

---

**(2014) 09 KAR CK 0025**  
**In the Karnataka High Court**  
**Case No : Criminal Revision Petition No. 93/2006**

Iynanda K. Chinnappa

APPELLANT

Vs

Balachanda M. Thammaiah

RESPONDENT

---

**Date of Decision :** 12-09-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 133

**Citation :** (2015) ILR 701 : (2014) 4 KCCR 3761

**Hon'ble Judges :** Anand Byrareddy, J

**Bench :** Single Bench

**Advocate :** N. Ravindranath Kamath, Advocate for the Appellant; K.R. Keshava Murthy, State Public Prosecutor and S.G. Rajendra Reddy, Advocate for the Respondent

**Final Decision :** Allowed

---

## Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioners.

2. The learned Counsel for the respondent No. 1 has remained absent though the matter was heard on several occasions and was adjourned to in expectation of the learned Counsel for the respondent appearing before the Court, he has failed to appear.

3. The learned State Public Prosecutor was also heard.

4. The brief facts of the case are as follows:

The first respondent herein is said to have filed an application u/s 133 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C." for brevity) claiming that the petitioners were causing obstruction in respect of free passage between the lands bearing survey numbers 63/1 and 60/1 of Yadoor village, Virajpet Taluk, Kodagu District. Respondent No. 1 claims that he has immovable properties; that he grows coffee and other crops and he has his residential house in Yaadoor village and to reach his land bearing survey No.

75/1 and other lands bearing abutting survey numbers and the petitioners were using "Kadanga" which lies between the lands bearing survey Nos. 63/1 and 60/1 of Yadoor village. Respondent No. 1 claimed that the Kadanga is the land belonging to the Government and runs from Kannangala village through Yadoor village and reaches Hachinad village and it is claimed that this Kadanga had been in existence since ancient times and it is a motorable Kadanga and vehicles do ply on the same. The width of Kadanga is said to be about 20 feet x 22 feet. Respondent No. 1 further claims that he was using this Kadanga to reach to his coffee estate and also move his cattle to the Devara Kadu Forest lying in the land bearing survey No. 62 and for other purposes. It was further claimed that respondent No. 1 and other villagers were maintaining the Kadanga. Apart from the petitioners, it was claimed that other villagers also used the same to reach the tank situated in survey No. 61 which is called "Aiyappa Devara Kere" and also to reach the land bearing survey No. 62 which is a reserve forest known as "Bhadrakali Devara Kadu". There is said to be a shrine situated there, where the villagers offer worship every month and therefore, the Kadanga is also a pathway used by the respondent and other villagers.

5. In this background, it was alleged that the present petitioners were claiming that the owners of land bearing survey Nos. 63/1 and 60/1 of Yadoor village as well as the Kadanga lying between these lands which runs between the two items of lands, have put up a fence which is about 5 feet in height, blocking and preventing the free movement of men and material and that they do not have an exclusive right over the said Kadanga which is the property of the Government. That the said obstruction has commenced from the year 1994 and this particularly prevents the respondent and his family from using the same. The petitioners having been notified of the application had filed objections contending that the Kadanga is not public property and that over time, it has merged with the lands of the petitioners and it has been in the exclusive possession and enjoyment of the petitioners for more than 50 years. There is a road which provides independent access to the first respondent's property and therefore, the claim that the Kadanga is the only access to his property, is misleading and a mischievous statement. The removal of the fence, as proposed by the respondent, would compromise the security of the coffee estate of the petitioner and leave it open to cattle and other miscreants, which would not be in the interest of the petitioners. It is in the above background that the Tahsildar and the revenue inspector had deputed a Taluka Surveyor to survey the area which was under dispute. However the survey work could not be completed on account of other engagements of the Taluka Surveyor. It transpires that the petitioners were constrained to complain to the police of the interference by respondent No. 1 in the year 1994 and the respondent No. 1 along with other anti social elements were trying to encroach upon the property and to forcibly remove the fence protecting the petitioners property. In this background, a suit for injunction was filed in O.S. No. 36/1994 on the file of the Additional MUnsiiff and JMFC, Virajpet against the respondent and his father and there was an order of status

quo preventing respondent No. 1 from interfering with the suit property. In that background, the petitioners had contended that any relief considered in favour of the first respondent would seriously jeopardize their interest in the property and the application was also without jurisdiction and could not be filed to decide private rights of the parties.

6. The Assistant Commissioner on hearing the application and after recording the evidence of the 3 witnesses on behalf of respondent No. 1 and one witness on behalf of the petitioner and after hearing the learned Counsel for the parties and examining the material placed on record, had by his order dated 16.10.1998 dismissed the application while holding that there was no sign of any such use of the Kadanga by respondent No. 1 or anybody else and had accordingly held in favour of the present petitioner. That order having been challenged by way of a revision petition before the District Judge, the matter was contested over again. The revisional Court in turn has set aside the order of the Assistant Commissioner and has concluded by a detailed order holding that the Sub-Divisional Magistrate shall remove the obstruction caused by the present petitioners to the Kadanga lying between the land bearing survey Nos. 60/1 and 63/2 of Yadoor village at Kodagu District to enable free passage and movement of men and vehicles. It is this order which is sought to be challenged in the present proceedings.

7. The learned Counsel appearing for the petitioners would submit that the findings of the Court below is without basis. It is seen that in the original order passed by the Assistant Commissioner & Sub-Divisional Magistrate that the nature of Kadanga and its existence has been addressed and it has been opined that Kadangas were in existence during the period of Wadeyars and a Kadanga was not a public road but was meant as war trenches for soldiers to use. However, the revisional Court has expressed that there was no basis for such a finding. But on the other hand has referred to a copy of the Karnataka Gazette, Kodagu District and has expressed that a Kadanga was meant for the public to go from one place to another and normally there would be watchmen on either side of the Kadanga which were called "Bakka Bagilu" Therefore it had formed an opinion that Kadangas were nothing but pathways situated below the ground level and was meant for the public to go from one place to another and not as held by the Sub-Divisional Magistrate, that it was not a public road. Thereafter, the revisional Court has proceeded to address whether there was a Kadanga lying between the land bearing survey No. 60/1 and 63/1 of Yadoor village to hold whether the petitioners can claim any exclusive right over the same and has concluded that the existence of the Kadanga between these lands was not disputed and therefore, the petitioners could not claim any exclusive right over the same and that it could be used by the respondent as well as others as a pathway and has then concluded that the obstruction, if any, be removed by the Assistant Commissioner & Sub Divisional Magistrate.

8. The learned Counsel for the petitioners has therefore sought to produce

material as regards the nature of Kadangas and the existence of these Kadangas and the purpose that was served by these Kadangas. It is contended that even if the said Kadanga could be treated as public property, the same having fallen into disuse in some areas has merged with the private properties. In other areas Kadangas have formed natural boundaries between private properties and in some other areas it may even be used as pathways. But this did not lead to a conclusion that every Kadanga in every area where they were found could be used as a pathway and in the instant case on hand, the Kadanga which is in existence between two items of land is not used as a pathway but has in fact merged with the adjoining lands of the petitioners and it has been so since more than 50 years which the Assistant Commissioner has found on a spot inspection. He has found that there was no sign of movement in the Kadanga and that there were no sign of any cattle or men having moved over the Kadanga. In the face of such a specific finding as to the Kadanga not being used by any person but having been brought under cultivation, it could not be said that the general finding of the Court below that all Kadangas are public property and could be used as pathways is the correct finding.

It is noticed that the Assistant Commissioner & Sub-Divisional Magistrate, having arrived at a finding that Kadangas are ancient war trenches, that have fallen into disuse and that they are network of trenches which run through several lands as seen in the village map. Further insofar as the particular Kadanga, which is the subject matter, is concerned, on a spot inspection, he has found that the Kadanga passes through and between the lands of the petitioners herein and that it has been cultivated with coffee, as part of the land of the petitioners and there is no sign of any pathway. The revisional court, however, having overruled such a finding on the basis of the copy of a Karnataka Gazette, which refers to a particular Kadanga being used as a pathway and to generally give a finding that every Kadanga also forms a pathway, may not be the correct position. In any event, the Regulations framed under the Coorg Land Revenue Regulations, the Karnataka Revenue Survey Manual and the Mysore Land Revenue Code, do not contain the definition of a Kadanga.

9. The learned Counsel for the petitioner has produced an extract from Wikipedia, a free encyclopedia available on the internet, which has referred to a Kadanga as being ancient antiquities of Kodagu and as being earth redoubts or war trenches, which are from 1.5 metre to 7.5 metre high, and provided with a ditch of 3 metre deep by 2 metre or 3 metre wide. It is also noticed that they are mentioned in inscriptions of the ninth and tenth centuries. It is noticed that the inscriptions dated around 800 AD to 900 AD speak of Kadangas or defensive structures made by the Kodavas and the fact that the Kodavas were a martial race and over centuries, several south Indian dynasties like, the Kadambas, the Gangas, the Cholas, the Chalukyas, the Rashtrakutas, the Hoysalas and the Vijayanagara Rayas ruled over Kodagu. Therefore, if these trenches were spread over vast areas, and if over time, the land was cultivated by private land owners with the Kadangas in tact, it is quite possible that in some places, they formed a

boundary between the two items of lands or was used as a pathway in some areas and in other cases has merged with lands through which Kadanga ran, by being brought under cultivation, as in the instant case. Since there is no practical use today, it is possible that the Government has not thought it fit to exercise any exclusive right over the Kadangas or to insist that the private parties ought not to exercise any right over the same. In any event, the claim of the respondent that the particular kadanga, which is undisputedly in existence and runs between two items of land belonging to the petitioners was being used as a public pathway, is not found as a fact by the Assistant Commissioner who has held a spot inspection. However, the revisional court has merely reversed this finding on the basis of the assertions made by the respondents. Therefore, it is evident that there was no public interest involved insofar as the particular Kadanga was concerned and it was a personal claim of the respondent, while incidentally asserting that apart from the respondent, other villagers were also using the Kadanga and if the finding of fact arrived at by the Assistant Commissioner is to be taken into account, it cannot be said that Section 133 of the Code of Criminal Procedure, 1973, could have been invoked to establish the case of the respondent, which is of a personal nature. If the respondent was seeking to exercise a right of way through the Kadanga, it was necessary for him to file appropriate proceedings possibly against the State Government as well as the present petitioners, in seeking a declaration as to such a right. Therefore, the finding of the court below that the Kadanga existing between the two items of land of the petitioners is a public pathway and a motorable road is certainly contrary to the findings of fact arrived at by the Assistant Commissioner on the basis of his spot inspection.

Consequently, the petition is allowed. The impugned order of the court below is set aside. The order passed by the Assistant Commissioner in the first instance is affirmed.