



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR SECOND APPEAL NO. 2307 OF 2012

Between:

C.O. Mathews,
Since deceased
Represented by his LRs

1. Mrs. A.Oomen Mathew,
Mother of Late C.O.Mathews,
Aged about 96 years,
2. Susheela Mathew
W/o Late C.O.Mathews,
Aged about 70 years,
3. Anitha Mathew
D/o Late C.O.Mathews,
Aged about 45 years,
4. Sam Mathew
S/o Late C.O.Mathews,
Aged about 42 years,

Appellants No.1 to 4 are
R/at River View Villa,
Hatti.P.O., Madapura, Kodagu,
Presently R/at River View Estate,
Hadageri Village,
Somwarpet Taluk-571 251,
Kodagu District.

...Appellants

(By Sri T.V.Vijay Raghavan, Advocate)

Digitally signed by
VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



And:

1. M/s Srivatsa Estate Pvt. Ltd.,
Represented by its Director,
Anitha Nanda,
W/o Nanda Belliappa,
Aged about 49 years,
Hadageri Village,
Somwarpet Taluk, Kodagu-571 251.
2. Nanda Belliappa
S/o Late A.M.Belliappa,
Aged about 50 years,
Srivatsa Estate, Hadageri Village,
Somwarpet Taluk, Kodagu-571 251.
3. Smt. Anitha Nanda
W/o Nanda Belliappa,
Aged about 49 years,
Srivatsa Estate, Hadageri Village,
Somwarpet Taluk, Kodagu-571 251.

...Respondents

(By Sri K.Shashikiran Shetty, Senior Counsel for
Sri Ismail Zabiulla, Advocate, for R1 to R3)

This RSA is filed under section 100 of CPC against the judgment and decree dated 23.08.2012 passed in R.A.No.69/2007 on the file of Senior Civil Judge, Madikeri, dismissing the appeal and confirming the judgment and decree dated 21.04.2007 passed in O.S.No.35/2001 on the file of Additional Civil Judge (Jr.Dn.), Madikeri and etc.,

Date on which the appeal was reserved for judgment	27.08.2024
Date on which the judgment was pronounced	25.09.2024



This appeal, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

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

CAV JUDGMENT

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

The correctness and legality of the judgment and decree in RA No.69/2007 on the file of Senior Civil Judge, Madikeri is called in question in this second appeal by the plaintiff in O.S.No.35/2001 on the file of Additional Civil Judge (Jr.Dn), Madikeri.

2. Following are the two questions on which this appeal came to be admitted:

- 1. Whether the findings by the Court of facts are vitiated by non-consideration of relevant evidence on record or by essentially wrong approach?*



2. Whether the Courts below are right in giving a finding regarding extinguishment of the easementary right without any pleading or evidence regarding the same?

3. It may not be wrong if we express an opinion at the outset that above two questions need not be answered or do not arise for consideration for the following reasons.

4. Plaintiff's suit was for declaration of absolute right and ownership on a road measuring 16 feet in width and 1980 feet in length starting from Hatti – Mukkodlu public road that passes through Sy.Nos.107/1, 107/2, 107/4, 79 and 76 and ends at Sy.No.49/1 as described in schedule B to the plaint.

5. His case in brief is that on 11.09.1984, there was a partition of properties that jointly belonged to him, his mother, sister and brother-in-law. The properties were divided into three units.



Property described in schedule A to the partition deed fell to his and his mother's share. The property described in schedule C and D were allotted to his sister and brother-in-law. After the execution of the partition deed, there came into existence on the same day a supplementary agreement to rectify a typographical error and according to the supplementary agreement the parties to the partition deed agreed to share the property in such a way that the entire properties situated on the western side of the road would belong to the plaintiff and on the eastern side to his sister and brother-in-law. For the effective management of the respective shares, the sister and the brother-in-law of the plaintiff were given an old bungalow and a cattle shed which was in existence in an enclave on the western side of the road, but rest of the properties were allotted to the plaintiff. The actual allegation is that the defendants who are the subsequent purchasers of



the properties that fell to the share of plaintiff's sister and brother-in-law tried to block the road and denied his right to make use of the same and therefore he brought the suit for the reliefs stated above.

6. The defendants admitted the partition deed dated 11.09.1984 and denied the supplementary agreement which modified the allotment of shares. They also denied that they blocked the road and contended very clearly that in the partition deed itself there is mention about the road meant for common use. The plaintiff has stated about an imaginary road which actually does not exist.

7. The defendants in O.S.No.35/2001 had also filed a suit O.S.No.19/2001 for the relief of permanent injunction to restrain the plaintiff in O.S.No.35/2001 i.e., C.O.Mathews from trespassing into and interfering with their property



in Sy.No.78/2 to a extent of 2-07 acres of coffee estate situate at Hadageri village, Somwarpert Taluk, Madikeri district. In this suit C.O.Mathews being the defendant therein set-up counter claim to stop interference of the plaintiffs from disturbing his right to use the road.

8. Two suits were clubbed and common evidence was recorded by the trial court. The trial court dismissed both the suits and also the counter claim in O.S.No.19/2001. With regard to road, the finding of the trial court is that except the road meant for common use of the parties as mentioned in the partition deed dated 11.09.1984 no other road exists. C.O.Mathews has failed to prove existence of road as described in schedule B of the plaint in O.S.No.35/2001. The first appellate court also arrived at the same conclusion after re-appreciation of evidence. It is also observed that C.O.Mathews approached the court with unclean



hands and he suppressed the fact of common road passing through Sy.No.78.

9. Three first appeals, R.A.No.59/2007, R.A.No.69/2007 and R.A.No.74/2007 came to be filed before the Senior Civil Judge, Madikeri. If the legal representatives of C.O.Mathews preferred the appeals challenging the dismissal of the suit O.S.No.35/2007 and counter claim in S.No.19/2001, Srivatsa Estates Private Limited, the respondent in second appeal filed an appeal challenging the dismissal of O.S.No.19/2001. All the three appeals were dismissed by the first appellate Court.

10. Aggrieved, the legal representatives of C.O.Mathews preferred two second appeals R.S.A.No.2307/2012 which is now under consideration, and R.S.A.No.2308/2012.



11. In R.S.A.No.2308/2012, legal representatives of C.O.Mathews called in question the judgment in R.A.No.74/2007 insofar as it related to dismissing the counter claim in O.S.No.19/2001. But the learned counsel for the appellant in RSA No.2308/2012 filed a memo on 18.09.2019 seeking permission to withdraw the said appeal as he would pursue the remedy in RFA No.1368/2016.

12. RFA No.1368/2016 is a first appeal that arose from judgment in O.S.No.32/2007 filed by Srivatsa Estates Private Limited, Suryakiran Estates Private Limited, Sri A.Nanda Belliyappa and Smt. Anitha Nanda against C.O.Mathews for declaration of their title and possession of properties in Sy.No.107/2, Sy.No.80, Sy.No.78/2, Sy.No.76/2, Sy.No.50 and Sy.No.49/1b of Hadageri village which were all subject matters of the partition dated 11.09.1984. In the said suit



C.O.Mathews was the defendant and he took up the same contention about supplementary agreement which according to him effected some changes in allotment of shares.

13. The trial court decreed the suit O.S.No.32/2007 in favour of the plaintiffs therein and rejected the specific plea of C.O.Mathews about subsequent agreement in regard to modification of shares. Aggrieved by the judgment in this suit, the legal representatives of C.O.Mathews preferred RFA No.1368/2016 which this court has dismissed after re-appreciation of entire evidence.

14. The net effect of all these proceedings is that the specific pleas of C.O.Mathews about modification of the shares by a separate document has not been accepted. Therefore the position as regards enjoyment of their properties remains as reflected in the partition deed dated 11.09.1984.



In the said partition there is a clear mention about road which is meant for common use of all the parties. Therefore this second appeal i.e., RSA No.2307/2012 arising from the judgment in R.A.No.69/2007 does not survive.

15. In the above set of facts and circumstances substantial question of law does not arise. The questions framed at the time of admission are based on facts which do not arise for consideration. Further it may be stated that on account of withdrawal of RSA No.2308/2012, RSA No.2307/2012 does not survive. Hence this second appeal is ***dismissed***.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

KMV
List No.: 1 Sl No.: 1