



CNR: KAHC010410832020

NC: 2026:KHC:50449
MSA No. 36 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE JYOTI M

MISCELLANEOUS SECOND APPEAL NO. 36 OF 2021 (RO)

BETWEEN:

1. MR. VENKAPPA MADIVALA,
AGED ABOUT 78 YEARS,
S/O. LATE CHANDU MADIVALA,
R/AT DEVI PRASAD HOUSE,
KUMBLAKODI, SHIBRIKERE POST,
THENKAYADAPADAVU VILLAGE,
MANGALURU-574164.
2. SMT. UMAVATHI,
AGED ABOUT 88 YEARS,
WIFE OF LATE ANNI MADIVALA,
D/O LATE CHANDU MADIVALA,
R/AT KAYARADKA HOUSE,
KUVETTU VILLAGE AND POST,
MADADKA BELTHANGADY TALUK-574 214.
3. MR. VASU MADIVALA,
AGED ABOUT 50 YEARS,
S/O. LATE APPI MADIVALA,
R/AT KUMBLAKODI HOUSE,
SHIBRIKERE POST,
THENKAYADAPADAVU VILLAGE,
MANGALURU-574 164.

...APPELLANTS

(BY SRI. RANJAN KUMAR K., ADVOCATE)



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AND:

SMT. JAYAMANI,
W/O. LATE VITTAL SALIYAN,
SINCE DECEASED BY HER LRS,

1. MR. VIJAYA VARUN RAJ,
AGED ABOUT 35 YEARS,
S/O. LATE JAYAMANI,
R/AT 3-426-17/1,
VARUN RAJ NIVAS, KAVOOR,
MARKADA, KUNJATHABAIL POST,
MANGALURU-575015
2. MRS. KUSHALA,
AGED ABOUT 66 YEARS,
W/O. LATE SHEENAPPA MADIVALA,
R/AT RAVIKIRAN SALIAN COMPOUND,
KUMBLAKODI HOUSE, SHIBRIKERE POST,
THENKAYADAPADAVU VILLAGE,
MANGALURU-574164.
3. MRS. RESHMA,
AGED ABOUT 38 YEARS,
W/O. MANJUNATH P.,
D/O. SMT. KUSHALA,
R/AT 4TH MAIN, JCR EXTENSION,
NEAR SHARAD STORE,
CHITRADURGA-577501.
4. MRS. SUSHMA,
AGED ABOUT 33 YEARS,
D/O. KUSHALA,
R/AT D NO.3-81/7,
NISARGA, KOPPALA HOUSE, KADEKAR,
MALLIKARJUNA TEMPLE CROSS ROAD,
JEPPINAMOGERU, KANKANADY,
MANGALURU-575 002



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5. SOUMYA
AGED ABOUT 31 YEARS,
D/O KUSHALA,
R/AT RAVIKIRAN SALIAN COMPOUND,
KUMBLAKODI HOUSE, SHIBRIKERE POST,
THENKAYADAPADAVU VILLAGE,
MANGALURU-574164.

6. MR. BHASKAR MADIVALA,
AGED ABOUT 44 YEARS,
S/O. LATE APPI MADIVALA,

7. MRS. VANITHA,
AGED ABOUT 42 YEARS,
D/O. LATE APPI MADIVALTHI,

RESPONDENTS NO.6 AND 7 ARE
RESIDING AT KUMBALAKODI HOUSE,
SHIBRIKERE POST,
THENKAYADAPADAVU VILLAGE,
MANGALURU-574 164.

...RESPONDENTS

(R1 TO R7 SERVED AND UNREPRESENTED,
VIDE COURT ORDER DATED 21.02.2026,
NOTICE TO R2 TO R6 DISPENSED WITH)

THIS MISCELLANEOUS SECOND APPEAL IS FILED UNDER
ORDER 43 RULE 1(u) OF THE CODE OF CIVIL PROCEDURE.

THIS MISCELLANEOUS SECOND APPEAL IS LISTED FOR
ADMISSION, THIS DAY, THE JUDGMENT IS DELIVERED AS
UNDER:



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ORAL JUDGMENT

Sri.Ranjan Kumar. K., counsel for the appellants, appeared in person and, on instructions, submits that the appellants are alive as of today.

The oral submission is recorded.

Notice to respondents was ordered on 09.04.2021. A perusal of the office note shows that respondents 1 and 7 are served and unrepresented. They have neither engaged the services of an advocate nor conducted the case as parties in person.

The appeal is listed today for admission, and it is heard finally.

2. The present appeal is filed challenging the remand order dated 29.09.2020 passed by the II Addl. Senior Civil Judge & CJM, Mangaluru, D.K., in R.A.No.84/2018.

3. For convenience, the parties are referred to as per their status and ranking before the Trial Court.

4. The short facts are as follows.



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The plaintiffs filed a suit seeking relief for deterioration and partition in O.S.No.464/2012. The appellants were defendant Nos.1, 2 and 7. The Trial Court, vide Judgment and Decree dated 06.07.2018, decreed the suit. Against the Judgment and Decree of the Trial Court, an appeal was preferred before the Appellate Court in R.A.No.84/2018. The Appellate Court, vide order dated 29.09.2020, remanded the matter. Under these circumstances, the appeal is filed challenging the remand order on several grounds as set out in the memorandum of appeal.

5. Counsel for the appellants submits that the remand order is bad in law.

Next, he submits that the Appellate Court has erred in concluding that the Trial Court has not framed proper issues arising from the pleadings put forth by the parties to the case.

A further submission is that the Appellate Court failed to appreciate that, based on the material proposition put forth by the parties, the Trial Court framed proper issues. It has been vehemently contended that the Trial Court, on 25.04.2018,



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framed an Additional Issue and erroneously placed the burden on the defendants to prove that issue. On the contrary, the burden ought to have been placed on the plaintiffs to prove the relationship.

Finally, he argues that since the Additional Issue was framed on 25.04.2018, the Appellate Court could not have remanded the case and should have decided the appeal on its merits. He emphasises that, regardless of the perspective, the remand order is legally untenable. Therefore, he requests that the remand order be revoked and that the Appellate Court be instructed to rule on the appeal based on the case's merits.

6. Heard the arguments and perused the papers carefully.

7. The Court has framed the question of law as under:
Whether the order of remand is just and proper.

8. The issue falls within a narrow compass and relates to the remand order. A suit for partition and declaration was filed, and the parties to the *lis* put forth their material



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propositions. Based on these material propositions, the Trial Court framed the proper and necessary issues.

In the plaint, it is stated that the first plaintiff, Smt. Jayamani, is the wife of Vittal Salian, and the second plaintiff, Vijay Varunraj, is the son of Vittal Salian. Mr. Vittal Salian is the son of Chandu Madival. Accordingly, they are related to defendants 1, 2, and 7. However, in the written statement, defendants 1, 2 and 7 clearly denied this relationship. Taking note of these pleadings, the Trial Court framed an additional issue, which reads as under:

Whether the defendants No.1 and 2 prove that there is no relationship between the plaintiffs and defendants No.1 and 2?

The Trial Court shifted the burden onto defendants 1 and 2 to prove this issue. On appeal, the defendants argued that this burden shifting was a ground for their case. Therefore, the Appellate Court could have also considered whether the burden should be placed on defendants 1 and 2 to prove that issue. However, instead of addressing this, the Appellate Court acknowledged the issue and wrongly remanded the case.



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Additionally, the Trial Court identified the appropriate and essential issues; there was no requirement to introduce more issues. Therefore, the remand is unwarranted. For the reasons mentioned earlier, the remand order is legally untenable and should be overturned.

9. Accordingly, the remand order dated 29.09.2020 passed by the II Addl. Senior Civil Judge & CJM, Mangaluru, D.K., in R.A.No.84/2018 is set aside. The appeal is restored to the registry. The Appellate Court is directed to dispose of the appeal in accordance with the law as expeditiously as possible.

10. The question of law is answered accordingly. Consequently, the appeal is **allowed**.

Since the appeal has been disposed of, any interim order granted is now discharged, and pending interlocutory applications are considered resolved.

**Sd/-
(JYOTI M)
JUDGE**

MRP
List No.: 1 Sl No.: 20