



CNR: KAHC010072152014

NC: 2026:KHC:39988
RSA No. 1 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1 OF 2014 (INJ)

BETWEEN:

1. SRI GOVINDAIAH
S/O LATE HUCCHADASAIAH,
SINCE DEAD REP. BY HIS LEGAL REPRESENTATIVES

1(A) SMT. THIMMAMMA
W/O KRISHNAMURTHY C V
AGED ABOUT 42 YEARS
R/O #7, MUNIMARAPPA STREET
A J HALLY POST, SHANTHINAGAR
BENGALURU - 560 027

1(B) SMT. D M YASHODAMMA
W/O VYRAMUDI
AGED ABOUT 40 YEARS
R/O 5TH CROSS, BYDARAHALLI
MAGADI ROAD
BENGALURU - 560 023

...APPELLANTS

(BY SRI. H N BASAVARAJU.,ADVOCATE)

AND:

1. SRI KEMPEGOWDA
S/O G.LAXMAIAH,

Digitally
signed by
SHILPABAI S
Location:
HIGH COURT
OF
KARNATAKA



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AGED ABOUT 46 YEARS,

2. SRI SHIVARAMU
S/O G.LAXMAIAH,
AGED ABOUT 44 YEARS,
3. SRI NAGARAJU
S/O G.LAXMAIAH,
AGED ABOUT 38 YEARS,
4. SRI KRISHNA
S/O G.LAXMAIAH,
AGED ABOUT 36 YEARS

RESPONDENT Nos.1 TO 4 ARE THE
RESIDENTS OF DODDAUPPALA VILLAGE,
DEVALAPURA HOBLI,
NAGAMANGALA TALUK,
MANDYA DISTRICT.

...RESPONDENTS

(R1 SERVED
SRI. NARENDRA D V GOWDA, ADVOCATE FOR R2 TO R4)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 12.7.2013 PASSED IN
R.A.NO.33/2008 ON THE FILE OF THE SENIOR CIVIL JUDGE &
JMFC., NAGAMANGALA, ALLOWING THE APPEAL AND SETTING
ASIDE THE JUDGEMENT AND DECREE DTD 23.1.2008 PASSED
IN OS.NO.48/2003 ON THE FILE OF THE CIVIL JUDGE (JR.DN)
& JMFC., NAGAMANGALA.

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



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CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 12.07.2013, passed in R.A.No.33/2008 by the learned Senior Civil Judge and JMFC, at Nagamangala.

2. For the sake of convenience, parties are referred to based on their ranking before the trial Court. The appellant was the plaintiff and the respondents were the defendants.

3. The brief facts leading rise to the filing of this appeal are as follows:

The plaintiff filed a suit for permanent injunction alleging that the plaintiff has acquired the title to the suit property under a registered sale deed dated 21.09.1966 executed by defendant No.1. It is contended that defendant Nos.2 to 6 are the legal representatives of



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Lakshmaiah. It is contended that defendant Nos.2 to 6 have no right, title or interest over the suit schedule property. It is contended that in the month of February 2002 and also on 02.02.2003, the defendants made attempts to trespass into the suit property and to dig foundation to build a permanent structure. The act of the defendants is illegal, high handed and tortuous. The defendants have denied the title of the plaintiff over the suit schedule property. Hence, the cause of action arose for the plaintiff to file a suit for declaration of title and injunction.

3.1. Defendant Nos.2 to 6 filed a written statement contending that defendant No.1 was not the owner of the suit schedule property and he has not acquired any right, title or interest under the registered sale deed dated 21.09.1966. It is contended that defendant No.1 was the earlier owner of the suit schedule property, had sold 12 items of land and house properties, including 25 guntas of



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land in survey No.108 of Doddauppala village (the suit schedule property is comprised within 25 guntas) in favour of one Narasaiah @ Gondaiah. Under the registered sale deed dated 23.10.1953 Smt.Mayamma, the mother of defendant Nos.2 to 6 inter alia repurchased the said property dated 19.06.1961. Since then as absolute owner Mayamma was in possession of the property repurchased by her from Narasaiah @ Gondaiah. On 15.01.2003, she died intestate leaving behind her children namely defendant Nos.2 to 6 to succeed her estate. After the death of Mayamma, defendant Nos.2 to 6 are in peaceful possession and enjoyment of the land bearing Sy.No.108 of Doddauppala village measuring 25 guntas. It is contended that Mayamma was buried in the said land and constructed a tomb at the burial place. It is contended that they also formed thrashed floor in the said property and stocked hay. They raised one tamarind tree in the said property. It is contended that defendant Nos.2 to 6 after execution of the sale deed dated 23.10.1953 their father



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i.e., defendant No.1 has no manner of any right, title or interest over the suit schedule property. It is also contended that as on the date of the execution of the alleged sale deed by defendant No.1 in favour of the plaintiff neither he was owner nor in possession of the suit schedule property. Hence, the suit filed by the plaintiff is not maintainable. Accordingly, he prays to dismiss the suit.

3.2. The Trial Court, on the basis of the above said pleadings, framed the following issues:

- (1) *Whether the plaintiff proves that he is the owner in possession of the suit schedule property by virtue of registered sale deed dated 21.09.1966?*
- (2) *Whether the plaintiff proves the alleged interference?*
- (3) *Whether the plaintiff is entitled for the relief of declaration and injunction as claimed in the plaint?*
- (4) *What order or decree?*



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3.3. The plaintiff, to substantiate his case, examined himself as PW1, examined one independent witness as PW2 and marked 06 documents as Exs.P1 to P6. In rebuttal, defendant No.6 was examined as DW.1, defendant No.5 was examined as DW.2 and examined two independent witnesses as DW.3 and DW.4, and marked 13 documents as Exs.D1 to D13.

3.4. The trial Court after recording the evidence, hearing on both sides and assessing the verbal and documentary evidence answered issue Nos.1 and 3 partly in the affirmative, issue No.2 in the affirmative, and issue No.4 as per the final order. The suit of the plaintiff was decreed in part and declared that the plaintiff is the owner of 5 guntas of land in Sy.No.108/2AP22, bounded on East: Road, West: Hutcheeraiah and Kaggegowda's son Giriyaiah, North: P; Laxmegowda, South: Govindaiah, and the defendants are restrained from interfering with the



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peaceful possession in respect of the said property vide judgment dated 23.01.2008.

3.5. The defendants, aggrieved by the judgment and decree passed in O.S.No.48/2003, preferred an appeal in R.A.No.33/2008 on the file of learned Senior Civil Judge and JMFC, Nagamangala.

3.6. The First Appellate Court, after hearing the learned counsel for the parties, has framed the following points for consideration:

- 1) *Whether the plaintiff proves that he is the absolute owner of the suit property?*
- 2) *Whether the plaintiff proves his possession over the suit schedule property as on the date of the suit?*
- 3) *Whether the plaintiff proves the interference by the defendants as alleged?*
- 4) *Whether the trial Court is justified in partly decreeing the plaintiff's suit?*
- 5) *What order or decree?*



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3.7. The First Appellate Court, after re-assessing the verbal and documentary evidence, answered point Nos.1 to 4 in the negative and point No.5 as per the final order. The appeal was allowed. The judgment and decree passed by the trial Court in O.S.No.48/2003 was set aside. Consequently, dismissed the suit of the plaintiff.

3.8. The plaintiff, aggrieved by the judgment and decree passed in R.A.No.33/2008 dated 12.07.2013, filed this Regular Second Appeal.

4. Heard the arguments of the learned counsel for the plaintiff and also learned counsel for the defendants.

5. Learned counsel for the plaintiff submits that, originally, the suit schedule property was owned by defendant No.1. He sold the suit schedule property in favour of Gundaiah, in the year 1953. He also submits that the said Gundaiah in turn sold the suit schedule property in favour of Mayamma i.e., the mother of defendant Nos.



2 to 6. He submits that the said property is the property of defendant No.1 and he had a right to execute a registered sale deed in favour of defendant No.1 and under the registered sale deed, the plaintiff became the absolute owner and in possession of the suit schedule property. He submits that the First Appellate Court has committed an error in ignoring Ex.P1 i.e., the registered sale deed executed by defendant No.1 in favour of the plaintiff and also revenue records, which stands in the name of plaintiff. He also submits that there is a presumption under Section 133 of the Karnataka Land Revenue Act,1964 in regard to the entries in the revenue records. He submits that the First Appellate Court without considering this aspect has committed an error in dismissing the suit. Hence, on these grounds, he prays to allow the appeal.

6. Learned counsel for the defendants submits that, as on the date of execution of the registered sale



deed, defendant No.1 was not the absolute owner in possession of the suit schedule property. As defendant No.1 executed a registered sale deed in favour of Gundaiah on 23.10.1953, the said Gundaiah sold the suit schedule property in favour of Mayamma i.e., the mother of defendant Nos.2 to 6. Defendant No.1 had no right, title or interest over the suit schedule property. The plaintiff had not acquired any right by virtue of a registered sale deed executed by defendant No.1 in favour of the plaintiff on 21.09.1966. He also submits that the plaintiff has not produced any document to show that defendant No.1 had a title over the suit schedule property. He submits that the First Appellate Court has rightly dismissed the suit. Hence, on these grounds, he prays to dismiss the appeal.

7. This Court, vide order dated 19.02.2019, admitted the appeal to consider the following substantial questions of law:

- (1) Whether the First Appellate Court be justified in law in passing the judgment and decree, be*



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declaring the sale deed Ex.P1 does not convey the title, though such defence is barred in law of limitation? and

- (2) *Whether the judgment and decree of the First Appellate Court is erroneous in law, as the same has been passed in discarding the sale deed of 1966 upon ignoring Section 3 of the Limitation Act?*

8. **Reg. Substantial question of law**

Nos. 1 and 2: Substantial question of law Nos.1 and 2 are interlinked and they are taken together for common discussion to avoid the repetition of facts.

9. The plaintiff filed a suit for declaration of title and injunction on the ground that defendant No.1 was the absolute owner and in possession of the suit schedule property. He purchased the suit schedule property under a registered sale deed in 1953 and subsequently, he sold the suit schedule property in favour of one Gundaiah in 1966. The said Gundaiah sold the suit schedule property in favour of Mayamma i.e. the wife of defendant No.1 and



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mother of defendant Nos.2 to 6. Defendant No.1 had sold the suit schedule property in favour of the plaintiff under Ex.P1. The plaintiff in order to prove that he is the absolute owner of the suit schedule property examined himself as PW1 and reiterated the plaint averments in the examination-in-chief and in order to prove that the suit schedule property was purchased by the plaintiff from defendant No.1 produced the original registered sale deed marked as Ex.P1, Ex.P2 is the mutation extract, which discloses that the name of the plaintiff is entered based on Ex.P1 i.e., the registered sale deed, Exs.P3 and P4 are the RTC extract which discloses that the plaintiff is the owner in possession of the suit schedule property, Ex.P5 is the tippani uthar, Ex.P6 is the Patta book. During the course of cross-examination of PW1, it was suggested to PW1 that defendant No.1 had no right to execute a registered sale deed in favour of the plaintiff. The said suggestion was denied. PW1 admits that the said property was purchased by Mayamma in 1961. The plaintiff also examined one



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Giriyappa as PW.2 to prove that defendant No.1 has executed a registered sale deed and to prove the possession over the suit schedule property.

10. In rebuttal, defendant No.6 was examined as DW1. He reiterated the written statement averments in the examination-in-chief and defendant No.5 was examined as DW2. They examined two witnesses as DW3 and DW4 and produced the documents Ex.D1 to Exhibit D13. DW1 has deposed that the suit schedule property was originally owned by defendant No.1. He sold the suit schedule property in favour of one Gundaiah and Gundaiah in turn has sold the suit schedule property in favour of Mayamma and Mayamma died intestate leaving behind defendant Nos.2 to 6 as the legal heir. After her demise, defendant Nos.2 to 6 have succeeded to the estate of the deceased Mayamma.



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11. From the perusal of the entire records, there is no dispute that, originally, the suit schedule property was owned and possessed by defendant No. 1. He sold the suit schedule property in favour of Gundaiah under a registered sale deed. Gundaiah in turn sold the suit schedule property in favour of Mayamma. Mayamma died leaving behind defendant Nos.2 to 6 as her legal heirs. She died intestate. After the demise of Mayamma, defendant Nos.2 to 6 have succeeded to the suit schedule properties under Section 15 of the Hindu Succession Act, 1956. Admittedly, as on the date of executing the registered sale deed, the land was not standing in the name of defendant No.1. The plaintiff has not produced any records to show that as on the date of execution of the registered sale deed, defendant No.1 was the owner of the suit schedule property. In the absence of the title deeds of defendant No.1, defendant No.1 had no right, title or interest over the suit schedule property and to execute a registered sale deed. The registered sale deed



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executed by defendant No.1 in favour of the plaintiff, the plaintiff did not convey any right, title or interest under the said sale deed.

12. The plaintiff has filed a suit for declaration of title and possession. The initial burden is always on the plaintiff to establish that the suit schedule property was owned and possessed by defendant No.1 and he sold the suit schedule property in favour of the plaintiff for family and legal necessity.

13. As observed above, the plaintiff has failed to establish that the defendant No.1 was the owner of the suit schedule property as on the date of execution of the registered sale deed. The plaintiff did not acquire any title. Ex.P1 did not convey any title. The First Appellate Court has rightly held that the plaintiff has failed to establish that defendant No.1 had right to execute the registered sale deed. Though this Court has framed the substantial question of law No.1 and also recorded that such a



defence is barred in the law of limitation that issue has to be proved by the defendants and not by the plaintiff in the instant case. The said defence is available to the defendants and not to the plaintiff. Though the sale deed was executed in 1966, the said sale deed was executed by a person, who is having no right, title or interest to execute a registered sale deed. Hence, the question of applying Section 3 of the Limitation Act, 1963 could not arise. The First Appellate Court has rightly ignored Section 3 of the Limitation Act, 1963 and passed the impugned judgment. Hence, I do not find any error in the impugned judgment. In view of the above discussion, I answer substantial question of law No.1 in the affirmative and substantial question of law No.2 in the negative.

14. Accordingly, I proceed to pass the following:

ORDER

- i. The Regular Second Appeal is ***dismissed***.



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- ii. The judgment and decree passed by the First Appellate Court is hereby confirmed.
- iii. No order as to the costs.
- iv. Pending application/s, if any, shall stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

SSB