

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 17TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE DR. JUSTICE K.MANMADHA RAO
REGULAR FIRST APPEAL NO.100159 OF 2019

BETWEEN:

1. SMT. YALLAVVA W/O RAMAPPA TATTI
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/O: KAINAKATTI, TQ: BADAMI,
DSIT: BAGALKOT-587201.
2. SMT. TULASAVVA W/O FAKIEERAPPA HOSAKOTI
AGE: 63 YEARS, OCC: HOUSEHOLD WORK,
R/O: BELLIKINDI, TQ: BADAMI,
DSIT: BAGALKOT-587201.

...APPELLANTS

(BY SRI. PRANAV BADAGI, ADVOCATE FOR
SRI. S.B. HEBBALLI, ADVOCATE)

AND:

SMT. FAKEERAVVA W/O HANAMAPPA TATTI
AGE: 55 YEARS, OCC: HOUSEHOLD WORK,
R/O: KALAHAL, TQ: RAMADURG, DIST: BELAGAVI-591123.

...RESPONDENT

(NOTICE TO RESPONDENT IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 29.09.2018 PASSED IN OS NO.91/2016 ON THE FILE OF THE COURT OF SENIOR CIVIL JUDGE AND JMFC, BADAMI, DECREETING THE SUIT FILED BY RESPONDENT/PLAINTIFF AND DISMISS THE SUIT OF THE RESPONDENT/PLAINTIFF IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.02.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

1. The present appeal is filed by defendants seeking to set aside the judgment and decree dated 29.09.2018 passed in O.S.No.91/2016, on the file of the Senior Civil Judge and JMFC, Badami (hereinafter referred to as 'the Trial Court' for short).

2. The appellants herein are the defendants and the respondent herein is the plaintiff, before the Trial Court.

3. For convenience of reference, the parties herein are referred as arrayed before the Trial Court.

4. Brief facts of the case are that:

The suit was filed by the plaintiff against defendants No.1 and 2 seeking partition and separate possession of her 1/3rd share in the suit schedule properties. Late Kashappa Tatti was the propositus of the family. He had two sons, Ramappa and Hanamappa, both of whom are deceased. Defendant No.2 is the daughter of late Kashappa and his wife late Siddlingavva. The plaintiff is the widow of late Hanamappa and defendant No.1 is the widow of late Ramappa. It is averred that the suit properties exclusively belonged to late Kashappa during his lifetime. Upon his demise, the names of the plaintiff and defendants were

entered in the revenue records as his legal heirs. It is the case of the plaintiff that the parties are in joint possession and enjoyment of the suit schedule properties, each entitled to 1/3rd share, and that on 12.11.2016 her request for partition was refused, leading to the institution of the suit.

5. After institution of the suit, summons was duly issued to the defendants, who have appeared through counsel but failed to file their written statement before the trial Court.

6. In order to substantiate the case of plaintiff, plaintiff himself got examined as PW-1 and got marked documents as per Exs.P1 to P5. On the other hand defendants neither examined nor adduced any evidence.

7. Based on the oral and documentary evidence of the plaintiff, the trial Court framed issues and decreed the suit and held that the plaintiff and defendants No.1 and 2 are entitled for 1/3rd share in the suit schedule properties.

8. The learned counsel for the appellants would contend that the Trial Court by only relying on the revenue records and the documents produced by the plaintiff had decreed the suit and failed to examine the suit on merits. It is further urged that the

Trial Court decreed the suit without affording sufficient and reasonable opportunity to the defendants to file their written statement, amounting to violation of principles of natural justice.

9. Heard learned counsel appearing for the appellants and perused the material on record.

10. Having considered the contentions advanced and on careful perusal of the records, this Court is of the considered view that the Trial Court did not deal with the matter in the manner expected in a partition suit involving valuable rights in immovable property. The impugned judgment and decree passed by the Trial Court has been rendered mainly on the basis of revenue records and the evidence adduced by the plaintiff without a full-fledged trial or proper adjudication of rival claims. In the absence of written statement and effective evidence of the defendants, the findings recorded by the Trial Court cannot be said to be based on a holistic appreciation of the case, and therefore, the decree suffers from material infirmity warranting interference by this Court.

11. It is further evident that though the appellants/defendants were represented by counsel, the Trial

Court proceeded to decree the suit without granting them an opportunity to file their written statement and place their defence on record. This has resulted in denial of fair opportunity and violation of principles of natural justice. However, having regard to the settled position that Order VIII Rule 1 of the CPC is directory and not mandatory and that the Court retains power to permit filing of written statement beyond the stipulated period in appropriate cases, this Court deems it just and proper to grant one final opportunity to the defendants to file their written statement, subject to payment of costs, instead of finally deciding the rights of the parties without affording them an opportunity to contest the matter.

12. In view of the above, this Court deems it appropriate, in the interest of justice and to ensure a fair trial between the parties, the impugned judgment and decree passed by the Trial Court liable to be set aside and the matter deserves to be remanded to the Trial Court for fresh consideration in accordance with law.

13. In view of the foregoing discussions, this Court proceeds to pass the following:

ORDER

- a) *The RFA is **allowed**.*
- b) *The impugned judgment and decree dated 29.09.2018 passed in O.S.No.91/2016, on the file of the Senior Civil Judge and JMFC, Badami is set aside and the matter is remitted back to the Trial Court on payment of cost of Rs.10,000/- (Rupees Ten Thousand only) before the Trial Court for causing delay in filing the written statement.*
- c) *The appellants/defendants shall deposit the said cost of Rs.10,000/- within 30 days from the date of receipt of a certified copy of this judgment before the Senior Civil Judge and JMFC, Badami.*
- d) *The parties are directed to appear before the Trial Court without waiting for further issuance of notice.*
- e) *Upon such deposit, the defendants are permitted and directed to file their written statement within two weeks from the date of re-opening of the case before the Trial Court.*
- f) *On compliance with the above, on receipt of written statement, the Trial Court shall proceed to dispose of the suit afresh on merits in accordance with law, as expeditiously as possible, within eight months from the date of receipt of this order.*

*g) Both parties are directed to co-operate with the
Trial Court in disposal of the main suit.*

No order as to further costs.

**Sd/-
(DR. K.MANMADHA RAO)
JUDGE**

KGK,CT:VP