



CNR: KAHC010119452024

NC: 2026:KHC:36303
RSA No. 307 of 2024

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. 307 OF 2024 (INJ)

BETWEEN:

SMT. H.N. UMADEVI
D/O LATE H. NARAYANA RAO,
AGED ABOUT 69 YEARS,
RESIDING AT NO. 209/1
KSHETRAIAH ROAD, K.R. MOHALA,
MYSURU - 570 001.

...APPELLANT

(BY SRI. Y.K. NARAYANA SHARMA, ADVOCATE)

AND:

1. SRI. OMPRAKASH G. JAIN
S/O GUTRAJ H. JAIN,
AGED ABOUT 53 YEARS,
2. SRI. ASHOK KUMAR G. JAIN
S/O SRI. GUTRAJ H. JAIN,
AGED ABOUT 53 YEARS,
3. SRI. LALITH KUMAR G. JAIN,
S/O SRI. GUTRAJ H JAIN,
AGED ABOUT 47 YEARS,
4. SRI. HIRALAL G. JAIN
S/O SRI. GUTRAJ H JAIN,
AGED ABOUT 45 YEARS

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



**NC: 2026:KHC:36303
RSA No. 307 of 2024**

CNR: KAHC010119452024

5. SRI. MUKESH KUMAR G. JAIN
S/O SRI. GUTRAJ H. JAIN,
AGED ABOUT 44 YEARS

RESPONDENTS NO.1 TO 5 ARE
RESIDING AT NO. 174/C, VOHRA NIVAS,
RAMAVILAS ROAD, K.R.MOHALLA,
MYSURU - 570 001.

6. SMT. H.N. KUSUMA,
D/O LATE H. NARAYANA RAO,
AGED ABOUT 57 YEARS,
RESIDING AT NO. 209/1
KSHETRAIAH ROAD, K.R.MOHALLA,
MYSURU - 570 001.
(SINCE DECEASED, REPRESENTED
BY APPELLANT NO.1)

...RESPONDENTS

(VIDE ORDER DATED 02.07.2026, NOTICE TO R1 TO R5 ARE
HELD SUFFICIENT;
VIDE ORDER DATED 14.07.2026, APELLANT IS THE LR OF R6)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 20.11.2023 PASSED IN RA
NO.79/2021 ON THE FILE OF THE VII ADDITIONAL SENIOR
CIVIL JUDGE, AND JMFC, MYSURU, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGMENT AND DECREE DATED
18.03.2021 PASSED IN OS.NO.803/2015 ON THE FILE OF THE
PRINCIPAL I CIVIL JUDGE AND JMFC, MYSURU.

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



CNR: KAHC010119452024

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.Y.K.Narayana Sharma, learned counsel appearing for the appellant.
2. The present appeal is filed by the plaintiff in O.S.No.803/2015 dismissing the suit of the plaintiff for permanent injunction confirmed in R.A.No.79/2021.
3. Facts of the case are as under;

The plaintiff filed a suit in O.S.No.803/2015 in respect of the following immovable property with a prayer for permanent injunction;

"SCHEDULE

Property bearing No.163/1, and southern portion of 210, situated at Kshetraiah road, Bandikeri road, K.R.Moalla, Mysuru, measuring E-W 41', N-S 80', bounded on the -

East - by house of Ramaiah

West - by house of Narayanachar



CNR: KAHC010119452024

**NC: 2026:KHC:36303
RSA No. 307 of 2024**

South - by Kshetraiah road

*North - by property of Narayanachari now
purchased from LRs of Subbanna."*

4. The plaintiff contended that the suit property bearing No.163/1 at Kshetraiah road belonged to their father namely Sri.Narayana Rao measuring 27 ft x 238 ft. Sri.Narayana Rao said to have sold the property measuring 27 ft x 158 ft in favour of Sri.Subbanna through a registered sale deed dated 04.11.1936 which is situated on the Northern side of the said property bearing No.163/1. Sri.Subbanna had access to the property from the Northern side from Ramavilas road.

5. Father of the plaintiffs retained Southern portion of the remaining property measuring 27 ft x 80 ft and constructed a building thereon. The said property was originally numbered as 210 and later on numbered as 163/1. Erstwhile owner of the suit property was Sri.Mahadevashastri. He sold the Southern portion of the



CNR: KAHC010119452024

property measuring 27 ft x 80 ft in favour of the father of the plaintiffs through a registered sale deed dated 16.11.1933. After the death of father of the plaintiffs, the plaintiffs continued to be the owners of the suit property in possession.

6. In the year 1991, children of Sri.Subbanna, who purchased Northern side of the property measuring 27 ft x 158 ft, filed a suit against the plaintiffs in O.S.No.1255/1991, contending that property having width of 13 feet is a common passage and the children of Sri.Subbanna were denied access to the said common passage. Another suit in O.S.No.34/1992 was filed for the relief of permanent injunction to restrain the children of Sri.Subbanna from interfering with their possession and enjoyment of the property.

7. Both the suits were clubbed and tried in common. The suit filed by the legal representatives of Sri.Subbanna was decreed and the suit filed by the plaintiffs got dismissed.



CNR: KAHC010119452024

8. Against the said common judgment, two appeals were filed by the plaintiffs before the District Judge, Mysuru. Both the matters were clubbed together for common hearing and after contest, both the appeals were dismissed.

9. The plaintiffs thereafter preferred second appeal before this Court in R.S.A.Nos.23/2012 and 24/2012. While R.S.A.No.24/2012 was filed against the suit in O.S.No.80/1992, R.S.A.No.23/2012 was filed against the judgment and decree passed in O.S.No.34/1992.

10. When the second appeal was being considered by this Court, a memo came to be filed on behalf of the respondents in both the cases to the effect that respondents in both the appeals have sold the property to Sri.Omprakash G Jain and therefore, the appeals have become infructuous.



CNR: KAHC010119452024

NC: 2026:KHC:36303
RSA No. 307 of 2024

11. A Co-ordinate Bench of this Court has passed the orders in both the second appeals, which are in verbatim with each other, as under;

Judgment in RSA No.24/2012:

"Learned counsel for the respondents has filed the objection statement to the main appeal contending that the appellant has sold her portion of the suit property and therefore the appeal has become infructuous. Further, the respondents have also indicated that having succeeded in both the suit as well as in the appeal before the Lower Appellate Court, the respondents herein have also sold their property on 20.08.2013 to Sri Praksh Jain and Others.

2. Though the learned counsel for the appellants submits that they are not aware of the said development, considering the fact that in any event, the respondents herein who were the defendants in the suit have sold their property and the suit being for bare injunction, examining the question herein would not arise.

3. Therefore, taking note of the subsequent development, the appeal stands disposed of.



CNR: KAHC010119452024

However, with liberty to the appellants to file a fresh suit on the subsequent cause of action if any arising in the matter. All contentions in that regard are left open. Parties to bear their own costs.

In view of disposal of the main appeal, I.A. Nos. 1/2012 and 2/2012 are also stand disposed of."

Judgment in RSA No.23/2012:

"Learned counsel for the respondents has filed the objection statement to the main appeal contending that the appellant has sold her portion of the suit property and therefore the appeal has become infructuous. Further, the respondents have also indicated that having succeeded in both the suit as well as in the appeal before the Lower Appellate Court, the respondents herein have also sold their property on 20.08.2013 to Sri Praksh Jain and Others.

2. Though the learned counsel for the appellant submits that he is not aware of the said development, considering the fact that in any event, the respondents herein who were the defendants in the suit have sold their property and the suit being for bare injunction, examining the question herein would not arise.



CNR: KAHC010119452024

Therefore, taking note of the subsequent development, the appeal stands disposed of. However, with liberty to the appellant to file a fresh suit on the subsequent cause of action if any arising in the matter. All contentions in that regard are left open. Parties to bear their own costs."

12. Thereafter, taking advantage of the observation made in the suit, in the second appeal, the plaintiffs filed O.S.No.803/2015 with the aforesaid prayer in respect of the suit property.

13. Pursuant to the suit summons, the defendants who were the subsequent purchasers of the property from the legal representatives of Sri.Subbanna namely Sri.Omprakash G Jain and others entered appearance and filed the written statement denying the plaint averments in toto and contended that there is suppression of material facts by the plaintiffs.

14. They also brought to the notice of the Court that original owner Sri.Subbanna and father-in-law of the



CNR: KAHC010119452024

defendants - Vendor were parties to the suit in O.S.No.7/1965. It is further contended by the defendants that in the said suit in O.S.No.7/1965, Sri.Subbanna was declared as the owner and relief sought for by Sri.Subbanna was granted.

15. Against the said judgment, Smt.Seethamma and other defendants in suit O.S.No.7/1965 filed an appeal in R.A.No.63/1971. The said appeal filed by the defendants in O.S.No.7/1965 was dismissed and the matter stood there itself and thereby declaratory decree was granted in favour of Sri.Subbanna, whose children have sold the property in favour of the defendants, were declared owner of the suit property and suppressing the said material on record, suit in O.S.No.803/2015 was filed and thus, sought for dismissal of the suit.

16. It is also contended that long thereafter, when the plaintiffs again filed the suit, the defendants also filed a suit in O.S.No.80/1993, another suit was filed against the



CNR: KAHC010119452024

plaintiffs in O.S.No.34/1992 and obtained an order of injunction on contest, whereas suit filed by the plaintiffs in O.S.No.80/1993 was dismissed. Both the appeals filed by the plaintiffs against the decreeing of the suit in O.S.No.34/1992 and dismissal of the suit in O.S.No.80/1993, the plaintiffs filed R.A.No.260/2006 and R.A.No.263/2006, which were also dismissed on contest, which ultimately reached this Court in R.S.A.Nos.23/2012 and 24/2012 respectively.

17. The defendants resisted the suit claim by placing the necessary material on record.

18. Learned Trial Judge after raising necessary issues, recorded the evidence of the parties and by a considered judgment dated 18.03.2021, dismissed the suit of the plaintiffs.

19. Being aggrieved by the same, the plaintiffs filed an appeal before the First Appellate Court in R.A.No.79/2021. Learned Judge in the First Appellate Court after securing



CNR: KAHC010119452024

the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, dismissed the appeal filed by the plaintiffs.

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

21. Sri.Y.K.Narayana Sharma, learned counsel for the appellant reiterating the grounds urged in the appeal would contend that the finding recorded by the competent Court in O.S.No.1255/1991, judgment of which is marked as Ex.P2, is not considered to by both the Courts and wrongly dismissed the suit of the plaintiffs resulting in miscarriage of justice and sought for admitting the appeal on the following substantial questions of law;

"(a) Whether the Courts below committed error of law in not considering the admissions made by the parties and by not considering and by misreading the evidence produced in the case including Ex.P2 and Ex.P 20?"



CNR: KAHC010119452024

(b) Whether the Courts below committed error of law in not relying upon the Judgment passed in O.S.NO.1255/1991 marked as Ex. P-2 in this case?

(c) Whether the Courts below committed error of law in holding that the respondents have right of way in the suit property when there is no evidence regarding the same, in the case?

(d) Whether the Courts committed error of law in not decreeing the suit when the Plaintiffs have produced the documents and proved that they are the owners of the suit property?"

22. He would further contend that there is no dispute with regard to the ownership of the father of plaintiffs to the portion of the property measuring 27 ft x 18 ft and the dispute is with regard to the alleged common passage of 13 feet which the rights have been claimed by Sri.Subbanna.

23. He would also contend that children of Sri.Subbanna having sold the property in favour of the defendants, the defendants cannot enjoy any right other than what



CNR: KAHC010119452024

Sri.Subbanna possessed and therefore, dismissal of the suit by both the Courts has resulted in grave miscarriage of justice and sought for admitting the appeal.

24. Respondents are served with notice of the appeal, but remained absent. In the light of the arguments put forward on behalf of the appellant, this Court perused the material on record meticulously.

25. On such perusal of the material on record, there is no dispute with regard to the title possessed by the father of the appellant as well as Sri.Subbanna.

26. Admittedly, the property was enjoyed as per the measurements mentioned in their respective sale deeds. According to Sri.Subbanna, there existed a common passage of 13 feet which is to be enjoyed by Sri.Subbanna which was objected to by father of the plaintiffs.

27. A suit in O.S.No.7/1965 is the first litigation that ensued in respect of the suit property.



CNR: KAHC010119452024

28. Admittedly, in the entire plaint, there is no mention about the said suit and the result thereof. Pertinently, Sri.Subbanna was declared as the owner of the property in possession, in the said suit.

29. Therefore, father of the plaintiff is bound by the decree as he has purchased the property from the defendants in O.S.No.7/1965. Therefore, the decree passed in O.S.No.7/1965 which got confirmed in R.A.No.63/1971 binds the plaintiffs as well.

30. Conveniently, the proceedings in O.S.No.7/1965 and the judgment passed in R.A.No.63/1971 was suppressed by the plaintiffs even though they have produced the judgment of the earlier suit in O.S.No.1255/1991.

31. Pertinently, the judgment and decree passed in O.S.No.7/1965 confirmed in R.A.No.63/1971 was brought to the notice of the plaintiffs in the written statement filed by the defendants themselves.



CNR: KAHC010119452024

NC: 2026:KHC:36303
RSA No. 307 of 2024

32. Therefore, the plaintiffs cannot plead ignorance about the earlier decree. When father of the plaintiffs has suffered the decree is bound by the decree that is passed in O.S.No.7/1965, the plaintiffs cannot claim any contra interest over the suit property. This aspect of the matter has been considered by both the Courts in its proper perspective while dismissing the suit of the plaintiff.

33. Thus, this Court does not find any merit in any one of the substantial questions of law raised in the appeal. Accordingly the following;

ORDER

(i) Admission declined.

(ii) The Regular Second Appeal is ***dismissed***.

No order as to costs.

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

GH
List No.: 1 Sl No.: 74