

KAUK310017452021



**IN THE COURT OF THE ADDITIONAL CIVIL
JUDGE AND JMFC BHATKAL**

PRESENT

Smt.Dhanavathi. B.A.(law) LL.B.,
Addl. Civil Judge and J.M.F.C, Bhatkal.

O.S.No.80/2021

Dated this the 7th day of January 2026

PLAINTIFF :

Sri Mohammed Zarrar
S/o Late Shamsuddin Saheb Sidibapa,
Aged about:76 years,
R/o:Bunder Road, Susgadi Village,
Bhatkal Taluk.
Represented by his son and GPA Holder,
Sri Abdul Samad Sidibapa
S/o Mohammed Zarrar Sidibapa,
Aged about: 34 years,
R/o:Bunder Road, Susgadi Village,
Bhatkal Taluk.
(By Sri.N.S.R.B., Advocate)

// Versus //

DEFENDANT:

1. Sri Kariyappa Naika
S/o Late Lachimayya Naika,
Aged about 64 years,

2. Smt. Lakshmi W/o Jattappa Naika
Aged about 65 years,
3. Sri Manjunatha S/o Jattappa Naika
Aged about 47 years,
4. Sri Ramachandra S/o Jattappa Naika
Aged about 44 years,
5. Sri Ishwara bin Jattappa Naika
Aged about 39 years,
6. Sri Ramesha S/o Jattappa Naika
Aged about 37 years,
Sl. No.1 to 6 are residing at Kotimane,
Talagoda, Bhatkal Taluk.
7. Smt. Parvathi W/o Manjunatha Naika
Aged about 45 years,
R/o: Gandhinagara, Hebale Village,
Bhatkal Taluk.
8. Smt. Nagarathna W/o Irappaa Naika
Aged about 42 years, Beligadde,
R/o: 2nd Cross road, Hebale Village,
Bhatkal Taluk.
9. Smt. Bhagirathi W/o Madeva Naika
Aged about 35 years,
R/o:Sodigadde road, Belake Village,
Bhatkala Taluk.
10. Smt. Mastamma W/o Annappa Naika
Aged about 77 years,
11. Sri Manjunatha S/o Lachimayya Naika
Aged about 52 years,
12. Raghuveera bin Lachimayya Naika
Aged about 35 years,
SL No.10 to 12 are residing at Hebale
Village, Bhatkal Taluk.

13. Sri Mahabaleshwara S/o Lachimayya Naika
Aged about 49 years,
R/o: Jali Village, Bhatkal Taluk.
**(Defendant No.1 to 5 and 7 to 9 by
Sri.V.F.G., Advocate , Defendant No. 6, 10
to 13 exparte.)**

ORDER ON PRELIMINARY ISSUE No.5

The suit is for the relief of declaration against the defendants with regard to the below mentioned schedule property.

SUIT 'A' SCHEDULE PROPERTY

Immovable properties situated at Talagod Village, Bhatkal Taluk, Malki Right.

| SL. No. | SY. No. | Kissam | Extent (A-G-A) |
|---------|---------|----------------|----------------------|
| 1. | 76-1 | Wet pot Kharab | 00-05-00 00-00-08 |
| 2. | 76-2 | Wet pot Kharab | 00-25-00 00-01-08 |
| 3. | 76-3 | Wet pot Kharab | 01-10-00 00-02-00 |

2. **The brief facts of the plaintiff case:**

The suit schedule properties have been purchased by the plaintiff from one Lachimayya Kariyappa Naik Kotimane and his two sons viz., Jattappa Lachimayya Naik and defendant No.1 Kariyappa Lachimayya Naik as per the Registered Sale deed dated 30-03-1985 vide Document No. 9/1985-86

of S.R.O.. Honnavara, as such the Plaintiff is in actual and lawful possession and enjoyment of the suit properties. The RTCs in respect of the suit properties that illegally got mutated in the names of defendant No.3, 5 and 1 respectively. The originally item No.1 of the suit properties was purchased by the aforementioned Lachimayya Kariyappa Kotimane in his individual capacity from out of his self acquired funds as per the Regd. Sale deed executed by his Vendor Hassan Bapa vide the Regd. Sale deed dated 12-01-1972 vide document No. 717/1971-72 of S.R.O., Honnavara and item No.2 of the suit properties was purchased by the aforementioned Lachimayya Kariyappa Kotimane along with his two sons named above vide the Registered Sale deed dated 09-01-1972 vide document No. 718/1971-72 of S.R.O., Honnavara as per the Registered Sale deed executed by one Kannayya Durgayya Kannayyanamane So also Item No. 3 of the suit A Schedule properties was purchased by the aforementioned Lachimayya Kariyappa Kotimane along with his two sons named above vide the Regd Sale deed dated 09-01-1972 vide document No. 716/1971-72 of SRO Honnavara as per the Registered Sale deed executed by Nagappa Narayana Challanamane Accordingly the said Lachimayya Kariyappa Kotimane along with his aforementioned 2

children were enjoying the suit properties jointly with joint right over the same and thus they, having joined together, have executed the aforementioned Registered Sale deed in favour of the Plaintiff on 30-03-1985 as aforementioned and thus the said Lachimayya Kariyappa Naik Kotimane along with his 2 children viz., Jattappa Lachimayya Naki Kotimane and Kariyappa Lachimayya Naik Kotimane have sold and conveyed the suit properties in favour of the Plaintiff by handing over its possession and as such since then the Plaintiff has acquired absolute and lawful possession and enjoyment of the suit properties. Thus except the Plaintiff, nobody else including the defendants, have any right over the suit properties. The said Lachimayya Kariyappa Naik Kotimane died and Defendant No.1 is the surviving son of the said Lachimayya Naik and Defendant No.2 is the wife of deceased son of Lachimayya Naik viz., Jattappa Naik and Defendant No. 3 to 9 are the children of the said Jattappa Naik. That Defendant No. 10 is the daughter of the said Lachimayya Kariyappa Naik and the Defendant No. 11 to 13 are the children of the deceased daughter of the said Lachimayya Naik viz., Hadiyamma.

Such being the case, defendant No. 1, 3 and 5 approached the plaintiff's son on 30-06-2021 and

directed him to handover the possession of the suit properties to them by claiming that the RTCs of the suit properties are already been mutated in their respective names as per the Court Decree and that thereafter the plaintiff's people should not enter the suit properties and that even they would not allow the plaintiff's people to enter those properties. When the son of the plaintiff has opposed their threats, then the defendants have shown the copy of the Court Decree and claimed that the plaintiff's people should not enter the suit properties thereafter. Then being shocked at this, when the son of the plaintiff got obtained the relevant documents and verified the same, it was revealed that though the said Lachimayya Naik and his 2 children viz. Jattappa Naik and Defendant No. 1 have jointly sold the suit properties in favour of the Plaintiff as aforementioned and though they have lost possession, right title and interest over the suit properties as aforementioned. defendant No.1 to 13 have hatched a plan to somehow grab and usurp the suit schedule properties from the hands of the plaintiff in an illegal bid and by a backdoor method, that too by taking undue advantage of the fact that the RTCs of the suit properties were not mutated in the name of the Plaintiff as per the aforementioned Registered Sale deed dated 30-03-1985 and in furtherance of their

mischievous attitude and plan, they got filed a suit for Partition amongst themselves in the name of Defendant No. 1 against Defendant No. 2 to 13 and one Manju on the file of this Court, Bhatkal vide O.S. No. 76/2013 and sought for partition of their other family properties by illegally, immorally, fraudulently, mischievously and unauthorized including the suit properties mentioned herein, in the said suit also and sought for Partition of the same and even they got filed a name sake written statement and immediately thereafter, within a span of 2% months itself, they got collusively and mischievously filed a compromise petition only with an intention to grab and usurp the suit schedule properties amongst themselves and with that intention, they got allotted Item No. 1 of the suit properties and a portion of Item No. 3 of the suit properties to the share of defendant No. 3 along with certain other properties and even they got allotted Item No. 2 of the suit properties to the share of defendant No. 5 along with certain other properties and also got allotted the remaining portion of Item No. 3 of the suit properties to the share of defendant No 1, though they had no subsisting right over any portion of the suit properties and such fraudulent, illegal and immoral acts are being done by the defendants only to grab and acquire the suit properties by mutating those

RTCs in their names and thereby to hoodwink the plaintiff in an illegal way. Even the defendants are very well aware of the fact that the title holders of the suit properties have already sold the same in favour of the plaintiff and it is with this intention, they have not made the plaintiff as party to the said suit and even the plaintiff was not aware of the said suit or of the fraudulent Decree thus obtained by the defendants to the exclusion of the plaintiff. Therefore, the plaintiff is not bound by the fraudulent Decree thus obtained by the defendants in O.S. No. 76/2013 on 13-09-2013 and as it is obtained behind the back and without the knowledge of the plaintiff, the same is not binding upon the plaintiff and it is a nullity and as such the plaintiff is entitled to get the relief claimed in the suit free of the Compromise Decree thus got obtained by the defendants in the said suit on 13-09-2013 and the said defendants have not acquired any right over the suit properties on the basis of that Judgment and Decree dated 13-09-2013. Hence, the plaintiff is constrained to file this suit.

3. After service of summons the defendant No. 1 to 5, 7 to 9 appeared through their counsel. In spite of service of summons the defendant No.6 and 10 to 13 are not appeared before this court, hence placed them ex-parte. The defendant No.5 has filed written

statement and same has been adopted by the defendant No.1 to 4 and defendant No.7 to 9. The relevant portion with respect to preliminary issues in the written statement are only extracted herewith. In the written statement, the defendant No.5 has denied the contents made in the plaint and contended that, the suit of plaintiffs is false, frivolous, base and not maintainable either under law or on true facts of the case against the defendants. The suit schedule properties is valued more than Rs. 10,00,000/- and this court has no pecuniary jurisdiction to try the suit. Accordingly with other defence, prays to dismiss the suit.

4. On the basis of pleadings, my learned predecessor has framed seven issues and in which issue No.5 is treated as preliminary issue as bellow.

Issue No.5.

Whether the suit schedule property is valued more than Rs. 10,00,000/- and this court does have pecuniary jurisdiction to try this suit?

5. Both parties have not lead evidence on preliminary issue. Defendant counsel filed memo with valuation of the suit property.

6. Heard arguments of both sides and perused the documents.

7. On the materials available on record, this court answered the above preliminary issues in the **Negative** for the reasons bellow;

:R E A S O N S:

8. **Issue No.5:** On the basis of pleadings of the parties, this Court has framed issue No.5 on valuation of the suit property.

9. The plaintiff has filed this suit through his GPA holder praying to declare him as absolute owner of the suit properties and to declare the judgment and decree on O.S.76/2013 dated 13.9.2013 on the file of this court is not binding on the plaintiff and valued the suit as per section 24(d) of Karnataka Court Fee and Suits Valuations Act. On the other hand, though the defendant No.5 contended in his written statement that the suit property is valued more than ten lakhs. But during the arguments on above issue, the learned counsel for the defendant No.5 has produced the valuation of the suit property along with the Bhatkal sub registrar valuation, which is within the jurisdiction of this court. It is important to note here that the court has to see the valuation of the subject matter of suit made in the plaint and not made in the written statement. Hence, considering all these facts, I answer Preliminary Issue No.5 in the **Negative**.

10. For the forgoing reasons, I proceed to pass the following:-

:ORDER:

It is held that, the suit is properly valued and this court has jurisdiction to try the suit.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court this the 7th day of January, 2026)