



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO.200316 OF 2014

(DEC/INJ)

BETWEEN:

1. KASHINATH S/O SHIVAPPA MAHAJAN
AGE: 53 YEARS, OCC: AGRICULTURE,
2. VAIJINATH S/O SHIVAPPA MAHAJAN
AGE: 48 YEARS, OCC: AGRICULTURE,
3. BABURAO S/O SHIVAPPA MAHAJAN,
AGE: 43 YEARS, OCC: AGRICULTURE,

ALL ARE R/O VILLAGE KAMALNAGAR,
TQ. AURAD, DIST BIDAR-585401.

...APPELLANTS

(BY SRI SHIVAKUMAR KALLOOR, ADVOCATE)

AND:

SMT. SANGAMMA W/O PRABHURAO BIRADAR,
AGED ABOUT 53 YEARS, OCC: AGRICULTURE &
HOUSEHOLD, R/O KAMALNAGAR,
TQ. AURAD(B), DIST.BIDAR-585401.

...RESPONDENT

(BY SRI VEERANA GOWDA MALIPATIL AND
SRI B. V. JALDE, ADVOCATES)



THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO ALLOW THE REGULAR SECOND APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 19.08.2014 PASSED BY ADDL. DISTRICT AND SESSIONS JUDGE, BIDAR, DISMISSING THE R.A.NO.60/2013 AND CONFIRMING THE ORDER JUDGMENT AND DECREE DATED 09.04.2013 PASSED BY ADDL. SENIOR CIVIL JUDGE BIDAR CAMP AT AURAD-B IN O.S.NO.120/2005 AND DISMISS THE SUIT O.S.NO.120/2005 FILED BY THE RESPONDENT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.12.2025 COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CAV JUDGMENT

The captioned appeal is by the unsuccessful defendants assailing the concurrent judgment and decree of the Courts below in decreeing the plaintiff's suit thereby holding that plaintiff's as the exclusive owner in possession of suit land bearing Survey No.36/1A, measuring 2 acres 22 quntas towards eastern portion as shown in the plaint



and consequently, defendants are restrained by way of injunction from interfering with the plaintiff's peaceful possession over the suit land.

2. For the sake of brevity, rank of the parties is referred to as per their rank before the Trial Court.

3. Facts leading to the case are as follows:

The subject matter of the suit is an agricultural land bearing Survey No.36/1A, measuring 2 acres and 22 guntas, situated at Kamalanagar village. The plaintiff instituted the suit seeking a declaration of ownership and consequential relief of perpetual injunction in respect of the said suit schedule property.

4. The plaintiff's claim of title is founded on a registered sale deed dated 05.01.2004 executed by one Babshetty S/o Nagshetty Mahajan for a valuable consideration of Rs.1,36,000/-. It is the specific case of the plaintiff that pursuant to the said purchase, she was put in exclusive possession of the suit land and has been



cultivating the same. Alleging unlawful interference by the defendants, who according to her have no manner of right, title or interest over the suit property, the present suit came to be instituted.

5. Upon service of suit summons, defendant Nos.1 to 3, who are brothers, entered appearance. Defendant No.1 remained absent and did not file his written statement. Defendant Nos.2 and 3 contested the suit by filing their written statement, contending that their father had purchased an extent of 3 acres of land in the very same survey number from the same vendor under a registered sale deed dated 19.01.1971. It was specifically contended that the eastern boundary in their sale deed is shown as a tank and that the plaintiff, under the guise of seeking declaration of title, is in fact attempting to lay claim over a portion of land purchased by their father as far back as in the year 1971. They asserted continuous and exclusive possession from the date of their father's purchase. According to them, the boundaries described in



Ex.P1 correspond to the land owned and possessed by them under Ex.D1 and that the suit is a calculated attempt by the plaintiff to encroach upon their property. On these grounds, they sought dismissal of the suit.

6. Based on the rival pleadings, the Trial Court framed the necessary issues and called upon the parties to lead evidence. In support of her case, the plaintiff examined three witnesses and produced the original registered sale deed marked as Ex.P1, along with revenue records such as mutation entries, pahani extracts and the tonch map. On the other hand, the defendants examined three witnesses and produced the sale deed of their father dated 19.01.1971 marked as Ex.D1, along with its translated copy marked as Ex.D1(a). They also relied upon the tonch map, tippan, phodi and mutation extracts.

7. Upon appreciation of the oral and documentary evidence on record, the Trial Court answered Issue No.1 in the affirmative, holding that the plaintiff had successfully



proved her title over the suit schedule property. Issue No.2 was also answered in the affirmative, with a finding that the plaintiff had established interference by the defendants. Consequently, the suit was decreed declaring the plaintiff to be the absolute owner of Survey No.36/1A measuring 2 acres and 22 guntas, and the defendants were restrained by a decree of perpetual injunction from interfering with the plaintiff's peaceful possession and enjoyment of the suit land.

8. Aggrieved by the judgment and decree of the Trial Court, the defendants preferred an appeal in R.A.No.60/2013. The First Appellate Court, on re-appreciation of the entire oral and documentary evidence, particularly with reference to the boundaries described in Ex.P1, concurred with the findings recorded by the Trial Court. The Appellate Court was of the view that the plaintiff had established her title on the strength of the registered sale deed executed by the original vendor and that the conclusions drawn by the Trial Court were



supported by cogent and convincing evidence. Accordingly, the appeal came to be dismissed.

9. This Court, by order dated 30.01.2025, was pleased to admit the present appeal by formulating the following substantial questions of law:

1) Whether the Trial Court and the first appellate Court have committed any serious legal error in analysing the contents of Ex.P1 and Ex.D1 which are the sale deeds of the plaintiff and father of defendant Nos.2 & 3 as against the oral evidence of the parties and the contents of the pleadings?

(2) Whether both the courts below have committed any error in not properly applying the doctrine of priority of interest as per the provisions of the Transfer of Property Act and not holding that the father of defendant Nos. 2 & 3 are the first purchaser of the suit schedule property?

(3) Whether both the courts below have committed any serious error in only relying upon the pleadings and evidence of the parties as



against the documentary evidence without confirming itself with regard to the identity of the properties by appointing a Court Commissioner?

Findings on substantial question of law.

10. The admitted factual matrix unmistakably discloses that the original owner, Babshetty, was the absolute owner of land bearing Survey No.36 measuring 24 acres and 17 guntas. Out of the said extent, 4 acres came to be alienated in favour of defendant No.1; 3 acres were sold to the father of defendant Nos.2 and 3 under a registered sale deed dated 19.01.1971; and 3 acres 30 guntas were sold to one Abdul. Further, an extent of 11 acres 5 guntas was acquired by the Government for the formation of a tank. The suit schedule property measuring 2 acres 22 guntas is claimed by the plaintiff to be the remaining portion allegedly retained by the vendor after the aforesaid alienations and acquisition.

11. It is not in dispute that the sale deed in favour of the father of defendant Nos.2 and 3 is of the year 1971



(Ex.D1), whereas the plaintiff traces her title to a subsequent sale deed dated 05.01.2004 (Ex.P1). A comparative reading of both documents assumes critical significance. In Ex.D1, the eastern boundary is unequivocally shown as a tank, while the western boundary is shown as the land of Abdul and Kashinath. In contrast, in Ex.P1, though the eastern boundary is again shown as tank, the western boundary is described as the "remaining land of the vendor". This striking commonality of the eastern boundary, namely the tank, an undisputed and permanent physical feature lies at the heart of the controversy.

12. Before proceeding further, it is necessary to extract the relevant portion of Ex.D1 and Ex.P1, which clearly delineates the extent and boundaries of the land conveyed to the father of defendant Nos.2 and 3. The Table drawn below would effectively assist this Court to analyze the core dispute:



Particulars	Ex.D1	Ex.P1
Sy.Nos.	36	36/1-A
Extent	03 acres 00 guntas R.A.6.40 situated at village Kamalnagar, taluk Aurad, Dist. Bidar	13 Acrs. 27 Gts. R/A Rs.23-60 ps. to the extent of 2 Acrs. 22 Gts. R/A Rs.4-50 ps. situated at Kamalnagar, Tq. Aurad
Boundaries	East: Tank (talab) West: remaining land purchased by Abdul s/o Chand sab Lature and Kashinath s/o Shivappa Mahajan North: Land of Maharudrappa s/o Annarao Mahajan South: Land of Revenappa s/o Maharudrappa Mahajan	East-Tank. West- Remaining land of vendor. North- Land of Madolappa Mahajan. South- Land of Revenappa Mahajan.



13. The extracted recitals, read as a whole, unequivocally establish that possession of the land measuring 3 acres, with the eastern boundary abutting the tank, was delivered to the vendee in the year 1971 itself. The table extracted from Ex.D1 and Ex.P1 provides a clear topographical and boundary description of the property conveyed thereunder.

14. The aforesaid recital in Ex.D1 demonstrates that as early as in 1971, the eastern boundary of the land purchased by the father of defendant Nos.2 and 3 stood fixed as the tank. Once such a permanent boundary was assigned and possession delivered, the vendor was divested of all rights over the said extent. Consequently, the very fact that in Ex.P1, executed 33 years later, the eastern boundary is once again described as the tank, raises a serious cloud over the identity of the land conveyed under Ex.P1. This boundary overlap gives rise to a clear identity conflict and overlapping claim, which



neither the Trial Court nor the First Appellate Court has adequately addressed.

15. Though arithmetical calculation may suggest that after excluding the prior alienations and the Government acquisition, the vendor may have retained some portion of land, such a conclusion cannot be mechanically drawn in a case where boundaries are in dispute. The crucial question is not merely one of extent, but of location and identity. Whether the vendor had in fact retained any portion contiguous to the eastern tank could have been ascertained only by ordering a local inspection or comprehensive survey of the entire Survey No.36 measuring 24 acres 17 guntas. Admittedly, no such exercise was undertaken at any stage of the proceedings.

16. In cases where two transferees assert competing claims over the same or overlapping portion of land, the doctrine of priority, as enshrined under Section 48 of the Transfer of Property Act, 1882, becomes



decisive. The said provision mandates that where a person purports to create by transfer at different times, rights in or over the same immovable property, and such rights cannot co-exist, the later transfer is subject to the rights created by the earlier transfer. Applying this settled principle, the title claimed by the plaintiff under Ex.P1 (2004) must necessarily be subject to and subordinate to the earlier transfer made in favour of the father of defendant Nos.2 and 3 under Ex.D1 (1971).

17. At the same time, it must be clarified that defendant Nos.2 and 3 cannot assert any right beyond the 3 acres conveyed under Ex.D1. Their claim cannot be extended merely because the eastern boundary is shown as a tank. However, equally, the plaintiff cannot, under the guise of a subsequent sale deed, claim land which had already stood conveyed and possession delivered decades earlier. Any land allegedly retained by the vendor, if at all, had to be clearly identified, demarcated, and established



through cogent evidence and survey, an exercise conspicuously absent in the present case.

18. In this backdrop, the finding of the Trial Court that Ex.P1 conclusively relates to the “remaining portion” retained by the vendor suffers from manifest perversity. The Trial Court failed to examine the decisive impact of the eastern boundary being common in both Ex.D1 and Ex.P1. Once the eastern boundary of Ex.D1 is shown as a tank, the vendor could not have legally conveyed land with the same eastern boundary in 2004 without creating an overlapping and conflicting title. The Trial Court thus erred in overlooking the prior alienation and in failing to apply the doctrine of priority.

19. The First Appellate Court, despite being the final fact-finding authority, committed the same error. It mechanically affirmed the findings of the Trial Court without undertaking a meaningful scrutiny of the boundary descriptions and without applying Section 48 of the



Transfer of Property Act. Both Courts were unduly swayed by the mere production of a registered sale deed in favour of the plaintiff, ignoring the fact that a prior registered conveyance coupled with delivery of possession stood in favour of the father of defendant Nos.2 and 3. The concurrent findings declaring the plaintiff to be the absolute owner of 2 acres 22 guntas and granting consequential injunction, therefore, suffer from serious legal infirmities and perversity.

20. It is well-settled that in suits for injunction, particularly where boundary disputes and competing titles are involved, mere production of a title deed does not suffice to establish lawful possession. In the present case, the finding that the plaintiff has proved possession solely on the basis of Ex.P1, as against a prior sale deed of 1971 coupled with possession, is wholly unsustainable. The failure of both Courts in absence of survey or local inspection and in view of doctrine of priority vitiates the judgments under challenge.



CONCLUSIONS AND REASONS FOR REVERSAL

21. Upon a cumulative and anxious consideration of the pleadings, evidence on record and the rival title documents, this Court is of the firm view that the concurrent judgments and decrees passed by the Courts below cannot be sustained. The findings recorded suffer from perversity, non-application of settled principles of law and misreading of material evidence, warranting interference in exercise of jurisdiction under Section 100 of the Code of Civil Procedure.

22. The first and foremost error committed by both the Courts below lies in declaring the plaintiff's title solely on the basis of Ex.P1, without undertaking a comparative and holistic examination of the earlier title deed dated 19.01.1971 marked as Ex.D1. Once the defendants demonstrated that their predecessor-in-title had acquired a portion of land in the very same survey number decades prior to the plaintiff's purchase, the burden squarely lay on



the plaintiff to establish that the land conveyed under Ex.P1 did not overlap with the land already sold under Ex.D1. This burden has remained wholly undischarged.

23. The Trial Court committed a manifest error in holding that Ex.P1 automatically relates to the "remaining portion" of land retained by the vendor. Such a finding is not borne out from the recitals of Ex.P1 nor supported by any survey, demarcation or independent evidence. The conclusion is based on mere assumption and arithmetical deduction, ignoring the fact that in boundary disputes, identity of the land and not mere extent is determinative.

24. A critical examination of Ex.D1 and Ex.P1 reveals that in both documents, the eastern boundary is shown as a tank, which is an undisputed and permanent physical feature. Once the eastern boundary of the land sold in 1971 is described as a tank and possession is delivered accordingly, the vendor stood divested of rights over that portion. The vendor could not have lawfully



executed a subsequent sale deed in 2004 with the very same eastern boundary, unless the land was clearly demarcated and shown to be distinct. Both the Courts below have failed to appreciate this inherent conflict in boundaries, which goes to the root of the matter.

25. The Courts below have further erred in not applying the doctrine of priority of transfers as embodied under Section 48 of the Transfer of Property Act, 1882. The law is well-settled that where rights in immovable property are created at different points of time and such rights cannot co-exist, the later transfer must yield to the earlier transfer. The sale deed dated 05.01.2004 in favour of the plaintiff is thus necessarily subject to the prior conveyance of 1971 made in favour of the father of defendant Nos.2 and 3. The omission to apply this statutory principle vitiates the entire reasoning adopted by both the Courts.



26. Equally erroneous is the finding that the plaintiff has proved lawful possession so as to entitle her to a decree of perpetual injunction. In cases involving boundary disputes and competing titles, possession cannot be inferred merely from a subsequent sale deed and revenue entries. The recitals in Ex.D1 specifically record delivery of possession in favour of the defendants' predecessor as early as in 1971. In the absence of any survey or demarcation, the conclusion that the plaintiff is in exclusive possession of the suit schedule land is wholly conjectural and legally unsustainable.

27. The Trial Court as well as the First Appellate Court have further failed to notice that the defendants' claim is confined strictly to an extent of 3 acres under Ex.D1, and that the real controversy pertains to whether the vendor had retained any land towards the eastern side after earlier alienations and Government acquisition. This crucial factual issue could have been resolved only by securing a local inspection or comprehensive survey of the



entire Survey No.36 measuring 24 acres 17 guntas, which admittedly was never done. The failure to adopt such a course has resulted in a fundamentally flawed adjudication.

28. The First Appellate Court, despite being the final fact-finding authority, has mechanically affirmed the findings of the Trial Court without independently scrutinising the boundaries, title recitals and the legal effect of prior alienation. Such an approach runs contrary to the settled duty cast upon the First Appellate Court and renders its judgment vulnerable.

29. This Court therefore concludes that the concurrent findings declaring the plaintiff as the absolute owner of the suit schedule property and granting consequential relief of injunction are perverse, contrary to statutory mandate under the Transfer of Property Act, and unsupported by legally admissible evidence. The judgments under challenge reflect a clear case of



misdirection in law and erroneous appreciation of material evidence, justifying interference under Section 100 CPC.

30. Accordingly, the substantial questions of law framed by this Court are answered in the affirmative, holding that the Courts below have erred in decreeing the suit without applying the doctrine of priority, without resolving the boundary conflict, and without establishing the identity and possession of the suit property through proper survey.

31. For the aforesaid reasons, the judgment and decree passed by the Trial Court, as affirmed by the First Appellate Court, are liable to be set aside and the suit is liable to be dismissed, reserving liberty to the plaintiff to seek appropriate relief after proper measurement and demarcation in accordance with law.

32. For the foregoing reasons, the substantial questions of law framed by this Court are answered in the affirmative, holding that the concurrent findings of the



Courts below suffer from perversity and non-application of settled principles of law.

ORDER

- (i) The Regular Second Appeal is allowed.
- (ii) The judgment and decree dated 09.04.2013 passed by the learned Additional Senior Civil Judge, Bidar, Camp at Aurad-B in O.S.No.120/2005, as affirmed by the learned Additional District and Sessions Judge, Bidar in R.A.No.60/2013 by judgment and decree dated 19.08.2014, are hereby set aside.
- (iii) It is clarified that dismissal of the plaintiff's suit shall not preclude the plaintiff from seeking measurement and demarcation of the entire land bearing Survey No.36/1 measuring 24 acres 17 guntas by filing an



appropriate application before the
competent authority.

- (iv) If such an application is filed, defendant
Nos.2 and 3 and other interested
landholders shall cooperate in the survey.
Subject to the outcome of such survey,
liberty is reserved to the plaintiff to seek
redressal in accordance with law.

SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE

SRT
List No.: 3 Sl No.: 8
CT:SI