



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 745 OF 2020 (DEC/INJ)

BETWEEN:

1. SRI VENKATAPPA
S/O LATE MARAPPA,
DEAD BY HIS LRS:
- 1A. SMT. MUNIYAMMA
W/O. VENKATAPPA
AGED ABOUT 56 YEARS
R/AT NO.1/352
PANCHAKSHIPURAM
HOSURU TOWN,
KRISHNAGIRI DISTRICT
TAMIL NADU - 635 110
- 1B. SRI. SRINIVASA
S/O. VENKATAPPA
AGED ABOUT 30 YEARS
R/AT NO.1/352,
PANCHAKSHIPURAM
HOSURU TOWN,
KRISHNAGIRI DISTRICT
TAMIL NADU - 635 110
- 1C. SMT. SHUBHA MANJUNATH
W/O. MANJUNATH
D/O. LATE VENKATAPPA
AGED ABOUT 32 YEARS
R/AT NO.166, PANCHAKSHIPURAM POST
HOSURU TOWN, KRISHNAGIRI DISTRICT
TAMIL NADU - 635 110

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by
SHARADAVANI
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Location: High
Court of
Karnataka



2. SRI. SUBRAMANI
S/O LATE MARAPPA,
AGED ABOUT 45 YEARS,
R/AT DOOR NO.130,
ANDHRAHALLI VILLAGE,
VISHWANEEDAM POST,
YESHWANTHAPURA HOBLI,
BENGALURU DIST.

...APPELLANTS

(BY SRI. VIJAY KUMAR BHAT A., ADVOCATE FOR
APPELLANTS AND LRS OF A1 I.E., A1(A TO C))

AND:

1. SMT. THOPAMMA
W/O SRI NAGARAJU,
AGED ABOUT 45 YEARS,
2. SMT. BHARATHI
W/O LATE PRASANNA KUMAR,
AGED ABOUT 28 YEARS,
R/AT A K COLONY,
DODDAKERE BAGILU,
ANEKAL TOWN AND TALUK,
BENGALURU DISTRICT.
3. VENKATADRI
S/O. MUNIVENKATAPPA
R/AT NO.447, BHAVANI NAGAR
BANASHANKARI II STAGE
BENGALURU - 560 070

...RESPONDENTS

(BY SRI. KUMARA K.G., ADVCOATE FOR R2
(HAS FILED VK A/W NOC BEFORE COURT)
V/O DT 21.10.2024, NOTICE TO R3 IS H/S
V/O DT 02.07.2026,
APPEAL STANDS DISMISSED AS ABATED AGAINST R1)



THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 23.03.2018 PASSED IN RA.No.342/2012 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, ANEKAL, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 22.11.2011 PASSED IN OS.No.195/2008 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, ANEKAL.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Though the matter is listed for admission, by consent of both the parties, matter is taken up for final disposal.

2. Plaintiff is the appellant in this second appeal challenging the Order passed by the First Appellate Court in RA No.342/2012 setting aside the decree passed by the Trial Judge in O.S. No.195/2008.

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



3.1. A suit in O.S. No.195/2008 for declaration and injunction came to be filed in respect of the following property:

SCHEDULE

All that piece and parcel of property bearing Sy.No.503, old No.602, measuring 2 acres, situated at Anekal Gramathana, Anekal Town, Bangalore, bounded on:

*East by : Panchayath Road,
West by : Land of Prakash,
North by : Kanakapura Anekal Main Road,
South by : Land of Muthappa.*

3.2. Defendants were placed *ex-parte* and suit was decreed by formulating the necessary points by the Trial Court.

3.3 Defendants questioned the *ex-parte* decree before the First Appellate Court in R.A. No.342/2012.

3.4 The Judge in the First Appellate Court after securing the records held that the decree passed by the Trial Judge though *ex-parte* in nature is incorrect, but without the written statement of the defendants and



without remitting the matter to the Trial Court, permitting the defendants to file written statement, allowed the appeal in *toto* and set-aside the decree passed by the Trial Court without even affording necessary opportunity for the plaintiff to contest the case of the defendants in the absence of written statement.

4. Being aggrieved by the same, it is the plaintiff who has filed the present second appeal.

5. Sri. Vijaykumar Bhat, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum, would contend that the approach of the First Appellate Court is beyond the scope of Section 96 and Order XLI of the Code of Civil Procedure and thus sought for allowing the appeal.

6. Per contra, Sri. Kumara K.G., learned counsel for respondent No.2 would contend that the learned Judge in the First Appellate Court did consider the material documents placed on record and found that plaintiff has



failed to make out the ownership rights in respect of suit property. Therefore the learned Judge in the First Appellate Court rightly dismissed the suit of the plaintiff and thus sought for dismissal of the second appeal.

7. Sri. Kumara K.G. would also invite the attention of this Court to the fact that the suit property is acquired and the same is challenged before this Court and therefore plaintiff at a no stretch of imagination can be considered as owner of the suit property.

8. Having heard the arguments of both sides, this Court noticed the fact that the suit is *ex-parte* decree which was challenged before the First Appellate Court in R.A. No.342/2012.

9. In such circumstances, the First Appellate Court was required to set-aside the *ex-parte* decree, permit the defendants to file written statement and remit the matter to the Trial Court for fresh disposal in accordance with law



by exercising the power vested in it under Section 96 read with Order XLI of the Code of Civil Procedure.

10. Instead, the First Appellate Court took up the responsibility of holding the enquiry by itself in the guise of re-appreciation of the material evidence on record without there being any written statement at all on record and set-aside the judgment of the Trial Court resulting in miscarriage of justice. Therefore, the appeal is to be allowed and Trial Court decree is to be confirmed in the usual course.

11. At this stage, Sri. Kumara K.G. would contend that an opportunity be provided for the defendants to contest the suit on merits as the defendants are the owners of the property and plaintiff has no ownership rights over the property.

12. Taking note of the same, if the defendants are permitted to file written statement in OS No.195/2008 on payment of cost of Rs.25,000/- to the plaintiff as agreed



by the defendants' counsel, and if the suit is ordered to be adjudicated afresh in accordance with law, subject to the result of the acquisition proceedings, and in the event of acquisition proceedings being upheld, the compensation to be drawn by successful party in the suit, the appeal needs to be allowed and matter is to be remitted to the trial Court for fresh disposal in O.S. No.195/2008.

13. Taking note of the fact that suit is of the year 2008, the suit is also ordered to be adjudicated afresh in a time bound manner. Needless to emphasize that parties shall co-operate for the same.

14. Accordingly, following order:

ORDER

- (i) Regular Second Appeal is allowed.
- (ii) Judgment passed by the First Appellate Court in RA No.342/2012 is set-aside. Matter is remitted to the Trial Court for fresh disposal in accordance with law after affording an



opportunity for the defendants to file written statement on payment of cost Rs.25,000/- to the plaintiff.

(iii) Parties shall appear before the Trial Court without further notice on **27.07.2026**.

(iv) Thereafter, the learned Trial Judge shall conclude the suit on merits on or before **31.07.2027**.

Sd/-
(V SRISHANANDA)
JUDGE

SNC
List No.: 1 SI No.: 72