



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 5TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5645 OF 2012 (PAR)

BETWEEN:

- 1A. SHRI UMESH MAHADEV KUDACHI
AGE: 37 YEARS, OCC. AGRICULTURE,
R/O. INGALI, TQ. CHIKODI-591201,
DIST. BELAGAVI.
- 1B. SHRI NANDESHWAR MAHADEV KUDACHI
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. INGALI, TQ. CHIKODI-591201,
DIST. BELAGAVI.
- 1C. MISS ANJALI MAHADEV KUDACHI
AGE: 29 YEARS, OCC. HOUSEHOLD WORK,
R/O. INGALI, TQ. CHIKODI-591201,
DIST. BELAGAVI.
- 1D. MISS VIDYA MAHADEV KUDACHI
AGE: 27 YEARS, OCC. HOUSEHOLD WORK,
R/O. INGALI, TQ. CHIKODI-591201,
DIST. BELAGAVI.
- 1E. SMT. PARVATI W/O. MAHADEV KUDACHI,
AGE: 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. INGALI, TQ. CHIKODI-591201,
DIST. BELAGAVI.

...APPELLANTS

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

AND.

1. SHRI. ANNAPPA JINNAPPA MELAVANKI
AGE: 70 YEARS, OCC. AGRICULTURE,

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NARAYANKAR

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R/O. BIJAPUR AND JODATTI HAMLET OF
KABBUR-591201,
TQ. CHIKODI, DIST. BELAGAVI.

2. SHRI PARISA JINNAPPA MELAVANKI
AGE: 70 YEARS, OCC. AGRICULTURE,
R/O. RAJIV NAGAR, CHIKODI AND
JODATTI HAMLET OF KABBUR-591201,
TQ. CHIKODI, DIST. BELAGAVI.
3. SHRI HUVAPPA MALLAPPA KURI
AGE: 31 YEARS, OCC. AGRICULTURE,
NOW R/O. INGALI-591201,
TQ. CHIKODI, DIST. BELAGAVI.
4. SHRI MARUTI MALLAPPA KURI
AGE: 25 YEARS, OCC. AGRICULTURE,
NOW R/O. INGALI-591201,
TQ. CHIKODI, DIST. BELAGAVI.

...RESPONDENTS

(BY SRI. M.B. GUNDAWADE, ADVOCATE FOR C/R2;
R1-ABATED; R3 AND R4-NOTICE SERVED)

THIS RSA IS FILED U/S. 100 OF C.P.C., PRAYING TO CALL FOR
THE RECORDS AND PROCEEDS OF THE CASE AND TO SET ASIDE THE
IMPUGNED JUDGEMENT & DECREE DATED 06.03.2012 PASSED BY
THE FAST TRACK COURT-I, CHIKODI, IN R.A.NO.61/2010 AND
FURTHER THE JUDGMENT AND DECREE DATED 14.07.2010 PASSED BY
THE PRL. CIVIL JUDGE AND JMFC CHIKKODI, IN O.S.NO.53/2005 MAY
KINDLY BE CONFIRMED BY ALLOWING THIS RSA WITH COSTS IN THE
INTEREST OF JUSTICE.

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 appellants.

None appear for respondents.

2. This appeal arises out of the judgment dated 06.03.2012 in R.A.No.61/2010 passed by the learned Presiding Officer, Fast Track Court-I, Chikodi whereby the First Appellate Court allowed the appeal reversing the judgment dated 14.07.2010 in O.S.No.53/2005 passed by the Principal Civil Judge, and JMFC, Chikodi. The Trial Court had decreed the suit of the plaintiff granting the relief of permanent injunction against the defendants from encroaching upon the suit land and interfering with the possession and enjoyment of the plaintiff over the suit property. The First Appellate Court by impugned judgment has allowed the appeal and dismissed the suit. Thus, the plaintiff is before this Court in second appeal.

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

a) The property measuring 18 guntas out of R.S.No.872/3A/2, situated at Kabbur village, Chikodi Taluka is



the suit schedule property. The plaintiff contended that he was owner in possession of the lands bearing R.S.No.872/3A/1 and 872/3A/2, measuring 3 acres 11 guntas and 2 acres 11 guntas, respectively. Thereafter, on 26.08.2004, the plaintiff sold northern 2 acres 19 guntas of land in R.S.No.872/3A/1 (marked as 'GHIJ' in the hand sketch) to one Ashok and Shrees hail under registered sale deed. On the same day, plaintiff also sold the remaining southern 32 guntas of land in the said survey number (marked as 'EFGH' in the sketch) and 1 acre 33 guntas of land in R.S.No.872/3A/2 (marked as 'CDEF' in the sketch) to the defendant No.3 and 4 under registered sale deed. Thus, he retained the suit schedule property measuring 18 guntas in R.S.No.872/3A/2, which is marked as 'ABCD' in the sketch.

b) It was contended that there was a dispute between the plaintiff and defendant No.1 and 2 in O.S.No.115/2003 in respect of a well and therefore, the plaintiff and defendant No.1 are not in talking terms. Since the plaintiff was residing at Sangli for his business, the defendants were unnecessarily picking up quarrel and trying to encroach upon the suit land measuring 18 guntas. On 15.02.2005, the defendants were encroaching upon



the suit schedule properties and therefore, there was a cause of action for the plaintiff to file the suit.

c) On service of summons, the defendants appeared before the Trial Court. The defendant No.2 filed his written statement and the same was adopted by defendant No.1. The defendant No.3 and 4 filed their separate written statement.

d) Defendant No.1 and 2 denied the plaint allegations and disputed the description of the property. They contended that R.S.No.872/3A/1 measures 3 acres 11 guntas and R.S.No.87/3A/2 measures 2 acres 11 guntas, but there are no corresponding entries in the survey records. They alleged that the plaintiff was a litigant person and in spite of registered sale deed, he obstructed defendant No. 1 and 2 from taking water from the well and as such, O.S.No.115/2003 was filed by them and the same is pending. They denied that there was any effort for encroachment into the property of the plaintiff and contended that the plaintiff is making excess alienations than the property held by him to grab the land of the defendants and as such, the suit is *malafide* and liable to be dismissed.



e) They contended that they are the owners in possession of 30 guntas of land in R.S.No.872/3B and it was purchased by them in the year 1941. Therefore, they denied the contentions of the plaintiff and sought for dismissal of the suit. The defendant No.3 and 4 have supported the claim of the plaintiff.

4. On the basis of the above contentions, the following issues were framed by the Trial Court:

"ISSUES

- 1. Whether the plaintiff proves that, he is in lawful possession and enjoyment of the suit property as on the date of suit?*
- 2. Whether the plaintiff further proves the alleged interference by the defendants?*
- 3. What Order or Decree?"*

5. During pendency of the suit, the original plaintiff died and his legal heirs were brought on record. Plaintiff No.1C was examined as PW1 and a witness was examined as PW2. Ex.P.1 to Ex.P4 were marked. The defendant No.2 was examined as DW1 and Ex.D1 to D3 were marked. After hearing the arguments, the



Trial Court held Issue No.1 and Issue No.2 in the affirmative and decreed the suit. Being aggrieved, the defendant No.1 and 2 approached the First Appellate Court in R.A.No.61/2010. After hearing, the First Appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Being aggrieved, legal representatives of the original plaintiff are before this Court.

6. At the time of the admission, the following substantial question of law was framed by this Court:

"Whether the finding of the First Appellate Court that the appellant's/plaintiff's lawful possession on the suit schedule property cannot be ascertained without surveying the entire land and therefore the appellants/plaintiffs are not entitled for injunction is perverse, palpably erroneous and contrary to the categorical admission given by DW.1 in the cross-examination who has admitted in unequivocal terms that the appellants/ plaintiffs having sold 1 acre 33 guntas in Sy.No.872/3A/2 have retained 18 guntas and they are in lawful possession of remaining 18 guntas?"



7. Learned counsel appearing for the appellants would submit that the DW1, in his testimony, admits the alienations made by the original plaintiff in favour of defendant No.3 and 4. He contends that DW1 having admitted that 18 guntas remained with the plaintiff, states that there is no such land. He has taken this Court through the cross-examination of DW1 to establish that DW1 admits all the transactions made by the plaintiff in favour of defendant No.1 and 2 and also that an area measuring 18 guntas was retained by the plaintiff. When that is so, the defendant cannot deny that the plaintiff is not the holder in title of the suit schedule property measuring 18 guntas. It is pointed out that when the plaintiff is claiming right, title and interest over the suit schedule property measuring 18 guntas and the said aspect is admitted by the DW1 in the cross-examination, there was nothing on record, which could have prompted Appellate Court in reversing the judgment of the Trial Court.

8. A perusal of the cross-examination of DW1 would show that he admits that the total extent of the land held by the plaintiff in Survey No.872/3A/2 was 2 acres 11 guntas. It is also an admitted fact that the entire Survey No.872/3A/1 was also



owned by the plaintiff and he had sold the same under the registered sale deed. Insofar as R.S.No.872/3A/2 is concerned, an area measuring 1 acre 33 guntas was sold in favour of defendant No.3 and 4. Therefore, what remains in Survey No.872/3A/2 is 18 guntas and it is the said 18 guntas, which is now subject matter of this suit.

9. The cross examination of PW1 shows that the transactions made by the plaintiff in respect of 1 acre 33 guntas in suit survey number is categorically admitted by him but he denies that there remains 18 guntas under the title of the plaintiff. This contention of the defendant No.1 and 2 appears to be inconsistent and illogical.

10. The First Appellate Court holds that though the revenue records show the existence of 18 guntas, there are no corresponding entries in the survey records. It is worth to note that whether there exists a survey record in respect of the 18 guntas or not, was not the subject matter before the Court. Simply because the defendants deny the plaintiff to be in possession of 18 guntas, it cannot be held that no such property



exists. The record of rights clearly show that the 18 guntas of the suit schedule property is held in favour of the plaintiff.

11. It is one thing to say that though the property exists in the revenue records, there is no survey measurement in respect of the same. But the outright denial of the defendant No.1 and 2 that there is no such property, which is in existence, cannot be accepted. It seems that the defendants No.1 and 2 in their enmity with the plaintiff have denied the existence of the property itself. When the revenue records reveal that 18 guntas stands in the name of the plaintiff, it has to be presumed that he is in possession of the same. In paragraph 3 of the cross-examination of DW1, he admits that 18 guntas of land stands in the name of the plaintiff. He admits that on the southern side of the said 18 guntas of land belonging to the plaintiffs, his property is situated. Therefore, it is clear that there exists certain property in between the property of the defendants and the property, which was sold in favour of defendant No.3 and defendant No.4. This admission of DW1 in the cross-examination is obviously ignored by the First Appellate Court.



12. The First Appellate Court has reversed the finding of the Trial Court on the premise that the title documents are not produced by the appellants. In a suit for injunction, the title documents are not in dispute. The DW1 categorically admitted about the title but however, he says that there is no such property. This is obviously denial of the possession without any ground. Therefore, this Court does not find any merit in the impugned judgment passed by the First Appellate Court. In paragraph 24 of the impugned judgment of the First Appellate Court, it observes as below:

"24. Although, deceased Mahadev has mathematically calculated that he owned 5-As 22-Gs of area with phot kharab of 6-Gs and he has sold an area of 5-As 4-Gs in all by keeping 18-Gs for himself, he has not produced the survey records and the defendant No.1 and 2 owned adjoining land of 30-Gs bearing RS.No.872/3B and the survey settlement could have met the purpose but the application filed in that regard is not pressed. Further the nature of dispute appears to be a boundary dispute and trial court had no jurisdiction to resolve



such boundary dispute and deceased Mahadev could have approached revenue court instead of filing the suit for redress through survey settlement. So also the trial court has not framed issue regarding maintainability of suit, adverse possession, and identification of property and erred in relying upon the deposition of P.W.1 at Ex.P.4 in the absence of supporting survey documents. Therefore, the impugned judgment and decree are liable to be set aside and the suit in O.S.No.53/05 is liable to be dismissed. Accordingly, I answer this point in affirmative."

13. Thus, it appears that the First Appellate Court has laid a thrust on the survey settlement and the records, but not the admitted facts by the defendant. In that view of the matter, if at all there is any discrepancy in respect of the survey, it was open for the DW1 to apply for measurement of the property. When he admits that there remains 18 guntas of land with the plaintiffs, he cannot say that no such property exists. Therefore, the impugned judgment of the First Appellate Court is not sustainable in law. In the result, the substantial question of law raised by this Court is answered in the affirmative and as such



the impugned judgment of the First Appellate Court deserves to be set aside. Hence the following:

ORDER

- (i) *The appeal is allowed.*
- (ii) *The impugned judgment dated 06.03.2012 in R.A.No.61/2010 passed by the learned Presiding Officer, Fast Track Court-I, Chikodi is set aside and the judgment dated 14.07.2010 in O.S.No.53/2005 passed by the Principal Civil Judge, and JMFC, Chikodi, decreeing the suit of the plaintiff is hereby confirmed.*
- (iii) *Costs made easy.*

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

YAN
CT:PA
LIST NO.: 1 SL NO.: 53