

Adivappa vs Ramappa

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Court : Karnataka Dharwad

Decided On : Feb-20-2025

Judge : E.S.Indires

Appeal No. : RSA/2193/2006

Appellant : Adivappa

Respondent : Ramappa

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 20TH DAY OF FEBRUARY, 2025 BEFORE THE HON'BLE MR. JUSTICE E.S.INDIRESH REGULAR SECOND APPEAL NO. 2193 OF 2006 C/W REGULAR SECOND APPEAL NO.1707 OF 2006 IN RSA NO.2193/2009 BETWEEN: ADIVEPPA S/O. PARAPPA HUNNUR, AGED ABOUT 51 years, R/O. MAREGUDDI VILLAGE JAMKHANDI 587301 BAGALKOT SINCE DECEASED BY HIS LRS. 1a. RACHAPPA S/O. ADIVEPPA HUNNUR AGE: 48 YEARS, Digitally

signed by R/O. MAREGUDDI, VN

TAL : JAMK

Location: High

Court of 1b. IRAPPA S/O ADIVEPPA HUNNUR, Karnataka,

Bench R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. 1c. SHIVAPPA S/O. ADIVEPPA HUNNUR, AGE: 40 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. -2-

1d. SMT. SAYAVVA W/O. ADIVEPPA HUNNUR, AGE: 68 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. 1e. SMT. SHANTAVVA W/O. MALLAPPA MAGDUM, AGE: 46 YEARS, R/O. MUDALGI, TAL: MUDALGI, DIST: BELAGAVI - 591312. 1f. SMT. KAMALAVVA @ MAHADEVI W/O. RAMAPPA KOTI AGE: 38 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. APPELLANTS (BY SRI. RAVI S. BALIKAI, ADVOCATE) AND:

1. RAMAPPA S/O. GANGAPPA AREKERI AGED ABOUT 52 YRS R/O. MAREGUDDI, TAL. JAMKHANDI, DIST: BAGALKOT - 587301. SINCE DECEASED BY HIS L.RS.

1a. Smt. PARVATI W/O. RAMAPPA RAKERI, AGE: 65 YEARS, OCC: HOUSEHOLD, R/O. MAREGUDDI - 587301. TAL: JAMKHANDI, DIST: BAGALKOTE. 1b. SMT. NAGAVVA W/O. MALLAPPA ALABAL, AGE: 45 YEARS, OCC: HOUSEHOLD, R/O. MAREGUDDI - 587301. TAL: JAMKHANDI, DIST: BAGALKOTE. -3- 1c. RACHAPPA S/O. RAMAPPA RAKERI, AGE: 42 YEARS, R/O. MAREGUDDI - 587301. TAL: JAMKHANDI, DIST: BAGALKOTE. 1d. SHRIKANT S/O. RAMAPPA ARAKERI, AGE: 42 YEARS, R/O. MAREGUDDI - 587301. TAL: JAMKHANDI, DIST: BAGALKOTE. 1e. PRAKASH S/O. RAMAPPA ARAKERI, AGE: 38 YEARS, R/O. MAREGUDDI - 587301. 1f. SMT. DODDAWWA W/O. MALLAPPA GUNDI, AGE: 36 YEARS, OCC: HOUSEHOLD, R/O. JAGADAL ROAD - 587301.

2. KADAPPA S/O. GANGAPPA AREKERI AGED ABOUT 50 YEARS, R/O. MAREGUDDI - 587301. TAL: JAMKHANDI, DIST: BAGALKOTE

3. ADIVEPPA S/O. GANGAPPA AREKERI AGED ABOUT 48 YEARS, R/O. MAREGUDDI - 587301. TAL: JAMKHANDI, DIST: BAGALKOTE. RESPONDENTS (BY SRI. MALLIKARJUN C. HUKKERI, ADVOCATE FOR R1 (A-F); SRI. ARUN L. NEELOPANT, ADVOCATE FOR R2 AND R3) ----- -4- THIS

RSA IS FILED UNDER SECTION 100 OF CPC., PRAYING

TO SET ASIDE THE JUDGMENT AND DECREE PASSED IN R.A. NO.33/2004 DATED 20.03.2006 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (SR.DN), JAMKHANDI AT JAMKHANDI CONFIRMING THE

JUDGMENT AND DECREE PASSED IN O.S.NO.77/95 ON THE FILE OF

THE PRINCIPAL CIVIL JUDGE (JR.DN) JAMKHANDI AT JAMKHANDI DATED 08.10.2003 BY ALLOWING THIS APPEAL WITH COST IN THE INTEREST OF JUSTICE AND EQUITY. IN RSA NO.1707/2006 BETWEEN: ADIVEPPA S/O. PARAPPA HUNNUR, AGED ABOUT 51 years, R/O. MAREGUDDI VILLAGE JAMKHANDI 587301 BAGALKOT SINCE DECEASED BY HIS LRS.

1a. RACHAPPA S/O. ADIVEPPA HUNNUR AGE: 48 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. 1b. IRAPPA S/O ADIVEPPA HUNNUR, AGE: 45 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. 1c. SHIVAPPA S/O. ADIVEPPA HUNNUR, AGE: 40 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. -5-
1d. SMT. SAYAVVA

W/O. ADIVEPPA HUNNUR, AGE: 68 YEARS, OCC: AGRICULTURE, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. 1e. SMT. SHANTAVVA W/O. MALLAPPA MAGDUM, AGE: 46 YEARS, OCC: AGRICULTURE, R/O. MUDALGI, TAL: MUDALGI, DIST: BELAGAVI - 591312. 1f. SMT. KAMALAVVA @ MAHADEVI W/O. RAMAPPA KOTI AGE: 38 YEARS, R/O. MAREGUDDI, TAL: JAMKHANDI, DIST: BAGALKOT - 587301. APPELLANTS (BY SRI. RAVI S. BALIKAI, ADVOCATE) AND:

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TO SET ASIDE THE JUDGMENT AND DECREE PASSED IN R.A. NO.32/2004 DATED 20.03.2006 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (SR.DN), JAMKHANDI AT JAMKHANDI CONFIRMING THE

JUDGMENT AND DECREE PASSED IN O.S.NO.60/95 ON THE FILE OF

THE PRINCIPAL CIVIL JUDGE (JR.DN) JAMKHANDI AT JAMKHANDI DATED 08.10.2003 BY ALLOWING THIS APPEAL WITH COST IN THE INTEREST OF JUSTICE AND EQUITY. IN THESE APPEALS ARGUMENTS BEING HEARD, RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING: CORAM: THE HON'BLE MR. JUSTICE E.S.INDIRESH

CAV JUDGMENT

RSA No. 2193/2006 is filed by the defendant challenging the judgment and decree dated 20.03.2006 in RA No.33/2004 on the file of the Principal Civil Judge (Sr.Dn), Jamakhandi allowing the appeal and setting aside the judgment and decree dated 08.10.2003 in O.S.No.77/1995 on the file of the Civil Judge (Jr.Dn.), Jamakhandi dismissing the suit.

2. RSA No. 1707/2006 is filed by the defendant No.6

challenging the judgment and decree dated 20.03.2006 in RA No.32/2004 on the file of the Principal Civil Judge (Sr.Dn), Jamakhandi, (for short the First Appellate Court) allowing the -8- appeal and setting aside the judgment and decree dated 08.10.2003 in O.S.No.60/1995 on the file of the Civil Judge (Jr.Dn.), Jamakhandi (for short the Trial Court) dismissing the suit.

3. The parties are referred to as per their rank before the Trial Court.

4. It is the case of the plaintiffs in O.S.No.60/1995

that, the land bearing Sy.No.79 of Mareguddi village belongs to the family with surname of Hunnur of village Mareguddi and same was partitioned and subdivided into two blocks viz., land bearing Sy.No.79/1 and 79/2. The land bearing Sy.No.79/1 fallen to the share of Dundappa Hunnur, cousin brother of defendant No.6. The said partition was effected on 14.09.1957. It is the case of the plaintiffs that the suit land at Sl.No.1 was transferred by Dundappa Hunnur in favour of the plaintiffs as per the mutation extract in M.E.No.2224 dated 29.07.1973. It is also stated that as per the partition deed dated 14.09.1957, the total extent of 13 Acres 5 Guntas each and same also mentioned in the records of rights. The plaintiffs should have been in actual possession and enjoyment of the land bearing -9- Sy.No.79/1 as per records however, the plaintiffs are in actual cultivation of land bearing Sy.No.79/2. It is also stated in the plaint that the plaintiffs and the defendant No.6 are utilizing the water from the well situate in Sy.No.79/1 by rotation of four days in a week. It is also stated that portion of the land was acquired for the purpose of irrigation and same is reflected in P.T. sheet. It is also stated by the plaintiffs that the defendant No.3 in collusion with defendants No.4 to 6 modified the measurement of the land in question so as to reduce the area in

Sy.No.79/2 and to enlarge the area in Sy.No.79/1. Hence, it is the case of the plaintiffs that the present holding of the plaintiffs in Sy.No.79/1 and that of defendant No.6 in Sy.No.79/2, as per M.E.No.3778 stipulates the extent of lands as 10 Acres 4 guntas and 14 acres 28 guntas, respectively. It is also stated by the plaintiffs that the plaintiffs are deemed to be in actual possession and enjoyment of the extent of 13 Acres 5 Guntas in land bearing Sy.No.79/1 and having noticed the discrepancy in the revenue records, the plaintiffs made a representation to the defendants No.2 and 3 to redress the revenue records insofar as extent of the land in the records of rights, however, same has not yield result. Hence, the plaintiffs - 10 - have filed suit in O.S.No.60/1995 seeking relief of declaration and injunction that the plaintiffs are in possession and enjoyment of land bearing Sy.No.79/1 measuring 13 acres 5 guntas, which is adjacent towards the western side of the land bearing Sy.No.79/2. It is also stated that the defendant No.6, interfered with the land belonging to the plaintiffs. 4.1. After service of notice, defendants entered appearance, however the defendant No.6 has contested the matter on merits. The defendant No.6 denied the hand sketch map appended to the plaint. It is the case of the defendant No.6 that the plaintiffs have no right over the suit property and the plaintiffs are belonged to Adivappa-I branch and defendant No.6 belonged to the branch of brother of Adivappa-I (Parappa). It is also stated in the written statement that there was partition in the branch of Adivappa-I and his sons Kallappa, Basappa and Dundappa have partitioned the property belonging to the share of their father and the claim made by the plaintiffs as per M.E.No.2224 dated 29.07.1973 is created to knock off the property and further stated that as the Dundappas Class-I heirs are still alive, and therefore the plaintiffs have no share in the suit schedule property and accordingly sought for dismissal - 11 - of the suit. It is the specific contention of the defendant No.6 that the plaintiffs have to approach the revenue authorities for rectification of the revenue records based on their title and accordingly sought for dismissal of the suit.

5. The facts in RSA No.2193/2006 are that the

appellant was a defendant in O.S.No.77/1995. It is the case of the plaintiffs that the land bearing Sy.No.79 of Mareguddi village belongs to the family of Hunnur and during the partition, land was sub-divided into Sy.No. S.No.79/1 and

Sy.No.79/2. In the partition, Sy.No.79/1 has fallen to the share of Dundappa Hunnur. The said partition finds place in M.E.No.1440 dated 14.09.1957. It is the case of the plaintiffs that the plaintiffs are the children of Bhagavva (sister of Dundappa). It is further stated that, area of land in Sy.No.79/1 was reduced and thereby area in Sy.No.79/2 was increased and accordingly, there is variation and discrepancy in the area of the lands in question. The plaintiffs came to know about the same and as such filed suit in O.S.No.77/1995 seeking declaration that the well situated in the suit land is belonged to the plaintiffs and further the plaintiffs were/are deemed to be - 12 - entitled for equal right in the suit well situated in the land in question. 5.1. On service of notice, the defendant entered appearance and filed written statement denying the averments made in the plaint. It is the case of the defendant that the well belonged to the defendant and there are two pump-sets fixed, out of which one pump-set belonged to the plaintiff. It is also stated that the plaintiffs have filed suit seeking declaration without title. Accordingly, sought for dismissal of the suit.

6. The Trial Court after considering the pleadings on record, formulated the issues for its consideration.

7. In order to establish their case, plaintiffs have

examined two witnesses and produced 15 documents and same were marked as Ex.P1 to Ex.P15. Defendant No.6 was examined as DW1 and got marked 7 documents and same were marked as Ex.D1 to Ex.D7.

8. The Trial Court, after considering the material on

record, dismissed both the suits by judgment and decree dated 08.10.2003. Feeling aggrieved by the same, the plaintiffs have preferred R.A.No.32 and 33 of 2004 before the First Appellate - 13 - Court and same was contested by the defendants. The First Appellate Court after considering the material on record, allowed the appeals and set aside the judgment and decree dated 08.10.2003 in O.S.No.60/1995 and O.S.No.77/1995. Feeling aggrieved by the same, defendant No.6-Adevippa-II has preferred these appeals.

9. This Court, vide order dated 01.08.2008 has formulated the following substantial questions of law;

1) Whether the Civil Court is justified in entering the suits when the plaintiff has not exhausted the appeal remedy provided under the Karnataka Land Revenue Act, 1964 (the said Act) for short) in view of the bar contained in Section 63 in the said Act? 2) Whether the reappreciation of evidence by the First Appellate Court is perverse and whether its findings are contrary to the materials on record? 3) Whether the second suit (O.S.No.77/1995) is hit by Order II Rule 2 of Civil Procedure Code? - 14 -

10. I have heard Sri. Ravi S Balikai, learned counsel

appearing for the appellants in both the appellants and Sri.Mallikarjun C. Hukkeri, learned counsel for the respondents 1(a) to 1(f) and Sri. Arun L Neelopant, learned counsel for the respondents No.2 and 3.

11. It is contended by Sri. Ravi S Balikai learned

counsel appearing for the appellants contended that the claim made by the plaintiffs, with regard to subject land is altogether different insofar as claiming right against the defendant No.6, wherein the plaintiffs grandfather (Adivappa-I) had severed from the joint family status, after partition with his brother- Parappa (father of defendant No.6) and therefore, the claim made by the plaintiffs cannot be accepted in a suit for declaration. It is also argued by the learned counsel appearing for the appellants that the Trial Court after considering the entire material on record rightly in dismissed the suit of the plaintiffs on the sole ground that the plaintiffs have not produced the title deeds to establish their rights and on the other hand, the First Appellate Court on mis-appreciation of evidence, accepted the case of the plaintiffs based on the change in mutation entry and considered the same as a title - 15 - deed and the said finding recorded by the First Appellate Court is contrary to well established principles in law and accordingly, sought for interference of this Court. It is the further argument of the learned counsel appearing for the appellants that the plaintiffs are claiming title through Ex.P14, which has nothing to do with the transfer of property from

Dundappa to the plaintiffs and therefore, contended that the finding recorded by the First Appellate Court is contrary to law. It is also argued that no relinquishment deed has been produced by the plaintiffs to establish their right from the said Dundappa, accordingly, the finding recorded by the First appellate Court requires to be set aside by confirming the judgment and decree passed by the Trial Court.

12. Nextly, it is contended by Sri. Ravi Balikai, learned

counsel appearing for the appellants, by referring to I.A.No.1/2025 wherein Hissa Form No.12 and 4 are produced would substantiate that the land bearing Sy.No.79/2 was allotted to the share of Dundappa and the signature of the said Dundappa is reflected in the revenue documents. Accordingly, sought for interference of this Court. In respect of I.A.No.2/2025 filed by the respondents, referring to the - 16 - certified copies of the records of rights and the mutation entries, Sri.Ravi Balikai submitted that those revenue records do not confer title to the plaintiffs and accordingly, submitted that the First Appellate Court has committed an error in interfering with the well-reasoned judgment of the Trial Court.

13. Per contra, learned counsel appearing for the

respondents, argued that the entries in records of rights in respect of Sy.No.79/1 and Sy.No.79/2 were altered as per M.E.No.3778 (Ex.P2), wherein land bearing Sy.No.79/2 was altered as Sy.No.79/1 and the extent of land was altered as 14 acres 28 guntas and in the Kabjedar column, the name of the defendant No.6 was shown and in respect of land in Sy.No.79/1 was altered as Sy.No.79/2 wherein an extent of land was altered as 10 Acres 4 Guntas and in the Kabjedar column name of the plaintiffs were shown and as such, sought to justify the impugned judgment and decree passed by First Appellate Court. Referring to Ex.P14, it is argued by the learned counsel appearing for the respondents that, Smt.Bhagavva was only sister to Kallappa, Basappa and Dundappa and plaintiffs are the children of Bhagavva and as no property was given to Bhagavva during the family partition, Dundappa had - 17 - relinquished his right insofar as the land in question in favour of the plaintiffs as per the mutation entry at Ex.P14 and therefore, sought for dismissal of the appeals.

14. Nextly, it is contended by the learned counsel

appearing for the respondents that as per the survey report, it is the duty of the defendant to prove the onus of proving the map appended to the survey report and therefore, in the absence of such action on the part of the appellants, the

judgment and decree passed by the First Appellate Court is to

be confirmed.

15. It is also submitted by the learned counsel

appearing for the respondents, by referring to I.A.No.2/2025, by producing record of rights and certified copy of M.E.No.1439 that the records of rights was mutated in the name of the plaintiffs in respect of the property having been transferred by Dundappa and therefore, unless those records are challenged in a manner known to law, no interference is called for in these appeals. It is further argued by the learned counsel for the respondents with regard to application filed by the appellants in I.A.No.1/2025 under Order XLI Rule 27 of CPC, having - 18 - produced the Hissa Form No.12 and 4 as additional evidence and as such, same requires to be proved by adducing evidence and accordingly, those documents have been produced before this Court for the first time and therefore, argued that those documents would not confer title to the defendant No.6. Accordingly sought for dismissal of the appeals.

16. In the light of the submissions made by the learned counsels appearing for the parties, I have carefully examined the finding recorded by both the Courts below and perused the original records.

17. In order to understand the relationship between the

parties, genealogy of the parties is extracted below. Basappa (Propositus) (Died) Adivappa-I Parappa (Expired) (Expired) Kallappa Basappa Dundappa Bhagavva Ramappa Bheemappa Adivappa-2 (Expired) (Deft.6) Ramappa Kadappa Adivappa-3 (Plt1) (Plf-2) (Plf-3) - 19 -

18. Perusal of the genealogy would indicate that the

land bearing Sy.No.79/1 and Sy.No.79/2 belonged to the original propositus-Basappa. Basappa had two children viz., Adivappa-I and Parappa. Adivappa-I had four children viz., Kallappa, Basappa, Dundappa and Bhagavva. Parappa, the second son of original propositus-Basappa, had three children viz., Ramappa, Bhimappa and Adivappa-II (defendant No.6). Plaintiffs are the children of Smt. Bhagavva. It is pertinent to mention here that on 14.09.1957 sons of the Parappa i.e., Ramappa, Bhimappa and Adivappa-II effected partition between themselves as per M.E.No.1439 and land bearing Sy.No.79/2 measuring 12 Acre 18 Guntas with Kharab land was allotted to Adivappa-II. On the very same day, i.e. on 14.09.1957, sons of Adivappa-I i.e., Kallappa, Basappa and Dundappa effected partition between themselves and land bearing Sy.No.79/1 measuring 12 acres 18 guntas with Kharab land was allotted to Dundappa. On careful examination of Ex.P14, it is forthcoming that as per Apasat Watni dated 14.09.1957, land bearing Sy.No.79/1 was allotted to the share of Dundappa and further, Dundappa had given a Varadi to the revenue officers to transfer the land which was allotted to him - 20 - in the partition between himself (Dundappa) along with his brothers, Kallappa and Basappa, to the children of Bhagavva (plaintiffs herein).

19. After considering the oral and documentary

evidence produced by the parties (Ex.P14), nothing is produced by the plaintiffs so as to ascertain on what basis the plaintiffs got the suit property from Dundappa without there being any registered instrument. What was given to the plaintiffs by Dundappa is only through revenue documents and not by a registered instrument and therefore, I find force in the submissions made by the learned counsel appearing for the appellants.

20. On careful examination of the evidence of PW1,

where nothing is forthcoming as to how the plaintiffs got the property through a registered instrument from Dundappa and therefore, the evidence adduced by the plaintiffs requires to be discarded by looking into the prayer made in the plaint. On the other hand, the defendant No.6 has produced the change of Hissa in Hissa

Form No.12 copy and Hissa No.4 copy to substantiate that the said Dundappa had signed the document - 21 - in respect of Sy.No.79/2, which is forthcoming in the document No.2 in I.A.No.1/2025 filed under Order XLI Rule 27 of CPC.

21. In that view of the matter, since the plaintiffs have

not produced any title documents as to how the property in question claimed in the paint has been transferred from Dundappa to the plaintiffs, alternatively, Dundappa has not executed any relinquishment deed in favour of the plaintiffs insofar as the suit lands is concerned, and in the absence of the said title document, I am of the view that the First Appellate Court has committed an error in interfering with the well reasoned judgment and decree passed by the Trial Court in dismissing the suit of the plaintiffs. It is well established principles of law that the mutation entries do not create title over the property. In this regard, it is relevant to cite the

judgment of the Honble Supreme Court in the case of

Bhimabai Mahadeo Kambekar (Dead) Through LRs v. Arthur Import & Export Company and others¹, wherein it is held as follows: 6. This Court has consistently held that mutation of a land in the revenue records does

(2019) 3 SCC 191 - 22 -

not create or extinguish the title over such land nor has is any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni (Smt.) vs. Inder Kaur, (1996) 6 SCC 223, Balwant Singh & Anr. Vs. Daulat Singh (dead) by L.Rs. & Ors., (1997) 7 SCC 137 and Narasamma & Ors. vs. State of Karnataka & Ors., (2009) 5 SCC 591).

7. The High Court while dismissing the writ

petition placed reliance on the aforementioned law laid down by this Court and we find no good ground to differ with the reasoning and the conclusion arrived at by

the High Court. It is just and proper calling for no interference.

8. It is not in dispute that the civil suits in

relation to the land in question are pending in the Courts between the parties. Therefore, it would not be proper to embark upon any factual inquiries into the question as to whether the entries were properly made or not and at whose instance they were made, etc. in this appeal. It is more so when they neither decide the title nor extinguish the title of the parties in relation to the land.

22. It is also relevant to deduce the law declared by the Honble Supreme Court in the case of Smt. Sawarni v. Smt. - 23 - Inder Kaur and others² wherein at paragraph it is held as follows.

7. Having heard the learned counsel for the parties and having scrutinised the judgment of the trial Judge as well as that of the lower appellate court, we find sufficient force in all the contentions raised by the learned counsel for the appellant. At the outset, it may be noticed that the plaintiff had filed the suit claiming half interest for herself and claiming half interest in favour of the husband and sons of Roori and, therefore, the learned Additional District Judge was wholly in error to hold that the plaintiff could not have filed the suit in question. In view of rival stand of the parties the main question that arose for consideration was whether Roori was daughter of Gurbax Singh or Inder Kaur, defendant no. 5 was the daughter of same Gurbax Singh? The learned trial Judge after elaborate discussion of the evidence on record both oral and documentary came to the positive conclusion that it was Roori who was the daughter of Gurbax Singh as alleged by the plaintiff and not Inder Kaur. The lower appellate Court without focusing his attention to the weighty reasons advanced by the trial court and without examining the materials on record in that respect even did not set aside the said finding of the trial Judge and yet reversed the decree of the trial Judge. We have

no hesitation to come to the conclusion that the said

(1996) 6 SCC 223 - 24 -

judgment of the Additional District Judge is wholly

unsustainable in law. The crucial point being as to who was the second daughter of Gurbax Singh, namely Roori or Inder Kaur, and the trial Judge having come to the positive conclusion that it was Roori who was the second daughter of Gurbax Singh, the lower appellate Court was not justified in not considering the material evidence as well as reasons advanced by the trial Judge and merely coming to the

conclusion that the evidence on the file does not

prove Roori to be the daughter of Gurbax Singh. Further, the lower appellate Court has not come to any positive finding that Inder Kaur was the daughter of Gurbax Singh. He has been swayed away by the so called mutation in the revenue record in favour of Inder Kaur. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a

conclusion that mutation in favour of Inder Kaur

conveys title in her favour. This erroneous conclusion

has vitiated the entire judgment. That apart, as it would be seen, the learned trial Judge had considered the oral evidence adduced on behalf of the parties to establish the respective stand as to who was the second daughter of Gurbax Singh and on perusal of the same came to the conclusion that it was Roori who was the second daughter of Gurbax Singh. The Additional District Judge has not even discussed

- 25 - anything about the said oral evidence and the reasonings advanced by learned trial Judge in coming to the conclusion that it was Roori who was the second daughter of Gurbax Singh. Non consideration of the oral evidence

adduced by the parties, by the

lower appellate Court vitiates the ultimate conclusion

on the question whether Roori was daughter of Gurbax Singh or not. It is further seen that Gurdip Kaur, widow of Gurbax Singh had executed a Will in respect of the entire estate in favour of plaintiff and Roori and after death of Gurdip Kaur a succession certificate had been issued by the civil court under the Indian Succession Act, 1925, in favour of plaintiff and said Roori. The said succession certificate and rights flowing therefrom cannot be ignored. Admittedly no attempt has been made by defendant nos. 1 to 4 to annul the succession certificate on the grounds available under the Succession Act. The Additional District Judge committed serious error of law in not considering the said Will and the succession certificate in question which unequivocally clinches the matter and thereby the ultimate

judgment of the Additional District Judge is vitiated.

The High Court also was in error in not examining these questions and dismissing the Second Appeal in limine.

23. Following the declaration of law made by the

Honble Supreme Court, the plaintiffs have filed suit seeking declaratory relief without producing the title documents and the - 26 - plaintiffs have produced only the revenue documents to substantiate their rights in respect of the suit schedule property and same cannot be accepted including the revenue documents produced in I.A.No.2/2025. Therefore, the First Appellate Court has committed an error in re-appreciating the material on

record and has not applied its mind as required under Order

XLI Rule 31 of CPC and therefore, I find perversity in the impugned judgment and decree passed by the First Appellate Court the substantial question of law framed

above favours the defendants/appellants herein based on the title documents viz., partition deed dated 14.09.1957 between the children of Parappa and as such, I am of the opinion that the Trial Court, after considering the material on record rightly dismissed the suit and same has been misconstrued by the First Appellate Court and accordingly, I pass the following:

ORDER

i) The appeals are allowed. ii) The judgment and decree dated 20.03.2006 in RA No.32/2004 and R.A.No.33/2004 on the file of the Principal Civil Judge (Sr.Dn), Jamakhandi is hereby set aside. - 27 - iii) Judgment and decree dated 08.10.2003 in O.S.No.60/1995 and O.S.No.77/1995 on the file of the Civil Judge (Jr.Dn.,) Jamakhandi is confirmed. iv) Accordingly, suits in O.S.No.60/1995 and O.S.No.77/1995 are dismissed. v) In view of disposal of the appeals, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly. Sd/- (E.S.INDIRESH) JUDGE YAN Ct:ANB

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