



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5439 OF 2009 (DEC/INJ)

BETWEEN:

KATIGI GANGAVVA D/O. KATIGI VADAKAVVA,
SINCE DECEASED BY HER LRS.

1. JAMBALINGAPPA S/O. BANADA JAMBAIAH,
AGED ABOUT 69 YEARS,
OCC. RTD. HEAD BILL COLLECTOR,
R/O. WEAVERS COLONY, 3RD CROSS,
HOSPET-583201, BELLARY TQ. AND DIST.
2. B. CHIDANANDA S/O. B. JAMBAIAH,
AGED ABOUT 60 YEARS,
OCC. R.M.P. DOCTOR,
R/O. NEAR A.C. OFFICE,
HOSPET POST AND TALUK,
BELLARY DISTRICT.

YASHAVANT
NARAYANKAR

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YASHAVANT
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(BY SRI. GODE NAGARAJA, ADVOCATE)

...APPELLANTS

AND:

1. KATIGI NAGARATNA
W/O. KATIGI HANUMANTHAPPA,
AGED ABOUT 49 YEARS,
R/O. 32ND WARD, TALAVARKERE, HOSPET,
DIST. BELLARY-583201.
2. KATIGI HANUMANTHAPPA
S/O. KATIGI SANNAKAVVA,
AGED ABOUT 58 YEARS,



R/O. 32ND WARD, TALAVARAKERE, HOSPET,
DIST. BELLARY-583201.

3. KATIGI LAKASHMAVVA
W/O. KATIGI UDAY KUMAR,
AGED ABOUT 32 YEARS,
R/O. 32ND WARD, TALAVARAKERE, HOSPET,
DIST. BELLARY-583201.
4. K.UDAY KUMAR
S/O. K.HANUMANTHAPPA,
AGED ABOUT 37 YEARS,
R/O. 32ND WARD, TALAVARAKERE, HOSPET,
DIST. BELLARY-583201.
5. K. JAMBAIAH,
S/O. K. HANUMANTHAPPA,
AGED ABOUT 34 YEARS,
R/O. 32ND WARD, TALAVARAKERE, HOSPET,
DIST. BELLARY-583201.
6. B.MARISWAMY
S/O. JAMBAIAH,
AGED ABOUT 72 YEARS,
OCC. RTD. HEAD MASTER,
SOGI VILLAGE, HADAGALI TALUK,
DIST. BELLARY.

...RESPONDENTS

(BY SRI. S.S. KOLIWAD, ADVOCATE FOR R1 TO R5;
R6-NOTICE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO CALL FOR THE RECORDS AND TO SET ASIDE THE JUDGMENT AND DECREE DATED 26/02/2009 PASSED BY THE PRL. CIVIL JUDGE (SR.DN.) AND JMFC HOSPETE IN R.A.NO. 32/2007 AND RESTORE THE JUDGMENT AND DECREE DATED 01.03.2007 PASSED BY THE PRL. CIVIL JUDGE (JR.DN.) JMFC HOSPETE, IN O.S.NO.132/2005 AND DECREE THE SUIT FILED BY THE APPELLANTS/PLAINTIFFS AS PRAYED FOR AND ETC.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 29.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

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

The plaintiffs in O.S.No.132/2005 are before this Court assailing the reversal of the judgment of the Trial Court by the First Appellate Court in R.A.No.32/2007 dated 26.02.2009.

2. The factual matrix that is necessary for the purpose of this appeal may be stated as below:

a. The plaintiffs/appellants herein filed a suit against the defendants for relief of declaration that they are the absolute owners of the suit schedule property and for relief of mandatory injunction to direct the defendants to remove the construction made in the suit schedule property and for handing over of the possession of the same, and also for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment.

b. Initially, the suit was filed by Gangavva as a sole plaintiff and later, after her death, her children are brought on record as plaintiffs No.1 to 3. The plaintiff contended that the suit schedule property, which is



described as the property situated at Hospet in ward No.13, new ward No.17 bearing door No.102, new door No.330, bounded by a road on the east and north, property of Katagi Pakkeerappa on the west, property of Jeenagar Hanumanthappa on the south. It is contented that the plaintiff- Gangavva had purchased the suit schedule property under the registered sale deed dated 17.06.1953 for a valuable consideration of Rs.400/- from one Meenahalli Hulagamma and Bharmavva. The vendors had put the plaintiff in possession of the suit schedule property and accordingly, the Municipal Khata was changed in the name of the plaintiff.

c. Due to heavy rain, the house collapsed and the said premises became a vacant premises having door No.330. The second defendant and his family members tried to put up a construction over the suit schedule property and the plaintiff objected and filed an objection to the Municipal Commissioner, who issued a notice to the defendant No.2 to stop the construction. However, the defendant No.2 continued the interference by proceeding with the construction.



d. The defendants unauthorisedly and illegally started the construction and therefore, the plaintiff was constrained to file the suit for relief of declaration and mandatory injunction.

3. On service of summons, the defendants appeared and they filed the written statement denying the plaint averments.

a. They denied that the plaintiff-Gangavva had purchased the suit schedule property in her individual capacity.

b. It is submitted that one Jambaiah had two wives namely, Sanna Akkamma and the plaintiff. Sanna Akkamma was the elder sister of the plaintiff and the said Jambaiah had purchased the suit schedule property in the name of the plaintiff, since she had no independent income. There were similar other purchases in the joint names of plaintiff and Sanna Akkamma by the said Jambaiah. It is contended that neither Sanna Akkamma nor the plaintiff had any independent source of income to buy the properties.



c. They further contended that the defendants are in possession and enjoyment of the suit property and they have been paying their municipal taxes. It is contended that plaintiff never raised any claim about the ownership. The defendant No.2 believed that suit property belongs to her exclusively. Therefore, it was contended that the defendants had asserted their exclusive ownership and possession and this fact is further corroborated by the entire family residing in the suit schedule property. After demise of Sanna Akkamma, defendant No.2 inherited the suit property from his mother and since then, he has believed that the suit property is under his possession by succession. Therefore, it was contended that defendant No.2 has perfected his title by adverse possession as the sole heir of Sanna Akkamma and the said possession being open to the public knowledge and also to the knowledge of the plaintiff, as such, they have perfected the title. They contended that the plaintiff is living in ward No.35, since construction is completed and the present suit filed by the plaintiff deserves to be dismissed. They also contended that the valuation of the suit is not proper and correct.



d. In their additional written statement, they contended that Gangavva had left her daughter who are living in different places and since the present suit is filed for declaration of title and the cause of action has not survived on unimpleaded daughters also. Therefore, the suit suffers from non-joinder of necessary parties.

4. On the basis of the above contentions, the Trial Court framed the following issues:

ISSUES

"1. Whether Plaintiff proves that she is the absolute owner of the suit schedule property?

2. Whether Plaintiff proves the unlawful construction by the Defendants in the suit schedule property?

3. Whether the Plaintiff is entitled for the declaration of her title?

4. Whether the Plaintiff is entitled for the declaration for the demolition of the suit mentioned construction?

5. Whether the Plaintiff is entitled for the Permanent Injunction?



6. *Whether the 1st Defendant proves that the suit is not properly valued?*
7. *What order or decree?*

ADDITIONAL ISSUES

Whether the suit is bad for non-pleading of necessary parties?"

5. During pendency of the suit, the original plaintiff died and her legal heirs are brought on record. The plaintiff No.1 examined as PW1 and Exs.P1 to 16 were marked. The defendant No.2 was examined as DW1 and two other witnesses were examined as DW2 and DW3. Exs.D1 to D9 were marked.

6. After hearing the arguments, The Trial Court answered issue Nos.1 to 6 in the 'affirmative' and issue No.7 in the 'negative' and proceeded to decree the suit of the plaintiff as prayed.

7. Being aggrieved, the defendants approached the First Appellate Court in R.A.No.32/2007. The First Appellate Court after hearing both the parties, framed the following points for consideration:

"1. Whether additional issue has to be raised regarding adverse possession?"



- 2. Whether finding of the trial court that plaintiff has proved her title in the Suit Schedule Property is correct?*
- 3. Whether finding of the trial court that, court fee paid by the plaintiff is correct?*
- 4. Whether judgment of the trial court calls for interference?*
- 5. What Order?"*

8. Answering them in favour of the appellants, it reversed the judgment of the Trial Court and dismissed the suit. Being aggrieved, the plaintiffs are before this Court in appeal. At the time of admission, this Court has framed the following substantial questions of law:

Substantial questions of law:

- "i. Whether the First Appellate Court has committed a serious error in reversing the judgment and decree of the trial Court, the moment title is established by the plaintiff and no adverse possession being pleaded and proved by the defendant?*
- ii. Whether the First Appellate Court has committed a serious error in ignoring the material evidence on record, more particularly, the entries found in the revenue records and in not drawing a presumption under Section 133 of Karnataka Land Revenue Act and Section 114 of the Evidence Act, and thus the*



*judgment and decree of the First Appellate Court is
perverse?"*

9. The arguments by learned counsel appearing for the appellants and the learned counsel for the respondents were heard.

ARGUMENTS:

10. The learned counsel appearing for the appellants submits that the ingredients of adverse possession were not pleaded in the written statement of the defendants. The date from which the possession of the defendants became adverse is also not pleaded in the written statement and therefore, the First Appellate Court erred in holding that the defendants have perfected the title.

11. It is further contended that the records in respect of the suit schedule property, particularly the municipal records stand in the name of the plaintiff and therefore, there is a presumption under Section 133 of the Karnataka Land Revenue Act, 1964 which can be applied to the case on hand *mutatis mutandis* and therefore, the inferences drawn by the First Appellate Court are not proper and correct. It is submitted that the property was purchased by Gangavva and therefore, such



property acquired in her name becomes her absolute property. It is not open for the defendants to go behind the purchase in the name of Gangavva and find the source of such purchase. It may be true that certain other properties were purchased in the joint name of the plaintiff and Sanna Akkamma -the mother of the defendants. But that would not help the defendants in any way to draw a presumption that the suit schedule property is also the joint property of the plaintiff and Sanna Akkamma. It is contended that though it is true that plaintiff and Sanna Akkamma were the two wives of Jambaiah, that would not lead to an inference that the property belongs to the plaintiff as well as Sanna Akkamma. Therefore, the inferences drawn by the First Appellate Court are not sustainable in law.

12. In this regard, he placed reliance on the judgment in the case of ***T. Anjanappa and others V/s. Somalingappa and another¹***, where the Hon'ble Apex Court has laid down the ingredients of adverse position in paragraph Nos.12 and 15, it was observed as below:

"12. The concept of adverse possession contemplates a hostile possession i.e. a possession

¹ (2006) 7 SCC 570



which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. xxxx

14. xxxx

15. *An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar) Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere*



trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See Rains v. Buxton)"

13. He also relied on the judgment in the case of **R. Prakash and another V/s. Smt.G. P. Marthamma²**, where also the ingredients of adverse possession are discussed.

14. Per contra, learned counsel appearing for the respondents submits that the plaintiff-Gangavva was never in possession of the suit schedule property and it is Sanna Akkamma and the defendants who are residing in the suit schedule property. He submits that after collapse of the old house, the defendants have put up a house in the suit schedule

² ILR 2000 KAR 1223



property. It is contended that after death of mother of the defendants, the defendants have continued to be in possession under the impression that they have inherited the property of their mother-Sanna Akkamma. The mother of the defendants died in the year 1992 and therefore, the starting point of the adverse possession is from the year 1992. It is contended that the First Appellate Court has rightly considered the contentions of the respondents herein, particularly on issue No.1 and 7. He submits that the testimony of PW1 shows that he was unaware of the fact about the purchase of the property in the name of Gangavva and there is no evidence to show that his mother had got independent income to purchase the suit schedule property in the year 1953. From the year 1992 to 2005 there was no interference in the enjoyment of the property by anybody and therefore, the defendants have perfected their title to the suit schedule property. It is submitted that all the ingredients of the adverse possession have been established by the defendants and when the possession is uninterrupted and continuous from the year 1992 to till 2005, the necessities of proving adverse possession have been complied by them. It is submitted that when the contention of the defendants is that the property was



purchased in the name of Gangavva by Jambaiah, the defendants being none other than the children of the second wife of Jambaiah, they are entitled to raise the question as to whether the source for purchase of the property by Gangavva was out of her own income or by the joint family or by the income of Jambaiah. Therefore, it is submitted that the impugned judgment is proper and correct. To establish that the defendants are in possession and enjoyment of the property, he relies on the revenue entries and submits that the presumption under Section 133 of the Karnataka Land Revenue Act, 1964 is a rebuttable presumption and when the evidence on record show otherwise than the revenue entries, the impugned judgment cannot be interfered with.

ANALYSIS AND CONCLUSIONS

15. A perusal of the pleadings of the defendants in their written statement show that they contend that ever since the purchase of the suit property by Jambaiah in the name of the plaintiff-Gangavva, the defendants have been in possession and enjoyment of the suit property. They averred in the written statement that it is the second defendant who has been



continuously paying municipal taxes and he had no knowledge that it was purchased in the exclusive name of the plaintiff-Gangavva. Plaintiff also had not raised any claim in respect of the suit property which could override the belief of the defendant No.2. It is averred that throughout the defendants asserted their exclusive ownership and possession. After the demise of Sanna Akkamma i.e.,the mother of the defendants, the second defendant has inherited the suit property from his mother. Sanna Akkamma died in the year 1992 and since then, he believed he is successor in possession and enjoyment. Therefore, it is contended that the defendant has perfected his title by adverse possession as the sole heir of Sanna Akkamma. The construction of the house is also one of the circumstance which shows that the defendant had asserted his title.

16. As noted in the case of ***T. Anjanappa and others*** referred *supra*, to establish adverse possession, the occupation of reality is to be inconsistent with the right of the true owner. It is necessary that the intention to possess the property as an owner is essential and such intention to possess the property as owner has to be with the full knowledge of the true owner. In addition to that, the person claiming adverse possession should



establish that such possession adverse to the interest of the true owner is continuous and uninterrupted for 12 years. The hostility of the possession to the true owner is a *sine-qua-non* of establishing adverse possession. If we examine the pleadings, it shows that the animus of asserting title over the suit schedule property as against the true owner i.e., the plaintiffs is not forthcoming. The written statement mentions that such adversity to the true owner commenced when Sanna Akkamma died. Obviously, as narrated in the written statement, Sanna Akkamma had died in the year 1992. But nowhere, the written statement states as to since when such adverse animus was brought to the knowledge of the plaintiff- Gangavva or her children.

17. A perusal of the testimony of the DW1- Katigi Hanumanthappa, who is none other than the defendant No.2 would show that he has reiterated the averments of the written statement in his examination in chief. It is pertinent to note that he had no knowledge that it was purchased in the name of Gangavva. If he had no knowledge that the property was purchased in the name of Gangavva, and he went on paying the taxes without ascertaining in whose name the property was



standing and for what reason it was standing in the name of Gangavva, it is difficult to draw an inference that the animus to hold the property as owner against the title of Gangavva was asserted by him. In cross-examination, he denies that Gangavva had purchased the property on 17.06.1953 from Bharmavva and Hulagamma. He denies that the vendors had handed over the possession to the plaintiff- Gangavva. He denies that the property is standing in the name of Gangavva. In his cross-examination, he asserts that he obtained the property from his father and it was the property acquired by his father. He denies that Commissioner of the Municipality had issued a notice to him on 22.02.2005 to stop the construction. He denies that any police complaint was filed by Gangavva and others against DW1. Therefore, the testimony of the DW1, does not show that he had asserted his title over the suit schedule property and to the knowledge of the plaintiff- Gangavva or her legal heirs.

18. The testimony of DW2, who is a neighbour, shows that he does not know that the suit property was belonging to Gangavva. He pleads that he does not know about the vendors of the plaintiff- Gangavva and about the sale transaction. He pleads that he does not remember that Gangavva purchased the



property in the year 1953 and thereafter, she resided there for about 5 years. He admits that he used to lend money to the DW1. Therefore, his testimony in so far as it relates to the possession of the property by the defendants become doubtful.

19. DW3 is another neighbour and he reiterates that the defendants are residing in the property. In the cross-examination, he admits that the Gangavva had purchased the property in the year 1953. But denies that the vendors Hulgamma and Bharmavva resided in the suit schedule property till their death, even after they sold the property to Gangavva. He denied that the house had become dilapidated and it had fallen down in rain. Therefore, his testimony though to some extent establish the possession of the defendants, does not establish that such possession was adverse to the interest of the plaintiff.

20. The cross-examination of PW1 –Katagi Jambulingappa shows that he admits that Jambaiah was the manager of the family, but denies that Jambaiah had purchased the property in the name of Gangavva. Though he states that Gangavva used to have obtain the contract of harvesting the tamarind trees, no such documentary evidence is produced by



the plaintiff. He denies that Sanna Akkamma was residing in the suit property till her death. He admits that in the year 2004, he paid the tax for 15 years at once. He denies that the defendants have obtained loan by mortgaging the suit schedule property. Thus, the oral testimony of the witnesses shows that the adversity of the title and possession of the defendants was not brought to the notice of either Gangavva or the PW1. Nowhere, it is admitted by PW1 that the defendants were asserting that they were the owners in title of the suit schedule property. What has been contended is that the defendants obtained it from their father- Jambaiah and therefore, it is to be presumed that their possession was adverse to the interest of the plaintiffs.

21. The second aspect to be noticed is that the revenue records which are basically the municipal records show the name of Gangavva as the owner. Though DW1 states that he has been paying the taxes continuously, he never bothered to verify as to why the name of Gangavva appears in the records. The tax receipts produced by the defendants at Exs.D13 to D17 relate to the year 1983-1988, 1988-1990, 1997 and 2006. Whereas, the tax receipts produced by the plaintiff are for the year 1991, 1992 to 2001, 2002 and it was paid at once in the year 2004. It was



based on the self-assessment. Therefore, the tax receipts do not establish anything about the assertion of the title by the defendants. The fact remains that the property stands in the name of Gangavva.

22. Thus, the oral testimony and the documentary evidence available on record does not show the date from which the hostility of the title to the plaintiff was made known to the plaintiffs. It has come in the evidence that the plaintiffs were residing elsewhere, and despite their resistance, the house was constructed by the defendants. Obviously, the building permission to construct the house is not obtained. If at all the defendants were in possession and enjoyment adverse to the interest of the plaintiffs, the DW1 would have known that the name of Gangavva appears in the municipal records and that he obtains the building permission for construction of the house. Thus, it has to be inferred that the construction of the house was despite the resistance by the plaintiffs as contended by them. Till the year 2004, there is nothing on record to show that the defendants had asserted their title over the suit schedule property. In that view of the matter, the essential ingredients of the adverse possession were not established by them.



23. Coming to the impugned judgments, the Trial Court in paragraph No.13(q), notices the tax payment receipts and holds that they were pertaining to a different property. The Trial Court considers the contention of the adverse possession in detail and comes to the conclusion that plaintiffs have proved their case. It also notices that the defendants had never admitted the title of the plaintiff, which was an essential ingredient of adverse possession. All along it is the case of the defendants that they believe that the property belongs to Jambaiah and Sanna Akkamma, and they have inherited the property from Jambaiah and Sanna Akkamma. On this account, the Trial Court holds that the adverse possession has not been proved.

24. The First Appellate Court in considering the above aspect, holds that the suggestion to the DW1 and DW2 that vendors of Gangavva had continued to be in possession of the property till their death is an admission by the plaintiffs and holds that there are admissions by PW1 in this regard. In paragraph No.17, the First Appellate Court holds as below:



"17. On the other hand, the learned counsel for the respondents/plaintiffs has argued that, plaintiffs have filed the suit for declaration and possession of the Suit Schedule Property, Suit schedule property was purchased by late Gangamma in the year 1953. The court has made an order of status quo. The defendants have completed the building during the time of status-quo order. The conduct of the defendants is to be considered in appreciating the case of the defendants. The application Filed U/O 1. R.10 CPC is not tenable as there is no cause to implead the party in this appeal. Even if there is a cause, that cause may be a separate cause for them to file a suit. There is no evidence that, Jambaiah had two wives. Framing of additional issue regarding adverse possession is totally unnecessary in view of the fact that, both the parties have understood their case and let in their evidence. The trial court considering the evidence of both the parties has decided the claim of the plaintiffs. Therefore, it is totally unnecessary to raise an additional issue in this appeal. The appellants are at liberty to file an application before the trial court, if there was no issue framed regarding pleading of adverse possession. No, such application is made by the present appellants, when the suit was pending before the trial court. Now they filed an application to raise additional issue only with an intention to remand the case for fresh disposal and to cause unnecessary delay in disposal of the case. Therefore, there are no grounds to interfere in the judgment and decree of the trial court. The suit is



filed by the plaintiff based on title. Therefore, the Article that is applicable to the case of the plaintiff is Article 65 of the Limitation Act and not Article 64 of the Limitation Act. Therefore, the suit filed by the plaintiff is well within time."

25. It is pertinent to note that the First Appellate Court holds that the right to claim the title has been lost. Evidently, such conclusion is based on the fact that the vendors of the plaintiff were permitted to reside in the suit schedule property even after the sale. It is worth to note that the First Appellate Court does not mention as to since when the possession became hostile to the right of the plaintiffs. Therefore, the impugned judgment of the First Appellate Court does not consider the appreciation of the evidence by the Trial Court.

26. It is worth to note that the manner in which the evidence has to be appreciated is succinctly dealt by the Hon'ble Apex Court in the case of ***Santosh Hazari V/s. Purushottam Tiwari***³. The First Appellate Court has to traverse the line of appreciation as is done by the Trial Court to the extent possible and then point out where the Trial Court has gone wrong. In the case on hand, the First Appellate Court has replaced its own

³ (2001) 3 SCC 179



findings and reasonings to that of the Trial Court. Obviously, the First Appellate Court didn't have the advantage of seeing the demeanor of the witnesses and as such, it had to traverse the line of conclusions traversed by the Trial Court and then point out where it has gone wrong. Obviously, the First Appellate Court has not done this exercise and by holding that the vendors of the plaintiff had continued in possession till their death, holds that it would adversely affect the title of the plaintiff. While coming to such conclusion, it doesn't give a finding as to since when the possession of the defendants became adverse to the title of the plaintiff. Therefore, the conclusion of the First Appellate Court that the defendants had perfected the title by adverse possession is not sustainable in law.

27. Coming to the second question of law, it would not hold this Court for much longer. The entries that were found in the revenue records show that the property was standing in the name of Gangavva. It is not known why the DW1 while paying the taxes to the municipality didn't notice that it was standing in the name of Gangavva. It has to be kept in mind that the defendants are none else than the children of Sanna Akkamma, who was the second wife of Jambaiah. Plaintiff-Gangavva was



the first wife. Therefore, when the property was standing in the name of Gangavva, the defendant No.2 had full knowledge of the same. The First Appellate Court did not draw any inference regarding the name of Gangavva appearing in the records. Therefore, it appears that it overlooked the records of the Municipality in coming to the conclusion that the defendants have perfected their title.

28. In the light of the above discussions, both the substantial questions of law framed by this Court are answered in the 'affirmative'.

29. The last aspect to be considered by this Court is about the question whether the Courts are permitted to go beyond the sale deed standing in the name of a female Hindu and find out who had financed such purchase. Even if we hold that Jambaiah had spent the money for purchasing the suit schedule property, by virtue of Section 14 of the Hindu Succession Act, it becomes the absolute property of the woman. There can't be any question regarding the source of the income for purchasing the property by a woman and whatever may be the source, the property becomes the absolute property of lady. The judgment of a coordinate bench of this Court in the case of



Gowramma Vs. Rangappa⁴ makes it very clear that the properties standing in the name of a female member can't be treated as a joint family property. It was observed as below:-

"It is to be noted here that when the properties were purchased by plaintiff 1 along with the defendant, to the extent of the half share, those properties became absolute properties of plaintiff 1 and even the doctrine of blending is also not applicable to the properties of female member of the joint family. It is no doubt true that during the course of cross-examination of PW.1, she was testified as to what was her independent income at the time of purchasing the property jointly with the defendant. It was also suggested that the family owned the other properties when the suit schedule properties were purchased jointly by plaintiff 1 and the defendant. Therefore, both the Courts inferred that the properties purchased under the registered Sale Deed of the year 1956 were also the joint family properties and upheld the oral partition between plaintiff 1 and defendant. Even if it is presumed that the joint family by investing its funds has purchased a property in the name of female member of the family, such property becomes absolute property of the female member and the other members of the family have no right to ask such female

⁴RSA No.3090/2007 dtd. 7.1.2015



member to put the property into common hatchpot seeking partition in respect of the property between the members of the family. This legal aspect has been completely overlooked by both the Courts below.”

30. The provisions of Section 14 of the Hindu Succession Act reads as below:-

“14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.”

31. Thus, it is very clear that whenever a property is held by a female Hindu, it has to be treated as her own property and the source is irrelevant. The decision of the Apex Court in the case of **Marabasappa (Dead) by LRs and Others Vs. Ningappa (Dead) By Lrs and Others**⁵, in paragraph No.20 and 24 observes as below:-

“20. Stridhana belonging to a woman is a property of which she is the absolute owner and which she may dispose of at her pleasure, if not in all cases during

⁵ (2011) SCC 451



coverture, in all cases during widowhood. Since the plaintiffs have proved that Parwateva had not alienated the property by executing a will in favour of defendant 5 during her lifetime, the property is the absolute property of Parwatevva and would not be available for partition among the members of joint family since it does not partake the character of joint family property.

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24. Section 14 of the Hindu Succession Act, 1956 clearly mandates that any property of a female Hindu is her absolute property and she, therefore, has full ownership. The Explanation to sub-section (1) further clarifies that a Hindu woman has full ownership over any property that she has acquired on her own or as stridhana. As a consequence, she may dispose of the same as per her wish, and that the same shall not be treated as a part of the joint Hindu family property."

32. Thus, from the perusal of the above judgment of the Apex Court, it is clear that the individual property of a female Hindu doesn't partake the character of the joint family property. Therefore, the mandate of Section 14 of the Hindu Succession



Act can't be taken away by a contention that the said property was financed by Jambaiah.

33. When the property stands in the name of a female Hindu, it has to be presumed that it is her self-acquired property whatever the source may be. In that view of the matter, the defendants could not have raised the contention that Jambaiah had purchased the property in the name of Gangavva. For these reasons, the impugned judgment of the First Appellate Court is not sustainable in law. In the result, the appeal deserves to be allowed and the judgment of the Trial Court needs to be restored. Hence the following:

ORDER

- i. The appeal is ***allowed.***
- ii. The impugned judgment of the First Appellate Court in R.A.No.32/2007 is hereby set aside.
- iii. The judgment of the Trial Court in O.S.No.132/2005 is thereby confirmed.

SD/-
(C M JOSHI)
JUDGE