



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 18TH DAY OF JUNE, 2026
BEFORE
THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM
REGULAR FIRST APPEAL NO. 295 OF 2013 (DEC/INJ)

BETWEEN:

SRI N. CHINNASWAMY
S/O N. NALLAPOOVA,
AGED ABOUT 52 YEARS,
REP THROUGH SPA HOLDER
PALANI YANDI
S/O LATE NALLAPOOVAN,
AGED ABOUT 70 YEARS,
RESIDING AT NO.156,
11TH CROSS, VINAYAKANAGAR,
CHURCH STREET,
BANGALORE-560030.

...APPELLANT

(BY SRI. AHAMED S.N., ADVOCATE)

AND:

SRI RICHARD JOYCE S/O. S.A JOYCE
AGED ABOUT 41 YEARS
RESIDING AT BDA QUARTERS,
II STAGE, AUSTIN TOWN,
BANGALORE -560047.

...RESPONDENT

(BY SRI. P. VENKATARAMANA., ADVOCATE FOR C/R)

THIS REGULAR FIRST APPEAL, FILED U/SEC.96 OF CPC,
PRAYING TO SET ASIDE JUDGMENT AND DECREE DATED
14.12.2012 PASSED IN O.S.NO.9182/2001 ON THE FILE OF XXXIX
ADDITIONAL CITY CIVIL SESSION JUDGE, BANGALORE CITY, AND
DECREE THE SUIT.

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



ORAL JUDGMENT

The captioned Regular First Appeal is filed by the unsuccessful plaintiff, calling in question the judgment and decree dated 14.12.2012 passed in O.S.No.9182/2001, whereby the trial Court has dismissed the suit filed by the plaintiff seeking declaration of title based on the sale deed dated 28.04.1989 and consequential relief of permanent injunction.

2. For the sake of convenience and brevity, the parties are referred to as per their ranking before the trial Court.

3. The facts leading to the present appeal are as under:

The plaintiff initially instituted a suit for bare injunction in O.S. No.9182/2001 seeking relief of perpetual injunction restraining the defendant from interfering with his alleged peaceful possession and enjoyment of the suit schedule property. In the plaint, the plaintiff asserted that



the suit property is Site No.8/4 and contended that the erstwhile owner, namely Gundappa S/o Gundappa, had conveyed the same in his favour under a registered sale deed dated 28.04.1989. The plaintiff further pleaded that the suit site was formed out of portions of Sy. Nos.8/4, 9/1 and 10 and that he had been in lawful possession and enjoyment of the property ever since the date of purchase.

4. The plaintiff further specifically averred that during the relevant point of time, there existed restrictions and practical impediments in regard to registration of revenue sites and, therefore, it was a prevailing practice amongst vendors to secure khata entries by describing such properties as Gramathana properties in collusion with village accountants. Placing reliance on the said circumstance, the plaintiff contended that though the property in fact formed part of agricultural survey numbers, the same came to be described in the sale deed and revenue records as House Khata No.8/4 instead of by its original survey number. On the strength of the said



registered sale deed and consequential revenue entries, the plaintiff asserted absolute ownership and lawful possession over the suit schedule property.

5. The plaintiff further alleged that on 12.02.2001 the defendant and his father, alleged power of attorney holder made an unlawful attempt to trespass upon the suit schedule property and interfere with his peaceful possession and enjoyment. It was specifically pleaded that the said persons demanded a sum of Rs.1,00,000/- from the plaintiff and also threatened him with dire consequences. According to the plaintiff, he immediately lodged a complaint before the Ashok Nagar Police Station complaining about the acts of interference and intimidation.

6. The plaintiff further averred that notwithstanding the intervention and warning issued by the police authorities, the defendant continued to assert a hostile claim over the suit property on the basis of what,



according to the plaintiff, was a fictitious and fabricated document alleged to have been executed by one A.P. Srinivasalu through his purported power of attorney holder S.A. Joyce, who is none other than the father of the defendant. The plaintiff specifically contended that the defendant had created and relied upon a fabricated document dated 15.10.1998 with an oblique intention to encroach upon and dispossess the plaintiff from the suit schedule property. It is in this background that the plaintiff instituted the suit seeking the relief of permanent injunction against the defendant.

7. Per contra, on service of summons, the defendant entered appearance through counsel and filed a detailed written statement stoutly denying the entire averments made in the plaint. The defendant specifically disputed the title, possession, and identity of the suit schedule property as projected by the plaintiff and contended that the suit instituted by the plaintiff was



wholly misconceived and not maintainable either in law or on facts.

8. The sum and substance of the defence set up by the defendant is that the plaintiff's alleged vendor, namely Gundappa S/o Gundappa, had himself acquired several sites from the erstwhile owner, namely Chandanmal Jugraj, and thereafter alienated the very same sites in favour of different purchasers under registered sale deeds. The defendant specifically pleaded that Site No.8 had already been sold by Gundappa in favour of one Revanna under a registered sale deed dated 26.02.1966 and, therefore, Gundappa had completely divested himself of all right, title, and interest in respect of the said site much prior to the alleged sale transaction dated 28.04.1989 relied upon by the plaintiff.

9. Placing heavy reliance on the earlier sale deed executed in favour of Revanna, the defendant contended that the subsequent sale deed dated 28.04.1989 said to



have been executed by Gundappa in favour of the plaintiff is a sham and fictitious document, incapable of conferring any manner of right, title, or interest. The defendant specifically asserted that once Site No.8 had already been conveyed in favour of Revanna in the year 1986, the vendor Gundappa had no subsisting title remaining with him so as to once again convey the very same property in favour of the plaintiff in the year 1989. It was therefore contended that the plaintiff, who traces his title through a void and ineffective document, could not seek the equitable relief of injunction on the basis of such defective title.

10. The defendant further contended that as on the date of the alleged sale deed dated 28.04.1989, Gundappa had no manner of right over any portion of the suit property and consequently the plaintiff's claim founded on the said document was liable to be rejected in limine. On these set of pleadings, the defendant sought dismissal of the suit.



11. In response to the specific defence set up in the written statement disputing his title, the plaintiff filed an application seeking amendment of the plaint. By way of the proposed amendment, the plaintiff sought to convert the suit from one for bare injunction into a comprehensive suit for declaration of title and consequential injunction by specifically seeking declaration that he is the absolute owner of the suit schedule property on the strength of the registered sale deed dated 28.04.1989. The said amendment application having been considered by the trial Court came to be allowed, and consequently the plaintiff was permitted to incorporate additional pleadings and seek the relief of declaration of title founded on the sale deed dated 28.04.1989.

12. The defendant, upon amendment of the plaint and incorporation of the additional relief of declaration, filed an additional written statement and specifically raised a plea of limitation. The defendant contended that the relief of declaration introduced by way of amendment was



hopelessly barred by limitation and that the plaintiff, having initially instituted a suit for bare injunction, could not at a belated stage seek declaration of title after the statutory period prescribed under law had expired. On these grounds, the defendant sought dismissal of the suit as being barred by limitation apart from disputing the very title of the plaintiff.

13. On completion of pleadings, the trial Court framed the necessary issues and additional issues and called upon the parties to adduce oral and documentary evidence in support of their respective claims. In order to substantiate his case, the plaintiff examined himself as PW1 and also examined two supporting witnesses as PW2 and PW3. The plaintiff, in support of his title and possession, produced in all 29 documents, which came to be marked as Exs.P1 to P29.

14. Per contra, the defendant examined his father and General Power of Attorney holder as DW1 and relied



upon extensive documentary evidence in support of the defence set up in the written statement. The defendant, in all, got marked 58 documents as Exs.D1 to D58. Since dispute also arose in regard to the identity, location, and existence of the suit schedule property, a Court Commissioner was appointed for local inspection. The Commissioner, after conducting spot inspection and survey, submitted a report before the trial Court. The Commissioner was examined as CW1 and the Commissioner's report and connected records were marked as Ex.C1 to Ex.C8.

15. The trial Court, on meticulous appreciation of the pleadings, oral and documentary evidence and the Commissioner's report, proceeded to answer Issue No.1 and Additional Issue No.1 in the negative. The trial Court further held that the relief of declaration sought by the plaintiff by way of amendment was barred by limitation. Consequently, having recorded findings against the plaintiff on the question of title, identity of the property,



and limitation, the trial Court proceeded to dismiss the suit in its entirety by the impugned judgment and decree.

16. In the backdrop of the rival contentions urged by the learned counsel appearing for the plaintiff and the learned counsel appearing for the defendant, the following points arise for consideration before this Court:

"(i) Whether the finding recorded by the trial Court holding that the plaintiff has failed to substantiate his title over the suit schedule property based on the registered sale deed dated 28.04.1989 suffers from perversity or illegality warranting interference by this Court?

(ii) Whether the finding of the trial Court that the relief of declaration sought by the plaintiff is barred by limitation suffers from perversity or arbitrariness warranting interference by this Court?

(iii) Whether the plaintiff has succeeded in establishing the identity, existence, and location of



the suit schedule property in the light of the Commissioner's report, oral evidence of CW1, and the documentary evidence placed on record, and whether the finding recorded by the trial Court on the said issue suffers from perversity or illegality warranting interference by this Court?

(iv) What order ?"

Finding on point No.(i):

17. The core issue which requires deeper scrutiny at the hands of this Court is as to whether the plaintiff's vendor, namely Gundappa, had any subsisting and saleable right, title, or interest in respect of Site No.8 as on the date of execution of the sale deed dated 28.04.1989 in favour of the plaintiff. The entire edifice of the plaintiff's claim rests on Ex.P2, which is the registered sale deed dated 28.04.1989 alleged to have been executed by Gundappa in favour of the plaintiff, wherein Site No.8 is purportedly conveyed in favour of the plaintiff.



Therefore, in order to ascertain the legality and validity of the plaintiff's title, it becomes necessary for this Court to examine not merely Ex.P2, but also the antecedent title documents and surrounding circumstances placed on record.

18. Before proceeding further, this Court deems it appropriate to advert to Ex.P8, namely the title deed under which Gundappa had acquired title from the erstwhile owner Chandanmal Jugraj. A careful examination of Ex.P8 indicates that Gundappa had purchased in all ten sites from Chandanmal Jugraj. However, what assumes significance is not the initial acquisition of title by Gundappa, but whether he retained any subsisting right over Site No.8 as on the date of execution of Ex.P2 in favour of the plaintiff.

19. This Court has also carefully examined the order passed in C.R.P. No.1481/2003, the judgment and decree rendered in O.S. No.15291/2001, the interim order



passed on I.A. Nos.2 and 3 in O.S. No.787/1992 marked as Ex.D43, and the other connected title documents placed on record. On cumulative appreciation of these materials, what unmistakably emerges is that Gundappa, though initially having acquired title to ten sites from Chandanmal Jugraj, had subsequently alienated all the sites in favour of different purchasers and had thereby exhausted his entire right, title, and interest over the layout sites purchased by him.

20. Particular significance has to be attached to Ex.D43, which is the order passed on I.A. Nos.2 and 3 in O.S. No.787/1992 instituted by Gundappa himself seeking relief of perpetual injunction. While considering the prayer for temporary injunction, the competent Civil Court, upon examining the prima facie materials placed before it, has made a categorical reference to the fact that Gundappa had already sold Site Nos.5, 7 and 8 in favour of one Revanna under a registered sale deed dated 26.02.1966. This observation assumes considerable evidentiary value,



particularly because the said proceedings were initiated by Gundappa himself and the said finding directly relates to the very property now claimed by the present plaintiff under the subsequent sale deed dated 28.04.1989.

21. Equally significant are the findings recorded in O.S. No.15291/2001, which throw considerable light on the conduct of Gundappa. The materials on record reveal that Gundappa, having alienated several sites in favour of different purchasers, once again proceeded to create overlapping and conflicting claims in respect of the very same sites by executing multiple sale deeds with altered and misleading property descriptions. The records further indicate that several purchasers tracing title through Gundappa are found to be laying claim over properties situated in Sy. No.7 by projecting them as sites carved out in Sy. Nos.8/4, 9/1, and 10.

22. The evidence on record also demonstrates that Sy. No.7, which comprises revenue sites, is situated on



the western side of Sy. No.8/4. By assigning incorrect boundaries and manipulated descriptions, overlapping claims came to be created over properties situated in adjoining survey numbers. The judgment rendered in O.S. No.15291/2001 further discloses that Gundappa had even attempted to deal with Site No.2 despite having alienated the very same site as far back as in the year 1968. These circumstances clearly establish a consistent pattern of conduct on the part of Gundappa in repeatedly alienating the very same sites in favour of multiple purchasers.

23. On holistic appreciation of the pleadings, oral evidence, documentary evidence, and the findings recorded in the earlier proceedings, more particularly the observations contained in Ex.D43, the findings recorded in O.S. No.15291/2001, and the observations made by this Court in the connected Civil Revision Petitions, this Court is of the considered opinion that Gundappa had no subsisting saleable title in respect of Site No.8 as on 28.04.1989. The materials on record overwhelmingly



indicate that Site No.8 had already been conveyed in favour of Revanna under a registered sale deed dated 26.02.1966 and, therefore, Gundappa had completely divested himself of all right, title, and interest in the said property much prior to the execution of Ex.P2 in favour of the plaintiff.

24. It is also relevant to note that O.S. No.787/1992, which was instituted by Gundappa himself seeking injunction, was not pursued after rejection of the prayer for temporary injunction and ultimately came to be dismissed. The conduct of Gundappa in abandoning the proceedings after adverse observations regarding prior alienations also probabalises the defence set up by the defendant.

25. Therefore, merely because the plaintiff is armed with a registered sale deed marked at Ex.P2, the same by itself would not confer valid title unless the plaintiff establishes that his vendor possessed a lawful and



subsisting title capable of being conveyed. It is a settled proposition of law that a transferee cannot derive a better title than that possessed by his transferor. In the case on hand, the plaintiff has utterly failed to establish that Gundappa had retained Site No.8 so as to legally convey the same in favour of the plaintiff under the sale deed dated 28.04.1989.

26. Accordingly, this Court is of the considered opinion that the finding recorded by the trial Court while answering Additional Issue No.1 against the plaintiff does not suffer from perversity, illegality, or misappreciation of evidence warranting interference by this Court. Consequently, Point No. (i) is answered in the '**negative**'.

Finding on Point No. (ii):

27. The undisputed facts on record would reveal that the plaintiff initially instituted the suit as one for bare injunction simpliciter by alleging interference with his possession said to have occurred on 12.02.2001 and



08.12.2001. The original plaint did not contain any prayer seeking declaration of title. The relief sought was confined only to protection of alleged possession based on the sale deed dated 28.04.1989. However, after the defendant entered appearance and specifically disputed the very title of the plaintiff by contending that the plaintiff's vendor Gundappa had already alienated Site No.8 in favour of Revanna under the registered sale deed dated 26.02.1966, the plaintiff sought to convert the suit into one for declaration and consequential injunction by filing an amendment application.

28. The records indicate that the application seeking amendment for incorporation of the relief of declaration came to be filed only on 15.12.2006 and the said application was subsequently allowed by the trial Court under order dated 11.12.2007. Consequent upon the amendment being allowed, the defendant filed additional written statement specifically contending that the newly introduced relief of declaration was hopelessly



barred by limitation. In view of the rival pleadings, the trial Court formulated an additional issue touching upon limitation.

29. On re-appreciation of the pleadings and the material on record, this Court is of the considered view that the cause of action to seek declaration of title had undeniably accrued to the plaintiff in the year 2001 itself, when the defendant openly disputed the plaintiff's title and asserted hostile title by specifically contending that Gundappa had no subsisting right to execute the sale deed dated 28.04.1989. The moment the plaintiff's title was denied in unequivocal terms in the written statement, the cloud cast over the plaintiff's title became apparent and complete cause of action arose to seek declaratory relief.

30. At this juncture, it would be useful to advert to Article 58 of the Limitation Act, 1963 (for short "the Act"), which governs suits seeking declaration. Article 58 reads thus:



*"Article 58: To obtain any other declaration —
Period of limitation: 3 years; Time from which period
begins to run: When the right to sue first accrues."*

31. A plain reading of Article 58 of the Act, makes it abundantly clear that a suit seeking declaration has to be instituted within a period of three years from the date when the right to sue first accrues. The expression "when the right to sue first accrues" employed under Article 58 of the Act has consistently been interpreted by Courts to mean the first point of time when the plaintiff is entitled to seek declaration upon clear and unequivocal denial of his alleged right.

32. In the present case, the plaintiff having instituted the suit in the year 2001 merely for injunction despite serious dispute relating to title, and having sought declaratory relief only on 15.12.2006, clearly falls outside the prescribed period of limitation contemplated under Article 58 of the Act. Even if the date of accrual of cause of action is reckoned from the pleadings and objections filed



by the defendant disputing title in the year 2001, the amendment seeking declaration introduced in the year 2006 is evidently beyond the statutory period of three years.

33. What further assumes significance is the settled proposition governing amendments introducing a new relief. It is trite law that when a substantive relief of declaration is introduced by way of amendment after expiry of the period of limitation, such amendment would ordinarily take effect only from the date on which the amendment application is filed and not from the date of institution of the original suit, unless the Court while allowing the amendment specifically directs that the amendment shall relate back to the date of filing of the suit.

34. In the present case, though the amendment application came to be allowed on 11.12.2007, there is absolutely no indication in the order passed by the trial



Court that the amendment incorporating the relief of declaration would relate back to the date of institution of the suit. In the absence of any such specific direction, the amended relief seeking declaration has necessarily to be construed as having been introduced only on the date of filing of the amendment application, namely 15.12.2006.

35. Therefore, viewed from any angle, the relief of declaration sought by the plaintiff based on the sale deed dated 28.04.1989 is clearly barred by limitation under Article 58 of the Act. The trial Court, on proper appreciation of the pleadings and the governing principles relating to limitation, has rightly held that the declaratory relief introduced by way of amendment is time-barred.

36. Accordingly, this Court is of the considered opinion that the finding recorded by the trial Court on the issue of limitation neither suffers from perversity nor from any error of law warranting interference by this Court.



Consequently, Point No.(ii) is answered in the '***negative***' and against the plaintiff.

Finding on Point No.(iii):

37. In order to resolve the controversy relating to the identity and location of the suit schedule property, the trial Court had appointed a Court Commissioner for local inspection. The Commissioner, after conducting spot inspection and survey, submitted a detailed report along with sketch and connected records. The Commissioner was examined before the Court as CW1 and was subjected to detailed cross-examination by both parties.

38. On meticulous examination of the Commissioner's report and oral evidence of CW1, this Court finds that the report does not conclusively establish the exact identity and physical existence of the suit schedule property in the manner asserted by the plaintiff. On the contrary, the Commissioner's report discloses substantial discrepancies relating to survey numbers,



boundaries, and the correlation between the sites claimed by various purchasers tracing title through Gundappa.

39. The Commissioner has specifically noticed that there existed considerable overlap and confusion between the sites allegedly formed in Sy. Nos.8/4, 9/1, and 10 and the adjoining revenue sites situated in Sy. No.7. The materials on record further indicate that several purchasers tracing title through Gundappa were laying competing claims over sites situated in Sy. No.7 by projecting them as sites carved out in Sy. No.8/4. The report also reveals that the physical features available on the spot did not satisfactorily correspond with the descriptions found in the plaintiff's title documents.

40. What further assumes significance is that the plaintiff has failed to produce any approved layout plan, authenticated survey sketch, or revenue records capable of conclusively identifying the precise location of Site No.8. The Commissioner's report, instead of clarifying the



controversy, probabilises the defence set up by the defendant that multiple and overlapping claims were created by assigning manipulated boundaries and inconsistent descriptions while executing successive sale deeds.

41. This Court is conscious of the settled principle that a Commissioner's report is only a piece of corroborative evidence and cannot by itself confer title. However, when the very identity and existence of the suit property are seriously disputed, the report assumes considerable evidentiary value for the limited purpose of ascertaining physical features and location of the property. In the present case, the Commissioner's report substantially weakens the plaintiff's case rather than supporting it.

42. The cumulative effect of the Commissioner's report, oral evidence of CW1, and the documentary evidence placed on record clearly demonstrates that the



plaintiff has failed to satisfactorily establish the identity and exact location of the suit schedule property. Therefore, the finding recorded by the trial Court while appreciating the Commissioner's report and allied evidence does not suffer from perversity, arbitrariness, or misappreciation of evidence warranting interference by this Court.

Accordingly, Point No.(iii) is answered in the ***negative*** and against the plaintiff.

Finding on Point No.(iv) and Conclusions:

43. This Court has also carefully examined the findings recorded by the trial Court in regard to the identity, location, and existence of the suit schedule property in the light of the Commissioner's report and the documentary evidence placed on record by both parties. The Commissioner, who was examined as CW1, has categorically indicated serious discrepancies in regard to the identification of the suit property. The materials on



record clearly demonstrate that there was substantial confusion relating to the location of the sites allegedly formed in Sy. Nos.8/4, 9/1, and 10 on the one hand, and the sites situated in adjoining Sy. No.7 on the other hand.

44. The evidence further discloses that several purchasers tracing title through Gundappa were found to be laying overlapping claims over sites situated in Sy. No.7 by projecting them as sites formed in Sy. No.8/4. The inconsistent boundaries, altered descriptions, and conflicting claims emerging from the title documents produced by various purchasers clearly probabilise the defence of the defendant that multiple sale deeds came to be executed by Gundappa by assigning erroneous and manipulated descriptions. The Commissioner's report also does not conclusively establish the exact identity and location of the suit schedule property as claimed by the plaintiff.



45. When the plaintiff seeks declaration of title and consequential injunction, the burden squarely lies on him not only to establish lawful title, but also to clearly identify the property in respect of which such declaration is sought. In the present case, the plaintiff has failed to place cogent and satisfactory evidence to establish the exact identity and existence of the suit schedule property. Therefore, the finding recorded by the trial Court on the issue relating to identity of the property is based on proper appreciation of oral and documentary evidence and does not suffer from perversity or arbitrariness warranting interference by this Court.

46. This Court, on re-appreciation of the entire oral and documentary evidence available on record, is of the considered opinion that the plaintiff has utterly failed to establish that his vendor Gundappa had any subsisting saleable title in respect of Site No.8 as on the date of execution of the sale deed dated 28.04.1989. The materials placed on record overwhelmingly indicate that



Site No.8 had already been alienated in favour of Revanna under the registered sale deed dated 26.02.1966 and therefore, the subsequent sale deed relied upon by the plaintiff did not confer any valid title.

47. This Court is also of the view that the declaratory relief introduced by way of amendment in the year 2006 is hopelessly barred by limitation under Article 58 of the Act. Further, the plaintiff has also failed to satisfactorily establish the identity and existence of the suit schedule property in the manner known to law.

48. The trial Court, having meticulously examined the pleadings, oral and documentary evidence, earlier proceedings, Commissioner's report, and the surrounding circumstances, has recorded findings which are based on proper appreciation of evidence. This Court does not find any perversity, illegality, or misdirection in the findings recorded by the trial Court warranting interference in



exercise of appellate jurisdiction under Section 96 of the Code of Civil Procedure, 1908.

49. In view of the above findings and conclusions, this Court proceeds to pass the following:

ORDER

(i) The Regular First Appeal is dismissed.

(ii) The judgment and decree dated 14.12.2012 passed in O.S. No.9182/2001 by the trial Court are hereby confirmed.

(iii) In the facts and circumstances of the case, parties shall bear their own costs.

(iv) Pending interlocutory applications, if any, do not survive for consideration and stand disposed of.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

ALB/CT:GSM
LIST NO.: 19 SL NO.: 8.1