



CNR: KAHC010530522017

NC: 2026:KHC:42498
MSA No. 130 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MS. JUSTICE JYOTI M

MISCELLANEOUS SECOND APPEAL NO. 130 OF 2017

BETWEEN:

SRI. M.RAJU,
S/O. MALLAIAH,
AGED ABOUT 42 YEARS,
R/AT DODDA ANKANAHALLI VILLAGE,
ATHAGURU HOBLI, MADDUR TALUK,
MANDYA DISTRICT-571428.

...APPELLANT

(BY SRI. SHIVARAMU H.C., ADVOCATE)

AND:

1. MR. HARSHAVARDHAN,
AGED ABOUT 17 YEARS,
S/O. LATE M.C.SWAMY,
(MINOR REPRESENTED BY HIS
NATURAL GUARDIAN MOTHERS,
SMT. BEERAMMA),
(MINOR GUARDIAN DISCHARGED
VIDE COURT ORDER DATED 19.06.2025
SINCE R1 ATTAINED MAJORITY AMENDED
AS PER THE ORDER)
2. KUM. CHAMPA
AGED ABOUT 19 YEARS,
D/O. LATE M.C.SWAMY,
3. MR. DHARSHANA,
AGED ABOUT 22 YEARS,
S/O. LATE M.C.SWAMY,

Digitally signed by
PREMCHANDRA M R
Location: HIGH
COURT OF
KARNATAKA



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4. SMT. BEERAMMA
AGED ABOUT 48 YEARS,
W/O. LATE M.C.SWAMY,
5. SRI. M.C.CHANDRA,
AGED ABOUT 48 YEARS,
S/O. CHIKKAKEMPAIAH,
6. SMT. JAYAMMA
AGED ABOUT 43 YEARS,
W/O. M.C.CHANDRA,
7. SRI. M C JAYAKUMAR
AGED ABOUT 44 YEARS,
S/O. LATE CHIKKAKEMPAIAH,
SINCE DECESED REPRESENTED BY LRS
- 7(A). CHIRANJIVI,
AGED ABOUT 9 YEARS,
S/O. LATE M.C.JAYAKUMAR,
- 7(B). LAKSHMI,
AGED ABOUT 6 YEARS,
D/O. LATE M.C.JAYAKUMAR,

RESPONDENTS NO.1(A) AND 7(B)
SINCE MINORS REPRESENTED BY
THEIR NATURAL MOTHER RESPONDENT NO.8,
AND BOTH ARE RESIDING AT
MAHARNAVAMIDODDI VILLAGE,
HAMLET OF BESAGARAHALLI,
KOPPA HOBOLI, MADDUR HOBOLI,
MANDYA DISTRICT-571419.

8. SMT. SHANTHAMMA
AGED ABOUT 40 YEARS,
W/O. LATE M.C.JAYAKUMAR,

RESPONDENTS NO.1 TO 8 ARE
RESIDING AT MAHARNAVAMIDODDI VILLAGE,



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HAMLET OF BESAGARAHALLI,
KOPPA HOBOLI, MADDUR HOBOLI,
MANDYA DISTRICT-571419.

9. SMT. SUDHA,
AGED ABOUT 42 YEARS,
W/O. LATE M.C.KEMAPAIAH,
10. KUM. SHASHIKALA
AGED ABOUT 22 YEARS,
D/O. LATE M.C.KEMAPAIAH,
11. MR. NAGENDRA,
AGED ABOUT 20 YEARS,
S/O. LATE M.C.KEMAPAIAH,
12. SMT. SUJATHA
AGED ABOUT 36 YEARS,
W/O. LATE M.C.KEMAPAIAH,

RESPONDENTS NO.9 TO 12 ARE
RESIDENTS OF HARAHALLI VILLAGE,
MARALIGE POST, KOPPA HOBOLI,
MADDUR TALUK-571428.

...RESPONDENTS

(BY SRI. VIVEK S., ADVOCATE FOR R1, R3, R4, R8 AND R12;
SRI. ANANTHANARAYANA K.S., ADVOCATE FOR
R5 AND R6; VIDE COURT ORDER DATED 21.06.2018,
SERVICE OF NOTICE IS TAKEN AS SUFFICIENT IN
R/O R9, R10, R11 AND R7(A) AND R7(B) ARE
LRS OF DECEASED R7 AND MINORS REPRESENTED BY R8;
VIDE COURT ORDER DATED 11.07.2025 R2 -CHAMPA)

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 FINAL HEARING, THIS DAY, THE JUDGMENT IS DELIVERED AS UNDER:

ORAL JUDGMENT

Sri.H.C.Shivaramu, counsel for the appellant and Sri.Vivek S., counsel for respondents 1, 3, 4, 8 and 12, appeared in person.

2. The Judgment and Decree dated 16.06.2017, passed by the Senior Civil Judge, Maddur, in R.A.No.27/2013, is challenged in this appeal on several grounds as detailed in the memorandum of appeal.

3. Counsel for the respective parties urged several contentions.

Counsel for the appellant submits that the suit was filed for specific performance, and defendants 2 to 5, 7, and 8 were placed ex parte. The first defendant died during the pendency of the suit, and the legal representatives were brought on record. Since they were minors, a court guardian was appointed, who filed a written statement. The court guardian contested the matter on the merits of the case, and the Trial



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Court, vide Judgment and Decree dated 12.04.2013, decreed the suit. However, the legal representatives of the first defendant and defendant No.2, who was placed ex parte, filed an appeal before the Appellate Court in R.A.No.27/2013.

The appellant's counsel additionally argues that defendant No.2, who was ex-parte, did not attempt to have the ex parte order vacated and instead let the Court decide on the case's merits. He emphasises that merely filing an application under Order 41 Rule 27 to introduce additional evidence does not justify remanding the case for such evidence to be recorded. It is strongly argued that as a second-level fact-finding court, the Appellate Court has the authority to record evidence and resolve the appeal directly. Therefore, the remand order is considered unjustified and untenable.

Counsel for respondents Nos. 1, 3, 4, 8, and 12 justified the remand order during his argument. He contended that defendant No.1 died during the ongoing suit, and his legal representatives were minors whose interests were not properly protected by the court guardian. Considering this, the Appellate Court was justified in remanding the case. Supporting other



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additional arguments, he concludes that the appeal lacks merit and should be dismissed.

4. Heard the arguments, carefully reviewed the records.

5. The issue is confined to a narrow scope and pertains to the Appellate Court's remand order.

6. It is sufficient to mention that a suit was filed by the appellant seeking certain relief. After the summons was served, defendant Nos.2 to 5, 7, and 8 were all placed ex parte. Defendant No.1 was also served but passed away during the proceedings. Defendant No.2 is his wife, who chose not to contest the case and was therefore also placed ex parte. Following defendant No.1's death, his legal representatives, who were minors, were brought on record. The minors were represented by a court-appointed guardian who filed the written statement and contested the suit. The Appellate Court remanded the case solely because it believed the minors' interests were not adequately protected. It also noted that a remand is required, as an application to produce additional



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documents has been filed. This decision is incorrect. The reason is clear: defendants 2 to 5, 7, and 8 had all been placed ex parte in the suit. Defendant No.2, being the wife of defendant No.1, did not file any application to set aside the ex parte order. Even after her husband's death, she did not attempt to file such an application or act as a guardian for her minor children. Moreover, defendant No.8 was also ex parte, so she cannot raise objections to the remand order.

In this appeal, defendant No.1's legal representatives strongly argued that their interests were not protected by the court-appointed guardian. This argument cannot be accepted because their father died during the suit, and their mother was alive. She could have sought to set aside the ex parte order and act as the natural guardian for her minor children after her husband's death, but she chose not to pursue this. Instead, she filed an appeal. After the Trial Court's decree, she and her minor children filed an appeal. The Appellate Court mistakenly believed the minor's interests were not properly protected and wrongly ordered a remand. Legally, the Appellate Court is the second fact-finding authority and has the power to admit



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additional evidence and decide on its merits. Instead of exercising these powers, the Court, even upon an application, declared it needed more evidence and remanded the case, which is incorrect under the law.

7. Due to the reasons mentioned above, the remand order is unjustified and should be overturned. Therefore, the Appellate Court's decision dated 16.06.2017 in Appeal No.27/2013, which remanded the case to the Trial Court, is set aside. The Appellate Court is directed to consider / review the case and all pending applications on their merits and to dispose of the suit as quickly as possible within a maximum period of six months.

8. Resultantly, the appeal is **allowed**.

Because of disposal of the appeal, interim order granted if any stands discharged and pending interlocutory applications if any are disposed of.

Sd/-
(JYOTI M)
JUDGE

SS
List No.: 1 Sl No.: 65