



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.5461 OF 2011 (DEC/INJ)

BETWEEN:

K. SUGAPPA S/O. CHANNAPPA,
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. KARATAGI,
TQ. GANGAVATHI-560021.

...APPELLANT

(BY SRI. ANOOP G. DESHPANDE, ADVOCATE)

AND:

SANGAMMA W/O. VIRUPAKSHAPPA PATIL.
AGE: MAJOR, OCC/ PRIVATE DOCTOR,
R/O. HOSALLI ROAD,
GANGAVATHI-560021.

...RESPONDENT

(BY SRI. NEELENDRA D. GUNDE, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO CALL FOR THE RECORDS AND TO SET ASIDE THE JUDGMENT AND DECREE DATED 24.02.2010 MADE IN O.S.NO.101/2006 ON THE FILE OF THE PRL. CIVIL JUDGE (JUNIOR DIVISION), GANGAVATHI AND JUDGMENT DATED 18.02.2011 AND DECREE DATED 03.03.2011 IN R.A.NO.9/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, GANGAVATHI AS THE SAME BEING ERRONEOUS AND NOT SUSTAINABLE IN LAW AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

YASHAVANT
NARAYANKAR

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YASHAVANT
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Date: 2025.11.29
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ORAL JUDGMENT

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

This appeal arises out of the judgment in R.A.No.9/2010, whereby the judgment of the Trial Court in O.S.No.101/2006 dated 24.02.2010 was confirmed.

2. The factual matrix of the case is that the plaintiff is the owner and possessor of an open site bearing No.6 at Sivaparvati Nagar, Hosahalli Road, Gangavathi and bounded by a 15 feet road towards east. The plaintiff had purchased it under the registered sale deed dated 29.09.1995 and 18.11.2006. When the plaintiff was in his site, the defendant along with her henchmen tried to trespass into the suit site and dispossessed the plaintiff. Therefore, the plaintiff was constrained to file the suit for declaration of his title and consequential relief of injunction and to restrain the defendant.

3. The suit was resisted by the defendants contending that there is a land of one Mayur Patil, who is her stepson, and the roads are formed illegally in the property of the said Mayur Patil and therefore, the plaintiff has no right to use the said road.



4. On the basis of the said contention, the following issues and additional issue were framed:

"ISSUES

1. *Whether the plaintiff proves that he is in lawful possession of the suit schedule property?*
2. *Whether the plaintiff further proves that his peaceful possession and enjoyment is interfered with, by the defendant?*
3. *Whether the defendant proves that towards the eastern side of the suit plot there is a land bearing Sy. No.8/2/2 belonging to one Mayur Patil, further the plaintiff colluded with deed writer mentioned wrong boundaries in the sale deed?*
4. *Whether the plaintiff is entitled for relief claimed?*
5. *What order or decree?*

ADDL. ISSUES

1. *Whether the plaintiff proves that he is an absolute owner and possessor of suit schedule property?*
2. *Whether the suit is properly valued and court fee paid is sufficient?"*

5. After the trial, the Trial Court came to the conclusion that though the plaintiff has proved the ownership of his site, he is unable to prove the disturbance caused by the defendant. It was held that when there is no interference that has been proved by the plaintiff, the suit would fail and therefore, it dismissed the



suit. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.9/2010 and by judgment and decree dated 18.02.2011, the First Appellate Court dismissed the appeal confirming the judgment of the Trial Court.

6. Now, the learned counsel appearing for the appellant submits that the existence of the road on the eastern side has been decided by this Court in RSA No.100341/2016 and RSA No.100393/2016 and therefore, the appeal has to be disposed off in terms of the observations made in the above said appeals. It is submitted that the appellant is no more in possession of the property since he has sold it to somebody else.

7. It is pertinent to note that when the appellant admittedly has disposed of the property regarding which he claims the relief of injunction, being a remedy in personam, it cannot survive when the appellant cannot be in lawful possession of the property. In that view of the matter, the appeal does not survive.

8. It is made clear that the finding insofar as additional issue No.1 is concerned, it was answered by the Trial Court in



the affirmative and that was not dealt in detail by the First Appellate Court and therefore, it would prevail.

9. It is also relevant to note that the existence of the road towards the eastern side of the site of the plaintiff is concerned, the finding in the RSA No.100341/2016 and RSA No.100393/2016, which is based on the report of the ADLR, who was appointed as a Court Commissioner at the instance of this Court, would be binding.

10. With these observations, the appeal is disposed of.

11. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed off.

SD/-
(C M JOSHI)
JUDGE