

KADK600005562024



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC,
MOODABIDRI, D.K.**

PRESENT: SRI KRISHNA RAJ K. B.A., LL.B.
SENIOR CIVIL JUDGE & JMFC,
MOODABIDRI, D.K.

Dated this the 19th day of June 2026

O.S./25/2024

PLAINTIFF: Mr. Guruprasad,
S/o. Late S. Ramesh Rao,
Aged about 47 years,
R/at Ganga Prasad,
Site No.604, 3rd Block,
Katipalla, Mangaluru,
D.K. District – 575 030.

(By Advocate Sri V.R.S.)

- Vs -

DEFENDANTS: 1. Mr. Mohan Shetty,
S/o. Late Muddanna Shetty,
Aged 60 years,
R/at Rajdhani, Bajpe Village & Post,
Mangaluru Taluk.

2. Mr. Hariprasad Shetty,
S/o. Late Subash Shetty,
Aged 49 years,
Nalya Padavu, Shakthinagar,

Mangaluru Taluk.

3. The State of Karnataka,
Rep. By Deputy Commissioner,
Mangaluru Taluk.

(D1, 2 by Adv. Sri J.P.B.
D3 by Adv. Sri G.K.R.)

IN I.A.NO.12

Applicant/

Defendant No.3 : The State of Karnataka

- Vs -

Opponents : Mr. Guruprasad and others

ORDERS ON I.A.No.12

I.A. No.12 is filed by defendant N.3 under Order VII Rule 11(d) and Section 151 of C.P.C. R/w. Section 135 of Karnataka Land Revenue Act, 1964 to reject the plaint as against defendant No.3 on the ground that the suit is barred under the provisions of Karnataka Land Revenue Act.

2. In the accompanying affidavit, the defendant No.3 submitted that the plaintiff has filed suit for declaration that the plaintiff is the absolute owner of the plaint schedule property and consequential relief of permanent injunction with respect to the suit schedule property. The Assistant Commissioner has ordered that the suit schedule property is

B-Kharab land and accordingly, the mutation in the name of plaintiff on the basis of the alleged Will deed has been cancelled. In view of Section 135 of Karnataka Land Revenue Act, the civil suit is not maintainable before the Civil Court against the State Government. The suit schedule property is belonging to the Government, the plaintiff has no manner of right, title and interest over the suit schedule property. Hence, the plaint is liable to be rejected against defendant No.3.

3. The above application is resisted by the plaintiff by filing his objections. In the objections it is stated that the application filed by defendant No.3 is not maintainable and liable to be dismissed in limine. The plaintiff has filed the suit for the relief of declaration of title and other consequential reliefs before the Civil Court. The bar enumerated under Section 135 of Karnataka Land Revenue Act is applicable only with respect to the revenue entries made by the Revenue Department. In the present suit, the plaintiff is not challenging the revenue entries, the suit for declaration of title is maintainable against the Government. The plaintiff has produced Sale Certificate, Will deed, Trust Deed etc. to substantiate his case. Hence, the contention urged by defendant No.3 cannot be accepted. Therefore, the above application is liable to be rejected.

4. Heard the arguments of learned counsel for plaintiff and defendant No.3.

5. The points that would arise for consideration of this court are:-

1. Whether the defendant No.3 has made out sufficient grounds to reject the plaint as against the defendant No.3 under Order 7 Rule 11(d) of CPC?
2. What order?

6. My findings on the above points are as follows:-

Point No.1 : In the Negative

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

R E A S O N S

7. **POINT No.1:-** It is the specific case of the plaintiff that plaintiff is the absolute owner and in lawful possession of the suit schedule property bearing Survey No.35-7 measuring 11 cents situated at Pranthya Village of Moodabidri Taluk. The suit schedule property originally belonged to grandfather of the plaintiff namely, Sri Venoor Krishnayya and one Mr. Narayana Upadhyaya, who have purchased the same under Sale Certificate dated 16.04.1912 issued in Execution Proceedings No.19/1911 arising out of O.S. No.540/1908. The said Narayana Upadhyaya died as a bachelor, Venoor Krishnayya continued to be in possession and enjoyment of the suit schedule property. Venoor Krishnayya died in the

year 1962 leaving behind his wife Smt. Venkamma, said Venkamma also died in the year 1987 leaving behind their 3 female children. The said 3 daughters are unmarried and issuess. Out of 3 daughters, one of the daughter namely Shantha Bai inherited the suit schedule property and she has executed Will Deed dated 27.12.2001 bequeathing the suit schedule property in favour of the plaintiff. The plaintiff became the absolute owner and lawful possession of the suit schedule property. In the suit schedule property, there are 100 years old buildings and Veerabhadra temple is also situated. The commercial shops were occupied by the tenants. There is a dispute between the plaintiff and tenants. Based on the Will deed, the plaintiff had obtained mutation in his name in the year 2018, subsequently, the Assistant Commissioner has cancelled the same stating that the suit schedule property is B-kharab land belonging to the Government. The said order was challenged before the Deputy Commissioner. The Deputy Commissioner upheld the order of the Assistant Commissioner. The plaintiff has filed Writ Petition No.18041/2021 before the Hon'ble High Court of Karnataka, The Hon'ble High Court of Karnataka has set-aside the order passed by the Assistant Commissioner and remanded the matter. The Assistant Commissioner once again dismissed the appeal preferred by the plaintiff. Against the said order, the plaintiff has filed appeal before the Deputy Commissioner, the said appeal is pending for consideration. The plaintiff has

registered trust deed with respect to the temple situated in the suit schedule property before the Sub-Registrar, Moodabidri on 29.10.2003 for smooth functioning of the temple. Such being the case, on 07.07.2024, the officials of defendant No.3 colluding with defendants No.1 and 2 illegally trespassed into the suit schedule property and made an attempt to lock the temple situated in the suit schedule property. The defendants have denied the title of the plaintiff over the suit schedule property. Hence, the plaintiff has constrained to file the above suit for declaration and consequential relief of permanent injunction.

8. The defendant No.3 in his written statement denied the averments of the plaint and contended that the suit schedule property is Government paramboku land. As per Akarband, the suit schedule property is not a revenue land, it was entered as a Government paramboku B-Kharab land. The revenue records pertaining to the suit schedule property never entered in the name of alleged Venoor Krishnayya or Narayana Upadhyaya or in the name of Shantha Bai. The legal heirs of Narayana Upadhyaya are proper and necessary parties. In their absence, the suit is bad for non-joinder of necessary parties. The suit is barred under Section 135 of Karnataka Land Revenue Act. The Assistant Commissioner has passed an order dated 19.01.2018 to mutate the name of the plaintiff in the revenue records. After verifying the records, the Assistant Commissioner got corrected the said order by cancelling the

revenue entry under order dated 22.03.2018. The present suit filed by the plaintiff is barred by limitation and there is no cause of action to file the above suit. Since the proceedings are pending before the revenue court, the present suit is barred by principles of res-judicata.

9. In support of the case of the plaintiff, the plaintiff already got examined as PW1 and produced documents at Ex.P1 to P28. The learned counsel for defendant No.3 argued that, the suit against defendant No.3 for the relief of declaration and permanent injunction is barred under Section 135 of Karnataka Land Revenue Act. In para No.5 of the plaint, the plaintiff has narrated about the mutation proceedings pending before the Assistant Commissioner and Deputy Commissioner. The plaintiff is challenging the said mutation entry. Therefore, the present suit is hit by Section 135 of Karnataka Land Revenue Act. It is further argued that if at all, the plaintiff wants to claim right over the suit schedule property against the Government, first he has to file application before the Deputy Commissioner under Section 67(2) of the Karnataka Land Revenue Act. Unless the plaintiff exhausts the remedy under Section 67(2) of the Karnataka Land Revenue Act, the suit is not maintainable. Admittedly, the revenue proceedings are pending before the Deputy Commissioner, such being the case, parallel proceedings before the Civil Court is not maintainable. Hence, plaint is liable to be rejected against defendant No.3. In support of the

above arguments, the counsel for defendant No.3 relied on the decision of Hon'ble High Court of Karnataka in W.P. No. 44702/2017 between Sri B.L. Jardhana V/s. The Deputy Commissioner, Kodagu District, date of disposal 15.02.2019 and the decision of Hon'ble High Court of Karnataka in the case of Sri Basavaradhya V/s. The Deputy Commissioner, Kolar and others reported in ILR 2017 Kar 4389.

10. On the other hand, the learned counsel for plaintiff argued that the present application is filed by defendant No.3 when the case was posted for final arguments. In order to delay the proceedings, the above application is filed. The provisions of Section 135 of Karnataka Land Revenue Act is applicable only with respect to the revenue entries, not with respect to the suit for declaration and other consequential reliefs. The provision Section 67(2) of Karnataka Land Revenue Act is only applicable when the plaintiff seeks right over the suit schedule property through the Government admitting that the suit schedule property is a Government land. In the case on hand, the plaintiff is not claiming right over the suit schedule property through the Government, however, the plaintiff is claiming right over the suit schedule property based on the registered title documents which was executed in the year 1912. Therefore, the provisions of Section 67(2) of Karnataka Land Revenue Act is not applicable. The plaint cannot be rejected in part against the defendant No.3. Ex.P2 the Sale Certificate is the title document of the plaintiff.

Therefore, the suit for declaration of title and consequential relief is maintainable even against the Government. Hence, application filed by defendant No.3 is liable to be rejected.

11. In the light of the arguments advanced by both sides, I have perused entire materials placed on record. The plaintiff is claiming ownership and possession over the suit schedule property based on the Sale Certificate dated 16.04.1912 which is registered as document No.143/1911. The said Sale Certificate was issued in execution proceedings No.19/1911 arising out of O.S. No.540/1908. The said Sale Certificate is produced at Ex.P2. The contention of defendant No.3 is that the suit schedule property is B-Kharab land and it belongs to the Government. The defendants including defendant No.3 denied the title of the plaintiff. Hence, plaintiff has constrained to file the above suit for declaration of title and other consequential reliefs against defendants No.1 and 2 and the State Government. No doubt, the parallel proceedings are pending before the Revenue Court. In para No.5 of the plaint, the plaintiff has pleaded about the pendency of the revenue proceedings before the Deputy Commissioner. However, there is no prayer to set-aside the order passed by the Assistant Commissioner or Deputy Commissioner. If the plaintiff makes prayer to set-aside the order passed by the Revenue Court, the bar enumerated under Section 135 of Karnataka Land Revenue Act would have been attracted. However, there is no such prayer. The Revenue Courts have

no jurisdiction to declare the title of the plaintiff over the suit schedule property. The bar enumerated under Section 135 of Karnataka Land Revenue Act is applicable only with respect to the revenue entries and not with respect to declaratory relief. Under such circumstances, the bar enumerated under Section 135 of Karnataka Land Revenue Act is not applicable to the present suit. The decisions relied by the learned counsel for defendant No.3 is with respect to the provisions of Section 136 of the Karnataka Land Revenue Act. With respect to suit for declaration of title, the jurisdiction of the Civil Court cannot be taken away merely on the ground that parallel proceedings are pending before the Revenue Courts under Section 136 of the Karnataka Land Revenue Act. Therefore, the decisions relied by learned counsel for defendant No.3 referred supra are distinguishable and not applicable to the case on hand.

12. The defendant No.3 contended that, before filing the suit, the plaintiff should have filed an application before the Deputy Commissioner under Section 67(2) of the Karnataka Land Revenue Act. Since the plaintiff has not exhausted the said remedy, suit is not maintainable. Section 67 of the Karnataka Land Revenue Act deals with all public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and tanks and all canals and water-courses and all standing and flowing waters, and all lands

wherever situated which are not the property of individuals. In such cases, the person who is claiming right over such public road, street etc. shall file an application before the Deputy Commissioner. If the Deputy Commissioner after conducting enquiry, declined to grant the relief in favour of the applicant, as per Sub-Section 3, the aggrieved person may file a suit before the Civil Court. In the case on hand, the plaintiff is not claiming right over the suit schedule property through the Government. The plaintiff is claiming right over the suit schedule property based on the Sale Certificate which was issued in the year 1912 and subsequent Will deed which was executed in the year 2001. There is a title dispute between the plaintiff and defendants. The title dispute cannot be decided by the Deputy Commissioner by invoking Section 67 of the Karnataka Land Revenue Act. Under such circumstances, I am of the view that, the provisions of Section 67 of the Karnataka Land Revenue Act is not applicable to the case on hand. Suit for declaration of title and other consequential relief is maintainable before the Civil Court, even though the parallel revenue proceedings are pending before the Deputy Commissioner. The defendant No.3 has sought for rejection of plaint only against defendant No.3. Partial rejection of plaint is not permissible. In view of the above discussion, I am of the opinion that the defendant No.3 has failed to make out sufficient ground to reject the plaint under Order 7 Rule 11(d) of C.P.C. Accordingly, Point No.1 is answered in the Negative.

13. **POINT NO.2:-** In view of my findings on point No.1, I proceed to pass following:

ORDER

I.A. No.12 filed by defendant No.3
under Order 7 Rule 11(d) and Section 151 of
CPC R/w. Section 135 of Karnataka Land
Revenue Act, 1964 is hereby rejected.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced
by me in the open court on this the 19th day of June 2026)

(KRISHNA RAJ K.)
SENIOR CIVIL JUDGE & J.M.F.C.,
MOODABIDRI, D.K.