



IN THE HIGH COURT OF KARNATAKAAT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.159 OF 2026 (DEC)

BETWEEN:

MALLESHAPPA. P
S/O PAKEERAPPA,
AGED ABOUT 57 YEARS,
RESIDING AT HOLEHANASVADI VILLAGE,
HOLALUR HOBLI,
SHIVAMOGGA TALUK,
SHIVAMOGGA DISTRICT-577201.

...APPELLANT

(BY SRI. HARSHA KUMAR GOWDA H.R, ADVOCATE)

AND:

NANJUNDAPPA
SINCE DEAD BY LRS,

1. SMT. LAKSHMAMMA,
W/O LATE NANJUNDAPPA. P,
AGED ABOUT 68 YEARS,
2. SATHISHA
S/O LATE NANJUNDAPPA. P,
AGED ABOUT 43 YEARS,
3. VENKATESH
S/O LATE NANJUNDAPPA. P,
AGED ABOUT 41 YEARS,
4. MANJULAMMA
D/O LATE NANJUNDAPPA. P,
AGED ABOUT 47 YEARS,

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



RESPONDENT NO.1 TO 4 ARE
RESIDING AT LAST CROSS,
NANDINI MILK DAIRY ROAD,
HOLEHANASAVADI VILLAGE,
HOLALUR HOBLI,
SHIVAMOGGA-577201.

5. JAYAPPA.P,
S/O PAKEERAPPA,
AGED ABOUT 67 YEARS,
RESIDING AT
HOLEHANASAVADI VILLAGE,
HOLALUR HOBLI,
SHIVAMOGGA-577201.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE
DATED 24.10.2025 PASSED IN RA NO.36/2023 ON THE FILE OF
I ADDITIONAL SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 28.03.2023 PASSED IN O.S.NO.91/2017
ON THE FILE OF LEARNED PRL. CIVIL JUDGE AND JMFC,
SHIVAMOGGA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

Heard Sri Harsha Kumar Gowda H.R., learned counsel for the appellant.

2. First defendant in O.S.No.91/2017 is the appellant challenging the decreeing of the suit confirmed in R.A.No.36/2023.

3. Facts of the case which are utmost necessary for disposal of the present second appeal are as under:

4. A suit for declaration and injunction came to be filed by the plaintiff/respondent No.1 - Nanjundappa in O.S.No.91/2017, contending that agricultural land in Sy.No.16/2, measuring six acres of land in Holehanasavadi Village, Shivamogga Taluk was granted by Land Tribunal in favour of late Pakeerappa, S/o Nagabhovi. Parties to the suit are his children. Grant was made on 19.03.1980 and Pakeerappa expired over a period of time. After his death, there was a partition in the family on 10.07.1998 and a partition deed came into existence signed by the parties to the suit.



5. In the said partition, there is a clear mention that a road was left over for the enjoyment of the property having width of twelve feet in one acre of land that has fallen to the share of 7th party (who is defendant No. 1) in partition deed. The said 12 feet road was upto the land of 3rd party – Jayappa (who is defendant No.2) and it was to be used by all, as a common road for the purpose of irrigation and other agricultural operations.

6. When the matter stood thus, there was an obstruction to the usage of the road by the plaintiff on 01.02.2017 and therefore, suit was necessitated.

7. Pursuant to the suit summons, first defendant entered appearance and filed written statement.

8. He admitted the registered partition deed dated 10.07.1998 and also the relationship among the parties. But, he denied having put up a fence to obstruct the movement of the plaintiff to his property through the common road.

9. Based on the rival contentions, learned Trial Judge after raising necessary issues recorded the evidence of the parties and noted that the fact that there is a clear admission of the partition deed which is marked as Ex.P10 that there existed



a road which is to be used by the parties to the partition deed in common, decreed the suit as prayed for.

10. Being aggrieved by the same, first defendant filed an appeal before the First Appellate Court in R.A.No.36/2023.

11. 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 of the first defendant *inter alia* holding in paragraphs 19 to 21 as under:

"19. A perusal of the sketch at Ex.P-9 reveals that the plaintiff's land is situated to the west. Adjacent to the plaintiff's land are the properties of defendant No.2 and Devendrappa. To the east of defendant No.2's land lies the property of defendant No.1. Additionally, to the east of the lands owned by defendants No.1 and No.2, a road is present. A perusal of the sketch indicates that the plaintiff has no access to his land except by traversing the properties of defendants No.1 and No.2. The defendants have not produced any evidence to show that there is other route to approach the land of plaintiff.

20. The oral and documentary evidence available indicates the presence of a road on the defendants' land. Although the defendant No.1 has asserted that no road exists on his property, he has not disputed the deed of partition. This document is a registered document. It



cannot be said that it is only an agreement and conditions mentioned in the document are not acted upon. Consequently, based on the aforementioned discussions, I am of the opinion that the plaintiff has successfully demonstrated the existence of the road in the suit schedule properties. The plaintiff asserts that the defendants are obstructing his use of the suit road. Defendant No. 1 has refuted the existence of the road, which is adequate to establish that the defendants have indeed interfered with the plaintiff's use of the suit road. Therefore, the plaintiff is entitled to the reliefs claimed in the suit.

21. The Trial Court, after evaluating the materials presented and assessing the evidence, has decreed the suit. It has appropriately considered both the oral and documentary evidence in its proper context. The conclusions reached by the Trial Court are sound, and therefore, intervention by this court is unwarranted. Consequently, I proceed to answer points No.1 and 2 in the negative."

12. Being further aggrieved by the same, first defendant has filed the present appeal on the following grounds and substantial questions of law:

- *It is submitted that, the impugned Judgment and Decree passed by the Trial court and 1st Appellate Court is not sustainable either in law or on facts, hence they are liable to be set aside.*



- *It is submitted that, an impugned Judgment and Decree passed by the Trial Court and first Appellate court is illegal, perverse and are being passed without application of mind.*
- *It is submitted that, the both the courts inadequately assessed the oral and documentary evidence available.*
- *The trial court made an error in affirmatively answering issue no.1, concluding that the plaintiff has proved the existence of a road in the suit schedule properties. Furthermore, the trial court incorrectly determined that the plaintiff is entitled to an injunction. Although the deed of partition mentions a 12-foot road, the parties involved have never utilized or exercised their rights concerning the purported 12 foot wide road. The description of the suit properties provided by the plaintiff is inadequate. There is a lack of specific pleading regarding the B schedule property. The trial court overlooked the fact that defendant no.1 has cultivated his entire land in sy.no.16/7, enclosing it with a fence across the full extent of one acre. Additionally, there are areca nut trees that are 30 years old on the land owned by defendant no.1. The plaintiff, having remained inactive for all these years, has now filed this suit in 2017, intending to impose hardship on the first defendant.*
- *The suit is also barred by the statute of limitations. The trial court failed to recognize that the plaintiff has alternative routes to access his land. It erred in appreciating the fact that the plaintiff's land does not adjoin that of defendant no.1, as the land separating*



them belongs to defendant no.2 in sy.no.16/6. There are no references in the partition deed concerning the schedule B property. The trial court did not take these factors into account. The documents submitted by defendant no.1, i.e., Ex.D-2 and D-3, demonstrate that the parties to the partition deed did not intend to create any road as claimed by the plaintiff. If there were to be any road established on the land of the first defendant, it would have certainly been recorded in the revenue documents. The plaintiff has not raised any objections regarding this matter until now. The plaintiff has not examined any independent witnesses regarding alleged interference by the defendants.

- *The trial court erred in granting the relief of declaration and permanent injunction. The impugned judgment and decree passed by the trial court is perverse and improper.*
- *The appellant being aggrieved by the same, filed an appeal in R.A.No.36/2023 before the Learned 1 Addl. Senior Civil Judge & CJM at Shivamogga, same is dismissed by Judgment and Decree dated 24.10.2025. The Learned appellate Court also erred in confirming the judgment and decree dated 28.03.2023 passed in O.S.No.91/2017. Hence both the impugned Judgment and Decree are liable to be set aside.*

SUBSTANTIAL QUESTION OF LAW

- i) *Whether the Trial Court and 1st Appellate Court erred in concluding that the plaintiff is entitle to*



the decree of declaration and permanent injunction?

- ii) Whether both the Court erred in not considering the Ex-D2 and Ex.D3 while passed in impugned Judgment and decree?*
- iii) Whether the 1st Appellate Court justified in confirming the Judgment and Decree passed in O.S. No. 91/2017.?"*

13. Sri Harshakumar Gowda, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that there is no road in existence and suit land is arecanut garden. Therefore, very decreeing of the suit is incorrect though there is no dispute as to Ex.P10 and the partition among the plaintiff and other defendants.

14. He would further invite the attention of the Court that when the clear mention is made in the written statement that there was no fencing put up and there is no existence of the road at all, decreeing of the suit has resulted in miscarriage of justice and sought for admitting the appeal on the aforesaid substantial questions of law.



15. This Court did not deem fit to issue notice in view of the admissions made by the defendant in his written statement itself in respect of Ex P10 registered partition deed.

16. Accordingly, in the light of the argument put forth on behalf of the appellant, this Court perused the material on record meticulously.

17. On such perusal of the material on record, in paragraphs 9 and 10 of the Trial Court Judgment, it has been observed that since there is no dispute as to Ex.P10 and the contents therein would depict that there existed a road of 12 feet width which the 7th party (1st defendant/appellant) has agreed to leave for the road for the purpose of reaching up to the land of 3rd party Jayappa (who is second defendant). Plaintiff has made out a case as contended in the plaint.

18. Learned Trial Judge has noted that since there is no dispute as to the contents of Ex.P10, decreeing of the suit was utmost necessary as there was an obstruction that has taken place to reach the land on 01.02.2017 by trying to close the road.

19. Said aspect of the matter is re-considered by the learned judge in the First Appellate Court after revisiting into



the factual aspects and re-appreciating the material evidence on record and found that the factual aspects as held by the learned Trial Judge is just and proper and therefore dismissed the appeal.

20. When two Courts have concurrently recorded the factual finding about the existence of the road as well as the obstruction made by defendant No.1, this Court does not find any good grounds in admitting the appeal on the aforesaid substantial questions of law.

21. Accordingly, the following:

ORDER

- (i) Admission is ***declined***.
- (ii) Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**