



**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 7TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS FIRST APPEAL NO. 102262 OF 2014 (CPC)

BETWEEN:

1. MANOHAR BALAPPA MUNGARI
AGE: 61 YEARS,
OCC: AGRICULTURE,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
2. RAMA KALLAPPA KADOLKAR
AGE: 67 YEARS, OCC: AGRICULTURE,
R/O. MARUTI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
3. SIDDAPPA OMANNA TUMARI
AGE: 56 YEARS,
OCC: AGRICULTURE,
R/O. NEAR MARUTI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
4. LAXMAN GHATAGU MULERAKHI
AGE: 67 YEARS,
OCC: AGRICULTURE,
R/O. MARUTI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
5. VEERBHADRA DEVMANI MUNGARI
AGE: 64 YEARS,
OCC: AGRICULTURE,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.





6. GOPICHAND CHUDAMANI MUNGARI
AGE: 42 YEARS,
OCC: AGRICULTURE,
R/O. KURUBAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
7. SIDARAI LAXMANI GAVI
AGE: 65 YEARS,
OCC: FORMER,
R/O. KOTHAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
8. SIDARAI DURGARAM SONULKAR
AGE: 55 YEARS,
OCC: FARMER,
R/O. YAMANAPUR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
9. SIDARAI TOPANA KATRE
AGE: 55 YEARS,
OCC: SERVICE,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
10. MOHAN GUNDU GAVI
AGE: 64 YEARS,
OCC: BUSINESS,
R/O. P.B.ROAD,
BEHIND BHARAT PETROL PUMP, KAKATI,
TAL AND DIST: BELGAUM.
11. PRABHAKAR BALAKRISHNA SUTAR
AGE: 50 YEARS,
OCC: BUSINESS/CARPENTER,
R/O. MARUTI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
12. MALLAPPA RAMCHANDRA DHONJI
AGE: 50 YEARS,
OCC: FARMER,
R/O. BHAVAKAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.



13. SHIVAJI NINGAPPA GAVI
AGE: 52 YEARS,
OCC: FARMER,
R/O. GANPAT GALLI, KAKATI,
TAL AND DIST: BELGAUM.
14. SHIVAJI SIDDAPPA NAREGAVI
AGE: 61 YEARS,
OCC: FARMER,
R/O. SIDDESHWAR NAGAR, KAKATI,
TAL AND DIST: BELGAUM.
15. BASAVANNI GANGARAM TUMARI
AGE: 56 YEARS,
OCC: FARMER,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
16. KALLAPPA YAMANU SOMAI
AGE: 52 YEARS,
OCC: FARMER,
R/O. GANPAT GALLI, KAKATI,
TAL AND DIST: BELGAUM.
17. YALLAPPA SIDARAI GAVI
AGE: 54 YEARS,
OCC: BUSINESS,
R/O. KOTHAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
18. BHAVAKANNA BABU MUNGARI
AGE: 50 YEARS,
OCC: FARMER,
R/O. KOTHAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
19. BABURAO SIDARAI PINGAT
AGE: 58 YEARS,
OCC: BUSINESS/FARMER,
R/O. MARUTI GALLI, KAKATI,
TAL AND DIST: BELGAUM.



20. SHIVAJI VHANAPPA PAWAR
AGE: 64 YEARS,
OCC: RETD. GOVT. SERVANT,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
21. PARASRAM GANGARAM NARVEKAR
AGE: 54 YEARS,
OCC: MASON,
R/O. BHAVAKAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
22. GUNDU SAMBHAJI TALWAR
AGE: 45 YEARS,
OCC: FARMER,
R/O. AMBEDKAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
23. APPASAHEB IRAGOUDA DESAI
AGE: 52 YEARS,
OCC: BUSINESS,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
24. UDAY SHIVAPUTRAYYA HIREMATH
AGE: 48 YEARS,
OCC: BUSINESS,
R/O. P.B.ROAD, KAKATI,
TAL AND DIST: BELGAUM.
25. PARASRAM BHAKANA DHONJI
AGE: 48 YEARS,
OCC: BUSINESS/FARMER,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
26. RAJU BABURAO JOSHI
AGE: 48 YEARS,
OCC: BUSINESS,
R/O. P.B.ROAD, KAKATI,
TAL AND DIST: BELGAUM.



27. GANPAT NAGAPPA SUREKAR
AGE: 58 YEARS,
OCC: BUSINESS,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
28. UMESH SIDDAPPA GANAGER
AGE: 40 YEARS,
OCC: BUSINESS,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
29. ANAND KHIRANA KOCHERI
AGE: 66 YEARS,
OCC: BUSINESS,
R/O. YAMANAPUR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
30. SURYAKANTH SIDAGOUDA PATIL
AGE: 75 YEARS,
OCC: BUSINESS,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
31. GOPAL SIDARAI PATIL
AGE: 66 YEARS,
OCC: FARMER,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
32. BASAVRAJ DUNDAPPA GANAGER
AGE: 55 YEARS,
OCC: FARMER,
R/O. MUSLIM GALLI, KAKATI,
TAL AND DIST: BELGAUM.
33. ASHOK CHANAPA KUMBAR
AGE: 45 YEARS,
OCC: BUSINESS,
R/O. MATH GALLI, KAKATI,
TAL AND DIST: BELGAUM.



34. HALAPPA YALLAPPA GURAV
AGE: 75 YEARS,
OCC: FARMER,
R/O. MUTYANATTI, POST: KAKATI,
TAL AND DIST: BELGAUM.
35. JYOTI DEEPAK GAVI
AGE: 38 YEARS,
OCC: HOUSEHOLD,
R/O. KOTHAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
36. SHEELA SIDDAPPA KURUBAR
AGE: 50 YEARS,
OCC: HOUSEHOLD,
R/O. KURUBAR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
37. SIDDAYYA BASAYYA NANDIKOL
AGE: 38 YEARS,
OCC: FARMER,
R/O. MATH GALLI, KAKATI,
TAL AND DIST: BELGAUM.
38. SHANKAR MALLAPPA HALANAWAR
AGE: 38 YEARS,
OCC: BUSINESS,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
39. LAXMI BASAVANI TUMARI
AGE: 45 YEARS,
OCC: HOUSEHOLD,
R/O. KOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
40. NAGULI SHIVAJI TUMARI
AGE: 38 YEARS,
OCC: HOUSEHOLD,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.



41. SHRIKANT BALAVANT KADOLKAR
AGE: 50 YEARS,
OCC: AGRICULTURE,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
42. PRABHAKAR MALLAPPA INCHAL
AGE: 75 YEARS,
OCC: AGRICULTURE,
R/O. DESAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
43. MAHANTESH BASAYYA MATHAPATI
AGE: 45 YEARS,
OCC: AGRICULTURE,
R/O. MATH GALLI, KAKATI,
TAL AND DIST: BELGAUM.
44. LAXMAN RAMA SUTAR
AGE: 73 YEARS,
OCC: CARPENTER,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
45. CHANNAYYA SIDDAYYA PURANIK
AGE: 35 YEARS,
OCC: PVT. SERVICE,
R/O. MATH GALLI, KAKATI,
TAL AND DIST: BELGAUM.
46. NARAYAN PITAMBAR MULERAKI
AGE: 51 YEARS,
OCC: PRESS-REPORTER,
R/O. MARUTI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
47. MAHANTESH BABU BAGEWADI
AGE: 45 YEARS,
OCC: AGRICULTURE,
R/O. MUSLIM GALLI, KAKATI,
TAL AND DIST: BELGAUM.



48. BHAVAKANNA TOPANNA TUMARI
AGE: 62 YEARS,
OCC: SERVICE,
R/O. BHAVAKAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
49. HUNACHIWARI SIDESHWARDEV
A REGISTERED TRUST,
R/B ITS HEREDITARY TRUSTEE
SHRI. SIDDAYAA S/O SIDRAMAYYA PUJERI
AGE: 15 YEARS, OCC: POOJA,
R/B NEXT FRIEND HIS NATURAL MOTHER
SMT. MAHADEVI W/O SIDRAMAYYA PUJERI
AGE: 35 YEARS,
OCC: HOUSEHOLD AND POOJA,
R/O: SIDESHWAR TEMPLE, KAKATI,
TAL AND DIST. BELGAUM.

...APPELLANTS

(BY SRI. VISHWANATH BADIGER, ADVOCATE)

AND:

1. SHRI. REVANSIDDESWAR SIDDARSHRAM
COMMITTEE,
R/B ITS CHAIRMAN
SHRI. YALLAPPA SIDRAI TUMARI,
AGE: 66 YEARS, OCC: AGRICULTURE,
R/O. BHAVAKAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
2. SHRI. NARAYAN S/O SIDRAI CHOUGULE
AGE: 55 YEARS,
OCC: BUSINESS,
R/O.MANNUR,
TAL AND DIST: BELGAUM.
3. SHRI. HIRAMANI S/O JAYAPPA MOLERAKI
AGE: 35 YEARS,
OCC: SERVICE,



R/O. BHAVAKAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.

4. SHRI. SHANKAR S/O BALAPPA SHIRGAONKAR
AGE: 75 YEARS,
OCC: AGRICULTURE,
R/O. HOLI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
5. SHRI. BABU S/O MALLAPPA BADAGULI
AGE: 40 YEARS,
OCC: AGRICULTURE,
R/O. MUSLIM GALLI, KAKATI,
TAL AND DIST: BELGAUM.
6. SHRI. PIRAJI S/O GANU NAGODEKAR
AGE: 48 YEARS,
OCC: MASON,
R/O. YAMANAPUR GALLI, KAKATI,
TAL AND DIST: BELGAUM.
7. SHRI. MONAPPA S/O DHANAPPA MOLERAKI
AGE: 68 YEARS,
OCC: AGRICULTURE,
R/O. BHAVAKAI GALLI, KAKATI,
TAL AND DIST: BELGAUM.
8. SHRI. AVADHUT S/O LAXMAN NILAJKAR
AGE: 40 YEARS,
OCC: BUSINESS,
R/O. 1ST MAIN ROAD,
3RD CROSS,
SHIVAJI NAGAR,
BELGAUM.
9. SHRI. ANNAPPA S/O ALLAPPA HUDDAR
AGE: 59 YEARS,
OCC: ADVOCATE,
R/O. BAR ASSOCIATION ATHANI,
DIST: BELGAUM.



10. SHRI. ISHWAR S/O GANPAT PATIL
AGE: 68 YEARS,
OCC: BUSINESS,
R/O. 1ST MAIN ROAD,
3RD CROSS,
SHIVAJI NAGAR, BELGAUM.

11. SMT. SUDHA W/O LAXMAN NILAJKAR
AGE: 60 YEARS,
OCC: HOUSEHOLD,
R/O. 1ST MAIN ROAD,
3RD CROSS,
SHIVAJI NAGAR, BELGAUM.

12. SHRI. PRABHU S/O LAXMAN NILAJKAR
AGE: 45 YEARS,
OCC: BUSINESS,
R/O. 1ST MAIN ROAD,
3RD CROSS,
SHIVAJI NAGAR, BELGAUM.

...RESPONDENTS

(BY SRI. SHIVARAJ BALLOLLI, ADV. FOR R1-R6, R8, R10-R12;
SRI. SANGAMESH S GHULAPPANAVAR, ADVOCATE FOR R9;
R7-NOTICE SERVED)

THIS MFA IS FILED U/S.104(1) (FFA) OF CPC, AGAINST
THE JUDGMENT AND AWARD DATED:26.07.2014, PASSED IN
F.R.NO.5/2014 ON THE FILE OF THE PRINCIPAL DISTRICT
JUDGE, BELGAUM, DISMISSING THE I.A.1, FILED UNDER
SECTION 92 OF CPC, 1908.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY,
THE COURT DELIVERED THE FOLLOWING:



JUDGMENT

Invoking Section 104 of the Code of Civil Procedure, 1908, the plaintiffs are before this Court, as their application under Section 92 of the Code of Civil Procedure, seeking permission to file a suit against the defendants under Section 92 of the Code of Civil Procedure is rejected by the Principal District Judge, Belagavi.

2. Plaintiffs have filed a suit seeking the relief of declaration that the formation of the first defendant Committee is null and void and also have sought a prayer to frame a scheme for administration of the Hunasevari Siddeshwar Devasthan, and consequential relief of injunction is also sought.

3. The plaintiffs claim that, Hunasevari Siddeshwar Devasthan is a registered Trust under the Bombay Public Trusts Act, 1950. In support of their claim, they have also produced the certified copy of the Register pertaining to the aforementioned Temple, wherein it is stated that the



temple is registered as a Public Trust. It is their further contention that, defendant No.1 is registered as a Committee on 16.12.2008 before the Registrar of Societies and it is contended that the Committee, without any authority, is claiming right over the property of the Hunasevari Siddeshwar Devasthan Trust.

4. The application seeking permission to sue under Section 92 of the Code of Civil Procedure, is opposed by the defendants on the premise that, the Committee, which has been established on 16.12.2008 and the same is registered before the Registrar of Societies. And it is urged that the Committee has nothing to do with the Hunasevari Siddeshwar Devasthan Trust. It is the contention of the defendants that, the said Committee is established to manage the properties left behind by a saint namely, Laxman Nilajkar. It is their further contention that, the property held by Laxman Nilajkar has nothing to do with the Hunasevari Siddeshwar Devasthan referred to above.



5. The jurisdictional Court after considering the material on record has found two reasons to dismiss the application:

- a. Plaintiffs have nothing to do with the Hunasevari Siddeshwar Devasthan Trust.
- b. Plaintiffs have not produced any material to show that the Trust is registered under the Bombay Public Trust Act, 1950.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

7. Learned counsel appearing for the appellants/plaintiffs would contend that, the plaintiffs have produced certified copy of the Register maintained under the Bombay Public Trust Act, 1950 pertaining to the Hunasevari Siddeshwar Devasthan Trust. It is also his contention that the plaintiffs being the residents of the said village are the followers of the said temple and in the



interest of public, they have filed a suit to frame the scheme, as there is no Scheme to govern the Hunasevari Siddeshwar Devasthan. It is his further contention that, the existence of the Trust is duly established by production of certified copy of the Register and as such, the trial Court could not have rejected the application seeking permission to prosecute under Section 92 of the Code of Civil Procedure.

8. Learned counsel for the Respondents - Committee would submit that, the trial Court is justified in dismissing the application, as the plaintiffs have nothing to do with the aforementioned temple and plaintiffs have nothing to do with the first defendant Committee by name Revanasiddeshwar Committee.

9. This Court has considered the contentions raised at the bar.

10. Section 92 of the Code of Civil Procedure reads as under:



"92. Public charities.—(1) *In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree :—*

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust



property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following circumstances, namely :—

(a) where the original purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a



use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]"



11. To maintain a suit under Section 92 of the Code of Civil Procedure, the persons who apply to the Court under Section 92 of the Code of Civil Procedure, must establish two things:

- a. Two or more persons filing the suit are having interest in the Trust
- b. The suit is filed to obtain any of the reliefs available in the said Section.

12. Section 92(1)(g) deals with settling a scheme. Sections 92(1)(a) provides for removing any trustee and 92(1)(b) provides for appointing a new trustee.

13. As could be noticed from the records, there is no dispute over the fact that Hunasevari Siddeshwar Devasthan is a Trust registered under the Bombay Public Trust Act, 1950. More than two persons have filed a suit claiming interest in the affairs of the Trust. It is also forthcoming that they are praying to frame a scheme to manage the affairs of the Trust.



14. Whether the first defendant Committee is a duly constituted Committee or whether the first defendant Committee can claim any right in the property in the name of Hunasevari Siddeshwar Devasthan or whether the first defendant is claiming right over the property belonging to the aforementioned Trust, can be adjudicated only if the parties are permitted to lead evidence in support of their respective claims. At the same time, the question whether the property in the name of first defendant is the property of the Hunasevari Siddeshwar Devasthan is also the question to be decided after recording the evidence.

15. Under the circumstances, this Court is of the view that the plaintiffs have made out of *prima facie* case for grant of permission to sue under Section 92 of the Code of Civil Procedure.

16. The trial Court is not justified in rejecting the application on the premise that the plaintiffs have nothing to do with the aforementioned Trust. The trial Court has also failed to take note of the fact that the Trust is duly



registered in the name of Hunasevari Siddeshwar Devasthan.

17. This being the case, the order of the trial Court dismissing the application is held illegal and is liable to be set aside. Consequently, the application of the plaintiff seeking permission to sue under Section 92 of the Code of Civil Procedure is to be allowed.

18. Hence the following:

ORDER

- i. The appeal is ***allowed***.
- ii. Consequently the impugned order dated 26.07.2014 passed on I.A.No.I by the Principal District Judge, Belagavi, in F.R.No.5/2014 is set aside.
- iii. Permission is granted to the plaintiffs to prosecute the matter under Section 92 of the Code of Civil Procedure.



- iv. It is made clear that, this Court has not expressed any opinion on the merits of the case of either of the plaintiffs or the defendants.
- v. The opinion expressed in this order is only confined to the application seeking permission to grant leave under Section 92 of the Code of Civil Procedure.

In view of disposal of the main appeal, all pending I.As., if any, do not survive for consideration.

Sd/-
JUDGE

gab
CT-PA
List No.: 1 Sl No.: 38