



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.624 OF 2008 (RES)

BETWEEN:

1. SRI. GANAPATH SHATTU MAYANAGOUDA
SINCE DECEASED BY HIS LRS.
- 1A. SRI. ANUSAYA
W/O. GANAPAT PATIL MAYANGOUDA,
AGE: 75 YEARS,
OCC. HOUSEHOLD WORK,
R/O. HOUSE NO.202,
HANDIGANUR VILLAGE-591143,
TQ. AND DIST. BELAGAVI.
- 1B. MRS. MANGALA HINDURAO DHAMANE
AGE: 56 YEARS, OCC. TEACHER,
R/O. HOUSE NO.204,
RAJA HOUSING SOCIETY,
SAKHARAM COMPLEX,
KOPAR ROAD, DOMBIVALI,
THANE-421202, MAHARASHTRA.
- 1C. MR. SHASHIKANT
S/O. GANAPAT PATIL,
AGE: 52 YEARS, OCC. SELF EMPLOYED,
R/O. HOUSE NO. C 104,
CHANDRESH NIKETAN,
LODHA COMPLEX,
GOLDEN NEST, MIRA ROAD EAST,
THANE-401107, MAHARASHTRA.

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1D. MR. RAJESH S/O. GANAPAT PATIL,
AGE: 49 YEARS, OCC. SELF EMPLOYED,
R/O. HOUSE NO.104, AMBER DEV BUILDING,
NANDIVALI ROAD, OPP. LAXMIKANT HOTEL,
SAMARTH NAGAR, DOMBIVALI EAST,
KALIAN-421204, MAHARASHTRA,

...APPELLANT

(BY SRI. SURABHI KULKARNI, ADVOCATE FOR
SRI. CHETAN MUNNOLI, ADVOCATE)

AND:

1. SRI. RAMACHANDRA YALLAPPA MAYANAGOUDA
AGE: MAJOR, OCC. AGRICULTURE,
R/O. HANDIGANUR,
TALUKA AND DIST. BELAGAVI.

2. SRI. ANNAPPA YALLAPPA MAYANAGOUDA
AGE: MAJOR, OCC. AGRICULTURE,
R/O. HANDIGANUR,
TALUKA AND DIST. BELAGAVI.

...RESPONDENTS

(BY SRI. R.V. ITAGI, ADVOCATE FOR R1;
R2-NOTICE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING
TO SET ASIDE THE JUDGMENT AND DECREE DATED 07.01.2008 IN
REGULAR APPEAL NO.41/2005 ON THE FILE OF THE III ADDL. CIVIL
JUDGE (SR.DN.) BELAGAVI, REVERSING THE JUDGMENT AND
DECREE DATED 07.01.2005 PASSED IN O.S.NO.751/2002 ON THE
FILE OF THE III ADDL. CIVIL JUDGE (JR.DN.) BELAGAVI AT
BELAGAVI AND DISMISSING THE CROSS APPEAL FILED BY THE
APPELLANT AND THIS APPEAL BE ALLOWED WITH COST THROUGH
OUT.

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



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel appearing for the appellant and the learned counsel for the respondents.

2. The plaintiff, who suffered the reversal of the judgment of the Trial Court at the hands of the First Appellate Court in R.A.No.41/2005 is before this Court in appeal.

3. The factual matrix that is relevant for the purpose of this appeal may be summarized as below:

a) The suit property happens to be Sy.No.3/1 measuring 1 acre 22 guntas of Handiganoor Village. The said property was purchased under a sale deed dated 18.02.1963 by father of the plaintiff. It was contented that he is in possession and enjoyment of the property since the date of the sale deed and after the demise of his father, the property has devolved upon the plaintiff.



b) The defendants are the relatives of the plaintiff and they are the owners of Sy.No.3/2, adjoining the suit property on the eastern side.

c) The plaintiff alleged that the defendants without any right, title or interest have illegally encroached and occupied a portion of 5 ft east-west and 25 ft north-south in 1 acre 22 guntas of land belonging to the plaintiff during October 2002. It was contented that the plaintiff and his family members resisted the illegal acts, but they did not heed to the same. Hence, the plaintiff was constrained to file the present suit seeking a decree declaring that the plaintiff is the owner of the suit schedule property shown in the hand sketch, which is part of Sy.No.3/1 and consequential relief that the defendants be directed to remove any encroachment in the property of the plaintiff and demolish the illegal constructions made by them.

d) On service of summons, the defendants appeared and filed their written statement. They contended that they were owners of Sy.No.3/2 to the extent of 21 guntas and it was granted to them by the Land Tribunal. They contended that when the plaintiff admits that the defendants are the owners of



Sy.No.3/2 measuring 21 guntas and their names were entered in the revenue records, there is no reason to hold that the defendants are not the owners to the extent of 21 guntas. It is contented that the plaintiff has not challenged the extent of the land held by the defendants, but on the contrary admitted the case of the defendants and therefore, the suit is not maintainable.

4. On the above contentions, the Trial Court framed the issues and additional issue as below:

"ISSUES

- 1. Whether the Plaintiff proves that, he is the owner of Suit Property?*
- 2. Whether the Plaintiff further proves that the Defendants illegally put up permanent structure in the Suit Property?*
- 3. Whether the Defendant No.2 proves that he constructed farm house in 1998 June and the Plaintiff did not raise objections?*
- 4. Is the Plaintiff entitled for the reliefs claimed?*
- 5. What Order or decree?*



ADDL. ISSUES:

- 1. Whether Plaintiff proves that, the defendant encroached an area of 5' X 25' out of R.S. No. 3/1?"*
- 2. Whether the defendant proves that this suit is barred by limitation?*

5. The plaintiff was examined as PW1 and Ex.P.1 to 9 were marked and the defendant No.2 was examined as DW1 and Ex.D.1 to 7 were marked.

6. After hearing arguments, the Trial Court answered Issue No. 1 to 4 and Additional Issue No. 1 in the affirmative and Additional Issue No. 2 in the negative and decreed the suit as prayed by the plaintiff. It also awarded compensation of ₹10,000/- to the plaintiff from the defendants. Being aggrieved, the defendants approached the First Appellate Court in R.A.No.41/2005 and after hearing both the sides the First Appellate Court reversed the judgment of the Trial Court and dismissed the suit of the plaintiff. Being aggrieved, the plaintiff is before this court in appeal.



7. At the time admitting this appeal, the following substantial question of law was framed by this court:

"Whether the Lower Appellate Court has erred in law in not properly considering the legal effect of the registered sale deed –Ex.P4?"

8. The learned counsel appearing for the appellant submits that the father of the plaintiff had purchased 1 acre 22 guntas from the erstwhile owners of the property, which totally measured 2 acres comprising of Sy.No.3. She submits that the defendants claimed that they had approached the Land Tribunal as tenants under the provisions of the Karnataka Land Reforms Act, 1961 and they were granted the occupancy rights in respect of 21 guntas. It is submitted that obviously such order of the grant by the Land Tribunal is subsequent to 1974. It is submitted that the sale deed of the father of the plaintiff, on which the plaintiff is relying is of the year 1963. Therefore, the defendants could only claim rights in respect of about 18 guntas, which was left in Sy.No.3, when the provisions of the Karnataka Land Reforms Act, 1961 were amended and came into effect in the year 1974. Therefore, it is contended that Ex.P.4 the sale deed



gains pivotal importance. Hence she submits that the First Appellate Court erred in holding that the plaintiff had not proved that there was an encroachment by the defendants.

9. *Per contra*, the learned counsel appearing for the respondents submits that the Trial Court has rightly considered the revenue entry pertaining to the suit survey number and has dealt with the matter. He contends that subsequent to the alleged sale deed of the father of the plaintiff in the year 1963, there was measurement of the property and the revenue as well as survey authorities had prepared Form No.12 and the said Form No.12 as per Ex.D.2 mentioned that the property which was in possession of the plaintiff was only 1 acre 19 guntas but not 1 acre 22 guntas as mentioned in the sale deed. Accordingly, the revenue entries were changed after the inquiry and thereafter, the defendants had filed the Form No.7 before the Land Tribunal, which had granted the occupancy rights. Hence, he submits that no interference is required in the impugned judgment.

10. A careful perusal of the records which are available would show that though the sale deed at Ex.P.4 mentioned that



an area measuring 1 acre 22 guntas in Sy.No.3, which is described as Sy.No.3/1A was sold to the father of the plaintiff, the subsequent events which are borne out of the report show that there was a Form No.12 prepared by the revenue authorities and as per Ex.D.2, the plaintiff was found to be in possession of 1 acre 19 guntas only. This aspect is not explained by the plaintiff by any cogent evidence.

11. It is pertinent to note that during pendency of the first appeal, it was submitted that an appeal against Form No.12 had been filed before the Assistant Commissioner. The outcome of the said appeal is not known. If at all Form No.12 was prepared without holding an enquiry and if the plaintiff is aggrieved by the same, the plaintiff is at liberty to take suitable available remedy under the extant laws. It is also relevant to note that when there is a revenue record which show that while holding an enquiry, Form No.12 was prepared, obviously, there may be some other records showing the K.J.P. (Kami Jast Patrak) which was the basic document to prepare Form No.12. Therefore, it is not known for what reason and how the form No.12 as per Ex.D.2 was prepared.



12. Secondly, it is relevant to note that the defendants though they contended that the Tribunal had granted them occupancy rights in respect of 22 guntas, such evidence was not placed before the Trial Court. Either the Form No.7 filed by the defendants and the order of the Land Tribunal and also the Form No.10 granting the occupancy rights were not at all produced by the defendants. If the defendants are claiming 22 guntas, obviously they should be in a position to substantiate the same by the order of the Land Tribunal and Form No.10 issued to them under the provisions of the Karnataka Land Reform Act.

13. So far as the present appeal is concerned, it is necessary to note that though initially in the year 1963 the father of the plaintiff had purchased 1 acre 22 guntas in Sy.No.3, subsequently there have been changes in the revenue records and the revenue records indicate that the extent of the land held by the plaintiff is only 1 acre 19 guntas. If that is so, the hand sketch map of the plaintiff, where the encroachment is shown as A, B, C and D do not explain the survey map produced at Ex.P.3. Under these circumstances, this Court do not find any reason to



interfere with the judgment of the First Appellate Court in dismissing the suit of the appellant/plaintiff.

14. The First Appellate Court observes that the primary burden of proving the case is on the plaintiff and the plaintiff has failed to establish that it was not 1 acre 19 guntas but it was 1 acre 22 guntas which he was in possession. Therefore, the First Appellate Court has allowed the appeal and dismissed the suit.

15. Under these circumstances, the conclusions of the First Appellate Court cannot be interfered when it has dismissed the suit. The dismissal of the suit by the First Appellate Court and the appeal by this Court would not preclude the plaintiff from pursuing any remedy available under the provisions of the extant laws in ascertaining how 1 acre 22 guntas mentioned in Ex.P.4 was reduced to 1 acre 19 guntas in the revenue records. With this observation, the appeal is ***dismissed***.

**SD/-
(C M JOSHI)
JUDGE**