



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO.100114 OF 2018 (DEC/INJ)

BETWEEN:

1. SRI. HALESHPA S/O SIDDAPPA RODDANAVAR,
AGE: 67 YEARS, OCC: AGRICULTURE,
R/O: NEAR BASAVESHWAR TEMPLE, DODDAPETE,
RANEBENNUR, DIST: HAVERI-581115.
2. SRI. SHIVAPPA S/O SIDDAPPA RODDANAVAR,
AGE: 63 YEARS, OCC: AGRICULTURE,
R/O: NEAR BASAVESHWAR TEMPLE, DODDAPETE,
RANEBENNUR, DIST: HAVERI-581115.
3. SRI. NAGAPPA S/O SIDDAPPA RODDANAVAR,
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O: NEAR BASAVESHWAR TEMPLE, DODDAPETE,
RANEBENNUR, DIST: HAVERI-581115.
4. SMT. JAYAMMA MAHADEVAPPA RODDANAVAR,
AGE: 51 YEARS, OCC: HOUSEHOLD WORK,
R/O: HOSANGADI PLOT, NEAR RAILWAY STATION,
RANEBENNUR, DIST: HAVERI-581115.
5. SRI. ASHOK S/O MAHADEVAPPA RODDANAVAR,
AGE: 35 YEARS, OCC: BUSINESS,
R/O: HOSANGADI PLOT, NEAR RAILWAY STATION,
RANEBENNUR, DIST: HAVERI-581115.
6. SRI. ANIL S/O MAHADEVAPPA RODDANAVAR,
AGE: 32 YEARS, OCC: BUSINESS,
R/O: HOSANGADI PLOT, NEAR RAILWAY STATION,
RANEBENNUR, DIST: HAVERI-581115.
7. SRI. RAVIKUMAR S/O MAHADEVAPPA RODDANAVAR,
AGE: 29 YEARS, OCC: AGRICULTURE WORK,
R/O: HOSANGADI PLOT, NEAR RAILWAY STATION,
RANEBENNUR, DIST: HAVERI-581115.

- APPELLANTS

(BY SRI. N.S. KINI, ADVOCATE)



AND:

1. SMT. JYOTI W/O RAMACHANDRARAO KULKARNI,
AGE: 68 YEARS, OCC: HOUSEHOLD WORK,
R/O: MALAMADDI, NEAR CANARA BANK,
DHARWAD-580007.
 2. SMT. BALAKKA @ VASUDA W/O KRISHNA DESAI,
AGE: 58 YEARS, OCC: HOUSEHOLD WORK, R/O: IYENGAR
ROAD, SHESHADRI PURAM, BENGALURU-560020.
 3. SMT. PUSPA @ MALATI W/O RAMARAO DESAI,
AGE: 63 YEARS, OCC: HOUSEHOLD WORK,
R/O: VIDYANAGAR, HUBBALLI,
DIST: DHARWAD-580004.
 4. SMT. SUBHA W/O SRIRANGANARAYAN PETHKAR,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/O: GANDHI CHOWK, DHARWAD-580001.
 5. SRI. RAMAKRISHNA RAJPUROHIT,
AGE: 63 YEARS, OCC: MEDICAL PRACTITIONER,
R/O: MEHABOOB NAGAR,
ANDHRA PRADESH-509001.
 6. SRI. PAVAN S/O RAMAKRISHNA RAJPUROHIT,
AGE: 35 YEARS, OCC: BUSINESS,
R/O: MEHABOOB NAGAR, ANDHRA PRADESH-509001.
 7. SRI. SHRAVAN S/O RAMAKRISHNA RAJPUROHIT,
AGE: 33 YEARS, OCC: BUSINESS,
R/O: MEHABOOB NAGAR, ANDHRA PRADESH-509001.
- RESPONDENTS

(BY SRI. SHARAT B. NYAMAGOUDAR FOR
SRI. C.S. SHETTAR, ADVOCATES)

THIS REGULAR FIRST APPEAL IS FILED U/S 96 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 16.12.2017 PASSED
BY THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
RANEENNUR DISMISSING O.S. NO.117/2015 & ETC.,

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The plaintiffs have preferred this appeal. They claimed declaration of title over agricultural land to an extent of 7 acres 30 guntas and possessory title in respect of 4 acres 6 guntas in Sy. No. 552 of Ranebennur. They pleaded that the entire land earlier belonged to Akkavva wife of Subbanna Naika, the grandmother of the first defendant. Akkavva executed a will on 10.10.1972 bequeathing the entire property to the first defendant. After the death Akkavva on 28.10.1975, the first defendant became the absolute owner. They also stated that this land was earlier being cultivated by one Hemappa Channabasappa Doddanavara, the grandfather of the plaintiffs as a tenant. After the first defendant became the owner, the plaintiffs' father purchased 7 acres 30 guntas of land from the first defendant on 29.05.1980 for a consideration of Rs.23,250/- and obtained mutation to his name. However the plaintiffs father was also cultivating remaining extent of 4 acres 6 guntas. After the death of



father, plaintiffs continued to cultivate 4 acres 6 guntas of land without any obstruction from anybody else including the defendants and since their possession was more than 12 years, they stated to have acquired title by adverse possession. The first defendant's brother Ravi Naika had filed a suit O.S. No. 172/1989 against her sister, i.e., the first defendant herein, and the plaintiffs' father for declaration of title. But the said suit was dismissed for non prosecution. In the said suit plaintiffs' father took up a defence that he was in possession of 4 acres 6 guntas of land for over 50 years. This being the position, the defendants tried to disturb the plaintiffs' possession by trying to obtain the mutation in their favour. Therefore they brought the suit for the reliefs aforesaid.

2. In the written statement first defendant admitted that out of 11 acres 30 guntas she sold 7 acres 30 guntas of land to the plaintiffs' father and contended specifically that she was in possession of remaining extent of 4 acres



6 guntas of land. She denied the plaintiffs' possession over 4 acres 6 guntas.

3. Having framed necessary issues, the trial court, after assessing the evidence both oral and documentary drew conclusions that plaintiffs were not in possession of 4 acres 6 guntas of land. The trial court referred to the evidence of PW1 to hold that the admissions given by him would disprove the specific plea of the plaintiffs about their possession over 4 acres 6 guntas of land and therefore partly decreed the suit declaring title in respect of 7 acres 30 guntas and dismissing the suit in respect of 4 acres 6 guntas. Therefore the plaintiffs have preferred this appeal.

4. We have heard the arguments of Sri N.S. Kini, learned counsel for the appellants/plaintiffs and Sri Sharad V. Nyamagouda and Sri C.S. Shettar for respondents/defendants.



5. Sri N.S. Kini argued that actually the defendants agreed to sell entire 11 acres 36 guntas of land to the plaintiffs' father. But the sale deed was executed in respect of only 7 acres 30 guntas as evidenced by Ex.P.1. Nevertheless he was in possession of remaining extent of 4 acres 6 guntas. The possession of the plaintiffs' father was without title and the plaintiffs succeeded to the possession. Their possession was adverse to the interest of the defendants. There was no interruption or obstruction to their possession at all. In this view, the trial court ought to have granted possessory title in respect of 4 acres 6 guntas of land.

6. Refuting the argument of Sri N.S. Kini, it was argued by respondents' counsel that the plaintiffs cannot claim adverse possession in respect of 4 acres 6 guntas in as much as the possession remained with the first defendant who was the absolute owner by virtue of a will executed in her favour by Akkavva, i.e., her grandmother. The sale deed was only in respect of 7 acres 30 guntas which the



first defendant does not deny. PW1 has given clear admissions in the cross examination that the possession is with the first defendant and even the revenue entries are made out in her name. The trial court has appreciated the evidence in right perspective and hence appeal cannot be allowed.

7. The point that arises for discussion is:

Whether the trial court has rightly held that plaintiff has not been able to prove adverse possession over 4 acres 6 guntas of land?

8. Ex.P.1 is the sale deed executed by the first defendant in favour of plaintiffs' father. This sale deed shows that the first defendant sold only 7 acres 30 guntas of land in Sy. No. 552 for a consideration of Rs.23,250/-. In order to prove adverse possession, the plaintiffs must first admit the first defendant to be the true owner and they hold the possession openly and hostile to the interest of the true owner. If the cross examination of PW1 is seen, he has given admission that the mutation was



accepted in the name of the first defendant and her sisters on the basis of a report made by them. Seeing the RTC-Ex.P.12 he admitted the suggestion that the defendants are shown as cultivators of 4 acres 6 guntas of land and he has no any document to show that he was in possession of 4 acres 6 guntas of land. His answers also show that in the year 2015 the defendants applied for survey of the land and at that time notices were issued to neighboring land owners including the plaintiffs. His clear admission is that after the survey notice was issued to him, he filed the suit. Though PW2 and PW3 have given evidence that the plaintiffs are in possession, their evidence does not assume significance in view of clear admissions given by PW1 based on which an inference can be drawn that neither he nor other plaintiffs were in possession of 4 acres 6 guntas. They may have claimed that their grandfather was a tenant in the entire land and thus they continued the possession. If this plea is accepted, their specific plea of adverse possession fails.



9. The reappreciation of evidence only discloses that except 7 acres 30 guntas of land which the plaintiffs' father purchased from the first defendant, remaining extent of 4 acres 6 guntas was not sold and its possession was retained by the sellers, i.e., the first defendant. So this being the evidence, a clear conclusion can be drawn that the trial court has not erred in not declaring title over 4 acres 6 guntas of land. Appeal fails and it is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE

BVV
LIST NO.: 1 SL NO.: 31