



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1726 OF 2018
(DEC/INJ)

BETWEEN:

1. K S POOVAIAH
S/O LATE SUBBAIAH
AGED ABOUT 76 YEARS
2. K P GANESH
S/O K S POOVAIAH
AGED ABOUT 51 YEARS
3. K P MALLESH
S/O K S POOVAIAH
AGED ABOUT 46 YEARS
4. SMT MUTTAMMA
W/O K S POOVAIAH
AGED ABOUT 66 YEARS

APPELLANT NO.1 TO 4 ARE
R/O THOLURSHETTALI VILLAGE
SOMWARPET TALUK-571 236
KODAGU DISTRICT.

...APPELLANTS

(BY SRI. CHETHAN B., ADVOCATE)

Digitally signed
by JUANITA
THEJESWINI
Location: HIGH
COURT OF
KARNATAKA



AND:

1. A B THILAK KUMAR
S/O LATE A P BASAPPA
AGED ABOUT 46 YEARS
2. A B MANJUNATH
S/O LATE A P BASAPPA
AGED ABOUT 44 YEARS
3. A B MAHESH
S/O LATE A P BASAPPA
AGED ABOUT 41 YEARS
4. SMT POOVAMMA
W/O LATE A P BASAPPA
AGED ABOUT 66 YEARS

RESPONDENTS NO.1 TO 4 ARE
R/O DODDATHOLUR VILLAGE
SOMWARPET TALUK-571 236
KODAGU DISTRICT.

...RESPONDENTS

(BY SRI. RAJESH A., ADVOCATE FOR R1 TO R4)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 30.08.2017
PASSED IN RA.NO.55/2014 ON THE FILE OF THE SENIOR CIVIL
JUDGE, SOMAWARPET, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 06.09.2014
PASSED IN O.S.NO.37/2007 ON THE FILE OF PRINCIPAL CIVIL
JUDGE AND JMFC AT SOMWARPET AND ETC.

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri. Chethan B., learned Counsel for the appellants and Sri. R. Rajesh A., learned Counsel for the respondents.

2. The present Regular Second Appeal is filed by the unsuccessful plaintiffs challenging the judgment and decree dated 06.09.2014 passed in O.S.No.37/2007 and the judgment and decree dated 30.08.2017 passed in R.A.No.55/2014, wherein suit of the plaintiffs came to be dismissed.

3. Facts in nutshell which are utmost necessary for disposal of the present appeal are as under:

3.1. A suit for cancellation of the sale deed and consequential relief of permanent injunction came to be filed by the plaintiffs contending that schedule property is a house site measuring 0.25 Cents consisting with a Mangalore tiled house, attached with portion of Rice Mill, Shop and Hotel situated in land bearing Sy.No.131/45



situated at Tholurshettali Village, Somwarpet Taluk, Kodagu District (hereinafter referred to as 'the suit schedule property' for short).

3.2. The plaintiffs further pleaded that plaintiffs No.2 and 3 are the sons of plaintiff No.1 and plaintiff No.4 is the wife of plaintiff No.1 and they constitute Hindu Undivided Joint Family and suit schedule property has been granted to plaintiff No.1 in the year 1960 by the Government through Deputy Commissioner, Kodagu District. The suit schedule property was developed by utilising the funds from the ancestral properties of plaintiff No.1 and therefore, all the plaintiffs are joint owners of the property and the property is protected by barbed wire fencing and therefore, is a compact block.

3.3. It is further pleaded that defendant No.1 raised proceedings before the Tahsildar in M.C.No.7/04-05, praying to get the transfer of the house site to an extent of 0.05 Cents out of 0.25 Cents onto his name and when plaintiff No.1 received the notice, he resisted the same by



engaging a lawyer. Defendant No.1 claimed ownership/ rights over the said property based on the sale deed which was registered on 24.02.1969. Said sale deed was in fact executed on 14.12.1968 after obtaining the signature of plaintiff No.1, fraudulently.

3.4. Pursuant to the suit summons, defendants entered appearance and resisted the suit by contending that suit is not maintainable; suit is hopelessly barred by time and is an afterthought only to deny the valuable rights flown under the registered sale deed to the defendants.

3.5. Learned Trial Judge after due trial noted that plaintiffs utterly failed to prove that the sale deed executed by plaintiff No.1 in favour of the father of defendants is a fraudulent sale deed and as such dismissed the suit. Trial Court also held that the suit is barred by limitation as well.

3.6. Being aggrieved by the same, plaintiffs filed an appeal before the first appellate court. Learned Judge in



the first appellate court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, dismissed the appeal of the plaintiffs *inter alia* holding in paragraphs No.35 to 38, as under:

"35. On perusal of entire evidence it is clearly proved that the plaintiff No.1 sold 5 cents of property to the father of defendants No. 1 to 3 by name A.P. Basappa and another 5 cents in favour of D.M.Ponnappa and 10 cents sold to Shivaiah S/o Erappa. In spite of it the plaintiffs have pleaded false things to defraud the rights of the purchasers. No doubt the name of A.P.Basappa not mutated in the revenue records pertaining to 5 cents out of 25 cents in suit Sy.No:131/45 after purchasing of sale deed dated 24-2- 1969 but on that ground alone his rights and title cannot defeated. Because, proviso to Sec. 128 of the Karnataka Land Revenue Act exempted the purchaser acquiring a right by virtue of registered document from the obligation to report to the competent authority to mutate his name with respect to purchased property. This preposition of law has been decided by the Hon'ble High Court of Karnataka in the case of Vasudevan V/s The Deputy Commissioner of Kodagu district and others reported in ILR 2002 Kar.4637. In the case of state of Himachal Pradesh V/s Keshav Ram and others reported in ILR 1998 Kar.1 (Supreme Court), it is held that entry in revenue record of rights by no stretch of imagination can form basis for declaration of title. Therefore, though the record of rights with respect to suit property standing in the name of 1st plaintiff cannot create any rights and title over it.



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36. I have gone through the citations relied on behalf of the plaintiffs. In the case of Ram Sevak Dubey and other V/s Smt. Ajirana and others reported in ILR 1988 C Allahabad 41, wherein the purchaser had obtained the signature of the plaintiff Smt Ritu Raji on plain stamped papers for other purposes and thereafter created the sale deed. Considering the facts of the case the said decision has been laid down. In the case of Dayashankar V/s Smt. Bachi and others reported in AIR 1982 Allahabad 376, in that case the Hon'ble High Court was pleased to held that law presumes, prima-facie in favour of the being duly executed so ordinarily the person who challenges the validity of the transaction on the ground of the fraud, undue influence etc., and charges his opponent with bad faith has to discharge the burden of the proof which rests on him. But the major exception to this rule is that the initial burden would not shift to the party who challenges the transaction and will instead be caste on the person who relies on such deed. In the case of O.Leelavathi and others V/s M. Neelakanta Naidu and others reported in ILR 2006 Kar 4637, where in it is held that document is registered before the Sub-Registrar, such document has to be treated as public document. In Quadricon Pvt Ltd V/s Bajarang Alloys Ltd it is held that cancellation of sale deed, actually injury or attempt to injury not necessary to maintain action under sec.31 of Specific Relief Act. In the case of B.G. Ravindra and another V/s Deviramma held that as per Sec.91 of Evidence Act, no evidence shall be given in proof of the terms of the disposition of the property except by producing the document itself. In the case of Ramsaran Lall and others V/s Mst. Domini Kuer and others reported in AIR 1961 S.C. 1474 it is held that the title of vendee was not to be postponed to any date beyond the date of execution of the document. In the case of N.M.Ramchandraiah and another V/s State of Karnataka it is held that execution of do document does not mean merely signing but signing by way



assent to the terms of the contract embodied in the document. The above mentioned citations relied on behalf of the plaintiffs are not applicable to the present facts on hand.

37. The defendants have also submitted the decisions of the as mentioned above. In the case of A.V. Rangacharya V/s Pillananjinappa reported in ILR 1999 Kar. 1524, wherein it is held that the validity of the sale deed of 1969 and gift deed of 1971 cannot be questioned after period of 16 years and 14 years respectively by the sons of the original vendor/donor's successors. In the instant case the plaintiffs have challenged the sale deed dated 24-2-1969 by filing the suit on 2-6-2007 after more than 38 years and the conduct of the plaintiffs is not in consonance with the human experience. Therefore the above mentioned decision is aptly applicable to the defence taken by the defendants. Therefore, the suit of the plaintiffs is clearly barred by limitation for the reasons discussed above.

38. The plaintiffs have failed to their plea, which is seriously disputed by the defendants. In the case of Kenchavva V/s Amogonda and others reported in ILR 2003 Kar.2548 (DB) wherein it is held that when fact probanda is denied by the other side, the same forms of fact in issue and in proof of the fact in issue, the party, who has come up with such plea, will have to place acceptable legal evidence and said evidence pertakes the nature of facta probantia. Considering the facts and circumstances of the case the above mentioned decision is aptly applicable to the case of the defendants."

3.7. Being further aggrieved by the same, plaintiffs are before this Court.



4. Sri.B.Chethan, learned Counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts have failed to note that when the suit schedule property is an ancestral property, plaintiff No.1 alone did not have right to part away the entire suit property in favour of the defendants. As such, the rights of other plaintiffs not got transferred to the defendants under the sale deed.

5. Therefore, the Trial Court ought to have decreed the suit and sought for admitting the appeal on the following substantial questions of law:

- a. *Whether the Judgments and Decrees passed by the Courts below would stand legal scrutiny?*
- b. *Whether the appreciation of evidence on record by the Courts below is justified?*
- c. *Whether the Trial Court erred in not framing appropriate issues having regard to the real disputes involved between the Parties?*
- d. *Whether the Courts below are justified in giving findings on facts without there being an issue on the same?*
- e. *Whether the Courts below are justified in accepting the alleged sale deed without even*



testing the same in terms of section 10 of the Indian Contract Act?

- f. Whether the Courts below are justified in dismissing the suit of the Appellants as barred by Law of Limitation?*
- g. Whether the findings of the Courts below that the Respondents have proved the execution of alleged sale deed would stand legal scrutiny in the absence of production of original of the same?*
- h. Whether the Courts below are Justified in attributing negative burden of the Appellants?*

6. Per contra, Sri Rajesh, learned Counsel for the respondents supports the impugned judgments. He would further contend that long silence in seeking the cancellation of the sale deed itself express the hollowness in the plaint averments and it is an afterthought to extract more money from the defendants which has been rightly rejected by both the Courts and sought for dismissal of the appeal.

7. Having heard the arguments of both sides, this Court perused the material on record meticulously.



8. On such perusal of the material on record, it is crystal clear that there is a sale deed which is validly executed by plaintiff No.1 in favour of the father of the defendants, which was registered in the office of Sub-Registrar in the year 1969. The suit came to be filed before the Trial Court in the year 2007.

9. The cause of action in the plaint is vague and without necessary particulars. When once the sale deed has been executed by plaintiff No.1 and defendant No.1 was put in possession of the property and when there is a proceedings to transfer the revenue entries in the name of defendant No.1 pursuant to the registered sale deed, plaintiffs with ulterior motive have challenged the very execution of the sale deed and sought for cancellation of the sale deed. It is the case of the plaintiffs that the sale deed got executed fraudulently.

10. Pertinently, Order VI of CPC contemplates that whenever fraud is alleged, there must be details of the



fraud so as to meet the case of the plaintiffs by the contesting party.

11. No such particulars are forthcoming in the plaint and merely contending that the sale deed was fraudulently executed, would not be sufficient enough to hold that plaintiff No.1 is not a party to the sale deed.

12. Thus, this Court does not find any good grounds in the case of appellants.

13. These aspects of the matter have been taken into consideration by both the Courts in accordance with law after adjudging the rival contentions of the parties with the available evidence on record and rightly dismissed the suit of the plaintiffs which requires no further consideration before this Court, that too in the second appeal having regard to the scope of Section 100 of C.P.C.

14. As such, this Court is of the considered opinion that substantial questions of law raised in the appeal memorandum referred to supra *sans* merit.

15. Hence, the following:



ORDER

- (i) Admission declined.
- (ii) Appeal stands ***dismissed***.
- (iii) All pending Interlocutory Applications
stand disposed of.

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