



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 1864 OF 2018 (DEC/INJ-)

BETWEEN:

K. N. PRAKASH,
S/O LATE T. K. NARAYANA RAO,
AGED ABOUT 60 YEARS,
R/O MAIN ROAD,
DURGIGUDI EXTENSION,
SHIVAMOGGA CITY AND TALUK
SHIMOGA DISTRICT,
PIN CODE-577202.

...APPELLANT

(BY SRI. R. GOPAL, ADVOCATE)

AND:

1. THE CHIEF SECRETARY,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE-560 001.

Digitally signed
by BELUR
RANGADHAMA
NANDINI

Location: HIGH
COURT OF
KARNATAKA

2. THE CONSERVATOR OF FOREST
FOREST DEPRATMENT,
SHIVAMOGGA,
PIN CODE-577 202.

3. THE DEPUTY CONSERVATOR OF FOREST,
WILD LIFE DIVISION,
SHIMOGA CITY,
PIN CODE-577202.



4. THE RANGE FOREST OFFICER
WILD LIFE RANGE,
SHIMOGGA,
PIN CODE-577202.

...RESPONDENTS

(BY SMT. RANSA VASANTHI, HCGP FOR R1 TO R4

(MA NOT FILED))

THIS RFA FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 14.08.2018 PASSED IN O.S.NO.44/2013 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA, DISMISSING THE SUIT FOR DECLARATION AND PERMANENT INJUNCTION AND MANDATORY INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is filed by the plaintiff against the judgment and decree dated 14.08.2018 in O.S. No.44/2013 on the file of I Additional Senior Civil Judge, Shivamogga, dismissing the suit for declaration of title and injunction.



2. The plaintiff has also sought the mandatory injunction to close the trench which according to the plaintiff is dug in the property belonging to the plaintiff.

3. The suit property is agricultural land bearing Survey No.26/15 measuring 1 acre 20 guntas in Aladevarahosuru Village, Kasaba Hobli, Shivamogga Taluk. The boundary of the property is shown as under:

East: Lands of S. Geetha W/o Sridhara,

West: Lands of Auditor Satish,

North: Lands in Sy.No.73 of Chandrakanth and

South: Beaten Track.

4. The plaintiff claims to have purchased the property under a registered sale deed dated 29.08.2005 from the previous owner Neelappa son of Sanna Ningappa. The plaintiff also claims that his vendor got 3 acres of land allotted in Survey No.26/15, in terms of the Government grant dated 12.11.1974. It is submitted that when the property was granted to Neelappa, the plaintiff's vendor, it was numbered as 26/15. The suit is filed on the premise



that the officers of the Forest Department are obstructing the plaintiff's use and occupation of the property and have also unauthorisedly dug the trench in the suit property.

5. The averments in the plaint would also reveal that the total extent of land bearing Survey No.26 referred to above was originally 290 acres and 10 guntas and out of the said extent, 164 acres and 2 guntas was handed over to the Forest Department and remaining extent of 126 acres and 8 guntas is retained by the revenue department. The Revenue department later granted around 96 acres of land to various eligible persons and in the said process, the vendor of the plaintiff namely Neelappa is allotted 3 acres, is the contention.

6. The Divisional Forest Department contested the suit. They claimed that the property bearing Survey No.26, measured 290 acres and 10 guntas. The plaintiff's claim that out of 290 acres and 10 guntas in Survey No.26, the Revenue department has handed over only 164



acres and 2 guntas and remaining 126 acres 8 guntas is retained by the Revenue department is disputed. The Forest Department contended that entire property is handed over to Forest department and Revenue department did not retain any of the property.

7. The Trial Court on 19.06.2013 framed the following issues:

"1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property having purchased the same through a registered sale deed dated 29-8-2005?

2. Whether the plaintiff further proves that the defendants dug the trenches in the schedule property to fix the boundary?

3. Whether the defendants prove that the suit is bad for non-joinder of necessary parties?

4. Whether the defendants prove that the land bearing Survey No.26 of Aladevara Hosuru village is the notified forest land as contended in para no.5 of their written statement?



5. *Whether the defendants prove that the notice issued under Section 80 of CPC., is defective one and hence, the suit is not maintainable?*

6. *Is the plaintiff entitled for the reliefs claimed in the suit?*

7. *What order or decree?"*

8. The Trial Court has come to the conclusion that the plaintiff is not entitled to the relief on the premise that the suit property is not identifiable. Aggrieved by the aforementioned judgment and decree, the plaintiff is in appeal.

9. Learned counsel appearing for the plaintiff/appellant would contend that the revenue records placed before the Court would clearly demonstrate that in Survey No.26 only 164 acres and 2 guntas were handed over to the Forest Department and remaining 126 acres and 8 guntas were retained by the Revenue Department and to this effect, there is a finding recorded by the Trial Court. It is further submitted that said finding is based on



the admission of DW1, who has admitted that Forest Department has taken possession of only 164 acres and 2 guntas.

10. Learned counsel for the plaintiff/appellant to substantiate his contention that the judgment and decree are erroneous would refer to Exhibit-P9, the survey sketch prepared by the Revenue Department which would disclose the extent of the land allotted to Neelappa, the plaintiff's vendor. He would also refer to the report submitted by the Court Commissioner who was appointed to identify the property. The Court Commissioner has identified the property, prepared the sketch, submitted a report. Same is marked in Exhibit-C series and though there is cross-examination to the Court Commissioner, nothing is elicited in the cross-examination to disbelieve the report of the Court Commissioner. Thus, it is urged that the Trial Court erred in holding that the identity of the property is not established.



11. Learned counsel for the appellant would also refer to the mutations based on the sale deed, the grant certificate and other revenue records which are standing in the name of the plaintiff's vendor as well as the plaintiff after the purchase and would contend that the property is very much identified and would urge that the judgment and decree passed by the Trial Court will have to be set aside.

12. Exhibit-P9 is the survey sketch prepared at the time of subdivision of the property. The property marked as Item No.1 in the said sketch is shown to be the property of Neelappa and the total extent is shown as 1 acre 21 guntas.

13. Exhibit-P1 is the grant certificate in the name of Neelappa, who is said to be the plaintiff's vendor. From the said grant certificate, it is evident that 3 acres of land is allotted to the plaintiff's vendor Neelappa. The boundary of the property of 3 acres is shown as under:



On the East: Property bearing No.2,
on the west: Property bearing No.18,
on the north: Property bearing No.16 and
on the south: Property No.14.

By referring to this boundary and the boundary in the sale deed and the description in the remaining documents, the Court has come to the conclusion that the description of the property is not established and suit should have been decreed as the suit property cannot be the property of the Forest Department.

14. In DW-1 has admitted that the Forest Department is not concerned with the eastern portion of Survey No.26 and they are only concerned with western portion. Referring to the sketch, learned counsel for the appellant would submit that the suit land is lying on the eastern portion of Survey No.26, and as suit should have been decreed as the property cannot be the property of Forest Department.



15. Learned Government Advocate would submit that the property in question is part of the property handed over to the Forest Department by the Revenue Department and the plaintiff has utterly failed to establish the identity of the property with reference to the sale deed produced by him and also with reference to the boundaries mentioned in the Grant Certificate in the name of Neelappa.

16. It is also submitted that the Court Commissioner who has submitted the report could not have identified the property as the plaintiff's property as there was no basis for the Court Commissioner to say that the portion mentioned in the survey sketch is the plaintiff's property. In addition it is also submitted that there were various fraudulent grants in respect of the Forest Land and the dispute is now raised before the Jurisdictional Assistant Commissioner and the same is pending consideration.

17. The Court has considered the contentions raised at the bar and perused the records.

18. The following point arises for consideration:



"Whether the plaintiff/appellant establishes title and possession over the suit property.

19. Before the Trial Court, the Survey Commissioner was appointed to identify the suit property and also to measure the suit property. The said report is marked at Ex.C1(a) to Ex.C1(c). The Court Commissioner when examined before the Court has stated that though the Forest Officers were present at the time of survey they refused to sign the mahazar and participate in the survey. The Court has perused the said report. In the said report marked at Ex.C1(a) to Ex.C1(c), the suit property is shown as the property adjacent to Survey No.73 and lying to the south of Survey No.73.

20. By referring to the said sketch, learned counsel for the appellant would urge that in Survey No.26, the suit property identified as one adjacent to Block No.73 and is lying on the eastern side and the witness examined on behalf of the defendants has admitted that the property granted to the Forest Department is on the western side of



Survey No.26 and eastern side of Survey No.26 is retained by the Revenue Department and the same is subsequently granted to various eligible persons.

21. The survey sketch does not indicate as to the basis for identifying the suit property as the property adjacent to Block No.73. Though it appears that the said property is on the eastern portion in Survey No.26, which according to the Forest Department is the property retained by the Revenue department, still the Court is of the view that the appropriate way to identify the property and resolve the dispute, is to measure the extent of the property granted to the Forest Department which is admittedly lying in the western portion of survey No.26.

22. That being the position, the Court is of the view that the matter has to be remanded to the Trial Court to identify and demarcate the extent of the property that is granted to the Forest Department and retained by the Revenue Department. In case it is found that the suit



property is falling outside the 164 acres and 2 guntas granted to the Forest Department, then the plaintiff may be entitled to the appropriate relief.

23. In case it is found that the suit property is within 164 acres and 2 guntas granting to Forest Department, then the plaintiff is not entitled to the relief.

24. Since the Court is remitting the matter to the Trial Court for fresh survey, both the parties are at liberty to adduce additional evidence in support of their respective claims. Hence the following:

ORDER

- (i) The appeal is ***allowed in part.***
- (ii) The impugned judgment and decree dated 14.08.2018 in O.S.No.44/2013 on the file of the Court of I Additional Senior Civil Judge at Shivamogga are set aside.
- (iii) The matter is remitted to the Trial Court for fresh consideration.



- (iv) The Trial Court shall appoint the Survey Commissioner to measure entire Survey No.26 and the Commissioner shall also identify the property granted to the Forest Department and the property retained by the Revenue Department.
- (v) The Court Commissioner shall also identify as to whether suit property is within 164 acres 2 guntas said to have been allotted to the Forest Department or part of 126 acres 8 guntas said to have been retained by the Revenue Department.
- (vi) Both the parties are at liberty to adduce additional evidence.
- (vii) It is made clear that this Court has not expressed anything on the merits of the matter.
- (viii) All contentions kept open.
- (ix) The parties shall appear before the trial Court on **04.06.2026** without any further notice.



- (x) Registry to send back the records to the Trial Court.
- (xi) Both the parties shall co-operate for early disposal of the suit.
- (xii) Both the parties are permitted to move necessary application for amendment of their pleadings, if so advised.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

CHS/NS
CT:TSM
List No.: 1 SI No.: 25