

KAUK210003932015



**ADDL. CIVIL JUDGE AND JMFC ANKOLA AT ,UTTARA
KANNADA**

Presided Over by **ARPITHA B BELLAD**

B.Com., LL.B.,
Addl., Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.31/2015

Dated this the 1st day of March 2024

- PLAINTIFFS :**
1. Sri. Anath Kallu Nayak
Age: 66 years, Occ:Agriculturist,
 2. Sri. Venkatraman Kallu Nayak,
Age: 64 years, Occ:Agriculturist,
 3. Sri. Vijay Kallu Nayak
Age:55 years, Occ:Agriculturist
& Private Job,
All are R/o: Venkappa House,
Belekeri, Ankola Tq.

(By: Sri M.P.B., Advocate)

-Vs-

DEFENDANTS: 1. Sri. Govindraya Subraya Nayak,
Age:62 years, Occ:Agriculture,

2. Sri. Vittal Subraya Nayak,
Age:58 years, Occ: Agriculture,
R/o:Bavikeri Ankola Tq.

(D1 & D2 By: Smt..S.N.H., Advocate)

Date of Institution of the suit : 08-04-2015

Nature of the Suit : Declaration of
Easementary rights

Date of commencement of the
evidence : 11-01-2017

Date of closing of the evidence : 30-10-2018

Date of Judgment : 01-03-2024

Duration : Year/s Month/s Day/s
-8- -10- -22-

: J U D G M E N T :

This suit has been filed by the plaintiffs seeking the relief of declaration of easementary right of necessity and prescription to draw water from the well situated at Sy.No.89/6 and to worship the deity and consequential relief of permanent Permanent Injunction against the defendants.

2. Factual score, which is necessary for exposition is as under:

It is averred that plaintiffs are the own brothers and the children of deceased Kallu Anant Nayak. The deceased Anant Kallu Nayak (grandfather of plaintiffs) had three sons among which Venkanna had no issues, Govind had one daughter by name Mani and the plaintiffs are the legal heirs of Kallu Nayak. Mani, daughter of Govind was given in marriage to Subray Nayak, resident of Bhavikeri Taluk. The land bearing Sy.No.89 of belekeri village got separated into 10 hissass and Sy.No.89/1 of Belekeri village belonged to the plaintiffs.

3. It is further averred that since the ancestors of plaintiffs and defendants constituted single family, they had dug a drinking water well on western side of Sy.No.89/6(Sy.No.89) for the purpose of domestic use from time immemorial and after Sy.No.89 got separated into hissass, hissedars of Sy.No.89/1 and 89/6 that is ancestors of plaintiffs and defendants have been using the water of the said well as such they have acquired easementary right by way of necessity and prescription. Earlier Sy.No.89/1 had not been any pot hissa but during the lifetime of deceased Kallu Nayak, Sy.No.89/1 got separated into hissa as Sy.No.89/1A and 89/1B. Sy.No.89/1A measuring an area of 0-4-8 was entered in village records in the names of plaintiffs as joint owners and cultivators and Sy.No.89/1B measuring an area of 0-0-8 is

found to be entered in the names of defendants and there is no any fence or compound between these two properties and Sy.No.89/6 is situated on eastern side of the said property. The father of the plaintiffs during his lifetime had given an area of 0-0-8 in Sy.No.89/1 to the mother of defendants which is numbered as Sy.No.89/1B. The property bearing Sy.No.89/1 belongs to the ownership of plaintiffs and Sy.No.89/6 is existed on eastern side that is Sy.No.89/6 is abutted to Sy.No.89/1B on southern side of Sy.No.89/1A and abutted to eastern boundary of nothernside of Sy.No.89/1A and Sy.No.89/6 measuring an area of 0-1-12 is standing in the names of defendants and there exists no fence or any compound to bifurcate the Sy.No. 89/6 and 89/1A because long back, the said properties were the family properties of plaintiffs and defendants that is to say the said properties belonged to deceased Kallu Naik and there was no drinking water well in the plaintiff's property. Sy.No.89/1 and 89/6 which are abutted to each other were the ancestral properties of family of plaintiffs.

4. It is further stated that since the mother of the defendants Manu was the only daughter of Govind, brother of plaintiff's grandfather, the right of the said Govind was inherited by the mother of defendants Manu. There exists a Nagadeva Katte and Choudidevi deity belonging to the the family of plaintiffs in an area of 0-1-12 in Sy.No.89/6 to

which the family of plaintiffs has been performing the pooja from time immemorial and the said temple is at the distance of 2-3ft from Sy.No.89/1A and there also exists a drinking water well in Sy.No.89/6 and the water of the said well has been using by the plaintiffs and their family by repairing the same with their own money and also installed 4 electric pumps to draw the water from the said well among which 3 pumps are belonging to plaintiffs and one pump belongs to the defendants and the plaintiffs and defendants have been continuously using the water of the said well situated in Sy.No.89/6 through ropes and pumps from time immemorial without any obstruction with the knowledge of the defendants from more than 20 years for daily use and for watering the trees. Since there are residential houses of plaintiffs and defendants and also since there is no any fence and compound wall to bifurcate the houses of plaintiffs and defendants, they have been coming and going to each others courtyard.

5. It is further averred that the well situated in Sy.No.89/6 is abutted to eastern boundary of Sy.No.89/1, plaintiffs only had made it a more depth so as to collect more water by putting cement ring etc and plaintiffs only performing the daily pooja of aforesaid temple and both the parties are drawing the water from the said well for the daily use, hence the plaintiffs have been using the water of the well by way of

easementary right of necessity and prescription and though the said water well is found to be in Sy.No.89/6 but more than half portion is situated in Sy.No.89/1 abutting to its boundary. It is further stated that defendants have no right to obstruct the plaintiffs from performing the pooja as well as from drawing the water from the well but still the defendants claiming to have done the survey by fixing the boundaries of Sy.No.89/1A, 89/1B and 89/6 have shown the aforesaid temple and the water well in their property and threatening the plaintiffs to obstruct them from performing the pooja and from drawing the water which the plaintiffs have been using from time immemorial and there is every chance for the defendants to obstruct the plaintiffs and this fact came to the knowledge of the plaintiffs on 15/02/2015 when the villagers were talking regarding the survey conducted on 24/05/2013 after which the plaintiffs obtained the survey map from survey department and got to know about the same. It is stated that defendants who originally belonged to Bhavikeri village have been residing in the suit property by inheriting the right through their mother in ancestral property of plaintiffs and there is a possibility for the defendants in obstructing the plaintiff from performing pooja and from drawing the water of the well. Hence, the plaintiffs have knocked the door of the Court.

6. Brief facts of the written statement -

The defendants admitted that they are the children of Manu Govind Nayak and denied all other averments of the plaintiff and contended that there exists a laterite stone compound between Sy.No.89/1A and 89/1B. It is admitted that Sy.No.89/1A belongs to plaintiffs and further stated that plaintiffs and defendants have been enjoying the suit schedule properties as per the partition that was effected in the family of plaintiff and defendants after the separate hissas and accordingly, they have been enjoying the said properties separately by digging the water well in their respective properties and also by taking the water connection of Panchayat. It is denied that Sy.No.89/1 and 89/6 are the ancestral properties of plaintiffs. It is further admitted that there exists a Nagarkatte in Sy.No.89/6 which has been constructed by the ancestors of defendants in the year 1987 and the plaintiffs as well as the villagers use to perform the pooja during festivals and the plaintiffs have been performing the pooja during the festivals for which the defendants have never obstructed them but defendants only have been performing the daily pooja. It is further contended that the well has been dug by the ancestor of the defendants in Sy.No.89/6 in the year 1985 for the own use and further stated that they have been residing separately by constructing the houses in their respective properties after becoming the hissas in Sy.No.89 and also they have constructed the well in their respective properties and also

there exists a well in an area of 0-4-4 in Sy.No.76/7 situated adjacent to southern side and northern boundary of of Sy.No.89/1A of plaintiff's property and the plaintiffs have been using the water of the said well for cattles and for gardening and the said well is in existence from the time father of plaintiffs and there also situated an irrigation well in an area of 0-4-4 in Sy.No.89/1A from which the plaintiffs have been using the water for their use and through the plaintiffs own two wells but to harass the defendants, they have filed this suit. It is further stated that suit well has been constructed by ancestors of the defendants in which the plaintiffs have no right, title or interest and there exists no necessity for the plaintiff since there is a source of water in their lands and also they have made an arrangement of the water provided by the panchayat also. It is further stated that the plaintiffs have attempted to install the pump and gadagade for which this defendants have obstructed and the plaintiffs are claiming the half of the well to be in their property by colluding with the survey officers and the defendants have preferred an appeal wherein it is shown in the map that the said well is situated in the defendants property. On all these grounds, prays to dismiss the said suit.

7. On the basis of the pleadings on record my predecessor has framed the following :

ISSUES

1. ವಾದಿಯರು ದಾವಾ ಆಸ್ತಿ ಸರ್ವೆ. ನಂ. 89ಂ:1 ಅ, 89ಂ:1 ಬ ನೇದಕ್ಕೆ ಸಂಬಂಧಿಸಿದ 89ಂ:6 ನೇದರ ಪಶ್ಚಿಮ ಗಡಿಗೆ ಹೊಂದಿಕೊಂಡಿರುವ ಬಾವಿ ನೀರನ್ನು ತಾವು ಅನಾದಿ ಕಾಲದಿಂದ, ಉಪಭೋಗ ಮಾಡುತ್ತಾ ಬಂದಿದ್ದರಿಂದ ಬಾವಿ ನೀನ್ನು ಪಡೆಯಲು ವಾದಿಯರಿಗೆ ಅನುಭೋಗದ ಹಾಗೂ ಚಿರಭೋಗದ ಹಕ್ಕು ಪ್ರಾಪ್ತವಾಗಿರುತ್ತದೆ ಎಂದು ವಾದಿಯರು ಸಬೀಸುಪಡಿಸುವರೇ?
2. ವಾದಿಯರು ದಾವಾ ಆಸ್ತಿ ಸರ್ವೆ ನಂ. 89ಂ:6 ರಲ್ಲಿ ಇರುವ ನಾಗದೇವರಕಟ್ಟೆ ಚೌಡಿ ದೇವಸ್ಥಾನಗಳ ದಿನನಿತ್ಯ ಪೂಜೆ ಮಾಡುವ ಹಕ್ಕನ್ನು ತಾವು ಹೊಂದಿರುತ್ತೇವೆ ಎಂದು ಸಾಬೀತುಪಡಿಸುವರೇ ?
3. ಪ್ರತಿವಾದಿಯರು ಸರ್ವೆ ನಂ. 89ಂ:6 ರಲ್ಲಿರುವ ಬಾವಿ ನೀರಿಗೆ ಹಾಗೂ ನಾಗದೇವರಕಟ್ಟೆ ಚೌಡಿ ದೇವಸ್ಥಾನಗಳ ಪೂಜೆಗೆ ಆತಂಕಪಡಿಸುತ್ತಿದ್ದಾರೆಯೇ?
4. ವಾದಿಯರು ತಾವು ಬೇಡಿದಂತೆ ಪರಿಹಾರ ಪಡೆಯಲು ಅರ್ಹರೇ ?
5. ಹಾಗಾದರೆ ಆದೇಶ ಅಥವಾ ಡಿಕ್ರಿ ಏನು?

8. In order to establish their case, plaintiff No.1 examined himself as P.W.1 and got examined other witnesses as P.W.2 and 3 and got marked the documents at Ex.P.1 to P.25 and closed their side. In rebuttal, defendant No.1 examined himself as D.W.1 and got marked the documents at Ex.D.1 to 36 and closed his side.

9. Heard learned counsel for the plaintiffs as well as learned counsel for the defendants at length. Perused the oral as well as documentary evidence placed on record.

The Counsel for the Plaintiffs in support of his arguments has placed a reliance upon following decisions -

- 1.HCR 2023 Kant. 599
2. AIR 1959 Bm 63
3. AIR 1986 Ker 75

10. On the other hand, the Counsel for the defendants in support of her arguments has placed a reliance upon following decisions -

1. AIR 1982 ALL 468
2. AIR 1977 Allahabad 283

11. Upon hearing arguments and on perusal of material placed on record, my findings to the above issues are as under:

Issue NO.1: In the Negative.

Issue NO.2:In the Negative.

Issue No.3: In the Negative.

Issue No.4: In the Negative.

Issue No.5: As per the final order for the following:

REASONS

12. REASONING ON ISSUE NO.1: These Issues are interrelated to each other and involve common appreciation of evidence and facts. Finding on issue No.1 will have bearing on others. Hence, to avoid repetition, all these issues are taken together for common consideration.

13. As could be seen from the pleadings, it is the case of the plaintiffs that ancestors of plaintiffs and defendants belonged to single family. Main propositus was one by name Anant Kallu Nayak who had three sons by name Kallu Anant Nayak, Venkanna and Govinda, among which Venakanna had no issues. Govinda had a daughter by name Mani. Plaintiffs are the sons of Kallu Anant Naik and defendants are the children of said Mani. The property bearing Sy.No.89 got separated into 10 pot hissas. The plaintiffs are the owners of Sy.No.89/1 and the defendants are the owners of Sy.No.89/6 which were the ancestral property of plaintiffs. Since the

ancestors of plaintiffs and defendants belonged to one family, they had dug a well on western boundary of Sy.No.89/6 for the use of their families from time immemorial and after Sy.No.89 got separated into hissas, hissedars of Sy.No.89/1 and 89/6, predecessor in title of the plaintiffs and defendants have been using the water from the said well, as such they acquired an easementary right of necessity as well as prescription. It is also stated that during lifetime of Kallu Anant Nayak, he had given an extent of 0-0-8 in Sy.No.89/1 to Lakshmi Govind Nayak, grandmother of defendants after which it got separated as Sy.No.89/1A and Sy.No.89/1B and Sy.No.89/1B came to be entered in the names of defendants having been inherited from their mother Manu. It is further pleaded that Sy.No.89/1 and 89/6 are adjacent to each other and there is no fence or compound to bifurcate the properties because all these properties originally belonged to Anant Kallu Nayak. The plaintiffs from their ancestors have been using the water from the well from time immemorial for more than 20 years situated in Sy.No.89/6 without any interruption with exclusive knowledge of the defendants.

14. On the other hand, the defendants admitted that they are the children of Manu but denied that the said properties were ancestral properties. It is contended that there exists a compound wall in between the parties. As per the partition in

families of plaintiffs and defendants, all properties got divided into separate hissas and has been enjoying the properties separately from long back. It is further pleaded that well is situated in Sy.No.76/2 belonging to the plaintiffs which is situated towards northern side of Sy.No.89/1A and also another well is situated in Sy.No.89/1A also, as such they have got two wells hence, there is no necessity for the plaintiffs to draw the water from the well situated in Sy.89/6. The grandfather of defendants Govinda Nayak had dug a well in the year 1985 for his own use.

15. In order to substantiate the claim of the plaintiffs, Plaintiff No.1 is examined as PW.1 by filing his affidavit evidence in lieu of examination in chief reiterating the averments made in the plaint in verbatim. PW.1 in his evidence submits that plaintiffs and defendants are the owners of Sy.No.89/1A and Sy.No.89/6 respectively which were the ancestral properties of plaintiffs which got separated into 10 hissas. A well is existed in Sy.No.89/6 on western boundary from time immemorial and they have been using the water from the said well as of necessity and prescription.

16. In support of his oral evidence he has also placed documentary evidence on record which got marked at Ex.P.1 to Ex.P.25.

17. In order to strengthen the case of the plaintiffs, the plaintiffs have also examined two witnesses by name Venkatramana Rama Nayak and Gopala Venkatramana Nayak as P.W.2 and P.W.3. They testified that they are acquainted with the plaintiffs and defendants and seen their respective houses and also seen the well and Nagarkatte and plaintiffs and defendants have been using the water from the said well. Earlier they used to draw water from gadegade and now they have installed electric pumps. Nagarkatte is near to the well and plaintiffs and defendants have been performing the pooja.

18. On the other hand, defendant No.1 is examined as D.W.1 and reiterated the written statement averments supporting their claim by denying that plaintiffs and defendants constituted single family. He stated that his grandfather Govinda was separated from his father Anant Kallu Nayak in 1928 only and Sy.No.89/6 and Sy.No.89/7 are the self acquired properties of his grandfather Govind Nayak . After the death of his grandfather, Sy.No.89/6 and Sy.No.89/7 came to be entered in the names of his grandmother Lakshmi Govind Nayak and after her death, it came to be entered in the name of his mother Manu after which came to be mutated in names of defendants and Sy.No.89/6 is not joint family property. Only the properties

standing in the name of Anant Kallu Nayak were partitioned as per the court decree in the year 1944 but during that time Govind, Kallu and Venkanna were residing separately and acquired properties separately and plaintiffs and defendants have been residing separately prior to the year 1928 and also they have dug a well in their respective properties for their use and there is also panchayat connection of water tap and also plaintiffs owns a drinking water well in their property bearing Sy.No.76/7 from which they have been using the water.

19. At the outset it is necessary to advert to the undisputed facts of this case. The relationship of the parties are in dispute. On going through the averments of written statement and chief examination of D.W.1, it clearly establishes the factum of relationship that main propositus was one Anant Kallu Nayak who had three sons by name Kallu, Venkanna and Govinda. The plaintiffs are the legal heirs of Kallu and defendants are legal heirs of Govinda. Hence, it is not necessary to give much stress on the relationship of the parties. The existence of the properties of the plaintiffs and defendants are also not in dispute. It is not in dispute that the property bearing Sy.No. 89/1A, Sy.No.76/7 belongs to the ownership of plaintiffs and Sy.No.89/1B and Sy.No.89/6 belongs to the ownership of defendants. The same is evident from Ex.P.1 and Ex.P.2 which are the Record of Rights

wherein the names of Plaintiffs and defendants are forthcoming to their respective properties. It is also not seriously disputed that an area of 0-0-8 was given to Laxmi Govind Nayak, grandmother of defendants and after her demise it came to be mutated in name of Manu and thereafter, it came to be mutated in the names of defendants. In this regard, Ex.P.5 and Ex.P.25 which are the mutation entries No. 2687 and 2576 depicts the names of Kallu Anant Nayak to Sy.No.89/1A and Sy.No.89/1B respectively. And also the suggestion made by counsel for defendants to P.W.1 during his cross-examination at page no.5 of para no.3 wherein it has been suggested that an area of 0-0-8 in Sy.No.89/1 is given to the defendants, itself shows an area of 0-0-8 is given up to Lakshmi which is also evident from documentary evidence. However, there is no serious dispute in this regard. It is also not in dispute that Sy.No.89/1 and Sy.No.89/6 are adjacent to one another. Ex.D.2 which is a survey sketch clearly goes to show that Sy.No.89/1 is adjacent to Sy.No.89/6, it is also relevant to consider here that Sy.No.76/2 in which the defendants claims to have water well belonging to plaintiffs, is also situated adjacent to Sy.No.89/1 on northern side.

20. Now coming to the aspect of existence of water well, it is also not in serious dispute. Though the plaintiff except

photos, have not produced any document to show the existence of disputed well but the defendants have not at all denied the existence of the said well. Also P.W.1 during his cross-examination, at page No.12 of para No.15 has clearly stated that disputed well is situated in Sy.No.89/6 and he is seeking a right of water in Sy.No.89/6. Hence, it clearly establishes that disputed well is situated in Sy.No.89/6 which is belonging to the ownership of defendants.

21. However, the plaintiffs claim is that the properties were ancestral properties of plaintiffs originally belonged to Anant Kallu Nayak and predecessor in title of plaintiffs and defendants had dug a well in Sy.No.89(which is now Sy.No.89/6) for the use of their families and after Sy.No.89 got separated into hissas, hissedars of Sy.No.89/1 and Sy.No.89/6 have been using the water from the said well from time immemorial as such they have acquired right of necessity as well as prescription since the plaintiffs have been using the water from the said well from time immemorial for more than 20 years peaceably, continuously and without any interruption.

22. The centripodal issue which revolves around the suit whether the plaintiffs have acquired an easementary right to draw water from the well situated in Sy.No.89/6 by way of easementary right of necessity as well as prescription. Before

going to discuss the merits of the case, let's discuss the relevant provisions and legal position in respect of easementary rights.

23. Sec 4. Easement defined -

An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

24. Dominant and servient heritages and owners.--The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.--In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

25. An easement is privilege though without profit enjoyed as a right by owner of the tenement in or over the of another person who is obliged, for the advantage of the former to suffer or refrain from doing something on his own tenement. An easement has six essential characteristics: (1) there must be a dominant and a servient tenement; (2) the easement must accommodate the dominant tenement; (3) the easement for beneficial enjoyment of the dominant tenement; (4) the dominant and servient owners must be different persons; (5) the easement should entitle the dominant owner to do and continue to do, or to prevent and continue to prevent, something in or upon or in respect of the servient tenement; and (6) that something must be certain or well defined and capable of being subject-matter of a grant.

Modes of Acquisition of Easements -

1. Easement of Necessity
2. Prescriptive Easements
3. Customary Easements
4. Easement by express grant.

26. In the present case on hand, the plaintiff has sought for easementary right to take water from disputed well by way of necessity as well as prescription.

27. Section 13 of Indian Easements Act, 1882 reads as under:

Easements of necessity and quasi-easements. -Where one person transfers or bequeaths immovable property to another-

(a) If an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) If such an easement is apparent and continuous and necessary for enjoying: the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or lessee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement:

(c) If an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) If such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal

representative of the testator, shall, unless a different intention is expressed or necessarily implied be entitled to such easement.

Where a partition is made of the joint property of several persons, -

(e) If an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entire to such easement, or

(f) If such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless the different intention is expressed or necessary implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e), are called easement of necessity.

Where immovable property passed by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed respectively, the transferor and transferee.

28. Sec 15. Acquisition by prescription -

Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure or by things affixed thereto as an easement, without interruption, and for twenty years, and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years, the right to such access and use of light or air, support or other easement shall be absolute.

29. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.--Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been

granted for a limited period, or subject to a condition on the fulfillment of which it is to cease.

Explanation II.--Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Explanation III.--Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.--In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

30. When the property over which a right is claimed under this section belongs to Government this section shall be read as if, for the words "twenty years", the words "thirty years" were substituted.

31. Before going further, at the prime outset it is prime factor to be noted here that the plaintiff in his plaint has

averred claiming easementary right both by prescription and necessity but the very claim by prescription and necessity itself is inconsistent. First of all, both these cannot go together. While easement of necessity has its origin in a statute, the right of easement by prescription is the result of continuous and hostile use to the knowledge of other person. **Easement of necessity begins out of an implied grant or permission on severance of tenements and a prescriptive right, in law, begins only out of a hostile or adverse user. Therefore, easement by prescription does not begin as long as easement of necessity(implied grant) continues. It is therefore follows that a claim of easement of necessity and prescription cannot co-exist. Easement by prescription commences only when easement of necessity ends.**

32. Be that as it may, so far as easementary right of necessity is concerned, as already extracted a relevant provision herein above, Section 13 of the Indian Easements Act deals with easement of necessity. An easement of necessity can arise only when there is a cessation of common ownership. It arises where both the servant and dominant tenement were in common ownership and by disposition, there was disintegration of the tenements. It is also well settled that **easement of necessity arises only where by a transfer, bequest or partition, a single tenement is**

divided into two or more tenements and any of those is to be situated that it cannot be enjoyed at all without certain privilege on another such tenement. When there is an impossibility of enjoyment and implied grant or reservation will be presumed in favour of the person holding the former tenement. It is also settled law that the creation of easement of necessity is an outcome of the prior relationship between the tenements. The disposition, which terminates the common ownership and give rise to an easement by implication of law, may be of either tenement, or be a simultaneous disposition of both tenements.

33. As already observed, in order to claim an easementary right by way of necessity then it must be proved that the dominant tenement and servient tenement must constituted the single tenement that is to say proof of common ownership must be shown.

34. In the present case on hand, the Plaintiffs are claiming easementary right to draw water from the well situated in Sy.No.89/6. Hence, the plaintiffs must show that Sy.No.89/1 and Sy.No.89/6 constituted a single tenement and later it got divided into separate parts. In the plaint averments, it is asserted that Sy.No.89 got separated into 10 hissas and all these properties were ancestral joint family properties which originally belonged to main propositus Anant Kalu nayak.

But the pleadings are silent in respect of Sy.No.89 as to how the main propositus acquired the property bearing Sy.No.89 and no doubt it has been pleaded that it got divided into 10 hissass but pleadings are absolutely silent as to how and under what manner it got divided into separate portions, whether through partition or bequest or any other mode of transfer. While addressing the arguments, the Counsel for the plaintiffs argued by referring to the averments of written statement wherein defendants admitted at para No.2 that as per the partition in the family of plaintiff and defendants, after divided the shares into different hissass, they have been enjoying the properties separately. By referring to the said averments the Counsel for the Plaintiffs argued that the defendants only have clearly admitted that there was a partition. No doubt it is true that defendants have averred as referred above but the same cannot be taken as conclusive proof of partition. The admissions must be specific and clear and shall contain all such material facts. Mere asserting that there was partition in between plaintiff and defendants family is not sufficient. It has to be pleaded when and in between whom the partition took place and which share was allotted to which party. It is also to be noted that though defendants stated that as per the partition, they have been enjoying the properties separately, but at para No.3, it is asserted that Sy.No.89/1 and 89/6 are not ancestral properties. Even during his chief examination he deposed that it is not

ancestral property. At this juncture it is essential to refer to Section 58 of Indian Evidence Act -

35. Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

36. On careful reading of the aforesaid provision, it is clear that facts admitted in pleadings or at hearing made by parties or their agents need not be proved but the proviso to the said section clearly indicates that the Court still in its discretion may call for proof of such facts. The Plaintiff can be insisted upon to prove his case and the plaintiff cannot derive the benefit of weakness from the case of the defendant. He has to prove his case on its own strength as per section 101 of Indian Evidence Act and he cannot succeed on any alleged weakness of the defendants case. Even if the defendants fail to appear and contest the case, it is still the duty of the plaintiff to prove his case.

37. In the present case on hand, pleadings are silent with regard to the partition of Sy.No.89. It is simply asserted that it got divided into 10 hissass but there is no clarity in the pleadings as to how it got divided. It is also not seen in the plaint as to on what date or year partition took place in the family of plaintiffs and defendants and what was the mode of partition whether by registered deed or by oral partition and who was allotted which property. It is also not forthcoming as to whom the other hissass were given. Admittedly, Sy.No.89 is divided into 10 parts but whether owners of other hissass were also family members, whether they were also allotted a share in Sy.No.89 in partition is not forthcoming. No doubt on oral and documentary evidence, it is established that ancestors of plaintiffs and defendants belonged to one family but under Hindu Law, mere existence of joint family cannot lead to the presumption of existence of joint family property. There is a presumption in respect of existence of joint family but there is no presumption in respect of joint family property and the one who asserts the same, the burden is on that party to prove the existence of joint family property. If the plaintiff discharges his initial burden and is able to prove the same, then onus shifts on the defendant to prove that it is his self acquired property.

38. In the case on hand, pleadings are lacking as to material facts to prove that Sy.No.89/1 and Sy.No.89/6 constituted

single tenement. Proof of common ownership must be shown. But plaintiffs have not produced an iota of document in respect of Sy.No.89. He has not produced any partition deed to show how the property bearing Sy.No.89 got divided into 10 hissas. Mutation entry in respect of Sy.No.89/1 is produced which reveals as to how Sy.No.89/1 got divided as Sy.No.89/1A and Sy.No.89/1B but no document either record of rights or mutation entry or partition deed has been produced to show the severance of tenements. During cross-examination of P.W.1, when the mode of partition was suggested to him, he pleaded ignorance of the same. He stated that he has produced the documents to show the factum of partition but no such documents are placed on record except the mutation entries in respect of Sy.No.89/1 which is not in dispute. To the contrary, Ex.D29 which is the Record of Rights produced by the defendants pertaining to Sy.89/6 depicts the name Govinda Naik, grandfather of defendants from the year 1921 to 1939. Ex.D.25 which is mutation entry No.1581 varasa reveals that after the demise of Govida Nayak on 13/10/1932, the property bearing Sy.No.89/6 along with other properties were inherited by his wife Lakshmi Govind Nayak. Ex.D.30 and Ex.D33 – Record of Rights pertaining to Sy.No.89/6 shows the name of Lakshmi Govind nayak, grandmother of defendants from the year 1939-1991 and as per Ex.D32 which is the mutation entry No.5872 varasa, the name of Manu, mother of defendants

came to be mutated after which the names of defendants came to be certified.

39. On perusal of the documentary evidence, no material has been placed on record to show that Sy.No.89 was partitioned and hissa 1 and 6 were allotted to the sharers of fathers of plaintiffs and defendants respectively. There is no material to prove the factum of partition and on mere unambiguous admission of the defendants, the factum of partition of Sy.No.89 cannot be inferred. Merely because, property got divided into separate hissass, it cannot be presumed that there was a partition.

40. Easement of necessity is created by doctrine of implied grant. It is an easement which, under particular circumstances, the law creates by virtue of the doctrine of implied grant to meet the necessity of a particular. It is an easement which is not merely necessary for the reasonable enjoyment of the dominant tenement, but one without which that tenement cannot be used at all. Such an easement lasts only so long as the necessity exists, for a grant arising out of the implication of necessity cannot be carried further than the necessity of the case requires. The grant must be either an express grant or implied grant and in the absence of the same, it will not amount to easement of necessity. In the present case on hand, there is no either oral or documentary

evidence to show the grant of right either express or implied. As already observed, no evidence has been placed on record to show the factum of partition or any transfer or bequest, as such there is no implied grant. No partition deed has been placed on record to show that at the time of partition, parties reserved an easementary right to draw water from the well.

41. During arguments, the Counsel for the Plaintiffs argued by referring to the averments of the written statement and the evidence of D.W.1 wherein it has been averred that grandfather of defendants had constructed the well in the year 1985 whereas during cross-examination, he stated that his father had dug a well which is contradictory to each other. He also referred to Ex.D.25 Mutation Entry No.1581 varasa which reveals that grandfather of defendants died on 1932 which itself shows that well is existed prior to the partition and the ancestors of both the plaintiffs and defendants were using the water from the said well. But I am not inclined to accept this argument. There is a variance in pleadings and evidence of defendants side but the plaintiffs cannot acquire an easementary right on the basis of the mere fact that well is in existence from long back and they have been using the water from the said well but he has to prove the same with cogent oral and documentary evidence.

42. Another point to be noted here is that a claim of an easementary right should be for beneficial enjoyment of land. The plaintiffs must prove that right to draw water from the well situated in defendants land is necessary for beneficial enjoyment of land. It is averred in the plaint that they have been drawing the water for domestic purpose, for cattles and for irrigating the lands. I do not think that drawing water for domestic purpose or cattles would fall under the ambit of beneficial enjoyment of land. And so far as irrigating the lands is concerned, the plaintiffs have not adduced either oral or documentary evidence to prove that they have grown up such and such trees, crops etc. Even Ex.P.1 – Record of Rights pertaining to Sy.No.89/1A for which the plaintiffs have claiming an easementary right, discloses at column No.13 as No Crop Info. It means that no crops are in existence in Sy.No.89/1A. The plaintiffs have not even produced any photos to show the same, as such the claim of an easementary right by the plaintiffs is not for any beneficial enjoyment of land.

43. The mere fact that one person draws water from a well situated on another person's land does not create an easement in the absence of proof of single tenement. Under Indian social conditions, a person owing a well is deemed to be under moral or pious obligation to allow the inhabitants of the locality to draw water from his well. The presumption in

view of social conditions should be that the right in all such cases is permissive and does not create an easement. In India, it is quite common, in villages as well as towns, for the owner of a well to allow neighbors to draw water for domestic purposes but the same amounts to a license which has nothing to do with the beneficial enjoyment of any land. At this juncture, it is relevant to go through the decision relied upon by the Counsel for the defendants reported in **AIR 1982 ALL 468 wherein Allahabad High Court referred the case of Chheddu Singh V.Kewal wherein it was held as under -**

“Furthermore, I am very doubtful whether the plaintiff has established his right of easement. All that he has proved is that he has been drawing water from a well which did not belong to him. The mere fact that one person draws water from a well situate on another person's land does not create an easement. Under Indian Social Conditions a person owning a well is deemed to be under a moral or pious obligation to allow the poor or less fortunate inhabitants of the locality to draw water from his well. In almost every street in India the rich man's well is used by his poor neighbours for drawing water. I do not think that the law of easement was intended to disturb this excellent social custom by giving the drawer of water from another person's well right of easement. In my opinion, the presumption in view of social conditions should be that the right in all such cases is permissive and does not create an easement. The law of

easement must be interpreted in the light of Indian Social Conditions”.

44. In the said decision, the question for consideration was arisen as to whether a right to do so by way of an easement could be acquired by prescription in view of the provisions contained in section 17 of the Easement Act which is to the effect that a right to underground water not passing in a defined channel cannot be acquired as an easementary right by prescription under Section 15 of the Act. A right to draw water from a well is surely a right to underground water and it is not the case that the plaintiffs right to enjoy water from their well was interrupted by something done by the defendants to the source of water in the well which was through a defined channel, by doing something, such as drawing an excessive supply of water from their own well from the same underground source.

45. The principles discussed in the aforesaid decision is aptly applicable to the case on hand and in the instant case also, plaintiffs are claiming to draw water from the well belonging to the defendants which comes under underground water and the plaintiff cannot acquire any easementary right of prescription in view of the provisions of section 17 of Easements Act. It is not even the case of the plaintiff to draw water from the defendants well even by way of customary

right of easement. Hence, the evidence of P.W.1 and P.W.2 who deposed that they have seen the plaintiffs and defendants using the water from disputed well does not come to the aid of the plaintiffs in any way.

46. It is also observed above that easement of necessity must be an absolute necessity and not merely a convenient mode of enjoyment of property. An easement of necessity cannot be granted merely on ground of convenience and advantage. In this case, the defendants have also taken a contention that plaintiffs own a drinking water well in their property bearing Sy.No.76/7 situated on southern land and they have been using the water from the said well. P.W.1 during his cross-examination conducted on behalf of defendants at para No.12 of page No.9, admitted that Sy.No.76/7 is in their possession and it is situated at the distance of 10feet from Sy.No.89/1A. At para No.7 of page No.6, he clearly admitted that borewell is existed in Sy.No.76/7. The document produced by plaintiffs which got marked at Ex.P.7 which is a certificate issued by Village Panchayat, clearly establishes the fact that there exists a bore well in Sy.No.76/7. On perusal of the Ex.P.7, it reveals that Village Panchayat, Belekeri has issued a certificate stating that bore well was dug in Sy.No.76/7 but water did not come in the said well and thereafter, when another new borewell was dug, then water came and on inspection it is found that

water is salty. As already observed above, use of water for domestic purpose would not fall under the ambit of beneficial enjoyment of land. If we take into consideration that plaintiffs are in need of water for irrigating their lands, then their own document itself establishes that they have another well to draw water which is situated in Sy.No.76/7 belonging to them which is also adjacent to the Sy.No.89/1A. The plaintiff cannot acquire easementary right of necessity merely for the reason that water of the borewell existed in Sy.No.76/7 is salty. It is also to be noted that defendants have also taken a contention that there exists a connection of water tap provided by Panchayat near the house of the plaintiffs. To support the same, D.W.1 has also produced Ex.D.8 which is an information provided by the office of Village Panchayat, Belekeri under RTI Act. On perusal of the same, it reveals that water has been providing once in two days by KUWS department in public water tap beside the house of the Anant Kallu Nayak who is the plaintiff No.1 in this case. The said document has not been challenged by the plaintiffs as false and concocted. Even no suggestion has been put to D.W.1 in this regard, as such the said document remained unchallenged which signifies that the plaintiffs have impliedly admitted that. Hence, it clearly establishes that plaintiffs have other source of water. He can draw water from the borewell situated in Sy.No.76/7 belonging to them and also he can take the water provided by Panchayat from the public

water tap situated beside his house. When it is proved that the plaintiffs have other source of water, then right of easement of necessity ceases as already observed that it must be absolute necessity without which the dominant tenement cannot be used and not merely for convenience or advantage. In order to claim an easement of necessity, it has to be established that there are no alternative source of water, howsoever inconvenient it may be. When there is an evidence to show that plaintiffs have other source of water then the easement of necessity gets extinguished in view of section 41 of Easement Act that is an easement of necessity is extinguished when the necessity comes to an end.

47. Another point which needs to be considered here that in order to claim easement of necessity, whenever any transfer or partition or bequest takes place under which the owners gets an easementary right of necessity, then at the time of such partition or transfer, the owners must be using such right as an absolute necessity. If they were not using the same as an absolute necessity at the time of such partition or transfer, then after many years, they cannot come and claim an easement of necessity. At this juncture, it is necessary to go through the cross-examination of P.W.1 at para No.10 of page No.7 which is extracted here under -

“ಕುಟುಂಬದಲ್ಲಿ ಪಾಲು ಆಗುವಾಗ ಬಾವಿ ಮತ್ತು ನೀರಿನ ಬಗ್ಗೆ ಪ್ರಸ್ತಾಪ ಮಾಡಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ ಅವಾಗ ಸಮಸ್ಯೆ ಬಂದಿರುವುದಿಲ್ಲ.”

48. On going through the said answer, it is clear that no such problem has arisen at the time of partition. Though if in case we accept the contention of partition also as contended by the plaintiffs, the said answer elicited from the mouth of P.W.1 clearly manifests that at the time of partition, they were not using the water as an absolute necessity. Hence, the plaintiffs cannot claim an easementary right of necessity when it was not an absolute necessity at that time. In this aspect also, the plaintiffs have failed to establish an easementary right of necessity.

49. So far as easementary right of prescription is concerned, as per section 15 of the Act, when the property over which the right is claimed, it is to be established that such right is to be exercised for the period of 20 years ending within 2 years next before the institution of the suit. The principles to be borne in mind with regard to the easementary right are well-settled. It is necessary that the plaintiff should establish his case as required by law before he can claim a right of easement over the land. Section 15 of the said Act provides that where the right has been peacefully and openly enjoyed

by any person claiming title thereto as an easement, and as of right without interruption, and for twenty years, the right would be established. It is also necessary for the plaintiff to establish that he openly enjoyed his right and that he did so as of right.

50. In the present case on hand, it is averred that they from their ancestors have been using the water from the disputed well to the knowledge of the defendants without any interruption for more than 20 years. It is also asserted that there are 4 pillars and 4 electric pumps have been installed and in those 3 pumps belongs to the family of plaintiffs. It is also stated that the plaintiffs only made the well more depth by installing cement ring etc. In this regard, P.W.1 has produced Ex.P.8 and Ex.P.9 which are the agreements executed between the contractor and P.W.1 thereby undertaken to repair the well and install the concrete ring to the said well situated in Sy.No.89/6. But it is to be noted here that said agreements came to be executed after the institution of the present suit and also mere repairing the disputed well and mere drawing the water from their own electric pumps does not itself confer any easementary right either by way of necessity or by way of prescription. The plaintiffs have to plead and prove all the necessary ingredients envisaged in section 13 and 15 of the Indian Easement Act. It is not sufficient to plead that they have been

using from time immemorial for more than 20 years but plaintiffs have to prove the same also with cogent supportive oral and documentary evidence. A claim of an easementary right being a precious right, the pleadings must be clear and specific in order to prove the same. In the case on hand, the pleadings are silent as to from which date they have been drawing the water from the disputed well and on which date period of 20 years is completed. Except time immemorial and except the averment that they have been using for more than 20 years, absolutely no evidence either oral or documentary has been placed on record. No amount of pleadings would come to the support of the plaintiffs when there is no supportive evidence. Even P.W.2 and P.W.3 who have been examined on behalf of plaintiffs have not stated with regard to acquisition of right by prescription. They have not at all deposed that plaintiffs have been using the water from the disputed well without any interruption for the period of 20 years. Also the plaintiffs have not produced any document to show the same. Hence, the evidence of P.W.2 and P.W.3 are not useful for the plaintiffs to prove their case. As already observed above, a very claim of an easementary right by way of necessity and prescription, itself is inconsistent and the prescription commences when the necessity ends. But the plaintiff cannot claim both at the same time. If he wants to claim an easementary right of prescription, then he has to give up the claim of easementary right of necessity.

51. On assessing entire evidence in the light of oral and documentary evidence the preponderance of probability tilts opposite to that of plaintiffs herein. Hence, **Issue No.1 is answered in Negative.**

52. Issue No.2 – The Plaintiffs have also sought for a declaration of right to worship the Nagardeva and Choudi temples. It is averred in the plaint that there existed Nagardeva Katte and Choudi deity belonging to the family of plaintiffs in Sy.No.89/6 and they have been worshiping the same. There is no dispute in respect of existence of the deity. But pleadings are silent as to how the plaintiffs have got right in worshiping the deity. According to the plaintiffs, temple belongs to their family to which they have been worshiping. In support of his claim, he has produced photos which are marked at Ex.P.13 to 23 in which many people can be seen and also it can be seen that priests are performing the pooja. But the said photos does not establish the fact of acquisition of any right to perform pooja for the plaintiffs. It is not even pleaded as to under which mode, plaintiffs have acquired a right, whether by heredity or by customary right or anything else. It is already observed above in detail while giving a finding for issue No.1 that plaintiffs have failed to establish the proof of factum of partition. It is case of the plaintiffs that temples are belonging to their family but except the photos,

not an iota of document is produced to show that those belongs to the family of plaintiffs and also photos does not establish anything in this regard. The plaintiffs have also failed to establish that how they acquired right to worship the temples situated in Sy.No.89/6 when they failed to establish the very fact that Sy.No.89/1 and Sy.No.89/6 was partitioned. No document has been produced to establish the fact that they acquired a right to worship the deity. Merely worshipping the deity installed on another's land for however longer period does not confer any right on the plaintiffs to claim a declaration of right. While addressing the arguments, the learned Counsel for defendants argued that plaintiffs have sought for easementary right in respect of worshipping diety which does not find any place under Easements Act. Per contra, the Counsel for the plaintiffs argued that right of easement is not sought so far as worshipping diety is concerned but only declaration of right is sought. On going through the prayer column of the plaint, it can be seen that plaintiffs have sought for declaration of right to worship and easementary right to draw water. Both reliefs are sought under one prayer. But on going through the whole pleadings, it can be ascertained that he has nowhere claimed any easementary right in respect of worshipping pooja. But it is also to be noted here that if in case the plaintiffs claimed the right to enter the defendants land for the purpose of worshipping a deity situated there, it cannot be said that the

worship of a deity on another's land is necessary for the beneficial enjoyment of one's own land. If this were so, anybody who has been going to an adjoining temple for the last 50 years for the purpose of worshipping a deity could claim an easementary right against the temple. The plaintiffs had to establish that their beneficial enjoyment of their own land was obstructed by being prevented from worshipping the deity installed on the defendants land. However, on going through the averments of the plaintiffs, it goes to show that they have not claimed any easementary right to worship a deity situated in defendants land but they sought for declaration for a right but as already observed the plaintiffs have also failed in establishing that they had acquired any right to perform pooja. Hence, **issue No.2 is also answered in Negative.**

53. Issue No.3 – In view of findings given on issue No.1 and 2, when the plaintiffs have failed to establish their claim as sought for in the prayer, then the question of interference by the defendants does not arise, hence this issue does not call for much discussion. Hence, issue No.3 is answered in **Negative.**

54. Issue No.4 – After answering issue No.1 to 3 in the Negative, this issue does not call for much discussion as it is offshoot of above said issues. The plaintiffs have failed to

prove their easementary right over the disputed well situated in Sy.No.89/6 and also they failed to establish their right of performing the pooja of Nagardeva and Coudidevi temples and also the interference of the defendants by producing the cogent and material documents. The contesting defendants have successfully proved about existence of other source of water. In such being the case, the plaintiffs are not entitled for any relief from the hands of this court. **With these observations, Issue No.4 is answered in the Negative.**

55. Issue No.5 :- In view of above findings on Issues Nos.1 to 4, this court proceeds to pass the following -

:-O R D E R:-

**The suit of the plaintiffs is
hereby dismissed with costs.**

Draw decree accordingly.

(Prepared and typed by me, directly on computer then corrected by me and then pronounced by me in the open court on this the 01st day of March 2024)

(Arpitha B. Bellad)

Addl., J.M.F.C Ankola.

ANNEXURE

LIST OF WITNESSES EXAMINED FOR PLAINTIFF:

- P.W.1 - Ananth Kallu Nayak
P.W.2 - Venkatraman Rama Nayak
P.W.3 - Gopal Vektraman Nayak

LIST OF WITNESSES EXAMINED FOR DEFENDANTS:

- D.W. -1 Govindraya Subraya Nayak

LIST OF DOCUMENTS EXHIBITED FOR PLAINTIFF:

- Ex.P.1 - RTC bearing Sy. no. 89/1A for the year 2014-2015
Ex.P.2 - RTC bearing Sy. no. 89/1B for the year 2014-2015
Ex.P.3 - Hissa Form No. 4
Ex.P.4 - Hissa Form No. 11
Ex.P.5 - Certified copy of M.E.No. 2687 in respect of Sy.No. 89/1A and 1B
Ex.P.6 - Copy of PT Sheet
Ex.P.7 - Certificate given by Belekeri Grampanchayath
Ex.P.8 - GPA
Ex.P.9 - Agreement
Ex.P.10 to 23 - Photos
Ex.P.24 - CD
Ex.P.25 - Mutation Register No. 2576

LIST OF DOCUMENTS EXHIBITED FOR DEFENDANTS:

- Exh. D.1 : RTC bearing Sy. no. 76/09 for the year 2016-17
- Exh. D.2 : Survey Map
- Exh. D.3 : Order passed by ADLR, Kumuta
- Exh. D.4 : Application given by plaintiffs to DDLR Karwar
- Exh. D.5 : Information provided by Gram Panchayath under RTI Act
- Exh. D.6 : Application given by plaintiff No.1 to PDO
- Exh. D.7 : Certificate given by PDO Gramapanchayath Belekeri
- Exh. D.8 : Information given by PDO, Belekeri
- Exh. D.9 : Acknowledgment issued by Ankola PS
- Exh. D.10 : Endorsement given by Ankola PS
- Exh. D.11 : Letter given by AEE, Ankola to Srinivas Naik
- Exh. D.12 : Application given by Srinivas Naik under RTI
- Exh. D.13 : Information given by AEE, Ankola
- Exh. D.14 : Information given by public information officers
- Exh. D.15 : Letter given by PDO, Belelkeri,
- Exh. D.16 : Information given by PDO, Belelkeri to Srinivas Naik
- Exh. D.17 : Application given by plaintiff to PDO, Belekeri

- Exh. D.18 : Information given by AEE Ankola to Plaintiff
- Exh. D.19 : Certified copy of Plaint
- Exh. D.20 : Letter given by PDO Belekeri to Srinivas Naik
- Exh. D.21 : Application given by Plaintiffs to DDLR
- Exh. D.22 : Notice given by DDLR Karwar
- Exh. D.23 : Application given to AEE, Karwar
- Exh. D.24 : Certified Copy of Mutation Entry No. 505
- Exh. D.25 : Certified Copy of Mutation Entry No. 1581
- Exh. D.26 : Certified Copy of Mutation Entry No. 1234
- Exh. D.27 : Certified Copy of Mutation Entry No. 1375
- Exh. D.28 : Certified Copy of Mutation Entry No..946
- Exh. D.29 to 31: Certified Copy of Record of rights in respect of Sy.No. 89/6 from the year 1921-30 to 1964-65
- Exh. D.32 : Certified Copy of Mutation Entry No. 5872
- Exh. D.33 : RTC bearing Sy. no. 89/6 from the year 1983-84 to 1990-91
- Exh. D.34 : Endorsement given by Tahasildar Ankola
- Exh. D.35 : Certified Copy of Record of rights in respect of Sy.No. 89/6
- Exh. D.36 : Appeal filed by defendants against plaintiffs in the Court of DDLR Karwar.

Addl. Civil Judge, Ankola.

**(Order Pronounced by in the open court
vide separate Judgment)**

ORDER

**The suit of the plaintiffs is
hereby dismissed with costs.**

Draw decree accordingly.

Addl., Civil Judge, Ankola