

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF JUNE 2019

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

**REGULAR SECOND APPEAL NO.89/2015**

**BETWEEN:**

1. SRI D.V.GIRISH  
S/O SRI D.P.VASANTHA KUMAR  
AGED ABOUT 44 YEARS  
COFFEE PLANTER, WILD-LIFE ACTIVIST  
KAIMARA POST  
CHIKMAGALUR TALUK - 577 156
  2. SRI S.GIRIJASHANKAR  
S/O LATE SHANKARANARAYAN  
AGED ABOUT 57 YEARS  
EDITOR AND PUBLISHER, JANAMITRA  
DAILY LOCAL NEWSPAPER  
ANJANEYA TEMPLE STREET  
VIJAYAPURA EXTENSION  
CHIKMAGALUR CITY - 577 101
  3. SRI MANISHKUMAR  
S/O SRI MADANCHAND  
AGED ABOUT 30 YEARS  
COFFEE PLANTER AND BUSINESSMAN  
M.G.ROAD, CHIKMAGALUR
  4. G.VEERESH  
S/O GANGADHARAIHAH  
AGED ABOUT 27 YEARS  
C-95, 2<sup>ND</sup> CROSS, 2<sup>ND</sup> STAGE  
C.D.A. LAYOUT, KALYANAGAR  
JYOTHINAGAR POST  
CHIKMAGALUR - 577 102
- ... APPELLANTS

(BY MS.JAYNA KOTHARI, SENIOR COUNSEL FOR  
SRI NAVEEN CHANDRA V. ADVOCATE)

**AND:**

1. GOVERNMENT OF KARNATAKA  
BY ITS CHIEF SECRETARY  
VIDHANA SOUDHA  
BANGALORE - 560 001
2. DEPUTY CONSERVATOR OF FOREST  
BHADRA WILDLIFE DIVISION  
BHADRA WILDLIFE SANCTUARY  
FOREST OFFICER COMPLEX  
CHIKMAGALUR - 577 101
3. SPECIAL OFFICER, TOURISM  
GOVERNMENT OF KARNATAKA  
2<sup>ND</sup> FLOOR, MATHIAS TOWER  
I.G.ROAD, CHIKMAGALUR - 577 101
4. DEPUTY COMMISSIONER  
CHIKMAGALUR DISTRICT  
CHIKMAGALUR - 577 101 ... RESPONDENTS

(BY SRI N.DINESH RAO, AAG)

THIS RSA IS FILED UNDER SECTION 100 OF CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 20.10.2014 PASSED BY THE PRINCIPAL DISTRICT JUDGE, CHIKMAGALUR IN R.A NO.32/2013 AND THE JUDGMENT AND DECREE DATED 31.01.2013 PASSED BY THE SENIOR CIVIL JUDGE, CHIKMAGALUR IN O.S.NO.1/2008.

THIS RSA COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**J U D G M E N T**

This regular second appeal of plaintiffs arises out of judgment and decree dated 20.10.2014 passed by Principal District Judge, Chikmagalur in R.A.No.32/2013. By the impugned judgment and decree, the First

Appellate Court dismissed the appeal of plaintiffs and confirmed the judgment and decree dated 31.01.2013 passed by the Senior Civil Judge, Chikmagalur in O.S.No.1/2008. Under the said judgment and decree, the trial Court had dismissed the suit of the plaintiffs for declaration and injunction.

2. Appellants were plaintiffs and respondents were defendants before the trial Court. For the purpose of convenience, parties will be referred to henceforth with their ranks before the trial Court.

3. Subject matter of the suit were the forest land bearing survey No.226 measuring 440.03 acres and survey No.228 measuring 1004-39 acres situated within Bhadra Wildlife Sanctuary of Siravase Village, Chikmagalur Taluk.

4. Plaintiffs' case in brief is as follows:

Suit properties were part of Bhadra Wildlife Sanctuary forest lands. Defendant No.2- the Deputy Conservator of Forest, Bhadra Wildlife Division has

proposed to put up structures for promoting Muthodi Nature Camp in Muthodi, allegedly for development of eco tourism in Bhadra Wildlife Sanctuary. Proposed work consists of building construction, electrification by laying high tension lines, clearing of the forests. Such work can't be undertaken without prior approval of the Central Government as required under Section 2 of the Forest (Conservation) Act, 1980 ('the Act' for short). No such approval is taken by the defendants. Therefore, plaintiffs seek declaration that suit schedule properties were part of Bhadra Wildlife Sanctuary which is reserve forest land, permanent injunction restraining defendant No.2 from taking up proposed project and for mandatory injunction for restoration of the suit schedule properties in case, any structure was already put up.

5. Defence of the defendants was as follows: Proposed project is taken up to promote eco tourism activities in Muthodi nature camp and that does not attract Section 2 of the Act. Therefore, Central Government prior approval was not required.

Defendants are not putting up any new structures. There was already forest nature camp existing since 1980. There were two cottages, two dormitories, kitchen, three pergolas, ten tent bases, one instructor's room, three common toilets and bathrooms, a overhead hume pipe water tank, interpretation centre etc. Those structures were dilapidated and on the advise of the experts defendants are only renovating them. Proposed project costs is Rs.142.42 lakhs and they have already taken up the work.

6. On the basis of such pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs prove that the suit schedule property is a part of Bhadra Wild Life Sanctuary, which is a reserve forest land?
2. Whether the plaintiffs prove that 2<sup>nd</sup> defendant has continued the construction work in gross violation of the provisions of the Central Act of the Forest (Conservation) Act, 1980?

3. Whether the suit is not maintainable as contended in para 6 of the written statement?

4. Whether the plaintiffs are entitled for the reliefs as sought for?

5. What Order or Decree?

7. Parties adduced evidence. On behalf of plaintiffs, plaintiff No.1 was examined as PW.1 and Ex.P1 to Ex.P25 were marked. On behalf of defendants, DW.1 was examined and Ex.D1 to Ex.D8 were marked.

8. The trial Court after hearing the parties dismissed the suit on the following grounds:

(i) Defendants have admitted that suit properties are part of Bhadra Wildlife Sanctuary. When there is no dispute on that fact, question of granting declaration does not arise. Therefore, the suit is not maintainable;

(iii) Activities taken up under proposed project was for promoting ecotourism which is an ancillary activity to conservation, development and management of forest and wildlife;

(iv) The project in question relates to development of eco tourism. Therefore, Section 2(iv) of the Act does not apply and no approval of the Central Government is required.

9. Aggrieved plaintiffs, challenged the said judgment and decree before the First Appellate Court in R.A.No.32/2013. The First Appellate Court by impugned judgment and decree concurred with the findings and reasonings of the trial Court and dismissed the appeal. The First Appellate Court even went to the extent of stating that works were taken up with the prior approval of the Central Government. Therefore, there was no violation of Section 2 of the Act.

10. This Court admitted the appeal for consideration of the following substantial question of law:

“Whether the judgment and decree of the courts below are perverse in holding that Section-2 of the Forest (Conservation) Act, 1980 is not applicable to the facts and circumstances of the suit ?”

11. Ms.Jayna Kothari, learned Senior Counsel appearing for Sri Naveen Chandra V., learned Counsel for appellants seeks to assail the impugned judgments and decrees of the Courts below on the following grounds:

(i) Defendants own document Ex.P8 the financial worksheet of the proposed project and the sanction granted by the Principal Chief Conservator of Forests, Wildlife Bengaluru to the Conservator of Forests, Chikmagalur shows that the work was not only the development of existing structures, but consisted of putting up of new structures. The Courts below overlooked Ex.P8;

(ii) Photographs Ex.P10 to Ex.P21 show that work taken up requires clearing of the forest and in fact some of the forest area was cleared for the proposed work. The Courts below failed to consider the said evidence. Therefore, the judgments of the Courts below suffer perversity;

(iii) Forest activities involve only the work stated in *Explanation* to Section 2(iv) of the Act. Proposed



work was not covered under *Explanation* (b) to Section 2(iv) of the Act. The Courts below have wrongly interpreted the said Section; &

(iv) Since the concurrent findings of the Courts below are contrary to the mandatory provisions of law, judicial precedents of Supreme Court and this Court and perverse this Court can interfere with such findings invoking jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

12. In support of her contentions, she relies upon the following judgments:

1. Gurnam Singh v. Lehna Singh  
[AIR 2019 SC 374];  
[2019 SCC Online SC 374]
2. Union of India  
v. Kamath Holiday Resorts Pvt. Ltd.  
[(1996) 1 SCC 774]
3. Jairaj A.P. v. The Chief Conservator of  
Forest (Wildlife), Thiruvananthapuram and  
others [AIR 1996 Ker 362]
4. Ishwar Dass Jain v. Sohan Lal  
[(2000) 1 SCC 434]
5. M/s Gateway Hotels and Gateway Resorts  
Limited, Bangalore v. Nagarahole

Budakattu Hakku Sthapana Samithi,  
Virajpet, Coorg District and others  
[1997 SCC Online Kar 219]

13. Per contra, Sri N.Dinesh Rao, learned Additional Advocate General seeks to support the impugned judgments and decrees on the following grounds:

(i) Courts below on sound appreciation of the evidence came to the conclusion that proposed project is to promote eco tourism which is ancillary activity for the management and development of forest land. Such concurrent findings of the Courts below cannot be interfered by this Court in second appeal;

(iii) When there is no dispute that suit schedule lands are forest lands situated within Bhadra Wildlife Sanctuary forest area, question of granting declaration does not arise. Therefore, Courts below rightly held that the suit for declaration is not maintainable;

(iv) Activities proposed did not involve any new structure, but they are only developing the existing structure.

14. In support of his contentions, he relies upon the following judgments:

1. Om Prakash Choudhary and another v. State [AIR 2005 Rajasthan 18]
2. T.Ramalingeswara Rao (Dead), Thr. LRs & Anr. v. N.Madhava Rao & Ors. [Civil Appeal No.3408/2019, DD 05.04.2019]
3. Veerayee Ammal vs. Seenii Ammal [Civil Appeal No.7185/1997, DD 19.10.2001]
4. Gurdev Kaur & Ors. vs. Kaki & Ors. [Civil Appeal No.2083/2006, DD 18.04.2006]

15. Having regard to the aforesaid submissions, first question is under what circumstances this Court can interfere with the concurrent findings of the Courts below invoking Section 100 of CPC.

16. Sum and substance of the all the judgments relied upon by both Counsel on this point is that generally on the question of fact, First Appellate Court is the last Court and High Court cannot interfere with such findings, unless the appellant is able to show that judgments of the Courts below suffer perversity.

17. The Hon'ble Supreme Court in **Gurnam Singh v. Lehna Singh** [2019 SCC Online SC 374] [Civil Appeal No.6567/2014 DD 13.03.2019] relying upon its earlier judgment in *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar* [(1999) 3 SCC 722] in para 26 of the judgment held as follows:

"26. ....As per law laid down by this Court in a catena of decisions, the jurisdiction of High Court to entertain second appeal under Section 100 CPC after the 1976 Amendment, is confined only when the second appeal involves a substantial question of law. The existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this Court in case of *Kondiba Dagadu Kadam* (Supra), in a second appeal under Section 100 of the CPC, **the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being:**

- (i) Contrary to the mandatory provisions of the applicable law; or**
- (ii) Contrary to the law as pronounced by the Apex Court; or**
- (iii) Based on inadmissible evidence or no evidence."**

(Emphasis supplied)

18. Therefore, now this Court has to see whether the findings of the Courts below are contrary to the mandatory provisions of applicable law, or the law pronounced by Apex Court or based on inadmissible or no evidence.

19. So far as nature of the properties, defendants did not dispute that properties were covered under Bhadra Wildlife Sanctuary reserve forest land. Declaration in that regard was sought only to invoke Section 2 of the Act. Courts below refused to grant declaration on the ground that since there is no dispute there is no cause of action and the suit is not maintainable. Now that has become an admitted fact and no substantial question of law is raised on that. On such admission of fact, whether Courts below were right in rejecting injunction sought for is the next question.

20. Section 2 of the Act reads as follows:

**2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.—**

Notwithstanding anything contained in any other law for the time being in force in a State, **no State**

**Government or other authority shall make, except with the prior approval of the Central Government,** any order directing.—

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) **that any forest land or any portion thereof may be used for any non-forest purpose;**

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) **that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.**

**Explanation.—** For the purpose of this section “**non-forest purpose**” means the breaking up or clearing of any forest land or portion thereof for.—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) **any purpose other than re-afforestation,** but does not include any work relating or ancillary to conservation, development and management of forests

and wildlife, namely, the establishment of check-post, fire lines, wireless communication and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purposes.

(Emphasis supplied)

21. Perusal of the above provisions makes it clear that said provision has overriding effect over any State legislation. Having regard to said Section without Central Government's prior approval, defendants were barred from making any order for clearing trees from suit lands for the purpose of re-forestation or use of such land for any **non-forest purpose**.

22. Non-forest purpose is defined as breaking up or clearing of any forest land or portion thereof for any purpose other than re-forestation. Only exception for that is work relating or ancillary to conservation, development and management of forest wildlife mentioned therein and other like purpose.

23. In the case on hand, defendants themselves have admitted that they have taken up project called

development of Muthodi Nature Camp in Bhadra Tiger reserve area. Ex.P22 is proposal sent by defendant No.2-the Deputy Conservator of Forests, Bhadra Wildlife Division, Chikmagalur to the Deputy Commissioner, Chikmagalur District for forwarding proposal of the project to the tourism department for getting sanction.

24. On the basis of such requisition, Deputy Commissioner under Ex.P6 wrote to the Commissioner, Department of Tourism, Government of Karnataka for approval of the project bearing cost of Rs.92.92 lakhs. Proposal was sent to the Government also. Ex.D3 is the sanction order of Principal Chief Conservator of Forests communicated to Conservator of Forests, Chikmagalur for taking up work under Ex.P8. Ex.P8 is the revised financial worksheet. Perusal of the final work sheet of the Bhadra Wildlife Sanctuary in Muthodi Nature Camp shows that project cost estimation was increased to Rs.142.42 lakhs. All those documents specify the work proposed.



25. Work proposed at Sl.Nos.4 to 6, 11 and 12 in Ex.D3 are as follows:

REVISED  
WORKS PROPOSED IN MUTHODI NATURE CAMP FINANCIAL WORKSHEET

Sl. No	Item of Works	Quantity	Unit Cost (Amount in Rs. each)	Amount (Rs. In Lakhs)
4	Construction of tent bases with attached bath rooms provided with tents accessories like cots, tables, chairs, mattresses, etc. as per design	2 Nos.	575000 each	11,50000
5	Construction of a pergola near Tented accommodation	1 No.	270000 each	2.70000
6	Construction of reception cabin cum Ticket counter as per design in nature camp	1 No.	350000 each	3.50000
11	<b>Kitchen Block:</b> A) Demolition of the existing kitchen block and construction of new one  B) <b>Procurement:</b> a) Purchase of utensils and crockery for kitchen and dining b) Purchase of LPG Gas	1 No.	LS  LS  LS	4.00000  0.20000  0.10000
12	Construction of a store room to keep the articles when not in use in nature camp	1 No.	LS	1.00000

26. Aforesaid works were not just development of the existing building, but new constructions were also taken up. Courts below did not consider the aforesaid

documents at all to state whether work involves new structures or it is only development of the existing structures.

27. Next question is whether the work proposed i.e. (i) construction of tent bases with attached bathrooms provided with tents accessories like cots, tables, chairs, (ii) construction of pergola near tented accommodation, (iii) construction of reception cabin and (iv) construction of overhead tank, (v) laying of pipelines etc which were said to be undertaken for the purpose of promoting eco-tourism fall under the category of "ancillary" work mentioned in Section 2(iv)(b) of the Act.

28. ***In M/s.Gateway Hotels and Gateway Resorts Limited, Bangalore versus Nagarahole Budakattu Hakku Sthapana Samithi, Virajpet, Coorg [1997 SCC Online Kar 219]***, similar contention was taken. Work taken up was only to renovate, refurnish and to run the hotel without conferment of any right in the property and to put up structures apart from

existing staff quarters with intention to start boarding and lodging facilities to the Wildlife lovers. In that case also referring to Section 2 of the Act in para 29 of the judgment, it was specifically held as follows:

"29. .... ***In the absence of such an approval no activity of renovation, repairs etc., in terms of the impugned lease deed can be carried on till the approval of the Central Government in terms of Section 2 of the Act is granted.***"

(Emphasis supplied)

29. The Hon'ble Supreme Court in ***Union of India v. Kamath Holiday Resorts Pvt. Ltd. [(1996) 1 SCC 774]*** referred to *supra* held that putting up snack bar and restaurant to cater needs of tourists visiting the forest is not covered under Section 2(b) of the Act and that violates the said provisions.

30. This question fell for consideration before the Kerala High Court in ***Jairaj A.P. versus The Chief Conservator of Forests (Wildlife), Thiruvananthapuram and others [AIR 1996 Ker 362]***. The very same arguments of eco-tourism being part of management of

wildlife forest was raised in the said case and the Division Bench of Kerala High Court in that regard held as follows:

"8. The requirement in Sec.2 for prior approval of Central Government must be strictly construed as any relaxation of it would be perilous to the fast depleting forest wealth of the country. One of the directive principles of State Policy is to "safeguard the forests and wild life of the country" (Article 48A of the Constitution). One of the fundamental duties of every citizen of India is to protect and improve forests (Article 51-A Clause (g)). So clearance of forest area should be allowed only as a stark exception. ***When Parliament insisted that such clearance can be made only with the prior permission of Central Government the rule should be rigorously followed. Forest wealth is already an endangered bounty of nature.***"

(Emphasis supplied)

31. In view of the aforesaid judgments of the Hon'ble Supreme Court and Division Bench Judgment of the this Court, Division Bench judgment of the Rajasthan High Court and other judgments relied upon by learned Additional Advocate General cannot be followed.

32. Having regard to the aforesaid judgments and nature of work mentioned in defendant's own

documents, Courts below were not right in holding that works taken up by the respondents were for promoting ecotourism and that they are ancillary to the management and development of forest wildlife, therefore, Section 2 of the Act is not applicable. The impugned judgments and decrees of the Courts below fit into the criteria laid down by the Supreme Court in **Gurnam Singh's** case for their reversal by this Court.

33. Next question is whether plaintiffs are entitled for mandatory injunction for demolition of structures already put up. While admitting the appeal on 19.02.2015, interim order was issued against respondents prohibiting them from taking up further constructions, expansion etc. of the Muthodi Nature Camp. Respondents have not placed materials to show what all structures they had put up by 19.02.2015.

34. In similar situation in **Union of India vs. Kamath Holiday Resorts Pvt. Ltd.** referred to *supra*, the Hon'ble Supreme Court held that it is open to the forest authorities to seek approval of the Central Government

as required under Section 2 of the Act and abide by the order of the Central Government. Para 7 of the said judgment reads as follows:

"7. As a way out, therefore, we direct that the proposal as mooted by the Collector and approved by his action, together with the objection of the Conservator of Forests be sent by the former to the Central Government under Section 2 of the Forest (Conservation) Act, 1980 read with the rules framed thereunder. The Central Government may on receipt of such proposal by the Collector act in accordance with the provisions of the aforesaid Act and the rules and after obtaining advice from the Advisory Committee pass such orders thereon, which may be warranted in the facts and circumstances, informing the Collector accordingly. The Collector shall thereafter abide by the orders of the Central Government. Let the entire exercise be over within a period of three months from today. The appeal would stand disposed of with these directions. No costs."

35. Ms.Jayna Kothari, learned Senior Counsel relying upon the aforesaid judgment submits that similar procedure can be followed and relief can be moulded accordingly. Having regard to the said submission and the aforesaid reasons, appeal is partly allowed.

The impugned judgments and decrees of the Courts below are hereby set aside.

Suit of the plaintiffs is partly decreed. Defendant No.2 or his subordinates or other officers or servants are hereby restrained from cutting any trees or laying any H.T.Electric line or L.T.Electric line or raising any structure in the suit schedule properties without prior approval of the Central Government as required under Section 2 of the Act.

So far as structures or works already carried out, respondents are hereby directed to submit their proposal of the project in question to the Central Government for post-facto approval/sanction as required under Section 2 of the Act within six months from the date of receipt of copy of this judgment.

If respondents fail to secure approval of the Central Government within the aforesaid period, the structures set up contrary to Section 2 of the Act shall be demolished.

In view of disposal of the appeal, IA No.2/2015  
stand disposed of.

**Sd/-  
JUDGE**

KSR

Not An Official Copy