HC-KAR

NC: 2026:KHC:64099
RSA No. 119 of 2019

CNR: KAHC010263782019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 119 OF 2019 (PAR)

BETWEEN:

K P GIDDAPPA
S/O PUJARE HALADAPPA
AGED ABOUT 56 YEARS,

AMENDED CARRIED OUT AS PER
HON'BLE COURT ORDER DATED: 06.11.2024
THE FOLLOWING ARE THE LEGAL HEIRS OF
DECEASED APPELLANT.

1. CHANDRAMMA
   W/O LATE K.P GIDDAPPA
   AGED ABOUT 62 YEARS.

2. G. NATARAJ
   S/O LATE K.P. GIDDAPPA
   AGED ABOUT 44 YEARS.

3. K.P. RAGHAVENDRA
   S/O LATE. K.P. GIDDAPPA
   AGED ABOUT 42 YEARS.

   APPELLANTS ARE RESIDENTS OF
   DODDAKERI, KUMSI VILLAGE
   SHIVAMOGGA TALUK – 577 423.
   SHIVAMOGGA DISTRICT.

…APPELLANTS

(BY SRI. P N HARISH, ADVOCATE)

Digitally signed by VANDANA S
Location: High Court of Karnataka

AND:

1. HALADAMMA
   W/O A YELLAPPA
   AGED ABOUT 52 YEARS,
   R/O DODDAKERI, KUMSI,
   SHIVAMOGGA DISTRICT
   SHIVAMOGGA TALUK – 577 423.

2. SUMITHRA
   W/O H NARAYANAPPA
   AGED ABOUT 42 YEARS,
   R/O DODDAKERI, KUMSI,
   SHIVAMOGGA TALUK – 577 423
   SHIVAMOGGA DISTRICT.

3. SHASHIKALA
   W/O SHIVAPUTRAPPA
   AGED ABOUT 40 YEARS
   R/O SOCIETY RAOD,
   SHIKARIPURA TOWN – 577 427
   SHIVAMOGGA DISTRICT.

4. GANGAMMA
   W/O LATE SIDDAPPA
   AGED ABOUT 62 YEARS

5. NAGAMMA
   W/O LAKSHMANAPPA
   AGED ABOUT 52 YEARS

6. SURESHA
   S/O LATE SIDDAPPA
   AGED ABOUT 47 YEARS

7. JAGADEESHA
   S/O LATE SIDDAPPA
   AGED ABOUT 44 YEARS

8. RENUKAMMA
   W/O BASAVARAJAPPA
   AGED ABOUT 37 YEARS

9. SHEELAVATHI
   W/O GANESHA
   D/O LATE SIDDAPPA

RESPONDENTS 4 TO 9 ARE
THE LEGAL HEIRS OF DECEASED
SIDDAPPA
S/O POOJARI HALADAPPA
THE FIRST DEFENDANT BEFORE THE TRIAL COURT
AND ALL ARE
R/O DODDAKERI, KUMSI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT.

10. GUTHYAMMA
W/O LATE T SIDDAPPA
AGED ABOUT 65 YEARS
R/O DODDAKERI, KUMSI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT.

11. GIDDAMMA
W/O MOOKAPPA
AGED ABOUT 88 YEARS
R/O DODDAKERI, KUMSI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT

12. LEELAVATHI
W/O A SIDDAPPA
AGED ABOUT 47 YEARS
R/O BOVERAKERI,
KUMSI, SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT.

13. P JAGADISH
S/O SIDDAPPA
MAJOR IN AGE
R/O DODDAKERI, KUMSI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT

14. BASAVAMMA
W/O LATE MANJAPPA
AGED ABOUT 50 YEARS
R/O CHIKKAMARASA VILLAGE
KUMSI HOBLI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT.

15. CHAITRA
D/O LATE MANJAPPA
AGED ABOUT 37 YEARS
R/O CHIKKAMARASA VILLAGE
KUMSI HOBLI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT

16. USHA D/O LATE MANJAPPA
AGED ABOUT 35 YEARS
R/O CHIKKAMARASA VILLAGE
KUMSI HOBLI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT

17. GIRISH S/O LATE MANJAPPA
AGED ABOUT 33 YEARS
R/O CHIKKAMARASA VILLAGE
KUMSI HOBLI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT

18. P SURESHA S/O SIDDAPPA
MAJOR IN AGE
R/O DODDAKERI, KUMSI,
SHIVAMOGGA TALUK - 577423
SHIVAMOGGA DISTRICT.

…RESPONDENTS

(BY SRI. S V PRAKASH, ADVOCATE FOR C/R-1, R-2, R-3 & R-12
SRI. ADINARAYAN, ADVOCATE FOR R-18,
R-6, R-14, R-15, R-16, R-17 – SERVED & UNREPRESENTED
VIDE ORDER DATED: 16.11.2026
NOTICE TO R-5, R-7 TO R-9 & R-13 IS H/S
VIDE ORDER DATED: 16.11.2026
NOTICE TO R-4, R-10, & R-11 IS D/W)

THIS RSA IS FILED UNSER SEC. 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED: 22.09.2018 PASSED IN R.A.No.30/2016 ON THE FILE FO THE II ADDL.DISTRICT AND SESSIONS JUDGE, SHIMOGA, DISMISSING THE APPEAL AND CONFIRMING THE ORDER DATED: 20.07.2016 PASSED IN FDP NO 15/2010 ON THE FILE OF THE II ADDL. SENIOR CIVIL JUDGE, SHIVAMOGGA ALLOWING THE PETITION FILED UNDER SEC. 54 OF CPC.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

The appellant was defendant no. 2 in O.S. No. 255/2004 filed by the respondents No. 1 to 3-plaintiffs against the appellant-defendant no. 2 and remaining defendants for partition and separate possession of their alleged share in the suit schedule immovable properties.

2. As stated supra, in the said suit the appellant was arrayed as defendant no. 2 while his brother Siddappa was arrayed as defendant no. 1. So also the defendants 3 to 5 represented one more branch along with plaintiffs and defendants 1 and 2. According to the plaintiffs, all of them together were entitled to one third share in the suit schedule immovable properties comprising of 9 (nine) items of 'A' schedule landed properties and 3 (three) items of house properties described as suit schedule 'B' properties. So also, the defendants No. 1 and 2 represented the branch of Poojari Haladappa and they

were entitled to jointly one third share in all the suit schedule properties. Similarly, the defendants No. 3 to 5 represented the last branch of Mukkappa and they were entitled to one third share each in the suit schedule properties.

3. It is an undisputed fact and a matter of record that the plaintiffs represented the branch of Poojari Haladappa. As per the judgment and decree of the trial Court, Poojari Haladappa had two brothers, Poojari Haladappa, the father of defendants No.1 and 2, had 2 brothers Mukappa and Siddappa and all of them were the children of late Gundappa. The said Gundappa had three daughters, Siddamma, Kenchamma and Giddamma who died unmarried and the only legal representatives of late Gundappa were Poojari Haladappa father of defendants 1 and 2; Mukkappa, father of defendants No. 3 to 5 and Siddappa, father of plaintiffs No.1 to 3. It is under these circumstances the legal representatives of the three sons

of Gundappa were parties to the aforesaid suit for partition which culminated in a primary decree dated 02.07.2010 declaring that the plaintiffs No.1 to 3 were entitled to one third share jointly in the suit schedule properties while the defendants No. 1 and 2 were entitled to one third share jointly and the defendants No.3 to 5 were entitled to the remaining one-third share jointly in the suit schedule properties.

4. The said preliminary decree was confirmed by the first appellate Court in R.A. No. 218/2010 dated 25.11.2013 whereby the first appellate Court dismissed the appeal filed by the appellant-defendant no. 2 and the legal representatives of defendant no. 9. Further, the Review Petition in R.Mis. No.1/2014 filed by the LRs of defendant No. 8 was also dismissed by the first appellate Court and the said judgment and decree of the first appellate Court attained finality and became binding upon all parties including the appellants as well as the LRs of

defendant No. 8. In this context, it is pertinent to note that prior to the suit, i.e. on 28.03.1994 itself, the defendant no.1 who was none other than the brother of the appellant-defendant no. 2 had alienated item No. 9 of the suit 'A' schedule property bearing land bearing Survey No. 38 measuring 4 acres 4 guntas situated at Somasettikoppa Village, Kumsi Hobli, Shimoga Taluk in favour of the defendant No. 8 who was a pre-suit alienee in respect of item No. 9 of the suit schedule properties.

5. As noticed earlier, having regard to the fact that the Review Petition in R.Mis.No.□1/2014 filed by the LRs of the defendant No. 8 was also dismissed, the judgment and decree passed by the trial Court declaring that the plaintiffs, Defendants No.1 and 2 and defendants No.3 to 5 were jointly entitled to one third share each in all items of suit schedule properties including item No. 9 of suit 'A' schedule property attained finality, became conclusive and binding upon the LRs of the Defendant No. 8. In this

regard, it is necessary to state that the said LRs of defendant No. 8 are arrayed as respondents No. 14 to 17 in the present appeal and though they have been served with notice of the present appeal, have not contested the proceedings.

6. In pursuance of the aforesaid preliminary decree passed by the trial Court, the respondents No. 1 to 3-plaintiffs instituted Final Decree Proceedings in F.D.P. No. 15/2010 in which a Court Commissioner was appointed whereby the Court Commissioner demarcated the properties to be allotted to the share of the plaintiffs and indicated that the plaintiffs would be entitled to the entire items 1, 2 and 8 of the A schedule properties and 2 acres 30 guntas in item No. 7 out of a total extent of 7 acres 11 guntas.

7. As per the Commissioner's report, item No. 1 of the ‘B’ schedule was indicated to be allotted in favour of the plaintiffs. The Commissioner also indicated how allotment

of the shares of the other parties were to be made in terms of his report; It is at this stage that the appellant-defendant no. 2 filed objections to the Commissioner's report *inter alia* contending that he was entitled to equal share in item No. 9 of the suit schedule properties and that the sale of entire item No. 9 of the suit 'A' schedule properties by the defendant No. 1 was not binding upon the appellant-defendant No. 2 and as such the allotment of entire item No. 9 of 'A' schedule property in favour of the purchaser as indicated by the Court Commissioner was incorrect and a final decree allotting the entire item No. 9 of 'A' schedule deserves to be set aside.

8. The said contention of the appellant-defendant No. 2 was rejected by the appellate Court on the ground that the appellate Court in R.Mis.No. 1/2014 filed by the respondents No. 8(A to D) directed allotment of item No. 9 in favour of Respondents No. 8(A to D) by adjusting equities during the course of Final Decree Proceedings.

Under these circumstances, the trial Court rejected the claim of the appellant that his share in item No. 9 of the suit schedule properties is also to be demarcated and he being put in the separate possession of his legitimate share in item No. 9 of the suit schedule properties. The said finding recorded by the trial Court in F.D.P. No. 15/2010 is as under:

> *"6. Point No.1:- The suit O.S.255/2004 was filed by the plaintiffs seeking relief of partition and separate possession and for declaration that the sale transaction effected between defendant No.1 and defendants No.6 to 8 pertaining to item No.9 of 'A' schedule property dated 28.03.1994 is not binding upon them and for declaration that registered partition deed dated 01.03.1991 effected between deceased Poojare Haladappa s/o Gundappa i.e., the father of the defendant No.1 and 2 under is null and void, illegal and not binding on the plaintiffs.*
>
> *7. It is apparent from the records that this court vide its judgment and decree dated 02.07.2010 has decreed the suit of the plaintiffs and it is ordered that the plaintiffs No.1 to 3 are together entitled to claim 1/3rd share in the suit schedule properties and the remaining 2/3rd share shall go to defendants No.1 to 3 and defendant No.4 and 5. Further it is declared that the registered partition deed dated 01.03.1991 is null and void and not*

binding on the rights of the plaintiffs. It is also declared that the sale transaction taken place between the defendant No.1 and the defendant No.6 to 8 in respect of the item No.9 of 'A' schedule, as per sale deed dated 28.03.1994 is also not binding on the rights of the plaintiffs.

8. It is borne from the records that being the aggrieved by the judgment and decree passed by this court, the legal heirs of defendant No.9 and defendant No.2 have preferred RA 218/2010 on the file of Hon'ble 1st Additional District and Sessions Judge, at Shivamogga and Hon'ble appellate court, vide its judgment dated 25.11.2013 has dismissed the appeal and confirmed the judgment and decree passed by the trial court. It is necessary to note that the defendant No.8(a) to (d) preferred R.Mis 01/2014 on the file of Hon'ble 1st Additional District and Sessions Judge, at Shivamogga seeking review of judgment and decree passed in RA 218/2010 on 25.11.2013 and said review petition was also dismissed on the ground that the petitioners have though alleged that they purchased item No.9 of 'A' schedule properties under registered sale deed dated 28.09.1994, they had not filed any written statement before the trial court and they had not led any evidence and in view of the same, the cross appeal definitely was not maintainable and the result of appeal has nothing to do with the present petition.

9. So, by holding this, Hon'ble appellate court has dismissed the review petition, but has directed this court to make an attempt to allot suit item No.9 in favour of purchaser if equity permits, depending upon the location

and value of other properties involved in the case. Thereafter, this proceeding was initiated by the petitioner U/s. 54 of CPC to effect partition and to allot the shares in consonance of preliminary decree passed.

10. The records before the court makes it clear that in order to effect partition, the Tahsildar was appointed as court commissioner and he was directed to effect partition in consonance with preliminary decree passed and also to take into consideration the order passed by the Hon'ble District court in R.Mis No.1/2014.

11. So, based on the warrant issued, commissioner has executed commission work and conducted survey and effected partition submitted the report and said report was seriously objected by both the parties and the respondent No.8 a to 8d resisted the report on the ground that the commissioner has not taken into consideration the order passed by Hon'ble Appellate court and since there was serious objections raised as to the manner in which the work was executed, the court commissioner was examined as CW.1 and report of commissioner was marked as Ex.C.1 and it shows that he has effected partition in consonance with preliminary decree and also has alloted the shares in favour of petitioner, but he has paritioned item No.9 of the suit properties and share is allotted in favour of plaintiffs and 5th defendant, but has failed to consider the order passed by Hon'ble 1st Additional District and Sessions Judge, at Shivamogga in R.Mis Nno.1/2014 to see whether any equity adjustment could be done pertaining to item No.9 of the suit properties and submitted report. So thereafter, the commissioner was redirected to effect

partition and to consider the order passed by Hon'ble Appellate court. So the, commissioner has visited the spot and conducted survey and has allotted suit item No.9 of property in favour of purchasers, the said report was not objected by the petitioner counsel and he submits that he has no objection to accept the report and said report is objected by 8th defendant on the ground that the respondent No.9 to 11 are not at all parties in final decree proceedings and they are not purchasers of suit schedule properties. So, as per report of commissioner, item No.9 has to be to allotted to the share of respondent No.8(a) to (d) and delete Respondent No.9 to 11. The 2nd respondent has filed objections stating that Ex.D.6 dated 01.03.1991 executed by 1st defendant in favour of defendant No.6 to 8 is binding on the plaintiffs right and therefore, sale deed binding other persons including 1st defendant. Therefore, final decree may be passed in respect of distinct share of 2nd defendant segregating his property from defendant No.1 and 3.

12. On perusal of records placed before the court and report of commissioner and also evidence of court commissioner, no doubt, he has duly executed commission work and has allotted the shares in favour of petitioners in consonance with preliminary decree passed. So far as item No.9 of suit property is concerned, he has duly complied with order passed by Hon'ble 1st Additional District and Sessions Judge, at Shivamogga in R.Mis 1/2014 and has allotted item No.9 in favour of respondent No.8 to 11. But it is necessary to note that R.Mis 1/2014 was preferred by Respondent No.8(a) to (d). Even in the original suit, no

relief was granted in favour of defendant No.9 to 14 and defendant No.9 to 14 are also not arrayed as parties to this final decree proceedings. However, it is necessary to note that Hon'ble 1st Additional District and Sessions Judge, at Shivamogga has specifically ordered that equity adjustment has to be done in favour of respondent No.8 to 11,i.e, purchasers. As per the order passed by the Hon'ble 1st Additional District and Sessions Judge, at Shivamogga it is ordered to work out equity in favour of purchaser and to see as to whether equity adjustment can be done. Admittedly, the defendant No.8 is the purchaser and defendant No.9 to 11 are the family members. So, the Hon'ble appellate court has ordered to work out the remedy in favour of purchasers i.e., 8th defendant who is now represented by his legal heirs. Though the report of commissioner shows that item No.9 is allotted to the share of defendant No.8(a) to (d) and defendant No.9, 10 and 11 and as per order passed by appellate court, item No.9 is allotted to the share of defendant No.8(a) to (d) who are purchasers. So, with this modification report of commissioner pertaining to item No.9 of suit schedule property is accepted. The contention raised by defendant No.2 that his share must be segregated holds no substance, since this court finds no Irregularity in the work executed by the commissioner and as such I find no impediment to accept the report. Accordingly, I answer aforesaid point for consideration in the affirmative and proceed pass the following:

ORDER

The petition filed U/s 54 is allowed.

The report of commissioner which is at Ex.C.1 and subsequent commissioner report received by this court on 29.02.2016 are accepted.

Further as per the order passed by Hon'ble 1st Additional District and Sessions Judge, Shivamogga in R. Mis No.1/2014, dated 23.07.2014 equity adjustment is done and item No.9 of the suit schedule property is allotted to the share of purchaser i.e., defendant No.8(a) to (d). So, with this modification, report of commissioner is accepted.

Office to draw final decree accordingly."

9. Aggrieved by the final decree passed by the trial Court, the defendant No. 2 approached the first appellate Court in R.A. 30/2016 in which the first appellate Court confirmed the judgment and decree of the trial Court by holding as under:

10. I have carefully perused the entire materials on record before this court. There is no dispute with regard to the shares allotted in their favour of the respective parties in the suit schedule properties. The trial court has decreed the suit by allotting 1/3rd share to the plaintiffs No.1 to 3 . The remaining 2/3rd share has been allotted to the defendant No.1 to 3 and defendant No.4 and 5 inter-alia declared sale deed dated 01.03.1991 as per ExP.6 as null and void not binding on the rights of plaintiffs No.1 to 3. The trial court has further declared that the sale transaction between defendant No.1

with that of defendant No.8 in respect of item No.9 of suit 'A' schedule property. Hence it is quite clear that defendant No.1 and 2 are entitled for 1/3rd share and defendant No.4 and 5 are entitled for 1/3rd share in the suit schedule properties. It is also not in dispute by the respective parties that RA No218/2010 filed by the defendant No.1 and 2 before the 1st Addl. District Judge, Shivamogga has been dismissed with costs by confirming the judgement and decree passed in O.S.255/2004. It is further not in dispute that the defendant 8[a] to [d] have filed review petition in R.Mis.01/2014 u/s 114 of CPC seeking to review the judgement and decree passed in RA No.218/2010 which came to be allowed on 23.07.2014 directing the 2nd Addl. Civil Judge Senior Division shall make an attempt to allot the suit 'A' schedule item No.9 in favour of the revision petitioner defendant No.8[a] to [d] if equity permits depending upon the location and value of the other properties involved in this case.

11. Consequent upon the said clarification made by the 1st Addl. District and Sessions Judge Court, Shivamogga, the Hon'ble trial court has directed the commissioner to work out the possibility of equity judgements in favour of defendant No.8[a] to 8[d]. On the basis of the order of the review petition R.Mis.01/2014, the court commissioner has submitted his report by visiting the spot and conducting the survey of the suit schedule property and has allotted the suit 'A' schedule item No.9 of the property in favour of defendant 8[a] to 8[d] and other properties to respective parties. The total properties available for partition to the family is 21A-09 guntas. Out of which the respondent No.1 to 3 [plaintiffs No.1 to 3] have been allotted 7A-03 guntas towards the 1/3rd extent allotted to

them. 7A-03 guntas have been allotted to defendant No.4 and 5 [respondent No.14 to 17] towards their 1/3rd share. Out of the total extent of 21A-09 guntas wing of the defendant No1 and 2 have been allotted total 7A-03 guntas. Suit 'A' schedule item No.9 Sy.No.38 of Gopishettipura village totally measures 4A-04 guntas and 2A-39 guntas have been allotted to in other survey numbers. The said 4A-04 guntas has been sold to the defendant No.8[a] to 8[d] which has been adjusted to the share of defendant No.1. Therefore the order passed by the 2nd Addl. Senior Civil Judge, Shivamogga rejecting the contentions taken by the defendant No.2 has rightly accepted the report of the court commissioner dated 29.02.2016 as per Ex.C.1. Hence there is no reason to interfere with the orders of the Hon'ble trial court passed in FDP No.15/2010. Therefore the appellant has not made out any ground to allow the appeal. Hence he is not entitled for the relief as prayed for. Therefore this court is of the opinion that it is not a fit case to interfere with the order passed by the trial court in FDP No.15/2010. Accordingly, I answer point No.1 in the negative.

12. It is needless to state that O.S.255/2004 has been filed in the year 2004. Now the year 2018 is running. Defendant No.1 and 2 are having possession for all these dates. It is submitted by the counsel for the respondent No.1 to 3 [plaintiff No.1 to 3] that appellant/defendant No.2 has filed this appeal only to gain time taking advantage of the mesne profit which has not been granted by the trial court. The plaintiffs are fighting litigation nearly more than 15 years that they have not been able to get physical possession of the property pertaining to their share. Hence they have been exposed to the hardship and financial loss. The argument submitted by the counsel for

the plaintiff appears to be proper and defendant No.1 and 2 have adopted the dilatory tactics by one or the other reason. Such abusive practices are to be curbed by imposing exemplary costs. Hence it is a fit case to impose exemplary costs of Rs.10,000/-, out of which Rs.5,000/- is to be given to the plaintiffs No.1 to 3 and Rs.5,000/- is to be given to defendant No.8[a] to 8[d].

13. Point No.2: In view of the above discussion and reasons stated therein, I proceed to pass the following:

-: O R D E R :-

The appeal filed by the defendant No.2/appellant under order 41 Rule 1 and 2 of C.P.C. is hereby dismissed with costs and exemplary costs of Rs.10,000/- The order passed by the trial court in FDP 15/2010 dated 20.07.2016 on the file of 2nd Addl. Senior Civil Judge, Shivamogga is hereby confirmed. Costs is to be deposited within one month from the date of receipt of this order.

Office is hereby directed to draw final decree in terms of the order passed by the trial court in FDP 15/2010.

Draw final decree accordingly;

Send copy of the judgment along with L. C. R. to the Court below forthwith."

10. The first appellate Court confirmed the judgment of the trial Court in F.D.P. No. 15/2010 which had adjusted the equities by allotting the entire item No. 9 of the suit

schedule properties in favour of the defendants No. 8(A to D) who were pre-suit purchasers of the said property from defendant No. 1. It is under these circumstances that the present appeal was admitted by this Court to consider the following substantial questions of law.

"Whether the trial Court and the first appellate Court were justified in allotting entire item No. 9 in favour of defendants No.8(A to D)/respondents No.14 to 17 by adjustment of equities without considering that the sale deed dated 01.03.1991 by defendant No. 1 in favour of deceased defendant No. 8 was not binding upon the appellant as per the preliminary decree passed in O.S. No. 255/2004?"

Re. Substantial question of law:

11. Heard learned counsel for the appellant and learned counsel for respondents No.1 to 3 and perused the material on record.

12. As stated supra, the remaining respondents including respondents No. 14 to 17/defendants No. 8(A to D), in whose favour the impugned judgment and decree of the trial Court and first appellate Court was passed have been served with notice of the present appeal and have not contested the present appeal.

13. A perusal of the aforesaid order passed in R.Mis No.1/2014 will clearly indicate that the Review Petition filed by the respondents No.14 to 17-defendants No.8(A to D) was dismissed by the first appellate Court. However, since the instant F.D.P. No.15/2010 was pending as on that day, the appellate Court directed that the Final Decree Court shall make an attempt to allot suit item No. 9 in favour of purchasers-defendants No.8 to 11 if equity permits the trial Court depending on the location and value of the other properties involved in the case. Despite the specific direction issued by the first appellate Court in the Review Petition in R.Mis No. 1/2014, the trial Court

(Final Decree Court) and the first appellate Court did not conduct any enquiry in this regard and summarily/mechanically proceeded to allot the entire item No. 9 in favour of defendants No. 8(A to D)-respondents No.14 to 17 without considering whether equity permits such allotment nor conducting any enquiry or recording any finding regarding the location and value of the other properties involved in the case. In other words, having regard to the undisputed fact that the defendant No. 1 was not entitled to the entire item No.9 of plaint 'A' schedule properties, the sale of the entire item No.9 of the 'A' schedule properties to the entire extent of 4 acres 4 guntas would not be binding upon the remaining parties/co-sharers and before proceeding to allot the entire item No. 9 in favour of the purchaser-defendant No.8, it was incumbent upon the final decree Court to ascertain the value and conduct enquiry in relation to all the properties and thereafter proceed to adjust equities if permissible in accordance with law.

14. A perusal of the impugned judgment and decree of the trial Court will indicate that no such exercise has been carried out by the trial Court for the purpose of ascertaining the value, conducting an enquiry, ascertaining the location, etc. before proceeding to allot entire item No. 9 of the suit schedule properties in favour of defendants No. 8(A to D) and in the absence of the same, I am of the considered opinion that the impugned judgment and decree of the trial Court deserves to be set aside.

15. Insofar as the judgment and decree of the first appellate Court is concerned, even the first appellate Court has mechanically / summarily confirmed the judgment and decree of the final decree Court without any application of mind and without making any attempt to ascertain the value of the item No. 9 and other properties and the feasibility of allotment of item No. 9 in favour of defendants No. 8(A to D) by adjustment of equities and failure on the part of the first appellate Court to do so,

would also vitiate the impugned judgment and decree of the first appellate Court, warranting interference by this Court in the present appeal.

16. The aforesaid facts and circumstances clearly indicate that the scope of the present appeal is restricted to item No. 9 of the suit 'A' schedule properties only and the controversy between the parties in the present appeal does not extend to the final decree passed by the trial Court and confirmed by the first appellate Court in relation to all properties other than item No. 9 of the suit schedule properties and consequently I am of the view that the impugned judgment and decree of the trial Court passed in F.D.P. No.15/2010 and confirmed in R.A. No. 30/2016 deserves to be set aside only in relation to item No. 9 of the suit schedule properties and the matter remitted back to the trial Court for reconsideration only in relation to item No. 9 and by confirming the judgment and decree of

the trial Court and first appellate Court in respect of all other properties.

17. In the result, I pass the following:

ORDER

(i) The appeal is hereby partly allowed.

(ii) The impugned judgment and decree in F.D.P. No. 15/2010 and R.A. No. 30/2016 to the limited/restricted extent only insofar as it relates to item No. 9 of suit 'A' schedule property is hereby set aside.

(iii) The impugned judgment and decree of trial Court in first appellate Court in relation to item No. 1 to 8 of 'A' schedule and items No. 1 to 3 of 'B' schedule is hereby confirmed.

(iv) The matter is remitted back to the trial Court for reconsideration of F.D.P. No. 15/2010 only in relation to item No.9 of the suit 'A' schedule properties.

(v) It is made clear that the impugned judgment and decree which allots entire items No.1, 2 and 8 of plaint 'A'

schedule and 2 acres 30 guntas in item No. 7 out of total extent of 7 acres 11 guntas in item No. 7 of 'A' schedule as well as entire item No. 1 of 'B' schedule is hereby confirmed and the respondents No.1 to 3-plaintiffs who have been allotted the said properties shall be entitled to enforce the said final decree in accordance with law in respect of these properties.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BVV
List No.: 1 Sl No.: 30