IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF APRIL 2025

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 2502 OF 2007 (PAR-)

BETWEEN:

1. SMT. RIHANA
W/O. MOHAMMED GHOUSE,
AGE: 48 YEARS, OCC: RYOT,
R/O. MAINALLI, TAL: MUNDAGOD,
DIST: UTTARA KANNADA.

2. JANAB MOHAMMED GHOUSE,
SINCE DECEASED BY HIS LR'S.

2(A) MATIN MOHAMMEDGOUSE SHAIKH,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O. MAINALLI, TAL: MUNDGOD,
DIST: UTTARA KANNADA.

2(B) MOHAMMED MUDASSIR MOHAMMED GOUSE,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O. MAINALLI, TAL: MUNDAGOD,
DIST: UTTARA KANNADA.

MOHANKUMAR B SHELAR
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH

2(C) MUZAMMIL MOHAMMED GOUSE,
AGE: 34 YEARS, OCC: AGRICULTURE,
R/O. MAINALLI, TAL: MUNDAGOD,
DIST: UTTARA KANNADA.

2(D) ZAINABI MOHAMMED GOUSE,
AGE: 28 YEARS, OCC: HOUSE WIFE,
R/O. MAINALLI, TAL: MUNDAGOD,
DIST: UTTARA KANNADA.

...APPELLANTS

(BY SRI. RAMESH I. ZIRALI, ADVOCATE FOR A1 AND A2(A-D))

AND:

1. SMT. NAKALIBAI BOMMU GOUDA,
SINCE DECEASED BY HIS LR'S.

1(A). SMT. SAVUBAI W/O. BABU PANDRAMISE,
AGE: 69 YEARS, OCC: HOUSEWIFE,
R/O. # 51, MAJJIGEHALLI UCHAGERI,
CHIPGERI, UK-581402.

1(B). KONDUBAI JANU PATAGARE,
AGE: 66 YEARS, OCC: HOUSEWIFE,
R/O. CHALAGERI MUNDAGOD,
CHIPGERI, UTTARA KANNADA.

1(C). BAJJU BOMMU BORE,
AGE: 49 YEARS, OCC: AGRICULTURE,
R/O. MAINALLI GOULIVADA,
MUNDAGOD, DIST: UTTARA KANNADA.

1(D). VAAGU BOMMU JORE,
AGE: 40 YEARS, OCC: HOUSEWIFE,
R/O. MAINALLI GOULIVADA,
MUNDAGOD, DIST: UTTARA KANNADA.

1(E). SMT. SAGGUBAI RAMU YEDAGE,
AGE: 45 YEARS, OCC: HOUSEHOLD,
R/O. MAINALLI, MUNDAGOD,
DIST: UTTARA KANNADA.

1(F). SONUBAI SAJU JORE,
AGE: 50 YEARS, OCC: HOUSEHOLD,
R/O. BELLIBELAKU, VTC MAINALLI,
MUNDAGOD, TAL/DIST: UTTARA KANNADA.

1(G). BAMMU SAAJU JORE,
AGE: 28 YEARS, OCC: AGRICULTURE,
R/O. BELLIBELAKU, VTC MAINALLI,
MUNDAGOD, TAL/DIST: UTTARA KANNADA.

1(H). SMT. GANGA VITHOBA MALAGONDE,
AGE: 26 YEARS, OCC: HOUSEWIFE,
R/O. # 453, HOLENANDIKATTA,
VTC HOSALLI, PO: HOSALLI,
TAL: YELLAPUR, DIST: UK.

1(J). JAYASHREE SAAJU JORE,
AGE: 23 YEARS, OCC: HOUSEHOLD,
R/O. BELLIBELAKU, VTC MAINALLI,
MUNDAGOD, TAL/DIST: UTTARA KANNADA.

1(K). SAVITA SAJU JORE,
AGE: 19 YEARS, OCC: STUDENT,
BELLIBELAKU, VTC MAINALLI,
MUNDAGOD, TAL/DIST: UTTARA KANNADA.

1(L). SANTOSH SAAJU JORE,
AGE: 13 YEARS, OCC: STUDENT,
BELLIBELAKU, VTC MAINALLI,
MUNDAGOD, TAL/DIST: UTTARA KANNADA.

2. BHAIRU NAVALU GOWLI,
AGE: 32 YEARS,
R/O. MAINALLI, TAL: MUNDGOD,
UTTARA KANNADA.

…RESPONDENTS

(BY SRI. DINESH M. KULKARNI, ADVOCATE FOR R1(A-H) & (J-L));
SRI. R.G. HEGDE, ADVOCATE FOR R2)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 PRAYING TO SET ASIDE THE JUDGMENT & DECREE DATED 9.1.07 PASSED IN R.A.NO.10/1999 ON THE FILE OF DISTRICT JUDGE FAST TRACK COURT-II KARWAR CONFIRMING THE JUDGMENT AND DECREE DATED 17.9.1999 PASSED IN O.S. NO.133/1994 ON THE FILE OF CIVIL JUDGE (SR.DN.) SIRSI BY ALLOWING THIS REGULAR SECOND APPEAL WITH COSTS THROUGHOUT IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: THE HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL JUDGMENT

This appeal is filed by the plaintiffs, challenging the judgment and decree dated 09.01.2007 passed in RA No.10/1999 on the file of District Judge, Fast Track Court-II, Karwar, U K District (for short, hereinafter referred to as 'First Appellate Court'), dismissing the appeal and confirming the judgment and decree dated 17.09.1999 passed in OS No.133/1994 on the file of Civil Judge (Sr.Dn.), Sirsi (for short, hereinafter referred to as 'Trial Court'), dismissing the suit of the plaintiffs.

2. For the sake of convenience, the parties in this appeal shall be referred to in terms of their status and ranking before the Trial Court.

3. It is the case of the plaintiffs that, the plaintiffs are in possession of the deforest land, set out as the schedule property in the suit and enjoying the same and

constructed house in the suit land by investing huge amount and also Panchayat No.398 has been assigned to the house constructed by the plaintiffs in the suit schedule property. It is also stated that, one Dattappa Subbanna Daivadnya, has interfered with the suit schedule property and as such, the plaintiffs has filed OS No.24/1988, which came to be decreed stating that, the plaintiffs are in possession and enjoyment of the suit schedule property. Hence, it is the case of the plaintiffs that, the defendants without having any semblance of right over the suit schedule property interfered with the possession of the plaintiffs and as such, the plaintiff has filed OS No.133/1994, seeking relief of declaration with consequential relief of injunction.

4. After service of summons, the defendants entered appearance and filed detailed written statement denying the averments made in the plaint. It is the case of the defendant No.1 that, the plaintiffs have no right, title in respect of the suit schedule property as the suit land has been granted to the defendant No.1 on

21.03.1960 and as such, husband of the defendant No.1 is in possession of the suit schedule property and cultivating the same. The husband of the defendant No.1 died on 29.05.1985 leaving behind the defendant No.1 and children and they are in possession of the suit schedule property, hence, the defendant No.1 sought for dismissal of the suit.

5. On the basis of the rival pleadings, the Trial Court has formulated issues for its consideration.

6. In order to establish their case, plaintiffs have examined three witnesses as PW1 to PW3 and got marked 23 documents as Exs.P1 to P23. On the other hand, defendants have examined two witnesses DW1 and DW2 and produced 12 documents as Exs.D1 to D12.

7. The Trial Court, after considering the material on record, by its judgment and decree dated 17.09.1999 dismissed the suit of the plaintiffs and being aggrieved by the same, the plaintiffs have preferred Regular Appeal in RA No.10/1999 on the file of First Appellate Court and the said appeal was resisted by the defendants. The First

Appellate Court after re-appreciating the facts on record, by its judgment and decree dated 09.01.2007, dismissed the appeal, consequently, confirmed the judgment and decree passed by the Trial Court in OS No.133/1994. Being aggrieved by the same, the appellants/plaintiffs have preferred this Regular Second Appeal.

8. This Court vide order dated 06.07.2012 formulated the following substantial question of law.

> *"Whether both the Courts below are justified in not giving due weightage to the grant order Ex.P.17 made in favour of the plaintiff during the pendency of the suit?"*

9. I have heard Sri. Ramesh I. Zirali, learned counsel appearing for the appellants, Sri. Dinesh M. Kulkarni, learned counsel appearing for the respondent Nos.1(A to L) and Sri. R. G. Hegde, learned counsel appearing for respondent No.2.

10. The learned counsel appearing for the appellants, refers to the documents and Ex.D3 as well as Ex.P15 wherein, the land in question was granted in favour

of the plaintiffs and same is supported by Ex.P17 wherein, the grant made in favour of defendant No.1 was set aside by the Competent Authority and therefore, by referring to paragraph No.17 of the judgment and decree passed by the Trial Court, the learned counsel appearing for the appellants sought for interference of this Court.

10.1. The learned counsel appearing for the appellants, also filed a memo stating that, the order of cancellation passed by the Deputy Commissioner, Karwar U K District was assailed in Appeal No.410/1996 before the Karnataka Appellate Tribunal, Bengaluru and the Tribunal by its order dated 22.06.1999 set aside the order of cancellation at Ex.P17 and remanded the matter to the Competent Authority to consider the case afresh. Pursuant to the same, the Deputy Commissioner, Karwar, U K District, rejected the claim made by the defendant No.1 by its order dated 10.11.1999 and therefore, sought for interference of this Court.

11. Per Contra, the learned counsel appearing for the respondents submits that, the order of cancellation

was questioned before the Karnataka Appellate Tribunal in Appeal No.410/1996 and thereafter, the order of cancellation was set aside and matter was remanded to the Deputy Commissioner Karwar, U K District for fresh consideration and therefore, no documents have been produced in furtherance of the same before the Courts below and therefore, sought for dismissal of the appeal.

12. The learned counsel appearing for the respondents further submitted that, the order dated 10.11.1999 produced by the plaintiffs herein has been produced before this Court for the first time and the learned counsel for the respondents has no knowledge about the same, and accordingly, sought for dismissal of the appeal.

13. In the light of the submission made by the learned counsel appearing for the parties, I have carefully examined the finding recorded by both the Courts below and perused the record. It is the case of the plaintiffs that, the land in question has been granted by the Tahasildar, Mundagod as per Ex.P15 and Ex.P17 is in support of the

same makes it clear that, the land in question has been granted to the plaintiffs. On the contrary, Ex.D3 wherein, the land in question was granted in favour of the defendant No.1. It is the contention of the learned counsel appearing for the appellant that, as the defendant No.1 has failed to adhere to the terms and conditions stated in the order of grant in Ex.D3 and therefore, the Ex.D3 came to be cancelled as per Ex.P17 and the land in question was granted in favour of the plaintiffs.

14. It is fact that the order of cancellation was questioned before the Karnataka Appellate Tribunal, Bengaluru in Appeal No.410/1996 wherein, the matter was remitted to the Deputy Commissioner, Karwar, U K District to afford opportunity to the appellant therein (defendants herein) to substantiate their case.

15. Learned counsel appearing for the appellants has filed a memo stating that, in furtherance of remitting the matter to the Competent Authority, the Deputy Commissioner, Karwar, U K District, by its order dated 15.11.1999 confirmed the order of cancellation made in

favour of the defendant No.1. Undisputebly, these documents have not been tested before the Trial Court as well as before the First Appellate Court and as such, I am of the view that, since the suit is one for seeking relief of declaration, these documents have to be assessed by the Trial Court afresh and therefore, it is a fit case to remand the matter to the Trial Court for appropriate consideration in accordance with law. Hence, the substantial question of law framed above favours the plaintiffs and as such, I pass the following:

ORDER

i) Appeal is ***allowed***.

ii) Judgment and decree dated 09.01.2007 in RA No.10/1999 on the file of District Judge, Fast Track Court-II, Karwar, is hereby set aside.

iii) Judgment and decree dated 17.09.1999 in OS No.133/1994 on the file of Civil Judge (Sr.Dn.), Sirsi, is hereby set aside and the matter is remitted to the Trial Court for fresh consideration.

iv) It is open for the parties to adduce evidence, if any, in the matter and all the contentions are kept open.

v) It is needless to say that, since the suit is of the year 1994 the Trial Court is directed to expedite the matter.

vi) Since, the parties are represented through their counsel, the parties are directed to appear before the Trial Court on ***04.06.2025 at 11.00 a.m.,*** without waiting any notice from the Trial Court.

Sd/-
(E.S.INDIRESH)
JUDGE

SMM / CT-MCK
List No.: 1 Sl No.: 36