

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 16<sup>TH</sup> DAY OF SEPTEMBER, 2010

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR. JUSTICE SUBHASH B.ADI

R.F.A.NO. 1260 OF 2004

BETWEEN

1. SUSHILABAI  
W/O SIDDANA GUBBI  
AGED ABOUT 46 YRS  
OCC:AGRICULTURE  
R/O KAPNOOR VILLAGE  
GULBARGA TQ & DIST

2. TULJAPPA  
S/O AMBRAYA GUBBI  
AGED ABOUT 46 YRS  
OCC:AGRICULTURE  
R/O KAPNOOR VILLAGE  
GULBARGA TQ & DIST

.. APPELLANTS

(By Sri.YESHWANTHRAO BABLAD & Sri.S.K.VENKATA REDDY,  
ADVOCATES)

AND

1. DANAMMA  
W/O LATE APPARAYA GUBBI @ APPARAO  
AGED ABOUT 61 YRS  
OCC:NIL  
R/O KAPNOOR  
GULBARGA TQ & DIST

2. INDUBAI  
W/O LATE APPARAYA @ APPARAO GUBBI  
AGED ABOUT 46 YRS  
OCC:NIL  
R/O KAPNOOR  
GULBARGA TQ & DIST

3. REVANASIDDAPPA  
S/O HANMANTHRAYA MACHCHETTI  
AGED ABOUT 46 YRS  
OCC:NIL  
R/O KAPNOOR  
GULBARGA TQ & DIST

... RESPONDENTS

(By Sri. VEERESH B PATIL FOR R1 & R2;  
R3 SERVED & UNREPRESENTED)

RFA FILED U/S.96 R/W O 41 R 1 OF CPC AGAINST THE  
JUDGMENT AND DECREE DT.22.9.04 PASSED IN O.S.NO.1/03  
ON TE FILE OF THE II ADDL. CIVIL JUDGE (SR.DN), GULBARGA,  
DISMISSING THE SUIT FOR DECLARATION AND INJUNCTION.

This RFA, coming on for hearing, this day, N.KUMAR J.,  
delivered the following:

J U D G M E N T

This is plaintiffs' appeal against the judgment and  
decree of the trial court, which has dismissed the suit  
of the plaintiffs for declaration.

2. For purposes of convenience, the parties would  
be referred to as they are referred to in the original suit.

3. The subject matter of the suit is land bearing  
Sy.No.5/1 measuring 3 acres 38 guntas situated in  
village Kapnoor, Taluk and Dist. Gulbarga situated

within the boundaries mentioned in para 2 of the plaint and for short, hereinafter referred to as the schedule property.

4. One Tuljappa Gubbi is the propositus. He had three sons by name Ambaraya, Annaraya and Shivasharanappa. Plaintiff No.2 is the son of Ambaraya and plaintiff No.1 is the wife of Siddappa, another son of Ambaraya who is no more. Defendants 1 and 2 are the wives of Annaraya, the second son.

5. The case of the plaintiffs is, land bearing Sy.No.5/1, 73 and 176/1, all situated within the limits of Kapnoor village, originally belong to the grand father Tuljappa Gubbi. During his lifetime, there was no partition. After his death, the three sons succeeded to the said estate, between them there was a partition. In the said partition, Ambaraya was allotted suit land and an extent of 2 acres 34 guntas in Sy.No.176/1 towards his share. Sy.No.73 measuring 9 acres 14 guntas was allotted to the share of the husband of defendants 1 and 2, which was an irrigated land. He in turn sold the said

land in the year 1967 after such sale, he purchased land bearing Sy.No.41/1 measuring 17 acres 20 guntas situated at Belur village in Gulbarga Taluk and district. Ambaraya was an illiterate person so also the other son Shivasharanappa. However, Annaraya, the second son was an elite person according to village standard and he was working in MSK Mills, Gulbarga till it was closed. Annaraya became handicapped person due to the accident. He got huge amount as compensation in motor vehicle accident case. He had no male issues. Therefore, he married the 2<sup>nd</sup> defendant in koodike form about 9 years ago.

6. Annaraya went to the village Mudhol to eke out his livelihood because Mudhol village is the native place of mother of plaintiff No.2. Since Annaraya had no male issues, he used to look after the agriculture of the plaintiffs at village Kapnoor i.e., cultivation of the suit land. The name of Ambaraya appears in the record of rights from the beginning till 1967-68. The name of one Eranna Kurubar appeared only for one year i.e., 1967-

68 without any mutation. Annaraya used to give half share in the produce of the land to the plaintiffs till his death. After the death of Annaraya land remained barren, most of the times plaintiff No.2 cultivated the land soon after the death of husband of defendants 1 and 2, who had taken crops like Mung, Jawar and Teel for about two years or three years. But most of the fertile land i.e., mud surface over the suit land was sold to brick kilns. Therefore, 2<sup>nd</sup> plaintiff discontinued cultivation and he allowed the said land to remain barren. Plaintiff No.2 and his brother have not divided the property among themselves. Therefore, they have filed this suit jointly. When the plaintiffs came to know that Annaraya manipulated the records and got his name inserted in the record of rights in respect of the schedule property from the year 1968-69 till his death and after his death name of defendants 1 and 2 have been inserted, they took steps to get the mutation entries changed. However, in the meanwhile, defendants 1 and 2 have sold the suit land to an extent of 1 acre

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each under a registered sale deed dated 10.12.2002 in favour of 3<sup>rd</sup> defendant. Soon after they came to know about the sale, the present suit is filed for declaration of title and for cancellation of the sale deed in favour of 3<sup>rd</sup> defendant and for other consequential reliefs.

7. After service of notice, defendants entered appearance, have filed a detailed written statement contesting the claim of the plaintiffs. They admitted the relationship pleaded in the plaint, the partition among the family members, but they disputed the fact that the schedule property has fallen to the share of Ambaraya in the said partition. It is their specific case, the partition in the joint family property took place on the basis of fertility of the land among the three brothers about in the year 1958-59. In the said partition, land bearing Sy.No.176/1 has fallen to the share of the father of plaintiff No.2 and another brother Shivasharanappa as said land is very fertile and suit land Sy.No.5/1 and another land Sy.No.73 were fallen to the share of husband of defendants 1 and 2 which

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are not fertile. Even after partition, the name of the father of plaintiff No.2 continued in the record of rights of all the three lands till the year 1966-67. In the year 1967, when the husband of defendants 1 and 2 sold the land in Sy.No.73 which has fallen to his share along with the suit land in the family partition, the father of plaintiff No.2 has put his signature. The husband of defendants 1 and 2 purchased land in Sy.No.41/1 in the year 1969 under a registered sale deed. A portion of the land in Sy.No.176 was sold by the father of plaintiff No.2 in the year 1969. Shivasharanappa was only an illiterate person among the three brothers. The father of plaintiff No.2 was knowing reading and writing in Modi. They admit that the father of plaintiff No.2 went to Mudhol village to eke out his livelihood as his wife hails from that place. The other reason for such migration was, the father of plaintiff No.2 had already sold the entire land fallen to his share in the family property. Annaraya had no male issues is correct. But he was looking after the properties of the father of plaintiff No.2

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at village Kapanoor is false. The suit schedule property was in the possession of the husband of defendant 1 and 2 till his death and after his death it is in their possession. They admit that even after the partition, the name of the father of plaintiff No.2 continued in the revenue records in respect of all the three lands as he was the eldest in the family and the partition was oral. However, after the partition, each of the parties are enjoying the properties separately. The suit land was in possession of Annaraya and after his death it is in the possession of defendants 1 and 2 as the owners which has fallen to the share of Annaraya in the family partition. As the said Annaraya got cultivated the suit lands in the year 1967-68 from one Eranna Kurbur, his name appeared in the record of rights of the suit lands for the year 1967-68. Late Annaraya personally cultivated the suit land from the year of partition till the year 1967-68 and from the year 1968-69 till his death. Annaraya divided the suit land among his two wives in the year 1997. Accordingly, mutation took place on



31.12.1997. After the death of Annaraya, his wives are in possession as owners of the suit land on portions fallen to each share. The allegation that Annaraya had given half share in the produce grown in the schedule property till his death to the plaintiffs is false. Annaraya died in the year 2000 and not in the year 1997-98. The allegation that plaintiff No.2 was taking crops like Mung, Jawar and Teel for about two years or three years is false. Annaraya has sold mud surface of the suit land to the Brick Bhatti. The plaintiff No.2 was never in possession of the suit land at any time nor he has received any crop share from late Annaraya. Plaintiff No.2 with malafide intention to grab out the land from late Annaraya during his life time filed a revision petition before the Deputy Commissioner, Gulbarga, under Section 136(3) of the Karnataka Land Revenue Act, 1964 on 01.07.1997, alleging that the entries in the record of rights of the suit land are wrong as he himself is cultivating the suit land as owner of the suit land measuring to the extent of 3 acres 31 guntas

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and to enter his name in the record of rights. The Deputy Commissioner, Gulbarga, has rejected the revision petition on 14.12.1998 after hearing. If plaintiff No.2 was really the owner in possession of the suit land, he would have tried to get mutation for entering his name in the record of rights of the suit land after the death of his father who died about 25 years back or atleast he ought to have tried to pay the land revenue of the suit land every year, as Annaraya has paid land revenue of the suit land every year. Since plaintiffs are not the owners of the suit land, plaintiff No.2 has not tried to do any of the aforestated things. The Patta Book also issued in the name of Annaraya, as in the village every one will try for Patta Book. In order to avoid the law of limitation, plaintiff No.2 has falsely alleged that he came to know about the entries in the record of rights in the suit land recently, the plaintiffs have filed false suit stating that late Annaraya had no male issues, to snatch the suit land from defendants 1 and 2. They denied the allegations made in the plaint.

8. The 3<sup>rd</sup> defendant has filed a separate written statement contending that, after looking into the order passed by the Deputy Commissioner, he has purchased the property, he is a bonafide purchaser of a portion of the suit land for valuable consideration. He is in possession of the portion of the suit land purchased by him from the date of purchase as owner, he has denied the title of the plaintiffs to the suit schedule property.

9. On the aforesaid pleadings, the trial court has framed as many as 8 issues which are as under:

- (i) *Whether the plaintiffs prove that, family genealogy is correct?*
- (ii) *Whether the plaintiffs prove that, the suit land along with 2 acre 34 guntas of Sy.No.176/1 as mentioned in plaint para No.5 was allotted to the father of plaintiff No.2 in the partition?*
- (iii) *Whether the plaintiffs prove that defendant Nos.1 and 2 without any right and title have sold 1 acre land in the suit land to the defendant No.3 on 10.12.2002 and the same is not binding on them?*
- (iv) *Whether the defendants 1 and 2 prove that, in the family partition the suit land Sy.No.5/1*

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and another land Sy.No.73 were fallen to their husband?

- (v) Whether the defendants 1 and 2 prove that, the suit of the plaintiffs is barred by law of limitation?
- (vi) Whether the defendant No.3 proves that, he has purchased the 1 acre of land in the suit land on 10.12.2002 from defendants Nos. 1 and 2 after ascertaining their ownership and he is a bonafide purchaser?
- (vii) Whether the plaintiffs are entitled for the relief of declaration as prayed in plaint prayer column?
- (viii) What order or decree?

10. The plaintiffs in order to substantiate their claim, examined 2<sup>nd</sup> plaintiff as PW1, they examined two witnesses Revanasiddappa and Tuljappa as PWs. 2 and 3. They also examined Indubai, w/o.Shivasharanappa Gubbi as PWs.4. They produced 23 documents which are marked as Exs. P1 to P23. On behalf of the defendants, the 1<sup>st</sup> defendant – is examined as DW1. They also examined three witnesses Ganpathi, Karappa and Revanasiddappa as Dws. 2 to 4. They also



produced 38 documents which are marked as Exs.D1 to D38. The trial court on appreciation of the aforesaid oral and documentary evidence on record held that, the plaintiffs have established the correctness of the family genealogy set out in the plaint. The 2<sup>nd</sup> plaintiff has failed to establish that the suit land along with two acres of Sy.No.176/1 was allotted to his father's share in the partition. The plaintiffs have failed to prove that defendants 1 and 2 without any right and title have sold 1 acre land in the suit land to defendant No.3 on 10.12.2002 and the same is not binding on them. Defendants 1 and 2 have established that, in the family partition suit land Sy.No.5/1 and Sy.No.73 fallen to the share of their husband. The defendants 1 and 2 have proved that, the suit of the plaintiffs is barred by the law of limitation. The 3<sup>rd</sup> defendant has also proved that he is the bonafide purchaser for valuable consideration and he has purchased after verification of the title of defendants 1 and 2 to the property which he has purchased. Therefore, it held, plaintiffs are not entitled

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to relief of declaration and cancellation of the sale deed and accordingly, it dismissed the suit of the plaintiffs. Aggrieved by the said judgment and decree of the trial court, the plaintiffs are in appeal.

11. Learned counsel for the appellants/plaintiffs assailing the impugned judgment and decree of the trial court contended that the relationship between the parties is admitted, oral partition pleaded by the plaintiffs is admitted, in the said partition the suit schedule property along with a portion of the land in Sy.No.176/1 fell to the share of the 2<sup>nd</sup> plaintiff's father. In support of the same, 2<sup>nd</sup> plaintiff has adduced acceptable evidence on record, the trial court has not properly appreciated the said evidence and came to an erroneous conclusion that the plaintiffs have failed to establish that the suit schedule property has fallen to the share of the 2<sup>nd</sup> plaintiff's father in the partition. Similarly, the finding of the trial court on the question of limitation is also contrary to the material on record in as much as the sale deed in favour of the 3<sup>rd</sup> defendant

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is in the year 2002, prior to that when the plaintiffs came to know about the mutation entries in the name of defendants 1 and 2, they have immediately taken steps and have filed the suit. Therefore, cause of action in the suit arose from the date of knowledge of these mutation entries and on the day defendants 1 and 2 sold the property to the 3<sup>rd</sup> defendant which was in the year 2002 and therefore, the suit for declaration is valid and well in time. Therefore, she contends that the judgment and decree of the trial court requires to be set aside.

12. Per contra, learned counsel for the respondents/defendants supported the impugned judgment and decree.

13. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration in this appeal are as under:

- (i) *Whether the plaintiffs have established that the suit property has fallen to the share of 2<sup>nd</sup> plaintiff's father in the partition pleaded by them?*

(ii) *Whether the suit for declaration and title is within time?*

Point No.1:

14. The material on record clearly establishes, propositus Tuljappa Gubbi was the owner of land bearing Sy.No.5/1 i.e., suit schedule property, Sy.No.73 and Sy.No.176/1 all of which are situated in Kapnoor village, Gulbarga Taluk and District. He had three sons by name Ambaraya, Annaraya and Shivasharanappa. During the lifetime of Tuljappa Gubbi, there was no partition. After his death, all the three sons inherited the suit property. It is not in dispute between the parties that, somewhere in 1958-59 these three brothers effected a partition of the joint family properties. It is an oral partition. Even after partition, the mutation entries continued in the name of Ambaraya, eldest son of Tuljappa Gubbi in whose name mutation entry has been made after the death of Tuljappa Gubbi. But it is the case of the parties, notwithstanding the continuity of the name in the

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mutation register in the name of Ambaraya, all the three brothers were separately cultivating the properties which have fallen to their respective shares.

15. The question is, in the said partition, whether the suit schedule property has fallen to the share of Ambaraya or Annaraya as contended by defendants 1 and 2. The evidence on record shows and in fact in the examination-in-chief, the 2<sup>nd</sup> plaintiff has categorically stated, Sy.No.176/1 is the most fertile land when compared to the other two lands. The next fertile land is Sy.No.73, least is the suit land. According to the plaintiffs, suit land and an extent of 2 acres 34 guntas in Sy.No.176/1 fallen to the share of Ambaraya, the remaining extent also in Sy.No.176/1 fallen to the share of Shivashanrappa, the third son of Tuljappa Gubbi. Sy.No.73 in its entirety fallen to the share of the husband of defendants 1 and 2 which measures 9 acres 14 guntas.

16. On the contrary, it is the case of the defendants 1 and 2, as Sy.Nos.73 and 5/1 were not



fertile lands, both of them were allotted to the share of Annaraya, whereas the most fertile land Sy.No.176/1 and a portion measuring about 4 acres was allotted to the share of Shivasharanapa and remaining extent was allotted to the share of Ambaraya. It is clear from the material on record, Shivasharanappa who was allotted portion in Sy.No.176/1 is content with what has been allotted to him. In other words, if he has been allotted either 4 acres or 3 acres and odd that represents 1/3 share in the joint family properties. If that represents 1/3 share, when more than that extent is allotted to the share of Ambaraya that should also fully represent 1/3 share of Annaraya, in which event, Sy.No.73 measuring 9 acres 14 guntas and the suit land however represent remaining 1/3 share in the joint family properties by way of value. In fact, the oral evidence adduced by the parties is full of inconsistencies. The 2<sup>nd</sup> plaintiff who is examined as PW1 admittedly was a minor on the date of partition. His evidence is of no assistance in finding out which property was allotted to the share of his father and the

value. PW4 – wife of Shivasharanappa in categorical terms has said in her evidence that, after 10 years after partition she was married to Shivasharanappa. Therefore, she also did not have any personal knowledge about the partition. The other two witnesses who have deposed are unable to give survey numbers though they speak about the partition and the suit schedule property having fallen to the share of the father of the 2<sup>nd</sup> plaintiff.

17. The trial court on careful appreciation of these oral evidence on behalf of the plaintiffs has come to the conclusion that, their evidence do not assist the court in deciding the said issue, it is full of inconsistencies, moreover that PW4 has categorically admitted in her evidence that her brother is married to one of the daughters of Ambaraya and all of them are living together. Therefore, the oral evidence adduced on behalf of the plaintiffs do not establish the case of the plaintiffs. It is in this context, when we look at the documentary evidence which is produced till 1967-68,

the name of Ambaraya appears in the mutation register in respect of the three lands belonging to the joint family notwithstanding the partition by metes and bounds in the year 1958-59. Therefore, those entries are of no assistance in deciding which property fallen to whose share in the partition of 1958-59 because his name appeared even after partition, when the husband of defendants 1 and 2 wanted to sell the land bearing Sy.No.73 which fallen to his share, Ambaraya has also joined as party to the sale deed. The recitals in the sale deed make this position very clear, so Ambaraya had no title and ownership right in the suit property, because mutation entry stood in his name, he also executed the sale deed though the said property exclusively belongs to the husband of defendants 1 and 2 which is at Ex.D33. After the execution of the said document in the year 1967, i.e., on 27.10.1967, on 17.4.1969, Ambaraya had executed the sale deed in favour of one M.A.Saleem, conveying an extent of 2 acres 34 guntas out of 7 acres 10 guntas in Sy.No.176/1 for a

consideration of Rs.10,000/-. In the sale deed it is recited that Ambaraya is the owner of 7 acres 10 guntas and out of the said extent, he is selling 2 acres 34 guntas in favour of M.A.Saleem, the purchaser and the consideration mentioned in the sale deed is Rs.10,000/- In so far as sale deeds, there is no reference to the suit schedule property. If really, the suit schedule property has fallen to the share of Ambaraya at some stage during his life time, he should have made an attempt to get the mutation entries in his name, however, the evidence on record shows, for 1967-68 the name of Eranna Kurbur was entered in respect of the suit schedule properties, no explanation is forthcoming from the plaintiffs. On the contrary, defendants 1 and 2 explained it by saying, the suit schedule property was leased by their husband in favour of Eranna Kurbur for one year and therefore, mutation entry was made in his name. Thereafter, he started cultivating the land personally and therefore from 1968-69 onwards, the mutation

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entry in respect of the suit property is made in the name of the husband of defendants 1 and 2. At that point of time, the father of 2<sup>nd</sup> plaintiff was very much alive, he did not raise his objection, he did not take any steps to get mutation entry cancelled. On the contrary, the material on record shows, after selling the property which have fallen to his share atleast a portion as is evident from the plaint averments, to eke out livelihood the father of plaintiff No.2 along with his wife and children left the village Kapnoor and migrated to Mudhol village, the place of his wife. It is also on record, somewhere in 1970, mother of 2<sup>nd</sup> plaintiff died, father died in 1972. From 1968-69, mutation entries in respect of the suit property stand in the name of husband of defendants 1 and 2. Patta Book stands in his name, he has been paying taxes and tax receipts are produced. Admittedly, the possession of the property is with the husband of defendants 1 and 2 till his death and after his death it is in the possession of the defendants 1 and 2. After the death of the husband, two

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wives filed an application and got mutation entries made in their name. It is only somewhere in 1997-98 after the mutation entries in the name of husband of defendants 1 and 2 was challenged by the present plaintiffs by filing revision under Section 136(3) of the Karnataka Land Revenue Act. In the said proceedings, the title of the plaintiffs as well as the father of the 2<sup>nd</sup> plaintiff was denied. The Deputy Commissioner, after hearing both the parties, after going through the material placed before him, has categorically held that they have failed to establish the title to the property. The material on record did establish title of the husband of the 2<sup>nd</sup> defendant and therefore, in 1998 the revision petition came to be dismissed. The said order has attained finality, as it was not challenged. By that order it is explicitly clear that the title of plaintiffs was denied in a quasi judicial proceedings to the knowledge of the plaintiffs. However, plaintiffs did not take any steps for declaration of title, recovery of possession immediately thereafter. It is only on 10.12.2002 when a portion of

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the suit property is sold in favour of the 3<sup>rd</sup> defendant, they appears to have woken up and filed the present suit for declaration of title. When the plaintiffs are seeking a declaration that they are the erstwhile owner of the suit schedule property, having fallen to their share in the partition in 1958-59, the burden is on them to establish the said fact, as the same is categorically denied by the defendants in their written statement. Except the oral assertion, nothing is placed before the court to show at that partition the suit property has fallen to the share of the 2<sup>nd</sup> plaintiff's father. That apart, admittedly, during 1970 onwards, father of 2<sup>nd</sup> plaintiff was not in possession of the suit property, he was not residing in the village at all. He has not paid taxes, mutation entries are not in his name, Patta was not in his name, he is not cultivating the land. All these clearly goes to show that the father of plaintiff No.2 did not exercise the right of ownership over the suit property after 1968-69. Even after his death in 1972, plaintiffs also have not exercised the





right of ownership over the suit schedule property. Though a feeble attempt is made in the course of evidence to show that the 2<sup>nd</sup> plaintiff cultivated the suit land for 2 to 3 years, no material is placed on record to substantiate the said contention. Similarly, no material is placed on record to show that he sold the surface land as contended by him in his pleadings as well as evidence. On the contrary, the overwhelming evidence on record shows that it is the husband of defendants 1 and 2 who is in uninterrupted possession of the property, at any rate from 1968-69 till his death in 2000 who has exercised ownership, whose title to the property is recognized by the revenue officials by mutating his name and therefore, the finding recorded by the trial court that the plaintiffs have failed to establish title to the suit property is unexceptionable, it is based on legal evidence. In fact, the trial court has carefully scrutinized not only the oral evidence on record, but each and every documentary evidence on record and



has recorded a categorical finding that the plaintiffs have failed to show that the suit property has fallen to the share of the father of 2<sup>nd</sup> plaintiff and consequently, he was not the owner of the property and thus plaintiffs are not the owners of the property. We do not find any justifiable grounds to interfere in this finding recorded by the trial court. Accordingly, we answer point No.1.

Point No.2:

19. The suit is one for declaration of title. Three years is the period prescribed under Article 58 for filing a suit for declaration from the day the cause of action arose. The cause of action for the suit for declaration arose when the title to the property is denied. It is not in dispute that the 2<sup>nd</sup> plaintiff filed a revision petition under Section 136(3) of the Karnataka Land Revenue Act challenging the mutation entry in the name of the husband of defendants 1 and 2 before the Deputy Commissioner, Gulbarga. In the said proceedings, the husband of defendants 1 and 2 appeared, filed

statement of objections, contending that he is the owner of the property and neither the plaintiffs nor the 2<sup>nd</sup> plaintiff's father had any title to the suit property. After hearing both the parties, the Deputy Commissioner by his order has rejected the revision petition holding that the material on record did establish that it is the husband of defendants 1 and 2 who is the owner of the property and the plaintiffs have no title. Though the said finding do not bind the plaintiffs in so far as title is concerned, it is in those proceedings title of the plaintiffs is denied. Once plaintiffs' title is denied, the plaintiffs have to approach the court for relief of declaration within three years there from. The suit is filed in the year 2003, nearly five years after the denial of title. It is not a case of continuing cause of action as sought to be made out. In fact, it is pleaded in the plaint that recently they came to know about the mutation entries in the name of defendants 1 and 2 and therefore they have approached the court well within time. It is factually incorrect. They challenged the



mutation entries in the name of defendants 1 and 2 in the year 1997-98 and lost the battle in 2000, he died, after his death mutation entry was made in the name of defendants 1 and 2, that would not give them cause of action to file the suit for declaration. The trial court was justified in holding, in the aforesaid circumstances, the suit is barred by time. The said finding is proper and just and do not call for any interference. Accordingly, we answer point No.2.

20. For the aforesaid reasons, we do not see any merit in this appeal. Accordingly, appeal is liable to be dismissed. Hence, we pass the following:

ORDER

Appeal is dismissed. No costs.

Sd/-  
JUDGE

Sd/-  
JUDGE

Cm/-