

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 25TH DAY OF FEBRUARY, 2011

PRESENT

THE HON'BLE MR. JUSTICE N.K.PATIL

AND

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

REGULAR FIRST APPEAL NO. 338/2005

BETWEEN:

SHRI CHANDRASHEKAR KONNUR
S/O DUNDAPPA KONNUR
AGED ABOUT 57 YEARS
OCC: PWD EMPLOYEE
R/AT DWARKANATH GALLI
OLD FORESH OFFICE
JAMKHANDI - 587 301
DIST: BAGALKOTE

:APPELLANT

(BY SRI MRUTYUNJAY TATA BANGI, ADV.)

AND:

1. MAHADEV TANAPPAGOL
S/O PARAPPA TANAPPAGOL
AGED ABOUT 53 YEARS
R/A PAGA GALLI JAMKHANDI
DIST: BAGALKOTE

2. SHIVAPPA TANAPPAGOL
S/O PARAPPA TANAPPAGOL
AGED ABOUT 47 YEARS
R/A PAGA GALLI JAMKHANDI
DIST: BAGALKOTE

3. GOURAWWA TANAPPAGOL
D/O PARAPPA TANAPPAGOL
AGED ABOUT 42 YEARS
R/A PAGA GALLI JAMKHANDI
DIST: BAGALKOTE

4. THE EXECUTIVE ENGINEER
GHATAPRABHA LEFT BANK CANAL
(G.L.B.C.) DIVISION NO.2
KUDACHI ROAD JAMKHANDI
DIST: BAGALKOTE

5. THE ASSISTANT EXECUTIVE ENGINEER
GHATAPRABHA LEFT BANK CANAL
(G.L.B.C.) DIVISION NO.5
KUDACHI ROAD JAMKHANDI
DIST: BAGALKOTE

6. THE DISTRICT COMMISSIONER (D.C.),
NAVANAGAR BAGALKOTE - 587 101 :RESPONDENTS

(BY SRI M.G. NAGANURI, ADV. FOR R1 TO R3;
SMT. PREETI DAYANAND, SRI D.S. NAIK &
SRI MURTHY DAYANAND ADVS. FOR R4;
R5 & R6 ARE SERVED.)

This appeal is filed under Section 96 of CPC against the Judgement and Decree dated: 13.1.04 passed in O.S. No. 356/01 on the file of Prl. Civil Judge(Sr.Dn.), Jamkhandi, dismissing the suit for perpetual, permanent and mandatory injunction.

This appeal having been reserved, this day, A.N.VENUGOPALA GOWDA J., pronounced the following:

JUDGMENT

The unsuccessful plaintiff has filed this appeal against the respondents / defendants. The suit filed was



for permanent and mandatory injunctions in respect of suit canal water which flows from Southern side of his land.

2. The case stated is that, he is the owner in possession of land bearing R.S. No.154/3A measuring 4 acres 35 guntas and towards Eastern side of suit property after Hunnur-Kankanawadi road, the land of defendants bearing R.S. Nos.207, 209/1A and 181/2/2 are situated. Towards the side of the plaintiff's land, canal road shown as 'XY' in the plaintiff's hand sketch and Kadakol Minor Canal shown as 'EF' are situated. The defendants were earlier taking water to their lands from Kadakol Minor Canal from point 'C' to 'D' shown in their hand sketch and irrigating their lands. That on 13.11.01, defendants 1 to 3 trespassed into the plaintiff's land and put up a 9" cement pipe at point 'G' and created new 'AB' canal in the Southern side of the plaintiff's land despite the protest. That due to creation of new 'GAB' canal as shown in the hand sketch (suit canal), water uses to sewage and percolates in the plaintiff's land and thereby it has become useless and he is not in a position to grow any crops. The

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suit was instituted for the said prayers also claiming compensatory cost of ₹25,000/-.

3. Defendant 1 has filed the written statement. Defendants 2 and 3 having filed the memo adopting the written statement of defendant 1, the other defendants have not filed written statement. In the written statement, the case pleaded by the plaintiff was denied and it was stated that, towards West of plaintiff's land, canal road and Kadakol Minor Canal are situated and that from Kadakol Minor Canal 'GLBC' water flows on the Southern side of the plaintiff's as well as defendants' lands and they are taking water from the said sub-let which is in existence for the last forty to fifty years and that, they have not created the disputed canal at any point of time. It was also stated that the plaintiff is taking water from the very suit sub-let (sub canal) and the question of sewage of water or its percolation in plaintiff's land does not arise. It was contended that, in view of the bar created under the provisions of Karnataka Irrigation Act, 1965 (for short, the Act), the Court has no jurisdiction to try the suit and the

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same is also barred by limitation and that, the suit without seeking the relief of declaration is not maintainable and it is also bad for non-joinder of necessary parties.

4. Based on the pleadings of the parties, the following issues and additional issues were raised:

Issues:

1. Whether the plaintiff proves that the suit hand sketch is correct and that the defendant Nos.1 to 3 have interfered with his possession rights over his suit schedule R.S. No.154/3A measuring 4 Ac. 35 Gs. Situated at Jamkhandi by way of digging for a canal as shown in the hand sketch?
2. Whether defendant Nos. 1 to 3 prove that since from 40 – 50 years suit sub-let and sub-channel are in existence in the plaintiff's land, they and plaintiff are taking water to their lands from suit channel since then?
3. What judgment / order?

Additional Issues:

1. Do they further prove that in view of bar under the provisions of Karnataka Irrigation Act this Court has no jurisdiction to try this suit?

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2. Do they further prove that without seeking the relief of declaration for suit channel, suit for permanent injunction is not tenable?
3. Do they further prove that suit is barred by limitation?
4. Whether plaintiff is entitled for the relief against the defendants as prayed?

5. The plaintiff deposed as PW-1, examined two witnesses and marked Exs.P1 to P19. The 2nd defendant deposed as DW-1 and Ex.D1 was marked. Considering the rival contentions and upon appreciation of the evidence placed on record, the Trial Court has not recorded any finding on issue Nos.1 and 2. It has answered additional issue Nos.1 and 2 in the affirmative and additional issue Nos.3 and 4 in the negative and has dismissed the suit, directing the plaintiff to approach and agitate the dispute with regard to the suit channel before the competent authority under the Act i.e., defendants 4 and 5.

6. Sri Mrutyunjay Tata Bangi, learned advocate appearing for the appellant contended that, the Trial Court has committed error and illegality in dismissing the suit



and in directing the plaintiff to approach defendants 4 and 5 for relief. Learned counsel contended that, the main prayer in the suit was for permanent injunction restraining defendants 1 to 3 from receiving water from the land of plaintiff and that therefore, the only remedial Court would be Civil Court. Learned counsel contended that, the bar under S.69 of the Act applies to any act done or purporting to be done under the Act and in the instant case the act of defendants 1 to 3 was sought to be enjoined by the order of the Court and therefore, the dismissal of the suit by the Trial Court is illegal. Learned counsel contended that the defendants 1 to 3 ought to have been restrained from receiving water from the suit canal and defendants 4 and 5 having failed to discharge the duty cast upon them, the relief prayed in the suit ought to have been granted. Learned counsel further contended that on account of the misdirection adopted by the learned Trial Judge, the suit has come to be erroneously dismissed and the impugned Judgment and Decree are liable for reversal entitling the plaintiff to the relief prayed in the suit.

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7. Sri M.G. Naganuri, learned advocate appearing for respondents 1 to 3 and Sri Murthy Dayanand learned advocate appearing for respondent No.4 contended that, the main relief sought in the suit being the second relief, in view of S.69(5) of the Act, the suit in the Civil Court being not tenable, the Judgment of dismissal passed by the Trial Court is well founded and no interference is called for. Both the learned counsel by referring to the provision of the Act contended that, keeping in view the main relief sought, the plaintiff should seek redressal of the grievance, if any, before the competent authority under the Act i.e., avail the remedies as provided under the Act. Learned counsel contended that the suit is barred by S.69(5) of the Act for the main relief sought and hence, no interference in the matter is called for.

8. In view of the rival contentions and the record which we have perused, the points for consideration is:

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" (a) Whether the provisions of Karnataka Irrigation Act, 1965 apply and whether the suit is barred under S.69(5) of the Act and

(b) Whether the impugned Judgment and Decree are justified? "

9. The suit was instituted by the appellant seeking the following prayers:

" (a) The Hon'ble Court may grant perpetual injunction restraining the defendants 1 to 3 his agents or servants passing canal water from "EF" canal through the "G" and "AB" shown in the hands sketch map illegally digging area of suit land of plaintiff bearing R.S. No.154/3A measuring 4a. 35 gs. to the defendants lands bearing R.S.No.207, 209/1A and 181/2/2 situated at Jamkhandi Dist., Bagalkot.

(b) The Hon'ble Court may issue directions to defendants No.3 and 4 to stop the illegal water flowing through the "G" to "AB" area shown in the Hands sketch map in plaintiff's land R.S. No.154/3A situated at Jamkhandi, Dist: Bagalkot.



(c) The Hon'ble Court may kindly grant compensatory costs of ₹25,000/- from the defendants 1 to 3 to the plaintiff.

(d) The Hon'ble Court may kindly grant costs of the suit from the defendants No.1 to 3 to the plaintiff. "

10. The Act provides for construction, maintenance and regulation of irrigation works, supply of water and certain other matters pertaining to irrigation in the State of Karnataka. S.4 of the Act prohibits any person from controlling wholly or partly any reservoir, tank, pond, spring pond etc. except with the previous sanction of the State Government. S.12 provides for the Irrigation Officer to issue an order to any person causing or having control over any obstruction to remove or modify the same within the period specified in the order. S.13 empowers the Irrigation Officer to cause the obstruction to be removed. Chapter X which contains S.55 is with regard to the offences under the Act. S.61 is with regard to the power to remove obstruction or damage to work. S.65 provides for appeals against the orders passed under the Act. S.66

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is power of revision and S.67 is the power to issue summons and examine witnesses. S.69 is with regard to bar of proceedings. Sub-section (5) thereof bars the jurisdiction of Civil Court in respect of the control, regulation etc. of any irrigation work.

11. Keeping in view the said provisions and the main relief sought in the suit, in our view, the contention urged by the learned advocates appearing for the respondents that Civil Court cannot entertain the suit since for the matters in dispute, the Act applies, is well founded. Even the appellant has made correspondence with the Officers under the Act, seeking redressal of his grievance. Hence, he ought to have proceeded further in the matter instead of approaching the Civil Court.

12. A combined reading of the said provisions comes in the way of the appellant pursuing the remedy before the Civil Court for the main relief sought in the suit. Since the main relief cannot be decided in the suit, the learned Trial Judge is justified in passing the impugned

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Judgment and Decree. Since the suit is barred under the provisions of the Act and since the plaintiff has separate forum for redressal of his grievance, by making it clear that, the dismissal of the suit and this appeal shall not come in the way of the plaintiff / appellant seeking remedy under the provisions of the Act, the appeal stands dismissed.

However, in the facts and circumstances of the case, parties are directed to bear their respective costs.

**Sd/-
JUDGE**

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JUDGE**