHAMMADRAFIQ JAMBAGI,
AGE: 25 YEARS, OCC: STUDENT,
R/O: JAMBAGI CHAL UPLI BURZ H.NO.5,
VIJAYAPURA - 586 103.
- 17.C. SHAROOQ S/O MOHAMMADRAFIQ JAMBAGI
AGE: 20 YEARS, OCC: STUDENT,
R/O: JAMBAGI CHAL UPLI BURZ H.NO.5,
VIJAYAPURA - 586 103.
18. THE CHIEF EXECUTIVE OFFICER,
KARNATAKA STATE BOARD OF WAKF, NO 6,
CUNNINGHAM ROAD, BENGALURU – 560 018.
19. SHASHIDHAR SHRISHAILPPA AWAJI,
AGE : 54 YEARS, OCC: AGRICULTURE,
R/O: CHADACHAN – 586 205.
20. SOMASHEKHAR MALLAPPA AWAJI,
AGE : 59 YEARS, OCC: AGRICULTURE,
R/O: CHADACHAN – 586 205.
21. GURUSHANTAPPA MALLAPPA SURPUR
(SINCE DECEASED BY LRS)
- A SUNANDA W/O GURUSHANTPPA SURPUR,
AGE : 68 YEARS, OCC: HOUSEHOLD,



R/O: COLLEGE ROAD, VIJAYAPURA – 586 103.

- B. ASHOK KUMAR S/O GURUSHANTAPPA SURPUR
(SINCE DECEASED BY LRS)
- B.I. SMT. MAHALAXMI W/O ASHOK KUMAR,
AGE : 45 YEARS, OCC; HOUSEHOLD,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- C. VEERKUMAR S/O GURUSHANTAPPA SURPUR
AGE : 60 YEARS, OCC: PRIVATE SERVICE,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- D. ANANDKUMAR S/O GURUSHANTAPPA SURPUR
AGE : 58 YEARS, OCC: PRIVATE SERVICE,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- E. SHAKUNTALA D/O GURUSHANTAPPA SURPUR
AGE : 55 YEARS, OCC: HOUSEHOLD,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- F. SHOBHA D/O GURUSHANTAPPA SURPUR
AGE : 53YEARS, OCC: PRIVATE SERVICE,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- G. SUREKHA D/O GURUSHANTAPPA SURPUR
AGE : 50 YEARS, OCC: PRIVATE SERVICE,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- 22. ANANDKUMAR GURUSHANTAPPA SURPUR
AGE : 30YEARS, OCC: AGRICULTURE,
R/O: COLLAGE, ROAD, VIJAYAPURA - 586 103.
- 23. RAJSHEKHAR @ RAJENDRA
S/O MAHADEVAPPA KAPASE,
AGE : 53 YEARS, OCC: AGRICULTURE,
R/O: HALASANGI, INDI,
TQ: HALASANGI – 586 207.
- 24. KASHINATH MAHADEVAPPA KAPASE,
AGE : 53 YEARS, OCC: AGRICULTURE,
R/O: HALASANGI – 586 207.
- 25. KALLAWWA W/O KALLAPPA BILAGOND,
AGE : 53 YEARS, OCC: AGRICULTURE,



R/O: SAVALSANG, INDI,
TQ : SAVALSANG – 586 117.

26. CHANDAKKA W/O BAPURAYA PATIL,
AGE : 50 YEARS, OCC : AGRICULTURE,
R/O: VIJAYAPURA – 586 103.
27. SHAILA MURUGEPPA SARSHETTI,
AGE : 40 YEARS, OCC : HOUSEHOLD WORK,
R/O: VIJAYAPURA – 586 103.
28. GANGUBAI W/O MAHADEVAPPA SANKH,
AGE : 60 YEARS, OCC: HOUSEHOLD WORK,
R/O: VIJAYAPURA – 586 103.

...RESPONDENTS

THIS RFA IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE, PRAYING TO ALLOWED BY SETTING A SIDE THE JUDGMENT AND FINAL DECREE PRINCIPAL SENIOR CIVIL JUDGE AT VIJAYAPURA, IN THE INTEREST OF JUSTICE AND SET ASIDE THE ORDER ON INTERIM APPLICATION FILED UNDER ORDER 1 RULE 10 CPC AS A I.A.NO.XXII IN F.D.P. NO.27/2012 BY THE PRINCIPAL SENIOR CIVIL JUDGE AT VIJAYAPURA ON DATED 24.12.2025 IN THE INTEREST OF JUSTICE AND ET.

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
and
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. Appellant is before this Court seeking for the following reliefs:

"Therefore, it's prayed that Regular First Appeal may kindly be allowed by setting a side the Judgment and Final Decree Proceedings dated: 28/02/2024 passed in F.D.P No.27/2012 by the Principal Senior Civil Judge At Vijayapura, in the interest of justice.



Further it is prayed that the Hon'ble Court be please to set aside the order on Interim application filed Under Order 1 Rule 10 C.P.C, as a I.A NO XXII in F.D.P No.27/2012 by the Principal Senior Civil Judge At Vijayapura on dated 24.12.2025 in the interest of justice.

Further be please to allow the I A NO XXII filed by the appellant Under Order XXII C.P.C, and allow the appellant to contest the F.D.P No.27/2012 at Principal Senior Civil Judge At Vijayapura in the interest of justice."

2. In the final decree proceedings in FDP No.27/2012, the appellant filed an application for impleadment in I.A. No.XXII, which came to be dismissed by order dated 24.11.2025. By the said order, the Trial Court also accepted the Commissioner's report and directed drawing up of the final decree. Aggrieved by both the rejection of the impleading application and the consequential final decree, the appellant has preferred the present appeal.
3. Though ordinarily a first appeal would be considered on merits, the present case stands on a distinct footing having regard to the prior conduct of the appellant and the procedural history of the matter. The suit in O.S. No.99/1987 culminated in a preliminary decree dated 10.09.1993, which has attained finality.



4. In the course of the final decree proceedings in FDP No.27/2012, the appellant had earlier filed an application for impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908, in I.A. No.XIV. The said application was withdrawn by filing a memo dated 06.03.2023, and such withdrawal was permitted by the Court. The order permitting withdrawal has attained finality.
5. It is well settled that where a proceeding is withdrawn without liberty to institute a fresh proceeding on the same cause, the party is precluded from re-agitating the same issue. The principle underlying Order XXIII Rule 1 of the Code of Civil Procedure, though in terms applicable to suits, would apply to other proceedings as well, and that withdrawal without liberty bars a fresh proceeding on the same cause.
6. Further, the attempt to file a successive impleading application is also hit by the principle of constructive res judicata, which prevents a party from raising, in subsequent proceedings, a ground which ought to have been urged earlier. This doctrine, being a facet of finality in litigation, is intended to prevent



multiplicity of proceedings and ensure certainty in judicial determinations.

7. Significantly, the subsequent application in I.A. No.XXII has been filed only after submission of the Commissioner's report, clearly indicating an attempt to reopen a stage of the proceedings that had already attained finality insofar as the appellant is concerned.
8. The conduct of the appellant, in repeatedly seeking impleadment and withdrawing the earlier application without liberty, and thereafter filing a fresh application for the very same relief, constitutes an abuse of the process of Court. An abuse of process would in our considered opinion include relitigation of issues and proceedings which are manifestly frivolous or vexatious, or instituted with the intent to delay or obstruct the course of justice.
9. The Trial Court, being alive to these principles, has rightly rejected the subsequent impleading application as not maintainable. Once the appellant has failed to secure impleadment, he does not acquire the status of a party to the proceedings. In the absence of locus standi, the appellant cannot be



permitted to challenge the final decree drawn up in FDP No.27/2012.

10. In the peculiar facts and circumstances of the case, we are of the considered opinion that the present appeal does not merit admission. The appellant, having consciously withdrawn the earlier impleading application without liberty and having failed to challenge the order permitting such withdrawal, is barred from maintaining a subsequent application for the same relief. The rejection of the impleading application by the Trial Court is legally sound and does not warrant interference.
11. Consequently, no independent right survives in favour of the appellant to assail the final decree. Entertaining such an appeal would amount to permitting a collateral challenge by a non-party, which is impermissible in law.
12. Accordingly, the appeal is dismissed at the stage of admission.
13. In the facts of the case, and having regard to the conduct of the appellant, we are of the view that the proceedings verge on abuse of process. However, considering that the matter arises out of civil



proceedings relating to property rights, we refrain from imposing costs, while making it clear that any further attempt to reopen the issue shall be viewed seriously.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

THM
List No.: 2 SI No.: 22