



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1448 OF 2025 (PAR)

BETWEEN:

SRI V MARISWAMY
AGED ABOUT 53 YEARS
S/O VARADHANAYAKA
@VARADAI AH,
R/AT NO.831/2,
3RD BLOCK,
UDBOOR VILLAGE,
JAYAPURA HOBLI,
MYSURU TALUK,
MYSURU DISTRICT - 570 008.

...APPELLANT

[BY SRI G.V. SHASHI KUMAR, ADVOCATE (PH)]

Digitally signed **AND:**
by ANUSHA V

Location: High
Court of
Karnataka

1. SMT. JAYAMMA,
AGED ABOUT 60 YEARS,
D/O VARADANAYAKA
@ VARADAI AH,
R/AT BIDARUGUDU VILLAGE,
CHIKKAIAHNCHATRA HOBLI,
NANJANGUD TALUK,
DOORA POST,
MYSURU DISTRICT - 570 008.
2. SMT. CHIKKATHAYAMMA,
AGED ABOUT 57 YEARS,
W/O SRI NARAYANA,



R/AT.NO.521, 3RD BLOCK,
UDBOOR VILLAGE,
JAYAPURA HOBLI,
MYSURU TALUK,
MYSURU DISTRICT - 570 008.

...RESPONDENTS

(BY SRI P.N. VYSHAK, ADVOCATE FOR
SRI BHARGAVA D BHAT, ADVOCATE FOR R1 (PH);
NOTICE TO R2 - SERVED & UNREPRESENTED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 05.07.2025 PASSED IN
RA NO.168/2024 ON THE FILE OF IV ADDITIONAL DISTRICT
AND SESSIONS JUDGE, MYSURU, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
12.03.2024 PASSED IN OS NO.494/2015 ON THE FILE OF I
ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MYSURU.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



ORAL JUDGMENT

Challenging judgment and decree dated 05.07.2025 passed by IV Addl. District & Sessions Judge, Mysuru, in RA no.168/2024, this appeal is filed.

2. Sri GV Shashi Kumar, learned counsel for appellant submitted, appeal is by defendant no.3 in OS no.494/2015 filed by respondent no.1 herein against appellant and respondent no.2 for relief of partition and separate possession in respect of suit schedule properties.

3. Though, matter is listed today for admission, this appeal is on short question of law, instead of retaining it by admitting, counsel for parties submitted that it would be appropriate to dispose it at this stage itself, therefore appeal was heard for final disposal with consent of counsel for appellant.

4. Brief facts relevant for purpose of consideration of this appeal are OS no.494/2015 was filed by plaintiff against defendants for declaration of plaintiff entitled for 1/4th share in suit schedule properties. It was stated in plaint that, plaintiff



and defendants constituted Hindu undivided joint family and as suit properties originally belonged to propositus Varadanayaka, plaintiff was entitled for share therein.

5. After service of summons only defendants no.1 and 3 filed written statement opposing suit.

6. Thereafter, trial Court framed issues recorded evidence and on consideration thereof, decreed suit in part, dismissing plaintiff's claim in respect of items no.1 to 9 of suit properties and granting 1/3rd share in favour of plaintiff in respect of items no.10 to 15.

7. Aggrieved, plaintiff had filed RA no.168/2024 challenging denial of relief insofar as items no.1 to 9. But, there was delay of 153 days in filing appeal and IA no.1/2024 was filed for its condonation. Though, first appellate Court had ordered issuance of notice/summons on appeal as well as on IA no.1/2024, notice was not served through regular mode.

8. Further, defendant no.1 had died during pendency of suit, but arrayed as respondent no.1 in appeal. Without noticing same, first appellate Court allowed application filed by appellant



under Order V Rule 20 of CPC on 21.03.2025 and permitted service by way of paper publication. Even, thereafter while passing impugned judgment and decree, first appellate Court proceeded failed to pass any orders on IA.no.1/2024. Consequently, impugned judgment suffers from error of procedure and was in violation of principles of natural justice, which would be a substantial question of law and prayed for allowing appeal on same.

9. Sri.PN Vyshak, learned counsel appearing for Bhargava Bhat, learned counsel for respondent no.1/plaintiff sought to oppose appeal. It was contended that on failure to effect service by normal mode, plaintiff had filed application for substituted service. Same was allowed and paper publication was taken out. Thereafter first appellate Court had proceeded to dispose of appeal under impugned judgment after due appreciation of material on record and therefore there was no error committed. It was submitted, failure to dispose of IA no.1/2024 was inadvertence omission not affecting merits of matter and therefore no substantial question of law would arise for consideration.



10. Heard learned counsel, perused impugned judgment and decree and trial Court records.

11. In light of above facts and circumstances, appeal is admitted on following substantial question of law:

"Whether first appellate Court erred in disposing of appeal on merits without passing any orders on IA no.1/2024 filed for condonation of delay?"

12. From above, it is seen that this second appeal is by defendant no.3 challenging judgment and decree passed by first appellate Court in appeal filed by plaintiff. There is no dispute about fact that appeal filed by plaintiff against judgment and decree passed by trial Court was belated by 153 days and plaintiff/appellant had filed IA no.1/2024 for condonation of delay.

13. Perusal of records of first appellate Court would indicate that it had ordered issuance of notice on IA no.1/2024 as well as appeal. But, order sheet in appeal does not indicate any order passed on IA no.1/2024. It is time and again held by Hon'ble Supreme Court that in case of delay in filing appeal, appellate Court would not be justified in disposing appeal on



merits without passing orders on application for condonation of delay. Consequently, there is grave error of procedure committed by first appellate Court and matter would require remand on said ground itself.

14. In view of above, there would be no need to consider other grounds, namely orders against a dead person and irregularity in allowing service of notice by paper publication. For aforesaid reasons, substantial question of law is answered in affirmative.

15. Consequently, appeal is *allowed*, impugned judgment and decree dated 05.07.2025 passed by IV Addl. District & Sessions Judge, Mysuru, in RA no.168/2024, is set-aside only on technical ground of failure to pass orders on IA no.1/2024 and without expressing any opinion whatsoever on merits of judgment and by clarifying that, it would be open for first appellate Court to pass any appropriate orders on merits, after providing opportunity to parties.



16. Since defendant no.3 and plaintiff are represented herein, they are directed to appear before first appellate Court without awaiting fresh notice on 16.03.2026.

On said day, first appellate Court shall issue notice only to respondent no.2 and thereafter proceed in accordance with law by considering IA.no.1/2024 before dealing with merits of appeal.

To Expedite disposal, registry to transmit trial Court records to first appellate Court well before 16.03.2026.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

Psg*
List No.: 1 Sl No.: 54