**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 17TH DAY OF DECEMBER, 2024

**BEFORE
THE HON'BLE MR. JUSTICE C.M. POONACHA**

MISCELLANEOUS SECOND APPEAL NO.100084 OF 2022 (INJ)

BETWEEN:

SRI MARUTHI
S/O. GANAPAYYA @ MARTHAPPA NAGAPPA SHET,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA, HONNAVARA TALUK – 581 334.

…APPELLANT

(BY SMT. BUSHRA S. WAREMANI,
SRI ANOOP G. DESHPANDE, ADVOCATES)

AND:

1. SRI MALAPPA DURGAYYA SHET,
AGE:72 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA,
HONNAVARA TALUK – 581 334.

SRI UMESH DURGAYYA SHET,
SINCE DIED REPRESENTED BY HIS LRS.,

2. SMT. CHANDRAKALA W/O. UMESH SHET,
AGE: 52 YEARS,
R/O: NAGARA,
HONNAVARA TALUK – 581 334.

3. SRI GURUPRASAD UMESH SHET,
AGE: 37 YEARS,
R/O: NAGARA,
HONNAVARA TALUK – 581 334.

4. SMT PRIYA D/O. UMESH SHET,
R/O: NAGARA, HONNAVARA TALUK – 581 334.

5. SMT. JYOTHI D/O. UMESH SHET,
R/O: NAGARA,
HONNAVARA TALUK – 581 334.

6. SRI NARAYANA DURGAYYA SHET,
AGE: 65 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA,
HONNAVARA TALUK – 581 334.

7. SRI VITTALA S/O. DURGAYYA SHET,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA,
HONNAVARA TALUK – 581 334.

8. SMT. KALAVATHI W/O .MANJUNATH SHET,
AGE: 47 YEARS, OCC: EMPLOYEE,
DAIVAJNA CO-OPPERATIVE SOCIETY,
KAMAXI PLAZA, ASHOKA ROAD,
SAGARA – 577 401.

9. KUM ABHISHEK S/O. MANJUNATH SHET,
AGE: 27 YEARS, C/O DAIVAJNA
CO-OPERATIVE SOCIETY, KAMAXI PLAZA,
ASHOKA ROAD, SAGARA – 577 401.

10. SRI NAGAPPA S/O MANJUNATH SHET RAIKAR,
AGE: 34 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA,
HONNAVARA TALUK – 581 334,

NOW R/AT BAZAR ROAD,
GERUSOPPA,
HONNAVARA TALUK – 581 384.

11. SRI GANAPA, S/O. MANJUNATH SHET,
AGE: 32 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA,
HONNAVARA TALUK – 581 334,

NOW R/AT BAZAR ROAD,
GERUSOPPA,
HONNAVARA TALUK – 581 384.

12. SRI CHANDRANATH
S/O. GANAPAYYA @ MARTHAPPA
NAGAPPA SHET,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA, HONNAVARA TALUK – 581 334,

NOW R/AT MACCHANDIBALA,
5TH CROSS ROAD, VADAGAO,
BELAGAVI – 590 005.

13. SRI RAVI S/O. GANAPAYYA
@ MARTHAPPA NAGAPPA SHET,
AGE: 51 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA, HONNAVARA TALUK,

NOW R/AT DURGAKERI,
HONNAVARA TALUK -581334.

14. SRI ANNAPPA S/O. GOPALA SHET,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O: NAGARA, HONNAVARA TALUK,

NOW R/AT HOUSE NO. 791,
NARVEKARAGALLI, SHAPURA,
BELAGAVI – 590003.

…RESPONDENTS
(R1 TO R9 AND R11 ARE SERVED BUT UNREPRESENTED;
R10 AND R13 ARE SERVED AS PER POSTAL SHARA)

THIS MSA IS FILED UNDER ORDER XLIII RULE1(U) OF CODE OF CIVIL PROCEDURE, 1908, PRAYING TO, SETTING ASIDE THE JUDGMENT AND DECREE PASSED BY SENIOR CIVIL JUDGE AND JMFC, HONNAVARA IN R.A.NO.12/2015 DATED 13.12.2021 AND CONFIRM THE JUDGMENT AND DECREE DATED 11.02.2015 PASSED BY PRINCIPAL CIVIL JUDGE, HONNAVARA IN O.S.NO.53/2014 AND ETC.,

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

The present appeal is filed calling in question the order dated 13.12.2021 passed in RA No.12/2015 by the Senior Civil Judge and Judicial Magistrate of the First Class at Honnavar[1].

2. The relevant facts leading to the present appeal are that the appellant/plaintiff instituted O.S.No.53/2014 before the Court of the Civil Judge and J.M.F.C., Honnavara[2] and the said suit was decreed vide judgment and decree dated 11.02.2015. Being aggrieved, defendant Nos.2 and 3 filed RA No.12/2015.

3. Defendant No.2 who was arrayed as appellant No.1 died during the pendency of the appeal and his legal representatives are brought on record as appellant No.1(a) to 1(d) in the said appeal. The First Appellate Court by its judgment dated 13.12.2021 allowed the appeal and pass the following order:

"ORDER

The regular appeal filed by the appellant No.1 and 2/defendant No.2 and 3 under section 96 read with Order

[1] Hereinafter referred to as 'the First Appellate Court'
[2] Hereinafter referred to as 'the Trial Court'

XLI, Rule 1 of Civil Procedure Code is hereby allowed subject to payment of cost of Rs.10,000/-.

Consequently, the judgment and decree passed by the learned Civil Judge and JMFC., Honnavar in OS No.53/2014 on 11-02-2015 is hereby set-aside.

The appellants are hereby directed to deposit the cost of Rs.10,000/- within 30 days from the date of their appearance before the trial court and the plaintiff is entitled for the said cost.

The matter is remanded to the trial court with directed to permit the defendant No.2 and 3 to appear before the court through advocate, permit them to file written statement and to dispose the matter on merits in accordance with law.

Plaintiff and defendant No.2 and 3 are directed to appear before the trial court on 10-01-2022 without waiting for notice.

Draw the decree accordingly.

Office is directed to return the LCR to the trial court along with copy of this judgment forthwith."

4. Being aggrieved, the present appeal is filed by the plaintiff.

5. Heard the submissions of learned counsel Smt.Bushra S. Waremani for learned counsel Sri. Anoop G. Deshpande for the appellant.

6. It is relevant to note that the First Appellate Court allowed the appeal subject to payment of cost of ₹10,000/- and

directed the appellants who are arrayed as defendant Nos.2 and 3 to deposit the cost of ₹10,000/- within 30 days from the date of their appearance before the Trial Court and further ordered that the plaintiff was entitled for the said cost. The First Appellate Court further ordered that the plaintiff and defendant 2 and 3 were directed to appear before the Trial Court on 10.01.2022 without any further notice. The First Appellate Court had further ordered that defendant Nos.2 and 3 were permitted to file their written statement pursuant to which, the Trial Court was to proceed further in the matter.

7. The learned counsel for the appellant has filed a memo dated 03.12.2024 placing on record that defendant Nos.2 and 3 have not appeared before the Trial Court till date and that the cost has also not been paid.

8. Having regard to the fact that the appellant before the First Appellate Court who are the legal representatives of defendant Nos.2 and 3 who are arrayed as respondent Nos.2 to 6 in the present appeal have not appeared before the Trial Court pursuant to the judgment of the First Appellate Court and having regard to the fact that they have not yet paid the cost

as also not filed their written statement, the present appeal filed by the appellant merits consideration.

9. It is further relevant to note that the legal representative of deceased defendant Nos.2 and 3 who are the appellants before the First Appellate Court have been arrayed as respondent Nos.2 to 6 in this present appeal have been served with the notice of the present appeal and have not entered appearance and have remained unrepresented.

10. Having regard to the fact that the legal representatives of deceased defendant Nos.2 and 3 have not availed the opportunity that has been given by the First Appellate Court to file their written statement and contest the suit and in view of the fact that the defendant Nos.2 and 3 had filed their application before the Trial Court after the final arguments were addressed, when the matter was reserved for judgment, it is just and proper that the present appeal filed by the plaintiff be allowed.

11. In view of the aforementioned, the following:

ORDER

i) The appeal is allowed.

ii) The judgment dated 13.12.2021 passed in RA No.12/2015 by the Senior Civil Judge and Judicial Magistrate of the First Class at Honnavar is set aside.

iii) The judgment and decree dated 11.02.2015 passed in O.S.No.53/2014 by the Court of the Civil Judge and J.M.F.C., Honnavara is affirmed.

Sd/-
(C.M. POONACHA)
JUDGE

SSP/CT-ASC
List No.: 1 Sl No.: 3