



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 31ST DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100156 OF 2018 (DEC)

BETWEEN:

1. SHRI SHIVAPPA NINGAPPA CHOUGULA
AGE: 48 YEARS, OCC. AGRICULTURE,
R/O. SANNA ONI, KARADIGUDDI,
TQ. AND DIST: BELAGAVI-591103.
2. SHRI BASAPPA NIGAPPA CHOUGULA
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. SANNA ONI, KARADIGUDDI,
TQ. AND DIST: BELAGAVI-591103.

...APPELLANTS

(BY SRI. SANGRAM S. KULKARNI, ADVOCATE)

AND:

SMT. TAYAWWA W/O. SHIDDAPPA CHOUGULA
SINCE DECEASED BY HER LRS.

1. SHRI MALLIKARJUN SHIDDAPPA CHOUGULA,
AGE: 60 YEARS, OCC. AGRICULTURE,
R/O. DODDA ONI, KARADIGUDDI,
TQ. AND DIST. BELAGAVI-591103.
2. SMT. KASTUREVVA
W/O. GANGAPPA URNINATTI,
AGE: 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. DODDA ONI, KARADIGUDDI,
TQ. AND DIST. BELAGAVI-591103.

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3. SMT. SUVERNEVVA
W/O. SHIVANINGAPPA RACHANNAVAR,
AGE: 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. DODDA ONI, KARADIGUDDI,
TQ. AND DIST. BELAGAVI-591103.
4. SHRI NAGAPPA SHIDDAPPA CHOUGULA
AGE: 46 YEARS, OCC. AGRICULTURE,
R/O. DODDA ONI, KARADIGUDDI,
TQ. AND DIST. BELAGAVI-591103.
5. SHRI SOMAPPA SHIDDAPPA CHOUGULA
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. DODDA ONI, KARADIGUDDI,
TQ. AND DIST. BELAGAVI-591103.
6. SMT. SAVITREVVA W/O. RUDRAGOUDA PATIL,
AGE: 36 YEARS, OCC. HOUSEHOLD WORK,
R/O. YERAGOPPA, TQ. BAILHONGAL,
DIST. BELAGAVI-591102.

...RESPONDENTS

(BY SRI. M.M. PATIL, ADVOCATE FOR C/R1)

THIS RSA IS FILED UNDER SECTION 100 R/W. ORDER 41
RULE 1 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND
DECREE PASSED IN RA.NO.41/2017 DATED 06.01.2018 BY THE
III ADDL. SENIOR CIVIL JUDGE, BELAGAVI AND ALSO SET
ASIDE THE JUDGMENT AND DECREE PASSED IN
O.S.NO.1354/2012 DATED 23.02.2017 PASSED BY IV ADDL.
CIVIL JUDGE AND JMFC, BELAGAVI AND ETC.

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



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel appearing for the appellants.

2. The appellants are defendants in O.S.No.1354/2012, which came to be decreed by the Trial Court and which was confirmed by the First Appellate Court in R.A.No.41/2017.

3. The factual aspect that is necessary for the purpose of this appeal is that the suit property was originally owned by one Shiddappa who died on 11.07.2001. The first plaintiff is the wife of the said Shiddappa and plaintiff Nos.2 to 7 are the sons and daughters of Shiddappa. After the death of Shiddappa, the name of plaintiff Nos.2, 5 and 6 were mutated in the record of rights. It was alleged that defendant No.1 got his name entered in the revenue records of the suit schedule property in the year 2007 by certain fictitiously created documents and accordingly, mutation entry No.18/2007-2008 came to be effected. When the defendants started obstructing the possession and enjoyment of the plaintiffs, they came to know that the suit property had been mutated in the name of defendant No.1 on the basis of an



alleged Kabuli Patra (relinquishment deed) executed by plaintiff Nos.2, 5 and 6. Such Act was protested and when it was not successful, the plaintiffs filed the suit before the Trial Court contending that they are the owners in possession of the suit schedule property and the defendants be restrained by an injunction.

4. The defendants appeared before the Trial Court and contended that defendant No.1 was in possession of the suit schedule property on the basis of the relinquishment deed/Kabuli Patra executed by plaintiff Nos.2, 5 and 6 and later defendant No.2 has purchased the property from defendant No.1 under a valid sale deed. Therefore, they contended that defendant No.2 is in possession and enjoyment of the suit schedule property and the plaintiffs cannot maintain the suit. It was also contended that defendant No.2 had mortgaged the suit schedule property to a Bank for the purpose of raising loans and they being in possession, the suit deserves to be dismissed.

5. Thereafter, the plaintiffs got amended the plaint and they challenged the sale deed executed by defendant No.1 in favour of defendant No.2.



6. The trial was held before the trial Court and the trial Court came to the conclusion that the relinquishment/Kaboolipatra executed by the plaintiffs No.2, 5 and 6 in favour of the defendant No.1 is non-est and there was no such relinquishment under law. It was held by the trial Court that the relinquishment has not been proved and if at all there is any relinquishment, it was not under any of the modes known to law. Therefore, the trial Court held that the evidence available would show the title in favour of the plaintiffs and as such, their possession has to be protected by issuing any injunction. It also declared that the sale deed executed by defendant No.1 in favour of defendant No.2 dated 17.05.2012 is illegal, void and not binding on the plaintiffs. Being aggrieved, the defendants approached the First Appellate Court in R.A.No.41/2017 and after hearing the arguments and appreciating the evidence on record, the First Appellate Court had dismissed the first appeal.

7. Being aggrieved, the defendants are before this Court in second appeal.

8. Learned counsel appearing for the appellants would submit that the testimony of the PW1 show that there were revenue entries in favour of the defendants and those revenue



entries had not been challenged by the plaintiffs anywhere and as such, there is a presumption under Section 133 of the Karnataka Land Revenue Act, 1964 and such presumption of possession goes in favour of the appellants. It is his contention that the PW1 in the cross-examination has admitted the records being changed in the name of the defendants and therefore, the trial Court could not have held that the plaintiffs are in possession of the suit schedule property. In this regard, he also places reliance on the judgment in the case of **Akkamma and Others V/s Vemavathi and Others**¹ rendered by Hon'ble Supreme Court in Civil Appeal No.5884/2009.

9. It is pertinent to note that in a suit for declaration of title and consequential relief of injunction, the provisions of Section 34 of the Specific Relief Act create an embargo on the maintainability of the suit. The judgment in the case of **Akkamma and Others V/s Vemavathi and Others** referred *supra* in paragraph 17, it was held as below:

¹ 2021 SCC Online 1146



"17. So far as the reliefs claimed in the suit out of which this appeal arises, prayer for declaration was anchored on two instances of interference with the possession of land of the plaintiffs and injunctive relief for restraint from interference with the property was also claimed. But possession of the said property by the original plaintiff was not established. The alternative relief sought to be introduced at a later stage of the suit was also found to be incapable of being entertained for the reason of limitation. Thus, the foundation of the case of the plaintiffs based on these two factual grounds collapsed with the fact-finding Courts rejecting both these assertions or allegations. But that factor ought not to be a ground for denying declaration of ownership to the plaintiffs. There is no bar in the Specific Relief Act, 1963 in granting standalone declaratory decree."

10. Therefore, obviously the maintainability of the suit cannot be questioned by the appellants on the ground that the proviso to Section 34 of the Specific Relief Act would create a bar. If the plaintiffs had not sought for the consequential relief of injunction, but had prayed only the declaration of title, then there would have been certain weight in the argument that the suit would not be maintainable.



11. So far as the other contentions are concerned, it is to be noted that the cross-examination of the PW1 do not show any clear admission regarding the possession of the defendants. If the foundation on which the revenue entries are made, i.e., the sale deed dated 17.05.2012 become non-est, then all such entries which stand in the name of the defendant No.2 would not survive. It is also pertinent to note that the relinquishment of the rights by the plaintiffs No.2, 5 and 6 in favour of defendant No.1 is non-est in eye of law and this observation of the trial Court and the First Appellate Court cannot be found fault with.

12. In the light of the above position, the appeal does not raise any substantial question of law. In the result, the appeal is ***dismissed*** at the stage of admission.

SD/-
(C M JOSHI)
JUDGE

SSP: Para 1 to 4
RKM: Para 5 to end
CT:PA
LIST NO.: 1 SL NO.: 6