



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.1144 OF 2024 (DEC/INJ)

BETWEEN:

THE CHIEF OFFICER
TOWN PANCHAYATH,
HOLALKERE – 577 526.

...APPELLANT

(BY SRI B.M.SIDDAPPA, ADVOCATE)

AND:

1. MRS VIMALAMMA
W/O LATE BASAPPA,
AGED ABOUT 78 YEARS,
2. MRS RENUKAMMA
W/O LATE KARIYAPPA,
AGED ABOUT 58 YEARS,
3. SMT SUJATHA
W/O NARAYANAPPA,
AGED ABOUT 56 YEARS,
4. REVANASIDDAPPA
S/O LATE BASAPPA,
AGED ABOUT 53 YEARS
5. DYAMANNA
S/O LATE BASAPPA
DEAD BY HIS L.RS
- 5(a) CHANDRIKA
W/O LATE DYAMANNA
AGED ABOUT 44 YEARS,


Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



HOUSE WIFE,
R/O A D COLONY,
HOLALKERE TOWN – 577 526

5(b) DEEPTHI
D/O LATE DYAMANNA
AGED ABOUT 8 YEARS,
MINOR,
REPRESENTED BY
NATURAL MOTHER 5(a)
R/O A D COLONY,
HOLALKERE TOWN - 577526

6. SHIVANNA
S/O LATE BASAPPA,
AGED ABOUT 46 YEARS,

ALL ARE AGRICULTURISTS,
R/O A D COLONY,
HOLALKERE TOWN -577526,

7. THE CHIEF SECRETARY,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE – 560 001

8. THE DEPUTY COMMISSIONER,
CHITRADURGA – 577501

9. THE ASSISTANT COMMISSIONER,
CHITRADURGA – 577501

...RESPONDENTS

(BY SRI SATEESH CHANDRA.K.V, ADVOCATE
FOR C/R1, R4, R6)

THIS RSA IS FILED UNDER SECTION 100 OF CODE OF
CIVIL PROCEDURE AGAINST THE JUDGMENT AND DECREE
DATED 10.04.2024 PASSED IN R.A.No.33/2022 ON THE FILE
OF THE SENIOR CIVIL JUDGE AND JMFC, HOLALKERE,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT



AND DECREE DATED 15.03.2022 PASSED IN O.S.No.120/2014 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC, HOLALKERE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri B.M. Siddappa, learned counsel for the appellant and Sri K.V. Sateesh Chandra, learned counsel for respondent Nos.1, 4 and 6.

2. Fourth defendant is the appellant challenging the decree passed in O.S.No.120/2014, confirmed in R.A.No.33/2022, whereby plaintiffs are declared as the owners of the following immovable property (hereinafter referred to as suit property) and all the defendants were directed to vacate and hand over the possession of the suit property to the plaintiffs within three months from the date of order of the Trial Court.

"SCHEDULE

The land with dilapidated pump house, water tank, quarters, situated at Holalkere bearing Sy.No.367/1,



*measuring 1-06 guntas, assessed at Rs.1-22 ps, and
bounded by:*

*East : Land of H.R. Siddalingappa and Mujib
Sab*

West : Holalkere – Hosadurga, PWD Road

North : Land of Ajeez Sab

South : Land of Anand”

3. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

A suit came to be filed by the plaintiffs contending that the plaintiffs are the owners of the suit property, having inherited to Basappa, who is the father of plaintiff Nos.2 to 6 and husband of plaintiff No.1. After the death of Basappa, the khatha of the suit property got mutated in the name of plaintiff No.1 in mutation proceedings in M.R.No.114/1999-2000.

4. It is further contented that said Basappa had permitted defendant No.4 orally to construct a water tank and a sump pit for supply of water and as such defendant No.4 has



constructed a pump house and was supplying the water to the residents of Holalkere town.

5. The permissive possession of defendant No.4 was terminated by issuing notice on 04.06.2016. But, despite such termination, defendant No.4 did not vacate the premises as called in the legal notice. Therefore, filed suit seeking relief of declaration that the plaintiffs are the owners of the suit property and with a direction to vacate and hand over the suit property to the plaintiffs.

6. Pursuant to the suit summons, defendant Nos.1 to 3 no doubt appeared before the Trial Court but failed to contest the suit by filing the written statement and it is the defendant No.4 who contested the suit by contending that Basappa had orally agreed to sell the property in favour of him for a sum of Rs.6,000/- and he had already paid sum of Rs.3,000/-.

7. He also sought a counter claim that he has perfected the title in respect of the suit property by virtue of the said agreement to sell and therefore, he must be declared as the owner.

8. To such a counter claim that has been filed by the defendant No.4, plaintiffs filed written statement denying the



contentions urged in the counter claim and he also denied sum of Rs.3,000/- paid to father of Basappa, namely, Ningappa.

9. Based on the rival contentions of the parties, Trial Court raised following issues and an additional issue pursuant to the counter claim, claimed by defendant No.4.

"ISSUES

1. Whether the plaintiffs prove that their title and ownership over the suit schedule property?

2. Whether the defendant No. 4 proves the averments made in para 10 of written statement?

3. Whether the plaintiffs prove the defendants are in permissive possession of suit schedule property?

4. Whether the defendant No.4 proves that he has perfected his title over the suit schedule property by way of adverse possession?

5. Whether the suit is properly valued and paid correct court fee?

6. Whether the plaintiffs are entitled to the relief as sought for ?

7. What or decree?

ADDL. ISSUES

1. Whether the defendant No.4 is entitle to the relief as sought for?



10. In order to prove the case of the plaintiff, Sri Dhyamanna, who is the plaintiff No.5 is examined as PW1 and two witnesses namely, Shivanna, who is the plaintiff No.6 is examined as PW2 and Sri H.B.Shivananda is examined as PW3.

11. On behalf of plaintiffs, 19 documentary evidence were placed on record, which were exhibited and marked as Exs.P1 to P16 comprising of computerized RTC extract, legal notice, postal acknowledgements, copy of the RTC, petition register, tax paid receipt and paper publication.

12. As against the material evidence placed on record by the plaintiff, Sri Wasim S/o Mohammed Asmath, who was the Chief Officer of Purasabhe, Holalakere Taluk got examined himself as DW1 and a witness by name Venkateshalu S/o Sathyanarayanawamy, who is in-charge Chief Officer, examined himself as DW2.

13. On behalf of the defendants, 39 documents were placed on record as Exs.D1 to D.39, comprising of photographs, resolution book, certified copy of the registered sale deed dated 29.08.2003, work order dated 15.06.2016, meeting proceedings dated 08.09.2021, another work order dated 13.11.2018, order of the Deputy Commissioner dated



17.02.2022, permission to construct the pump house and work orders thereon etc.

14. On conclusion of recording of evidence, learned Trial Judge heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record by the parties, noted that defendant No.4 failed to prove that there was a sale in favour of defendant No.4 by father of Basappa, namely, Ningappa, having accepted sum of Rs.3,000/- as part sale consideration, decreed the suit of the plaintiffs, noting the fact that the property earlier belonged to Ningappa which was inherited by Basappa after the death of Ningappa and plaintiff No.1 being the wife of said Basappa, and other plaintiff being the children of Basappa.

15. Learned Trial Judge also took into consideration that the defence put forward by defendant No.4 that they have perfected the title by way of adverse possession is not proved and dismissed the counter claim as well.

16. Being aggrieved by the said judgment and decree passed by the learned Trial Judge, defendant No.4 filed two appeals in R.A.No.33/2022 and R.A.No.41/2022, challenging



decreeing of the suit of the plaintiffs and rejection of the counter claim.

17. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed both the appeals filed by defendant No.4.

18. Against the said judgment, the present appeal is filed by defendant No.4.

19. During the course of arguments, a memo is filed restricting the appeal only to the extent of decreeing the suit of the plaintiffs. Said memo is taken on record which reads as under:

"It is respectfully prayed that this Hon'ble Court may kindly be pleased to permit the appellants is restricted this top noted appeal to the R.A.No.33/2022 which is challenged the judgment and decree not to the counter R.A.41/2022 in the interest of justice and equity."

20. Having heard the arguments of both sides, this Court perused the material on record meticulously.

21. On such perusal of material on record, it is not in dispute that the property was earlier owned by Ningappa, who



is the father of Basappa. After death of Ningappa, Basappa inherited the suit property.

22. Soon after the death of Basappa, plaintiff No.1 being the wife and other plaintiffs being the children further inherited the suit property and they applied for change of revenue entries and by consent, revenue entries were mutated in the name of plaintiff No.1 being the wife of Basappa.

23. In the plaint itself, there is a categorical statement that the suit property was given for defendant No.4 to construct the pump house and a sump pit for supply of water to the Holalkere Town and said possession was permissive in nature and not for any consideration.

24. The permissive possession of defendant No.4 was duly terminated by issuing the legal notice. However, defendant No.4 failed to comply with the callings of notice and therefore, suit was necessitated.

25. Pursuant to the service of suit summons, it is defendant No.4 who contested the suit and other defendants though appeared did not choose to contest the suit.

26. Defendant No.4 took a peculiar contention that the suit property was agreed to be sold to defendant No.4 by



Ningappa during his lifetime for a total consideration of Rs.6,000/- and sum of Rs.3,000/- was paid to Ningappa and defendant No.4 was put into the possession of the property as an agreement holder and not as a license or permissive possession.

27. At another breath, defendant No. 4 also maintained the defence that defendant No.4 has perfected the title to the suit property by adverse and therefore sought for a counter declaration that defendant No.4 is the owner of the suit property and therefore sought for injunction against the plaintiffs.

28. Learned Trial Judge, after raising necessary issues, recorded the material evidence on record and noted that there is no dispute that the suit property earlier belonged to Ningappa, who is the father of Basappa, from whom the plaintiffs are claiming the right, title over the suit property.

29. Trial Court also noted that the evidence of DW1 and DW2 coupled with the documentary evidence placed on record was not sufficient enough to establish that there was an agreement to sell between Ningappa and defendant No.4 and



sum of Rs.3,000/- being paid as part sale consideration of total sale consideration of Rs.6,000/-.

30. Further, the Trial Court also noted that there is no proper pleading to substantiate the plea of adverse possession inasmuch as there is no date mentioned in the written statement as to transfer of title from Ningappa or Basappa and thereafter, enjoyed the property uninterruptedly for more than 12 years. Therefore, negated the plea of adverse possession and decreed the suit of the plaintiffs and directed the defendant No.4 to vacate and hand over the possession of the property within a period of three months from the date of decree of the order.

31. As already pointed out, it is defendant No.4 who challenged decreeing of the suit and dismissal of the counter claim in two appeals in R.A.No.33/2022 and R.A.No.41/2022.

32. Learned Judge in the First Appellate Court not only agreed with the reasoning recorded by the learned Trial Judge, but also supplemented additional reasons while upholding the decreeing of the suit and dismissing the counter claim.

33. The learned Judge in the First Appellate Court in its judgment in paragraphs 40 to 44 has held as under:



"40. With regard to counter claim of the defendant that they claims as they perfected their title by way of adverse possession is concerned, per contra, the plaintiffs avers that the defendant is in **Permissive possession** As regards the counter claim or contentions of the defendant that they perfected the title by way of adverse possession as the plaintiffs did not take any steps to get the possession back from the defendant, in this regard, it is worth to rely the latest ruling of our own Hon'ble High Court of Karnataka, wherein the HOn'ble Court has said a person will not acquire adverse possession by simply remaining in permissive possession, for however long it may be, it has further said, "Article 65 of the Limitation Act presupposes that the limitation starts only if the defendants prove the factum of adverse possession affirmatively from a particular time."

41. That to elaborate the said factum, Court relies on the decision as mentioned earlier that in **R.F.A.No.1840 OF 2005 DATE OF JUDGEMENT: 17th November 2021 in the case of Chepudira Madaiah, Son of late Muthanna Vs. Mallengada Chengappa, Son of late Bopaiah and Others**

Examining the issue of limitation, the Hon'ble court referred to section 65 of the Limitation Act of 1963, which provides that the limitation period for a suit for the relief of possession of the immovable property is twelve years from the date when the possession of the defendant becomes adverse to the plaintiff. 2. The Hon'ble Court explained that under section 65, the time from which the



period of 12 years begins to run is not from the date when the defendant occupied the property, but, when the possession of the defendant becomes adverse to the plaintiff, hence, the limitation commences when the defendants prove the fact of adverse possession affirmatively from a particular point of time.

*The Hon'ble Court relied on the judgment in the case of **Dagadabai (Dead) by Legal Representatives vs Abbas alias Gulab Rustum Pinjari** where the **Hon'ble Apex Court** held that the person raising the plea of adverse possession must necessarily first admit the ownership of the true owner of the relevant property to the knowledge of that owner and that was only done by the defendants in their written statement where they admitted the ownership of the respondents over the suit property. 3. Apart from these essentials, the Court held that the appellants must also prove that their possession is an actual, open, exclusive, hostile, and continued over a statutory period by wrongful dispossession of the rightful owner. Mere possession cannot be deemed to be adverse possession merely on the basis of denial of another's title over a property for that would be violative of basic rights of the actual owner. The Hon'ble Court referred to the judgment in the case of *Uttam Chand (Dead) through Legal Representatives vs Nathu Ram (Dead) through Legal Representatives and others* where the court explained three basic essentials of adverse possession: **a) Nec vi i.e adequate in continuity, b) Nec clam i.e. adequate in publicity and c) Nec precario i.e. adverse to a competitor, in denial of title and his knowledge.***

42. That the Hon'ble High Court has held that: a person will not acquire adverse possession by simply remaining in permissive possession, for however long it may be. The physical fact of exclusion, possession and



animus, to hold as owner, in exclusion to the actual owner, are the most important factors to prove adverse possession.

43. That whereas, the present case on hand is concerned, the learned counsel appearing for the defendant has argued that the Ningappa who was the original owner of the suit property did not get back the property from the defendant, moreover, as noted above, the defendant had paid Rs.3,000/ towards price for acquiring the suit property, so, his heirs who are the plaintiffs herein cannot claim any right over the suit property after lapse of 30 years of such possession of the defendant, and hence, they perfected the title by way of adverse possession. That as against the principle laid down in the above cited decisions, that the defendant who got the EXD39 E khatha showing that the defendant Chief Officer is the owner, so, the defendant without admitting the ownership of the plaintiffs or of late Ningappa and his son Basappa, they want to get the relief of declaration of their title, so, when admittedly, the property was given by the Ningappa under the permissive possession who permitted the defendant to make use of his land for the public utility purpose, but which has been abandoned about many years ago, which is revealed from their own schedule as mentioned earlier as it is in dilapidated condition, and being used by the defendant.

44. The above discussed fact is also further strengthened by the report of the Commissioner, so, in alternate, as brought to the notice of this Court, the



*defendant admittedly had abandoned the said water supply pump house and quarters, and presently, a new plant has been installed, and the water is being supplied to the residents of Holalkere from the new water pump house. At the same time, a paper publication report, which is not seriously disputed by the defendant, that on 07-07-2014 there was a press note released by the defendant and the Town Municipal Council headed by the President as the said pump house is going to be converted into Devaraja Urs Market. These are all things can only be done against rustic poor landless farmers, that too without following any due process of law and not acquiring it validly, so, it is manifest that the defendant cannot seek conversion of a permissive possession into an adverse possession and also, he had not acquired the land at any point of time, no admissible documents placed on record to show that the same had been purchased either from the late Ningappa or from the Basappa, accordingly, the defendant failed before the trial Court to establish that he is entitled to the relief as sought in the counter claim, at the same time, the plaintiffs have established that they are entitled to the relief as sought for. As such, I am of the clear view that the there is no perversity or illegality found in the findings of the trial Court. Accordingly, I answer the **point No.1 to 5 are answered in the Negative.**"*

34. This Court in the light of the memo filed on behalf of the appellant and also in the light of the arguments that has



been canvassed on behalf of the appellant perused the record meticulously.

35. On such perusal of the material on record, there is no dispute that Ningappa was the owner of the suit property.

36. Admittedly, Ningappa died leaving behind Basappa and thus Basappa inherited the suit property and enjoyed the same. Basappa also died and at that juncture, mutation entries were sought to be transferred in the name of the legal heirs of Basappa and after notifying the concerned, the revenue entries are mutated in favour of plaintiff No.1 in M.R.No. 114/1999-2000.

37. Said mutation registered extract is marked at Ex.P17 and there is no effective cross-examination on the said aspect of the matter.

38. It is also pertinent to note that defendant No.4 if at all is in possession of the suit property as an agreement holder, pleading part performance of the contract should have been objected for the mutation proceedings. But, defendant No.4 failed to do so.



39. Further, there is no reply to the legal notice issued by the plaintiff before initiating the suit and terminating the permissive possession.

40. These aspects of the matter would make it clear that the plaintiffs being the owners of the property have established their title to the suit property and therefore were entitled for a judgment of declaration.

41. Further, since the permissive possession is duly terminated by issuing the legal notice, they were also entitled for the possession of the property.

42. Defendant No.4 no doubt tried to resist the suit by taking the plea that Ningappa had agreed to sell the property in favour of defendant No.4 for a total consideration of Rs.6,000/. Defendant No.4 also contended that he has perfected the title to the suit property by way of adverse position.

43. There is no proper proof placed on record besides the proper pleadings to establish the plea of adverse possession. Likewise, there is no proper proof to show that there was an agreement to sell executed by Ningappa in favour of defendant No.4.



44. If it is a case of defendant No.4 that there is an oral agreement, then question of part performance would not come into picture at all.

45. Thus viewed from any angle, this Court does not find any good reasons to admit the appeal for further consideration.

46. Accordingly, the following:

ORDER

Admission is declined.

Appeal is dismissed.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR
List No.: 2 SI No.: 75