



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS SECOND APPEAL NO. 221 OF 2025 (RO)

BETWEEN:

PRAKASH,
S/O KISHORILAL,
AGED ABOUT 39 YEARS,
R/OF NO-538, SOWGEREPET,
KAIPETE, NEAR BASAVANNA TEMPLE,
DAVANAGERE -577002.

...APPELLANT

(BY SMT SARVAMANGALA CHIKKANAGOUDAR, ADVOCATE FOR
SRI HIREMATHAD MAHESHIAH RUDRAYYA, ADVOCATE)

AND:

MANJUNATH RAIKAR,
S/O GANAPATHI,
AGED ABOUT 54 YEARS,
R/AT 261/2, BEHIND VAKKALIGARA PETE,
DAVANAGERE - 577001.

...RESPONDENT

(BY SMT SOWKHYA PATIL,ADVOCATE (ABSENT))

THIS MSA IS FILED UNDER ORDER 43 RULE 1(U) OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 1.08.2025
PASSED IN RA. NO.46/2024 ON THE FILE OF II ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC, DAVANAGERE., ALLOWING
THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 2.03.2024 PASSED IN OS NO. 497/2019 ON THE FILE
OF LEARNED FIRST ADDITIONAL CIVIL JUDGE AND JMFC,
DAVANAGERE., PARTLY DECREERING THE SUIT FOR EVICTION,
MATTER IS REMITTED BACK TO THE LEARNED TRAIL COURT
FOR FRESH ADJUDICATION WITH A DIRECTION TO THE TRAIL
COURT TO PROVIDE AN OPPORTUNITY TO THE DEFENDANT TO

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Location:
HIGH COURT
OF
KARNATAKA



CROSS-EXAMINE PW1 AND 2 AND ADDUCE EVIDENCE ON HIS BEHALF, THEN ADJUDICATE THE MATTER IN ACCORDANCE WITH LAW.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is directed against the judgment and decree dated 01.08.2025 in R.A.No.46/2024 on the file of the II Additional Senior Civil Judge, Davanagere. In terms of the said decree, the First Appellate Court has allowed the appeal and remanded the matter to the Trial Court after setting aside the judgment and decree in O.S.No.497/2019 for eviction granted in favour of the plaintiff.

2. Plaintiff being aggrieved by the said judgment and decree remanding the matter is before this Court.

3. Learned counsel appearing for the plaintiff/appellant would submit that, though the defendant filed written statement in the suit for eviction, did not cross examine the plaintiff and the Trial Court rightly noticing the fact that the defendant has defaulted in paying the rent amount, has granted a decree for eviction.



4. It is further submitted that the tenure under the rent agreement has come to an end and the First Appellate Court could to have remanded the matter to the Trial Court. It is the further contention of the plaintiff/appellant that, the defendant being a defaulter, the First Appellate Court could not have remanded the matter without insisting for deposit of the rent which is due to the plaintiff/appellant from the defendant.

5. Respondent though served is not represented before this Court.

6. The Court has considered the contentions raised at the Bar and perused the records.

7. The following question of law would arise for consideration:

(i) Whether the First Appellate Court is justified in remanding the matter to the Trial Court?

8. The suit is filed in the year 2019 and evidence commenced on 29.05.2023. The defendant has raised a contention that, because of COVID-19 related restrictions though he had filed written statement, could not cross examine



the plaintiff. Due to the communication gap between himself and the counsel, the defendant could not participate in the further proceedings.

9. The judgment would reveal that the evidence commenced on 29.05.2023 and the suit is decreed on 02.03.2024.

10. Though the Court is of the view that the COVID related restrictions were not so rigorous from May, 2023 onwards, the judgment remanding the matter to the Trial Court to give an opportunity to the defendant to defend the matter cannot be said to be erroneous so as to interfere in exercise of jurisdiction under Order XLIII Rule 24 of the Code of Civil Procedure, 1908.

11. However, as rightly contended by the learned counsel for the plaintiff/appellant, the defendant has raised a contention that he is not a tenant under the plaintiff and the plaintiff is not the landlord. If that is the case, the defendant has not paid the rent.



12. Whether the defendant is a tenant or not is a question that has to be decided. However, what is required to be noticed is the plaintiff has produced the rent agreement.

13. If the rent agreement is proved, then the defendant has to pay rent, which is a matter that requires consideration after considering the evidence to be led by the parties before the Court.

14. However, since the matter is remitted because of the default on the part of the defendant, the Court is of the view that, the defendant will have to deposit 50% of the alleged arrears of the rent amount before the Court before contesting the matter.

15. Hence the following:

ORDER

- (i) Appeal is ***allowed in part.***
- (ii) The matter is remanded back to the Trial Court.
- (iii) 50% of the rent amount mentioned in the agreement shall be deposited before the Trial



Court, from the date of default till date.

- (iv) The amount to be deposited shall be kept in fixed deposit in a nationalised bank for one year with auto renewal mandate and subject to the result of the suit, the amount has to be disbursed.
- (v) It is made clear that nothing is expressed on the status of the plaintiff and defendant before the Trial Court.
- (vi) All conditions are kept open.
- (vii) Both parties shall co-operate for early disposal of the matter.
- (viii) Deposit of the amount is the condition precedent to the defendant to contest the matter.

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**

brn
List No.: 1 Sl No.: 52