



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 770 OF 2014 (DEC/INJ)

BETWEEN:

1. RUDRESH
S/O SHIVARUDRAPPA
AGED ABOUT 47 YEARS,
2. JAGADESH
S/O SHIVARUDRAPPA,
AGED ABOUT 43 YEARS,
3. PRAKASH
S/O SHIVARUDRAPPA,
AGED ABOUT 38 YEARS,
4. MAHESHWARAPPA
S/O SHIVARUDRAPPA,
AGED ABOUT 35 YEARS,

ALL ARE R/AT CHILUR VILLAGE,
KUMBAR STREET, CHILUR POST,
HONNALI TALUK,
DAVANAGERE DT
PIN-577230

...APPELLANTS

(BY SRI. DAYANAND S PATIL, ADV.)





AND:

1. K. SUSHEELA
W/O C.KENCHAPPA,
AGED ABOUT 67 YEARS,
2. PUSHPAVATHI K
W/O MANJAPPA,
AGED ABOUT 65 YEARS,
SINCE DEAD BY HER LRS
- 2(A) SRI D.MANJAPPA
S/O LATE D.DURGAPPA
AGED ABOUT 73 YEARS
- 2(B) SRI RAGHAVENDRA M
S/O MANJAPPA
AGED ABOUT 42 YEARS

BOTH ARE R/AT NO.LIG HOUSE No.1
KHB COLONY,
GANDHINAGAR, SAGAR
SHIVAMOGGA-DT-577401

3. MANJUNATHA K
S/O LATE KADASIDDAPPA
AGED ABOUT 62 YEARS,

RESPONDENT NO.1 TO 3
R/AT GANDHINAGAR
SAGAR-AT/TQ,
SHIMOGA-DT
PIN-577401
4. K.THIPPESWAMY
S/O LATE KADASIDDAPPA,
AGED ABOUT 54 YEARS,
SUPERINTENDENT ENGINEER,
KADA OFFICE,
MALAVAGOPPA,



SHIMOGA-577201

5. THE STATE OF KARNATAKA
REPRESENTED BY CHIEF SECRETARY
VIDHANA SOUDHA
BANGALORE-01
6. THE TAHASHILDAR
HONNALI TALUK, HONNALI,
DAVANGAERE DT-577217

...RESPONDENTS

(BY SRI. S.SREEVATSA, SENIOR COUNSEL FOR
SRI. MAHESH P UPPIN, ADV. FOR R1, R3 & R4,
SMT. LALITHA P.M, HCGP, FOR R5 & R6
SRI. C.A.AJITH, ADV. FOR R2(A) & R2(B))

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 03.04.2014 PASSED IN
R.A.NO.17/2012 ON THE FILE OF SENIOR CIVIL JUDGE,
HARIHAR, ALLOWING THE APPEAL AND SETTING ASIDE THE
JUDGEMENT AND DECREE DTD 25.2.2012 PASSED IN
OS.NO.224/2007 ON THE FILE OF CIVIL JUDGE, HONNALI, AND
ETC.,

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular second appeal is filed by the appellants
challenging the judgment and decree dated
03.04.2014, passed in R.A.No.17/2012 by the
learned Senior Civil Judge, Harihar.



2. For the sake of convenience, parties are referred to based on their ranking before the trial Court. The appellants were defendant Nos.3 to 6 and respondent Nos.1 to 4 were the plaintiff Nos.1(a) to 1(d) and the other respondents were the defendants.
3. The brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiff filed a suit for declaration of title, possession and mandatory injunction, to cancel the order of grant made in favour of father of defendant Nos.3 to 6 and defendant No.7 regarding Sy.No.56 new RTC No.56/P2 measuring 4 acres situated at Dhonderi village, Honnali Taluk. It is the case of the plaintiffs that the land bearing Sy.No.56 was totally measuring 30 acres and it was gomal land and on 06.07.1963, the schedule land to the extent of 4 acres in Sy.No.56 was granted in favour of the plaintiff. Likewise, the Government has granted



remaining part of land to the different cultivators from time to time. According to the grant order dated 06.07.1963, the name of the plaintiff was entered in the revenue records and the mutation was also passed. Since the order of grant, the plaintiff is in possession and enjoyment of the suit schedule property. The defendants have no right, title or interest in the suit schedule land. The plaintiff came to know that the government granted 4 acres of land in favour of defendant No.7 on 30.03.1971 and another 4 acres in favour of father of defendant Nos.3 to 6. By virtue of the said grant order, the grant made in favour of the father of defendant Nos.3 to 6, effected the right of the plaintiff over the suit schedule property. The father of defendant Nos.3 to 6, and defendant No.7 colluding with each other and the surveyor authority prepared the sketch and no land of the plaintiff was shown in the sketch prepared. Based on the sketch and revenue entries,



the name of defendant Nos.3 to 7 were entered in the revenue records. The father of defendant Nos.3 to 6 and defendant No.7 denied the title of the plaintiff over the suit schedule property. The plaintiff issued the legal notice to the defendant on 01.05.2007. Despite service of notice, the defendants continued to interfere with the peaceful possession and enjoyment of the suit schedule property. Hence, a cause of action arose for the plaintiff to file a suit for declaration of title and for cancellation of grant order. Accordingly, prays to decree the suit.

5. Defendant Nos.1 and 2 filed a written statement stating that the Civil Court has no jurisdiction to entertain the suit, and it is contended that the plaintiff was not cultivating the suit schedule property which was granted to her. Hence, prays to dismiss the suit against defendant Nos.1 and 2.



6. Though summons was issued to defendant Nos.3 to 7.
7. Despite service of summons, defendant Nos.3 to 7 remained unrepresented and were placed *exparte*.
7. The Trial Court, based on the above said pleadings, framed the following issues and additional issues and additional issue:

Issues

- 1) *Whether the plaintiff proves that she is the absolute owner and in peaceful possession and enjoyment of the suit schedule property?*
- 2) *Whether the plaintiff proves the she is entitled for mandatory injunction against the defendant No.1 and 2 to make phodi as per Darkhast sketch of the suit schedule property?*
- 3) *Whether the plaintiff proves that she is entitled for the mandatory injunction against defendant No.1 and 2 cancel the phodi and saguvali chit which is granted in favour of the father of defendant No.3 to 6 and defendant No.7?*
- 4) *Whether the plaintiff is entitled for the vacant*



*possession of the suit
schedule property from
defendant No.3 to 7?*

5) *What order or decree?*

Addl. Issue:

1) *Whether the suit is barred by
law of limitation?*

8. The plaintiff to substantiate her case examined one witness as PW.1, and marked 30 documents as Exs.P1 to P30. In rebuttal, the official of defendant No.2 was examined as DW.1, and marked 14 documents as Exs.D1 to D14.
9. The Trial Court after recording the evidence, hearing no both sides and on the assessment of verbal and documentary evidence answered issue Nos.1 to 4 in the negative, additional issue No.1 in the affirmative, and issue No.5 as per final order. The suit of the plaintiff was dismissed vide judgment dated 25.02.2012.



10. The plaintiff aggrieved by the judgment and decree passed in O.S.No.224/2007 preferred the appeal in R.A.No.17/2012 on the file of the learned Senior Civil Judge, Harihar.
11. The First Appellate Court, after hearing the learned counsel for the parties, has framed the following points for consideration:
 - (i) *Whether the trial Court has committed error in holding that plaintiff has not established his ownership over the schedule property?*
 - (ii) *Whether the finding of the trial Court that the plaintiff has failed to establish his possession over the schedule land is erroneous and capricious?*
 - (iii) *Whether the trial Court committed any error of law in holding that suit is barred by law of limitation under Article 64 of Limitation Act?*
 - (iv) *What order?*
12. The First Appellate Court, on re-assessing the oral and documentary evidence, answered point Nos.1



and 3 in the affirmative, point No.3 in the negative, and point No.4 as per final order. The appeal was allowed and the judgment and decree passed by the Trial Court in O.S.No.224/2007 dated 25.02.2012 was set aside and the suit of the plaintiff was partly decreed and it is declared that the plaintiff is the owner of schedule land and also decreed that the plaintiff is entitled to the possession of schedule land from defendant Nos.1 to 6, and that the judgment and decree is not binding on the legal representatives of defendant No.7 and defendant Nos.1 to 6 were directed to hand over the possession of the suit schedule property to the plaintiff i.e., legal representatives of plaintiff within two months.

13. Defendant Nos.3 to 6, aggrieved by the judgment and decree passed in R.A.No.17/2012, has filed this regular second appeal.



14. This Court, on 19.06.2014, admitted the appeal on the following substantial questions of law :

(I) In a suit for declaration and possession of immovable property, was it not required for the plaintiff to substantiate that the suit was within the period of 12 years from the date of possession of defendant became adverse to her as spelt out in Article 65 of the Limitation Act? So also the suit was not barred by limitation under Article 64 of the Limitation Act?

(II) Is the judgment of the appellate Court sustainable in the absence of specific finding on the above questions?

15. Heard Sri Dayanand S. Patil, learned counsel for the appellants and also Sri S.Sreevatsa, learned Senior counsel for the defendants.

16. Learned Senior counsel for defendant Nos.3 to 6 submits that though the trial Court issued the



summons, however, the summons has not been duly served on defendant Nos.3 to 6. He also submits that the trial Court was justified in dismissing the suit of the plaintiff. He submits that the First Appellate Court has committed an error in reversing the judgment and decree passed by the trial Court, and wrongly decreed the suit of the plaintiff and he also contend that the suit filed by the plaintiff is barred by limitation. He submits that the father of defendant Nos.3 to 6 was in possession of the suit schedule property, since the date of grant and the suit is filed after lapse of 12 years from the date of possession of the defendants became adverse to the plaintiff. He submits that the judgment and decree passed by the First Appellate Court is erroneous and arbitrary. Hence, on these grounds, he prays to allow the appeal.

17. *Per contra*, learned Senior counsel for the plaintiff submits that defendant Nos.3 to 6 have no *locus*



standi to file the appeal. He submits that defendant No.3 to 7 were placed *exparte* before the trial Court. He submits that the plaintiff, aggrieved by the dismissal of the suit, preferred an appeal in R.A.No.17/2012. The First Appellate Court issued a notice to defendant Nos.3 to 6, although they have appeared through the counsel, they did not participate in the appeal. He submits that defendant Nos.3 to 6 have not pleaded that they are in possession of the suit schedule property, and acquired the title by way of adverse possession. He submits that mere long and continuous possession by itself cannot create adverse possession.

18. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of **L.N. ASWATHAMA AND ANOTHER VS. P. PRAKASH** reported in **AIR 2009 (SCW) 5439** and he also submits that the defendants are not admitting the title of the plaintiff over the suit schedule property.



Hence, the defendant cannot claim adverse possession without admitting the title of the plaintiff and to buttress his arguments, he has placed reliance of the judgment of this Court in the case of **D. SHIVAKUMAR, SINCE DECEASED BY LRS AND OTHERS Vs. M. V. MANJUNATH AND OTHERS** reported in **ILR 2025 KAR. 4165**. He submits that the First Appellate Court was justified in passing the impugned judgment. The impugned judgment passed by the First Appellate Court is just and proper and do not call for any interference at the hands of this Court. Hence, on these grounds, he prays to dismiss the appeal.

19. Perused the records, and considered the submissions of learned counsel for the parties.
20. **Substantial questions Nos.1 and 2**: Substantial questions of law Nos.1 and 2 are taken together for common discussion as they are interlinked with each other to avoid the repetition of facts.



21. The plaintiff has filed a suit for declaration, decreed injunction and possession contending that the suit schedule property was granted in favour of the plaintiff on 06.07.1963. Since the date of grant, the plaintiff is in possession and enjoyment of the suit schedule property. The land bearing Sy.No.56 comprised of 30 acres of land and the Government granted a land to the different grantees. It is contended that based on the grant made in favour of the plaintiff dated 06.07.1963, the name of the plaintiff was entered in the revenue records and the mutation was also effected in favour of the plaintiff. The defendants have no right, title or interest over the suit schedule property.
22. The plaintiff examined one witness as PW.1 and marked 30 documents. The plaintiff to show that the suit schedule property was granted, produced the grant certificate, and also produced the documents to



show that the revenue records stands in the name of the plaintiff.

23. In rebuttal, though the summons was duly served on defendant Nos.3 to 7, despite service of summons, the defendant Nos.3 to 7 remained unrepresented and were placed *exparte*.
24. Further, the Trial Court dismissed the suit holding that the suit filed by the plaintiff is barred by limitation i.e., on the ground of limitation.
25. The plaintiff aggrieved by the dismissal of the suit, preferred an appeal in R.A.No.17/2012.
26. Defendant Nos.3 to 7 did not participate in the proceedings.
27. Defendant Nos.3 to 6 contend that the Government has granted the land in favour of the father of defendant Nos.3 to 6 in 1971 and since the order of grant, the father of defendant Nos.3 to 6 and



defendant No.7 are in possession and enjoyment of the suit schedule property i.e., for more than 40 years.

28. It is also well settled that long and continuous possession by itself would not constitute adverse possession, if it was either permissive possession or possession without *animus possidendi* and the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.
29. This Court had occasion to consider the said aspect in RSA No.855 of 2007 disposed off on 12.03.2024 placing a reliance on the several judgments of the Hon'ble Apex Court and wherein this Court held that,



in the absence of pleading, the defendants cannot claim plea of adverse possession.

30. Admittedly, in the instant case, defendant Nos.3 to 7 have not filed the written statement claiming that they have acquired the title by way of adverse possession.

31. The Hon'ble Apex Court in the case of **L.N. ASWATHAMA & ANOTHER VS. V.P. PRAKASH** reported in **AIR 2009 (SCW) 4539** held in para No.17, which reads as follows:

"17.The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not



constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence."

32. Also in the case of ***State of Haryana Vs. Mukesh Kumar & Ors.*** reported in ***AIR 2012 SC 559*** held in para 42, 43, and 48, which reads as follows:

"42. We inherited this law of adverse possession from the British. The Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in law in the larger public interest. The Government



instrumentalities - including the police - in the instant case have attempted to possess land adversely. This, in our opinion, a testament to the absurdity of the law and a black mark upon the justice system's legitimacy. The Government should protect the property of a citizen - not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of the Parliament, then at least the law must require those who adversely possess land to compensate title owners according to the prevalent market rate of the land or property in question. This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors - some of whom may be poor - to pay market rates for the



land they possess, perhaps some lesser amount would be realistic in most of the cases. The Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case.

43. The Parliament must seriously consider at least to abolish "bad faith" adverse possession, i.e., adverse possession achieved through intentional trespassing. Actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief."

x x x x

"48. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of



the opinion that time has come
for change.”

33. The original plaintiff by producing the grant certificate has established that she is the owner of the suit schedule property and it is contended that the defendants have dispossessed the plaintiff from 2007. Immediately, the plaintiff filed a suit for a declaration of title and possession and injunction. The First Appellate Court considered the aspect regarding the limitation in point No.3 at paragraph No.24, which reads as follows:

“24. Article 58 of Limitation Act prescribes the period of limitation for the relief of declaration. The period of limitation for declaration is three years and such period starts from the date when the right to sue first accrues to the plaintiff. Therefore, when the right to sue for declaration of ownership was accrued to the plaintiff, first time has to be ascertained. The plaintiff in para No.7 of the plaint has stated that in the month of



March 2007, the defendant No.3 to 7 tried to encroach over the schedule property and at that time, the defendant No.3 to 7 have denied the right of the plaintiff over the schedule land. According to the pleadings of the plaintiff, the right to file suit for declaration of ownership and possession arisen to the plaintiff in March 2007. The plaintiff has filed the suit on 09.11.2007 itself. In view of these facts, it is for the defendant No.1 and 2 to show that right to sue was accrued to the plaintiff prior to March 2007, or more than 3 years prior to institution of the suit. The defendant No.1 and 2 in para No.3 of the written statement has simply stated that the suit of plaintiff is barred by law of limitation. They have not specified on which date, the right was accrued to the plaintiff to file suit for declaration. Therefore, there is vague allegation made by the defendants regarding limitation. Even during the cross-examination of PW.1 and in the examination-in-chief of DW.1, the defendants not specifically stated the date of right accrued to the plaintiff first time to file the suit for declaration. So,



there is no proper pleading and even there is no evidence adduced by the defendants to prove the fact that right was accrued to the plaintiff to file suit for declaration first time more than 3 years before filing the suit. Hence, by accepting the evidence of PW.1 that right was accrued to the plaintiff in March 2007 to file a suit for declaration, I hold that suit for declaration is also well in time prescribed Article 58 of Limitation Act.”

34. The First Appellate Court rightly held that the suit filed by the plaintiff is well within time and also held that the defendants have not pleaded regarding the plea of adverse possession. Hence, the question of applying Article 65 of the Limitation Act would not arise. The First Appellate Court has rightly passed the impugned judgment. Hence, I do not find any error in the impugned judgment. Accordingly, I answer substantial question of law No.1 in the negative, and substantial question of law No.2 in the affirmative.



35. In view of the aforesaid facts and circumstances, I
proceed to pass the following:

ORDER

- (i) The Regular Second Appeal is
dismissed.
- (ii) The judgment and decree dated
03.04.2014, passed in
R.A.No.17/2012 by the learned
Senior Civil Judge, Harihar, is
hereby confirmed.
- (iii) No order as to the costs.
- (iv) Pending applications, if any,
stand disposed off accordingly.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

SSB