

[2026 LiveLaw \(SC\) 812](#)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
S.V.N. BHATTI; J., N.V. ANJARIA; J.**

SPECIAL LEAVE PETITION (CIVIL) NOS. 22982-22983 OF 2026; August 13, 2026
SHIVAPPA versus SHANTAVVA AND OTHERS

Code of Civil Procedure, 1908 (CPC) — Section 107, Order XLI Rule 23, Order XLI Rule 24 & Order XLI Rule 27 — Scope and exercise of power of remand by the First Appellate Court — Remand is not a matter of routine course - An order of remand should not be adopted as a matter of ordinary course - The First Appellate Court is required not only to determine the legality and tenability of the Trial Court's judgment, but it also exercises all the jurisdiction that the Trial Court had to decide the issues - When the necessary pleadings and evidence (both oral and documentary) are already available on record, the First Appellate Court ought to decide the appeal itself on merits rather than remitting the matter to the Trial Court to re-frame issues and record further evidence, which only serves to cause unnecessary delay, uncertainty, and avoidable prolonged litigation - The discretion to remand is to be exercised only when imminently warranted by the specific circumstances of a given case (such as where a suit was disposed of strictly on a preliminary issue without evidence on other issues). [Paras 14 - 16]

Code of Civil Procedure, 1908 (CPC) — Framing of Issues & Appellate Power — Adequacy of Existing Issues - Where existing issues framed by the Trial Court are sufficiently broad and comprehensive to cover the core disputes between the parties (e.g., validity/binding nature of a registered sale deed and legal necessity), and the parties went to trial knowing the controversy and leading evidence accordingly, an appellate court cannot routinely remand the matter merely on the premise that specific distinct issues (such as limitation, possession, or whether the deed is sham/nominal) were not explicitly framed - The First Appellate Court possesses full jurisdiction to evaluate the available evidence and return findings on questions of fact and law. [Relied on *Ashwini Kumar K. Patel v. Upendra J. Patel & Ors.*, (1999) 3 SCC 161; *P. Purushottam Reddy & Anr. v. Pratap Steels Ltd.*, (2002) 2 SCC 686; *Zarif Ahmad (Dead) Through LRs. & Anr. v. Mohd. Farooq*, (2015) 13 SCC 673; Paras 14-17]

For Petitioner(s) Mr. Sharanagouda Patil, Adv. Mr. Anand Kolli, Adv. Ms. Supreeta Sharanagouda, AOR Mr. Kotresh A M, Adv. Mr. Vinod Kumar Srivastava, Adv. Mr. Vijay Bandi, Adv.

For Respondent(s) Mr. Sanket Shankrappa Ambali, Adv. Ms. G. Anusha, Adv. Mr. Basheerahmed, Adv. Mr. Abhinav Garg, AOR Mr. Rahul Singh Latwal, Adv. Mr. Divyanshu Singh, Adv. Ms. Pulkit, Adv.

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.
2. The Impugned Judgment allowed RFA No. 100251 of 2020 and RFA CROB No. 100005 of 2023 to the extent of Item No. '5' of the Plaint Schedule Property and remitted the matter to the Trial Court to frame issues, afford the parties an opportunity to adduce further evidence, and thereafter dispose of the Suit to the extent of Item No. '5' of the Plaint Schedule in O.S. No. 143 of 2015.
3. The consideration is confined to whether remand to the Trial Court is justified and lawful in the circumstances of the case. The Appellant is Defendant No. 2 in O.S. No. 143 of 2015 in the Court of I Addl. Senior Civil Judge & CJM, Dharwad. Respondent Nos. 1

and 2 were among the Plaintiffs, and the Suit was filed on 17.03.2015 seeking Partition and Separate Possession of the Plaint Schedule Items Nos. '1' to '5', and a declaration that the Sale Deed executed by one Madiwalappa in favour of Defendant No. 2 is illegal, null and void, and not binding on the Plaintiffs' share and entitlement. Plaintiff No. 1, Sharawwa, died during the pendency of the Suit.

4. The Plaintiffs contended that a Hindu Undivided Joint Family comprising the Plaintiffs and Defendant No. 1 existed. Madiwalappa was the propositus. The Plaint Schedule Properties are ancestral properties inherited through Madiwalappa and his predecessors-in-interest. On 28.06.1982, a registered sale deed for Suit Schedule Property Item No. '5' was executed by Madiwalappa in favour of Defendant No. 2. Item No. '5' comprises 5 Acres 12 Guntas in RS/Block No. 137/3 in Amminbhavi village, Dharwad Taluk. The Plaintiffs allege that the said Sale Deed dated 28.06.1982 was sham and bogus. Madiwalappa was addicted to bad habits and vices. Therefore, the transfer of Item No. '5' does not affect the rights and entitlements of the Plaintiffs and Defendant No. 1 in Item No. '5' of the suit property. There was no legal necessity, and the family has not derived any benefit from the sale deed dated 28.06.1982. Accordingly, the Suit was filed for the purposes referred to above. We do not refer to the Written Statement filed by Defendant No. 1, both for the view taken by the High Court and because Defendant No. 1 has not challenged the Decree and Judgment of the High Court dated 27.04.2026. We make it clear that, in the absence of a challenge to Item Nos. '1' to '4' of the Suit Schedule, we are not considering the same.

4.1 Defendant No. 2 has resisted the Suit by contending that Item No. '5' of the Suit Schedule was purchased by him and that he holds valid title. The Sale Deed dated 28.06.1982 is valid and binding on the Plaintiffs and Defendant No. 1. The Sale Deed was executed to repay a loan borrowed by Madiwalappa for his daughter's marriage expenses and to repay a bank loan. From the date of execution of the Sale Deed in his favour, he has been in exclusive possession and enjoyment of the Suit Schedule property No. 5 as the absolute owner. It is further contended that the Plaintiffs have filed the Suit in collusion with Defendant No. 1 to grab Item No. '5' of the Suit Schedule.

5. The Trial Court framed the following Issues:

"1. Whether the Plaintiffs prove that, they and the 1st Defendant constitute a Hindu undivided joint family and schedule properties are the ancestral properties?"

2. Whether the 2nd Defendant proves that, on 04.01.1980, partition took place between Yallappa, Madiwalappa, Shankrappa, Rayappa, Shivappa and Smt. Mallawwa?"

3. Whether the 2nd Defendant proves that, Madiwalappa sold suit Item No. 5 property by Registered Sale Deed dtd. 28.06.1982 for family legal necessity?"

4. Whether the Plaintiffs are entitled to the plaint relief?"

5. What Order or Decree?"

6. The Suit was decreed in part, resulting in RFA No. 100251 of 2020 and RFA. CROB No. 100005 of 2023. The Trial Court, on the Plaintiffs' prayer for partition of Items Nos. 1 to 4, accepted the Plaintiffs' case and recorded that Defendant No. 1 supports the Plaintiffs' case. Defendant No. 2, the only contesting party, does not dispute the case made out by the Plaintiffs and the defence taken by Defendant No. 1 in claiming their share in the Suit Schedule properties Nos. 1 to 4. In view of the pleadings and evidence, the Suit Schedule properties are ancestral properties of Madiwalappa, which he acquired in a family partition dated 04.01.1980. Plaintiffs Nos. 2 and 3 and Defendant No. 1, who

are admittedly joint family members, have equal shares, i.e., 1/3rd shares, in the Suit Schedule properties Nos. 1 to 4.

7. The crucial aspects concerned in the Civil Appeals are Item No. '5' and Issue Nos. '2' and '3' framed by the Trial Court.

7.1 After considering the pleadings and oral and documentary evidence, the Trial Court held that the Plaintiff failed to produce any credible evidence to prove that Madiwalappa was addicted to bad vices. The Sale Deed is registered in accordance with the law and is valid in the eyes of the law.

7.2 The Plaintiffs and Defendant No. 1 have not disputed the signature of Madiwalappa on the Sale Deed. On the date of execution of the Sale Deed, Madiwalappa was the Karta of the HUF. It is natural and believable that in 1982, Madiwalappa was responsible for the family's affairs, comprising the Plaintiffs and Defendant No. 1, as his son, Defendant No. 1, was a minor.

7.3 Further, the recitals of the Sale Deed show that Defendant No. 2 was 33 years old; that Madiwalappa required funds to discharge loans he had taken for marriage; and that a valuable sale consideration of Rs. 16,000/- was paid by Defendant No. 2 to the late Madiwalappa.

7.4 Since the Suit schedule property No. 5 is situated abutting the land of Defendant No. 2, he had purchased the Suit schedule Item No. '5' from Madiwalappa for convenient cultivation.

7.5 Regarding possession, the Trial Court has held that the recitals in the Sale Deed show that possession was handed over to Defendant No. 2 on the date of its execution. It cannot be said that Defendant No. 2 was not in possession merely because his name was not mentioned in the Revenue records. Possession follows title, and Defendant No. 2 has acquired title through the registered Sale Deed dated 28.06.1982.

7.6 Further, on the question of limitation, the Trial Court observed that the Plaintiffs challenged the Sale Deed thirty-three years after its execution. As per Articles 58 and 59 of the Limitation Act, 1963, the challenge must be made within three years from the date of execution or knowledge. Hence, the Plaintiffs were denied the relief of declaration.

8. The High Court, through the Impugned Judgment, while confirming the findings of the Trial Court on Item Nos. '1' to '4' of the Suit Schedule, reversed the findings on Item No. '5' and remitted the matter to the Trial Court, as noted above. We will, in general, deal with the findings of the Impugned Judgment on the lack of averments and evidence, primarily on possession, limitation, etc. The findings of the High Court can be summarised as follows:

8.1 There was no dispute among the parties regarding the partition effected by the Partition Deed dated 04.01.1980, and the only contention of the Plaintiffs was that the Sale Deed dated 28.06.1982 was a sham document and that it was not acted upon. When such a specific pleading was made in the Plaint to that effect, the Trial Court ought to have framed the issue as to whether the said Sale Deed was a sham document and whether the parties had acted upon it.

8.2 Even though Defendant No. 2 did not take the defence that the Suit is barred by limitation, it was the duty of the Court to frame an issue regarding limitation, as limitation is a question of law.

8.3 The Appellants did not place any material before the Court to prove their possession of the subject property from the date of execution of the Sale Deed in their favour. Such

being the case, the matter requires reconsideration to address the issue of limitation, as well as whether the Sale Deed is a sham document and whether the parties have acted upon it, to be decided by the Trial Court in addition to the possession.

8.4 The material available on record, particularly with regard to the issues involved between the parties, was not raised by the Trial Court as contemplated under Section 3(1) as well as Article 109 of the Limitation Act.

8.5 It is a case for remitting the matter to the Trial Court to reconsider it afresh and frame appropriate issues, and, if necessary, to allow the parties to adduce evidence, and the Trial Court shall give them an opportunity to adduce their evidence for proper adjudication.

9. Hence, the Civil Appeals.

10. Mr. Sharanagouda Patil, Counsel for Defendant No. 2, contends that the remand of Item No. '5' of the Suit Schedule to the Trial Court is, prima facie, illegal and unwarranted. Issue Nos. '2' and '3' are complete and comprehensive in light of the averments in the Plaint and the Written Statement. The First Appellate Court is required not only to determine whether the Judgment and Decree of the Trial Court are legal and tenable in the circumstances of the case, but also to exercise all the jurisdiction the Trial Court had to decide the issues while disposing of the Appeal. The remand is avoidable and will perpetuate litigation between the parties for another decade or two. The Plaintiffs are praying for a declaration regarding the Sale Deed executed on 28.06.1982, and Defendant No. 2 is resisting the Suit. The pleadings are complete, and nothing more is needed from that perspective. The issues framed not only test the limitation but also the legal necessity, binding nature, and the consequential effect of filing a Suit on 17.03.2015. He relies on *Ashwini Kumar K. Patel v. Upendra J. Patel & Ors.*,¹ for the proposition that the remand of a matter is not a matter of course but is guided by judicial discretion.

11. Mr. Sanket Shankrappa Ambali, Counsel for the Respondents, argues that the remand does not prejudice either party and that not only is an issue framed, but the Impugned Judgment also directed the Trial Court to afford an opportunity to adduce further evidence. Therefore, while the Plaintiffs are required to place evidence of knowledge, etc., to bring the Suit within the period of limitation, Defendant No. 2 is required to prove exclusive possession claimed pursuant to the Sale Deed dated 28.06.1982. In deciding the question of limitation, the possession claimed will also be decided. Therefore, the Order of remand is sustainable.

12. We have taken note of the limited submissions of the Learned Counsel appearing for the parties and perused the record.

13. In the circumstances of the case, the question for consideration is whether the remand for reconsideration of the prayer for partition and declaration regarding Item No. '5' in the Impugned Judgment is valid in law. **14.** Before reverting to the reasons in the Impugned Judgment, a few leading precedents on the point, including the one on which the Defendant No. 2 has relied, are referred to.

14.1 In *Ashwini Kumar (supra)*, this Court has held as follows:

"8. In our view, the High Court should not ordinarily remand a case under Order 41 Rule 23 CPC to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself

¹ (1999) 3 SCC 161.

decided the appeal one way or the other. It could have considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of the trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima facie case on the material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary.”

In *P. Purushottam Reddy & Anr. v. Pratap Steels Ltd.*², this Court was of the view that:

“11. It is true that a specific issue was not framed by the trial court. Nevertheless, the parties and the trial court were very much alive to the issue whether Section 16(c) of the Specific Relief Act was complied with or not and the contentions advanced by the parties in this regard were also adjudicated upon. The High Court was to examine whether such finding of the trial court was sustainable or not — in law and on facts. Even otherwise the question could have been gone into by the High Court and a finding could have been recorded on the available material inasmuch as the High Court being the court of first appeal, all the questions of fact and law arising in the case were open before it for consideration and decision.”

In *Zarif Ahmad(Dead) Through LRs. & Anr. v. Mohd. Farooq*³, it was held:

“13. No doubt, Section 107 CPC empowers the appellate court to remand a case, but it simultaneously empowers the appellate court to take additional evidence or to require such evidence to be taken. Rule 24 Order 41 CPC provides that where evidence on record is sufficient, the appellate court may determine the case finally. It is not a healthy practice to remand a case to the trial court unless it is necessary to do so as it makes the parties to wait for the final decision of a case for the period which is avoidable. Only in rare situations should a case be remanded, e.g., when the trial court has disposed of a suit on a preliminary issue without recording evidence and giving its decision on the rest of the issues, but it is not so in the present case.”

15. The High Court has recorded its findings on the partition, said to have taken place on 04.01.1980, among Yallappa, Madiwalappa, Shankarappa, Rayappa, Shivappa, and Mallawwa, as evidenced by a registered partition deed. The Plaintiffs' case is that the Sale Deed executed on 28.06.1982 for one of the items partitioned on 04.01.1980 is sham, void, and not binding on the Plaintiffs. Accordingly, the High Court held that the Trial Court erred in not framing a specific issue on the validity of the Sale Deed dated 28.06.1982. Defendant No. 2 has not specifically averred in the Written Statement that the Suit is barred by limitation. Under Section 3 of the Limitation Act, it is the duty of the Court to decide whether the Suit is within the period of limitation, and for that purpose, a specific issue ought to have been framed. Defendant No. 2 claims exclusive possession, and a separate issue ought to have been framed.

16. The reason for remand assigned by the High Court is that, despite a plea that the Sale Deed dated 28.06.1982 is sham and nominal, no issue was framed. We have perused the Plaint and Written Statement. Issue No. 2, excerpted *supra*, is a comprehensive issue regarding the partition dated 04.01.1980. Similarly, Issue No. 3 covers the sale of Item No. '5' of the Suit Schedule in favour of Defendant No. 2, whether valid or not. Therefore, the Trial Court has not decided the Suit without relevant issues being presented by the pleadings of the parties. In our view, remand is not to be adopted as a matter of ordinary course, and the Judgment of remand reflects the Appellate Court's incorrect exercise of its discretion. In the case at hand, the parties have adduced oral and documentary evidence in accordance with the burden and onus of proof fastened on them. At this stage, directions are given to reframe issues, adduce further evidence, and afford

² (2002) 2 SCC 686.

³ (2015) 13 SCC 673.

the parties a further opportunity to lead evidence. There were no circumstances preventing the first appellate court from deciding the points in issue. Consequently, remanding the case to the Trial Court is completely contrary to the legal principles laid down by this Court in the decisions mentioned above. The correctness or otherwise of the case of the contesting parties is appreciated from the pleadings, issues, oral and documentary evidence, and a finding can be returned instead of remitting the matter to the Trial Court. Our view may not be understood as holding that the Appellate Court, in the given circumstances, cannot provide opportunities to the parties to adduce evidence, including after accepting a prayer under Order 41 Rule 27 of the Civil Procedure Code, 1908. We express our view that such discretion for remand is exercised when imminently warranted by the circumstances of a given case.

17. As this Court is considering whether the remand is justified, we are not examining the other contentions canvassed by both sides, which, in our view, would touch upon the merits of the matter. Hence, the findings in the Impugned Judgment *vis-à-vis* item No. '5' of the Suit Schedule, and the Order of remand to the Trial Court are set aside. For the said limited purpose, the appeals are restored, and we request the High Court to dispose of the Appeals on the merits.

18. Civil Appeals are allowed.

19. Pending Application(s), if any, shall stand disposed of accordingly.

20. No order as to costs.

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