



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 10TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 5381 OF 2011 (POS-)

BETWEEN:

SRI. SOMASHEKHARAPPA BASAVANNEPPA KALAKOTI
AGE: 48 YEARS,
OCC. AGRILCUTRIST,
R/O. KORADUR, HAVERI DISTRICT-581110.

...APPELLANT

(BY SRI. J.S. SHETTY, ADVOCATE)

AND:

SRI. DAYANANDA CHITTARANJAN KALAKOTI
AGE: 47 YEARS,
OCC. AGRICULTURIST,
R/O. KORADURA,
HAVERI DISTRICT-581110.

...RESPONDENT

(RESPONDENT-NOTICE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING FOR SETTING ASIDE THE JUDGMENT AND DECREE PASSED DATED 21.04.2010 PASSED BY THE ADDITIONAL CIVIL JUDGE (JR.DN.) HAVERI IN O.S.NO.207/2010. CONFIRMED BY THE JUDGMENT AND DECREE DATED 24.01.2011 IN R.A.NO.18/2010, PASSED BY THE SENIOR CIVIL JUDGE, HAVERI. MAY BE KINDLY BEEN SET ASIDE BY ALLOWING THIS APPEAL WITH COST THROUGH OUT, IN THE ENDS OF JUSTICE AND EQUITY.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 26.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:

YASHAVANT
NARAYANKAR

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YASHAVANT
NARAYANKAR
Date: 2025.12.11
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CAV JUDGMENT

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

Being aggrieved by the concurrent findings of the Trial Court in O.S.No.207/2007 and First Appellate Court in R.A.No.18/2010, whereby, the suit came to be decreed, the defendant is in appeal before this Court under Section 100 of Code of Civil Procedure (for short, 'C.P.C').

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

a. The plaintiff filed a suit in O.S.No.207/2007 seeking recovery of possession of the property bearing Survey No.15/1+2+3+4, measuring 24 guntas out of a total of 10 acres 3 guntas situated at Akkur village of Haveri Taluka. It is the case of the plaintiff that the suit schedule property totally measuring 10 acres 3 guntas was allotted to the share of plaintiff in a partition dated 15.11.2002 between himself and his father. Accordingly, his name was appearing in respect of the said property in revenue records.



b. The property of the defendant bearing R.S.No.14/1+2+3 was situated on the eastern side of the property of the plaintiff. During the year 2002 to 2003, the defendant encroached the suit schedule property. The defendant was requested to hand over the possession of the encroached portion in favour of the plaintiff and a Panchayat was also convened and the defendant was advised to deliver the possession.

c. A measurement was done through the surveyor and he confirmed that there was encroachment of the suit schedule property by the defendant. Even then, the defendant refused the report of the surveyor and as such, the plaintiff was constrained to file the suit for recovery of possession of the encroached portion.

3. On service of summons, the defendant appeared and contended that the suit schedule property is not properly described by the plaintiff and there is no such encroachment of 24 guntas by the defendant. He denied the other contentions of the plaintiff including the partition in the year 2002 and he also



denied the possession of the plaintiff over the suit schedule property.

4. However, the defendant admitted that his land in Survey No.14/1+2+3 is on the western side of the land of the plaintiff. He denied that there was strained relationship between the plaintiff and his father and as a result of which, certain portion was left without cultivation, resulting in defendant's encroachment in the suit schedule property

5. He contended that he has been in possession and enjoyment of the property that lies adjacent to the alleged pipeline shown by letters 'BC' in the sketch. It was contended that plaintiff has tried to create facts in order to bring the suit within the limitation by putting-forth the alleged partition between the plaintiff and his father. There was no such survey as contended by the plaintiff and no sketches were prepared by the survey authorities.

6. It is contended that though the father of the plaintiff contended that he was in possession of 10 acres 3 guntas as per records, but in fact, it measures 9 acres 29 guntas. In other



words, it is his contention that there was a pipeline when the irrigation facility was made by taking the water from Varada river along the pipeline shown as 'BC' in the sketch and the land on the western side of the said pipeline was in possession and enjoyment of the defendant since the year 1974. Therefore, it was contended that the suit filed by the plaintiff was not sustainable in law.

7. Based on the above contentions, the Trial Court framed the following issues:

"ISSUES

- 1. Whether plaintiff proves his title and possession over suit schedule property?*
- 2. Whether plaintiff proves the encroachment in suit schedule property?*
- 3. Whether plaintiff proves the validity of P.T sheet dated 12.07.2004?*
- 4. Whether plaintiff proves that since from 2002-03 defendant is cultivating the suit land unlawfully?*
- 5. Whether defendant proves that suit is barred by limitation and court fee is not properly paid?*
- 6. Whether plaintiff entitled for decree prayed in the suit?*
- 7. What order/decreet?"*



8. The plaintiff was examined as PW1 and Exs.P1 to 24 were marked in evidence. The defendant was examined as DW1 and one witness was examined as DW2. The Exs.D1 and D2 were marked.

9. After hearing the arguments, the Trial Court answered the issue Nos.1 to 4 and 6 in the 'affirmative' and issue No. 5 in the 'negative' and decreed the suit.

10. Being aggrieved, the defendant approached the First Appellate Court in R.A.No.18/2010 and after hearing both the sides, the First Appellate Court formed the following points for consideration:

- 1. Whether the trial Court was erred in appreciating the pleading, evidence, documents and the arguments urged before it on both sides?*
- 2. Whether the trial Court was erred in decreeing the suit of the plaintiff?*
- 3. Whether the suit of the plaintiff is barred by law of limitation?*
- 4. Whether the impugned judgement and decree of the trial Court needs interference by this Court?*
- 5. What order?*



11. It held all the points in the 'negative' and dismissed the appeal. Being aggrieved, the defendant is before this Court in appeal.

12. While admitting the appeal, this Court has framed the following substantial questions of law:

"Whether both the courts have committed a serious on error in decreeing the suit by ignoring the material evidence placed record more particularly the admissions culled out from the mouth of PW-1 in regard to land held by defendant up to the pipeline and thus the judgments of both the Courts are perverse and illegal?"

13. Learned counsel appearing for the appellant/defendant submitted that the Trial Court as well as the First Appellate Court have failed to consider the admissions of the PW1 that the defendant is in possession of the property till the pipeline. He submits that the plaintiff heavily relied upon the Plain Table sheet (for short, P.T. sheet) alleged to have been prepared by the survey authorities and failed to recognize that the title of the plaintiff is in dispute. It is contended that the P.T.



sheet relied by the Trial Court as well as the First Appellate Court was not admitted document.

14. But on the other hand, the admission of PW1 clearly showed that the defendant was in possession of the property till the pipeline. The alleged P.T sheet relied by the plaintiff was a document which was brought up behind the back of the defendant and therefore, that could not have been relied by the Courts below. The correctness of the sketch prepared by the survey authorities were not tested anywhere and there was no such notice which was issued to the defendant while the said P.T sheet was brought into existence. In substance, his contention is that the P.T. sheet on which reliance placed by the Courts below was not proved as required under law. In the absence of any such proof, to prove the said P.T. sheet produced at Ex.P10, the suit could not have been decreed by the Courts below. Therefore, he contends that the Courts below have not considered the evidence on record in proper perspective and therefore, the impugned judgment being one sided; ignoring the testimony of PW1 is not sustainable in law.



15. Despite granting several opportunities, none appeared for the respondent.

16. The perusal of the judgment of the Trial Court in O.S.No.207/2007 shows that, it answered issue No.1 regarding the title of the plaintiff over Survey No.15/1+2+3+4 in the 'affirmative' on the basis of the partition between the plaintiff and the defendant. Obviously, the title of the plaintiff over the said survey number is not in dispute before the Court.

17. It is the contention of the plaintiff that the defendant has encroached into his property to the extent of 24 guntas, which is the subject matter of the dispute. The Trial Court while discussing issue Nos.2 and 3, observed that PW1 in his examination in chief has admitted that even before the mutual partition between himself and his father, application was filed on 18.01.20002 to the A.D.L.R to measure the suit schedule property along with the property of the adjacent owners i.e., the defendants. In this regard, he relied on the Ex.P7 issued by the A.D.L.R. As per the said application, the A.D.L.R after issuing notice as per Ex.P8, has conducted the spot measurement on 29.04.2004 and 09.07.2004 and prepared the P.T sheet as per



Ex.P10. As per Ex.P10, he showed an encroachment of 24 guntas in the property of the plaintiff by the defendant. The Trial Court also observes that the measurement was conducted in due compliance of Rule 47 to Rule 53 of the Karnataka Land Revenue Rules and despite issuance of notice as required under Rule 47, the defendant has raised the question of the validity of the said survey. Therefore, holding that the defendant unless shows that the said survey being erroneous, could not have contended that there was no such encroachment of 24 guntas. On that account, the Trial Court holds that the Ex.P10 having been proved, the encroachment is also established.

18. So far as the issue No.4 is concerned, it holds that Ex.P10 shows the exact encroachment only in the year 2004, but not earlier. The Trial Court observes that in the written statement, there is an admission by the defendant that the area of the property of the plaintiff was 10 acres 3 guntas and that of the defendant is 10 acres 16 guntas. But in fact, the area under the cultivation of the plaintiff was only 9 acres 29 guntas. In other words, it was the contention of the defendant that the



actual enjoyment of the property was as shown in the P.T. sheet of the survey department, but it was since long time.

19. While considering issue No.5 regarding limitation, the Trial Court holds that the defendant had not given any application to the revenue authorities to rectify the actual area of the enjoyment in the survey records or revenue records. The Trial Court holds that the exact area of encroachment came to light only when the property was measured and then, the plaintiff had approached the Tahsildar for possession but since, there was a question of adverse possession, the Tahsildar declined to pass any order to clear the encroachment. The Trial Court holds that the plaintiff has filed the suit in the year 2007 and it being based on the title of the plaintiff, it is Article 65 of the Limitation Act which is applicable and therefore, the contention of the defendant that there is bar of limitation cannot be accepted.

20. The First Appellate Court in its judgment reiterate the view taken by the Trial Court and in paragraph Nos.17 and 18 as below:



"17. The evidence placed before the Court by the defendant makes out a case that he has not been in possession and enjoyment of the said 24 guntas of land from the year 1974. Therefore, adverse inference can be drawn that the defendant has been in possession and enjoyment of the said property from the year 2002-03 and onwards. The pleadings or the evidence of the defendant do not specific that the defendant has acquired possession of the suit schedule property adversely to the interest of the plaintiff with an intention to acquire title over it. He also has not been specifically pleaded or stated before the Court that on what date and onwards his possession over the suit schedule property becomes adverse to the title of the plaintiff. The defendant fails to prove title over the suit schedule property by way of adverse possession.

18. As per article 65 of the Limitation Act suit for possession of immovable property or any interest based on title shall be filed within 12 years when the possession of defendant becomes adverse to the plaintiff. The evidence placed before the Court clearly discloses that the defendant has taken possession and enjoyment of the suit schedule property from the year 2007. The proceedings before the revenue Court and surveyor have been initiated immediately after the year 2002-03. This suit was filed within 12 years from the year 2002-03. Therefore, I am of the opinion that it could not be accepted that the suit of the plaintiff is barred by law of limitation. This suit is filed within 12



years from the date of dispossession. Therefore, the suit of the plaintiff is well within the period of limitation."

21. On that account, the First Appellate Court dismisses the appeal of the defendant.

22. A perusal of the cross-examination of PW1 discloses that the partition between himself and his father was on 15.11.2002. However, his father had filed an application for measurement of the property on 18.01.2002. Though, he admits that in between Survey Nos.15 and 14, there was a pipeline. He denies that the said pipeline was the boundary of Survey Nos.14 and 15. He admits that the enjoyment of the property by his father and the defendant was on the two sides of the said pipeline since the year 1974. It is this elicitation of the PW1 that is contended to be an admission.

23. The testimony of the PW1 would show that the PW1 admit that there was a partition between himself and his father but he denies that the pipeline was the boundary. However, he admits that the enjoyment by plaintiff/defendant was on the either side of the said pipeline.



24. It is pertinent to note that the reliance of the plaintiff is on the P.T sheet, which is produced at Ex.P10. Obviously, Ex.P10 has come into existence on the basis of a survey which was conducted in accordance with the land revenue rules. The correctness or otherwise of the procedure followed by the survey authorities has not been questioned by the defendant anywhere. Ex.P10 came into existence on the basis of a valid survey. Though, a feeble attempt is made by the learned counsel appearing for the appellant/defendant that no notice was served upon him while conducting the survey which led to preparation of the P.T sheet as per Ex.P10, no discernible evidence is available on record which would render the Ex.P10 otiose.

25. On the contrary, the Exs.P7, 8 and 9 would reveal that notices had been sent by the survey department to the defendant also indicating the date on which the survey would be conducted. It is in pursuance to such notice, which may be found at Exs.P11 and 12 also, the survey was conducted.

26. In pursuance to the said survey, a proceeding was initiated before the Tahsildar, Haveri as per Ex.P13 and it culminated in a direction that the possession of the encroached



portion can be given only through a decision of the Court. The order of the Tahsildar may be found at Ex.P16. It is worth to note, the defendant raised the question of his possession by way of adverse possession only before the Tahsildar. He had not questioned the correctness or otherwise of the survey report as per Ex.P10. Therefore, when the documentary evidence is available on record, which shows that the exact area of encroachment by the defendant came to light only after the survey as per Ex.P10, the oral testimony of PW1 that the enjoyment was in pursuance to the pipeline as shown at letters 'BC' in a sketch cannot be of much relevance. Till the survey report was prepared as per Ex.P10, the plaintiff was not in the knowledge of the alleged encroachment by the defendant. Therefore, it cannot be held that the plaintiff was well within the knowledge of the alleged encroachment by the defendant since the year 1974. It may be true that the enjoyment was on the either side of the pipeline since the year 1974 but the plaintiff had no knowledge that beyond the said pipeline, the plaintiff had about 24 guntas of land belonging to him. Therefore, the contention of the appellant that plaintiff was well within the



knowledge of the alleged encroachment since the year 1974 cannot be accepted.

27. The next aspect which needs to be looked into is about the limitation. It is worth to note that the plaintiff seek the possession of the encroached portion not on the basis of the previous possession, in which case it would be Article 58 of the Limitation Act which that be applicable. The plaintiff is claiming the possession of the property on the basis of his title to the property, which is encroached by the defendant. Obviously, the exact area of encroachment came to the knowledge of the plaintiff only when survey was conducted in the year 2004 as per Ex.P10. Obviously, Ex.P10 was prepared on 09.07.2004. When the claim is based on the title, and unless it is shown by the defendant that such possession of the defendant was adverse to the original owner since the year 1974, the limitation starts from the year 2004 and runs for 12 years. This view taken by the Trial Court and the First Appellate Court cannot be found fault with.

28. The third aspect to be noted is that if a document is a private document, it needs to be proved as required under law. In the case on hand, the notices issued by the surveyor as per



rules and the preparation of the P.T sheet as per rules are not in dispute. Therefore, when the survey is conducted as per rules, and when it is not shown that the rules have been violated for preparing Ex.P10, it is not in the mouth of the defendant to dispute the same.

29. In that view of the matter, none of the contentions raised by the appellant in this appeal are sustainable in law. The admissions of the PW1 do not constitute an admission to hold that the plaintiff was well within the knowledge of the encroachment of 24 guntas by the defendant much prior to the survey and preparation of the P.T sheet as per Ex.P10. Hence, the substantial question of law is answered in the 'negative'. Consequently, the appeal is bereft of any merits and as such, the same is liable to be dismissed. Hence, the following:

ORDER

- i. The appeal is ***dismissed*** with costs.
- ii. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive



NC: 2025:KHC-D:17839
RSA No. 5381 of 2011

for consideration and are disposed of
accordingly.

SD/-
(C M JOSHI)
JUDGE

RKM
CT:PA
List No.: 1 SI No.: 65