



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5124 OF 2009 (PAR)

BETWEEN:

SRI. S. ANANTHPADMANABHA SETTY
S/O. S. RAMACHANDRA SETTY,
AGED ABOUT 48 YEARS, OCC. AGRICULTURIST,
R/A. KUDLIGI, VIJAYANAGAR DISTRICT-583135.

...APPELLANT

(BY SMT. V. VIDYA, ADVOCATE FOR
SRI. K. RAGHAVENDRA RAO, ADVOCATE)

AND:

B. KUMARASWAMY
SINCE DEAD BY HIS LRS,

1. SMT. VASANTHA W/O. KUMARASWAMY,
AGED ABOUT 40 YEARS,
2. SRI. UDAY KIRAN
S/O. KUMARASWAMY,
AGED ABOUT 20 YEARS,

RESPONDENT NO.1 AND 2 ARE
RESIDING AT KUDLIGI,
VIJAYANAGAR DISTRICT-583135.

3. SRI. B. SHANMUKHA
SINCE DEAD BY HIS LRS.



- 3A. SMT. POORNIMA S.V
W/O. LATE SRI. B. SHANMUKHA,
AGED ABOUT 48 YEARS,
- 3B. CHANNAMALLIKARJUNA B.S
S/O. LATE SRI. B. SHANMUKHA,
AGE ABOUT 24 YEARS,

RESPONDENTS NO.3(A) AND 3(B) ARE RESIDING AT
HOUSE NO.3, BEHIND GANESHA TEMPLE,
PIPE LINE ROAD CIRCLE, SRINAGAR,
BANASHANKARI, BENGALURU SOUTH,
BENGALURU-560050.

...RESPONDENTS
(BY SRI. M. PALAKSHA, ADVOCATE FOR R1 AND R2(ABSENT)
R3(A) AND R3(B)-HELD SUFFICIENT)

THIS RSA IS FILED U/S. 100 OF CPC, PRAYING TO SET
ASIDE THE JUDGMENT AND DECREE PASSED IN R.A.NO.3/2006
DATED 03.11.2008 PASSED BY THE LEARNED CIVIL JUDGE
(SR.DN.) KUDLIGI AND ALSO THE JUDGMENT AND DECREE
PASSED BY THE CIVIL JUDGE (JR.DN.) AND JMFC, KUDLIGI, IN
O.S.NO..127/1998 DATED 21.12.2005 ALLOW THIS APPEAL
WITH COSTS AND GRANT SUCH OTHER RELIEFS AS THIS
HON'BLE COURT DEEM FIT TO GRANT IN THE CIRCUMSTANCES
OF THE CASE.

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 learned counsel appearing for the appellant.

2. None appeared for the respondents.

3. The plaintiff in O.S.No.127/1998 is before this Court in second appeal assailing the concurrent findings of the Trial Court and the First Appellate Court in R.A.No.3/2006, by which the plaintiff was non-suited.

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

a. The plaintiff contended that he is absolute owner of the suit schedule property, which is the land situated at Kudligi in Survey No.712B measuring 1 acre 14 cents bounded by Survey No.713 on the east, 712 on the west, stream on the north and a road on the south. It was urged by the plaintiff that he has purchased the same from its previous owner Veeranagouda and it has been mutated in the name of the plaintiff and has paid land revenue also.



b. It is contended that the defendant is no way concerned to the suit schedule property and somewhere in the year 1986-87, the defendant colluded with the revenue officers and got his name entered in the record of rights.

c. The defendant's version was that his father had purchased it from one Maribasavanagouda in the year 1938. But since the year 1938, the name of the defendant was not mutated till the year 1988 and even on the date of filing of the suit the defendant was not in possession and enjoyment of the property. Therefore, the plaintiff contended that he is the rightful owner and holder of title of the suit schedule property and the plaintiff's possession was acknowledged by the Tahsildar in his reports dated 18.08.1995 and 22.07.1997.

d. It was alleged that the defendant is unnecessarily disturbing the peaceful possession and enjoyment of the plaintiff by denying the title and therefore, there was a cause of action for filing of the present suit and as such, the plaintiff approached the Trial Court seeking a decree of declaration of title and consequential injunction in respect of the suit schedule property.



5. In response to the suit summons issued to the defendants, the defendant No.1 appeared and filed his written statement.

a. The defendant denied the plaint averments and requested that the plaintiff be put to proof of all the averments made in the plaint. The defendant contended that he is the absolute owner of the suit schedule property and the plaintiff has no right, title or interest over the same and he had inherited the same from his late father, who had purchased an extent of 0.57 acres on 04.06.1938 for a consideration of Rs.40/- under a registered sale deed from one Maribasavanagouda. The remaining 0.57 acres was in peaceful possession and enjoyment of the father of the defendant for more than 60 years without interference by anyone.

b. The defendant further contended that about 2 years back, the father of the defendant died and till then, his father was in a peaceful possession and enjoyment of the property. The defendant contended that the plaintiff had filed



an application before the revenue authorities to cancel the name of the father of the defendant in the revenue records and after enquiry, the same came to be dismissed. The plaintiff initiated the appeal proceedings before the Tahsildar and ultimately, it culminated before the Assistant Commissioner in dismissal. The defendant contended that the title of the plaintiff is not established and he has not disclosed as to how the plaintiff obtained the title over the suit schedule property and therefore, the plaintiff be put to strict proof of the same.

6. During pendency of the suit, the defendant No.1 died and his legal representatives are brought on record and additional written statement was filed by defendant No.1(a), who reiterated the written statement filed by his father. *Inter alia*, it was contended that the vendor of the plaintiff i.e., Veeranagouda had no right, title or interest towards the suit schedule property and therefore, the plaintiff cannot have title in respect of 1.14 acres. *Inter alia*, it was contended that the suit suffers from non-joinder of necessary parties and the



daughters and wife of defendant No.1 were not brought on record. The question of limitation was also raised by the defendant.

7. The defendant No.2 also filed a written statement denying the plaint averments and he reiterated the contentions taken up by the defendant No.1.

8. On the basis of the above contentions, the Trial Court framed following issues and additional issues:

ISSUES

- 1) *Whether the plaintiff proves that he is the absolute owner of the schedule property ?*
- 2) *Further the plaintiff proves that he is in lawful possession and enjoyment of the schedule property?*
- 3) *Whether the plaintiff proves the interference of defendants for his enjoyment of the schedule property?*
- 4) *Whether the defendant proves that he perfected title to the extent of 0.57 cents out of the schedule property by adverse possession?*
- 5) *Is plaintiff entitled to the relief of declaration and injunction?*
- 6) *What order?*



ADDITIONAL ISSUE

Whether the defendants prove that this suit is bad for non-joinder of necessary parties as contended by them in para-5 of their additional written statement?

9. The plaintiff was examined as PW1 and Exs.P1 to P16 were marked. Five witnesses were examined as PW2 to PW6. The defendant was examined as DW1 and Exs.D1 to D10 were marked. Defendant No.1(a) was examined as DW2.

10. After hearing the arguments by both sides, the Trial Court answered issue No.1 to 5 in the 'negative' and additional issue in the 'affirmative' and dismissed the suit.

11. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.3/2006. The First Appellate Court framed the following points for consideration:

- i) *Whether the trial Court is justified in holding that the plaintiff has failed to prove his title and possession over the suit schedule properties?*
- ii) *Whether the trial Court is justified in holding that the defendants have failed to prove their title to an extent of 57 cents by way of adverse possession?*



- iii) Whether the trial Court is justified in holding that the suit of the plaintiff is bad for non-joinder of necessary parties?*
- iv) Whether the Judgment and decree of the trial Court warrants interference?*
- v) What order or decree?*

12. After hearing both the sides, it also reiterated the reasoning of the Trial Court and dismissed the appeal. Being aggrieved, the plaintiff is before this Court in second appeal. This Court while admitting the appeal, framed following substantial question of law:

"Whether the courts below have not properly considered the evidence available on record and, as such, whether the finding of the courts below, that the plaintiff has not proved the case before the Trial Court, would admit of perversity for non-appreciation of the evidence?"

13. During pendency of this appeal, the appellant has filed an application under Order XLI Rule 27 of CPC seeking to produce registered relinquishment deed executed by the legal representatives of the vendor of the plaintiff.



14. The affidavit filed in support of the application contains that he had purchased the suit schedule property from Sanna Veeranagouda, son of B. Komara Gowda and the son of the vendor had been examined as PW3 and the attesters of the sale deed were also examined as PW4 to PW6. However, the sale deed was rejected on the ground that it was not registered. It was contended that there was a legal hurdle to get the sale deed registered, since, it was hit by the provisions of Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Therefore, even though the sale deed was produced, it could not be marked and admitted in evidence. Despite the attesting witnesses and other oral evidence was let in. Now, after repeal of the said Act, the legal heirs of the vendor of the plaintiff have executed a registered relinquishment deed which reiterates the sale that had taken place under the unregistered sale deed. Therefore, being a subsequent act, the appellant has to be permitted to invoke the provisions of Order XLI Rule 27 of CPC.



15. The respondents have not filed any objections to the said application.

16. In the light of the above submissions, before considering the substantial question of law raised by this Court, it is necessary to consider the application filed under Order XLI Rule 27 of CPC. The provisions of Order XLI Rule 27 permit an appellant or a party to the appeal to produce additional evidence, within the narrow window which is available under Rule 27. The Rule 27 envisages three circumstances under which such application may be considered by the Court.

17. The first one being that there was a refusal by the Trial Court to admit such evidence which is now sought to be produced. The second circumstance is that the appellant despite due diligence, could not lay his hands on such evidence which is material and it is of pivotal importance for his case. The third circumstance is that the Appellate Court requires a document to be produced or a witness to be examined to enable a just decision in the matter. Obviously,



the contention of the appellant herein falls within the first category i.e., Rule 27(a). The intrinsic evidence on which the plaintiff wants to rely in the present document was already available before the Trial Court. But it could not be marked for technical reason that it was not registered. Though the document was marked as Ex.P15, only for the purpose of identification, it was not relied by the Trial Court as well as the First Appellate Court. Therefore, to validate the said Ex.P15, the document now sought to be produced is relevant and would assist the Court to come to a proper conclusion. Therefore, the application filed under Order XLI Rule 27 of CPC deserves to be allowed and as such, is allowed.

18. Coming to the substantial question of law that is framed by this Court, a perusal of the judgment of the Trial Court would show that the issue No.1 and 2 were answered in the 'negative' on the ground that he has not produced a valid sale deed showing his title to the suit schedule property. The Trial Court in Paragraph No.17 of its judgment notes that the sale deed is suffering from technical 'abnormalities' as it is



unregistered. Therefore, it discards the unregistered sale deed and holds that the claim of title by the plaintiff over 1.14 acres of the land of the suit schedule property has not been established. Therefore, it holds that the mutation extract and other revenue records are not relevant and as such, it holds that the title to the property is not established.

19. However, in so far as the contention raised by the defendants is concerned, it notes in paragraph No.20 that the DW1 and DW2 were unable to establish their title based on the sale deed alleged to have been executed in the name of their father. Though the DW1 and DW2 had stated that in the year 1936, their father had purchased 57 cents of land, no sale deed was produced to that effect and as such, they have failed to locate where exactly 57 cents of land held by them is situated. It ultimately holds that the defendants have miserably failed to prove that the location and the existence of 57 cents of land in the suit survey number. It also holds that since the defendants failed to admit the title of the plaintiff, their contention about the adverse possession is not



maintainable. On that ground, the Trial Court dismisses the suit.

20. The First Appellate Court in the impugned judgment notices that the plaintiff had failed to establish the title over the suit schedule property since there is no admissible title deed to prove the same. It reiterates the views expressed by the Trial Court and holds that plaintiff having failed to establish his title, the suit is liable to be dismissed and consequently, the injunction also could not be granted.

21. Now, by virtue of the additional evidence which has been placed on record before this Court, which is a registered relinquishment deed executed by the legal representatives of vendors of the plaintiff, it establishes that they have reiterated the sale deed which was produced at Ex.P15. On a combined reading of Ex.P15 and the registered relinquishment deed now produced before this Court, it can be said that the sale has been ratified and document produced is admissible in law. If we examine this document which is now produced before this Court, in the light of the testimony of the PW2 and PW3, it is



crystal clear that the plaintiff had purchased the suit schedule property from one Veeranagouda S/o Kumaragouda Bharmanagoudra. Therefore, there being no other ground on which the claim of the plaintiff was rejected and that the claim of the defendant was not established by them, the plaintiff would succeed in the suit.

22. Though the Trial Court as well as the First Appellate Court were justified in dismissing the suit, since, the registered sale deed was not produced by the plaintiff before the Trial Court or the First Appellate Court, the additional evidence which is now produced before this Court in the form of a registered relinquishment deed executed by the legal representatives of the executants of Ex.P15, and it gets corroboration from PW2 and PW3 as well as Ex.P15, the title of the plaintiff is established.

23. When the title of the plaintiff over the suit schedule property is established and there being no other rebuttal available on record, the appeal deserves to be allowed. In the result, though the substantial question of law is to be



answered in the 'negative', in view of the additional evidence which is now produced before this Court, the appeal deserves to be allowed. Hence the following:

ORDER

- i. The appeal is ***allowed***.
- ii. The impugned judgment of the First Appellate Court and the Trial Court are set aside.
- iii. The suit of the plaintiff is decreed.
- iv. The plaintiff is declared to be the owner in possession of suit schedule property measuring **0.57 cents in Survey No.712B*.
- v. The defendants are restrained from obstructing the peaceful possession and enjoyment of the suit schedule property by the plaintiff.
- vi. No order as to cost.

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

RKM
CT:PA, LIST NO.: 1 SL NO.: 24