



CNR: KAHC010078842014

NC: 2026:KHC:41969  
RSA No. 27 of 2014

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 17<sup>TH</sup> DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE ASHOK S.KINAGI**

**REGULAR SECOND APPEAL NO. 27 OF 2014**  
**(DEC/INJ)**

**BETWEEN:**

1. NARAYANAPPA  
S/O LATE CHANNARAMAIAH,  
SINCE DEAD BY LEGAL REPRESENTATIVES

1(A) SMT. VENKATAMMA  
W/O LATE NARAYANAPPA  
AGED ABOUT 70 YEARS

1(B) RAMESH  
S/O LATE NARAYANAPPA  
AGED ABOUT 52 YEARS

1(C) J N CHANNAKESHAVAIAH  
S/O LATE NARAYANAPPA  
AGED ABOUT 49 YEARS

ALL ARE R/AT JALAGERE VILLAGE  
SARALU HOBLI  
DODDABALLAPURA TALUK  
BENGALURU RURAL DISTRICT.

1(D) SMT. KALPANA  
D/O LATE NARYANAPPA  
W/O MUNEGOWDA

Digitally  
signed by  
KIRAN  
KUMAR R  
Location:  
HIGH COURT  
OF  
KARNATAKA



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R/AT THINDLU VILLAGE  
DODDAMMA TEMPLE STREET  
VIDYARANYAPURA POST – 560 057  
BENGALURU RURAL DISTRICT.

- 1(E) SMT SUMITRAMMA  
D/O LATE NARAYANAPPA  
W/O RAVI  
AGED ABOUT 40 YEARS  
THYAMAGONDLU  
NELAMANGALA  
BENGALURU RURAL DISTRICT – 562 132

...APPELLANTS

(BY SRI. ANIL KUMAR S.,ADVOCATE)

**AND:**

1. NANJAPPA @ NANJEGOWDA  
SINCE DECEASED BY LEGAL REPRESENTATIVES
- 1(A) SMT. KEMPAMMA  
W/O LATE BAIRAPPA  
AGED ABOUT 51 YEARS
- 1(B) SRI. BYREGOWDA S N  
S/O LATE NANJAPPA  
AGED ABOUT 45 YEARS

ALL THE ABOVE ARE  
R/AT ALUR DUDDANAHALLI POST  
SUNNAGHATTA VILLAGE  
KUNDANA HOBLI  
DEVANAHALLI TALUK  
BANGALORE RURAL DISTRICT.

...RESPONDENTS

(BY SRI. G S PRASANNA KUMAR, ADVOCATE)



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THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGEMENT & DECREE DTD 30.10.2013 PASSED IN R.A.NO.53/2011 ON THE FILE OF THE IV ADDL. DISTRICT & SESSIONS JUDGE, DODDABALLAPUR, BANGALORE RURAL DISTRICT, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 24.1.2011 PASSED IN O.S.NO.341/2006 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., DODDABALLAPUR.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

### **ORAL JUDGMENT**

This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 30.10.2013 passed in R.A.No.53/2011 by the learned IV Additional District and Sessions Court at Doddaballapur, Bangalore Rural District, Bangalore.

2. For convenience, the parties are referred to, as per their ranking before the trial Court. The appellant was the plaintiff and the respondent was the defendant.



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3. The brief facts leading rise to filing of this appeal are as follows.

The plaintiff filed a suit for perpetual injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment towards the suit scheduled property. It is the case of the plaintiff, that he is the absolute owner and in possession and enjoyment of the suit property bearing Sy.No.15 to an extent of 2 acres 31 guntas of Kadabyadarahalli, Sasalu Hobli, Doddaballapur Taluk. The suit property is the ancestral property of the plaintiff and acquired the same from his ancestor belonging to Kempanna grandfather of the plaintiff. The said Kempanna died issueless and the suit property was reverted to the family of the plaintiff and produced the genealogical tree. The plaintiff filed an application before the Tahsildar for change of revenue entries in his name by deleting the name of his grandfather. At that time, the defendant filed objections



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claiming that he is the legal heir of Kempanna and in the said proceedings, one person by name Venkataswamy was also claiming that he was in possession and cultivation of land and later he has not turned up and his sister gave a statement before the Deputy Tahsildar on 09.04.1991 stating that the suit schedule property belongs to the grandfather of the plaintiff and the same was in possession of the plaintiff. The revenue authority passed an order in favour of the plaintiff to transfer the revenue entries in the name of the plaintiff. The defendant aggrieved by the said order, filed an appeal before the Assistant Commissioner, Doddaballapur Sub-Division and he remanded the matter to the Tahsildar by giving opportunity to the defendant and changed the khatha in the name of defendant. The plaintiff, aggrieved by the said order, preferred a revision before the Deputy Commissioner, Bangalore. Even after change of khatha in respect of the said property in the name of defendant, the name of the plaintiff shown in column No.12 of the RTC



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Extract. The defendant filed a suit against the plaintiff in O.S.No.160/2003 on the file of Learned Senior Civil Judge, Doddaballapur and the plaintiff filed a written statement and the said suit was dismissed for default. It is contented that the defendant is nowhere related to the family of the plaintiff. On 08.01.2006 when the plaintiff was harvesting ragi crop, the defendant interfered with his possession and enjoyment of the suit property illegally and he resisted the same. Hence, a cause of action arose for the plaintiff to file a suit for injunction.

3.1. The defendant filed a written statement denying the averments made in the plaint. It is contended that the plaintiff is a stranger to the suit property and they have no right or interest over the suit property and the defendant is the absolute owner and in possession of the suit property. The genealogical tree shown in the plaint is false and baseless. The defendant has produced the correct and proper genealogical tree issued by the competent



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authority. The said Late Kempanna is none other than the father of a defendant and the said fact is admitted by the plaintiff himself in the cause title and also before the revenue authorities. The RTC Extent discloses the name of the defendants both in column Nos.9 and 12. The plaintiff was never in possession of the suit's scheduled property at any point of time, and the suit filed by the plaintiff is not maintainable. Accordingly, prays to dismiss the suit.

3.2. The trial Court, based on the rival pleadings of the parties, framed the following issues:

- (1) *Whether the plaintiff proves that he is the absolute owner of the suit property?*
- (2) *Whether the plaintiff further proves he is the lawful possession of the suit schedule property?*
- (3) *Whether the plaintiff proves that the defendant has interfere the suit schedule property?*
- (4) *Whether the plaintiff is entitle to the relief of declaration and injunction?*



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- (5) *Whether the defendant proves that the plaintiff is stranger to the suit schedule property?*
- (6) *What order or decree?*

3.3. The plaintiff, to substantiate his case, examined himself as PW1, examined two witnesses as PW2 and PW3 and marked 37 documents as Exs.P1 to P37. In rebuttal, the Special Power of Attorney holder of the defendant was examined as DW1, two witnesses were examined as DW2 and DW3 and marked 26 documents as Exs.D1 to D26. The trial court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered Issue Nos.1 to 4 in the affirmative and issue No.5 in the negative and consequently, decreed the suit of the plaintiff.

3.4. The defendant, aggrieved by the judgment and decree passed in O.S.No.341/2006 preferred an appeal in R.A.No.53/2011 on the file of IV Additional District and



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Sessions Court, Doddaballapur, Bangalore Rural District,  
Bangalore.

3.5. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- (1) Whether the impugned judgment and decree passed by the trial Court under appeal is perverse, capricious and arbitrary and it calls for any interference by this Court?*
- (2) Whether the respondent has made out grounds to allow I.A.No.II filed by the respondent U/o.41 Rule 27 of CPC as prayed by him?*
- (3) What order and decree?*

3.6. The First Appellate Court, after re-appreciating the entire evidence on record answered point No.1 in the affirmative, point No.2 in the negative and point No.3 as per the final order. The appeal was allowed with costs. I.A.No.2 filed by the plaintiff was dismissed. The impugned



judgment and decree passed by the trial Court in O.S.No.341/2006, dated 04.01.2011, on the file of Senior Civil Judge, and JMFC, Doddaballapura was set aside and consequently, the suit of the plaintiff was dismissed with costs. While dismissing the suit, the First Appellate Court directed the plaintiff to deliver the suit schedule property to the defendant within three months from the date of the judgment.

3.7. The plaintiff, aggrieved by the judgment and decree dated 30.10.2013 passed in R.A.No.53/2011 by the IV Additional District and Session Court, Doddaballapura, Bangalore Rural District, Bangalore, filed this Regular Second Appeal.

4. Heard the arguments of the learned counsel for the plaintiff and also the learned counsel for the defendant.



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5. Learned counsel for the plaintiff submit that the suit schedule property was owned and possessed by the grandfather of the plaintiff Kempanna. The defendant has no right, title, or interest over the suit schedule property and he is not the son of kempanna. The defendant colluding with the revenue officers got entered his name in the revenue records. She submits that the defendant aggrieved by the entries in the name of plaintiff filed an appeal before the Assistant Commissioner and the said appeal came to be allowed and the revision was filed by the plaintiff. The said revision came to be dismissed and directed the plaintiff to approach the Civil Court. She submits that the trial Court considering the entire evidence on record has held that the defendant is not related to the family of the plaintiff and decreed the suit. The First Appellate Court without properly re-appreciating the entire evidence on record, committed an error in reversing the judgment and decree passed by the trial court. The impugned judgment passed by the trial court is just and



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proper. Hence, on these grounds, he prays to allow the appeal.

6. Learned counsel for the defendant submits that the plaintiff has filed a suit for perpetual injunction. It is for the plaintiff to establish that the plaintiff is the absolute owner of the suit schedule property and also in possession of the suit schedule property. The plaintiff has taken a specific position pleading in the plaint that the defendant is not the son of Kempanna. The plaintiff has to establish that the defendant is not the son of Kempanna and further, no documents have been produced to establish that the defendant is not the son of Kempanna. He submits that the name of the plaintiff was entered in the revenue records. The same was challenged by the defendant before the Assistant Commissioner. The Assistant Commissioner allowed the appeal and the plaintiff preferred a revision before the Deputy Commissioner. The revision came to be dismissed. The



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First Appellate Court has rightly re-appreciated the entire evidence on record and held that the plaintiff is not in possession of the suit schedule property. On the other hand, the defendant is in possession of the suit schedule property. Hence, on these grounds, he prays to dismiss the appeal.

7. This Court, on 28.03.2014, admitted the appeal on the following substantial question of law:

1. *Whether in the facts and circumstances of the case, the appellate court was justified in reversing the judgment and decree passed by the trial Court and dismissing the suit holding that the respondent is the son of Kempanna?*
2. *Whether in the facts and circumstances of the case, the appellate court was justified in directing to deliver the possession of the suit schedule property to the defendant (respondents herein)?*



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8. **Reg. Substantial Questions of Law**

**Nos.1 and 2:** Substantial questions of law Nos.1 and 2 are inter-linked with each other, hence, taken together for a common discussion, to avoid repetition of facts.

9. The plaintiff filed a suit for declaration of title and permanent injunction. It is the case of the plaintiff that the suit schedule property is the ancestral property belonging to Kempanna the grandfather of plaintiff. The said Kempanna died issueless and the suit property was reverted to the family of the plaintiff. After the demise of Kempanna, the plaintiff has filed an application before the Tahsildar for change of revenue records in his name by deleting the name of his grandfather Kempanna. At that time, the defendant filed objections claiming that he is the legal heir of deceased Kempanna. The Deputy Tahsildar passed an order recording the finding that the suit schedule property belongs to the grandfather of the plaintiff and he was in possession and cultivation of the



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suit land. The defendant, aggrieved by the order passed by the Deputy Tahsildar, preferred an appeal before the Assistant Commissioner at Doddaballapura. The Assistant Commissioner remanded the matter to the Tahsildar. The plaintiff, aggrieved by the said order, preferred a revision petition before the Deputy Commissioner, Bangalore Rural District, Bangalore. Even after changing the khatha in the name of defendant, the name of the plaintiff is shown in column No.12 of RTC extracts. The defendant filed a suit against the plaintiff in O.S.No.160/2003 on the file of Senior Civil Judge, Doddaballapura. In the said suit, the plaintiff filed a written statement. In the said suit, the defendant has not whispered that he is the son of Kempanna, who is the grandfather of the plaintiff. The plaintiff, to substantiate his case, examined himself as PW1. He reiterated the plaint averments in the examination-in-chief and produced the documents Ex.P1 is the genealogical tree, Exs.P2 to P9 are the RTC Extracts, Exs.P10 and P11 are the mutation registers, Ex.P12 is the



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certified copy of O.S.No.160/2003, which discloses that the defendant herein filed the suit against the plaintiff for a relief of declaration and injunction, Ex.P13 is the order passed by the Tahsildar, Ex.P14 is the mutation register, Exs.P15 to 20 are the Pahani Extracts, Exs.P21 and P22 are the tax paid receipts, Exs.P23 to 25 are the patta book, Ex.P26 is the order passed by the Tahsildar, Exs.P27 to 30 are the acknowledgments, Exs.P31 to 35 are the photographs, Exs.P36 is the paper publication and Ex.P37 is the endorsement issued by the Deputy Tahsildar. PW.1 contended that Kempanna died issue less. During the course of cross-examination, it was suggested to PW.1 that he admits that his brother Krishnappa's daughter married to Bannimangala village in Devanahalli Taluk and he do not know whether her daughter was married to Krishnappa's son and he do not remember the name of son-in-law who married his brother's daughter Bannimangala village. He did not attend the wedding but he went to the house about two times. He do not know



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Sunaganta is from Manimangala and he never been to Hosanagatta. His son Chandrashekar is married to Galibili Kotte and he do not know how far Kempanna's wife and three daughters are also from Galibili kotte and he do not know Kempanna's elder daughter Channamma is married to H.Cross Agrahara and he do not know that she has children namely Gopalappa, Muniyappa, Byramma, Gowramma and he do not know Kempanna's second daughter. Hanumakkala was married to Sunnaghatta and he do not know she had five children and do not know grandfather Subbegowda and his father Heeregowda used to get together and scold Kempanna. The family has inherited about 10 survey numbers of the properties from the grandfather Veeregowda and the said properties are located near Chaligere. Veeregowda divided the said 10 survey number by grandfather Subbegowda and his brothers. He do not know which survey numbers were allotted. The plaintiff examined one Poojappa as PW.2. He has deposed that the plaintiff's maternal uncle Kempanna



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has no children and the defendant is not related to Kempanna in any way and the defendant has never lived in the village and he never cultivated the suit land.

10. During the cross-examination, he has admitted that he is an uneducated and he live in Chaligere. He has come to the Court to give evidence at the instance of Narayanappa, who has claimed that 2.5 acres of land in Sy.No.15 and it includes Dawa land. He has deposed that Tirumalappa and Krishnappa's land, Annegowda's land and Karigowda's land and Narasappa's land are adjacent and the Dawa land the Dawa land which he is claiming originally belonged to Narayanappa. He do not know whether Kempanna is married and he has not seen Kempanna's wife and children and he do not know how many children Kempanna have. The plaintiff also examined one more witness as PW3. He reiterated the examination-in-chief of PW2.



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11. The defendant examined through power-of-attorney holder as DW1. He has deposed that the plaintiff is total stranger to the suit schedule property has no right, title or interest over the same. He has deposed that he is the absolute owner and in possession of the suit schedule property. He has deposed that the genealogical tree produced by the plaintiff is incorrect and the defendant has produced the genealogical tree, which clearly discloses the relationship between the defendant with late Kempanna, who is none other than the father of defendant. The suit schedule property was owned and possessed by the defendant's father Kempenna, and after his demise, the defendant came in possession and enjoyment of the suit schedule property and has succeeded. The plaintiff was never in possession and enjoyment of the suit schedule property at any point of time, and the entries in the revenue records stands in the name of defendant. Except denying the averments in the examination-in-chief, nothing has been elicited from the



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mouth of this witness in order to disbelieve the examination-in-chief. The defendant also examined witnesses in order to prove that the defendant is the son of Kempanna and after his demise the defendant has succeeded to the properties left by deceased Kempanna. The defendant is in possession of the suit schedule property. The defendant in order to prove the possession over the suit schedule property produced the documents marked as Exs.D1 to D26.

12. It is the case of the plaintiff that the plaintiff is the grand son of Kempanna and the defendant is the stranger to the family of the plaintiff. The plaintiff has filed a suit for declaration and permanent injunction. The plaintiff has to establish his case. The plaintiff must succeed on the strength on his own case and he cannot be granted a decree merely because the defence is weak or absent. The burden of proof to establish the valid claim always rest on the plaintiff. Admittedly, the plaintiff has



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contended that the defendant is not the son of kempanna. The defendant has produced the genealogical tree, which clearly discloses that defendant is the son of Kempanna and also the defendant has produced the records which clearly discloses that the plaintiff has filed an application to enter his name in the revenue records. The defendant objected for transferring khatha in the name of the plaintiff. The Deputy Tahsildar passed an order in favour of the plaintiff. The defendant has filed an appeal against the order, preferred an appeal before the Assistant Commissioner. The Assistant Commissioner allowed the appeal and set aside the order passed by the Tahsildar and remitted the matter to the Tahsildar. The plaintiff, aggrieved by the order passed by the Assistant Commissioner, preferred revision before the Deputy Commissioner. The Deputy Commissioner dismissed the revision petition filed by the plaintiff. The revenue records stands in the name of the defendant. The plaintiff in order to demonstrate that the defendant is not the son



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Kempanna have not produced any records. On the contrary, PW.1 has admitted that he has no documents to show that Kempanna was residing with him. He admits that the suit schedule property fell to the share in the partition. In order to prove that there was a prior partition and the properties fell to the share of the plaintiff, the plaintiff has not produced any records.

13. From the perusal of the cause-title of the plaint it clearly discloses that the defendant is the son of Kempanna. The defendant in paragraph No.5 of the written statement clearly discloses the relationship of the defendant with Kempanna, which reads as follows:

*5. A bare perusal of the document D (1) discloses the relationship of this defendant with the late Kempanna who is none other than the father of this defendant, which in fact is clearly admitted by the plaintiff himself if the cause title of the defendant is perused. On this ground alone, the suit deserves to be dismissed with exemplary cost along with the proceedings to be initiated against the plaintiff for committing perjury."*



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14. Further, the defendant in para No.7 of the written statement has clearly stated that he is the son of late Kempanna. The defendant has set up the defence that he is the son of Kempanna. The said fact has been denied by the father by filing re-joinder. It is settled law that non-filing of re-joinder or replication does not mean that the plaintiff implicitly admits the defendant's claim. It is a discretionary document, and failure to file it does not prejudice the case, all the material facts in the written statement are automatically denied. Further, in the examination-in-chief, the plaintiff did not explain that the father name of the defendant is shown as Kempanna, is not the grand father of the plaintiff. The defendant's father name is shown as Kempanna in the cause-title itself is sufficient to hold that the defendant is the son of Kempanna and further, the plaintiff has not produced any records to establish that Kempanna is not related to the defendant. The First Appellate Court, considering the entire material on record, has held that the suit schedule



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property originally belongs to Kempanna and the defendant being the son of late Kempanna and the plaintiff is not in possession of the suit land. Mere suit for declaration of title without seeking a consequential relief of possession is not maintainable as per proviso to Section 34 of the Specific Relief Act, 1963.

15. The Hon'ble Apex Court in the case of **UNION OF INDIA & ORS Vs. VASAVI Co-OP. HOUSING SOCIETY LTD. & ORS.** reported in **AIR 2014 SC 937** at paragraph No.15, which reads as follows:

*15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.*



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16. Admittedly, in the instant case, the plaintiff wanted to take advantage of the defendant weakness. The plaintiff must succeed on his own strength. The First Appellate Court considering the entire evidence on record has rightly passed the judgment. While passing the judgment, the First Appellate Court directed the plaintiff to deliver the suit schedule property to the defendant within three months from the date of order. The First Appellate Court, has committed an error in issuing such a direction when the First Appellate Court has dismissed the suit with cost and the defendant has not made any counter claim regarding delivery of suit schedule property. In the absence of counter claim by the defendant, the First Appellate Court has committed an error in directing the plaintiff to deliver the possession of the property. As the plaintiff has failed to establish that the defendant is not the son of Kempanna, Kempanna is the grand father of the plaintiff. To the said extent, the judgment and decree



passed by the First Appellate Court is deserves to be set aside.

17. In view of the above discussion, I answer substantial question of law No.1 in the affirmative and substantial question of law No.2 in the negative.

18. Accordingly, I proceed to pass the following:

**ORDER**

- i. The Regular Second Appeal is ***allowed in part.***
- ii. The judgment and decree passed by the First Appellate Court insofar as directing the plaintiff to deliver the suit schedule property to the defendant within three months from the date of order is set aside and rest of the judgement passed by the First Appellate Court is maintained.



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- iii. Pending applications, if any, shall stand disposed off.

**Sd/-  
(ASHOK S.KINAGI)  
JUDGE**

SSB