



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 30TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 100065 OF 2017 (DEC/INJ)

BETWEEN:

SRI. BASAPPA
S/O. BALANAGOUDA GOUDAR,
AGE: 70 YEARS, OCC. AGRICULTURE,
R/O. PATTADAKAL,
TQ. AND DIST. BADAMI.

...APPELLANT

(BY SRI. S.S. NIRANJAN, ADVOCATE)

AND:

1. SRI. SUDHENDRA
S/O. SHAMRAO MUTTALIK DESAI @ KARAKUN,
SINCE DECEASED BY HIS LRS.

1A. SMT. SUMANGALA
W/O. SUDHENDRARAO MUTALIKDESAI @ KARKUN,
AGE: 56 YEARS, OCC. HOUSEHOLD,
R/O. PATTADAKAL VILLAGE,
TQ. BADAMI,
DIST. BAGALKOTE-587201.

1B. SMT. JYOTHI
W/O. MADHAV BOMMIGATTI,
AGE: 40 YEARS, OCC. ADVOCATE,
R/O. CHALUKYANAGAR, BADAMI,
DIST. BAGALKOTE-587202.



- 1C. SMT. REVATI
W/O. RAGHAVENDRA KERUR,
AGE: 38 YEARS, OCC. HOUSEHOLD,
R/O. KILLA ONI, KERUR VILLAGE,
TQ. BADAMI, DIST. BAGALKOTE-587206.
- 1D. SRI. SANTHOSH
S/O. SUDHENDRARAO MUTALIKDESAI @ KARKUN,
AGE: 36 YEARS, OCC. AGRICULTURE,
R/O. PATTADAKAL VILLAGE, TQ. BADAMI,
DIST. BAGALKOTE-587201.

...RESPONDENTS

(BY SRI. K.L. PATIL AND
SMT. P.S. TADAPATRI, ADVOCATE FOR R1(A) TO (D))

THIS RSA IS FILED UNDER SECTION 100 OF CPC, 1908,
PRAYING TO CALL FOR THE ENTIRE RECORDS AND SET ASIDE
THE JUDGMENT & DECREE PASSED IN R.A.NO.20/2010 ON THE
FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS, BADAMI DATED 04.11.2016 AND SET ASIDE THE
JUDGMENT AND DECREE IN O.S. NO.141/2005 DATED
23.04.2016 PASSED BY THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, BADAMI AND DECREE THE SUIT OF
THE PLAINTIFF 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 learned counsel appearing for the appellant.

2. The appellant/plaintiff had filed O.S.No.141/2005 seeking relief of declaration and injunction against the defendant.

3. It is a case of the appellant/plaintiff that one Raghavendra Rao Karkun was absolute owner of VPC No.140 in Pattadakal village and he had no issues. He went to Maharashtra and settled there permanently. The maternal grandfather of the plaintiff-Adiveppa was residing at Pattadkal and he had no house property and as such in the year 1955, the said Adiveppa started residing in the house belonging to the said Raghavendra Rao. He made repairs to the said house from time to time and started residing there. Thereafter, it is alleged that one Naraso Dheerendra Karakun had got up certain created documents behind the back of the plaintiff. He had neither the absolute right, title or interest over the suit schedule property nor he was the successor of Raghavendra Rao. It is contented that there was



interference and obstruction by the defendant and as such, the plaintiff was forced to file the present suit against the said Naraso Dheerendra Karakun and sought declaration that by way of adverse possession, he has become the owner of suit schedule property. He also sought for consequential relief of injunction.

4. On service of notice, the defendant appeared and contented that the allegations of the plaintiff are false and frivolous and the suit schedule property was belonging to Raghavendra Rao Karakun and he was unmarried and had no Class-I legal heirs and as such, the defendant being the Class-II legal heir has succeeded to the estate. Hence, he had filed O.S.No.50/2004 for declaration of his heirship and the Court had decreed the said suit. It is contented that the defendant has been paying the taxes etc., and therefore, the suit deserves to be dismissed. Appropriate issues were framed by the trial Court and after adducing evidence, it came to the conclusion that the plaintiff has not proved the ingredients of adverse possession and as such, dismissed the suit. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.20/2010 and



after hearing both sides, the First Appellate Court also held that no interference is needed and dismissed the appeal.

5. The learned counsel appearing for the appellant submits that the grounds on which the suit as well as the appeal were dismissed, are not proper and correct. He contends that the First Appellate Court and the Trial Court should have held that the plaintiff has become the owner of the suit schedule property by adverse possession. Therefore, the possession of the plaintiff being continuously for a long period, he would be entitled for the reliefs sought in the suit.

6. It is pertinent to note that the ingredients that are required to prove the adverse possession are no more *res integra*. At the cost of repetition, to prove an adverse possession, it is essential that the plaintiff has to admit the title of the rightful owner and then, establish as to when and how he asserted the title over the suit schedule property and it became adverse to the interest of the real owner. Unless these aspects are established, the plaintiff cannot succeed in his contention.



7. Evidently, the plaintiff is not admitting the title of the defendant. It is his contention that one Raghavendra Rao was the owner of the property, but not the defendant. When he denies the title of the defendant, the question of granting the relief of declaration on adverse possession do not arise. This fundamental requirement of claiming adverse possession has not been established by the pleadings of the plaintiff.

8. In view of the same, a factual finding recorded by the Trial Court and the First Appellate Court cannot be interfered with. Whatever may be the evidence available on record, the contention that the defendant is not the real title holder, would itself be sufficient enough to hold that the relief of declaration on adverse possession cannot be granted. Under these circumstances, both the Courts below were justified in holding that the plaintiff is not entitled for the relief claimed.

9. Secondly, in the said suit, the contention of the defendant that there was a decree in favour of the defendant in O.S No.50/2004 has not been overcome. It is not known in what context the said decree was obtained by the defendant. Be that



as it may, that would not be of any relevance in the second appeal.

10. For the above said reasons, no substantial question of law arises in the matter and as such, the appeal is dismissed at the admission stage.

SD/-
(C M JOSHI)
JUDGE

RKM
CT:PA
LIST NO.: 1 SL NO.: 10