



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 20TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100459 OF 2017 (DEC/INJ)

BETWEEN:

1. SMT. SUJATA D/O. AMARAPPA NASHI
@ SMT. SUJATA W/O. SHIVAYOGI SANGOLLI,
AGED ABOUT 38 YEARS,
OCC. HOUSEHOLD, R/O. KESHWAPUR,
HUBBALLI POST AND TALUK,
DHARWAD DISTRICT-580023.
2. SRI. GURUSIDDAPPA S/O. AMARAPPA NASHI,
AGED ABOUT 37 YEARS,
OCC. AGRICULTURE AND BUSINESS,
R/O. AKKIHONDA, HUBBALLI-580028.
3. SRI. VISHWANATH S/O. AMARAPPA NASHI,
AGED ABOUT 35 YEARS,
OCC. AGRICULTURE AND BUSINESS,
R/O. AKKIHONDA, HUBBALLI-580028.
4. SMT. MANGALA D/O. AMARAPPA NASHI
@ MANGALA W/O. VIJAY YALAVATTI,
AGED ABOUT 33 YEARS,
OCC. HOUSEHOLD, R/O. VIDYANAGAR,
HUBBALLI-580021.

...APPELLANTS

(BY SRI. SATHISH M.S, ADVOCATE)

AND:

1. SMT. SANGAVVA W/O. AMARAPPA NASHI,
AGED ABOUT 67 YEARS,
OCC. HOUSEHOLD,
R/O. AKKIHONDAR, HUBBALLI-580028.
2. MALLAPPA S/O. AMARAPPA NASHI,
AGED ABOUT 57 YEARS,



OCC. HOUSEHOLD,
R/O. AKKIHONDAR, HUBBALLI-580028.

3. GOOD NEWS WELFARE SOCIETY,
KALAGHATAGI,
BY ITS CHAIRMAN/ADMINISTRATOR,
BROTHER SABU, AGED ABOUT 36 YEARS,
R/O. KALAGHATAGI,
DIST. DHARWAD-580114.

...RESPONDENTS

(BY MISS. RENUKA YALAMELI, ADVOCATE FOR
SRI. M.M. KORIMATH, ADVOCATE FOR R3;
R1 AND R2-NOTICE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO
CALL FOR THE RECORDS AND TO SET ASIDE THE IMPUGNED
JUDGMENT AND DECREE PASSED IN O.S.NO.368/2013 PASSED BY
THE III ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI DATED
20.07.2015 ONLY IN SO FAR AS FINDINGS ON ' A ' SCHEDULE
PROPERTY, BEING CONFIRMED IN R.A.NO.290/2015 PASSED BY THE
LEARNED IV ADDITIONAL DISTRICT AND SESSION JUDGE, DHARWAD
DATED 28.10.2016 AND THEREBY DECREE THE ENTIRE SUIT FILED BY
THE APPELLANTS BEFORE THE TRIAL COURT IN O.S.NO.368/2013
PASSED BY THE HON'BLE III ADDITIONAL SENIOR CIVIL JUDGE,
HUBBALLI, DATED 20.07.2015 BY ALLOWING THIS APPEAL WHILE
DECREEING THE SUIT FILED BY THE APPELLANTS AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY, THE
COURT DELIVERED THE FOLLOWING:



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

This appeal is filed by the plaintiffs in O.S.No.368/2013, who was non-suited by the Trial Court as well as the First Appellate Court in R.A.No.290/2015 by impugned judgment.

2. The summary of factual matrix of the case is that the father of the plaintiffs, Amarappa was having several properties and suit schedule 'A' property is one among them. After death of Amarappa, the plaintiffs filed suit for partition contending that they are entitled for a share in property. So far as, suit schedule 'A' property is concerned, the said Amarappa had executed a registered sale deed dated 25.04.1985 in favour of the defendant No.3/Society for a consideration of Rs.9,000/-. Later the said Amarappa filed a suit in O.S.No.82/1986 and it was for declaring the sale deed as null and void. The said suit culminated in a compromise between the said Amarappa and defendant No.3. By virtue of the compromise, the sale deed dated 25.04.1985 was declared non est. The said compromise decree is at Ex.P.4 dated 13.03.1986. Thereafter, the said Amarappa appears to have converted the suit schedule 'A' property into non-agricultural by



stating that it was to be used for educational purposes. Subsequently, the said Amarappa executed an unregistered gift deed in favour of the same defendant No.3 on 08.06.1986. From the records it appears that, subsequent to the sale deed, the revenue entries were not changed in favour of defendant No.3, since defendant No.3 was a Society and the provisions of Section 79-A the Land Revenue Act, 1996 prohibited acquisition of any agricultural property by the Society. When the matter stood thus, the partition suit came to be filed by plaintiffs after the death of said Amarappa.

3. The Trial Court came to the conclusion that the suit schedule 'A' property is not available for partition, since now, it stands in the name of defendant No.3/Society and therefore, decreed the suit in respect of the remaining properties.

4. Being aggrieved by the same, the plaintiffs approached the First Appellate Court in R.A.No.290/2015. During pendency of the said appeal, the plaintiffs also filed an application under Order 41 Rule 27 of CPC and had also filed another application seeking to refer some of the documents to the handwriting expert and obtain an expert opinion alleging Amarappa had not executed any documents. The First Appellate



Court, without noticing the pendency of the application filed under Order 41 Rule 27 of CPC and a few other applications, proceeded to decide the appeal on merits and it dismissed the appeal.

5. Now, the learned counsel for the appellants submits that the appellants had sufficient grounds to urge, on the basis of the application filed under Order XLI Rule 27 of the CPC. Through the additional evidence sought to be produced, the appellants intend to throw light on the conduct of Amarappa and on the question whether he had the intention to sell, donate, or gift the Schedule 'A' property to defendant No.3.

6. A perusal of the order sheet of the First Appellate Court dated 08.08.2016 shows that the application was filed by the appellants under Order XLI Rule 27 of CPC, and later the Appellate Court has lost the track of said application. Nothing is forthcoming from the records of the First Appellate Court as to the fate of application filed by the appellants. The learned counsel appearing for the appellants submits that he had also filed an application under Order XXVI Rule 10 of CPC for referring the documents to the concerned officers of FSL, Madivala for opinion regarding ascertaining the signatures of Amarappa.



Anyhow, it is not necessary for this Court to dwell upon the said application, since it is in the domain of the First Appellate Court and it seems that the applications were not urged by the appellants.

7. It is evident that the merits of the application filed under Section XLI Rule 27 of CPC which was either not urged by the appellants or not considered by the Appellate Court. When the application is filed under Order XLI Rule 27 of CPC, to consider additional evidence, it was incumbent upon the First Appellate Court to deal with the said application along with the main appeal itself. Separate Order on application under XLI Rule 27 of CPC is not contemplated, but it has to be considered by the First Appellate Court along with the main appeal. No such exercise has been done by the Appellate Court. The records reveal that nearly 28 documents were produced by the appellants under the said application. It is not necessary for this Court to enter into the merits of the application and whether the application comes within the four corners of Rule 27 of Order XLI of CPC. It is settled principle of law that an application under Order XLI Rule 27 of CPC has to be allowed in rare circumstances and only if the grounds fall within the scope of Rule 27. The



judgment of the Hon'ble Apex Court in the case of ***Union of India vs. Ibrahim Uddin and another***¹ lays down the parameters under which such application has to be considered. Since the appellants have been non-suited by the Trial Court as well as the First Appellate Court, the grievance of the appellants that their application for additional evidence was not considered needs to be addressed. In that view of the matter, the impugned judgment deserves to be set aside and the matter has to be remanded to the First Appellate Court to consider the said application along with the main appeal and to render a judgment. Hence, the following:

ORDER

- i) *The appeal is **allowed**.*
- ii) *The impugned judgment and decree passed by the First Appellate Court in RA No.290/2015 is set aside.*
- iii) *The matter is remanded to the First Appellate Court to consider the application filed under*

¹ (2012) 8 SCC 148



Order XLI Rule 27 of CPC on merits along with the main appeal and to dispose of the appeal.

- iv) The parties are at liberty to urge the grounds available to them before the First Appellate Court.*
- v) It is made clear that this Court has not expressed anything on the merits of the case and all questions are kept open.*
- vi) Both the parties are directed to appear before the First Appellate Court on 08.01.2026 without waiting for any notice from that Court.*
- vii) The records of the Trial Court as well as the First Appellate Court be sent to the First Appellate Court expeditiously along with the copy of the judgment of this Court.*

SD/-
(C M JOSHI)
JUDGE