

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 669 OF 2019 (INJ)

BETWEEN:

SMT. SHOBHA
W/O HONNEGOWDA @ UMESH,
AGED ABOUT 36 YEARS,
NO.78, 5TH CROSS,
GANESHA BLOCK,
MAHALAKSHMI LAYOUT,
BANGALORE-96.

...APPELLANT

(BY SRI. NAGARAJA N, ADVOCATE)

AND:

1. SRI. DEEPAK KUMAR
S/O SHANKARAPPA,
AGED ABOUT 39 YEARS,
NO.187, 8TH CROSS,
MASJID ROAD,
HEGGANAHALLI,
BANGALORE-59.
2. SMT. POORNIMA
W/O H. PRAKASH, 34 YEARS
C/O RAJU, NO.163
2ND CROSS, BEHIND JAIN
BAASADI, RANGANATHA NAGAR
SRIRANGAPATNA TALUK & TOWN
MANDYA DISTRICT-571 401
3. SRI. SOMESH
S/O LATE CHENNAPPA, 38 YEARS
NO.41, CHAMUNDESWARI
NAGAR, NEAR SHANKARESWARI

Digitally signed
by PANKAJA S
Location: HIGH
COURT OF
KARNATAKA

ENGLISH SCHOOK, BEHIND
RAJGOPALANAGAR POLICE STATION
LAGGERI, BANGALORE-58

...RESPONDENTS

(BY SRI. HARSHA KUMAR GOWDA H.R, ADVOCATE FOR C/R1,
NOTICE TO R2 & R3 DISPENSED WITH)

THIS RFA IS FILED U/S.96 OF CPC AGAINST THE
JUDGMENT AND DECREE DATED 01.03.2019 PASSED IN
OS.NO.7931/2014 ON THE FILE OF THE XXIV ADDL.CITY CIVIL
AND SESSIONS JUDGE, BANGALORE CITY DISMISSING THE
SUIT FOR PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT
ON 17.09.2026 COMING ON FOR PRONOUNCEMENT THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

This Regular First Appeal is preferred against the
judgment and decree dated 01.03.2019 passed in O.S. No.
7931/2014 on the file of the XXIV Additional City Civil &
Sessions Judge, Bengaluru (CCH-6)(for short, "the Trial
Court"), whereby the Trial Court dismissed the suit filed by the
plaintiff for permanent injunction.

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

3. The abridged facts of the case are that the plaintiff-appellant filed the suit for permanent injunction seeking to restrain defendants, their agents, and servants from entering or interfering with her peaceful possession and enjoyment of the suit schedule property—Site No. 27, Assessment No. 158, Laggere Village, Yeshwanthpura Hobli, Bengaluru North Taluk, measuring East to West 30 feet and North to South 40 feet. The plaintiff claimed continuous lawful possession and absolute ownership by virtue of a registered Sale Deed dated 13.12.2004 executed by Smt. Devamma through her General Power of Attorney holder, M. Manjunath, followed by a Rectification Deed dated 03.12.2012, along with municipal Khatha records and tax paid receipts. She alleged that when she attempted to put up an asbestos sheet shed on the site, defendant No. 1 unlawfully attempted to disrupt the construction work under the guise of an alleged rival Sale Deed dated 13.10.2014. As such, the plaintiff was constrained to file the suit.

4. The Trial Court, upon consideration of oral and documentary evidence dismissed the suit. Aggrieved by the said judgment and decree, the appellant/plaintiff is before this Court.

5. Heard the learned counsel Sri. Nagaraja N. appearing for the appellant/plaintiff and the learned counsel Sri. Harsha Kumar Gowda H.R. appearing for respondent No. 1/defendant No. 1.

6. The learned counsel for the appellant contended that the Trial Court failed to appreciate the previous binding judicial determination in O.S. No. 868/2012. It was submitted that the appellant had instituted O.S. No. 868/2012 against Smt. Poornima and Smt. Parvathamma (who are the predecessor-in-title/vendors of respondent No. 1), wherein the Court, vide judgment and decree dated 06.03.2014, categorically held that the appellant was in lawful possession and enjoyment of the suit schedule property and granted a decree of permanent injunction against vendors of the respondent No.1. The learned counsel submitted that since that judgment and decree remained unchallenged, it attained finality and operates as binding precedent against respondent No. 1, who claims title under a subsequent Sale Deed dated 13.10.2014 executed by the defeated vendors. It was further contended that the appellant has now produced the General Power of Attorney and in light of these vital aspects, the

impugned judgment is liable to be set aside. Accordingly, he prays to allow the appeal.

7. *Per contra*, the learned counsel appearing for respondent No. 1 supported the impugned judgment and decree, contending that the decree in O.S. No. 868/2012 was an *ex-parte* / uncontested decree obtained without proper adjudication of title. It was submitted that the defendant No.1 set up a complete flow of title establishing his absolute ownership, asserting that the original land in Survey No. 158 belonged to Mallaiah and his sons, which was purchased by Doddagangappa in 1944. Upon Doddagangappa's death, his heirs executed a registered GPA dated 10.08.1981 in favor of Erappa, who sold the land to Malleshwaram Tailoring Co-operative Society Ltd.. The Society formed a layout and allotted Site No. 27 to Chennappa, whose wife Parvathamma bequeathed it via registered Will dated 09.07.2009 to Somesh and Poornima. Defendant No. 1 subsequently purchased the site from Somesh and Poornima under a registered Sale Deed dated 13.10.2014 and took physical possession. As such respondent No. 1 is a bona fide purchaser under a registered Sale Deed dated 13.10.2014 backed by an unbroken chain of title originating from the Co-operative Society. The learned

counsel argued that in respect of vacant sites, possession follows title, and since the non-production of the GPA was fatal to the appellant's case before the Trial Court, the dismissal was justified.

8. I have given my anxious consideration to the submissions made by learned counsel for both parties and perused the Trial Court records placed before this Court.

9. As could be gathered from records, the Trial Court in the present suit (O.S. No. 7931/2014) dismissed the plaintiff's claim primarily on the ground that the General Power of Attorney executed by Smt. Devamma in favor of M. Manjunath was not produced. The appellant has now produced the said General Power of Attorney before this Court under Order XLI Rule 27 of CPC. Since this document directly impacts the core issue regarding the vendor's authority and goes to the root of the title and lawful possession, its consideration is necessary for a complete and effective adjudication of the dispute.

10. However, since this document and the full legal impact of the final decree in O.S. No.868/2012 were not comprehensively evaluated with evidence before the Trial

Court, respondent No. 1 must be afforded an opportunity to cross-examine and lead rebuttal evidence. Deciding the appeal on merits without remanding the matter would prejudice the procedural rights of the parties. Therefore, it is just and proper to set aside the impugned judgment and decree and remand the matter back to the Trial Court under Order XLI Rule 23A of CPC for fresh consideration in light of the additional evidence and the binding nature of the decree in O.S. No.868/2012.

11. In that view of the matter, the appeal deserves to be allowed in part for the purpose of remand.

12. In the result, I proceed to pass the following:

ORDER

(i) The Regular First Appeal is ***allowed in part.***

(ii) The judgment and decree dated 01.03.2019 passed in O.S. No. 7931/2014 by the XXIV Additional City Civil & Sessions Judge, Bengaluru (CCH-6) is hereby set aside.

(iii) The matter is remanded back to the Trial Court (XXIV Additional City Civil & Sessions Judge, Bengaluru) for fresh consideration and disposal in accordance with law.

(iv) The interlocutory application filed by the appellant under Order XLI Rule 27 of CPC for production of additional evidence (General Power of Attorney) is hereby disposed of and the document produced therein is ordered to be transmitted to the Trial Court.

(v) All contentions of the parties are left open. The Trial Court shall afford reasonable opportunity to the plaintiff to mark the additional documents and lead further evidence, if any, as well as afford full opportunity to defendant No. 1 to cross-examine and adduce rebuttal evidence for the same.

(vi) Both parties are directed to appear before the Trial Court on 06.11.2026 without waiting for further notice.

(vii) The Trial Court shall endeavor to dispose of the suit as expeditiously as possible.

**SD/-
(RAJESH RAI K)
JUDGE**

PKS/V