



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS SECOND APPEAL NO.184 OF 2025 (RO)

C/W

MISCELLANEOUS SECOND APPEAL NO.185 OF 2025 (RO)

IN MSA NO.184/2025:

BETWEEN:

1. MR. MOHAMMED ABBAS
S/O LATE B.MOHAMMED PEER SAB
AGED ABOUT 72 YEARS
RESIDENT OF ROSHAN CHOWK
KIRUGAVALU VILLAGE
MALAVALLI TALUK
MANDYA DISTRICT-571 401.

...APPELLANT

(BY SRI. RAJA L., ADVOCATE)

AND:

1. MRS. AKTHAR UNNISA
W/O SYED JAFAR
AGED ABOUT 65 YEARS
RESIDENT OF NEAR CAUVERY CLINIC
INFRONT OF POST OFFICE, BANNUR
T-NARASIPURA TALUK
MYSURU DISTRICT-570 001.
2. MRS. NAHIDA KHANUM
D/O LATE M.RASOOL KHAN
W/O DAWOOD SAHEB
AGED ABOUT 43 YEARS
RESIDENT OF HEGGUR ROAD

Digitally signed
by BELUR
RANGADHAMA
NANDINI

Location: HIGH
COURT OF
KARNATAKA



KIRUGAVALU
MALAVALI TALUK,
MANDYA DISTRICT-571 401.

3. MRS. NUHI KHANUM
D/O LATE M. RASOOL KHAN
W/O NAVEED IMRAN M.I.
AGED ABOUT 42 YEARS
RESIDING AT NO.59/69
3RD CROSS, LALJI NAGAR
BENGALURU.

...RESPONDENTS

(BY SRI. BILAL AHMED SHARIFF, ADVOCATE FOR R1;
SRI. B.S.GURUDATH, ADVOCATE FOR R2 AND R3)

THIS MSA IS FILED UNDER ORDER 43 RULE 1(U) OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 25.06.2025
PASSED IN R.A.NO.1/2020 ON THE FILE OF THE PRL. DISTRICT
AND SESSIONS JUDGE, MANDYA, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
06.02.2019 PASSED IN O.S.NO.27/2018 ON THE FILE OF THE
SENIOR CIVIL JUDGE, MALAVALLI, MATTER IS REMANDED
BACK TO THE TRIAL COURT WITH A DIRECTION TO DISPOSE
THE MATTER AFRESH.

IN MSA NO.185/2025:

BETWEEN:

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S/O LATE B.MOHAMMED PEER SAB
AGED ABOUT 72 YEARS
RESIDENT OF ROSHAN CHOWK
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MALAVALLI TALUK
MANDYA DISTRICT-571 401.

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NC: 2026:KHC:14776
MSA No. 184 of 2025
C/W MSA No. 185 of 2025

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SRI. B.S.GURUDATH, ADVOCATE FOR R2 AND R3)

THIS MSA IS FILED UNDER ORDER 43 RULE 1(u) OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 25.06.2025 PASSED IN R.A.NO.3/2020 ON THE FILE OF PRL. DISTRICT JUDGE, MANDYA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 6.12.2019 PASSED IN O.S.NO.27/2018 ON THE FILE OF SENIOR CIVIL JUDGE, MALAVALI, AND THE MATTER IS REMANDED TO THE TRIAL COURT WITH A DIRECTION TO DISPOSE THE MATTER AFRESH BY FRAMING PROPER ISSUES AS PER THE PLEADINGS AND PROVIDING OPPORTUNITY TO BOTH PARTIES TO LEAD FURTHER



EVIDENCE, PREPARE AND PRONOUNCE JUDGMENT IN ACCORDANCE WITH MOHAMMEDAN LAW.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

These appeals are filed against the judgment and decree dated 25.06.2025 passed in R.A.Nos.1/2020 and 3/2020 on the file of Principal District Judge, Mandya.

2. In terms of the impugned judgment and decree referred to above dated 25.06.2025, both the appeals are allowed and matter is remanded to the Trial Court for fresh consideration.

3. The First Appellate Court has directed the Trial Court to frame proper issues as per the pleadings and to give opportunity to both the parties to lead evidence and to substantiate their case under the provisions of the Mohammedan Law.



4. Certain facts are admitted. The suit is one for partition and separate possession and the said suit is dismissed.

5. The defendant No.2 in O.S.No.27/2018 on the file of Senior Civil Judge, Malavalli filed R.A.No.1/2020 and legal representatives of original plaintiff filed R.A.No.3/2020.

6. The contesting party is defendant No.1.

7. Admittedly, the plaintiff and defendants No.1 and 2 are three children of late B. Mohammed Peer Sab, who died on 01.03.1993 and Banu Maa. The suit is filed on the premise that the properties are inherited after the demise of B. Mohammed Peer Sab, this fact is not in dispute.

8. It appears that the defendant No.1 raised a contention that there is already a partition in the family, as such, the suit is not maintainable. The Trial Court dismissed the suit on the ground that the plaintiff is unable to establish how the plaintiff and defendant No.1 have sold item Nos.1 and 8 properties.



9. On appeal filed by the plaintiff and legal representatives of defendant No.1, the appeals are allowed and matter is remanded to the Trial Court with a direction to frame proper issues and to consider the case as per the provisions of the Mohammedan Law.

10. Learned counsel appearing for the appellant would submit that the order of remand is impermissible. The Trial Court was justified in dismissing the suit. Without appreciating the evidence on record and without assigning proper reasons, the matter is remanded to the Trial Court and the same has to be set aside.

11. Learned counsel appearing for respondents would submit that the Trial Court has erroneously dismissed the suit without appreciating the evidence and without properly framing the issues and the Trial Court went beyond the issues and erroneously dismissed the suit. Thus, he would urge that the matter has to be tried afresh in terms of the judgment and decree passed by the First Appellate Court.



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

13. The following question arises for consideration of this Court:-

- (i) Whether the First Appellate Court is justified in remanding the matter with a direction to frame proper issues?

14. The Court has perused the issues which are as under:-

- "1. *Whether the plaintiff proves her equal right of partition in the suit schedule properties?*
- 2. *Whether the 1st defendant proves that, the suit of the plaintiff is not maintainable in the present form?*
- 3. *Whether the plaintiff is entitled for reliefs as sought for?*
- 4. *What order or decree? "*

15. After going through the pleadings and the issues, it is noticed that issues framed are rather vague, more particularly, issue No.2. On what basis, the Trial Court has



framed the issue No.2 on maintainability of the suit is not forthcoming from the said issue No.2.

16. It is also noticed that the Trial Court has dismissed the suit on the premise that the father died in the year 1993 and the suit is filed in the year 2018. Since, it is a suit for partition, the question of limitation would arise only in case, the defendants raise a plea of ouster or adverse possession. In the absence of any such plea and issue, the Court could not have held that the suit filed 18 years after the death of the father is not maintainable.

17. Under these circumstances, without expressing any opinion on the merits of the matter, the First Appellate Court remanded the matter with a direction to frame proper issues and to give opportunity to both the parties to lead evidence.

18. This Court does not find any error in the said judgment and decree passed by the First Appellate Court.

19. Hence the following:-

ORDER

(i) The appeals are **dismissed**.



- (ii) The Trial Court shall frame appropriate issues based on the pleadings and thereafter, pass appropriate judgment and decree after giving opportunity to both the parties to lead evidence.
- (iii) It is made clear that this Court has not expressed anything on the merits of the matter.
- (iv) All contentions of the parties are kept open.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

ST
List No.: 1 Sl No.: 33