



CNR: KAHC010503942017

NC: 2026:KHC:52344
RSA No. 1466 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF SEPTEMBER, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 1466 OF 2017

BETWEEN:

1. BASAVARAJAPPA
S/O HANUMATHAPPA,
AGED ABOUT 65 YEARS,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577429
SHIVAMOGGA DISTRICT.
2. CHANDRAPA
S/O HANUMANTHAPPA,
AGED ABOUT 57 YEARS,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.
3. MARUTHAPPA
S/O HANUMANTHAPPA,
AGED ABOUT 50 YEARS,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.

...APPELLANTS

(BY SRI.UMESH MOOLIMANI, FOR
SRI. S V PRAKASH, ADVOCATES)

AND:

1. KATTER BHEEMARAYAPPA
S/O BHEEMAPPA,
AGED ABOUT 77 YEARS,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.



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2. THITTER HANUMANTHAPPA
S/O BANGARAPPA,
AGED ABOUT 75 YEAR,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.
3. TALUR HANUMANTHAPPA
S/O BHEEMAPPA,
AGED ABOUT 65 YEAR,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.
4. KENCHANAR MALLESHAPPA
S/O YALLANNA,
AGED ABOUT 80 YEAR,
R/O GUDDEKOPPA VILLAGE,
KUPPAGADDE HOBLI,
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.

...RESPONDENTS

(BY SRI.D.C. PARAMESHWARAIHAH, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 01.07.2017 PASSED IN R.A.NO.4/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC SORABA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 14.12.2015 PASSED IN O.S.NO.106/2006 ON THE FILE OF THE CIVIL JUDGE AND JMFC, SORABA.

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

This appeal by the plaintiffs in O.S.No.106/2006 is directed against the impugned judgment and decree dated 14.12.2015 passed by the Civil Judge and JMFC, Soraba (for short "Trial Court"), which dismissed the suit in relation to the suit schedule immovable property, against which the appellant-plaintiff preferred R.A.No.4/2016 before the Senior Civil Judge and JMFC, Soraba (for short "the First Appellate Court"), which was also dismissed by the First Appellate Court vide judgment and decree dated 01.07.2017, which is assailed in the present appeal.

2. Heard learned counsel for the appellants and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that the appellants-plaintiffs instituted the aforesaid suit in O.S.No.106/2006 for permanent injunction and other reliefs in relation to the suit schedule immovable property bearing Sy.No.12 measuring 4 acres 30 guntas situated at Guddekoppa Village, Kuppagadde Hobli,



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Soraba Taluk, Shivamogga District. The said suit was contested by the respondents-defendants, who were residing in the said village. In addition thereto, the respondents-defendants instituted one more suit in O.S.No.87/2009 against the appellants herein for declaration and permanent injunction in relation to the very same suit schedule property. Both the suits having been contested by both parties, the Trial Court clubbed both the suits together and framed the following issues:

Issues in O.S.No. 106/2006

- “ 1. Whether the plaintiff proves that he is in exclusive possession of the suit schedule property as described in the plaint as on date?*
- 2. Whether the plaintiff further proves the alleged interference by the defendant in the peaceful posses of the suit property of the plaintiff?*
- 3. If so, whether the plaintiff is entitled to the relief of permanent injunction?*
- 4. What decree or order?”*

Issues in O.S.No.87/2009

- “1. Whether the plaintiffs prove that the plaint schedule property is reserved for Hindu graveyard?*
- 2. Whether the plaintiffs prove that the alleged interference by the defendants over the plaint schedule property?*



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3. Whether the plaintiffs are entitled for declaration as prayed in the plaint?

4. Whether the plaintiffs are entitled for permanent injunction as sought in the plaint?

5. Whether the plaintiffs are entitled for the reliefs sought in the plaint?

6. What order or decree? "

4. Plaintiff No.3 examined himself as PW.1 and one witness was examined as PW.2 and documentary evidence at Exs.P-1 to P-91 were marked on their behalf, while defendant No.1 examined himself as DW.1 and three witnesses as Dws.2 to 4 and documentary evidence at Exs.D-1 to D-16 were marked on their behalf.

5. After hearing both sides, the Trial Court proceeded to pass the judgment and decree dismissing both the suits in O.S.Nos.106/2006 and 87/2009 filed by the appellants and respondents, respectively .

6. Aggrieved by the judgment and decree dated 14.12.2015 passed in O.S.No.106/2006 filed by them, the plaintiffs-appellants approached the First Appellate Court in R.A.No.4/2016, which was also dismissed by the First Appellate Court vide



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judgment and decree dated 01.07.2017. Aggrieved by the said judgments and decrees passed by the Trial Court as well as the First Appellate Court, the appellant-plaintiffs are before this Court by way of the present appeal.

7. Learned counsel for the appellants submits that the impugned judgments and decrees passed by both the Trial Court and The First Appellate Court are contrary to the material on record and non-consideration of relevant evidence and placing reliance upon inadmissible evidence would give rise to Substantial Questions of Law that would arise for consideration in the present appeal. It was submitted that the material on record would indicate that the appellants are in lawful and peaceful possession and enjoyment of the suit schedule property and mere pendency of the appeal before the Karnataka Appellate Tribunal, Bengaluru, in Appeal No.629/2012 could not have been made the basis by both the Courts to non-suit the plaintiff by passing the impugned judgments and decrees, which deserve to be set aside.

8. Per contra, learned counsel for the respondents would support the impugned judgments and decrees passed by both the



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Courts and submits that no questions of law, muchless any Substantial Question of Law arises for consideration in the present appeal which is liable to be dismissed. It is also submitted on 08.09.1999 itself, the State Government through the Assistant Commissioner had reserved the suit schedule property for burial ground/graveyard, which was confirmed by the Deputy Commissioner. vide Order dated 29.08.2011, which was assailed by the appellants-plaintiffs herein in Appeal No.629/2012, which came to be dismissed by the KAT, Bengaluru, vide final order dated 31.10.2017 during the pendency of the present appeal. It is submitted that in the light of declaration of the suit schedule property as a graveyard/burial ground by the State Government through its Assistant Commissioner and the same having been upheld by the Deputy Commissioner as well as the Karnataka Appellate Tribunal, which dismissed the appeal filed by the appellants and the same having attained finality and became conclusive and binding upon the appellants, who did not choose to challenge the final order passed in Appeal No.629/2012 dated 31.10.2017, the question of interfering with the impugned judgments and decrees passed by the Trial Court and the First



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Appellate Court would not arise in the facts and circumstances of the instant case and the present appeal is liable to be dismissed.

9. I have given my anxious consideration to the rival submissions and perused the material on record.

10. A perusal of the material on record will indicate that the Trial Court has correctly and properly considered and appreciated the entire material on record and has also taken into account the undisputed fact that the suit schedule property had been declared and reserved for the purpose of graveyard/burial ground by the State Government acting through its Assistant Commissioner and confirmed by the Deputy Commissioner and that the matter was pending before the Karnataka Appellate Tribunal, Bengaluru, in an appeal by the unsuccessful appellants.

11. Under these circumstances, the Trial Court came to the conclusion that having regard to the fact that the suit schedule property had been declared reserved, treated and being utilized as graveyard/burial ground for the purpose of the public at large including the villagers, the question of appellants-plaintiffs claiming individual, proprietary or possessory right over the suit schedule



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property would not arise in the facts and circumstances of the instant case and proceeded to reject the claim of the plaintiffs by holding as under:

“REASONS

*“ 14. **Issue No.1 in O.S.No. 87/2009**: Admitted facts in this case are that the plaint schedule property is the Government land, defendant No.3 had filed application for regularization of un authorized cultivation of the said property before the Land Grant Committee, Soraba and the same was dismissed, appeal preferred by the defendant No.3 against the said order before the Assistant Commissioner, Sagar was dismissed and the appeal preferred by him against the said order before the Deputy Commissioner was also dismissed and now the matter is pending before the Karnataka Appellate Tribunal, as per the order dated 02/08/1999, passed by the Deputy Commissioner an extent of the three acres of land in the plaint schedule property was granted for Hindu burial ground and the said grant order was set aside as per the order dated 31/10/2002 passed in WP.No.4894/2002 on the file of the Hon'ble High Court of Karnataka and the matter was remitted to the Deputy Commissioner for fresh consideration after giving opportunity to the defendant No.3 and to proceed with the matter and pass appropriate orders strictly in accordance with law and thereafter as per the direction of the Hon'ble High Court of Karnataka, Deputy Commissioner consider the matter and confirmed his aforesaid order dated 02/08/1999 and thereby reserved three acres of land in the*



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plaint schedule property for burial ground and against the said order the defendant No.3 preferred appeal before the Karnataka Appellate Tribunal, Bangalore in Appeal No.629/2012 and in the aforesaid appeal both parties are directed to maintain status-quo of the land in question and the said order of status-quo was extended until further orders and as on the date of suit the record of rights in respect of the said three acres of land stands in the name of Hindu burial ground and the record of rights in respect of the remaining 01-30-00 acres of land is standing in the name of the Government. In order prove the aforesaid admitted facts, the defendants got marked the relevant documents.

15. Learned advocate for defendants has vehemently argued that though the three acres of land in the plaint schedule property is reserved for burial ground, the said the reserved land has not been demarcated, boundaries of the said land are not fixed and no authenticated sketch of the said three acres of land is prepared. Plaintiffs in their plaint and the DW1 to DW4 in their examination in chief have deposed that after demarcating the boundaries said three acres of land the same was reserved for burial ground. Plaintiffs in their plaint has shown the boundaries of the said three acres of land as East by land bearing S.No.120, West by land bearing S.No.122, North by Tank, South by remaining portion of the same survey number and land bearing S.No.123. That on perusal of the entire materials on record, the plaintiff have not produced any authenticated sketch to identify the aforesaid



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three acres of out total extent of 04-30-00 acres in plaint schedule property.

16. Defendants got marked the certified copy of order passed in WP Nos. 15301-15302/2012 on the file of the Hon'ble High Court of Karnataka dated 30/08/2013 at Ex.P74. That the aforesaid writ petitions were filed by the plaintiff Nos.2 and 4 against the Government of Karnataka, Deputy Commissioner, Shivamogga, Assistant Commissioner, Sagar, Tahasildar, Soraba and the defendants directing the aforesaid revenue authority to demarcate the aforesaid three acres of land out of 04-30-00 acres of land in the plaint schedule, property and the said appeals were dismissed stating that the plaintiff Nos.2 and 4 without making application before the competent authority straight away came to the High Court of Karnataka, subject matter of the appeal is before the Karnataka Appellate Tribunal and there is an interim passed by the aforesaid Tribunal. In the aforesaid writ petitions, liberty was given to the plaintiff Nos. 2 and 4 to approach the competent authority after disposal of the appeal pending before the Karnataka Appellate Tribunal for redressal of their grievance. As per Ex.P74 it is clear that till today the said three acres of land is not demarcated from the plaint schedule property. In spite of the same the plaintiffs have contended that the said three acres of land is demarcated from the plaint schedule property. That the aforesaid contention of the plaintiffs shows their conduct.

17. Plaintiffs have sought for declaration to declare that the said three acres of land is reserved for Hindu burial



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ground. Since the said three acres of land has not been demarcated out of 04-30-00 acres of land in the plaint schedule property, it is not possible to identify the said three acres of land. When the land to which the declaration is sought cannot be identified, then question of granting declaration on the said land does not arise. Under these circumstances, I am of the opinion that the plaintiffs have failed to prove that the three acres of land described as plaint schedule property in O.S.No.87/2009 is reserved for Hindu burial ground. Accordingly, I answered the issue No.1 in O.S.No.87 in the Negative.

18. **Issue No.2 in O.S.No.87/2009:** *Plaintiffs have contended that the defendants are obstructing from burying the dead bodies in the aforesaid three acres of land in the plaint schedule property. Since the plaintiffs have failed to prove that the three acres of land described as plaint schedule property in the O.S.No.87/2009 is reserved for Hindu burial ground, the question of alleged interference over the said property does not arise. Accordingly, I answered the issue No.2 in O.S.No.87 in the Negative.*

19. **Issue No.1 in O.S.No.106/2006:** *Defendants have contended that since prior to 1950, their ancestors had been cultivating the plaint schedule property under bagar hukkum cultivation and thereafter, they have been cultivating the said property and the Government has collected TT fine from them. In order to prove the possession of the defendants over the plaint schedule property, they got marked the record of rights of the plaint schedule property for the period 1969 to*



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1984 at Ex.P1 to P3. In the Ex.P1 to P3 the name of one Sri. Hanumantha, alleged to have been the father of the defendants is mentioned as cultivator of two acres of land in the plaint schedule property for the period 1969 to 1974, 01-30-00 acres of land in the plaint schedule property for the period 1974 to 1978 and the entire extent of the plaint schedule property for the period 1978 to 1984. Defendants have also got marked three receipts for having paid TT fine for the period 1979, 1976 and 1988 and they have also got marked the show cause notices issued by the Tahasildar, Soraba and the all the documents produced by the defendants are prior to the year 1989 and none of the aforesaid documents bears the names of the defendants.

20. In order to prove that as on the date of suit the defendants were in possession and enjoyment of the plaint schedule property, they have not produced any authenticated documents. It is not the case of the defendants that they are actually residing in the plaint schedule property. Under these circumstances, I am of the opinion that the evidence adduced by the defendants is not sufficient to prove their exclusive possession over the plaint schedule property as on the date of suit. Consequently, I hold that the defendants have failed to prove that they were in exclusive possession of the plaint schedule property as on the date of suit. Accordingly, I answered the issue No.1 in O.S.No.106/2006 in the negative.

*21. **Issue No.2 in O.S.No.106/2006**: Defendants have contended that the plaintiffs are interfering with their possession over the plaint schedule property. In order to*



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prove the alleged interference by the plaintiffs over the plaint schedule property, the defendants got marked copies of several petitions given to the police, endorsements given by the police and documents of the criminal cases. Since the defendants have failed to prove their possession over the plaint schedule property, as on the date of suit, in my opinion the aforesaid documents do not support the defendants and the question of alleged interference does not arise. Under these circumstances, I am of the opinion that the defendants have failed to prove the alleged interference of the plaintiffs over the plaint schedule property. Accordingly, I answered issue No.2 in O.S.No.106/2006 in the negative.

22. Issue No.3 in O.S.No.106/2006: *Learned advocate for defendants has relied upon following decisions reported in 1) 2002 (2) KCCR 1162 in between Chako and another V/s Deputy Commissioner, Shivamogga and others, 2) ILR 1999 Karnataka 1451 in between Sathyam @ Ramaiah and others V/s Karnataka Mild Federation Co-operative Ltd., 3) ILR 1999 Karnataka 1451 in between P. Prabhaathi and another V/s Divisional Controller and others, 4) AIR 1996 Bombay 98 in between Smt. Saraladevi Vs Shailesh, 5) AIR 1998 Bombay 87 in between Mulji Umershi Shah Vs Paradisia Builders Pvt. Ltd. and others and 6) ILR 1994 Karnataka 3267 in between B.T. Sakku Vs Commissione, BDA.*

23. *In the aforesaid first decision his lordship held that the issuance of the eviction notice during the pendency of application for regularization before the Regularization*



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committee is illegal. In the instant case it is not the case of the defendants that the Government has issued eviction notice. In the aforesaid decision Nos. 2 to 4 and 5, their lordships held that where a trespasser is in settled possession of the land is entitled for permanent injunction even against the rightful owner till he is disposed through due process of law. In the instant case the defendants have failed to prove their possession over the plaint schedule property as on the date of suit. In the aforesaid fifth his lordship held that in a suit for permanent injunction an enquiry into title is not excluded. That on perusal of the entire materials on record, I am of the opinion that the principles laid down in the aforesaid decisions can be distinguished in this case.

24. Learned advocate for plaintiffs has relied upon following decisions reported in 1) ILR 1998 Karnataka 3035 in between Narayan Mukund Shet Vs Narayan Nagesh Shetty, 2) ILR 2007 Karnataka 5121 in between MB Bettaswamy Vs The Commissioner, BDA and another and 3) 2013(2) KCCR 1617 in between P.V.Kamesh Kumar Vs Thoti Muniyappa and others.

25. In the aforesaid first decision his lordship held that injunction cannot be granted in favour of the plaintiff, who is not in actual possession of the property. In the aforesaid second decision his lordship held that a person who is unauthorizedly squatting on the public property has no right to remain in possession and in the third decision his lordship held that the plaintiff cannot maintain suit for permanent



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injunction on the basis of the somebody's title deed. In my opinion the principles laid down in the aforesaid decisions can be applied to the instant case as in this case the defendants have failed to prove their possession over the plaint schedule property as on the date of suit, defendants have no title over the plaint schedule property and the defendants are claiming the plaint schedule property on the ground of unauthorized cultivation.

26. Since the defendants have failed to prove their possession over the plaint schedule property as on the date of suit, they are not entitled for the reliefs sought in the plaint much less the relief of permanent injunction. Moreover, as per Section 41(h) of the Specific Relief Act an injunction cannot be granted when equally efficacious relief certainly be obtained by any other usual mode. In this case the subject matter of the suit is before the Karnataka Appellate Tribunal, Bangalore and the aforesaid Tribunal has already directed the parties to the suit to maintain status quo with regard to the plaint schedule property. Under these circumstances, I am of the opinion that the defendants can certainly obtain the reliefs sought in this suit before the aforesaid Tribunal. Accordingly, I answered the issue No.3 in O.S.No.106/2006 in the Negative.

*27. **Issue Nos. 3 to 5 in O.S.No.87/2009**: Since the plaintiffs have failed to prove that the three acres of land described as plaint schedule property in the O.S.No.87/2009 is reserved for Hindu burial ground and the alleged interference over the said property, they are not entitled for the reliefs of declaration and permanent injunction sought in*



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the plaint. Accordingly, I answered the issue Nos. 3 to 5 in O.S.No.87 in the Negative.

28. Issue No.4 in O.S.No.106/2006 and Issue No.6 in O.S.No.87/2009: *In view of my findings on Issue Nos. 1 to 3 in O.S.No.106/2006 and issue Nos. 1 to 5 in O.S.No.87/2009, I proceed to pass the following :*

ORDER

The suit in O.S.No.106/2006 and the suit in O.S.No.87/2009 are dismissed with cost.

Draw decree accordingly.

Office is hereby directed to keep the copy of this judgment in O.S.No.87/2009."

12. It is also pertinent to note that having regard to the proceedings before the Karnataka Appellate Tribunal, Bengaluru, which was pending as on the date of the impugned judgment and decrees, coupled with the fact that it was incumbent upon the appellants to file a comprehensive suit seeking declaration of their title over the suit schedule property on their own, coupled with the fact that the appellants themselves undisputedly admit that they were in unauthorised occupation of the suit schedule property and their claim for regularisation having been rejected by the Land Grant Committee, the Trial Court was fully justified in coming to the



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correct conclusion that the appellant-plaintiffs were not in lawful or peaceful possession or enjoyment of the suit schedule property.

13. I do not find any illegality or infirmity in the impugned judgment and decree passed by the Trial Court warranting interference in the present appeal..

14. A perusal of the impugned judgment and decree passed by the First Appellate Court will indicate that the following points were formulated by the First Appellate Court in the appeal:

- “1. Whether the trial Court was justified in holding that plaintiffs failed to prove exclusive possession of the suit schedule property as on the date of suit?*
- 2. Whether the trial court was justified in holding that plaintiff failed to prove the alleged interference by the defendant.?*
- 3. Whether the impugned judgment is perverse, capricious and call for interference if so, to what extent?*
- 4. What order or direction?”*

15. The First Appellate Court reconsidered, re-evaluated and re-appreciated the pleadings and oral and documentary evidence adduced by both sides and took note of the fact that the State Government acting through its Assistant Commissioner had



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specifically reserved and declared the suit schedule property for the purpose of burial ground/graveyard and that the same cannot be said to be in lawful or peaceful possession and enjoyment of the appellants-plaintiffs and dismissed the appeal by holding as under:

“The plaintiffs in O.S.No. 106/2006 on the file of the Civil Judge and JMFC, Soraba has preferred this appeal against the impugned judgment dated 14-12-2015. The respondents were the defendants therein.

2. For the sake of convenience, parties in this appeal are referred to by their ranks assigned in the trial Court.

3. Suit was filed for permanent injunction.

4. Facts of the case of the plaintiff: The plaintiffs in OS 106 of 2006 has preferred this appeal against the impugned judgment. In the trial court, OS106/06 was clubbed with OS 87/09 and common judgment was passed. Only the plaintiffs of OS 106/06 have preferred the instant appeal.

5. It is the specific case of the plaintiff that they were cultivating the suit schedule property as bhagarhukumdars. Even earlier to 1950 and thereafter they had filed an application for regularization of suit schedule property before the land grant committee. The Soraba land grant committee has dismissed the application of the plaintiffs. Plaintiffs had preferred an appeal before the Deputy Commissioner, which also came to be dismissed. The plaintiffs have again



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preferred the matter before the Karnataka Appellate Tribunal, which is now pending.

6. The plaintiffs further averred that they are in actual possession over the suit schedule property and without considering the possession of the plaintiffs the Deputy Commissioner had granted 3 acre land in the suit schedule property for the purpose of Hindu burial ground. The Deputy Commissioner has colluded with the defendants and grant of the said 3 acre of land is without authority. The defendants taking advantage of this matter has tried to interfere in the possession of the plaintiffs over the suit schedule property. Thus the suit for permanent injunction, restraining the defendants from encroaching the suit schedule property or obstructing the agricultural activities of the plaintiff.

7. In the trial court defendants appeared and contested the case. Defendants apart from denial of plaint averments have taken up a specific contention that there is no cause of action to file present suit. Suit is bad for non-joinder of necessary parties. The suit property in fact belongs to the revenue department and suit schedule property is meant for Hindu burial ground. Since revenue department has not made as party to the suit is not maintainable. Further suit property in Guddekoppa village Sy.NO. 121 totally measuring 4 acre 30 guntas is 'sarakari pada'. On the basis of requisition land was reserved for burial ground for all communities of Hindus. Specific order has been passed u/s 71 of Karnataka Land Revenue Act. 1 acre 30 guntas is meant for this purpose. There is no kharab portion in the said survey number. No



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agricultural activities is being carried out in the suit schedule property by the plaintiffs. But in the earlier records of the Sy.NO.121, the name of family members of plaintiffs is appearing. Though revenue records appeared their names in fact there is no actual cultivation over the suit schedule property but the villagers are using the suit schedule property as Hindu burial ground.

8. Defendants have contended that plaintiffs have in collusion with revenue authority got some of the revenue records into their name and therefore, those documents cannot be believed. On these grounds the defendants prayed for dismissal of the suit.

9. On the basis of aforesaid pleadings, the trial court framed four issues as under:

ISSUES

- 1. Whether the plaintiff proves that he is in exclusive possession of the suit schedule property as described in the plaint as on date?*
- 2. Whether the plaintiff further proves the alleged interference by the defendant in the peaceful possession of the suit schedule property of the plaintiff?*
- 3. If so, whether the plaintiff is entitled to the relief of permanent injunction?*
- 4. What decree or order?*

10. In the trial court the plaintiffs have examined two witnesses as PW.1 and 2 and relied upon 91 documents as



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Ex.P 1 to 91. On the other hand, the defendants have got examined DW 1 to 4 and got marked Ex.D 1 to D 16.

11. The trial court after full-fledged trial answered issue No.1 to 3 in the negative and ultimately dismissed the suit of the plaintiffs.

12. Feeling aggrieved by the dismissal of the suit the plaintiffs have preferred this appeal on the grounds that the evidence and materials on record were not properly appreciated, analyzed and assessed. The trial court erred in holding that appellants failed to prove exclusive possession over the suit schedule property as on the date of the suit. The appellants were in possession of the suit schedule property for more than 50 years uninterruptedly from the time of their father. Thereafter, possession has been continued. Though the form no.50 was filed before the land grant committee it was recently dismissed by the thasildar. The appeal preferred before the assistant commissioner, sub-division Sagar and Deputy Commissioner Shivamogga were also wrongly dismissed. Now the matter is before Karnataka Appellate Tribunal wherein order has been passed to maintain status quo. The trial court failed to appreciate R.T.C., extracts. Their names appear right from 1969-70 up to 1994 which clearly shows the possession of the plaintiffs over the suit schedule property. Presumption u/s 133 was not considered by the trial court. In the cross-examination DW.1 has given evidence wherein they have established the possession of the plaintiff over the suit schedule property. But the same has not considered by the trial court. The trial court rightly came to the



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conclusion that respondent failed to prove that three acres was reserved for Hindu graveyard and wrongly came to the conclusion that interference was not established. The identity of the suit schedule property extent and description and also actual possession was established. But all the facts were not clearly examined by the trial court and therefore, judgment of dismissal is erroneous and caused great injustice to the plaintiffs. Thus it calls for interference of this court.

13. In pursuance of notice, respondent appeared and contested the appeal.

14. Perused LCR and heard both side.

15. The following points arise for my consideration:

- 1. Whether the trial court was justified in holding that plaintiffs failed to prove exclusive possession of the suit schedule property as on the date of suit?*
- 2. Whether the trial court was justified in holding that plaintiff failed to prove the alleged interference by the defendant?*
- 3. Whether the impugned judgment is perverse, capricious and calls for interference if so, to what extent?*
- 4. What order or direction?*

16. My findings on the above points as under:

Point No.1: In the affirmative

Point No.2: In the affirmative



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Point No.3: In the negative

Point No.4: As per final order for the following:

REASONS

*17. **Point No.1 and 2:** As these two points are inter-linked with each other, they are taken together for common discussion in order to avoid repetition of facts and evidence as these are inter related.*

18. In the appeal the learned counsel for the appellants have produced a memo along with two documents. It is the order passed in the miscellaneous petition No.40/16 by the Hon'ble High Court of Karnataka, Karnataka Appellate Tribunal, Bangalore. The appeal was preferred by Maruthappa against the Deputy Commissioner, Shivamogga, Bheemarayappa and Hanumanthappa under regularization 28/A Karnataka Appellate Tribunal Regularization 1979. The copy of the order sheet goes to show that it was posted for order ultimately on hearing the said matter the Hon'ble tribunal has allowed the petition filed u/s 28A of Karnataka Appellate Tribunal has restored the appeal No.629/12 to the original stage. On perusal of reasons it is apparent that since the counsel appearing for the appellant could not represent the case due to break down of the vehicle case was not properly represented and it was dismissed. Therefore, it was restored to its original stage.

19. By producing this copy of order, appellant has convinced this appellate court that the miscellaneous appeal



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No.629/12 which was dismissed has been restored to its original position.

20. During the course of arguments, it was argued by the learned counsel for the appellants that the trial court has failed to properly appreciate the case on record and though actually possession was proved by producing number of documents in 'P' series, trial court has wrongly dismissed the case.

21. On the other hand, it is the argument of the learned counsel for the respondent that trial court has properly dismissed the suit of the plaintiff. The possession was not proved and interference is also not proved. Evidence of Pw 1 is sufficient to dismiss the suit. There are no merits in the appeal.

22. In support of arguments the learned counsel for the appellants have relied upon the following rulings: 2002 (2) KCCR 1162 Chaka and another Vs. Deputy commissioner, Shivamogga and Others; wherein, it was observed that where under section 94 (3) of KARNATAKA LAND REVENUE ACT, 1964, -Section 94(3), Form No.53 application was filed by an unauthorized occupant was pending before the Regularization Committee notice for eviction was not legal or valid.

I.L.R. 1999 Kar 1451 Sathyam @ Ramaiah & Others Vs. Karnataka Milk Federation Co-operative Ltd.) Wherein, it is held: that even a trespasser is entitled for injunction. CIVIL PROCEDURE CODE 1908 (Central Act No.5 of 1908) ORDER XXXIX Rules 1 and 2. Whether a



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Trespasser or a person who has no legal title but is in possession of the land is entitled to get Temporary Injunction Held- Relying on PURAN SINGH and Others Vs. STATE OF PUNJAB AIR 1975 SUPREME COURT 1674, the High court held that, where a Trespasser is in Settled Possession of the land, is entitled to resist or defend his possession even as against the rightful owner who tries to dispossess him.

I.L.R. 2000 KAR 435 P. Prabhavathi and Another vs. Disannul Controller and Others. Wherein, it is held:

(B) Civil Procedure Code, 1908 (central Act V OF 1908) Order XXXIX Rule 1 and 2 – A person, even if, he is a trespasser, if he is in settled possession cannot be thrown out by taking course otherwise than a due process of law-Even a Trespasser, who is in settled possession, is entitled to protect his possession even as against the true owner.

A.I.R. 1996 Bombay 98 Smt. Sarladevi widow of Kundanal Bandawar, Dharampeth, Nagpur, Vs. Shailesh S/o. Gourishankar Namdeo, Tilaknagar, Nagpur. Wherein, it is held. (A) Civil P.C. (5 of 1908) Order 39 rule 1 and 2- Injunction against interference with possession- Person in possession – Can claim against everyone including rightful owner-Rightful owner cannot evict him by force-He has to follow due process of law.

A.I.R. 1998 Bombay 87 Mulji Umershi Shah and etc. Vs. Paradisia Builders Pvt. Ltd.. Mumbai and Others. Wherein, it is held.

Civil P.C. (5 of 1908) O.39 R.1 Suit for injunction based on possession – Enquiry into title is not excluded.



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Civil P.C. (5 of 1908) 5 Or. 39 R.1, O.40, R.1 – Application for temporary injunction-While refusing injunction Court may on its own appoint receiver if it is convenient, just and necessary in facts of the case.

I.L.R. 1994 KAR 3267 B.T. Sakku vs. Commissioner, BDA. Wherein, it is held (B) SPECIFIC RELIEF ACT, 1963 (Central Act No.47 of 1963) =Section 38- Possession: Whether settled possession or not depends on facts of each case-Features-Person in settled possession not to be evicted except in due course of law.

23. In support of arguments the learned counsel for the respondents have relied upon the following rulings:

(1) ILR 1998 Kar. 3035 in the case of Narayana Mukund Shet vs. Narayan Nagesh shetty, wherein it is observed as under:

Specific Relief Act 1963, sec.38- injunction cannot be granted in favour of plaintiff not in actual possession of property.

(2) ILR 2007 KAR 5121, in the case of M.B. Bettaswamy vs. The commissioner, Bangalore Development Authority and another, wherein it is observed as under:

"SEC.96 R/W O.41 R1- ----- when the land is acquired and possession is taken, the land vests in the state. Even if the plaintiff puts up unauthorized construction, he does not have any legal right to remain in possession based on the illegal structure and it cannot be termed as a settled possession- A person who is unauthorisedly squatting on the public property, has no right to remain in possession. However, the trial court extending the sympathy, directed the BDA to issue notice and evict the plaintiff in accordance with law. Such sympathy will harm the public interest, as there are several persons legally waiting for lawful allotment-further held,



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admittedly the plaintiff has not proved his title nor proved his right to remain in possession -dismissal of suit is justified.

(3) 2013(1) KCCR 640, in the case of Hullappa vs. Deputy Commissioner, Bidar and others, wherein it is observed as under:

SPECIFIC RELIEF ACT 1963- Sec.34-suit for declaration of title-plaintiff to seek relief based on title deeds-relief cannot be granted solely based on entries in R.T.C., tax paid receipt and mutation extracts.

(4) 2013 (2) KCCR 1617, in the case of P.V. Kamesh Kumar vs. Thoti Muniyappa and others, wherein it is held that "Specific Relief act 1963-sec.3 and 8-suit for injunction based on title-admittedly the suit schedule property did not belong to plaintiff –held plaintiff cannot maintain a suit for permanent injunction on the basis of somebody's title deed.

(5) 2014 (1) KCCR 850 in the case of Smt. Sumithra bai vs. P.Siddesh and another wherein it is held that " SPECIFIC RELIEF ACT 1963-sec.34 and 38-suit for declaration of title and injunction-plaintiff claimed title on the basis of grant by Mandal Panchayath, paying Kandayam and in possession and enjoyment –defendant denied title and alleged that suit property belonged to some other person-trial court dismissed the suit-first appellate court decreed the suit-second appeal.

24. I have given anxious thoughts to the rival arguments canvassed at the bar and also perused rulings relied supra. There may not be any dispute regarding the observations made in the cited cases. Even a trespasser is no doubt entitled for injunctive relief if he is in settled possession as rightly argued by the learned counsel for the appellants.

25. It is also necessary to peruse evidence before the trial court. Plaintiffs have also examined two witnesses as PW.1 and 2. PW.1 Maruthappa has deposed on behalf of the



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case and in his affidavit he has reiterated the plaint averments. He had relied upon the documents, which are marked as Ex.P 1 to P 91.

26. Ex.P1 to 3 are the R.T.Cs of Sy.NO. 121 of Guddekoppa, measuring 4 acre 30 guntas shows as "Sarakari Pada" in column no 9 and column no 12 shows the name of Hanumantappa from 1969 to 1984. Ex.P 4 is also R.T.C extract of Sy. NO. 121 for the year 2005-06, measuring 4 acre 30 gunts wherein at possessor column, it is mentioned as "sarakari pada" to an extent of 1 acre 30 guntas and to an extent of 3 acres reserved for Hindu Grave Yard. Ex.P 5 to 7; are the tax assessment receipts issued by the revenue authority on behalf of Hanumanthappa. Ex.P 8 and 11 are the notices issued by the Thasildar to Hanumanthappa ie, father of the plaintiffs. Ex.P 12 is the T.T receipt.

27. Ex.P 13 is the copy of judgment passed by the Hon'ble High Court of Karnataka in W.P.No.4894/02, filed by Maruthappa ie, plaintiff No.3, against Deputy Commissioner, Shivamogga wherein it is observed that as no opportunity of hearing was given to petitioner matter was remitted to Deputy commissioner to consider matter afresh after affording opportunity. Ex.P 14 is the order of assistant commissioner passed in RA 123/A-99-2000, wherein the assistant commissioner has dismissed the appeal filed by Maruthappa. Ex.P 15 is the copy of revision petition filed by Maruthappa before Deputy Commissioner, Shivamogga. Ex.P 16 is the requisition filed by the Maruthappa before Thasildar, Soraba. Ex.P 17 and 18 are the application filed under form No.50.



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Ex.P19 and 20 are the photographs. Ex.P 21, is the complaint filed by Maruthappa dated 1.09.09. Ex.P 22 is the police endorsement. Ex.P 23 is the copy of complaint filed by Maruthappa against defendants and others. Ex.P 24 is the endorsement of police. Ex.P 25 and 28 are the photographs and Ex.P 28(a) is the negative.

28. Ex.P 29 is the notice issued by the Thasildar, Soraba dated 26-8-2008 to the plaintiffs wherein the Thasildar has given instruction to stop illegal cultivation in the disputed land and has directed the plaintiffs to stop illegal cultivation. Ex.P 30 and 31 are the applications to Deputy Commissioner, Shivamogga filed by plaintiffs wherein he urged the Deputy Commissioner to cancel the order in respect of Sy.NO. 121 of Guddekoppa village. Ex. P 32 is the complaint given to PSI Anwatti by Maruthappa. Ex. P 33 is letter given to tahasildar by Basavarajappa. Ex.P 34 is also a requisition made by the plaintiff addressed the Thasildar in respect of disputed land bearing sy.no.121 of Guddekoppa.

29. Ex.P 35 is the oral partition deed of plaintiffs' family wherein the suit property is allotted to the share of Maruthappa third party. Ex.P 36 is the R.T.C of Sy.NO. 123 which shows that it is a government forest and reserve forest. Ex.P 37 is the copy of interim order passed by the Hon'ble High Court of Karnataka in WP No.4894/02.

30. Ex.P 38 is the order of Deputy Commissioner, Shivamogga passed in RA 11/06-07 dated 1.12.07, wherein the Deputy Commissioner has dismissed the petition filed by



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the Maruthappa and upheld the order of assistant commissioner, Sagar in not regularizing holding of suit property. Ex.P 39 is the index of K.A.T, Ex.P 40 is the copy of petition filed before the Karnataka Appellate Tribunal under section 50 of Karnataka land Revenue Act.

31. Ex.P 41 is the copy of order passed in writ petition No.12076/09 filed by Marutheppa vs. Deputy Commissioner and another wherein direction was given to consider mater after giving opportunity. Ex.P 42 is the endorsement issued by the Deputy Commissioner, Shivamogga, wherein it is ordered that the petition of the appellants Maruthappa has been rejected and after re consideration three acres in sy no 121 reserved for graveyard is confirmed.

32. Ex.P43 is the index of appeal No.629/12 of K.A.T, Bangalore. Ex.P 44 is the copy of appeal filed by the Maruthappa on behalf of plaintiff's u/s 49 of Karnataka Land Revenue Act 1964. Ex.P 45 is the copy of order sheet portion passed by the Karnataka Appellate Tribunal, wherein the hon'ble court has ordered to maintain status quo. Ex.P 46 is the form No.III-A notice issued by Assistant registrar of Hon'ble High Court of Karnataka to Chandrappa to appear before the court. Ex.P 47 is the notice issued by the counsel for the plaintiffs to Chief secretary of government of Karnataka and others u/s 80(1) of C.P.C stating that the plaintiffs had perfected title to the suit property by long possession and by adverse possession and suit will be filed for declaration. Ex.P48 is the draft sketch.



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33. *Ex.P 49 is the first information report and other police documents in respect of police complaint filed by the plaintiffs against sParasappa and others. Ex.P 50 to 55 are the photographs. Ex.P 56 is the envelope. Ex.P 57 is the copies of order sheet of appeal No.629/12. Ex.P 58 to 60 are the copies of complaint filed by the plaintiffs against the defendants and others. Ex.P 61 to 68 are the postal receipts. Ex.P 69, 70 are the complaint filed by Maruthappa against Bheemarayappa and others. Ex.P 71 is the postal cover. Ex.P 72 is the letter issued by Director General of Police, Bangalore addressed to S.P., Shivamogga to verify complaint of Maruthappa and to report back. Ex.P 73 is the complaint of Maruthappa filed against the defendants before the PSI, Soraba.*

34. *Ex.P 74 is the copy of order passed by the Hon'ble High Court of Karnataka in a W.P 15301-15302/12 wherein writ of mandamus is refused and directed to approach tribunal. Ex.P 75 is the letter of Deputy Commissioner, Shivamogga issued to Thasildar Soraba dated 19.06.13 on the requisition of Maruthappa to act upon it.*

35. *Ex.P 76 to 78 are the R.T.C extract of Sy.NO.123,112 and 123 of Guddekoppa village show that it is entered as 'sarakari pada"reserve forest' at column No.9 ie, possessor column 12 also. Ex.P 79 is the charge sheet copy wherein case is filed against Parasappa Rangappa and others for offences p/u/s 143,144,147,323,324,504 r/w 149 IPC on the complaint of Basavarajappa in crime no 41-09. Ex.P 80 is the first information report by Basavarajappa. Ex.P 82 is the*



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mahazar copy. Ex.P 87 is the statement of witnesses in crime no 41-09. Ex.P 88 to 90 are copies of wound certificates of Renukamma Basavarajappa Marutappa. Ex.P 91 is the copy of PF No.21/09.

36. In the cross-examination, P W 1 has deposed that there were documents in the name of his father since 15-20 years. He has stated that he has seen document, which shows the suit schedule property, is meant for Hindu graveyard. He has stated that after 2000 there are no revenue documents which stand either in his name or his father's name. He stated that he had filed an application for land grant committee wherein revenue authority visited the spot and filed a report and ultimately dismissed the application. He also admitted that even the appeal preferred was dismissed. He has stated that since the suit property is meant for grave yard villagers are contended that it should be vacated. He admitted that usually in the revenue record the crops grown and the name of the possessor will be entered and Ex.P 4 and 5 there is no mention about the crop or his name in possessor column. He has denied the other suggestions. He has stated that suit schedule property was granted to him and title deed has been issued in his favour.

37. PW 1 further deposed that the suit schedule property was granted to provide grave yard by the Deputy Commissioner, but he had obtained stay order from the Hon'ble High Court of Karnataka. Again application for grant is pending before the Deputy Commissioner.



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38. He further stated that the Deputy Commissioner again considered the application. PW.1 further admitted that even after the Honble High court order, again his application was rejected. He has been subjected to lengthy cross-examination, wherein he has denied many suggestions. He admitted that the partition deed is executed only with intention to obtain suit schedule property in his name. He was unable to state the exact date month and year of interference of the defendants.

39. PW.1 has admitted that the land granted for graveyard is in Sy.NO.121. He was unable to state who had prepared sketch shown in Ex.P48. Though he stated that sy no 112 is reserved for grave yard produced no such documents to show that.

40. PW.2, Yallappa one of the acquaintance of the party has supported the case of plaintiff wherein he has stated that plaintiff is in actual possession of the suit schedule property but he has not been subjected to cross-examination.

41. DW.1, Bheemarayappa has reiterated the defence taken in the written statement. He has got marked Ex. D 1 to D 16 in support of his case. Ex.D 1 is the certified copy of order sheet of OS 87/09. Ex.D 2 and 3 are the certified copies of IA No.1 and 2, passed in OS 87/09. Ex.D 4 and 5 are the copies of R.T.C extract of Sy.NO. 121 of Guddekopa measuring 4 acre 30 guntas wherein it is shown as 'sarakari pada"grave yard of Hindu' at possessors column. Ex.D 6 is the copy of mutation register extact, wherein it goes to show



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that 3 acres of land in Sy.NO.121 is reserved for Hindu graveyard as per orders of Deputy commisser. Ex.D 7 is the hand sketch of Sy.NO.121 issued by the village accountant. Ex.D 8 is the record of right form no 5 of Sy.NO.121, wherein it is mentioned as 'sarakari pada' at title column.

42. Ex.D 9 is the index of land of Sy.NO.121, wherein also it is mentioned as 'sarakari pada' at possessor column. Ex.D 10 is the proceedings of Udri grampanchayath, wherein the grampanchayath committee has passed a resolution to request Tahasildar to fix boundaries of Sy.NO. 121 to an extent of 3 acres reserved for graveyard. Ex.D 11 is the order copy of appeal filed by the plaintiff in RA 123/A/99-2000. Ex.D12 is the order copy of Deputy Commissioner, wherein it shows that the Deputy Commissioner has granted 3 acres of land in Sy.NO. 121 for the purpose of Hindu grave yard. Ex.D 13 to 15 are the R.T.C extracts of Sy.NO. 63,86 and 99 of Guddekoppa village, which shows that the plaintiffs Chandrappa Channamma Basavarajappa Maruthi are having some extent of land in those survey numbers. Ex.D 16 is the order copy of Deputy Commissioner passed under LND:CR 300/06-07, filed by the Maruthappa against defendants and others wherin he has confirmed grant of land for graveyard.

43. In the cross examination DW.1 has denied the suggestion that since 1952 to 1980 revenue records stood in the name of father of the plaintiff Hanumanthappa. He admitted that suit schedule property is measuring 4 acres 30 guntas and it is dry land. He denied the suggestion that plaintiffs were in actual possession of the suit schedule



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property. He admitted that the place where they are burning the dead bodies is Sy.NO. 123, which is government, land. He denied the suggestion that Sy.NO. 112 government land is also used for burning the dead bodies. He has been subjected to lengthy cross-examination. DW.1 is suggested that in the partition 1991 suit schedule property was allotted to the share of the plaintiff. He denied the suggestion. It is admitted that they are demanding plaintiff to leave out the suit schedule property for the purpose of graveyard. He denied the knowledge that thasildar issued a notice to the plaintiff to stop cultivation and to vacate the suit schedule property. He admitted that a criminal case was filed against them wherein, they tried to burn dead bodies in the land belonging to the plaintiff.

44. DW. 2 Basappagowda one of the witness in his examination in chief has supported the defence of the defendant. However, in the cross-examination, He has stated about the boundaries of Sy.NO.121. He denied the suggestion that plaintiff has been excluded from the village. He also denied the suggestion that by imposing political pressure they have got granted the suit property for the purpose of grave yard.

45. DW.3, Udri Chandrappa also supported the defence but he has not been cross examined.

46. DW. 4, Huccharayappa also supported the defence in the examination in chief. However, in the cross- examination he denied the knowledge of stopping of burning of dead bodies in Sy.NO.123. He has stated about the boundaries of



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the spot. He has stated that suit property does not consist of any crop.

47. With the afore stated evidence on record, it is apparent that, plaintiffs are making stake over the suit schedule property claiming that, they are in actual, peaceful possession of the suit schedule property and they are also in settled possession. Since this is a suit filed seeking relief of injunction, the only relevant aspect that has to be considered by the Court is regarding actual possession. As already pointed out, plaintiff in order to prove the possession has relied upon voluminous documents and contended that the documents marked in P series sufficiently establishes his case.

48. On Marshalling the entire oral as well as documents marked in P series, it is quiet apparent that the revenue records of the suit schedule property earlier stood in the name of Hanumanthappa since 1969 upto the year 1984. Thereafter, as evident from the documents marked in P series, the Hon'ble Deputy Commissioner has made an order for grant of suit schedule property reserving it for Hindu grave yard purpose. There is no dispute regarding the fact that the Deputy Commissioner has passed an Order reserving the suit schedule property for purpose of Hindu grave yard. It is also elicited and it has come in the evidence that, plaintiff had filed an application before the appropriate authority for grant of the suit schedule property and the said application came to be dismissed. The Appeal preferred against that order has also ended in dismissal and that had went upto the Hon'ble High



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Court of Karnataka. As per the documents produced by the learned Counsel for the plaintiffs, the matter has been again remanded to appropriate authority for giving fresh consideration regarding grant of land.

49. Therefore, evidently, the plaintiff is not the owner of the suit schedule property. In all the R.T.C. extracts produced by the plaintiffs, column No. 9 has throughout as been entered as Government land. Thereafter, it has been entered as Hindu grave yard. Therefore, apparently column No.9 shows that, the suit schedule property was granted for the purpose of grave land. Plaintiff has tried to elicit in the cross examination of defendants that, there is another survey number available in the village which is sy.no 112 which is being used for disposal of dead bodies. But, as per the very version of the plaintiffs, there are no documents to show that even Sy. No. 112 is being used as a grave land. Even for the sake of argument, it is considered that Sy.No. 112 is being used as a grave yard, that will not in any manner help the case of the plaintiff. Since, the suit schedule property infact belongs to the Government, the Government and the appropriate authorities have prerogative right to grant the property to any person to whom they deemed fit legitimately and they can also reserve any portion of the Government land for the purpose of public utility including for the purpose of grave yard.

50. In the instant case, plaintiff is indirectly challenging the order passed by the appropriate authorities in reserving the land for grave yard. In particular, plaintiff has tried to take



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shelter by taking advantage of the notice marked under Ex.P 29. As already pointed out, Ex.P29 is the notice issued by the Tahsildar on 26.08.2008 to the plaintiff stating that, he should stop illegally cultivating in Sy.No. 121 or otherwise, suitable legal action will be taken against him. Basing on notice, the learned counsel for the a plaintiff has tried to convince that this document itself is sufficient to show the actual possession of the plaintiffs over the suit schedule property. On perusal of R.T.C. extract, no where the name of plaintiffs is entered. The suit was filed in the year 2006 and the R.T.C. extract which are produced in P series does not show the name of the plaintiffs or the name of the father or forefather of the plaintiff during the year 2006.

51. Ex.P4 is the R.T.C. extract of the year 2005-2006 when the suit came to be filed. As per this document, column No.9 as well as column No.12 shows that, it is a Government land and also Hindu grave yard. Therefore, apparently as per the very R.T.C. extract produced by the plaintiff, neither his name nor the name of his fatehr or forefathers' name appears in the R.T.C. extract of the year 2006 in which suit was filed. Even the defendants have produced some R.T.C. extracts in D series, which also similarly shows that, it is a grave yard and the Government land. Ex.D 4 is the R.T.C. extract of the year 2006 which shows that, it is a Government land. Therefore, as per the revenue documents, the possession of the suit schedule property is not with the plaintiff.

52. Even for the sake of argument, it is considered that, as per Ex.P 29, plaintiff is in possession of the suit schedule



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property, then, Ex.P 29 is helpful only to ascertain that as on 2008 plaintiff was in possession of the suit schedule property. For grant of injunctive relief in this case, possession of the year 2006 is itself is material and not for the year 2008.

53. On perusal of the other documents, which are marked in P series, it is apparent that, there are recitals in the orders passed by the revenue authorities that, there were possession in favour of the plaintiff, but, however, since the plaintiffs have held the lands in excess of the permissive extent, grant was not made. Therefore, by seeking the relief of injunction by filing of this suit, the plaintiff cannot indirectly challenge the statutory right of the Government to reserve lands for the purpose of public benefits.

54. It is evident from the documents and oral evidence on record, that there is no single document to hold that plaintiff or their forefathers' were in possession of the suit schedule property as on the date of the suit. Thus being the case, actual possession of the plaintiffs over the suit schedule property is not proved.

55. Regarding the argument of learned Counsel for the appellants that, even a trespasser is entitled for preserving possession, the rulings relied by the learned counsel for the appellant is no doubt received with utmost due respect. But, the observations made in the cited case is to the effect that, even a trespasser is entitled to preserve his possession as against the whole world except true owners. Admittedly, in this case, the Government is the true owner and is not made



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as party to the suit. No doubt, another suit filed by the defendants in respect of declaration that the suit schedule property was reserved for grave yard came to be dismissed. But, the dismissal of suit will in no way helpful to the case of the plaintiff. In the instant case, the plaintiff has not established his actual possession be it illegal possession or it is not even established that he is a trespasser.

56. There is no iota evidence to hold that, plaintiffs were in actual possession of the suit schedule property as on the date of the suit. This being the case, plaintiffs cannot seek the relief of permanent injunction. No doubt, the defendant and his witnesses have given certain admissions stating that, they are contending that, the plaintiffs should give the suit schedule property for the purpose of grave yard. But, that admission is not helpful because the plaintiff failed to prove his actual possession.

57. It is relevant to note that since it is the plaintiff who has approached the Court, he has to establish his case without backing upon the weakness of the defendant. He has to stand on his own legs and cannot derive the strength from the weakness of the case of the defendants. Therefore, plaintiffs having failed to prove the case and discharge the burden of proving the actual possession. One stray admission of defendants will in no manner help the plaintiffs' case.

58. It is also relevant to note that, plaintiff has already challenged the order of rejection of grant and there is direction given by the Hon'ble High Court of Karnataka for



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reconsidering the plea of the plaintiffs. Therefore, the plaintiff is having every right to agitate before the tribunal in respect of grant of suit schedule property. Thus, there is separate appropriate forum to get the suitable relief.

59. It is further relevant to state that, there is no document to show that plaintiff was evicted from the suit schedule property in furtherance of Ex.P 29 notice. But as already pointed out, Ex.P 29 may be helpful only to prove the possession as on 2008, but, not as on the date of suit in the year 2006.

60. On perusal of the Judgment of the trial Court, it is apparent that, the trial Court has given findings that, grant of property for Hindu burial ground was set aside by order dated 31.10.2002 in W.P.4894/2002 and the matter was remitted to the Deputy Commissioner for fresh consideration and thereafter, also, the Deputy Commissioner considered the matter afresh and again, reserved 3 acres of land for burial ground.

61. Further, it was observed by the trial Court that, the name of Hanumanthappa, the father of plaintiffs is entered in records from 1969-74 and again from 1974 to 1978, upto 1984. But, none of those documents bears the name of the plaintiff and therefore, exclusive possession of the suit schedule property was not proved. On going through the Judgment of the trial court, it is apparent that, the trial Court has not committed injustice in holding that exclusive possession of the property was not proved by the plaintiff.



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There is no apparent error in answering issues. Therefore, I answer point nos. 1 and 2 for consideration in the affirmative.

*62. **Point No.3:** In the result, due to the findings given on point No.1 and 2, it is apparent that the trial court had properly appreciated the evidence and documents on record in the light of applicable law and no miscarriage of justice has been caused. Further, no error of law is committed in dismissal of the suit and no injustice is caused to the plaintiff. The grounds urged in the appeal memo is also not established by the appellants. There is no grounds to interfere with the findings given by the trial co court on issue No.1 and 2 is concerned and also consequential dismissal of the suit. Therefore, point No.3 is answered in the negative.*

*63. **Point No.4:** In the result, for the foregoing reasons I proceed to pass the following:*

ORDER

The appeal filed by the appellant u/o 41 rule 1 of CPC is hereby dismissed with costs.

The judgment and decree passed in OS 106/2006 on the file of the Civil Judge & JMFC, Soraba dated 14-12-2015 is hereby confirmed.

Draw decree accordingly.

Retransmit LCR with a copy of this judgment to the trial court."



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16. I do not find any illegality or infirmity in the impugned judgment and decree passed by the First Appellate Court warranting interference by this Court.

17. As rightly contented by learned counsel for the respondents, both the Trial court and the First Appellate Court had taken note of the fact that during the pendency of the suit and the Regular Appeal, Appeal No.629/2012 filed by the appellants challenging the orders of the Assistant Commissioner and Deputy Commissioner was pending before the Karnataka Appellate Tribunal, Bengaluru. However, during the pendency of the present appeal, the said appeal filed by the appellants before the Karnataka Appellate Tribunal in Appeal No.629/2012 came to be dismissed, thereby confirming the orders of the Assistant Commissioner and Deputy Commissioner, whereby the suit schedule property had been declared and reserved for the purpose of burial ground/ graveyard by holding as under:

"This Appeal is filed under Section 49(c) of the Karnataka Land Revenue Act, 1964 (hereinafter called as "The Act" in short), against the impugned order passed by the 1st Respondent in No.LND/2/CR/300/2006-07 dated 29-08-2011 wherein the land measuring 3-00 Acres in Survey



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Number 121 of Gudekoppa Village, Soraba Taluk, Shimoga District is reserved for Hindu Graveyard.

2. The Appellant also filed an application u/s 5 of the Limitation Act to condone the delay of 252 days in filing the present Appeal. The Appeal is admitted by keeping open the point of limitation. The notices were issued to the Respondents and the 1st Respondent is represented by the State Representative. The 2nd and 3rd Respondents are represented by their Counsels.

3. The brief facts of the case of the Appellant are that he is in unauthorized possession and enjoyment of land measuring 4.30 Acres in Survey Number 121 of Gudekoppa Village, Soraba Taluk since time immemorial by growing Ragi, Jowar, Paddy and also paying T.T. fine to the Government. The Appellant filed Form-50 seeking grant of 4.30 Acres in Survey Number 121 of Gudekoppa Village, and the same is rejected by the committee headed by the Tahsildar. The Appellant preferred an appeal before the Assistant Commissioner and the same is dismissed. When the appeal is pending before the Assistant Commissioner the 1st Respondent has suo-motu passed an order on 8-9-1999 and reserved 3-00 Acres out of 4.30 Acres in possession of the Appellant for Hindu Burial Ground. The 1st Respondent did not issue any notices to the Appellant before reserving the land as a burial ground. The Appellant also challenged the said order in a W.P.No.4894/2002, and the same is allowed and the matter is remanded for fresh consideration. The Appellant has filed objections to the effect that there is



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no necessity to reserve any land in Survey Number 121 for burial ground and the Appellant is in possession of the same since long time. Some of the villagers are also impleaded as parties and only on their request the 1st Respondent has passed the impugned order. The 1st Respondent failed to consider that there are other suitable lands for reservation as burial ground. The 1st Respondent failed to consider that the Form-50 filed by the Appellant is still pending as he has filed an appeal challenging the rejection of the same. The 1st Respondent failed to consider the long standing occupation of the land by the Appellant and his ancestors. The 1st Respondent failed to consider the imposition of T.T., fine to the Appellant in respect of his unauthorized occupation of the land. The 1st Respondent erred in holding that the Appellant has no right to partition the Survey Number 121 as it belongs to the Government. The 1st Respondent failed to consider that a suit in O.S.No.87/2009 is pending. The Appellant also filed a suit in O.S.No.106/2006 and obtained an interim order of injunction against the villagers. Hence the impugned order reserving 3.00 Acres is illegal and opposed to law and prays to set aside the same.

4. The Lower Court Records were secured. We have heard the arguments of the Appellant and the Respondents.

5. The Points that arise for our consideration are:

Point No. I: Whether the Appellant makes out sufficient grounds to condone the delay in filing the Appeal ?



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Point No. II: Whether the Appellant makes out sufficient grounds to set aside the impugned order No. LND /2/ CR/ 300/ 2006-07 dated 29-08-2011 ?

Point No. III: What Order ?

6. Our findings for the above points are as under:

Point No.I : In the Affirmative.

Point No.II : In the Negative.

Point No.III : As per final order for the following :

REASONS

7. **Point No. I:** The Appellant has preferred this Appeal against the impugned order passed by the 1st Respondent in No. LND/2/CR/300/2006-07 dated 29-08-2011. The Appeal is filed on 07-07-2012. The Appellant has contended that he was advised to file a Writ Petition against the impugned order and as such entrusted the same to a local Advocate but his Counsel has not filed the Writ Petition as assured in time. He then contacted his Advocate at Bengaluru through his local Advocate as he received notices in W.P.No. 15301-02/2012 filed by the 3rd Respondent seeking an order of mandamus to demarcate the land as burial ground, and then he was advised to file this Appeal, and in the process a delay is occurred, which is bonafide one and not intentional. The Respondents have not disputed this bonafide ground urged by the Appellant for the delay in filing this Appeal. Since the Appellant is attributing laches on the part of his counsel in not preferring this Appeal and the same is not disputed we are of the opinion that the Appellant



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cannot be penalized for the fault committed by his Counsel. So, we feel that it is necessary to condone the delay to provide reasonable opportunity to the Appellant to meet the ends of justice. Accordingly, we answer Point No.I in the Affirmative.

8. **Point No. II** : *The Appellant contends that he is in unauthorized possession and enjoyment of land measuring 4.30 Acres in Survey Number 121 of Gudekoppa Village, Soraba Taluk since time immemorial by growing Ragi, Jowar, Paddy and also paying T.T. fine to the Government. The Appellant filed Form-50 seeking grant of 4.30 Acres in Survey Number 121 of Gudekoppa Village, and the same is rejected by the committee headed by the Tahsildar. The Appellant preferred an appeal before the Assistant Commissioner and the same is dismissed. When the appeal is pending before the Assistant Commissioner the 1st Respondent has suo-motu passed an order on 8-9-1999 and reserved 3-00 Acres out of 4.30 Acres in possession of the Appellant for Hindu Burial Ground. The 1st Respondent did not issue any notices to the Appellant before reserving the land as a burial ground. The Appellant also challenged the said order in a W.P.No.4894/2002, and the same is allowed and the matter is remanded for fresh consideration. The Appellant has filed objections to the effect that there is no necessity to reserve any land in Survey Number 121 for burial ground and the Appellant is in possession of the same since long time. Some of the Villagers are also impleaded as parties and only on their request the 1st Respondent has*



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passed the impugned order. The 1st Respondent failed to consider that there are other suitable lands for reservation as burial ground. The 1st Respondent failed to consider that the Form-50 filed by the Appellant is still pending as he has filed an appeal challenging the rejection of the same. The 1st Respondent failed to consider the long standing occupation of the land by the Appellant and his ancestors. The 1st Respondent failed to consider the imposition of T.T., fine to the Appellant in respect of his unauthorized occupation of the land. The 1st Respondent erred in holding that the Appellant has no right to partition the Survey Number 121 as it belongs to the Government. The 1st Respondent failed to consider that a suit in O.S.No.87/2009 is pending. The Appellant also filed a suit in O.S.No.106/2006 and obtained an interim order of injunction against the Villagers.

9. On perusal of the records it is clear that the Appellant did not disputes that his family holds 6.33 Acres in addition to the land in unauthorized occupation. It is pertinent to note that the land hold by the family of the Appellant is a wet land having source of Tank water. On perusal of the records it is clear that the claim of the Appellant seeking grant of land measuring 4-30 Acres in Survey Number 121 as he is in unauthorized occupation is dismissed on the ground that he holds more agricultural lands than the ceiling limits prescribed. The Appeal and the Revision Petition filed against the rejection of his application in Form-50 are also came to be dismissed. The Deputy Commissioner also after verifying the rejection of the claim of the Appellant has



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passed the impugned order reserving 3.00 Acres out of 4.30 Acres for a burial ground. Since the land being a Government land the Deputy Commissioner has powers to reserve the same as a burial ground or for any other public purposes. It is pertinent to note that the Revision Petition filed by the Appellant in Revision Petition 38/2015 against the order of the Deputy Commissioner dismissing the appeal filed by the Appellant against the rejection of his Form-50 is also came to be dismissed today only by this Tribunal. No other grounds are urged by the Appellant to show that the impugned order is suffering with any illegality, except the fact that his application for grant of the land is pending. When the claim of the Appellant seeking grant of this land is already rejected and when there is no bar to the Deputy Commissioner to reserve the Government land for any public purposes, the reservation of the land for a burial ground for public purpose cannot be found fault with. So the question of interfering with the impugned order passed by the Respondent will not arise for consideration. Accordingly we treat the Point No. II in the Negative.

10. **Point No. III:** *For the reasons discussed above, we proceed to pass the following:*

ORDER

The Appeal filed by the Appellant against the impugned order passed by the 1st Respondent in No. LND/2/CR/300/2006-07 dated 29-08-2011 is dismissed.



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The office is hereby directed to comply Regulation 53(a) of Karnataka Appellate Tribunal Regulations, 1979. Send back the records to the lower authorities immediately. No order as to costs. Intimate the parties."

18. It is a matter of record and an undisputed fact that the aforesaid order passed by the Karnataka Appellate Tribunal, Bengaluru, as long back as on 31.10.2017 in Appeal No.629/2012 has attained finality and became conclusive and binding upon the appellants, who had undisputedly not challenged the same before this Court.

19. Under these circumstances, the declaration and reservation of the suit schedule property for the purpose of burial ground/graveyard by the State Government and its authorities having attained finality, it is needless to state that the appellants-plaintiffs whose claim for regularisation of unauthorised occupation having been rejected by the authorities also, both the Courts were fully justified in passing the impugned judgments and decrees dismissing the suit and regular appeal filed by the plaintiffs-appellants.



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20. Under these circumstances, the various substantial questions of law urged by the appellants are clearly not the questions of law, much less Substantial Questions of Law warranting interference by this Court in the present appeal. Accordingly, I do not find any merit in the appeal and the same is hereby **dismissed at the stage of admission itself.**

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

BMC
List No.: 1 SI No.: 22