

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 27TH DAY OF FEBRUARY, 2026



BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS SECOND APPEAL NO.100015 OF 2022

BETWEEN:

BHIMAPPA LAKKAPPA GALAGALI
SINCE DECEASED BY HIS LRS.

1. MAYAVVA W/O BHIMAPPA GALGALI
AGE. 62 YEARS, OCC. HOUSEHOLD,
R/O. TAPASHI VILLAGE,
TQ. GOKAK, DIST. BELAGAVI-591233.
2. KAMALAVVA D/O BHIMAPPA GALGALI
SINCE DECEASED BY HER LRS
- 2.A BASAPPA S/O SIDDARAM YABARATTI
AGE. 60 YEARS, OCC. AGRICULTURE,
R/O. HIDKAL, TQ. RAIBAGH, DIST.
BELAGAVI.
- 2.B. KAREPPA S/O BASAPPA YABARATTI
AGE. 25 YEARS, OCC. AGRICULTURE,
R/O. HIDKAL, TQ. RAIBAGH, DIST.
BELAGAVI.
- 2.C MUTTEPPA S/O BASAPPA YABARATTI
AGE. 23 YEARS, OCC. AGRICULTURE,
R/O. HIDKAL, TQ. RAIBAGH, DIST.
BELAGAVI.
3. KASTURI D/O BHIMAPPA GALGALI
AGE. 46 YEARS, OCC. HOUSEHOLD,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.



4. MUTTEPPA S/O. BHIMAPPA GALGALI
AGE. 43 YEARS, OCC. AGRICULTURE,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.
5. KALLAPPA
S/O BHIMAPPA GALGALI
AGE. 40 YEARS, OCC. AGRICULTURE,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.
6. RENUKA
D/O BHIMAPPA GALGALI
AGE. 38 YEARS, OCC. HOUSEHOLD,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.

...APPELLANTS

(BY SRI. MAHESH WODEYAR, ADVOCATE)

AND:

1. BASAPPA
S/O HANAMANT AWARADI @ YEMMEPPAGOL
AGE. 54 YEARS, OCC. AGRICULTURE,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.
2. SMT. DUNDAWWA
W/O BASAPPA YALLUR
AGE. 63 YEARS,
OCC. AGRICULTURE AND HOUSEHOLD,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.
3. SMT. LAXMAVVA
W/O UDDAPPA KULAGOD
AGE. 60 YEARS,
OCC. AGRICULTURE AND HOUSEHOLD,
R/O. TAPASHI VILLAGE, TQ. GOKAK,
DIST. BELAGAVI-591233.

4. BAGAWWA
D/O BALAPPA KARIGAR
AGE. 73 YEARS, OCC. HOUSEHOLD,
C/O. GURASIDDAPPA SIDDPPA KARIGAR,
R/O. WADDAR ONI, GOKAK,
CALLING HERSELF @ YEMMEPPAGOL-591228.

...RESPONDENTS

(BY SRI. S.B. MALIGWAD, ADVOCATE FOR R1 TO R3;
R4- HELD SUFFICIENT (VIDE ORDER DATED 01.03.2024)

THIS MISCELLANEOUS SECOND APPEAL IS FILED UNDER ORDER 43 RULE 1(U) CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.02.2022 PASSED BY THE LD I ADDITIONAL SENIOR CIVIL JUDGE GOKAK IN R.A.NO.62/2016, REVERSING THE JUDGMENT AND DECREE DATED 08.07.2016 PASSED BY THE LD ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GOKAK IN O.S.NO.366/2004 AND CONSEQUENTLY RESTORE THE JUDGMENT AND DECREE DATED 08.07.2016 PASSED BY THE LD ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GOKAK IN O.S.NO.366/2004 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MSA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.02.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

The present appeal is filed seeking to set aside the judgment and decree dated 05.02.2022 in R.A.No.62/2016, on the file of the I Additional Senior Civil Judge, Gokak ('the First Appellate Court' for short), and restore the judgment and decree dated 08.07.2016 in O.S.No.366/2004, on the file of the Additional Civil Judge and JMFC, Gokak ('the Trial Court' for short).

2. The appellants herein were the defendants and respondents No.1 to 3 herein were the plaintiffs No.1 to 3 before the Trial Court.

3. For convenience of reference, the parties herein are referred to as per their rankings before the Trial Court.

4. The brief facts leading to the filing of the present appeal are that:-

The plaintiffs/respondents herein filed O.S.No.366/2004 for declaration of ownership over the suit schedule property bearing R.S.No.186/2 measuring 04 acres 29 guntas situated at Tapasi village, Gokak Taluk, by setting aside the sale deed dated 02.12.1998 executed by defendant No.2 in favour of defendant No.1, and for permanent injunction and possession. The property

originally formed part of Sy.No.186 measuring 08 acres 10 guntas owned by Dundayya @ Kenchappa Awaradi. After his death, his son Hanamant succeeded, and thereafter Kenchappa and Ningappa inherited. The land was divided into R.S. No.186/1 measuring 03 acres 21 guntas allotted to Dundayya Kenchappa Awaradi and R.S.No.186/2 measuring 04 acres 29 guntas allotted to Bhima Ningappa Awaradi. Bhima had no issues and after his death, his wife Smt. Kenchawwa adopted Laxman of Chikkanandi village. Laxman's wife Siddavva died on 15.06.1968. Laxman died on 01.06.984. The plaintiffs, being the children of Hanamant and claiming to be the nearest legal heirs of Laxman who had no issues, contended that they have been in possession and cultivation of the suit schedule property since 1968, raising crops such as jowar, sajji and madaki. In June 2004 they obtained the record of rights and found the name of defendant No.1 entered on the basis of a sale deed dated 02.12.1998 allegedly executed by defendant No.2 as wife of deceased Laxman, which they contended was bogus and forged, asserting that defendant No.2 was not the wife of Laxman and that Siddavva had died on 15.06.1968 prior to Laxman's death.

5. Defendant No.1 adopted the written statement of defendant No.2 and contended that defendant No.2 was the legally wedded wife of deceased Laxman Bhimappa Awaradi, having married him on 18.10.1968 in 'Udaki' form after the death of his first wife Siddavva, and lived with him until his death that is till 1984. It was contended that Laxman had purchased the suit schedule property from Bagavva on 30.10.1953, that after his death, defendant No.2 succeeded to the property and her name was mutated under M.E.No.3363, and that she sold the suit schedule property to defendant No.1 under a registered sale deed dated 02.12.1998 for valuable consideration of Rs.25,000/-, whereupon his name was mutated under M.E.No.3381 and possession was delivered to him on the same day. The defendants contended that the suit was barred by limitation and that the plaintiffs had knowledge of the sale. It was further contended that Shivappa Demappa Jallikatti and Ramappa Demappa Jallikatti filed RTS appeals against M.E.No.3363 and M.E.No.3381 before the Assistant Commissioner, Bailhongal, which were dismissed, and thereafter instigated the plaintiffs to file the suit.

6. In order to substantiate the case of the plaintiffs, plaintiff No.3 was examined as PW1 along with PW2 to PW4 and got marked documents as per Exs.P1 to P34. On the other hand, defendants examined DW1 and DW2 and got marked documents as per Exs.D1 to D14; defendant No.1 examined himself as DW3 and examined DW4 and DW5 and got marked documents as per Exs.D15 to D23.

7. By judgment and decree dated 08.07.2016, the Trial Court dismissed the suit. Aggrieved by the same, the plaintiffs preferred R.A.No.62/2016 before the First Appellate Court and filed I.A.Nos.6 and 7 under Order XLI Rule 27 of the CPC for additional evidence and I.A.No.11 for amendment of plaint. By considering pleadings and materials placed on record, the First Appellate Court by judgment dated 05.02.2022, allowed I.A.Nos.6, 7 and 11 on cost of Rs.3,000/-, allowed the appeal under Order XLI Rule 1 of the CPC, set aside the judgment and decree passed by the Trial Court and remanded the matter to the Trial Court for fresh disposal permitting amendment and additional evidence, directing parties to appear on 08.03.2022 and to bear their own costs wherein it was held as under:-

67. the proposed amendment is sought for insertion of new facts in the plaint relating to the contents of the documents, which are allowed f to be produced as

additional evidence. That apart, the proposed amendment is not utter contrary to the case that has been pleaded by the plaintiffs. Because, same is not denied by the defendants and moreover the proposed amendment is very much necessary to produce and prove the said additional evidence by the plaintiffs and also it is necessary to determine the real question in controversy between the parties. Moreover, it neither changes the nature of the suit nor brings a new cause of action and also it would discussed hereinabove, the 2nd defendant has not proved the not cause hardship to the defendants. Furthermore, as fact of solemnization of the alleged Udaki marriage between herself and the deceased Laxman. On the other hand, the plaintiffs are able to produce oral evidence to substantiate their case. But, as the relief is in respect of declaration of ownership on the suit property, based on such oral evidence ownership of the plaintiffs over the immovable property cannot be declared and such oral evidence must be corroborated by the documentary evidence. / Therefore, one more opportunity has to be given to the plaintiffs to substantiate their case and prove their right over the suit property by producing additional evidence and amending the plaint as sought in the IA.No.6, 7 and 11. In the circumstances, this court deems fit to hold that there are acceptable reasons and also exceptional and extraordinary circumstances in the case in which the proposed amendment needs to be allowed to meet the ends of justice and avoid multiplicity of proceedings.

68. *In view of the aforesaid discussions, reasons and findings of this court, the impugned judgment and decree needs to be set aside by the intervention of this court and remand the matter for fresh disposal in accordance with law by allowing the plaintiffs to carryout amendment as sought in the IA.No.11 and receiving the additional evidence as sought in the IA.No.6 and 7.*

8. The learned counsel appearing for the appellants would contend that the impugned judgment and decree dated 05.02.2022 passed by the First Appellate Court in R.A.No.62/2016 is contrary to law, facts and evidence on record,

arbitrary, illegal, erroneous and perverse, resulting in miscarriage of justice. The First Appellate Court has not properly appreciated the oral and documentary evidence produced by the appellants, and the findings recorded are contrary to the pleadings and materials on record. The reasons assigned are neither proper nor cogent, and the conclusions arrived at are unsustainable in law.

9. It is further contended that the First Appellate Court committed grave error in allowing I.A.Nos.6, 7 and 11 at the stage of arguments of the appeal without the respondents showing sufficient cause as required under Order XLI Rule 27 of the CPC. The documents sought to be produced under I.A.Nos.6 and 7 pertain to RTS proceedings, are not relevant for adjudication of right and title, and were already produced before the Trial Court. The First Appellate Court failed to determine the relevancy and necessity of the additional evidence before exercising jurisdiction. Order XLI Rule 27 of the CPC does not empower acceptance of additional evidence in the absence of satisfactory explanation for non-production before the Trial Court, especially when the Trial Court had already determined all relevant issues including limitation under Article 58 of the

Limitation Act. The First Appellate Court also failed to consider that the respondents were aware of the RTS proceedings which had been disposed of prior to filing of the suit, and ought to have decided the appeal under Order XLI Rule 28 of the CPC instead of remanding the matter.

10. It is contended that the First Appellate Court further erred in allowing I.A.No.11 seeking amendment of the plaint at the appellate stage, which is impermissible in law, alters the nature of the suit, introduces a new cause of action and is barred by limitation, and was not necessary for determination of the issues. Despite recording a finding that declaration of ownership cannot be granted on oral evidence without corroborative documentary evidence, the Court granted a fresh opportunity to the plaintiffs by remanding the matter, thereby prejudicing the rights of the appellants. The remand for fresh disposal without proper enquiry and consideration of all relevant aspects is erroneous and has resulted in miscarriage of justice.

11. In support of the contentions, learned counsel for the appellants has placed reliance on the following judgments:-

- ***Andhra Pradesh Southern power Distribution power Company Limited and Another v.***

Hinduja National Power Corporation Limited and another reported in ***(2022) 5 SCC 484;***

- ***Basavaraj v. Indira and others*** reported in ***(2024) 3 SCC 705;***
- ***H.S.Goutham v. Rama Murthy and another*** reported in ***(2021) 5 SCC 241;***
- ***Shakuntalabai and another v. L.V.Kulkarni and another*** reported in ***(1989) 2 SCC 526;*** and
- ***Rabiya Bi Kassim M v. The Country wide Consumer Financial Service Limited*** reported in ***ILR 2004 KAR 2215.***

12. The learned counsel for the respondents would contend that the I.A.Nos.6 and 7 were filed much prior to the matter got reserved for judgment. However the I.A.No.11 for amendment was filed when the matter which was reserved for judgment was posted for further clarification. The said date is not reflected on the e-Court services Application. The appellant herein have also filed objections to the said IA's. Hence the IA's filed by the respondent are legally sustainable.

13. The learned counsel for the respondents would further contend that the RTC extracts, mutation register extracts, gift deed and sale deed pertain to the suit schedule

property and disclose that Kenchavva W/o Bhimappa gifted the suit schedule property in favour of Bagappa Ittappa Awaradi on 14.01.1946, and that Bagappa Ittappa Awaradi thereafter sold the suit schedule property in favour of deceased Laxman on 03.07.1953 under a registered sale deed, pursuant to which the khatha was transferred to the name of Laxman. Though these transactions were not originally pleaded in the plaint, the plaintiffs have sought amendment by way of filing I.A.No.11 to incorporate the said facts, including reference to O.S.No.232/2005 filed by defendant No.2 before the Trial Court in respect of another property of Laxman, the pleadings therein regarding the mode of solemnization of marriage between defendant No.2 and Laxman, and the orders passed by the Assistant Commissioner, Bailhongal confirming the order of the Tahasildar cancelling the legal heir certificate issued by the Village Accountant, as well as the order passed by the Deputy Commissioner, Belagavi in revision.

14. It is contended that the respondents that deceased Laxman purchased the suit schedule property and have not denied the aforesaid transactions under the gift deed dated 14.01.1946 and sale deed dated 03.07.1953, and therefore the

said documents are material for adjudication of title and may be permitted in light of the decision reported in ***Ambasa Peetambarasa Rangreji dead by Lrs and others v. Executive Engineer, Public Works Department, Gadag and others reported in 2022 (1) KCCR 248***, whereas the decision reported in ***Surjit Singh and others v. Guruwant Kour and others reported in (2014) SCCR 887*** is stated to be inapplicable to the facts of the present case.

15. In support of the contentions, learned counsel for the respondents has placed reliance on the following judgments:-

- ***Leeladevi and another v. Narayan, since deceased by his LRs. And another reported in ILR 2017 KAR 3557***; and
- ***Shanthaveerappa v. K.N. Janardhanchari reported in ILR 2007 KAR 1127***.

16. Heard learned counsel on either side and perused the materials on record.

17. Having perused the judgments relied upon by the learned counsel for the parties, the rival submissions advanced on either side, and on careful examination of the daily orders reflected in the e-Courts services, it is evident that though the matter was initially reserved for judgment by the First Appellate

Court, I.A.No.11 had not been filed at that stage when the matter was set down for judgment before pronouncement of judgment. The record further discloses that subsequently the matter, which had earlier been reserved, was posted for clarification by the First Appellate Court.

18. It is at that stage when the appeal was listed for clarification that IA No.11 came to be filed. The daily order sheet clearly indicates that the proceedings had not culminated in pronouncement of judgment and that the Court had reopened the matter for the limited purpose of clarification. Therefore, it is not correct to state that the application was filed when the matter stood finally reserved for judgment in its strict sense.

19. The records further reveal that upon filing of I.A. No.11, the appellants herein filed their objections to the said interlocutory application. The First Appellate Court has taken note of the objections and thereafter proceeded to consider and pass orders on the application. Thus, the parties were afforded due opportunity to contest the matter.

20. In view of the above, the contention that I.A.No.11 was filed after the matter was reserved for judgment and immediately prior to pronouncement so as to render the

proceedings irregular cannot be accepted. The material on record demonstrates that the application was filed when the matter was posted for clarification and was considered after hearing both sides, and hence no procedural infirmity is made out on that ground.

21. Insofar as the power of the First Appellate Court is concerned, under Order XLI Rule 27 of the Code of Civil Procedure, 1908, additional evidence may be permitted if the Court requires such evidence to enable it to pronounce judgment or for any other substantial cause. Further, Order XLI Rule 28 of the CPC provides the procedure to be followed where additional evidence is allowed. In the present case, the First Appellate Court, after considering I.A. Nos.6 and 7 filed under Order XLI Rule 27 of the CPC and I.A.No.11 seeking amendment of the plaint, exercised its appellate jurisdiction under Order XLI Rule 1 of the CPC and, upon being satisfied about the necessity of such applications for proper adjudication, allowed the same subject to costs and remanded the matter for fresh disposal. The daily order sheet reflects that the applications were considered at a stage when the Court sought clarification, and thus the exercise

of jurisdiction cannot be termed as one undertaken after the matter stood finally reserved.

22. In view of the above discussions, this Court is of the considered opinion that no substantial question of law arises for consideration in this Miscellaneous Second Appeal. The findings recorded by the First Appellate Court relate to exercise of discretion under Order XLI Rule 27 and Order VI Rule 17 of the CPC, which do not warrant interference under Section 100 of the CPC in the absence of perversity or jurisdictional error.

23. In view of the foregoing discussions, this Court proceeds to pass the following:-

ORDER

(i) The Miscellaneous Second Appeal is ***dismissed***.

(ii) The judgment and decree passed by the First Appellate Court is hereby ***confirmed***.

No order as to costs.

**Sd/-
(DR. K.MANMADHA RAO)
JUDGE**

KGK,CT:VP