



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS SECOND APPEAL NO. 91 OF 2026 (RO)

BETWEEN:

1. SRI. M.C BORAIAH @ HOTTALAH,
SON OF LATE CHOWDALAH, AGED ABOUT 64 YEARS,
RESIDING AT MANGADAHALLI VILLAGE,
VIRUPAKSHIPURA HOBLI, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE - 562138.
2. SMT.GOWRAMMA,
WIFE OF LATE ATTALAH, AGED ABOUT 63 YEARS,
RESIDING AT MANGADAHALLI VILLAGE,
VIRUPAKSHIPURA HOBLI, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE - 562138.
3. SRI. MUNISIDDHA,
SON OF LATE ATTAIAH, AGED ABOUT 33 YEARS,
RESIDING AT MANGADAHALLI VILLAGE,
VIRUPAKSHIPURA HOBLI, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE - 562138.
4. SRI CHOUDESHA,
SON OF ATTAIAH, AGED ABOUT 25 YEARS,
RESIDING AT MANGADAHALLI VILLAGE,
VIRUPAKSHIPURA HOBLI, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE - 562138.
5. SMT.KAVYA,
WIFE OF SWAMY, AGED ABOUT 30 YEARS,
RESIDING AT 4TH CROSS, TEMPLE ROAD,
THITAMARANA HALLI POST, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE - 562138.
6. SIDDARAMU,
SON OF LATE CHOWDALAH, AGED ABOUT 59 YEARS,

Digitally signed
by BELUR
RANGADHAMA
NANDINI
Location: HIGH
COURT OF
KARNATAKA



RESIDING AT MANGADAHALLI VILLAGE,
VIRUPAKSHIPURA HOBLI, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE 562138.

...APPELLANTS

(BY SRI P M GOPI, ADVOCATE FOR
SRI P.M.SIDDAMALLAPPA, ADVOCATE)

AND:

SRI. M.N ARUNKUMAR,
SON LATE NINGEGOWDA,AGED ABOUT 64 YEARS,
RESIDING AT MANGADAHALLI VILLAGE,
VIRUPAKSHIPURA HOBLI, CHANNAPATNA TALUK,
BANGALORE SOUTH DISTRICT,PIN CODE 562138.

...RESPONDENT

(BY SRI NATARJ BABA K, FOR C/R IN C P NO.4981/2026)

THIS MSA IS FILED UNDER ORDER 43 RULE 1(u) OF CPC., AGAINST THE JUDGMENT DATED 16.02.2026 PASSED IN RA NO.30/2022 ON THE FILE OF PRL. SENIOR CIVIL JUDGE AND JMFC, CHANNAPATNA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 23.02.2022 PASSED IN OS NO.69/2016 ON THE FILE OF PRL. CIVIL JUDGE AND JMFC, CHANNAPATNA., PARTLY DECREERING THE SUIT FOR DECLARATION, PERMANENT INJUNCTION AND MANDATORY INJUNCTION AND MATTER IS REMANDED BACK TO TRIAL COURT WITH A DIRECTION TO PROVIDE AN OPPORTUNITY TO APPOINT COURT COMMISSIONER TO MEASURE THE SUIT SCHEDULE PROPERTIES ON IA NO.8 AND DISPOSE THE MATTER AFRESH ON MERITS.

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



CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is filed against the judgment and decree dated 16.02.2026 in R.A.No.30/2022 wherein the First Appellate Court has allowed the appeal and remanded the matter to the Trial Court and at the same time also allowed the application for appointment of a Court Commissioner to measure the property. The defendant is before this Court.

2. The suit is filed in respect of two schedule properties in schedule A and B. The suit is decreed in respect of 'A' schedule property and dismissed in respect of 'B' property.

3. The 'B' schedule property according to the plaintiff is part of 'A' schedule property and the plaintiff alleges that certain portion of the property in 'A' schedule is encroached and said property is described as 'B' schedule.

4. Defendants contend that the plaintiff is claiming right over the property purchased by the defendants.



5. The Trial Court has decreed the suit in part, granted injunction in respect of 'A' schedule property and relief is declined in respect of 'B' schedule property.

6. Plaintiff filed an appeal and also an application for appointment of surveyor to measure the suit properties.

7. The First Appellate Court heard the appeal on merits as well as the application at I.A.No.8 for appointment of Court Commissioner. Thereafter, the First Appellate Court allowed the appeal and set-aside the judgment and decree and allowed the application for appointment of Court Commissioner and remitted the matter to the Trial Court for fresh consideration.

8. Aggrieved by the said judgment and decree, the defendants are before this Court.

9. Learned counsel appearing for the defendants/ appellants would urge that the First Appellate Court has not considered the appeal on merits and simply allowed the application for appointment of Court Commissioner at I.A.No.8 and remanded the matter. In addition, learned



counsel for the defendant would also urge that the application is filed by the plaintiff before the Trial Court for appointment of the Court Commissioner, same was rejected. The said order is not called in question and same has attained finality and one more application before the First Appellate Court for appointment of Court Commissioner is impermissible.

10. Learned counsel for the respondent/plaintiff would urge that the dispute is relating to the encroachment. The defendants purchased 21 guntas under the registered sale deed. Since, there is an encroachment by the defendants the plaintiff sought relief of declaration and injunction in respect of 'A' schedule property and also relief of mandatory injunction and possession in respect of 'B' schedule property. The Trial Court committed a mistake in dismissing the suit in respect of 'B' schedule property and Trial Court also committed an error in rejecting the application for appointment of Court Commissioner. Thus, the plaintiff filed an application for appointment of Court



Commissioner which would resolve the controversy relating to the encroachment.

11. The First Appellate Court also considered the appeal on merits and came to the conclusion that report of the Court Commissioner is necessary for adjudication of the case on hand. Thus, it is urged that the appeal has to be dismissed and the matter has to be tried by the Trial Court afresh as per the mandate of the First Appellate Court, is the submission.

12. The Court has considered the contentions raised at the Bar and perused the records.

13. The following substantial question of law would arise for consideration:

"Whether the appellants establish that the First Appellate Court committed an error in remanding the matter to the Trial Court by allowing the application for appointment of Court Commissioner?"

14. It is indeed true that an application for appointment of Court Commissioner was filed before the Trial



Court and the same was rejected and the same was not called in question by the plaintiff during the pendency of the suit. However, that does not prevent the plaintiff from seeking appointment of the Court Commissioner or question the order rejecting the application for appointment of the Court Commissioner under Section 105 of the Code of Civil Procedure.

15. Merely, because the Trial Court has rejected the application, the First Appellate Court's power to allow the application is not taken away.

16. It is noticed from the impugned judgment and decree that the Appellate Court has come to the conclusion that the dispute relating to encroachment has to be considered with aid of the Court Commissioner's report.

17. The defendants have disputed the allegation of encroachment in 'B' schedule property. The plaintiff to establish the alleged encroachment has moved an application for appointment of Court Commissioner before the Trial



Court and the same was rejected by the Trial Court, against the application is filed before the Appellate Court.

18. As can be noticed from the judgment and decree passed by the First Appellate Court, the First Appellate Court has considered the merits of the case and has come to the conclusion that the issue relating to encroachment can be resolved by securing the report of the Court Commissioner. Under the circumstances, this Court does not find any error in the judgment passed by the First Appellate Court setting-aside the judgment and decree passed by the Trial Court.

19. It is to be noticed that the First Appeal is filed by the plaintiff challenging the decree in respect of 'B' schedule property. The suit was decreed in respect of 'A' schedule property. The defendants have not questioned the decree in respect of 'A' schedule property. Since, 'B' schedule property is said to be part of 'A' schedule property, the Trial Court could not have decreed in respect of 'A' schedule property without ascertaining the encroachment if any, over the 'B'



schedule property. Hence, entire Judgment and decree of the Trial Court are set aside.

20. Hence the following:

ORDER

- (i) Appeal is ***allowed in Part.***
- (ii) The entire judgment and decree in R.A.No.30/2022 and also O.S.No.69/2016 are set-aside and the matter is remitted to the Trial Court.
- (iii) The Court Commissioner shall be appointed to measure the property.
- (iv) Both parties are at liberty to lead necessary evidence.
- (v) To the extent possible, the Trial Court shall follow the guidelines laid down by this Court in ***Shadaksharappa vs. Kumari Vijayalaxmi and others¹.***
- (vi) It is made clear that this Court has not expressed anything on the merits of the matter, all contentions are kept open.

¹ ILR 2023 page No.3983



(vii) The parties shall appear before the Trial Court on **03.06.2026** without any further notice.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

brn
List No.: 1 Sl No.: 59