

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

**DATED THIS THE 8<sup>TH</sup> DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE H.P.SANDESH**

**AND**

**THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

**REGULAR FIRST APPEAL NO.100278 OF 2016**

**BETWEEN:**

SMT. SHOBHA W/O ASHOK BELAMKAR,  
AGED ABOUT: 58 YEARS, OCC: AGRICULTURE,  
R/O: NO.38, BANKERS COLONY,  
LAXMIPUR, SIDDARUDHAMATH,  
OLD-HUBBALLI, HUBBALLI-580028.

... APPELLANT

(BY SRI S.R. HEGDE, ADVOCATE FOR SRI P.K. SANNINGMMANAVAR,  
ADVOCATE)

**AND:**

1. MR. SANGAPPA  
S/O BASAVANNEPPA BURADI @ HULAMANI  
AGED ABOUT 34 YEARS, OCC.  
AGRICULTURE,  
R/O. BHOGENAGARKOPPA,  
TQ. KALAGHATAGI, DIST. DHARWAD-  
581204.
2. MR. MANJUNATH  
S/O BASAVANNEPPA BURADI @ HULAMANI,  
AGED ABOUT: 31 YEARS, OCC:  
AGRICULTURE,  
R/O: BHOGENAGARKOPPA,  
TQ: KALAGHATAGI, DIST: DHARWAD-  
581204.
3. MR. FAKKIRAPPA  
S/O BASAVANNEPPA BURADI @ HULAMANI,



AGED ABOUT: 28 YEARS, OCC:  
AGRICULTURE,  
R/O: BHOGENAGARKOPPA, TQ:  
KALAGHATAGI,  
DIST: DHARWAD-581204.

4. MR.VEERAPAKSHAPPA  
S/O BASAVANNEPPA BURADI @ HULAMANI,  
AGED ABOUT 25 YEARS, OCC:  
AGRICULTURE,  
R/O: BHOGENAGARKOPPA,  
TQ: KALAGHATAGI, DIST: DHARWAD-  
581204.
5. MRS. NEELAVVA  
W/O BASAVANNEPPA BURADI @ HULAMANI,  
AGED ABOUT: 58 YEARS, OCC:  
AGRICULTURE,  
R/O: BHOGENAGARKOPPA,  
TQ: KALAGHATAGI, DIST: DHARWAD-  
581204.
6. MR. BASAVANNEPPA  
S/O SANGAPPA BURADI @ HULAMANI,  
AGED ABOUT: 60 YEARS, OCC:  
AGRICULTURE,  
R/O: BHOGENAGARKOPPA,  
TQ: KALAGHATAGI, DIST: DHARWAD-  
581204.  
  
DIED LEAVING BEHIND RESPONDENT NO.1  
TO 5 AS HIS LEGAL HEIRS.
7. MR. KURSHID AHMED  
S/O IBRAHIMSAB KALAGHATAGI,  
AGED ABOUT: 61 YEARS, OCC: BUSINESS,  
R/O: APMC, ISHWARNAGAR, HUBBALLI-  
580031.

... RESPONDENTS

(BY SRI S.G. NANDOOR, ADVOCATE FOR SRI A.C. CHAKALABBI AND SRI S.B. DODDAGOUDAR, ADVOCATES FOR R1 TO R4; NOTICE ISSUED TO R5 IS SERVED BUT UNREPRESENTED (V/O/DATED 05.03.2026, R1 TO R5 ARE LRS OF DECEASED R6); APPEAL AGAINST R7 STANDS DISMISSED (V/O DATED 08.01.2020 AND 16.03.2023)

THIS RFA IS FILED UNDER SEC. 96 OF CPC., PRAYING THAT, JUDGMENT AND DECREE DATED:08.09.2016 PASSED IN O.S.NO.60/2010 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, HUBBALLI, MAY KINDLY BE SET ASIDE DISMISSING THE SUIT OF THE PLAINTIFF WITH COSTS AND ETC.,.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 25.03.2026, THIS DAY, **B. MURALIDHARA PAI J.**, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH  
AND  
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

**CAV JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

This appeal is directed against the judgment and decree dated 08.09.2016 passed in O.S. No.60/2010 by learned Principal Senior Civil Judge and JMFC, Hubli, (hereinafter referred as 'the Trial Court') by Defendant No.3 therein.

2. The parties to the proceeding are referred herein with their original ranking before the Trial Court.

3. The plaintiffs namely Sri Sangappa and four others maintained the suit in O.S. No.60/2010 for the relief of declaration that the sale deed executed by Defendant No.2 in favour of Defendant No.3 on 26.05.2005 is not binding on their share and consequently for the relief of permanent injunction restraining Defendant No.3 and any other person claiming through her from interfering with their possession and enjoyment over schedule A1 property. The plaintiffs have also sought for partition and separate possession of their 1/5<sup>th</sup> share each in the schedule properties.

4. Initially, the plaintiffs confined their suit to two items of property, namely, the lands bearing R.S. No. 249 measuring 10 acres and R.S. No. 246 measuring 13 acres, both situated at Kurdikeri Village, Hubli Taluk. During the pendency of the suit, the plaintiffs obtained leave to amend the plaint and incorporated an additional property, viz., the residential house along with the adjoining open space bearing VPC No. 44 situated at Bogenaragakoppa in Kalaghatagi Taluk.

5. The suit summons was served on all the three defendants. In spite of the same, Defendant Nos.1 and 2 remained absent before the Trial Court. As such they were placed ex-parte. Defendant No.3 appeared before the Trial Court through her counsel and contested the suit by filing written statement.

6. The Trial Court disposed of the suit vide impugned judgment and decree dated 08.09.2016 holding that the plaintiffs Nos.1 to 4 are entitled for 1/5<sup>th</sup> share each on par with Defendant No.1 in all the suit schedule properties and declared that sale deed dated 26.05.2005 executed in favour of Defendant No.3 in respect of Item No.1 of Schedule A property is not binding upon the share of the plaintiffs and also granted permanent injunction restraining her from interfering with peaceful possession and enjoyment of the said plaintiffs over Item No.1 of Schedule A property. Being aggrieved by the said judgment and decree, Defendant No.3 has preferred this appeal.

7. Sri S.R. Hegde, learned Counsel for Defendant No.3 vehemently submitted that Defendant No.1 has sold the property in question to Defendant No.3 through his GPA holder i.e., Defendant No.2 for legal necessity of his family and that

Defendant No.3 is a bonafide purchaser. He submitted that Defendant No.3 had valid grounds to defend the suit and to oppose the reliefs sought by the plaintiffs but the Trial Court disposed of the matter in hurried manner, without giving an opportunity of fair trial and without complying with the principles of natural justice.

8. Per contra, Sri S.G. Nandur, learned Counsel for Plaintiffs, vigorously submitted that the Trial Court is justified in decreeing the suit as Defendant No.3 has obtained the sale deed in question in collusion with Defendant Nos.1 and 2 and that there was no necessity for Defendant No.1 to sell the property in question. He further submitted that the Trial Court has given sufficient opportunity to Defendant No.3 to adduce their evidence in the case but she did not make use of such opportunities. As such, he contended that there is no substance in the contention of Defendant No.3 regarding not getting a fair trial in the case.

9. Having heard the arguments submitted by learned counsels appearing for both sides, the short point that arises for the consideration of this Court is 'whether the Trial Court gave sufficient opportunity to Defendant No.3 to contest the suit and thereby complied with the principles of natural justice?'

10. As noted above, the suit in question is for partition and separate possession and for other consequential reliefs. Further, though the suit is filed in respect of three items of properties, the contesting parties to the suit i.e, the plaintiffs and Defendant No.3 are at lis only in respect of one item of schedule properties i.e., land bearing R.S.No.249 measuring 10 acres situated at Kurdikeri village in Hubli Taluk.

11. It is the case of the plaintiffs that the schedule properties are the ancestral and joint family properties of the plaintiffs and Defendant No.1. According to them, their family was/is in very sound position and there was no financial distress or any necessity of alienating any portion of the joint family properties. It is their case that Defendant No.1 colluding with Defendant Nos.2 and 3 created General Power of Attorney and sale deed in favour of Defendant No.3 with a view to defeat the right, title and interest of the plaintiffs over the property in question and that Defendant No.1 has refused to effect partition and hand over their share in all the schedule properties.

12. On the other hand, the case of Defendant No.3 is that she has purchased the property in question after due enquiry regarding the antecedent debt of Defendant No.1, who has

utilised the sale consideration for discharge of the debt and for the benefit of the family. It is the definite case of Defendant No.3 that Defendant No.1 had the burden of heavy loan in Hubli Agriculture and Rural Development Co-operative Bank Ltd., and that she has cleared the loan by paying an amount of Rs.89,244/-. Apart from the above contention, Defendant No.3 has also contended that after purchase of the land in question she has improved the land by raising loan.

13. The only ground urged by Defendant No.3 in this appeal is that the Trial Court has hurriedly disposed of the suit without giving her reasonable and sufficient opportunity of contesting the suit. It is contended that Defendant No.3 did not get fair trial and an opportunity of adducing all her evidence and thereby the Trial Court has failed to comply with the principles of natural justice. In this regard, Defendant No.3 has drawn the attention of this Court to the Trial Court Record and particularly, the entries in the order sheet.

14. The case papers reveal that on 28.03.2015 Defendant No.3 adduced her evidence in the case through her husband and GPA Holder, who filed an affidavit in lieu of his examination-in-chief and got marked a document on the said date. On the next

date of hearing, i.e., 08.04.2015, Defendant No.3 filed an application along with six documents, seeking permission to produce those additional documents and to adduce evidence in respect of those documents. On that day, Counsel for Plaintiffs submitted no objection to allow the application. However, he objected marking of GPA (executed by Defendant No.1 in favour of Defendant No.2) on the ground that it is not duly stamped. As such, the trial Court adjourned the matter to hear on such objection. Thereafter, the suit came to be adjourned from time to time at the same stage till 24.11.2015. On that day, the trial Court heard both sides on the question of duty and penalty payable on GPA in question and reserved the case for order by 02.12.2015.

15. The order sheet reveals that thereafter the trial Court did not pronounce its order from 02.12.2015 till 19.08.2016. During intervening period, the trial Court once again posted the matter for further hearing and for clarification and ultimately pronounced its order on 19.08.2016 holding that GPA produced by Defendant No.3 is duly stamped and permitted Defendant No.3 to adduce her evidence in respect of the said document.

16. The case papers reveal that when Defendant No.3 had sought permission to produce additional documents, she had produced five other documents i.e., three original receipts dated 07.06.2005 pertaining to payment of a total sum of Rs.61,678/- in Hubli Agriculture and Rural Development Co-operative Bank Ltd. in the names of Shivappa Sangappa Buradi and Mahadevappa Sangappa Buradi and two more documents dated 07.06.2005 i.e., Wardis issued by concerned bank for removing/raising the charge pursuant to repayment of the loan amount.

17. The trial Court, after pronouncing order on 19.08.2016, had adjourned the case for further examination in chief of D.W.1 by 25.08.2016. As per the entries in the order sheet, on 25.8.2016 D.W.1 was absent before the Court. As such, the trial Court took further evidence of d.W.1 as nil, closed evidence on the side of the defendants and posted the case for arguments by 29.08.2016. Even on such adjourned date, there was no representation. Hence, the trial Court adjourned the case to 02.09.2016 for arguments as a last chance. Yet, the parties and their counsels remained absent on 02.09.2016. Hence, the trial Court adjourned the case to 03.09.2016. The parties and

their counsels did not appear before the trial court even on 03.09.2016. In the said circumstances, the trial Court posted the case for judgment by 08.09.2016 and pronounced impugned judgment on that day.

18. The aforesaid factual matrix unequivocally demonstrates that Defendant No.3 was denied a fair opportunity to adduce her evidence and effectively contest the suit. On 25.08.2016, the trial Court ought not to have precipitously closed the defendants' evidence. Instead, with Defendant No.3's evidence, tendered through her GPA holder already on record, the trial court could have deemed DW-1's evidence complete and adjourned the matter for his cross-examination. Moreover, the record reveals that the trial Court disposed of the suit on merits with undue haste, within a mere 20 days from 19.08.2016, when it ruled on the admissibility of the document produced by Defendant No.3. Notably, the same court had taken over a year to adjudicate the GPA's admissibility and more than nine months to pronounce its order following initial arguments on 24.11.2015. Compounding these irregularities, the order sheet entries suggest an absence of representation for either party between 25.08.2016 and 08.09.2016. In the light of these compelling

facts and circumstances, this Court finds substantial merit in Defendant No.3's contentions. For the foregoing reasons, the point for the consideration is answered in 'affirmative'.

19. In the result, this Court proceed to pass the following:

**ORDER**

- i. Appeal is allowed. The parties are directed to bear their respective cost.
- ii. The judgment and decree dated 08.09.2016 passed in O.S.No.60/2010 by learned Principal Senior Civil Judge and JMFC, Hubli is set aside and matter is remanded back to the trial Court for its fresh disposal from the stage of further evidence of Defendant No.3/DW-1, in accordance with law.
- iii. The parties are directed to appear before the trial Court on 29.04.2026 at 11.00 a.m., to take notice of further proceeding in the suit, failing which the trial Court is at liberty to proceed with the matter, without issuing court notices to the parties.
- iv. The trial court is directed to dispose of the matter on merits of the case, within outer limit of 180 working days from 29.04.2026.

- v. The Registry is directed to send back the record to concerned trial court at the earliest to enable the trial Court to take up the matter.

**Sd/-  
(H.P.SANDESH)  
JUDGE**

**Sd/-  
(B. MURALIDHARA PAI)  
JUDGE**

YAN/RKM  
CT-CMU