HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 17TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 115781 OF 2019 (GM-CPC)

BETWEEN:

1. SRI GOVINDAPPA YALLAPPA TALWAR
   AGE: 56 YEARS, OCC: AGRICULTURE,
   R/O MALASAMUDRA,
   TQ: DIST: GADAG-582101.

MOHANKUMAR B SHELAR
Digitally signed by MOHANKUMAR B SHELAR
Location: High Court of Karnataka, Dharwad Bench
Date: 2026.06.18 15:20:38 +0530

2. SMT. VENKAWWA
   W/O. MAHADEVAPPA TALWAR,
   AGE: 47 YEARS, OCC: HOME MAKER,
   R/O MALASAMUDRA,
   TQ: DIST: GADAG-582101.

3. SRI MANJUNATH
   S/O. MAHADEVAPPA TALWAR,
   AGE: 23 YEARS, OCC: AGRICULTURE,
   R/O MALASAMUDRA,
   TQ: DIST: GADAG-582101.

4. SMT. VIJAYALAXMI
   W/O. BASAVARAJ SAIDAPUR
   AGE: 20 YEARS, OCC: HOME MAKER,
   R/O MALASAMUDRA,
   TQ: DIST: GADAG-582101.

5. KUMARI MAHADEVI
   D/O. MAHADEVAPPA TALWAR
   AGE: 17 YEARS, OCC: NIL,
   SINCE MINOR REPRESENTED

BY HER MOTHER NATURAL GUARDIAN
PETITIONER NO.2, SMT. VENKAWWA,
W/O. MAHADEVAPPA TALWAR
AGE: 46 YEARS, OCC: HOME MAKER
R/O MALASAMUDRA,
TQ: DIST: GADAG-582101.

6. SMT. SANGAWWA
W/O. YALLAPPA TALWAR
AGE: 75 YEARS, OCC: AGRICULTURE,
R/O: MALASAMUDRA,
TQ: DIST: GADAG-582101.
(SENIOR CITIZEN BENEFIT NOT CLAIMED)

… PETITIONERS

(BY SRI HANUMANTHAREDDY SAHUKAR, ADVOCATE)

AND:

1. SMT. YALLAWWA
W/O. SHANKRAPPA TALWAR
AGE: 65 YEARS, OCC: HOME MAKER,
R/O MALASAMUDRA,
TQ: DIST: GADAG-582101.

2. SMT. GANGAWWA
W/O. MARUTEPPE PUJAR
AGE: 45 YEARS, OCC: HOME MAKER,
R/O. BANNIKOPPA, TQ: SHIRHATTI,
DIST: GADAG-582101.

3. SMT. SHANKRAWWA
W/O. DEVAPPA KORUGAL
AGE: 43 YEARS, OCC: HOME MAKER,
R/O. KATARKI,
TQ: DIST: KOPPAL-583231.

4. SMT. SOMAWWA
W/O JAGADISH WALMIKI

AGE: 33 YEARS, OCC: HOME MAKER,
R/O. HIRE-MANNUR, TQ: RON,
DIST: GADAG-582101.

5. SMT. DYAMAWWA
W/O. NINGAPPA TALWAR
AGE: 31 YEARS, OCC: HOME MAKER,
R/O. HALKUSUGAL, TQ: NAVALGUND,
DIST: DHARWAD-582208.

6. SMT. RATNAWWA
W/O. HANMAPPA DODDAMANI
AGE: 29 YEARS, OCC: HOME MAKER,
R/O. ADAVI SOMAPUR,
TQ: DIST: GADAG-582101.

7. SRI FAKIRAPPA SHANKRAPPA TALWAR
AGE: 42 YEARS, OCC: SERVICE,
R/O. MALASAMUDRA,
TQ: DIST: GADAG-582101.

8. SRI SHEKHARAPPA MARIYAPPA TALWAR
AGE: 66 YEARS,
OCC: RETIRED KSRTC SERVANT,
R/O. MALASAMUDRA,
TQ: DIST: GADAG-582101.

9. SRI RAMAPPA BASAPPA TALWAR
AGE: 56 YEARS, OCC: AGRICULTURE,
R/O. MALASAMUDRA,
TQ: DIST: GADAG-582101.

10. SRI HANUMAPPA BASAPPA TALWAR
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O. MALASAMUDRA,
TQ: DIST: GADAG-582101.
11. SRI MARUTEPPA BASAPPA TALWAR
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O. ALWANDI, TQ: DIST: KOPPAL-583231.

12. SMT. AKKAWWA
W/O. ASHOK HULIGAMMANAVAR
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O. BELDHADI, TQ: DIST: GADAG-582101.

13. UMABAI D/O. MAHADEVAPPA TALWAR
AGE: 25 YEARS, OCC: HOME MAKER,
R/O. MALASAMUDRA,
TQ: DIST: GADAG-582101.

… RESPONDENTS

(BY SRI MAHANTESH R. PATIL,
ADVOCATE FOR R-1 TO R-3 & R-5 TO R-7,
SRI SHIVANAND MALASHETTY,
ADVOCATE FOR R-9 TO R-12,
SMT. ROOPA S. CHINIWAR, ADVOCATE FOR R-8,
NOTICE TO R-13 IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR ORDER OR DIRECTION QUASHING THE ORDER DATED 21.09.2019 ON ADDL. ISSUE NO.1 AND 3 IN O.S.NO.271/2014 PASSED BY THE LEARNED 3RD ADDL. CIVIL JUDGE AND JMFC, GADAG, PRODUCED AS ANNEXURE-C.

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

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

1. Captioned petition is instituted by defendant No.6 and the legal representatives of defendant Nos.7 and 8 calling in question the order passed by the learned Trial Judge, whereby the issues pertaining to the plea of *res judicata* and sufficiency of Court fee have been framed and tried as preliminary issues and have ultimately been answered against the defendants.

2. Learned counsel appearing for the petitioners, reiterating the grounds urged in the writ petition, would vehemently contend that the procedure adopted by the Trial Court in treating the aforesaid issues as preliminary issues is legally unsustainable and contrary to the settled principles governing adjudication of civil disputes. He would submit that the impugned order is passed without affording the parties an adequate opportunity to lead evidence and, therefore, suffers from violation of the principles of natural justice. Elaborating his submissions, learned counsel would

argue that the questions relating to res judicata and valuation of the suit for the purpose of Court fee are mixed questions of law and fact, necessitating a full-fledged trial. According to him, the Trial Court ought to have permitted the parties to adduce oral and documentary evidence and only thereafter recorded findings on the said issues. On these grounds, he seeks interference under Article 227 of the Constitution of India.

3. Per contra, learned counsel appearing for the plaintiffs seeks to justify the impugned order and would submit that the present proceedings have resulted in prolonged stagnation of the suit proceedings. He points out that the impugned order has remained under challenge before this Court since the year 2019 and, on account of the interim order of stay granted by this Court, further proceedings in the suit have been stalled for several years. He would therefore contend that any further interference at this stage would only compound the delay and result in

serious prejudice to the plaintiffs, who are awaiting adjudication of their substantive rights.

4. Having heard the learned counsel appearing for the respective parties and having perused the material placed on record, this Court has carefully examined the order under challenge. Before embarking upon an examination of the correctness and legality of the impugned order, this Court deems it appropriate to refer to the foundational pleadings in the plaint, particularly paragraph No.4 thereof, as the controversy surrounding the preliminary issues essentially stems from the averments made therein. Paragraph No.4 of the plaint reads thus:—

> *"4) After the death of original propositus Hanamappa, his heirs have already filed a suit for partition and separate possession in O.S.NO.151/1984 in the court of civil Judge senior Division Gadag in respect of the suit properties and some other properties. The said suit came to be decreed. After the decree one of the heir filed F.D.P.NO.2/1998 in the court of the civil Judge Senior Division Gadag asking for division and separate possession of his share. In that proceeding the court commissioner was appointed and the lands were divided by equitable metes and bounds. The present suit*

properties have been fallen to the joint share of present plaintiffs and Defendants. Hence, the present plaintiffs and Defendants are in joint possession and enjoyment of the suit properties. The plaintiffs 1 to 7 have got joint 1/4th share and Defendants No1 has got ¼ th share and Defendants No.2 to 5 have got joint 1/4th share and Defendants No.6 to 8 have got joint 1/4th share in the suit properties."

5. A careful reading of paragraph No.4 of the plaint, extracted supra, would indicate that the plaintiffs themselves have candidly admitted the institution of an earlier suit for partition and separate possession in O.S. No.151/1984 by the legal heirs of the original propositus, Hanamappa. The pleadings further disclose that the said suit culminated in a decree and that final decree proceedings were thereafter initiated in FDP No.2/1998. The plaintiffs have also specifically averred that, in the course of the final decree proceedings, a Court Commissioner was appointed and the properties were divided by metes and bounds. Significantly, the plaintiffs have asserted that the present suit schedule properties were allotted jointly to the shares of the present plaintiffs and defendants and that all

of them continue to be in joint possession and enjoyment of the said properties.

6. The principal defence set up by the petitioners/defendants is that the present suit is barred by the doctrine of res judicata in view of the earlier adjudication in O.S. No.151/1984 and the consequential final decree proceedings. The second limb of defence is that the suit is not properly valued and that the Court fee paid by the plaintiffs is insufficient.

7. On a consideration of the pleadings and the material placed on record, the learned Trial Judge has adverted to the judgment and decree rendered in O.S. No.151/1984 and has recorded a finding that the present suit cannot be said to be barred by the principles of res judicata. The learned Judge has also held that the valuation adopted by the plaintiffs and the Court fee paid under Section 35(2) of the Karnataka Court Fees and Suits Valuation Act are proper and do not warrant any objection.

These findings came to be recorded while treating the aforesaid issues as preliminary issues.

8. This Court is of the view that the question relating to the applicability of the doctrine of res judicata ordinarily involves an examination of pleadings, issues and findings recorded in the former proceedings and, depending upon the facts of a given case, may partake the character of a mixed question of law and fact. Therefore, the Trial Court could have deferred consideration of the said issue until the parties were afforded an opportunity to adduce evidence. To that extent, the course adopted by the Trial Court in treating the issue of res judicata as a preliminary issue may not be strictly in consonance with the settled principles governing trial of civil suits.

9. However, the peculiar facts of the present case persuade this Court not to interfere with the impugned order. The petitioners themselves have produced the judgment and decree rendered in O.S. No.151/1984 and

have heavily relied upon the same to substantiate their plea of res judicata. The existence of the earlier partition suit, the decree passed therein and the initiation of final decree proceedings are all admitted facts emerging from the plaint itself. In such circumstances, any amount of oral evidence would have little bearing on the determination of the controversy. The question as to whether the present suit is barred by res judicata necessarily depends upon a comparison of the pleadings, issues and reliefs involved in the earlier proceedings with those in the present suit. Such an exercise is essentially founded on documentary material already available on record.

10. What is equally significant is that the plaintiffs have not suppressed the earlier proceedings. On the contrary, they have specifically pleaded the institution of O.S. No.151/1984, the decree passed therein and the allotment of the suit properties in the final decree proceedings. The plaint itself contains an explanation as to why, notwithstanding the earlier proceedings, the present

suit is maintainable. Whether such explanation ultimately merits acceptance is a matter to be decided on the basis of the evidence and material available at trial. Nevertheless, the pleadings unmistakably demonstrate that the plaintiffs have approached the Court with full disclosure of the antecedent proceedings.

11. This Court also cannot lose sight of the fact that the suit was instituted as far back as in the year 2014. The challenge to the impugned order has remained pending before this Court since the year 2019 and, by virtue of the interim order operating in the present proceedings, further progress in the suit has remained stalled for several years. The inevitable consequence is that adjudication of the substantive rights of the parties has been considerably delayed. The object of civil adjudication would be defeated if interlocutory challenges are permitted to obstruct the progress of a long-pending partition suit indefinitely.

12. Having regard to the aforesaid facts and circumstances, this Court is not persuaded to exercise its supervisory jurisdiction under Article 227 of the Constitution of India. Interference at this stage would only prolong the litigation and further delay adjudication of the real controversy between the parties. It is therefore appropriate that the parties are relegated to the Trial Court for expeditious disposal of the suit on merits.

13. Accordingly, without expressing any opinion on the rival claims touching the merits of the controversy, the writ petition stands ***dismissed***. The parties shall extend full cooperation for early disposal of the suit. The learned Trial Judge is directed to proceed with the matter on a priority basis and make an endeavour to decide the suit as expeditiously as possible, preferably within an outer limit of twelve months from the date of receipt of a copy of this order.

14. In view of the dismissal of the writ petition, all pending interlocutory applications, if any, stand disposed of.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

VNP / CT: GSM
List No.: 2 Sl No.: 13