NC: 2025:KHC-K:86
WP No. 200163 of 2021
C/W WP No. 202191 of 2021

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.200163 OF 2021 (GM-CPC)

C/W

WRIT PETITION NO.202191 OF 2021(GM-CPC)

IN W.P.NO.200163/2021:

BETWEEN:

1. SHANKARAGOUDA
   S/O GURANNAGOUDA PATIL,
   AGE: 45 YEARS, OCC: AGRICULTURE,
   R/O SOMANAL (SHARANA-SOMANAL),
   TQ. B. BAGEWADI, DIST. VIJAYAPUR

2. AYYANAGOUDA
   S/O GURANNAGOUDA PATIL,
   AGE: 48 YEARS, OCC: AGRICULTURE,
   R/O SOMANAL (SHARANA-SOMANAL)
   TQ.B. BAGEWADI DIST. VIJAYAPUR.

Digitally signed by SACHIN
Location: High Court Of Karnataka

...PETITIONERS

(BY SRI. NARENDRA M. REDDY, ADVOCATE)

AND:

1. NINGAMMA W/O DUNDAPPA BIRADAR @ PATIL,
   SINCE DECEASED BY LRS. (AS RESPONDENT NO.2
   TO 4 ARE TREATED AS LR'S OF DECEASED
   RESPONDENT NO.1)

2. BASALINGAPPA
S/O DUNDAPPA BIRADAR
@ PATIL, AGE: 52 YEARS, OCC: COOLIE,
R/O SAVANAHALLI, TQ. AND DIST. VIJAYAPUR-586101.

3. SAHEBGOUDA S/O DUNDAPPA BIRADAR
@ PATIL
AGE: 37 YEARS, OCC: COOLIE,
R/O SAVANAHALLI,
TQ. AND DIST. VIJAYAPUR-586101.

4. GANGADHAR S/O DUNDAPPA BIRADAR @ PATIL,
AGE: 28 YEARS, OCC: COOLIE,
R/O SAVANAHALLI, TQ. AND DIST. VIJAYAPUR-586101.

5. RAVAJAPPA S/O KASHIPATI PATTAR,
AGE: 33 YEARS, OCC: AGRICULTURE,
R/O SOMANAL (SHARANA-SOMANAL)
TQ.B.BAGEWADI, DIST. VIJAYAPUR-586101.

6. BALASAHEBGOUDA S/O SAHEBGOUDA PATIL
@ BIRADAR, AGE: 60 YEARS OCC: AGRICULTURE,
R/O SOMANAL (SHARANA-SOMANAL)
TQ. B.BAGEWADI, DIST. VIJAYAPUR-586101.

7. SHANKARGOUDA
S/O SAHEBGOUDA PATIL
AGE: 63 YEARS, OCC: AGRICULTURE.
R/O SOMANAL (SHARANA-SOMANAL)
TQ. B.BAGEWADI DIST. VIJAYAPUR-586101.

8. SIDDANAGOUDA
S/O RUDRAGOUDA PATIL,
AGE: 50 YEARS, OCC: AGRICULTURE.
R/O SOMANAL (SHARANA-SOMANAL)
TQ.B.BAGEWADI DIST. VIJAYAPUR-586101.

9. RUDRAGOUDA
S/O GURANNAGOUDA BIRADAR,
AGE: 75 YEARS, OCC: AGRICULTURE.

R/O SOMANAL (SHARANA-SOMANAL)
TQ. B.BAGEWADI DIST. VIJAYAPUR-586101

10. SIDRAMAPPA
S/O SIDNINGAPPA BIRADAR,
AGE: 80 YEARS, OCC: AGRICULTURE.
R/O SOMANAL (SHARANA-SOMANAL)
TQ. B.BAGEWADI DIST. VIJAYAPUR-586101.

…RESPONDENTS

(BY SRI. VINAYAK APTE, ADVOCATE FOR RESPONDENT NOS.2 TO 4;
SRI. D. P. AMBEKAR, ADVOCATE FOR RESPONDENT NO.5;
RESPONDENT NOS.6 TO 10 ARE SERVED;
VIDE ORDER DATED 10.04.2023, RESPONDENT NOS.2 TO 4 ARE TREATED AS LEGAL REPRESENTATIVES OF THE DECEASED RESPONDENT No.1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI THEREBY QUASHING THE IMPUGNED ORDER VIDE ANNEXURE-F DATED 07.11.2020 ON I.A.NO.6 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC AT B.BAGEWADI IN O.S.NO.112/2015, IN THE INTEREST OF JUSTICE AND EQUITY. II) ISSUE A WRIT IN THE NATURE OF MANDAMUS THEREBY ALLOWING I.A.NO.VI FILED BY THE PETITIONERS IN O.S.NO.112/2015 TO AMEND THE WRITTEN STATEMENT.

IN W.P.NO.202191 OF 2021:

BETWEEN:

1. BALASAHEBGOUDA
S/O SAHEBGOUDA PATIL @ BIRADAR
AGE. 61 YEARS, OCC. AGRICULTURE,
R/O. SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPURA-586101

2. SHANKARGOUDA S/O SAHEBGOUDA PATIL
AGE. 64 YEARS, OCC. AGRICULTURE,

R/O. SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPURA-586101.

3. SIDDANAGOUDA S/O RUDRAGOUDA PATIL
AGE. 51 YEARS, OCC. AGRICULTURE,
R/O. SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPURA-586101.

4. SIDRAMAPPA S/O SIDNINGAPPA BIRADAR
AGE. 81 YEARS, OCC. AGRICULTURE,
R/O. SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPURA-586101.

…PETITIONERS

(BY SRI. NARENDRA M. REDDY, ADVOCATE)

AND:

1. NINGAMMA W/O DUNDAPPA BIRADAR @ PATIL
RESPONDENT R-1 HAS EXPIRED RESPONDENT NOS.
2 TO4 ARE TREATED AS LR'S RESPONDENT NO.1

2. BASALINGAPPA S/O DUNDAPPA BIRADAR @ PATIL,
AGE: 53 YEARS, OCC: COOLIE,
R/O SAVANAHALLI,
TQ. & DIST. VIJAYAPUR. 586106

3. SAHEBGOUDA S/O DUNDAPPA BIRADAR @PATIL,
AGE: 38 YEARS, OCC: COOLIE,
R/O SAVANAHALLI,
TQ. & DIST. VIJAYAPUR. 586106

4. GANGADHAR S/O DUNDAPPA BIRADAR @PATIL,
AGE: 34 YEARS, OCC: COOLIE,
R/O SAVANAHALLI, TQ. & DIST. VIJAYAPUR.

5. RAVAJAPPA S/O KASHIPATI PATTAR,
AGE: 34 YEARS, OCC: AGRICULTURE
R/O SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPUR. -586106

6. SHANKARAGOUDA S/O GURANNAGOUDA PATIL,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPUR-586106.

7. AYYANAGOUDA S/O GURANNAGOUDA PATIL,
AGE: 49 YEARS, OCC: AGRICULTURE,
R/O SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPUR-586106

8. RUDRAGOUDA S/O GURANNAGOUDA BIRADAR,
AGE: 76 YEARS, OCC: AGRICULTURE,
R/O SOMANAL (SHARANA-SOMANAL),
TQ. B.BAGEWADI, DIST. VIJAYAPUR-586106

…RESPONDENTS

(BY SRI. VINAYAK APTE, ADVOCATE FOR RESPONDENT NOS.2 TO 4;
SRI. D. P. AMBEKAR, ADVOCATE FOR RESPONDENT NO.5;
RESPONDENT NOS.2 TO 4 ARE THE LEGAL REPRESENTATIVES OF THE DECEASED RESPONDENT NO.1;
CAUSE TITLE IS AMENDED VIDE COURT ORDER DATED 12.01.2024;
VIDE ORDER DATED 07.01.2025, SERVICE OF NOTICE TO RESPONDENT NOS.6 TO 8 IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF THE CERTIORARI THEREBY QUASHING THE IMPUGNED ORDER VIDE ANNEXURE - F DATED 07.11.2020 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, B.BAGEWADI IN O.S NO.112/2015, IN THE INTEREST OF JUSTICE AND EQUITY. B) ISSUE WRIT IN THE NATURE OF MANDAMUS THEREBY ALLOWING I.A NO.VII FILED BY THE PETITIONERS IN O.S NO.112/2015 TO AMEND THE WRITTEN STATEMENT.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

The defendant Nos.1 and 3 in O.S. No.112/2015 pending trial before the Senior Civil Judge and JMFC., Basavana Bagewadi, (henceforth referred to as 'the Trial Court') have filed W.P. No.200163/2021 challenging an order dated 07.11.2020 by which their application (I.A. No.6) filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'CPC') to amend their written statement to incorporate a counter claim was rejected.

2. The defendant Nos.4 to 6 and 8 in O.S. No.112/2015 pending trial before the Senior Civil Judge and JMFC., Basavana Bagewadi, have filed W.P. No.202191/2021 challenging an order dated 07.11.2020 by which their application (I.A. No.7) filed under Order VI Rule 17 of CPC to amend the written statement to incorporate a counter claim was rejected.

3. The suit in O.S. No.112/2015 was filed for declaration of title of the plaintiffs to the suit lands and for recovery of the same from the defendants.

4. The plaintiffs claimed that the suit lands belonged to their predecessor and that their predecessor had engaged distant relatives for cultivation of the same prior to the year 1980. They contended that till the death of their predecessor, their relative was sharing the crop grown in the suit lands and later, when the plaintiffs started visiting the suit lands, the defendants refused to share the produce grown in the suit lands. The plaintiffs, therefore, sought for a relief of declaration of their title to the suit lands and for recovery of possession of the same from the defendants.

5. Defendant Nos.1 and 3 filed a written statement denying the claim of the plaintiffs. They also denied that the predecessor of the plaintiff had engaged their predecessor for cultivation of the suit lands. They claimed that the predecessor of the plaintiffs was excluded from the possession of the suit lands from the year 1980 which was within the knowledge of the plaintiff No.1 and everyone in the village. Therefore, they contended that the defendant Nos.3, 5 and 6 had perfected their title to the suit lands by way of adverse possession.

6. Similarly, defendant Nos.4 to 6 and 8 filed a separate written statement reiterating the contentions urged by the defendant Nos.1 and 3 in their written statement.

7. Based on these contentions, issues were framed by the Trial Court and the suit was set down for trial. When the suit was set down for the evidence of the defendants, two applications, namely, I.A. No.6 and I.A. No.7 were filed by the defendant Nos.1 and 3 as well as defendant Nos.4 to 6 and 8 respectively, to amend their written statement to incorporate a counter claim/s for declaration that they had perfected their title to the lands in R.S. No.160/1A and R.S. No.160/2 measuring 05 acres 38 guntas and 08 acres respectively, situate at Somanal, B.Bagewadi taluk and which formed part of the suit lands, by way of adverse possession. The said applications were contested by the plaintiffs on the ground that the same were filed long after issues were framed by the Trial Court and after the suit was set down for evidence. They also claimed that the defendants had already claimed that they had perfected their title by way of adverse possession in respect of some of the suit lands and therefore, there was no need to file

application/s to amend the written statement to make a counter claim.

8. The Trial Court after considering the contentions of the plaintiffs and the defendant Nos.1 and 3 and 4 to 6 and 8, rejected the applications (I.A Nos.6 and 7) in terms of the impugned order on the ground that a counter claim is permissible before issues are settled in the suit and only in exceptional circumstances, the Court could exercise jurisdiction to allow a counter claim after issues are settled. It also held that allowing the amendment to the written statement/s would change the nature of the defence raised by the said defendants in their respective written statement.

9. Being aggrieved by the said order, defendant Nos.1 and 3, defendant Nos.4 to 6 and 8 are before this Court in W.P. No.200163/2021 and W.P. No.202191/2021 respectively.

10. The learned counsel for the defendant No.2/respondent No.5 in both the petitions contended that the law as it stood when the defendant Nos.1 and 3 and defendant Nos.4 to 6 and 8 filed their respective written statement was that they could plead adverse possession to non-suit the

plaintiffs. However, in view of the judgment of the Hon'ble Apex Court in the case of ***Ravinder Kaur Grewal and Others v. Manjit Kaur and Others [(2020) 9 SCC 706]***, a claim for adverse possession could be now used as a sword. Therefore, he contends that the defendant Nos.1 and 3 and 4 to 6 and 8 were entitled to seek for counter claim/s and this being an exceptional circumstance, the Trial Court must have allowed the defendant Nos.1 and 3 and defendant Nos.4 to 6 and 8 to seek for counter claim/s.

11. Per contra, the learned counsel for the plaintiff Nos.2 to 4 (respondent Nos.2 to 4 in both the petitions) contended that the defendant Nos.1 and 3 and defendant Nos. 4 to 6 and 8 have already raised a claim of adverse possession in their respective written statement. He submits that if the defendants are able to establish that their possession had become adverse to the right, title and interest of the plaintiffs, then that would suffice and there is no need for the defendants to make a counter claim for declaration of their title in respect of some of the suit lands by way of adverse possession.

12. I have considered the submissions of the learned counsel for the plaintiff Nos.2 to 4 and the learned counsel for the defendant No.2.

13. The defendant Nos.1 and 3 and defendant Nos.4 to 6 and 8 in their respective affidavit accompanying the application Nos.6 and 7 had categorically mentioned that the Hon'ble Apex Court had declared that the relief of counter claim could also be claimed as a main relief departing from the earlier view that it could be raised as a defence in a suit for partition.

14. I have perused the written statement/s filed by the defendant Nos.1 and 3 and defendant Nos.4 to 6 and 8 which show that the said defendants had indeed taken a defence that they had perfected their title to some of the suit lands by way of adverse possession. As rightly contended by the learned counsel for the defendant No.2, in view of the change in the position of law, the defendant Nos.1 and 3 and 4 to 6 and 8 were entitled to seek for counter claim/s that they had perfected their title in respect of some of the suit lands by way of adverse possession. This being an exceptional circumstance,

the Trial Court must have allowed the defendant Nos.1 and 3 and defendant Nos.4 to 6 and 8 to raise counter claim/s as that would fully and conclusively determine the dispute between the parties and also avoid multiplicity of proceedings.

15. In that view of the matter, W.P. No.200163/2021 and W.P. No.202191/2021 are ***allowed*** and the impugned order dated 07.11.2020 passed by the Senior Civil Judge and JMFC., Basavana Bagewadi, in O.S No.112/2015 rejecting the applications, namely, I.A. Nos.6 and 7 filed by the defendant Nos.1 and 3 (petitioners in W.P. No.200163/2021) and defendant Nos.4 to 6 and 8 (petitioners in W.P. No.202191/2021) respectively, for amendment of their respective written statement to incorporate the counter claim/s is set aside. The said applications are allowed. The defendant Nos.1 and 3 and defendant Nos.4 to 6 and 8 are permitted to amend their respective written statement in O.S. No.112/2015 and incorporate the counter claim/s. It is open for the plaintiff Nos.2 to 4 to file a written statement to the counter claim/s, if they are so advised.

16. Since the suit is filed in the year 2015, the Trial Court is requested to dispose off the suit – O.S No.112/2015 as early as possible, at any rate, within a period of one year from the date of receipt of a certified copy of this order.

Sd/-
(R.NATARAJ)
JUDGE

SMA
List No.: 1 Sl No.: 57
CT:SI