



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE V SRISHANANDA**

**MISCELLANEOUS SECOND APPEAL NO. 80 OF 2018 (RO)**

**BETWEEN:**

1. SMT. K.S. SAVITHRI  
W/O K.N. SEETHARAMAYYA,  
AGED ABOUT 71 YEARS  
R/A GOWRIGAGANAGIRI HOUSE,  
KOLLAMOGARU VILLAGE & POST,  
SULLIA TALUK,  
D.K.DISTRICT-574218.
2. K.S. GOWRISHANKARA  
S/O K.N. SEETHARAMAYYA,  
AGED ABOUT 63 YEARS  
AGRICULTURIST,  
R/A KATTA GOWRIGAGANAGIRI HOUSE,  
KOLLAMOGARU VILLAGE & POST,  
SULLIA TALUK,  
D.K.DISTRICT-574 218.

...APPELLANTS

(BY SRI. K. RAVISHANKAR, ADVOCATE)

**AND:**

1. KAMALAKSHA  
S/O M. ANGARA GOWDA,  
AGED ABOUT 49 YEARS,  
AGRICULTURIST,  
MULUBAGILU HOUSE,

Digitally  
signed by  
MALATESH  
K C

Location:  
HIGH  
COURT OF  
KARNATAKA



2. DEVIDAS KAJJODI  
SINCE DEAD BY HIS LR<sub>s</sub>

2(A) SMT. MOHANAGI,  
W/O DEVIDAS KAJJODI,  
AGED ABOUT 55 YEARS,

2(B). JAYAPRAKASH  
S/O DEVIDAS KAJJODI,  
AGED ABOUT 35 YEARS,

2(C). YATHISH  
S/O DEVIDAS KAJJODI,  
AGED ABOUT 30 YEARS,

ALL ARE RESIDING AT  
MULUBAGILU HOUSE,  
KOLLAMOGARU VILLAGE & POST,  
SULLIA TALUK,  
D.K.DISTRICT-574 218.

2(D). NAMITHA K  
W/O SANDEEP K,  
D/O DEVIDAS KAJJODI,  
AGED ABOUT 32 YEARS  
HOTEL PALLAVI BUS STAND ROAD,  
HALGERI, KUMUTA,  
UTTARA KANNADA-581 355.

3. KESHAVA KATTA  
S/O RAMAYYA,  
AGED ABOUT 56 YEARS  
AGRICULTURIST,  
MULUBAGILU HOUSE,

4. NARAYANA BATTODI  
S/O NEELAPPA GOWDA,  
AGED ABOUT 51 YEARS,  
MULUBAGILU HOUSE,



RESPONDENT NOS.3 AND 4 ARE  
R/A KOLLAMOGARU VILLAGE AND POST,  
SULLIA TALUK,  
D.K.DISTRICT-5742 18.

...RESPONDENTS

(BY SRI. ASHISH RAM D, ADVOCATE FOR  
SRI. KRISHNA MOORTHY D, ADVOCATE FOR  
R1, R2, R2(A-D), R3 & R4)

THIS MSA IS FILED UNDER ORDER XLIII RULE 1[u] OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 02.07.2018 PASSED IN R.A.NO.119/2005 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., SULLIA, D.K., ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 17.09.2005 PASSED IN OS NO.15/97 ON THE FILE OF THE CIVIL JUDGE [JR.DN] AND JMFC., SULLIA, D.K. AND REMANDING BACK THE MATTER TO TRIAL COURT TO ISSUE NOTICE TO THE GENERAL PUBLIC AS CONTEMPLATED UNDER ORDER 1, RULE 8 OF CPC.

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

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

**ORAL JUDGMENT**

Heard Sri K. Ravishankar, learned counsel for the appellants and Sri Aashish Ram, appearing on behalf of Sri Krishnamurthy D., counsel for the respondents.

2. Second appeal is filed by the plaintiff in O.S.No.15/1997, on the file of Civil Judge (Jr.Dn) and JMFC.,



Sullia, Dakshina Kannada, challenging the order passed in R.A.No.119/2005, dated 02.07.2018, on the file of Senior Civil Judge and JMFC., Sullia, Dakshina Kannada, whereunder the judgment and decree passed in O.S.No.15/1997 set aside the matter was remitted to the Trial Court.

3. Facts in brief which are utmost necessary for disposal of the second appeal are as under:

Plaintiff filed a suit for declaration that defendant Nos.1 to 4 and other public have got right only as a permissive users in respect of the pathway situated three feet width, running from South to North which is in the plaint schedule property and has got the length of 324 links, touching the Western Boundary line of the plaint 'A' schedule property which is situated in Sy.No.162/2B, adjoining the land bearing Sy.No.160 of Kollamogru village and defendants and others have no rights whatsoever to interfere or widen the said pathway without the consent of the plaintiff and consequential relief.

4. The suit was contested and suit came to be decreed as under:



*"The suit of the plaintiffs is decreed with costs as follows:*

*It is declared that the defendants no.1 to 4 have right only as permissive users to use the pathway of six to feet in width to the Eastern side of the mud compound wall running from South to North parallel to the mud compound wall near and along the Western boundary line of the plaint 'A' schedule property in sy.no.162/28 adjoining the mud compound wall and the defendants or persons claiming through or under them have no right to form or widen the said pathway in the plaint 'A' schedule property without the consent of the plaintiffs.*

*The defendants or persons claiming through or under them are restrained by way of permanent prohibitory injunction from interfering with the peaceful possession and enjoyment of the plaint 'A' schedule property.*

*The defendants are directed by way of mandatory injunction to restore to its original position the said pathway of six feet in width to the Eastern side of the mud compound wall running in North-South direction in the Western boundary line of the plaint 'A' schedule property parallel to the mud compound wall situated on the West of the said pathway.*

*The suit of the plaintiff claiming declaration against the public is dismissed."*

5. Being aggrieved by the said, defendants No.1 to 4 filed an appeal before the District Court which is numbered as R.A.119/2005.



6. The learned Judge in the First Appellate Court secured the records and heard the parties in detail. Thereafter, allowed the appeal as under:

*"The appeal filed by the appellant u/s 96, Order 41, Rule 1 of C.P.C. is hereby allowed.*

*In the result the judgment and decree passed by the trial court in O.S.No.15/1997 is hereby set aside.*

*The matter/suit is remanded to the trial court and it is directed to issue notice to the general public as contemplated u/o 1, rule 8 of CPC calling upon the interested persons to file their written statement/objections and there after frame the issues and permit the public to lead evidence and permit the parties to lead evidence on their side and also permit the appellants herein to mark the documents which are produced by them before this court along with I.A. u/o 41, rule 27 of CPC and there after pass the judgment after hearing on both sides.*

*The suit is of the year 1997 hence the trial court is directed to dispose the matter within six months from the date of receipt of the records. Both the parties are directed to appear before the trial court on 12.7.2018 and co-operate the trial court for disposal of the matter without obtaining un- necessary adjournments."*



7. Being aggrieved by the same, the plaintiff is before this Court.

8. Sri K. Ravishankar, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum contended that admittedly suit came to be filed by the plaintiff based on the title possessed by her and he also took a specific contention that defendant Nos.1 to 4 and other general public may use the three feet passage which is part of the schedule property belonging to the plaintiff as permissive users and not as the ownership and they do not have any further right over the path way either expanding it or for making use of the same any other purpose except ingress and egress to reach the Western boundary.

9. He also contended that when the plaintiff has made a specific prayer about the defendant Nos.1 to 4, who are the adjoining owners, and in general for the public, there was no necessity for the Trial Court to direct the plaintiff to issue notice under Order 1 Rule 8 of Civil Procedure Code for interested persons converting the suit of the plaintiff into a representative character. Therefore, the order passed by the First Appellate



Court as referred to supra has resulted in miscarriage of justice and sought for allowing the appeal.

10. He also pointed out that the learned Judge in the First Appellate Court has accepted the additional evidence based on record by the defendants and for the said purpose also the matter was remitted to the Trial Court which is equal useful having regard to order XLI Rule 25 Civil Procedure Code and sought for allowing the appeal.

11. Per contra, Sri Aashish Ram, appearing on behalf of Sri Krishnamurthy D., counsel for the respondents supports the impugned order.

12. Having heard the parties in detail this Court perused the material on record meticulously. On such perusal of the material on record, it is crystal clear that the plaintiff suit prayer was one for declaration and the plaintiff based his claim on the title possessed by him in respect of the suit property.

13. He also contended that the three feet passage which is situated in the plaint schedule property was used for





free movement and ingress and egress to reach the other portions of the lands and the same should not be treated as a right, except for the free movement which is in the nature of a permission granted by the plaintiff to defendant Nos.1 and 4 and such other public who would like to make use of the said pathway.

14. When such is the specific prayer, plaintiff being the master of the suit, has chosen, who are the defendants, who are interfering with her peaceful possession and enjoyment of the three feet passage which is described in the plaint schedule and has sought for the prayer against the defendant Nos.1 to 4.

15. It is to be noted that the declaratory relief is a judgment in rem, and it would not only restrict to the defendants, but which would also against the rest of the world. By way of abundant caution, the plaintiff must have used the word that other public which the learned Judge in the First Appellate Court mis understood that the prayer is against the rest of the world and the suit is to be considered as a suit for in a representative manner.



16. What is to be looked into under Order I Rule 8 of Civil Procedure Code is the plaintiff claiming the relief not only for herself and for general public as a whole and not the claim against the rest of the people in a specifically drafted suit.

17. Therefore, the approach of the First Appellate Court in directing the plaintiff to convert the suit into a representative capacity cannot be countenanced in law.

18. In this regard learned counsel for the appellants has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Hari Ram v. Jyoti Prasad and another*** reported **in 2011 (2) SCC 682** and relevant paragraphs 19 which reads as under:

*"19. The next plea which was raised and argued vehemently by the learned Senior Counsel appearing for the appellant was that the suit was bad for non-compliance with the provisions of Order 1 Rule 8 CPC. The said submission is also found to be without any merit as apart from being a representative suit, the suit was filed by an aggrieved person whose right to use public street of 10 feet width was prejudicially affected. Since the affected person himself has filed a suit, therefore, the suit cannot be dismissed on the ground of*



*alleged non-compliance with the provisions of Order 1 Rule 8 CPC.”*

19. Following the principles of enunciated in the above judgment in the case on hand, the directions issued by the First Appellate Court to convert the suit into representative capacity cannot be countenanced in law.

20. This would take the matter to the next question on which the First Appellate Court wanted the matter to be remitted is for taking the additional evidence on record.

21. Since in the impugned judgment itself, learned Judge has ruled that the additional evidence placed on record by filing an application under Order XLI Rule 27 Civil Procedure Code is to be taken as marked as an exhibit, the First Appellate Court itself can afford an opportunity for the plaintiff to contest the evidentiary/probative value of additional evidence placed on record and dispose of the appeal by itself instead of remitting the matter to the Trial Court, as unjust remand is not justifiable.



Accordingly, from the foregoing discussion, following:

ORDER

- (i) Appeal is allowed in part.
- (ii) The direction issued by the First Appellate Court for the plaintiff to convert the suit into a representative suit by issuing a necessary notice under Order I Rule 8 of Civil Procedure Code is hereby set aside.
- (iii) So also remitting the suit to the Trial Court for the purpose of taking the additional evidence on record and dispose of the suit afresh in accordance with law is also set aside.
- (iv) Instead, the appeal in R.A.No.119/2005 shall be decided by the First Appellate Court by taking the additional evidence on record and also allowing the plaintiff/respondent in the said appeal to contest the veracity/probative value of the additional evidence, if need be by affording an opportunity to cross-examine the defendant who wants to place



the additional evidence on record and dispose of the appeal on or before 30<sup>th</sup> November 2024.

- (v) Parties shall appear before the Trial Court without further notice on 26<sup>th</sup> August, 2024.
- (vi) Office is directed to return the Trial Court Records with copy of this order forthwith.

**Sd/-**  
**(V SRISHANANDA)**  
**JUDGE**