



CNR: KAHC010721922025

NC: 2026:KHC:37543
RSA No. 1752 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.1752 OF 2025(DEC/INJ)

BETWEEN:

SRI CHALAPATHI
S/O LATE KEMPEGOWDA
AGED ABOUT 60 YEARS,
R/AT AVALAMARAKALAGATTA,
AVANI HOBLI,
MULBAGAL TALUK-563131
KOLAR DISTRICT

...APPELLANT

(BY SRI N S BHAT, ADVOCATE)

AND:

1. SRI MUNIVENKATAPPA
SINCE DEAD BY L.Rs

SMT BHAGYAMMA
W/O CHALAPATHI
D/O LATE MUNIVENKATAPPA
AGED ABOUT 50 YEARS,
BETHAMANGALA HOBLI,
KGF TALUK
KOLAR DISTRICT-563101

2. SMT VARADHAMMA
W/O VENUGOPAL
D/O LATE MUNIVENKATAPPA
AGED ABOUT
BISANAHALLI VILLAGE
DUGGASANDRA HOBLI,
MULBAGAL TALUK-563131
KOLAR DISTRICT-563101

3. SMT NARAYANAMMA
W/O VENKATAREDDY

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KARNATAKA





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D/O LATE MUNIVENKATAPPA
AGED ABOUT 47 YEARS,
RA/T THAMMAREDDYHALLI VILLAGE,
BYRAKURU HOBLI,
MULBAGAL TALUK
KOLAR DISTRICT-563131

4. SMT VARALAKSHMI @ LAKSHMIDEVI
W/O MUNIRAJU
D/O LATE MUNIVENKATAPPA
AGED ABOUT 45 YEARS
R/AT ITHANDAHALLI VILLAGE,
KASABA HOBLI,
BANGARPET TALUK-563114
KOLAR DISTRICT
5. SMT NANJAMMA
W/O LATE MUNIVENKATAPPA
AGED ABOUT 80 YEARS,
R/AT AVALAMARAKALAGATTA VILLAGE,
AVANI HOBLI,
MULBAGAL TALUK-563131
KOLAR DISTRICT
6. SRI SRINIVASA
S/O MUNIVENKATAPPA
AGED ABOUT 39 YEARS,
R/AT AVALAMARAKALAGATTA VILLAGE,
AVANI HOBLI,
MULBAGAL TALUK-563131
KOLAR DISTRICT

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 16.07.2025 PASSED IN R.A.NO.21/2020 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, MULBAGAL., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 11.11.2020 PASSED IN O.S.NO.40/2010 ON THE FILE LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, MULBAGAL.

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



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CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri N.S.Bhat, learned counsel for the appellant.

2. This Court did not deem it fit to issue notice to the respondents.

3. Parties are referred to as plaintiff and defendants as per their original ranking before the Trial Court, for the sake of convenience.

4. Plaintiff's Second Appeal challenging the dismissal of his suit in O.S No.40/2010 on the file of the Prl. Civil Judge and JMFC, Mulbagal, confirmed in R.A No.21/2020 on the file of the Senior Civil Judge and JMFC, Mulbagal.

5. Facts of the case are as under:

5.1 A suit seeking the relief of declaration that the plaintiff is the absolute owner of the suit property and for permanent injunction restraining the defendants from disturbing the peaceful possession and enjoyment of the suit property came to be filed by the plaintiff in respect of the following property, hereinafter referred to as 'suit property'.



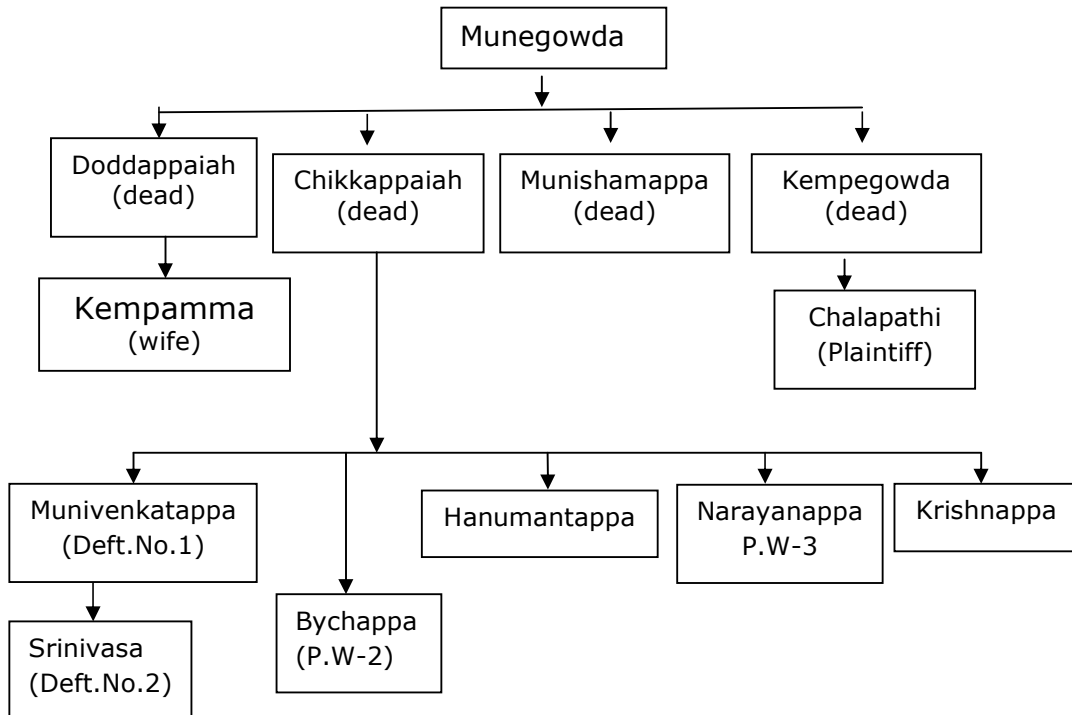
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"The property bearing Sy.No.60/1, measuring 28 guntas of Avalamarakalagatta village, Avani Hobli, Mulbagal Taluk, Kolar District, and bounded on the:

*East : Govt. Tank,
West : Chalapathi's land,
North : Chalapathi's land, and
South : Land belongs to
Venkataramarao.*

5.2 Plaintiff claimed right, title and interest over the suit property based on the fact that he is the grandson of Munegowda. The genealogy reads as under:





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5.3 It is further contention of the plaintiff that father of the plaintiff viz., Kempegowda was the owner of suit property measuring 0.28 guntas and was in possession of the suit property, cultivating the said land and also carrying out agricultural activities, growing the crops 'ragi', 'avare', 'groundnut' etc. He was in enjoyment of this property for a period of more than 25 years, who had also grown eucalyptus trees over it.

5.4 After the death of Kempegowda, plaintiff became the absolute owner and defendants have no right, title or interest in respect of said property and plaintiff enjoyed the suit property by adversely enjoying the same for more than 60 to 70 years from the time of his father.

5.5 It is specific case of the plaintiff that on 03.02.2010 defendants illegally entered the suit property, tried to remove the eucalyptus trees and therefore, same was resisted.

5.6 On enquiry it was revealed that first defendant had executed the gift deed in favour of defendant No.2 on



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29.09.2018 detrimental to the interest of the plaintiff and therefore, suit came to be filed.

6. Pursuant to the suit summons, defendant Nos.1 and 2 appeared through their counsel, filed written statement denying the plaint averments in *toto*.

7. It was specifically contented that first defendant purchased the suit property along with other properties from its vendor for valuable consideration, by registered sale deed dated 03.07.1974 and possession was also delivered to defendant No.1 by his vendors.

8. It is further contented that the vendors of defendant No.1 had the marketable title. Therefore, suit is not only barred by limitation but speculative in nature and sought for dismissal of the suit.

9. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and after recording the evidence of the parties, dismissed the suit of the plaintiff holding that,



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plaintiff failed to make out any legal right in respect of the suit property.

10. Being aggrieved by the same, plaintiff filed R.A No.21/2020 on the file of the Senior Civil Judge and JMFC, Mulbagal.

11. Learned Judge in the First Appellate Court after securing records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed the appeal of the plaintiff confirming the dismissal of the suit.

12. Being further aggrieved by the same, plaintiff has filed the present Second Appeal.

13. Defendant No.1 died and his legal representatives are brought on record.

14. Sri N.S.Bhat, learned counsel for the appellant/plaintiff reiterating the grounds urged in the appeal memorandum would contend that from the period of the father of the plaintiff viz., Kempegowda, who is the son of Munegowda, suit property is enjoyed by the father of the plaintiff. After death of father of



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the plaintiff it is the plaintiff, who had enjoyed the suit property.

15. It is the specific case of the plaintiff that his father had grown eucalyptus trees and had also cultivated the land by raising the crops like ragi, avare, ground nut and such other crops.

16. However, to establish the said factual aspect, there is no material placed on record.

17. At another breath, plaintiff has also contended that since his father and himself owned the suit property for more than 60 to 70 years, therefore, they have perfected their title to the suit property adversely to the interest of all concerned and sought for declaration.

18. Both the Courts negated the contentions urged on behalf of the plaintiff on material facts and dismissed the suit of the plaintiff.



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19. This Court in the light of the appeal grounds and the substantial questions of law raised in the appeal memorandum reconsidered the material on record.

20. In the first place plaintiff cannot have alternate pleas. No doubt, it is now settled that plaintiff can also seek declaration that he is in adverse possession of the suit property. To substantiate the said aspect of the matter, it is incumbent on the plaintiff to plead as to when he started enjoying the suit property openly and adversely to the interest of the true owner and such enjoyment must be without hindrance from anybody. It must also be open and peaceful

21. In the case on hand, any one of those parameters are pleaded, much less proved.

22. If Kempegowda being the fourth son of Munegowda has enjoyed the property as owner having derived the interest from Munegowda, the plea of adverse possession has no meaning at all.



23. There is a registered sale deed in favour of defendant No.1 by his vendors including the suit property in the year 1974 itself.

24. If it is so, when did plaintiff came into the possession of the suit property is a question that needs to be answered. No supporting documents are also placed on record to substantiate the plaint averments.

25. It is settled principles of law and requires no emphasis that whenever a party approaches the Court for the relief of declaration, it is necessary for such party to not only plead but also prove the legal title to the suit property.

26. In the case on hand, plaintiff failed in both.

27. Accordingly this Court having regard to the scope of Section 100 of the Code of Civil Procedure does not find merit in any one of the substantial questions of law.



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28. Consequently, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 76