



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1099 OF 2013 (PAR)

BETWEEN:

SANNANINGASHETTY
SINCE DEAD BY HIS LRS

1. RAMAMMAA
W/O SANNANIGASHETTY
AGED ABOUT 58 YEARS
R/A KYATHANAHALLY VILLAGE
HAMPAPURA HOBLI
H D KOTE TALUK
MYSORE - 577 024
2. SMT LAKSHMAMMA
W/O BHAIKASHETTY
AGED ABOUT 43 YEARS
R/A TIPTUR VILLAGE
K R NAGAR TALUK
MYSORE - 577 023
3. SRI MAHADEVASHETTY
S/O SANNANINGASHETTY
AGED ABOUT 41 YEARS
R/A KYATHANAHALLY VILLAGE
HAMPAPURA HOBLI
H D KOTE TALUK
MYSORE - 577 024
4. SMT CHIKKAMMA
W/O NAGESH

Digitally signed
by KIRAN
KUMAR R.
Location: HIGH
COURT OF
KARNATAKA



AGED ABOUT 38 YEARS
R/A YELAWALA VILLAGE
BEHIND POLICE STATION
MYSORE TALUK
MYSORE – 577 024

5. SMT SAKAMMA
W/O JAYARAM
AGED ABOUT 33 YEARS
R/A ARAKERE VILLAGE
MANDYA DISTRICT – 577526
6. SMT CHIKKATHAYAMMA
W/O RANGASWAMY
AGED ABOUT 26 YEARS
R/A MANDAHALLY VILLAGE
JAYAPURA HOBLI
MYSORE TALUK – 577 021

...APPELLANTS

(BY SRI. A MADHUSUDHANA RAO &
SRI. HEMANTH KUMAR, ADVOCATES)

AND:

1. SRI BETTASHETTY @ CHIKKASHETTY
S/O LATE BODASHETTY @ CHIKKASHETTY
SINCE DEAD, REP. BY LEGAL REPRESENTATIVES
- 1(1) SMT. THIMMAMMA
W/O LATE SRI BETTESHETTY
AGED ABOUT 72 YEARS
R/AT MANDAHALLY VILLAGE
JAYAPURA HOBLI
MYSORE TALUK
- 1(2) SMT. YASHODA
D/O LATE SRI BETTESHETTY
AGED ABOUT 50 YEARS
D.NO.2614, HERIGERE
KUMBARAGEERI 2ND CROSS



PULIKESHI ROAD
LAKSHKAR MOHALLA
MYSORE – 570001

- 1(3) SMT KAMALAMMA
D/O LATE SRI BETTESHETTY
AGED ABOUT 48 YEARS
KYATHANAHALLI VILLAGE AND POST
HAMPAPURA HOBLI
H D KOTE TALUK
MYSORE DISTRICT.
- 1(4) SMT SHARADAMMA
D/O LATE SRI BETTESHETTY
SINCE DECEASED BY LEGAL REPRESENTATIVES
- 1(4)(i) SRI. RAMAKRISHNASHETTY
AGED ABOUT 55 YEARS
- 1(4)(ii) SRI. CHANDRASHEKAR SHETTY
S/O RAMAKRISHNA SHETTY
AGED ABOUT 30 YEARS
- 1(4)(iii) SRI SHAMSHETTY
S/O RAMAKRISHNA SHETTY
AGED ABOUT 25 YEARS
- 1(4)(iv) SMT. NETHRA
D/O RAMAKRISHNA SHETTY
AGED ABOUT 30 YEARS

RESPONDENT Nos.1(4)(i) TO 1(4)(iv) ARE R/AT
THATTEKERE VILLAGE AND POST
ANUGADU HOBLI
HUNSUR TALUK
MYSORE DISTRICT – 571 105

- 1(5) SMT. SHANTHAMMA
D/O LATE SRI. BETTESHETTY
AGED ABOUT 42 YEARS
KANDEGALA VILLAGE AND POST



- RAVANDOORU HOBLI
PERIYAPATTANA TALUK
MYSORE – 571 107.
2. SRI KAMALAMMA
W/O MANCHASHETTY
D/O SRI BETTASHETTY
AGED ABOUT 43 YEARS
R/A KYATHNAHALLY VILLAGE
HAMPAPURA HOBLI
H D KOTE TALUK
3. SRI DASASHETTY
S/O LATE CHIKKASHETTY
AGED ABOUT 68 YEARS
R/A KYATHNAHALLY VILLAGE
HAMPAPURA HOBLI
H D KOTE TALUK
4. SMT. SUMATHI R UDUPA
W/O SRI A RAGHUPATHI UDUPA
D/O SRI INDIRA NEJARU
MAJOR
R/AT No.6/181, PARIJATHA
NEAR NAJAR ASHWATH KATTE
KALYANAPURA,
SANTHE KATTE
UDUPI TOWN
UDUPI DISTRICT – 576 101
5. SRI. SOMASHEKAR V
S/O SRI. VENKATESH
AGED ABOUT 28 YEARS
R/AT No.352, BEHIND MARIGIDI
ELAWALA
MYSORE – 571130
6. HARISH M
S/O MOGONNA
34 YEARS
No. 206 , ROMOMANDIRA ROAD



THANNA CHIKKAPOLU
MYSORE.

...RESPONDENTS

(BY SRI. N D ONKARAPPA & H S SUBRAMANYA SWAMY,
ADVOCATES FOR R1(4)(ii) & R2 (NOC)
SRI. S RAVICHANDRA, ADVOCATE FOR R5
SRI. N.G. KOTRE, ADVOCATE FOR R1(1, 2, 3 & 5) R1(4)(i),
R1(4)(iii, iv) NOC GIVEN FOR R1(4)(ii)
V/O DATED 02.08.2016 SERVICE OF NOTICE IN R/O R3
DASASHETTY H/S
R6 SERVED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 27.3.2013 PASSED IN
R.A.NO.338/2012 ON THE FILE OF THE PRESIDING OFFICER,
FAST TRACK COURT, HUNSUR, MYSORE DISTRICT,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 14.6.2012 PASSED IN O.S.NO.339/2006
ON THE FILE OF THE SENIOR CIVIL JUDGE, HUNSUR.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This regular second appeal is filed by the appellants
challenging the judgment and decree dated
27.03.2013 passed in R.A. No.338 of 2012 by the
learned Fast Track Court, Hunsur, Mysore District
(for short, '***the First Appellate Court***'), confirming
the judgment and decree dated 14.06.2012 passed



in O.S. No.339 of 2006 by the learned Senior Civil Judge, Hunsur (for short, '***the Trial Court***').

2. For the sake of convenience, the parties are referred to based on their ranking before the Trial Court. The appellants were the plaintiffs and the respondents were the defendants.
3. Brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit for partition and separate possession of the suit schedule properties. It is the case of the plaintiffs that original plaintiff—Sanna Ningashetty, and defendant No.1—Bettashetty are the brothers and sons of Late Bodashetty alias Chikkashetty. All the suit schedule properties are their joint family properties and there is no partition effected between the plaintiff and defendant No.1. Defendant No.1 has deliberately changed the khata in favour of defendant No.2, who is none other than



his daughter. Defendant No.1 is trying to alienate the suit schedule properties. He has also given the particulars of the lands as to which are the suit schedule properties. The plaintiffs demanded for a partition and separate possession, but defendant No.1 refused to effect a partition. Hence, a cause of action arose for the plaintiffs to file a suit for partition and separate possession.

5. Defendant No.1 filed a written statement admitting the relationship between the parties to the suit and contended that there was a partition among defendant No.1 and his brothers. A memorandum of partition was recorded on 06.12.1965 styled as "*Palu Pareekath*". According to it, the following properties have fallen to the share of plaintiffs and defendant No.1:

Share of the plaintiff – Sannaningashetty

1. Eastern side 2½ Ankanas of a Small Tiled House residential house with abutting vacant side and Amage Kottige.



- II. Eastern side of Sy.No. 167 measuring 0-19 ^{3/4} guntas of wet land (which is called as yereya gadde) of Karigala Village
- III. Land bearing Sy.No.57 measuring 2-20 acres, which is called as katteholu with one Kondaga, Land bearing Sy.No.57 measuring 1-20 acres, it is called as poorvadhi holadalli of Thandasipura Village. (it is item No.5 in the plaint schedule property).
- IV. Land bearing Sy.No. 39 block No.1 measuring 3-00 acres of Thandasipura, which is called as thakkalu.
- V. Land bearing Sy.No.13/1 measuring 0-36 guntas, which is called as Maregowdanaholu full of Kyathanahalli Village. (it is item No.2 in the plaint schedule property)

Share of the Defendant No.: 1- Sri Chikkashetty @ Bettashetty

1. Western side 2½ Ankans of a Small tile residential house, with abutting vacant site and House of Hanuma.
- II. Wet land bearing Sy.No.166 measuring 3½ guntas of Karigala Village, Which is called as Narappana Gadde.
- III. Land bearing Sy.No.179/1 measuring 1-25 acres and Sy.No.179/3 measuring 0-21 guntas of Kyathanahalli village, which is called as Big Holi with 3 Kondagas.
- IV. Northern Side of the land bearing Sy.No.57 measuring 1-35, acres of Thandasipura Village.
- V. Land Bearing Sy.No.39 Block No.1 measuring 3-30 acres of Kyathanahalli Village, which is called as thakkalu.



VI. Land bearing Sy.No.2/5 measuring 2-02 acre of Kyathanahalli Village, which is called as "Mantappada Hola" and debts of Rs.3,000=00.

That the defendant No.1 has repaid the said debts.

6. It is contended that defendant No.1 had purchased item No.1 from A.Rajagopalshetty and since from the partition in 1965, defendant No.1 has been enjoying the property. On 23.10.1998, defendant No.1 executed a Mortgage Deed in respect of the land bearing Survey No.2/5, measuring 24 guntas in favour of Rangegowda, Somegowda and Papegowda, each to the extent of 08 guntas out of 02 acres 02 guntas.

7. Defendant No.1 executed a Mortgage Deed in favour of Basavegowda in respect of the land bearing Survey No.2/5 measuring 02 acre 03 guntas for a consideration amount of ₹10,000/- i.e., Item No.1 of the suit schedule properties on 10.01.1996. Defendant No.1 executed a mortgage deed in favour



of Basavegowda in respect of same survey number and to the same extent on 17.06.1998.

8. The plaintiffs are in peaceful possession and enjoyment of Item No.2 of the suit schedule properties and the revenue entries are standing in the name of Chikashetty @ Sannahyda, who is the cousin brother of the plaintiff and defendant No.1. It is contended that as on the date of filing of the suit, the plaintiffs and defendants were not the members of Hindu joint family. Hence, prays to dismiss the suit against defendant No.1.
9. Defendant No.2 filed a separate written statement denying the averments made in the plaint and contended that there was a partition effected between the plaintiffs and defendant No.1 and there is no cause of action for the plaintiffs to file a suit for partition and separate possession.



10. The husband of defendant No.2 has been in unauthorised occupation of land bearing Survey No.39 measuring approximately 02 acres, which is abutting to the land of defendant No.1. On 21.12.1977, the marriage of defendant No.2 took place with defendant No.1. Defendant No.1 was permitted to cultivate the share of defendant No.2 in land bearing Sy.No.39, Block No.1, approximately measuring 3.15 acres. From 1977, defendant No.2 and her husband have been cultivating the land and are in peaceful possession and enjoyment of the suit land.
11. On 10.12.1998, Manchashetty, the husband of defendant No.2, made an application for regularisation of unauthorised occupation of the said land. The said application is pending for consideration. Hence, prays to dismiss the suit against defendant No.2 in respect of Survey No.39.



12. The Trial Court based on the rival pleadings of the parties framed the following issues:

- "1. Whether the plaintiff proves that the suit schedule properties are the joint family properties of him and 1st defendant?
2. Whether the 1st defendant proves that there was a partition between him, the plaintiff and his brothers of their joint family properties on 6.12.1965?
3. Whether the 1st defendant proves that the suit is not maintainable for non-joinder of necessary parties and non-inclusion of the properties bearing Nos.167, 179/1, 179/3 and the houses bearing No.178 & 180 and other residential house properties and vacant site into a common hotch-potch?
4. Whether the 1st defendant proves that the suit is barred by law of limitation?
5. Whether the 2nd defendant proves that her husband is in unauthorised occupation of the land bearing



Sy.No.39, TQAZ measuring 2 acres
which is abutting to the land of the 1st
defendant?

6. Whether the plaintiff is entitled for the
relief of partition? If so, at what rate?
7. What order or decree?"

Addl.Issue:

- "1. Whether the 1st defendant proves that
item No.10 of plaint schedule belongs
to Kantaharaja Shetty, item No.11
belongs to himself and item No.12 to
one Devashetty as contended in para-
4, 5 and 6 of his additional written
statement?"
13. The plaintiff died during the pendency of the suit and
his legal representatives were brought on record.
14. To substantiate his case, the plaintiff got himself
examined as PW1, examined two witnesses as PW2
and PW3 and marked 13 documents as Exhibits P1 to
P13.



15. In rebuttal, defendant No.1 was examined as DW1, defendant No.3 was examined as DW2, examined two more witnesses as DW3 and DW4. In all, 88 documents were marked as Exhibits D1 to D88.
16. The Trial Court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered issue No.1 as per the discussion; issue No.2 in the affirmative; issue No.3 and additional issue No.1 partly in the affirmative; issue Nos.4, 5 & 6 in negative; and issue No.7 as per final order. Ultimately, the Trial Court dismissed the suit vide judgment dated 14.06.2012.
17. Plaintiffs aggrieved by the dismissal of suit in O.S. No.339 of 2006 preferred an appeal in R.A. No.338 of 2012 on the file of the learned Fast Track Court, Hunsur.



18. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- "1. Whether the I.A. No.1 filed under section 151 of CPC by the appellant No.1(c)/plaintiff No.1(c) is deserves to be allowed?
2. Whether the respondent No.1 proves that there was already partition between himself and the original plaintiff dated 0612.1965, accordingly he is in his share as shown in the palu parikathu marked as Ex.D-83?
3. Whether the impugned judgment and decree under appeal passed by the lower court is illegal, capricious, arbitrary which call for interference of this court?
4. What order?"

19. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 partly in the affirmative, point No.2 in the



affirmative, point No.3 in the negative and point No.4 as per the final judgment. The appeal was dismissed, however, while dismissing the appeal, the First Appellate Court partly allowed the application in I.A. No.1 filed by plaintiff No.1(c), and defendant No.1 was directed to give consent to mutate the name of appellant No.1(c)/plaintiff No.1(c) in respect of Sl.Nos.2, 3 and 5 of the properties as shown in I.A. No.1; with regard to Sl.Nos.1 and 4 properties, as shown in I.A. No.1, the claim was rejected.

20. The plaintiffs aggrieved by the impugned judgment have filed this regular second appeal.
21. Heard the arguments of the learned counsel for the plaintiffs and learned counsel for the defendants.
22. Learned counsel for the plaintiffs submits that the defendants in paragraph 11 of the written statement have clearly admitted that there was a partition effected between the original plaintiff and his



brothers and a memorandum of partition was recorded on 06.12.1965 and under the said partition, the properties fell to the share of plaintiff and defendant No.1.

23. He submits that the plaintiffs filed I.A. No.1 before the First Appellate Court seeking for a direction to defendant No.1 to give his consent to change the khata in respect of the following properties:

- "1. Land bearing Sy.No.167, measuring 0.19 $\frac{3}{4}$ guntas, of wet land as the Eastern side of Karigala village (which is called as yereya gadde)
2. Land bearing Sy.No.57 measuring 1.20 acres, which is called as Katteholi with one Kondaga.
3. Land bearing Sy.No.57 measuring 1.20 acres, is called as Poorvadhi holadalli of Thondasipura village(within item No.5 in the plaint schedule property)



4. Land bearing Sy.No.39/1, measuring 3.15 acres of Thondasipura which is called as Thakkalu.
 5. Land bearing Sy.No.13/1, measuring 0.36 guntas which is called as Maregowdanahola full of Kyathanahalli village.”
24. The First Appellate Court partly allowed the said application, only in respect of Sl.Nos.2, 3 and 5 properties shown in I.A. No.1 (supra), however, it rejected I.A. No.1 in respect of Sl.Nos.1 and 4 properties shown in I.A. No.1 (*supra*).
25. Learned counsel for the plaintiffs submits that defendant No.1 himself has admitted that there was a prior partition of the properties including Sy.Nos.167 and 39/1.
26. However, the First Appellate Court has declined to grant relief in respect of Sy.No.167 (Sl.No.1) on the ground that the said property was not the subject matter of the suit. As far as claim in respect of



Sy.No.39/1, which is also rejected by the First Appellate Court, is concerned, it was held by the First Appellate Court that the said property was owned by defendant No.1 and the same is standing in the name of defendant No.2.

27. He submits that the First Appellate Court without examining how defendant No.2 had acquired the said property, rejected the claim.
28. He submits that defendant No.1 has executed a gift deed and that no document has been produced to show how defendant No.2 has acquired the property bearing Sy.No.39/1. The First Appellate Court committed an error in rejecting the claim in respect of Sy.No.167. He submits that during the pendency of this appeal, the plaintiffs have filed an application to include Sy.No.167. The said application came to be allowed and the land bearing Sy.No.167 was



included in the suit schedule properties. Hence, he prays this Court to allow the appeal.

29. Learned counsel for the defendants submits that there was a partition in between the original plaintiff and his brother. The main dispute between the plaintiff and defendant No.1 is Sy.Nos.167 and 39/1. The plaintiff is claiming the land bearing Sy.No.39/1 which fell to the share of defendant No.1. Hence, the plaintiff has no right to claim a share in the property bearing Sy.Nos.39/1 and 167. He submits that the land bearing Sy.No.39/1 is standing in the name of defendant No.2 and not in the name of defendant No.1.

30. He further submits that the First Appellate Court was justified in rejecting the claim in respect of Sy.Nos.39/1 and 167 and rightly passed by the impugned judgment and hence, prays to dismiss the appeal.



31. This Court vide order dated 09.09.2025 framed the following substantial questions of law for consideration:

"1) Whether the Trial Court is justified in dismissing the suit after holding that the previous partition pleaded by the defendants in terms of Ex.D83 is inadmissible in evidence?

2) Whether the First Appellate Court is justified in dismissing the appeal recording a finding that there is previous partition?"

32. Both the substantial questions of law are interlinked and they are taken together for common discussion to avoid repetition of facts.

Reg. Substantial Questions of Law:

33. The plaintiffs have filed a suit for partition and separate possession. One Late Bodashetty @ Chikkashetty was the original propositus. The



plaintiff and defendant No.1 are the brothers and sons of Bodashetty. The suit schedule properties are the joint family properties of the plaintiff and defendant No.1 are the members of Hindu undivided family. No partition is effected between the plaintiff and defendant No.1. The plaintiff demanded for a partition and separate possession. Defendant No.1 refused to effect a partition. Hence, a cause of action arose for the plaintiff to file a suit for partition and separate possession.

34. The plaintiff, to substantiate his case examined himself as PW-1 and has reiterated the plaint averments in the examination-in-chief and produced the documents:

- Exhibit P1 is the Genealogical tree;
- Exhibits P2 & 8 are the RTC extracts;
- Exhibits P9 and 10 are Chekbandi;
- Exhibit P11 is the copy of the legal notice;
- Exhibit P12 is the postal receipt;
- Exhibit P13 is the postal cover and



- Exhibit P13(a) is the copy of the notice;

35. During the course of cross-examination it was suggested to PW-1 that there was a prior partition between the plaintiff and defendant No.1 and the partition was reduced into writing, styled as "*Palu Pareekhat*" dated 06.12.1965. The said suggestion was denied by PW-1.

36. The plaintiffs also examined two witnesses as PWs-2 and 3, who reiterated the plaint averments in their deposition.

37. In rebuttal, the defendants examined defendant No.1 as DW-1. He has deposed that there was a prior partition in between the plaintiff and defendant No.1. In the said partition, the properties shown in paragraph No.11 of the written statement fell to the share of the plaintiff and the remaining properties fell to the share of defendant No.1. On the basis of the



said partition, the names of the parties were entered in the revenue records.

38. Defendant No.3 was examined as DW2, who reiterated the written statement averments in his examination-in-chief.
39. To prove that there was a prior partition between the plaintiff and defendant No.1, defendant No.1 examined witnesses as DWs-3 and 4.
40. DW4 is the power of attorney holder of defendant No.2. In order to establish their case, defendants have produced 88 documents as exhibits D1 to D88.
41. From the perusal of the entire evidence on record, it is clear that the plaintiffs filed a suit for partition and separate possession alleging that the suit schedule properties are the joint family properties of the plaintiff and defendant No.1 and no partition was effected. On the other hand, defendant No.1 filed a written statement contending that there was a prior



partition in between the plaintiff and defendant No.1 and in the said partition, the properties shown in paragraph 11 of the written statement fell to the share of the plaintiff and defendant No.1. On the basis of the said partition, the names of the plaintiff and defendant No.1 were entered in the revenue records.

42. It is evident that though the name of defendant No.1 is shown in the revenue records, that was not on the basis of the alleged partition.

43. Defendant No.1 in the written statement has clearly admitted that there was a prior partition.

44. I have perused the written statement filed by defendant No.1. Paragraph No.11 thereof reads as follows:

"11. The defendant No.1 submits that, the plaintiff and defendant No.1 are brothers. There was a partition amongst the brothers and a written memorandum of partition was recorded on 06.12.1965



styled as "*Palu Pareekathu*". According to which, the following survey numbers and house properties, vacant site have fallen (allotted) to the share of the plaintiff herein and defendant No.1 herein.

Share of the plaintiff – Sannaningashetty

1. Eastern side 2½ Ankana of a Small Tiled House residential house with abutting vacant side and Amage Kottige.
2. Eastern side of Sy.No. 167 measuring 19¾ guntas of wet land (which is called as yereya gadde) of Karigala Village
3. Land bearing Sy.No.57 measuring 2-20 acres, which is called as katteholu with one Kondaga.
4. Land bearing Sy.No.57 measuring 1-20 acres, it is called as poorvadhi holadalli of Thandasipura Village. (it is item No.5 in the plaint schedule property).
5. Land bearing Sy.No. 39 block No.1 measuring 3-00 acres of Thandasipura, which is called as thakkalu.
6. Land bearing Sy.No.13/1 measuring 0-36 guntas, which is called as Maregowdanaholu full of Kyathanahally Village. (it is item No.2 in the plaint schedule property)



**Share of the Defendant No.: 1- Sri
Chikkashetty @ Bettashetty**

1. Western side 2½ Ankana of a Small tiled residential house, with abutting vacant site and House of Hanuma.
- II. Wet land bearing Sy.No.166 measuring 3½ guntas of Karigala Village, Which is called as Narappana Gadde.
- III. Land bearing Sy.No.179/1 measuring 1-25 acres and Sy.No.179/3 measuring 0-21 guntas of Kyathanahalli village, which is called as Big Hola with 3 Kondagas.
- IV. Northern Side of the land bearing Sy.No.57 measuring 1-35, acres of Thandasipura Village.
- V. Land Bearing Sy.No.39 Block No.1 measuring 3-30 acres of Kyathanahalli Village, which is called as thakkalu.
- VII. Land bearing Sy.No.2/5 measuring 2-02 Kyathanahalli Village, which is called as "Mantappada Hola" and debts of Rs.3,000=00.

That the defendant No.1 has repaid the said debts."

45. From the perusal of paragraph 11, it clearly discloses that a partition was recorded on 06.12.1965 and in the said partition, the properties (as extracted



above) fell to the share of the plaintiff and defendant No.1.

46. As there was a prior partition between the plaintiff and defendant No.1, as per the memorandum of partition dated 06.12.1965.
47. During the pendency of the appeal before the First Appellate Court, the plaintiff filed an application I.A. No.1 of 2023 seeking change of Khata in respect of the properties that fell to the share of the plaintiffs.
48. Defendant No.1 filed an objection to the said application. The First Appellate Court allowed the said application in part excluding the lands bearing Sy.Nos.167 and 39/1.
49. The First Appellate Court has rejected the claim of the plaintiff in respect of the land bearing Sy.No.167 on the ground that the same is not the subject matter of the suit.



50. According to the plaintiffs, the said land is not included in the suit schedule properties and as far as Sy.No.39/1 is concerned, the said property is standing in the name of defendant No.2.
51. Admittedly, during the pendency of this appeal, the plaintiff has filed an application to include Sy.No.167 and the said application came to be allowed by this Court and Sy.No.167 was included in the suit schedule properties as item No.13 and the plaintiff has carried out the amendment in the original plaint.
52. Insofar as Sy.No.39/1 is concerned, the First Appellate Court has rejected the application on the ground that the said property is standing in the name of defendant No.2. Though defendant No.2 has filed the written statement but defendant No.2 is unaware as to when she had acquired Sy.No.39/1. In the absence of title deeds/documents, the First Appellate



Court committed an error in rejecting the application insofar as Sy.No.39/1 is concerned.

53. In view of the admission made by defendant No.1 in the written statement that there was a prior partition in between them and a memorandum of partition came to be executed between the parties, though the Trial Court has dismissed the suit holding that there was a prior partition as pleaded by the defendants, in terms of Exhibit D-83. Admittedly, Exhibit D-83 is an unregistered document and as such, it is inadmissible.

54. At this stage, learned counsel for defendant No.1, on instructions, submits that defendants have no objection to enter the name of the plaintiffs in the revenue records in respect of the properties which have been allotted to the share of the plaintiffs. To that extent, the instant appeal may be disposed of.



55. Hence, the substantial questions of law do not arise for consideration.

56. In the result, I pass the following:

ORDER

(i) This Regular Second Appeal is

dismissed.

(ii) Liberty is reserved to the plaintiffs to get the Khata transferred in their names in respect of the properties that fell to their share, including Sy.No.167.

(iii) Learned counsel for the plaintiffs submits that in view of the dismissal of the appeal, plaintiffs do not press the pending interlocutory applications and prays to dispose of the same accordingly. Submission is placed on



NC: 2026:KHC:35891
RSA No. 1099 of 2013

record. In view of the submission,
pending interlocutory applications are
dismissed as withdrawn.

Sd/-
(ASHOK S.KINAGI)
JUDGE

RK
List No.: 2 Sl No.: 1