

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.746 OF 2010 (DEC/INJ)

BETWEEN:

1. SMT. NARASAMMA
AGED ABOUT 65 YEARS
W/O SRI. H. GOVINDAIAH,
RESIDENT OF CHICKMANKANALA VILLAGE
DODDABELAVANGALA HOBLI
DODDABALLAPURA TALUK-561 204.
[PLAINTIFFS IN O.S.No.166/2005
AND APPELLANT IN R.A.98/2009]

...APPELLANT

(BY SRI. PAPIREDDY, SENIOR COUNSEL A/W.
SRI. VARUN P., ADVOCATE)

AND:

1. SMT. RAJAMMA
AGED ABOUT 19 YEARS
D/O SRI. RANGASWAMY
RESIDENT OF SHANKARANAHALI VILLAGE
DODDABELAVANGALA HOBLI
DODDABALLAPURA TALUK-561 204.
[DEFENDANT-1 IN O.S.NO.166/2005
AND RESPONDENT-1 IN R.A.98/2009]

2. SMT. GIRIAMMA
W/O MUNINAGAPPA
DIED ON DECEMBER 2010

R3 AND R4 ARE THE LRS OF DECEASED
RESPONDENT-2

(VIDE COURT ORDER DATED 11.03.2025)

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by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

3. SMT. NAGAMMA
AGED ABOUT 45 YEARS
W/O SRI. GANGAPPA
RESIDENT OF KAMANA AGRAHARA
DODDABELAVANGALA HOBLI
DODDABALLAPURA TALUK-561 204.
[DEFENDANT-3 IN O.S.NO.166/2005
AND RESPONDENT-3 IN R.A.98/2009]
4. SRI. RANGASWAMY
AGED ABOUT 42 YEARS
S/O SRI. MUNIYAPPA @ MUNINAGAI AH
RESIDENT OF GUDEMARAMAHALLI VILLAGE
BIDHADI HOBLI, MAGADI TALUK
RAMANAGARA DISTRICT-561 204.
[DEFENDANT-4 IN O.S.NO.166/2005
AND RESPONDENT-4 IN R.A.98/2009]

...RESPONDENTS

(BY SRI. KESHAV R. AGNIHOTRI, ADVOCATE FOR R1;
VIDE ORDER DATED 11.03.2025,
R3 AND R4 ARE THE LRS OF DECEASED R2;
SRI. PRABHUGOUD B. THUMBIGI, ADVOCATE FOR R3 AND R4)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 08.02.2010
PASSED IN R.A.NO.98/2009 ON THE FILE OF THE PRL.
DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL
DISTRICT, BENGALURU, DISMISSING THE APPEAL FILED
AGAINST JUDGMENT AND DECREE DATED 31.03.2009 PASSED
IN O.S.NO.166/2005 ON THE FILE OF THE CIVIL JUDGE,
(SR.DN.), DODDABALLAPURA.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 23.07.2026 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

This second appeal is filed against the concurrent finding of the trial Court in dismissing the suit in O.S. No.166/2005 for the relief of declaration and injunction vide judgment dated 31.03.2009 and also the confirmation of the judgment and decree of the trial Court by the appellate Court in RA No.98/2009 vide judgment dated 08.02.2010, praying this Court to set aside both the judgments and decree the suit seeking relief of declaration and injunction.

2. The parties are referred to as per their ranking before the Trial Court.

3. The factual matrix of case of the plaintiff before the trial Court while seeking the relief of declaration and injunction, it is contended that defendant No.2 Giriyamma has purchased the suit schedule property from one Gangaiah under the registered sale deed dated 23.05.1963. Hence, the suit schedule property is a self acquired property of defendant No.2 Giriyamma. The

plaintiff in turn has purchased the said suit schedule property from defendant No.2 Giriyamma on 16.08.1999 for valuable consideration. The plaintiff is in actual possession and enjoyment of the suit schedule property since the date of purchase. The plaintiff is a bonafide purchaser of the suit schedule property. The defendants have no right, title or interest towards the suit schedule property but causing interference in her peaceful possession and enjoyment of suit schedule property. The defendant No.1 had filed suit in O.S.No.315/1997 against defendant Nos.2 to 4 for partition and separate possession. But defendant No.1 has no right, title or interest in the suit schedule property as the said suit schedule property is self acquired property of defendant No.2 and defendant No.2 has executed sale deed in favour of plaintiff. In pursuance of the suit summons, defendant Nos.1, 2 and 3 appeared through their counsel, but defendant No.4 was placed ex-parte, who is none other than the father of defendant No.1. But defendant No.2 has not filed written statement and defendant Nos.2 and 3

have filed written statement. The main contention of defendant No.1 is that the suit itself is not maintainable and she is the daughter of defendant No.4 Rangaswamy and defendant No.2 is mother of defendant Nos.3 and 4. The defendant No.1 is the granddaughter of defendant No.2. He further contends that suit schedule property is the joint family ancestral property of defendants and she has filed O.S.No.315/1997 against defendant Nos.2 to 4 for the relief of partition and separate possession of her 1/4th share and the same was decreed and thereafter obtained final decree. Consequent upon obtaining final decree, all documents stands in her name and prayed the Court to dismiss the suit.

4. Further, defendant No.3 also filed written statement taking the same contention as taken by defendant No.1. The trial Court having considered the pleadings of parties framed issues Nos.1 to 7 which reads as follows:

a. Whether plaintiff proves her ownership with possession of suit schedule property as purchased from 2nd

*defendant Giriyamma, W/o.
Muninagappa under a Regd. Sale Deed
dt.16.08.99?*

*b. Whether plaintiff proves that
decree in Partition suit O.S.No.315/1997
was collusively obtained by the
defendant notwithstanding to the sale of
suit schedule property by 2nd defendant
as was herself acquired?*

*c. Whether defendants No.1 & 3
prove the suit schedule property is of
joint family ancestral in nature and was
purchased in the name of 2nd defendant
Giriyamma so to say they were entitle
to get partition and separate share
through above referred decree in
O.S.No.315/97?*

*d. Whether plaintiff's suit Valuation
and Court fee paid is not correct as
pleaded by both defendants No.1 & 3 in
their Written Statement Paragraph No.
Nos.5 & 8?*

*e. Whether plaintiff's suit is bad for
non-joinder of necessary party as
pleaded by 1st defendant in her written
statement Para No.6?*

*f. Whether plaintiff is entitle to get
the relief of declaration of title and
permanent injunction against
defendants as prayed?*

g. For what Order or Decree?

5. The plaintiff was examined as P.W.1 and two independent witnesses examined as P.W.s2 and 3 and got

marked documents as Exs.P1 to P8. Defendant No.1 was examined as D.W.1 and defendant No.3 was examined as D.W.2 and got marked documents as Exs.D1 to D7. The trial Court taking into note of the oral and documentary evidence, answered issue Nos.1 and 2, that the plaintiff has not proved that she has purchased the property under sale deed dated 16.08.1999 and she is not the owner and decreeing the suit of partition in O.S.No.315/1997 was not collusively obtained by defendant No.1 notwithstanding to the suit schedule property by defendant No.2 as her self-acquired property and answered issue No.3 in affirmative that suit schedule property is of joint family ancestral in nature and was purchased in the name of defendant No.2- Giriyamma and they were entitled to get partition and separate possession. Hence, answered all other issues in negative.

6. Being aggrieved by answering issue No.3 as affirmative and answering other issues as negative, an appeal is filed before the appellate Court in RA.No.98/2009 and the grounds urged are that the suit schedule property

is a self acquired property of defendant No.2 and the trial Court committed an error. In order to substantiate the said contention also, an application is filed under Order 41 Rule 27 of Code of Civil Procedure to adduce additional evidence. The appellate Court rejected the said application and also answered the point that defendant No.1 has acquired right in respect of the plaint schedule property in the earlier proceedings in O.S.No.315/1997 and answered the point in negative and held in favour of defendant No.1. Further, the appellate Court answered the point regarding acquiring title on account of purchase by defendant No.2 as negative. Both the Courts come to the conclusion that plaintiff has not acquired the title in view of earlier judgment in O.S.No.315/1997 and also in invoking Section 52 of Transfer of Property Act, 1882 (hereinafter referred to as 'Act' for short) in coming to the conclusion that during lis pendens, property was purchased.

7. Being aggrieved by the judgment of concurrent finding of both Courts, the present Regular Second Appeal is filed before this Court.

8. In this Regular Second Appeal also mainly relied upon the ground that the suit schedule property belongs to defendant No.2 and the same is the self acquired property. The defendant No.1 has no any right and the same is not an ancestral property. Further, it is contend that judgment and decree obtained by defendant No.1 is collusive since she is the daughter of defendant No.4. The defendant No.4 himself had remained absent and he was placed ex-parte and question of filing suit during the life time of defendant No.4 does not arise. Defendant No.4 did not dispute the case of plaintiff and defendant No.2 is the vendor of plaintiff and she also did not dispute the case of plaintiff. But defendant No.3 also contend that the suit schedule property is an ancestral property as contended by defendant No.1. But nothing is placed on record to show that the said property was an ancestral property. But the trial Court committed an error in coming to the

conclusion that it was an ancestral property only on the ground that the property was purchased in the name of defendant No.2 out of the joint family nucleus and the very approach of the trial Court is erroneous and to that effect no material is placed before the Court.

9. The counsel appearing for appellant also brought to the notice of this Court in paragraph No.16, that the trial Court made an observation that it is very strange that defendant No.1 who has filed suit for relief of partition in O.S.No.315/1997. It is also observed that defendant No.1 has not included the present plaintiff in the suit inspite of suit schedule property purchased by plaintiff during the pendency of suit. But she proceeded against defendant Nos.2 to 4 and obtained an ex-parte decree. In spite of said observation made, the trial Court comes to the conclusion that defendant No.1 has produced the judgment and decree passed in O.S.No.315/1997 where the suit schedule property was held as an ancestral property of plaintiff and defendants and suit of the plaintiff came to be decreed holding that she is entitled for share

in the suit schedule property though it was exparte decree. The said findings are unchallenged and remain on record and the very approach is erroneous. When the plaintiff is not a party in the said suit, the question of challenging the same does not arise and it comes to the conclusion that plaintiff fails to prove that the suit schedule property is a self acquired property of defendant No.2 and the same is erroneous. The trial Court relies upon evidence of D.W.2 that during his cross examination, he admits that the suit schedule property is purchased by the husband of defendant No.2- Giriyamma having no good financial condition to purchase the same and relied upon the same. An observation is also made that principles of *lis pendency* of Section 52 of the Act is applicable to the case on hand is also erroneous.

10. The counsel also in his argument would vehemently contend that when application is filed before the appellate Court invoking under the provisions of Order 41 Rule 27 of Code of Civil Procedure, producing the original sale deed dated 23.05.1963 and also the certified

copy of sale deed dated 13.08.1953 and the same are not entertained. Further, it is contended that the certified copy of sale deed dated 23.05.1963 of the vendor of plaintiff and the property was sold on the very same day and the plaintiff in turn purchased the suit schedule property by his vendor and so also the Will executed in the year 1992 and the same was cancelled subsequently, one more Will was executed in the year 1997 wherein it is specifically recited that the said property is a self acquired property. When all those documents were relied upon by the appellant, the appellate Court ought to have allowed the application, but committed an error in rejecting the same by coming to the conclusion that they do not specify any material to support the dispute. The contention of defendant No.2 in earlier suit i.e., O.S.No.315/1997 is that the suit schedule property is an ancestral property but defendant No.3 also support the contention of defendant No.1 that the said suit schedule property is a joint family property, thereby coming to conclusion that tracing out of title of the property of defendant No.2 is not a criteria for

deciding the lis in this case is also an error on the part of appellate Court. The very approach of the appellate Court is erroneous and the very specific case of the appellant is that the suit schedule property belongs to defendant No. 2 and the same is a self acquired property of defendant No.2. But that is the criteria whether it is a self acquired property or ancestral property is the crux of the issue. But the appellate Court committed an error that defendant No.2 is the title holder of the suit schedule property is not a criteria in deciding the case is an erroneous approach and committed an error and the said ground is set out in paragraph No. 4 of the appeal memo.

11. The other contention is that judgment and decree passed in O.S.No.315/1997 is a collusive decree and none of the parties have contested in the said suit and the same is an exparte decree. Based on that ex- parte decree, obtained final decree and both of them are collusive decrees and the same was not taken note of by both the Courts. Further, the counsel in his arguments would vehemently contend that defendant No.1 has no

legal right in respect of suit schedule property during the lifetime of her father, i.e., defendant no. 4. The defendant No.4 himself has not acquired any legal right over the suit schedule property and defendant No.1 is not a class-I heir to file the suit for partition against her grand mother who is the vendor of plaintiff and she has not acquired any legal right under the said collusive decree. The judgment and decree passed in O.S.No.315/1997 and final decree are not binding on the right of plaintiff as both are nullity.

12. The counsel also in his argument would vehemently contend that the very approach of trial Court and appellate Court is erroneous and fails to take note of the fact that defendant No.4 is the son of defendant No.2. Both defendant Nos.2 and 4 have not contested the matter in O.S.No.315/1997. When the suit was filed by defendant No. 1 for the relief of partition, it took almost the lifetime of defendant No. 4. He further contends that since the defendant No.1 not having any pre-existing right, there is no need to challenge the judgment and decree passed in O.S.No.315/1997 as the same is nullified and the same is

obtained by fraud, if the documents produced under Order 41 Rule 27 of Code of Civil Procedure have to be considered and could touch upon the crux of the issue between the parties.

13. The counsel in support of his argument relies upon the judgment of Apex Court in the case of ***S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs. and others reported in (1994)1 Supreme Court Cases 1***, brought to notice of this Court in paragraph No.5, wherein the Apex Court discussed that the Courts of law meant for imparting justice between the parties. One who comes to the Court, must come with clean hands, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

14. The counsel also brought to notice of this Court the judgment in the case of ***Ramanagouda Siddanagouda Biradar and Others vs. Basavantraya Madivalappa Mulimani and Others reported in ILR***

2001 KAR 5474, wherein the discussion made with regard to invoking of Section 52 of the Act, that sale validly executed by the person who has the authority to sell pendente-lite but is only to subordinate the rates based on the decree in the suit. As between the seller and the purchaser, the transaction is perfectly valid and operates to vest a title in the purchaser and in order to invoke Section 52 of the Act, it is clear that a suit must be pending and it should be non-collusive in character and involves any right to immovable property and there must be a transfer by a party to the suit who has some right under the decree in the suit. It is also held that the *Doctrine of Lis pendens* being essentially a *Doctrine of Equity*, and fraud collusion being the anti thesis of equity, cannot be encouraged by Courts, nor any decrees obtained by fraud or collusion can defeat the rights of the alienees of immovable property.

15. The counsel also brought to notice of this Court the judgment passed by this Court in **RSA No.577/2014 dated 01.12.2021**. This Court while considering the

issue involved between the parties in paragraph No.15 taken note of the fact that once the property belongs to the vendors who is a woman, Section 14 of the Hindu Succession Act attracts.

16. The counsel also relies upon the judgment rendered by the Apex Court in the case of **Smt. Satya vs. Shri Teja Singh** reported in **(1975) 1 Supreme Court Cases 120**, and relies upon paragraph No.52 with regard to Section 41 of the Indian Evidence Act, 1872, that a final judgment of a competent Court in the exercise of jurisdiction must be a judgment pronounced by a Court of competent jurisdiction. And if it is obtained by analogy and if it is obtained by fraud and collusion, the same will not come to the aid of party who plays such a role.

17. The counsel also relies upon the judgment of this Court in the case of **Sakina Bee Vs. Mohamed Ameer Saheb and Others** reported in **ILR 1976 Karnataka Series 226**, brought to notice of this Court paragraph No.7 invoking the provisions of Order VIII Rule

5 of CPC are not applicable to the facts of the case in as much as neither the appellant nor respondent No.2 ever filed any written statement or objections to the suit.

18. The counsel appearing for respondent Nos.3 and 4 in his argument would vehemently contend that when defendant No.1 has already filed suit in O.S.No.315/1997 and there was a judgment and decree, the same has attained its finality and also final decree was passed and relief was granted, the question of collusive judgment and decree does not arise. Further, he contends that the counsel who filed Final Decree Proceedings and the suit is one and the same and the suit schedule property is an ancestral property. Hence, the trial court and the appellate Court rightly come to a conclusion that the suit schedule property is an ancestral property and the vendor of the plaintiff cannot sell the property and not committed any error. Though this Court given opportunity to the counsel appearing for respondent Nos.1 and 2, this Court made it clear in its order dated 17.07.2026 that if the counsel for respondent fails to

appear before this Court on the next date of hearing, the appeal will be considered in the absence of respondent. Only respondent Nos.3 and 4 appeared and made their submission. But counsel for respondent No.1 did not choose to make any submission before this Court and even respondent No.2 is also no more and has treated respondent Nos.3 and 4 as legal representatives of deceased respondent No.2.

19. Having heard the counsel appearing for appellant and also the counsel appearing for respondent Nos.3 and 4, this Court has to take note of the substantive question of law framed by this Court on 06.10.2010 while admitting the second appeal which reads as follows:

I. "Whether the doctrine of lis pendens indicated U/s.52 of the Transfer of Property Act would stand attracted, even after the plaintiff in a pending suit did not have a right to the property or rather right to succession had not opened in favour of the plaintiff, when the property was purchased, though during the pendency of the suit?"

II. Whether the appellant could claim that though the decree had been passed in favour of the plaintiff, it was a collusive decree and therefore the doctrine of lis pendens would not apply?"

20. Having heard the counsel appearing for appellant and the counsel appearing for respondent Nos.3 and 4 and also the substantive question of law framed by this Court, it is very clear that whether the *Doctrine of lis pendens* indicated under Section 52 of Transfer of Property Act would stand attracted or may even after the plaintiff in a pending suit did not have a right to the property or rather right to succession had not opened in favour of plaintiff, when the property was purchased, though during the pendency of the suit.

21. The other substantive question of law is that whether the applicant could claim that though the decree had been passed in favour of plaintiff, it was a collusive decree and therefore *Doctrine of lis pendens* does not apply.

22. Having taken note of these two substantive questions of law, it is very specific case of the plaintiff before the trial Court that suit schedule property is the self acquired property of defendant No.2 and the parties have also not disputed the sale that property was purchased by defendant No.2. But the only contention was raised before the trial Court that the same was purchased by defendant No.2 out of joint family income and having perused the reasoning of trial Court in paragraph No.16, the trial Court made an observation that it is very strange that defendant No.1 who has filed suit in O.S.No.315/1997 for the relief of partition did not implead the present plaintiff in the suit inspite of suit schedule property purchased by the plaintiff during the pendency of the suit but obtained decree subsequent to the sale of property in favour of plaintiff and it has to be noted that plaintiff in O.S.No.315/1997 proceeded against only defendant Nos.2 to 4 who are their family members, that too against the father who is alive. When the suit was filed against defendant No.4, it is rightly pointed out by the counsel appearing for the

appellant that when the father is alive there was no any pre-existing right in favour of plaintiff who is the daughter of defendant No.4. It is also to be noted that the said suit is filed against the grandmother arraying her as defendant No.2 who had sold the property in favour of plaintiff and both grandmother and also father did not contest the matter and also to be taken note of that only defendant No.3 supported the case of plaintiff. Except defendant Nos.1 and 3 have filed the written statement in O.S. No.166/2005 and claimed that the suit schedule property is an ancestral property and in order to substantiate the same, nothing is placed on record. But the trial Court, while coming to the conclusion while answering issue No.3, relies upon the evidence of D.W.2 i.e. defendant No.3 who supported the case of plaintiff in O.S.No.315/1997 that both of them colluded together and relies upon the evidence of D.W.2 that he admits that the suit schedule property is purchased by husband of Giryamma. Except this material, there is no any material to prove that it is an ancestral property and also an

observation is made by the trial Court that the husband of defendant No.2 is financially very good and he was having sound income. The very approach of the trial Court is erroneous in coming to such a conclusion while answering issue No.3. But the fact is that plaintiff had purchased the property under the sale deed dated 16.08.1999 from defendant No. 2 and the said issue No.1 was answered in negative and so also with regard to O.S.No.315/1997 was collusively obtained by defendant No.2 as the suit schedule property was her self acquired property and it was answered in negative. The trial Court also failed to take into consideration that when the suit was pending, the plaintiff in O.S.No.315/1997 would have brought the present plaintiff as party to the proceedings and without making the plaintiff as party, obtained the judgment and decree and in the said judgment also, none was contested and that was an ex-parte decree.

23. It is also important to note that the appellate Court while answering the point for consideration that when the application is filed under Order 41 Rule 27 of the

Code of Civil Procedure, reiterating that the suit schedule property is a self acquired property of defendant No.2 and original sale deed of defendant No.2 is also produced before the Court and certified copy of the other sale deed is also produced before the Court, apart from that before selling the property in favour of plaintiff herself has executed the registered Will in the year 1992 and subsequently the same was cancelled and even before selling the property once again in the year 1997 again registered the Will wherein categorically stated that it was a self acquired property. Now this document would clinch the issue between the parties. Defendant No.2 is the exclusive owner and the same is a self acquired property of defendant No.2 would have been considered, when such documents are produced, the appellate Court could have entertained the application having considered the application filed under Order 41 Rule 27 of Code of Civil Procedure, when the appellant categorically stated the reason for not producing of those documents before the trial Court. No doubt, defendant No.1 had filed objection

before the appellate Court to resist that application. But the appellate Court having perused the documents which have been produced along with list and Item No.1 to 7, with regard to tracing out the title to the property. When the appellate Court comes to the conclusion that the same is tracing of title to the property, instead comes to the conclusion that they do not specify any material to support or dispute the contention of defendant No.1 in their earlier suit in O.S.No.315/1997 and that property is a joint family property or a separate property and unless those documents are allowed to be produced and taken note of those recitals of the documents which have been relied upon and specifically pleaded that the same are self acquired property of defendant No.2. But the appellate Court comes to the conclusion that tracing out of the title to the property of defendant No.2 is not a criteria for deciding the lis in this case. The very approach of the appellate Court is erroneous i.e. the lis between the parties whether defendant No.2 is the absolute owner of the suit schedule property and the same is a self acquired

property of defendant No.2 and the same was sold in favour of plaintiff was the issue between the parties. The very case of the plaintiff before the trial Court that the same was a self acquired property of defendant No.2 and with regard to whether it is an ancestral property or self acquired property, it ought to have been considered by the appellate Court by exercising power under Order 41 Rule 31 of the Code of Civil Procedure and also to consider both factual aspects and also on question of law being the Statutory Appellate Authority and the same has not been done, but erroneously proceeded in rejecting the application.

24. The crux of the issue is that whether the suit schedule property is a self acquired property of defendant No.2 or it is an ancestral property as contended by defendant No.1 would have been considered in the appeal and so also with regard to issue of invoking of Section 52 of the Transfer of Property Act, when the judgment and decree was obtained without arraying of present plaintiff as party to the suit and also whether the plaintiff in

O.S.No.315/1997 was having a right that is pre-existing right during the lifetime of his father who has been arrayed as defendant No.4 who had not contested the matter in the suit in OS No.315/1997 as well as in the present suit and these issues were not met by the appellate Court to while considering the appellate jurisdiction i.e., question of fact and question of law. As such, the appellate Court committed an error in not considering the application filed under Order 41 Rule 27 of the Code of Civil Procedure. Hence, the documents which have been produced before the Court are necessary documents to consider the germane issue involved between the parties.

25. The other observation made by the trial Court is that judgment and decree passed in OS No.315/1997 is unchallenged and it has reached its finality and the same cannot be accepted for the reason that the plaintiff is not a party and even he was not impleaded as a party subsequent to the sale made in favour of the plaintiff that too, during pendency of the suit and without arraying,

obtained the decree in O.S.No.315/1997 and these are the factors ought to have been considered. Therefore, the matter requires to be reconsidered and to be remanded. Hence, I answered the substantial question of law accordingly.

26. In view of the discussions made above, I pass the following:

ORDER

- a. The Regular Second appeal is ***allowed***.
- b. The impugned judgment of trial court dated 31.03.2009 passed in O.S.No.166/2005 and the appellate Court dated 8.02.2010 passed in R.A.No.98/2009 are ***set aside***.
- c. The application filed under Order 41 Rule 27 of the Code of Civil Procedure before the appellate Court is allowed and the same has to be considered in the original suit.

- d. The matter is remitted back to the trial Court to consider the document filed along with application filed under Order 41 Rule 27 of the Code of Civil Procedure and to give an opportunity to both the parties to decide the issue involved between the parties as observed by this Court with regard to the claim of plaintiff as well as the claim of defendants.
- e. The parties are directed to appear before the trial Court on **24.08.2026**, without expecting any notice from the trial Court.
- f. This is the suit of the year 2005. Two decade has been elapsed. Hence, the trial Court is directed to dispose of the suit within **9 months** from 24.08.2026.
- g. The respective parties and counsels are directed to assist the trial Court in disposal of the suit within a time bound period.

h. The Registry is directed to send the records to the trial Court forthwith along with application filed under Order 41 Rule 27 of the Code of Civil Procedure and documents which have been produced before the appellate Court for reconsideration of the same in view of the observations made by this Court and allowing of the said application.

**Sd/-
(H.P.SANDESH)
JUDGE**

SSD