



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 3RD DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100144 OF 2021 (DEC/INJ)

BETWEEN:

SRI. KUDURI CHIDANANDAPPA
S/O. MALIYAPPA,
AGED ABOUT 73 YEARS, HINDU,
AGRICULTURIST,
R/O. OLD AMARAVATHI ROAD,
S.R. NAGAR,
HOSAPETE POST AND TALUK,
BALLARI DISTRICT-583201.

...APPELLANT

(BY SRI. SATHISH M.S, ADVOCATE)

AND:

YASHAVANT
NARAYANKAR

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YASHAVANT
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SMT. H.DEVAMMA W/O. H.LINGAPPA,
AGED ABOUT 55 YEARS, HINDU,
R/O. 18TH WARD,
HOSAPETE POST AND TALUK,
BALLARI DISTRICT-583201,

SINCE DECEASED BY HER LRS.,

1. H. SRINIVASA S/O. LATE H. DEVAMMA,
AGED ABOUT 42 YEARS,
2. KUMARI H. AMBIKA D/O. H. DEVAMMA,
AGED ABOUT 37 YEARS,



3. SMT. K. BHAVANI W/O. K. AMBANNA
D/O. H DEVAMMA,
AGED ABOUT 45 YEARS,
OCC. HOUSEWIFE,

ALL ARE HINDUS, R/O. 27TH WARD,
CHAPPARADAHALLI,
NEAR THONDE MASZID,
HOSAPETE, BALLARI DISTRICT.

4. SMT. BHADRAVATHI W/O. MANJUNATHA
D/O. H. LINGAPPA,
AGED ABOUT 28 YEARS,
HINDU, HOUSEWIFE,
R/O. 28TH WARD, CHAPPARADAHALLI,
HOSPETE, BALLARI DISTRICT.

...RESPONDENTS

(BY SRI. RAJASHEKHAR B. HALLI, ADVOCATE)

RSA FILED U/SEC.100 OF CPC, 1908, PRAYING TO CALL
FOR THE ENTIRE RECORDS AND TO SET ASIDE THE IMPUGNED
JUDGMENT AND DECREE IN R.A.NO.25/2017 PASSED BY THE
ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS, HOSAPETE, DATED 27.11.2020 AND IMPUGNED
JUDGMENT AND DECREE PASSED IN O.S.NO.209/2012 ON THE
FILE OF THE ADDITIONAL CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, HOSEPETE, BY ALLOWING THIS
APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ORDERS 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 respondents.

2. The defendant before the Additional Civil Judge and JMFC, Hosapete in O.S.No.209/2012, who suffered the decree at the hands of the Trial Court and dismissal of the First Appeal in R.A.No.25/2017 dated 27.11.2020 by the learned Additional Senior Civil Judge and JMFC, Hosapete is before this Court in this second appeal.

3. The factual matrix that is relevant for the purpose of this appeal is that the plaintiff is the sole and absolute owner in possession of the suit schedule property and he purchased the same under the sale deed dated 26.01.1994 from one Bharmappa. The defendant is a neighbour of the plaintiff on the northern side of the suit property. When the plaintiff was away from his village, the defendant allegedly encroached the suit property and constructed a building thereon. On coming to know that there was encroachment, the plaintiff issued a legal notice



calling upon the defendant to remove the unauthorized construction and when it was not heeded to, the plaintiff was constrained to file the suit seeking possession of the encroached portion.

4. On being summoned by the Trial Court, the defendant appeared and resisted the suit by filing the written statement. In the written statement, the defendant denied the contentions of the plaintiff that there was any encroachment by him. He contended that he has purchased his property from the said Bharmappa under registered sale deed dated 01.10.1990 and has constructed a building thereon. He also contended that he purchased other neighbouring plots from Bharmappa and has put up construction. It is his case that the building constructed by him includes the property which he has purchased from one Yerriswami also and therefore, the extent of the building constructed is more than the property, which the defendant has purchased from the said Bharmappa. Hence, he contends that there is no such encroachment by him. Apart from that he states that there is a dispute between the defendant and one Laxmibai



in respect of the property situated at the western side and it ended in compromise.

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

"ISSUES

1. *Whether the plaintiff proves that, she is absolute owner of suit schedule property?*
2. *Whether the plaintiff further proves that, defendant made encroachment unauthorisedly by making construction towards northern side of suit schedule property?*
3. *Whether defendant proves that, the identity of the property is the plaintiff has described is not at all in existence?*
4. *Whether the defendant proves that the suit is barred by law of limitation?*
5. *Whether the Court fee is paid proper?*
6. *Whether the plaintiff is entitled for the relief as prayed for?*
7. *What order or decree?*



Addl. Issue: *Whether the defendant proves the suit is bad for non-joinder of necessary parties?"*

6. The plaintiff was examined as PW2 and Ex.P1 to Ex.P9 were marked. The defendant was examined as DW1 and Ex.D1 to Ex.D9 were marked. Three witnesses were also examined as DW2 to DW4.

7. After hearing the arguments, the Trial Court answered the issue No.1, 2 and 6 in favour of the plaintiff and decreed the suit directing the defendant to vacate the encroached portion and handover the same to the plaintiff.

8. Being aggrieved by the same, the defendant approached the First Appellate Court in R.A.No.25/2017. In the said appeal, the defendant also filed an application under Order XLI Rule 27 of CPC seeking to produce certain additional documents contending that he could not trace those documents earlier and the documents are very much essential for just disposal of the appeal. The said application was opposed by the respondent therein by filing objections.



9. The First Appellate Court heard the arguments and dismissed the appeal but it did not consider the application filed under Order XLI Rule 27 of CPC.

10. Now the learned counsel for the appellant contends that those documents which were sought to be produced under Order XLI Rule 27 of CPC are important and pivotal documents for just decision in the matter. It is submitted that the documents sought to be produced are the sale deed under which he purchased the adjoining property from one Yerriswami. It is pointed out that the Trial Court in paragraph 13 observes that though there was a contention by the defendant that he has purchased the adjoining property, such documents were not produced and therefore, it has proceeded to decree the suit. Hence, he submits that the impugned judgment, bereft of noticing the application filed under Order XLI Rule 27 of CPC is vitiated and the First appellate Court was duty bound in considering the said application. Hence, he seeks to set aside the impugned judgment.

11. Per contra, learned counsel appearing for the respondent/plaintiff submits that even though the First Appellate



Court has not disposed of the application filed under Order XLI Rule 27 of CPC, the documents sought to be produced are not of much relevance to the case since it is concerning a property which is different than the suit schedule property. He submits that even without the said document, which is now sought to be produced, the judgment of the Trial Court is sustainable and as such, the contention of the appellant is unmerited.

12. On perusal of the records, it is evident that in the written statement, the defendant has taken up the contention that he has constructed building on the property which includes the property purchased from Bharmappa as well as Yerriswami. The written statement also mentioned that the building is in the property, which was compromised with Laxmibai.

13. A perusal of the judgment of the Trial Court in paragraph 13 shows that it has considered this contention of the defendant and came to the conclusion that the sale deed is not produced and therefore, such a contention of the defendant cannot be acceded to. In paragraph 13, the Trial Court observes as below:



"13. ****The documents and evidence on record clearly shows the defendant has constructed the building measuring 30.5 Ft X 62.5Ft. On perusing the Ex.D-2 defendant sale deed defendant has purchased the property East-West: 15Ft, East-West northern side 30Ft, North-South: 60ft. Defendant having East-West only 15Ft how can the defendant has constructed the building measuring 30.5Ft, it clearly shows that defendant has encroached the suit property and constructed the building. Apart from that DW-1 has admitted that he has purchased 15Ft property from Mr.Yerriswamy under the sale deed. However the defendant has not produced the said sale deed. The defendant has also state that the defendant entered into compromise with Lakshmi Bai adjacent property owner and she has left 6Ft road to the defendant. The defendant has also not produced the said compromise decree. Under these circumstances, it clearly shows that the defendant has no right to construct the building more than the measurement mentioned in his sale deed."*

(emphasis supplied)

14. It is pertinent to note that when the Trial Court has come to such conclusion, it was incumbent upon the First Appellate Court to consider with the application filed under Order XLI Rule 27 of CPC and then to consider the merits of the appeal.



15. The First Appellate Court has not dealt with the said application filed by the appellant herein and it has simply reiterated the findings of the Trial Court. Therefore, the First Appellate Court has clearly erred in jumping to the conclusion that the judgment of the Trial Court has to be upheld. In coming to such a conclusion, it was incumbent upon the First Appellate Court to consider the application filed under Order XLI Rule 27 of CPC either to permit for production of additional documents or to reject the same under the extant provisions of Order XLI Rule 27 of CPC. Therefore, this is a case where the impugned judgment of the First Appellate Court needs to be set aside and the matter has to be remitted back to the First Appellate Court with a direction to decide the application and the appeal on merits. Ordered accordingly.

16. It is needless to say that this Court has not expressed any opinion on merits of the application under Order XLI Rule 27 of CPC, which shall be considered by the First Appellate Court in the light of the judgment of the Hon'ble Apex



Court in the case of ***Union of India vs. Ibrahim Uddin and another¹***.

17. Since the suit is of the year 2012, the First Appellate Court is directed to dispose of the appeal expeditiously preferably within the period of four months from the date of appearance of the parties before it.

18. Both the parties are directed to appear before the First Appellate Court on 07.01.2026, without waiting for notice.

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

YAN
CT:PA
LIST NO.: 1 SL NO.: 5

¹ (2012) 8 SCC 148