



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.5624 OF 2012 (DEC/INJ)

BETWEEN:

1. SRI. KARABASAPPA
S/O. DEVENDRAPPA BAJIRAO,
SINCE DECEASED BY HIS LRS.,
 - 1A. SMT. UMA
W/O. KARABASAPPA BAJIRAO,
AGE: 50 YEARS, OCC. HOUSEHOLD,
 - 1B. SRI. PRASHANTH
S/O. KARABASAPPA BAJIRAO,
AGE: 27 YEARS, OCC. AGRICULTURE,
 - 1C. SRI. SANTOSH
S/O. KARABASAPPA BAJIRAO,
AGE: 25 YEARS, OCC. AGRICULTURE,
- ALL ARE RESIDENTS OF RATTIHALLI,
TQ. HIREKERUR, DIST. HAVERI.

...APPELLANTS

(BY SRI. CHETAN MUNNOLI, ADVOCATE)

AND:

1. SRI. RAMESH
S/O. DEVENDRAPPA BILACHI,
AGE: 38 YEARS, OCC. EMPLOYEE,



R/O. RATTIHALLI, TQ. HIREKERUR.

2. SMT. GANGAVVA
W/O. DEVENDRAPPA BILACHI,
AGE: 53 YEARS, OCC. HOUSEHOLD AND COOLIE,
R/O. RATTIHALLI, TQ. HIREKERUR.
3. SRI. IRAPPA @ ERAPPA
S/O. DEVENDRAPPA BILACHI @ BILAJI,
AGE: 32 YEARS, OCC. COOLIE,
R/O. RATTIHALLI, TQ. HIREKERUR.

...RESPONDENTS

(BY SRI. AVINASH BANAKAR, ADVOCATE FOR R1 TO R3)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT & DECREE DATED 13.04.2012 IN R.A.NO.41/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., HIREKERUR, CONFIRMING THE JUDGMENT AND DECREE DATED 16.06.2007 IN O.S.NO.54/1998 ON THE FILE OF THE CIVIL JUDGE (JR.DN.) & JMFC., HIREKERUR, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 27.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

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

Being aggrieved by the judgment in O.S.No.54/1998, which came to be confirmed in R.A.No.41/2011, defendant No.1 approached this Court in second appeal under Section 100 of C.P.C.

2. The factual matrix as is necessary for the purpose of this appeal may be summarized as below:

- a) Plaintiff No.1 and defendant No.2 are the sons of plaintiff No.2. The suit property is the Gram Panchayath No.325, old No.280/2 situated at Rattihalli village and these aspects are not in dispute.
- b) It is the case of the plaintiffs that earlier the suit property belonged to the husband of plaintiff No.2-Devedrappa. He was owner in possession of the property and he had inherited it from his father Manjoji. Devenrappa died long back and after his death, plaintiff No.1 and defendant No.2 succeeded to the property. Earlier the entire property, including the portion which was sold



by plaintiff No.1 and defendant No.2 was bearing the Gram Panchayat No.280. For their family necessity plaintiff No.1 and defendant No.2 sold a portion of the property and retained the other portion, which is given the Gram Panchayat No.280/2 and later it was given a new No.325.

- c) It is the case of the plaintiffs that after death of Devendrappa, his children along with their mother plaintiff No.2 started residing at Shivamogga doing coolie work. But however, plaintiff No.2 alone was residing at Rattihalli, but at some other place. Taking advantage of the absence of plaintiff No.1 and defendant No.2, defendant No.1 in collusion with the Panchayat Officials got entered his name in the assessment records of the Panchayat and started enjoying the property.
- d) Defendant No.1 on the basis of the illegal entry in the Panchayat extracts & Panchayat Registers, started to deny the right, title and interest of the plaintiffs over the suit property, though he is no way concerned to the same. Therefore, the plaintiffs sought the relief of declaration that they are the owners in title of the Panchayat No.325, earlier No.280/2 and



to restrain the defendants by permanent injunction from interfering with the enjoyment of the said property.

- e) The suit was filed on 04.03.1998. Subsequently, by way of amendment on 13.07.2005, an alternative prayer that if the Court comes to the conclusion that the defendant No.1 is found to be in possession of the property, then the possession may be awarded to the plaintiffs was inserted in the plaint.

3. Defendant No.1 appeared before the Trial Court and filed written statement. He contended that he is the son of sister of Devendrappa and he admitted that the property was belonging to Manjoji. He took up the defence that Devendrappa died 5 years earlier to the death of Manjoji and after death of Devendrappa, the plaintiffs and defendant No.2 were residing outside Rattihalli and there were none else to look after Manjoji except defendant No.1. He contended that Manjoji was intending to give the suit property to defendant No.1 and such intention was expressed by Manjoji to the plaintiffs. Thus, Manjoji had given the suit property bearing the Panchayat No.280/2 to him



and since last 25 years, he is in possession and enjoyment of the same. He has put up his temporary shed and he is in its enjoyment.

4. As per the intention of Manjoji on 11.04.1990, the plaintiffs gave a varadi to enter the name of defendant No.1 in respect of the suit property and accordingly, his name came to be entered in the records. Therefore, he sought for dismissal of the suit.

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

"ISSUES

1. *Whether plaintiffs prove that they are owners over and in lawful possession of the schedule property?*
2. *Whether the defendant proves that he has acquired title over schedule property in a manner as contended in para 8 of his written statement?*
3. *Whether plaintiffs further prove the alleged obstruction by defendant?*



4. *Whether the defendant proves that the suit of the plaintiff is bad for non-joinder of necessary party?*
5. *Whether the defendant further proves that the suit of the plaintiff is time barred?*
6. *Whether the Court fees paid is improper and insufficient?*
7. *Whether the plaintiffs are entitle to the reliefs or declaration, injunction or alternatively for possession of schedule property?*
8. *To what order or decree?*

ADDITIONAL ISSUES

1. *Whether defendant No.1 proves that suit is hit by the principles of Estoppel as narratted in his additional written statement?"*

6. Plaintiff No.1 was examined as PW.1 and Ex.P.1 to P.4 were marked. Defendant No.1 was examined as DW.1, one witness was examined as DW.2 and Ex.D.1 to 11 were marked.

7. After hearing the arguments, the Trial Court held issue No.1 ***partly in the affirmative***, issue Nos.2, 3, 4, 5 and 6 and additional issue in the ***negative*** and issue No.7 in the ***affirmative*** and proceeded to decree the suit and directed



defendant No.1 to hand over the vacant possession of the suit property to the plaintiffs.

8. Being aggrieved, defendant No.1 approached the First Appellate Court in R.A.No.41/2011 and after hearing the parties, the First Appellate Court held that no interference is required in the judgment of the Trial Court and therefore, dismissed the appeal.

9. Being aggrieved, defendant No.1 is before this Court.

10. While the appeal was being heard, the following substantial question of law was framed by this Court:

"Whether the amendment brought to the plaint in the year 2005 seeking possession of the property relates back to the date of filing of the suit in the background of the sale deed executed by the plaintiffs in favour of third party depicts the property occupied by the appellant on the eastern side?"

11. The learned counsel appearing for the appellants submits that the plaintiffs had not sought the possession of the property, when they filed the suit in the year 1998. He contends that the amendment was brought in the year 2005, whereas the



boundaries shown in the admitted document of the plaintiffs shows the possession of the appellant to the suit schedule property. Therefore, he contends that when Ex.D.10 of the year 1990 shows that on the eastern side of the property sold, the property of defendant No.1 is situated, there is an admission by the plaintiffs that defendant No.1 is in possession of the suit property and as such an amendment brought in the year 2005 seeking possession is beyond the period of the limitation. Therefore, the Trial Court could not have granted the relief of possession. In this regard, he relies on the judgment of the Hon'ble Apex Court in the case of ***Vishwambhar and others vs. Laxminarayan (dead) through LRs and another***¹.

12. *Per contra*, the learned counsel appearing for the respondents submits that the limitation starts to run only when the possession of defendant No.1 turns adverse to the interest of the plaintiffs. Simply because defendant No.1 was in possession in the year 1990, it cannot be construed that at that time itself the possession was adverse to the interest of the plaintiffs. Admittedly, it is not the case of the defendants that they have

¹ (2001) 6 SCC 163



perfected the title by adverse possession. Defendant No.1 was none else than the son of the paternal aunt of plaintiff No.1 and defendant No.2. Therefore, when it is not the case of defendant No.1 that his interests had turned hostile or adverse to the interest of the plaintiffs, it cannot be said that Ex.D.10 would indicate the starting point of the limitation. He further contends that the judgment in the case of ***Vishwambhar***, relied by the learned counsel for the appellants was in the context of different facts and therefore, it cannot be applied to the case on hand. He also submitted that the relief claimed for possession is an alternative relief and therefore, that cannot be hit by the law of limitation.

13. The factual aspects as it unfolds from the judgment of the Trial Court reveal that defendant No.1 had initially contended that it was standing in the name of Devendrappa and Manjoji had intended the property to be given to defendant No.1. It is his case that Manjoji insisted the plaintiffs and defendant No.2 to mutate the name of defendant No.1 in respect of half portion of the property. He further contends that it was Manjoji who had given a varadi to the Panchayat to enter the name of



defendant No.1. But later a different contention was taken. In other words, the Trial Court observed that the evidence adduced by defendant No.1 was at variance to the contentions taken up in the written statement.

14. The second point that was considered by the Trial Court is that DW.2 in categorical terms admits that when he purchased the property in the year 1990, the entire property was in possession of the plaintiffs. He admits that entire property was owned by the plaintiffs and defendant No.2 and they have not sold the property to anybody after they sold the half portion to DW.2. So far as the present possession of the suit property is concerned, he states that he does not have the knowledge of it. In other words, he had given a go-bye to his examination-in-chief and pleaded ignorance regarding the possession.

15. The third aspect noticed by the Trial Court is that when the property was in the name of Devendrappa and it was mutated in the name of the plaintiffs and defendant No.2, plaintiff No.2 being the minor guardian; the transition of the property in the name of defendant No.1 is based on a revenue entry in the Panchayat. It also observes that the property has



not been conveyed under any of the means known under law and recognized under the Transfer of Property Act, 1882. It also notices that the value of the property is more than ₹100/-. Therefore, in the absence of any valid conveyance deed, entry of the name of defendant No.1 cannot be construed to be a valid transfer of the title. On that ground, it holds that when the property is held in the name of Devendrappa about 30 years prior to the date of deposition of DW.1, (which is admitted by him), it is not in the mouth of defendant No.1 to say that Manjoji had agreed to transfer the said property to him. Evidently, he happens to be the son of sister of Devendrappa. There is no material on record to show that his grandfather Manjoji had intended to transfer the suit property to him. Therefore, on this ground also, the Trial Court holds that the title had not been transferred to defendant No.1 in any manner known to law. On these grounds, the Trial Court holds that the suit deserves to be decreed granting the relief of declaration of title to the plaintiffs.

16. So far as possession is concerned, the Trial Court holds that Ex.D.10 mentioned that on the eastern side of the suit property, the property of DW.2 is situated and the boundary is



mentioned in Ex.D.10 that it is occupied by defendant No.1. It comes to the conclusion that the plaintiffs are not in possession, but there being a consequential relief of possession, it has to be granted. The Trial Court also comes to the conclusion that the plaintiffs are not in possession, since the name of defendant No.1 is appearing in the panchayat records as per Ex.P.1 to Ex.P.4. Therefore, as a consequential relief, the Trial Court awards the relief of possession.

17. Coming to the question, whether there was a bar of limitation, it may be noted that the relief of possession was not a substantial relief, but it was a consequential relief. It is not the case of the defendant No.1 that his title became adverse to the title of the plaintiffs since the year 1990. There is no such mention anywhere in the written statement that he started enjoying the property as owner. Evidently, the title of defendant No.1 has not been established by him. At one stretch, he contends that the suit property was given to him by Manjoji. In the next breath, he states that plaintiff No.1 and defendant No.2 gave a varadi to the Panchayat to enter his name. In the third breath, he says that there was a partition. Therefore, defendant



No.1 is unable to say in what capacity he was in possession of the property. In that view of the matter, it cannot be said that the possession of the defendants had turned adverse to the interest of the plaintiffs in the year 1990 itself. Evidently, the entry of the name of defendant No.1 was a few months prior to the Ex.D.10 dated 19.11.1991. The Panchayat extracts show that on 10.07.1990, the Khata was changed in the name of defendant No.1. Obviously, it was on the basis of a varadi.

18. The judgment relied by the learned counsel for the appellant in ***vishwambar*** (supra) was pertaining to a set of facts, which is different. In the said case, one of the plaintiffs had attained majority on 05.08.1975 and contended that the transfers made by their mother were without legal necessity and without permission of the Court and as such they are *void ab initio*. The amendment was brought at a later point of time. The prayer for setting aside the sale deeds was not there earlier and it was introduced during the hearing of the suit. It was held that, when the plaintiff had attained majority in the year 1975 and 1978 and the suit was filed in the year 1980 and prayer seeking setting aside the sale deeds was made in the year 1985. In that



background, the Hon'ble Apex Court held that Article 60 of the Limitation Act, 1963 prescribes a period of three years and as such, the prayer was hit by the law of limitation.

19. In the case on hand, the Trial Court considers this aspect in paragraph No.19 of the judgment. It holds that the plaintiffs have admitted in Ex.D.10 that defendant No.1 is in possession of the property and time starts running for the plaintiffs from the date of execution of Ex.D.10 and plaintiffs have to file the suit within twelve years. The suit was filed in the year 1998. Therefore, when the suit was filed in the year 1998, consequential relief was sought in the year 2005, it is the Article 65 of the Limitation Act, 1963 which will apply. It is not shown by the defendant No.1 that entry of his name in Panchayat records was adverse to the title of the plaintiffs and defendant No.2. Hence, there cannot be any doubt that the suit is in time. Moreover the prayer for possession being a consequential relief, it squarely depends upon the declaration which is sought. It is not that the plaintiffs had not sought any consequential relief. Under these circumstances, no fault can be found in the decree passed by the Trial Court. In that view of the matter, the



NC: 2025:KHC-D:16513
RSA No. 5624 of 2012

substantial question of law raised by this Court deserves to be answered in the ***negative***. As a consequence, the appeal fails and the same is ***dismissed***.

SD/-
(C M JOSHI)
JUDGE

SSP
CT:PA
LIST NO.: 1 SL NO.: 61