



CNR: KAHC010341892017

NC: 2026:KHC:48268
RSA No. 289 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 289 OF 2017 (DEC/INJ)

BETWEEN:

SRI. VENKATESHAPPA
S/O OBALAPPA
SINCE DECEASED
REPRESENTED BY HIS LEGAL HEIRS

1. SMT. GOPAMMA,
W/O LATE VENKATESHAPPA,
AGED ABOUT 70 YEARS
HOME MAKER,
R/O JAYANTHI GRAMA,
SHIVAMOGGA TALUK,
SHIVAMOGGA DISTRICT - 577 217.
2. SARASWATHI
W/O LATE MURALI,
AGED ABOUT 41 YEARS
AGRICULTURIST
R/O "PEDAVALA NILAYA"
2ND CROSS, HOSAMANE,
BHADRAVAHTI - 577 301,
SHIVAMOGGA DISTRICT.
3. SUMITHRA
W/O PATEL NARAYANA,
HOME MAKER,
R/O VARABAILU, CHORDI,

Digitally
signed by
VANDANA S
Location:
High Court
of Karnataka



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SAGAR ROAD - 577 201
SHIVAMOGGA DISTRICT.

4. LOKESHA
S/O LATE VENKATESHAPPA,
SINCE DEAD BY HIS LR'S

4(A). VIJAYALAKSHMI
W/O LATE B.V. LOKESH
AGED ABOUT 33 YEARS

4(B). LIKITHA L
S/O LATE B.V. LOKESH
AGED ABOUT 16 YEARS

4(C). SAGAR L
S/O LATE B.V. LOKESH
AGED ABOUT 12 YEARS
APPLICANTS 4(B) AND 4(C) ARE MINORS
AND ARE REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN
THE FIRST APPLICANT HEREIN

APPLICANTS ARE RESIDENT OF
JAYANTHI GRAMA
SHIVAMOGGA TALUK,
SHIVAMOGGA DISTRICT - 577 217.

...APPELLANTS

(BY SRI. S.V. PRAKASH, ADVOCATE)

AND:

1. SMT. GOWRAMMA
W/O RAJANNA,



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AGED ABOUT 60 YEARS
R/O NO.102,4TH CROSS,
ELACHENAHALLI, ASHRAMA ROAD,
B. BHYRAPPA, KANAKAPURA MAIN ROAD,
BENGALURU - 560 078.

2. PADMAVATHI
W/O PATHI,
AGED ABOUT 55 YEARS
R/O NO.3, KPTCL OFFICERS QUARTERS,
HAL, 2ND STAGE, INDIRANAGAR,
BENGALURU - 560 038.
3. NAGARATHNA
W/O LATE NANJUNDAPPA,
AGED ABOUT 48 YEARS
R/O PRINCIPLE QUARTERS,
NEAR MINI VIDHANA SOUDHA,
BELUR ROAD, MOODIGERE - 577 132
CHIKKAMAGALURU DISTRICT.
4. VANITHA @ LAKSHMI
W/O BALAKRISHNA
HOUSE MAKER,
RESIDING AT NO.14,
"BANASHANKARI NILAYA"
5TH CROSS, 5TH MAIN, ELECHENAHALLI,
KANAKAPURA ROAD, J.P NAGAR POST,
BENGALURU - 560 018.
5. GOPAMMA
W/O VENKATESHAPPA,
AGED ABOUT 65 YEARS
R/ONO.102, 4TH CROSS
ELACHENAHALLI,



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ASHRAMA ROAD, B BHYRAPPA
KANAKAPURA MAIN ROAD,
J.P. NAGAR POST
BENGALURU - 560 078.

6. THE SPECIAL LAND ACQUISITION OFFICER
KARNATAKA INDUSTRIAL
AREA DEVELOPMENT BOARD,
BAIKAMPADY, MANGALURU - 575 011.
7. E RAMAMURTHY MINERALS AND
METAL PRIVATE LTD.,
NO.59, 12TH MAIN, (OLD 24TH MAIN)
BSK 1ST STAGE, 1ST BLOCK,
SRINAGAR, BENGALURU - 560 050.

...RESPONDENTS

(BY SRI. MADHUKAR M. DESHPANDE, ADVOCATE)

THIS RSA IS FILED U/S 100 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 01.12.2016 PASSED IN
R.A.NO.50/2012 IN THE FILE OF ADDL. SENIOR CIVIL JUDGE
AND JMFC, BHADRAVTHI, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
12.04.2012 PASSED IN O.S.NO.396/2009 IN THE FILE OF THE
II ADDL. CIVIL JUDGE AND JMFC BHADRAVTHI.

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



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CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

1. This appeal by the defendants in O.S.No.396/2009 is directed against the impugned judgment and decree dated 01.12.2016 passed in R.A.No.50/2012, whereby the said appeal filed by the first respondent - plaintiff against challenging the judgment and decree dated 12.04.2012 passed by the Trial Court was allowed by the first Appellate Court, which set-side the judgment and decree passed by the Trial Court and consequently, decreed the suit filed by the first respondent - plaintiff against the appellants - defendants.

2. Heard learned counsel for the appellant and learned counsel for respondent Nos.1 to 6 and perused the material on record.

3. Briefly stated the facts giving rise to the present appeal are as under;



Respondent Nos.1 to 6 are the LR's of the original plaintiff Smt.Gowramma, who instituted a suit in O.S.No.396/2009 against the appellants - defendant Nos. 1 and 2, defendant No.3 - KIADB and defendant No.4 - M/s.E.Ramamurthy Minerals and Metals Private Limited for declaration of title, permanent injunction and other reliefs in relation to the suit schedule immovable property which was described as land bearing Survey No.2/2 measuring 1 acre 8 guntas situated at Navilebasapura Village, Kasba-1 Hobli, Bhadravathi Taluk, Shivamogga District.

4. Perusal of the plaint averments will indicate that the plaintiff specifically contended that the suit schedule property originally belonged to her grandmother Smt.Muniyamma, who was the tenant under Basavanna Devaru of Navilebasavapura Village, Bhadravathi Taluk and the said Muniyamma had filed an application seeking re-grant of the land under the Karnataka Certain Inams Abolition Act, 1977 which were registered as proceedings in INAOR No.29/1979-80. It was averred that during the



pendency of the said application filed by Muniyamma, she expired and the plaintiff being her grand daughter continued to prosecute the said proceedings as her legal representative which ultimately culminated in an order dated 17.09.1981 passed by the Land Tribunal, which re-granted the suit schedule property to an extent of 2 acres 2 guntas in favour of the plaintiff. It is contented that since she was an illiterate, she could not get the Khata mutated in her name, despite which the plaintiff continued to remain as an absolute owner in lawful and peaceful possession and enjoyment of the suit schedule property and defendant Nos.1 and 2 did not have any right, title, interest or possession over the suit schedule property.

5. It was further contended that defendant No.1 is the younger brother of the plaintiff's grandfather while defendant No.2 is the wife of defendant No.1 and they have one more brother Venkataswamappa, all of whom do not have any right, title, interest or possession over the



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suit schedule property. It was also contended that the State Government acquired the suit schedule property for the benefit of defendant No.3 - KIADB with the ultimate beneficiary being defendant No.4 for industrial purposes and the compensation amount was about to be disbursed in favour of the appellant - plaintiff, when the respondents were defendant Nos.1 and 2 objected to the same and as such, the plaintiff instituted the aforesaid suit after issuing a legal notice, to which defendant No.1 issued an untenable reply thereby, constraining the plaintiff to institute the aforesaid suit for declaration, permanent injunction and other reliefs in relation to the suit schedule property.

6. Defendant Nos.1 and 2 entered appearance and disputed and denied the various allegations and the claim made by the plaintiff and *inter alia* contended that the suit schedule property here Inam lands granted to the temple of the Sri.Basavanna Devaru and defendant No.2 being one of cultivator of the suit schedule property made an



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application before the Tahsildar seeking grant and as such, the plaintiff did not have any right, title, interest or possession over the suit schedule property and that the suit was liable to be dismissed.

7. Based on the aforesaid pleadings, the Trial Court framed the following issues;

"1. Whether the plaintiff proves that she is the owner in possession of the suit schedule property?

2. Whether the plaintiff proves that she was in actual possession as on the date of suit?

3. Whether the 2nd defendant proves that she is in cultivation of 01 acre 08 guntas of land in Sy.No.2?

4. Whether the 1st and 2nd defendants prove that they are entitled to receive the compensation amount from 3rd and 4th defendants after completion of transfer of 1-08 guntas to the 3rd and 4th defendants.?

5. Whether the plaintiff is entitled for the relief sought for?

6. What order or decree?"



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8. On behalf of the plaintiff, she examined herself as PW1 and documentary evidence as Exs.P1 to P11 were marked. While defendant No.1 examined himself as DW1 and documentary evidence as Exs.D1 to D4 were marked. Defendant Nos.3 and 4 i.e. KIADB and M/s. E.Ramamurthy Minerals and Metals Private Limited submitted that they were ready to abide by the orders passed by the Court and disburse the compensation in favour of the successful party.

9. After hearing the parties, the Trial Court answered Issue Nos.1 and 2 in the negative against the plaintiff thereby holding that the plaintiff had failed to prove title and possession over the suit title property. In addition there to, Issue Nos.3 and 4 framed by the Trial Court were also answered in the negative by holding that defendant Nos.1 and 2 had also not proved that they had any right over the suit schedule property and that defendant Nos.1 and 2 had also not established that they were entitled to receive the compensation amount from defendant



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Nos.3 and 4 in view of acquisition of the suit schedule property. Accordingly, the Trial Court proceeded to dismiss the suit by passing the said judgment and decree.

10. Aggrieved by the judgment and decree passed by the Trial Court dismissing her suit, the first respondent - plaintiff - Gowramma preferred an appeal before the First Appellate Court; it is a matter of record and an undisputed fact that though Issue Nos.3 and 4 were answered against defendant Nos.1 and 2 by the Trial Court which ultimately dismissed the suit, defendant Nos.1 and 2 did not choose to challenge the findings on Issue Nos.3 and 4 recorded against them and neither preferred cross objections nor separate appeal and did approach this Court by way of any separate petition.

11. Under these circumstances, the First Appellate Court took up only the appeal in R.A.No.50/2012 filed by respondent No.1 - plaintiff without there being any challenge to the findings recorded on Issue Nos.3 and 4



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which were held as against the appellants - defendant Nos.1 and 2 and formulated the following points for consideration;

"(1) Whether the plaintiff proves that she is the absolute owner of the suit schedule property so as to claim compensation from defendants no 3 and 4 for acquisition of suit schedule property?

(2) Whether plaintiff is entitled for the relief of permanent injunction as sought by her?

(3) Whether the Judgment and decree of the trial court needs interference of this court?"

12. After hearing the parties, the First Appellate Court re-considered, re-evaluated and re-appreciated the pleadings and evidence on record and came to the categorical conclusion that the original tenant was the plaintiff's grandmother Muniyamma, who had filed an application for re-grant of occupancy rights and during the course of the proceedings before the Land Tribunal, said Muniyamma having died, the plaintiff was brought on



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record as her legal representative and the said proceedings ultimately culminated in an order at Ex.P1 dated 17.09.1981, whereby the suit schedule property was re-granted in favour of the plaintiff by the Land Tribunal. The First Appellate Court also took into account the undisputed fact that was borne out from the material on record that the said order of re-grant in favour of the plaintiff had not been challenged or assailed by the defendants Before any forum whatsoever and the same had attained finality and become conclusive and binding upon the appellants - defendants. The First Appellate Court also reconsidered and re-appreciated the material on record in order to come to the conclusion that despite having put forth the claim that defendant No.2 was cultivating the suit schedule property, defendant Nos.1 and 2 had not established any manner of right, title, interest or possession and the application filed by them at Ex.P4 had not culminated in any order of re-grant or any



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right having accrued in their favour in the manner known to law.

13. Under these circumstances, in the light of the material on record which indicated that the plaintiff was the absolute owner in lawful and peaceful Possession and enjoyment with defendant Nos.1 and 2 not having been able to establish any better title or possession over the suit schedule property, the First Appellate Court recorded the finding of facts based on the admissible evidence by coming to the conclusion that the judgment and decree of the Trial Court was based on surmises and conjectures and since defendant Nos.1 and 2 had not assailed / challenged the findings recorded against them on Issue Nos.3 and 4 which had attained finality and become conclusive and binding upon them, the judgment and decree passed by the Trial Court deserve to be set aside and the claim of the plaintiff deserves to be upheld by holding as under;

"12. Point No.1 and 2:- As these points are interconnected they are taken up together for



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common discussion to avoid repetition of facts and appreciation of evidence.

13. Plaintiff asserts that she is the absolute owner of the suit favor and property by virtue of the land granted In her defendants no 1 and 2 having no manner or right title and interest over the suit property by creating revenue documents received compensation of Rs 1,00,000/- and trying to receive further compensation from the defendants no 3 and 4 for acquisition of suit property.

14. Per contra defendants no 1 and 2 have disputed very grant of suit property in favor of plaintiff and there by disputed the very right, title and interest of the plaintiff over the suit property and contended that among others defendant no2 is also cultivating an extent of 1 acre 08 guntas of land in S. No 2 of Navilebasapura village since from 30 to 35 years and to regularize the land of defendant no 2 way back in the year 1983-84 the Tahaisdar Bhadravathi issued RTC over the land and Mutation was carried in her name but after the advent of computerized RTC due to mistake the name of defendant no2 was not continued hence defendant no2 filed application to Tahsidlar to issue computerized RTC in respect of her land and accordingly the revenue inspector had prepared report to the effect of defendant no2 cultivating said extent of land and submitted report to the Government.

15. The plaintiff in order to prove her ownership over the suit property has produced the order passed by the Land Tribunal Bhadravathi i.e Re- grant order which is at EXP1. On perusal of EXP1 it reveals that one Muniyamma Kom Venkatappa being the cultivator of S.No 2 measuring 2 acre 20 guntas and S. No 3 measuring 1-00 acre had filed application before the Land tribunal for re grant of aforesaid two properties. During the pendency of the proceedings,



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applicant Muniyamma died. Since the daughter of Muniyamma predeceased Muniyamma, plaintiff who is the granddaughter of Muiyamma filed application and continued the proceedings Even though Muniyamma filed application for grant of two properties i.e S.No 3 measuring 1 acre and S.N 2 measuring 2 acre 20 guntas but before the tribunal since plaintiff had given statement to the effect that she is in possession and cultivation of only S.N 2 measuring 2 acre 20 guntas, that property alone was re granted in her name by virtue of grant order dated 17/9/1981. Along with the plaintiff some extent of land was granted in the name of Siddayya S/o Chikkasidayya and another person by name Siddayya S/o Maralasiddappa.

16. From the materials placed on record it could be gathered that subsequent to the grant order passed in favor of plaintiff the special Thasildar Land Reforms Bhadravathi under section 10 of the Act has made the plaintiff as Hiduvalidhar and Khatedar of S.No.2 measuring 1 acre 37 guntas of land which is evident from EXP2. In EXP2 there is reference of proceedings of Land tribunal Bhadravathi vide no INAOR 299/79-80. Hence it can said that EXP2 was issued in reference/ in relation to the land tribunal order as under EXP1.

17. EXP3 is the RTC extract pertaining to the suit property for the year 2007-2008 where in column no 9 was kept blank without mentioning the name of any person either the plaintiff or the defendants no1 and 2.

18. The plaintiff in further has relied upon Pakka Book / Hissa Survey which is at EXP12. As per EXP12 after phodi Durasath work Gowramma Kom Venkatappa is shown to be in possession of 1.08 acres, Siddayya S/o Siddayya is shown to be possession of 2.05 acres of land and Siddayya S/o



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Marulasidayya is shown to be in possession of 037 guntas of land.

19. It is contended by plaintiff that even though as per EXP1 an extent of 2 acre 20 guntas of land in S.N 2 was granted in her name but after survey work as per EXP12 it was found that she is in possession of 1 acre 0.8 guntas hence only she has filed suit for declaration in respect of 1.08 acres instead of 2 acre 20 guntas.

20. The defendants' no1 and 2 in order to prove the defense taken by them have relied upon EXD1 and EXD2. EXD1 is the RTC extract pertaining to S.N 2 measuring 1.08 acres for the year 1983-1984 which shown to be standing in the name of defendant no 2. On careful perusal of EXD2, we can also find the name of Siddayya S/o Siddayya and Siddayya S/o Maralasiddayya as persons in possession of S.N 2 measuring 2.05 acre and 0.37 guntas respectively. EXD2 is the Mutation register extract which go to show that after phodi durasth work was done in respect of S.N 2 measuring 4 acre 01 guntas of land the mutation as per EXD2 was effected. EXD4 is the application filed by the defendant no2 before the Thasildar Bhadravathi to give computerized RTC in her name in respect of S.N 2 measuring 1.08 guntas.

21. The learned counsel for the respondents no1 and 2 during the course of argument by highlighting before the court the name of the applicant and the extent of land one shown in EXP1, EXP2 and EXP12 has submitted that in EXP1 it was shown that an extent of 2 acre 20 guntas of land was granted in favor of Gowramma but in EXP2 there is mention of grant of 1 acre 37 guntas where as in EXP12 it was shown that Gowaramma is in possession of 1 acre 8 guntas of land. Even though there is dissimilarities in the extent of land alleged to be re granted in favor of Gowramma and even though in EXP12 There is



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*mention of name Gowramma Kom Venkatappa where as the name of plaintiff as per the cause title of the plaint is Gowramma Kom Rajanna, the suit filed by the plaintiff for declaration of owner ship over the suit property basing on EXP1 without rectifying the mistake crept as to the name of the applicant and the extent of land granted, is not maintainable. The learned counsel by highlighting all those facts before this court has submitted that the applicant one shown in EXP1, EXP2 and EXP12 is altogether different from plaintiff and that at no point of time plaintiff was re granted with suit property. The learned counsel at this juncture has relied upon ruling reported in **2005 (4) KCCR 2477 Between Gangamm and Another / The Tahsildar Bangalore South Taluk and Other** to bring it before the court the relevancy of filing application before the tribunal for modification of its previous order so as to bring it in conformity with the survey report.*

22. In the above stated case the applicant while filing application in Form No 7 has shown the wrong survey number and wrong extent of land. In accordance with the application filed by the applicant the occupancy right was granted in favor of the applicant But after grant of occupancy right and issuance of certificate of registration when survey of the land in question was conducted by the competent authority it was found that the Petitioner by showing wrong survey number and extent of property which is in his possession has filed the application. When the legal representative of petitioner filed application before the trbunal or modify the previous order and bring it in conformity with the survey report, the land tribunal rejected the application by giving endorsement that it does not have statutory power to amend the order. In the given set of facts it was observed by hon'ble High court by referring Section 48A(6) of Karnataka Land Reforms Act that the Land



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tribunal has power to correct the extent of the land in any order after causing actual measurements and after giving opportunity of being heard to the concerned parties.

23. Coming to the case on hand here in cause title of the plaint the name of plaintiff is shown as Gowramma Kom Rajanna. In the EXP1 it was shown that applicant Gowramma is the grand daughter of original applicant Muniyamma. In EXP1 it is no where shown the name of the husband of Gowramma. Further in EXP2 the name of grantee is clearly shown as Gowramma Kom Rajanna the resident of Navilebasapurra Village and it is also shown that applicant Gowarma is the legal heir of deceased Muniyamma. Further in EXP12 the name of the holder of property bearing S. No 2 is shown as Gowramma kom Venkatappa and the extent of land in possession of Gowramma is shown as 1 acre 08 guntas of land.

24. The learned counsel for the respondents during the course of argument has disputed the very relationship of plaintiff with the aforesaid Muniyamma and also disputed the very re grant of land in favor of plaintiff on the death of Muniyamma. It is the line of argument of learned counsel that when the plaintiff prove her relationship with Muniyamma so also failed to prove that the land bearing S.No 2 measuring 1 acre 8 guntas of land i.e suit property is granted in favor of plaintiff the plaintiff is not entitled for the relief of declaration one sought by her.

25. It is true that even though the husband's name of plaintiff is Rajanna but in EXP12 the husband's name of Gowramma is shown as Venkatappa. But the learned counsel for the defendants by cross examining the Pw1 and the defendant no1 who got examined as Dw1 during the course of his cross



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examination has clearly admitted the relationship of plaintiff with Muniyamma kom Venkatappa and also admitted the grant of property bearing S. No 2 measuring 2 acre 20 gunta (after survey 1.08 acre) in favor of plaintiff.

26. The relevant portion of the cross examination of Pw1 is extracted here below for the sake of better understanding:

"ನನ್ನ ತಾತನ ಹೆಸರು ವೆಂಕಟಪ್ಪ ಹಾಗೂ ಆತನ ಹೆಂಡತಿ ಹೆಸರು ಮುನಿಯಮ್ಮ, ಈ ಮುನಿಯಮ್ಮ ಎಂಬವರು ಜಮೀನು ಟ್ರಿಬ್ಯೂನಲ್‌ನಲ್ಲಿ ಲ್ಯಾಂಡ್ ಅಜಿ9 ಸದರಿ ಮುನಿಯಮ್ಮ ಲ್ಯಾಂಡ್ ಮಂಜೂರಾತಿಗಾಗಿ ಹಾಕಿಕೊಂಡಿದ್ದರು ಎಂದರೆ ಸರಿ... ಟ್ರಿಬ್ಯೂನಲ್‌ನಲ್ಲಿ ಪ್ರಕರಣ ನಡೆಯುತ್ತಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ಮೃತಪಟ್ಟಿರುತ್ತಾಳೆ ಎಂದರೆ 10. ಆನಂತರ ಆಕೆಯ ವಾರಸುದಾರಳಾಗಿ ಸದರಿ ಜಮೀನು ಮಾಡಿಕೊಡುವಂತೆ ನಾನು ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ್ದೆ ಎಂದರೆ ಸರಿ....."

Further the Dw1 in his examination in chief so also in his cross examination has admitted the relationship of plaintiff with Muniyamma Kom Venkatappa. The relevant portion of the evidence of Dw1 in his chief-examination is extracted here below:

"ವಾದಿಯ ಅಜ್ಜಿಯಾದ ಮುನಿಯಮ್ಮ ಕೋಂ ವೆಂಕಟಪ್ಪ ಇವರ ಹೆಸರಿನಲ್ಲಿ ಈಗಲೂ ಸಹ ನವಲೇ ಬಸಾಪುರ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬ್ರ 3ರಲ್ಲಿ 2 ಎಕರೆ 20 ಗುಂಟೆ ಜಮೀನು ಇರುತ್ತದೆ."

In the cross examination the Dw1 has deposed that:

"ಈ ಪ್ರಕರಣದ ವಾದಿ ಸದರಿ ಮುನಿಯಮ್ಮಳ ಮಗಳ ಮಗಳು ಅಂದರೆ ಮೊಮ್ಮಗಳು ಎಂದರೆ ಸರಿ."

27. The learned counsel for the defendants by cross examining the Pw1 to the aforesaid effect and the



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Dw1 by giving evidence both in his examination in chief and cross examination to the aforesaid effect has clearly admitted the relationship of plaintiff with Muniyamma kom Venkatappa, the application filed by Muniyamma Kom Venkatamma for grant of S.N.2 measuring 2 acre 20 guntas and also admitted the fact of death of Muniyamma during the pendency of proceedings and on her death application filed by plaintiff for re grant of said land as the legal heir of Muniyamma. By admitting the aforesaid material facts, the defendants no 1 and 2 have admitted EXP1 and EXP2 and thereby admitted the re grant of land in favor of plaintiff.

28. Coming to EXP12, it is the contention of plaintiff that after Survey measurement the extent of granted land was reduced to 1.08 even though as per Exp1 land granted was 2.20 acres. Now applying the ratio laid down in the aforesaid ruling to the present set of facts, herein even though in Exp12 some mistake was crept as to the name of the husband of the plaintiff as in EXP12 husband's name was shown as Venkatappa instead of Rajappa but in Exp1 and Exp2 the name of plaintiff was clearly shown as Gowramma. Hence question of modification of order to modify the name of applicant does not arise. More than that the defendants themselves have admitted the application filed by plaintiff and the entire proceedings of the land tribunal and intern admitted the grant of land in favor of plaintiff. Regarding necessity of modification of tribunal order to bring in conformity with the survey report, when after survey measurement it was shown that plaintiff is in possession of lesser extent of land than the extent of land granted in her name by the tribunal, and when plaintiff by filing this suit for declaration asserts that she is the owner of 1 acre 8 guntas of land i.e the lesser extent of land than the extent one shown in the grant order, there is no legal -hurdle in the relief claimed by the plaintiff for an extent of 1 acre 08



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guntas of land without modifying the previous order of the tribunal. As rightly argued by the learned counsel for the appellant had on survey measurement greater extent of land was found to be in possession of the plaintiff than the extent of land granted in her favor by the order of the land tribunal and had the plaintiff filed suit for declaration for larger extent of land than the extent of land granted in her favor without modifying the previous tribunal order in conformity with the survey measurement, then there is every reason to believe the version of the defendants. Hence in the given set of facts even though EXP12 is not in conformity with EXP1 and EXP2 but it does not go to the root of the case of plaintiff in asserting her right over the suit property.

29. It is pertinent to refer here that the defendants by filing written statement and by adducing evidence bent upon contending that suit schedule property is in their possession as defendant no2 is in occupation and cultivation of inam land of Basavadevaru of Naveelebasapura village to an extent of 1 acre 8 guntas in S.N. 2 and that for regularizing the land the Tahsildar Bhadravathi has issued RTC in respect of suit property in her name. The defendants further contended about the report submitted by revenue Inspector to the government reporting possession and cultivation of suit property by defendant no 2 in order to get computerized pahani copy in the name of defendant no 2 and contended about the acquisition of the suit property by the defendant no 3 and 4 by convincing the defendants no1 and 2 to cede their land for the said purpose and accordingly their receiving Rs 1,00,000/- as initial amount of compensation from defendants no 3 and 4 etc.

30. Admittedly except EXD1 and EXD2 1.e., the RTC and Mutation register extract relating to S.N 2 measuring 1.08 the defendants have not produced any other document to prove that they are the



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occupant of the suit property. Even though the defendants have contended about the report drawn by the revenue inspector reporting about their occupation of suit property but no such report is produced before the court. Admittedly before acquisition of land by the government, it issues notice to the land owners whose land they propose to acquire by calling objection from them. But even though defendants contends that being the owner of the suit property they have received initial amount of compensation but no such notice issued from defendants no3 and 4 is produced before this court.

31. Even though no gazette notification is produced, but from the evidence of the Pw1 and Dw1 it could be gathered that suit property along with other property at Naveelebasapura village was acquired by defendant no 3.

32. Now on going through EXD1 and EXD2, in the year 1983-1984 the Khata in respect of S.N 2 measuring 1.08 was affected in the name of defendant no 2. In the EXD2 there is reference of survey settlement of S.N 2 of Naveelebasapura village. Along with defendant no 2 in EXD2 there is reference of effecting khata in respect of S. No 2 measuring 2.05 in the name of Siddayya s/o Siddayya Siddayya S/o Marala Siddayya to an extent of 0.37. Even in EXD1 we find the name of aforesaid two persons in column no 9 of the RTC as person in possession of the aforesaid extent of land.

33. From the entries found in EXD1 and EXD2 it can be gathered that khata was affected based on EXP12. EXP12 i.e phodi sketch is nothing but continued process of EXP1 and EXP2. From EXP1 and EXP2 and from the admission of Dw1 it reveals that along with plaintiff, aforesaid Siddayya S/o Siddayya and Siddayya s/o Marala Siddayya have been granted with 2.05 and 0.37 guntas of land



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respectively. After the grant, measurement was done of the granted land. In EXP12 we can find the name of Siddayya S/o Siddayya, Siddayya S/o Maralasiddayya and Gowramma kom Venkatappa. At the cost of repetition even though there is some typographical mistake crept in EXP12 while mentioning the name of husband of Gowramma, but admitted fact is that as per EXP1 plaintiff was granted with land. Hence it is not made known by the defendants no1 and 2 as to on what basis khata was effected in the name of defendant no 2. The Dw1 in his cross examination has deposed that his wife i.e., defendant no2 as the tenant under Basavana Devaru was cultivating the suit property and that for the grant of said land defendant no 2 in the year 1982-83 had filed application before the Tahasildar Bhadravathi but Thasildar Bhadravathi has not granted the suit property in the name of defendant no2. It is further deposed by Dw1 that the revenue Inspector in the year 1983-1984 had drawn the mahzar and on the basis of the mahzar drawn by the revenue inspector land was granted in the name of defendant no 2 and that the copy of the mazhar is with him and he has no objection to produce the copy of the mazhar before the court. But admittedly the defendant no1 and 2 have not produced alleged mahzar / report copy. If really any such mahazar was drawn and on the basis of mahazar drawn the khata was effected in the name of defendant no2, the defendants could have produced the same before the same. Hence non production of material document which stated to be in the possession of the defendants no1 and 2, adverse inference can be drawn against the case of defendants no 1 and 2.

*34. Now at this juncture it would be relevant to refer here the ruling relied by learned counsel for appellant reported in **2008 (3)Kar.L.J 63 K.Pasala Reddy @ A.K Pasalappa / State of Karnataka and Others** where in mutation of entry in record of*



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rights in favor of party in possession was made claiming to be grantee but party in possession not able to produce original or certified copy of order of grant in support of his claim. Hence order was passed to expunge the entry holding that it is only a created and concocted entry made with motive of making wrongful gain.

35. Coming to the case on hand, here also the defendant no2 without having grant order or for that matter any other order with respect to suit property in her name has effected khata in her name. It appears that the defendants no1 and 2 by taking advantage of the absence of plaintiff at Navilebasapura village and taking advantage that in EXP12 the husband's name of Gowramma is shown as Venkatappa where as the name of the husband of defendant no 2 is also Venkatappa by misleading the revenue authority got mutate the khata in her name.

36. It is further relevant to observe here that the Dw1 in his cross examination has admitted grant of 2.05 acre in favor of Siddayya S/O Siddayya and 0.37 guntas of land in favor of Siddayya S/o Marala Siddayya but disputes the grant of 1.08 guntas of land to plaintiff without any base When Dw1 admitted EXP12 to the extent of survey measurement done in respect of the property of Siddayya S/o Slldayya and Siddayya S/o Maralsiddayya there is no meaning in disputing the entry in EXP12 with respect to survey measurement of the suit property granted in the name of plaintiff.

37. So far as acquisition of suit property by defendant no3 is concerned, it is admitted by Dw1 that prior to the acquisition of land, the defendant no3 had issued notice to the owner of the land proposed to be acquired by them to submit their objection if any for such acquisition proceedings and in that regard even meeting was called for before the



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Deputy Commissioner Shimoga and thereafter acquisition process was published in Gazetted notification. It is relevant to observe here that Dw1 has admitted that the name of defendant no2 is not mentioned in Gazette notification and no notice was issued to her calling for objection from her side. Now if really the defendant no2 is the owner in possession of suit property, definitely on acquisition of suit property her name would have been shown in the Gazette notification and notice would have been issued to her for raising objection if any. Further even though notice was issued to the plaintiff calling for objection with respect to the acquisition proceedings as it is evident from EXP13 which is marked before this court, the defendants admittedly have not taken any steps disputing the name of plaintiff shown in the gazette notification as the owner of the suit property. It is not made known by the defendants on what basis they have received compensation of Rs 1,00,000/- from the defendants for acquisition of suit property, when they have not proved to be the owner of the suit property.

38. The learned counsel for the respondent during the course of argument has much stated about the plaintiff not obtaining certificate of registration as provided under section 55 of the Karnataka Land Reforms Act and also not effecting khata in the name of plaintiff subsequent to such grant. It is argued by the learned counsel that since land was not granted in the name of plaintiff or that even if land was granted in her favor since she has not paid premium amount to the government, the khata was not affected in the name of plaintiff. It is submitted that unless and until certificate of registration i.e., Form No 10 is issued confirming occupancy right of the plaintiff, the plaintiff cannot be declared as the owner of the suit property.



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39. Admittedly suit property is a Inam land. As per section 9 of the Mysore(Religious and Charitable) Inams Abolition Act 1955 and Rules 1956 for the purpose of grant of occupancy right to the occupant of Inam Land power was given to the tribunal to examine the nature and history of the lands in respect of which person claims to be registered as an occupant by holding enquiry

Section 9 (c) of the aforesaid act provides that the provision of section 48-A, 48-C and section 112 of the Karnataka Land Reforms Act and the relevant rules framed there under shall mutatis and mutandis apply to an enquiry for determination of the claim and **the decision of the tribunal shall be final.**

40. The aforesaid section clearly provides that only provision of section 48-A, 48-C and Section 112 of KLR act can be applied for holding enquiry for grant of inam land. Further the order passed by the tribunal itself is final .It is no where provided under the Mysore (Religious and Charitable) Inams Abolition Act to obtain certificate of registration or made it mandatory to obtain Certificate of Registration.

41. Now with respect to non-payment of premium by plaintiff to the government is concerned, even if on grant of land the grantee has failed to pay premium to the government it does not take away the right of the grantee over the granted land. Government has every right to recover the premium amount as arrears of land revenue.

42. Even though section (c) of the Mysore (Religious & Charitable) Inams Abolition Act not made it mandatory to obtain certificate of registration subsequent to the re grant order passed by the tribunal but plaintiff had filed application before the Thasildar for issuance of Hakku Pathra. But the



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Thahsildar has given endorsement as per EXP8 and EXP9 stating that since suit property is acquired by KIADB there is no provision to issue Hakku Pathra. If really the plaintiff was not granted with suit property, when she filed application for issuance of Hakku Pathra, the Thasildar after verification of document would have given endorsement that no land was granted in the name of plaintiff.

43. Even though defendants no1 and 2 disputes the very grant of suit property in favor of plaintiff but admittedly till this date no one has challenged the grant order as per Exp1 and EXP2 passed in favor of plaintiff. Hence the grant order passed as per EXP1 and Exp2 has reached finality. The defendants no1 and 2 without taking any legal recourse for all these years simply challenge the grant order made in favor of the plaintiff without any base and without any supportive materials. Hence bald statement made by defendants no1 and 2 disputing the ownership of defendant no1 and 2 does not wipe out or destroy the right of the plaintiff over the suit property.

44. The learned counsel for defendants no1 and 2 in further has submitted that when plaintiff is not in possession of the suit property since from several years she is not entitled to claim compensation from defendants no 3 and 4. Admittedly since from 15 years plaintiff is not in possession of the suit property as she stated to be residing at Bangalore but as stated by Pw1 she often visits to Bhadravathi and stays in her relative's house.

45. Admittedly the plaintiff has filed this suit for declaration to declare that she is the owner of the suit property and hence she is entitled to claim compensation from the defendants no 3 and 4 and for permanent injunction restraining the defendants no 1 and 2 from receiving any sort of compensation from defendants no 3 and 4 with respect to suit



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property. Even though plaintiff is not in possession of suit property, but as rightly argued by the learned counsel for plaintiff it does not take away the right of the plaintiff over the suit property unless and until the order of grant is revoked or cancelled or set aside by the competent authority. Had the plaintiff filed suit for declaration to declare that she is the absolute owner and for permanent injunction restraining the defendants not and 2 from interfering with her possession and enjoyment of the suit property then matter would have been different in such circumstances it would not have possible to give relief to the plaintiff because when plaintiff herself admitted that she is not in possession of the property, the relief of declaration and injunction could not have been granted.

46. But here in the plaintiff claimed the relief of declaration of ownership only to receive compensation from the no3 and 4 on account of acquisition of suit property by defendants no 3 and 4. Further the nature of injunction order claimed by the plaintiff does not require actual possession of the suit property. The defendants no 1 and 2 neither have proved their ownership nor their possession of the suit property. Hence they are not at all entitled to receive compensation from defendant no 3 and 4.

47. Even though plaintiff has produced EXP1, EXP2 and EXP12 to prove her ownership of the suit property but trial court without appreciating the said material documents erred in observing that plaintiff has not proved her ownership by not producing documents. Even though plaintiff nowhere has asserted that she is in possession of the suit property but trial court has wrongly framed issues casting burden on the plaintiff to prove her possession of the suit property and thereby given erroneous findings



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on issue no1 and 2. Further even though plaintiff has produced phody sketch as per Exp12 but the trial court has wrongly observed that plaintiff has not produced any document to prove the Survey of granted land and after such phodi work reduction of measurement of suit land to 1.08 from 2 acre 20 guntas. In all the trial judge erred in not properly appreciating the documentary and oral evidence placed by the plaintiff and defendants and failed to take in to consideration the regarding the relationship grant of land in favor of material admission given by the Dw1 of plaintiff with Muniyamma and also the plaintiff.

48. When plaintiff proved to be the owner of the suit property by virtue of grant of suit property in her favor she being the owner of the suit property is entitled to receive compensation on account of acquisition of suit property from defendant no 3 and 4. Further when defendants no1 and 2 admittedly have received compensation of Rs.1,00,000/- from defendants no 3 and 4 even though they have no manner or right title and interest over the suit property, they have to be restrained from receiving any sort of compensation from defendants no 3 and 4 in respect of the suit property. Accordingly point no 1 and 2 are answered in the Affirmative.

*49. **Point no 2:** On re appreciating the entire oral and documentary evidence, I am of the considered opinion that the trial court has overlooked some important aspect. There has been misapplication of facts of the case. As such the interference of this appellate court is absolutely required. Consequently appeal has to be allowed and thereby OS No 395/2009 has to be set aside in its entirety with costs throughout. Hence Point No 3 is answered in the Affirmative.*



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50. **Point No.4:-** *In view of my finding on points 1 to 3 appeal has to be allowed by setting aside the judgment and decree passed in O.S.No.396/2009.*

ORDER

Appeal filed u/s, 96 of C.P.C. read with Order 41 Rule 1 of C.P.C. challenging the Judgment and decree passed in O. S No 395/2009 on the file of the Court of II Additional Civil Judge (Jr. Dvn.) and JMFC is allowed with costs throughout. Consequently suit bearing OS No 396/2009 is set aside.

Office to draw decree accordingly.

Office to return the entire records of OS 396 /2009 to the trial court along with copy of the judgment and decree of this appeal."

14. Though the plaintiff has attempted to urge various contentions, the same are not questions of law, much less, the substantial questions of law.

15. As can be seen from the substantial questions of law formulated / framed by the appellant in the present appeal, the same are purely questions of fact and not any questions of law, much less, the substantial questions of law which arise for consideration in the present appeal; as stated supra, the First Appellate Court has recorded a



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categorical finding of fact based on admissible evidence that the suit schedule property was owned and possessed by the plaintiff who had better title and possession as against defendant Nos.1 and 2, who had not placed any legal or acceptable evidence to rebut the claim of the plaintiff nor establish their right, title, interest or position over the suit schedule property.

16. Under these circumstances, I am of the considered opinion that no question of law, much less, the substantial question of law arises for consideration in the present appeal, which is accordingly liable to be dismissed. Accordingly, the appeal is ***dismissed***.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

GH
List No.: 1 Sl No.: 34