



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS SECOND APPEAL NO. 171 OF 2025 (RO)

BETWEEN:

MR. SATHISHCHANDRA NAYAK
AGED ABOUT 76 YEARS,
S/O. LATE VAMANA NAYAK,
RESIDING AT SRI RAM,
JEPPU, MARNAMI KATTE,
MANGALURU- 575 001.

...APPELLANT

(BY SRI.VISHWAS.N., FOR
SRI. RAKESH KINI., ADVOCATE)

AND:

1. MRS SHANTHA NAYAK
AGED ABOUT 81 YEARS,
D/O. LATE VAMANA NAYAK,
RESIDING AT MAGAPPA NAYAK,
JEPPU, MAHAKALI PADPU,
MANGALURU- 575 002.
2. MR. ARUN KUMAR.K. NAYAK,
AGED ABOUT 73 YEARS,



S/O LATE K. KRISHNAN NAYAK,

3. AMARANTH NAYAK.,
AGED ABOUT 63 YEARS,
S/O LATE K. KRISHNAN NAYAK,
NO.2 AND 3 ARE R/AT USHA NAYAK,
NEAR JEPPU POST OFFICE, JEPPU,
MARNAMIKATTE,
MANGALORE- 575001
4. MR. ASHOK NAYAK,
AGED ABOUT 70 YEARS,
S/O LATE K. KRISHNAN NAYAK,
RESIDING AT DOOR NO.21-4-487,
BOLAR, MANGALURU- 575001
5. SMT. SANDHYA.A. RAO,
AGED ABOUT 65 YEARS,
RESIDING AT SHRI KRIPA TOURIST HOME,
NEAR R.T.O., STATION ROAD,
AURNGABAD- 431001
6. HARIDAS NAYAK,
AGED ABOUT 80 YEARS,
H/O LATE USHA NAYAK,
7. HARSHA NAYAK,
AGED ABOUT 44 YEARS,
S/O LATE USHA NAYAK,
8. AISHWARYA PRABHU,
AGED ABOUT 42 YEARS,
S/O LATE USHA NAYAK,

NO.6 TO 8 ARE RESIDING AT



LAXITON MANNER, FLAT NO.34,
S. MATHIAS ROAD, HIGHLAND,
MANGALORE- 575001

M. RATNAKAR NAYAK, (SINCE DEAD),
DEAD BY LR'S

9. PREMA R. NAYAK,
AGED ABOUT 76 YEARS,
W/O M. RATHNAKAR NAYAK,
RESIDING AT 24-11-1168,
SRI RAM NAYAK COMPLEX,
NANDI GUDDA ROAD, JEPPU,
MANGALORE- 575002
10. MR. GAUTHAM NAYAK,
AGED ABOUT 56 YEARS,
S/O LATE RATHNAKAR NAYAK,
RESIDING AT 24-11-1168,
SRI RAM NAYAK COMPLEX,
NANDI GUDDA ROAD, JEPPU,
MANGALORE- 575002
11. ANUPAMA NAVEEN KUMAR,
AGED ABOUT 55 YEARS,
D/O LATE M. RATHNAKAR NAYAK,
W/O DR. NAVEEN KUMAR,
RESIDING AT NO.58, ASHOKA ROAD,
SAGAR, SHIMOGA- 577401.
12. M. SURENDRA NAYAK,
AGED ABOUT 83 YEARS,
S/O M. VAMANA NAYAK,
RESIDING AT SRI. RAM, JEPPU,
MARNAMIKATE,



MANGALORE- 575001

RAVINDRA NAYAK,
SINCE DEAD BY LRs,

13. PRIYA PAI,
AGED ABOUT 36 YEARS,
D/O LATE JAYANATHI R NAYAK,

14. RESHAN KINI,
AGED ABOUT 34 YEARS,
D/O LATE JAYANATHI R NAYAK,

15. SURAJ KIRAN NAYAK,
AGED ABOUT 32 YEARS,
S/O LATE JAYANTHI R NAYAK,

NO.13 TO 15 ARE R/AT
VASANTHAASHRAMA,
MPT ROAD, CAR STREET,
MANGALORE.

16. M. RAMESH NAYAK,
AGED ABOUT 70 YEARS,
S/O M. DAMODHARA NAYAK,
SRI GANESH, MORGANSGATE,
MANGALURU.

17. MUKTHA NAYAK,
AGED ABOUT 76 YEARS,
W/O LATE DAMODHARA NAYAK,

18. RAKESH NAYAK
AGED ABOUT 47 YEARS,
W/O LATE DAMODHARA NAYAK,



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19. ROSHNI NAYAK,
AGED ABOUT 47 YEARS,
W/O LATE DAMODHARA NAYAK,

NO.16 AND 18 ARE RESIDING AT
MANGALA, SILVA CROSS ROAD,
NEAR P.F.OFFICE,
MANGALORE- 575002
20. HEMALATHA NAYAK,
AGED ABOUT 77 YEARS,
W/O DEVADAS NAYAK,
RESIDING AT
M.VAMAN NAYAK AND SONS,
JEPPU, MARNAMIKATTE,
MANGALORE - 575001.
21. KIRANA NAYAK,
AGED ABOUT 50 YEARS,
W/O RAVI SHETTY,
RESIDING AT ABHIMAN CHAMBERS,
FLAT NO.406, NEAR CITY HOSPITAL,
KADRI, MANGALORE.
22. SHOBHA NAYAK
AGED ABOUT 42 YEARS,
W/O LATE VIJAYA NAYAK,
23. ADITHI,
AGED ABOUT 17 YEARS,
D/O LATE VIJAYA NAYAK,
24. KUMARI ASTHA,
AGED ABOUT 10 YEARS,
D/O LATE VIJAYA NAYAK,



RESPONDENTS 23 AND 24 ARE MINORS
REPRESENTED BY THEIR MOTHER
AND NATURAL GUARDIAN,
RESIDING AT M. VAMAN NAYAK AND SONS,
JEPPU, MARNAMIKATTE,
MANGALORE- 575001

...RESPONDENTS

THIS MSA IS FILED UNDER ORDER 43 RULE 1(U) OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 5.04.2025
PASSED IN RA NO.22/2023 ON THE FILE OF III ADDITIONAL
DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU,
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT
AND DECREE DATED 1.07.2022 PASSED IN OS NO. 78/2013
ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND
CJM, MANGALURU, D.K., DISMISSING THE SUIT FOR
PARTITION AND THE MATTER IS REMANDED BACK TO THE
TRIAL COURT FOR FRESH CONSIDERATION AND FOR SPEEDY
DISPOSAL IN ACCORDANCE WITH LAW.

THIS APPEAL, COMING ON FOR ORDERS, 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 05.04.2025 passed in RA.No.22/2023 by the Court of III Additional District Judge, D.K., Mangaluru.

2. In terms of the impugned judgment and decree, the judgment and decree passed by the Trial Court in O.S.No.78/2013 on the file of I Additional Senior Civil Judge, Mangaluru are set aside. The matter is remitted to the Trial Court with a direction for fresh consideration and for speedy disposal in accordance with law.

3. The appeal before the First Appellate Court was filed by the plaintiff.

4. The suit is for partition and separate possession, and was dismissed. The defendants raised the



contention that there is a registered release deed executed by the power of attorney holder of the plaintiff. The defendants led evidence. There was no cross-examination to the evidence of the contesting defendant No.1.

5. Based on the registered release deed, the Trial Court has held that the plaintiff has not succeeded in establishing the fact that plaintiff has right over the property and accordingly, dismissed the suit.

6. Before the First Appellate Court, it was urged that the plaintiff did not have sufficient opportunity to cross-examine the defendant, who has led the evidence based on the contention. The First Appellate Court has accepted the said contention and has remanded the matter permitting the plaintiff to cross-examine the witness examined on behalf of the defendant. Hence, the present second appeal.



7. Learned counsel appearing defendant No.1/appellant would submit that the appeal is allowed and the matter is remanded without there being the contention by the plaintiff that he should be permitted to cross-examine defendant No.1 who is examined as DW.1. It is the further submission that no reasons are assigned by the plaintiff for not cross-examining DW.1, despite sufficient opportunity being given. Thus, he would urge that the impugned judgment and decree passed by the First Appellate Court are to be set aside.

8. The Court has considered the contentions raised at the bar and perused the records.

9. The following points arise for consideration:

Whether the First Appellate Court is justified in remanding the matter to the Trial Court, permitting the plaintiff to cross examine DW.1?



10. It is noticed that the suit is one for partition and separate possession. Defendant No.1 who is the brother of the plaintiff has raised a contention that the plaintiff has executed the registered relinquishment deed in favour of defendant No.1 and defendant No.1 has produced the registered relinquishment deed and also the power of attorney of the plaintiff's who according to Defendant No.1 was authorized to execute the registered relinquishment deed. It is noticed that there is no cross-examination to DW.1/defendant No.1, who raised a contention based on the registered deed and an unregistered power of attorney.

11. Considering the nature of the controversy involved in this case, the Court is of the view that the order remanding the matter to the Trial Court permitting the plaintiff to cross-examine DW.1 cannot be said to be erroneous in the facts and circumstances of the case. Under the circumstances, this Court does not find any



merit in the appeal. Accordingly, the appeal is ***disposed of.***

12. Learned counsel the appellant submits that appellant is aged 69 years and is suffering from cancer. Under these circumstances, the plaintiff should not seek unnecessary adjournment before the Trial Court and should co-operate for early disposal.

13. The plaintiff should cross-examine on the date fixed by the Trial Court. The plaintiff shall cross-examine DW-1, and thereafter, both the parties are permitted to lead additional evidence, if they desire.

14. The Trial Court shall consider the case in accordance with law and thereafter, pass an appropriate orders/judgment.

15. It is made clear that this Court has not expressed anything on the merits of the matter.



16. Since it is submitted that the appellant is suffering from cancer, the trial court shall endeavour to dispose off the matter within 6 months from the date of the receipt of the copy of this order.

17. In view of disposal of the appeal, pending interlocutory applications do not survive for consideration.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

SSB