HC-KAR

NC: 2025:KHC-K:3543
RFA No. 200194 of 2024

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 1ST DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR FIRST APPEAL NO. 200194 OF 2024 (DEC/INJ)

BETWEEN:

MANOHAR REDDY
S/O CHANDRASHEKAR REDDY MANNUR,
AGE: 59 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

...APPELLANT

(BY SMT. HEMA L.KULAKARNI, ADVOCATE)

AND:

1. SRINIVAS
S/O BASAVANTAPPA,
AGE: 60 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

2. NAGARAJA
S/O BASAVANTAPPA,
AGE: 55 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

3. AMARESH
S/O BASAVANTAPPA,
AGE: 53 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

4. SMT. BALAMMA
D/O BASAVANTAPPA,
AGE: 52 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

5. SMT. MABI
D/O BASAVANTAPPA,
AGE: 50 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

6. SMT. YANKAMMA
W/O KALINGAPPA,
AGE: 48 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

7. MANAPPAYYA
S/O HANUMANTAPPA,
AGE: 50 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

8. SHIVAMURTHAPPA
S/O HANUMANTAPPA,
AGE: 48 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,

TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

9. LAXMIPUTRAPPA
S/O HANUMANTAPPA,
AGE: 46 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

10. TIRUPATHI
S/O HANUMANTAPPA,
AGE: 44 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

11. SURAYACHANDRA
S/O HANUMANTAPPA,
AGE: 42 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

12. SMT. CHANNAMMA
W/O MUDDALINGAPPA,
AGE: 40 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

13. SMT. MAHNATAMMA
W/O SHARANAPPA AIDANAL,
AGE: 35 YEARS,
OCC: AGRICULTURE,
R/O: LINGASUGUR,
TQ: LINGASUGUR,
DIST: RAICHUR – 584 122.

14. THE ASSISTANT DIRECTOR
OF LAND RECORDS,
ADLR OFFICE LINGASUGUR – 584 122.

15. THE TECHNICAL ASSISTANT
OF DEPUTY COMMISSIONER AND
DEPUTY DIRECTOR OF LAND RECORDS,
DEPUTY COMMISSIONER OFFICE, RAICHUR – 584 101.

16. THE DEPUTY COMMISSIONER,
RAICHUR – 584 101.

17. THE ASSISTANT COMMISSIONER,
LINGASUGUR, DIST: RAICHUR – 584 122.

18. THE TAHSILDAR,
LINGASUGUR, DIST: RAICHUR – 584 122.

…RESPONDENTS

(BY SRI DEEPAK V. BARAD, ADVOCATE FOR R3;
SRI VARUN PATIL, ADVOCATE FOR R13;
SMT. ANITA M. REDDY, HCGP FOR R14 TO R18;
R1, R2, R4 TO R12 ARE SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO CALL FOR THE RECORDS IN O.S.NO.206/2024 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, LINGASUGUR AND ALLOW THE APPEAL BY SETTING ASIDE THE ORDER DATED 23.11.2024 RENDERED IN THE SAID SUIT, THEREBY RESTORING THE SUIT TO ITS ORIGINAL POSITION FOR THE SAME BEING PROCEEDED WITH ON ITS MERITS IN ACCORDANCE WITH LAW, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RFA, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Though appeal is listed for admission, with consent of learned counsel for parties, it is taken up for final disposal.

2. Challenging order dated 23.11.2024 passed by Senior Civil Judge and JMFC, Lingasugur, in O.S.no.206/2024 allowing IA.no.V under Order VII Rule 11(A) and (D) of CPC and rejecting plaint, this appeal is filed.

3. Smt.Hema L.Kulkarni, learned counsel submitted appeal was by plaintiff challenging order of rejection of plaint. It was submitted plaintiff had filed suit in O.S.no.206/2024 seeking for declaration of his title in respect of land bearing Sy.no.391/1 measuring 02 acres 17 guntas, out of total extent of 24 acres 36 guntas situated at Karadakal Village, Tq: Lingasugur (for short "suit property"); for perpetual injunction against interference by defendants no.1 to 13 and for direction to revenue authorities for rectification of revenue entries etc. It was submitted suit was filed on 07.06.2024. Along with plaint, plaintiff had filed IA.no.I of 2024 under Section 80(2) of CPC for dispensation of notice under 80(1) CPC to defendants no.14 to 18 and IA.no.2 of 2024 under Order 39 Rule 1 and 2 for staying of mutation proceedings in RRT 13124 initiated by

defendants no.10 and 12 before defendant no.18 in respect of suit property. It was submitted on 07.06.2024, applications were heard and on 11.06.2024. IA.no.1 of 2024 filed under Section 80(2) CPC was allowed. However, IA.no.2 of 2024 was kept in abeyance. Thereafter, on 11.07.2024, defendants no.14 to 18 were represented by Addl. Government Pleader and on 13.11.2024. IA.no.5 under Order VII Rule 11(a) and (d) of CPC was filed for rejection of plaint. It was submitted main ground for filing application was that plaintiff had not complied with requirement of notice under Section 80 of CPC, that suit was barred by limitation, plaintiff had failed to avail alternative remedy, there was no clear cause of action and suit was filed on illusory cause of action. It was submitted application was opposed by plaintiff by filing objections.

4. Based on submissions, trial Court framed following points for consideration:

> a. *"Whether the defendants proves that, the suit of the plaintiff is not maintainable and liable to reject U/o 7 Rule 11A and D of CPC?*
>
> b. *What order?"*

5. Without proper appreciation, it passed impugned order rejecting plaint.

6. Main reason assigned was that requirement of notice to defendants no.14 to 18 who were Government authorities was mandatory and on 11.06.2024 trial Court had observed that this was not fit case for dispensation of notice under Section 80 of CPC, consequently, suit was not maintainable. Apart from above, it also observed that against initiation of proceedings or orders passed in revenue proceedings, plaintiff had alternative remedy and suit was barred by limitation of Sections 61, 63, 64 and 135 of Karnataka Land Revenue Act. It also observed that plaint did not disclose cause of action. It was submitted said observations were not only contrary to material on record but also contrary to law. It was submitted, in plaint, plaintiff had stated that act of private defendants approaching revenue authorities for mutation of their names in respect of suit property amounted to denial of plaintiff's title and therefore plaintiff had filed suit for declaration of title. It was submitted for seeking declaration of title, civil suit was proper remedy. For aforesaid reasons, observations by trial Court that an order passed by revenue

authorities would not give rise to cause of action for filing a suit was without any basis. On said grounds, sought for setting order and for allowing appeal.

7. Smt.Anita Reddy, learned HCGP appearing for respondents no.14 to 18 and Sri Deepak Barad, learned counsel appearing for respondent no.3 opposed appeal. Learned HCGP submitted that provisions of Section 80 CPC were mandatory in nature and could not be dispensed with. Therefore, order passed by trial Court was justified.

8. Heard learned counsel and perused impugned order as well as certified copy of entire order sheet in suit made available for perusal by learned counsel for plaintiff/appellant.

9. From above, since appeal is by plaintiff against an order allowing application under Order VII Rule 11 of CPC rejecting plaint, on ground of perversity, point that would arise for consideration is:

> "Whether impugned order rejecting plaint by trial Court suffers from perversity and calls for interference?"

10. This appeal is by plaintiff being aggrieved by order rejecting plaint and allowing defendants' application in IA.no.5 filed by defendants no.14 to 18 under Order VII Rule 11(a) and (d) of CPC. Hon'ble Supreme Court in ***Azhar Hussain V. Rajiv Gandhi***[1] has held that on reading of entire plaint it it is manifest that there is no clear cause of action or suit is barred by any law, a remedy is provided to defendants to seek for rejection of plaint. It is also held that power under Order VII Rule 11 would be available to Court nip suit in its bud on aforesaid grounds. Main reason assigned by trial Court for rejection of plaint are, on 11.06.2024, it had observed that this was not fit case for dispensation of notice under Section 80 of CPC which was mandatory. Perusal of certified copy of entire order sheet in suit would reveal that on 11.06.2024, trial Court had in fact allowed IA.no.1 of 2024 and dispensed with notice under Section 80 of CPC. It had however ordered notice on IA.no.2 of 2024. Observations of trial Court would thus be contrary to record.

[1] 1986 Supp SCC 315

11. The next reason assigned is absence of cause of action and about order passed by revenue authorities not giving rise to any cause of action.

12. Perusal of averments in plaint would *prima facie* reveal that act of defendants no.10 and 12 in filing application before defendant no.18 for mutation of their names in respect of suit property was stated to be amounting to denial of title and thus, providing cause of action for plaintiff for filing suit for declaration of title. It is settled law, for seeking declaration of title in respect of immovable property, Civil Court would be proper forum. Hon'ble Supreme Court in case of ***Liverpool & London S.P. & I Association Ltd. V. M.V. Sea Success I & Another***[2] has held that while considering application under Order VII Rule 11-A of CPC, entire averments in plaint have to be presumed to be true. Paragraph-6 of plaint specifically discloses date of accrual of cause of action for filing suit. Relief sought by plaintiff is for declaration of title and perpetual injunction in respect of suit property and for consequential rectification of revenue records by revenue authorities. Thus,

[2] 2004 (9) SCC 512

observations by trial Court that there is apparently no cause of action for filing of suit would not be justified. Moreover, observations that order passed by revenue authorities would not give rise to cause of action would be contrary to law and in any case, would not apply to present suit as direction by Tahsildar to parties to maintain status-quo taking note of pendency of O.S.no.206/2024 would be a post lite event and is apparently not stated to be cause of action for filing suit. For aforesaid reasons, observations and conclusions by trial Court being contrary to record and law, would call for interference on ground of perversity. Thus, point for consideration is answered in affirmative. Consequently, following:

ORDER

i. Appeal is allowed. Impugned order dated 23.11.2024 passed by Senior Civil Judge and JMFC, Lingasugur, in O.S.no.206/2024 on I.A.no.V filed under Order VII Rule 11(a) and (d) of CPC, rejecting plaint is set aside. I.A.no.V is dismissed. O.S.no.206/2024 is restored to file of Senior Civil Judge and JMFC, Lingasugur.

ii. Since plaintiff, defendants no.3 and 13 to 18 are represented, they are directed to appear before trial

Court on 29.07.2025. Trial Court to issue notice to others and thereafter, proceed with suit from stage where it was prior to filing of I.A.no.V, in accordance with law.

iii. Learned HCGP is permitted to file memo of appearance within four weeks.

Sd/-
(RAVI V HOSMANI)
JUDGE

MSR,NB
List No.: 1 Sl No.: 36