

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 31ST DAY OF JANUARY 2015

BEFORE

THE HON'BLE MR. JUSTICE S.N. SATYANARAYANA

R.S.A. No. 6060/2010 (DEC)

BETWEEN:

1. BASAVARAJAYYA S/O SHIVAYYA
CHATRADMATH, AGE: 67 YEARS,
OCC.: RETIRED,
2. SIDDALINGASWAMY,
S/O SHIVAYYA CHATRADMATH,
AGE: 61 YEARS, OCC.: DOCTOR,
3. RUDRAMUNI S/O SHIVAYYA
CHATRADMATH, AGE: 57 YEARS,
4. PANCHAKSHARAYYA,
S/O SHIVAYYA CHATRADMATH,
AGE: 55 YEARS, OCC.: EX-SERVICEMAN.

ALL ARE R/O KADARAMANDALAGI,
TQ.: BYADAGI, DIST.: HAVERI,
P.C. NO. 581 111.

5. SMT. SUSHEELA W/O CHANNABASAVAYYA
CHATRADMATH, AGE: 49 YEARS,
OCC.: HOUSEHOLD, R/O RANEENNUR,
TQ.: RANEENNUR, DIST.: HAVERI.
6. SMT. GEETHA W/O
CHANDRASHEKHARAYYA SALIMATH,
AGE: 24 YEARS, OCC.: DOCTOR,
R/O HONNALI, TQ.: HONNALI,
DIST.: DAVANAGERE.

7. KUMARI SWETHA D/O
 CHANNABASAYYA CHATRADMATH,
 AGE: 21 YEARS, OCC.: STUDENT,
 R/O RANEENNUR, TQ.: RANEENNUR,
 DT.: HAVERI, P.C. NO. 581 115.

- APPELLANTS

(BY SRI. P.G. MOGALI, ADVOCATE)

AND:

RAJASHEKHARAYYA,
 S/O MURIGEPPAYYA MATHAD,
 DECEASED BY HIS LRS.

1. PRAKASH S/O RAJASHEKHARAYYA MATHAD,
 AGE: 57 YEARS, OCC.: ADVOCATE,
 R/O KAKOL ROAD, BYADGI,
 NEAR POLICE STATION,
 TQ.: BYADGI, DIST.: HAVERI.
2. VAGISH S/O RAJASHEKHARAYYA MATHAD,
 AGE: 52 YEARS, R/O KADARAMANDALAGI,
 TQ.: BYADGI, DIST.: HAVERI.
3. KAILASAPATHI S/O RAJASHEKHARAYYA MATHAD,
 AGE: 40 YEARS, OCC.: LECTURER,
 R/O 13TH CROSS "A" BLOCK,
 BASAVESHWARANAGAR, HAVERI,
 AT: TQ. & DIST.: HAVERI.
4. SMT. ASHA ALIAS BABY,
 W/O RAJENDRA CHURCHIHALMATH,
 AGE: 54 YEARS, R/O MUNDARGI
 EX-MLA'S HOUSE, TQ.: MUNDARGI,
 DIST.: GADAG.
5. REKHAMMA W/O SHARANAYYA
 KONCHIKERIMATH, AGE: 50 YEARS,
 R/O BAILUR, TQ: SHIRUGUPPA,
 DIST.: BELLARY.
6. SMT. VEENA W/O RUDRAYYA MATHAD,
 AGE: 44 YEARS, C/O RAJACHAR,

NO. 1116, VIDYANAGAR,
R/O TARALABALU BADAVANE, 1ST MAIN
3RD CROSS, DAVANAGERE,
TQ. & DIST.: DAVANAGER.E

- RESPONDENTS
(BY SRI. VIJAYENDRA R. BHEEMAKKANNAVAR AND
SRI F.V. PATIL, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGMENT & DECREE DATED 01.09.2010
PASSED IN R.A. NO. 7/2009 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE, RANEENNUR, ITENERATE COURT,
BYADAGI & ETC.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. The plaintiffs in O.S. No. 125/99 on the file of the Civil Judge (Jr. Dn.), Byadagi, have come up in this second appeal impugning concurrent findings of both the Courts below in decreeing the suit of the plaintiff for the relief of declaration of his right of way over 'ABCD' pathway shown in suit sketch by way of easement of prescription for beneficial enjoyment of property bearing V.P.C. No. 795 belonging to him and also for consequential relief of permanent injunction restraining defendants from interfering with his

peaceful possession and right to use and enjoyment of suit property and for consequential reliefs.

2. Admittedly plaintiffs and defendants are descendants of same family and that the suit pathway 'ABCD' is a pathway situated in the midst of V.P.C. Nos.791, 793, 794, 792 on its Eastern side and 799 and 796 on its Western side. The said pathway runs North-East measuring 11 feet in width and 80 feet in length from panchayath road on the Northern side to V.P.C. No.795 situated on the Southern side of the pathway. Admittedly towards North of Panchayath road, house of the plaintiff with cart yard is situated on the Southern side of the said road is the common pathway shown as 'ABCD' in the suit hand sketch with the properties of defendants situated on its either side.

3. It is further not in dispute that V.P.C. No.795 is on the Southern side of hand sketch and thereafter other properties of the plaintiffs is situated. The location of the pathway and also the properties of the plaintiffs and defendants is not in dispute. The dispute is with reference to right of plaintiff to use pathway to reach V.P.C. No.795 from panchayath road as right of easement by prescription. In the original suit which is filed by him for the said releif, the defendants took up contention that the pathway is the exclusive property belonging to the defendants who are owners of V.P.C. No.791, 792, 793, 794, 796 and 797. According to them V.P.C. No.795 never belonged to the plaintiffs and it is their property.

4. However, in the Court below when the matter was agitated by filing written statement and adducing evidence by both the parties it is seen that under a registered Will great-grandfather of the plaintiff has

secured title to V.P.C. No.795, which earlier carried V.P.C. No.165 and subsequently renumbered as V.P.C. No.650 in the hands of the plaintiff's father and thereafter V.P.C. No.795 in the hands of plaintiff, is clearly explained, with the evidence available on record. With this, it is clearly seen that location of the properties and the situation of the pathway is properly established. However, with reference to the denial of plaintiff's right over suit V.P.C. No.795 is concerned, the same is established relying upon Ex.P.30, registered Will of the year 1913 which is executed by the great-grandfather of the plaintiff in favour of his grandfather which would indicate further flow of title of suit property, namely, V.P.C. No.795 in favour of plaintiffs. In that view of the matter, it is clearly seen that the issues which were framed to ascertain the right of plaintiff for easement of prescription to reach V.P.C. No.795 is concerned is held in his favour and

the defence which was taken by the defendants in the said suit claiming V.P.C. No.795 does not belong to plaintiff as well as the pathway is not in existence over common use of parties other than the defendants, is held against them.

5. As against the finding of the trial Court in decreeing the suit of the plaintiff, defendants preferred R.A. No. 7/2009 on the file of Civil Judge (Sr. Dn.) iteranating at Byadagi wherein while deciding the said appeal, the lower appellate Court on re-appreciation of the pleadings oral and documentary evidence confirmed the judgment and decree passed by the Court below and dismissed the appeal filed by the defendants in the trial Court. As against the concurrent finding of both the Courts below this second appeal is filed on the ground that both the Courts below have not properly appreciated the evidence available on record in as much as title of the

plaintiff to V.P.C. No.795 not being established, the right of way to reach the said property through the passage identified as ABCD in the suit sketch, is erroneous and also contended that in the absence of a specific issue regarding title of plaintiff over V.P.C. No.795 grant of relief of easement by prescription to reach the said property is erroneous. To substantiate the same the appellants tried to rely upon the judgment rendered by the Apex Court in the matter of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and others (2003 (3) KCCR 1769)***.

6. On going through the said judgment it is clearly seen that the said judgment does not have bearing either on the facts or on the finding of both the Courts below in accepting the title of plaintiff to V.P.C. No. 795 as well as right to reach said property through ABCD pathway shown in hand sketch.

7. After going through the grounds of appeal and after referring to the judgment supra and the evidence available on record, this Court find no grounds are made out to interfere with the concurrent finding of both the Courts below and decreeing the suit of the plaintiff. It is further seen that no substantial question of law arises for consideration in this second appeal as against the judgments of both the Courts below. Hence, this second appeal is dismissed.

Sd/-
JUDGE

BVV