



**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 25<sup>TH</sup> DAY OF FEBRUARY, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE R.NATARAJ**

**AND**

**THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY**

**REGULAR FIRST APPEAL NO.200108 OF 2023 (PAR/INJ)**

**BETWEEN:**

1. ARVIND KUMAR  
S/O LATE NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 44 YEARS, OCC: BUSINESS
2. SMT. CHANNAMMA  
W/O NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 60 YEARS, OCC: HOUSEWIFE,  
  
BOTH R/O. NEAR CHAMUNDESHWARI TEMPLE,  
ALLA WALI DARGA, VTC, SHAHAPUR,  
DIST. YADGIRI-585 223.

...APPELLANTS

(BY SRI H.M. PATEL, ADVOCATE)

**AND:**

1. ANAND S/O NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 60 YEARS, OCC: PRIVATE SERVICE,
2. MAHADEVI  
W/O NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 50 YEARS, OCC:HOUSEWIFE,





3. ASHA D/O NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 36 YEARS, OCC: NIL,
4. USHA D/O NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 34 YEARS, OCC: NIL,
5. JYOTHI D/O NAGENDRAPPA @ NAGAPPA TELLUR,  
AGE: 32 YEARS, OCC: NIL,  
  
ALL R/O. H.NO.1-1498/56 AND 56-A,  
SHAKTI NAGAR, BHAVANI LAYOUT,  
STATION AREA,  
KALABURAGI-585 102.

...RESPONDENTS

(BY SRI RAVI B. PATIL, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER XLI RULE 1 R/W SECTION 96 OF CPC, PRAYING TO ALLOW THE APPEAL AND SET-ASIDE THE IMPUGNED ORDER AND DECREE DATED 20.02.2023 PASSED ON PRELIMINARY ISSUES BY THE I ADDL. SENIOR CIVIL JUDGE, KALABURAGI, IN O.S. NO.145/2022 IN RESPECT OF PARTITION OF THE SUIT SCHEDULE PROPERTIES SITUATED AT TELLUR, TQ. ALAND AND SHAKTI NAGAR, KALABURAGI AND REMAND BACK THE MATTER TO THE TRIAL COURT FOR FRESH TRIAL ON ALL ISSUES.

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

CORAM: HON'BLE MR. JUSTICE R.NATARAJ  
AND  
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY



**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

The plaintiffs in O.S. No.145/2022 on the file of I Additional Senior Civil Judge, Kalaburagi [for short 'Trial Court'] are before this Court challenging an order dated 20.02.2023, by which, the suit was rejected on preliminary issues No.4, 8, 9 and 10.

2. The suit in O.S. No.145/2022 was filed for partition and separate possession of the plaintiffs' share in the suit schedule properties. The plaintiffs claimed that plaintiff No.2 was a Muslim, who was given in marriage to a person named Mohammed Yaseen, from whom she had a child. Later, she divorced the said Mohammed Yaseen in terms of a *Khula* and then married one Mr. Nagendrappa in the year 1973. The plaintiff No.1 is born to plaintiff No.2 after her marriage with Nagendrappa. The said Nagendrappa died on 11.12.2021. The plaintiffs after performance of all death ceremonies called upon the defendants No.1 and 2 to partition the suit properties and handover their separate possession. However, the defendants refused to do so, which compelled the plaintiffs to seek for



partition of their shares in the suit schedule properties. The suit was contested by the defendants on various grounds. The Trial Court framed the following issues:

**ISSUES**

1. *Whether the plaintiff No.2 proves that her marriage was solemnized with Nagendrappa @ Nagappa as per Hindu customs and rites?*
2. *Whether the plaintiff No.2 proves that the plaintiff No.1 born due to wedlock of plaintiff No.2 and Nagendrappa in the year 1978 at Shahapur?*
3. *Whether the plaintiff No.1 proves that he is entitled for 1/5th share with his mother in the sit property?*
4. *Whether the defendant No.1 to 5 prove that the suit of the plaintiffs is barred by under Order VII Rule-3 of C.P.C.?*
5. *Whether the defendant No.1 to 5 prove that the plaintiff No.2 and plaintiff No.1 are strangers to the family of the defendants?*
6. *Whether the defendants prove that they are only legal heirs of deceased Nagendrappa @ Nagappa Tellur?*
7. *Whether the defendant No.1 to 5 prove that the defendant No.2 herself is only legally wedded wife of deceased Nagendrappa @ Nagappa Tellur?*



8. *Whether the defendant No.1 to 5 prove that the suit of the plaintiffs is barred under Order VII Rule-11 (a) of CPC.?*
9. *Whether the defendant No.1 to 5 prove that the court fees paid by the plaintiffs on the plaint is incorrect, insufficient and improper?*
10. *Whether the defendant No.1 to 5 prove that suit of the plaintiffs in the present form is not maintainable?*
11. *Whether the plaintiffs are entitled for the reliefs as claimed in the plaint?*
12. *What Order or Decree?"*

3. The Trial Court considered issue No. 4, 8, 9 and 10 as preliminary issues and in terms of the impugned order held that the suit properties were not capable of being identified and hence, issue No.4 was held against the plaintiffs. It also held that plaintiff No.2 was not a Hindu governed under the provisions of the Hindu Succession Act, 1956, (hereinafter referred as 'Act, 1956' for short) by relying upon Section 2C of the Act, 1956 and it also held that the Court Fee paid was



insufficient and hence the suit was not maintainable and proceeded to dismiss the suit.

4. Being aggrieved by the said order, the plaintiffs are before this Court.

5. (i) The learned counsel for the plaintiffs contended that the plaintiffs had described the suit properties as Houses bearing Corporation No.148/56 and 56(A), Shakti Nagar, Bhavani Layout, Station Area, Kalaburagi and land Sy.No.94/1-A, measuring 5 acres situated at Tellur Village, Taluk Aland, District Kalaburagi. He contends that under Order VII Rule-3 of CPC, these particulars are sufficient to identify the property. Besides, he contends that the defendants do not dispute the existence of the aforesaid properties. Thus, he submits that the Trial Court could not have answered preliminary issue No.4 against the plaintiffs.

(ii) He contends that plaintiff No.2 was married to Sri Nagendrappa in the year 1973 and that the plaintiff No.2 was converted from Islam to Hinduism and she got her name changed from Chunnibai to Channamma. He contends that plaintiff No.2 has led a life as a Hindu and therefore, the



provisions of the Act, 1956 is applicable. Besides this, he contends that under explanation to the provisions of the Section 2 of the Hindu Marriage Act, 1955, any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion would be construed as a Hindu. Likewise, any child legitimate or illegitimate, one of whose parents is a Hindu and who is brought up as a member of the Tribe, Community, Group or Family to which such parent belonged is deemed to be a Hindu. He therefore contends that the suit could not have been dismissed as plaintiff No.1 being a hindu was also claiming his share in the suit properties.

(iii) He further contends that the question whether the suit properties are in joint possession or not and whether the suit had to be valued under Sections 35(1) or Section 35(2) of the Karnataka Court Fees and Suits Valuation Act, 1958 (hereinafter referred to 'Act,1958' for short) is a matter of trial and cannot be construed as a preliminary issue.

6. The learned counsel for the respondents on the other hand contended that under Section 2(c) of the Hindu Marriage Act, 1956 the provisions of the Act are not applicable



to a person who is not a Hindu. He contends that the plaint specifically set out that plaintiff No.2 was earlier a Mohammedan, who was married to Nagendrappa. Therefore, he contends that the marriage was governed under the provisions of the Special Marriage Act and consequently the succession had to be under the Indian Succession Act, 1925. He also contends that the suit properties are not capable of identification as the boundaries of the property as well as its measurements are not provided. He further contends that the plaintiffs have not pleaded that they are in joint possession of the suit properties and therefore the trial Court was right in considering it as a preliminary issue and rejecting the plaint for non-payment of correct court fee. He also contends that in the entire pleadings, the plaintiff No.2 has not pleaded that she has converted to Hinduism or that she has followed the Hindu way of life and that plaintiff No.1 was brought up as a Hindu.

7. We have considered submissions made by the learned counsel for the plaintiffs as well as the learned counsel for the respondents.



8. The trial Court having framed issues, could not have construed any issue as a preliminary issue unless it went to the root of the matter affecting the jurisdiction of the trial Court to decide the suit. Issues, such as identification of a property, question whether plaintiffs were Hindus or not or whether provisions of the Act, 1956 were applicable to them or not and question whether Court fee paid on the plaint was sufficient or not, does not affect the jurisdiction of the trial Court to decide the dispute. In this regard, it is profitable to refer to the judgment of the Division Bench of this Court in the case of ***Veeragouda and others Vs Shantakumar @ Shantappagowda*** reported in ***2008 SCC OnLine Kar 516***, wherein it was held that the Courts cannot consider any issue to be a preliminary issue unless it affects the jurisdiction of the Court.

9. Now coming to the facts pleaded by the plaintiffs, the plaintiff No.2 claimed that she was Mohammedan and was given in marriage to one Mr. Mohammed Yaseen and after she divorced him, she married Sri Nagendrappa in the year 1973. Nagendrappa is undoubtedly a Hindu and the plaintiff No.1 was



born to them. Plaintiff No.1 was named Arvind Kumar and plaintiff No.2 who was earlier known as Chunnubegum changed her name to Chennamma. Plaintiff No.2 claimed that her marriage with Nagendrappa was in accordance with Hindu rites. Therefore, the question whether plaintiff No.2 had converted to Hinduism or whether she led a Hindu way of life, were all questions of fact which had to be thrashed out after an enquiry. The trial Court could not have arrogated to itself the authority to hold that plaintiff No.2 continued to be a Mohammedan and therefore the provisions of the Hindu Succession Act, 1956 are not applicable to her. The trial Court completely lost sight of the contours of excesses of power under Order VII Rule 11 of CPC in rejecting a plaint on a disputed question of fact.

10. As regards finding of the trial Court that the suit properties were not properly described for identification under Order VII Rule 3 of CPC the plaintiffs are required to only provide such particulars which are sufficient to identify the property and nothing more. In the case on hand, the defendants have not pleaded that the suit properties do not exist. Therefore, when the plaintiffs have provided the



particulars of the property and its location, it is not impossible for the Court to identify the properties and therefore the finding on the preliminary issue by the trial Court is misplaced.

11. As regards sufficiency of the Court fee, the plaintiffs have claimed that suit schedule 'B' property is the ancestral property fallen to the share of Nagendrappa in a partition between him and his brothers, while suit item No.1 is a self-acquisition. Therefore, the plaintiffs have claimed that they are in constructive possession of the properties along with the defendants. Therefore, they have valued the suit under Section 35(1) of the Act, 1958. The question whether plaintiffs are in possession or not and whether the plaintiffs must have valued the suit under Section 35(2) of the Act, 1958, is a disputed question of fact which has to be thrashed out after a trial. Assuming that the suit is undervalued and proper Court fee is not paid, the Court does not lose jurisdiction to recover the court fee payable from the plaintiffs.

12. In that view of the matter, the impugned order passed by the trial Court warrants interference and hence the following:



**ORDER**

- i) Accordingly, this appeal is ***allowed***.
- ii) The impugned order passed by the trial Court is set aside. Consequently, the suit before the trial Court is restored.
- iii) Parties are directed to appear before the trial Court on 24.04.2026 without awaiting any further notice.
- iv) The trial Court is directed to decide the matter on merits.
- v) Any observation made in the course of this order shall not come in the way of the trial Court deciding the suit on merits, in accordance with law.

**Sd/-  
(R.NATARAJ)  
JUDGE**

**Sd/-  
(TYAGARAJA N. INAVALLY)  
JUDGE**