



CNR: KAHC010003092019

NC: 2026:KHC:39764
RSA No. 39 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA
REGULAR SECOND APPEAL NO. 39 OF 2019 (INJ)

BETWEEN:

1. SRI. K.N.NANJUNDAPPA,
S/O LATE NANJAPPA,
AGED ABOUT 66 YEARS,
R/AT KUNIKENAHALLI VILLAGE,
KASABA HOBLI, TURUVEKERE TALUK,
TUMAKURU DISTRICT - 572 227.
SINCE DEAD BY LRS
- 1(a) KEMPAMMA,
W/O NANJUNDAPPA,
AGED ABOUT 66 YEARS,
- 1(b) HOMBEGOWDA,
S/O NANJUNDAPPA,
AGED ABOUT 44 YEARS,
- 1(c) GIRISH,
S/O NANJUNDAPPA,
AGED ABOUT 47 YEARS,
- 1(d) KAMALAMMA,
D/O NANJUNDAPPA,
AGED ABOUT 47 YEARS,

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



**NC: 2026:KHC:39764
RSA No. 39 of 2019**

CNR: KAHC010003092019

ALL ARE R/AT KUNIKENAHALLI VILLAGE,
KASABA HOBLI,
TURUVEKERE TALUK,
TUMAKURU DISTRICT - 572 227.

...APPELLANTS

(BY SRI. K.N.NITISH, ADVOCATE FOR 1A(a TO d))

AND:

TAHASILDAR,
TURUVEKERE TALUK,
TURUVEKERE,
TUMKUR DISTRICT - 572 227.

...RESPONDENT

(BY SRI.SESHU V., AGA)

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 15.09.2018 PASSED IN RA.NO.57/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, TURUVEKERE DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 02.05.2015 PASSED IN OS.NO.133/2011 ON THE FILE OF THE CIVIL JUDGE AND JMFC, TURUVEKERE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



CNR: KAHC010003092019

ORAL JUDGMENT

Heard Sri K.N.Nitish, learned counsel appearing for the appellants.

2. Plaintiff's second appeal challenging the dismissal of the suit in OS No.133 of 2011 confirmed in RA No.57 of 2015.

2. Facts of the case are as under:

A suit for declaration and injunction came to be filed against the Tahsildar, Turvekere by the plaintiff in OS No. 133 of 2011 in respect of the following property hereinafter referred to as the 'suit property'.

3. Plaintiff laid the claim in respect of the suit property seeking the aforesaid relief by contending that he is the absolute owner in lawful possession and enjoyment of the suit properties. It is his case that Item No.1 of the suit properties is the ancestral property and Item No.2 is the property purchased by him through a registered sale deed dated 03.07.1978 for a valuable consideration and



CNR: KAHC010003092019

therefore, he is in possession of the suit property as absolute owner raising coconut trees and banana trees in the suit properties.

4. It is his case that to protect the property, he has erected a fence in the border of the suit property and in the year 1994 villagers of Kunikenahalli tried to form a road in the suit property and as such he was constrained to file a suit in OS No.74 of 1994.

5. In the said suit there was an order of in favour of the plaintiff granting declaration and injunction by judgment dated 28.11.1996 by the Civil Judge Senior Division, Tiptur.

6. It is further contented that defendant being a stranger, without there being any right, title or interest in respect of the suit property, at the instigation of the villagers, unlawfully and illegally in the last week of May 2011 attempted to form a pathway in the suit properties and as such a notice was issued by the plaintiff on



CNR: KAHC010003092019

05.05.2011. There was no reply to the notice and the defendant formed the pathway.

7. It is further contended by the plaintiff that there is no kharab or pathway in the suit properties. In spite of it, defendant without informing the plaintiff on 10.06.2011 trespassed into the suit properties along with the villagers and with the aid of taluk surveyor, illegally and forcibly formed the pathway which is denoted with the letters 'ABCD' in the suit sketch in the suit properties.

8. It is also contented that while so forming the pathway, the coconut trees were damaged and removed. The fence was also destroyed and banana trees were also destroyed by the defendant high handedly. Therefore, the plaintiff was constrained to file the suit.

9. Pursuant to the suit summons, the defendant appeared through the learned Assistant Government Pleader and filed written statement denying the case of the plaintiff in toto.



CNR: KAHC010003092019

10. It is contended in the written statement that plaintiff obtained decree in OS No.74 of 1994 without impleading the defendant as a party and therefore the said decree would not bind the defendant.

11. It is also contended that there is no pathway in the suit properties, but pathway is formed in the land bearing Sy.No.91/1 and Sy.No.41 and the plaintiff is refusing to measure the said pathway.

12. It was also specifically contended that an eviction notice was issued to the plaintiff and a criminal case was also registered against the plaintiff before the Dandinashivara Police Station and therefore to escape from the rigours of law, present suit has been filed.

13. Learned Trial Judge based on the rival contentions, raised necessary issues and recorded the evidence of the parties and dismissed the suit of the plaintiff.



CNR: KAHC010003092019

14. Being aggrieved by the same, the plaintiff filed an appeal before the First Appellate Court in RA No.57 of 2015.

15. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, dismissed the appeal and confirmed the judgment of the trial Court.

16. Being further aggrieved by the same, the plaintiff has preferred the present second appeal on the following grounds and substantial questions of law:

"(i) Whether the 1st Appellate court is justified in dismissing the application filed by the Appellant under 47 Rule 27 of CPC?

(ii) Whether the 1st Appellate Court is justified in dismissing the application in the course of passing the impugned judgment and decree?

(iii) When the courts below have found that the Appellant is the owner of Item No.1 of the suit property and 4 guntas of land in suit Item No.2 whether they are justified in dismissing the suit?"



CNR: KAHC010003092019

17. Sri K.N.Nitish, learned counsel for the appellants, reiterating the grounds urged in the appeal memorandum would contend that there is a categorical finding recorded by the learned Trial Judge, which was also not disturbed by the learned Judge in the First Appellate Court with regard to the four guntas of land in Item No.1 of the suit properties.

18. Therefore, there should have been a finding recorded by trial Court as well as the First Appellate Court that the plaintiff is the owner of Suit Item No.1 and 4 guntas of land in Item No. 2 of the suit properties which is not challenged by the defendant by filing the cross objections or cross appeal and therefore, the suit should have been decreed to that extent.

19. He would further contend that the approach of the trial Court as well as the First Appellate Court in dismissing the suit in entirety thus has resulted in grave



CNR: KAHC010003092019

miscarriage of justice and sought for admitting the appeal on the aforesaid substantial questions of law.

20. Per contra, Sri Seshu.V., learned Additional Government Advocate, opposes the appeal grounds by contending that the basis for the Trial Court as well as the First Appellate Court to record a finding that the plaintiff is the owner of Item No.1 of the suit property and 4 guntas of the land in Item No.2 of the suit properties, is the decree that has been passed by the Civil Judge Senior Division, Tiptur in OS No.74 of 1994, wherein the defendant or any governmental agency is not arrayed as a party and therefore the same would not bind the defendant.

21. He would further contend that the suit relief in the present suit itself is to the extent of the pathway that has been formed as 'ABCD' in the suit sketch and therefore, dismissal of the suit is thus just and proper and there cannot be further declaration by the learned Trial



CNR: KAHC010003092019

Judge in the present suit, as the prayer in the present suit is only with regard to the pathway and not the entire property. Therefore, he sought for dismissal of the appeal.

22. Having heard the arguments of both sides, it is just and necessary for this Court to cull out the prayer in the present suit which reads as under:

" WHEREFORE, the Appellants most respectfully pray that this Hon'ble Court be pleased to:

(i) Call for records in O.S.No.133/2011 on the file of the learned Civil Judge and JMFC at Turuvekere and R.A.No.57/2015 on the file of the learned Senior Civil Judge and JMFC at Turuvekere;

(ii) Allow this appeal and set aside the Judgment and Decree passed in R.A.No.57/2015 dated 15.09.2018 by the learned Senior Civil Judge and JMFC at Turuvekere and confirming the judgment and decree in O.S.No.133/2011 dated 02.05.2015 passed by the learned Civil Judge and JMFC at Turuvekere; and

(iii) Grant such other and further relief as this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in the interest of justice and equity."

23. Schedule to the plaint property reads as under:



CNR: KAHC010003092019

NC: 2026:KHC:39764
RSA No. 39 of 2019

: SCHEDULE:

1. The land bearing Sy.No.91/1, measuring 0.37 guntas bounded by-

East : Nanjundappa i.e., Plaintiff,

West : Boregowda,

North : Halla and Kunikenahalli-Ramadihalli Road,

South : Nanjundappa i.e., Plaintiff land in Sy.No.91/5

2. The land bearing Sy.No.91/5, measuring 0.08 guntas bounded by:

East : Nanjundappa i.e., Plaintiff,

West : Rathnamma,

North : Plaintiff land in Sy. No.91/1,

South : Rathnamma

Both the lands are situated at Kunikenahalli Village, Kasaba Hobli, Turuvekere taluk."

In the suit sketch, the pathway is shown as 'ABCD'.

24. The specific contention that has been taken in the written statement is that there is no pathway formed in the land of the plaintiff but the same is already in existence in land bearing Sy.No.91/1 and Sy.No.41.



CNR: KAHC010003092019

25. It has been specifically contended by the defendant that there is no pathway which is in existence as per the Village Map in the lands that are owned by the plaintiff.

26. Thus, the learned Trial Judge as well as the learned Judge in the First Appellate Court accepting the contentions urged by the parties and also taking note of the judgment in OS No.74/1994 dismissing the suit, is just and proper.

27. As rightly contended by the defendant, since the Tahsildar or any governmental agency was not a party in OS No.74/1994, the question of that judgment binding on the Tahsildar would not arise at all.

28. Thus, dismissal of the suit by both the courts by concurrently recording the finding that no pathway is formed in the land of the plaintiff is just and proper which requires no further consideration by admitting the appeal on the aforesaid substantial questions of law.



CNR: KAHC010003092019

NC: 2026:KHC:39764
RSA No. 39 of 2019

29. Moreover, since there is already a decree in OS No.74/1994, second declaration would not arise.

30. Thus, following order:

O R D E R

Admission declined.

Appeal ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

SNB
List No.: 1 Sl No.: 46