HC-KAR

NC: 2026:KHC-D:1337-DB
RFA No. 100015 of 2021
C/W RFA No. 100017 of 2022
RFA No. 100080 of 2022

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 30TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE R.DEVDAS

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR FIRST APPEAL NO. 100015 OF 2021 (DEC/INJ)
C/W
REGULAR FIRST APPEAL NO. 100017 OF 2022 (DEC/INJ),
REGULAR FIRST APPEAL NO. 100080 OF 2022 (DEC/INJ)

IN RFA NO.100015/2021:

BETWEEN

1. SHASHIDHAR S/O. SOMAPPA ALAGAWADI,
AGE: 39 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

2. ISHWAR S/O. SOMAPPA ALAGAWADI,
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

...APPELLANTS

(BY SRI VINAY S. KOUJALAGI, ADV. FOR
SRI S. H. MITTALKOD, SRI. M. L. VANTI, ADVOCATES)

V N BADIGER
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Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2026.02.04 14:32:51 +0530

AND

1. SURESH S/O. LINGANGOUDA PATIL,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

SOMAPPA S/O. GOUDAPPA ALAGAWADI,
SINCE DECEASED BY HIS LRS.

2. SHOBHA W/O. CHANDRSHEKAR GANGIGATTI,
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
R/O. CHIKKMALLUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

3. PRAMILA W/O. SOMAPPA ALAGAWADI,
AGE: 59 YEARS, OCC: HOUSEHOLD WORK,
R/O. TIMMAPUR, AT PRESENT JAYANAGAR,
TQ. SHIGGAON, DIST. HAVERI-581110.

4. BALAPPA S/O. BASAPPA JALALLI @ JALAHALLI,
AGE: 43 YEARS, OCC: AGRICULTURE & BUSINESS,
R/O. BALIGAR ONI, UNAKAL, HUBBALLI,
TQ. & DIST. DHARWAD-580001.

…RESPONDENTS

(BY SRI A. P. MURARI, ADV. FOR R1;
SRI DINESH M. KULKARNI, ADV. FOR R3;
NOTICE TO R2 AND R4 IS SERVED, BUT UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., PRAYING TO CALL FOR THE RECORDS AND ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 06.01.2021 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, SHIGGAON IN O.S.NO.180/2017, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

IN RFA NO.100017 OF 2022:

BETWEEN

BALAPPA S/O. BASAPPA JALALLI @ JALAHALLI,
AGE: 43 YEARS, OCC: AGRICULTURE & BUSINESS,
R/O. BALIGAR ONI, UNAKAL, HUBBALLI,
TQ. & DIST. DHARWAD.

...APPELLANT

(BY SRI LAXMAN T. MANTAGANI, ADVOCATE)

AND

1. SURESH S/O. LINGANGOUDA PATIL,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

SOMAPPA S/O. GOUDAPPA ALAGAWADI,
SINCE DECEASED BY HIS LRS.

2. SHOBHA W/O. CHANDRSHEKAR GANGIGATTI,
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
R/O. CHIKKMALLUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

3. ISHWAR S/O. SOMAPPA ALAGAWADI,
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

4. SHASHIDHAR S/O. SOMAPPA ALAGAWADI,
AGE: 39 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581110.

5. PRAMILA W/O. SOMAPPA ALAGAWADI,
AGE: 59 YEARS, OCC: HOUSEHOLD WORK,
R/O. TIMMAPUR, AT PRESENT: JAYANAGAR,
TQ. SHIGGAON, DIST. HAVERI-581110.

…RESPONDENTS

(BY SRI A. P. MURARI, ADV. FOR R1;
SRI VINAY S. KOUJALAGI, ADV. FOR SRI. S.H. MITTALKOD
& SRI M. L. VANTI, ADVS. FOR R3 & R4;
SRI DINESH M. KULKARNI, ADV. FOR R5;
NOTICE TO R2 SERVED, BUT UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., PRAYING TO CALL

FOR THE RECORDS, ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 06.01.2021 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, SHIGGAON IN O.S. NO.180/2017, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

IN RFA NO.100080/2022

BETWEEN

PRAMILA W/O. SOMAPPA ALAGAWADI,
AGE: 59 YEARS, OCC: HOUSEHOLD WORK,
R/O. TIMMAPUR, AT PRESENT: JAYANAGAR,
TQ. SHIGGAON, DIST. HAVERI-581205.

...APPELLANT

(BY SRI. DINESH M. KULKARNI, ADVOCATE)

AND

1. SURESH S/O. LINGANGOUDA PATIL,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581205.

   SOMAPPA S/O. GOUDAPPA ALAGAWADI,
SINCE DECEASED BY HIS LRS.

2. SHOBHA
W/O. CHANDRSHEKAR GANGIGATTI,
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
R/O. CHIKKMALLUR, TQ. SHIGGAON,
DIST. HAVERI-581205.

3. ISHWAR S/O. SOMAPPA ALAGAWADI,
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581205.

4. SHASHIDHAR S/O. SOMAPPA ALAGAWADI,
AGE: 39 YEARS, OCC: AGRICULTURE,

R/O. TIMMAPUR, TQ. SHIGGAON,
DIST. HAVERI-581205.

5. BALAPPA S/O. BASAPPA JALALLI @ JALAHALLI,
AGE: 43 YEARS, OCC: AGRICULTURE & BUSINESS,
R/O. BALIGAR ONI, UNAKAL, TQ. HUBBALLI,
DIST. DHARWAD-580020.

…RESPONDENTS

(BY SRI. A. P. MURARI, ADV. FOR R1;
SRI. VINAY S. KOUJALAGI, ADV. FOR SRI.S.H. MITTALKOD &
SRI. M. L. VANTI, ADVS. FOR R3 AND R4;
SRI. LAXMAN T. MANTAGANI, ADV. FOR R5;
NOTICE TO R2 IS SERVED, BUT UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., PRAYING TO CALL FOR RECORDS, ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 06.01.2021 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, SHIGGAON IN O.S.NO.180/2017, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THESE APPEALS, HAVING BEEN HEARD AND RESERVED ON 11.11.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

1. Defendant Nos.2 to 5 in O.S.No.180/2017 on the file of learned Senior Civil Judge and JMFC, Shiggaon, have preferred these appeals challenging the judgment and decree dated 06.01.2021 passed therein and praying to dismiss the suit.

2. For the sake of convenience, the parties to these appeals are referred with their original ranking before the trial Court.

3. The Plaintiff namely Sri Suresh maintained the suit in O.S.No.180/2017 seeking declaration that he is the owner of Schedule A properties and for an order to delete the names of Defendant Nos.2 to 4 entered in Record of Rights / revenue record pertaining to Schedule A properties and for permanent injunction restraining them from disturbing his peaceful possession and enjoyment over those properties.

4. The case of the Plaintiff is that he is the adopted son of Sri Linganagouda Patil and that he has inherited all the properties of his adoptive family after the death of the adoptive father. He has alleged that his genetic father obtained his signatures on blank white papers and gave vardi to enter names of Defendant Nos.2 and 3, who are his genetic brothers and those entries are illegal. He maintained the suit for the relief of declaration and injunction in respect of plaint Schedule A properties on the allegation that on 10.8.2010 the defendants had tried to interfere with his possession and enjoyment over the schedule properties by dispossessing him from those properties.

5. Initially, the Plaintiff had maintained the suit only against Defendant Nos.1 to 4. During the pendency of the suit, the Plaintiff got impleaded Defendant No.5 on the ground that he has purchased a portion of the schedule properties from Defendant No.3 during pendency of the suit. Defendant No.1 died during pendency of the suit.

Defendant Nos.2 to 4 are the legal representatives of Defendant No.1. The Plaintiff brought one more person i.e, the daughter of Defendant No.1, on record as the legal representative of Defendant No.1, who was not a party to the suit.

6. On service of summons, all the defendants appeared before the trial court through their counsel. Defendant Nos.2 and 5 have filed their written statement separately. Defendant Nos.1(a), 3 and 4 have adopted the written statement filed by Defendant No.2 by filing memos to the said effect.

7. In his written statement, Defendant No.2 contended that based on a vardi given by the Plaintiff himself the names of Defendant Nos.2 and 3 came to be entered in the revenue records vide ME No.577 dated 03.11.1991 and that since then they are in possession and enjoyment of concerned properties openly to the knowledge of everyone. They have stated that the properties standing

in the name of Defendant No.4 are her absolute properties and that those properties were not in the possession of the Plaintiff at any point of time. Thus, he contended that they are the absolute owners in possession of schedule properties since 03.11.1991 and prayed for dismissal of the suit.

8. Defendant No.5, in his written statement stated that he has purchased the portion of the schedule properties from Defendant No.3 under a registered sale deed dated 08.07.2016 for valuable consideration and that he is a bonafide purchaser. He claimed that he is in possession and enjoyment of the properties purchased by him from the date of the sale deed and as such prayed for dismissal of the suit.

9. Based on the pleadings of the parties and the documents available on record, the trial Court framed the following issues and additional issued in the case for its consideration:

–: ವಿವಾದಾಂಶಗಳು :–

1) ವಾದಿಯು ವಾದಪತ್ರದಲ್ಲಿ ಹೇಳಿರುವಂತೆ ಲಿಂಗನಗೌಡ ಪಾಟೀಲ ಹಾಗೂ ಶ್ರೀಮತಿ ವೀರವ್ವ ಕೋಂ ಲಿಂಗನಗೌಡ ಪಾಟೀಲ ಇವರು ವಾದಿಯನ್ನು ದತ್ತಕ ಪಡೆದುಕೊಂಡಿರುವರು ಎಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೇ?

2) ವಾದಿಯು ವಾದಪತ್ರದಲ್ಲಿ ಹೇಳಿರುವಂತೆ ವಾದಿಯನ್ನು ದತ್ತಕ ಪಡೆದುಕೊಂಡಿರುವ ಬಗ್ಗೆ ದತ್ತಕ ಪತ್ರ ಬರೆದಿರುವರು ಎಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೇ?

3) ದಾವಾ ಶೆಡ್ಯೂಲ್ ಅ ಮತ್ತು ಬ ಆಸ್ತಿಗಳು ದತ್ತಕ ತಂದೆ ತಾಯಿಯರ ಆಸ್ತಿ ಎಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೆ?

4) ವಾದಿಯು ವಾದ ಪತ್ರದ ಖಂಡಿಕೆ 7ರಲ್ಲಿ ಹೇಳಿರುವಂತೆ 1ನೇ ಪ್ರತಿವಾದಿಯು ಬಿಳಿಯ ಹಾಳೆಯ ಮೇಲೆ ವಾದಿಯ ಸಹಿ ಪಡೆದು ಖೊಟ್ಟಿಯಾಗಿ ಡ ನಂ.577 ರ ದಾಖಲೆಯನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡಿರುವರು ಎಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೇ?

5) ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ವಾದಿಯು ಪ್ರತ್ಯೇಕ ಕಬ್ಜಾ ವಹಿವಾಟಿ ಹೊಂದಿರುವರು ಎಂಬುದನ್ನು ರುಜುವಾತುಪಡಿಸುವರೇ?

6) ವಾದಿಯು ವಾದಪತ್ರದಲ್ಲಿ ಕೋರಿರುವಂತೆ ಪರಿಹಾರ ಪಡೆಯಲು ಅರ್ಹರೇ?

7) ಯಾವ ಆದೇಶ ಅಥವಾ ಡಿಕ್ರಿ?

ಹೆಚ್ಚುವರಿ ವಿವಾದಾಂಶಗಳು
ದಿನಾಂಕ: 05.07.2018

1) ಪ್ರತಿವಾದಿ 5 ರವರು ದಾವಾ ಆಸ್ತಿ ರಿ.ಸ.ನಂ. 77/1 ಮತ್ತು 77/2 ಅ ದ ಒಟ್ಟು ಕ್ಷೇತ್ರ 3 ಎಕರೆಯ ಜಮೀನನ್ನು 3 ನೇ ಪ್ರತಿವಾದಿಯಿಂದ ಸದ್ಭಾವನಾ ಪೂರ್ವಕವಾಗಿ ಖರೀದಿ ಮಾಡಿರುವರು ಎಂಬುದನ್ನು 5ನೇ ಪ್ರತಿವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೇ?

2) ಪ್ರತಿವಾದಿ 5 ರವರು ಈ ದಾವಾ ಜಮೀನನ್ನು ಖರೀದಿ ಮಾಡಿದ ದಿನದಿಂದ ಪ್ರತ್ಯಕ್ಷ ಕಬ್ಜಾ ವಹಿವಾಟು ಸಾಗುವಳಿ ಮಾಡುತ್ತಿರುವರು ಎಂಬುದನ್ನು 5ನೇ ಪ್ರತಿವಾದಿಯರು ರುಜುವಾತುಪಡಿಸುವರೇ?

3) ವಾದಿಯರು ಸಂದಾಯ ಮಾಡಿರುವ ನ್ಯಾಯಾಲಯದ ಶುಲ್ಕ ಸಮಂಜಸವಾಗಿರುವುದೇ?

ಹೆಚ್ಚುವರಿ ವಿವಾದಾಂಶಗಳು
ದಿನಾಂಕ: 23.03.2020

4) ವಾದಿಯ ದಾವೆಯು ಕಾಲಪರಿಮಿತಿ ಅಧಿನಿಯಮದಿಂದ ಪ್ರತಿಷೇಧಿತವಾಗಿರುವುದೇ?

5) ವಾದಿಯ ದಾವೆಯ ನಿರ್ದಿಷ್ಟ ಪರಿಹಾರ ಅಧಿನಿಯಮದ ಕಲಂ 34 ರ ಪ್ರಕಾರ ತಾಂತ್ರಿಕವಾಗಿ ಬಾಧಿತವಾಗಿರುವ ದಾವೆಯಾಗಿರುವುದು ಎಂಬುವುದನ್ನು 2ನೇ ಪ್ರತಿವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೇ?

6) ಪ್ರತಿವಾದಿ 2 ಮತ್ತು 3 ರವರು ಡ ನಂ.557 ರ ಪ್ರಕಾರ ದಾವಾ ಶೆಡ್ಯೂಲ್ ಅ–ದ 1 ರಿಂದ 4 ರ ಜಮೀನುಗಳು ಕಬ್ಜಾ ವಹಿವಾಟಿ

ಹೊಂದಿ ಸಾಗುವಳಿ ಮಾಡುತ್ತಾ ಬಂದಿರುವರು ಎಂಬುವುದನ್ನು ಪ್ರತಿವಾದಿ 2 ರವರು ರುಜುವಾತುಪಡಿಸುವರೇ?

7) ವಾದಿಯ ದಾವೆಯು ಈರವ್ವ ಕೋಂ ನಿಂಗನಗೌಡ ಪಾಟೀಲ ಇವಳನ್ನು ಅವಶ್ಯಕ ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಸೇರ್ಪಡೆ ಮಾಡದೇ ಇರುವುದರಿಂದ ಈ ದಾವೆಯು ಊರ್ಜಿತವಾಗಿರುವುದಿಲ್ಲ ಎಂಬುವುದನ್ನು ಪ್ರತಿವಾದಿ 2 ರವರು ರುಜುವಾತುಪಡಿಸುವರೇ?

10. In support of his case, the Plaintiff deposed before the trial Court as PW-1 and got marked documents at Ex.P1 to P60. Defendant Nos.3 and 5 have adduced their evidence as DW-1 and DW-2 respectively and got marked documents at Ex.D1 to D69.

11. Thereafter, the trial Court heard the arguments of both sides; considered materials placed on record and decreed the suit. While answering the issues framed for consideration, the trial Court based on the testimony of PW-1, adoption deed marked at Ex.P42 and the admission of DW-1 i.e. Defendant No.3 held that the Plaintiff is the adopted son of Sri Lingangouda Patil and his wife Smt. Veerawwa. The trial Court, relying on the document marked

at Ex.P8 i.e. extract of ME No.263 and admissions of the parties, held that the Plaintiff is the owner of the schedule properties. Further, based on the endorsements marked at Ex.P47 and P50 held that the defendants have fraudulently got their names entered in the revenue records and that those entries will not give rise to presumption under Section 133 of the Karnataka Land Revenue Act as such revenue entries were not supported by the documents as required under Section 128 of the Karnataka Land Revenue Act. Based on these findings, the trial Court proceeded to hold that the possession follows the title and thereby the Plaintiff has to prove his title and possession over the schedule properties and decreed the suit as prayed for.

12. Being aggrieved by the said judgment and decree, Defendant Nos.2 and 3 have preferred the appeal in RFA No.100015/2021, Defendant No.5 has maintained the appeal in RFA No.100017/2022 and Defendant No.4 has filed RFA No.100080/2022. All of them have challenged the impugned judgment and decree on similar grounds.

13. Sri V.M.Sheelvant, learned Counsel appearing for Defendant Nos.2 and 3 submitted that the trial Court has failed to consider the documents marked at Ex.D15 to Ex.D20 wherein their names were entered into based on a vardi given by the plaintiff himself. It is submitted that the trial court has failed to take notice of the conduct of the plaintiff in keeping quiet for nearly 15 years without raising any dispute regarding the mutation entries made in the name of the defendants. It is further submitted that though the plaintiff was not in possession of the properties in question, he did not choose to seek for possession of those properties while praying for declaration of title and as such suit is hit by Section 34 of the Specific Relief Act. He vehemently submitted that there are sufficient materials on record to show that Defendants Nos.2 and 3 are in possession and enjoyment of concerned properties since 1991 by exercising their right of ownership and as such the suit is barred under Section 27 of the Limitation Act.

14. Sri Dinesh M. Kulkarni, learned Counsel for the Defendant No.4 reiterated the grounds urged on behalf of Defendant Nos.2 and 3 and prayed to reverse the impugned judgment and decree on the ground that the suit is hit by Section 34 of the Specific Relief Act and barred under Section 27 of the Limitation Act.

15. Sri Laxman T. Mantagani, learned Counsel for Defendant No.5, apart from supporting the contentions of Defendant Nos.2 to 4, submitted that the trial court has failed to properly appreciate the materials available on record supporting his contentions that he was a bonafide purchaser and he being in possession of portion of the property from the date of its purchase by him.

16. *Per contra*, Sri A.P.Murari learned Counsel appearing for the Plaintiff forcefully supported the findings recorded by the trial court and submitted that the trial court is justified in decreeing the suit, based on sufficient supporting materials on record. He submitted that the

names of defendant Nos.2 to 4 came to be entered in the revenue records of the schedule properties during the minority of the plaintiff and without any basis. As such he contended that such mutation entries in the names of defendants No.2 to 4 do not create any right in their favour. He further submitted that as such entries came to be made without complying with Section 128 of the Karnataka Land Revenue Act, those entries will not come to the aid of the defendants. Alternatively, learned Counsel for Plaintiff submitted that even if for the sake of argument it is admitted that Defendant Nos.2 to 4 are in possession of the schedule properties, their possession would be only a permissive possession as the defendants have not claimed adverse possession. In view of the same, he contended that such possession of the defendants would not ripen into possessory title. He submitted that the possession of the plaintiff over the schedule properties is supported by admission regarding his title over the schedule properties and the evidence adduced by the plaintiff. In the above

circumstances, he contended that in the absence of cloud over plaintiff's title over the schedule properties and the plaintiff having proved his possession over the schedule properties, the trial court is justified in decreeing the suit as prayed for.

17. As noted above, various contentions have been canvassed before us on either side. In order to decide these issues, this Court needs to answer mainly following three points:

1. Whether the suit was barred by limitation?
2. Whether the suit in present form was not maintainable in view of Section 34 of the Specific Relief Act?
3. Whether the trial court has properly appreciated the pleadings of the parties and the evidence placed on record?

Point No.1 :

18. Learned Counsels appearing for the contesting defendants have vehemently submitted that though the trial court had raised an issue at Additional Issue No.4 pertaining to question of limitation, the trial court has failed

to arrive at a right conclusion in the facts and circumstances of the case. They submitted that though the plaintiff maintained the suit for declaration and injunction, he was not in possession of the properties in dispute as on the date of suit and thereby he was not entitled for the relief of injunction. They further submitted that under Article 58 of the Limitation Act, the time stipulated to seek the relief of declaration is three years from the date when the right to sue first accrues. Nevertheless, the plaintiff failed to institute a suit for appropriate remedy for more than 12 years and thereby the plaintiff has lost the right of seeking any remedy in respect of the properties in dispute if any, under Section 27 of the Limitation Act.

19. *Per contra*, learned Counsel for the Plaintiff has relied on a decision in ***Annakili Vs A. Vedanayagam and Others*** [***AIR 2008 SC 346***]. This case deals with starting point of limitation under Article 65 of the Limitation Act and proposition of law governing classical requirements of acquiring title by adverse possession. The other decision

relied on by learned Counsel for the Plaintiff pertaining to point under consideration is ***Karam Singh Vs Amarjit Singh and Others***, reported in ***2025 Legal Eagle (SC) 1104 : 2025 INSC 1238***. In this case, Hon'ble Apex Court has primarily dealt with correctness of rejection of the plaint on the question of limitation, where several reliefs are sought in suit. In this decision, Hon'ble Apex Court has affirmed the law laid down in ***N. Thajudeen Vs Tamil Nadu Khadi & Village Industries Board***, reported in ***2024 SCC OnLine SC 3037***, wherein it is held that "… though the limitation for filing a suit for declaration of title is three years as per Article 58 of the Schedule to the Limitation Act but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act…". He vigorously submitted that in the case on hand the defendants have not claimed adverse possession and as such suit of the plaintiff was well within the time.

20. Here in the case, the plaintiff has instituted the suit i.e, O.S. No.117/2010 on 06.10.2010, on the file of the then learned Civil Judge (Jr.Dn.), Shiggaon, praying to declare him as the owner in possession of Schedule A properties by cancelling the names of the Defendant Nos.2 to 4 in the revenue records of these properties and consequential relief of permanent injunction. Thereby, it becomes clear that the suit is governed by Articles 58 and 113 of the Limitation Act. Both these provisions stipulate the period of limitation as three (3) years from the date when the right to sue accrues.

21. Para 11 of the plaint contains averments relating to the incident which gave rise to cause of action for the suit. In the said paragraph it is stated that the cause of action arose on 10.08.2010, the day on which the defendants tried to interfere with the possession of the plaintiff over Schedule A properties by attempting to dispossess him from those properties. If we go by the averments of Para 11 of the plaint, basically the alleged

incident of 10.08.2010 gave rise to a cause of action for maintaining a suit for injunction and not for the relief of declaration of title.

22. The prayer sought in the case indicates that it is not a suit for declaration in simpliciter but with a rider i.e, by cancelling the names of the Defendant Nos.2 to 4 in the revenue records of the properties in question. In view of the same, it is to be held that the cause of action for such a remedy has arisen on the date when the names of the defendants were entered in the revenue records or at least when such entries came to the knowledge of the plaintiff. Admittedly, the names of Defendant Nos.2 and 3 were entered in the revenue records vide ME 577 dated 03.11.1991 and the name of Defendant No.4 was entered in property register during the year 1985. In Para 7 of the plaint, it is categorically stated that in the year 1997 the plaintiff came to know about the revenue entries made pursuant to ME 577 dated 03.11.1991 and he challenged the said entries by preferring an appeal in RTS/APSR

No.132/97-98 before the Assistant Commissioner, Savanur. In the above stated admitted factual aspects of the case, the plaintiff could not have maintained the suit for declaration of title based on alleged incident of 10.08.2010.

23. It is also admitted that the plaintiff withdrew the appeal in RTS/APSR No.132/97-98 on 04.09.1999 by filing a memo, reporting settlement of the dispute outside the court. Thereafter, the plaintiff filed another appeal for second time, in the year 2009-10. Thereby it becomes clear that the plaintiff did not choose to institute a suit for declaration of his title over Schedule A properties for over 12 years from the date of his knowledge about the revenue entries standing in the name of the defendants.

24. In ***Jadiyappa Vs Gurusiddappa*** [RFA No. 100107/2016 DD 12.10.2015] rendered by co-ordinate bench of this Court, which was an identical case, wherein the Plaintiff had surrendered the land in dispute to the Defendant and vardi/report was applied in that connection.

In the said case, the co-ordinate bench of this Court considered efficacy of the legal effect of the document confirming the handing over of the land and proceeded to hold that,

> ".... The revenue entries by themselves do not confer the title. However, terms and conditions attached to them continue and the person who claims title over such property fails to provide materials against the revenue entries, the entries would then gain importance. …"

and by virtue of legal concept declaring ownership or revenue entries, presumption thereon, physical possession, the bone of contention between the parties, pleadings, oral and documentary evidence, legal position applicable, confirmed the trial court's judgment and decree, dismissing the suit of the plaintiff for declaration of title and permanent injunction.

25. In the case on hand, the revenue records of the properties in dispute are in the names of Defendant Nos.2 to 4 for quite long period and based on such revenue

entries, definitely a presumption can be drawn in their favour regarding their possession and enjoyment over those properties. Admittedly, the plaintiff has not produced any document before the trail court either to prove or atleast probabilise his physical possession and enjoyment over Schedule A properties subsequent to change of revenue records in the names of Defendant Nos.2 to 4. On the other hand, very admissions of the Plaintiff probabilise the defendants being in actual possession and enjoyment of the properties under dispute for all these years. It is because apart from the revenue records standing in the names of the defendants, they have been paying the kandayam, receiving crop insurance compensation from concerned authorities, raising crop loans from the Agricultural Co-operative Society at Neelaragi. Though all these aspects are within the knowledge of the plaintiff, he neither raised any objection nor chose to register his protest in the matter. Thus, the materials on record make it clear that the plaintiff has not exercised his right of ownership over the

properties in dispute since 1991/1985. The said inaction on part of the plaintiff and his admissions regarding positive acts of the defendants in respect of the properties in dispute, probabilise the contention of the defendants that the plaintiff is out of these properties, from the date of giving up of his right by giving a vardi to enter their names in the revenue records.

26. During the course of the argument, learned Counsel for the Plaintiff has tried to canvas an alternative submission that even if the defendants are in possession of the schedule properties, it is only permissive possession and that the defendants have not claimed adverse possession against the Plaintiff. These contentions of the Plaintiff cannot be accepted for more than one reason. It is because first of all the plaintiff maintained this suit with specific contention that he and his adoptive family were/are in actual physical possession and enjoyment of the properties in dispute and it is not the case of the plaintiff that he ever

permitted the defendants to be in possession and enjoyment of the properties in question.

27. On the other hand, the defendants have contended that after attaining the majority, the plaintiff himself gave up his rights in respect of the some of the suit properties, in favour Defendant Nos.2 & 3 and gave a vardi on 03.11.1991, pursuant to which, the revenue authorities entered their names vide ME No.577. It is further case of the defendants that from the said date onwards they are in lawful possession and wahivat of the properties mentioned at Sl.Nos. 1 to 4 of Schedule A, enjoying those properties openly and to the knowledge of everyone including the plaintiff, without any obstruction or interference. Thus, the materials on record indicate that the plaintiff is not possession and enjoyment of these properties for more than 12 years.

28. It may not be out of place to refer Section 27 of the Limitation Act, which mandates that at the

determination of the period limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. In other words, this provision extinguishes the right of a person to property by barring him the remedy. As per Article 65 of the Limitation Act, a suit for possession of immovable property or any interest thereon based on title has to be brought within a period of 12 years, when the possession of the defendant becomes adverse to the plaintiff. If we go by the averments of the written statement and the contentions put forth by the defendants, it is nothing short of a claim of adverse possession. It is to be noted that the defendants have not only raised a contention of the Plaintiff having given up his right over the properties in dispute but also contended that from date of giving vardi on 03.11.1991, they have been enjoying those properties openly to the knowledge of everyone including the Plaintiff, and without any obstruction or interference. Thereby, it becomes clear

that the suit was hopelessly barred by limitation and accordingly, Point No.1 is answered in the affirmative.

Point No.2:

29. The other ground urged by the contesting defendants is that the suit in the present form is not maintainable and hit by Section 34 of the Specific Relief Act. They have submitted that the plaintiff has maintained the suit for the relief of declaration of title and permanent injunction though he was not in possession of the properties in question as on the suit and thereby he has omitted to seek further relief of possession in addition to the relief of declaration. In the said circumstances, the suit is hit by Section 34 of the Specific Relief Act. In support of this contention, learned Counsels for Defendants have relied on the decisions in ***Poojari Puttaiah (by LRs) and others Vs Kempaiah,*** *reported in* ***ILR 1980 KAR 103, Vinay Krishna Vs Keshav Chandra and another***, reported in ***1993 Supp (3) Supreme Court Cases 129*** and

Vasantha (dead) through Legal Representative Vs Rajalakshmi alias Rajam (dead) through Legal Representatives, reported in ***(2024) 5 Supreme Court Cases 282***. In these decisions, it is reiterated that suit for declaration of title without seeking recovery of possession, not maintainable when the plaintiff is not in possession of the property.

30. Whereas, learned Counsel for Plaintiff has relied on decision in ***Akkamma and Others Vs Vermavathi and Others***, reported in ***(2021) 18 Supreme Court Cases 371*** and submitted that the suit of the plaintiff being for declaration and injunction, there was no need for the plaintiff to seek any further relief in the suit including the relief of possession and the suit in present for is perfectly maintainable.

31. In ***Akkamma's*** case, referred supra, Hon'ble Supreme Court of India clarified key principles on suits for

declaration of title and injunctions under Section 34 of the Specific Relief Act and held that,

> "…The prohibition or bar contained in the proviso to Section 34 of the 1963 Act determines the maintainability of a suit and that issue has to be tested on the basis the plaint is framed. If the plaint contains claims for declaratory relief as also consequential relief in the form of injunction, that would insulate a suit from an attack on maintainability on the sole ground of bar mandated in the proviso to the aforesaid section. If on evidence the plaintiff fails on consequential relief, the suit may be dismissed on merit so far as plea for consequential relief is concerned but not on maintainability question invoking the proviso to Section 34 of the 1963 Act. …

This interpretation of Section 34 of the Specific Relief Act makes it clear that there is no merit in the objections raised by the defendants regarding maintainability of the suit or the suit being hit by Section 34 of the Specific Relief Act. Accordingly, Point No.2 is answered in the negative.

Point No.3:

32. On re-appreciating the materials on record, it becomes clear that the Plaintiff has maintained the suit on

10.8.2010, praying for declaration of his title and permanent injunction in respect of Schedule A properties, which is clearly beyond the period of 12 years from the date of his knowledge about the revenue entries in the names of Defendant Nos. 2 to 4. No doubt, the properties in question originally belonged to the adoptive family of the plaintiff. Whereas, it is the definite case of the defendants that the revenue entries of properties in dispute came to be entered in their names at the instance of the Plaintiff, who gave up his rights over those properties and voluntarily gave a vardi to effect such entries, which amounts to relinquishment of his right over the properties by the plaintiff. The plaintiff has made a feeble attempt to counter the above contention of the defendants by claiming that his genetic father had obtained his signatures on some blank white sheets long ago and that his genetic father with a malafide intention of usurping the properties, got prepared false vardi dated 03.11.1991 and got entered the names of Defendant Nos.2 and 3 in concerned revenue records. Undisputedly, the

plaintiff attained the age of majority on 13.04.1988. It is the definite case of the plaintiff that from the date of attaining the majority, he is managing all the properties left behind by his adoptive father. However, the materials on record do not indicate the Plaintiff having taken any effective step against the revenue entries made in the names of the defendants. Though in the year 1997 the Plaintiff filed an appeal before the Assistant Commissioner, Savanur questioning the revenue entries made in the name of Defendant Nos.2 and 3, he did not pursue the said appeal on merits of the case. On the other hand, he withdrew the said appeal on 04.09.1999 on the ground of settlement of the dispute outside the court and then took another 10 years to once again file another appeal for same relief.

33. Learned Counsel for the Plaintiff, relying on the decision of Hon'ble Apex Court in ***Kurella Naga Druva Vudaya Bhaskara Rao Vs Galla Jani Kamma Alias Nacharamma*** [Civil Appeal No.4788 of 2008 DD 4.8.2008], has made a frail attempt to overcome the

weakness in the case by contending that the defendants are his close relatives and they were managing the properties in dispute on his behalf. No doubt, the defendants are the close relatives of the plaintiff. However, it is not the case of the Plaintiff that he ever permitted the defendants to be in possession of Schedule A properties and manage those properties on his behalf. The plaintiff has come up with this contention for the first time, that too at the appellate stage. Hence, this Court does not find any merit in the above contention of the Plaintiff. The materials on record clearly indicate that the trial court has grossly erred in understanding the case of the parties, appreciating the materials available on record and to arrive at proper conclusion. On the other hand, it proceeded to decree the suit on assumptions, without satisfying itself regarding sufficiency of evidence placed on record by the plaintiff to discharge the initial burden of proving his case. In view of the same, Point No.3 is answered in the negative.

34. In the result, this Court proceeds to pass the following:

ORDER

i) The Appeals are allowed with cost throughout.

ii) The judgment and decree dated 06.01.2021 passed in O.S.No.180/2017 by learned Senior Civil Judge and JMFC, Shiggaon is set aside and consequently the said suit is dismissed.

iii) Draw a decree accordingly and send back trial court record to concerned court.

Sd/-
(R.DEVDAS)
JUDGE

Sd/-
(B. MURALIDHARA PAI)
JUDGE

VB/CT:AN
LIST NO.: 19 SL NO.: 2