



NC: 2026:KHC:50903
RSA No. 466 of 2019

CNR: KAHC010066732019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 466 OF 2019 (INJ)

BETWEEN:

MUDASIR PASHA
S/O K. AMEER JAN
AGED ABOUT 44 YEARS
R/A NEAR MASJID-E-AMEEN
KHILA COURT LAYOUT,
KOLAR-563 101.

...APPELLANT

(BY SRI. SHAIK ISMAIL, AND
SRI. KAAJA ALEEMUDDIN, ADVOCATES)

AND:

SMT B JAYAMMA
W/O H GANGAPPA
AGED ABOUT 77 YEARS
EX-CHIEF OFFICER,
MADHUGIRI-572 132
TUMKUR DISTRICT

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)

THIS RSA IS FILED U/S.100 R/W ORDER 42 RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 09.11.2018 PASSED IN RA.NO.29/2018 ON THE FILE OF THE I ADDL.SENIOR CIVL JUDGE, KOLAR DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 12.01.2018 PASSED IN OS.NO.562/2012 ON THE FILE OF THE PRL.CIVIL JUDGE AND JMFC KOLAR.

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



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CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

This appeal by the plaintiff in O.S.No.562/2012 on the file of the Prl.Civil Judge and JMFC, Kolar, is directed against the impugned judgment and decree dated 12.01.2018 passed by the trial court which dismissed the suit for permanent injunction and other reliefs filed by the appellant – plaintiff against the respondent – defendant in respect of the suit schedule immovable property which was confirmed by the 1st appellate court in R.A.No.29/2018 filed by the appellant – plaintiff which was dismissed by the 1st appellate Court thereby confirming the judgment and decree passed by the trial court.

2. Heard learned counsel for the appellant and perused the material on record. The respondent having been served with notice of this petition, has chosen to remain absent and has not contested the appeal. For the purpose of convenience, the parties are referred to by their respective ranks before the trial Court.



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3. A perusal of the material on record will indicate that the plaintiff instituted the aforesaid suit for permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit schedule immovable property bearing Site No. 458 of Kilukote Layout, Kolar bearing Municipal Khata No.934/ Assessment No. 934 as described in the schedule to the plaint. It was contended that the plaintiff acquired the suit schedule property as per oral sale agreement dated 05.06.2012 entered into between plaintiff and defendant in pursuance of which the plaintiff paid a sum of Rs.50,000/- to the defendant out of the total sale consideration of Rs.11,50,000/- and the defendant delivered possession of the suit schedule property to the plaintiff and agreed to execute a written agreement of sale in favour of the plaintiff within seven days. It was further contended that instead of complying with his part of the contract, the defendant erected a building in the suit schedule property and attempted to illegally trespass onto the suit schedule property as a result of which the plaintiff instituted the aforesaid suit against the defendant for permanent injunction and other reliefs.



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4. The defendant remained exparte and did not contest the suit and the plaintiff having examined himself as PW1, documentary evidence at Exs.P.1 to P.7 were marked on his behalf. The trial Court formulated the following points for consideration.

- 1. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of suit?*
- 2. Whether the plaintiff proves alleged attempt or interference by the defendant?*
- 3. Whether the plaintiff is entitled for the relief sought for?*
- 4. What order or decree?*

5. The trial Court considered and appreciated the material on record and came to the conclusion that the appellant/ plaintiff had not placed any material to establish that he was in lawful and peaceful possession and enjoyment of the suit schedule property and consequently proceeded to dismiss the suit by holding as under:

“8. Point No.1:- In order to prove the case of the plaintiff, he examined himself as P.W.1. He has filed affidavit in lieu of his examination-in-chief in which has reiterated the plaint averments. In support of his case he has produced Exs.P.1 to 7. According to him he acquired the suit schedule property by virtue of sale transaction held between himself



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and defendant on 05/06/2012. He agreed to execute registered sale deed within 7 days stating that she has to collect some documents. She has delivered possession to the plaintiff on the date of sale transaction. The plaintiff is residing in the suit schedule property along with his family. As per oral agreement the defendant has not executed agreement of sale inspite of repeated requests made by the plaintiff. Subsequently the plaintiff learnt that the defendant is not the owner of said property. She has concocted some documents and unlawfully erected the building in said property. The said property is belongs to Municipality, Kolar. Further he learnt that the Municipality has lodged complaint against the defendant for cheating and forgery and case has been registered against her in CC No.40/2000 on the file of Prl. Senior Civil Judge, Kolar. After knowing said fact the plaintiff demanded the defendant to refund his advance amount. But she is evading to return the same. The plaintiff has prepared to vacate and handover possession of the property. But the Municipality is insisting him to handover possession of the property to it. He has refused to deliver possession of the same unless and until he is vacated by due process of law the defendant.

9. Ex.P.1 reveals that property No.3714 measuring 30 X 40 feet is standing in the name of Municipality, Kolar. In the said document it is certified that site Nos.457 and 458 are belong to Municipality. Ex.P.2 reveals that Gulpet Police have registered case against defendant for the offences punishable under Sec.457, 490, 420, 467, 468 of IPC. In the



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said case the accused who is defendant herein was acquitted. When she was acquitted for alleged offences, it could be inferred that she has not made any transaction with the plaintiff. Apart from Exs.P.1 and 2, Exs.P.3 to 6 reveal that residential address of the plaintiff and his wife and children is Keelukote Layout, Kuvempu Nagar, Kolar Taluk. It does not disclose the plaintiff is residing in the suit schedule house. Ex.P.7 discloses that electricity connection is in the name of the defendant. But said document does not disclose that whether said bill is pertaining to the suit schedule property or not. However the plaintiff stated that there was transaction held between himself and the defendant in the presence of witnesses. But in order to prove the same he has not examined any witnesses to prove his case. The documents produced by him do not disclose that he is in possession and enjoyment of the suit schedule property as on the date of suit.

*10. It is true that the defendant has not appeared before the court and she was placed ex parte. The evidence of P.W.1 remained unchallenged. But it is principle of law that a party who approaches the court has to prove his case on his own strength. He cannot take advantage of the weakness of the case of other side. In this regard I have relied upon the citation reported in **AIR 2014 SC 937 (Union of India and others V/s. Vasavi Co-operative Housing Society Ltd., and others.)** wherein the Hon'ble Apex court held that "decreeing the suit by finding weakness in evidence of defendant, improper". In **ILR 2014 KAR 1311**, the Hon'ble*



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*High Court of Karnataka held that “weakness of the defendants case would not strengthen plaintiff’s case. The plaintiff has to prove his case to the satisfaction of the court by means of convincing and cogent evidence.” In the instant suit when the plaintiff is seeking relief of permanent injunction he has to prove that he is in possession and enjoyment of the suit schedule property as on the date of suit. When he has stated that in the presence of mediators namely Akthar Ulla, Chand Pasha and Syed Bahadur the transaction was taken place between himself and the defendant. He would have adduced the evidence of the said persons as witnesses on his behalf. In the absence of cogent and convincing witness evidence, mere on the basis of testimony of P.W.1 the case of the plaintiff cannot be believed. In view of above discussion this court is of the opinion that the plaintiff has failed to prove his case. Accordingly point No.1 is answered in the **negative**.*

11. Point No.2 :- *Further allegation of the plaintiff is that the defendant has no manner of right, title, interest over the suit schedule property. In spite of it she has tried to interfere into the said property and dispossess the plaintiff from the suit schedule property. In order to prove said allegation the plaintiff has not produced any document. If the defendant has tried to disposes the plaintiff from said property, he would have lodged complaint against her. Moreover to substantiate the interference by the defendant the plaintiff would have adduced witness evidence. But he has neither produced document nor adduced other witness*



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*evidence. When the plaintiff is not in possession of the suit schedule property as discussed in point No.1, interference by the defendant does not arise at all. Accordingly point No.2 is answered in the **Negative**.*

12. Point No.3:- *When the plaintiff is seeking the relief of permanent injunction with respect to the suit schedule property, he has to prove his possession over the said property as on the date of suit. In the instant suit he has failed to prove that he is in possession and enjoyment of the suit schedule property as on the date of suit and interference of defendant. Therefore plaintiff is not entitled for the relief as sought for. Accordingly point No.3 is answered in the **Negative**.*

13. Point No.4:- *In view of above discussions, I proceed to pass the following:*

ORDER

The suit of the plaintiff for the relief of permanent injunction is hereby dismissed.

Considering the facts and circumstances of the case no order as to costs.

Draw decree accordingly."

6. Aggrieved by the aforesaid judgment and decree passed by the trial Court, the plaintiff filed an appeal in which also the respondent remained *exparte* and did not contest the suit and the first appellate Court reconsidered, re-appreciated and re-evaluated



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the entire material on record and proceeded to dismiss the appeal by holding as under:

“11. In view of the grounds urged by the appellants, the points that would arise for consideration are;

- 1. Whether the pleadings and evidence on record is sufficient to decree the suit of the plaintiff as prayed for?*
- 2. Whether the judgment and decree of the trial Court needs interference?*
- 3. To what relief and decree the parties are entitled for?*

12. The findings on the above points are as follows:

Points No.1 & 2 : In the Negative

Point No.3 : As per the final order for the following:

REASONS

13. The description of the suit schedule property as described in the plaint is as follows:

“Building in Site No.4578 of keelukote Layout, Kolar, measuring EastWest 30 ft. NorthSouth 40 ft. bearing Municipal Katha No.934, assessment No.934, bounded on:

*East by Site No.459
West by Site No.457
North by Road
South by Site No.470.*

14. Point No.1 : *The trial court has dismissed the suit by holding that there is variance in the residential address of the plaintiff, his wife and children, from the Ex.P1 & 2 and 3 to 6. The trial court has observed that Ex.P7 does not*



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disclose as to whether it pertains to the suit property. The trial court has refereed to ILR 2014 Karnataka 1311 that weakness of the defendant shall not to be trump card to the plaintiff.

15. This is a peculiar suit filed by the plaintiff seeking permanent injunction claiming to be a person inducted in to the suit property in part performance of an oral agreement for sale, purported to be executed by a person on the basis of concocted documents, without having any subsisting right over the suit property. In other words, the very vendor of the said oral agreement did not have any right over the said property is pleaded by the plaintiff himself. If that is so, how one can deliver the possession of such a property is point germane at this juncture. Under Sec.53A of Transfer of Property Act, 1882 to claim the protection of possession under part performance, the transfer must be completed in the manner prescribed by the law for the time being in force. As per Act, 48/2001 w.e.f. 24.9.2001, words "the contract, though required to be registered, has not been registered, or," has been omitted from Sec.53A of T.P. Act. Thus, from the date of said amendment if the agreement for sale requires to be compulsory registered, an unregistered agreement cannot be relied upon to claim the benefit of Sec.53A of T.P. Act. As per Sec.17 of the Registration Act, 1908, in particular Sec.17(1A) stipulates as follows:

*"Documents of which registration is compulsorily
(1A) The documents containing contracts to
transfer for consideration, any immovable property
for the purpose of section 53 A of the Transfer of*



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Property Act, 1882 shall be registered if they have been executed on or after the commencement , they shall no effect for the purposes of the said section 53A.”

16. Therefore, from the date of commencement of said Sec.17(1A) i.e. w.e.f. 24.9.2001, the party who wants to rely upon Sec.53A of T.P. Act must have a registered agreement for sale. The very pleadings of the plaintiff does not stand up to the said requirement. Purported agreement is neither written nor registered. There is not even a receipt for proof of payment of advance consideration as alleged. Hence the plaintiff is not entitled for the benefit of protection of possession under section 53A of T.P. Act. This is one aspect of the matter.

17. It is relevant to note that in the decision reported in 2012 (5) SCC 370 (Maria Margarida Segueira Fernandes – vs Erasamo Jack De Segveria) , the Hon’ble Apex court has held as follows:

“Possession of the past is one thing, and the right to remain or continue in future is another thing. It is the later which is usually more in controversy than the farmer”.

18. Thus, the purported prior possession of the plaintiff is one thing which is altogether irrelevant at this juncture. Whether the plaintiff has right to continue in possession (even if it is considered for a moment that he is in possession of the suit property for the sake of argument) of the suit schedule properties? requires to be considered at this juncture. At the cost of repetition it is relevant to note that



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the plaintiff has no protection of 53A of T.P. Act. Therefore, when the defendant is not at all the person possessing any interest over the property, but only a person who concocted the documents at the cost of belong an accused undergoing prosecution in that regard. Moreover, the purported delivery of possession itself is prima facie illegal and not proved. Therefore, the plaintiff can not be held to possess any right to continue in possession of the suit property, requires to be clarified at this juncture. Even going by the case pleaded by the plaintiff without any subtraction, he is not a trespasser in settled possession, i.e., in undisturbed possession for quite long time. Per contra, he is only a rank trespasser of a public property. He cannot held to have any right to continue in possession of the said property even after coming to know of the illegal Acts of the defendant. Neither the plaintiff nor the defendant has any equities in their favour to remain in illegal possession of a public property. Therefore, even on the test of right to continue in possession, the case of the plaintiff fails. This is the second aspect of the matter.

19. This court is not impressed by the argument of the learned counsel for the appellant that till municipal authorities evict the plaintiff under due process of law, the plaintiff is entitled to remain in possession of the property. What is due process of law? is observed in the above mentioned Maria Margarida Segueira's case. It is held in the said judgment as follows:

"Due process of law means that nobody ought to be condemned unheard. It means a person in settled possession will not be dispossessed except by due process of law. No one can take law in his



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*own hands. Even a trespasser in a settled possession cannot be dispossessed without recourse to law. Due process means an opportunity to the defendant to file pleadings including written statement and then documents before the court of law. It does not mean the whole trial. **Due process of law is satisfied, moment rights of the parties are adjudicated upon by a competent court. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against the dispossession), is not of much consequence**".*

20. Therefore, when the plaintiff has failed in his attempt to make out ingredients for obtaining the relief of permanent injunction in his favour in respect of the suit property, the due process of law has already been complied, for which the plaintiff no more possess any right to continue in possession of the suit property. Therefore in any view of the matter, the plaintiff is not entitled for any equitable relief of permanent injunction. Neither, the plaintiff has proved his possession over the suit property nor any right to continue in possession thereof.

21. Be it as it may, it is relevant to note that the plaintiff cannot use the judgments of the courts to squat on any property by illegal entry in to such property. Therefore, when the public property is involved, the court has to be more cautious while passing the judgment, especially when the defendant remains absent and lets the case to continue uncontested.

22. In the decision reported in AIR 2000 SC 3272 (Grampanchayath of Village and Nanlakka vs Ujagar Singh), the Hon'ble Apex court has held to the following effect:



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“Fraudulent or collusive judgment may be challenged in a latter suit or proceedings it is not necessary to file an independent suit for declaration or for setting it aside more so, where public property is in jeopardy collector allowing application and finding that an earlier decree obtained by the respondent had been in collusion – proper and correct.”

23. The above decision categorically stipulates that when the public property is at jeopardy, the authorities concerned need not even file any suit to recover the possession or even seek cancellation of any decree obtained in collusion, by a person. Thus, the public property needs to be protected from unscrupulous elements of the society. Thus, the suit property being admittedly a property owned by Municipal Authorities, i.e., a public property, no equity lies in favour of the plaintiff. Hence equitable jurisdiction can not be exercised in favour of the plaintiff.

24. In view of the above, the judgment and decree of the trial court is proper and incorrect, even on re-appreciation of the pleadings and evidence. The trial court has come to proper conclusion in the matter and hence the judgment and decree of the trial court does not require interference in this appeal. Hence, the Points No.1 & 2 are answered in the negative.

25. Point No.3 : In view of the findings on the above points, the following order is passed :

ORDER

The appeal is hereby dismissed with costs.



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*The judgment and decree passed in
O.S.No.562/2012, dated 12/12/2018 by the Prl. Civil Judge,
Kolar is confirmed.*

Draw decree accordingly.

*Send back the LCR along with copy of this order to
the trial court, as per law."*

7. A perusal of the material on record, including the impugned judgment and decree passed by the trial Court as well as the first appellate Court is sufficient to come to the conclusion that both the Courts have concurrently / correctly and properly considered and appreciated the entire material on record and have recorded categorical finding of fact to the effect that the plaintiff who claimed to be in lawful and peaceful possession and enjoyment of the suit schedule property had not placed any material in this regard; both the Courts also took note of the fact that the claim of the plaintiff that he entered into an oral sale agreement with the defendant in pursuance of which he paid Rs.50,000/- to the defendant had not been established by the plaintiff and in the light of the provisions contained in Sec. 53-A of the Transfer of Property Act, it was necessary that a sale agreement is to be in writing for the purpose of claiming protection of possession by way of part performance



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and since undisputedly, the plaintiff had neither pleaded nor proved any such written sale agreement, the plaintiff cannot be said to be in lawful or peaceful possession or enjoyment of the suit schedule property. Under these circumstances, having regard to the findings of fact recorded by both the Courts after considering and appreciating the pleadings and evidence of the plaintiff which was not sufficient to establish his claim over the suit schedule immovable property, I am of the considered opinion that no question of law, much less substantial question of law arises for consideration in the present appeal warranting interference by this Court in the exercise of its jurisdiction under Section 100 CPC.

8. Accordingly, I do not find any merit in the appeal and the same is hereby dismissed at the stage of admission itself.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

SV/bvv
List No.: 1 Sl No.: 43