



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.200144 OF 2015 (DEC)

BETWEEN:

1. SMT. DANAWWA @ LAXMIBAI
W/O BHIMANAGOUDA,
AGED ABOUT 75 YEARS,
OCC: HH WORK.
2. KRISHNAGOUDA S/O BHIMANAGOUDA PATIL,
AGED ABOUT 50 YEARS, OCC: ADVOCATE,
3. SHRIKANT @ SANGANAGOUDA
S/O BHIMANAGOUDA PATIL,
AGED ABOUT 52 YEARS, OCC: AGRIL.

ALL ARE R/O NAVBAGH,
NEAR BUS STAND, VIJAYAPUR-586101.

....APPELLANTS

(BY SMT. RATNA N. SHIVAYOGIMATH, ADVOCATE)

AND:

1. TILAJAPPA S/O BHIMAPPA UPPAR,
AGED ABOUT 52 YEARS, OCC: AGRIL.,
R/O KENGALGUTTI,
TQ: AND DIST: VIJAYAPURA.
2. LAXMAN S/O BHIMAPPA UPPAR,
SINCE DECEASED THROUGH LRS;



- A) SMT. KASTURI W/O LAXMAN UPPAR,
AGED ABOUT 43 YEARS, OCC: HH WORK,
R/O KENGALGUTTI, TQ: AND DIST: VIJAYAPURA.
- B) SRI BHIMAPPA S/O LAXMAN UPPAR,
AGED ABOUT 22 YEARS, OCC: AGLR.,
R/O KENGALGUTTI, TQ: AND DIST: VIJAYAPURA.
- C) SRI PRAUSHARAM S/O LAXMAN UPPAR,
AGED ABOUT 20 YEARS, OCC: AGRL.,
R/O KENGALGUTTI, TQ: AND DIST: VIJAYAPURA.

...RESPONDENTS

(BY SMT. HEMA L. K., ADVOCATE FOR R1;
NOTICE TO R2(A) TO (C) ARE SERVED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO CALL FOR ENTIRE RECORDS AND SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 07.04.2015 PASSED BY THE LEARNED II ADDITIONAL DISTRICT JUDGE, VIJAYAPUR IN R.A.NO.95/2011 AND CONFIRMING THE JUDGMENT AND DECREE DATED 21.04.2011 IN O.S.NO.325/2006 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE, VIJAYAPUR.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 08.12.2025 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 second appeal is by the defendants assailing the judgment and decree rendered by the Appellate Court granting injunction by reversing the dismissal decree rendered by the Court of first instance. These divergent findings are challenged by the defendants.

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

3. The plaintiffs instituted O.S. No.325/2006 seeking declaration of title, recovery of possession and consequential injunction in respect of agricultural lands bearing Sy.Nos.14/1, 14/2A and 14/2B situated at Kengalgutti village. It is an admitted position that the suit lands originally belonged to Narayan Bhatt Joshi and his wife, Mathurabai. The plaintiffs' case is that their ancestor was a tenant in respect of the suit lands and that a dispute arose between the landlord and the plaintiffs' ancestor in



the year 1967. During the pendency of the said proceedings, Mathurabai W/o Narayan Bhatt Joshi along with Rama Bhatt is alleged to have sold half share of the suit schedule properties in favour of one Sidram Uppar, who, on the very same day, further alienated the said half share in favour of the father of defendant Nos.2 and 3 and the husband of defendant No.1. The plaintiffs asserted that the said transactions were sham and collusive, brought about in order to defeat their tenancy rights, and that on the strength of such transactions, the father of defendant Nos.2 and 3, in collusion with the landlords, managed to get the revenue entries mutated in his favour and forcibly dispossessed the plaintiffs. On these premises, the plaintiffs sought declaration of title, recovery of possession and consequential relief of injunction.

4. Upon service of summons, the defendants entered appearance and filed their written statement. Defendant No.2 filed the written statement, which was adopted by defendant Nos.1 and 3. The defendants, while



disputing the maintainability of the suit, contended that the relief of declaration as well as the consequential relief of possession were untenable and that the suit was vexatious and devoid of any cause of action. The defendants pleaded that as early as in the year 1970, Mathurabai and Rama Bhatt Joshi had sold half share in Sy.No.14, totally measuring 24 acres 9 guntas, to one Sidram Uppar and that thereafter Sidram Uppar and his son Sabu Uppar conveyed the said half share in favour of Bhimanagouda, the father of defendant Nos.2 and 3, for valuable consideration of Rs.5,000/- under a registered sale deed dated 26.03.1970. It was contended that by virtue of the said conveyance, the defendants' father acquired absolute title to half share measuring 12 acres, which was later re-numbered as Sy.No.14/1. The defendants further asserted that there was no subsisting tenancy dispute in respect of the said 12 acres.

5. The defendants further pleaded that the remaining half portion of Sy.No.14 was subsequently



bifurcated in the year 1972 into Sy.No.14/2A and Sy.No.14/2B, measuring 6 acres odd guntas and 6 acres 3¼ guntas respectively. It was their specific case that Mathurabai continued to be in exclusive possession of Sy.Nos.14/2A and 14/2B and that she bequeathed the said properties in favour of defendant No.1 under a registered Will dated 15.04.1986. The defendants further contended that they had perfected title by adverse possession in respect of Sy.No.14/2B from the date of mutation effected under M.E. No.1205. It was specifically pleaded that as on the date of institution of the suit, the plaintiffs had lost their right, if any, to seek possession and that such right stood extinguished. The defendants also raised the plea of limitation, contending that the relief of declaration was barred from the year 1988 and, in any event, from 1972 onwards, and sought dismissal of the suit.

6. Both parties adduced oral and documentary evidence in support of their respective claims. The Trial Court, on appreciation of the evidence on record,



answered Issue Nos.1 and 2 against the plaintiffs, holding that they had failed to establish their title over the suit lands, and consequently dismissed the suit in its entirety. Aggrieved by the said judgment and decree, the plaintiffs preferred R.A. No.95/2011. The First Appellate Court, while concurring with the findings of the Trial Court insofar as the rejection of declaratory relief is concerned, however, relying upon certain documentary evidence produced by the defendants, proceeded to presume that notwithstanding the resumption order passed against the plaintiffs' ancestor, the plaintiffs had not lost possession and, on that premise, granted the relief of injunction, overlooking the pleadings and the specific prayer for recovery of possession made in the plaint. The judgment and decree of the First Appellate Court, insofar as it grants the relief of injunction, is therefore assailed in the present second appeal.



7. This Court, by order dated 25.01.2027, admitted the appeal on the following substantial question of law:

"Whether the Lower Appellate Court was justified in law in granting the decree of injunction, on having confirmed the rejection of relief of declaration, when the issue in the suit was also with regard to the plaintiff seeking possession of the suit schedule property?"

8. Heard the learned counsel appearing for the defendants and learned counsel appearing for the plaintiffs.

Findings on substantial question of law framed by this Court:

9. Before this Court delves into the matter, deems it absolutely necessary to advert to the relevant pleadings in the plaint. Paragraph Nos.3 and 4 of the plaint are extracted which read as under:

"3) One Narayan Bhatt and Mathurabai W/o Narayan Bhatt Joshi were owners of schedule a



properties and later on the said schedule properties had passed by plaintiff's father and grand-father as a tenant and dispute arose between land-lord and tenant in the year 1967. The said matter has pending before the Tribunal.

- 4) *During the pendency of this matter, the said land-lord and father of the plaintiff No.1 & 2, husband of defendant No.1 and revenue authority colluding each other and made various mutation and presently the said properties standing in the name of defendants."*

10. A careful reading of paragraph Nos.3 and 4 of the plaint makes it abundantly clear that though the suit is styled as a comprehensive suit for declaration of title, possession and injunction, the plaintiffs have conspicuously failed to trace or establish their own title to the suit schedule properties. The pleadings are vague and bereft of material particulars, inasmuch as they do not disclose as to how the plaintiffs' ancestor acquired any right, title or interest over the suit lands. On the contrary,



the plaintiffs have, in unequivocal terms, acknowledged the alienations made by the original owners, namely Mathurabai and Rama Bhatt, conveying half share in Sy.No.14 in favour of one Sidram Uppar. The plaintiffs have further admitted that on the very same day, the said transferee, in turn, conveyed the said interest in favour of the husband of defendant No.1 and the father of defendant Nos.2 and 3. In that view of the matter, this Court deems it appropriate to extract paragraph No.5 of the plaint, which reads as under:

"5) *On 30-5-1970 the said land-lord Mathurabai W/o Narayan Bhatt, and Rama Bhatt S/o Krishnabhatt Joshi has sold ½ of properties to one Sidram S/o Sabu Uppar, on the same day, the said Sidram Sabu Uppa has sold to father of defendant No.2 & 3 and husband of defendant No.1. These both transaction had been bogus one and not binding on the plaintiffs and remaining ½ property had made bogus will deed in favour of defendant No.1 on 5-11-1988 on these bogus transaction the defendant and father of defendant No.1 and 2 and land lord had made bogus M.E. No's and made R/R*



forcibly dispossess the plaintiffs. Therefore,
during the pendency of matter all transactions
are bogus one not binding on the plaintiffs.
Therefore, the plaintiffs have constrained to file
this suit."

(Emphasis supplied)

11. A plain reading of paragraph No.5 of the plaint leaves no manner of doubt that the plaintiffs have acknowledged the execution of the sale deeds as far back as in the year 1970. The said paragraph assumes significance for yet another reason, namely that the plaintiffs have, in unequivocal terms, admitted that they were dispossessed from the suit lands pursuant to the mutation entries effected on the basis of the said registered sale deeds.

12. The underlined portion of the plaint, therefore, clearly demonstrates that even according to the plaintiffs' own version, the alleged dispossession had occurred in the year 1970. This admission goes to the root of the matter and has a direct bearing on the maintainability of the suit.



This Court would, therefore, proceed to closely examine the nature of the reliefs sought in the suit, as the prayers assume considerable relevance in the context of the admitted pleadings, the same is extracted which read as under:

"10] **PRAYER.** *Therefore, the Hon'ble court may be pleased to pass a decree.*

- a) *It be declared that the plaintiffs are exclusive owners of suit land. "**suit land**" or alternatively declare that sale transactions in favour of deceased Bhimangouda T. Patil of dated 26/3/1970 and alleged registered will dated 15/4/1986 in favour of defendant No.1 are null and void and not binding on plaintiffs pertaining to the suit land.*
- b) *The consequence relief of possession of suit land from the defendants and permanent injunction against the defendants.*
- c) *Cost of the suit be awarded.*
- d) *Allowed the plaintiffs to amend the plaint if and when necessary."*



13. The first prayer in the suit seeks a declaration of title and, in the alternative, a declaration that the sale transaction obtained by the defendants' ancestor Bhimanagouda in respect of half portion of Sy.No.14 measuring 12 acres odd guntas, as well as the Will relied upon in respect of the remaining half portion re-numbered as Sy.Nos.14/2A and 14/2B, are null and void. Prayer 'B' assumes considerable significance, for the reason that despite categorical admissions in the plaint with regard to dispossession, the First Appellate Court has reversed the well-considered decree of dismissal passed by the Trial Court and has partly decreed the suit by granting an injunction. The Appellate Court has proceeded on a presumption that although the resumption proceedings initiated by the landlords in respect of half share were allowed, there was no evidence to show that possession was actually delivered. It is pertinent to note that, as per the plaintiffs' own pleadings, such resumption proceedings were initiated as early as in the year 1967. In the



backdrop of these admitted facts, a substantial and crucial question arises as to whether the First Appellate Court, in the face of clear admissions in the plaint regarding loss of possession, and after concurring with the Trial Court on the issue of title, was justified in reversing the dismissal of the suit and granting the relief of injunction.

14. As noticed supra, the plaintiffs have not pleaded the origin or source of their title. The plaint does not disclose either the source or the chain of title. It does not even plead the date, mode or nature of vesting of title in favour of the plaintiffs or their ancestor. The manner in which the plaint is drafted discloses a conscious and deliberate omission of material facts which are essential for grant of declaratory relief under Section 34 of the Specific Relief Act. The plaintiffs were fully aware that they possessed no title deed, no document evidencing derivative title, nor any order conferring occupancy rights in their favour.



15. The contention urged on behalf of the plaintiffs that the present second appeal cannot be decided till disposal of the writ petition pending before this Court in W.P. No.201683/2023 is equally misconceived and fundamentally flawed. The suit for declaration and possession was instituted in the year 2006 and came to be dismissed on merits, with a categorical finding that the plaintiffs had failed to establish title and, consequently, were not in possession of the suit lands. It is only after dismissal of the suit in the year 2010 that the plaintiffs appear to have approached the Land Tribunal seeking a so-called "correction" by insertion of the suit survey numbers into earlier proceedings, raising serious legal concerns. Whether a party who did not file Form No.7 in respect of the suit lands could subsequently seek inclusion of those lands by way of a correction, decades after conclusion of the original proceedings, is an issue squarely falling for consideration before the Writ Court in W.P. No.201683/2023.



16. Though learned counsel for the defendants has vehemently contended that the statutory scheme under Section 48A of the Karnataka Land Reforms Act mandates the filing of Form No.7 as a foundational requirement for adjudication of tenancy rights and that, in the absence of such an application, the Tribunal lacks jurisdiction to confer occupancy rights under the guise of correcting survey numbers, the said issue is now directly under consideration before the Writ Court. The order passed by the Land Tribunal has already been stayed, and the matter is pending adjudication.

17. The permissibility, legality and effect of post facto insertion of survey numbers in concluded Land Tribunal proceedings fall exclusively within the province of writ jurisdiction and cannot form the basis either for grant of injunction or for recording a finding on possession in the present second appeal.



18. Until the writ petition is finally adjudicated, the plaintiffs derive no legal advantage from the so-called correction proceedings, and the Civil Court cannot treat such disputed proceedings as lending support to the plaintiffs' claim of possession or title. The submission of the learned counsel for the plaintiffs that the present second appeal ought to be deferred till disposal of the writ petition is therefore wholly misconceived and untenable. The appeal before this Court arises out of O.S. No.325/2006 and has to be adjudicated on the basis of pleadings, cause of action, evidence and issues as they stood at the time of institution of the suit. The writ petition, on the other hand, concerns a unilateral attempt made by the plaintiffs subsequent to dismissal of the suit to secure insertion of additional survey numbers into earlier proceedings. The two operate in distinct and independent legal spheres.

19. In the light of the above discussion, the core question that arises for consideration is whether the First



Appellate Court was justified in reversing the findings of the Trial Court despite concurring with it on the issue of title. Under Section 34 of the Specific Relief Act, a plaintiff seeking declaration of ownership must succeed on the strength of his own title and not on the weakness of the defendant's case. There are no pleadings in the plaint asserting that despite the resumption order obtained by the landlords, the plaintiffs continued to remain in possession after 1967. Even assuming such a plea were available, it would be in direct conflict with the express prayer for recovery of possession made in the plaint. Section 38 of the Specific Relief Act permits grant of permanent injunction only when the plaintiff is in lawful possession as on the date of suit. In a suit founded on title, the question of injunction arises only upon establishment of title. The plaintiffs themselves sought recovery of possession, thereby unequivocally admitting that they were not in possession on the date of suit. Such admissions, under Section 58 of the Evidence Act and



Order XII Rule 6 of the Code of Civil Procedure, require no further proof and are binding unless specifically withdrawn.

20. The First Appellate Court, despite affirming the finding that the plaintiffs failed to establish title, has proceeded to grant injunction by assuming facts contrary to the pleadings, contrary to the evidence on record and contrary to registered documents of title produced by the defendants. Such a finding is perverse, being founded neither on pleadings nor on evidence, but on mere conjectures. In the absence of any pleading or proof of continued possession, and in the face of documentary evidence indicating otherwise, the Appellate Court could not have exercised equitable jurisdiction to grant injunction in a suit which is essentially one for recovery of possession.

21. An additional circumstance which materially undermines the plaintiffs' case is the consistent contention



of the defendants that the suit lands were never the subject matter of tenancy proceedings before the Land Tribunal. This submission finds support from the Land Tribunal records marked at Exhibits D9 and D10. Exhibit D10 clearly discloses that the Form No.7 application filed by Bhimappa pertained only to other lands and did not include the suit lands, particularly Sy.No.14/1. More significantly, Exhibit D9 contains a categorical statement by the plaintiffs' father that he had no claim other than those mentioned in Form No.7, thereby reinforcing the inference that he never asserted tenancy rights over the suit lands at any point of time, either during statutory proceedings or prior to the cut-off date under the Land Reforms Act.

22. In contrast, after suffering dismissal of the suit, the plaintiffs have now taken a stand that their father had claimed tenancy rights over the present lands, a claim which is presently under scrutiny before the Writ Court. For the foregoing reasons, it is evident that the First



Appellate Court has ventured into assumptions on facts which were neither pleaded nor proved. By resorting to surmises and conjectures, the Appellate Court presumed that possession was never recovered by the landlords, contrary to the explicit pleading in paragraph No.5 of the plaint wherein the plaintiffs admitted dispossession in the year 1970. Consequently, the finding of the Appellate Court that the plaintiffs continued to be in possession is not only erroneous but is perverse and wholly contrary to admitted facts. The judgment and decree of the Appellate Court granting injunction, despite a specific prayer for recovery of possession and a categorical admission of dispossession, is therefore unsustainable and liable to be set aside. It is, however, clarified that the observations made herein shall not prejudice the plaintiffs' rights, if any, in the pending writ proceedings.



**Conclusions and Reasons for Reversal of the
Appellate Court Decree Granting Injunction:**

23. The judgment and decree of the First Appellate Court granting permanent injunction, despite dismissal of the suit for declaration and possession by the Trial Court, are legally unsustainable and liable to be reversed for the following independent and cumulative reasons:

(i) Injunction Granted Contrary to Express Admissions in para 5 of Plaint. The plaint contains a categorical admission in paragraph No.5 that the plaintiffs were dispossessed from the suit lands pursuant to resumption proceedings. Such an admission constitutes substantive evidence under Section 58 of the Evidence Act and is binding on the plaintiffs. In the face of this unequivocal admission of dispossession, the Appellate Court could not have presumed continued possession and granted injunction.



(ii) Grant of Injunction Inconsistent with the Relief of Possession Sought. The plaintiffs have expressly sought recovery of possession in the suit. A prayer for possession is an unequivocal acknowledgment that the plaintiffs were not in possession as on the date of suit. Grant of injunction under Section 38 of the Specific Relief Act is permissible only when the plaintiff is in lawful possession. The Appellate Court has thus granted a relief which is inherently inconsistent with the pleadings and prayers in the plaint.

(iii) Absence of Pleadings or Proof of Continued Possession Post-Resumption. There are no pleadings in the plaint asserting that the plaintiffs continued in possession even after the resumption proceedings initiated as early as 1967. No evidence has been adduced to establish continued possession thereafter. In the absence of pleadings and proof, the Appellate Court could not have assumed possession in favour of the plaintiffs.



(iv) Injunction Granted Despite Failure to Establish Title.

The First Appellate Court has concurred with the Trial Court in holding that the plaintiffs failed to establish title to the suit lands. In a suit founded on title, injunction can follow only upon proof of title and possession. The Appellate Court, having affirmed the negative finding on title, erred in granting equitable relief of injunction contrary to settled principles under Section 34 of the Specific Relief Act.

(v) Findings Based on Presumptions and Conjectures, Not Evidence. The Appellate Court has proceeded on a speculative assumption that possession was not delivered pursuant to resumption proceedings, despite the plaintiffs' own admissions to the contrary. Such a finding is not founded on pleadings, evidence, or statutory records, but purely on conjecture, rendering the judgment perverse.



(vi) Disregard of Binding Admissions and Statutory Consequences. Admissions in pleadings dispense with proof unless specifically withdrawn. The plaintiffs have neither withdrawn nor explained their admission of dispossession. The Appellate Court has ignored the binding nature of such admissions and has acted in derogation of settled principles under Order XII Rule 6 CPC.

(vii) Equitable Relief Granted in a Suit Essentially for Possession. The suit, in substance and form, is one for declaration and recovery of possession. Injunction cannot be granted as a substitute for possession, nor can equitable relief be invoked to negate the plaintiffs' own pleadings. The Appellate Court has exercised equitable jurisdiction in a manner contrary to law.

(viii) Reliance on Disputed and Subsequent Proceedings Impermissible. The Appellate Court has indirectly relied upon disputed Land Tribunal proceedings, which themselves are stayed and subject matter of writ



adjudication. Subsequent and contested proceedings cannot be used to retrospectively infer possession as on the date of suit.

(ix) Finding on Possession Contrary to Documentary Evidence. The registered title documents and Land Tribunal records produced by the defendants unequivocally negate the plaintiffs' claim of possession. The Appellate Court has overlooked these materials while recording a finding contrary to the documentary evidence on record.

(x) Resultant Finding is Perverse and Legally Unsustainable. A decree granting injunction despite: admitted dispossession, a specific prayer for recovery of possession, absence of title, and lack of pleadings or proof of possession, is perverse, contrary to law, and unsustainable. The Appellate Court has reversed a well-reasoned dismissal by the Trial Court without any legal or factual basis.



24. For the foregoing reasons, the substantial question of law framed by this Court is answered in the **Negative**. Consequently, this Court proceeds to pass the following:

ORDER

- (i) The Regular Second Appeal is allowed.
- (ii) The judgment and decree dated 07.04.2015, passed in R.A.No.95/2011 by the II Additional District Judge, Vijayapur is set aside.
- (iii) The judgment and decree dated 21.04.2011 passed in O.S.No.325/2006, by the Principal Senior Civil Judge, Vijayapur is restored.
- (iv) Draw decree accordingly.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

RSP
List No.: 3 Sl No.: 10
CT: SI