

KABG040008352018



**IN THE COURT OF THE IV ADDL.CIVIL JUDGE, BELAGAVI
AT: BELAGAVI**

PRESENT

Shri. Basavaraja Thulasappa Nayaka,
B.A.L LL.M.,
IV Addl. Civil Judge & JMFC,
Belagavi.

Dated this 21st day of April, 2023

ORIGINAL SUIT NO.404/2018

Plaintiff / s : 1) **Shri. Sunil S/o. Amrut Jadhav,**
Age: 42 years, Occ: Agriculture,
R/o: Laxmi Galli, Gojage village,
Taluka and District: Belagavi.

2) **Smt. Mangala W/o. Amrut Jadhav,**
Age: 65 years, Occ: Household work,
R/o: Laxmi Galli, Gojage village,
Taluka and District: Belagavi.

3) **Smt. Madhuri W/o. Rajesh Jadhav,**
Age: 42 years, Occ: Household work,
R/o: Laxmi Galli, Gojage village,
Taluka and District: Belagavi.

(By Shri. R.G. Jadhav, Advocate)

V/s

- Defendant /s**
- 1) **Shri. Pundalik Nagu Savant,**
Age: 48 years, Occ: Nil,
R/o: Laxmi Galli, Bekkinkeri village,
Taluka and District: Belagavi.
 - 2) **Shri. Raju Nagu Savant,**
Age: 40 years, Occ: Private service,
R/o: Laxmi Galli, Bekkinkeri village,
Taluka and District: Belagavi.
 - 3) **Shri. Jyotiba Nagu Savant,**
Age: 30 years, Occ: Student,
R/o: Laxmi Galli, Bekkinkeri village,
Taluka and District: Belagavi.
 - 4) **Shri. Maruti Krishna Savant,**
Age: 72 years, Occ: Nil,
R/o: Laxmi Galli, Bekkinkeri village,
Taluka and District: Belagavi.

(By Shri. G.C. Magi, Advocate)

ORDERS ON PRELIMINARY ISSUE

Issue No.3 treated as Preliminary Issue: The plaintiff has filed this suit seeking permanent injunction to restraining the defendants from disturbing and obstructing the lawful peaceful possession, cultivation, use, wahiwat and enjoyment of the plaintiffs over the suit property illegally and high-handedly in any manner.

2. Brief facts of the parties are as under:

It is averred that the father of the plaintiff No.1 viz., Amrut Gopal Jadhav was the original owner in possession of the suit property who during his life time was in military service since 1962 to 1977. After his retirement, he had filed an application to the Special Tahsildar for Land Reforms, Belagavi for restoration of the possession of the suit schedule property from one Krishna Nago Savant U/s. 15(2) of KLR Act in the year 1977 for personal cultivation. The Special Tahsildar after enquiry, pleased to pass an order restoring the possession of the suit property to him. Thereafter, Krishna Nago Savant has preferred an appeal challenging the order dated 21.05.1979 before the Assistant Commissioner, Belagavi. The Assistant Commissioner has dismissed the appeal by confirming the order of the Special Tahsildar. Thereafter, Krishna Nago Savant preferred writ petition bearing No. 9532/2007 challenging the order dated 29.05.2002. the Hon'ble High court pleased to remand the matter to the Land Tribunal, Belagavi on 16.01.2009. The plaintiffs contend that during the pendency of the proceeding before the Land Tribunal, the father of the plaintiff No.1 Amrut Gopal Jadhav expired on 24.05.2013. In view of his death, the suit property devolved upon the plaintiffs and they are in actual physical possession and

enjoyment of the suit schedule property. The plaintiff contend that the defendants who have no right, title or interest whatsoever manner over the suit property, even during the pendency of Land Tribunal proceedings, are making an illegal attempt in interfering, disturbing and obstructing the peaceful possession, use and enjoyment of the plaintiffs over the suit property. Hence, this suit.

3. In the written statement, the defendant denied the content of the plaint as false and defendants admitted the ownership of deceased Amrut Gopal Jadhav. Further admitted that the plaintiffs are the legal heirs of deceased Amrut Gopal Jadhav. Further admitted the death of Amrut Gopal Jadhav on 24.05.2013. The defendants admitted that deceased Amrut Gopal Jadhav had preferred petition for restoration of the possession and the same was allowed by Special Tahsildar and the order of the Special Tahsildar was confirmed by the Assistant Commissioner, Belagavi. Further admitted that the deceased Krishna Nago Savant had preferred writ petition bearing No.9532/2007 and the matter was remanded to the Land Tribunal. Now the matter is pending before the Land Tribunal. The defendants denied the possession of the plaintiffs over the suit property. The defendants contend that their grandfather had filed Form No.7 and the

occupancy right have been granted in their favour on 13.08.1981. Further contend that they are in possession and enjoyment of the suit schedule property. The suit property is the tenanted land. The occupancy rights are under consideration before the Land Tribunal. So, the suit of the plaintiffs is not maintainable because the issue of tenancy is pending before the competent authority and the Civil Court has no jurisdiction to decide the suit in view of sections 132 and 133 of the Karnataka Land Reforms Act. Therefore, suit is not maintainable.

4. **Issue No.3** : Whether the present suit is maintainable when the dispute of the subject matter in the present suit is pending before the Land Tribunal, Belagavi as on the date of filing of this suit?

5. Heard, the Advocate for Plaintiff and the Advocate for defendants. Perused the materials on record. After hearing both parties, *the court proceeds to answer* **Issue No 3 answered in the Affirmative** for the following;-

REASONS:

6. **Issue No.3: (Preliminary Issue):-** The plaintiffs have filed the present suit against the defendants seeking permanent

injunction not to interfere with their possession over the suit schedule property. The plaintiffs contend that the father of the plaintiff No.1 Amrut Gopal Jadhav was the original owner in possession of the suit property who during his life time was in military service since 1962 to 1977. After his retirement, he had filed an application to the Special Tahsildar for Land Reforms, Belagavi for restoration of the possession of the suit schedule property from one Krishna Nago Savant U/s. 15(2) of KLR Act in the year 1977 for personal cultivation. The Special Tahsildar after enquiry, pleased to pass an order restoring the possession of the suit property to him. Thereafter, Krishna Nago Savant has preferred an appeal challenging the order dated 21.05.1979 before the Assistant Commissioner, Belagavi. The Assistant Commissioner has dismissed the appeal by confirming the order of the Special Tahsildar. Thereafter, Krishna Nago Savant preferred writ petition bearing No. 9532/2007 challenging the order dated 29.05.2002. the Hon'ble High court pleased to remand the matter to the Land Tribunal, Belagavi on 16.01.2009. The plaintiffs contend that during the pendency of the proceeding before the Land Tribunal, the father of the plaintiff No.1 Amrut Gopal Jadhav expired on 24.05.2013. In view of his death, the suit property

devolved upon the plaintiffs and they are in actual physical possession and enjoyment of the suit schedule property. The plaintiff contend that the defendants are trying to interfere with the possession and enjoyment over the suit property.

7. On the other hand, the defendants admitted the ownership of deceased Amrut Gopal Jadhav. Further admitted that the plaintiffs are the legal heirs of deceased Amrut Gopal Jadhav. Further admitted the death of Amrut Gopal Jadhav on 24.05.2013. The defendants admitted that deceased Amrut Gopal Jadhav had preferred petition for restoration of the possession and the same was allowed by Special Tahsildar and the order of the Special Tahsildar was confirmed by the Assistant Commissioner, Belagavi. Further admitted that the deceased Krishna Nago Savant had preferred writ petition bearing No.9532/2007 and the matter was remanded to the Land Tribunal. Now the matter is pending before the Land Tribunal. The defendants denied the possession of the plaintiffs over the suit property. The defendants contend that their grandfather had filed Form No.7 and the occupancy right have been granted in their favour on 13.08.1981. Further contend that they are in possession and enjoyment of the

suit schedule property. The suit property is the tenanted land. The occupancy rights are under consideration before the Land Tribunal. Therefore, suit is not maintainable.

7. It is pertinent to note that it is not in dispute that the deceased Amrut Gopal Jadhav was the original owner of the suit schedule property. According to the plaintiffs, possession of the suit schedule property was restored to deceased Amrut Gopal Jadhav. They are in possession and enjoyment of the suit schedule property. On the other hand, the defendants contend that occupancy rights has been granted in favour of their grandfather and they are in possession and enjoyment of the suit schedule property. It is not in dispute that the question of tenancy and occupancy rights is pending before the Land Tribunal. According the defendants, the dispute in respect of the suit property is pending before the Land Tribunal, therefore suit is not maintainable. Now the question is whether in view of the tenancy dispute before the Land Tribunal in respect of the suit property, the present suit is not maintainable. It is pertinent to note that the present suit filed for seeking the relief of permanent injunction claiming that the plaintiffs are in possession and enjoyment of the

suit schedule property. The defendants counsel relied on the decision of the Hon'ble High court of Karnataka reported in 2004(5) KAR L.J (DB) in case of K. Ravindranatha Shetty V/s. Smt. Maire Hengasu and contended that in the said suit the Hon'ble High court has held that the suit for injunction against the tenant, issue of tenancy the Court has to stay the suit and referred the issue of the tenancy to Land Tribunal for its decision and further relied on decision of the Hon'ble High Court of Karnataka passed in CRP No. 2970/87 and contend that when pendency of proceeding before the Land Tribunal, civil Court loses its jurisdiction. It is pertinent to note that the decision referred by the defendants is not applicable to the present facts of the case. In the said decision, the Hon'ble High Court has held that the issue of tenancy cannot be decided by the civil Court. Whereas, in the present case the issue is not pertaining to tenancy. The plaintiffs contend that they are in possession of the suit schedule property claiming that the possession has been restored to them. It is pertinent to note that the ***Hon'ble High Court of Karnataka in M.S.A No. 20/2017 dated 20th February, 2018 in a case between Puttappa S/o Bangarappa Vs Gurumurthy by referring to the decision of the Hon'ble Supreme court passed***

R. Ravindra Reddy and others V/s. H. Ramesh Reddy and others (2010) 3 SCC 214 has held that civil suit is barred only if the actual question in controversy is whether the land is agricultural land or not or whether the person claiming to be in possession is a tenant or not. In other words, the actual question of issue of tenancy must arise for decision to hold the suit is barred. Further held that the question of proving possession as on the date of suit by the plaintiff, suit for bare injunction is very much maintainable. In a suit of this nature the civil Court does not decide the question of tenancy. Hence, I am of the opinion that the contention of the defendants that the suit of the plaintiffs seeking for the relief of permanent injunction is not maintainable in view of the pendency of the dispute pertaining to suit property before the Land Tribunal against the plaintiffs is not acceptable. Hence, I answer preliminary Issue No.3 in the ***Affirmative***.

8. Having discussed above and having opined so, the court proceeds to pass the following:

: O R D E R :

**The Preliminary Issues no.3 is answered
in the Affirmative.**

The suit of the plaintiff is maintainable.

**In view of the circumstances, there is no
order as to costs.**

*(Dictated to the Judgment Writer, transcribed and typed by her,
corrected by me and then pronounced in the open Court on this 21st day
of April, 2023).*

**(Basavaraja Thulasappa Nayaka)
IV Addl. Civil Judge & JMFC.,
Belagavi**