



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22<sup>ND</sup> DAY OF JUNE, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE ASHOK S.KINAGI**

**REGULAR SECOND APPEAL NO. 1000 OF 2013 (PAR)**

**BETWEEN:**

1. PYARI JAN,  
D/O SYED REHMAN,  
W/O RAHMATULLA,  
AGED ABOUT 62 YEARS,  
DOOR NO.432/2, 3<sup>RD</sup> MAIN CROSS,  
BHUVANESHWARI NAGAR,  
BANGALORE - 560 032.
2. MAJAN BEE,  
D/O SYED REHMAN,  
W/O CHAND,  
AGED ABOUT 52 YEARS,  
9<sup>TH</sup> CROSS, R.K.HEGDE NAGAR,  
BANGALORE - 560 035.
- ZEENATHUNNISA,  
D/O SYED REHMAN,  
W/O SERVER SAB,  
SINCE DEAD BY LRS
3. SERWAR SAB,  
H/O LATE ZEENATHUNNISA,  
AGED ABOUT 58 YEARS,
4. SAZAMUL KHAN,  
S/O LATE ZEENATHUNNISA,

Digitally  
signed by  
SUNITHA K S  
Location:  
HIGH COURT  
OF  
KARNATAKA



AND SERWAR SAB,  
AGED ABOUT 25 YEARS,

5. NASEEBA,  
D/O LATE ZEENATHUNNISA,  
AND SERWAR SAB,  
AGED ABOUT 22 YEARS,
6. SHAZAMA  
D/O LATE ZEENATHUNNISA  
AND SERWAR SAB,  
AGED ABOUT 21 YEARS,
7. THAHERA,  
D/O LATE ZEENATHUNNISA  
AND SERWAR SAB,  
AGED ABOUT 20 YEARS,
8. SHAHEENA,  
(MENTIONED AS SHAHEEDA IN R.A),  
D/O LATE ZEENATHUNNISA  
AND SERWAR SAB,  
AGED ABOUT 19 YEARS,  
RESPONDENTS NO.4 TO 8 ARE  
R/AT INDIRA NAGAR,  
BILANARASAPURA,  
NANDAGUDI HOBLI,  
HOSAKOTE TALUK.

...APPELLANTS

(BY SRI.SOMANATHA H SSI QUADRI, ADVOCATE)

**AND:**

1. AMEER JAN  
S/O SYED REHMAN,



SINCE DEAD  
REPRESENTED BY LRS

1(a) JAREENA TAJ,  
AGED ABOUT 66 YEARS,  
W/O AMEER JAAN,

1(b) SADIK PASHA,  
AGED ABOUT 41 YEARS,  
S/O AMEER JAAN,

1(c) NAJINA,  
AGED ABOUT 45 YEARS,  
D/O AMEER JAAN,

ALL ARE R/AT KENDATTI MADIVALA,  
KENDATTI, KOLAR,  
KARNATAKA - 563 33.

2. BAKASH,  
S/O SYED REHMAN,  
SINCE DEAD  
REPRESENTED BY LRS

2(a) HASEENA,  
AGED ABOUT 55 YEARS,  
W/O BAKASH,

2(b) SHANU,  
AGED ABOUT 36 YEARS,  
D/O BAKASH,  
MOB. NO.8884668240.

2(c) ASIF,  
AGED ABOUT 34 YEARS,



**NC: 2026:KHC:31244**  
**RSA No. 1000 of 2013**

S/O BAKASH,  
MOB. NO.8892999786.

2(d) BABA,  
AGED ABOUT 32 YEARS,  
S/O BAKASH,

2(e) DILLU,  
AGED ABOUT 30 YEARS,  
D/O BAKASH,  
MOB. NO.8095679928.

ALL RESIDING AT  
CHICKEN BAKHASH,  
VEMGAL, CHINNAPANAHALLI,  
KOLAR - 563 128.

3. SMT.VENKATAMMA,  
W/O NANJAPPA,  
AGED ABOUT 75 YEARS,  
R/O. KENDATTI VILLAGE,  
VOKKALERI HOBLI,  
KOLAR TALUK - 563 130.

...RESPONDENTS

(BY SRI. K. SHRIHARI, ADVOCATE FOR C/R3;  
R1(A), R1(B), R1(C), R2(A), R2(B), R2(C) AND R2(E) ARE  
SERVED)

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE  
JUDGMENT & DECREE DATED 28.2.2013 PASSED IN  
R.A.NO.175/2010 ON THE FILE OF PRINCIPAL SENIOR CIVIL  
JUDGE AND CJM, KOLAR, ALLOWING THE APPEAL AND  
SETTING ASIDE THE JUDGMENT AND DECREE DATED  
19.10.2010 PASSED IN OS.NO.220/2006 ON THE FILE OF II  
ADDITIONAL CIVIL JUDGE, KOLAR.



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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

**ORAL JUDGMENT**

1. This Regular Second Appeal is filed by the appellants challenging the judgment and decree dated 28.02.2013 passed in R.A.No.175/2010 by the learned Principal Senior Civil Judge and CJM, Kolar. (for short 'the first appellate Court').
2. For convenience, the parties are referred to as per their ranking before the trial Court. The appellants were the plaintiffs and the respondents were the defendants.
3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit for partition and separate possession claiming that the plaintiffs have got 3/7<sup>th</sup> share over the suit schedule property. It is



contended that suit schedule property owned and possessed by their father Syed Rehman. He was in peaceful possession and enjoyment of the suit schedule property during his life time. He passed away about 10 years back leaving behind the plaintiffs and defendants No.1 and 2 as his legal heirs. After the demise of Syed Rehman, the legal heirs became co-tenants thereof.

5. It is contended that defendants No.1 and 2 who are the brothers of plaintiffs No.1 and 2 exhibited a hostile attitude towards the plaintiffs and sold the property in favour of defendant No.3 without any manner of right, title or interest whatsoever to alienate the share of the plaintiffs. The sale deed executed by defendant Nos.1 and 2 in favour of defendant No.3 is not binding on the plaintiffs. The plaintiffs demanded for partition and separate possession. Defendant Nos.1 and 2 refused to effect partition. Hence, a cause of action arose for the



plaintiffs to file a suit for partition and separate possession.

6. Defendant Nos.1 and 2 filed a written statement admitting the relationship with the plaintiffs and it is contended that Sy.No.42 of Madivala village belongs to Syed Rehman i.e., father of the plaintiffs and defendant Nos.1 and 2. He was in possession of the suit schedule property. After his death, defendant Nos.1 and 2 have succeeded to the said property. They have continued in possession and enjoyment of the suit schedule property. Defendant Nos.1 and 2 have no objections for allotting 3 shares out of 7 shares in the suit schedule property and defendant No.3 is the utter stranger to the family of the plaintiffs and defendant Nos.1 and 2. Hence, prays to decree the suit.

7. Defendant No.3 filed a written statement contending that Syed Rehman Sab was in possession and enjoyment of the suit schedule property during his



life time. He passed away and defendant Nos.1 and 2 succeeded to the suit schedule property. Defendant Nos.1 and 2 jointly sold the suit schedule property to her under a registered sale deed dated 18.04.1994 for valuable consideration. It is contended that after purchasing the suit schedule property, defendant No.3 is in peaceful possession and enjoyment of the suit schedule property and revenue records stands in the name of defendant No.3. Defendant No.3 has obtained loan from Vijaya Bank, Narasapura, by mortgaging the suit schedule property in favour of Vijaya Bank. It is contended that defendant Nos.1 and 2 colluding with the plaintiffs got filed the present suit for partition and separate possession. It is also contended that defendant Nos.1 and 2 filed a suit in O.S.No.267/2006 for the relief of permanent injunction. It is contended that the suit filed by the plaintiffs is barred by limitation. Hence, prays to dismiss the suit against defendant No.3.



8. The trial Court, based on the pleadings of the parties, framed the following issues:

- 1. Whether the plaintiffs prove that they and defendants No.1 and 2 have succeeded to the suit schedule property from their father Syed Rehman and they are in joint possession and enjoyment of the suit schedule property as contended by her?*
- 2. Whether the plaintiffs prove that defendants No.1 and 2 had no absolute right over the suit schedule property to sell the same in favour of defendant No.3 and the same is not binding on him?*
- 3. Whether the plaintiffs are entitled for the relief sought for?*
- 4. What order or decree?*

9. The plaintiffs to substantiate their case, plaintiff No.1 was examined as PW.1 and marked 6 documents as Exs.P1 to P6. In rebuttal, the power of attorney holder of defendant No.3 examined as DW.1 and 2 witnesses were examined as DW.2 and 3 and marked 7 documents as Exs.D1 to D7.



10. The trial Court after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered issues Nos.1 to 3 in the affirmative, issue No.4 as per the final order. The suit of the plaintiffs was decreed and it is declared that the plaintiffs are entitled for 3/7<sup>th</sup> share in the suit schedule property.
11. Defendant No.3 aggrieved by the judgment and decree and preliminary decree passed in O.S.No.220/2006 preferred an appeal in R.A.No.175/2010 on the file of learned Principal Senior Civil Judge and CJM, Kolar.
12. The first Appellate Court after hearing the learned counsel for the parties, framed the following points for consideration.
  1. *Whether the impugned judgment and decree passed by trial Court in O.S.No.220/2006 is illegal, perverse, arbitrary and erroneous and*



*not based on principles of law and requires interference?*

*2. What order?*

13. The first Appellate Court after reappreciating the entire evidence on record, answered point No.1 in the affirmative, and point No.2 as per the final order. The first Appellate Court allowed the appeal and set aside the judgment and decree passed in O.S.No.220/2006 dated 15.10.2010 by the trial Court and consequently dismissed the suit of the plaintiffs.
14. The plaintiffs aggrieved by the judgment and decree passed in R.A.No.175/2010, filed this Regular Second Appeal.
15. Heard Smt. S. Susheela, learned senior counsel for the plaintiffs and learned counsel for the defendants.
16. Learned senior counsel for the plaintiffs submits that the trial Court decreed the suit of the plaintiffs holding that the suit schedule property was owned



and possessed by Sri.Syed Rehman. After his demise, the plaintiffs and defendants No.1 and 2 have succeeded to the property of his father Syed Rehman and the plaintiffs have got right and title in the suit schedule property. She submits that the trial Court has rightly decreed the suit and decreed that the plaintiffs are entitled for 3/7<sup>th</sup> share in the suit schedule property. She submits that the first Appellate Court has reversed the judgment of the trial Court on the ground that the suit filed by the plaintiffs is barred by limitation. She submits that first Appellate Court without properly framing the points for consideration has passed the impugned judgment. She submits that the points for consideration framed by the first Appellate Court is not in compliance with Order XLI Rule 31 of CPC.

17. To buttress her arguments, she has placed reliance on the judgment of the Co-ordinate bench in the case



of ***Bangarappa Vs. Rudrappa and another<sup>1</sup>*** and also placed reliance on the judgment of the Hon'ble Apex Court in the case of ***H. Siddiqui dead by LRs Vs. A. Ramalingam<sup>2</sup>***. Hence, she submits that the impugned judgment passed by the first Appellate Court is not in compliance with Order XLI Rule 31 of CPC. Hence, she prays to set aside the judgment passed by the first Appellate Court and remit the matter to the first Appellate Court with a direction to pass the judgment in accordance with Order XLI Rule 31 of CPC.

18. Learned counsel for defendant No.3 submits that the suit filed by the plaintiffs is barred by limitation as the suit was filed after 12 ½ years from execution of a registered sale deed. He submits that even though issues were not framed, still the Court can consider the point for limitation as per section 3 of the

---

<sup>1</sup> ILR 2012 KAR 1020

<sup>2</sup> AIR (2011) SC 1492



Limitation Act. The first Appellate Court has rightly passed the impugned judgment. Hence, on these grounds, prays to dismiss the appeal.

19. Perused the records and considered the submissions of the learned counsel for the parties.
20. This Court vide order dated 17.09.2013, admitted the appeal to consider the following substantial question of law:

*"When the trial Court granted a decree for partition and separate possession of share of the appellants in the suit property, whether the first Appellate Court was justified in reversing the judgment and decree on the ground of limitation in the absence of any issue in this regard though the question of limitation was a mixed question of law and facts?"*

**Regarding substantial question of law:**

21. It is an undisputed fact that said suit schedule property was owned and possessed by Syed Rehman



and the plaintiffs and defendants No.1 and 2 are the legal representatives of deceased Syed Rehman. The deceased Syed Rehman was in possession of the suit schedule property during his life time. After his demise, the plaintiffs and defendants No.1 and 2 succeeded to the suit schedule property. Defendants No.1 and 2 have sold the suit schedule property in favour of defendant No.3 in 1994. The plaintiffs filed a suit for partition and separate possession alleging that defendants No.1 and 2 alone have no right to execute the registered sale deed in respect of shares of the plaintiffs in favour of defendant No.3. The sale deed executed by defendants No.1 and 2 in favour of defendant No.3 is not binding on the shares of the plaintiffs.

22. The plaintiffs to substantiate their case, plaintiff No.1 was examined as PW.1, she reiterated the plaint averments in the examination-in-chief and got marked 6 documents as Exs.P1 and P6. During the



course of cross-examination of PW.1, nothing has been elicited from the mouth of PW.1. Defendant No.3 examined through Power of Attorney as DW.1. He reiterated the written statement averments in the examination-in-chief and got marked registered sale deeds executed by defendants No.1 and 2 in favour of defendant No.3. The sale deeds are marked as Exs.D1 and D2. Defendant No.3 has also produced the copy of the plaint in O.S.No.267/2007 filed by defendants No.1 and 2 against defendant No.3 for the relief of permanent injunction. The defendants also examined two witnesses as DW.2 and 3.

23. From the perusal of the entire evidence on record, it is an undisputed fact that the suit schedule property was owned and possessed by Syed Rehman Sab and it is also undisputed fact that the plaintiffs are the daughters and defendant Nos.1 and 2 are the sons of Syed Rehman Sab. The plaintiffs have share in the property left by deceased father Sri. Syed Rehman



Sab. Though defendant No.3 has taken defense in the written statement that the suit filed by the plaintiffs is barred by limitation, the trial Court has not framed issues in regard to the limitation. The trial Court has decreed the suit vide judgment dated 19.10.2010.

24. Defendant No.3 aggrieved by the judgment and decree passed in O.S.No.220/2006, preferred an appeal in R.A.No.175/2010. The first Appellate Court without framing the points for consideration in regard to the limitation has framed the following points for consideration, which reads as follows:

1) Whether the impugned judgment and decree passed by the trial Court in O.S.No.220/2006 is illegal, perverse, arbitrary and erroneous and not based on the principles of law and requires interference?

2) What order?



25. This Court had an occasion to consider the similarly framed issues for determination in the case of ***Bangarappa Vs. Ramappa and another*** reported in ***ILR 2012 KAR 1020***, wherein the first Appellate Court in the said case has framed the following points for consideration, which reads in para No.12 as follows:

“12. The lower appellate Court, however, framed the following point for determination:

Whether judgment of the trial Court requires interference?”

26. Admittedly, in the instant case, the first Appellate Court has framed an identical point for adjudication. Order XLI Rule 31 of CPC, which reads as follows:

***31. Contents, date and signature of judgment:*** *The judgment of the Appellate Court shall be in writing and shall state-*

*(a) the points for determination;*

*(b) the decision thereon;*



*(c) the reasons for the decision; and*

*(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;*

*and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein.*

Order XLI Rule 31 of CPC provides guidelines for the Appellate Court as to how the Court has to proceed and decide the appeal. It is further observed that the provision should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the Appellate Court that Court has properly appreciated the facts /evidence, applied its mind and decide the case considering the material on record. This would amount to substantial compliance with the provisions of Order LXI Rule 31 of CPC.

The Appellate Court has to independently assess the entire evidence and all aspects of the matter to ensure findings of the first Appellate Court are well founded and quite convincing. It



is mandatory for the first Appellate Court to independently assess the evidence of the parties and consider the relevant points that arise for adjudication, along with the bearing of the evidence on those points.

(emphasis supplied)

27. Hence, the first Appellate Court has not properly framed the points for adjudication. The judgment and decree passed by the first Appellate Court is not in compliance with Order XLI Rule 31 of CPC. The Hon'ble Apex Court in the case of ***H. Siddiqui dead by LRs Vs. A. Ramalingam*** reported in ***AIR (2011) SC 1492***, held in para No.18, which reads as follows:

*"18. ... .. It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record the mere general expression of concurrence with the trial Court judgment*



*rather it must give reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions.*

*(emphasis supplied)*

28. Further, the first Appellate Court without framing the points for adjudication in regard to the limitation has observed that the suit filed by the plaintiffs is barred by limitation. Hence, the judgment and decree passed by the first Appellate Court is not in compliance with Order XLI Rule 31 of CPC and is in contrary to the propositions laid down by the Hon'ble Apex Court in the cases of **H. Siddiqui** (referred supra) and **Bangarappa** (referred supra). As the matter requires reconsideration by the first Appellate



Court, in view of the above discussion, I answer substantial question of law in the negative.

29. Accordingly, I proceed to pass the following order:

**ORDER**

- i. The Regular Second Appeal is ***allowed***.
- ii. The judgment and decree dated 28.02.2013 passed in R.A.No.175/2010 by the Principal Senior Civil Judge and CJM, Kolar is hereby set aside.
- iii. The appeal in R.A.No.175/2010 is restored to its original file.
- iv. The parties are directed to appear before the first Appellate Court on **06.08.2026** without awaiting further notice.
- v. The first Appellate Court is directed to frame proper points for adjudication and



thereafter pass appropriate orders in  
accordance with law.

vi. It is made clear that this court has not  
made any adjudication on merits in issue.

vii. Registry is directed to transmit the  
records to the first appellate court.

viii. All the contentions are kept open.

ix. Pending application/s if any, stands  
disposed of accordingly.

**Sd/-**  
**(ASHOK S.KINAGI)**  
**JUDGE**

SKS