



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

REGULAR SECOND APPEAL NO. 200264 OF 2015

(DEC/INJ)

BETWEEN:

1. ABDUL RAHEEM
S/O MOHD.HUSSAIN MERCHANT
AGE: 62 YEARS, OCC: PRESIDENT OF ANJUMAN
URDU EDUCATION TEACHERS AND
PARENTS ASSOCIATION, SHAHABAD TOWN
TQ: CHITTAPUR
DIST: KALABURAGI-585211.

2. MOHD.YAKUB
S/O MOHD ISHAQUE MERCHANT
AGED ABOUT MAJOR
OCC: SECRETARY ANJUMAN
URDU EDUCATION TEACHERS AND
PARENTS ASSOCIATION, SHAHABAD TOWN
TQ: CHITTAPUR, DIST:KALABURAGI-585211

...APPELLANTS

(BY SRI.C.A.SUGOOR., ADVOCATE)

AND:

ANJUMAN URDU EDUCATION SOCIETY (REGD)
THROUGH ITS PRESIDENT
AYUB ALI S/O: KASHIM PATEL
AGED: 46 YEARS, OCC: PRESIDENT OF
PLAINTIFF SOCIETY & BUSINESS
R/O: SHAHABAD TOWN, TQ: CHITTAPUR
DIST: KALABURAGI-585211

...RESPONDENT

(BY SRI.VIKRAM VIJAYKUMAR., ADVOCATE) (ABSENT)





THIS RSA IS FILED U/S 100 OF CPC, PRAYING TO ALLOW THE APPEAL WITH COSTS BY SET ASIDING THE JUDGMENT AND DECREE DATED 14.07.2015, PASSED BY THE PRL. DIST. JUDGE AT KALABURAGI IN R.A.NO.92/2013 AND ALSO THE JUDGMENT AND DECREE DATED 01.10.2013 PASSED BY THE SENIOR CIVIL JUDGE CHITTAPUR COURT IN O.S.NO.110/2011 MAY KINDLY BE PLEASED TO DISMISS THE SUIT OF THE RESPONDENTS OR THE ABOVE SAID JUDGEMENT AND DECREE MAY KINDLY BE REMANDED TO LOWER COURT BY GIVING AN OPPORTUNITY TO THE CONTEST THE CASE TO APPELLANT AND PURCHASERS OF THE PLOT AND ANY OTHER RELIEF WHICH THIS HONOURABLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellants have preferred this appeal under Section 100 of C.P.C, seeking following relief:

"Wherefore, it is prayed that this Hon'ble Court may kindly be pleased to allow the appeal with costs by set asiding the judgment and decree dated 14-07-2015 passed by the Prl. Dist. Judge at Kalaburagi in R.A.No.92/2013 and also the judgment and decree dated 01-10-2013 passed by the Senior Civil Judge Chittapur Court in O.S.No.110/2011 may kindly be pleased to dismiss the suit of the respondents or the above said judgment and decree may kindly be remanded to Lower Court by giving an opportunity to the contest the case to appellant and purchasers of



the plot and any other relief which this Hon'ble Court deems fit in the circumstances of the case, in the interest of justice and equity."

2. The appellants are defendant Nos. 1 and 2 before the learned Trial Court. The original suit No. 110/2011 came to be decreed with costs as per the judgment dated 01.10.2013. Against this, defendant Nos. 1 and 2 preferred appeal in R.A. No. 92/2013 before the Principal District Judge, Kalaburagi.

3. It is submitted by the learned counsel for the appellants that on 12.11.2013, the appellants filed an application under Order 41 Rule 3, read with Order 6 Rule 17 and Section 151 of the Civil Procedure Code, 1908 (CPC), to amend the memorandum of appeal by way of filing the brief facts of the case as well as incorporating defendant Nos. 3 to 19. It is submitted that the appellate Court has not passed any order on I.A. No. II and dismissed the appeal. Hence, he sought remand of the case to the First Appellate Court to consider I.A. No. II.

4. This Court has framed the following substantial question of law on 12.03.2024:



- i. Whether the First Appellate Court committed an error in not considering the application filed under Order 6 Rule 17 of C.P.C., read with Section 151 of C.P.C., filed by the appellants, though the Appellate Court passed an order on 02.01.2014 that the application will be heard along with the main appeal?*
- ii. Whether the impugned judgment and decree passed by the First Appellate Court is not sustainable in law in the absence of impleading respondents Nos. 3 to 19?*
- iii. What order?*

Reasons regarding Point Nos. 1 and 2:

5. Before appreciating the materials on record, it is necessary to mention the provisions of Rule 3 of Order 41 of the Code of Civil Procedure, 1908, which reads as under:

"3. Rejection or amendment of memorandum.—(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there. (2) Where the Court rejects any memorandum, it shall record the reasons for such rejection. (3) Where a memorandum of appeal is



amended, the judge, or such officer as he appoints in this behalf, shall sign or initial the amendment."

6. In the case on hand, the plaintiff—Anjuman Urdu Education Society, registered through its president had filed a suit against defendant Nos. 1 to 19 for relief of declaration and injunction in O.S. No. 110/2011. The suit came to be decreed in favour of the plaintiff.

7. Being aggrieved by this judgment and decree passed against the defendants, only two defendants preferred this appeal before the Principal District Judge, Kalaburagi in R.A. No. 92/2013. At the time of filing the appeal, the appellants/defendant Nos. 1 and 2 had not made the remaining defendants as respondents. Since the memorandum of appeal was not drawn up in the manner prescribed, the present appellants filed an application under Order 41 Rule 3, read with Order 6 Rule 17 and Section 151 of the Civil Procedure Code (CPC) in I.A. No. II on 12.11.2013. The same is also noted in the order sheet pertaining to R.A. No. 92/2013. The order sheet reveals that on 02.01.2014, the respondent's counsel had filed an objection to this I.A., and the Court passed an order that the



amendment application will be heard along with the main appeal, and the case was posted on 06.01.2014.

8. Thereafter, the trial Court dismissed the appeal on 14.07.2015. The First Appellate Court has not passed any order on I.A. No. II. Though the First Appellate Court passed an order dated 02.01.2014 that the amendment application will be heard along with the main appeal, the First Appellate Court, without application of mind, passed the impugned judgment and decree without passing any order on I.A. No. II, which is not sustainable under law. Hence, I answer Point Nos. 1 and 2 in the affirmative.

Regarding point No. 3:

9. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

- i. The appeal is partly allowed.
- ii. The matter is remitted back to the Principal District Judge, Kalaburagi with a direction to consider the I.A.No.II filed under Order 41 Rule 3, read with



- Order 6 Rule 17 and Section 151 of the Civil Procedure Code (CPC).
- iii. The First Appellate Court is directed to comply the mandatory provision of Rule 3 of Order 41 of the Code of Civil Procedure, 1908 and pass appropriate order on I.A.No.II within six months from the date of receipt of this order.
- iv. The Registry is directed to send the copy of the order along with the TCR to the First Appellate Court.
- v. The Court fee paid by the appellant shall be refunded to the appellant under Section 64 of the Karnataka Court-Fees and Suits Valuation Act, 1958.

Sd/-
(G BASAVARAJA)
JUDGE

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List No.: 2 Sl No.: 12