



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 8TH DAY OF APRIL 2026
BEFORE
THE HON'BLE MRS JUSTICE GEETHA K.B.
REGULAR SECOND APPEAL NO. 5190 OF 2010 (DEC/INJ)

BETWEEN

1. NINGAPPA
S/O. NARAYAN BADIGER,
AGE: 49 YEARS, OCC: CARPENTER,
2. CHANDRAKANT
S/O. NARAYAN BADIGER,
AGE: 45 YEARS, OCC: MILL WORKER,
3. SANJEEVKUMAR
S/O. NARAYAN BADIGER,
AGE: 42 YEARS, OCC: AGRICULTURE,
4. SMT. SAVITRIBAI
W/O. NARAYAN BADIGER,
AGE: 68 YEARS, OCC: HOUSEHOLD WORK,

(ALL ARE R/O. KONNUR, TQ: GOKAK,
DIST: BELGAUM-591307)

...APPELLANTS

(BY SRI. DINESH M. KULKARNI, ADVOCATE)

AND

SMT. RATNAVVA
W/O. HANAMANT BADIGER,
AGE: 68 YEARS, OCC: HOUSEHOLD WORK,
R/O. KONNUR, TQ: GOKAK, DIST: BELGAUM-591307.

...RESPONDENT

(BY SRI. BAHUBALI N. KANABARGI, ADVOCATE)





THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET-ASIDE THE JUDGMENT AND DECREE PASSED BY 2ND ADDITIONAL CIVIL JUDGE (SR.DN) GOKAK DATED 08-01-2010 IN R.A.NO.2/2007 IN REVERSING JUDGMENT AND DECREE PASSED BY THE ADDITIONAL CIVIL JUDGE (JR.DN) GOKAK DATED 13.11.2006 IN O.S.NO.302/2002 IN SO FAR AS GRANTING RELIEF OF PERMANENT INJUNCTION AND CONFIRMING FINDING ON RELIEF OF DECLARATION AND SET ASIDE JUDGMENT AND DECREE PASSED BY THE ADDITIONAL CIVIL JUDGE (JR DN) GOKAK DATED 30.11.2006 IN O.S.NO.302/2002 IN SO FAR AS RELIEF OF DECLARATION IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 13.03.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

The appellants/plaintiffs have filed this appeal under Section 100 of the Code of Civil Procedure, 1908 (in short CPC) praying for setting aside the judgment and decree dated 08.01.2010 passed in R.A.No.2/2007 on the file of II Additional Senior Civil Judge, Gokak (for short, 'First Appellate Court') and to restore the judgment and decree dated 30.11.2006 in O.S.No.302/2002 in granting the relief of permanent injunction and confirming finding on the relief



of declaration; to set aside the judgment and decree passed by the Additional Civil Judge, Gokak (for short, 'Trial Court') in O.S.No.302/2002 insofar as the relief of declaration and for such other reliefs.

2. Parties would be referred with their ranks as they were before the Trial Court for the sake of convenience and clarity.

3. Plaintiffs have filed the suit before Trial Court praying for the relief of declaration that plaintiffs are absolute owners of suit schedule property and consequently grant relief of permanent injunction restraining the defendant from causing obstruction for the use and enjoyment of the suit schedule property and also in performing the Pooja and Jathra etc., in any manner; for court costs and for such other reliefs.

4. The case of plaintiffs before the Trial Court in nutshell is that suit schedule property bearing TMC No.464, (correspondence No.409) consisting of Deity of Dyamawwa



as Sri Dyamawwa Temple situated within Town Municipal limits of Konnur village, Gokak Taluk. Plaintiffs No.1 to 3 are sons and plaintiff No.4 is the wife of deceased Narayan Ningappa Badiger. Father of plaintiffs No.1 to 3 died in the year 1995 at Konnur Village. After his death, plaintiffs were his only legal heirs, who have succeeded to the suit schedule property and other family properties. Father of plaintiffs was given in adoption to one Ningappa Badiger. After death of adopted father, the father of plaintiffs No.1 to 3 succeeded to the property. After his death, name of father of plaintiffs No.1 to 3-Narayan entered in the revenue records. After death of father of plaintiffs No.1 to 3, name of plaintiffs is entered in the revenue records. Thus, plaintiffs have succeeded to the suit schedule property and are performing Pooja of Deity Dyamawwa. Grandfather of plaintiffs No.1 to 3 has constructed the temple in suit schedule property during the year 1858. He was performing Pooja of Dyamawwa and also at Brahmadevaragudi, which was situated at old TMC No.408 and present No.460. He



was celebrating jathra once in 5 years. The family of plaintiffs invested huge amount for construction of temple and idol. Defendant, who is in no way connected to the family of plaintiffs or to the suit schedule property, has given false varadi on 10.12.2000 alleging that her name should be entered along with name of plaintiff No.1. After receiving such an application, TMC, Konnur has issued notice to plaintiff No.1. Plaintiff No.1 was busy with his domestic work and thus could not appear before the TMC Authorities. But, the TMC Authorities have passed Resolution No.57 dated 29.11.2001 that this subject will be discussed in the next meeting and without passing any resolution, the TMC, Konnur has deleted the name of plaintiff No.1 and entered the name of Dyamawwa Devara Gudi. It is challenged by the plaintiffs before the Divisional Commissioner, Belagavi. He has allowed the appeal and remanded the matter for fresh inquiry.

5. In pursuance of the order, the TMC Authorities have backdated the entry appearing as Dyamawwa Devara

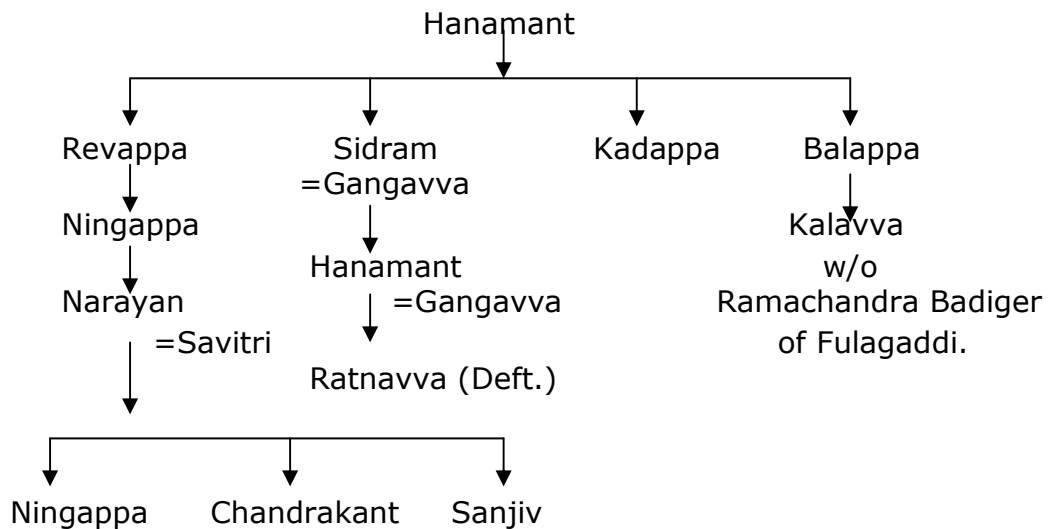


Gudi and entered the name of plaintiff No.1 in the revenue records. But without giving any opportunity and without considering the documents of plaintiffs, in collusion with defendant, the TMC Authorities have passed the Resolution No.53 dated 01.01.2002 and again deleted the name of plaintiff No.1 and entered the name 'Dyamawwa Devara gudi'. None of the villagers of Konnur have given varadi to make such entry. But only at the instance of defendant, this happened. Plaintiffs are absolute owners, Vahivatdars and performers of Pooja of Deity and performing all religious rituals since from the time of their grandfather. Defendant taking undue advantage of deleting the name of plaintiff No.1 from records, illegally, unauthorizedly trying to oust the plaintiffs from suit schedule property and also denied the title of plaintiffs over suit schedule property. She has given complaint before police authority in that regard. Hence, the suit for appropriate reliefs.

6. After service of summons, defendant appeared through her counsel and filed her written statement,



wherein she denied the plaint averments in toto except admitting the relationship of plaintiffs No.1 to 4 with deceased Narayan Ningappa Badiger. She admitted that the temple was constructed in suit schedule property in the year 1858. But denied all other averments in the plaint regarding who constructed the temple and who is in possession of it, who is performing Pooja, etc. The defendant further has given genealogy of plaintiffs and defendant that one Hanamant was the original propositus having 4 children. The genealogy reads as under:



7. It is further pleaded that if plaintiffs able to establish that their father was given in adoption, then they



will acquire 1/3rd right in the suit schedule property. But if they fail to establish it, then they will have no right, title or interest in or over the suit schedule property. Defendant is the only daughter of Hanamant. Kalavva is the daughter of Balappa. Defendant and Kalavva are performing Pooja at Dyamawwa Devi Temple. It is under her management. She is performing Pooja. She has got every right to perform it and it is inherited by her from her ancestors. It is further pleaded that plaintiffs are not performing Pooja as on the date of filing of the suit or prior to it in suit schedule property. Hence, they are not entitled for the relief of declaration and injunction as prayed in the plaint. Hence, prayed for dismissal of suit with costs.

8. From the above facts, the Trial Court has framed following issues and additional issues:

- 1) *Whether the plaintiffs prove that they are the absolute owners and in possession of the suit property?*
- 2) *whether the plaintiffs are entitled to the declaration sought?*



- 3) *whether the plaintiffs prove that the deft., interfered with their possession?*
- 4) *whether the plaintiffs are entitled to the relief of permanent injunction?*
- 5) *What order or decree?*

Addl.Issue No.1: Whether the plffs., prove that their father has gone in adoption to one Ningappa Badiger?

No.2: Whether the defendant proves that she is having 1/3 share in the suit schedule Property?

9. After recording evidence of both sides and hearing the arguments, the Trial Court has partly decreed the suit. Permanent injunction was granted to plaintiffs against defendant. Defendant was restrained from obstructing the use of suit schedule property and performing Pooja by the plaintiffs. However, the suit in respect of relief in respect of declaration of title of plaintiffs is dismissed.

10. Aggrieved by the said judgment and decree, defendant has filed R.A.No.2/2007. Said appeal was allowed in part. The judgment and decree in O.S.No.302/2002



dated 30.11.2006 granting the relief of permanent injunction to plaintiffs was set aside. The suit of plaintiffs was dismissed in entirety. The cross-objection filed by the plaintiffs was rejected. Aggrieved by the same, plaintiffs/appellants are before this Court.

11. At the time of admitting the appeal, the substantial question of law is formulated as follows:

"Whether the First Appellate Court has committed a serious error in allowing the appeal and dismissing the suit in which the relief of permanent injunction had been granted by ignoring the material evidence placed on record?"

12. Heard arguments.

13. Learned counsel for appellants, Sri Dinesh M Kulkarni would submit that the Trial Court and the First Appellate court failed to consider the fact that Dyamawwa Devi Temple is personal and absolute property of plaintiffs and it is built by their grandfather in the year 1858, who



was performing Pooja. Both the Courts have not properly appreciated the flow of title. Exs.P.13 and P.14 refer to the transactions of 1926 and 1934. The existence of temple is shown in these two documents and further name of grandfather of plaintiffs No.1 to 3-Ningappa is found place in the revenue records, which is not properly appreciated by both the Courts. Plaintiffs have produced the registered adoption deed and also mutation entry in respect of adoption by the grandfather of plaintiffs. The First Appellate Court and Trial Court have failed to appreciate the fact that defendant has no *locus standi* to challenge the adoption of father plaintiffs No.1 to 3 by their adopted grandfather-Ningappa Badiger. They have not appreciated the oral and documentary evidence in proper manner and cross-examination of D.W.1 was not appreciated in accordance with law. Hence, prayed for allowing the appeal.

14. Even after giving sufficient opportunities, learned counsel for respondent became continuously absent and not



submitted his arguments. Hence his arguments were taken as heard.

15. The above substantial question of law is answered in AFFIRMATIVE for the following:

REASONS

16. The contention of plaintiffs is that their grandfather Ningappa Revappa Badiger was the absolute owner in possession of the suit schedule property bearing present No.464 and old No.406. Their grandfather has constructed Dyamawwa temple in the suit schedule property in the year 1858, performing pooja and he has taken father of plaintiffs in adoption.

17. Defendant contended that she is the daughter of Ningappa's brother and she has got full right over suit schedule property and not plaintiffs. Her contention is that only she and her senior uncle's daughter Kalavva are alive in their family and she is performing Pooja in Dyamawwa temple. She denied the relationship of plaintiffs with



deceased Ningappa. She has denied even the adoption of father of plaintiffs No.1 to 3-Narayana by her senior uncle Ningappa Revappa Badiger. Thus, this defendant contended that the suit schedule property was and is never in possession of plaintiffs.

18. To substantiate the contention that father of plaintiffs No.1 to 3 is the adopted son of Ningappa Revappa Badiger, plaintiffs mainly rely upon the oral evidence of witnesses and also the certified copy of adoption deed produced by them.

19. It is to be noted here that the defendant is not the natural father and mother of Narayana or the adoptive father and mother of Narayana. Only the natural parents or adoptive parents can challenge this adoption and not by any other person. Furthermore, plaintiffs have produced the certified copy of adoption deed as per Ex.P.26 of the year 1926. This also clearly establishes that father of plaintiffs No.1 to 3-Narayana was taken in adoption by Ningappa



Revappa Badiger. Furthermore, name of father of plaintiffs No.1 to 3 Narayana Ningappa Badiger is categorically admitted by defendant in her written statement. Anyway the Trial Court considering these facts has rightly held that father of plaintiffs No.1 to 3-Narayana is the adopted son of Ningappa Revappa Badiger.

20. In this regard, this Court relies upon the following judgments:

1. ***Veerabhadrayya R Hiremath and Others vs. Irayya A.F. Basayya Hiremath*** reported in ***ILR 2006 KAR 1740***, wherein it is held as follows:

"12. xxxxx

The appellant admits the execution of the adoption deed taking the defendant in adoption by Basayya. According to the appellant the adoption deed as per Ex. D1 came into existence by playing fraud on deceased Basayya. According to him, Basayya died six years prior to the institution of the suit. It is also his case that he came to know of adoption of the defendant by Basayya in the year 1979. The suit was filed in the year 1992. If Basayya died six years prior to the institution of the suit, in all probabilities Basayya was alive till 1986. If plaintiff had come to know of the adoption deed in the year 1979, if really adoption deed had been obtained by the defendant by playing fraud on Basayya, there was no difficulty for



the appellant-plaintiff to request Basayya to challenge the adoption deed contending that the same was obtained by misrepresentation or fraud. But such an action has not been taken by the plaintiff, requesting Basayya to file a suit to challenge the adoption deed. Admittedly, the suit is filed six years after the death of Basayya and 13 years after coming to know of the adoption of the defendant by Basayya. In the normal circumstances, adoption can be challenged either by the natural parents of the boy or by the adoptive parents or by the child who has been given in adoption. But in the instance case, the plaintiff is a stranger to the defendant. If really, a fraud had been played on Basayya, it was for Basayya to file a suit for cancellation of the adoption. The very fact that the plaintiff had not requested Basayya to file a suit for cancellation on the ground that Ex. D1 had come into existence on account of the fraud played by Police-Patil of Astakatti village on Basayya, it is not open for the plaintiff to challenge the adoption of defendant, six years after the death of Basayya. In other words, this Court is of the opinion there is no cause of action for the plaintiff to file the suit."

2. Smt.Chandamma W/o Shankrappa Chalgeri

(since deceased by LRs.) vs. Channaveer in RSA

No.200036/2014 dtd. 10.10.2023, wherein it is held as

follows:

*"31. The Co-ordinate Bench of this Court in the case of **Veerabhadraiah R.Hiremath vs. Irayya A.F. Basaiah Hiremath** as stated supra, held that, except the genitive parents, adoptive parents and the adoptive son, others have no locus standi to question the validity of the adoption deed. The principle laid*



down by the Co-ordinate Bench of this Court is squarely applicable to the instant case."

3. M.G.Purushotham (Since deceased by LRs.) vs. N.K.Srinivasan (Since deceased by LRs.) in RSA No.498/2007 dtd. 16.02.2024, wherein it is held as follows:

*"37. The adoption is also challenged by the plaintiff, who is the brother of the husband of Nanjamma and this Court in the judgment in **VEERABHDRAYYA R. HIREMATH (D) BY L.Rs. VS. IRAYYA A.F. BASAYYA HIREMATH** reported in **2006 A I H C 1734**, held that except the adoptive parents and adoptive son, others have no locus standi to question the validity of the adoption deed. The principles laid down by co-ordinate Bench of this Court is squarely applicable to the instant case which has been considered in the judgment of this Court in **R.S.A.NO.200036 OF 2014** dated 10.10.2023. Hence, the plaintiff cannot question the adoption and validity of the adoption deed and the plaintiff has no locus standi to question the same. Hence, I answer the substantial questions of law framed by this Court accordingly that both the Courts committed an error in rejecting the claim of defendant No.1 that he is an adopted son and failed to consider both oral and documentary evidence and after a long time i.e., 42 years, strict burden of proof for an adoption cannot be insisted when presumption is available under Section 16 of Hindu Adoption and Maintenance Act, 1956 which I have already discussed."*



21. Relying on the principles noted in the above judgments, I am of the opinion that defendant not being the natural or adoptive parents of deceased Narayana cannot challenge his adoption.

22. The plaintiffs have produced the revenue documents i.e., assessment register extract of suit schedule property as per Exs.P.1 to P.3. In the plaint, plaintiffs categorically stated that the number of suit schedule property is 464 and its old number was 406. As per Ex.P.1, property No.464 was standing in the name of plaintiff No.1.

23. It is an admitted fact that in the meanwhile the name of first plaintiff was rounded off and name of Dyamawwa Devara Gudi was inserted in the revenue records, which is being challenged by plaintiffs and then it was again renamed in the name of first plaintiff. Subsequently also, revenue proceedings had taken place and they were taken place in and around the time of filing of suit. Hence, change of name of owner in the revenue



documents into the name of Sri Dyamawwa Devara Gudi is having no consequence.

24. Ex.P.2 is the certified copy of assessment register extract for the year 1938-39-40-41 in respect of properties bearing Nos.406, 407, 408 and 409. In property No.406, name of Ningappa Revappa Badiger *i.e.*, the grandfather of plaintiffs No.1 to 3 is mentioned and not the name of temple. As per Ex.P.3, after death of Ningappa Revappa Badiger, this property was mutated into the name of father of plaintiffs No.1 to 3 Narayana Ningappa Badiger.

25. Plaintiffs have produced the Survival Certificate as per Ex.P.11 to show that plaintiffs are the only legal heirs of deceased Narayana Ningappa Badiger. They have also produced mutation register extract as per M.E.No.719 to show that survey number properties were mutated into the name of Ningappa Revappa Badiger and then into the name of Narayana Ningappa Badiger. In these documents, it is



clearly recited that Narayana, the father of plaintiff No.1 to 3 is the adopted son of Ningappa.

26. The contention of defendant is that she is in possession of suit schedule property and conducting Pooja in suit schedule property. To prove said contention, defendant has not produced any material before the Court. On the other hand, she has produced only the revenue documents which were mutated as per the order of the Tahasildar, which is later set aside as discussed above. Furthermore, only based on oral evidence it cannot be said that defendant is performing Pooja in suit schedule property. It is the specific contention of plaintiffs that the Pooja in Dyamawwa temple is being performed by male members of the family and not females. Defendant being the daughter in the family cannot perform the Pooja.

27. Considering these aspects, rightly, the Trial Court has granted permanent injunction in favour of plaintiffs. But declaration as prayed by them was refused on the ground



that no admissible title documents are produced and there is no pleading and proof regarding the alleged Will produced by P.W.1 in his further examination-in-chief. There is no whisper about the Will executed in favour of Ningappa by one Parvatevva Tadasalla. But only in the evidence, plaintiffs have produced certified copy of the Will as per Ex.P.14. This is not pleaded and attestors to the Will are not examined and original Will is not produced. For these reasons, rightly, the Trial Court has not granted the relief of declaration to plaintiffs.

28. The First Appellate Court has not considered the oral and documentary evidence in respect of the relief of permanent injunction but only held that as title is not established plaintiffs are also not entitled for the relief of permanent injunction, which is erroneous. At undisputed point of time i.e. from 1938-1941, the name of Ningappa Revappa Badiger is forthcoming in revenue extracts and then, i.e., after his death, name of Narayana Ningappa Badiger, the father of plaintiff No.1 to 3 is shown in respect



of suit schedule property for the period from 1946-49-50. However, the First Appellate Court has only held that reasons for entering their names in revenue records is not established and thereby rejected the claim of plaintiffs.

29. It is to be noted here that it is name of first plaintiff forthcoming in Ex.P.1, but his name is also Ningappa and his grandfather's name is also Ningappa. By confusing himself that said Ningappa shown in Ex.P.1 is the grandfather of plaintiffs No.1 to 3, the First Appellate Court wrongly come to the conclusion that how and on what basis name of Ningappa came to be entered in Ex.P.1 and thereby dismissed the claim of plaintiffs. Only after death of father of plaintiffs No.1 to 3-Narayana, name of Ningappa Narayana Badiger i.e. name of first plaintiff is entered in Ex.P.1 that is also entered long back. Hence, the finding and observation of First Appellate Court on this point is not correct and erroneous and thus it requires interference.



30. Thus, the First Appellate Court has committed serious error in allowing the appeal and dismissing the suit in which the relief of permanent injunction granted by the Trial Court without considering the material evidence placed on record. Accordingly, the substantial question of law is answered in '**AFFIRMATIVE**'.

31. In view of the above discussion, I pass the following:

ORDER

1. Appeal filed under Section 100 of the Code of Civil Procedure, 1908 is partly allowed by setting aside the judgment and decree dated 08.01.2010 passed in R.A.No.2/2007 on the file of II Additional Senior Civil Judge, Gokak by restoring the judgment and decree dated 30.11.2006 in O.S.No.302/2002 on the file of Additional Civil Judge, Gokak.
2. The permanent injunction granted in favour of plaintiffs against the defendant by Trial Court is



hereby confirmed. Further, as far as the prayer in respect of declaration of title of plaintiffs is concerned, the judgment and decree of Trial Court in refusing the same is hereby confirmed.

3. Draw decree accordingly.

**Sd/-
(GEETHA K.B.)
JUDGE**

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CT-MCK
List No.: 1 Sl No.: 1