

KABG040026572022



Presented on : 13-12-2022

Registered on : 14-12-2022

IN THE COURT OF IV ADDL. CIVIL JUDGE AND JMFC, BELAGAVI.

**PRESENT: BHUVANESHWARI D. BA, LLB (Hon's), LLM.
IV Addl. Civil Judge & JMFC.,
Belagavi.**

Dated, on this 09th day of April, 2026

ORIGINAL SUIT No.1375/2022

PLAINTIFFS:	1. Smt. Laxmi W/o. Ramu Patil Age: 74 years, Occ: Household Work R/o: # 172 Chawat Galli, Janewadi, Belagavi 2. Smt. Laxmi W/o. Narayan Patil Age: 69 years, Occ: Household Work R/o: # 543 Siddeshwar Galli, Ramnagar, Tq: Joida, Uttara Kannada Karnataka. 3. Smt. Rukmini W/o. Balu Bijagarnikar Age: 67 years, Occ: Household Work R/o: Patil Galli, Belagundi, Belagavi. 4. Smt. Narmada W/o. Raghoba Chougule Age: 65 years, Occ: Household Work R/o: 90 Chougule Galli, Belvatti, Tq: Hukkeri, Dist: Belagavi. 5. Smt. Vimal W/o. Nivruti Majukar Age: 55 years, Occ: Household Work R/o: #1189 Mangai Nagar 3rd Cross, Yellur, Tq & Dist: Belagavi.
(By Shri. M. N. Kulkarni, Advocate)	

V/s.

DEFENDANT:	1. Shri. Parashuram S/o. Laxman Hosurkar, Age: 55 years, Occ: Agriculture, 2. Shri. Kallappa S/o. Laxman Hosurkar Age: 40 years, Occ: Agriculture, 3. Shri. Balu S/o. Sommanna Hosurkar Age: 58 years, Occ: Agriculture, 4. Shri Kallappa S/o. Sommanna Hosurkar, Age: 52 years, Occ: Agriculture, 5. Smt. Paravati S/o. Rama Hosurkar Age: 50 years, Occ: Household Work, 6. Shri. Arjun S/o. Rama Hosurkar Age: 57 years, Occ: Agriculture, 7. Shri. Narayan S/o. Rama Hosurkar Age: 55 years, Occ: Agriculture, 8. Shri. Yallappa S/o Rama Hosurkar, Age : 51 years, Occ : Agriculture, Defendant No.1 to 8 are R/o : Navage, Tal/Dist: Belagavi.
(Rep. By Sri. S.R. Nerli, Advocate)	

ORDER ON PRELIMINARY ISSUES No.5 AND 6

It is the case of the plaintiffs that land bearing R S No:195/2 measuring 10 Acre 11 gunthas and R S No: 192/2 measuring 8 gunthas 06 annas which is situated at Navage Village was possessed by Mahadev Parashuram Gurav and Kishan Parashuram Gurav as landlords. The said

land was cultivated by Somanna, Rama and Laxman S/O Govind Hosurkar and Yashodabai Meenaji Toralkar as tenants. It is submitted name of somanna Govind Hosurkar was recorded as cultivator though Yashodabai Meenaji Toralkar was cultivating the lands. Somanna and Yashodabai Meenaji Toralkar on the basis of mutual understanding are said to have filed Form No.7 in respect of R. S No: 195/2 and 192/2 with condition to get the name of Yashodabai entered after obtaining occupancy rights as she was in possession and cultivation as tenant. It is submitted agreeing with Somanna and his brothers she did not file Form No.7 and it is contended occupancy rights were granted to Somanna, Rama and Laxman under order dated 23.09.1997. It is submitted by plaintiff subsequent to this an agreement was executed by them to transfer rights upon completion of six years period of non alienation put up by the Land Tribunal Belagavi on 11.01.1979. The plaintiffs submit Yashodabai was in the possession of the suit property and her illiteracy is attributed for not getting her name entered in the property extract.

2. It is submitted by the plaintiffs that on completion of 15 years from the date of order passed by the Land Tribunal the defendants have executed document dated 21.11.1994 confirming lawful possession and payment of occupancy price paid by Smt. Yashodabai Meenaji Toralkar by executing document. It is contended that Smt. Yashodabai Meenaji Toralkar is in the possession of the property till her demise in the year 2001.

3. The plaintiffs submits that subsequent of entering into agreement dated 21.11.1994 Smt.Yashodabai Meenaji Toralkar has

found that there is a mistake in the description and after mutual negotiation that were held the predecessor in title of the defendants confirmed the agreement dated 11.01.1997 and 21.11.1994 and voluntarily executed rectification agreement on 29.04.1995 before the witness. The plaintiffs submit that the defendants kept on postponing the execution of sale agreement though the same was denied by the predecessor in title. The plaintiffs contending the refusal by the defendants to convey the suit property as per the terms and conditions of the agreements and giving threat of dispossession from the suit property have instituted this suit seeking the relief of mandatory injunction and perpetual injunction.

4. The defendants No.1 to 8 being represented through their counsel have filed written statement refuting the contentions taken by the plaintiff in their plaint averments. Further it is submitted that Agreement dated 11.01.1979 and Written Agreement dated 21.11.1994 and Rectification Agreement dated 29.04.1995 are against the mandatory provisions of Karnataka Land Reforms Act. It is further contended that the alleged agreements are entered into contemplated unlawful objectives. The defendants also submit that the agreements were executed within prohibitory period provided under Section 61 of the Karnataka Land Reforms Act. It is further submitted that as under Section 61 of Karnataka Land Reforms Act there is restriction to alienate the property during non-alienation period and agreements entered into with unlawful objectives or opposed to public policy is void-ab-initio. The defendants further contended that Rectification deed do not change the effect on agreements from unlawful to lawful objectives. It

is the case of the defendants that institution of the said suit after lapse of 20 years subsequent to the death of their mother Smt. Yashodha in the year 2001 is not explained by stating cogent reasons. The defendants further submitted that the cause of action to institute the suit is illusory and the contentions are also taken with regard to suit being barred by law governing aspect of limitation and defendants denied the execution of the alleged aforementioned agreements by their predecessor in favor of mother of plaintiffs in specific. Form No. 7 is said to have been issued after sending notice as required under law. On all these grounds the defendants No.1 to 8 contended that the suit of the plaintiff is not maintainable.

5. On the basis of pleadings of the parties and documents produced at the initial stage, considering the matters that are affirmed by one party and are denied by other party by laying emphasis on the statutory provision laid down in Order XIV Rule 1 of CPC, the predecessor in office has framed 8 issues on 21.06.2023 in which Issues No.5 and 6 are ordered to be treated as Preliminary Issues following;

ISSUES

1. Whether the plaintiffs prove that the predecessor of defendants executed agreement dated.11-01-1997 and 21-11-1994 agreeing to transfer the ownership of Mitthe suit property to deceased Smt. Yashoda Bai?
2. Whether the plaintiffs prove that predecessor of defendants executed rectification agreement dated.29-04-1995 as contended in the plaint?

3. Whether the plaintiffs prove that they are in possession and enjoyment of the suit schedule property as contended in the plaint?
4. Whether the plaintiffs prove the interference by the defendants as alleged in the plaint?
5. Whether suit of the plaintiff is not maintainable?
6. Whether court fee paid by the plaintiff is proper?
7. Whether the plaintiff is entitle for the relief sought in the plaint?
8. What order or decree?

In which Court has ordered Issue No.5 and 6 treated as Preliminary issues.

6. Heard learned counsel for plaintiffs Sri. GMK for MNK and Counsel for defendants Sri. SRN on preliminary issues. Both counsels have submitted written synopsis and citations relied by them respectfully in support of their case.

Issue No.5 : Whether suit of the plaintiff is not maintainable?

Issue No.6 : Whether the Court Fee paid by the plaintiff is proper?

7. Answer to the Preliminary Issues are as under ;

Issue No.5	In the Negative
Issue No.6	In the Affirmative

REASONS

8. Preliminary Issue No. 5: Whether suit of the plaintiff is not maintainable?

The present suit is instituted in the year 2022 by the plaintiffs as against the defendants No. 1 to 8 seeking the relief of mandatory injunction and as per the agreement executed by predecessor in title of the plaintiffs in favor of Smt. Yashodabai Meenaji Toralkar and also sought decree of perpetual injunction to restrain the defendants from disturbing the peaceful possession of the suit property. It is to be noted that the question encompassing maintainability of suit are to be treated as preliminary issue as provided under Order 14 Rule 2 of CPC which reads as follows :

*2[2. Court to pronounce judgment on all issues.—
(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue.

9. The said statutory provisions in explicit terms indicate that if there is bar of the suit created by any law for time being if any issue is pertaining to the jurisdiction of the Court the same has to be treated and disposed off as preliminary issue.

10. In this specific suit the contentions of the defendants No.1 to 8 is that suit of the plaintiff is not maintainable as per Section 48 of the Karnataka Land Reforms Act, Section 6 (h) of Transfer of property Act and Section 23 of the Contract Act and Section 61 of the Karnataka Land Reforms Act and suit being barred by law of limitation as suit is instituted after lapse of 30 years.

11. The plaintiffs contends that Somanna, Rama, Laxman along with Smt. Yashodabai Meenaji Toralkar are tenants and cultivators of the suit property and they contend that after completion of the period of non-alienation, the property was agreed to be transferred to Smt. Yashodabai Meenaji Toralkar. The plaintiffs submits that accordingly the agreement dated 11.01.1979, 21.11.1994 and rectification dated 29.04.1995 was entered by the predecessor in title of the defendants. The plaintiffs submitted that plain reading of agreement dated 11.01.1979 shows that it is an agreement confirming possession of Smt. Yashodabai Meenaji Toralkar wherein she has given consent to Somanna Hosurkar and his brother to filed Form No. 7. Later contended that Section 48 of the Karnataka Land Reforms Act , which provides that tenancy rights cannot be claimed unless the names are

appearing in the property extract is not applicable to the present facts. The contentions of the plaintiffs is that agreement dated 11.01.1979 is not sale, gift, exchange, mortgage, lease or assignment and it is confirmation of lawful possession of Smt. Yashodabai Toalka r. Hence, they contend that Section 61 can be only made applicable if the transfer made is registered instrument.

12. If the contentions of the defendants that on the grounds of the suit being barred by Section 48 of Karnataka Land Reforms Act is considered, it is incumbent upon this Court to peruse Section 48 of the Karnataka Land Reforms Act and its statutory implication. **Section 48 of Karnataka Land Reforms Act reads as follows :**

48. Constitution of Tribunals.—(1) The State Government shall, by notification, constitute for each Taluk a Tribunal for purposes of this Act consisting of the following members, namely:—

(i) the Assistant Commissioner of the Revenue sub-division having jurisdiction over the Taluk or an Assistant Commissioner specially appointed for the purpose by the State Government.

(ii) four others nominated by the State Government of whom at least one shall be a person belonging to the Scheduled Castes or Scheduled Tribes,

3[Provided that if in its opinion it is necessary so to do, the State Government may constitute additional Tribunals for any taluk and the Deputy Commissioner may, subject to any general or special orders of the State Government, distribute the work among the Tribunals in any taluk.]3

(2) The Assistant Commissioner shall be the Chairman of the Tribunal.

(3) The State Government may from time to time likewise re-constitute the Tribunal. 1[Any proceedings pending before the Tribunal shall be continued by the reconstituted Tribunal as if the same were instituted before it.

Explanation.—For the purpose of this sub-section ‘reconstitution’ shall include removal of a member from or nomination of a new member to the Tribunal.]

(4) The quorum to constitute the meeting of the Tribunal and procedure to be followed by it shall be such as may be prescribed.

(5) No act or proceeding of the Tribunal shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution or re-constitution thereof.

(6) The non-official members of the Tribunal shall be entitled to such traveling and other allowances as may be prescribed.

(7) The Tahsildar 1[or any officer specially appointed for the purpose by the State Government]1 shall be the Secretary of the Tribunal.

13. Section 48 is provision deals with constitution of Tribunals. Complete reading of the said provision do not contemplate any bar that is imposed on jurisdiction of this Court to try and entertain the suit of this nature. The other facet of the argument canvassed by defendants counsel is that Agreement dated 11.01.1979 and Agreement dated

21.11.1994 and Rectification Agreement dated 29.04.1995. are entered into with the purpose of unlawful objective and the same are averred to be treated as void which do not recognize them as enforceable in the eyes of law.

14. Section 6 (h) of Transfer of Property Act reads as follows:

No transfer can be made in so far as it is opposed to the nature of the interest affected thereby, or [for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or to a person legally disqualified to be transferee]

15. Section 23 of the Indian Contract Act reads as follows :

What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law⁴; or

is of such a nature that if permitted, it would defeat the provisions of any law; or

is fraudulent ; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

16. Mere pleadings in the written statement and arguments canvassed by counsel for defendants contending that agreements

entered during the period of non-alienation with unlawful intent cannot be believed at this stage as the same requires thorough examination by adverting to fair trial. On these grounds the suit of the plaintiffs cannot be dismissed as not maintainable at this stage of the suit, as the trial of the suit has not yet been commenced.

17. On the other grounds taken by the defendants counsel to prove that the agreements are void as per Section 61 of the Karnataka Land Reforms Act cannot be considered. The ascertainment of agreement executed during the period of non-alienation requires examination of material evidence placed on record which is adduced by both the parties and same can be only be decided after both the parties have put forth their claim and defence before the Court to arrive at the findings in this aspect.

18. The suit being barred by law of limitation is also one among the other grounds taken by the defendants to hold the suit as not maintainable. The defendants contended that mother of the plaintiff died in the year 2001 and suit is instituted after lapse of more than 30 years. In this regard if the cause of action to institute the present suit is perused, the plaintiffs have contended that on 09.11.2022 when the defendants fatally refused to act as per the terms and conditions of the agreements and started giving threat of dispossession to the plaintiffs from the suit property the cause of action to institute this suit is said to have arose. If the said cause of action is taken into consideration the suit of the plaintiffs is well within the period of limitation as the relief of mandatory injunction and

perpetual injunction is sought and the suit do not contain the relief in respect of agreements alone to hold that suit of the plaintiffs is not maintainable.

19. To determine the said aspect this court places reliance on the decision of Hon'ble Supreme Court of India in **Major S. S. Khanna vs Brig. F.J. Dillon 1964 SCR (4) 409** wherein it is held that "The Judge of the Court of First Instance unfortunately assumed without a trial an affirmative answer to both these questions. Under O. 14 r. 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court ; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of the suit"

20. The ruling relied by the counsel for defendants is:

1) 2006 (1) KLJ 377 in which they have efficacious that plaintiffs have not showing person being in possession is not entitled for grant of occupancy

rights is not applicable to the present averments forthwith in the form of pleadings by both the parties.

2) 1977 (1) KLJ 377 is also pertaining to granting of occupancy rights this Court has no jurisdiction to grant occupancy rights hence, in the ruling stated are not applicable.

21. Article 113 reads as follows :

If the said provisions prescribed in suit seeking the relief of perpetual injunction is considered, it is to be noted that suit is well within the period of limitation.

22. The Court is of the view that at this stage of the suit no grounds are made out by the defendants No. 1 to 8 to hold that suit of the plaintiffs is not maintainable as all the contentions raised by the defendants can be considered in respect of the entitlement of reliefs claimed by the plaintiffs in this suit at the time of delivering the final orders in this suit. **Hence, Issue No. 5 is answered in the Negative holding that suit of the plaintiff is maintainable.**

23. **Issue No. 6 : Whether the Court Fee paid by the plaintiff is proper?**

The plaintiffs have sought the relief of mandatory injunction and perpetual injunction and valued at Rs. 2000/- by paying Court Fee as

required under Section 26 (c) of the Karnataka Court Fees and Suit Valuations Act, 1958 reads as follows :

(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees [one thousand] [Substituted by Act 21 of 1979 w.e.f. 31.3.1979.], whichever is higher.

24. The said statutory provisions clearly contemplates that if the relief sought is with reference to any immovable property and if plaintiffs title to property is denied or if issue is framed regarding title of the plaintiffs then the Court Fee shall be computed on one half of the market value of the property. In any other case, fees is to be computed on the relief claimed in the plaint or Rs.1000/- whichever is higher unless suit relief sought in reference of the immovable property and no issue is framed regarding title of the plaintiffs. Hence, the question of computing paying Court Fee under Section 24(b) of Karnataka Court Fee and Suit Valuation Act as stated by the defendants does not survive for consideration as in this suit, the relief of declaration is not sought hence, the question of Court Fee under Section 24(b) of Karnataka Court Fee and Suit Valuation Act does not arise. **Hence, Issue No. 6 are answered in the Affirmative holding that Court Fee paid is proper.** Accordingly, I proceed to pass the following:

ORDER

***The suit of the plaintiffs is maintainable
and Court Fee paid by the plaintiff is proper.***

(Directly dictated to the Stenographer Grade-III on computer, typed by her and corrected by me and pronounced in the open Court, on this 09th day of April, 2026).

Sd/-
(Bhuvaneshwari D.),
IV Addl. Civil Judge & JMFC,
Belagavi.