HC-KAR

NC: 2026:KHC:17270
MSA No. 103 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS SECOND APPEAL NO. 103 OF 2024 (RO)

BETWEEN:

SMT. S. CHANDRAKALA,
D/O LATE SIDDALINGAIAH,
C/O A.N. PRAKASH,AGED ABOUT 49 YEARS,
R/AT HOUSING BOARD,
ARLIMARADA PALYA, TUMAKURU-572137.

...APPELLANT

(BY SRI BHANU PRAKASH H V, ADVOCATE)

AND:

1. SMT. SHIVAMMA,
W/O LATE SIDDALINGAIAH ,
AGED ABOUT 70 YEARS,
R/AT GARDEN HOUSE
(TENGINA THOTADHA MANE) HOSAHALLI,
DIBBUR POST, TUMAKURU - 572106
(SINCE DECEASED REP. BY HER LRS
R2, R3, R4 AND R9)

2. SMT VASANTHA
W/O LATE RAVIKUMAR, AGED ABOUT 40 YEARS,
R/AT BEHIND CHIDAMBARA ASHRAMA, GUBBI
TOWN, GUBBI AND PRESENTLY RESIDING AT
R/AT SITE NO 15 AND 17,
KHATHA NO 4339, 3750,
MAHALAXMI NAGRA, GUBBI TOWN,
GUBBI TALUK - 572216 TUMAKURU DISTRICT.

3. SRI JAGADEESHA,
S/O LATE SIDDALINGAIAH,
AGED ABOUT 59 YEARS,R/AT HOSAHALLI VILLAGE,

Digitally signed by C HONNUR SAB
Location: HIGH COURT OF KARNATAKA

TUMAKURU KASABA HOBLI,TUMAKURU TALUK.

4. SRI LEPAKSHAIAH,
S/O LATE RAVIKUMAR,AGED ABOUT MAJOR,
R/AT MUDIGERE VILLAGE,
KASABA HOBLI, M.G. PATTNA POST,
GUBBI TALUK - 572216.

5. SRI S THIMMAIAH,
S/O SEENAPPA, AGED ABOUT 44 YEARS,
R/AT THIPPURAMMA PALYA,
KASABA HOBLI, OORKERE POST,
TUMAKURU TALUK - 572105.

6. THE MANAGER,
TGMC CO-OP BANK J C ROAD,TUMAKURU - 572101.

7. THE MANAGER,
MAHATMA GANDHI CREDIT CO-OPERATIVE BANK,
MANDIPET, TUMAKURU - 572101.

8. THE MANAGER
CANARA BANK,ASHOKA ROAD,TUMAKURU - 572101.

9. SMT S VANITHA
D/O LATE SIDDALINGAIAH
W/ LATE PUTTARAJU,AGED ABOUT 47 YEARS,
R/AT MADANAYAKANAHALLI KUDUGERE MAIN ROAD
R/AT HOUSE NO.60, 5TH CROSS,
VEERABADRA SWAMY NILAYA,
BENGALURU - 562162.

…RESPONDENTS

(BY SRI V B SIDDARAMAIAH, ADVOCATE FOR R2 TO R4,
SRI K R RAMESH, ADVOCATE FOR R5,
SRI VINAY BHAT, ADVOCATE FOR R8
V/O/DT 03.07.2025 SERVICE OF NOTICE AGAINST R9
IS HELD SUFFICIENT,
V/O/DT 03.07.2025 R2 TO R4 AND R9 ARE THE
LR'S OF DECEASED R1,
R6 AND R7 ARE SERVED)

THIS MSA IS FILED UNDER ORDER 43 RULE 1(u) OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 18.07.2024 PASSED IN RA NO.81/2024 (OLD RA NO.3/2014) ON THE FILE OF THE I ADDITIONAL PRL JUDGE, FAMILY COURT, TUMAKURU, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 23.10.2013 PASSED IN OS NO.8/2000 ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE AND CJM, TUMKUR AND THE MATTER IS REMANDED BACK TO TRIAL COURT TO RE-ADMIT THE SUIT.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

Heard the learned counsel appearing for the appellant. There is no representation on behalf of the respondents.

2. This appeal is against the judgment and decree dated 18.07.2024 in R.A. No.81/24 (Old R.A. No.3/2014) on the file of the I Additional Principal Judge, Family Court at Tumakuru. In terms of the impugned judgment and decree, the appeal is remitted to the Trial Court for fresh consideration to enable defendant No.7 to lead evidence.

3. Aggrieved by the said order of remand, the plaintiff No.1 is before this Court.

4. Learned counsel appearing for the plaintiff No.1/appellant would submit that the suit in O.S No.8/2000 for

partition was filed against the family members and one of the family members viz., Lepakshaiah was not made a party when the suit was filed. However, his mother Vasantha was included as a party/defendant no.2. Later, Lepakshaiah was included as a party and since, he was minor and his mother was arrayed as the guardian, however she did not represent the minor son and the suit came to be decreed. Thereafter, appeal was filed by defendant no.2 and also cross appeal by Lepakshaiah. Both appeals were allowed and the share was modified.

5. Plaintiffs and Lepakshaiah both filed Regular Second Appeals in RSA Nos.1769/2019 and 470/2021 and said the appeals were allowed in part and the matter was remitted to the First Appellate Court to consider the case afresh both on facts and law.

6. The relevant portion of the judgment in aforementioned RSAs reads as under:

> *Appeals are allowed. The judgment and decree of the First Appellate Court in R.A.No.03/2014 is hereby set aside. Matter is remitted back to the First Appellate Court to decide question of law, since the First Appellate Court is a statutory appellate court within the time bound of three months from 09.11.2023.*

(ii) The parties are directed to appear before the First Appellate Court without expecting any notice from the First Appellate Court on 09.11.2023 and even if any parties does not appear before the First Appellate Court, the First Appellate Court do not venture to issue notice and proceed with the matter and consider the same in accordance with law.

(iii) The Registry is also directed to send the application and the documents produced along with I.A.No.2/2021 to the First Appellate Court for consideration along with main appeal.

(iv) The First Appellate Court shall give an opportunity to both the parties to lead any additional evidence if found necessary.

7. Considering the materials on record, the following point arises for consideration:

> "Whether the appellant has made out a case to interfere with the order of remand passed by the First Appellate Court".

8. The judgment and decree passed by this Court in aforementioned Regular Second Appeals would indicate that this Court has remitted the matter to the First Appellate Court to consider the case on facts as well as on law. That would

indicate that the First Appellate Court should have recorded evidence by permitting the defendant No. 7/Lepakshaiah to file written statement. However, the matter is remitted to the Trial Court and before the Trial Court, written statement is filed and evidence is recorded. Now the case is posted for arguments.

9. Learned counsel for the plaintiff No.1/appellant would submit that, the suit is filed in the year 2000 and more than 25 years have elapsed and this being the position, one more decree by the Trial Court would enable the losing party to file a Regular Appeal before the Appellate Court and thereafter, the Appellate Court has to decide the matter on merits. Thus he would contend that there will be unreasonably long delay in view of the remand by the First Appellate Court to the Trial Court.

10. Considering the tenor of the order passed in Regular Second Appeals, this Court is of the view that the matter will be remitted to the First Appellate Court for hearing the case on merits and the First Appellate Court shall pass appropriate orders.

11. Hence, the following:

ORDER

(i) The appeal is ***allowed-in-part***.

(ii) The evidence recorded by the Trial Court shall be treated as a valid evidence.

(iii) The parties shall appear before the First Appellate Court on **16.04.2026.**

(iv) Registry shall send the records to the First Appellate Court forthwith.

(v) The Trial Court shall send the records to the First Appellate Court.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN
List No.: 1 Sl No.: 37