



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1186 OF 2009 (DEC/INJ)

BETWEEN:

- 1 . DASAPPA NAIKA,
S/O AITHAPPA NAIKA,
AGED ABOUT 64 YEARS
- 2 . VAMANA NAIKA,
S/O AITHAPPA NAIKA,
AGED ABOUT 49 YEARS,
- 3 . KAROPOLOU,
D/O AITHAPPA,
AGED ABOUT 69 YEARS,
- 4 . THIMMAKKA,
D/O AITHAPPA,
AGED ABOUT 64 YEARS,
- 5 . LALITHA,
D/O. AITHAPPA,
AGED ABOUT 59 YEARS
- 6 . HONNAMMA,
D/O. AITHAPPA,
AGED ABOUT 54 YEARS,

APPELLANTS NO.1 TO 6 ARE ALL
R/O BALAPALPU ALLETTY VILLAGE,
SULLIA TALUK,
D.K. - 574 439.

...APPELLANTS

(BY SRI KRISHNA MOORTHY D., ADVOCATE)

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



AND:

- 1 . PARAMESHWARA NAIKA,
S/O VENKAPPA NAIKA,
AGED ABOUT 61 YEARS,
- 2 . GANGADHARA NAIKA,
S/O KUNHA NAIKA,
AGED ABOUT 53 YEARS,
- 3 . KESHANA NAIKA,
S/O KUNHA NAIKA,
AGED ABOUT 49 YEARS,
- 4 . SEETHAMMA,
S/O BALAKRISHNA NAIKA,
AGED ABOUT 54 YEARS,
- 5 . GURU PRASAD,
S/O BALAKRISHNA NAIKA,
AGED ABOUT 31YEARS,

RESPONDENTS NO.1 TO 5 ARE
R/O BALAPALPU ALETTY VILLAGE,
SULLIA TALUK,
D.K. DISTRICT - 574 239.

- 6 . SAVITHA
W/O MONAPPA NAIKA,
MAJOR,
R/A PALLA PADNOOR
VILLAGE AND POST
PUTTUR TALUK,
D.K. - 574 201.

...RESPONDENTS

(BY SRI VENUGOPAL, ADVOCATE FOR R1, R3 & R4;
V/O DTD 20.06.2016 APPEAL AGAINST R2 IS DISMISSED;
R5 & R6 - SERVED)



THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 04.06.2009 PASSED IN R.A.NO.40/2000 ON THE FILE OF THE ADDL. CIVIL JUDGE, (SR. DN.) AND JMFC, PUTTUR, ALLOWING THE APPEAL SETTING ASIDE THE JUDGEMENT AND DECREE DATED 06.04.2000 PASSED IN OS.08/1985 ON THE FILE OF THE CIVIL JUDGE (JR. DN.) AND JMFC, SULLIA, D.K.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging judgment and decree dated 04.06.2009 passed by Additional Civil Judge (Senior Division) and JMFC, Puttur, D.K., in R.A. no.40/2000 by allowing judgment and decree dated 06.04.2000 passed by Civil Judge (Jr.Dn.) and JMFC, Sullia, D.K., in OS no.08/1985.

2. Sri D. Krishnamurthy learned counsel for appellants submitted that appeal was by defendants in OS no.08/1985 filed seeking for declaration and injunction. In plaint it was stated that plaintiffs and defendants were members of Hindu Joint Family having properties including plaint 'A' schedule.



That in partition as per decree in OS no.115/1959 filed by their father Venkappa Naik and shares were allotted and 'A' schedule properties (**'suit properties'**) fell to share of plaintiffs. And since partition, plaintiffs were in possession and enjoyment of suit properties. It was also stated, only source of irrigation for plaintiffs was from 'stream in Aletty Reserve Forest Sy.no.336/1A1' (**'stream'**), from which plaintiffs' ancestors drew water by putting *kattas* and channels for cultivation. And Forest Department had issued water licence in name of *yajaman* of family. And as plaintiffs continued using water after partition, they acquired quasi-easementary right over water source. And since, defendants attempted to dig new channel on 30.12.1984 to interfere with natural flow of water and divert it to their lands causing obstruction and preventing cultivation of plaintiffs' lands, leading to filing of suit.

3. On appearance, defendants filed written statement denying plaint averments and alleging suit was frivolous and untenable due to suppression of material fact that earlier partition decree did not grant exclusive right to plaintiffs over water source. Non-joinder of necessary parties was also urged. There was specific denial of plaintiffs acquiring any quasi-



easementary right over water source and stated that water channel existed for long and both parties were using water equally. They stated even defendants had right to take water from source and alleged that plaintiffs had altered nature of their land and diverted water for domestic purposes. It was stated water belonged to Government/Forest Department. And civil Court lacked jurisdiction due to bar under provisions of Karnataka Irrigation Act, 1965 (**'Act'**). Defendants denied causing obstruction and sought for dismissal of suit.

4. Based on pleadings, trial Court framed following:

ISSUES

1. *Whether plaintiffs prove that they have acquired the right of quasi-easement over the water under licence from the Forest Dept. by means of grant in decree passed in OS no.115/59 on file of District Munsiff, Puttur, D.K.?*
2. *Whether plaintiffs prove that defendants caused interference inspite of said right?*
3. *Whether plaintiffs are entitled to relief of declaration as sought for?*
4. *Whether plaintiffs are entitled to relief of injunction as sought for?*
5. *Whether proper and sufficient court fee is paid?*
6. *Whether suit is bad for non-joinder of necessary parties?*
7. *To what order and reliefs are parties entitled to?*



ADDITIONAL ISSUE:

Whether defendants proved that this Court has no jurisdiction to try this suit as contended in Addl. Written Statement?

5. In trial, plaintiff no.1 and two others deposed as PWs.1 to 3 and got marked Exs.P1 to P13, while defendant no.1 and another deposed as DWs.1 and 2.

6. On consideration, trial Court answered issues no.1 to 4 and 6 in negative, issue no.5 and additional issue in affirmative and issue no.7 by dismissing suit. Aggrieved, plaintiffs preferred RA no.40/2000 on various grounds.

7. Based on same, first appellate Court framed following:

POINTS:

1. *Whether the plaintiffs prove that they have acquired the right of quasi easement over the water under the licence?*
2. *Whether the suit filed by the plaintiff is not maintainable?*
3. *Whether the judgment and decree passed by the trial judge is required to be interfered with?*
4. *What order or decree?*

8. And answering points no.1 and 3 in affirmative, point no.2 in negative, it answered point no.4 by allowing



appeal, reversing trial Court judgment and decreeing suit, leading to this appeal.

9. It was submitted without re-appreciation, first appellate Court arbitrarily reversed well-reasoned findings of trial Court, which was illegal. In their deposition, PWs.2 and 3 clearly admitted lack of personal knowledge about obstruction and stated that they deposed as per instructions of plaintiffs. It ignored bar of jurisdiction of Civil Court as per Section 61 of Mysore Land Revenue Act, 1964 (corresponding to Section 221 of the Mysore Land Revenue Code, 1888) as well as Sections 2 (h) read with Section 69 (5) of Act. It erred in holding Section 69 (5) of Act inapplicable, despite statute vesting exclusive authority over regulation and use of water in Irrigation Officer under Sections 11, 12 and 13 of Act.

10. It was submitted suit was filed mainly for relief of declaration of plaintiffs' right over water flowing from *stream* and restraining defendants from obstructing natural flow of water. User of water flowing from *stream* was admitted in earlier suit i.e. OS no.115/1959. It was submitted, any determination about obstruction to flow of water from *stream*



would fall under Section 11 of Act and oust jurisdiction of Civil Court. And though trial Court rightly held Section 69 (5) read with Sections 5, 12 and 13 of Act oust jurisdiction of Civil Court and dismissed suit, first appellate Court overturned said reasoning by mere observation that plaintiffs were entitled to quasi-easementary right and suit was maintainable.

11. It was submitted specific prayer of plaintiffs is for declaration of their right over water from stream originating in Reserve Forest, based on licence issued by Forest Authorities. Plaintiffs allege obstruction to licensed flow of water. Therefore, subject matter of suit would squarely fall under Act and jurisdiction of Civil Court ousted due to Sections 2 (h) read with Section 69 (5) of Act. In view of above, it was submitted, trial Court was justified in dismissing suit relying on decision of this Court in **Narayana Rao v. Devadass Naik**, reported in **1975 (1) KLJ page 43 SN 144**.

12. It was submitted, right claimed was not a quasi-easementary right as water was available only from January till 15th of April and pipes are being used for drawing water. It was submitted, Ex.P4 – Water license was for limited duration of five years and issued in year 1965 and Exs.P5 and P6 showing



payment of license fee for period from 1979-80 to 1983-84 and 1984-85 to 1988-89 only. It was submitted, there was no evidence about water license being current. Hence, suit was rightly dismissed by trial Court.

13. It was submitted both parties apart from others had right over natural flow of water and were using same. Since, plaintiffs were claiming easementary right over water, every person using water from same source would be necessary parties and ought to have been impleaded. Thus, suit was bad for no-joinder of necessary parties.

14. It was submitted, as per Exs.P1 to P3 – judgment and decree in OS no.115/1959, shares allotted were as follows:

- *A Schedule share marked in green colour was allotted to plaintiffs.*
- *B Schedule share marked in yellow colour was allotted to Kariya Naika.*
- *C Schedule share marked in brown colour was allotted to defendants.*
- *With Sy.no.220/2 measuring 60.3 cents constituting share of defendants and Sy.nos.220/1 and 220/2 constituting share of plaintiffs.*

15. It was submitted, para-2 of Further Report of Court Commissioner at Ex.P13 only mentions drawing water from



stream to irrigate lands and as admitted by PW-1, there was no arrangement about sharing of water between plaintiffs and defendants, in earlier suit. He admitted, decree only mentioned about lands drawing water for irrigation. And PWs-2 and 3 did not support plaintiffs' claim. While PW-2 stated that plaintiffs were drawing water since 10-15 years and admitted water from *stream* first flowed to defendants' lands and he unaware about share of water between parties; PW-3 admitted plaintiffs instructed him what to depose in Court. In view of above, dismissal of suit by trial Court was justified both on ground of suit being barred by provisions of Act as well as on merits. Hence, substantial questions of law arose for consideration and prayed for answering them in favour of defendants, allow appeal and dismiss plaintiffs' suit.

16. On other hand, Sri Venugopal, learned counsel for plaintiffs opposed appeal. At outset, it was submitted that in written statement itself, defendants admitted ownership of land and shared user of water as per water license. There was no dispute about natural flow of water from *stream* and claim of plaintiffs was supported by PWs-2 and 3, water licence/receipts and reference to water from *stream* used for irrigation, in



earlier suit. It was submitted, hand-sketch filed in earlier suit was deliberately not produced in present suit. It was submitted that para-2 of Court Commissioner's report at Exs.P12 and P13, showed division of Sy.no.220/2 into several parts and usage of water from *stream* to irrigate them. Exs.P4 and P5 showed issuance of water licence and its usage for considerable length of time i.e. from 1955-60 to 1988-89. Therefore, dismissal of suit by trial Court was without proper appreciation of evidence and improper application of position in law but rectified by first appellate Court which had after due re-appreciation of entire material arrived at well reasoned conclusions. It was lastly submitted that above appeal involved no substantial question of law and prayed for its dismissal.

17. Heard learned counsel, perused impugned judgment and decree of both Courts and records.

18. This appeal is by defendant against divergent findings in suit for declaration and permanent injunction, wherein trial Court dismissed suit, first appellate Court reversed same and decreed suit. Appeal was admitted on 16.04.2010 on following substantial questions of law:

- 1. Whether judgment and decree passed by first appellate Court is vitiated for non-consideration of*



evidence both oral and documentary on record while reversing finding of trial Court especially PWs.2 and 3?

2. *Whether first appellate Court was justified in holding suit was maintainable under Sections 2 (h) and 69 (5) of Karnataka Irrigation Act, inspite of ouster of jurisdiction of Civil Court?*

19. On 12.02.2026, one more substantial question of law was framed as follows:

3. *Whether first appellate Court was justified in reversing trial Court judgment even when plaintiffs failed to establish existence of quasi-easementary right to flow of water and obstruction by defendants with sufficient particulars?"*

20. Circumstances for filing suit and rival pleading as well as evidence led by parties are narrated above. At time of passing impugned judgment, trial Court noted that suit was dismissed earlier on 26.09.1989 answering issue no.1 in affirmative, issues no.2 to 4 in negative, issue no.5 in affirmative and issue no.6 in negative. In R.A. no.142/1989 filed against it, by judgment and decree dated 31.10.1996, first appellate Court remanded matter back to trial Court for fresh disposal and appeal against it in M.S.A. no.11/1997 was dismissed with observation reserving liberty to both parties to amend pleadings and frame issues and proceed with suit in accordance with law. Thereafter, though defendants amended



written statement, raised contention about jurisdiction of Civil Court and examined witness, plaintiffs did neither.

21. While deciding issues no.1 and 2 and additional issue, trial Court noted plaintiffs' claim that along with defendants, they were members of joint family owing/cultivating lands. After partition as per decree in earlier suit, they were cultivating their lands by drawing water from *stream* through 'Kani' as per licence granted in name of Yajaman of joint family – Karia Naika and therefore they had quasi-easementary right. It noted dispute by defendants was only about manner of usage of water from source and nature of right granted under licence and while plaintiffs denied prior usage of water by defendants, defendants claimed they were also using water from *stream* for irrigating their lands. And suit being barred by law and bad for non-joinder of necessary party namely Government or Forest Department.

22. On jurisdiction, it noted evidence established water from *stream* through Kani was used by plaintiffs and defendants. And dispute was only about defendants causing obstruction of plaintiffs' using said water. It observed allegation



of obstruction of right to use water from Government source was required to be examined under Section 11, Irrigation Officer had powers to direct obstructer to remove obstruction under Section 12 or cause removal under Section 13, which attracted bar under Section 69 of Act. And as per **Narayana Rao's** case (supra) barred jurisdiction of Civil Court. Therefore, it was not required to decide about currency of licence. It held when claim was based on licence, prayer for declaration of quasi-easement was untenable and dismissed suit.

23. In appeal, first appellate Court observed specific case of plaintiffs was that their father Venkappa Naika was part of joint family owning properties and as per decree in suit filed by him, partition was effected and plaintiffs were irrigating lands fallen to their share with water from *stream* in terms of water licence issued earlier in name of Karia Naika who was family yajaman. Based on continuous usage, plaintiffs acquired quasi-easementary right over water and entitled for reliefs.

24. It noted admission usage of water by plaintiffs was admitted by defendants, but as per Ex.P13 water flowing from *stream* was used by plaintiffs as well as defendants except for lands bearing Sy.no.220/3 and Sy.no.220/5 and *held plaintiffs*



and defendants had right to draw 50% of water each. And as plaintiffs' usage of water was not disputed, suit was for restraining defendants from interfering with such user as per ratio in **GN Narayana v. K. Sheshagiriyappa**, reported in **2004 SCC OnLine Kar 274**, Civil Court had jurisdiction. Reversing judgment and decree of trial Court, it decreed suit.

25. Main contention urged herein is about suit being barred by Section 69 (5) read with Sections 5 and 11 to 13 of Act. While learned trial Judge relied on decision in **Narayan Rao's** case (supra) to hold suit was barred by Section 69 (5) of Act, Appellate Court relied on **GN Narayana's** case (supra) to hold Irrigation Officer lacked power to grant injunction and suit was maintainable. Prima facie, view taken by first appellate Court does not appeal as prayer in suit was not for mandatory injunction, but for permanent injunction against obstruction.

26. Further, Sections 11 to 13 and Section 69 (5) of Act read as follows:

"Section 11: Government may prohibit obstructions of rivers, etc. within certain limits: *Whenever it appears to the State Government that injury to the public health, or public convenience, or to any irrigation work or to any land for which supply from an irrigation work is available, has arisen or may arise from the*



obstruction of any river, stream or natural drainage channel, the State Government may, by notification, prohibit within limits to be defined in such notification, or may, within such limits, order the removal or other modification of such obstruction; and thereupon so much of the said river, stream or natural drainage channel as is comprised within such limits, shall be deemed to be a drainage work as defined in Section 2.

12. Irrigation Officer may issue order to person causing obstruction: *The Irrigation Officer may, after the publication of the notification under Section 11, issue an order to any person causing or having control over any such obstruction to remove or modify the same within such period as may be specified in such order.*

13. Irrigation Officer may cause obstruction to be removed: *If within the period specified under Section 12 such person does not comply with the order, the Irrigation Officer may cause the obstruction to be removed or modified and such person shall be liable to pay the expense of such removal or modification; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable as an arrear of land revenue.*

69. Bar of certain proceedings, etc.- *(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the State Government, for any act done or purporting to be done under this Act, without the previous sanction of the State Government .*

(2) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of the functions imposed by or under this Act.

(3) No suit shall be instituted against the State Government in respect of any act done unless the



suit is instituted within six months from the date of the act complained of.

(4) In the case of an intended suit against any officer or servant of the State Government under sub-section (1), the person intending to sue shall be bound to give the officer or servant, as the case may be, one month's notice at least of the intended suit with sufficient description of the cause of action, failing which such suit shall be dismissed.

(5) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit instituted in respect of any matter to which this Act applies.

27. Bare perusal, reveals jurisdiction of Irrigation Officer to exercise powers under Sections 12 and 13 of Act would arise only on issuance of general notification by Government under Section 11 of Act, about which there is no pleading nor material. Moreover, bar under Section 69 (5) of Act applies *only in respect of any matter to which Act applies*. Further Section 11 of Act is only in respect of *irrigation work*. There is no finding that *stream* was *irrigation work* under Section 2 (h) and thus no explanation, how Act would apply.

28. As noted above, suit is for declaration of plaintiffs' right of quasi-easement over water from *stream*. There is no dispute about *stream* belonging to Government. As per decision of Hon'ble Supreme Court in **Jagtu v. Suraj Mal and Ors.**,



reported in **2010 (13) SCC 769**, declaration of right as claimed by plaintiffs cannot be granted without Government being arrayed as party to suit.

29. As there is no dispute about plaintiffs' usage of water from *stream*, claim for bare injunction requires examination. But, it is settled law without demonstrating obstruction to plaintiffs' right by defendants, relief of permanent injunction would not lie. Cause of action for suit was defendants digging up new channel to divert water from Kani leading to plaintiffs land bearing Sy.no.220/2 of Aletty, on 30.12.1984. In written statement, defendants admitted plaintiffs' usage but claimed that they being allotted three shares in partition were entitled for half share in water and denied exclusive right of plaintiffs to use water from *stream*. They denied diversion as alleged and made counter allegation that shortage of water was due to plaintiffs diverting water from channel near their newly constructed house and converting paddy fields into areca garden and alleging suit was filed for harassing defendants.

30. In trial, plaintiff no.1 deposed as PW-1 and examined two independent witnesses as PWs-2 and 3. Though



PW-1 deposed as per plaint, in cross-examination, he admitted land bearing Sy.nos.220/1 and 220/2, earlier growing paddy were converted into areca garden. There is also admission that even prior to 30.12.1984, Kani existed for flow of water into defendants land and though all three defendants had come to fields for digging new Kani, plaintiff had not given any police complaint. There is also admission that in earlier decree, there was mention only of lands receiving water from *stream*. There is material elicitation about plaintiffs objecting to application filed by defendants for appointment of Court Commissioner. Though PW-2 deposed about water from *stream* flowing to plaintiffs' lands, he contradicted them by stating said user was since 10 to 15 years. In cross-examination, he admits that he has no knowledge about extent of water over which defendants had right. Even PW-3 though stated that defendants had right to use water to irrigate ($\frac{1}{2}$) half mudi seed area but had put-up new channel and diverted course of water reducing quantum of water into plaintiffs lands, he admitted he was deposing *as instructed by plaintiffs*. In fact, first appellate Court has not properly appreciated deposition of PWs-2 and 3.



31. In any case, documentary evidence on behalf of plaintiffs is preliminary decree, judgment and final decree in O.S no.115/1959, water licence and water charge paid receipts marked as Exs.P1 to P6, RTCs marked as Exs.P7 to P10, Eye-sketch as Ex.P11, Commissioner's report and further report as Exs.P12 and P13. Though these documents support plaintiffs' claim about user of water from *stream* to irrigate their lands, none of them indicate or establish defendants opening new Kani on 30.12.1984 for diverting water. Interestingly, defendants have specifically contended that licence relied upon by plaintiffs had expired, which trial Court stated would not require adjudication as suit was barred by law. And while decreeing suit, first appellate Court did not give any findings about currency of licence. Absence of material to establish subsistence of cause of action would be fatal especially in facts and circumstances of this case as relief of declaration of plaintiffs right of quasi-easement is held to be untenable in absence of Government as party to suit. In view of above, findings of first appellate Court would not only be without proper re-appreciation of entire material on record, but also



without proper basis if not contrary to material on record and as such perverse calling for interference by this Court.

32. Substantial questions of law no.1 and 2 are answered in affirmative, substantial question of law no.3 in negative.

33. Consequently, Appeal is allowed with costs, judgment and decree dated 04.06.2009 passed by Additional Civil Judge (Senior Division) and JMFC, Puttur, in R.A. no.40/2000 is set-aside, judgment and decree dated 06.04.2000 passed by Civil Judge (Jr.Dn.) and JMFC, Sullia, D.K. dismissing O.S. no.08/1985 is restored.

Sd/-
(RAVI V HOSMANI)
JUDGE

AV,GRD
List No.: 1 Sl No.: 62