

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.1046/2021 (INJ)

BETWEEN:

- 1 . CHINNAPPA
AGED ABOUT 67 YEARS
S/O BASAVANYAPPA
R/O NELVAGILU VILLAGE
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577 417. ... APPELLANT

(BY SRI. CHIDAMBARA G.S., ADVOCATE)

AND:

- KARIBASAPPA
S/O SHIVAPPA MARER,
SINCE DEAD BY LRS.
- 1 . SMT. MANJAMMA
AGED ABOUT 56 YEARS
W/O LATE KARIBASAPPA
 - 2 . SHIVAKUMARA
AGED ABOUT 26 YEARS
S/O LATE KARIBASAPPA
 - 3 . SHASHIKUMAR
AGED ABOUT 28 YEARS
S/O LATE KARIBASAPPA

4 . MADHU
AGED ABOUT 26 YEARS
S/O LATE KARIBASAPPA

ALL ARE
R/O. NELAVAGILU VILLAGE
SHIKARIPURA TALUK
SHIVAMOGGA DISTRICT-577 417.

... RESPONDENTS

(BY SRI. SRIKANTH PATIL K., ADVOCATE FOR R1 TO R3;
R4 - SERVED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 06.08.2021
PASSED IN R.A.NO.27/2020 ON THE FILE OF THE SENIOR CIVIL
JUDGE AND JMFC, SHIKARIPURA, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
17.02.2020 PASSED IN O.S.NO.191/2013 ON THE FILE OF THE
II ADDITIONAL CIVIL JUDGE AND JMFC AT SHIKARIPURA.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 12.12.2025 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard learned counsel for the appellant and learned counsel for respondent Nos.1 to 3.

2. This second appeal is filed against the divergent finding. The Trial Court dismissed the suit and the same is reversed by the First Appellate Court on appreciation of both oral and documentary evidence placed on record.

3. The factual matrix of case of the plaintiff before the Trial Court while seeking the relief of permanent injunction is that he is the owner of the property which is morefully described in the suit schedule i.e., vacant site bearing Sl.No.242, property No.105/7 at Nelavagilu Village Grama Panchayath, Shikaripura Taluk measuring 15 x 180 feet with boundary description as given in the schedule. It is contented that plaintiff is the absolute owner in lawful possession and enjoyment of the suit schedule property.

The said property initially belonged to the joint family and it is an ancestral property of the plaintiff in the name of his father Sri Shivappa Marer. The said Shivappa Marer is no more and after the death of Shivappa Marer, his wife's name i.e., Smt. Susheelamma is entered in the revenue records. When such being the material, the consent agreement has taken place in the family in which the plaintiff got the suit property for his share and became the absolute owner in possession of the suit schedule property. Thus, all the revenue entries are mutated in his name under M.R.No.36/1996-97 dated 09.04.1996. He has constructed one tent house (Kottige Mane) in the suit schedule property for agricultural purpose and enjoying the suit schedule property by paying kandayam to the panchayath authority from time to time. That on 28.07.2013, the defendant along with his henchmen came to the suit schedule property and tried to encroach the same and the same was resisted.

Hence, prayed the Court to grant the relief of permanent injunction.

4. The defendant appeared and filed the written statement contending that averments made in the plaint is false. It is contended that originally, the property was owned and possessed by Mukappa Marer. The said Mukappa Marer had one daughter by name Basamma and a son Basetyappa. It is contented that Shivappa Marer had two wives. The said Shivappa Marer had one daughter by name Kenchamma through his first wife and she also died issueless in her husband's home. The plaintiff as well as Rajappa are the sons of Shivappa Marer through his second wife Susheelamma. After the death of Shivappa Marer, his second wife Susheelamma went with one Goddanakoppada Hanumanthappa about 39 years back and settled at Chattanahalli Village, Honnali Taluk and they were leading their life as a husband and wife. The said Susheelamma took her sons i.e., plaintiff and his brother Rajappa along

with her and lived in Chettanahalli Village itself and still they are living in the said village. Therefore, the plaintiff is not in possession and enjoyment of the suit schedule property nor constructed the cattle shed. It is contented that his sister Kamamma married one Basetyappa of Nelavagilu Village and in the said wedlock, one daughter was born to them and she was Radhamma and she died at the age of 2 years old. As such, the said Kamamma took him to look after the agricultural work at the age of 12 years old. Since then, she is the only daughter and she performed her marriage with him and kept him as a illoten son-in-law. After his marriage, he is living with his wife's family and enjoying the suit schedule property along with other properties.

5. It is contented that on the eastern side of the suit schedule property, his wife's another property is situated, wherein they are living in the said house at present. It is contented that suit schedule property was

vacant and nobody came forward claiming rights over the same. Therefore, he constructed cattle shed in the suit schedule property about 25 years ago and tethering the cattle and raised two coconut trees and used the same to keep the hay stock and firewood. It is his contention that taking this advantage, the plaintiff and his father colluding with the panchayath officials got entered their name in the panchayath records behind his back and without giving any notice to him, his wife or sister. Therefore, the entries made in the panchayath records has no value in the eye of law. It is further contended that neither the plaintiff nor his mother ever raised any voice regarding his possession over the suit schedule property for all these days. It is further contended that since 25 years, his possession over the suit schedule property is continuous, peaceful and without any obstruction by any body, including the plaintiff and thereby his possession is hostile to the real owner including the plaintiff and his father, though they got any right on it. It is

also contended that he constructed the cattle shed in the year 1991 in the month of April first week and he is in continuous possession and enjoyment of the suit schedule property by way of adverse possession. Therefore, prayed the Court to dismiss the suit.

6. The Trial Court, based on the pleadings of the parties, framed the following issues:

- "1. Whether the plaintiff proves that he is an absolute owner and person in possession and enjoyment of the suit property?*
- 2. Whether the plaintiff further proves the alleged interference by the defendant?*
- 3. Whether the plaintiff is entitled to the relief as sought for?*
- 4. What order or decree?"*

7. The plaintiffs, in order to prove the case, examined the original plaintiff as P.W.1 and later, he died and his son is examined as P.W.2 and got marked the

documents as Exs.P1 to P18. On the other hand, defendant examined himself as D.W.1 and got marked the documents Exs.D1 to D3 and also examined two witnesses as D.Ws.2 and 3.

8. The Trial Court having considered both oral and documentary evidence available on record comes to the conclusion that plaintiff is not in possession of the property and extracted the evidence of P.W.1 in paragraph No.18 and comes to the conclusion that dimension mentioned in the schedule not tallies with each other and as per P.W.2, his grand-father died 35 to 40 years ago and the house which appears in Ex.P6 appears to be new one. There is no pleading with regard to construction of the shed and the same is in their possession and it is pleaded as a vacant site and in the absence of pleadings, the case of plaintiff cannot be believed and dismissed the suit.

9. Being aggrieved by the judgment and decree of dismissal of suit, an appeal is filed before the First Appellate

Court in R.A.No.27/2020. The First Appellate Court, keeping in view the grounds urged in the appeal memo, framed the points for consideration whether the Trial Court has erred in considering the evidence of the plaintiff and defendant and comes to the wrong conclusion in dismissing the suit and whether it requires interference. The First Appellate Court on appreciation of both oral and documentary evidence, particularly considered the documents of both the plaintiff and the defendant in paragraph Nos.22 and 23 and with regard to possession is also concerned, accepted the case of the plaintiff and disbelieved the case of the defendant and comes to the conclusion that as on the date of filing of the suit, all records stands in the name of the plaintiff and even taken note of the documents confronted to the witness and particularly, the version taken by the defendant was considered in paragraph No.9, wherein he had contended that he had constructed the said house in the year 1991. In paragraph No.30, the First Appellate Court

also considered the discrepancy with regard to mentioning of measurement of the property in the tax assessment register extract for the year 2012-13 i.e., Ex.P4 that the property measures to an extent of 15 x 143 feet and no other document discloses north to south measurement as 180 feet and it appears that the same is not correct and there was a mistake. When the documentary evidence supports the case of the plaintiff, case of the plaintiff was accepted and granted the relief of permanent injunction and the Court has to look into the documentary evidence as on the date of filing of the suit. Hence, reversed the judgment of the Trial Court.

10. This Court having considered the grounds which have urged in the second appeal, admitted the second appeal on 19.07.2023 and framed the following substantial questions of law:

- "1. *Whether the First Appellate Court justified in reversing the Judgment & Decree of the Trial Court?*
2. *Whether the First Appellate Court justified in decreeing the suit for permanent injunction despite recording of specific finding that the measurements and boundaries shown in Ex.P.4 did not tally with the suit schedule property?"*

11. Learned counsel appearing for the appellant would vehemently contend that First Appellate Court committed an error in reversing the judgment and decree of the Trial Court. The First Appellate Court is not justified in decreeing the suit for permanent injunction, despite recording of specific finding that measurements and boundaries shown in Ex.P4 did not tally with the suit schedule property. Hence, it requires interference of this Court. The counsel also would contend that the document at Ex.P4 discloses the measurement to an extent of 15 x 143 feet. But, suit is filed for the measurement to an extent

of 15 x 180 feet and inspite of having noticed the same, the Trial Court committed an error in granting the relief of permanent injunction and matter requires to be reconsidered and set aside.

12. Per contra, learned counsel for respondent Nos.1 to 3/plaintiffs would vehemently contend that all the documents stand in the name of plaintiff and documents i.e., Exs.P1 to P15 clearly disclose ownership as well as possession on the part of the plaintiff and the same has been rightly considered by the First Appellate Court. Hence, it does not require any interference.

Substantial Question of Law Nos.1 and 2:

13. Having heard learned counsel for the appellant and learned counsel for respondent Nos.1 to 3 and also keeping in view the substantial questions of law framed by this Court, the first substantial question of law is with regard to reversal of judgment of the Trial Court by the

First Appellate Court and second substantial question of law is with regard to discrepancy in the document of Ex.P4 as well as the claim made by the appellant. No doubt, the original plaintiff is examined before the Court as P.W.1, he was not cross-examined, since he had died during the pendency of the suit. Hence, his son is examined as P.W.2 and he was subjected to cross-examination.

14. In view of the divergent finding, this Court has to take note of the evidence available on record. P.W.2, in his cross-examination admits that he is residing at a distance of 1 km. from the place of disputed suit schedule property. But, he claims that house which is found in Ex.P6 was constructed 6 to 7 years ago and he cannot tell the names of coolies, who involved in construction and no door to the said house and the said photo was taken by his father during his lifetime. He admits that on the east of the suit schedule property, house of Radhamma is located and on the west, house of Danendrappa is located and now, that

is a vacant site. He admits that a small house behind the wall which is visible in the photo belongs to Danendrappa. But, he volunteers to state that the same was demolished 6 to 7 months ago. This witness was also subjected to further cross-examination and he admits that while cultivating the property, they were having ox and grand-father died 35 to 40 years and now, they are not having any ox. Ex.P6 was confronted and watering pipes are found near the said house and he admits the same. He claims that ox belongs to his friend's father and suggestion was made that the same belongs to the defendant and the same was denied.

15. On the other hand, D.W.1 was also examined and in the cross-examination, he admits that he gave an application for change of khatha, but the same was not changed. But, he claims that his house is on the northern side of the suit schedule property and again, he admits that the suit schedule property is on the west of his property. He also admits that he has not paid kadayam at any point of

time and also admits that there is a cattle shed which appears in Ex.P6 and claims that water pipes are existing in Ex.P6-house since about 15 years ago.

16. The other witness is D.W.2. He claims that defendant is in possession of the suit schedule property. In the cross-examination, he admits that, Kamalamma is defendant's sister and also admits that the house in which he is residing is purchased from the family of the defendant. On the south, there is a road and he cannot tell, in whose name the suit schedule property stands and he did not make any attempt to know, who is the owner of the suit schedule property. But, he claims that defendant is in possession and admits that defendant himself brought him to give evidence.

17. The other witness D.W.3 also supports the case of the defendant. In the cross-examination, he categorically admits that on the west of his house property, property of plaintiff is located.

18. Having considered both oral and documentary evidence available on record, it is very clear that property of the plaintiff is in existence and the same is not in dispute and location is also admitted. Further, no dispute with regard to Ex.P6 and Ex.D2 and on the east of the suit schedule property, property of defendant is in existence. But, in suit schedule property, there is a small shed, wherein things are procured and kept. In Ex.D2, no pipes are found. But, in Ex.P6, pipes are found. When the suit is filed for the relief of permanent injunction, the Court has to take note that as on the date of filing of the suit, who is in possession of the property. The documents which have been relied upon by the plaintiff clearly discloses that the property was earlier standing in the name of Shivappa Marer and subsequent to his death, the property was transferred in the name of plaintiff and Ex.P5- tax paid receipt discloses that property stands in the name of plaintiff and in Ex.P4 measurement of the property is

mentioned as 15 x 143 i.e., Tax Assessment Register 2012-13. Hence, it is clear that as on the date of filing of the suit, property stands in the name of the plaintiff. Ex.P6 and Ex.D2 are one and the same. Ex.P8 discloses that on the east of suit schedule property, property of Radhamma is located and so also in Ex.P7 i.e., tax demand register, name of the plaintiff is shown. The documents Exs.P9, P10, P11 and P12 i.e., tax paid receipts stands in the name of the plaintiff. Ex.P11 is the tax paid receipt of the year 2013 in which year the suit was also filed. Ex.P9 is for the year 2005 and Ex.10 is for the year 2012 i.e., for the year 2012 previous to the year in which the suit was filed. Ex.P15 is the document of Danendrappa and on the east of his property, property of Karibasappa i.e., plaintiff is mentioned and the said document is confronted to the D.W.1 witness. Ex.P16 is also the document pertaining to Dananendrappa's property and Ex.P17 relates to the property of Radhamma, wherein also on the west of the property of Radhamma,

property of Karibassapa stands. Hence, it is very clear that suit schedule property belongs to the plaintiff and these are the documents which are confronted to the D.W.1 witness and he categorically admitted the same and identity of the property is also not in dispute.

19. It is settled law also that Court has to look into the document and possession of the property as on the date of filing of the suit and all the documents stands in the name of the plaintiff. Though, the defendant claims that he has perfected title in respect of the suit schedule property by adverse possession, in order to substantiate the same, nothing is placed on record. The First Appellate Court, while reversing the judgment, taken note of material available on record in paragraph Nos.21 to 25 and no doubt, there is a minor discrepancy in the evidence of P.W.1, but the documentary evidence supports the case of the plaintiff. The First Appellate Court also even extracted the written statement in paragraph No.9, wherein, he contend that

cattle shed was constructed in the year 1991 in the month of April first week and since that time, he is in continuous possession of the suit schedule property. Hence, it is clear that defendant is not the owner of the suit schedule property. However, his plea is that he is in possession of the suit schedule property and the same is discussed in paragraph No.30 i.e., document of Ex.P4-tax assessment register extract for the year 2012-13 is showing the measurement of the property to an extent of 15 x 143 feet and it stood against the measurement of the suit schedule property in the north to south direction. Looking to the other documents relied upon by the plaintiff, there are no reliable documents disclosing the north to south measurement as 180 feet. To this extent, the version of the plaintiff as well as arguments of the plaintiff's counsel are not acceptable. When the document clearly evidence the measurement only to the extent of 15 x 143 feet and though, the plaintiff claim 15 x 180 feet, but the fact is

that the existence of property stands in the name of the plaintiff and as on the date of filing of the suit also, all the documents stands in the name of the plaintiff, including the tax paid receipt and D.W.1 also categorically admitted the fact that he has not paid the tax, except claiming that he is in possession without supported by any documentary proof. Though D.Ws.2 and 3 claim that defendant is in possession and D.W.2 is an interested person and he categorically admits that D.W.1 himself brought him to the Court. D.W.3 admits the existence of property of the plaintiff and also admits that the same belongs to the plaintiff. Hence, I do not find any error on the part of First Appellate Court in re-appreciating both oral and documentary evidence. On the other hand, the Trial Court committed an error in considering the material available on record, particularly with regard to possession as on the date of filing of the suit and all the materials were not considered by the Trial Court and the same is properly considered by the First Appellate

Court. Therefore, I do not find any ground to reverse the finding of First Appellate Court. Accordingly, I answer substantial question of law Nos.1 and 2 as 'negative'.

20. In view of the discussion made above, I pass the following:

ORDER

The regular second appeal is dismissed.

Sd/-
(H.P. SANDESH)
JUDGE

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