



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF NOVEMBER, 2024

PRESENT

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND**

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO.100305 OF 2020 (DEC/INJ)

BETWEEN:

1. SRI GOUDAPPA S/O TIMMANNA PATIL
AGE: 69 YEARS, OCC: AGRICULTURE,
R/O: SORAGAON, TQ: MUDHOL,
DIST: BAGALKOT-587101.
2. SMT. TANGEWWA W/O GOUDAPPA PATIL
AGE: 64 YEARS, OCC: HOUSEHOLD WORK,
R/O: SORAGAON, TQ: MUDHOL,
DIST: BAGALKOT-587101.

...APPELLANTS

(BY SRI NAGPRASAD S. KINI, ADVOCATE)

AND:

1. SRI HANAMANT S/O VENKAPPA PATIL
AGE: 28 YEARS, OCC: AGRICULTURE,
R/O: ANANDNAGAR, TQ: MUDHOL,
DIST: BAGALKOT-587101.
CALLING HIMSELF AS HANAMANT
A/F GOUDAPPA PATIL
2. SRI VENKAPPA S/O TIPPANNA PATIL
SINCE DECEASED BY HIS LRS
RESPONDENT NOS.1 &3
3. SMT. SHAKUNTALA W/O VENKAPPA PATIL
AGE: 59 YEARS, OCC: HOUSEHOLD WORK,
R/O: ANANDNAGAR, TQ: MUDHOL,
DIST: BAGALKOT-587101.

...RESPONDENTS

(BY SRI S.B. HEBBALLI, ADV. FOR R1, NOTICE TO R3 IS HELD
SUFFICIENT, R2-DECEASED AND R1 & R3 ARE HIS LEGAL HEIRS)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 18.12.2019 PASSED IN
O.S.NO.57/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JUDICIAL MAGISTRATE FIRST CLASS, MUDHOL, PARTLY ALLOWING
THE SUIT FILED FOR DECLARATION AND INJUNCTION.



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

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is disposed of at the stage of admission itself with the consent of appellants' counsel and counsel for respondent no.1.

2. The appellants are the plaintiffs in O.S.No.57/2019 on the file of Senior Civil Judge, Mudhol. The plaintiffs' suit is for declaration that they are the exclusive owners being in possession of the suit properties and for permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of the suit properties. The plaintiffs are spouses. Defendants 2 and 3 are the parents of defendant no.1. Defendant no.2 is the brother of the first plaintiff. They alleged that defendants 1 to 3 colluded among themselves to fabricate an adoption deed to the effect that defendant no.1 was given in adoption to the plaintiffs under a registered adoption deed dated 04.05.2006. At the time of adoption, defendant no.2 was



working as Taluka Surveyor in the Revenue Department and he colluded with revenue authorities and entered the name of the first defendant in the revenue records in respect of the suit properties. But plaintiffs never treated him as an adopted son and therefore the adoption dated 04.05.2006 was not binding on them. It is stated that plaintiff no.1 filed O.S.No.211/2006 against his brothers and the first defendant herein for partition in respect of lands bearing R.S.91/3 measuring 1 acre 16 guntas and Sy.No.130/2A (part) measuring 4 acres. It is stated that it was the second defendant who managed plaintiff no.1 to file that suit. It is also stated that defendant no.2 managed to obtain a decree by playing fraud on plaintiff no.1 and therefore the said decree was not binding on the plaintiffs. In this premise suit was filed.

3. Defendant no.1 got filed an application under Order VII Rule 11(a) and (d) of CPC seeking to reject the plaint. According to the first defendant the suit was barred by time. And a compromise reported in O.S.No.211/2006 on 19.08.2006 binds the plaintiffs. Having remained silent for



13 years he brought a suit in the year 2019 therefore the suit was highly time barred.

4. The Trial Court rejected the plaint on two grounds, firstly that suit was time barred and secondly that it was hit by Order XXIII Rule 3 of CPC.

5. It is the submission of Sri Kini Nagprasad Suresh learned counsel for the appellants that defendants 2 and 3 played fraud on plaintiffs in execution of the adoption deed and also in obtaining compromise decree in the earlier suit, O.S.No.211/2006. He also submits that in the present suit the properties in Sy.No.208/4 and Sy.No.82/4 were not the subject matter of compromise and therefore this suit survives. According to him rejection of plaint was impermissible.

6. In these set of circumstances we are not inclined to accept this line of argument of Sri Kini Nagprasad Suresh. The subject matter of earlier suit was for partition, in which plaintiff no.1 himself stated about adopting the first defendant. Now in this suit adoption has been questioned. The compromise entered into in O.S.No.211/2006 on



19.08.2006 should have been questioned in the very same suit if at all fraud was played on the plaintiffs in giving consent to the compromise. The plaintiffs having stated about adoption in the former suit, cannot in the subsequent suit i.e., the present suit questioned the validity of adoption. Mere inclusion of some other properties in the present suit does not take away the effect of binding nature of adoption. Since validity of adoption is the main premise of this suit, the same having been already admitted by plaintiffs they cannot reopen it. In these circumstances we are of the opinion that apparently the present suit is time barred in as much as it was not filed within the prescribed time after 19.08.2006. And a suit questioning the validity of the compromise dehors the provisions of Order XXIII Rule 3A CPC is not maintainable. There is no infirmity in rejection of plaint. We do not find any merits in this appeal and it is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE