

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

REGULAR SECOND APPEAL NO. 1909 OF 2018 (DEC)

BETWEEN:

S RAMALINGESHWARASHARMA
S/O LATE S VENKATSUBRAMANYA
CHAINLU
AGED ABOUT 54 YEARS
R/AT F58/2, 16TH CROSS LANE
RAMANUJA ROAD, FORT MOHALLA
MYSURU-570 008.

...APPELLANT

(BY SRI. G. BALAKRISHNA SHASTRY., ADVOCATE)

AND:

SMT. S.L. SAVITHRI
W/O M.R. SRIDHAR
AGED ABOUT 54 YEARS
R/T 58/A, 16TH CROSS LANE
RAMANUJA ROAD ,
FORT MOHALLA
MYSURU-570 008.

...RESPONDENT

(BY SRI. SUMANTH M.S., ADVOCATE FOR
SRI MANMOHAN P.N., ADVOCATE)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 18.06.2018 IN RA NO.278/2016 (OLD RA NO.10/2014) ON THE FILE OF THE IV ADDITIONAL DISTRICT JUDGE, MYSURU, CONFIRMING THE JUDGMENT AND DECREE DATED 07.10.2013 IN OS NO.1810/2009 ON THE FILE OF THE

FIRST ADDITIONAL FIRST JUNIOR CIVIL JUDGE AND JMFC, AT MYSORE, OS NO.1810/2009 BE DECREED AS PRAYED FOR AND THIS APPEAL BE ALLOWED WITH COSTS THROUGHOUT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.11.2025 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

The present Regular Second Appeal is filed by the plaintiff/appellant to set aside the judgment and decree dated 18.06.2018 in R.A.No.278/2016 on the file of the IV Additional District Judge, Mysuru (herein after referred to as 'the first appellate Court' for short) and set aside the judgment and decree dated 07.10.2013 in O.S.No.1810/2009 on the file of the I Additional First Civil Judge and JMFC., at Mysuru (herein after referred to as 'the trial Court' for short).

2. The appellant herein is the plaintiff/appellant before the Courts below and the respondent herein is the defendant/respondent before the Courts below.

3. For convenience of reference, the parties herein are referred to as per their rankings before the trial Court.

4. The plaintiff filed the suit to declare that plaintiff is the absolute owner of the 'C' schedule property and to direct the defendant to hand-over vacant possession of 'C' schedule property.

5. The brief facts of the case are that:-

It is the case of the plaintiff that he purchased plaintiff 'A' schedule property under a registered Sale Deed dated 16.12.2006 from Smt. Nagarathnamma, and subsequently purchased plaintiff 'B' schedule property under a registered Sale Deed dated 26.11.2007 from B.N.Shivashankar. Both properties, described as adjacent, were stated to be in plaintiff's possession and enjoyment as absolute owner. At the time of purchase, the said lands were covered with debris, wild plants and waste, making it impossible to measure them accurately. The plaintiff is stated to have spent more than Rs.1,00,000/- to clear the area and make it habitable.

6. Upon taking technical assistance in measurement for constructing a house, the plaintiff allegedly discovered that the defendant had encroached upon portions of 'A' and 'B' schedule properties, which he described as Plaint 'C' schedule property. When plaintiff came to know about the same, he demanded the defendant to vacate and deliver possession. However, the defendant failed to comply with the same. Consequently, the plaintiff issued a legal notice on 29.09.2009, which elicited only an untenable reply, and therefore the suit was filed seeking necessary reliefs.

7. *Per contra*, upon service of summons, the defendant appeared before the trial Court and filed a written statement denying all averments of the plaint, including the plaintiff's ownership and possession over suit 'C' schedule property. The defendant asserted that she had purchased a portion of vacant site bearing No.58 under registered Sale Deeds dated 23.03.1984 and 20.06.1984 from one B.R.Yellappa and since then she has been in possession and enjoyment as absolute owner.

8. She further pleaded that after purchase, khatha was mutated in her name, an approved plan and licence were obtained and a residential house was constructed in the year 1986, in which she has been residing with her family. The allegation of encroachment was categorically denied and it was contended that the suit was barred by law, improperly valued, and that the sketch relied upon by the plaintiff was incorrect.

9. Based on the pleadings, the trial Court has framed following issues for consideration:-

1. Whether the plaintiff proves that he is the absolute owner of 'C' schedule property under the registered sale deed dated 16.12.2006 and 26.11.2007?

2. Whether the plaintiff further proves that defendant has no manner of right, title or interest over the 'C' schedule property ?

3. Whether the plaintiff further proves that defendant is in unauthorised, illegal possession of 'C' schedule property ?

4. Whether court fee paid is sufficient?

5. Whether plaintiff is entitled for the relief claimed ?

6. What order or decree?

10. In order to prove his claim, the plaintiff got examined himself as PW-1 and got marked documents as per Ex.P-1 to Ex.P-50. On the contrary, the defendant got examined his power of attorney holder as DW-1 and got marked documents at Ex.D-1 to Ex.D-9.

11. The trial Court, upon appreciation of the oral and documentary evidence, dismissed the suit of the plaintiff.

12. Assailing the said judgement and decree of the trial Court, the plaintiff has preferred an appeal in R.A.No.278/2016. The first appellate Court has framed following issues for consideration in R.A.No.278/2016:-

1. Whether the Plaintiff proves that he is the absolute owner of 'C' schedule property under the registered Sale Deed dated 16.12.2006 and 26.11.2007?

2. Whether the Plaintiff further proves that Defendant has no manner of right, title or interest over the 'C' schedule property?

3. Whether the Plaintiff further proves that Defendant is in unauthorised. possession of 'C' schedule property? illegal

4. Whether Court fee paid is sufficient?

5. Whether Plaintiff is entitled for the relief claimed?

6. What order or decree?

13. The first appellate Court after considering the facts and circumstances and after re-appreciating the evidence on record, confirmed the judgment and decree of the trial Court.

14. Hence, both the trial Court, and first appellate Court, concurrently held that the plaintiff failed to establish title or possession over the alleged suit 'C' schedule property, despite relying on the sale deeds dated 16.12.2006 and 26.11.2007. Both the Courts below found that the plaintiff admittedly failed to measure the properties at the time of purchase and failed to produce any authenticated survey or reliable evidence to prove that the extent mentioned in the sale deeds actually existed on the ground. On the other hand, the defendant's title under

the earlier sale deed dated 23.03.1984, supported by a sketch and explicit recitals that the fenced property with unequal measurements was delivered into his possession and the same was accepted by both the Courts below. The plaintiff's own admissions regarding the pre-existing compound wall, the absence of any pleading or proof as to when the alleged encroachment took place, and the total lack of corroborative oral or documentary evidence led both the Courts below to conclude that the plaintiff failed to identify or prove the existence of the alleged suit 'C' schedule property or any encroachment by the defendant.

15. On the other hand both the Courts below also recorded specific findings regarding the plaintiff's repeated attempt to secure appointment of a Court Commissioner. The plaintiff had earlier filed an application I.A.No.7, which was dismissed on 21.08.2012, remanded in W.P.34137/2012, allowed on 09.11.2012, and finally quashed by this Court in W.P.No.49023/2012 with a binding direction that the suit must be decided on merits based on the evidence already on record. This order

having attained finality, the first appellate Court held that a fresh application under Order XXVI Rule 9 of the CPC could not be entertained. Both Courts below thus concluded that the plaintiff failed to discharge the burden of proving title, possession, or encroachment, Hence, the appeal and the application filed under Order XXVI Rule 9 of the CPC was dismissed.

16. It is contended by the learned counsel appearing for the appellant that the Courts below failed to properly appreciate both oral and documentary evidence and to draw correct inferences from the admitted and proved materials. The plaintiff had established title and ownership over 'A' and 'B' schedule properties through registered title deeds and revenue records, including Ex.P2 dated 06.12.2006 and Ex.P3 dated 26.11.2007, as well as subsequent khatha transfers at Exs.P10 and P11 and tax register entries at Exs.P12 and P13 supported by tax receipts at Exs.P14 to P17. The suit 'C' schedule property forms part of the 'A' and 'B' schedule properties and the Courts below ought to have declared the plaintiff's title

accordingly. The rough sketches attached to the registered sale deeds at Ex.P2 and Ex.P3 further corroborate the plaintiff's ownership and the findings of the Courts below.

17. It is contended that the Courts below have also failed to appreciate that the defendant herself, in her reply notice Ex.P20 and written statement admitted that she had not encroached upon any property of others and that the land in her possession was exclusively attributable to her. However, the survey sketches at Ex.P42 and Ex.P43, when converted into standard measurements, clearly show that the defendant is in possession of roughly 63.82 feet, as against only 30 feet purchased under Ex.D1. Further, the Courts below erred in incorrectly reading Ex.D1 and assuming without basis that the defendant's property was fenced at the time of purchase, despite there being no such recital in Ex.D1. The plaintiff had also demonstrated that accurate measurement at the time of purchase was not possible due to the site being filled with waste, which he later cleared as evidenced in Ex.P22 to Ex.P30 and

Ex.P34 and that the defendant thereafter occupied land in excess of what was conveyed to her.

18. It is further contended that the measurement disputes are further substantiated by Ex.P43 prepared by the City Survey Department, Mysuru, showing that while the plaintiff ought to have been in possession of 3600 sq. ft. (50 x 72 feet), but he is actually in possession of only 3000 sq. ft., losing 600 sq.ft. to the defendant who is in occupation of excess land beyond that conveyed under Ex.D1. The same position is confirmed by Ex.P49, an endorsement issued by the City Survey Department, which records that the plaintiff is in possession of 15% less land than he purchased under Ex.P2 and Ex.P3. These documents, read with Ex.D1 and Ex.P43, clearly establish that the defendant has exceeded her lawful boundary and encroached towards the plaintiff's property.

19. It is also contended that in the given circumstances, the Courts below ought to have appointed a Surveyor/Commissioner to measure the properties, particularly since both parties trace title to the common

vendors B.R. Yellappa and B.N. Shivashankar and neither party disputes the other's title. The only issue is whether encroachment has occurred and the documents on record *prima facie* establish that the encroachment had occurred. The rejection of the plaintiff's application under Order XLI Rule 27 CPC by the first appellate Court on the ground of earlier directions of this Court in W.P.No.49023/2012 is erroneous. Since the trial Court itself recorded that there was no evidence establishing the precise extent of encroachment, the first appellate Court ought to have permitted appointment of a Commissioner in view of changed circumstances.

20. The learned counsel appearing for the appellant has raised following substantial questions of law for the consideration of this Court as under:

1. Whether the First Appellate Court has erred in law in dismissing the application filed by the appellant under Order 41 Rule 27 of the Code of Civil Procedure for appointment of a Commissioner to measure the property of the plaintiff and that of the defendant ?

2. Whether the Courts below have erred in law in not appointing the Commissioner/surveyor for measuring the property purchased by the plaintiff and defendant, so as to find out as to whether there is any encroachment as alleged by the plaintiff?

3. Whether the Courts below have erred in law in totally ignoring the documentary evidence Ex.P42, Ex.P43 and Ex.P49, Ex.P13 which documents clearly establish that, plaintiff is in possession lesser area than what is owned by the plaintiff and defendant is in possession of more area than purchased by the defendant ?

21. The respondent counsel vehemently contended that he purchased the property in Sy.No.58 under a registered sale deed dated 23.03.1984 from Sri Yellappa, wherein possession of the fenced property as per the sketch was delivered to him, and thereafter in the year 1986 he obtained an approved plan and constructed a dwelling house, residing therein with his family without objection from the vendor at any point of time. In contrary, the plaintiff purchased the 'A' and 'B' schedule properties only under sale deeds dated 16.12.2006 and 26.11.2007 and instituted the suit after a delay of two

years on the allegation that due to the presence of debris and bushes at the time of purchase, he could not measure the land and later discovered alleged encroachment of the 'C' schedule property.

22. However, it is contended that the plaintiff has not explained how the exact measurements mentioned in his sale deeds were arrived at without measurement and has failed to specify the date or manner in which the alleged encroachment occurred, nor produced any witness, record, or neighbour's evidence to prove the existence of suit 'C' schedule property or any encroachment by the respondent.

23. It is further contended that the plaintiff's own cross-examination reveals that he did not measure the site at the time of purchase, that an eastern compound wall existed and that the western compound wall of both parties ran in the same line. The plaintiff's case was not that the respondent was in possession of land in excess of what he purchased under the registered sale deed dated 23.03.1984, nor that the respondent encroached after his

purchase. The burden of proof to establish a specific encroachment on a particular date lies upon the plaintiff and he has failed to discharge the same. Notwithstanding this, after cross-examination, the plaintiff moved an application under Order XXVI Rule 9 of the CPC for appointment of a Chartered Engineer to investigate the alleged encroachment.

24. It is also contended that though the trial Court initially allowed the application, this Court in W.P.No.34137/2012 directed reconsideration, and though the trial Court again allowed the application on 09.11.2012, the same was set aside in W.P.No.49023/2012 by order dated 13.12.2012, directing the matter to be decided on merits based on existing evidence. The said order has attained finality and hence further request for appointment of a Commissioner was rejected.

25. It is lastly contended that the documents marked as per Ex.P-42, P-43, P-44 and P-49 have not been proved in accordance with law, since the issuing

authorities were not examined, as required by settled legal principles laid down in the case of ***M/s. Bareilly Electricity Supply Co. Ltd. v. The Workmen*** reported in ***(1971) 2 SCC 617***, and in the case of ***The Life Insurance Corporation of India v. Ram Pal Singh Bisen*** reported in ***(2010) 4 SCC 491***. The respondent was not served notice before issuance of the endorsement or sketch relied upon by the plaintiff, rendering such material unusable. Having been in uninterrupted possession since 1984 and there being no complaint by his vendor at any point, the allegation of encroachment is false and baseless. The Trial Court rightly dismissed the suit, and the dismissal was properly upheld in R.A.No.278/2016 by judgment and decree dated 18.06.2018.

26. Heard learned counsel appearing on either side.

27. In support of his contentions learned counsel for the respondent has placed reliance on the following judgments:-

- ***Life Insurance corporation of India and another v. Ram Pal Singh Bisen*** reported in **(2010) 4 SCC 491:**

25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

26. As has been mentioned hereinabove, despite perusal of the record, we have not been able to come to know as to under what circumstances the respondent-plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved the documents, Exts. A-1 to A-10 in accordance with law. Filing of the enquiry report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do.

- ***M/s. Bareilly Electricity Supply Co. Ltd., v. The Workmen and others*** reported in **(1971) 2 SCC 617;**

14. An attempt is however made by the learned Advocate for the appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof. The observations of Venkatrama Iyer, J., in *Union of India v. Varma* [AIR 1957 SC 882 : (1958) 2 LLJ 259 and 263-264 : 1958 SCR 499] to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to

above was dealing with an enquiry into the misconduct of the public servant in which he complained he was not permitted to be cross-examined. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the Enquiry Officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well recognised rules of procedure. In these circumstances it was observed at p. 264:

"Now it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law."

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity

afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order 19 of the Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except insofar as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection insofar as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt.

- **Smt. S L Savithri v. Sri S Ramalingeshwarasharma** by order dated **28.09.2012** passed in **W.P.No.34137/2012 (GM-CPC); and**

4. On hearing learned counsels and examining the impugned order, I' am of the considered view that the petition is liable to be allowed. The trial Court while passing the impugned order was of the view that it is not proper on the part of the Court to discuss with regard to the oral evidence of the parties. Under these circumstances, if the Commissioner is appointed, it will help the Court to appreciate the evidence on record. The view of the trial Court is erroneous. It would necessarily have to consider what is the evidence on record and thereafter come to a conclusion as to whether the appointment of the Commissioner is just and warranted. On the contrary to hold that the report would be first examined and thereafter the evidence would be appreciated is therefore incorrect. Under these circumstances, it is necessary that the trial Court should reconsider the application afresh. It shall keep in mind the oral evidence let in by the parties and thereafter, if

necessary, for the reasons to be assigned pass appropriate orders on the application.

- **Smt.S.L. Savithri v. Sri. S Ramalingeshwarasharma** by order dated **13.12.2012** passed in **W.P.No.49023/2012 (GM-CPC).**

10. It is relevant to note, the suit for declaration that the respondent is the owner of 'C' schedule property and for possession. The parties have led evidence. PW.1 in his cross-examination has admitted the compound wall to the east of his house existed when he purchased the property. He does not know who put up the compound wall. The compound wall to the east of his house and the western compound wall of defendant's house are in the same line. He has purchased the property in the year 2006. It was not measured. 'A' and 'B' schedule properties are different properties. Since 1988, the defendant is residing in the same place where he was residing. There is no specific plea when the defendant i.e., the petitioner herein encroached upon 'C' schedule property. The Court Commissioner cannot be appointed to investigate into encroachment. The Trial Court should have decided the matter on the basis of evidence available on record. In the circumstances of the case, the Trial Court was not justified in Therefore, the appointing the Court Commissioner. impugned order cannot be sustained in law.

Accordingly, the writ petition is allowed and the impugned order passed by the Trial Court in O.S.No. 1810/2009 on I.A.No.7 is hereby set aside. The Trial Court to decide the matter on merits based on the evidence available on record. The observations made in the course of this order shall not influence the Trial Court in deciding the matter on merits.

28. Having considered the contentions advanced and perused the materials on record, this Court is of the opinion that in the present case, it is of decisive relevance that the order of this Court in W.P.No.49023/2012 directing the trial Court to decide the suit solely on the basis of the evidence already on record has not been challenged by the plaintiff at any point of time. The said order, having attained finality, binds not only the trial Court but also the parties and the first appellate Court. Once the Writ Court conclusively held that the appointment of a Commissioner to investigate alleged encroachment was impermissible and that the suit must be adjudicated on the existing evidence, the plaintiff was estopped from re-agitating the very same request for local investigation either before the trial Court at a later stage or before the first appellate Court under Order XLI Rule 27 CPC. The failure to challenge the writ order therefore renders it final and conclusive, and the Courts below were justified in refusing to entertain any subsequent attempt to reopen the said issue.

29. In view of the foregoing discussions, the concurrent findings of both the trial Court and the first appellate Court suffers from no perversity. Both the Courts below independently found that the plaintiff, being a subsequent purchaser, failed to produce cogent evidence identifying the alleged suit 'C' schedule property or proving the existence and extent of any encroachment. The plaintiff admitted that he never measured the property at the time of purchase and failed to establish how the recited dimensions in his sale deeds were arrived at. On the contrary, the title of the defendant under the earlier sale deed dated 23.03.1984, supported by a sketch, approved plan and uninterrupted possession since 1986, stood proved. Both the Courts below further held that the plaintiff neither pleaded nor proved the date, manner or extent of any alleged encroachment and failed to produce reliable survey evidence or examine the issuing authority of the documents relied upon. Hence the said documents were incapable of proving the disputed fact.

30. Accordingly, the concurrent finding that the plaintiff failed to establish title, possession or encroachment over the alleged suit 'C' schedule property is fully justified and does not give rise to any substantial question of law. The decree of dismissal is based on proper appreciation of evidence, and the refusal to appoint a Commissioner is fortified by the binding writ order which has attained finality.

31. On hearing the submissions of the counsel for the appellants, it appears at the outset that this being a second appeal, it is only substantial question of law which gives raise for this Court to clutch the jurisdiction and answer the said question of law as otherwise, this Court would lack jurisdiction to entertain second appeal.

32. In view of the above discussions, this Court proceeds to pass the following:

ORDER

(i) The present appeal is ***dismissed***.

(ii) The judgment and decree dated 18.06.2018 in R.A.No.278/2016 on the file of the IV Additional District Judge, Mysuru and the judgment and decree dated 07.10.2013 in O.S.No.1810/2009 on the file of the I Additional Civil Judge and JMFC., at Mysuru is hereby confirmed.

(iii) Registry to send the records to the concerned Court, forthwith.

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

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