



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

R

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1144 OF 2025 (PAR)

BETWEEN:

1. MANJANAIIKA
S/O KOLLANAIIKA
AGED ABOUT 75 YEARS
R/O GOLAGODU, KUDARURU VILLAGE
SAGAR TALUK - 577 401,
SHIVAMOGGA DISTRICT
2. THIMMAPPA
S/O KOLLANAIIKA
AGED ABOUT 66 YEARS
3. KOLLAMMA
W/O HALANAIIKA
AGED ABOUT 65 YEARS
4. DYAVAPPA
S/O HALANAIIKA
AGED ABOUT 42 YEARS
RESIDENTS OF HADIKUNI, KARURU HOBLI,
BYKODU POST, SAGAR TALUK - 577 401,
SHIVAMOGA DISTRICT.
5. SAVITHA
W/O THIMMAPPA
AGED ABOUT 40 YEARS

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



R/O YALADAMAKKI VILLAGE,
BYKODU POST, SAGAR TALUK - 577 401,
SHIVAMOGA DISTRICT.

...APPELLANTS

(BY SRI. P.N. HARISH, ADVOCATE)

AND:

1. DURGAPPA
S/O BOLA NAIKA
AGED ABOUT 69 YEARS
R/O KANALLI VILLAGE ULAVI POST
SORABA TALUK - 577 429
SHIVAMOGGA DISTRICT
2. RAMANAIIKA
SIO KOLLANAILKA
AGED ABOUT 75 YEARS,
R/O HADIKUNI, KARUR HOBLI
BYKODU POST, SAGAR TALUK - 577 401.
SHIVAMOGA DISTRICT.
3. PREMA
W/O RAJAPPA
AGED ABOUT 48 YEARS
R/O HOSAMANE, NIDAGURU CHIMALE VILLAGE,
KARURU HOBLI,
SAGAR TALUK - 577 401,
SHIVAMOGGA DISTRICT
4. MANJAMMA
W/O HUCHAPPA
AGED ABOUT 59 YEARS
R/O KAISODI VILLAGE,
ULAVI POST, SORABA TALUK - 577 429,
SHIVAMOGGA DISTRICT.



5. HALAMMA
W/O DYAVAPPA
AGED ABOUT 57 YEARS
(KANUKOPPADEVARA MANE)
R/O HARIGE POST,
SORABA TALUK - 577 429,
SHIVAMOGGA DISTRICT.
6. SAVITHRI @ SUVARNAMMA
W/O LOKAPPA
AGED ABOUT 55 YEARS
R/O MUTTIGUDDE MANE,
MAVINASARA VILLAGE, HALUGUDDE POST,
HOSANAGARA TALUK - 577 418,
SHIVAMOGA DISTRICT
7. BANGARAMMA
W/O RAGHU
(KULADARAMANE)
AGED ABOUT 53 YEARS,
R/O ANDIGE POST,
SIRSI TALUK - 581 401,
UTTARA KANNADA DISTRICT.
8. MANJAPPA T.
S/O RUSUMA @ THIMMANAIKA
AGED ABOUT 49 YEARS
R/O KANALLI VILLAGE, ULAVI POST,
SORABA TALUK - 577 429,
SHIVAMOGGA DISTRICT.
9. ANNAPPA T.
S/O RUSUMA @ THIMMANAIKA
AGED ABOUT 49 YEARS
R/O KANALLI VILLAGE, ULAVI POST,



SORABA TALUK - 577 429,
SHIVAMOGGA DISTRICT.

...RESPONDENTS

(BY SRI. MURUGESHAPPA M., ADVOCATE FOR
SRI. PRASIDDARAJ, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGMENT AND DECREE DATED 21.01.2025, PASSED IN RA
NO. 11/2024, ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE
AND JMFC, SAGAR, ALLOWING THE APPEAL AND SETTING
ASIDE THE JUDGMENT AND DECREE DATED 12.02.2024
PASSED IN FDP NO. 7/2014 ON THE FILE OF THE PRINCIPAL
CIVIL JUDGE AND JMFC, SAGAR

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. P.N. Harish, learned counsel for the
appellants and Sri. Murugeshappa M., learned counsel for
the respondents.

2. The present second appeal is filed by the
petitioner – Respondents No.1, 3A, 3B, 3C in FDP
No.7/2014 challenging the Order passed by the First



Appellate Court reversing the Order passed by the learned Trial Judge in F.D.P. No.7/2014.

3. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under :

3.1 A suit for partition was earlier filed which ultimately culminated in allowing the final decree proceedings in FDP No.5/2003 on 18.11.2010.

3.2 Sri. Manjappa got a share in the said final decree who died subsequently. With regard to the share of Manjappa, there were some disputes between the parties to the present appeal and instead of trashing out the said dispute by filing a separate suit for partition as admittedly parties had share in respect of the property left behind by Manjappa, who got the same in final decree proceedings in FDP No.5/2003, a fresh final decree proceedings came to be filed seeking alteration of the earlier final decree which got concluded by dividing the properties by metes and bounds by virtue of the Order dated 18.11.2010.



3.3 Despite the objections filed by the contesting respondents in the said final decree proceedings in FDP No.7/2014, learned trial Judge allowed the final decree proceedings.

3.4 Being aggrieved by the same, the contesting respondent namely Durgappa filed an appeal before the First Appellate Court in RA No.11/2024 on the file of Civil Judge (Senior Division), Sagar.

3.5 Learned Judge in the First Appellate Court after securing the records heard the arguments of the parties and allowed the appeal and dismissed the final decree proceedings in FDP No.7/2014.

4. Being further aggrieved by the same, the appellants are before this Court.

5. Sri. P.N. Harish, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that in respect of share of the Manjappa, beneficiaries of the Will said to have been



executed by Manjappa have sought for altering the final decree passed in FDP No.5/2003 dated 18.11.2010, which is perfectly maintainable and thus sought for admitting the appeal on following substantial questions of law:

i) Whether the first appellate court committed an error in holding that PW3 is only a scribe to the Will and not an attesting witness?

ii) When the PW3 clearly identified the thumb impression of the testator and so also the signatures of the witnesses, in view of nonavailability of other two witness, whether the appellate court justified in not accepting the evidence of PW3 for proof of Will?

iii) Whether the first appellate court justified in dismissing the final decree proceedings on its entirety even though the same was questioned only by respondent No.5 of FDP No.7/2014?

iv) Whether the appellate court ought to have held that the Will is not binding on the appellant before it only since the others have not questioned the same?

v) Whether the first appellate court committed an error in accepting the version of the respondents without there being any evidence and documents placed on record to substantiate such objections?



6. Per contra, Sri. Murugeshappa M., learned counsel for the contesting respondent supports the impugned order of the First Appellate Court.

7. Having heard the arguments of both sides, this Court perused the material law on record meticulously.

8. On such perusal of the material law on record, there is no dispute that the '*lis*' between the parties in respect of the properties got ended in passing the final decree proceedings in FDP No.5/2003 on 18.11.2010 and properties were divided by metes and bounds. In said division, Manjappa also got a share in the suit property.

9. Said Manjappa subsequently died and therefore the share of Manjappa was sought to be granted to the present appellants by virtue of the Will said to have been executed by Manjappa.

10. The same was opposed by Durgappa stating that such a course is not open to the appellants and if at all right of Manjappa is to be further distributed; the only



proper course was to file a separate suit for partition of the share of Manjappa.

11. Learned trial Judge however did not consider the said objection of Durgappa and allowed the final decree proceedings and altered the final decree passed in FDP No.5/2003 in FDP No.7/2014.

12. Being aggrieved by the same, it is the Durgappa who approached the First Appellate Court and First Appellate Court rightly re-appreciated the position of law and the objection being the valid, allowed the appeal and dismissed the final decree proceedings in FDP No.7/2014.

13. Assailing the correctness of the said order, the present appeal has been filed.

14. The substantial questions of law raised in the appeal memorandum do not merit for consideration for more than one reason.



15. Firstly, when once the decree has been finally executed by passing the final order in F.D.P. No.5/2003 on 18.11.2010, '*lis*' among the parties with regard to the division got concluded as properties were divided by metes and bounds.

16. In such a division, Manjappa also got a share. It is the case of the appellant herein that Manjappa had executed a Will in his lifetime in favour of the first appellant and other appellants have supported the first appellant. Thus first appellant is seek for modification of the final decree and the shares that have been allotted to Manjappa should have been granted to the appellants herein.

17. Durgappa opposed the same contending that such a course is not available to the appellants inasmuch as the very word 'final decree' concludes the preliminary decree that has been passed earlier.



18. The said aspect of the matter is not properly considered by the learned trial Judge and again altered the final decree passed in FDP No.5/2003 which got concluded by dividing the properties by metes and bounds by Order dated 18.11.2010.

19. Secondly, it is no doubt true that any number of preliminary decrees are permissible to be passed depending upon the alteration of the shares on account of either enlargement of the estate or diminishing the estate.

20. But once the final decree is passed, it becomes final in respect of a preliminary decree passed in a suit.

21. Therefore, the trial Judge was wrong in altering the final decree passed in FDP No.5/2003 which has been rightly appreciated by the learned Judge in the First Appellate Court while passing the impugned order.

22. Secondly, if the appellants are having independent right, under the Will said to have been executed by Manjappa, their remedy is to file a separate



suit seeking share in the property left behind by Manjappa which she got in final decree proceedings in FDP No.5/2003 by Order dated 18.11.2010.

23. Instead of filing a separate suit, seeking alteration of the final decree in FDP No.5/2003 which got concluded on 18.11.2010 is thus *per se* incorrect and such a power was not was not existing in the learned trial Judge under law.

24. Therefore, the order of the First Appellate Court needs no interference having regard to the scope of Section 100 of the Code of Civil Procedure.

25. Having said thus, the rights of Manjappa are to be divided in accordance with law. Therefore, parties are at liberty to get settled the rights of Manjappa in accordance with law.

26. With that liberty, reserved for the appellants, following order:



NC: 2026:KHC:32541
RSA No. 1144 of 2025

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

SNC
List No.: 1 Sl No.: 73