



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 9TH DAY OF DECEMBER 2025

PRESENT

THE HON'BLE MR. JUSTICE R.DEVDAS

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR FIRST APPEAL NO.100028 OF 2025 (PAR)

C/W. REGULAR FIRST APPEAL NO.100080 OF 2025 (PAR)

IN RFA NO.100028 OF 2025:

BETWEEN:

1. SRI. KHATALSAB S/O. BAPUSAHEB KADABI,
AGE: 58 YEARS, OCC: PRIVATE JOB,
R/O: GUNDLUR CHAWL, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.

2. SRI. BABUSAB S/O. BAPUSAHEB KADABI,
AGE: 56 YEARS, OCC: PRIVATE JOB,
R/O: GUNDLUR CHAWL, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.

SRI. FAKRUSAHEB S/O. MUGUTSAB TIGADI
SINCE DECEASED BY LR's.,

3. SRI. ISMAIL S/O. FAKRUSAHEB TIGADI ,
AGE: 57 YEARS, OCC: PRIVATE JOB,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.

4. SRI. IBRAHIM S/O. FAKRUSAHEB TIGADI,
AGE: 55 YEARS, OCC: PRIVATE JOB,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.

SRI. YALLAPPA S/O. GURUPADAPPA BETAGERI
SINCE DECEASED BY LR's.,

MANJANNA
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5. SMT. HOLEWWA W/O. YALLAPPA BETAGERI,
AGE: 76 YEARS, OCC: HOUSEHOLD,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
6. SRI. MAHADEVAPPA S/O. YALLAPPA BETAGERI,
AGE: 58 YEARS, OCC: AGRICULTURE,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
7. SRI. BASAPPA S/O. YALLAPPA BETAGERI,
AGE: 54 YEARS, OCC: AGRICULTURE,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
8. SRI. SHIVANAND S/O YALLAPPA BETAGERI ,
AGE: 45 YEARS, OCC: AGRICULTURE,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI
9. SRI. BALAPPA S/O. YALLAPPA BETAGERI ,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI
10. SRI. GURUPAD S/O. YALLAPPA BETAGERI,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: ANAGOL ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
- SRI. SHANKAR S/O. YALLAPPA BETAGERI
SINCE DECEASED BY LR's.,
11. SMT. LALITA W/O. SHANKAR BETAGERI,
AGE: 38 YEARS, OCC: HOUSEHOLD,
R/O: DHARWAD ROAD, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
12. SRI. NISARAHEMAD S/O. FAKRUSAB TIGADI,
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O: JIGAJINNI GALLI, SAMPAGAON,
TQ: BAILHONGAL, DIST: BELAGAVI.



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13. SRI. AAYUB S/O. FAKRUSAB TIGADI,
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O: BASAVESHWAR NAGAR, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
14. SRI. SULEMAN S/O. FAKRUSAB TIGADI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: BASAVESHWAR NAGAR, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
- SRI. MEHBOOB S/O. FAKRUSAB TIGADI,
SINCE DECEASED BY LR's.,
15. SMT. RIYANA W/O. MEHBOOB TIGADI,
AGE: 52 YEARS, OCC: HOUSEHOLD,
R/O: BASAVESHWAR NAGAR, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
16. SRI. IMTIYAZ S/O. MEHBOOB TIGADI,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O: BASAVESHWAR NAGAR, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
17. SRI. FAYAZAHMAD S/O. MEHBOOB TIGADI,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: BASAVESHWAR NAGAR, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
18. SMT. AASIYA D/O. GOUSEBUDDIN SANGOLLI,
AGE: 34 YEARS, OCC: HOUSEHOLD,
R/O: BASAVESHWAR NAGAR, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
19. SMT. SANIYA W/O. MUJAFAR MULLA,
AGE: 28 YEARS, OCC: HOUSEHOLD,
R/O: MACCHE, BELAGAVI, DIST: BELAGAVI.
20. SRI. BASAVARAJ S/O. SIDDAPPA KELAGINAMANI,
AGE: 42 YEARS, OCC: AGRICULTURE,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.



21. SRI. CHANDRASHEKHAR S/O. DANAPPA JATTI,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: PINJAR GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
22. SRI. DUNDAPPA S/O. DANAPPA JATTI,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O: PINJAR GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
23. SRI. SHIVANAND S/O. DANAPPA JATTI,
AGE: 41 YEARS, OCC: AGRICULTURE,
R/O: PINJAR GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
24. SRI. MALIKSAB S/O. HASANSAB BEPARI,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O: ISLAMPUR GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
25. SRI. SHAMISAB S/O. KHADIRSAB BEPARI,
AGE: 55 YEARS, OCC: AGRICULTURE,
R/O: HOSA ONI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
26. SRI. GOUSKHADHIR S/O. SHOUKATALI KADABI,
AGE: 56 YEARS, OCC: AGRICULTURE,
R/O: HOSA ONI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
27. SRI. ALLABHAKSH S/O. SHOUKATALI KADABI,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: HOSA ONI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
28. SRI. BASIRAHEMAD S/O. SHOUKATALI KADABI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: HOSA ONI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.



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29. SRI. RIYAZAHMAD S/O. SHOUKATALI KADABI,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: HOSA ONI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
30. SMT. MUMTAZ W/O. MOHAMADGOUS CHIKKODI,
AGE: 53 YEARS, OCC: HOUSEHOLD,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.
31. SRI. MOHAMADSADIQ S/O. HAJARATSAAB MUJAWAR,
AGE: 30 YEARS, OCC: AGRICULTURE,
R/O: HOSA ONI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
32. SMT. TASLIM W/O. ASIF VARJI,
AGE: 28 YEARS, OCC: HOUSEHOLD,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.
33. SMT. MEHRAJABANU
W/O. IMANHUSSIAN ANKALE @ GAJJARI,
AGE: 50 YEARS, OCC: HOUSEHOLD,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.
34. SMT. NASHEEMA W/O. MEHABOOB KOUJALAGI,
AGE: 44 YEARS, OCC: HOUSEHOLD,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.
- SMT. AYESHA W/O. NOORAHMAD HARIHAR,
SINCE DECEASED BY HER LR's.,
35. KUM. TABREZ S/O. NOORAHMAD HARIHAR
AGE: 13 YEARS, OCC: STUDENT.
36. KUM. UJMA D/O. NOORAHMAD HARIHAR,
AGE: 09 YEARS, OCC: STUDENT,

BOTH ARE R/O: BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.



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APPELLANT NOS.35 AND 36 ARE MINORS
REP. BY GUARDIAN APPELLANT NO.28.

37. SRI. PRAKASH S/O. RAMAPPA BETAGERI,
AGE: 59 YEARS, OCC: AGRICULTURE,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.
38. SMT. SHAILAJA W/O. HANAMANTH BETAGERI,
AGE: 42 YEARS, OCC: HOUSEHOLD,
R/O: BAILHONGAL, TQ: BAILHONGAL,
DIST: BELAGAVI.
39. SMT. MAHEJABEEN
W/O. KHWAJASHAMSUDDIN BADEGHAR,
AGE: 49 YEARS, OCC: HOUSEHOLD,
R/O: MOJI GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
40. SRI. IMRAN S/O. MOHAMMEDRAFIQ BADEGHAR,
AGE: 33 YEARS, OCC: AGRICULTURE,
R/O: MOJI GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
41. SRI. MAKABOOLAHMED
S/O. MOHAMMEDRAFIQ BADEGHAR,
AGE: 31 YEARS, OCC: AGRICULTURE,
R/O: MOJI GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
42. SRI. MOHAMMEDSALIM
S/O. MOHAMMEDRAFIQ BADEGHAR,
AGE: 29 YEARS, OCC: AGRICULTURE,
R/O: MOJI GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.
43. SRI. MOHAMMEDSHOIB
S/O. MOHAMMEDRAFIQ BADEGHAR,
AGE: 26 YEARS, OCC: AGRICULTURE,
R/O: MOJI GALLI, BAILHONGAL,
TQ: BAILHONGAL, DIST: BELAGAVI.

...APPELLANTS

(BY SRI. MRUTYUNJAY TATA BANGI, ADVOCATE FOR
SRI. S.S.YALIGAR AND SRI. SHIVAKUMAR APARAJ, ADVOCATES)



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AND:

1. SHRI. MALLIKARJUN DEV TRUST, BAILHONGAL,
REPRESENTED BY ITS CHARMAN,
SHRI. BABANNA S/O. ADIVEPPA DHAMMANAGI,
AGE: 57 YEARS, OCC: BUSINESS,
R/O: BAILHONGAL-591102.
2. SHRI. SHIVASHANKAR S/O. VEERABHADRAPPA
HARUGOP, AGE: 70 YEARS, OCC: RETIRED GOVT.
SERVANT, R/O: H.NO.2420, RAGANNAVAR GALLI,
NEAR KBS NO.3, BAILHONGAL-591102.
3. SHRI. NAGESH S/O. MALLESHAPPA PAMPANNAVAR,
AGE: 50 YEARS, OCC: BUSINESS,
R/O: BILLUR GALLI, BAILHONGAL-591102.
4. SHRI. NEELAKANT S/O. PARANNA ASUNDI,
AGE: 76 YEARS, OCC: RETIRED
GOVERNMENT SERVANT,
R/O: DHARWAD BY-PASS ROAD,
BAILHONGAL-591102.
5. SHRI. KALLAPPA S/O. SHIVABASAPPA ARALIKATTI,
AGE: 58 YEARS, OCC: BUSINESS,
R/O: K.C. NAGAR, 1ST CROSS, BAILHONGAL-591102.
6. SHRI. RUHRAPPA S/O. SHIVAPPA HUDED,
AGE: 47 YEARS, OCC: BUSINESS,
R/O: KALMATH GALLI, BAILHONGAL-591102.
7. SHRI. NAGANNA S/O. GIRIMALLAPPA HUDED,
SECRETARY OF THE TRUST,
AGE: 67 YEARS, OCC: RETIRED GOVT. SERVICE,
R/O: HUDDERED HOUSE, BAILHONGAL-591102.
8. THE TOWN MUNICIPAL COUNCIL, BAILHONGAL,
REPRESENTED BY ITS PRESIDENT,
SRI. VIJAY S/O. SHRISHAIL BOLANNAVAR,
AGE: 36 YEARS, OCC: AGRICULTURE,
TQ: BAILHONGAL, DIST: BELGAUM-591102.

...RESPONDENTS

(BY SRI. SANGRAM S.KULKARNI, ADVOCATE FOR R1 TO R7;
SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE FOR R8)



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THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE SENIOR CIVIL JUDGE BAILHONGAL DATED 05.08.2024 PASSED IN OS NO.69 OF 2013 DISMISS THE SUIT WITH COSTS THROUGHOUT BY ALLOWING THE PRESENT APPEAL IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

IN RFA NO.100080 OF 2025:
BETWEEN:

THE CHIEF OFFICER,
THE TOWN MUNICIPAL COUNCIL,
BAILHONGAL, DIST: BELAGAVI-591102.

...APPELLANT

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE)

AND:

1. SRI. MALLIKARJUN DEV TRUST BAILHONGAL,
REPRESENTED BY ITS CHAIRMAN,
SRI. BABANNA S/O. ADIVEPPA DHAMMANAGI,
AGE: 68 YEARS, OCC: BUSINESS,
R/O. BAILHONGAL, DIST: BELAGAVI-591102.
2. SRI. SHIVASHANKAR
S/O. VEERABHADRAPPA HARUGOP,
AGE: 81 YEARS, OCC: RETIRED GOVT. SERVANT,
R/O. H.NO.2420, RAGANNAVAR GALLI,
NEAR KBS NO.3 BAILHONGAL,
DIST: BELAGAVI-591102.
3. SRI. NAGESH S/O. MALLESHAPPA PAMPANNAVAR,
AGE: 61 YEARS, OCC: BUSINESS,
R/O. BILLUR GALLI BAILHONGAL,
DIST: BELAGAVI-591102.
4. SRI. NEELAKANT S/O. PARAPPA ASUNDI,
AGE: 87 YEARS,
OCC: RETIRED GOVERNMENT SERVANT,
R/O. DHARWAD BY-PASS ROAD,
BAILHONGAL, DIST: BELAGAVI-591102.



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5. SRI. KALLAPPA S/O. SHIVABASAPPA ARALIKATTI,
AGE: 69 YEARS, OCC: BUSINESS,
R/O. K.C.NAGAR, 1ST CROSS, BAILHONGAL,
DIST: BELAGAVI-591102.
6. SRI. RUDRAPPA S/O. SHIVAPPA HUDED,
AGE: 58 YEARS, OCC: BUSINESS,
R/O. KALMATH GALLI BAILHONGAL,
DIST: BELAGAVI-591102.
7. SRI. NAGANNA S/O. GIRIMALLAPPA HUDED,
THE SECRETARY OF THE TRUST,
AGE: 78 YEARS, OCC: RETIRED GOVT. SERVICE,
R/O. HUDED GALLI BAILHONGAL,
DIST: BELAGAVI-591102.

...RESPONDENTS

(BY SRI. SANGRAM S.KULKARNI, ADVOCATE FOR RESPONDENTS
NO.1, 2, 6 AND 7)

THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER
41 RULE 1 OF CPC 1908, AGAINST THE JUDGMENT AND DECREE
DATED 05.08.2024 PASSED IN O.S.NO.69/2013 ON THE FILE OF
THE SENIOR CIVIL JUDGE, BAILHONGAL, DECREERING THE SUIT
FILED FOR PARTITION AND MESNE PROFIT AND ETC.

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

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE R.DEVDAS)

Delay of 70 days in filing the appeal in RFA No.100080/2025 stands condoned.

2. These two Regular First Appeals arise out of the judgment and decree passed in O.S.No.69/2013 on the file of the learned Senior Civil Judge, Bailhongal. Therefore, the appeals were clubbed, heard together and are being disposed of by this common order.

3. For the sake of convenience, the parties shall be referred to in terms of their ranking before the trial court.

4. The plaintiff-Shri Mallikarjun Dev Trust, Bailhongal along with its Trustees filed a suit for recovery of possession of the property bearing R.S.No.116 of Bailhongal Town (corresponding CTS No.128 now CTS Nos.114 to 128) measuring 2 acres 36 guntas; for award of compensation of Rs.15,00,000/-; future compensation of Rs.1,00,000/- p.m. and also for mesne profits of Rs.1,00,000/- from the



defendant-TMC, Bailhongal. Earlier when the suit was dismissed, the Trust filed RFA No.100278/2018. This court by judgment dated 24.04.2024 found that having regard to the provisions contained in Bombay Public Trust Act, 1950 (hereinafter referred to as 'the Act' for short), more particularly, Sections 18 to 21 of the Act, was of the opinion that an application having been made for registration of the Public Trust and the Charity Commissioner having enquired into the matter and thereafter having registered the Public Trust declaring that the property belongs to the Trust, therefore, it is claimed that the property in question belongs to the Trust.

5. However, this Court also held that Issue No.1 which was earlier framed by the trial Court, whether the plaintiff proves that Plaintiff No.1, Mallikarjun Dev Trust, Bailhongal is the owner of the suit property? was not properly decided. Therefore, the matter was remanded back to the trial Court with a specific direction for re-appreciation of the documents placed on record at the hands of the plaintiffs,



more particularly Ex.P35 to Ex.P38, in the light of the Judgment of the Hon'ble Supreme Court of India in the Case of ***Sainath Mandir Trust Vs. Vijaya and Others***, reported in **(2011) 1 SCC 623**, which was reiterated in ***R.M.Sundaram @ Meenakshisundaram Vs. Sri Kayarohanaswamy and Neelayadhakshi Amman Temple (through its Executive Officer) Nagapattinam, Tamil Nadu***, reported in **2022 SCC OnLine SC 883**. While remanding the matter this Court also noticed that since the defendant has not filed the written statement therefore the trial Court may proceed to re-assess the oral and documentary evidence produced by the plaintiffs and decide the matter on merits. Pursuant to the remand, the impugned Judgment and Decree has been passed by the trial Court declaring that the plaintiff No.1-Trust is entitled for recovery of vacant possession of the suit schedule property from the defendant. The defendant was directed to handover the vacant possession of the suit schedule property to the plaintiff No.1/Trust. Being aggrieved of the impugned Judgment and Decree, Town



Municipal Council, Bailhongal has filed RFA No.100080/2025 through its Chief Officer. Even before such appeal could be filed by the Town Municipal Council, Bailhongal appeal in RFA No.100028/2025 is filed by Sri Khatahsab and other 43 appellants along with an application seeking leave of this Court to prosecute the appeal although the appellants were not parties to the suit.

6. Learned counsel for the appellants in RFA No.100028/2025 submitted that the suit schedule property belongs to the Town Municipal Council and the Town Municipal Council executed a Sale Deed dated 22.07.1978 in favour of Sri Bapusab Hasansab Kadabi in respect of the 605 square yards and another Sale Deed dated 15.06.1983 is executed by the President, Town Municipal Council, Bailhongal in favour of Sri Abdul Munaf Wajidsab Jamadar. It is pointed out from the said Sale Deeds that the property was put up for auction and the purchaser bid the property for a sum of Rs.3,300/-. Learned counsel has today filed a memo along with photographs and copies of the Sale Deeds



and other documents to show that several constructions are put up on a portion of the property in question and the 43 appellants are in possession of the different measurements of the property. Attention of this Court is also drawn to the 'Google Map' where the suit schedule property appears to have been divided into two parts by tar road running in between from East to West. It is submitted that in the southern portion of the property, there are several CTS numbers commencing from CTS Nos.118 to 127 all belonging to the appellants. On the northern side of the property, where there is a Town Municipal Council Complex, Samudaya Bhavana, Medar Sri Ketayya Temple, Mali Mill, Saw Mill, the mid portion bearing CTS No.116 and 128 also belongs to one of the appellants herein.

7. In that view of the matter, the learned counsel submits that the plaintiffs, although aware of the fact that there are several other persons occupying portions of the suit schedule properties, have filed a suit only against the Town Municipal Council, Bailhongal. Therefore, the suit itself



is required to be dismissed for non-joinder of necessary parties. Moreover, possession is sought from the competent Civil Court, without impleading the necessary parties. Learned counsel submits that the valuation of the suit schedule property is also not proper, having regard to the fact that the appellants herein do not claim to be tenants under the plaintiffs. Learned counsel would further add that since the reference has been made by this Court in the earlier appeal to the Bombay Public Trusts Act, 1950, and the reference is also made to the Judgment of the Hon'ble Supreme Court of India in ***Sainath Mandir's*** case, this Court is required to go into the question as to whether the suit in its form filed without permission of the Charity Commissioner in terms of Sections 50 and 51 of the Act is maintainable.

8. Learned counsel submits that by the order dated 02.07.2025, an application in I.A. No.3/2025 filed by the appellants in RFA No.100028/2025 seeking leave of this Court to prosecute the appeal has been allowed while



granting permission to the appellants to prosecute this appeal, although they were not parties to the suit.

9. Learned counsel for the appellant in RFA No.100080/2025 filed at the hands of the Chief Officer of the Town Municipal Council, Bailhongal submits that if the matter is remanded at the instance of the appellants in the connected appeal, liberty could also be reserved to the Town Municipal Council, Bailhongal to file written statement and contest the matter on merits. Learned counsel submits that the appellant has instructed the learned counsel to submit that the suit schedule property was acquired for the benefit of the Town Municipal Council for establishing the 'Cattle Market', which was for the public purpose. Liberty is also sought to produce all relevant materials to show that the suit schedule properties were in fact acquired for the benefit of the Town Municipal Council and since they had right, title and interest over the property, the Municipality has sold a portion of the property as was contended by the appellants in the connected appeal. The fact that there are



registered Sale Deeds executed at the hands of the then President of the Town Municipal Council, Bailhongal the Municipality is required to file its written statement along with the material to support its contention that the Municipality is the owner of the property in question and not the plaintiffs.

10. Learned counsel for the plaintiffs however submits that such a liberty was sought for by the Municipality when the matter was earlier remanded by this Court, however, this Court declined to grant permission to the Municipality to file written statement. The learned counsel would therefore submit at this juncture liberty should not be given to the Municipality to file written statement. Further, it is contended that the appellants in RFA No.100028/2025 have not purchased the property from the Trust and therefore even if there is a registered instrument transferring the property at the hands of the Municipality in favour of certain individuals, it will have no binding effect on the plaintiffs. Learned counsel submits



that it was never the contention of the Municipality that it is the owner of the property. The Municipality has accepted the fact that the suit schedule property was given on lease to the Municipality for a period of 10 years and after the expiry of the period of lease, the Municipality failed to handover possession to the plaintiffs and therefore the prayer in the suit is only for recovery of possession and for damages and compensation.

11. Insofar as the appellant in connected appeal is concerned, the learned counsel for the plaintiffs submits that when it is clearly contended by the appellants that they are in possession by virtue of the Sale Deeds executed initially at the hands of the Town Municipal Council and thereafter there are subsequent sales and transfers, there is no need for the plaintiffs to implead such of the appellants, who claim to be in possession of various portions of the suit schedule property. In that view of the matter, the learned counsel submits that there is no infirmity in the impugned Judgment and Decree passed by the Civil Court.



12. Insofar as the contention of the appellant that the suit is not maintainable either for the fact that permission of the Charity Commissioner has not been obtained in terms of Sections 50 and 51 of the Act, the learned counsel submits that the suit was filed in the year 2013 when the said Act was not in force. Therefore, the question of taking permission of the Charity Commissioner would not arise. It is also submitted that the earlier when Writ Petition No.72883/2012 (LB-RES) was filed by the plaintiffs seeking a direction to the Municipality to handover the possession, this Court declined to give such a relief to the plaintiffs, however, liberty was granted to the plaintiffs to approach a competent Civil Court and seek recovery of possession from the Municipality. In that view of the matter, it is submitted that since the liberty is granted by this Court, the question of seeking permission of the Charity Commissioner would not arise.

13. Having heard the learned counsels for the appellants in both appeals, the learned counsel for the



plaintiffs and having perused the memorandum of appeals and the trial Court records, this Court finds that the question of non-joinder of necessary parties would definitely arise having regard to the appeal filed at the hands of 43 appellants in RFA No.100028/2025. The suit is admittedly filed in the year 2013 and there is sufficient material placed on record at the hands of the appellants that pakka constructions have been put up on various portions of suit schedule property and plaintiffs cannot feign ignorance of such constructions. When such is the position, and when the plaintiffs are aware of the fact that several constructions have come up on the suit schedule property, it was incumbent upon the plaintiffs to have impleaded such persons, who have put up constructions on the portions of the suit schedule property before seeking recovery of possession. Nevertheless, since the appellants in RFA No.100028/2025 have placed sufficient materials before this Court to show that they are in possession of various portions of the suit schedule properties, this Court is of the



considered opinion that all such appellants, who are in possession of various portions of the suit schedule property are necessary parties to the proceedings. It is another matter that, issue regarding the claim of all such persons in possession of property, and whether a suit with such prayer for possession is maintainable without seeking declaration has to be framed by the trial Court. At the same time, question of Court fee is also required to be re-considered by the trial Court. At this juncture, since we are of the opinion that the matter requires re-consideration at the hands of the trial Court, we are also of the opinion that the Town Municipal Council, Bailhongal should file written statement making its stand clear as to whether it claims ownership or title over the property in question. The trial Court shall also go into the question as to whether permission of the competent authority under the provisions of the Bombay Public Trusts Act, 1950 was required to be taken by the plaintiffs as held in the ***Sainath Mandir's*** case (supra).



14. In the light of the above, we proceed to pass the following :

ORDER

- (i) Appeals are allowed in part.
- (ii) The impugned Judgment and Decree dated 05.08.2024 passed in O.S. No.69/2013 by the Senior Civil Judge, Bailhongal is hereby quashed and set aside.
- (iii) The matter stands remanded back to the trial Court to enable the impleadment of the appellants in RFA No.100028/2025 as defendants in the suit. All the appellants in RFA No.100028/2025 shall be impleaded as defendants in the suit.
- (iv) The newly impleaded defendants and the Chief Officer of the Town Municipal Council, Bailhongal shall file written statement within a



period of four weeks from the first date of hearing after the remand.

- (v) The description of the defendants shall be corrected as the 'Chief Officer' of the Town Municipal Council, Bailhongal instead of President.
- (vi) Once the written statement is filed, issues shall be framed by the trial Court based on such pleadings of the parties.
- (vii) All contentions of both parties are kept open.
- (viii) The parties herein are directed to appear before the learned Senior Civil Judge, Bailhongal in O.S. No.69/2013 on 19.01.2026 without waiting for further notice.
- (ix) In view of appeals being allowed in part and the matter being remanded for re-consideration, the appellants are entitled for



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C/W RFA No. 100080 of 2025

refund of the Court fee in accordance with law.

(x) In RFA No.100080/2025 is concerned, we impose costs of Rs.10,000/- on the appellant, payable to plaintiff No.1 on the first date of hearing before the trial Court and the remaining amount shall be refunded to the appellant in accordance with law.

(xi) Office is directed to send back the trial Court records.

Sd/-
(R.DEVDAS)
JUDGE

Sd/-
(B. MURALIDHARA PAI)
JUDGE



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C/W RFA No. 100080 of 2025

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

[SRI KHATALSAB S/O BAPUSAHEB KADABI VS. SHRI.
MALLIKARJUN DEV TRUST, BAILHONGAL]

19.12.2025
(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR JUSTICE R.DEVDAS
and
HON'BLE MR JUSTICE B. MURALIDHARA PAI

ORAL ORDER

(PER: HON'BLE MR JUSTICE R.DEVDAS)

Though this appeal was disposed of on 09.12.2025, learned counsel for Respondent No. 8 has moved a memo for being spoken to.

Learned counsel submits that Respondent No. 8 is also an appellant in RFA No.100080/2025.

It is pointed out that costs of ₹10,000/- were imposed by this Court. However, it was directed that on the first date of hearing before the trial Court, the appellant shall pay Plaintiff No.1 costs of ₹10,000/-, and it was further directed that the remaining amount deposited by the appellant shall be refunded to the appellant. Learned counsel submits that by so directing, there appears to be an indication that ₹10,000/- is required to be paid by the appellant before the trial Court and that the same amount would again be deducted from the court fee deposited by the appellant, which may not be correct.



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C/W RFA No. 100080 of 2025

Learned counsel for the appellants in RFA No. 100028/2025 further submits that the direction regarding refund of court fee may be clarified to the effect that the amount be refunded to Appellant No. 1 alone, instead of all the appellants.

The submissions of the learned counsel for the appellants are accepted. Consequently, in the operative portion of the order, at Serial No.9, the following sentence shall be added:

"In RFA No. 100028/2025, the court fee admissible shall be returned to Appellant No. 1."

Directions at Sl.No.10 shall be replaced as follows:

"In RFA.No.100080/2025, we impose cost of Rs.10,000/- on the appellant payable to plaintiff No.1 on the first date of hearing before the trial Court. The appellant shall be refunded admissible court fee in accordance with law."

The order dated 19.12.2025 shall be treated as part and parcel of the order dated 09.12.2025.

Sd/-
(R.DEVDAS)
JUDGE

Sd/-
(B. MURALIDHARA PAI)
JUDGE

Vb/-
List No.: 1 Sl No.: 2