



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1<sup>ST</sup> DAY OF MARCH, 2023

BEFORE

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

**MISCELLANEOUS FIRST APPEAL NO. 781 OF 2023 (CPC)**

**BETWEEN:**

SRI. R Y VENKATESH REDDY  
S/O LATE YELLAPPA  
AGED 57 YEARS  
R/AT RAMANAYAKANAHALLI VILLAGE  
GUNJUR POST, SARJAPURA HOBLI  
ANEKAL TALUK  
BANGALORE - 560087

...APPELLANT

(BY SRI. A MADHUSUDHANA RAO., ADVOCATE)

**AND:**

1. SMT R Y PADMA  
D/O LATE YELLAPPA  
W/O PAPA REDDY  
AGED 51 YEARS  
R/AT NERALUR VILLAGE & POST  
ATTIBELE HOBLI  
BANGALORE – 562107

SMT. JAYAMMA  
W/O LATE YELLAPPA  
SINCE DEAD BY LRS  
I.E. PETITIONER AND  
RESPONDENTS

2. SMT. R Y VENKATALAKSHAMMA  
D/O LATE YELLAPPA  
W/O MUNI REDDY





AGED 61 YEARS  
R/AT C/O LATE PATEL THIMMA REDDY  
BOMMASANDRA  
BOMMASANDRA INDUSTRIAL AREA  
BANGALORE – 560099

SMT. R Y SARASWATHAMMA  
D/O LATE YELLAPPA  
W/O SRINIVAS REDDY  
SINCE DEAD BY LRS

3. SRI SRINIVAS REDDY  
S/O LATE MUNI REDDY  
AGED 69 YEARS

4. SRI SATHISH KUMAR  
S/O SRINIVAS REDDY  
AGED 39 YEARS

RESPONDENTS 3 AND 4 ARE  
R/AT HULIMANGALA HOSKOTE VILLAGE  
HULIMANGALA POST  
LAKKUR HOBLI MALUR TALUK  
KOLAR DISTRICT – 563160

5. SMT. SAVITHA  
W/O NARAYANA REDDY  
AGED 42 YEARS  
R/AT MUTTHAGATTI VILLAGE  
BESTHAMANAHALI POST  
KASABA HOBLI, ANEKAL DISTRICT  
BENGALURU URBAN DISTRICT

6. SMT. BHAGYA  
W/O PILLA REDDY  
AGED 37 YEARS  
R/AT KUMBARANAHALLI VILLAGE  
HARAGADDE POST, KASABA HOBLI  
ANEKAL TALUK  
BANGALORE – 560105



7. SRI RAMASWAMY REDDY  
S/O LATE NALLAPPANAVARA  
YELLAREDDY  
AGED 61 YEARS
8. SRI R RAGHUNATH  
S/O RAMASWAMY REDDY  
AGED 37 YEARS  
  
RESPONDENTS NO. 7 AND 8 ARE  
R/AT BILLAPURA VILLAGE  
BIDARAGUPPE POST  
SARJAPURA HOBLI  
ANEKAL TALUK  
BANGALORE – 560034
9. SMT. R SHILPA  
D/O RAMASWAMY REDDY  
W/O MURALI  
AGED 34 YEARS  
R/AT 534, 1<sup>ST</sup> MAIN,  
TEACHERS COLONY,  
KORAMANGALA POST  
BANGALORE – 560034
10. SRI. R Y NANJUNDA REDDY  
S/O LATE YELLAPPA  
AGED 46 YEARS  
R/AT RAMANAYAKANAHALLI VILLAGE  
GUNJUR POST,  
SARJAPURA HOBLI  
ANEKAL TALUK  
BANGALORE URBAN DISTRICT
11. SMT. R Y LALITHA  
D/O LATE YELLAPPA  
W/O MUNIRAJU  
AGED 43 YEARS  
R/AT KUMBARANAHALLI VILLAGE  
HARAGADDE POST



KASABA HOBLI  
ANEKAL TALUK  
BANGALORE URBAN DISTRICT

...RESPONDENTS

(BY SRI. K.K. VASANTH, ADVOCATE FOR C/R1)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(d) OF CPC AGAINST THE ORDER DT.12.01.2023 PASSED IN MISC. CASE NO.31/2010 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, ANEKAL, DISMISSING THE PETITION FILED U/O.9 RULE 13 OF THE CPC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal is directed against the impugned order dated 12.01.2023 passed in Miscellaneous Petition No.31/2010 by the II Additional Senior Civil Judge & JMFC, Anekal, whereby the said petition filed by the appellant under Order IX Rule 13 of the Code of Civil Procedure, seeking setting aside of the exparte judgment and decree dated 09.09.2010 passed in O.S.No.607/2009 on the file of Senior Civil Judge and JMFC, Anekal, was rejected by the Trial Court.

2. Heard learned Counsel for the appellant and learned Counsel for respondent No.1-caveator and perused the material on



record. In the order proposed, notice to remaining respondents is dispensed with.

3. The material on record discloses respondent No.1-plaintiff instituted the suit in O.S.No.607/2009 for partition and separate possession of alleged share in the suit schedule immovable properties and for other reliefs. In the said suit, the appellant was arrayed as defendant No.4 and the remaining respondents were arrayed as the remaining defendants. Insofar as the appellant-defendant No.4 was concerned, he was placed *exparte* by the Trial Court in the suit on the ground that summons was refused by him. In this context, it is the specific contention of the appellant that summons were actually never served upon the appellant and as such, the question of the appellant refusing service of summons upon him did not arise in the facts of the instant case. In view of the appellant as well as the other defendants having been placed *exparte* and not contesting the suit, the Trial court proceeded to pass the judgment and decree dated 09.09.2010 decreeing the suit in favour of respondent No.1-plaintiff. Subsequently, the appellant-defendant No.4 filed the instant Miscellaneous Petition No.31/2010 under Order IX Rule 13 of the Code of Civil Procedure, seeking



setting aside of the exparte judgment and decree insofar as the appellant was concerned. The said petition having been opposed by respondent No.1-plaintiff, the Trial Court proceeded to pass the impugned order rejecting the said Miscellaneous Petition, aggrieved by which the appellant is before this Court by way of the present appeal.

4. A perusal of the material on record including the impugned order will indicate that the Trial Court has failed to consider and appreciate that having regard to the nature of the suit, relationship between the parties and the properties involved in the suit, it was necessary to adopt a justice oriented approach and provide one more opportunity to the appellant to contest the suit by filing his written statement opposing the claim of respondent No.1-plaintiff. However, the Trial Court has adopted a hyper-technical approach and has come to the erroneous conclusion that the appellant had not made out sufficient cause in not appearing before the Trial Court by refusing receipt of suit summons.

5. Under these circumstances, in view of the specific assertion on the part of the appellant that he did not appear before the Trial Court in the suit and contest the same due to bona fide



reasons, unavoidable circumstances and sufficient cause, I deem it just and appropriate to set aside the impugned order and exparte judgment and decree for the purpose of providing one more opportunity in favour of appellant-defendant No.4 to contest the suit within a stipulated timeframe.

6. In the result, I pass the following:

**ORDER**

- (i) The appeal is hereby allowed.
- (ii) The impugned order dated 12.01.2023 passed in Miscellaneous Case No.31/2010 by the II Additional Senior Civil Judge and JMFC, Anekal, is hereby set aside.
- (iii) Consequently, the judgment and decree dated 09.09.2010 passed in O.S.No.607/2009 on the file of Senior Civil Judge and JMFC, Anekal, is hereby set aside and the said suit is restored to the file of the trial court.
- (iv) The appellant and respondent No.1 undertake to appear before the Trial Court in O.S.No.607/2009 on **20<sup>th</sup> March 2023** without awaiting further notice from the trial court.



- (v) The appellant is directed to file written statement on 20.03.2023 before the trial Court without seeking any adjournment under any circumstances whatsoever.
- (vi) Immediately upon the appellant filing the written statement, the Trial Court is directed to frame issues and proceed further in the matter and dispose of the suit within a period of six months from 20.03.2023.
- (vii) It is further directed that till disposal of the suit by the Trial Court, all parties are directed to maintain status-quo in all respects as on today in relation to the suit schedule properties.

All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.

**Sd/-  
JUDGE**

JT/-