



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO.34 OF 2011 (DEC)

BETWEEN:

H.P.VEERABHADRAPPA GOWDA
AGED ABOUT 48 YEARS
S/O LOKAPPA GOWDA
R/O HANCHI VILLAGE
BHARANGI-POST
SORAB TALUK
SHIVAMOGGA DISTRICT
PIN CODE - 577 429

...APPELLANT

(BY SRI.R.GOPAL, ADVOCATE)

AND:

1. CHANDRASHEKARAPPA
S/O BASAVANYAPPA JAVALLI
AGED ABOUT 65 YEARS
2. NAGENDRAPPA
S/O BASAVANYAPPA JAVALLI
AGED ABOUT 58 YEARS
3. SHADAKSHARAPPA
S/O BASAVANYAPPA JAVALLI
AGED ABOUT 53 YEARS
4. LAKSHMANAPPA
S/O HUCHAPPA





AGED ABOUT 53 YEARS

ALL ARE R/O HANCHI VILLAGE
BHARANGI POST
SORAB TALUK
SHIVAMOGGA DISTRICT - 577 429

...RESPONDENTS

(BY SRI.BASAVARAJ KAREDDY, ADVOCATE FOR R.1 TO R.4)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 20.10.2010 PASSED IN O.S.NO.365/2007 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., SORABA, PARTLY ALLOWING THE SUIT DECLARATION AND PERMANENT INJUNCTION AND ETC.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is filed by the unsuccessful plaintiff challenging the judgment and decree dated 20.10.2010 passed in O.S.No.365/2007 on the file of the Senior Civil Judge and JMFC, Soraba, whereby the plaintiff's suit for declaration of title over kharab land in suit survey numbers and for permanent injunction seeking prevention for use of foot-path for taking cattle-heads and



for developing and forming road along the foot-path in question is dismissed.

2. For the sake of brevity, the parties are referred as per their rankings before the Trial Court.

3. Facts leading to the case are as under;

The plaintiff instituted a suit seeking a declaration that he is the absolute owner of the suit schedule property and for permanent injunction restraining the defendants from converting the existing footpath in the schedule property into Tar Road (Pakka Road) or otherwise interfering with his peaceful possession. The plaintiff asserted that the suit schedule property is ancestral property allotted to him in a family partition dated 24.07.1972. The plaintiff specifically asserted that the village sketch depicts an east-west footpath passing through Sy. No.120 and the said footpath is about 8 feet wide and classified in the village records as *karab* land. The plaintiff specifically asserted that the suit



property, which is now referred to as footpath, is only used for pedestrian movement and the defendants by using the political influence are attempting to convert the said footpath into a Tar Road by raising its height by 2 to 3 feet. Significantly, while the plaintiff did not dispute the existence of the pathway, he specifically disputed its character as a Cart Track or vehicular road and hence, the present suit.

4. The defendants entered appearance and filed their written statement and stoutly denied the entire averments made in the plaint. The defendants on the contrary asserted that 8 feet wide road is in existence as per Village Map. They further asserted that the said road has been used by Villagers, Bullock Carts and Cattle and therefore, it is not a mere footpath but a public road. On these grounds, they sought for dismissal of the suit.

5. The Trial Court formulated the appropriate issues and called upon the plaintiff and defendants to lead oral and documentary evidence. Accordingly, both parties led



their respective oral and documentary evidence. The Trial Court on perusal of the records dismissed the suit by recording a finding that the disputed property is a Cart Track and therefore, no injunction could be granted to restrain the formation of Pakka Road and consequently, the plaintiff's suit was dismissed.

6. Heard learned counsel appearing for the plaintiff and learned counsel appearing for the defendants.

7. The points that would arise for consideration are;

- (i) Whether the Trial Court erred in treating 8 feet pathway as a Cart Track Road despite village records depicting it as a foot path?*
- (ii) Whether the defendants have established legal right to convert the existing pathway into a Tar Road?*
- (iii) Whether the judgment and decree rendered by the Trial Court suffers from perversity and warrants interference?*



(iv) *What order?*

Findings on point Nos.(i) to (iii):-

8. The entire controversy revolves around the character of 8 feet strip passing through Sy. No.120. Therefore, the village records and topographical symbols assume significant importance. The conventional symbols as reflected in the Village Map are relevant for determining the nature of the disputed strip and therefore, it would be apposite for this Court to extract and examine the symbols reflected in the Village Map.

Sl. No.	Item of Details	Symbols
1.	CART TRACK	----- -----
2.	FOOT PATH	-----

9. On closer examination of the Village Map and in view of the fact that the plaintiff does not dispute existence of pathway, the disputed strip is admittedly shown in the Village Map as a pathway and not as a Cart Track or Public Road. Admittedly, the defendants are



asserting that the disputed road is a Cart Track and therefore, the plaintiff has rushed to the Court seeking the relief of declaration and injunction asserting that the disputed road is a pathway. Once the Village Map depicts that it is a footpath, the defendants cannot assert the road to be a Cart Track to be used by bullock carts and cattle. The character of land as reflected in the revenue and village records carries presumptive value. The enlargement of user beyond established right would amount to encroachment. A footpath cannot be treated as a Cart Track unless it is legally recognized or proved by prescription.

10. The crucial evidence adduced by the plaintiff clearly demonstrates that the disputed road is clearly a footpath. The defendants have not adduced any rebuttal evidence to demonstrate that suit road is a Cart Track. During the course of the trial, the plaintiff has succeeded in substantiating that the defendants have access towards southern side of their land. Interestingly, the photographs



produced by the plaintiff depict the existence of a pathway running along the edge of the plaintiff's land, which connects the main road on the northern side. At the edge of the northern side of the plaintiff's land, there is a V-shaped natural rock formation that allows access only to human beings. Except human beings, nobody can cross this natural V-shaped hard rock, which has a narrow opening enabling only the human beings to cross that rock. Therefore, this Court on closer examination of the photographs, finds that the northern side is obstructed by V-shaped rock. Therefore, the dispute is not about access, but about the conversion of a footpath into a Cart Track.

11. Admittedly, the defendants have not set up any counter claim. The defendants have neither pleaded nor claimed the acquisition of an easementary right for vehicular passage. Mere oral assertions that Bullock Carts and Cattle used this strip cannot be a basis to convert essentially a footpath into a Cart Track. No documentary



evidence is produced by way of rebuttal by the defendants to establish the disputed road's classification as a public road capable of vehicular passage. The apprehension of the plaintiff that if Tar Road is formed, the land, being naturally sloped, would cause water to flow downward during rainy season. Raising the height of the pathway by 3 feet would alter natural drainage and damage crops of the plaintiff. This apprehension of the plaintiff appears to be both probable and reasonable.

12. In the light of these significant details, this Court is of the view that the Trial Court clearly misread the evidence and therefore, erred in treating the footpath as a Cart Track/Road. The trial Court has also ignored documentary evidence depicting the strip as a footpath and therefore, erred in solely relying on oral assertions of the defendants. The learned Judge also did not advert to the consequences of treating this as a Cart Road and therefore, any such interpretation and expansion of user is beyond legal entitlement. Accordingly, Point Nos.(i) and



(iii) are answered in the "**Affirmative**" and point No.(ii) in the "**Negative**".

Conclusions and Reasons for Reversal

13. **Misreading of Village Records and Topographical Symbols**

The Trial Court has committed a serious error in appreciating the documentary evidence on record. The village map and revenue entries clearly depict the disputed strip as a pathway (footpath) and not as a cart track or public road. The conventional symbols used in village records differentiate between a cart track (=====) and a footpath (-----). The Trial Court, without assigning cogent reasons, treated the 8-feet strip as a road capable of vehicular movement. This finding is contrary to documentary evidence and amounts to misreading of material records, thereby rendering the finding perverse.



14. **Failure to Appreciate the Limited Nature of User**

The plaintiff has never disputed the existence of the pathway nor objected to pedestrian use by villagers. His objection is confined to the proposed conversion of the footpath into a tar (pakka) road and enlargement of its character to permit vehicular traffic. The Trial Court failed to appreciate this crucial distinction and proceeded as if the very existence of a pathway defeated the plaintiff's claim. Such reasoning reflects non-application of mind to the actual controversy.

15. **Absence of Proof of Easementary or Public Right**

The defendants have neither pleaded nor proved acquisition of any easementary right for vehicular passage by prescription. No material is placed on record to show that the pathway has been declared as a public road by any competent authority or that it has been lawfully converted into a Village Panchayat road. In the absence of



such proof, the Trial Court could not have enlarged the nature of the right from pedestrian access to vehicular access.

16. **Ignoring Topography and Agricultural Impact**

The evidence on record discloses that the suit land is situated on a slope and that during rainy seasons excess water flows from Sy.No.120 to Sy.No.118. The proposal to raise the height of the pathway by 3 feet for conversion into a tar road would disturb the natural flow of water and adversely affect cultivation. The Trial Court has not adverted to these material aspects while dismissing the suit. Failure to consider material evidence vitiates the findings.

17. **Grant of Relief Beyond Pleadings and Evidence**

The Trial Court, while dismissing the suit, virtually permitted the laying of a tar road and use by cattle and carts, despite absence of pleadings, proof, or statutory



sanction. A Civil Court cannot, under the guise of adjudication, confer a right not established in law. Such enlargement of user amounts to deprivation of proprietary rights without due process.

18. **Perverse Finding Based Solely on Oral Assertions**

The finding that bullock carts and cattle were using the pathway is based on oral assertions unsupported by documentary corroboration. When documentary village records indicate the nature of the strip as a footpath, oral testimony contrary to official records cannot prevail unless strongly substantiated. The Trial Court has erroneously preferred uncorroborated oral evidence over documentary evidence.

19. The impugned judgment suffers from misreading of documentary evidence, non-consideration of material facts, enlargement of user beyond legal entitlement, perverse appreciation of evidence, and misapplication of



settled principles governing easementary and proprietary rights.

20. Accordingly, the findings of the Trial Court are unsustainable in law and on facts, warranting interference under Section 96 of the Code of Civil Procedure. The decree of dismissal is liable to be set aside and the suit decreed as prayed for.

21. **Point No.(iv)**:- For the foregoing reasons, this Court proceeds to pass the following;

ORDER

- (i) The appeal is allowed.
- (ii) The judgment and decree dated 20.10.2010 passed in O.S.No.365/2007 on the file of the Senior Civil Judge and JMFC, Sorab is set aside. Consequently, the suit is decreed.
- (iii) It is declared that the plaintiff is the absolute owner of the suit schedule property. The defendants, their agents



or anybody claiming through them are permanently restrained from converting the existing 8 feet footpath into a Tar (Pakka) Road, raising its level or altering its character.

- (iv) However, it is made clear that the existing pedestrian usage of the pathway shall not be obstructed by the plaintiff on the strength of the decree passed by this Court.
- (v) Draw decree accordingly.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE