



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 17 OF 2013 (DEC/INJ)

BETWEEN:

T. APPINAIKA
DEAD BY LRS

1. SMT. MUNEMMA,
W/O.T.APPINAIKA,
AGED ABOUT 79 YEARS,
2. VENKATESHAPPA,
S/O T.APPINAIKA,
AGED ABOUT 64 YEARS,
3. NARAYANASWAMY,
S/O T.APPINAIKA,
AGED ABOUT 66 YEARS,
4. SMT. LAKSHMIDEVAMMA,
W/O.H.NARASIMAHAIH,
AGED ABOUT 57 YEARS,
RESIDING AT D.NO.402,
MAHALAKSHMI LAYOUT,
NARENDRAHALLI,
BANGALORE UNIVERSITY POST,
KENGARI ROAD,
NEAR RAJARAJESHWARI TEMPLE,
BANGALORE.

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signed by
SUNITHA K S
Location:
HIGH COURT
OF
KARNATAKA



5. SMT. RATHNAMMA,
D/O LATE APPINAIKA,
W/O CHINNAIAH,
54 YEARS,
RAMPURA, KUDIYANUR POST,
MADUR TALUK.
6. SMT. SAROJAMMA,
D/O LATE APPINAIKA,
AGED ABOUT 51 YEARS,
7. SRINIVASA,
S/O LATE APPINAIKA,
AGED ABOUT 49 YEARS,
8. RAMESH,
S/O LATE APPINAIKA,
AGED ABOUT 47 YEARS,
APPELLANTS NO.1 TO 3 AND
6 TO 8 ARE
RESIDING AT ANOORU VILLAGE,
KASABA HOBLI,
CHINTAMANI TALUK - 563 125.

...APPELLANTS

(BY SRI.K.THEJUS, ADVOCATE FOR
SRI.SOMANATHA H., ADVOCATE)

AND:

T. SUBBANAIKA
DEAD BY HIS LRS

1. SMT. THIMMAKKA,
W/O LATE T.SUBBANAIKA,
84 YEARS,



RESIDING AT ANOORU VILLAGE,
KASABA HOBLI,
CHINTAMANI TALUK - 563 125.

2. SMT.NARAYANAMMA,
D/O. LATE T.SUBBANAIKA,
W/O V.SHANKARAPPA,
62 YEARS,
RESIDING AT YALDUR VILLAGE,
SRINIVASPUR TALUK - 563 135.
3. A.S.VIJAYA KUMAR,
S/O LATE T.SUBBANAIKA,
60 YEARS,
D.NO.82, GANESH NAGAR,
8TH ADDA ROAD,
K.G.F. - 563 122.
4. SMT. YASHODAMMA,
D/O LATE T.SUBBANAIKA,
W/O NARAYANAPPA,
54 YEARS,
RESIDING AT
BHOOMISHETTIHALLI VILLAGE,
MURUGAMALLA HOBLI,
CHINTAMANI TALUK - 563 125.
5. SMT. SUNANDAMMA,
D/O LATE T.SUBBANAIKA,
W/O VISHWANATH,
50 YEARS,
RESIDING AT KURUGEPALLI VILLAGE,
RAYIPAD HOBLI,
SRINIVASAPURA TALUK - 563 135.



6. SRI. A.S.SRINIVASIAH,
S/O.T.SUBBANAYAKA,
AGED ABOUT 48 YEARS,
RESIDING AT ANOORU VILLAGE,
KASABA HOBLI,
CHINTAMANI TALUK - 563 125.

...RESPONDENTS

(BY SMT.SHRAVANI, ADVOCATE FOR
SRI. LOKANATHA T.V., ADVOCATE FOR R1-R6)

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE JUDGMENT & DECREE DATED 5.9.2012 PASSED IN R.A.NO.49/2007 ON THE FILE OF SENIOR CIVIL JUDGE & JMFC, CHINTAMANI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 27.3.2009 PASSED IN OS.NO.316/1993 ON THE FILE OF PRINCIPAL CIVIL JUDGE (JR.DN.) & JMFC, CHINTAMANI, AND ADDITIONAL CIVIL JUDGE (JR.DN.) AND JMFC, CHINTHAMANI.

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

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

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellants challenging the judgment and decree dated 05.09.2012 passed in R.A.No.49/2007 by the learned Senior Civil Judge and JMFC, Chintamani. (for short 'the first appellate Court').



2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellants were the legal representatives of deceased defendant No.1, and respondents were the legal representatives of deceased plaintiff No.1.
3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiff initially filed a suit for permanent injunction contending that the suit schedule property is a vacant site and one yard (3 feet) sandu situated at Anoor village, Kasaba hobli, Chintamani Taluk. It is contended that the suit schedule property was granted to one Neeraganti Thirumala Naik, was the father of plaintiff No.1 under Darkhast by the Amaldar, Chintamani vide order No.VDR 39/42-43 dated 30.12.1942 for construction of house. The father of original plaintiff No.1 had applied for grant of site measuring east-west 9 yards, north-south 8 yards. The Amaldar had granted only east-west 8 yards and north



south 8 yards and from the date of grant, the father of the original plaintiff No.1 was in possession of the suit schedule property. After his demise, the plaintiff No.1 came in possession of the suit schedule property, khata was transferred in the name of plaintiff No.1 and the plaintiffs and his family members were in peaceful possession and enjoyment over the suit schedule property.

5. The plaintiff No.2 is the son of plaintiff No.1, who is living along with the other plaintiffs and intended to construct a house in the suit schedule property. The plaintiff No.2 applied for loan under the 'Ashraya yojana' before the competent authority. Therefore, competent authority demanded the title deeds of plaintiff No.2 for sanctioning the loan. Plaintiff No.1 executed a nominal agreement on stamp paper on 30.10.1992 in favour of plaintiff No.2 and created rights over the suit schedule property.



6. It is contended that plaintiff No.2 failed to construct a house in the suit schedule property due to non sanctioning of the loan from Government. It is contended that original defendant being the neighbour, he was staying towards eastern side of the suit schedule property. The defendant had no right, title, interest or possession over the suit schedule property and he tried to put up stone slabs compound and jopadi on it by encroaching the suit schedule property including the open space left for sandu by the plaintiffs. The plaintiffs requested the defendant not to put up any construction in the suit schedule property. The defendant did not gave any heed to the plaintiffs. Thus, a cause of action arose for the plaintiffs to file a suit for permanent injunction.

7. The defendant filed a written statement denying the ownership of the plaintiffs over the suit schedule property. It is contended that the land for sandu measuring 1 yard was never granted to the plaintiffs



and the plaintiffs were never in possession of the suit schedule property as pleaded in the plaint. It is denied that plaintiff No.2 intended to construct a house in the suit schedule property under Ashraya Yojana scheme. It is contended that the defendant was the neighbour and residing towards eastern side of the suit schedule property. It is denied that the defendant tried to encroach upon the suit schedule property measuring about 01 yard. It is denied that the said sandu was left for the use of plaintiffs' exclusively. It is contended that the defendant's father purchased site measuring east-west 10 yards and north-south 9 yards from one Venkatappa under a registered sale deed dated 27.02.1956.

8. It is contended that since from the date of purchase of the said property, the defendant and his family members were in possession and enjoyment of the suit schedule property. It is contended that, there is a clear gap of 5 yards between the property of the plaintiffs



measuring 8 yards towards east-west and the property of defendant measuring 10 yards towards east-west and the 5 yards does not belongs to the plaintiffs.

9. It is contended that the defendant has perfected his title over another 1 ½ yards towards western side of his site measuring 10 X 9 yards and the defendant constructed a sheep shed jopadi and cattle shed about 25 years back in the said 1 ½ yard place. Hence, there is no cause of action to file a suit for permanent injunction. The plaintiffs after lapse of 13 years from the date of filing a written statement filed an application to amend the plaint seeking for the relief of declaration to declare that the plaintiffs are the absolute owners of the suit schedule property. The said application came to be allowed and the plaintiffs were permitted to amend the plaint. Accordingly, the plaintiffs amended the plaint. The defendants filed an additional written statement contending that the suit filed by the plaintiffs for the relief of declaration is



barred by limitation and also contended that the suit filed by the plaintiffs is not maintainable. The plaintiffs have failed to seek consequential relief of possession. Hence, prays to dismiss the suit.

10. The trial Court based on the rival pleadings of the parties, framed the following issues and additional issues.

- 1. Whether the plaintiffs prove that they are in possession of the suit schedule property?*
- 2. Whether the plaintiffs further prove the interference by the defendants?*
- 3. Whether the plaintiffs are entitle for the relief of permanent injunction?*
- 4. What order or decree?*

Additional Issues

- 1. Whether the plaintiffs prove that after the service of temporary injunction warrant and suit summons and show cause notice to defendant, the defendant in a hurry and hasty manner had put up stone slabs*



compound to an height of three feet and with the support of said compound he had put up a jopadi by covering polithene sheets and coconut branches by encroaching the one yard i.e., 3 feet sandu in addition to 4.6 feet space of the suit schedule property?

2. *Whether the plaintiff is entitle for the relief of mandatory injunction?*

Additional Issue

1. *Whether the plaintiffs prove that they are the lawful owners of the suit schedule property?*

11. The plaintiffs in order to substantiate their case, examined 3 witnesses as PW.1 to PW.3 and marked 10 documents as Exs.P1 to P10. In rebuttal, the defendants examined 3 witnesses as DW.1 to DW.3 and marked 5 documents as Exs.D1 to D5. The commissioner was appointed and he submitted a report. The commissioner was examined as CW.1 and marked 4 documents as Ex.C.1 to Ex.C4.



12. The trial Court after recording the evidence, hearing both sides and appreciating the entire evidence on record, answered issues 1 to 3 in the negative, additional issues in the negative and consequently dismissed the suit vide judgment dated 27.03.2007.

13. The legal representatives of deceased plaintiffs aggrieved by the dismissal of the suit in O.S.No.316/1993, preferred an appeal in R.A.No.49/2007 on the file of learned senior civil judge and JMFC, Chintamani.

14. The first Appellate Court after hearing the learned counsel for the parties, framed the following points for consideration:

- 1. Whether the trial Court is justified in holding that the plaintiff has failed to prove his title and possession of suit schedule property as on the date of suit?*
- 2. Whether the trial Court is justified in holding that the plaintiff has failed to*



prove the encroachment made by the defendant in the suit schedule property?

3. Whether the judgment and decree of the trial Court warrant interference?

4. What order?

15. The first Appellate Court after re-appreciating the entire evidence on record, answered points 1 and 2 in the negative, point No.3 in the affirmative, point No.4 as per the final order. The appeal was allowed. The judgment and decree passed in O.S.No.316/1993 dated 27.03.2009 passed by the Civil Judge, Chintamani was set aside and consequently the suit of the plaintiff in O.S.No.316/1993 was decreed. It is declared that the plaintiff is the absolute owner and was in possession of the suit schedule property and decreed for mandatory injunction was granted directing the defendants to demolish the constructed jopadi and stone slab to an extent of east west-7.6 feet and north-south 24 feet encroached in the suit schedule property and handover the vacant possession of the same to the plaintiff within



two months. Ex.C4 sketch of the commissioner is part of the decree. If the defendant failed to demolish the encroached area and handover the vacant possession, the plaintiff get it demolished and obtain vacant possession of encroached area through Court.

16. The legal representatives of the deceased defendant aggrieved by the judgment and decree passed in R.A.No.49/2007 dated 05.09.2012, filed this Regular Second Appeal.

17. Heard the arguments of the learned counsel for legal representatives of the deceased defendant and legal representatives of the deceased plaintiff.

18. Learned counsel for the legal representatives of the deceased defendant submits that initially the plaintiff filed a suit for the relief of permanent injunction. The defendant has filed written statement in 1993 denying the title of the plaintiff over the suit schedule property. The plaintiff got the plaint amended and sought for the



relief of declaration of title after lapse of 13 years. The relief sought by the plaintiff for the relief of declaration is barred by limitation. He also submits that the trial Court appointed a Court commissioner and he has submitted a report stating that the defendant has made an encroachment in the property of the plaintiff. He submits that the plaintiff has filed a suit for declaration of title and mandatory injunction without seeking a consequential relief of possession.

19. He submits that the suit filed by the plaintiff is not maintainable as per proviso to section 34 of the Specific Relief Act and to buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Vasantha (Dead) Thr. L.R. vs. Rajalakshmi @ Rajam (Dead) Thr. Lrs.***¹ He also submits that the first Appellate Court has decreed the suit based on the commissioner's report. He also submits that the first Appellate Court has decreed the

¹ (2024) 3 SCC 282



suit of the plaintiff only on the ground of weakness of the defendant. He submits that the plaintiff has filed a suit for declaration of title, hence, burden is on the plaintiff to establish his title. The plaintiff cannot succeed on the weakness of the defendant.

20. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Union of India and others Vs. Vasavi Co-operative Housing Society Limited***². He also submits that the first Appellate Court has also recorded a finding that though the trial Court has rejected commissioner's report, the defendant has not got appointed new commissioner to prove that he has not encroached site of the plaintiff. The findings recorded by the first Appellate Court is contrary to the mandate laid down by the Hon'ble Apex Court in the case of ***Vasavi Co-operative Housing Society Limited*** (referred

² AIR 2014 SC 937



supra). Hence, on these grounds, prays to allow the appeal.

21. *Per contra*, learned counsel for the legal representatives of deceased plaintiff submits that the plaintiff is the absolute owner of the suit schedule property. She submits that during the pendency of the suit, the Court commissioner was appointed and he has inspected and measured the plaint suit schedule property. He submits that the defendant has encroached upon the property of the plaintiff. She submits that the Court commissioner was appointed and the first Appellate Court has rightly considered the report of the commissioner and recorded a finding as the plaintiff is the absolute owner of the suit schedule property and the defendant has encroached upon the property of the plaintiff and rightly decreed the suit. The judgment and decree passed by the first Appellate Court is just and proper and do not call for any



interference at the hands of this Court. Hence, prays to dismiss the appeal.

22. This Court vide order dated 29.02.2013, framed the following substantial question of law:

- (1) Whether the lower appellate Court was justified in reversing the finding recorded by the trial Court solely on the basis of the report of the Court commissioner which was rejected by the trial Court by assigning cogent reason?*
- (2) Whether the lower appellate Court was justified in holding that the defendant-appellants having not sought for appointment of another commissioner and having not produced any documentary evidence to prove that they are having right over the compound consisting of stone slab situated abutting to the plaintiff's property, the judgment of the trial Court was unsustainable, as the burden was on the plaintiff to establish his case?*

23. Perused the records and considered the submissions of the learned counsel for the parties.



Reg. substantial question of law:

24. The substantial questions of law No.1 and 2 are interlinked, hence, they are taken together for common discussion to avoid the repetition of facts.

25. Initially, the plaintiff filed a suit for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment over the suit schedule property. It is the case of the plaintiffs that plaintiffs are the absolute owners in possession of the suit schedule property and the same was purchased by the father of plaintiff No.1 Neeraganti Tirumala Naika under Darkhast by Amaldar Chintamani Taluk vide order dated 30.12.1942. Thereafter, he had applied for grant of site measuring east-west 9 yards and north-south 8 yards. The Amaldar has granted only 8X8 yards and the father of the plaintiff No.1 was in possession of the suit schedule property till his demise. After his demise, the plaintiffs came in possession of the suit schedule property. The plaintiff



No.2, intended to construct a building over the suit schedule property, plaintiff No.2 had applied for a loan under 'Ashraya Yojana' and plaintiff No.1 executed a nominal agreement in favour of plaintiff No.2 on stamp paper dated 30.10.1992. The Panchayath records transferred in the name of the plaintiffs. The Government has not granted loan to plaintiff No.2. The defendant being a neighbour of the plaintiffs tried to encroach upon the property of the plaintiffs.

26. The defendant filed a written statement on 04.08.1993 denying the title of the plaintiffs over the suit schedule property. The plaintiffs did not choose to amend the plaint and seek relief of declaration for more than 13 years. After 13 years, the plaintiffs filed an application for amendment of the plaint seeking the relief of declaration of title and mandatory injunction by way of proposed amendment sought for the relief of declaration and mandatory injunction.



27. The plaintiffs, to substantiate their case, examined three witnesses as PW1 to PW3. PW1 has reiterated the plaint averments in the examination-in-chief and also produced the records. To establish ownership over the suit schedule property, the plaintiffs also examined two witnesses as PW2 and PW3. They reiterated averments of examination-in-chief of PW1.

28. During the course of cross-examination of PW1 to PW3, the defendants have suggested that the plaintiffs are not in possession of the suit schedule property and the defendant is in possession of the suit schedule property. The said suggestion was denied by PW1 to PW3. In rebuttal, the defendants examined three witnesses as DW1 to DW3 and DW.1 has deposed that the defendant is the owner in possession of the suit schedule property since from the date of purchase by the father of the defendant. He has deposed that the plaintiff is neither the owner nor in possession of the suit schedule property.



29. In order to substantiate the defendant is the owner of the portion of the suit schedule property, during the pendency of the suit, a Court Commissioner was appointed at the instance of the parties. The Court Commissioner after measuring the property of the plaintiffs and defendants has opined that the defendant has made an encroachment over the portion of the suit schedule property. The defendant has filed objections to the commissioner report. Thus Commissioner was cross examined as CW1 and he has got marked four documents. The trial Court declined to accept the Court Commissioner's report on the ground that no sufficient reasons has been assigned by the Court Commissioner. The trial Court has dismissed the suit on the ground that the plaintiff has failed to establish that the plaintiff is the absolute owner of encroached portion of the suit schedule property and also in possession of alleged encroachment of the suit schedule property. The first appellate court has reversed the judgment and decree



passed by the trial court only on two grounds. That is, the trial court has rejected the court commissioner's report and the defendant has not sought for appointment of another court commissioner and not produced any documentary evidence that they have right over the constructed stone slabs situated abutting to the plaintiff's property.

30. The first appellate court has failed to consider the well-established principles of law that "in a suit for declaration of title, initial burden is always on the plaintiffs to prove their case. If the plaintiffs are to succeed, they must do so on the strength of their own title and cannot depend on the weakness of the defendant."

31. The said view is supported by the Hon'ble Apex Court in the case of ***Union of India versus Vasavi Housing Co-operative Society and others***. The Hon'ble Apex Court held in para 15, which reads as under:



"15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

32. From the perusal of para 15 of the judgment passed by the Hon'ble Apex Court in the case referred supra, the Hon'ble Apex Court held that in a suit for declaration of title and possession, initial burden is always on the plaintiff and he must succeed only on the strength of its own title, that could be done by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. The impugned judgment passed by the first appellate court is contrary to the



mandate laid down by the Hon'ble Apex Court in the case of ***Vasavi Co-operative Housing Society*** (supra).

33. The first appellate court, placing the weakness of the defendant has reversed the judgment and decree passed by the trial Court. The impugned judgment passed by the trial Court is arbitrary and erroneous. The plaintiff initially filed a suit for permanent injunction and the defendant has filed a written statement in the year 1993 denying the title of the plaintiffs in respect of portion of the suit schedule property. The plaintiffs could have filed application for amendment to the plaint seeking for the relief of declaration of title and possession of the suit schedule property. The plaintiffs filed an application for amendment of the plaint after lapse of 13 years from the date of filing of written statement by the defendants. The said application ought to have been filed by the defendant within 3 years from the date of



denial by the defendants as per Article 58 of the Limitation Act, 1963.

34. Admittedly, a cause of action seeking the relief of declaration in 1993, an application for amendment was filed after 13 years from the date of filing a written statement. The first appellate court did not examine the aspect of limitation while passing the impugned judgment. Admittedly, the plaintiff is not in possession of the portion of the suit schedule property. The plaintiff did not seek a consequential relief of possession. Hence, the suit filed by the plaintiff is not maintainable as per Proviso to Section 34 of the Specific Relief Act. The said view is supported by the judgment of the Hon'ble Apex Court in the case of **Vasantha** (referred supra). Hence, the said aspect was not considered by the first appellate court and committed an error in reversing the judgment and decree passed by the trial Court. The judgment and decree passed by the first appellate Court is contrary to



the mandate laid down by the Hon'ble Apex Court in the case of **Vasantha** (referred supra).

35. Hence, the first appellate Court has committed an error reversing the judgment and decree passed by the trial Court. The finding recorded by the first appellate court is contrary to proviso to Section 34 of the Specific Relief Act. The first appellate court committed an error in decreeing the suit of the plaintiff for declaration of title, permanent injunction and mandatory injunction without examining the maintainability of the suit for declaration of title and the relief of declaration was barred on the date of filing application to the amendment to the plaint and also that the plaintiff has not sought for consequential relief of possession, but only sought for mandatory injunction. Hence, the suit filed by the plaintiff is not maintainable. In view of the above discussion, I answer question of law Nos.1 and 2 in the negative.



36. During the pendency of this second appeal, this Court has appointed a Court Commissioner and the court commissioner has submitted a report stating that there is no such encroachment as alleged in the plaint. However, the plaintiff has filed an objection to the commissioner's report. As observed above, the court commissioner was appointed and the said suit filed by the plaintiff is not maintainable. Hence, the question of considering the commissioner report filed before this court would not arise for consideration.

37. Accordingly, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is ***allowed.***
- ii. Judgment and decree dated 05.09.2012 passed in R.A.No.49 of 2007 by the Senior Civil Judge and JMFC, Chintamani, is hereby set aside.



iii. Judgment and decree dated 23.07.2007 passed in O.S.No.316 of 1993 by the Additional Civil Judge (Jr.Dn.) Chintamani, is hereby restored.

iv. No order as to the costs.

v. Pending interlocutory application/s, if any, stands disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS