



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 401 OF 2023 (DEC/INJ)

BETWEEN:

SRI GOWDRA SHIVAMURTHY
S/O REVANASIDDAPPA
AGED ABOUT 50 YEARS
R/A ANAGODU VILLAGE
DAVANAGERE TALUK
DAVANAGERE - 577 556.

...APPELLANT

[BY SRI PRASANNA B R., ADVOCATE (PH)]

AND:

1. SMT. RUDRAMMA
SINCE DECEASED BY HER LR_s

1(a) SRI RANGAPPA M.H.,
S/O LATE HANUMANTHAPPA,
AGED ABOUT 57 YEARS,

1(b) SRI T.H. RAJAPPA,
S/O LATE HANUMANTHAPPA,
AGED ABOUT 54 YEARS,

1(c) SRI M.S.CHITRAPPA,
S/O LATE HANUMANTHAPPA,
AGED ABOUT 50 YEARS,

ALL ARE RESIDING AT
ANAGODU VILLAGE,

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



DAVANAGERE TALUK,
DAVANAGERE DISTRICT - 577 556.

2. SRI RANGAPPA,
S/O LATE HANUMANTHAPPA,
AGED ABOUT 54 YEARS,
OCC: MOTOR WINDING WORK,
R/A ANAGOUD VILLAGE,
DAVANAGERE TALUK,
DAVANAGERE - 577 556.

...RESPONDENTS

[BY SRI RANGANATH R. PATIL, ADVOCATE FOR R1 (a-c) (AB);
NOTICE TO R2 - SERVED AND UNREPRESENTED]

THIS RSA IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGMENT AND DECREE DATED 30.11.2022
PASSED IN R.A. No.48/2022 ON THE FILE OF THE II
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, DAVANAGERE,
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT
AND DECREE DATED 05.04.2022 PASSED IN OS No.217/2013
ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC,
DAVANAGERE.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



ORAL JUDGMENT

Challenging judgment and decree dated 30.11.2022 passed by II Additional Senior Civil Judge and J.M.F.C., Davangere, in R.A.no.48/2022 and confirming judgment and decree dated 05.04.2022 passed by Principal Civil Judge and J.M.F.C., Davangere, in O.S.no.217/2013, this second appeal is filed.

2. Sri Prasanna B.R., learned counsel for appellant submitted that appeal was by plaintiff against judgment and decree passed by first appellate Court, reversing trial court judgment and dismissing suit. O.S.no.217/2013 filed for relief of declaration, mandatory injunction and permanent injunction in respect of vacant site bearing no.147, measuring 30 X 60 feet, situated at Anagodu village, Davanagere i.e. **'A' Schedule Property** and Eastern portion measuring 15 X 60 feet out of 'A' Schedule Property was **'B' Schedule Property** (hereinafter referred to as **'Suit Property'**).

3. In plaint, it was stated that plaintiff was owner of 'A' Schedule Property by issuance of *Hakku Patra* by Anagodu Gram Panchayat and *Suit Property* was part of it. It was stated,



property of defendants was adjacent to it. It was stated, in collusion with officials of Anagodu Gram Panchayath, defendants had managed to get khata extract mutated in their names in respect of 'A' Schedule Property. On same coming to knowledge of plaintiff, he had filed complaint before Gram Panchayat. After verification, Gram Panchayat had passed Exhibit-P4 - Resolution holding mutation of name of defendant no.1 in respect of 'A' Schedule Property as illegal. Thereafter on 02.10.2012, defendants encroached eastern portion of 'A' Schedule Property. Plaintiff filed application before Anagodu Gram Panchayat for removal of encroachment. Since no action was taken, he filed suit.

4. After service of summons, defendants filed written statement denying plaintiff as owner of 'A' Schedule Property and contending that they were in possession of 'A' Schedule Property since time immemorial, constructed a tin roofed hut and residing in said property. They stated that to construct a toilet, they had stored construction material in *Suit Property*. But plaintiff began interfering with proposed construction and



suit was filed without any right, title or interest over suit property and denies encroachment.

5. Based on pleadings, trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves that he is absolute owner in possession of suit 'A' schedule property?*
- 2) *Whether the plaintiff proves that the defendants have illegally encroached the suit 'B' schedule property and put upped temporary hut?*
- 3) *Whether the plaintiff is entitle to recover possession of suit schedule property from the defendants by way of mandatory injunction?*
- 4) *Whether the plaintiff proves that alleged acts and interference of the defendants as pleaded in the plaint?*
- 5) *Whether the suit of the plaintiff is maintainable without the relief of declaration?*
- 6) *Whether the defendants prove that they are in continuous occupation of suit schedule property by constructing huts as pleaded in the written statement?*
- 7) *Whether the plaintiff is entitled to the reliefs as prayed?*
- 8) *What order or decree?*



6. In trial, plaintiff examined himself and two others as PWs.1 to 3 and got marked Exhibits-P1 to P8. In rebuttal, defendant no.2 examined himself as DW.1 and got marked Exhibits-D1 to D11.

7. On consideration, trial Court answered issues no.1 and 5 in affirmative, issues no.2 to 4 and 6 in negative, issue no.7 partly in affirmative and issue no.8 by decreeing suit granting relief of declaration but, dismissing suit insofar as reliefs of mandatory and permanent injunction.

8. Aggrieved defendants filed RA no.48/2022 on various grounds, based on which first appellate Court framed following:

POINTS

- 1) *Whether the appellant establishes that the impugned judgment and decree passed by the Prl. Civil Judge and J.M.F.C., Davanagere in O.S.217/2013, dated 05.04.2022 is illegal, perverse and liable to be set-aside?*
- 2) *What order or decree?*

9. After answering point no.1 in affirmative, answered point no.2 by allowing appeal, setting aside judgment and



decree passed by trial Court and dismissing suit. Aggrieved thereby, plaintiff had preferred this second appeal.

10. Learned counsel for appellant submitted that while passing impugned judgment, first appellate Court failed to properly appreciate documents produced by plaintiff, namely Exhibit-P4 - Resolution of Gram Panchayat and Exhibit-P6 - *Hakku Patra*. It is also contented that defendants did not place any material to dispute title of plaintiff's property. Despite same, well reasoned judgment passed by trial Court is reversed. Therefore, following substantial questions of law were proposed for consideration and prayed for answering same in favour of appellant and allow appeal.

- a. Whether the Judgment and Decree of the Lower Appellate Court is perverse on the facts of the case?*
- b. Whether, the Lower Appellate Court erroneously appreciated the material evidence on record and finding given is perverse on the facts of the case?*



c. Whether the defendants prove that they are in continuous occupation of suit schedule property by constructing huts as pleaded in the written statement?

d. Whether the Lower Appellate Court erroneously reversed the decree granted by Trial Court that the plaintiff is the owner of suit A-property?

11. Heard learned counsel and perused impugned judgment and decree.

12. Though learned counsel for appellant strenuously contended that first appellate Court did not properly appreciate Exhibit-P4 - Resolution of Gram Panchayat and Exhibit-P6 - *Hakku Patra* granted in favour of plaintiff and also failed to notice that there was no contrary evidence led by defendants to disprove title of plaintiff and was not justified in dismissing suit, it is seen in suit for declaration plaintiff had sought consequential reliefs of mandatory and permanent injunction in respect of *Suit Property*. Though same were rejected in suit,



plaintiff had not filed appeal. Without consequential reliefs, relief of bare declaration cannot sustain regardless of any error insofar as appreciation of Exhibits-P4 and P6. Therefore, no substantial question of law would arise for consideration. It is settled law that in absence of substantial question of law, even gross errors cannot be rectified in second appeal.

13. No grounds for admission of appeal under Section 100 of Code of Civil Procedure, 1908, appeal stands ***dismissed.***

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 36