

IN THE COURT OF ADDL. CIVIL JUDGE & JMFC,
AT: MUDHOL

Present : - **Sri Ajit Devaramani**, B.Sc., LL.B.,(Spl)

Addl. J.M.F.C. Mudhol.

DATED THIS THE 27th DAY OF JANUARY – 2018

O.S.No.282/2011

Sri Shankareppa Hunshikatti & others V/s State Govt of Karnataka

IA.No.VIII

Applnt/Defnt No.3 :1) Sri. Ashok S/o Murigeppagouda Patil,
Age:52 years, Occ: Agriculture and business
R/o: Jalikatti KD, Tq. Mudhol & others

(By Sri. M.B.T Adv.)

-V/s -

Oppnt/Plnttfs : 1) Sri Shankareppa S/o Gurappa Hunashikatti,
Age: 70 years, Occ: Agriculture,
R/o:Kadarakoppa, Tq. Mudhol & others.

(By Sri. BHP Adv.)

-ORDERS ON IA No.III-

1) This application is filed by the defendant No.3 / applicant U/o 7 Rule 11 r/w sec.151 of CPC with the prayer to reject the plaint.

2) The said application is annexed with the affidavit duly sworn by the applicant/defendant No.3 contending that, defendant No.3 according to pleading, numerous persons are in possession of separate strips in RS.No.69/2B of Jalikatti KD village. So, the cause of action for each person differs as they have claimed title by adverse possession. Therefore, the cause of action mentioned in the plaint does not apply to every plaintiff, for all 24 persons the cause of action cannot be the same. Hence this suit is also barred under law. Hence, prays to reject the plaint.

3) On the other hand opponents/plaintiffs have filed their objections to this application stating that, The suit is not maintainable under law and facts. The said application is not supported with proper reasons and grounds to allow the application. It is false that the suit is barred by res-judicata. The defendants have confused themselves as numerous plaintiffs are in possession of separate strips of RS.No.69/2B of Jalikatti KD village. It is denied that cause of action is illusory and no common cause of action has arisen for all the plaintiffs. In para No.6 of the plaint it has been clearly mentioned when the defendant No.3 to 6 started to deny the right, title and interest of the plaintiffs and numerous persons of Kadarakoppa village over the suit property and defendants started to give threat to

dispossess the plaintiffs and others from their lawful possession. Hence there is a common cause of action to all plaintiffs. The application filed by the defendants is misconceived under law and facts. Hence, prays to dismiss the application.

4) I have heard the arguments and perused the material on record.

5) On the basis of the aforesaid points the following points arise for my consideration.

Point No.1:- Whether applicant / defendant No.3 made out the sufficient reasons to reject the plaint?

Point No.2: - As per final order for the following reasons?

6) My answers to the above points are as follows....

Point No.1: - **In Affirmative**

Point No.2: - **As per final order for the following....**

- REASONS -

7) This suit is filed by the plaintiffs against the defendants for Declaration of title by way of adverse possession and permanent injunction alleging that,

plaintiffs are permanent residents of Kadarakoppa village and also ordinary residents of Jalikatti KD village, of Mudhol taluka Kadarakoppa and Jalikatti KD villages are adjoining to each other. Defendant No.3 to 6 are the members of one family and they are legal representatives of one Murigeppagouda Holabasanagouda Patil of Jalikatti KD village. Originally land RS.No.69/2B belongs to Murigeppagouda Holabasanagouda Patil. Out of the said land on northern side the original owner has sold 2 acers 30 guntas of land to one Ramappa Basappa Chikkur. The remaining portion of RS.69/2B is uncultivable land which was fallow and plaintiffs and other numerous persons of Kadarakoppa village were making use of the said portion of land totally measuring 6 acers and 21 guntas. Out of that about more than 3 acres of land is uncultivable and gone to diluvium due to stream adjoining on the eastern side of RS.No.69/2B and the remaining area of 3 acres 21 guntas is in exclusive possession of plaintiffs and numerous persons of Kadarakoppa by putting temporary sheds and also hystacks. Since 50 years they are in possessions with knowledge of Murigeppagouda Patil. Upto 1982 said Murigeppagouda has not objected the possession of plaintiffs, but during 1982 Murigeppagouda filed OS.No.190/1982. The said suit was dismissed on 03-01-1990. Thus the plaintiffs are in possession and enjoyment

of the respective portion till July 2011. during July 2011 defendant No.3 started the obstruction regarding cutting the trees grown in the area owned and enjoyed by plaintiffs and numerous persons. It is revealed from records that ME.No.648 that the owner of RS..No.69/2B has relinquished the area of 2 Acres 30 guntas in favour of defendant No.1 and 2 behind the back and without the knowledge and consent of plaintiffs and others. Against the said OS.No.190/1982 defendant No.3 to 6 have preferred an RA.No.25/1990 and have obtained exparte decree against the plaintiffs and others, said decree dtd:07-07-1995 is paper decree, sham and bogus and not binding on the present plaintiffs. Hence, plaintiffs have filed this suit for Declaration and Consequential Relief of Injunction and prays to dismiss the application.

8) Before going to discuss the pleadings and objections to IA No.VIII, now I feel it is relevant to quote the provisions of order 7 Rule 11 of CPC.

Order 7 Rule 11 of CPC – Rejection of Plaintiff.

The plaintiff shall be rejected in the following cases:

a) Where it does not disclose a cause of action:

10. Plaintiffs have contended in their objections that defendant no.

"Case called out in the open court. Advocate for petitioner No.1 present. Petitioner No.2 and their counsel absent. Petitioner No.1 absent, Advocate for petitioner No.1 prays time. No proper reasons. It appears that petitioners are not interested in continuing with the matter. Hence prayer of the advocate for the petitioner No.1 is rejected and petition is dismissed for non prosecution."

11. From the pleadings and the documents produced by both the parties shows that there is no valid decree of divorce by the competent court of law between the Defendant No.1 and deceased shivakumar. In the absence of such valid decree of divorce it cannot be said that defendant No.1 is the divorced wife of deceased Shivakumar.

According to Karnataka Civil Service (Appointment on Compassionate Grounds) and Rules as stated Supra the only widow, son, unmarried daughter, widow daughter are eligible for the compassionate job. In the instant case there are no material to show that defendant No.1 is the divorce wife. Such being the case when wife

of deceased is alive the cause of action for the plaintiffs to seek the service benefits does not arise at all.

12. Plaintiffs have made a prayer in the plaint to declare that the plaintiffs and the defendants No.2 to 4 are only entitled to service benefits of deceased Shivakumar Basappa Badiger, as well as defendant no.2 is entitled to the job on compassionate ground. In view of the Karnataka Civil Services (Appointment on Compassionate Grounds) and Rules only widow, son unmarried daughter, widow daughter are eligible for service benefits. When the defendant No.1 who is the widow of deceased Shivakumar Badiger is alive a cause of action for plaintiffs seeking a declaration and injunction does not arise at all. Therefore, **I answer the point No.1 in affirmative.**

13. **Point No.2:-** As per the discussion made herein above and in view of my findings given to point No.1, I proceed to pass the following:

- ORDER -

IA No.3 filed by defendant No.1 U/o.7 Rule 11 is hereby allowed.

Hence, plaint is hereby rejected.

Draw decree accordingly.

In view of the order passed on
IA No.3, IA No.1 does not survive
for consideration. Hence, disposed
off accordingly.

[Dictated to the stenographer directly on computer, typed by her, revised
and corrected by me and then pronounced in the Open Court this the 27th
day of January -2017]

(Ajit Devaramani)
Addl. CJ., & JMFC, MUDHOL.