



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 20TH DAY OF DECEMBER, 2024
BEFORE
THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR
MISCELLANEOUS SECOND APPEAL NO. 51 OF 2019 (RO)
C/W
MISCELLANEOUS SECOND APPEAL NO. 50 OF 2019

IN MSA No. 51/2019

BETWEEN:

V. KESHAVA
S/O VENKATEGOWDA,
AGED ABOUT 40 YEARS,
R/AT ARIKERE VILLAGE,
GERAHALLI POST AND KASABA HOBLI,
CHIKKABALLAPUR TALUK – 562 101.

...APPELLANT

(BY SRI. VARADARAJAN M S., ADVOCATE)

AND:

1. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE – 560 001.
2. THE REVENUE SECRETARY
REVENUE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE – 560 001.
3. THE DEPUTY COMMISSIONER
SHIDLAGHATTA ROAD,
CHIKKABALLAPUR TALUK AND



DISTRICT – 562 101.

4. THE ASSISTANT COMMISSIONER
ASSISTANT COMMISSIONER OFFICE,
CHIKKABALLAPUR TALUK AND
DISTRICT – 562 101.
5. THE TAHASILDAR
TALUK OFFICE,
CHIKKABALLAPUR TALUK AND
DISTRICT – 562 101

...RESPONDENTS

(BY SRI. RAJENDRA.K.R., AGA FOR R1 TO R5)

THIS MSA FILED UNDER ORDER 43 RULE(1)(U) OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 12.02.2019 PASSED IN R.A.NO.62/2016 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, CHICKBALLAPUR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 23.11.2015 PASSED IN O.S.NO.19/2011 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC, CHIKKABALLAPUR, AND FURTHER MATTER IS REMANDED TO THE TRIAL COURT TO FRAME PROPER ISSUES AND PROVIDE AN OPPORTUNITY TO BOTH THE PARTIES TO LEAD THEIR EVIDENCE AFTER FRAMING PROPER ISSUES.

IN MSA NO. 50/2019

BETWEEN:

V.KESHAVA
S/O VENKATEGOWDA
AGED ABOUT 40 YEARS
R/AT ARIKERE VILLAGE,
GERAHALLI POST AND KASABA HOBLI
CHIKKABALLAPUR TALUK – 562 101.

...APPELLANT

(BY SRI. VARADARAJAN M S.,ADVOCATE)

AND:

1. THE CHIEF SECRETARY



GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE – 560 001.

2. THE REVENUE SECRETARY
REVENUE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE – 560 001.
3. THE DEPUTY COMMISSIONER
CHIKKABALLAPUR TALUK
CHIKKABALLAPUR (D) – 562 101.
4. THE ASSISTANT COMMISSIONER
CHIKKABALLAPUR SUB -DIVISION
CHIKKABALLAPUR - 562 101.
5. THE TAHASILDAR
CHIKKABALLAPUR TALUK
CHIKKABALLAPUR(D) – 562 101

...RESPONDENTS

(BY SRI. RAJENDRA K.R. AGA FOR R1 TO R5)

THIS MSA FILED UNDER ORDER 43 RULE 1(U) OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 12.02.2019 PASSED IN R.A.NO. 119/2018 ON THE FILE OF THE I-ADDL. SENIOR CIVIL JUDGE AND JMFC., CHIKKABALLAPUR ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 23.11.2015 PASSED IN O.S.NO. 19/2011 ON THE FILE OF THE PRINCIPAL PRL. CIVIL JUDGE AND JMFC., CHIKKABALLAPUR, PARTLY DECREERING THE SUIT FOR DECLARATION AND MANDATORY INJUNCTION AND FURTHER REMANDING BACK THE MATTER TO THE TRIAL COURT WITH A DIRECTION TO DISPOSE OF THE CASE AFRESH ON MERITS IN ACCORDANCE WITH LAW EXPEDITIOUSLY.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

MSA No.51/2019 is filed by the plaintiff challenging the order dated 12.02.2019 passed in R.A.No.62/2016 on the file of I Additional Senior Civil Judge and JMFC, Chickballapur (hereinafter referred to as 'the First Appellate Court' for short), thereby, setting aside the judgment and decree dated 23.11.2015 passed in O.S.No.19/2011 on the file of Principal Civil Judge and JMFC, Chickballapur (hereinafter referred to as 'the Trial Court' for short) remanded the case to the Trial Court for fresh disposal.

2. MSA No.50/2019 is filed by the plaintiff challenging the order dated 12.02.2019 passed in R.A.No.119/2018 on the file of I Additional Senior Civil Judge and JMFC, Chickballapur, thereby, setting aside the judgment and decree dated 23.11.2015 passed in O.S.No.19/2011 on the file of Principal Civil Judge and



JMFC, Chickballapur, remanded the case to the Trial Court for fresh disposal.

3. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

4. The plaintiff has filed suit for declaration and consequential relief of mandatory injunction to declare that the plaintiff is in possession and enjoyment of the suit property bearing Sy.No.74 new Sy.No.74/2 measuring 02 acres 20 guntas are assigned as Sy.No.74/3 in the survey documents to carry into effect the name of the plaintiff in the revenue records. Therefore, the plaintiff is claiming that he is the owner of the said suit schedule land.

5. On the other hand, the defendants/Government represented through various Government Authorities and filed a written statement stating that the suit schedule land is a Government land. After a full fledged trial, the Trial Court has decreed the suit in part declaring that the



plaintiff is absolute owner in respect of the suit schedule land to an extent of 01 acre 27 guntas in Sy.No.74 (after renumbering Sy.No.74/3).

6. Being aggrieved by decreeing the suit so far as granting 01 acre 27 guntas of land to the plaintiff in Sy.No.74/3, the defendants/Government have preferred R.A.No.62/2016 before the First Appellate Court. In the said R.A.No.62/2016 the plaintiff has filed cross objection so far as against not granting 0.33 guntas of land and the said cross objection is numbered as R.A.No.119/2018. In R.A.No.119/2018 the rank of the parties is shown as vice versa. The cross objector must be the appellant/cross objector and the Government Authorities are to be the respondents in R.A.No.119/2018. Whatever may be against the judgment and decree passed in O.S.No.19/2011 there are two appeals filed before the First Appellate Court. One is R.A.No.62/2016 filed by the defendants/Government Authorities and another one is



numbered as R.A.No.119/2018 filed by the cross objector/plaintiff.

7. The Trial Court after full fledged trial, received the evidence and decided the case by decreeing the suit partly as above stated. When against the judgment and decree passed by the Trial court, two appeals are filed as above stated, the same ought to have been considered by the First Appellate Court on merits. But the First Appellate Court on the very same day, on 12.02.2019 in both the cases has passed order of remanding the case to the Trial Court after setting aside the judgment and decree passed by the Trial Court. The reason assigned by the First Appellate Court is that since the suit is for injunction the issue in respect of alleged interference is not framed therefore, with direction to frame issue regarding alleged interference the matter is remanded by setting aside the judgment and decree passed by the Trial Court.

8. Here, the suit is filed for declaration and for consequential relief of mandatory injunction after declaring



that the plaintiff is owner of the suit schedule land and for consequential relief of carrying out of entries in the revenue records. When this being the factual matrix and relief claimed, there is no question of framing of alleged interference therefore, the First Appellate Court ought to have decided the case on its merits, considering the legality of judgment and decree passed by the Trial Court instead of remanding the case to the Trial Court. This is not correct approach of the First Appellate Court. Therefore, the First Appellate Court has not decided the case on its merits, and the remand order made by the First Appellate Court is liable to be set aside and a direction is issued to the First Appellate Court to decide the case on its merits, considering the legality of the judgment and decree passed by the Trial Court then this Court without expressing any opinion on the merits involved in the case, remanded the cases to the First Appellate Court to decide the appeals filed by the Government Authorities and the plaintiff on merits as per law.



9. Therefore, the orders passed by the First Appellate Court in both R.A.No.62/2016 and R.A.No.119/2018 are hereby set aside and remanded the matters to First Appellate Court to hear the appeal and cross objection on merits and pass appropriate orders.

10. In MSA No.50/2019 the respondents - Government Authorities have filed I.A.No.1/2021 for production of additional evidence. The said I.A.No.1/2021 is allowed and the Government Authorities are permitted to adduce further evidence if the Government Authorities wish to lead additional evidence before the First Appellate Court.

11. Hence I proceed to pass the following:

ORDER

- i. The appeals in MSA No.50/2019 and MSA No.51/2019 are hereby allowed.
- ii. The order dated 12.02.2019 passed in R.A.No.62/2016 on the file of I Additional Senior Civil Judge and JMFC, Chickballapur and order dated 12.02.2019 passed in



R.A.No.119/2018 on the file of I Additional Senior Civil Judge and JMFC, Chickballapur are is hereby set aside.

- iii. The matters are remanded to the First Appellate Court to consider R.A.No.62/2016 and R.A.No.119/2018 in accordance with law on merits to consider the legality of the judgment and decree passed by the Trial Court.
- iv. The parties shall appear before the First Appellate Court on 30.01.2025 without accepting notice from the First Appellate Court.
- v. All other contentions are kept open.
- vi. The First Appellate Court is directed to dispose of the appeals within a period of 9 months from 30.01.2025.
- vii. The documents produced along with I.A.No.1/2021 shall be forwarded to the First Appellate Court for consideration of the case in accordance with law.

SD/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA
List No.: 1 Sl No.: 33