



IN THE HIGH COURT OF KARNATAKA,AT DHARWAD

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 265 OF 2006 (DEC/INJ)

C/W

RSA CROSS OBJ NO. 100002 OF 2024

IN RSA NO. 265/2006:

BETWEEN:

SHRI VEERABHADRA PARAGOURA PATIL,
SINCE DECEASED BY HIS LRS.

- 1(a) SMT. NIRMALA W/O. VEERABHADRA PATIL,
AGED ABOUT 66 YEARS,
OCC. HOUSEHOLD WORK,
R/O. IIIRD CROSS, GANDHI NAGAR,
GHATAPRABHA, TQ. GOKAK,
DIST. BELGAUM.
- 1(b) HALASIDDA S/O. VEERABHADRA PATIL,
AGED ABOUT 47 YEARS, OCC. DOCTOR,
R/O. IIIRD CROSS, GANDHI NAGAR,
GHATAPRABHA, TQ. GOKAK,
DIST. BELGAUM.
- 1(c) SIDAGOUDA S/O. VEERABHADRA PATIL,
AGED ABOUT 45 YEARS,
OCC. DOCTOR,
R/O. IIIRD CROSS, GANDHI NAGAR,
GHATAPRABHA, TQ. GOKAK,
DIST. BELGAUM.

...APPELLANTS



(BY SRI B S KAMATE, ADVOCATE)

AND:

1. SIDRAM DUNDAPPA DANDIN,
SINCE DECEASED BY HIS LRS.
- 1(a). SMT. SHIVALEELA,
W/O. LAKKAPPA VANTAMURI,
AGED ABOUT 45 YEARS,
OCC. HOUSEHOLD WORK,
R/O. BASTWAD, TQ. HUKERI,
DIST. BELAGAVI.
- 1(b). SRI DUNU SIDRAM DANDIN,
AGED ABOUT 41 YEARS,
OCC. AGRICULTURE,
R/O. HOLI ONI, GHODGARI,
TQ. HUKERI, DIST. BELAGAVI.
- 2 . THE MANAGING DIRECTOR,
HIRANYAKESHI SAHAKARI SAKKARE
KARKHANE NIYAMIT,
SANKESHWAR-591 313,
TQ; HUKKERI,DIST;BELGAUM.
- 3 . SMT. BHAGIRATI,
W/O PARAGOUDA PATIL,
SINCE DECEASED BY HER LRS.
APPELLANTS AND RESP.NO. 4 TO 9.
- 4 . SMT SHRINGAREWWA W/O IRAPPA GULL,
SINCE DECEASED BY LRS.
- 4(a). UMESH I. GULL,
SINCE DECEASED BY LRS.
- 1(a)(i). MALATI W/O. UMESH GULL,
AGE NOT KNOWN,
OCC. HOUSEHOLD,



- R/O. 2454, MARKET ROAD,
ATHANI-591 304, DIST. BELGAUM.
- 1(a)(ii). HARISHA S/O. UMESH GULL,
AGE NOT KNOWN, OCC. AGRICULTURE,
R/O. 2454, MARKET ROAD,
ATHANI-591 304, DIST. BELGAUM.
- 4(b). RAMESH I. GULL,
AGED ABOUT 42 YEARS,
OCC. AGRICULTURE,
R/O. 2454, MARKET ROAD,
ATHANI-591304, DIST. BELGAUM.
- 4(c). NIRMALA W/O. VEERABHADRA PATIL,
AGED MAJOR,
OCC. HOUSEHOLD,
R/O. J.G. HOSPITAL, GHATAPRABHA-591 321.
TQ. GOKAK, DIST. BELGAUM.
- 4(d). SHASHIKALA,
W/O. SHIVALING TORLI,
AGED ABOUT 48 YEARS,
R/O. C/O. I.C. NAGATHANA,
PANCHASEELA, GURU KRUPA ROAD,
BIJAPUR.
- 4(e). SMT. VANITA MOHAN TADAKASE,
AGED ABOUT 46 YEARS,
R/O. C/O. MOHAN C. TADAKASE,
58/B, SAMRAT HOUSING SOCIETY,
SOLHAPUR-413 002.
- 4(f). RAJESHWARI MAHESH VIJAPURE,
AGED ABOUT 40 YEARS,
SHOP NO.386, EAST MANGALAWAR PETH,
SOLHAPUR-413 002.
- 5 . SMT. SHANTA BHIMARAO SHIVANNAVAR,
AGED ABOUT 64 YEARS,
OCC:HOUSEHOLD WORK,
R/O C/O DR RAJENDRA SHIVANNAVAR,



SHIVANNAVAR'S UROLOGY HOSPITAL,
OPP: AMBEDKAR GARDEN, AMBEDKAR ROAD,
MIRAJ 416 410, DIST:SANGLI.

- 6 . SMT. PREMA W/O SHIVAKANT GOUDAPPAGOL,
AGED ABOUT 58 YEARS,
OCC:HOUSEHOLD WORK,
R/O NEAR BASAVA TEMPLE,
M.MALLAPUR-591 307, TQ:GOKAK,
DIST:BELGAUM.
- 7 . SMT. LALITA W/O KASHIRAO PARVATRAO,
AGED ABOUT 56 YEARS,
OCC:HOUSEHOLD WORK,
R/O BASAV COLONY, BEHIND KLE HOSPITAL,
BAUXITE ROAD, BELGAUM-590 001.
- 8 . SMT. GOURADEVI,
W/O LAXMAN HALLUR,
AGED ABOUT 53 YEARS,
OCC:HOUSEHOLD WORK,
R/AT KAMAT BUILDING, YOGIKOL ROAD,
GOKAK-591 307, DIST:BELGAUM.
- 9 . SMT. UMA, W/O BALCHANDRA GULL,
AGED ABOUT 50 YEARS,
OCC:HOUSEHOLD WORK,
R/AT SHANKAR NAGAR, NEAR BUS STAND,
ATHANI 591 304, DIST:BELGAUM.

...RESPONDENTS

(BY SRI SHIVARAJ P MUDHOL, ADVOCATE FOR R1 (a) AND
R1(b);
SRI JAGADISH PATIL, ADVOCATE FOR R2(NOC);
SRI RAVI S. BALIKAI, ADVOCATE FOR R4(b to f);
SRI MAHANTESH R. PATIL, ADVOCATE FOR R6 TO R9;
R5- SERVED;
R4(a) (i)-HELD SUFFICIENT;
R4(a) (ii)-HELD SUFFICIENT)



NC: 2026:KHC-D:786
RSA No. 265 of 2006
C/W RSA.CROB No. 100002 of 2024

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 16.11.2005 PASSED IN R.A.NO.4/2003 ON THE FILE OF THE I ADDL. DISTRICT JUDGE, BELGAUM, PARTLY ALLOWING THE APPEAL AND MODIFYING THE JUDGMENT AND DECREE DATED 25.10.2002 PASSED IN O.S.NO.85/1997 ON THE FILE OF THE CIVIL JUDGE (SR.DN.) HUKKERI.

IN RSA CROB. NO.100002/2024:

BETWEEN:

SRI. SIDRAM S/O. DUNDAPPA DANDIN
SINCE DECEASED BY HIS LRS

- 1 SHIVALEELA @ LAXMI
W/O LAKKAPPA VANTAMURI,
AGED ABOUT 50 YEARS,
OCC: HOUSEHOLD WORK,
R/O. BASTWAD, TALUK: HUKKERI,
DIST: BELAGAVI, PIN: 591 309.
- 2 SRI DUNDANAGOUDA,
S/O. SIDRAM DANDIN @ PATIL,
AGED ABOUT 45 YEARS,
OCC: AGRICULTURE,
R/O. HOLI ONI, GHODAGERI,
TQ. HUKKERI, DIST: BELAGAVI,
PIN: 591107.

...CROSS OBJECTORS

(BY SRI SHIVARAJ P MUDHOL, ADVOCATE)

AND:

VEERABHADRA S/O PARAGOUDA PATIL,
SINCE DIED REP. BY HIS LRS.

1. NIRMALA W/O VEERABHADRA PATIL,



AGED ABOUT 66 YEARS,
OCC: HOUSEHOLD WORK,
R/O. III RD CROSS, GANDHI NAGAR,
GHATAPRABHA, TALUK: GOKAK,
DIST: BELAGAVI, PIN-591 306.

2. HALASIDDA S/O. VEERABHADRA PATIL
AGED ABOUT 47 YEARS, OCC: DOCTOR,
R/O. IIIRD CROSS, GANDHI NAGAR
GHATAPRABHA, TQ. GOKAK,
DIST. BELAGAVI, PIN-591 306.

3. SIDAGOUDA S/O. VEERABHADRA PATIL,
AGED ABOUT 45 YEARS,
OCC. DOCTOR,
R/O. IIIRD CROSS, GANDHI NAGAR,
GHATAPRABHA, TQ. GOKAK,
DIST. BELAGAVI, PIN-591 306.

4. THE MANAGING DIRECTOR,
HIRANYAKESHI SAHAKARI SAKKARE
KARKHANE NIYAMIT SANKESHWAR,
TQ. HUKKERI, DIST: BELAGAVI,
PIN:591 313.

SMT. BHAGIRATI W/O. PARAGOUDA PATIL,
(SINCE DIED THE LRS ALREADY ON RECORD
RESPONDENT NO.1 AND 2 AND 4 TO 9)

SMT. SHRINGAREWWA W/O. IRAPPA GULL
SINCE DECEASED BY LRS

5. UMESH S/O. IRAPPA GULL,
AGED ABOUT 44 YEARS,
OCC. AGRICULTURE,
R/O. 2454 MARKET ROAD, ATHANI
TQ. ATHANI, DIST., BELAGAVI-591 304.
(SINCE DIED REP. BY HIS LRS)

5(a). MALATI W/O. UMESH GULL,
AGED MAJOR,



OCC. HOUSEHOLD WORK,
R/O. 2454, MARKET ROAD, ATHANI,
TQ. ATHANI, DIST. BELAGAVI-591 304.

- 5(b). HARISH S/O. UMESH GULL,
AGED MAJOR, OCC: ARICULTURE,
R/O: 2454, MARKET ROAD, ATHANI,
TALUK: ATHANI, DIST: BELAGAVI-591 304.
6. RAMESH S/O. IRAPPA GULL,
AGED MAJOR, OCC. AGRICULTURE,
R/O. 2454, MARKET ROAD, ATHANI
TQ. ATHANI, DIST. BELAGAVI-591 304.
7. NIRMALA W/O. VEERABHADRA PATIL,
AGED MAJOR, OCC. HOUSEHOLD WORK,
R/O. J.G. HOSPITAL GHATAPRABHA,
TQ. GOKAK, DIST. BELAGAVI-591 321.
8. SHASHIKALA W/O. SHIVALING TORLI,
AGED ABOUT 48 YEARS,
OCC: HOUSEHOLD WORK,
R/O. C/O: I.C. NAGATHANA,
PANCHASEELA, GURU KRUPA ROAD,
VIJAYAPUR, TQ: VIJAYAPUR,
DIST.: VIJAYAPUR.
9. VANITA W/O. MOHAN TADAKASE,
AGED ABOUT 46 YEARS,
OCC. HOUSEHOLD WORK,
R/O. C/O. SAMRAT HOUSING SOCIETY,
SOLAPUR- 413 002.
10. RAJESHWARI W/O: MAHESH VIJAPURE,
AGED ABOUT 40 YEARS,
OCC: HOUSEHOLD WORK,
R/O. SHOP NO. 386 EAST,
MANGALWAR PETH, SOLAPUR- 413 002.
11. SMT. SHANTA W/O. BHIMARAO SHIVANNAVAR,
AGED ABOUT 64 YEARS,



OCC. HOUSEHOLD WORK,
R/O. C/O: RAJENDRA SHIVANNAVAR,
SHIVANNAVAR UROLOGY HOSPITAL,
OPP. AMBEDKAR GARDEN,
AMBEDKAR ROAD, MIRAJ-416 410.

12. SMT. PREMA W/O. SHIVAKANT GOUDAPPAGOL,
AGED ABOUT 67 YEARS,
OCC. HOUSEHOLD WORK,
R/O. NEAR BASAVA TEMPLE M. MALLAPUR,
TQ. GOKAK, DIST. BELAGAVI.
13. SMT. LALITA W/O. KASHIRAO PARVATRAO,
AGED ABOUT 56 YEARS,
OCC. HOUSEHOLD WORK,
R/O. BASAV COLONY BEHIND KLE HOSPITAL
BAUXITE ROAD, BELAGAVI-590 001.
14. SMT. GOURADEVI W/O. LAXMAN HULLER,
AGED ABOUT 63 YEARS,
OCC. HOUSEHOLD WORK,
R/O. KAMAT BUILDING,
YOGIKOLLA ROAD, GOKAK, TQ. GOKAK,
DIST. BELAGAVI-591 307.
15. SMT. UMA W/O. BALACHANDRA GULL,
AGED ABOUT 60 YEARS,
OCC. HOUSEHOLD WORK,
R/O. SHANKAR NAGAR,
NEAR BUS STAND, ATHANI,
TQ. ATHANI, DIST. BELAGAVI-591 304.

...RESPONDENTS

(BY SRI B S KAMATE, ADVOCATE FOR R-1 TO R-3;
SRI GANGADHAR J.M., ADVOCATE AND
SRI SHARANABASAVARAJ C, ADVOCATE FOR R4;
SRI MAHANTESH R. PATIL, ADVOCATE FOR R12 TO R15;
SRI RAVI S. BALIKAI, ADVOCATE FOR R9;
R6, R7, R8, R10, R11-SERVED;
R5(a), R5(b)-HELD SUFFICIENT)



THIS RSA CROB IS FILED UNDER ORDER 41 RULE 22 OF CPC, PRAYING TO CALL FOR RECORDS AND TO SET ASIDE /MODIFIED THE IMPUGNED JUDGMENT AND DECREE DATED 16.11.2005 IN REGULAR APPEAL NO.04/2003 PASSED BY THE I ADDITIONAL DISTRICT JUDGE BELAGAVI IN RESPECT OF ITEM NO.1 AND 2 IN THE SUIT SCHEDULE PROPERTY I.E LAND BEARING SY.NO.21/1 MEASURING 1 ACRE 14 GUNTAS AND LAND BEARING SY.NO.21/2 MEASURING 2 ACRE 14 GUNTAS, AND SET ASIDE THE JUDGMENTS AND DECREE DATED 25.10.2002 PASSED BY THE CIVIL JUDGE (SR. DN.) HUKKERI IN O.S.NO.85/1997 BY ALLOWING THIS CROSS OBJECTION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RSA AND RSA CROSS OBJECTION HAVING BEEN HEARD AND RESERVED ON 30.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY AT BENGALURU BENCH, COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

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

1. The plaintiff in OS No. 85/1997 before the Civil Judge (Sr. Dvn.), Hukkeri, is before this Court in RSA No.265/2006 assailing the judgment in RA No.4/2003 dated 16.11.2005 by learned I Additional District Judge, Belgaum, which partly allowed the appeal and decreed the suit in respect of two of the suit schedule properties only



and Legal Representatives of defendant No.1 are before this Court in RSA Cross Objection No.100002/2024.

2. The factual matrix of the case as may be found from the pleadings, may be summarized as below:

A. The plaintiff, Veerabhadra Paragouda Patil, filed suit before the Senior Civil Judge of Hukkeri, seeking declaration of title and consequential relief of injunction against the defendants. The suit schedule properties are as below:

Description of the Suit Property:

Agricultural lands situated within the limits of Ghodageri village in Hukkeri taluka, bearing:-

SL.No.	R.S.No.	Extent A-Gs	Assessment Rs. Ps.	Market Value Rs.
1.	21/1	1-14	06=76	10,000/-
2.	21/2	2-14 -0-02 PK 2-12	11=90	20,000/-
3.	653	2-37 -0-01 PK 2-36	11=92	25,000/-
4.	518	2-27 -0-14 PK 2-13	13=66	25,000/-
		Total	44=24	80,000/-

Half Share



B. It is the case of the plaintiff that he is the son of one Paragouda, who died on 29.07.1974 at Ghodageri village in Hukkeri Taluka. Paragouda had two sons and six daughters, who are the plaintiff and defendant Nos. 1, 3 to 9. Said Paragouda had two wives i. e., Shivavva and Bhagirathi. He had married Bhagirathi after the death of Shivavva. Defendant No.1 had gone in adoption to one Dundappa Dandin of Ghodageri long back. Since the date of adoption, defendant No.1 had severed all his ties with the genital family and he was considered as adopted son of the said Dundappa Dandin. He was managing the family affairs of his family and the suit schedule properties were owned by the adopted father of the defendant No. 1. The suit schedule properties mentioned at Sl.Nos. 1, 2 and 4 were owned by defendant No.1 and he had gifted the properties at Sl.Nos. 1 and 2 completely and half share in the property at Sl. No. 4 i. e., R.S. No. 518 in favour of the plaintiff under a registered Gift Deed. As per the Gift Deed, the name of the plaintiff came to be entered in the record of



rights of the properties at Sl.Nos. 1, 2 and to the extent of half share in the property at Sl.No. 4. Since then he is using, cultivating and enjoying the said property.

C. So far as the property at Sl.No. 3 i.e., R.S. No. 653 of Ghodageri, is concerned, it was owned by the adopted father of defendant No. 1 Dundappa Dandin and he had gifted half portion of the same to the elder sister of the present plaintiff i. e., Shringarewwa. Accordingly, her name came to be entered in the revenue records in respect of the said half share. After coming into force of the Land Reforms Act, the father of the plaintiff, Paragouda had filed Form No.7 for grant of occupancy rights in respect of the said property. The Land Tribunal, Hukkeri, granted the occupancy rights in favour of the father of the plaintiff. The plaintiff has succeeded to the said property and therefore, it is the case of the plaintiff that he is the absolute owner in respect of the suit schedule properties.



D. While the plaintiff was in peaceful possession and enjoyment of the suit schedule properties, he had grown sugar cane crop and had invested huge amount for the same. Defendant No. 1 taking undue advantage of appearance of his name in the property extract of Sl.Nos.3 and 4 properties i.e., R.S. Nos. 653 and 518 to the extent of half share, he illegally and unauthorisedly tried to get the amount from the sugar factory in respect of those properties as well as the R.S. No. 21/1 and 21/2 i.e., Sl.Nos.1 and 2 of schedule properties. After coming to know this fact, plaintiff had made several representations to the defendant No.2 Sugar Factory, requesting it not to make any payment to anybody other than the plaintiff and therefore, the correspondence made by the plaintiff though were acknowledged by defendant No. 2, it didn't answer the same. It is contended that the plaintiff was permitted to cut the sugar cane crop in the properties and he was also issued the necessary authorization by defendant No.2-sugar factory. Therefore, it is contended that there was



obstruction and interference by defendant No.1 and defendant Nos. 3 to 9 for the possession and enjoyment of the schedule property and as such, there was a necessity for filing the present suit for declaration of his title and consequential relief of injunction.

3. On being served with the summons, defendant No. 1 appeared and filed his written statement. Defendant No.1 in the written statement contended the following aspects:

A. Defendant No.1 admitted that the plaintiff and defendant No. 1 were born to Paragouda and the said Paragouda had died on 29.07.1974. He also admitted that Paragouda had two sons and six daughters and that defendant No. 1 had gone in adoption to one Dundappa Dundin.

B. He contends that the deceased Paragouda acted as guardian of the defendant as he was a natural father. He denied that all ties of defendant No.1 were severed with the



original family. Defendant No.1 specifically denied that he had gifted the suit schedule properties i.e., the property Nos. 1, 2 and 4 in favour of the plaintiff under a registered Gift Deed. He contented that he never executed any Gift Deed in favour of the plaintiff and has not conveyed any right, title or interest to the plaintiff. He asserted his possession and enjoyment over the schedule property.

C. The other contentions of the plaintiff were denied by defendant No.1. He contended that when the adoptive father of defendant No.1 died, defendant No.1 was left in the care and custody of his natural father Paragouda. Defendant No.1 had never executed any documents in favour of anybody and Paragouda died leaving behind him, his second wife Bhagirathi and the plaintiff and the 6 daughters. Therefore, he contended that all of them have inherited the properties left by deceased Paragouda and this suit being for declaration they are also necessary parties to the suit. Hence, he sought for dismissal of the suit.



4. Defendant No.2 -Sugar Factory in its written statement denied the plaint averments and stated that the plaintiff be put to strict proof of the same. It was contended that defendant No.2 is not a necessary party to the suit and therefore, the suit be dismissed with compensatory costs.

5. The contention of defendant No.1 that the suit is bad for non-joinder of necessary parties was considered by the trial Court as a preliminary issue and it held that the daughters of Paragouda are also necessary parties. Hence, they came to be impleaded as defendant Nos.3 to 9. The defendant No.4 and defendant No.5 filed the written statement supporting the contention of the plaintiff and stated that they have relinquished their share in favour of the plaintiff.

6. On the basis of the above contentions, following issues and additional issues were framed by the trial Court:

ISSUES

"1. Whether the Plaintiff proves that he is the exclusive owner of the suit properties?



2. Whether the Plaintiff further proves that the suit properties were in his lawful possession on the date of suit and he has grown the crops therein?
3. Whether the Plaintiff further proves that the obstruction by the Defendant No.1?
4. Whether the Plaintiff further proves the cause of action against the defendant No.2?
5. What decree or order?"

ADDITIONAL ISSUES:

Whether the Defendant No.1 proves that the parties shown at para No.7 of the W.S. of D-1 are necessary parties to the present suit?

7. In support of the case of the plaintiff, plaintiff was examined as PW1 and one witness was examined as PW2. Exhibit P1 to Exhibit P45 were marked in evidence. The defendants have not adduced any evidence before the trial Court.

8. After hearing the parties, the trial Court has decreed the suit of the plaintiff declaring that the plaintiff is



the absolute owner of the suit schedule properties and defendant No.1 is liable to be restrained by an injunction. Aggrieved by the same, defendant No.1 approached the First Appellate Court in RA No.4/ 2003 and after hearing both the sides, the First Appellate Court framed following points for consideration:

"1. Whether the finding of the trial court that the Plaintiff is the exclusive owner of the suit properties is sustainable?

2. Whether the finding of the trial court that the Plaintiff is in lawful possession of the suit properties and has grown crops therein is sustainable?

3. Whether the order of the trial court granting declaration and permanent injunction as prayed by the Plaintiff and direction to Defendant Nos.1 and 2 to pay Rs.73,543/- to the Plaintiff is sustainable?

4. Whether the appeal deserves to be allowed?

5. If so what order?"

9. After consideration, point Nos. 1 to 4 were partly answered in the affirmative and allowed the appeal in part. The First Appellate Court held that the properties at Sl.No.1



and 2 i.e., Sy.No.21/1 and 21/2 are of the ownership of the plaintiff and restrained the defendants from interfering in respect of the enjoyment of those properties. However, it dismissed the claim of the plaintiff in respect of R.S.Nos.653 and 518 which are at Item Nos. 3 and 4 of the suit schedule.

10. Aggrieved by the same, the plaintiff is before this Court in RSA No.265/2006 and legal representatives of defendant No.1 is in RSA Cross Objection No.100002/2024.

11. On issuance of notice, defendant No.1 has appeared before this Court in the year 2009. During the pendency of this appeal, respondent No.3 and respondent No. 4 have died and their LR's are brought on record.

12. Respondent No.1 has appeared on 17.11.2009. The respondent No.1 also died during the pendency of this appeal and his LR's are brought on record. The LR's of defendant No.1/respondent No.1 herein have filed the cross objection in the year 2024 in RSA Crob.No.100002/2024



along with an application for condonation of delay of 702 days. The said application for condonation of delay has been opposed by the plaintiff.

13. Further, during pendency of this appeal, the appellant has also filed an application under Order XLI Rule No. 27 of CPC, seeking to produce the copy of the order of the Land Tribunal which had granted the occupancy rights in favour of Paragouda.

14. After hearing the learned counsel for the appellant on 08.06.2010, this Court admitted the appeal and framed following substantial questions of law:

"1) Whether the lower Appellate Court is justified in reversing the judgment and decree of the Trial Court in respect of the properties bearing No. 653 and 518?

2) Whether the lower Appellate Court is justified in dismissing the suit of the plaintiff in respect of recovery of Rs.73,543/-?



3) Whether the lower Appellate Court is justified in dismissing the suit insofar as the property at Sl.No.3 is concerned?"

15. In view of the above, this Court needs to consider the application seeking production of the additional evidence under Order XLI Rule 27 of CPC filed by the appellant, the application for condonation of delay in filing the cross objections by the LR's of the respondent No.1 along with the substantial questions of law framed as above.

16. The arguments by learned counsel appearing for the appellant and the learned counsel for the respondents were heard.

Re.IA for production of additional document:

Plaintiff has filed an application under Order XLI Rule 27 of CPC on 23.01.2006. The affidavit filed in support of the application contends that the plea taken in the suit that the Land Tribunal, Hukkeri had granted the occupancy



rights in favour of father of the plaintiff in respect of the suit property at Sl.No.3 i.e. R.S. No. 653 was not disputed or denied by defendant No.1 in the written statement and therefore, there was no question of producing the order of the Land Tribunal before the trial Court. However, when the appeal was filed by defendant No.1, the First Appellate Court had recorded the findings that plaintiff has not placed any piece of paper regarding the grant of occupancy rights by the Land Tribunal. Therefore, in view of the said findings of the First Appellate Court, it is necessary for him to produce the additional evidence in this case and as such, he may be permitted to produce the additional evidence.

17. The learned counsel appearing for the appellant submits that when there was no specific denial by defendant No. 1 in the written statement about the grant of the occupancy rights by the Land Tribunal, there was no question of producing the said document. However, the First Appellate Court gave a finding that there is no material produced to show the title of the plaintiff over the schedule



property, particularly, R.S. No.653 and therefore, it was necessary for the plaintiff to produce it before this Court.

18. It is pertinent to note that the plaintiff had approached the Court seeking relief of title over the suit schedule properties, of which, R.S. No. 653 was one among them. The burden of proving title over Survey No. 653 was on the plaintiff. Plaintiff had claimed half share in the said property on the basis of the occupancy rights. It is his case that R.S. No. 653 was owned by the father of defendant No. 1 Dundappa and he had gifted half of it in favour of Shringarewwa and in turn, when it was in the hands of Shringarewwa, the father of the plaintiff- who was also none else than the father of Shringarewwa- filed Form No. 7 before the Land Tribunal and the Land Tribunal had granted the occupancy rights in favour of Paragouda. Therefore, in order to establish his title over the suit schedule property, it was incumbent upon the plaintiff to produce the said document at the time of the trial. It is not the case of the plaintiff that he was not in possession of the said document.



It is pertinent to note that the said document is not a piece of evidence which has come into existence after the appeal is filed. The fact that defendant is claiming title over the suit schedule property was known to him and it was incumbent upon him to produce those documents. Even then the plaintiff did not produce it. The written statement of defendant No.1 clearly indicates that he has denied all the plaint averments which assert title of the plaintiff over the suit schedule properties. Therefore, the grounds contended by the plaintiff in affidavit do not fall within the purview of the requirements mentioned in Rule 27 of Order XLI of CPC.

19. Here it is necessary to reproduce Order XLI Rule 27 of CPC which reads as below:

"27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or



(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

20. Thus, from the bare perusal of the provisions of Rule 27, it is clear that the grounds stated by the plaintiff in the affidavit do not fall under any of the above clauses and therefore, the application is unmerited. When the plaintiff has approached the Court, it was his duty to produce all material on record to show his title over the schedule property. It is also relevant to note that though the plaintiff claims half share in R.S. No. 653, which was allegedly gifted to Shringarewwa by Dundappa Dandin, such Gift Deed is not produced by the plaintiff. The document now sought to



be produced, which is the order passed by the Land Tribunal show that occupancy rights of entire Survey No. 653 has been granted to Paragouda. Therefore, the said document do not fit in the pleadings of the plaintiff. Under these circumstances, the application filed under Order LXI Rule 27 of CPC is unmerited and as such, the same is liable to be dismissed.

Re.IA for condonation of delay in filing cross objection

21. Regarding the delay in filing the Cross objection by cross objectors is concerned, the affidavit filed by the cross objectors shows that his father Sidram Dandin had appeared before the Court through his counsel. Sidram died on 18.07.2015. Thereafter, the appellant had not taken any steps within time to bring these cross objectors on record as LR's of Sidram and the present appeal came to be abated. When the LR's were brought on record, notice was issued to the cross objectors and then they came to know about the



present appeal proceedings and then they engaged their advocate in the year 2022, who advised them to file a cross objections. It is contented that their cross objection is in respect of the proof concerning the gift of R.S. No. 21/1 and 21/2, i.e., Item Nos.1 and 2 of the schedule properties. It is their case that certified copy of the Gift Deed produced by the plaintiff as per Exhibit P15 has not been proved and therefore, they were advised to file the present cross objection to canvass their contention. They contend that if the application is dismissed, they will be put to irreparable loss and injury.

22. The delay application is opposed by the appellant, Veerabhadra Paragouda Patil, contending that the notice of the RSA was served upon defendant No.1 in the year 2006, but no cross-objection was filed by him. It is contended that the present cross-objectors step into the shoes of respondent No.1 and therefore, they cannot claim any fresh right to file a cross-objection when they were brought on record. It is contended that there is a lapse of



more than 18 years after filing of the second appeal and therefore, the filing of the cross- objection at this juncture is not sustainable in law. The fact remains that respondent No.1/defendant No.1 had appeared before this Court in the year 2009 as may be found from the records. He was represented by the same counsel, who is now representing the cross objectors. Obviously, defendant No.1 had not filed any cross-objection concerning the Gift Deed. When the present cross objectors have come on record in the year 2022 or 2024, obviously, they have stepped into the shoes of defendant No. 1. The limitation starts to run from the date when the notice of the appeal was served upon defendant No.1, but not on the cross objectors. The cross objection/appeal being the carrying forward of the contentions of defendant No.1 before the trial Court, it had to be filed within limitation from the date of service of notice of this appeal to defendant No.1. The present cross objectors cannot claim any independent right and as such,



the application which seeks condonation of delay of 702 days is also incorrect.

23. This Court does not find any discernible reason which would entitle the cross objectors to maintain the cross appeal/objection. It is significant to note that even in the absence of the cross objection, these respondents are at liberty to raise all such disputes and all such contentions in the appeal. The issues which have gone against them can be agitated by them in the appeal also. The provisions of Order XLI of CPC make it very clear that if they are aggrieved by finding on any of the issues, they are at liberty to file the cross appeal and even in the absence of the cross appeal, they can agitate their rights since an appeal is a continuation of the suit. In that view of the matter, the cross objection is hopelessly barred by time and as such, the application is refused and consequently, the cross objection is also liable to be dismissed.



Re.Substantial questions of law 1 to 3:

24. The substantial questions of law which have been framed by this Court, really overlap on each other. The first substantial question of law concerns to R.S. Nos. 653 and 518. The third substantial question of law is also in respect of the same. The second substantial question of law is in respect of recovery of Rs.73,543/- regarding which there is no prayer in the plaint but it was on the ground that such a relief was given by the trial Court and set aside by the First Appellate Court. Therefore, all these three substantial questions of law framed are taken up together.

25. The learned counsel appearing for the appellant Sri B. S. Kamate, submits that Item Nos.1 and 2 of the schedule properties are the properties which were gifted by defendant No. 1 in favour of the plaintiff and the said gift was never challenged by defendant No.1 at any point of time. He submits that R.S. No. 653, which is Item No.3 of the property was a subject matter of an order of the Land Tribunal and therefore, when Paragouda became the owner



of the property by virtue of the occupancy rights granted to him, it has devolved upon the plaintiff and therefore, he is the absolute owner. He further submits that ME.No.2426 at Ex.P16 shows that a varadi was given by none else than defendant No.1 and he had consented to enter the name of the plaintiff to the extent of half share as it is in joint possession. Therefore, he contends that the suit schedule properties are the absolute properties owned by the plaintiff. It is submitted that Exhibit P16 is of 12.06.1960 and since then it was not challenged by defendant No.1 at any point of time. Similarly, the other records which are in favour of the plaintiff were never challenged by defendant No.1 or anybody else and as such they have attained finality and therefore, the First Appellate Court should have dismissed the appeal, confirming the judgment passed by the trial Court. He points out that the defendant No.1 only filed his written statement and to substantiate his contention he had not adduced any evidence in the matter. Therefore, it is submitted that when the Gift Deed at Exhibit



P15 is acted upon and the mutation entry has not been challenged at any point of time and also there being an order of Land Tribunal in favour of father of plaintiff, the First Appellant Court erred in partly allowing the appeal.

26. Per contra, learned counsel appearing for the respondent submit that the Gift deed at Ex.P15 has not been proved as required under law. He contends that the original Gift Deed has not been produced by the plaintiff and it is only the certified copy which has been produced by him. He submits that the gift having not been proved as required under law, the contention of the plaintiff should have been rejected.

27. Insofar as Item Nos. 3 and 4 of the schedule properties are concerned, he submits that Item No. 3 was owned by one Shringarewwa and father of the said Shringarewwa acted as a minor guardian as well as tenant. This dual role played by Paragouda cannot be accepted. Therefore, he submits that the alleged grant of the



occupancy rights in favour of Paragouda as against his own daughter is shrouded with suspicious circumstances. He points out that the order of the Land Tribunal has not been produced. Therefore, insofar as R.S.No.518 is concerned, he submits that though the plaintiff contends that it was also part of the gift, the Gift Deed nowhere mention about Site No. 518. Hence, a mere mutation entry as per Exhibit P16 is insufficient and no title would pass on the basis of a revenue record. The alleged transfer of Survey No. 518 to the extent of half share is unknown to law and therefore, he seeks the total dismissal of the suit.

28. In support of his contention, he has placed reliance on the judgment reported in the case of **N. Ramaswamy Padayachi Vs. C. Ramaswami Padayachi and others**¹, wherein it was held that, a Gift Deed has to be proved as required under Section 68 of the Evidence Act.

¹ AIR 1975 Madras 88



29. He also relied on the judgment in the case of **P.Kishore Kumar Vs. Vittal K. Patkar**² rendered by Apex Court, wherein it was held that, having instituted the suit for declaration, the burden of proof rested on the shoulders of the plaintiff to reasonably establish the probability of the better title. He also contends that the interference in the second appeal under Section 100 of CPC ought not to be made unless the appeal involves substantial questions of law, as distinguished from a mere question of law.

In this case, it was also held that it is trite law that revenue records are not documents of title and they neither create nor extinguish title or does it have any presumptive value on title.

Analysis and conclusions:

30. A bare perusal of the plaint shows that insofar as R.S. No. 21/1 and 21/2 are concerned, the plaintiff pleads that they were owned by defendant No.1 and he has

² 2024(3) SCC 553



executed a Gift Deed in favour of the plaintiff. It is also stated in the plaint that half share in serial No. 4 property i.e., R.S. No. 518 was also subject matter of the gift. A certified copy of the Gift Deed is produced at Exhibit P15. A perusal of this document would show that nowhere, R.S. No. 518 is the subject matter. This Gift Deed dated 21.05.1960 shows that defendant No. 1 has executed the Gift Deed in favour of the plaintiff in respect of R.S. Nos. 21/1 and 21/2. As may be found from this document, defendant No.1 was aged about 20 years. Therefore, it is evident that Paragouda was not the minor guardian of defendant No. 1 in any way. The Gift Deed avers that the genitive mother of the defendant, Shringarewwa, was the original owner of the property and therefore, he wants to gift the same to the plaintiff. It is also mentioned that it was as per the wish of the said Shringarewwa. A perusal of this document shows that it was a registered Gift Deed and there is no reason not to believe the said document. It is pertinent to note that this Exhibit P15 pertains to only R.S.



No. 21/1 and 21/2 and it is not concerned with R.S. No. 518 as pleaded in the plaint.

31. Exhibit P16 is the mutation entry dated 12.06.1960, which is about a month later to Exhibit P15. In this, it is mentioned that defendant No.1 admitting the joint share of the plaintiff to the extent of half, wanted to mutate his name and accordingly, the mutation entry was effected. It may be noted that R.S. No.518 is the property which was owned by defendant No.1. The plaintiff had no right, title or interest in the same in whatsoever manner. Plaintiff was not a co-parcener of 1st defendant's family. Admittedly, defendant No.1 had gone in adoption. Therefore, any conveyance has to be by way of registered deed. If the value of the property is more than Rs.100/-, it has to be necessarily to be registered. Therefore, a mutation transfer in the form of Exhibit P16 is unknown to law. This aspect has been clearly dealt by the Apex Court in the judgment relied by the learned counsel for defendant No. 1 in the case of **P. Kishore Kumar** referred supra. It was held that



it is trite law that revenue records are not documents of title and they do not convey any property. In paragraph Nos.22 to 26, it was held as below:

"22. It is trite law that revenue records are not documents of title.

23. This Court in *Sawarni v. Inder Kaur* [*Sawarni v. Inder Kaur*, (1996) 6 SCC 223] held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

24. This was further affirmed in *Balwant Singh v. Daulat Singh* [*Balwant Singh v. Daulat Singh*, (1997) 7 SCC 137] wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

25. In *Jitendra Singh v. State of M.P.* [*Jitendra Singh v. State of M.P.*, 2021 SCC OnLine SC 802] , this Court after considering a catena of judgments, reiterated the principle of law as follows: (SCC OnLine SC para 6)

"6. ... mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose."



26. We may also profitably refer to the decision of this Court in *Sita Ram Bhau Patil v. Ramchandra Nago Patil* [*Sita Ram Bhau Patil v. Ramchandra Nago Patil*, (1977) 2 SCC 49] wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary."

32. Therefore, so far as R.S. No. 518 is concerned, there being absolutely no transfer of title as required under law, it cannot be said that the plaintiff has acquired any right, title or interest in the same.

33. In so far as R.S. No. 653 is concerned, it is the case of the plaintiff that it was the property which was gifted to Shringarewwa. The alleged Gift Deed executed by Dundappa Dandin, the adoptive father of defendant No.1 in favour of Shringarewwa has not been produced. What is available on record is the record of rights, Exhibit P3, which show that half of the property stands in the name of Paragouda and the remaining half stands in the name of defendant No.1. The name of the said Shringarewwa



doesn't find any place in it. Exhibit P4 is also the record of rights for the year 1995–96.

34. The next document that is available in respect of R.S. No. 653 is Exhibit P36. It is a mutation entry dated 17.07.1991. It is mentioned that Paragouda had given a vardi to the revenue authorities stating that he has become old and he is unable to manage the property and therefore, the name of his son Sidram Jundappa Patil i. e., defendant No.1 be entered in the records. Accordingly, the name of Paragouda came to be retained in respect of half share in R.S. No. 653 and the remaining half was entered in the name of defendant No.1. Apart from Survey No. 653, R.S. No. 541 and 652 were also entered in the name of defendant No.1. The said mutation entry was confirmed by the order of the Tahsildar. It may be noted that the entry was in the year 1991 and by that time defendant No.1 had gone in adoption. The mutation entry does not mention anything about the adoption of defendant No.1. Therefore, this document concerning R.S. No. 653 do not confer any



right, title or interest over the plaintiff to claim any share. Exhibit P41 is the record of rights of R.S. No. 653 and it shows that half share is standing in the name of Paragouda and the remaining half in the name of the defendant No. 1 – Sidrama. In other words, it only shows what has been effected in the mutation entry at Exhibit P36. These documents nowhere mention as to how R.S. No. 653 came in the hands of the plaintiff. The learned counsel for defendant No.1 has contended that the R.S. Nos. 21/1 and 21/2 are not at all the subject matter of the Gift Deed and the Gift Deed exhibited as P15 has not been proved as required under law. This aspect has been considered by the First Appellate Court. In its judgment, it notices that during course of trial, Exhibit P15 has been let in without any objections.

35. It is relevant to note that R.S. No. 21/1 and 21/2 are subject matter of the Gift Deed at Exhibit P15 and no objections were raised for marking the said document at the time of the trial. The defendants did not object for Exhibit



D15 and they have not let in any rebuttal evidence regarding the same. It is to be noted that the said property was standing in the name of defendant No.1 and he has executed a Gift Deed. The Gift Deed being registered one, it can be relied and it is not necessary that all the witnesses have to be examined in order to prove it. Obviously, the judgment relied by the learned counsel for the respondent cannot be accepted since the provisions of Section 68 of the Evidence Act are applicable only in respect of the Will. If a registered document is produced or in this case a certified copy is produced, there is no reason as to why it should not be believed. Under these circumstances, the finding of the First Appellate Court in respect of the Gift Deed has to be accepted. Hence, There is no infirmity in the judgment of the First Appellate Court. It may be noted that there was no such relief which was claimed by the plaintiff for recovery of money from the defendant. The trial Court by invoking the Provisions of Order VII Rule 7 of CPC has moulded the relief and had granted the price of the sugar cane supplied by



defendant No.1 to defendant No. 2. In fact, the First Appellate Court while discussing point Nos. 2 and 3 holds that the possession of the plaintiff in respect of Survey No. 653 and 518 cannot be approved since he had no right, title or interest over the same. In para 16, it observes that when no relief is asked by the plaintiff, such a relief could not have been granted by the trial Court. Obviously, there was no such issue which was framed concerning the payment of Rs.73,543/- and therefore, there is no evidence that was let in by the parties in respect of the same. Such relief was granted only on the basis of the oral evidence. Hence, the finding of the First Appellate Court in respect of the schedule properties do not need any interference by this Court and cannot be interdicted. In the result, the substantial questions of law are answered in the affirmative. The First Appellate Court has also discussed about from which property the sugar cane was sent and the said sum is in respect of the sugarcane sent from such property. Therefore, the said finding has to be justified. The finding is



proper and correct. For aforesaid reasons, the appeal is bereft of any merits. Hence, the following:

ORDER

- (i) IA No.2/2006 in RSA.No.265/2006 is dismissed.
- (ii) IA No.1/2024 in RSA CROB No.100002/2024 is dismissed and consequently, RSA CROB No.100002/2024 is also dismissed.
- (iii) RSA.No.265/2006 is dismissed.
- (iv) The judgment of the First Appellate Court in RA No.4/2003 dated 16.11.2005 is hereby confirmed.

Sd/-
(C M JOSHI)
JUDGE

tsn*
List No.: 19 Sl No.: 1