



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 1417 OF 2017 (DEC/INJ)

BETWEEN:

1. M. RAMANJANEYA @ RAMANJINI,
S/O. MUNIANJANAPPA,
AGED ABOUT 58 YEARS,
RESIDING AT MARUTHI NILAYA,
GEDDALAHALLI,
RMV II STAGE,
BANGALORE – 560 094.
2. M. RAMAMURTHY,
S/O. MUNIANJANAPPA,
AGED ABOUT 46 YEARS,
RESIDING AT NO.151,
AKSHATH NIVAS,
GEDDALAHALLI,
RMV II STAGE,
BANGALORE – 560 094.

...APPELLANTS

(BY SRI. PRASAD B.S., ADVOCATE)

AND:

R. VISHNU,
S/O. RAMAIAH,
AGED ABOUT 42 YEARS,
RESIDING AT NO.262/A,
I MAIN, ASHWATHNAGARA,
BANGALORE – 560 094.

...RESPONDENT

(BY SRI. D. HANUMANTHARAYAPPA, ADVOCATE FOR
SMT. RACHITA NANAIAH M., ADVOCATE)



THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, 1908, AGAINST THE JUDGMENT AND DECREE DATED 28.04.2017, PASSED IN OS.NO.6377/2004 ON THE FILE OF THE XLIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DECREERING THE SUIT FOR PERMANENT INJUNCTION AND MANDATORY INJUNCTION.

THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **UMESH M. ADIGA, J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This appeal is by defendant Nos.1 and 2 challenging the judgment and decree dated 28.04.2017 passed by the learned XLIII Addl. City Civil and Sessions Judge, Bengaluru (CCH-44) (for short 'trial Court'), in O.S.No.6377/2004.

2. We refer to the parties as per their ranks before the trial court.



3. The plaintiff filed the suit for declaration, mandatory injunction and for possession of the suit property. The case of the plaintiff was that he purchased the suit property bearing No.158/360/533/1, present No.158 and CTS No.487, measuring 40 ft. x 41 ft. of Geddalahalli village, Kasaba Hobli, Bengaluru North Taluk, under registered sale deed dated 14.03.1996 from its previous owner M.Shivanna. There was some mistake in the sale deed and that was rectified by the rectification deed dated 29.06.1999. After purchase of the property, plaintiff was put in possession of the suit property. Plaintiff applied to the revenue authorities and got mutated his name in the revenue records. Thereafter, he has been paying taxes to the Bruhat Bengaluru Mahanagara Palike (BBMP).

4. It is further case of the plaintiff that the defendants without any right, title, interest and possession over the suit property, started interfering with his peaceful possession and enjoyment of the same.



Plaintiff requested the defendants, not to interfere with his peaceful possession and enjoyment of the suit property. However they continued to interfere. Plaintiff filed complaint before the concerned police station and it was registered in FIR No.306/2004. In spite of that, defendants continued their illegal interference, therefore he filed the present suit. Initially the suit was for bare injunction. Subsequently by amending the plaint, he sought the relief of declaration, mandatory injunction and for possession along with other reliefs.

5. Both the defendants denied the case of the plaintiff. They denied title of plaintiff and his vendor. The contentions of the defendants are that survey No.34/2 of Geddalahalli village, measuring 3 acres 38 guntas was purchased by the ancestors of the defendants through registered sale deed dated 11.10.1917. They formed a layout in the said land and divided it into eight parts. Each family member was given two parts. They formed the layout in such a way that one member of the family



cannot encroach over the property belonging to another. Plaintiff by virtue of the alleged sale deed is trying to grab the property belonging to the defendants. Plaintiff filed O.S.No.10480/1998 in respect of the suit property against brother-in-law of defendant No.1. The said suit was dismissed. Defendants filed O.S.No.4060/1998 before the Court of City Civil Judge, Bengaluru, against the plaintiff and his vendor and obtained decree against the plaintiff, therefore, the present suit is not maintainable.

6. It is the further case of defendants that they have challenged order of mutation of revenue records in the name of the plaintiff before the Assistant Revenue Officer of Municipal Corporation, which was pending for consideration. The suit property is not at all in existence and it is a fictitious property. No vacant site is available in survey No.34/2 belonging to vendor of plaintiff to sell it in favour of the plaintiff. Plaintiff is a rich and influential person and he is trying to grab the property belonging to the defendants.



7. Defendants further contended that plaintiff's vendor and his brothers were having property bearing Nos.155, 156, 157, 158 and 160, which are in part-3 of the partition deed. Plaintiff has given his address in O.S.No.10480/1996 as house No.160. House No.160 belongs to the vendor of the plaintiff. The panchayat has given house number to the said house of vendor of plaintiff as No.158/360/533/1, which is measuring 35 ft. x 41 ft. The plaintiff's vendor left 5 ft. passage in between his house property and another property, that was also added in the sale deed executed in favour of plaintiff and made its measurement mentioned as 40 ft. x 41 ft.

8. It is the further case of the defendants that defendants have been in possession and enjoyment of their house properties which were constructed much prior to filing of the suit. Prior to the defendants, their ancestors were residing in the said property. Their katha is bearing No.92A, K.S.No.40, measuring 58 ft x 60 ft.



The construction of the house by the defendants was as per the plan and licence given by the corporation. Therefore, question of construction of building by the defendants by encroaching the suit property did not arise. Suit was filed to harass the defendants and gulp their property. With these reasons, defendants prayed to dismiss the suit.

9. From the rival contentions of the parties, the trial court framed the following issues:

Issues :

- 1) *Does plaintiff prove his lawful possession of suit property on the date of suit?*
- 2) *Does plaintiff further prove illegal interference by defendants as alleged?*
- 3) *What order or decree?*

Additional issues framed on 02.01.2010 :

- 1) *Whether plaintiff proves that defendant No.1 has made construction by encroaching on suit A schedule property as alleged in para 10(b) of plaint?*



- 2) *Whether plaintiff proves that defendant No.2 has put up construction by way of encroachment on suit B schedule property as alleged in para 10(c) of the plaint?*
- 3) *Whether plaintiff is entitled for possession of suit A and B schedule property?*
- 4) *Whether plaintiff is entitled for mandatory injunction as sought for?*

Additional issues framed on 17.09.2010 :

- 1) *Whether plaintiff proves that he is the absolute owner of the suit schedule property?*
- 2) *Whether the defendants prove that the suit is hit by the principles of res judicata?*

Additional issues framed on 11.01.2013 :

- 1) *Whether the plaintiff proves the description of suit property?*

10. During the trial of the case, plaintiff examined PWs.1 and 2 and got marked Exs.P-1 to P-54 and closed his evidence. The defendants examined DWs.1 and 2 and got marked Exs.D-1 to D-64.



11. Initially the trial court by its order dated 31.01.2011, appointed Assistant Executive Engineer of Bruhat Bengaluru Mahanagara Palike (BBMP) as court commissioner. He inspected the property and submitted report. His evidence was recorded. The trial court found that his report would not assist the court in arriving right conclusion and not helpful to both the parties, rejected the same. Thereafter, Assistant Director of Land Records, was appointed as court commissioner. He inspected the suit property and submitted report. He was also examined as CW-1 and his report is at Ex.C-2.

12. The trial court after hearing both the parties and appreciating pleadings and evidence on record, answered the issues and by the impugned judgment, decreed the suit. Being aggrieved by the same, the defendants have preferred this appeal on the grounds mentioned in the appeal memo.

13. We have heard the arguments of learned counsel for both the parties.



Learned counsel for the appellants has submitted that the trial court has not considered that survey No.34/2, measuring 3 acres 38 guntas, was purchased by the ancestors of defendants. They divided the said property into eight parts and each member of the family was given two parts. The vendor of the plaintiff constructed a house in portion of the said site executed in favour of plaintiff. The boundaries shown in the sale deed is in respect of the very same property. There is no vacant site belonging to his vendor having said boundary. It is fictitious property. By virtue of said sale deed, plaintiff is claiming property belonging to defendants. The documents produced by the plaintiff do not support his contentions. The Court Commissioner has also stated in his evidence that he could not identify the property. The defendants are in possession and enjoyment of the property and they have constructed the building long prior to filing of the suit. Therefore, question of encroachment by the defendants does not arise. The learned trial Judge has not considered these facts and without appreciating the



documents and pleadings properly, erroneously decreed the suit which needs interference by this Court.

14. Learned counsel for the respondent/plaintiff has supported the impugned judgment and further submitted that plaintiff has purchased the property from his vendor by verifying the revenue records. After purchase of the land, he got entered his name in the municipal records and earlier the Hebbal Notifying Area Committee was maintaining the records and in that record also, name of plaintiff was mutated. Plaintiff has been paying the taxes to the authority from the date of purchase of the land. Defendants have no right over suit property.

15. Plaintiff filed suit against the relative of the defendants in O.S.No.10480/1998. It was dismissed. He preferred an appeal before this court and during the pendency of the said appeal, both parties were directed to maintain *status quo*. Violating the order of *status quo*, the defendants constructed three-storied building in a portion of the suit property. Similarly, defendant No.2 had also



erected tin-sheet shed in a portion of the suit property which are mentioned as plaint `B' and `C' schedule. Highhandedly both the defendants constructed the said building. Therefore, the plaintiff got amended the plaint and sought for other relief. The trial court meticulously considered the said evidence.

16. Learned counsel for the respondent has further submitted that the alleged property said to be belonging to the defendants is in survey No.10 and plaintiff had purchased the property situated in survey No.34/2. There are no revenue records in the name of defendants or their predecessors showing that CTS No.487 belongs to them. Without any such records or title deeds, they are claiming the right over the suit property. The learned trial Judge has properly appreciated materials on record and decreed the suit. It does not call for any interference. Hence prayed to dismiss the appeal.

17. The following questions emerge for our determination:



(1) Whether the learned trial Judge is erred in holding that suit property is in existence and not fictitious property?

(2) Whether learned trial Judge erred in holding that plaintiff is the absolute owner of suit property and defendants have encroached over portion of suit property?

18. Our answer to the above said questions are in the negative for the following reasons:

The plaintiff in support of his contentions, examined himself as PW-1 and he gave detailed evidence. He disclosed all the previous litigations in respect of the suit property and he has produced the documents. Ex.P-23 is sale deed dated 14.03.1996, executed by M.Shivanna in favour of the plaintiff in respect of property bearing No.158/360/533/1 (suit property) measuring 40 ft. North to South and 41 ft. East to West, with 10 ft. x 10 ft. ACC house, of Geddalahalli village, Kasaba Hobli, Bengaluru North Taluk, bounded on East by road, West by Ramanganappa's house, North by Munianjanappa's house and South by road, for a sale consideration of



Rs.4,28,000/-. It appears that there was some mistake in the boundaries mentioned in the sale deed, therefore, registered rectification deed was executed by Shivanna on 29.06.1996 infavour of plaintiff as per Ex.P-24.

19. Copy of the City Survey Enquiry register extract of the suit property is produced at Ex.P-2, wherein the property number is mentioned as `136' and CTS number is mentioned as `487' and it is standing in the name of M.Shivanna and the PT Sheet number is mentioned as `1397'. `NIL' encumbrance certificate is produced at Ex.P-7 in respect of property bearing No.158/360/533/1. Sale transaction between Shivanna and plaintiff is entered therein and name of plaintiff is shown as owner of said property. The said encumbrance certificate is for the period of nine years i.e., from 01.04.1996 to 10.07.2004. It does not depict the name of the defendants in respect of the suit property. The katha extract of BBMP in respect of the suit property is produced at Ex.P-5 for the year 1995 to 2004. The registration of katha of the suit property is



produced at Ex.P-6, which also depicts the name of the plaintiff. The tax paid receipts are produced at Exs.P-4, P-13 and P-26 to P-29 and they are standing in the name of the plaintiff as well as his vendor. The katha extract given by Hebbal Notified Area Committee is produced at Ex.P-30, which also stands in the name of the vendor of the plaintiff in respect of suit property. The measurement and boundaries mentioned in the sale deed tallies with the entries made in Ex.P-30.

20. None of the above documents discloses any right of the defendants over the suit property. These documents came into picture at an undisputed point of time. If really the defendants had any interest over the suit property, then definitely their name would have been mentioned in the records. The defendants contend that their ancestors purchased the property and divided them into eight shares and formed layout etc., If that were to be the case of the defendants, there should have been entries of their names in the corporation records. These



documents clearly establish the title of the plaintiff as well as his vendor over the suit property.

21. The contention of the defendants was that the suit schedule property was a fictitious property and no such property exists within the boundary and measurements as mentioned in the plaint. The said contention is belied by the documents produced by the plaintiff as mentioned above. It is also the contention of the defendants that the property which is alleged to be sold under the sale deed is house property belonging to Shivanna. Said contention also does not hold any water. Ex.P-23 and BBMP records show that it was an open site. The tax paid receipts disclose that property is mentioned as "Site".

22. It appears that after litigation started between the parties; defendant No.1 had challenged giving of CTS number to the suit property before the Joint Director of Land Records, Bengaluru, in case No.CTS(B) Revision 17/02-03 and after hearing the parties, it was



dismissed by order dated 07.11.2008 as per Ex.P-42. The order challenging the city survey number given to the suit property was confirmed by the appellate authority.

23. The plaintiff has produced the map prepared by the Director of Survey Settlement and Land Records, K.R.Circle, Bengaluru, dated 22.05.1997 at Exs.P-43 and P-43(a) and relevant property i.e., suit property bears city survey number 487, which is marked at Ex.P-43(b) and Ex.P-43(c). These documents support the case of the plaintiff that CTS No.487 is not a fictitious property.

24. The defendants claim that suit property belongs to them and they are in possession of the property and they had constructed a house long prior to execution of the alleged sale deed. It is the case of the plaintiff that the property upon which the defendants are claiming their right is not in respect of survey No.34/2, but in respect of survey No.10/1-2-3. The defendants have produced tax paid receipts at Exs.D-12, D-13 and D-14. The said documents show that property No.34/2 in survey



No.10/1-2-3. The submission of learned counsel for the respondent/plaintiff is that to gulp the property belonging to the plaintiff, the defendants have misrepresented before the Court that property No.34/2 mentioned in the tax paid receipts is nothing but survey No.34/2. On the contrary, the said receipts shows that it was survey No.10/1-2-3. The said submission of learned counsel for the respondent/plaintiff is tenable.

25. The katha extract of property bearing No.34/3 and 34/2 are produced by the defendants at Exs.D-17 and D-18. The said documents also show the survey number as No.10/1-2-3. It is not explained by the defendants as to why the survey No.10/1-2-3 is mentioned in the said documents instead of survey No.34/2 if really they are part of survey No.34/2.

26. The defendants have produced certificate of BBMP at Exs.D-21 and D-22 dated 19.09.2003 and the extract of property register at Exs.D-23 and D-24. In the said register also, property number is mentioned as



No.34/2 and survey number is mentioned as No.10/1-2-3. Ex.D-20 is the permission granted to the defendants to construct the building in property NO.34/2 of Geddlahalli village and survey number is mentioned as 10/1-2-3. They were not permitted to construct the building in CTS No.487. The certified copy of katha extract of the year 2007 of defendants' property is at Ex.D-41 and it also shows that the property is in survey No.10/1-2-3 and municipal number is 34/2. These documents corroborate the case of the plaintiff that the properties belong to the defendants are totally different from the suit property.

The defendants have produced katha extract in respect of the suit property standing in the name of Shivanna at Exs.D-42 and D-43. It appears, Shivanna had some other property in CTS No.448 and CTS.No.478. They are not relevant documents.

27. During the pendency of the matter, the trial court appointed Assistant Director of Land Records (ADLR) as a Court Commissioner. The Court Commissioner visited the



property in the presence of both the parties and their counsel and filed a report as per Ex.C-2. The Court Commissioner prepared a sketch as per the city survey records, measured the property and identified the property. He has also showed that the property bearing survey No.487 is measuring East to West 41 ft. and North to South 40 ft. The boundaries are same as mentioned in the sale deed as well as plaint schedule. It is also shown in the said report that there was a building in the said land, the measurement of the same was East to West 21 ft. and North to South 29 ft. and along with that there is also a shed measuring 10 ft. x 12 ft. They were identified by the `letters`. The ADLR has also observed that the property number said to be given to the CTS No.487 by the BBMP as No.158/360/553/1.

28. The defendants have objected for the report, therefore the trial court has recorded his evidence. In a detailed cross-examination, he has stated about the identification of the property, its measurement as well as



construction of the building in the area measuring 21 ft. x 29 ft, as well as 10 ft. x 12 ft. Nothing was brought out to disbelieve his evidence. The ADLR in his evidence has stated that he has measured the property on the basis of City Survey records. Therefore, the submission of learned counsel for the appellants that the ADLR/Court Commissioner has not properly identified the property and that contention is not tenable.

29. From the evidence of the Court Commissioner CW-1 A.R.Kudumabal, it is very clear that suit property is available at the spot and it is not a fictitious property. It was identified by its city survey records and its measurement is also identified by measuring the property. Therefore the contention of the defendants that it was a fictitious property and the plaintiff to gulp the property bearing No.34/2, filed a false suit is not tenable.

The learned trial Judge in detail considered the case of both the parties and rightly came to the conclusion that



plaintiff was able to prove that he is the absolute owner of suit schedule property.

30. It is not in dispute that defendant No.1 had constructed the building in a portion of suit schedule property. It is also noted by the Court Commissioner. The permission to construct a building is placed on record by the defendants and the said permission pertains to the property bearing No.34/2 in survey No.10/1-2-3. It is the case of the plaintiff that during the pendency of this litigation, after passing of the *status quo* order by this court, defendants have high handedly constructed three-storied building. The defendants disputed the same and contended that building was constructed long back. However, the photographs produced by the plaintiff reveal that earlier there was no such building. The defendants without waiting till final adjudication of the matter, appears to have constructed the building highhandedly. Therefore, as rightly ordered by the learned trial Judge, the defendants have to demolish the said construction at



their own cost; if they fail to do so, then the plaintiff shall demolish the same at the cost of the defendants through process of court. The learned trial Judge has also granted an equitable relief in this regard and it does not call for interference.

31. For the above said reasons, we pass the following:

ORDER

The appeal is ***dismissed***, with costs.

The judgment and decree passed in O.S.No.6377/2004, dated 28.04.2017, by the learned XLIII Addl. City Civil and Sessions Judge, Bengaluru, is confirmed.

The appellants/defendants are granted two months time to demolish the building existing on the suit property at their cost, failing which the plaintiff can take appropriate steps for demolition of the said building through process of the court at the cost of defendants.



Registry to transmit the records along with copy of
this judgment to the concerned trial court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

bk/
List No.: 1 Sl No.: 1