



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

REGULAR SECOND APPEAL NO. 1508 OF 2016 (DEC/INJ)

BETWEEN:

H.C. RAJASHEKARA
DEAD BY LRS

1. SMT. DHAKSHAYANI
W/O LATE H.C. RAJASHEKARA,
AGED ABOUT 63 YEARS.
2. H.R.TEJESH KUMAR
S/O LATE H.C. RAJASHEKARA,
AGED ABOUT 40 YEARS.
3. H.R. MANOJ
S/O LATE H.C.RAJASHEKARA,
AGED ABOUT 38 YEARS.

ALL ARE RESIDENTS OF
HIG-19, 18TH CROSS,
KUVEMPUNAGAR,
HASSAN - 573 201.

...APPELLANTS

(BY SRI. SHRIKARA P.K., ADVOCATE)

AND:

1. LAKSHMI DEVAMMA
DEAD, BY LEGAL REPRESENTATIVES
RESPONDENTS 2 TO 4.
2. H.V. VASUDEVAMURTHY
S/O LATE H.M. VENKATASWAMIAH,
AGED ABOUT 47 YEARS,
R/OF OPP. SRI. RAMA MANDIR





DRIVER IN KSRTC,
BEHIND CHOWDESHWARI TEMPLE STREET,
HASSAN - 573 201.

2. PANDURANGASWAMY
S/O LATE H.M. VENKATASWAMIAH,
AGED ABOUT 47 YEARS,
R/O OPP, SRI. RAMA MANDIR
CHOWDESHWARI TEMPLE STREET,
HASSAN - 573 201.

4. SRINIVAS
S/O LATE H.M.VENKATASWAMIAH,
AGED ABOUT 46 YEARS,
R/O J.K. NILAYA,
BEHIND SANTHEPETE SCHOOL,
HUNSINKERE EXTENSION,
HASSAN - 573 201.

...RESPONDENTS

(BY SRI. K. RAVISHANKAR, ADVOCATE FOR R2 TO R4;
V/O DATED 02.09.2025, R2 TO R4 ARE LRS OF DEAD R1)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST THE JUDGMENT AND DECREE DATED 17TH MARCH, 2016 PASSED IN REGULAR APPEAL NO.255 OF 2009 ON THE FILE OF V ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN, DISMISSING, THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 31ST JULY, 2009 PASSED IN ORIGINAL SUIT NO.104 OF 2003 ON THE FILE THE ADDLITIONAL CIVIL JUDGE (SR.DN), HASSAN.

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

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH



ORAL JUDGMENT

This appeal is preferred by plaintiffs challenging the judgment and decree dated 17th March, 2016 passed in Regular Appeal No.255 of 2009 on the file of the V Additional District and Sessions Judge, Hassan (for short, hereinafter referred to as '*First Appellate Court*'), dismissing the appeal and confirming the judgment and decree dated 31st July, 2009 passed in Original Suit No.104 of 2003 on the file of the Additional Civil Judge (Sr.Dn.), Hassan (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of plaintiffs filed for relief of declaration and permanent injunction came to be dismissed.

2. For the sake of convenience, the parties in this appeal are referred as per their ranking before the Trial Court.

3. The relevant facts for adjudication of this appeal are that the plaintiffs have filed suit seeking relief of declaration and permanent injunction against the defendants based on the registered Sale Deeds dated 17th June, 1968 (Exhibit P1) and 20th August, 1983 (Exhibit P2). It is the case of plaintiffs that the defendants were interfering with the suit schedule property as the identity of the property itself is question and therefore,



plaintiffs filed the instant suit, seeking declaration with consequential relief of permanent injunction.

4. After service of summons, defendants entered appearance and filed detailed written statement, denying the averments made in the plaint.

5. Based on the pleadings on record, the Trial Court framed issues for its consideration.

6. In order to establish their case, plaintiffs examined one witness as PW1 and got marked 8 documents as Exhibits P1 to P8. On the other hand, defendants examined one witness as DW1 and no documentary evidence is adduced.

7. The Trial Court, after considering the material on record, by its judgment and decree dated 31st July, 2009, dismissed the suit. Being aggrieved by the same, plaintiffs preferred Regular Appeal No.255 of 2009 before the First Appeal Court. The First Appeal Court, after re-appreciating the material on record, by its judgment and decree dated 17th March, 2016, dismissed the appeal and consequently confirmed the judgment and decree passed by the Trial Court. Hence, the appellants filed the present appeal.



8. This Court, by order dated 27th March, 2026, admitted the appeal to consider the following substantial question of law:

"Whether the First Appellate Court committed an error in dismissing the appeal preferred by the plaintiffs without considering the application filed under Order XLI Rule 27 of the Code of Civil Procedure?"

9. Heard Sri. Shrikara P.K., learned counsel appearing for appellants and Sri. K. Ravishankar, learned counsel appearing for respondents 2 to 4.

10. Sri. Shrikara P.K., learned counsel appearing for appellants invited the attention of the Court to Paragraph 27 of the judgment and decree passed by the First Appellate Court and submitted that the appellants herein have filed application under Order XLI Rule 27 of the Code of Civil Procedure along with six documents to establish the case as to the title of suit schedule property. Learned counsel further submits that, though the appellant/plaintiffs have filed six documents to adduce additional evidence, however, the First Appellate Court misconstrued the same and taken view as two photographs. Accordingly, he sought for interference of this Court.



11. Per contra, Sri. K. Ravishankar, learned counsel appearing for respondents sought to justify the impugned judgment and decree passed by both the Courts below. He submits that, both the Courts below have arrived at a conclusion that the plaintiffs have not made out a case for granting relief of declaration. Accordingly, he sought for dismissal of appeal.

12. In the light of the submission made by learned counsel appearing for the parties, I have carefully examined the paragraph 27 of the judgment and decree passed by the First Appellate, wherein, it is observed that the appellant/plaintiffs have filed application along with two photographs. However, on perusal of the original records would indicate that the appellants herein have filed the said application on 30th November, 2010 before the First Appellate Court along with six documents. On perusal of the documents, there are no photographs instead four revenue documents and two registered Sale Deeds are forthcoming.

13. Therefore, following the law declared by this Court in the case of **SHANTHAVEERAPPA vs. K.N. JANARDHANACHARI** reported in *ILR 2007 KAR 1127* and law



declared by Hon'ble Supreme Court in the case of **UNION OF INDIA vs. IBRAHIM UDDIN AND ANOTHER** reported in (2012) 8 SC 148, I am of the view that, it is the duty of the Appellate Court to give finding on the application filed under Order XLI Rule 27 of the Code of Civil Procedure as to the relevant documents filed by the appellants would enure to the benefit of appellants for the purpose of adjudicating the matter on merits. In that view of the matter, since, the First Appellate Court had enumerated at paragraph 27 of the judgment and decree that the appellants have filed two photographs though the same are not produced by the appellants, I find force in the submission made by learned counsel appearing for appellants. Therefore, without going into the merits of the case, it is a fit case to remand the matter to the First Appellate Court for reconsideration of appeal afresh along with documents produced by the appellants in the application filed under Order XLI Rule 27 of the Code of Civil Procedure. Accordingly, I pass the following:

ORDER

- (i) Regular Second Appeal **allowed;**
- (ii) Judgment and decree dated 17th March, 2016 passed in Regular Appeal No.255 of 2009 on the file of the V Additional District and Sessions



Judge, Hassan is hereby set-aside; and the matter is remitted to the First Appellate Court to reconsider the appeal on merits afresh after affording opportunity of hearing to all the parties in the light of observation made above;

- (iii) It is needless to state that the First Appellate Court shall consider the application filed by the appellants under Order XLI Rule 27 of the Code of Civil Procedure on merits and pass orders;
- (iv) Since, the parties are represented through their learned counsels, in order to avoid further delay in the matter, parties are directed to appear before the First Appellate Court on 24th April, 2026 at 11.00 am. without waiting for any notice.

**SD/-
(E.S. INDIRESH)
JUDGE**

ARK
List No.: 2 Sl No.: 61