



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 1530 OF 2009 (PAR)

BETWEEN:

1. CHANDRA NAYAKA,
S/O HANUMANAYAKA,
AGED ABOUT 64 YEARS,
2. PUTTANAYAKA,
S/O KALANAYKA,
AGED ABOUT 60 YEARS,
DIED BY HIS LRS 3 TO 5
3. JAVARANAYAKA,
S/O PUTTANAYAKA,
AGED ABOUT 54 YEARS,
4. RAMANAYAKA,
S/O PUTTANAYAKA,
AGED ABOUT 53 YEARS,
5. PUTTANAYAKA,
S/O PUTTANAYAKA,
AGED ABOUT 46 YEARS,

ALL ARE R/AT KEREMEGALA KOPPALU,
GULAGANJI HALLI DAKHLE,
HALLYMYSORE HOBLI,



HOLENARASIPURA TALUK,
HASSAN DISTRICT - 573 211.

...APPELLANTS

(BY SRI.PARASHURAM R., ADVOCATE;
A3 TO A5 ARE LRS OF A2 VIDE ORDER DATED 08.08.2023)

AND:

1. SRI. JAVARA NAYAKA,
SINCE DEAD BY LRS -
- 1(a) NAGA NAYAKA,
S/O LATE JAVARA NAYAKA,
AGED ABOUT 65 YEARS,
- 1(b) SMT.SUDHA,
W/O LATE PRAKASH,
AGED ABOUT 45 YEARS,
- 1(c) PRAMOD,
S/O LATE PRAKASH,
AGED ABOUT 22 YEARS,
- 1(d) PRAJWAL,
S/O LATE PRAKASH,
AGED ABOUT 21 YEARS,

ALL ARE RESIDING AT
GALIGEKERE VILLAGE,
HOSA AGRAHARA HOBLI,
K.R.NAGAR TALUK - 571 602,
MYSORE DISTRICT.

...RESPONDENTS

(BY SRI. VINOD KUMAR B.N., ADVOCATE FOR R1(a) TO (d))



THIS RSA IS FILED U/S 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 11.09.2009 PASSED IN R.A.19/2004 ON THE FILE OF THE PRESIDING OFFICER FTC-III, HOLENARASIPURA, DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED 22.01.2004 PASSED IN O.S.24/1998 ON THE FILE OF THE CIVIL JUDGE (JR.DN). AND JMFC, HOLENARASIPURA.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL JUDGMENT

This appeal is preferred by the defendants assailing the judgment and decree dated 11.09.2009 passed in R.A.19/2004 on the file of the Fast Track Court and Addl. District Judge, Holenarasipura, dismissing the appeal and confirming the judgment and decree dated 22.01.2004 in O.S.No.24/1998 on the file of Civil Judge (Jr.Dvn.) and JMFC, at Holenarasipura, decreeing the suit of the plaintiff.

2. For the sake of convenience, parties are referred to as per their ranking before the Trial Court.
3. The relevant facts for adjudication of this appeal are that: the plaintiff claims to be the owner of suit schedule property as per the grant made by the Tahsildar, Holenarasipura in ASDR



258/59-60, and further stated that the suit schedule property is granted to the plaintiff and the plaintiff is cultivating the land in question. However the defendant is interfering with the suit schedule property. Accordingly the plaintiff has filed suit seeking relief of permanent injunction against the defendants.

4. After service of notice, the defendants entered appearance and submitted that the plaintiff is not the owner of the suit schedule property and also the grant made in favour of the plaintiff has been cancelled by the competent revenue authorities. It is also stated in the written statement that the defendants are in cultivation of the land in question and accordingly sought for dismissal of the suit.

5. Based on the pleadings on record, the Trial Court has formulated the issues for its consideration. In order to establish the case the plaintiff has examined two witnesses as PW-1 and PW-2 and marked 17 documents as Ex.P1 to P17. The defendants examined six witnesses as DW-1 to DW-6 and marked eight exhibits as Ex.D1 to D8. The Trial Court after considering the material on record, by its judgment and decree dated 22.01.2004, decreed the suit and as such restrained the



defendants from interfering with the suit schedule property. Feeling aggrieved by the same, the defendant has preferred R.A.No.19/2004 before the First Appellate Court and the same was resisted by the plaintiff. The First Appellate Court after re-appreciating the material on record, by judgment and decree dated 11.09.2009 dismissed the appeal and consequently confirmed the judgment and decree in O.S.No.24/1998.

6. Being aggrieved by the same, the defendants have preferred this second appeal under Sec.100 of CPC, 1908. This Court by order dated 18.10.2010 formulated the following substantial questions of law which reads as under:

"1. Are the courts below justified in decreeing the suit, more particularly when the mahazar and other investigation carried out by the Tahsildar (competent authority) is in the name of the present appellants/defendants?"

2) Is the lower appellate court justified in ignoring the mahazar and other investigation report which will clearly indicate that the appellants/defendants are in continuous possession of the suit schedule property?"

7. Heard Sri. Parashuram R.Hattarakihal, learned counsel for the appellants and Sri Vinod Kumar.B.N., learned counsel for the respondent.



8. Sri Parashuram R.Hattarakihal, learned counsel for the appellants contended that the grant made in favour of the plaintiff is a temporary grant which came to be cancelled and further the defendants are in possession of the suit schedule property and as such contended that the finding recorded by both the courts below are passed without appreciating material on record. It is also submitted by the learned counsel appearing for the appellant by referring to Ex.D1, the Mahazar drawn wherein it is stated that the plaintiff is not in possession of the suit schedule property and thereby the defendant is in cultivation of the same and both the courts below have not properly appreciated Ex.D1 and sought for interference of this court.

9. In order to buttress his arguments, the learned counsel appearing for the appellants places reliance on judgment of this court in RSA No.1957/2017(DEC/INJ) disposed of on 01.09.2023 and by referring to paragraph No.16 and contended that both the courts below have not properly appreciated Ex.D1, Mahazar drawn by the Revenue Officer and therefore sought for interference of this court.



10. Per contra, Sri Vinod Kumar.B.N. learned counsel for the respondent submitted that the suit is filed for the relief of permanent injunction and the plaintiff is in possession of the suit schedule property. It is also contended by the learned counsel for the respondent that as both the courts below have concurrently held on facts and as such this court is having limited jurisdiction to interfere with the judgment and decree passed by the courts below and accordingly sought for dismissal of the appeal.

11. In the light of the submissions made by the learned counsel appearing for the parties, I carefully examined the findings recorded by both the courts below and perused the original records. It is the case of the plaintiff that, the land in question is granted in favour of the plaintiff as per Ex.P1, the Tahsildar, Holenarasipura in the proceedings No.ASDR 258/59-60. The plaintiff has also produced the tax paid receipts as well as RTC extracts as per Ex.P8 to P12. It is also to be noted that, the Deputy Commissioner, Hassan has passed an order confirming the grant made in favour of the plaintiff as per Ex.P17, and the evidence on record wherein the Defendant



No.1, himself admits to the grant made in favour of the plaintiff.

12. In that view of the matter, taking into consideration the factual aspects on record, as the land in question has been granted in favour of the plaintiff during 1973 and a perusal of the RTC extracts at Ex.P8 to P12 and the Mutation Register at Ex.P13 and further the order passed by the Deputy Commissioner as per Ex.P17, I am of the view that, the plaintiff is in possession of the suit schedule property. In that view of the matter, both the Courts below have rightly rejected Ex.D1 wherein the said mahazar has been drawn by the Revenue Officer without issuing notice to the plaintiff and therefore I am of the view that the appellant herein has not made out a case for interference of this court.

13. Taking into consideration that both the courts have rightly arrived at the conclusion that the plaintiff is in possession of the suit schedule property as per the documents referred to above, in that view of the matter, the judgment referred to above by the learned counsel for the appellant cannot be accepted as the suit in the above case was for



seeking relief of easementary rights in respect of the suit schedule properties therein and the Commissioner's report has been filed in the said appeal to that effect.

14. In that view of the matter, the substantial questions of law referred to above favours the plaintiff and the Regular Second Appeal is dismissed.

**SD/-
(E.S.INDIRESH)
JUDGE**

SNB
List No.: 2 Sl No.: 36