

**Patel Doddakempe Gowda Vs. Chikkeere Gowda**

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**SooperKanoon Citation :** [sooperkanoon.com/381594](http://sooperkanoon.com/381594)

**Court :** Karnataka

**Decided On :** Feb-19-1986

**Reported in :** ILR1986KAR2404

**Judge :** Nesargi, J.

**Acts :** [Karnataka Land Revenue Act, 1964](#) - Sections 49, 61, 109 and 140(1)

**Appeal No. :** R.S.A. No. 1092 of 1976

**Appellant :** Patel Doddakempe Gowda

**Respondent :** Chikkeere Gowda

**Advocate for Def. :** Srishaila and ;N.S. Krishnan, Adv.

**Advocate for Pet/Ap. :** M. Dasappa, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Nesargi, J.**

1. Patel Doddakempe gowda the plaintiff in O.S. No. 357 of 1974 on the file of the Munsiff, Ramanagaram, filed this second appeal. He is now represented by his legal respresentatives. He filed the suit against two defendants, Chikkeere gowda and Eregowda praying for possession of 16 guntas of land in Survey No. 158 of

Gollahalli Village, Uyyamballi Hobli, Kanakapura Taluk.

2. The undisputed facts are that Survey No. 158 belonged to one Hayat Khan. Hayat Khan's sons are Rahim khan, Jabbarkhan and Peer khan. Jabbarkhan's wife is one Sabirabi. Somewhere about 20 years prior to the institution of the suit on 11-12-1974 Rahim khan, Jabbarkhan and Peer khan amicably partitioned the land into three bits. The partitioning of the land was done east to west.

3. The case of the plaintiff is that when the land was partitioned as stated above, each brother got 1 acre 4 guntas in his actual possession and continued to enjoy the said area. After the death of Jabbarkhan, Sabirabi his wife, executed a registered sale deed on 21-10-1967 transferring 1 acre 4 guntas that had fallen to her husband Jabbarkhan to the plaintiff and put him in possession. Since then he has been enjoying the said area which is the Southern bit in Survey No. 158. On 4-10-1970 defendant-1 Chikkeere gowda purchased the bit that had fallen to Peer khan, that is, the northern portion, under a registered sale deed. Defendant-2 Eregowda is the son of defendant-1. On 13-10-1972 defendant-2 purchased the middle bit that had fallen to the share of Rahim khan under a registered sale deed.

4. It is undisputed that the lands had not been mutually phoded and numbers of the subdivision had been allotted after survey. The plaintiff filed O.S. No. 255 of 1972 praying for permanent injunction against the defendants as the defendants were interfering with his peaceful possession. That suit was dismissed as withdrawn. Again he filed O.S. No. 422 of 1973 against the defendants for the same relief, but the suit was dismissed on the ground that the property involved was not identifiable.

5. The further averments in the plaint are that in the year 1972 the defendants got the lands 'surveyed, but the survey was done wrongly. Taking advantage of that wrong survey, the defendants encroached upon the 16 guntas of land out of the land which was in possession of the plaintiff. This they did prior to the institution of the suit.

6. Defendants 1 and 2 contended that only 28 guntas was in possession of Sabirabi and prior to her in the possession of her husband Jabbarkhan and that

the sale deed Exhibit P-1 mentions an extent of 1 acre 4 guntas that was actually given to the possession of the plaintiff and that they had not at all encroached upon any portion of land in possession of the plaintiff. They relied heavily on Exhibits D-5 and D-6 which are akarbund and tippani prepared by a Surveyor on 25-11-1972 and 26-11-1972. In this connection it may be remembered that this suit has been instituted on 11-12-1974, It may also be remembered that survey of these lands has been made as per Exs. D-5 and D-6 prior to the institution of O.S. No. 422 of 1973.

7. Defendant-1 has died during the pendency of this appeal. Hence, I. As. Nos. VIII to X have been filed for bringing his legal representatives on record after condoning the delay in filing an application for setting aside abatement, etc. Objections to I.As. Nos VIII to X have been filed. The legal representatives sought to be brought on record are wife of defendant-1 and other children of defendant-1. I am clearly of opinion that this is a fit case that delay has to be condoned in getting the abatement set aside and legal representatives of defendant-1 Respondent-1 are to be brought on record. Hence, I allow I.As. Nos. VIII to X and direct that the cause title in the memorandum of appeal be amended. The cause title in this judgment is in accordance with the judgment.

8. The undisputed fact is that even after the partition amongst the three brothers and after the sale in favour of the plaintiff and defendants 1 and 2, no survey was actually got made under any of the provisions of the Land Revenue Act,' that is, either under Section 109 or under Section 140 of the Karnataka Land Revenue Act 1964 (hereinafter referred to as the Act).

9. The plaintiff has made a serious attempt to establish that Jabbarkhan was actually in possession of 1 acre 4 guntas and his widow Sabirabi put him into possession of this area only by placing reliance on oral evidence and the pahani entries in Exhibit P-2, mutation extract in Exhibit P-3 and Patta Exhibit P-7. In this connection, it is necessary to point out that until Exhibits D-5 and D-6 came into existence, the revenue records have all along shown that each brother was owner in possession of 1 acre 4 guntas of land in Survey No. 158. Patta Exhibit P-7 appears to have been issued in favour of Sabirabi on this basis.

10. The trial Court decreed the suit and the lower appellate Court allowed the appeal and dismissed the suit.

11. The following issues were framed.

1) Whether the plaintiff proves title to the suit property ?

2) Is the plaintiff entitled to possession of suit property ?

3) Is the plaintiff entitled to mesne profits If so, at what rate ?

4) Is the suit barred by principles of res judicata ?

5) Is the suit barred under Order II Rule 2 C.P.C. ?

6) Whether the defendants prove that they have perfected title to the suit property by adverse possession ?

7) To what reliefs are they entitled ?

The Trial Court found in the affirmative on Issue Nos. 1 and 2 and in the negative on Issue Nos. 3 to 6. It has nowhere referred to Exhibits D-5 and D-6 in the course of its judgment.

12. The lower appellate Court has relied on Exhibits D-5 and D-6 and reasoned that if by 25-11-1972 and 26-11-1972 the plaintiff was in possession of only 28 guntas of land, he must have been deprived of possession of 16 guntas of land prior to that, but his case in O. S. No. 255 of 1972 and O.S. No. 422 of 1973 was that he was all along in possession of 1 acre 4 guntas and therefore entitled to injunction and as such the cause of action relied upon by him in this suit was not really available to him. It has further reasoned on this basis that in all probability Sabirabi and prior to her Jabbarkhan must have been in possession of only 28 guntas.

13. The two Courts below, have concurrently held against the defendants that they had failed to prove the issue on adverse possession in their favour. In that view of the matter, I need not give any finding on this aspect.

14. In my considered-opinion, the two Courts below have missed the crucial question involved in this case, may be because that question has not been pointed out and argued at any stage before the Courts below.

15. The main question is whether Exhibits D-5 and D-6 are survey copies or true extracts of public documents. It has been already pointed out that Exhibits D-5 and D-6 were prepared by the concerned Surveyor, actual measurement of the divisions in the possession of Rahim khan, Jabbarkhan and Peer khan and thereafter in possession of the plaintiff and the defendants had not been made and survey number had not been sub-divided. It was only on the preparation of Exhibits D-5 and D-6 Survey No. 158 was sub-divided into Survey Nos. 158/1 (a), 158/1 (b), 158/1 (c), 158/1 (d), and another bit Survey No. 158/1 (e). It is hence seen that though at the instance of the defendants, sub-divisions in the land were made after conducting a survey by a duly authorised Surveyor.

16. Section 109 of the Act reads as follows :

109. Division of survey number into sub-division :-

Subject to the provisions of any law in force for the prevention of fragmentation and consolidation of holdings in the State.

(1) survey numbers may from time to time and at any time be divided into so many sub-divisions as may be required in view of the lawful acquisition of rights in land Or for any other reason ;

(2) the division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and from time to time revised in accordance with such rules as may be made by the State Government in this behalf;

Provided that the total of the assessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under the provisions of this Act, unless such assessment is liable to alteration under Section 83 ;

(3) the area and assessment of such sub-division shall be entered in such land records as the State Government may prescribe in this behalf.

17. Sub-section (1) of Section 140 of the Act reads as follows :

140. 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.

It is the case of the plaintiff that he was not present when the survey was made and it has been done behind his back. Even if that be so, Clause (b) of Sub-section (1) of Section 140 applies. Therefore, it is clear that Exhibits D-5 and D-6 were made by the concerned Surveyor, authorised by law to do so, in discharge of his official duties as per the provisions of the Act and the land was sub-divided. The boundaries of the sub-division were thus fixed. When that is so, the only remedy available to the plaintiff was to prefer an appeal as provided in Section 49(e) of the Act which reads as follows :

49. (e) If such an order is passed by a Survey Officer below the rank of an Assistant Superintendent of Land Records or the Assistant Superintendent for Settlement, to the Assistant Superintendent of Land Records or the Assistant Superintendent for Settlement, as the case may be.

He has not done so. On the other hand, he has given evidence to the effect that he filed an application to the Assistant Superintendent of Land Records and the Assistant Superintendent of Land Records issued an endorsement as per Exhibit P-4 stating that the matter would be looked into by making a reference to the Tahsildar. But, as the things stand, Exhibits D-5 and D-6 have remained final.

18. The plaintiff has claimed that the Court should find that the survey made by the said Surveyor is wrong and that wrongful act has been exploited by the defendants to encroach upon 16 guntas of land. In other words, he wants the Civil Court to hold that the survey made by the competent Surveyor as per Exhibits D-5 and D-6 is wrong.

19. Section 61(e)(ii) of the Act reads as follows :

'61(e) claims against the Government -

(i) ... ..

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

This not only lays down that the exclusive jurisdiction is of revenue Court but also bars the jurisdiction of Civil Courts. The only relevant exception to this is found in Section 62(c) of the Act which reads as follows:

'62. (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.'

But, this is not a suit falling within the ambit of this provision. When the Civil Court has no jurisdiction to hold that an entry made in any record of revenue survey or settlement is wrong, it cannot, in law, proceed to grant the relief prayed for by the plaintiff because the relief is based on such a finding to be recorded by the Civil Court.

19. Sri M. Dasappa, learned Advocate appearing on behalf of the appellants, argued that Section 61(e) of the Act relates to the claim of a person against the Government, while in the case on hand the claim of the plaintiff is not against the Government, but is against the defendants. Reading of the said provision makes it appear so. But the object behind Section 61 is to provide finality for the acts covered by it and the other provisions of the Act particularly the ones which have been already noted in the preceding paragraphs. It has been left to the exclusive jurisdiction of the revenue Court to fix the boundaries and maintain the boundaries of lands or sub-division of lands, to fix the revenue and re-assess the revenue and

so on. Civil Courts are not permitted to have a hand in any of these matters. Maintenance of the boundaries of lands and sub-division of lands is exclusively the field of the Revenue Department as is clear from the provisions in Chapter XII of the Act. It is exactly in this Chapter Section 140 appears. In this connection, Section 140(2) and Section 142 of the Act may be read with advantage. Sub-section (2) of Section 140 empowers the Tahsildar to decided the dispute concerning the boundary of a holding which has not been surveyed or when a dispute arises at any time after the completion of a survey. What is noteworthy in this provision is that the dispute relates to the boundary and not to any encroachment. Section 142(2) clarifies with more lucidity the further power exercisable by the Tahsildar under Section 140(2) of the Act, After the Tahsildar decides the dispute concerning the boundary under Section 140(2) of the Act, he has further the power to summarily evict any land holder who happens to be wrongfully in possession of any land which has been adjudged in the settlement of a boundary.

20. In view of the foregoing reasons, I hold that the claim of the plaintiff to the effect that wrong survey was made by the Surveyor as per Exhibits D-5 and D-6 cannot be adjudicated by Court and as such the relief prayed for by the plaintiff cannot be granted. His remedy has to be for getting the boundaries fixed accurately. He is at liberty to work it out in accordance with the provisions of law. If he is able to work it out in accordance with the provisions of law, he may take recourse to the proper proceedings in the light of the provisions discussed in the preceding paragraphs.

21. In the result, this appeal fails and is dismissed. There will be no order as to costs throughout.