



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 28TH 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.100426 OF 2018

BETWEEN:

VARDHAMAN S/O. TAVANAPPA LENGAGE
AGE: 74 YEARS, OCC: BUSINESS,
R/O. FORMER KALYANPURKAR HOSPITAL,
NEAR CITY CLINIC, DAJIBANPETH,
HUBBALLI-580028, DIST: DHARWAD.

... APPELLANT

(BY SRI MALLIKARJUNSWAMY B. HIEMATH, ADVOCATE)

AND:

1 . SITAL S/O. BHARAMAPPA LENGAGE
AGE 47 YEARS, OCC. PRIVATE SERVICE,
R/O. PADMA BUILDING,
OPP. MOORUSAVIRMATH,
HUBBALLI-580028, DIST. DHARWAD.

2 . ANANTRAJ S/O. TAVANAPPA LENGAGE
SINCE DECEASED HIS LR'S

2(A) PRASHANT S/O ANANTRAJ LENGAGE
AGE: 47 YEARS, OCC. BUSINESS,
R/O. PADMA BUILDING,
OPP. MUURUSAVIRMATH,
HUBBALLI-580 028, DIST. DHARWAD.

2(B) VIVEK S/O ANANTRAJ LENGAGE
AGE: 40 YEARS, OCC. BUSINESS,
R/O. PADMA BUILDING,



OPP. MUURUSAVIRMATH,
HUBBALLI-580 028, DIST. DHARWAD.

... RESPONDENTS

(BY SRI SURESH S. GUNDI, ADVOCATE FOR R1;
NOTICE IS ISSUED R2(A) AND R2(B) ARE SERVED BUT
UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 OF CODE OF CIVIL
PROCEDURE, PRAYING TO, MODIFY THE JUDGMENT AND DECREE
DATED 28.07.2018 IN O.S.NO.325/2016 ON THE FILE OF THE II ADDL.
SENIOR CIVIL JUDGE, HUBBALLI AND ETC.,.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME
HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.03.2026,
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)

Defendant No.2 in O.S.No.325/2016 on the file of learned
II Additional Senior Civil Judge, Hubballi has maintained this
regular appeal against the judgment and decree dated
28.07.2018 passed therein, praying to modify the judgment and
decree by setting aside the judgment and decree passed insofar
as business establishment in the name and style of M/s Prashant
Metals.

2. The parties to this appeal are hereinafter referred
with their original ranking before the trial Court.

3. Brief facts leading to this appeal are as under:

i) One Sri Tavanappa was the propositus. He was running a business under the name and style of T.B. Lengade, which was a proprietary concern. After his death, the concern was succeeded by his sons, namely - Sri Bharamappa, Sri Anantraj (Defendant No. 1), and Sri Vardhaman (Defendant No. 2). They continued the business jointly under the name M/s T.B. Lengade. Later, Sri Bharamappa and Defendant Nos. 1 and 2 purchased the plot pertaining to Schedule 'A' property and constructed a double-storied building on it out of the business income. Sri Bharamappa died on 19.08.1995.

ii) The son of Sri Bharamappa namely Sri Sital instituted the suit in O.S. No.325/2016 on 17.09.2016, praying for partition and separate possession of his 1^{/3rd} share in Schedule 'A' and 'B' properties by metes and bounds including mesne profit at the rate of Rs.30,000/- per month on the ground that the defendants are not allowing him to participate in the family business and that they have even refused to effect partition and give his legitimate share in the schedule properties.

iii) On service of summons, both Defendant Nos. 1 and 2 appeared before the trial court through their counsel and filed a common written statement. In the said written statement, they admitted that the plot pertaining to Schedule 'A' property was purchased and a double-storied building was constructed on it out of the income earned from the business of M/s T.B. Lengade. However, they contended that it was a partnership business of Sri Bharamappa and his brothers. They further stated that the partnership was dissolved on 21.08.1992; thereafter, Defendant No.1 has been running the business exclusively, and Defendant No.2 has been running a business in the name and style of Prashant Metals in the ground-floor portion of the building on Schedule 'A' property since 1996. In the above circumstances, the defendants contended that the plaintiff has only a 1/3rd share in Schedule 'A' property and prayed for dismissal of the suit insofar as Schedule 'B' is concerned i.e., the business run in the name of M/s T.B. Lengade and the prayer for mesne profits.

iv) Based on the pleadings of the parties and the documents available on record, the trial court framed the following issues:

- i. Whether plaintiff proves that suit schedule properties are ancestral and joint family properties?
- ii. Whether the defendants prove that suit is not maintainable?
- iii. Whether the plaintiff is entitled the relief as sought for?
- iv. What order or decree?

v) In order to prove his case, the plaintiff stepped into witness box and adduced his evidence as PW-1 and got marked documents as Exs.P1 to P4. On behalf of the defendants, Defendant No.1 adduced the evidence as DW-1, examined two more witnesses and got marked documents as Exs.D1 to D7.

vi) Afterwards, the trial court heard the arguments of both sides, considered the materials available on record and decreed the suit in part holding that the plaintiff, his mother and two sisters are entitled for 1/3rd share in Schedule 'A' property and that they together are entitled for half share in the business establishment in the name and style of M/s Prashant Metals. The trial court dismissed the prayer of the plaintiff for a share in the business of M/s T. B. Lengade and mesne profits from both businesses.

vii) Being aggrieved by the said judgment and decree, Defendant No. 2 has preferred the present appeal on the ground that the trial court has committed an error in holding that the business of M/s Prashant Metals is a joint family property, even in the absence of any pleading to that effect, though it exclusively belonged to him. He further contended that the suit was liable to be dismissed for non-joinder of necessary parties, as the plaintiff failed to implead his mother and two sisters as parties to the suit. Hence, he prayed to modify the impugned judgment and decree and to pass such other order or decree as the Court may deem fit in the interest of justice and equity.

viii) Earlier, on 26.06.2025, when this Court took up the appeal for final hearing, the learned Counsel for Defendant No.2 sought an opportunity for Defendant No.2 to lead further evidence in the case to support his claim that the business of M/s Prashant Metals exclusively belongs to him. Defendant No.2 made such a request on the ground that after filing a joint written statement along with Defendant No.1, he believed that Defendant No.1 would stick to the defence set out in the written statement; but during the evidence stage, Defendant No.1 made a statement before the Court to the effect that the business of

M/s Prashant Metals was established by the father of the plaintiff and Defendant No.2 and that the father of the plaintiff was looking after the said business till the year 1995. At that time, this Court observed that the plaintiff had not made any specific claim insofar as M/s Prashant Metals was concerned and that the reasons assigned by Defendant No.2 for not adducing his evidence before the trial Court were not acceptable. Yet, this Court opined it necessary to give him an opportunity to adduce his evidence to support his claim. Accordingly, having regard to the contentions put forth by the parties, this Court framed an additional issue as follows: "Whether Defendant No.2 proves that the business of Prashant Metals was his independent business in which the plaintiff had no share?" and directed the office to place the file before the Additional Registrar (Judicial) to record further evidence and to submit the papers to this Court for determination of the appeal.

4. Pursuant to the above referred order, further evidence was recorded before the Additional Registrar (Judicial). During such proceeding, the GPA holder of Defendant No.2 got examined as DW-4 and got marked additional documents as Ex.D8 to D76. During the cross-examination of DW-4, the

plaintiff got marked documents at Exs.P29 to P32 by confronting them to DW-4. Afterwards, the plaintiff stepped into witness box and adduced his further evidence and got marked Exs.P10(a) and P11(a).

5. Sri Mallikarjunaswamy B. Hiremath, learned Counsel for Defendant No.2, vehemently submitted that the business of M/s Prashant Metals is the exclusive proprietorship business of Defendant No.2 and that the trial Court committed an error in holding that the plaintiff has an equal share in the said business, even in the absence of any specific pleading to that effect. He further submitted that the suit was not maintainable on account of non-joinder of necessary parties, yet the trial Court proceeded to decree the suit contrary to law by holding that the plaintiff, his mother, and his sisters together are entitled to a $\frac{1}{3}^{\text{rd}}$ and $\frac{1}{2}$ share in Schedule 'A' and Schedule 'B' properties, respectively. As such, he prayed that the impugned judgment be set aside, or at least that the impugned decree be modified by dismissing the suit in respect of Schedule 'B' property.

6. Per contra, Sri Suresh S. Gundi, learned Counsel for the Plaintiff, vigorously submitted that the father of the Plaintiff namely Sri Bharamappa had started the business of M/s

Prashant Metals in the year 1991 and was running the said business till his death. In support of this contention, learned Counsel for the Plaintiff drew the attention of the Court to Ex.P30 and other relevant documents pertaining to the business of M/s Prashant Metals and submitted that the trial Court has rightly held that the Plaintiff is entitled to an equal share in the said business. He further submitted that the Plaintiff represents the branch of Sri Bharamappa and as such, there is no merit in the contention that the suit is bad for non-joinder of necessary parties. Hence, he prayed for dismissal of the appeal.

7. On hearing the arguments canvassed on both sides and perusal of the materials available on record including the additional evidence adduced in pursuance of Order dated 26.06.2026, the following points arise for our consideration:

- i) Whether the suit is bad for non-joinder of necessary parties?
- ii) Whether the trial court was justified in decreeing the suit and particularly in respect of business of M/s Prashant Metals?

Point Nos. (i) and (ii) :

8. The parties to the proceeding are not at dispute regarding their inter-se relationship. The father of the Plaintiff

namely Sri Bharamappa, and the Defendants are the sons of one Sri Tavanappa. Admittedly, Sri Tavanappa was running a business in the name of T.B. Lengade. After his death, his sons namely Sri Bharamappa and the Defendants, continued the said business jointly. It is also admitted that Sri Bharamappa and the Defendants purchased the plot pertaining to Schedule 'A' property and constructed a building thereon out of the earnings of the said business.

9. Sri Bharamappa died on 19.08.1995 leaving behind his wife – Smt.Sumitra, two daughters namely Smt. Padma and Smt. Sudha and the only son i.e, the plaintiff.

10. The plaintiff has maintained the suit claiming partition and separate possession of his 1/3rd share in Schedule 'A' and Schedule 'B' properties on the ground that being the only son, he has succeeded to the 1/3rd share of Sri Bharamappa in the suit schedule properties. Although the Plaintiff is the only son of Sri Bharamappa, his father has left behind other Class-I heirs. Hence, the Plaintiff would succeed to the properties left behind by Sri Bharamappa, if any, along with other legal heirs of Sri Bharamappa. Thereby, it becomes clear that the Plaintiff could not have maintained the suit claiming a 1/3rd share in the

schedule properties to the exclusion of the other Class-I heirs of Sri Bharamappa.

11. In their written statement, the Defendants have averred that they performed the marriage of the elder sister of the Plaintiff during the lifetime of his father and that the Plaintiff is residing with his mother in the first-floor portion of Schedule 'A' property. Thereby, they indicated that Sri Bharamappa died living behind other legal heirs apart from the plaintiff. However, the Defendants did not take a specific contention disputing maintainability of the suit on the ground of non-joinder of necessary parties. On the other hand, they sought a decree in respect of Schedule 'A' property as prayed in the plaint and to dismiss the suit only in respect of Schedule 'B' property.

12. It is well settled that a suit for partial partition or one instituted without impleading all co-sharers is not maintainable. Further, non-joinder of a necessary party is primarily a question of law though it involves an initial factual determination whether the presence of a party is essential for effective adjudication of the dispute. This step involves examination of facts such as the rights asserted and the reliefs claimed, making it a question of fact depending on the circumstances. Once the necessity of such

a party is established, non-joinder becomes a fatal defect and turns into a pure question of law.

13. In **Kalyan Kumar Bera Vs Milan Kumar Khutia and Others** [2022:CHC-AS:67447], the Division Bench of Hon'ble High Court of Calcutta, has held as under:

"12. Admittedly, no issue had been framed as to whether suit was bad for non-joinder of necessary party but the learned Court below had dismissed the suit on such issue. Framing of issues is an important stage at which the scope of the trial is determined. Basically, the correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. 'Issue' means a point in question at the conclusion of the pleading between contending parties in an action and issues are to be framed in respect only of those facts which have been alleged by one party and either denied or not admitted by the other party and duty of framing issues primarily rests on the Court but such duty can be shared with the pleaders.

13. Admittedly, the defendants/respondents did not urge that the suit was bad for non-joinder of a necessary party and no issue has been framed to the effect whether the suit is bad for non-joinder of necessary party. So, within the scope of trial, such issue has not been included but suddenly, defendants have raised such plea in trial.

14. Order I of CPC deals with the subject namely, 'Parties to Suits'. Rules 3, 9 and 13 of Order I are the relevant provisions which should be taken into consideration besides Section 99 of the Code. Rule 3 lays down as to who are to be joined as defendants. Rule 9 states that no suit shall be defeated by reason of the misjoinder or non-joinder of parties. Rule 9

speaks further that the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The general rule of procedure in rule 9 is subject to the proviso thereto which speaks that such general rule shall not apply to non-joinder of a necessary party. So it is obvious that non-joinder of a necessary party stands on a different footing and is a ground to dismiss a suit. Rule 13 mandates to take all objections on the ground of non-joinder or misjoinder of parties at the earliest opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen and any such objection not so taken shall be deemed to have been waived. Admittedly, Rule 13 is applicable only to cases of mere non-joinder or misjoinder of parties. It has no manner of application to a case of non-joinder of a necessary party. Section 99 of CPC provides that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of the parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court but such general rule is also subject to the proviso which provides that nothing in this section shall apply to non-joinder of a necessary party. So, it can be deduced that non-joinder of a necessary party by itself is a ground to reverse or substantially vary a decree in appeal. It by itself is a ground to remand a suit, after setting aside the decree, in an appropriate case.

15. Whether a person is a necessary party, is a question of fact depending upon the relief claimed in the suit. But once it is established that the said person is a necessary party to the suit, it becomes a question of law and therefore can be raised for the first time in appeal.

16. Now, question that arises is as to whether it would be proper to dismiss the appeal or to remand

the suit. Had the issue say 'whether the suit was bad for non-joinder of necessary party' been framed, the plaintiff could have taken appropriate steps. Since no such issue had been framed, we think it proper to give an opportunity to the plaintiff/appellant to implead AITC, Sahapur Unit. Thus, in our opinion, a remand appears to be the proper course to avoid multiplicity of suits."

14. It is a settled legal position that a pure question of law may be raised at any stage of the proceedings, including in appeal, and even in the absence of specific pleading to that effect. The impugned judgment goes to show that during the course of argument the defendants had questioned maintainability of the suit on the ground of non-joinder of necessary parties and sought for dismissal of the suit. In spite of the same, the trial court proceeded to hold that "... in view of the undertaking given by the Plaintiff and also the claim of the defendants in their written statement, I am of the view that the Plaintiff, along with his mother and two sisters, is entitled to a 1/3rd share of his father in para 2A of the suit property, ... but the Plaintiff, his mother and sisters together are entitled to a 1/2 share of late Bharamappa in the Prashant Metals running shop and the remaining 1/2 share belongs to Defendant No. 2. ..." and partly decreed the suit.

15. The averments in the plaint and the prayers sought therein do not indicate that the Plaintiff has maintained the suit for and on behalf of all the legal representatives of Sri Bharamappa. Further, even in his affidavit filed on 16.06.2017 in lieu of his examination-in-chief, the Plaintiff has not stated anything in this regard. Subsequently, i.e, on 28.07.2018 the plaintiff filed an additional affidavit by way of his further examination-in-chief, stating as under:

"My mother Sumitra W/o Bharamappa, two sisters – Padma W/o Dayanand Hubli, Sudha W/o Bahubali Kundur, we are the only legal heirs of one late Bharamappa Lengade.

My mother and sisters authorized orally consent to filed the suit. If any share is allotted to me, I am ready to share whatever property may be allotted to this suit to share it with my mother and sisters equally through oversight I am unable to implead my mother and sisters, over also share like me."

16. First of all, the Plaintiff filed such an affidavit only after he was subjected to cross-examination regarding the legal heirs left behind by Sri Bharamappa. Further, the above extract makes it clear that the statements made by the Plaintiff in his additional affidavit are self contradictory. This is because at the first instance the Plaintiff claims that his mother and his sisters had orally authorized him to file the suit. If such contention of

the Plaintiff was true, then in the normal course, he would have disclosed the aspect in the averments of the plaint and sought the reliefs accordingly. As already pointed out, the Plaintiff has maintained the suit seeking a 1/3rd share in Schedule 'A' and Schedule 'B' properties exclusively for himself on the ground that "he is the only son of Sri Bharamappa". The other contention of the Plaintiff is that if any share is allotted to him, he is ready to share such property with his mother and sisters. If at all the Plaintiff had such an intention, nothing prevented him from impleading his mother and sisters as parties to the suit. Added to the above, in his additional affidavit, the Plaintiff has strangely contended that by oversight he could not implead his mother and sisters as parties to the suit. Whereas, the trial Court has noted that "he could not implead them as they were not in a position to come to the Court". Thereby, this Court does not find any justifiable ground for the trial Court to ignore the non-joinder of the co-sharers as the parties to the suit.

17. It is trite law that unlike mis-joinder of parties, non-joinder of necessary parties cannot be cured if it impairs complete relief, and in such cases non-joinder of a necessary party leads to dismissal of the suit. At the same time, it is to be

noted that non-joinder of a necessary party is a technical defect, which can often be remedied under Order I of the CPC. It is well settled that Courts shall make all endeavor to dispose of the matter on the merits of the case rather than on technicalities and thereby avoid multiplicity of proceedings.

18. The Court cannot proceed with any matter and decide the rights of the parties in the absence of necessary parties for such adjudication. Order I Rule 10(2) of the CPC empowers the Court to strike out or add parties. Under the said provision, the Court can order for striking out of the name of any party improperly joined, or to add the name of any person who ought to have been joined, or whose presence before the Court is necessary in order to enable the Court to adjudicate upon and settle all the questions involved in the suit, effectively and completely. The Court may exercise such power either upon, or without the application of either party. The trial court has not exercised such power vested in it to see that all the necessary parties are on record, before proceeding to dispose of the matter on the merits of the case.

19. Order I Rule 9 of the CPC explicitly states that no suit shall be defeated by reason of the mis-joinder or non-joinder of

parties and allows the Court to deal with the matter in controversy effectively. This protects against premature dismissal, emphasizing justice over procedural lapses. Thus, it becomes clear that the dismissal of the suit on account of non-joinder of necessary party should normally be resorted to, only after giving an opportunity to the plaintiff to rectify the defect and when the plaintiff fails to comply with an order passed under Order I Rule 10(2) of the CPC for impleadment of necessary party. For the foregoing reasons, this Court holds that though the materials on record clearly indicate that suit is bad for non-joinder of necessary parties, an opportunity needs to be given to the Plaintiff to bring those persons on record, before proceeding to dismiss the suit on such ground.

20. The other contention raised by Defendant No.2 is that the trial court has committed a grave error in decreeing the suit in respect of the business of M/s Prashant Metals, dehors pleading and a specific prayer in that regard. The plaintiff has maintained the suit for the following reliefs:

- "a) a decree for partition and separate possession may kindly be drawn, directing the defendants to make partition and give 1/3rd share in the Suit Schedule A & B properties by metes and bounds: If the Defendants

failed to do so, the same may kindly be got done by appointing a Court Commissioner or Court Receiver as the case may be;

- b) mesne profit at the rate of Rs.30,000/- per month may kindly be granted to the Plaintiff from the defendant;
- c) The Plaintiff may kindly be permitted to add, amend or alter the suit in case of need;
- d) Cost of the suit and such other reliefs, which this Hon'ble Court deems fit be also kindly awarded."

21. In paragraph No.2 of the plaint as well as in the schedule to the plaint, the plaintiff has described the properties in dispute as under:

"A) A double storied commercial-cum-residential Building, consists of double floor, having commercial shops and godown on the ground floor and residential premises on the first and second floor, comprised in CTS.No. 1280/B-1 of CTS.Ward.No.II measuring 111.7/9 Sq., Yds., situated at Opp. Moorusavirmath Hubli, and also sheltering a running business establishment, being run under the name and style of Prashant Metals, which is bounded as under:

East : Property of Ramasa Dongadi
West : Main Road,
North: Pawar Complex,
South: Property of Ijari,

B) A running business establishment, being dealing in Metal business, under the name and style of T.B.Lengade, at Lokhande Building, M.G.Market, Hubli."

22. The relevant averments of the plaint are as under:

"5. I further state that, propositus Tavanappa was running a business establishment under the name and style of T.B. Lengade and the said concern was purely a Proprietary concern being established by Shri. Tavanappa. After his death the said concern i.e. the Suit Schedule B Property has been jointly succeeded by Shri. Bharamappa and Defendant No.1 and 2 and the said Bharamappa and the Defendant No.1 and 2 were jointly managing the said business and running the said business profitably and they were having joint share in the profits of the said business.

I also further state that, out of the said earnings the Bharamappa and the Defendant No.1 and 2 have purchased the Suit Schedule A property, when the same was open plot and thereafter out of the joint income of the family the said open plot has constructed the double storied building.

6. I further state that, accordingly the names of Bharamappa and Defendant No.1 and 2 came to be mutated in the City Survey Records and Municipal Records.

7. I also further state that, Shri Bharamappa and the Defendant No.1 and 2 were having $1/3^{\text{rd}}$ share each in both the suit properties.

8. I further state that, the Bharamappa died on or about 19.08.1995. After his death, I am being the only son has succeeded to the $1/3^{\text{rd}}$ share of Shri. Bharamappa in both the suit Schedule A and B properties. Hence, I am having $1/3^{\text{rd}}$ joint share in both the suit Schedule A and B properties. I am in joint possession of all the suit properties."

23. The above extracts make it clear that the Plaintiff has neither pleaded anything about the business of M/s Prashant Metals claiming his share therein, nor prayed for a share in the said business. The plaint averments are totally silent about the

business of M/s Prashant Metals and the rights of the Plaintiff, if any, in the said business. The only reference to the business of M/s Prashant Metals found in the plaint is in the description of Schedule 'A' property as "a double-storied commercial -cum-residential building comprised in CTS No. 1280/B-1 of CTS Ward No. II, measuring 11.7/9 square yards, situated at Opp. Moorusavirmath, Hubli, and also sheltering a running business establishment being run under the name and style of Prashant Metals (emphasis supplied)...". There is no whisper in the plaint regarding the person(s) who established the business of M/s Prashant Metals, the source of income for establishing the said business, the person(s) who is/are running the said business, or the right of the Plaintiff in such business. It is also to be noted that the Plaintiff has not described the business of M/s Prashant Metals in the schedule to the plaint in terms similar to the business of M/s T.B. Lengade, described in Schedule 'B' property.

24. The trial Court proceeded to hold that the Plaintiff has a share in the business of M/s Prashant Metals based on certain statements/admissions of Defendant No.1 and on the ground that Defendant No.2 has failed to enter the witness box

to support his claim of ownership over the said business. It is true that during his cross-examination, Defendant No.1 made certain statements/admissions to the effect that after the dissolution of the partnership firm pertaining to the business of M/s T.B. Lengade, Sri Bharamappa and Defendant No.2 continued in the joint family and that both of them were running the business of M/s Prashant Metals jointly. At the same time, during his evidence the Plaintiff did not make any statement much less a categorical one, regarding any of these aspects. Thus, the materials on record make it amply clear that the trial Court traveled beyond the pleadings and the reliefs sought in the plaint in granting relief in respect of the business of M/s Prashant Metals. Hence, Point Nos. (i) and (ii) are answered accordingly.

25. As stated above, the Plaintiff has maintained the suit seeking partition and separate possession of his legitimate share in the properties left behind by his father namely Sri Bharamappa, i.e., the share of Sri Bharamappa in Schedule 'A' and Schedule 'B' properties. Schedule 'A' is an immovable property bearing CTS No. 1280/B-1 situated in Hubli, and Schedule 'B' is the business establishment in the name and style of M/s T.B. Lengade, which is being run in the Lokhande

Building, M.G. Market, Hubli. The defendants have categorically admitted that the plot pertaining to Schedule 'A' property was purchased and then a building was constructed thereon, out of the earnings made in the business of M/s T.B. Lengade and that the plaintiff has a share in the said property. Further, during the cross-examination of the plaintiff conducted on 28.07.2018, the defendants specifically denied the plaintiff's right to seek a share in the business of M/s T.B. Lengade and in M/s Prashant Metals. The said contention of the defendants gives the impression that they understood the case of the plaintiff even in the absence of a specific pleading. Added to the above, after Defendant No.1 gave certain admissions in respect of the business of M/s Prashant Metals, Defendant No.2 sought an opportunity and adduced further evidence to support his claim that the business in the name of M/s Prashant Metals exclusively belongs to him. The additional evidence adduced by the parties as per the order of this Court is yet to be appreciated. In the above narrated facts and circumstances of the case, this Court opines that it would be proper to remit the case to the trial Court for fresh disposal, after affording the parties an opportunity to amend their pleadings or to file additional pleadings and to adduce additional evidence, if

any, apart from the evidence and additional evidence adduced in the case, in the interest of justice. In our view such a course would not only enable the parties to properly and effectively put forth their case before the Court and to secure a decision on the merits of the case, but also avoid multiplicity of proceedings and unnecessary re-litigation. Under these circumstances, it is held that the impugned judgment and decree deserves to be set aside.

26. In the result, this Court proceeds to pass the following:

ORDER

- (i) The appeal is allowed with cost throughout.
- (ii) The judgment and decree dated 28.07.2018 passed in O.S.No.325/2016 on the file of learned II Additional Senior Civil Judge, Hubli is set aside and the matter is remitted back to the trial court for fresh disposal in accordance with law in view of the observation made above.
- (iii) The parties are directed to appear before the trial court on 03.06.2026 at 11.00 a.m., to take notice of further proceeding in the suit. In default, the trial court is at liberty to proceed with the matter in accordance with law.
- (iv) The plaintiff is directed to implead his mother and sisters as parties to the suit by

maintaining necessary application before the trial court, which shall be filed on or before 10.06.2026. In default, the trial court is at liberty to pass suitable order, for non-joinder of necessary parties.

- (v) The plaintiff is permitted to suitably amend the plaint and incorporate necessary pleading and a prayer, to seek a share in the business of M/s Prashanth Metals, as observed in the body of the judgment, by maintaining a proper application on or before 10.06.2026.
- (vi) The defendants are at liberty to file their written statement/additional written statement, if any, to the amended plaint, within a period of 15 days from the date of serving a copy of the amended plaint on them.
- (vii) The trial court is directed to recast the issues in compliance with Order XIV of CPC as soon as the additional pleadings are completed.
- (viii) The trial court shall dispose of the suit as expeditiously as possible and within outer limit of nine months from 10.06.2026.
- (ix) The registry is directed to transmit entire record including the additional evidence adduced in the case (i.e., depositions and the documents marked) before learned Additional Registrar (Judicial) to the trial court, well in time.
- (x) All contentions of the parties on all aspects of the matter are kept open, for adjudication by the trial court afresh, after giving them reasonable opportunity of hearing including a chance of adducing additional evidence, if any.

- (xi) The parties and respective counsels are directed to co-operate with the trial court for disposal of the suit in compliance with the above direction of time bound disposal.

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

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

YAN/RKM
CT-CMU