



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF MARCH 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR SECOND APPEAL NO. 2345 OF 2007 (RES)

BETWEEN

1. SRI. GAVIYAPPA
S/O. SHIVAPPA SOMASAGAR,
AGE: 60 YEARS, OCC: AGRICULTURIST,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.
2. SRI. BASAVANTHAPPA
S/O. SHIVAPPA SOMASAGAR,
AGE: 56 YEARS, OCC: AGRICULTURIST,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.
3. SRI. SUBHAS
S/O. SHIVAPPA SOMASAGAR,
AGE: 48 YEARS, OCC: AGRICULTURIST,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

...APPELLANTS

(BY SMT. PALLAVI PACHHAPURE, ADVOCATE FOR
SRI. F.V. PATIL, ADVOCATE)

AND

1. SRI. MUKAPPA
S/O. BASAPPA SOMASAGAR,
SINCE DECEASED BY HIS LR'S
- 1(A) SRI. SIDDAPPA
S/O. MUKAPPA SOMASAGAR,
AGE: 55 YEARS, OCC: AGRICULTURE,



R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

1(B) SRI. JAGADISH
S/O. MUKAPPA SOMASAGAR,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

1(C) SRI. CHANDRAPPA
S/O. MUKAPPA SOMASAGAR,
AGE: 30 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

1(D) SMT. JAISHEELA
W/O. MAHADEVAPPA AKKIVALLI,
AGE: 40 YEARS, OCC: AGRICULTURE,
R/O. KUSNOOR, TALUK: HANAGAL,
DIST: HAVERI.

1(E) SMT. MALLAMMA
W/O. MUKAPPA SOMASAGAR,
AGE: 44 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

SRI. MAHADEVAPPA
S/O. MUKAPPA SOMASAGAR,
SINCE DECEASED BY HIS LR'S.

1(F) SMT. SAVITA
W/O. MAHADEVAPPA SOMASAGAR,
AGE: 43 YEARS, OCC: HOUSEHOLD WORK,
R/O. CHIKKALLI VILLAGE, TALUK: BYADGI,
DIST: HAVERI.

1(G) KUMARI VANDANA
D/O. MAHADEVAPPA SOMASAGAR,



AGE: 20 YEARS, OCC: HOUSEHOLD WORK,
R/O. CHIKKALLI VILLAGE, TALUK: BYADGI,
DIST: HAVERI.

1(H) KUMAR NITEESH
S/O. MAHADEVAPPA SOMASAGAR,
AGE: 15 YEARS, OCC: STUDENT,
SINCE MINOR REP. BY HIS NATURAL
MOTHER MINOR GUARDIAN
RESPONDENT NO.1F.

MALLAPPA
S/O. BASAPPA SOMASAGAR,
SINCE DECEASED BY HIS LR'S.

2(A) SRI. SHANTAPPA
S/O. MALLAPPA SOMASAGAR,
AGE: 63 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

2(B) SRI. BASAVARAJAPPA
S/O. MALLAPPA SOMASAGAR,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

2(C) SRI. SHAMARAJ
S/O. MALLAPPA SOMASAGAR,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.

2(D) SRI. SAHADEVAPPA
S/O. MALLAPPA SOMASAGAR,
AGE: 45 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.



- 2(E) SRI. CHANNAKESHAVA
D/O. MALLAPPA SOMASAGAR,
AGE: 40 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI, TALUK: BYADAGI,
DIST: HAVERI.
- 2(F) SMT. INDRAVVA
W/O. SHIVARAJAPPA HANKANAD,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O. BELAGERI, TALUK: SORABA,
DIST: SHIVAMOGGA.
- 2(G) SMT. SUNANDA W/O. CHANNABASAPPA
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O. INGALAGUNDI, TAL: BYADAGI,
DIST: HAVERI.
- 2(H) SMT. KUSUMA W/O. BASAPPA HIRUR,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O. SOMASAGAR, TAL: HANAGAL,
DIST: HAVERI.

SRI. CHANNABASAPPA
S/O. BASAPPA SOMASAGAR,
SINCE DECEASED BY HIS LR'S.

- 3(A) SMT. NEELAVVA
W/O. CHANNABASAPPA SOMASAGAR,
AGE: 65 YEARS, OCC: HOUSEHOLD WORK,
R/O. CHIKKALLI VILLAGE, TAL: BYADAGI,
DIST: HAVERI.
- 3(B) SRI. MANJAPPA
S/O. CHANNABASAPPA SOMASAGAR,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI VILLAGE, TAL: BYADAGI, DIST:
HAVERI.
- 3(C) SRI. SHIDDAPPA
S/O. CHANNABASAPPA SOMASAGAR,



AGE: 38 YEARS, OCC: AGRICULTURE,
R/O. CHIKKALLI VILLAGE, TAL: BYADAGI,
DIST: HAVERI.

3(D) SMT. GIRIJAWWA
W/O. NAGAPPA SOMASAGAR,
D/O. CHANNABASAPPA SOMASAGAR,
AGE: 55 YEARS, OCC: HOUSEHOLD WORK,
R/O. BADAMALLI VILLAGE, TAL: BYADAGI,
DIST: HAVERI.

3(E) SMT. GEETA
W/O. MANJUNATH MADI
D/O. CHANNABASAPPA SOMASAGAR,
AGE: 39 YEARS, OCC: HOUSEHOLD WORK,
R/O. BALIHALLI VILLAGE, TAL: HANAGAL,
DIST: HAVERI.

THE RESPONDENTS NO.3(A) TO 3(E) BROUGHT ON
RECORD AS PER THE ORDER OF THE HON'BLE COURT
DATED 9/02/2026 ON I.A.NO.1/2026.

...RESPONDENTS

(BY SRI. VEERESH S. GADAG, ADVOCATE R1(A-E) &
R2 (A-H); R3 (A-E)-HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF CPC PRAYING
TO SET- ASIDE THE JUDGMENT AND DECREE PASSED BY THE
COURT OF THE ADDITIONAL CIVIL JUDGE (SR.DN.),
RANEBENNUR IN R.A.NO.18/2002, DATED 12.7.07 AND THE
JUDGMENT AND DECREE OF THE COURT THE CIVIL JUDGE
(JR.DN.) AND JMFC., BYADGI IN O.S.NO.56/1991 DATED
15.1.2002, MAY KINDLY BE RESTORED, BY ALLOWING THIS
APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 06.03.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT
DELIVERED THE FOLLOWING:



CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

This is the appeal filed under Section 100 of C.P.C. by plaintiffs/appellants praying for setting aside the judgment and decree dated 12.07.2007 in R.A.No.18/2002 on the file of Additional Civil Judge (Sr. Dn.) Ranebennur and to restore the judgment and decree dated 15.01.2002 passed in O.S.No.56/1991 on the file of Civil Judge (Jr. Dn.) and J.M.F.C., Byadagi and to allow this appeal.

2. Parties would be referred with their ranks, as they were before the trial Court for sake of convenience and clarity.

3. The plaintiffs have filed the suit before trial Court praying for declaration that plaintiffs are absolute owners of the encroached portion of 31 guntas and 15 guntas respectively by defendant Nos.1 and 3 in R.S.No.48/2 and 19 guntas by defendant No.2 in R.S.No.49; for possession



of the encroached portion of properties and for such other reliefs.

4. The case of plaintiffs before trial Court in nutshell is that suit schedule property Item No.1 bearing Sy.No.48/2 measuring 5 acres 9 guntas and Sy.No.49/1 measuring 3 acres 27 guntas situated at Chikkalli Village, Byadagi Taluk are the ancestral properties of plaintiffs and plaintiffs are the owners in possession of it; these properties consist of 2 Mango trees, 3 Neem trees and they were grown by the plaintiffs. Defendants are in possession of Sy.No.48/1A measuring 2 acres 24 guntas, Sy.No.48/1B measuring 2 acres 24 guntas, Sy.No.49/2 measuring 3 acres 27 guntas. Towards western side of the lands of plaintiffs bearing Sy.No.48/1A and 48/1B belonging to defendant Nos.1 and 3 are situated and towards eastern side of the lands of plaintiffs bearing R.S.No.49/1, lands of defendant No.2 are situated. There exist small bunds in between the lands of plaintiffs and defendants. The defendants have demolished the bunds and trespassed upon the lands of the plaintiffs.



Specifically, Defendant No.1 has encroached 31 guntas, Defendant No.3 has encroached 15 guntas in Sy.No.48/2 of the plaintiffs, and Defendant No.2 has encroached 19 guntas in Sy.No.49/1. The plaintiffs demanded defendants to vacate and hand over possession of the encroached portion. But defendants have not vacated. Plaintiffs in compromise have measured and surveyed their lands through Land Survey Office and Haddubastu boundaries of suit schedule properties were fixed. Hence, the suit for appropriate reliefs.

5. After service of summons defendants appeared through their counsel and filed their written statement wherein they have denied the plaint averments in toto. They have taken contention that one Mookappa was the original propositus who had 4 sons i.e. Basappa, Channabasappa, Shivappa and Siddappa. Defendant Nos.1 to 3 and one Shivappa are the sons of Basappa. Plaintiff Nos.1 to 3 are sons of Shivappa. After death of father of defendants-Basappa, there was partition and at the time of



partition, defendant Nos.2, 3 and their younger brother Shivappa were minors and they were represented by their mother; they and defendant No.1 together have taken the properties into their share, which were already in possession of their father. They contended that during lifetime of elders only, for convenience parties have divided their properties and were enjoying the properties separately. Said Channabasappa died without issues and the properties which were allotted to the share of Channabasappa was given to Basappa's heirs-defendant No.1 to 3 and Shivappa. After death of Siddappa who died without issues, the properties allotted to his share were taken by the heirs of Shivappa-plaintiffs without the knowledge and consent of defendants. A channel runs in Hirekeri, and to the East of this channel, the property of the plaintiffs is situated and its width towards East is becoming narrow. Likewise, in Sy.No.49, there were some barren lands, including Karalu and Javalu lands and hence, towards East the most fertile land was given to plaintiffs.



6. Defendants along with written statement, have produced the rough sketch. It is further pleaded in the written statement that with the letters 'GNCD' shown in rough sketch annexed to written statement, plaintiffs are in possession of Survey No.48/2 and towards western side of it, lands of defendant No.3 bearing Sy.No.48/1B is situated and it is shown with letters 'MNGF' in the sketch annexed to written statement. Defendant No.3 has grown two Mango trees in his property and they are shown with letters 'Z' and 'Z1' in the sketch annexed to written statement; lands of defendant No.2 bearing Sy.No.49/2 is situated and it is shown with letters 'PQRO' in the sketch annexed to written statement. Since 50-60 years, the old badu exists in between the lands of plaintiffs and defendants at Sy.No.48 and it is shown with letters 'NG' in the rough sketch annexed to the written statement; likewise, badu exists in between the lands of plaintiffs and defendants at Sy.No.49 and it is shown with letters 'OP' in the rough sketch annexed to the written statement; within the badu or



bunds, medegaddes (ಮೇದಗಡ್ಡೆಗಳು) are in existence. Towards western side of the lands of defendant No.3, lands of defendant No.1 situated at Sy.No.48/1A is in existence and it is shown with letters 'FMNG' in the rough sketch annexed to written statement. Thus at no point of time, lands of defendant No.1 are adjacent with the lands of plaintiffs to encroach his lands. Lands of defendant No.2 are not adjacent to Sy.No.48/1. Likewise lands of defendant No.3 are not adjacent to Sy.No.49/1.

7. The defendants further contended that in the year 1975, another partition had taken place among the defendants and Shivappa. In the said partition, Survey No.48/1A was fallen to the share of defendant No.1, Survey No.48/1B was fallen to the share of defendant No.3, and Survey No.49/1 was fallen to the share of defendant No.2. Defendant No.3 has planted two Mango trees in the property that fallen to his share and is enjoying the yield from the same. The defendants have also stated about



other properties that fallen to their respective shares. However, those properties are not the suit schedule properties, and therefore a detailed discussion regarding those properties and the pleadings relating to them is not relevant.

8. Defendants further contended that during 1983, Poth Hissa survey was conducted in respect of Survey No.48, and therefore the plaintiffs were aware of the alleged encroachment in 1983 itself. Hence, the suit is barred by limitation. Furthermore, the defendants are in peaceful possession and enjoyment of these properties from the time of their elders, openly, peacefully, without any obstruction, with the knowledge of the plaintiffs since more than 30 years. Therefore, they have perfected their title by way of adverse possession. Hence, they prayed for dismissal of the suit.



9. From the above facts, issues were framed. Later, the issues were recasted, and the recasted issues are as follows.

- 1) *Whether plaintiffs prove their title to suit property including two Mango trees, three Neem trees as pleaded?*
- 2) *Whether plaintiffs prove that defts. No.1 and 3 have encroached in R.S.NO.48/2 of Chikkalli village to the extent of 31 Guntas and 15 Guntas in total 46 Guntas including two Mango trees and three Neem trees as pleaded?*
- 3) *Whether plaintiffs prove that deft. No.2 has encroached in R.S.NO.49/1 of Chikkalli village to the extent of 19 Guntas as pleaded?*
- 4) *Whether plaintiffs prove the court fee paid on the plaint is proper?*
- 5) *Whether defendants prove that suit of the plaintiffs is barred by limitation?*
- 6) *Whether defendants prove that they have become owner by adverse possession of the alleged encroached land in the suit lands?*
- 7) *Whether plaintiffs prove that they are entitle for the relief as claimed?*
- 8) *What order and decree?*



10. After recording evidence of both sides and hearing the arguments, the Trial decreed the suit that the plaintiffs had proved that defendant No.1 had encroached 31 guntas, defendant No.3 had encroached 15 guntas in Survey No.48/2, and defendant No.2 had encroached 19 guntas in Survey No.49; accordingly, the defendants were directed to deliver possession of the encroached area to the plaintiffs as per the PT sheet drawn by the Court Commissioner at Ex.C.6. However, the suit in respect of *mesne* profits was rejected.

11. Aggrieved by the said judgment and decree, the defendants/appellants preferred first appeal. After hearing arguments, the First Appellate Court allowed the appeal and dismissed the suit of the plaintiffs by setting aside the judgment and decree passed by the Trial Court. Aggrieved by the said judgment and decree, the plaintiffs/appellants are before this Court.



12. Heard the arguments of learned counsel for the appellants and respondents.

13. Learned counsel for the appellants, Smt. Pallavi Pachhapure, would submit that admittedly the plaintiffs and defendants are cousins, i.e., the children of two brothers. The admitted genealogical tree reveals that the plaintiffs are the children of deceased Shivappa, who was the younger brother of Basappa. Defendants No.1 to 3 and Shivappa are the children of deceased Basappa. There was partition between the elders long back, and both parties have been enjoying their respective shares separately by putting small bunds between the properties of the plaintiffs and defendants. By demolishing those bunds, the defendants have encroached with the properties of the plaintiffs in Survey No.48/2 and Survey No.49/1.

14. The plaintiffs came to know about the encroachment through private survey. After filing the suit, Court Commissioner-Surveyor was appointed, who



submitted his survey report and sketch. Based on said report and sketch, plaintiffs amended the plaint and altered the reliefs in accordance with said commissioner's report and sketch. The said report and sketch reveal that defendant No.1 had encroached 31 guntas in Survey No.48/2, defendant No.3 had encroached 15 guntas in Survey No.48/2, and defendant No.2 had encroached 19 guntas in Survey No.49/1. These facts were established by the plaintiffs by producing the Commissioner's report and sketch and by examining the Commissioner.

15. Very recently, prior to filing of the suit, when the private survey was conducted, the plaintiffs came to know about the alleged encroachment. Considering these aspects, the Trial Court rightly decreed the suit of the plaintiffs. However, the First Appellate Court reversed the said judgment without assigning cogent and acceptable reasons. The First Appellate Court allowed the appeal without properly verifying the Commissioner's report and the evidence on record.



16. The First Appellate Court held that no Government survey was conducted and that the report of the private surveyor is inadmissible in law; said finding of the first appellate court is patently false.

17. The finding and observation of First Appellate Court is quite contrary to the established facts and sketch of court commissioner. The first appellate court wrongly held that bunds have existed between the properties of both parties for long time, and therefore the encroachment is not established. These findings of the First Appellate Court are against the material evidence available on record. The First Appellate Court further held that the plaintiffs had not approached the Revenue Authorities by raising RRT dispute for recovery of possession, and therefore allowed the appeal. Thus, the finding of first appellate court is contrary to the cogent and reasoned judgment of trial court. Hence, prayed for allowing the appeal.

18. Learned counsel for respondent No.3, Sri.Veeresh S. Gadag, would submit that the First Appellate



Court has properly appreciated the oral and documentary evidence and rightly dismissed the suit. Apparently, the suit is barred by law of limitation. Furthermore, the land of defendant No.1 is not adjacent to the land of the plaintiffs, and therefore there cannot be any encroachment upon the land of the plaintiffs by defendant No.1. Hence, the alleged encroachment of 31 guntas by defendant No.1 is only created and concocted story. The cross-examination of the commissioner establishes that he has not surveyed lands in accordance with the rules. Hence, the same is not acceptable one. Hence, he prayed for dismissal of the appeal.

19. From the above facts, the substantial questions of law that arose for consideration, as per the Order dated 13.08.2008, are as follows:

- i. Whether the First Appellate Court was justified in reversing the findings of the Trial Court on the ground that the survey conducted by the Government Surveyor, appointed as Commissioner by the Trial Court, was invalid?*



- ii. *Whether the First Appellate Court was justified in reversing the decree of the Trial Court by ignoring the documents of title standing in the names of the plaintiffs and by not considering the plea of adverse possession set up by the defendants in its proper perspective?*

20. Having perused the Trial Court and First Appellate Court records as well as records of this appeal and arguments of both sides, the substantial questions of law are reformulated as follows:

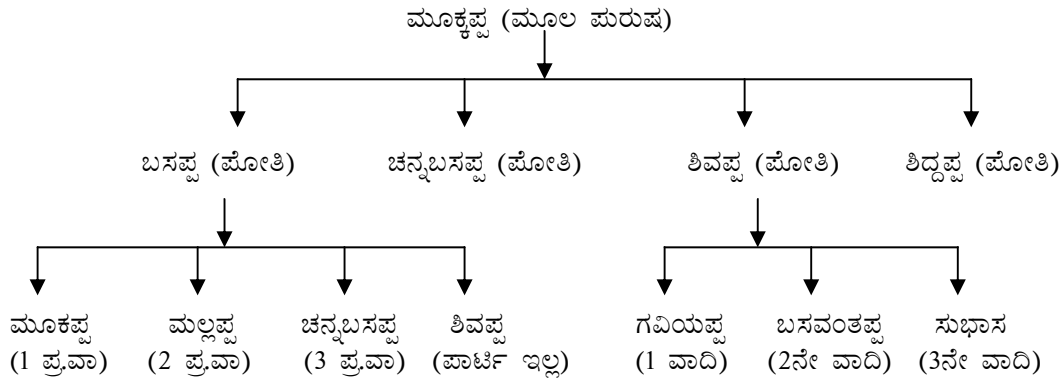
- i. *Whether the First Appellate Court was justified in reversing the findings of the Trial Court on the ground that the survey conducted by the Court Commissioner without surveying the lands of adjacent owners is invalid?*
- ii. *Whether the First Appellate Court was justified in reversing the decree of Trial Court on the ground that the plea of adverse possession taken by the defendants was only an alternative plea and they have not stuck on to it during trial?*

21. After reformulating the substantial questions of law, heard arguments of both sides.



22. Answer to the above Question Nos.(i) & (ii) in ***affirmative*** for the following reasons:

23. The admitted facts of the case are that the plaintiffs and defendants are cousins. The genealogical tree, as narrated in the written statement and admitted by the plaintiffs, is as follows:



24. One Mukappa had four sons, namely Basappa, Channabasappa, Shivappa and Siddappa. Basappa died leaving behind four sons, i.e., defendant Nos. 1 to 3—Mukappa, Mallappa and Channabasappa and another son—Shivappa, who is not a party to the suit. Channabasappa died, and his share devolved upon defendants and Shivappa (son of Basappa). Third son of Mukappa-Shivappa is the



father of plaintiff Nos. 1 to 3, namely Gaviappa, Basavantappa and Subash. Siddappa is the uncle of both plaintiffs and defendants. According to the plaintiffs, Siddappa had given his share of the property to the plaintiffs, which is not seriously disputed by the defendants.

25. It is an admitted fact that about 50–60 years prior to the filing of the suit, there was partition. After the death of Basappa, when defendant Nos. 2 and 3 were minors, defendant No.1 and defendant Nos. 2 and 3 represented by their mother and Channabasappa, the uncle of the plaintiffs on one side have taken half share and the remaining half share was taken by Shivappa and Siddappa. It is not in dispute that in the said partition, father of the plaintiffs has got Survey No.48/2 measuring 5 acres 9 guntas and Survey No. 49/1 measuring 3 acres 27 guntas, into their share.

26. During pendency of the suit, the Taluk Surveyor was appointed as Court Commissioner, who has visited the



spot, examined and measured the land, surveyed it and submitted his report along with a sketch. The Commissioner was examined as C.W.1, his report was marked as Ex.C.5, and sketch is marked as Ex.6.

27. According to plaint averments, Survey No. 48/1A and 48/1B belongs to defendants No.1 & 3 respectively are situated towards western side of Survey No.48/2 of plaintiffs. According to the Survey Sketch of Commissioner as per Ex.C.6, Survey No. 48/1B of defendant No.3 is situated on western side of Survey No.48/2 of plaintiffs. The commissioner has shown the encroached portion in red coloured dotted lines in Ex.C.6. This encroached portion comes in the land belonging to defendant No.3 and not in the land of defendant No.1. But in his report and also in his description in the sketch, the Court Commissioner has stated that 31 guntas property is encroached by defendant No.1 and 15 guntas property is encroached by defendant No.3. The Court Commissioner has fixed the boundaries of Survey No. 48/1, 48/1A and 48/1B. According to him in this



48/1A is 31 guntas in excess compared to the revenue records and thus he had shown the encroachment by defendant No.1 as 31 guntas. However the said encroachment, if really is done, it is not in the property of plaintiffs but it may be in the property of defendant No.3. It will be only the dispute between defendant Nos.1 and 3 and plaintiffs cannot claim the excess portion in possession of defendant No.1 directly because it does not belong to plaintiffs. At the most he ought to have prayed for possession from defendant No.3 and not from defendant No.1.

28. Court Commissioner in his cross-examination has categorically admitted that property of defendant No.1 is not adjacent to the property of plaintiffs in Survey No.48 and thus defendant No.1 cannot encroach upon the property of plaintiffs.

29. It is an admitted fact that the channel runs through Survey No.48/2. The lands of plaintiffs and



defendant No.3 in Sy.No.48 are not bifurcated by this channel; but it passes through on the northern side of Survey No. 48/2 and 48/1B and 48/1A. Plaintiffs have not claimed relief of possession from defendant No.3 for the entire extent of 1 acre 6 guntas in Survey No.48/2, but he has prayed for only 15 guntas from defendant No.3. There is no specific bifurcation of these 15 guntas and 31 guntas in the commissioner's sketch to decide till what portion the defendant No.3 has encroached the property of plaintiffs in Survey No. 48/2.

30. In this regard, learned counsel for appellants would submit that the Court can mould the relief in the interest of justice and equity. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in the case of ***J. Ganapatha and Ors. Vs. N. Selvarajalou Chetty Trust and Ors.***¹. Paragraph 20 of the said judgment reads as under:

¹ Civil Appeal No.4370 of 2025, disposed of on 25.03.2025



"20. The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion. When moulding the relief, the court considers the issues and circumstances established during the full-fledged trial, looks at shortening the litigation, and then in its perspective, renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course."

According to the principles noted in the above judgment, the Court can mould the relief in exceptional circumstances only to meet the ends of justice and not as a matter course.

31. In the instant case, since from the time of filing of written statement, defendants have taken specific plea



that lands of defendant No.1 are not adjacent to the lands of plaintiffs and thus, it is impossible for him to encroach with lands of plaintiffs. However, plaintiffs have not amended the plaint and not amended the reliefs; even though there was amendment about extent of encroachment after receipt of commissioner's report. Hence, the above citation is not helpful for appellants/plaintiffs.

32. As far as Sy.No.49 is concerned, plaintiffs are in possession of 49/1 and defendant No.2 is in possession of 49/2. Plaintiffs' possession in this survey number is on western side and possession of defendant No.2 in this survey number is on eastern side. According to commissioner's report and sketch, defendant No.2 has encroached 19 guntas in this survey number.

33. It is to be noted here that in the alleged encroached portion by defendant No.3, 2 Mango trees and 3 Neem trees are in existence. But the commissioner has



shown 4 Neem trees and 1 Mango tree in the alleged encroached portion by defendant No.3 in Survey No.48/2. That is on northern side and he had shown one Mango tree in the alleged encroached portion by defendant No.3 on the southern edge of the survey number. He has also shown another Mango tree in the lands of plaintiffs.

34. In the evidence it has come that the alleged Mango trees and Neem trees are aged about 25–30 years old plants.

35. In the cross-examination, the Commissioner admitted that the medegaddes bifurcate the lands of plaintiffs and defendant No. 3. However, on careful perusal of the commissioner's sketch, medegaddes bifurcating Survey No.48/2 and 48/1B are not forthcoming. But only one medegadde is bifurcating the lands of plaintiffs in Survey No.49/1 and lands of defendant No.2 in Survey No. 49/2 is forthcoming. That is shown only in one place.



36. The commissioner further admitted in his cross-examination that, if seen from those medegaddes, the Mango plants and Neem trees are in possession and cultivation of defendant No.3.

37. The Commissioner ought to have shown the property in cultivation of plaintiffs and the property in cultivation of defendant No.3. But admittedly, he has not shown it in Ex.C.6. He has not shown the encroached portion in any colour. On eastern side of said medegadde, property in possession and cultivation of defendant No.2 at Survey No.49/2 is situated and on western side of said medegadde, property in possession and cultivation of plaintiffs at Survey No.49/1 is situated. This fact is categorically admitted by both sides.

38. According to plaint averments, at para No. 7, it is pleaded that defendants have encroached the property of plaintiffs and plaintiffs have demanded to vacate it, and defendants refused to do so and thus the cause of action



arose about 2 years prior to filing of the suit i.e. on 23.09.1991.

39. In this regard in the evidence, P.W.1 categorically deposed that about 10-15 days prior to filing of the suit, defendants have encroached with his property. P.W.1 categorically deposed in further cross-examination that about 15 days prior to filing of the suit, the defendants have encroached with suit schedule property. He raised objection for such encroachment, but he has not filed any police complaint.

40. In the examination-in-chief itself, P.W.1 has categorically deposed that a badu is situated in between his property and the property of defendants, and they are in enjoyment and possession of the properties as per the said badu. According to him, when defendants started encroaching upon his property, he told defendants not to encroach but they have not heeded to his request. Hence he got surveyed his property through a private surveyor. He



has deposed that earlier he was taking the entire proceeds of Mango tree by himself. But plaintiffs have not produced even a single iota of evidence to show when exactly or at least in which year they have planted these Mango trees or Neem trees, or whether they have purchased the saplings from anyone, or at least oral evidence of neighbours to substantiate his contention. Only the report of Court Commissioner and the sketch of Court Commissioner is available to say that there is encroachment in the suit schedule property as alleged by plaintiffs.

41. Defendants have examined a witness on their behalf as D.W.2 to show the existence of Mango plants and Neem plants in the lands of defendant No.3.

42. In this regard, said witness has deposed that to bifurcate the lands of plaintiffs and defendants, the medegaddes are grown. They are in existence since his childhood. He further deposed that those medegaddes are not transferred or transported from one place to another.



They are in existence in the place where they were. In this regard, in the cross-examination, D.W.2 categorically deposed that there is distance of about 30-40 meters of each medegadde. There is no existence of fence in between the properties of plaintiffs and defendants. He further deposed that at the time of cultivation, if those medegaddes are removed, then they will be demolished. He has not deposed that the medegaddes that are in existence between the properties of plaintiffs and defendants were demolished at the time of cultivation. But he has only deposed in general that, if at the time of cultivation, there is chance of demolition of those medegaddes. However, there is no evidence to show that it happened in the present case also.

43. With this background, the actual date of partition between parties is to be looked into to say whether the suit is filed within the period of limitation or not.

44. Defendants have produced the M.E.No.473 dated 10.09.1962. According to this mutation entry, there was



partition amongst Channabasappa, Shivappa and Siddappa, the brothers and children of Mukkappa, and also defendant No.1, who was shown as one of the heirs of first branch-Basappa. According to this mutation entry certified by the revenue authorities, on 10.09.1962 there was compromise and partition amongst brothers and at that time this Survey No.48 was sub-divided into two portions. 48/1 was fallen to the share of children of first branch Basappa; 48/2, the remaining half portion in said survey number, was fallen to the share of father of plaintiff Nos.1 to 3 measuring 5 acres 9 guntas. Subsequently there is another partition amongst defendant Nos.1 to 3 and their brother Shivappa; and in that partition, Survey No.48A measuring 2 acres 17 guntas was fallen to the share of defendant No.1 and 48B measuring 2 acres 24 guntas was fallen to the share of defendant No.3, and Survey No.49/2 measuring 3 acres 27 guntas was fallen to the share of defendant No.2.

45. Ex.D.2 reveals that this Channabasappa died on 19.05.1966 and he had gifted his property to children of



Basappa i.e., to defendant No.1 to 3 and their brother Shivappa, and thus the properties which were fallen to his share were mutated into the names of defendant No.1 to 3 and Shivappa.

46. These documents being admitted revenue documents produced by defendants clearly and categorically established that in the year 1962 itself there was partition. The present suit is filed in the year 1991. Admittedly, at the time of this alleged partition, a survey was not conducted. But both were in possession of their respective portions which they were cultivating separately since long time prior to the partition. Thus plaintiffs have to produce some cogent evidence to show that the alleged encroachment in Survey No.48/2 by defendant No.3 and the alleged encroachment in Survey No. 49/1 by defendant No.2 has taken place 2 years prior to filing of the suit as per pleadings or 10-15 days prior to filing of the suit as per the evidence. However, as discussed above, no material is



produced by the plaintiffs to show that when this alleged encroachment has taken place.

47. The Commissioner in his cross-examination has deposed that, to decide the encroachment, not only the property in question but also the properties of adjacent landowners are also to be surveyed, and then only one can exactly say what is the actual encroachment. He further admitted that he has not done so in the present case. He admitted that on southern side of Re-survey No. 48, Survey No.77, on its northern side Survey Nos. 49, 57 and 58, on western side Re-survey No. 65 and on eastern side Re-survey No. 47 are situated for Survey No.48. However, he has not surveyed any of these survey numbers. He further admitted that he has not shown in the sketch as per Ex.C.6 regarding the encroached portion by defendant No.2 in Survey No.49/1.

48. Without proving the date on which cause of action arose, it cannot be said that the suit of plaintiffs is



within the period of limitation. Firstly, as discussed earlier, since 1962, parties are enjoying their respective portions separately. However, the suit is filed in the year 1991, i.e., about 30 years after such partition. Hence the suit is definitely barred by limitation to claim any possession of encroached portion from the defendants. Even though the defendants have not established the plea of adverse possession, plaintiffs who have filed the suit have to establish that their suit is filed within the period of limitation. When the Mango trees and Neem trees in existence in the portion of the land of defendant No.3 are aged 25-30 years, definitely the suit is not filed within the period of 12 years of the alleged encroachment.

49. The above discussion reveals that the commissioner's report and sketch are incomplete because the commissioner has not shown the proper encroached portion. The suit against defendant No. 1 is completely not maintainable because he has not encroached with any portion of the property of plaintiffs and his property is not at



all adjacent to the property of plaintiffs. There is no proper survey because the commissioner has not shown the Kharab land and the cultivable land and he has not shown the encroached portion properly in the sketch. Further, he has not surveyed the lands of adjacent owners to decide the actual encroachment.

50. The survey is conducted by the Court Commissioner who is a Government surveyor Tahsildar, but it was not properly examined by the First Appellate Court.

51. As discussed above, the plea of adverse possession taken by defendants is only an alternative plea and defendants have not stick on to said plea at the time of trial. Hence even though the First Appellate Court is wrong in holding that the survey is not conducted by Government surveyor, its conclusion that plaintiffs are not entitled for possession is proper. As discussed above, the plea of adverse possession taken by defendants is only an alternative plea and not the main plea. When parties are in



settled possession since 1962 or prior to said date, definitely plaintiffs are not entitled for possession from defendants.

52. Hence the modified substantial questions of law No.(i) and (ii) are answered in ***affirmative*** and this Court pass the following:

ORDER

The appeal filed under Section 100 CPC is dismissed, by confirming the judgment and decree dated 12.07.2007 in R.A.No.18/2002 passed by the Additional Civil Judge (Sr. Dn.), Ranebennur.

**Sd/-
(GEETHA K.B.)
JUDGE**

SSP: Para 1 to 5
VB: para 6 to 22
gab – para 23 to end
CT-MCK