

**(2015) 04 KAR CK 0179**  
**In the Karnataka High Court**  
**Case No : Regular First Appeal No. 6 of 2012**

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|--------------------------------|----|------------|
| Channa Narasimhaiah and Others | Vs | APPELLANT  |
| Thimmaiah and Others           |    | RESPONDENT |

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**Date of Decision :** 13-04-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 15A, Order 33 Rule 3

**Citation :** (2015) 04 KAR CK 0179

**Hon'ble Judges :** N. Kumar, J;B. Sreenivas Gowda, J

**Bench :** Division Bench

**Advocate :** B.N. Suresh Babu, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

N. Kumar, J.

1. This is a defendant's regular first appeal against the judgment and decree passed by the Trial Court decreeing the suit of the plaintiff for declaration of his title to the plaint schedule property and directing the legal representatives of defendant No. 3 to demolish the unauthorized illegal constructions made on the schedule property during the pendency of the suit and to deliver possession to the plaintiff and granting other consequential reliefs.

2. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

3. The subject matter of the suit is land bearing Sy. No. 36, measuring 1 acre 10 guntas situated at Kamakshipalya, Saneguruvanahalli Dakhale, Yeswanthapura Hobli, Bangalore North Taluk which is morefully described in the schedule to the plaint with boundaries and hereinafter referred to as "the schedule property". The case of the plaintiff is that his ancestors were rendering services to the office of Thothi of Saneguruvanahalli and Shivanahalli villages. One Haledappa was the original Hakkudar. He died leaving behind his two sons namely Sri. Malla and Sri.

Linga. After the death of the two sons of Haledappa, Smt. Kombamma and Smt. Byla Yellamma were the only surviving members of Thothi families being the legal heirs. Apart from the suit schedule land, other lands mentioned in the plaint were also attached to the office of the Thothi family. By virtue of the promulgation of the Act i.e., Karnataka Village Officers Abolition Act, 1961 (for short, hereinafter referred to as "the Act"), the Thoti Office attached to the village came to be abolished and the lands vested with the Government. Under the provisions of the said Act, the aforesaid legal heirs applied for re-grant of service inam lands attached to the Thoti Office of Saneguruvanahalli and Shivanahalli villages. The Assistant Commissioner, Bangalore Sub-Division, in case No. HOA(N) 125/6869 ordered for re-grant of lands in favour of Smt. Kombamma and Smt. Byla Yellamma and her sons jointly by an order dated 13.09.1979. The case of the plaintiff is pursuant to the regrant order, the grantees were in lawful possession and enjoyment of the properties. During the life time of Smt. Kombamma and Smt. Byla Yellamma, a partition came to be effected by way of a registered partition deed dated 09.02.1981. The properties mentioned in the "A" Schedule to the said deed were given to the share of Smt. Kombamma and "B" Schedule were given to the share of Smt. Byla Yellamma. Accordingly, the plaint schedule land fell to the share of Smt. Kombamma and the remaining extent of 27 guntas in the same Sy. Number was given to the share of Smt. Byla Yellamma. Thereafter, on an application made by the plaintiff, the Assistant Commissioner, Bangalore Sub-Division, Bangalore initiated eviction proceedings in the year 1978 in HOANT.29/78-79 under the provisions of the Act against the 3rd defendant in respect of the schedule properties, as he was in unauthorized/illegal occupation. On 28.02.1979, an order came to be passed directing eviction. The 3rd defendant challenged the said order before this Court in W.P. No. 18164/1982. In the said writ petition, he did not choose to make Smt. Kombamma as a party. The said writ petition was allowed and the eviction order was quashed. As the said order adversely affected the interest of the plaintiffs, they filed a writ petition before this Court in W.P. No. 7137/1986 seeking for clarification of the said order, to which, the 3rd defendant was made a party, who was a 6th respondent in the said proceedings. After hearing the parties, an order came to be passed on 03.08.1987. It was held that the 3rd defendant herein could not have purchased all the items of erstwhile service inam land only from Smt. Byla Yellamma and her children. Therefore, it was clarified that the 3rd defendant acquired valid title only in respect of the land, which fell to the share of Smt. Byla Yellamma and not the portion of the land which fell to the share of Smt. Kombamma and her children. Therefore, what followed from the said declaration is that the 3rd defendant is not the owner of the plaint schedule property. On the contrary, it was held that Smt. Kombamma and her children are the owners of the suit schedule property having acquired the same under a registered partition among the family members in pursuance of re-grant made in favour of the family. The case of the plaintiff is that after such order, the 3rd defendant made an attempt to trespass into the schedule property and the authorities failed to extend appropriate protection. Therefore,

the plaintiff filed a petition before the Assistant Commissioner, Bangalore Sub-Division, Bangalore under the provisions of the Act for eviction of the 3rd defendant in case No. HOA 59/90-91 and resume the land to the plaintiff and put him in peaceful possession and enjoyment of the schedule property. After service of notice and after holding a detailed enquiry, an order of eviction came to be passed on 20.02.1993.

4. The 3rd defendant preferred a writ petition in W.P. No. 13233/1993 before this Court challenging the said order of eviction. In the said writ petition, after hearing the parties, it was made clear that whatever the property, which fell to the share of Smt. Byla Yellamma under the partition has been sold and not the property which fell to the share of Smt. Kombamma. This Court further held that after the order of re-grant, the Government ceased to be the owner of the property and therefore, the provisions of the Act is not attracted to the said land. If the 3rd defendant is in possession of the property, he would be construed as an unauthorized occupant or that he is in unauthorized possession. With those observations, the said writ petition came to be dismissed by an order dated 13.01.1994. The 3rd defendant preferred a writ appeal in W.A. No. 393/1994 against the said order. That writ appeal came to be allowed on 28th February, 1997 by holding that it is for the title holder to seek appropriate remedies before the Civil Court to get possession of the land which he is entitled to.

5. After the disposal of the writ appeal, the plaintiff filed a suit for declaration of title, for recovery of possession and for mandatory injunction for demolition of unauthorized construction put up during these proceedings and also for a permanent injunction restraining the 3rd defendant from interfering with the plaintiffs peaceful possession after he is put back in possession. The said suit was filed by the plaintiff as an indigent person on 22.12.1997 in P.Misc. 1129/1997. During the pendency of the said miscellaneous application, the plaintiff paid the requisite Court fee on 04.03.2008 and accordingly, the suit was registered as O.S. No. 1729/2008.

6. The defendant, after service of summons entered appearance. The 1st defendant was State of Karnataka. They did not contest the matter and no relief is sought against the 1st defendant. The 2nd defendant is the brother of the plaintiff who also did not contest the matter and no relief was sought against him. It was only the 3rd defendant, who contested the matter. The 3rd defendant died even before filing the written statement. His L.Rs. were brought on record. Defendant No. 3(b) alone has filed the written statement contesting the claim of the plaintiff. In the written statement, the claim of the plaintiff is denied. The case of the defendants is the re-grant was in the name of Smt. Byla Yellamma. Smt. Kombamma had no right or authority. She was never in possession nor was put in possession of the schedule property. Even on the date of re-grant, the 3rd defendant Channa Narasimhaiah was in exclusive possession of the land sold to him and prior to that, the said land had been leased to him by Smt. Byla Yellamma in the year 1962 and the grant is subject to such rights. Smt. Byla

Yellamma had conveyed the schedule property for consideration to Channa Narasimhaiah under registered sale deed dated 20.10.1972 and had lost all her right, title and interest and the possession over the said property. Late Channa Narasimhaiah was a bonafide purchaser of the property for value. The sale was for legal necessity of the family of Smt. Byla Yellamma. As a head of the family, once there was a sale by Smt. Byla Yellamma in favour of Channa Narasimhaiah, the regrant enured to the benefit of the purchaser and there was a feeding by estoppel and not otherwise. The legal representatives of Smt. Byla Yellamma cannot make any unlawful gain having sold the land for consideration. The predecessor of the defendants are in possession of the property from the year 1962 and therefore, they have perfected their title by adverse possession, having exercised their rights for over a statutory period. Smt. Byla Yellamma and Smt. Kombamma have colluded together to try to defraud the defendants, if possible by such methods and have got up documents alleged to be partition deed after having conveyed the property to the predecessors of the defendant. They could not have partitioned the property as such and the said document is got up and fabricated for the purpose of the suit.

7. Even otherwise, the said portion of land was admittedly ought to have been allotted to the share of Byla Yellamma and to Smt. Kombamma. Even according to the plaintiff, the re-grant of equal share of the properties should have been divided into equal parts and not as has been done. The act of division as such is only to try to defraud the purchaser of property as predecessor of the defendants and try to knock off the property. The alleged partition is sham and unlawful one and is not really admissible in evidence. There was no division of the properties by metes and bounds. The schedule property continued to be in possession of predecessor of defendant and moreover, the schedule property had been sold to the predecessor by then, and the same has been suppressed and they have played fraud and as such, plaintiff is not entitled for any relief.

8. They admitted writ proceedings referred to in the plaint and contend that they are illegal and not binding on them. It is their specific case that third defendant had come into possession of the entire land in the year 1962 and the question of deceased third defendant coming into possession unlawfully does not arise. The third defendant was put in possession of the schedule property by virtue of the registered sale deed executed in the year 1972 and his possession has not been disturbed even though plaintiff had the knowledge of the same.

9. Though the suit was filed as an indigent person on 22.12.1997, as Court fee was paid in the year 2008 it means the suit is instituted in the year 2008 and not in 1997 and the suit is barred by law of limitation. The plaintiff and defendant No. 2 have executed sale deeds in respect of entire property, as such plaintiff is not entitled to any relief. Therefore, he sought for dismissal of the suit.

10. 4th defendant the brother of third defendant has also filed written statement denying the plaintiffs' claim. It is his specific case that he and his brother are parties to the proceedings in the suit for partition filed in the year 1976. The

schedule property was subject matter of suit. The suit property was granted in the name of Sri Veeranna. The said property was a Hindu undivided family property. The decree passed in the said suit has been affirmed in the final decree proceedings and that shows the undisputed possession of the schedule property by the 4th defendant and therefore he submits, the suit filed for declaration is not only barred by time, it is also not maintainable. He also sought for dismissal of the suit.

11. The rejoinder was filed by the plaintiff to the written statement filed by defendant No. 3(b) denying that third defendant was ever in adverse possession and it had been continued to be hostile to the interest of the owner for the period of 12 years. Earlier to the disposal of the writ appeal in the year 1996 third defendant by using force dispossessed the plaintiff from suit schedule property the suit has been filed on 22.12.1997 which is within the period of limitation.

12. On the aforesaid pleadings, the trial Court framed the following issues and additional issues for its consideration:

"1. Whether plaintiff proves that he is the absolute owner of the suit schedule property?

2. Whether the plaintiff proves that he is entitled for possession of suit schedule property from defendant No. 3?

3. Whether plaintiff is entitled for mandatory injunction against defendant No. 3 to direct him to demolish the construction situated in the suit schedule property?

4. Whether plaintiff is entitled for permanent injunction against defendant No. 3 as prayed?

5. What order or decree?"

Additional Issue:

"1. Whether the Court fee paid on the plaint and valuation of the suit is proper?

2. Whether the defendant No. 4 proves that the claim of the plaintiff in seeking the relief of declaration and possession is barred by limitation?

3. Whether defendant No. 4 further proves that he is in continues uninterrupted possession of the suit schedule property as of right and thereby, perfected his title over the property by way of adverse possession as contended in the written statement?

4. Whether LR's of defendant No. 3 prove that plaintiff and defendant No. 2 in collusion with each other have alienated the suit schedule property by playing fraud as contended in the written statement?

5. Whether LR's of defendant No. 3 prove that plaintiff has no subsisting right in the suit schedule property and hence cannot prosecute the suit?

6. Whether LR's of defendant No. 3 further prove that right from the days of 3rd defendant by virtue of sale deed from 1972 it is they who are in possession and enjoyment of the suit schedule property and have developed the same by investing huge amount as contended in the written statement?"

13. The plaintiff in order to substantiate his claim examined himself as PW.1 and produced 18 documents which are marked as Ex. P1 to P18. On behalf of defendants, Y.C. Yathish Kumar, LR of third defendant was examined as DW.1 and he has produced 34 documents which are marked as Ex. D1 to D34(a).

14. The trial Court, on appreciation of aforesaid oral and documentary evidence on record held that the plaintiff has proved that he is absolute owner of the suit schedule property and further has proved that he is entitled to possession of the suit property as well as decree of mandatory injunction directing third defendant to demolish the construction put up in the schedule property and he is also entitled for permanent injunction after he has put in possession. It had held that Court fee paid is sufficient. Defendant No. 4 has failed to establish that the suit is barred by law of limitation. He also failed to establish that he is in continuous uninterrupted possession of suit schedule property and perfected his title over the property by way of adverse possession as contended by him in the written statement. The LR's of defendant No. 3 have failed to prove that plaintiff and defendant No. 2 in collusion with each other have alienated the suit schedule property by playing fraud as contended in the written statement. They have failed to prove that the plaintiff has no subsisting right in the suit schedule property and hence cannot prosecute the case. They have also failed to prove that right from the days of 3rd defendant by virtue of sale deed from 1972 it is they who are in possession and enjoyment of the suit schedule property and have developed the same by investing huge amount as contended in the written statement and thus, it decreed the suit of the plaintiff as prayed for.

15. The appellants have preferred this appeal challenging the said Judgment and decree of the trial Court.

16. The learned counsel for the appellant assailing the impugned Judgment and Decree contended, though miscellaneous petition was filed in the year 1997, as the suit came to be registered on payment of court fee in the year 2008, the limitation of suit for declaration of title and for possession starts from 2008 in which event, the suit is hopelessly barred by time which has not been properly appreciated by the Court below. Even otherwise, he contended that defendant No. 3 and predecessor in title are in possession of the schedule property from the year 1962 from the date of lease uninterruptedly, openly and with hostility. They have perfected their title over the property by adverse possession and in this regard, finding of the trial Court is erroneous and requires to be set aside.

17. Per contra, learned counsel appearing for the plaintiff submits, having regard to the nature of plea raised by the defendants namely that they got into possession of the property under a lease deed in the year 1962, they got a

registered sale deed in the year 1972 and continued in possession, the plead of adverse possession is ill-founded and therefore when title of the plaintiff is proved, the defendants are in unlawful possession of the property without any right, the plaintiff is entitled to the possession of the same. The trial Court committed no illegality in decreeing the suit of the plaintiff as prayed for.

18. In the light of the aforesaid facts and rival contentions, the points that arise for our consideration are:

"1. Whether the finding recorded by the trial Court that the plaintiff has established his title to the plaint schedule property requires interference?

2. Whether the finding of the trial Court that the suit is in time is erroneous?

3. Whether the finding of the trial Court that the case of adverse possession by the defendant is not established, is right?"

Point No. 1:

19. The facts are not in dispute. Schedule property is a Thoti Inam land. The original Hakkudar was one Haledappa. He died leaving behind his two sons namely Sri Malla and Sri Linga. Smt. Kombamma and Smt. Byla Yellamma are the legal heirs of the said Malla and Linga. The schedule land being a Thoti Inam land on passing of Karnataka Village Offices Abolition Act, 1961, the office of Thoti was abolished. The lands attached to the office are vested with the Government. It is in pursuance of the provisions of the Act, the erstwhile persons holding the office of Thoti were acquired a right to make an application for re-grant. Accordingly, Smt. Kombamma and Smt. Byla Yellamma made applications for re-grant of the lands and the lands were re-granted by order dated 13.9.1979. If the case of third defendant is to be believed that his predecessor in title took schedule land in the year 1962, subsequently in the year 1972 i.e. on 20.10.1972 under a registered sale deed executed by Smt. Byla Yellamma acquired title to the schedule property as absolute owner, the order of re-grant passed on 13.9.1979 enures to the benefit of the purchasers from the re-grantee but the evidence on record discloses the re-grant was not in the name of Smt. Byla Yellamma but it was in the name of Smt. Kombamma and Byla Yellamma. After re-grant they effected a partition of the properties which were re-granted by way of registered partition deed on 09.02.1981 as per Ex. P5. Under the terms of the registered partition deed, schedule property fell to the share of Smt. Kombamma and another 27 guntas in the said Sy. No. fell to the share of Smt. Byla Yellamma. After the re-grant, the Asst. Commissioner had initiated proceedings against the third defendant for his eviction on the ground that he is an unauthorised occupant. The said order of eviction was challenged by the third defendant before this Court in WP NO. 18164/82 and the said writ petition came to be allowed setting aside the order of eviction. In the said writ petition, Smt. Kombamma was not a party and therefore, she is not bound by the said order but it affected her rights. Therefore, she preferred a writ petition in WP No. 7137/86 for review of the said order. In the said writ petition, third defendant

was 6th respondent. After hearing all the parties, this Court clarified by an order dated 3.8.1987, as only 27 guntas of the said Sy. No. fell to the share of Smt. Byla Yellamma and her children, the sale deed executed by her in favour of third defendant only conferred title to an extent of 27 guntas and in so far as 1 acre 10 guntas is concerned, the said property fell to the share of Smt. Kombamma. She has not executed any sale deed. She is not a party in WP No. 18164/82 and therefore, third defendant acquires no title to that extent of land fell to the share of Smt. Kombamma and it is the plaintiff who is the owner of the schedule property.

20. Thereafter, the plaintiff requested the Assistant Commissioner to evict the third defendant from the schedule property. The proceedings were initiated under the Act and an order dated 20.2.1993 came to be passed directing the eviction. The said order was challenged by the third defendant by filing WP No. 13233/93 which came to be dismissed by order dated 13.1.1996. Aggrieved by the said order, third defendant filed WA No. 393/94 which was allowed setting aside the order of the learned Single Judge as well as the Asst. Commissioner however, held that the plaintiff is the owner of the property, after the re-grant, the Act is not applicable to the land in question, it is open to the plaintiff to approach a competent civil Court to recover possession. The said order was passed on 28.2.1997.

21. From these proceedings it is clear that the land in question was a Thoti Inam land. With the passing of the Act, the lands vested with the Government. On the application filed by the legal heir, it was re-granted. After the said re-grant, they have effected partition of the re-granted land by way of a registered document and the properties which are fallen to the share under the partition deed exclusively belong to the parties and thus, the plaintiff has perfected his title to the plaint schedule property. Though there is sale deed in favour of third defendant executed by Smt. Byla Yellamma, the sale deed is valid only to the extent of 27 guntas which is the only extent to which she is the owner. For the remaining extent of the schedule property, Smt. Kombamma is the owner. Therefore, third defendant got no title to the schedule property under the registered sale deed.

22. In view of the Court proceedings, pending litigation and the registered documents on which the reliance is placed, the trial Court is justified in declaring that the plaintiff has established his title to the plaint schedule property. It is based on legal evidence. No case for interference of the said finding is made out.

Point No. 2:

23. In so far as law of limitation is concerned, though in the earlier proceedings itself the plaintiffs title to the property was declared, he was only agitating his rights in so far as possession is concerned. By way of abundant caution, he wanted a declaration from the Civil Court. Therefore, he sought for declaration. In the written statement, the specific case pleaded by the defendants is, partition

deed is collusive one. The order passed in the writ petition filed by Smt. Kombamma is not binding on them. It only shows they admitted the plaintiffs title and contend the documents under which the title is claimed are vitiated. Though a plea was taken, no evidence was adduced and the trial Court was justified in holding that the defendants have failed to establish their case. Consequently, they were interfering to unsettle the title of the plaintiff which otherwise, is confirmed in the earlier proceedings. Though the suit was filed in the year 1997 as an indigent person, in 2008 when court fee is paid in the very miscellaneous proceedings, that did not become starting point for suit for declaration for possession. Rule-15A of Order XXXIII CPC which provides for grant of time for payment of court fee on an application filed under Rule 5 or refusal of an application under Rule-7 or extending time from time to time, starting point for suit shall be deemed to have been notwithstanding the date on which the application for permission to issue a certificate as an indigent person was passed and therefore, when the suit is filed as an indigent person and if subsequently, the suit is registered either after the applicant is held indigent person after paying court fee or suit is registered on payment of court fee for the purpose of limitation is the date of initiation of proceedings under Order XXXIII Rules 1 and 3 has to be taken into consideration to find whether suit is in time or not. In this case, after the order was passed by the Division Bench of this Court on 28.2.1997, the proceedings initiated on 22.12.1997 is well within the time and therefore, the contention that the suit is time barred is misconceived as rightly held by the trial Court and therefore, we do not see any justification to set aside the said finding also.

Point No. 3:

24. The defendants have pleaded adverse possession. The plea taken in the plaint is, if as on the date of re-grant, the predecessor of the defendants-Channanarasimhaiah was in exclusive possession of the land sold to him, that property has been leased to him by Smt. Byla Yellamma in the year 1962 and the grant is subject to such lease therefore, the predecessor in title of third defendant was inducted into possession as lessee lawfully. Therefore, if third defendant wants to calculate possession from the year 1962, it was not adverse to the interest. Subsequently on 20.10.1972 in respect of land which was leased and registered sale deed came to be executed. Then from 1962 to 1972, the possession is that of a lessee and subsequently as that of a owner. Again, even if possession is construed from 20.10.1972 as absolute owner, it was under a valid title but not as adverse to the interest of owners. It is not in dispute that, proceedings were initiated by the Assistant Commissioner against third defendant treating him as unauthorized occupant. Order of eviction was passed. It was set aside by the High Court. After getting the order clarified, again eviction proceedings were initiated at the instance of the plaintiff which was also allowed and the said order was affirmed by the learned Single Judge and it is only on 28.2.1997, the said order was set aside granting liberty to the plaintiff to approach a competent Civil Court. Therefore, through out, the defendants are

claiming title to the property either under a lease deed or sale deed and according to them they are put in possession lawfully by the lawful owners. Therefore, merely because they are in possession of the property for more than 12 years uninterruptedly did not make their possession adverse to that of plaintiff. If the possession at the initial stage was legal, they have not pleaded when the lawful possession became unlawful, so as to perfect title by such adverse possession.

25. The trial Court, on careful consideration of the fact, evidence and the law on the point has rightly recorded a finding that plea of adverse possession is not established.

26. In that view of the matter, we do not see any merit in this appeal. Accordingly, the appeal is dismissed.