

The complainant has filed I.A. under Sec.175(3) of B.N.S.S. to refer the matter for investigation to Udupi Town Police Station and direct them to file necessary report against the accused before the court.

2. It is narrated out in the affidavit that, he is the one of the legal heirs through his mother Smt. Mumtaz, daughter of Late Kunjibettu Abdul Latif Sahib, who was the absolute owner of several immovable properties situated at Moodanidamboor Village, Udupi Taluk, including Survey Nos.99/36, 44/2, 48/11B, 48/20B, 96/7 and 45/2A. After his demise, the said properties devolved upon his legal heirs and all are entitled for undivided shares therein. All the said properties were granted in favour of Late Abdul Latif Sahib by the Land Tribunal, Udupi and Form No.10 was issued in his favour and revenue records were duly mutated in his name. After the death of Late Abdul Latif Sahib, the Accused took advantage of the situation and started managing and dealing with the joint family properties without informing the other legal heirs and without obtaining their consent. The accused, in collusion with others by way of dishonest intention, filed a joint memo before the Hon'ble High Court in respect of Survey No.96/7 without obtaining the consent, signature or authorization of

his mother Smt. Mumtaz and other co-owners. By virtue of unauthorized compromise, 14 cents out of 35 cents of the property was relinquished in favour of Fatima, causing substantial loss to the legal heirs. The said property after some time was sold under registered sale deeds and the accused suppressed the said transactions and failed to account for the benefits derived therefrom and there are strong reasons to believe that the Accused received monetary consideration and unlawfully enriched himself at the cost of the co-owners. Further, in respect of Survey No.44/2, while obtaining conversion of land for non-agricultural purpose, the accused forged the signatures of legal heirs, including himself and filed affidavits and other documents before the authorities without their knowledge or consent. The accused has received amounts from third parties in relation to the joint family properties and created documents without the consent of the co-owners and thereby causing wrongful loss to the legal heirs and corresponding wrongful gain to himself.

3. Further it is stated that, the complainant approached the Udupi Town Police Station on 31.12.2025 seeking action against the accused. The police did not register the F.I.R. and closed the complaint by issuing endorsements dated

24.01.2026 and 14.03.2026 and step has also been taken to approach the Superintendent of Police, Udupi requesting appropriate action against the accused and no action has been taken until this date. It is put forth by the complainant that the accused has acted in collusion with other persons and the entire transaction appears to be part of a systematic scheme to deprive the legal heirs of their rights in their ancestral properties. Hence forth the F.I.R. is to be registered by sending this complaint to the Udupi Town Police Station to register the case and file the report.

4. After having gone through the entire contents of the affidavit and also in detail the contents of the complaint, wherein all the contents of the complaint which is narrated out in the affidavit as well as narrated out in the complaint is purely a civil in nature and complainant has tried to give it a criminal colour which cannot be accepted.

5. At this stage of discussion, this court likes to place reliance upon reported judgment of Hon'ble Supreme Court **Anukul Singh vs The State Of Uttar Pradesh, 2025 Live Law SC 948**, wherein it is held that, the matters which are civil dispute in nature a criminal colour cannot be given to it. Hon'ble Supreme Court further held that, no

scope should be given to use criminal prosecution as a tool for harassment in purely disputes.

6. Now coming back to the facts of the case. Even if allegations narrated out in the complaint are assumed to be true that unmistakably arise out of the court transactions relating to the properties and the complainant is trying to give it a criminal colour and it is settled position of law that machinery of criminal law cannot be permitted to be misused in settling civil disputes or to wreak vengeance.

7. At this stage, this court likes to place reliance upon **Shailesh Kumar Singh @ Shailesh R. Singh Vs. State of Uttar Pradesh and others**, wherein it is held that, *disapproved practice of using criminal prosecution as a substitute for civil remedies*. So therefore, no essential ingredients of sections for alleged forgery, criminal breach of trust are attracted. Therefore at this stage, there are no good ground to refer the matter for police investigation. Hence, by placing reliance upon said judgments, the complainant has utterly failed to make out the grounds for sending the complaint for police investigation under Sec.175(3) of B.N.S.S.

8. Now for the sake of more clarity Sec.175(3) of B.N.S.S. need to be discussed, wherein

it is states that, *Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.* So by criminal prosecution of Sec.175(3) of B.N.S.S. it is not mandatory to entertain every application and refer the matter for police investigation. In this case also after perusal of the entire documents annexed with the complaint does not even remotely attracted the alleged forgery and perhaps if the complainant presumes to be get cheated by the act of the accused, he has civil remedy to address his grievance. Therefore, this court proceeds to pass the following :

ORDER

The application filed under Sec.175(3) of B.N.S.S. stands rejected.

Call to hear on maintainability of the complaint finally as last chance by 18.07.2026.

(Santosh Srivastava)

I Addl. Senior Civil Judge and A.C.J.M.,
Udupi.