



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 834 OF 2020 (DEC)

BETWEEN:

R. SRIDHAR
S/O. LATE S. RAMACHANDRAN,
AGED ABOUT 50 YEARS,
AT: NO.13, 1ST FLOOR,
LANDSDOWNE BUILDING,
MYSORE - 570 024

...APPELLANT

(BY SRI. PRAKASH 1B.N., ADVOCATE FOR
SRI. K.R. KRISHNAMURTHY, ADVOCATE)

AND:

1. SMT. PADMA
W/O. BHARATH,
AGED ABOUT 54 YEARS,
R/AT: NO.2705:17,
7TH MAIN, YADAVAGIRI,
MYSURU - 570 020
2. SHIVARAJU DEAD BY HIS LRS
 - A. SMT. PUTTASIDDAMMA,
W/O LATE SHIVARAJ,
AGED ABOUT 61 YEARS
 - B. SMT. SAVITHA S
D/O LATE SHIVARAJ,
AGED ABOUT 38 YEARS
 - C. SMT. LATHA .S
D/O LATE SHIVARAJ,

Digitally
signed by
VINUTHA B
S
Location:
High Court
of
Karnataka





AGED ABOUT 36 YEARS

D. SRI. AJAY KUMAR
S/O LATE SHIVARAJ,
AGED ABOUT 34 YEARS

E. SMT. ANITHA C.S.
D/O LATE SHIVARAJ,
AGED ABOUT 31 YEARS

ALL ARE R/AT D.NO.2353,
KAILASAPURAM, NEAR
MISSION HOSPITAL
MYSURU - 570 001

3. SRI. T. SHEKAR
AGED ABOUT 40 YEARS,
S/O THIMMEGOWDA,
R/AT NO. 230, NEETI
MARGA, SIDDARTHANAGAR,
NAZARABAD MOHALLA,
MYSURU - 570 010

4. SMT. MADHAVI
D/O MANAPPA RAI,
AGED ABOUT 47 YEARS,
R/AT: D.NO. 555, 26TH CROSS,
J.P. NAGAR, 2ND STAGE,
MYSURU - 570 008

...RESPONDENTS

THIS APPEAL IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 24.09.2019 PASSED IN RA.NO.510/2016 ON THE FILE OF THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 04.03.2015 PASSED IN OS NO.65/2008 ON THE FILE OF THE II CIVIL JUDGE AND JMFC, MYSORE.

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri. Prakash B.N., learned counsel for Sri.K.R. Krishnamurthy, learned counsel for the appellant.

2. Defendant No.4 is the appellant challenging the decreeing of the suit in O.S. No.65/2008, confirmed in R.A. No.510/2016.

3. Facts of the case are as under:

A suit in O.S. No.65/2008 came to be filed seeking the relief of declaration and injunction and consequential reliefs in the respect of the following property [hereinafter referred as 'the suit property']:

"SCHEDULE

Property measuring 0.02.2 Guntas out of 3-00 Acres in Sy.No.141, situated at Nandanahalli village, Kasaba Hobli, Mysuru Taluk, mysore, bounded on:

East by	:	Road,
West by	:	M. Krishnappa's property
North by	:	Road,
South by	:	Others property."



4. Plaintiff contended that plaintiff is the absolute owner of the suit property having purchased the same from defendant No.1 by virtue of the sale deed dated 02.11.2000 which was registered on 04.11.2000. Defendant No.1 had purchased land in Survey No.141, which totally measured 3 acres by virtue of a registered sale deed dated 15.11.1989.

5. On 25.09.1992, defendant No.1 said to have executed a General Power of Attorney in favour of Sri. Vivekananda and V.S. Renukappa, empowering them to alienate the property and subsequently revoked the same by registered instruments dated 29.08.1998 and 31.08.1998 respectively. Defendant No.1 said to have filed a suit in O.S. No.242/1998 against the attorney holders and obtained an interim order restraining them from alienating the remaining land in land in Survey No.141 of the suit property lies within the ambit of remaining property.



6. When the matter stood thus, in December 2007, plaintiff came to know that entire remaining property in Survey No.141 was sold to defendant Nos.2 to 4 and thus, there was a wrongful gain to defendant No.1 and when once the suit property was sold to the plaintiff, defendant No.1 did not possess any right to alienate the entire remaining property including the suit property to defendant Nos.2 to 4 and thus, sought for declaration and injunction.

7. Pursuant to the suit summons, defendant No.1 as expected remained *ex parte*. It is defendant Nos.2 and 3 filed the separate written statement contending that suit as framed by the plaintiff is incorrect and not maintainable. It is also contented by them that the boundaries furnished in respect of the suit property is incorrect and sought for dismissal of the suit. They further contented that having regard to the value of the property, Court has no pecuniary jurisdiction.



8. Defendant No.4 (appellant) filed a separate statement contending that land in Survey No.141 measured total 3 acres of which defendant No.4 purchased 1 acre by registered sale deed dated 11.10.2005. It is also contented by defendant No.4 that after purchase of land, revenue entries were mutated in the name of defendant No.4 and plaintiff has no right over the property purchased by defendant No.4 as out of the 3 acres where exactly the suit property lies is not mentioned in the sale deed of the plaintiff and thus, suit came to be dismissed as against defendant No.4.

9. Based on the rival contentions, learned trial Judge raised necessary issues and after recording the evidence of the parties and hearing the arguments of the parties, decreed the suit. The operative portion of the trial Court Judgment reads as under:

"The suit of the plaintiff is hereby decreed with costs.

It is declared that the Plaintiff is the absolute owner in possession and enjoyment of the suit schedule property; and further declared that the sale deeds dated 28.03.2006 and 15.11.2005 executed by the 1st



Defendant in favour of the Defendants No.2 to 4 are not binding on the plaintiff and they are null and void to the extent of the suit schedule property."

10. Being aggrieved by the same, it is the defendant Nos.2 and 3 filed the appeal before the First Appellate Court in R.A No.503/2016 and defendant No.4 separately filed an appeal in R.A. No.510/2016 against the plaintiff and on LRs of defendant No.1.

11. Learned Judge in the First Appellate Court, after securing the records, heard both the appeals together and by a common judgment dated 24.09.2019, dismissed the appeals of defendant Nos.2 and 3 and defendant No.4. Being further aggrieved by the same, it is defendant No.4, who has filed the present appeal on following grounds and substantial questions of law:

" GROUNDS:

- *The Judgments of the Trial Court as well as lower Appellate Court are illegal, perverse and are opposed to law, facts and probabilities of the case.*
- *It is submitted that according to the Plaintiff, she has purchased the suit Schedule property under the registered Sale Deed dated 04.11.2000 from 1st Defendant thorough his*



Power of Attorney holder. However, she has not produced such power of attorney before the Trial Court or layout sketch for having purchased the site. Further, the said power of attorney are not for any sites formed in Sy.No. 141 but the said power of attorney is for land bearing Sy.No.141 measuring 1 Acre 16 Guntas. Further, there are no powers granted to Sri. Vivekananda and V.S.Renukappa for formation of the sites on the said land or power granted to sell the sites so formed in the said land. The Power of Attorney shall be strictly construed in accordance with the power conferred. In the absence of power of attorney or such powers, the sale deeds executed by the said Power of Attorney are illegal, unauthorized and void. Both the Trial Court and lower Appellate Court erred in not noticing the same and erred in decreeing the suit filed by the Plaintiff.

- *The Trial Court as well as the lower Appellate Court erred in decreeing the suit in the absence of clear evidence to substantiate the ownership and possession of the Plaintiff over the suit Schedule Property.*
- *The Trial Court and the lower Appellate Court ought to have noticed that in the absence of legal evidence such as conversion and the approved plan of the layout which show the formation of the sites on the land bearing Sy.no. 141, the existence of the alleged sites as described in the suit Schedule and also measurement are not established by the Plaintiff. On this ground alone the suit ought to have been dismissed.*
- *The Trial Court as well as the lower Appellate Court failed to notice that in the schedule to the plaint, the measurement shown as 2.2. Guntas. In view of the specific denial of the claim of the plaintiff by the 4th Defendant, it is incumbent on the Plaintiff to establish the formation of the layout of sites in Sy.No. 141. Except alleged Sale Deed, demand register and tax paid receipt,*



there are no documents to establish the existence of the schedule property. The alleged sketch of the layout does not show the survey number or the measurement of the each sites. Further, the same is not approved by any authority. Therefore, the Trial Court as well as Appellate Court erred in decreeing the suit on the basis of in admissible evidence.

- *The Trial Court as well the lower Appellate Court erred in decreeing the suit applying the principles of priority of sale deeds in the absence of proof of existence of the suit Schedule property.*
- *The Trial Court as well as the lower Appellate Court erred in coming to the conclusion that the Plaintiff has proved his title and possession over the suit Schedule Property in the absence of legal evidence namely formation of the layout and measurements of the sites alleged to have been formed in Sy.No. 141.*
- *The Trial Court as well as the lower Appellate Court ought to have noticed that the 4th Defendant has purchased only 1-00 Acre of land in Sy.No.141 and there is no finding whether the site claimed by the Plaintiff is coming in the portion of the land acquired by the 4th Defendant. In the absence of the same, the Trial Court as well as the lower Appellate Court erred in decreeing the suit as against the 4th Defendant declaring that the sale deed dated 15.11.2005 in favour of 4th Defendant in respect of 1-00 Acre is not binding on the Plaintiff.*
- *The Trial Court as well as the lower Appellate Court erred in decreeing the suit in the absence of any proof regarding formation of the layout in Sy.No. 141 on the basis of the unapproved sketch of the layout as the said sketch does not show Survey Number nor show any measurements of the alleged sites.*



- *It is the specific case of the 4th Defendant in the Written Statement that the 4th Defendant purchased 1-00 Acre in Sy.No.141 after getting the land surveyed and making demarcation of the said 1-00 acre portion and the sketch is marked as Ex.D10 in evidence. There is no finding by the Trial Court or the lower Appellate Court that the suit Schedule Property is coming within the land purchased by the 4th Defendant. Therefore the judgment of the Trial Court as well as the lower Appellate Court decreeing the suit as against the 4th Defendant is illegal perverse and liable to be set aside.*
- *It is submitted that it is the case of the Plaintiff that she has purchased Schedule property under Ex.P.1 Sale Deed. The description shown in the Sale Deed and the Schedule do not tally. Further, in the Schedule to Ex.P.1, there is no site number or survey number of the land. Further, there is no reference to earlier sale deed under which the vendor of the Plaintiff purchased the same. The Trial Court as well as the lower appellate court failed to notice the said material before decreeing the suit. On this ground alone the suit ought to have been dismissed.*
- *The Appellant/Defendant No.4 seeks leave of the Court to urge additional grounds at the time of hearing.*

SUBSTANTIAL QUESTIONS OF LAW:

- i. *Whether the Trial Court as well as the lower Appellate Court right in decreeing the suit filed by the Plaintiff in the absence of proof of formation of the layout of residential sites, its measurement in the absence of legally permissible evidence such as approved residential plan and the conversion order, as pleaded by the Plaintiff ?*
- ii. *Whether the Trial Court as well as the lower Appellate Court right in coming to the conclusion that existence of the sites and its boundaries on the*



basis of Sale Deeds description in the absence of approved layout plan ?

- iii. Whether the Trial Court as well as the lower Appellate Court right in decreeing the suit on the basis of the Sale Deeds at Ex.P1 which was executed by the Power of Attorney holder, though the power of Attorney is not produced and in the absence of a specific power in the Power of Attorney for formation of the layout and sale of sites on the land bearing Sy.No.141 measuring 1 Acre 16 Guntas which is the subject matter of the Power of Attorney?"*

12. Sri. Prakash B.N., learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that at the first instance the frame of the suit itself was incorrect as sale deed conveyed the property which was unidentifiable in the entire extent of 3 acres of the land in Survey No.141, which was purchased by defendant No.1 from its erstwhile owner.

12.1 He would further contend that in the absence of the identity of the suit property, no declaratory decree is permissible and trial Court as well as learned Judge in the First Appellate Court, without considering the said aspect



of the matter, having declared that the plaintiff is the owner of the suit property, has resulted in miscarriage of justice and sought for admitting the appeal on the aforesaid substantial questions of law.

13. This Court did not deem fit to issue notice to the respondent. Having heard the arguments of the counsel for appellant, this Court perused the material on record meticulously.

14. On such perusal, admittedly there was a sale deed executed by defendant No.1 who is common vendor of plaintiff as well as defendant Nos.2 to 4 on 02.11.2000 in respect of the suit property. Revenue entries were also mutated in respect of the suit property.

15. Further, sale deed of the plaintiff contains the definite boundaries. If that is the factual situation, when once the property is already sold by defendant No.1, same property cannot be the subject matter of a subsequent



sale deed is the finding recorded by the learned trial Judge in paragraph No.13 of its judgment.

16. It is to be noted that when once the property has been sold at an earlier point of time to the plaintiff by way of a registered sale deed, defendant No.1 could not have conveyed the same in favour of defendant No.4 by a subsequent sale deed.

17. At any rate, the sale deed executed by defendant No.1 in favour of defendant No.4 to the extent of one acre it was for the defendant No.4 to establish that the said one acre was excluding the property that was conveyed to the plaintiff under the sale deed dated 02.11.2000.

18. In the absence of such material being placed, when defendant No.1 did not possess the land to convey in favour of defendant No.4 with a subsequent sale deed including the property of the plaintiff, the judgment rendered by the trial Judge as well as the learned judge in



the First Appellate Court needs no further interference that too in the second appeal.

19. As such, the substantial questions of law do not merit for further consideration. Hence, the following:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**