



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.371 OF 2021 (DEC/INJ)

BETWEEN:

THIMMAPPA
S/O NAGAPPA,
AGED ABOUT 65 YEARS,
R/O. HUNASEKATTE VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK,
CHITRADURGA DISTRICT-577501

...APPELLANT

(BY SRI VIJAYA KUMAR BHAT A, ADVOCATE)

AND:

1. THE TAHASILDAR
HOSADURGA TALUK,
HOSADURGA
2. THE REVENUE INSPECTOR
KASABA HOBLI,
HOSADURGA TALUK-577501
3. THE DEPUTY COMMISSIONER
CHITRADURGA DISTRICT,
CHITRADURGA-577501





4. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BENGALURU-560001

...RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 16.10.2020
PASSED IN RA.NO.248/2016 ON THE FILE OF THE SENIOR
CIVIL, JUDGE AND JMFC., HOSADURGA AND ETC.

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

J U D G M E N T

This matter is listed for admission. Heard the learned
counsel appearing for the appellant.

2. The factual matrix of the case of the plaintiff
before the trial court that he is the lawful owner and he is
in possession of the suit schedule property bearing
Sy.No.127/P2 measuring 6 acres of Kappagere village.
The suit schedule property was granted to him by the
defendants under Dharakast. The plaintiff's father was
cultivating the suit schedule property unauthorizedly since



long back. After the death of his father, he continued the cultivation of the suit schedule property as an unauthorized occupant and accordingly, his name was entered in the RTC in the year 1965 by the consent given by the defendants. Since then, he was in possession and enjoyment of the suit schedule property. It is also the contention that he has taken loans from VSSN Bank, Kellodu and Pragathi Gramina Bank, Hosadurga by mortgaging the suit schedule property. The plaintiff is in possession and enjoyment of the property more than 30 years and the defendants are trying to interfere with his possession. It is also the contention that one Honnappa S/o Durgappa was obstructing to his possession and enjoyment of the suit schedule property and hence, he was forced to file the suit in O.S.No.110/2009 against the said Honnappa for permanent injunction. The khata of the suit schedule property was standing in the name of the plaintiff and he is paying the tax to the Government.



3. The defendants appeared and filed the written statement denying the contention of the plaintiff and made an allegation that the plaintiff has illegally entered his name in the Government records hence, the criminal case was filed against him. Based on the pleadings of the parties, the Trial Court framed the Issues and allowed the parties to lead their evidence. The Trial Court after considering material available on record comes to the conclusion the plaintiff in order to prove that he is the owner of the property, not produced any grant order except producing the documents at Ex.P1 to 23. On the other hand, the defendants have produced the documents at Ex.D1 to D11 and the same was taken note by the Trial Court. In order to prove the fact that the plaintiff is the owner of the suit schedule property, no documents are placed before the Court though he claims that the property is grated by Dharakast except the mutation register. It is also the case that the documents are mutated by creating document and hence, a criminal case was also registered and hence, dismissed the suit.



4. Being aggrieved by the judgment and decree of the Trial Court, an appeal was preferred before the First Appellate Court and the First Appellate Court also having considered the material available on record and on re-appreciation of both oral and documentary evidence placed on record comes to the conclusion the Trial Court is justified in holding that the plaintiff has failed to prove his ownership and possession over the suit schedule property and dismissed the appeal and confirmed the order of the Trial Court. Being aggrieved by the judgment and decree of both the Courts, the present appeal is filed before this Court.

5. The learned counsel for the appellant would vehemently contend that the Trial Court has not considered the documents in a proper perspective and further he submits that the criminal case registered against the appellant is also ended in acquittal and the entries in the RTC is also genuine and mutation entries are also in the name of the plaintiff. When such being the



case, the Trial Court ought not to have dismissed the suit. Hence, prayed this Court to admit the appeal and to frame the substantial questions of law.

6. Having heard the learned counsel appearing for the appellant and also on perusal of the material available on record it discloses that the very plaint averment is clear that the plaintiff is claiming that he is the absolute owner of the suit schedule property and he is in possession and enjoyment of the same since the same was granted in his favour under the Dharakast by the defendants. In order to substantiate the said claim, the plaintiff has not produced any document except relying upon the mutation entries and RTCs. When complaint was given against the appellant stating that he had indulged in creation of revenue document but the appellant contend that the said criminal case was ended in acquittal. If the suit schedule property was granted in favour of the plaintiff under the Dharakast, the plaintiff has to produce the document of grant but he has not produced the same and mutation



entries is also not based on the grant order. When Tahsildar also taken recourse by sending the letter to the plaintiff and notice was also issued and criminal case was also registered against the plaintiff for creation of revenue entries. Unless the plaintiff produce any documents for his title, the question of granting the relief of declaration does not arise and the First Appellate Court also taken note of the said fact into consideration. The contention of the appellant that he has acquired the title by adverse possession and the same is also discussed by the First Appellate Court. The question of adverse possession does not arise unless the ownership is admitted. In one breath, the appellant says that the property belongs to the Government and in another breath he says that he got the property by way of Dharakast. Once he claims that the property is granted under Dharakast, the question of claiming adverse possession over the property does not arise. Hence, I do not find any error committed by both the Courts in dismissing the suit and confirming the order of the Trial Court. In the absence of any perversity in



finding of both the Courts, the question of invoking Section 100 of CPC does not arise.

7. In view of the discussions made above, I pass the following:

ORDER

The appeal is dismissed.

**Sd/-
JUDGE**

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