



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5759 OF 2010 (INJ)

BETWEEN:

1. SUDHINDRACHARYA
S/O. HANUMANTACHARYA DIGGAVI
URF KAMPLI,
SINCE DECEASED BY HIS LRS.
- 1A. SMT. GEETABAI
W/O. SUDHINDRACHARYA KAMPLI,
AGED ABOUT 66 YEARS,
OCC. HOUSEHOLD WORK,
R/O. RAYARMATH, MALAMADDI,
DHARWAD-580007.
- 1B. SMT. VANI
W/O. SUDHEENDRA HUILGOL,
AGED ABOUT 48 YEARS,
OCC. HOUSEHOLD WORK,
R/O. RAYARMATH, MALAMADDI,
DHARWAD-580007.
- 1C. SMT. SANGEETA
W/O. JAYASIMHA D
AGED ABOUT 45 YEARS,
OCC. HOUSEHOLD WORK,
R/O. RAYARMATH, MALAMADDI,
DHARWAD-580007.
- 1D. SMT. NAINA
W/O. ANAND KULKARNI,
AGED ABOUT 43 YEARS,

YASHAVANT
NARAYANKAR

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OCC. HOUSEHOLD WORK,
R/O. RAYARMATH,
MALAMADDI,
DHARWAD-580007.

...APPELLANTS

(BY SRI. SAGAR S. HEGDE, ADVOCATE FOR
SRI. S.R. HEGDE, ADVOCATE)

AND:

THE COMMISSIONER,
HUBLI-DHARWAD MUNICIPAL CORPORATION,
DHARWAD.

...RESPONDENT

(BY SRI. IRANAGOUDA K. KABBUR, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC., PRAYING TO SET
ASIDE THE JUDGEMENT AND DECREE IN R.A.NO.122/2010,
DATED 15.07.2010, ON THE FILE OF THE II ADDITIONAL
DISTRICT AND SESSIONS JUDGE, AT DHARWAD AND TO
CONFIRM THE JUDGMENT AND DECREE PASSED IN
O.S.NO.344/2002 DATED 19.02.2005 ON THE FILE OF THE PRL.
CIVIL JUDGE COURT (JR. DN.) & PRL. J.M.F.C., COURT,
DHARWAD BY ALLOWING THIS APPEAL, WITH COST IN THE
ENDS OF JUSTICE AND EQUITY.

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



ORAL JUDGMENT

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

Heard the learned counsel for the appellants and the learned counsel for the respondent.

2. The appellant was the plaintiff in O.S.No.344/2002 before the Trial Court, who succeeded in getting a permanent injunction against the defendant-corporation from demolishing or damaging the compound wall, which was put surrounding his property. The said judgment of the Trial Court in O.S.No.344/2002 dated 19.02.2005 was questioned before the First Appellate Court in R.A.No.122/2010. By impugned judgment dated 15.07.2010, the First Appellate Court allowed the appeal and dismissed the suit of the plaintiff. It is the said judgment of the First Appellate Court, which is assailed in the present second appeal.

3. The factual matrix that is relevant for the purpose of this appeal is that the plaintiff claims to be the



owner of the property bearing CTS No.301/II-2B/3 and the property in dispute is the compound wall of the length of 100 ft. It is the case of the plaintiff that he is the absolute owner of CTS No.301/II-2B/3 of Dharwad and it was purchased by him under a sale deed dated 19.05.1960. Later, it was subdivided amongst the brothers. The plaintiff contended that he has constructed a compound wall with due permission of the defendant-corporation and has also obtained a completion certificate.

4. The issuance of the completion certificate is disputed by the defendant-corporation. It was contented that there were some bunk shops, which were put adjoining the compound wall, which was opposed by the plaintiff and he had filed a suit in O.S.No.329/2002, which came to be decreed. Later, the defendant-corporation intended to demolish the compound wall constructed by the plaintiff without issuing any notice to the plaintiff and therefore, he was constrained to approach the Trial Court seeking an



injunction. The plaintiff had sought the following prayer in the suit:

Prayer

"The Plaintiffs most humbly prays as under:-

- a. An order of permanent injunction please be granted restraining the Defendant or anybody on its behalf from demolishing by damaging the suit compound wall.*
- b. Cost of the proceedings be awarded.*
- c. Any other appropriate relief that, this Hon'ble Court deems just and proper in the circumstances of the case be awarded.*

Hence, a decree be passed in favour of the Plaintiffs, in the ends of justice and equity."

5. On issuance of notice, the defendant-corporation appeared through its counsel and filed the written statement denying the plaint averments. It was contented that though it had given permission to the plaintiff to construct the compound wall, the plaintiff has not constructed it as per the City Survey Records and there is



encroachment by him. There were public complaints against the plaintiff and therefore, the defendant-corporation got measured the suit schedule property and found that there is an encroachment by the plaintiff and as such, it had taken action in accordance with law.

6. The Trial Court framed the following issues:

"ISSUES

- 1. Whether the Plff. proves that he has constructed the compound wall with due permission from the deft./corporation?*
- 2. Whether the Plff. proves the cause of action?*
- 3. Whether the plff. is entitled for the relief of permanent injunction as prayed for?*
- 4. Whether the Deft./Corporation proves that the suit of the plff. is not maintainable?*
- 5. To what order or decree?"*

7. After the trial, the Trial Court decreed the suit restraining the defendants from damaging or demolishing the compound wall of the plaintiff. Being aggrieved, the defendant-corporation approached the First Appellate Court



and the First Appellate Court by the impugned judgment, allowed the appeal and dismissed the suit. It is the said judgment of the First Appellate Court, which is assailed in the present second appeal.

8. This Court has framed the following the substantial question of law by order dated 30.09.2010:

- 1) Whether the finding of the Appellate Court at paragraph 27 is contrary to the finding at paragraph 13 amounting to a perverse finding?*
- 2) Whether Appellate Court was justified in holding that Ex.P1 to Ex.P10 being the title deeds will not prove the ownership of the plaintiffs property?*
- 3) Whether the Appellate Court was correct in holding that defendant had proved encroachment by plaintiff in the absence of evidence or the evidence that was available was sufficient to hold that plaintiff had encroached the property of the defendant?"*

9. Learned counsel for the appellant submits that the plaintiff has constructed the compound wall after the



boundaries were identified by the City Survey Authorities. He submits that the title in respect of the property owned by the plaintiff is not in dispute, but it is only the compound wall which is the point of litigation. He submits that Ex.P.1 is a City Survey Extract and Ex.P.7 is the permission granted by the defendant-corporation for construction of the compound wall. The plan showing the proposed construction was submitted to the defendant and it was approved as may be seen from Ex.P.9. It is his case that he has constructed the compound wall in accordance with the permission granted to him under Ex.P.7 and Ex.P.9. In this regard, he relies on Ex.P.8, the City Survey Map, which shows the boundaries of the property of the plaintiff.

10. *Per contra*, learned counsel appearing for the defendant-corporation submits that the defendant-corporation has directed the City Survey Authorities to survey the property and identify the encroachment by the plaintiff. Accordingly, the City Survey Authorities have prepared a sketch as per Ex.D.2, which clearly shows that



there was encroachment. In pursuance to Ex.D.2, the defendant-corporation proceeded to take action against the plaintiff.

11. A perusal of the records would reveal that while the defendant-corporation proceeded as per Ex.D.2, notice was not issued to the plaintiff. Though the oral evidence shows that notice was issued to the plaintiff, the defendant-corporation cannot rely on such oral deposition so far as the mandatory requirements are concerned. It is evident that it is the case of the plaintiff that he has constructed the compound wall as per the permission granted to him under Ex.P.7 and Ex.P.9. Except Ex.D2, there is nothing on record to show that while preparing Ex.D.2, prior notice was issued to the plaintiff and in his presence the survey was conducted by the concerned authorities. In that view of the matter, the contention of the respondent-corporation that Ex.D.2 holds the field cannot be accepted. It is also worth to note that when an action is being taken against a person like plaintiff, it is necessary that the permission issued by



the defendant-corporation are to be shown to be violated. In the case on hand, Ex.P.7 and Ex.P.9 being such documents issued and permitted by the defendant, it has to be established by the defendant authorities that the plaintiff has violated the same. The enquiry regarding such violation acquire quasi-judicial stature since the defendant is a corporation, who is acting as trustee of the citizens of Hubli-Dharwad city. In that view of the matter, preparing a sketch as per Ex.D.2 without a notice being issued to the plaintiff cannot be sustained.

12. At this juncture, both the learned counsels appearing for the parties would submit that the measurement of the property of the plaintiff may be done through the Court. I am afraid this request made by the learned counsels has any reason to accede. The cause of action for the present suit had arose somewhere in 2002 and it cannot be continued forever. When it is a conclusion that Ex.D.2 was prepared without a notice being issued to the plaintiff, the defendant-corporation will be at liberty to



initiate action after issuing notice to the plaintiff and after ascertaining that there is violation of the building permission granted to him and if at all there is any encroachment by the plaintiff into the public road, it is needless to say that the defendant-corporation has the statutory provisions, which come to its aid and is at liberty to take such action.

13. Therefore, this Court is of the view that it is not necessary for this Court to delve into the substantial questions of law, which were framed and it would suffice to hold that the defendant-corporation would be at liberty to initiate fresh action after issuing notice to the plaintiff and holding the survey as required under law through the city survey authorities, in the presence of the appellant. Therefore, with this observation, the present appeal deserves to be disposed off.



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14. It is made clear that until fresh action is taken by the defendant-corporation in accordance with law, the existing compound wall of the plaintiff has to be preserved.

15. Ordered accordingly.

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

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CT:PA
LIST NO.: 1 SL NO.: 36