

**(2010) 06 KAR CK 0116**

**In the Karnataka High Court**

**Case No :** Regular First Appeal No's. 152 and 188 of 2002

The Deputy Conservator of Fores, Chikmagalur Division and  
Range Forest Officer, Chikmagalur Range

**APPELLANT**

**Vs**

T.K. Thammanna Gowda, Manjappa and Revanna <BR> T.K.  
Thammanna Gowda Vs The Deputy Conservator of Forests,  
Chickmagalur Division, Range Forest Officer, Manjappa and  
Revanna

**RESPONDENT**

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**Date of Decision :** 28-06-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 64, 80

**Citation :** (2011) ILR (Kar) 480 : (2011) 3 KarLJ 556 : (2010) 3 KCCR 2292

**Hon'ble Judges :** A.N. Venugopala Gowda, J

**Bench :** Single Bench

**Advocate :** N.D. Jayadevappa, HCGP in R.F.A. No. 152/2002 and M. Ram Bhat,  
in R.F.A. No. 188/2002, for the Appellant; M. Ram Bhat, for R1 and N.D.  
Jayadevappa, HCGP in R.F.A. No. 188/2002, for the Respondent

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## **Judgement**

A.N. Venugopala Gowda, J.—RFA 188/2002 is by the plaintiff. RFA 152/2002 is by the defendants 1 and 2. The defendants 3 and 4, are the respondents 2 and 3 in RFA 152/2002 and respondents 3 and 4 in RFA 188/2002. For convenience, the parties will be referred to with reference to their rank in the suit.

2. The plaintiff claiming title to the suit land on the basis of a temporary Saguvali chit (Ex.P-8), issued by the Tahsildar, filed the suit to declare him as the owner in possession of the suit property and permanent injunction restraining the defendants from disturbing his possession and enjoyment of suit property i.e., land measuring 3 acres in Survey No. 369/P of Vasthare village/Hobli in Chikmagalur Taluk, by showing the eastern and northern boundaries as Government Gomala and the western and southern boundaries as the granted land. The defendants filed written statement and denied the claim of the plaintiff. The defendant stated that the plaintiff has not grown coffee plants in the suit land, since there was no chance of growing coffee plants, as it is a Government

Forest Land. It was stated that, Survey No. 369 of Vasthare village/Hobli measures 284 acres and as per Government Order, 230 acres has been reserved for forest by the erstwhile State under a Gazette Notification dated 27.01.1937 and the defendants/Forest Department is in possession and enjoyment of the property. It was stated that, Revenue Department has no power to grant any land in the forest area and so also, the plaintiff has no right to encroach upon the forest land belonging to the Forest Department. It was further stated that, any attempt for encroachment of forest land amounts to an offence and since the defendants came to know that plaintiff is attempting to encroach upon the forest land, a criminal case was registered against the him. It was stated that, without issuing notice required u/s 80 C.P.C. the suit has been filed, which is not maintainable and that, the plaintiff cannot be permitted to encroach upon the forest land.

3. Considering the pleadings of the parties, the trial court raised the following issues:

1. Whether the plaintiff proves that he is the absolute owner of schedule property?
2. Whether the plaintiff proves actual possession and enjoyment of schedule property on the date of suit?
3. Whether the defendants prove that 220 acres land in Vasthare Sy. No. 369 is Reserve Forest and grant of any portion of the said area by Revenue Authorities illegal?
4. Whether plaintiff proves alleged obstruction to possession and enjoyment of schedule property?
5. Whether plaintiff is entitled to decree of declaration and injunction?
6. What order or decree?

4. During the trial, plaintiff deposed as PW-1 and Ex.P-1 to Ex.P-8 were marked. The second defendant deposed as DW-1 and Ex.D-1 to Ex.D-17 were marked. The Trial Court answered issue Nos. 1 and 3 in the affirmative, issue No. 5 partly in the affirmative and issue Nos. 2 and 4 in the negative; as a result the suit was decreed in part. The plaintiff was directed to approach the concerned authority who has granted the land to locate his land. The suit for relief of permanent injunction was dismissed. Aggrieved, the plaintiff and the defendants 1 and 2 - Forest Department, have filed these appeals.

5. The learned Advocate appearing for the plaintiff contended that;

(a) The trial court has committed an error in holding that the grant of suit property made in favor of the plaintiff is a portion of forest land.

(b) The Civil Court cannot go into validity or otherwise of the grant made under the provisions of Karnataka Land Grant Rules until and unless the Forest

Department gets the grant set-aside.

(c) The plaintiff has produced the saguvali chit, which establishes his title to the suit property and the suit property being not a forest land, the denial of relief of permanent injunction is illegal.

(d) The Trial Court without correctly appreciating the evidence of PW-1 and Exs.P-1 to Ex.P-8, has committed material error and illegality in directing the plaintiff to approach the authority for location of granted land and also in denying the relief of permanent injunction.

6. Learned Government Pleader, on the other hand, contended that;

(a) The suit property is a forest land as is evident from the Gazette Notification dated 27.01.1937 (Ex.D-3).

(b) The Revenue Authorities had no right to grant the land, which is a Government Forest Land and is in the possession of the Forest Department.

(c) The Trial Court has committed an error in decreeing the suit holding that the plaintiff is the owner of the land, despite the finding that, failure on the part of the plaintiff to identify the suit property and prove his possession and enjoyment.

(d) Trial Court has committed material error and its finding with regard to declaration is perverse and the decree passed in favor of the plaintiff, which does not have the support of any tenable evidence, is bad and illegal.

7. Keeping in view the rival contentions and the record, which I have perused, the points for determination are:

1. Whether the plaintiff has proved that he is the absolute owner in actual possession and enjoyment of the suit property?

2. Whether the suit property forms a part of the land in Sy. No. 369 of Vasthare village/Hobli, reserved to the Forest Department?

3. Whether the plaintiff is entitled to the relief prayed in the suit?

8. Plaintiff while deposing as PW-1 has relied upon Ex.P-8, the saguvali chit, issued by the Tahsildar, to claim title to suit property. PW-1 has not produced any evidence with regard to location of suit property. Other than his own interested testimony, he has not examined any other witness. The plaintiff could have examined the alleged grantees of the land on the Western and Southern side boundaries of the suit property. Since the defendants have contended that, the suit property has not been lawfully granted and that the Revenue Department has no authority to grant the land, the plaintiff ought to have examined the authority which issued Ex.P-8. That apart, Ex.P-8 is a temporary saguvali chit. Plaintiff though has stated that he had grown coffee on a portion of the suit property, he has not produced the CRC. His evidence makes it clear that he had attempted to encroach a portion of the reserve forest land and had planted coffee, which was removed by the defendants-officials of the Forest Department.

Plaintiff admits that the Forest Department has instituted criminal proceedings against him and that the Forest Department authorities have passed order against him which he has questioned in appeal. No record has been produced with regard to the filing of any appeal.

9. DW-1 is the Range Forest Officer of Chikmagalur Range. He has deposed that, the suit property falls within Block-II of Reserve Forest in Survey No. 369 of Vasthare village, which measures 284 acres. He has deposed that, out of the said land, on 21.01.1937, 220 acres of land was transferred to the Forest Department for reserve forest and since then the reserve forest is in existence. He has further deposed that, on 16.11.1996 plaintiff attempted to clear a portion of the reserve forest land and enter upon it and hence a case was registered against him. He has stated that the Revenue Department has no right to grant any part of the forest land. RTC of the said reserve forest land is at Ex.D-1 and the mutation is at Ex.D-2 and the Notification under which the said extent of land in Survey No. 369 was transferred to the Forest Department is at Ex.D-3. The "C" Statement along with the Notification at Ex.D-3 is at Ex.D-4. The "C" statement shows that in Survey No. 369, 220 acres of land has been shown and the relevant entry is at Ex.D-4(a). Ex.D-5 is the survey sketch of Vasthare village issued by the Survey Department. Plaintiff attempted to enter upon the forest land by claiming it to be the granted land by the Revenue Department, which in fact is a forest offence. Separate action has been taken by the Deputy Conservator of Forest, Chikmagalur u/s 64 of the Act against the plaintiff. The plaintiff has no right of whatsoever nature on the suit property. Though DW-1 has been cross-examined at length, nothing material has been elicited to disbelieve his testimony. Evidence of DW-1 is in conformity with documentary evidence marked through him i.e., Exs.D-1 to Ex.D-17.

10. From the evidence of DW-1 and the documents marked through him, it is clear that, the suit property is part of reserve forest. When the suit land is part and parcel of the reserve forest as is evident from the Gazette Notification at Ex.D-3, the entry in the revenue record at Ex.P-2/RTC is of no consequence and further, mere temporary saguvali chit (Ex.P-8) did not confer any title on the plaintiff in respect of the suit land. The revenue authorities have no competence to deal with the property which was reserved to the Forest Department. The plaintiff has not derived any valid title in respect of the suit property to declare him as the owner of the property. Since the plaintiff has failed to establish that according to Ex.P-8, he was delivered with the property and he continued to hold and enjoy the same lawfully, he has been rightly denied the relief of permanent injunction. The plaintiff has failed to prove that he is the absolute owner of the property and that he is in actual possession and enjoyment of the same and that the defendants obstructed his possession and enjoyment of suit property. The evidence on record would clearly establish that defendants have proved that suit property forms part and parcel of 220 acres of land in Vasthare village/Hobli Survey No. 369, which is a reserve forest and grant of any portion of the land by Revenue Authorities is illegal and has not conferred any rights on the plaintiff.

11. The view I have taken, gets support from the decision of the Apex Court in the case of State of Karnataka v. I.S. Nirwane Gowda reported in 2007(15) SCC 744. In the said case, plaintiffs had claimed title to the suit lands on the basis of saguvali chits given by the Tahsildar and filed suit for declaration of title and permanent injunction. The defence of the defendants was that, the suit land was forest land and the revenue department had no right to grant and issue saguvali chits, to the plaintiffs. The Trial Court accepted the case pleaded by the defendants and concluded that the suit lands was forest land and Revenue Department has no right to grant saguvali chits to the plaintiffs. The said judgment and decree was affirmed by the Appellate Court, which made reference to Gazette Notification, showing the lands were included in the said Reserve Forest and as per Ex.D-2, the statement of land taken for Indavara in Hukkunda Village, which was spoken by the Range Forest Officer. However in Second Appeal, the said findings were reversed by raising a presumption on the basis of the entries in the revenue records. The said judgment/decreed when questioned before the Apex Court, while setting aside the impugned judgment/decreed and restoring that of the first appellate and Trial Courts, it has been held as follows:

When the lands were included in Reserve Forest, the entries in the revenue records were of no consequence and further more, saguvali chit do not confer title on the suit land. This apart, the revenue authorities were not competent to deal with the property which was the part of reserve forest.

In view of the above discussion, it has to be held that, the trial court has committed error in declaring the plaintiff to be the owner of three acres of land based on saguvali chit/Ex.P-8 and in directing him to approach the authority which granted the land to locate the extent of three acres. Since the lawful grant of suit property has not been established, the judgment/decreed of the trial court, to the extent of holding that the Plaintiff has right to an extent of three acres of land is wholly erroneous and illegal. Without the plaintiff establishing his possession and enjoyment of the suit property, a mere declaratory decree could not have been passed. However, the trial court is justified in dismissing the suit of the plaintiff for permanent injunction, since the plaintiff has failed to identify the location of suit property and prove his lawful possession and enjoyment thereof.

For the foregoing reasons, I pass the following:

ORDER

(i) RFA 152/2002 filed by the defendants stands allowed. The judgment and decree of the trial court, under challenge, stands set-aside.

(ii) Consequently, RFA 188/2002 filed by the plaintiff stands dismissed. O.S. 156/1986 on the file of the Civil Judge (Sr. Dn.) and CJM, Chickmagalur, stands dismissed.

(iii) However, in the circumstances of the case, the parties are directed to bear

their respective costs throughout.