

(1995) 09 KAR CK 0035

In the Karnataka High Court

Case No : Regular Second Appeal No. 165 of 1984

Irawwa

APPELLANT

Vs

Krishnaji Venkatesh Naik

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Karnataka Land Revenue Act, 1964 — Section 140, 61, 62

Citation : (1996) ILR (Kar) 1321 : (1996) 2 KarLJ 285

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : B.V. Jigjinni, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This is defendants' Second Appeal from the Judgment and decree dated 10.12.1980 delivered by the 1st Additional District Judge, Belgaum (Sri Syed Fazlulla Razvi) in Regular Civil Appeal No. 138/1980, whereby the lower appellate Court (the learned Additional District Judge) allowed the plaintiff's appeal and set aside the Judgment and decree dated 27.10.1978 passed by the learned Munsiff, Ramdurg, dismissing the plaintiff's claim in the suit (O.S.No. 85/1972) on the basis of finding on issue No. 2 to the effect that defendants had proved accrual of title by adverse possession. The lower Appellate Court after having set aside the Trial Court decree has decreed the plaintiff's claim in the above mentioned suit O.S. No. 85/1972 for possession of the property in dispute.

2. According to the plaintiff's case, Survey No. 25 of Halagatti Village situated in Ramdurg Taluk in the District of Belgaum, belongs to the plaintiff-respondent. The plaintiff further alleged that Survey No. 24/1A measuring 6 Acres belongs to the defendant. According to plaintiff this Survey No. 24 has been situated on the eastern side of Survey No. 25. The plaintiff further alleged in the plaint that defendants constructed a channel on the western side of their land which lies to the east of the plaintiff's land and plaintiff having suspected that the said

channel had been constructed by defendants by encroaching on the plaintiffs land, namely, Survey No. 25 in the year 1972. So the plaintiff got the land measured by the survey authorities in February, 1972 and thereupon it was found that the defendants-appellants by constructing the channel over 6 guntas of land of the plaintiff committed an encroaching of 6 guntas of land belonging to the plaintiff-respondent. The plaintiff further alleged that the said encroachment is mentioned in blue colour in the P.T. sheet prepared by the Survey authorities. The plaintiff further alleged that plaintiff asked defendants (appellants) to remove the encroachment and to hand over possession of the plaintiff's land but the same was without any avail and the defendants failed to remove their possession from the land which they had encroached. So the plaintiff has cause of action for filing the suit for possession which the plaintiff filed for the reliefs mentioned in the plaint.

3. The defendants-appellants filed their written statement and denied the plaint case and alleged that so far as the channel in dispute is concerned, it was running in between the lands of plaintiff -respondent and defendants-appellants, but the land on which it did exist belongs to the defendants and the defendants-appellants had been irrigating their land from the water of the channel. The defendants denied the plaint allegation that the defendants had encroached upon any portion of the plaintiff's land. In alternative the defendants asserted that the channel to be on their own land, but in alternative took the plea that in case it is found that the water channel exists on the land belonging to the plaintiff-respondent, the defendants-appellants on account of their use of the land of the channel openly and adversely to the plaintiff, perfected their right and title over the said portion of six guntas of land by way of adverse possession. The defendants further alleged that the measurement had been got done by the plaintiff behind the back of the defendants-appellants and the said measurement had got no value. The defendants further alleged that the suit of the plaintiff was not maintainable in view of the provisions of the Karnataka Land Revenue Act, 1964 and as such the Court has no jurisdiction to try the same and prayed for the suit being dismissed.

4. On the basis of the pleadings of the parties, the Trial Court framed the following issues:

"(1) Does plaintiff prove that defendants have encroached upon the land of the plaintiff as per P.T. Sheet to the extent of 6 guntas as alleged in the plaint?

(2) Do depts prove that they have become owners of the suit land by adverse possession as contended by them?

(3) Whether the suit is maintainable in Law?

(3-A) Whether this Court has jurisdiction to try this suit as contended by depts in written statement para No, 67?

(4) What decree or order? "

Issues 3 and 3-A tried as the preliminary issues and originally the issues decided in favour of the defendants and the suit was dismissed, whereupon the plaintiff-appellant had filed the Appeal No. 36/76 which had been allowed by the first Appellate Court and the Appellate Court answered those issues in affirmative i.e. in favour of the plaintiff holding that the suit was not barred by the provisions of the Karnataka Land Revenue Act and that Civil Court has jurisdiction to try the suit and remanded the suit for Trial Court on other issues. After the remand, the learned Munsiff by its Judgment dated 27.10.78 held that the plaintiff had proved that defendants have encroached upon the plaintiff's land to the extent of 6 guntas. It further held that defendants have been able to prove that they have acquired title by adverse possession and on account of the findings on the Issue No. 2, the Trial Court dismissed the plaintiff's suit.

5. That having felt aggrieved from the Judgment and Decree of the Trial Court, the plaintiff preferred the Regular First Appeal. The lower Appellate Court on consideration of the contentions of the learned Counsel for the parties and the material on record held that the Trial Court had wrongly come to a conclusion that the defendants had proved to have perfected title by adverse possession over the land in dispute namely, 6 guntas of land in question. According to the lower Appellate Court, the defendants failed to prove any adverse possession for full 12 years. The Lower Appellate Court held that the channel in all probability must have been dug some time in the months of March or April, 1961, in view of the statement of D.W.4 and that suit had been filed on 30.12.72 i.e. well within 12 years from the date of digging of the water channel. Having regard to the finding on the question of adverse possession to the effect that the defendants had not perfected title by adverse possession over the suit property and other findings recorded by the Trial Court being in favour of the plaintiff-appellant, allowed the appeal and decreed the plaintiff's suit in toto after having set aside the Trial Court's decree. Having felt aggrieved from the Judgment and Decree of the Lower Appellate Court, the defendants have come up in Second Appeal. The Second Appeal appears to have been admitted on the following three questions:

"(1) Whether the Courts below were correct in determining the boundary notwithstanding the bar contained in Section 140(3) of the Karnataka Land Revenue Act?

(2) Whether the view of the Court below that as no cross-objection was filed a plea regarding encroachment could not be taken up in the appeal?

(3) Whether the lower appellate Court was justified in negating the claim of adverse possession even when the Trial Court found that the encroachment might be before 1954? "

6. I have heard Sri B.V. Jigajinni, the learned Counsel for the appellants. The learned Counsel for the appellants submitted before me that the case involved a dispute to boundaries relating to the two Survey Nos. 24 and 25 and until the boundaries were settled, the other questions could not be decided. The learned

Counsel further submitted that the jurisdiction to decide the boundary dispute exclusively vested in the Revenue Court i.e. Tahsildar and Civil Court had no jurisdiction to deal with the matter and as such, until that has been decided by a competent Court and it had been found that the land in dispute did fall within the area of Survey No. 25, the plaintiff's suit could not be decreed. He submitted that in such a situation, really the decree of the Court below deserves to be set aside and the case to be remanded to the Court below with a direction that let first the boundary dispute be decided by the Tahsildar. The learned Counsel for the appellants further submitted that the question of consideration of plea of adverse possession could arise later on and not earlier i.e. the question of adverse possession could be decided only after this issue is decided. He further submitted, the survey was got done by the plaintiff but without the knowledge to the defendants, so it was not binding. He submitted that in this boundary there is no question of encroachment of the suit property. No other contention has been raised.

7. As regards the jurisdiction of the Civil Court, this issue no doubt has been decided at the earlier stage in favour of the defendants by the Munsiff. But as mentioned earlier, in the Regular First Appeal of 1976 Trial Courts finding and order was set aside and thereafter the suit had been remanded for trial and no Revision or Appeal from order had been filed against order of remand. It was open to the defendants-appellants to have challenged that order by way of First Appeal from order which in this Court are described as Miscellaneous Second Appeal. This I have mentioned as a fact what had happened.

8. Whether the suit would be barred or not in the circumstances of the case as the present one is a question to be considered. The present is the suit for possession of land alleged to have been encroached by defendants to the extent of 6 guntas and in that case as per parties case, the land in dispute lies in between the two numbers which are adjoining. The learned Counsel's contention that there is a boundary dispute involved and the survey numbers with their boundaries have to be determined and located. His contention has been that this is the job of Tahsildar and not of Civil Court. The Civil Court has no jurisdiction. Before I further proceed to examine this contention, I think it would be profitable to make reference to the provisions of the Karnataka Land Revenue Act.

9. The learned Counsel for the appellants has invited my attention to Section 140 of the Karnataka Land Revenue Act. Section 140 of the Act reads as under:

"Determination of boundaries of lands forming a survey number or a holding -

(1) At the time of a survey, the boundary of a survey number, a sub-division of a survey number or a holding -

(a) if undisputed, shall be recorded and marked as pointed out by the holder or person in occupation, and

(b) if disputed, or if the holder or person in occupation be not present, shall be

fixed by the Survey Officer, in accordance with the land records relating to the land and after making such inquiry as he considers necessary.

(2) If any dispute arises concerning the boundary of a holding which has not been surveyed, or if at any time after the completion of a survey, a dispute arises concerning the boundary of a survey number, a sub-division of a survey number or a holding, the (Tahsildar) shall decide the dispute having due regard to the land records, if they afford satisfactory evidence of the boundary previously fixed, and if not, after such inquiry as he considers necessary."

10. According to the learned Counsel for the appellants, the order passed u/s 140 is appealable. The learned Counsel further points out that the order passed in First Appeal is subject to Second Appeal and order passed in Second Appeal is declared to be final. The learned Counsel submitted that jurisdiction is given to revenue authorities, so the order passed by the Revenue authorities is to be final. Ordinarily an order which is final, it indicates that there is no further appeal provided. The question as regards the bar if it is applicable to Civil Court jurisdiction. But so far as the question of bar against Civil Court jurisdiction is concerned, it can operate where it is expressly provided or it is by necessary implication.

11. My attention has been invited to Section 61 of the Karnataka Land Revenue Act. Section 61 of the Karnataka Land Revenue Act reads as under:

"61. Exclusive jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts,-

(1) Save as otherwise provided in this Act, or any other law for the time being in force, a Revenue Court shall have jurisdiction to determine, decide or dispose of, any matter which it is, by or under this Act, empowered to determine, decide or dispose of and no Civil Court shall exercise jurisdiction as to any of such matters.

(2) Subject to the exceptions hereinafter specified, no Civil Court shall exercise jurisdiction as to any of the following matters, namely:-

(a) claims against the Government relating to and property appertaining to any office or for any service whatsoever;

(b) objections -

(i) to the amount or incidence of any assessment of land revenue under this Act, or

(ii) to the mode of assessment or levy, or to the principle on which such assessment or levy is fixed, or

(iii) to the validity or effect of the notification of survey or settlement;

(c) claims connected with or arising out of any proceedings for the realisation of land revenue or other demands recoverable as arrears of land revenue under this Act, or any other law for the time being in force;

(d) claims to set aside, on account of irregularity, mistake, or any other ground, except fraud, sales for arrears of land revenue;

(e) claims against the Government -

(i) to be entered in the revenue survey or settlement records or any land records as liable for the revenue or as superior holder, inferior holder, occupant, mortgagee, landlord or tenant;

(ii) to have any entry made in any record of a revenue survey or settlement, or

(iii) to have any such entry either omitted or amended;

(f) the distribution of land or allotment of land revenue on partition of any estate under this Act or any other law for the time being in force;

(g) claims against the Government -

(i) to hold land wholly or partially free from payment of land revenue; or

(ii) to receive payments charged on or payable out of the land revenue; or

(iii) to set aside any cess or rate payable under the provisions of any law for the time being in force; or

(iv) respecting the occupation of waste or vacant land belonging to Government;

(h) claims regarding boundaries fixed under this Act or under any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks or survey marks;

Provided that if any person claims to hold land wholly or partially exempt from payment of revenue under,-

(a) any law for the time being in force expressly creating an exemption not before existing in favour of an individual, or any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(b) any written grant from the Government expressly creating or confirming such exemption, such claim shall be cognizable by a Civil Court."

12. It will also be profitable in this connection to refer to the provisions of Section 62 of the Karnataka Land Revenue Act, which reads as under:

"62. Savings of certain suits-

Nothing in Section 61 shall be held to prevent the Civil Courts from entertaining any of the following suits, namely:-

(a) suits against the State Government to contest the amount claimed or paid under protest, or recovered as land revenue on the ground that such amount is in excess of the amount authorised in that behalf by the State Government or

that such amount had previous to such claim, payment or recovery been satisfied in whole or in part or that the plaintiff or the person whom he represents is not the person liable for such amount;

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record;

(c) suits between private parties for possession of any land being a whole survey number or sub-division of a survey number or a part thereof."

13. A perusal of Section 140 reveals that the boundaries of survey number or a sub-division in a survey number or holding if undisputed, they shall be recorded and marked as pointed out by the holder or person in occupation and if there is a dispute, or if the holder or person in occupation be not present, it shall be fixed by the Survey Officer in accordance with the land records relating to the land and after making such inquiry as the Survey Officer considers necessary. Sub-section (1) relates to the proceedings at the time of survey and a power has been conferred on the Survey Officer to determine and fix the boundaries in case of a dispute or in case the holder or the person in occupation is not present. Clause (b) of Sub-section (1) provides that the boundary shall be fixed by the Survey Officer according to the land records relating to the land and after making such inquiry as he considers necessary. Sub-section (2) of Section 140 deals with the situation where dispute arises concerning the boundary of a holding which has not been surveyed or in cases where subsequent to the completion of a survey, if a dispute arises concerning the boundary of a survey number or sub-division of a holding, then it is provided, the dispute shall be decided by the Tahsildar, having due regard to the Land records and after making such inquiries as Tahsildar considers necessary. The scope of Section 140 therefore reveals that where there is a pure and simple dispute relating to boundary of holding, then that dispute can be decided u/s 140, in case it has arisen during the course of survey, it can be decided by the Survey Officer and in cases where the dispute arises subsequent to the completion of survey proceedings, then the dispute shall be decided by the Tahsildar. A reading of this Section does not reveal that if dispute arises in connection with certain suit litigation even the Tahsildar will decide it.

14. So far as the question of exclusion of jurisdiction of the Civil Court is concerned, the material provisions are Section 61 and 62 which have been quoted earlier. A reading of Section 61 of the Act, firstly shows that except as otherwise provided under this very Act or by any other law for the time being, the Revenue Court has been conferred the jurisdiction to determine and to decide the matters which it has been empowered to decide and dispose of and that jurisdiction is to the exclusion of the jurisdiction of the Civil Court. Sub-section (2) of Section 61 further enumerates the matter in respect of Civil Court will have no jurisdiction but subject to the exception as mentioned in Sub-section (1) that if there is any other provisions to the contrary or it is provided otherwise either in the Revenue Act or under any other law, then the bar will not apply. Section 62 of the Karnataka Land Revenue Act which has already been quoted

earlier shows that Section 61 will not prevent the Civil Court from entertaining any of the suits referred to in Section 62 or suits of the category referred to in Section 62. Clauses (b) and (c) provide that suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record or suits between private parties for possession of the land where the land consists of the entire survey number or the sub-division or a part thereof. To such suits the bar or exclusion of Civil Courts jurisdiction as contained in Section 61 will not apply. Similarly, bar will also not apply to the suits referred to in Clause(a).

15. In the present case, the suit is between private parties for a decree for possession over 6 guntas of land in dispute and for declaration of the right of the plaintiff. No doubt, the question is whether the land in dispute forms part of Survey No. 25 or 24. But the suit being one for declaration of the plaintiff's right and for possession by eviction of the defendants and removal of construction made by him, the suit in question comes within the four corners of Clauses (b) and (c) of Section 62. That being the position, in my opinion, the bar of Section 61 with reference to the jurisdiction of the Civil Court will not apply to present suit. When I so observe, I find support from the view expressed by this Court in the case of Hanumantappa Kallappa Gudeppanavar Vs. Veerappa Rudrappa Uppin and Another, The Hon"ble E.S. Venkataramiah, J as he then was in the above mentioned case held and observed as under:

"The suit is instituted for establishing a private right in respect of the site in question. Section 61 of the Act would not bar a suit coming under any of the Clauses (a), (b) and (c) in Section 62 of the Act. Section 62 states that nothing in Section 61 shall be held to prevent the Civil Courts from entertaining suits, between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record; and suits between private parties for possession of any land being a whole survey number or sub-division of a survey number or a part thereof [vide Clauses (b) and (c) of Section 62 of the Act]. The present case falls under Clause (b) of Section 62 of the Act. The Court below was therefore in error in holding that the suit was barred u/s 61 of the Act."

16. The learned Counsel for the appellants in support of his contention tried to place reliance on a Decision of this Court in the case of Patel Doddakempe gowda Vs. Chikkeere gowda, The case relied on by the learned Counsel for the appellants, namely, Patel Doddakempegowda's case, in my opinion suffers from the per incuriam. A decision which based on non consideration or omission to consider the material provision or any part thereof or in which earlier Decision on the point has not been considered is said to be one suffering from per incuriam. In this case, it appears from the perusal of the Report, the learned Single Judge omitted to consider the impact of the earlier part of Section 62 which provides that "nothing in Section 61 shall be held to prevent the Civil Court from entertaining the filing of suit," The use in Section 62 of the expression "nothing

in Section 61" shows that whatever is contained in Section 61 shall not prevent the Civil Court from entertaining the suit and decide the question involved and when the jurisdiction which the Civil Court has got u/s 9 of the CPC to decide is kept intact by excluding the provisions of the provision of Section 61 in respect of those suits naturally it follows that in those cases, the exclusiveness of jurisdiction of Revenue Authority will not operate. The Civil Court will have to consider the questions involved in the suit particularly where the defendants are alleged to have committed trespass or encroachment over the plaintiff's land and when deciding the dispute if defendant has committed encroachment etc., if needed in that connection it can decide the question of the boundaries on the basis of evidence on record including the revenue record entries, It is well settled principle of law when a power is given to do some job or some act then for performing the job and for exercising that power whatsoever power is necessary for discharging that function is deemed to be there under the doctrine of implied and ancillary power unless there is provision to the contrary, so in order to grant the decree for possession, if the question had to be decided whether the land in dispute did fall on Survey No. 25 or 24 or partly on Survey No. 24 and 25, the decision on question of boundary being ancillary and essential for decision of the case, the ancillary powers will follow and particularly when I so find, I find support from the use of the language in the earlier part of Section 62 of the Act that nothing in Section 61 shall apply to such suits. In this view of the matter, I am of the opinion that the above noted case does (not) help the appellant. If at all the ratio is taken then the survey done at the instance of the plaintiff and thereafter suit had been filed, after survey of the Surveyor, and if defendants felt aggrieved from that decision on the ground alleged that survey had been done in his absence, it was his duty to have raised that dispute before the Tahsildar and not of the plaintiff.

17. It is well settled principle of law as laid in the case of A.R. Antulay Vs. R.S. Nayak and Another, that a Decision, which comes within the clutches of Doctrine of Per Incuriam, is not a binding authority. In paragraph 138 of A.R. Antulay's case, it has been laid down as under:-

"But the point is that the circumstance that a decision is reached per incurtam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate bench can disagree with it and decline to follow it. A large bench can over-rule such decision."

In this view of the matter, the Decision referred to and relied by the learned Counsel in the case of Patel Doddakempegowda v. Chikkeeregowda, cannot be taken to be binding on Judicial Proceedings.

18. In this view of the matter, in my opinion, the Courts below were justified in taking the view that the suit in question was maintainable and Civil Court jurisdiction was not barred. Thus considered in my opinion, the submission of the learned Counsel for the appellants in this regard that the Civil Court had no jurisdiction to try the suit as it involved a dispute relating to boundary as well is

without substance and as such is rejected.

19. The learned Counsel for the appellants' second submission as mentioned earlier had been to the effect that the present defendants-appellants were not allowed to challenge the other findings of the Trial Court in order to support the Trial Court's decree on the ground that he had not filed any cross-objection or cross appeal. The learned Counsel submitted that as the Trial Court had dismissed the plaintiff's suit and no decree had been passed against the defendants, therefore, there was no question of filing any cross-objection or cross appeal. The learned Counsel elaborating his contention contended that under Order 41 Rule 22 of the Code of Civil Procedure, a cross-objection can be filed only against the decree and the finding on the basis of which decree is passed against the person desiring to file the cross-objections. But if no decree had been passed against him, cross-objections or cross appeal can be filed against the finding. The learned Counsel as such submitted that lower Appellate Court erred in law by not allowing the defendants-appellants who were respondents in the lower Appellate Court to challenge the findings which were recorded against them by the Trial Court. He made reference to certain Cases.

20. That as a bare proposition of law, there is no doubt, that learned Counsel for the appellants is justified in contending that no appeal or cross appeal or a cross-objection can be filed against a finding by parties, until any decree on the basis of that finding has been passed against that party concerned, and a cross appeal or a cross objection lies against the part of the decree and the finding of the basis on which the decree is passed against the person. Order 41 Rule 22 Sub-clause (1) reads as under:-

"22. (1) Upon hearing respondent may object to decree as if he had preferred separate appeal:-

Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow."

Explanation:- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree is, wholly or in part, in favour of that respondent.."

21. This Explanation had been inserted by Section 87 of Act No. 104 of 1976. The use of expression "in respect of decree so far as it is based on that finding",

this Explanation again empowers the respondent to file a Cross-objection against a finding on which the decree appealed against is based, This is no doubt an empowering provision. But the material question would be whether the decree of dismissal of the suit is based on those findings. In the present case, the suit has been dismissed by the Trial Court on the ground that the defendants - present appellants had perfected title by adverse possession. The dismissal of the suit is not based on other findings. Basis of decree for dismissal of the suit is only the finding of adverse possession. Even if for a moment it can be taken that a party is empowered to file the cross-objections, but he has not filed, whether party can at the time of oral hearing support the decree by showing the Appellate Court that the findings recorded against him in Court below ought have been in his favour and the decree as passed would then have been maintained. In my opinion, the use of expression "may also take any cross objection" indicates that apart from his right to take oral objections and challenges to the findings recorded against him, the respondent has been given an additional right to file the cross objection in case a decree has been passed and therefore non filing of a cross objection cannot be taken to be a bar against respondent supporting the decree restraining him from and in submitting that the findings recorded against him by the Trial Court or the Court below on any issues ought to have been in his favour. When I so observe, I find support from the view expressed by the Allahabad High Court in the case of Shyam Nath and Others Vs. Durga Prasad etc., Hon. KM Dayal, J in paragraph 12 of the Report observed:-

"The learned Counsel for the respondent raised a further question. He argued that the judgment and order of Sri K.C. Singh remanding the case to the Trial Court and affirming the finding on the question of parentage of Smt. Yashoda having been set aside by this Court in the two F.A.F. Os., the entire judgment stood wiped off and the Court below was bound to give its own finding on the question of parentage of Smt. Yashoda. It should not have merely adopted the finding of Sri K.C. Singh recorded in the remand order. A technical objection has been made to this plea of the respondent by the learned Counsel for appellant. He argued that the present appeals were filed in May, 1977 i.e., after the enforcement of the Civil P.C., (Amendment) Act, 1976. The learned Counsel argued that in Rule 22 of Order 41 an explanation was added to Sub-rule(1), whereby the respondent was given a right to file a cross-objection in respect of the findings as well. He argued that the amendment in the main Sub-rule (1) about challenging the finding, made it obligatory on the respondent to have filed a cross-objection, if he wanted to challenge the finding of the lower appellate Court about the parentage of Smt. Yashoda.

He relied upon the proviso in Sub-rule(1) that unless such cross- objection was filed he could not do so. I am unable to accept that submission, the proviso to Sub-rule(1) of Rule 22 applies to the decrees and not to mere findings. It has however been permitted that a cross-objection could be filed against a finding as well. As the decree itself could not be challenged, the filing of any cross-objection was not obligatory. Had the respondent challenged any portion of the decree,

certainly he could not do so unless he had filed a cross-objection as contemplated by Sub-rule (1). I, therefore, propose to deal with the finding relating to parentage of Mst. Yashoda."

22. Thus it is quite clear that if the respondent intends to challenge certain part of the decree based on certain findings, then cross-objection has to be filed but if respondent in order to support the decree passed by the Court below by showing that a finding which has been recorded against the respondent concerned should not have been recorded by the Court below, he can do so without filing the cross-objection.

23. Here in the present case, I called upon the learned Counsel to show or indicate from the judgment or from his grounds of appeal to show that the lower appellate Court did not allow him to challenge those findings which were against the defendants, either from the judgment or from the grounds that he has taken that plea or ground that defendants who are respondents before the lower appellate Court were not allowed to challenge the findings which had been recorded against him and to support that decree on the basis that really the findings on those issues should have been in their favour and if it is in their favour, the decree as passed by the Trial Court is to be maintained and was not liable to be dismissed. The learned Counsel for the appellants failed to show me any such thing from any portion of the Judgment. The learned Counsel only placed before me only a portion of the Judgment in which the lower Appellate Court has said that the findings on issue No. 1 has not been challenged in any manner by defendants, either by way of appeal or by way of cross -objection and that is binding on defendants. A reading of these paragraphs does not indicate that the defendants-appellants who were respondents before the lower Appellate Court tried to challenge the finding on Issue No. 1 that had been recorded in favour of the plaintiff. In the Memo of Second Appeal no such allegation has been made that they tried to make submissions to challenge Issue No. 1 but was not allowed to challenge.

24. In this view of the matter, in my opinion, even though the proposition of law as urged as bare proposition of law by the appellants may be correct but on the facts on record, I do not find any such errors have been committed by the lower Appellate Court. The main thrust in the Second Appeal appears to have been on the finding relating to adverse possession. The lower Appellate Court has recorded the finding to the effect that in all probability the channel had been dug by D.W. 1 in the month of March or April 1961 having regard to the statement of first defendant as D.W. 4 to the effect that D.W. 1 Basawanappa had constructed the channel within two or three months after the date of Ex.D -1 which is dated 12.12.60 and that suit had been filed on 31.10.72 within 12 years period from the date or period when D.W. 1 has alleged to have dug the channel. The 12 years period could have been completed in accordance with the finding of the Court below in the month of March or April 73, then it cannot be said that the finding recorded by the lower Appellate Court to the effect that defendants had

failed to show that they had perfected title by adverse possession by 12 years prior to the institution over the disputed portion of 6 guntas of land is vitiated by any error of law. The finding on the question of perfection of title by adverse possession or failure to prove adverse possession for full 12 years prior to the institution of the suit recorded by lower appellate Court is pure and simple finding of fact. It has not been shown how it suffers from any error of law or substantial error of law. A finding of fact howsoever grossly erroneous it may be on a question of fact recorded by a Court of Fact, unless it is vitiated by error of law of substantial nature, cannot be interfered with by this Court in Second Appeal.

25. Thus considered in my opinion, the Second Appeal is concluded by finding of fact. It does not involve any Question of Law much less substantial Question of Law. As such, it deserves to be dismissed and is hereby dismissed. No orders as to costs.