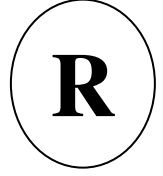


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF NOVEMBER, 2025



BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.459/2021 (DEC/INJ)

BETWEEN:

SRI. H.R. GOPALAPPA
S/O RAMAIAH
AGED ABOUT 54 YEARS
RESIDING AT
H. HOSAKOTE VILLAGE
LAKKURU HOBLI
MALUR TALUK
KOLAR DISTRICT-563114.

... APPELLANT

(BY SRI. B.C.VENKATESH, ADVOCATE)

AND:

1 . SRI. D. VENKATACHALAPATHI
S/O LATE DASAPPA
AGED ABOUT 64 YEARS

2 . SRI. D. MUNIRAJU
S/O LATE DASAPPA
AGED ABOUT 56 YEARS

BOTH ARE RESIDING
AT NO.73, 13TH CROSS,
AGRAHARA DASARAHALLI
BENGALURU-560 079.

... RESPONDENTS

(BY SRI. SRINIVASA A.E., ADVOCATE FOR C/R1 AND R2)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 02.09.2020 PASSED IN R.A.NO.131/2019 ON THE FILE OF THE I ADDL. DISTRICT JUDGE AT KOLAR, PARTLY ALLOWING THE APPEAL AND MODIFYING THE JUDGMENT AND DECREE DATED 25.07.2019 PASSED IN O.S.NO.38/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, MALUR AND ETC.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.11.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

This second appeal is filed against the divergent finding wherein at first instance, the suit was dismissed by the Trial Court in O.S.No.38/2016 vide order dated 25.07.2019 and the said judgment and decree was reversed by the First Appellate Court in R.A.No.131/2019 declaring that the plaintiffs are the absolute owners of the suit schedule property, however, the relief of permanent injunction sought by the plaintiffs was dismissed.

2. Heard the learned counsel appearing for the appellant. The counsel for the respondents is absent and hence, the arguments from the respondents side are taken as nil since

inspite of sufficient opportunities are given, not appeared before the Court.

3. The factual matrix of the case of the plaintiffs before the Trial Court while seeking the relief of declaration and permanent injunction is that the suit schedule property is a granted land in favour of their father Dasappa on 25.09.1980. The said Dasappa had filed a petition before the Assistant Commissioner against the father of the defendant viz., Ramaiah in Case No.LND SC/ST.14/1996-97 which came to be dismissed vide order dated 30.07.1997. The further appeal preferred before the Deputy Commissioner in R.A.SC/ST.13/1998-99 was allowed in favour of the plaintiffs. Based upon the said order, the Assistant Commissioner has passed another order in favour of plaintiffs in case number LND.SC/ST.MLR.1/2004-05. The defendant then challenged the said order passed by the Assistant Commissioner before the Deputy Commissioner in R.A.SC/ST.22/2004-05 which came to be dismissed on 19.08.2004. The defendant also preferred a Writ Petition in W.P.No.12315/2006 before this Court which came to be

dismissed as withdrawn on 01.12.2008. The father of the plaintiffs viz., Dasappa expired during 1996 and mother of plaintiffs expired during 2009 and thereafter, the plaintiffs are in possession of the suit schedule property. The revenue records relating to the suit schedule property stands in the name of their father-Dasappa and they are also paying the tax. It is contended that though the defendant has no right, title, interest or possession over the suit schedule property, trying to interfere with their possession. Hence, filed the suit seeking the relief of declaration to declare that they are the absolute owners and also for permanent injunction.

4. The defendant, in pursuance of the suit summons, appeared before the Court and filed the written statement denying the entire averments made in the plaint and also denied the very title of the plaintiffs. It is contended that the suit is not properly valued. The defendant was in unauthorised possession of the said land measuring 1 acre 20 guntas in Sy.No.138 and pursuant to the application submitted to the Tahsildar, the said land was granted in favour of defendant as per the Grant

Certificate dated 05.02.2003. Since then, the defendant is in continuation possession of the said property. The revenue records are also stand in the name of the defendant and he is paying tax. Hence, prayed the Court to dismiss the suit.

5. The Trial Court having considered the pleadings of the parties, framed the following Issues:

1. Whether plaintiffs prove that, they are the absolute owner in possession of the suit property as pleaded in the plaint?
2. Do the plaintiffs prove the alleged interference?
3. Whether defendant proves that valuation of suit property and Court fee paid by the plaintiff is not correct?
4. Whether plaintiffs are entitled for the relief's as sought for?
5. What order or decree?

6. In order to prove the case of the plaintiffs, plaintiff No.2 examined as PW1 and also examined one witness as PW2,

but he was not subjected to the cross-examination and got marked the documents at Ex.P1 to P17. On behalf of the defendant, defendant examined himself as DW1 and got marked the documents at Ex.D1 to D43 and also examined three witnesses as DW2 to DW4. The Trial Court having considered both oral and documentary evidence available on record dismissed the suit of the plaintiffs in coming to the conclusion that the plaintiffs have not proved the title as well as possession and hence, they are not entitled for the relief of declaration and permanent injunction. The said judgment and decree was challenged before the First Appellate Court in R.A.No.131/2019. The First Appellate Court after reassessing both oral and documentary evidence placed on record reversed the judgment and decree of the Trial Court in coming to the conclusion that the possession has not been proved by the defendant, however, title is in favour of the plaintiffs and hence, granted the relief of declaration. The First Appellate Court also given definite finding that in view of document of Ex.D3 which relies upon by the defendant cannot be considered since the suit schedule property itself could not have been granted by the Government as it was

already granted to Dasappa as per Ex.P1, thus, the claim of the defendant cannot be accepted. Being aggrieved by the divergent finding of the Trial Court as well as the First Appellate Court, this second appeal is filed before this Court.

7. This Court, having considered the grounds which have been urged at the time of admission, vide order dated 17.08.2021, framed the substantive questions of law which read as follows:

- (i) Whether the First Appellate Court has committed an error in reversing the finding of the Trial Court granting the relief of declaration of ownership and permanent injunction without he seeking better relief of possession?
- (ii) Whether the First Appellate Court was justified in allowing the appeal partly without deciding the validity of the grant certificate 05.02.2003 (Ex.D.3) issued in favour of the defendant?

8. The learned counsel appearing for the appellant in his arguments would vehemently contend that the father of the respondents namely, Dasappa had sold the subject property in

the name of the appellant's father – Ramaiah on the premise that the same was his self-acquired property vide sale deed dated 22.01.1979. The said document is marked as Ex.D29. The counsel also not disputes the fact that the agricultural land measuring to an extent of 1 acre 14 guntas in Sy.No.138 (138/P27) of Hulimangala, Lakkur hobli, Hoskote taluk, Kolar district was granted in the name of Dasappa vide LNDSP No.64/77-78. The counsel also brought to notice of this Court the boundaries which have been mentioned and the said document is marked as Ex.P1 and the same is not in dispute. The counsel also submits that the Assistant Commissioner, Kolar, after lapse of 16 years, forfeited the grant made in favour of the plaintiffs' father in terms of Ex.D30 observing that the original grantee has violated the conditions vide order dated 30.07.1997. The counsel also brought to notice of this Court that thereafter, the defendant had submitted an application before the Tahsildar in prescribed Form No.53 with a request to grant the land measuring 1 acre 20 guntas in the same survey number. But, in the boundary, except on the West side, mentioning as Nanjundappa's property in Ex.P1, it shows as

Eramma's property and description of the property is one and the same. The counsel would vehemently contend that the Tahsildar issued a Grant Certificate in the name of defendant vide order dated 05.02.2003 in terms of Ex.D3 in Official Memorandum No.LND RUO SR 16/2002-03 dated 02.11.2002. It is the contention of the appellant's counsel that based on the said grant, revenue officials have changed the mutation entry vide M.R.No.16/2002-03 in the name of the appellant. It is also the contention that children of original grantee-Dasappa who are the respondents herein have challenged the order dated 30.07.1997 before the Deputy Commissioner, Kolar on the ground that the said order was passed against a dead person and the Deputy Commissioner was pleased to allow RA.SC.:13/1998-99 and remanded the case to the Assistant Commissioner, Kolar to take steps to re-allot the land to the legal heirs of original grantee. In the said appeal, alienee was not made as a party to the proceedings though his name was found in the order dated 30.07.1997 at Ex.D30.

9. The counsel contend that the Assistant Commissioner passed an order in its proceedings No.LND-SC/ST-MLR:1/2004-05 invalidating the sale deed dated 22.01.1979 executed by the father of the respondents in favour of Ramaiah i.e., the father of the appellant herein. In the said order, it was directed that possession of the land be taken back by the Government and the said land may be re-granted in favour of respondents and the said document is marked as Ex.P6. The appellant has challenged the order dated 01.12.2004 passed by the Assistant Commissioner and the same was dismissed by the Deputy Commissioner vide order dated 19.08.2006 in terms of Ex.P7. Challenging the order of the Deputy Commissioner, the appellant filed a Writ Petition No.12315/2006 and the said petition was withdrawn on 01.12.2008 with liberty to file a fresh petition on the same cause of action. The Deputy Tahsildar, Malur, passed an order dated 16.09.2014 by canceling M.R.No.H9/2013-14 standing in the name of the defendants. The counsel would vehemently contend that once SC/ST granted land was forfeited by the Assistant Commissioner and allotted to a person belongs to SC/ST under another grant of unauthorised

occupation, the original grantee can restore the said land without an order of re-grant in their favour. The counsel would vehemently contend that there is no any re-grant made in the name of the appellant. Hence, the First Appellate Court committed an error in granting the relief of declaration declaring that the respondents are the owners. Thus, it requires interference of this Court.

10. In spite of given sufficient opportunity to the respondents' counsel, he did not choose to address his arguments, hence, arguments from the respondents' side is taken as nil.

11. The learned counsel appearing for the appellant in support of his arguments relies upon the judgment of the Apex Court reported in **(2024) 5 SCC 282** in the case of **VASANTHA (DEAD) THROUGH LEGAL REPRESENTATIVE vs RAJALAKSHMI ALIAS RAJAM (DEAD) THROUGH LEGAL REPRESENTATIVES** wherein it is held that the suit for declaration of title without seeking the relief of possession, reiterated, not maintainable when plaintiff not in possession. The

counsel also relied upon the judgment of this Court reported in **2025 SCC ONLINE KAR 1124** in the case of **SOMAYYA BELCHADA vs SANTHOSH AND OTHERS**. The learned counsel for the appellant referring the judgments of Apex Court would contend that the suit for declaration is not maintainable without seeking the relief of possession.

12. Having heard the learned counsel for the appellant and also on perusal of material available on record and considering the substantive questions of law framed by this Court, this Court has to analyze the material on record. The specific contention of the appellant that the property was sold by the father of the respondents in favour of his father vide sale deed dated 22.01.1979 in terms of Ex.D29. But the appellant also not disputes the fact that though it is mentioned in the sale deed that it was a self-acquired property of the father of the plaintiffs/respondents, nothing is placed on record with regard to the title of the said Dasappa either before the Trial Court or the First Appellate Court or before this Court. But the appellant's counsel also not disputes the fact that the suit schedule property

was granted in favour of Dasappa vide Ex.P1 dated 25.09.1980. It is not in dispute that a proceeding was initiated against the Dasappa and grant made in favour of Dasappa was cancelled vide order dated 30.07.1997 in terms of Ex.D30. It is also not in dispute that the said Dasappa passed away in the year 1996 itself, thus, as on the date of passing of the order dated 30.07.1997, he was no more and hence, the order was passed against a dead person.

13. It is also emerged during the course of evidence that the father of the appellant had filed an application for re-grant of the very same land in Form No.53 in terms of Ex.D4. It has to be noted that the grant was made in the name of the father of the appellant vide order dated 05.02.2003 in terms of Ex.D3 and appellant claims the title based on this document. But the fact is that the plaintiffs have challenged the Order dated 30.07.1997 before the Deputy Commissioner on the ground that their father passed away on 22.07.1996 and order was passed against the dead person. It is not in dispute that in terms of Ex.P5, Deputy Commissioner passed an order setting aside the order of the

Assistant Commissioner and remanded the matter to the Assistant Commissioner. It is also not in dispute that Assistant Commissioner invalidated the sale made in favour of father of the appellant vide Ex.P6 dated 01.12.2004. It has to be noted that the said order was challenged before the Deputy Commissioner by filing an appeal in RA-SC/ST:22/2004-05 by the appellant and the same was dismissed vide order dated 19.08.2006 in terms of Ex.P7.

14. It is also important to note that the said order was challenged before this Court in W.P.No.12315/2006 and the said petition was withdrawn on 01.12.2008 with a liberty to file a fresh petition on the same cause of action. M.R.No.H9/2013-14 was cancelled by the Deputy Tahsildar on 16.09.2014 which was standing in the name of the defendant. Hence, it is clear that the property was restored to the original grantee i.e., Dasappa in view of setting aside the sale deed executed in favour of the father of the appellant. Ex.P6 is very clear that the order dated 01.12.2004 was passed directing that the possession of the land be taken back by the Government and the same may be re-

granted in favour of respondents. When that order was challenged and the appellant was unsuccessful before the Deputy Commissioner as well as before the High Court, in spite of liberty was taken, no challenge was made thus, the same has attained its finality. Hence, both the Courts have taken note of the fact that consequent upon the sale deed executed, delivered the possession in favour of the appellant and though the property was restored back to the plaintiffs' family, possession was not handed over as per Section 5 of the Special Enactment of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.

15. It is also important to note that the appellant's counsel also filed an application under Order 41 Rule 27 of CPC seeking permission of this Court to file additional documents i.e., RTC; MR; RTC of the year 2024-2025; Representation dated 04.06.2025; Letter dated 17.11.2023; Representations dated 27.09.2024 and 28.09.2024; Report dated 15.10.2024; Memorandum dated 12.03.2025; Letter of Communication dated 12.03.2025; Report dated 26.03.2025 submitted by the Revenue

Inspector; Memorandum dated 16.04.2025 and Letter of Communication dated 16.04.2025. All these documents came into existence subsequent to the filing of the suit since, suit was filed in the year 2016 and except the M.R. of 2003-04, other documents are subsequent to the suit. It has to be noted that consequent upon restoring of the property in favour of the original grantee in view of the order passed by the Assistant Commissioner, notice was also issued to take back the possession and hand over the same in favour of the respondents/plaintiffs consequent upon the order passed on 01.12.2004 in terms of Ex.P6 and also the order of the Deputy Commissioner dated 27.03.2004 in terms of Ex.P5. Hence, all these documents are not necessary to decide the second appeal, thus, the question of permitting to produce the additional documents does not arise since the same will not tilt the case of the plaintiffs/respondents or the appellant herein and those records will not come into aid of the appellant. Hence, the question of consideration of the application filed under Order 41 Rule 27 of CPC does not arise and the same requires to be rejected.

16. Having considered both oral and documentary evidence available on record, it is not in dispute that in terms of Ex.P1, property was granted in favour of Dasappa and though the sale was made even prior to the grant, the same was set aside by the competent authority invalidating the sale in terms of Ex.P6 and also the order is specific that the possession of the land to be taken back by the Government and re-grant the same in favour of the respondents/plaintiffs. It is important to note that the original grant was restored in terms of the order dated 27.03.2004 passed by Deputy Commissioner and consequent upon the said order, the Assistant Commissioner passed an order in terms of Ex.P6 and the same is considered by the First Appellate Court with regard to the title of the appellant is concerned. The very contention of the appellant's counsel that without determining the grant made in favour of the father of appellant in terms of Ex.D3 ought not to have granted the relief in favour of respondents cannot be accepted. It is also emerged during the course of evidence that when grant was cancelled as against the dead person vide order dated 30.07.1997 in terms of Ex.D30 and in an ingenious method, the father of the defendant

filed an application on 15.12.1998 in terms of Ex.D4 claiming the very land by filing Form No.53 and also he has managed to get an order in terms of Ex.D3 vide order dated 05.02.2003. When the same comes to the knowledge of the plaintiffs, they have approach the Deputy Commissioner challenging the order which was passed against the dead person i.e., their father and the Deputy Commissioner rightly allowed the appeal and set side the earlier order of cancellation of grant. Having considered Ex.P1, P5 and P6, it disclose that the appellant was unsuccessful in terms of the order at Ex.P7 and writ petition was withdrawn and the orders at Ex.P5 and P6 were attained its finality, thus, the question of considering Ex.D3 grant made in favour of the appellant's father does not arise and even such grant was made, the same will not create any right in favour of the appellant since, already property was granted in favour of the original grantee Dasappa in the year 1980 itself and hence, once again, the very same property cannot be granted. Though it is contented that both properties are different during the course of arguments, this Court directed the appellant counsel to clarify that whether properties are different or not. But the counsel for

the appellant made the submission that property is one and the same. When such being the case, the contention of the counsel for the appellant cannot be accepted.

17. No doubt, both the Trial Court as well as the First Appellate Court comes to the conclusion that the plaintiffs have not proved the possession and there is a concurrent finding in this regard. The main argument of the counsel for the appellate before this Court is that without seeking the relief of possession, the suit for declaration is not maintainable. It is also settled law that without seeking the relief of possession when the plaintiffs are not in possession, they cannot maintain a suit for the relief of declaration. In the case on hand, it has to be noted that the prayer sought before the Trial Court is for declaration and permanent injunction claiming that the plaintiffs are in possession of the property. The definite finding was given that the plaintiffs are in possession of property. No doubt, in the judgment of this Court in the case of **SOMAYYA BELCHADA** referred supra, this Court also relied upon the judgment of the **VASANTHA's** case referred supra wherein it is held that the suit

for declaration without seeking the relief of possession is not maintainable.

18. But the Court has to take note of the special circumstances in the case on hand. Here is a case that the grant was made in favour of a person belongs to SC/ST. It has to be noted that the property was sold and the said sale was also cancelled by the competent authority. It is also to be noted that when the sale was made and possession was delivered, a specific direction was given that possession of the land to be taken back by the Government and same may be re-granted in favour of the respondents while invalidating the sale. The documents which have been produced before this Court as additional documents clearly depicts that a decision was taken to take back the possession and re-grant the same in favour of the original grantee. At this juncture, this Court would like to extract Sections 4 and 5 of the Special Enactment which reads as follows:

“Section 4. Prohibition of transfer of granted lands.- (1) Notwithstanding anything in any law, agreement, contract or instrument, any

transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority.

Section 5. Resumption and restitution of granted lands.- (1) Where, on application by any interested person or on information given in writing by any person or *suo-motu*, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of section 4, he may,-

- (a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

- (b) restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land to such grantee or legal heir; such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

[(1A) After an enquiry referred to in sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.]

- (2) [Subject to the orders of the Deputy Commissioner under section 5A, any order passed] under [sub-section (1) and (1A)] shall be final and shall not be questioned in any

court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

- (3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of section 4.”

19. Having considered the above provisions and also material on record, it is very clear that there is a prohibition under Section 4 of the Act and sale is invalidated. It discloses that if the possession was not yet taken back by the competent authority to the Government or the land was not handed over to the original grantee, the same is a process under this Special Enactment and Civil Court cannot grant any relief of possession and hence, the very contention of the appellant that possession was not sought and hence, suit is not maintainable cannot be

accepted since, the material also discloses that possession is with the appellant and the same has to be taken back under due process of law by the competent authority exercising the powers under Section 5 of the Special Enactment. When such being the case, the principals laid down in the judgment of **VASANTHA'S** referred supra case as well as the followed by the same by this Court will not come to the aid of the appellant counsel as contended by him. This Court has already pointed out that process was already made to take back the possession from the appellant since the appellant suffered an order in terms of Ex.P5 and P6 and also he made all his efforts to challenge the said order and he was unsuccessful in terms of Ex.P7 and so also a writ petition was filed challenging the dismissal order of the Deputy Commissioner and the same was withdrawn with liberty to file a fresh petition on the same cause of action but the same was not done. Hence, the orders at Ex.P5, P6 as well as P7 have attained its finality. When such being the case, the very contention of the appellant's counsel cannot be accepted. Thus, I am of the opinion that the very reasoning of the First Appellate Court in reversing the finding of the Trial Court with regard to

the relief of declaration declaring the plaintiffs are the absolute owners not suffers from any legality and its correctness and the same has to be upheld. The other substantive question of law that whether the First Appellate Court was justified in allowing the appeal partly without deciding the validity of the grant certificate at Ex.D3 is justified consequent upon passing of the orders in terms of Ex.P5, P6 and P7 hence, deciding of Ex.D3 does not arise. Hence, I answered both the substantive questions of law accordingly.

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

ORDER

The Second appeal is dismissed.

The application filed under Order 41 Rule 27 of CPC is dismissed in view of the discussions made above.

The order dated 02.09.2020 passed in R.A.No.131/2019 by the First Appellate Court is upheld and sustainable in the eye of law with regard to the relief of declaration is concerned.

Sd/-
(H.P. SANDESH)
JUDGE

SN