



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1140 OF 2019 (DEC/INJ)

BETWEEN:

SMT TRIVENI NAYAK
WIFE OF MAHENDRA KODKANY
AGED ABOUT 44 YEARS,
R/AT TRIVENI, S L MATHIAS ROAD
FALNIR, MANGALORE- 575001

...APPELLANT

(BY SRI. H D.SOMESHA, ADVOCATE FOR
SRI. RAJARAMA S., ADVOCATE)

AND:

SMT APOLINE FERNANDES,
W/O JOSEPH FERNANDES,
AGED 55 YEARS,
R/AT WEST VIEW,
PARASHURAM NAGAR,
KAVOOR MANGALORE- 575015

...RESPONDENT

(BY SRI PRAVEEN KUMAR B R, ADVOCATE FOR
SRI. RAKESH KINI., ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 23.01.2019 PASSED IN
RA.NO.78/2013 ON THE FILE OF THE 1st ADDITIONAL SENIOR

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by AASEEFA
PARVEEN
Location: HIGH
COURT OF
KARNATAKA



CIVIL JUDGE, MANGALURU D.K., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 20.02.2013 PASSED IN OS.NO.409/2006 ON THE FILE OF THE 1st ADDITIONAL CIVIL JUDGE AND JMFC., MANGALURU.

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.H.D.Somesha for Sri.Rajarama.S, learned counsel for the appellant as well as Sri.Praveen Kumar.B.R for Sri.Rakesh Kini, learned counsel for the respondent.

2. Unsuccessful plaintiff is the appellant challenging the dismissal of the suit in OS No.409/2006 confirmed in RA No.78/2013.

3. Facts of the case are as under:

3.1 A suit in OS No.409/2006 came to be filed for the relief of declaration and prohibitory injunction in



respect of following immovable property (hereinafter referred to as the suit property).

PLAINT SCHEDULE PROPERTY

The immovable Non-agriculture property situated in Kavoor village of Mangaluru Taluk D.K, District comprised in Sy.No.149/3A2.

<u>Sl.No.</u>	<u>Sy.No.</u>	<u>KISSAM</u>	<u>EXTENT</u>
1	149/3A2	Converted	00-07-50

With Existing 16 ft Width Road as shown in the sketch enclosed to the Sale Deed above said and all other contents and all mamool and Easementary Rights and improvements and appurtenant thereto.

BOUNDARIES:

<i>East:</i>	<i>Existing Road as shown in the sketch and property of the defendant attached to the Road.</i>
<i>West:</i>	<i>Portion of Survey No.149/1</i>
<i>North:</i>	<i>Survey Line</i>
<i>South:</i>	<i>Property sold in favour of V.V.Kumar</i>

4. Plaintiff laid his claim for the aforesaid relief by contending that plaintiff is the absolute owner of the suit property having acquired the same through sale deed dated 20.03.1993 from Smt.Padmavathi.P.Rai. Property is situated at Kavoor Village, Mangalore Taluk bearing Sy No.149/3A2 measuring 7.5 cents of vacant land with easementary right over 16 feet width existing road as



shown in the sketch annexed to the plaint leading from South to North attached to the suit property. It is further contended that plaintiff is enjoying the suit property including the road without any hindrance till the date of suit but defendant who is the adjacent owner of the suit property, claiming to be the owner of the adjacent property having purchased the same from Smt.K.Leelavathi Shetty started interfering with the peaceful possession and enjoyment of the road by building a compound wall trespassing into the 16 feet public road in the first week of August 2006 and therefore, suit came to be filed.

5. Pursuant to the suit summons, defendant entered appearance and denied the plaint averments in toto and contended that there was no public road as is contended by the plaintiff, but the road that was in existence is for the utilization of the property of the defendant. The sale deed executed in favour of the



plaintiff did not mention about the existence of the public road and thus sought for dismissal of the suit.

6. Learned judge after raising necessary issues, recorded the evidence of the parties and noted that the plaintiff failed to prove that there existed a road which was a public road dismissed the suit of the plaintiff.

7. Further, the counter claim claimed by the defendant in the suit was allowed by directing that plaintiff or anybody claiming under the plaintiff was restrained from trespassing into the written statement schedule property in any way and disposed of the suit.

8. Being aggrieved by the same, a single appeal is filed only with regard to the dismissal of the suit seeking declaration and injunction and did not challenge the decreeing of the counter claim.

9. Learned judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material on record,



dismissed the appeal filed by the plaintiff, inter-alia holding in paragraph Nos.34 to 38 as under:

"34. Further, it is pertinent to note here that as per settled principles of law in respect of section 61 and 62 of Karnataka Land Reforms Act is concerned, when there is suit between private parties for establishing private rights although it may be affected by entries in land records and suit preferred by private parties for possession of land fall U/S 62 of Karnataka Land Reforms Act and jurisdiction of civil court to entertain such suit is not barred under Sec. 61 of the act. Hence, under circumstances, merely because preferring of appeal before the revenue court in respect of wrong plotting is not disentitle the parties to agitate their claim and counter claim before this court being the private parties so as to establish their private rights and to effect entries in land records. Therefore, the jurisdiction of civil court is not barred U/S 61 of the Act. In this regard, the decision relied upon by the defendant reported in 1996(2) KLJ 285 held between Smt. Irawwa and Vs- Krishnaji Venkatesh Naik (dead) by LRs and others). The ratio laid down in the aforesaid decision is applicable to the case on hand. The trial court has applied the ratio laid down in the aforesaid decision.

35. In respect of the written statement schedule property while making the counter claim by the defendant it has been contended that it is during the month of August 2006 the plaintiff claims right pertaining to the written statement schedule property under the pretext that it is a road. Therefore, the cause of action arose. As discussed earlier, the plaintiff having an interest to deny the legal status of the defendant over the written statement schedule property under the pretext of grant of easement to make use of the strip of land under the pretext of road and on the basis of the document Ex.P1. In respect of the document Ex.P1 and Ex.P1 (a) the discussion has already been made. It is the property to an extent of 76 feet of land in between the boundaries mentioned in the sale deed was subjected to purchase by the plaintiff and towards eastern side of purchased



property the road has been shown separately. Therefore, the claim of the defendant could be considered.

36. Further as far as identification of the property is concerned, in the suit It involves the immovable property as the subject matter of the suit, the same is to be described in proper manner and there is a burden cast upon the plaintiff to give proper description so as to location or Identification of the property upon which he is claiming road. When the description of the property is not sufficient for the purpose of identification, then the decree though it granted to the plaintiff is unworkable. The said ratio laid down in the decision reported in AIR 1964 Tripura Page 36 held between Heirs of Charanpai Reang Smt Sambatri Rioang and others - Sri. Dinabandu Das and others. The ratio laid down in the aforesaid decision applicable to the case on hand as far as the facts put forth by the plaintiff in respect of location of the road and as per its geographical existence is concerned. As the property road upon which the easement of grant claimed by the plaintiff could not be ascertained or identified on the basis of the document placed before the court. Hence, the defendant is entitled for the benefit of ratio laid down in the above said decision.

37. Further it is the settled principles of law that unless and until the court is satisfied that the material details on the basis of material proposition of law and facts with evidence placed before the court for the purpose of identification of property, the relief of declaration and injunction could not be granted. The ratio laid down by the Hon'ble High Court of Karnataka reported in ILR 2005 Kar LJ 884, in the case of Nagendra Babu - Vs Manohar Rao Pawar is applicable to the case on hand. The plaintiff has not placed the proper material evidence in respect of identification of property upon which she is claiming easement by way of grant and seeking the relief. Therefore, the plaintiff has not proved the case.

38. Further in respect of unidentified properties or injunction unascertained properties is concerned, the relief of also could not be granted. In this regard the ratio laid down by the Hon'ble High Court of Karnataka reported in ILR 1 1991 Karnataka page 1696 held



between Annamma -Vs- Puttamma could be considered. The same has been relied upon by the counsel for the defendant before the trial court and trial court has considered the same and applied the ratio."

10. Being further aggrieved by the same, plaintiff has filed the present appeal.

11. Sri.Somesha.H.D for Sri.Rajarama.S would contend that there is an admission in the cross examination of DW1 about the existence of the road. Ignoring such admission, dismissal of the suit by the trial judge confirmed by the First Appellate Court cannot be sustained in the eye of law and thus sought for admitting the appeal on following substantial questions of law:

1. *Whether the Plaintiff proves that she is the absolute owner of the suit schedule property as per the registered sale deed dated 20.03.1993?*

2. *Whether, she further proves that she is having easementary right over 16 feet width existing road as sown in the sketch connecting the suit schedule property leading from south to north attached to the suit schedule property as contended in the plaint?*

3. *Whether the plaintiff further proves that she acquired the easementary right over the 16 feet width existing road through her vendor Smt.Padmavathi as per the registered sale deed?*



4. *Whether the Courts below have justified in dismissing the suits when the plaintiff/Appellant proved that she has no approach road to her property except suit schedule property?*

5. *Whether the Courts below have committed error of law by not appreciating oral and documentary evidence on record?*

6. *Whether the Court below have justifying in dismissing the suit when the plaintiff is entitled for easementary right?*

7. *Whether the Courts below have committed error of law by not considering the law relating to easementary right?*

8. *Whether the Courts below misconstrued the settled principles laid out in the easementary rights act 1882?*

12. Per contra, learned counsel for respondent Sri.Praveen Kumar.B.R on behalf of Sri.Rajesh Kini would support the impugned judgments by contending that plaintiff has failed to establish that the alleged road which has been shown in the sketch along with the plaint is not a public road.

13. Therefore, rejection of the dismissal of the suit confirmed by the First Appellate Court is just and proper and sought for dismissal of the appeal.



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

15. On such perusal of the material on record, it is crystal clear that plaintiff and defendant are claiming their rights based on their respective sale deeds. Pertinently in the sale deed filed by the plaintiff there is no mention as to the existence of the common road. Nor the alleged road according to the plaintiff which she is using as an easementary right is not a public road and in that regard no village map is placed on record.

16. Defendant on the contrary has established before the Court stating that the property purchased by the defendant included the road as well and therefore, learned trial judge while dismissing the suit of the plaintiff, decreed the counter claim.

17. Pertinently for the reasons best known to the plaintiff, what has been challenged before the First



Appellate Court is the dismissal of the suit alone and not decreeing the counter claim.

18. In essence, the challenge as to the decreeing of the counter claim became final in view of non challenge of the same before the First Appellate Court.

19. Single appeal challenging the dismissal of the suit and counter claim could not have been maintained and therefore, the decreeing of the counter claim became final.

20. Plaintiff having failed to establish legal right over the road which is mentioned in the sketch along with the plaint, the appeal came to be dismissed by the First Appellate Court.

21. Mere admission of the defendant that there exists a road would not *ipso facto* make out a fact that it is a public road or a common road which is to be utilized by all the persons and general public are also making use of it.



22. Further, to seek easementary right over the suit property, required pleadings are not pleaded. Since how long the plaintiff or her predecessors in title were using the said road and the right has been acquired by prescription by enjoying the road for a continuous period is not even pleaded and proved by the plaintiff.

23. Plaintiff for the reasons best known to her did not choose to get the witnesses from the local Municipal Authority to establish that the road was a public road. Oral evidence of PW.2 to PW.4 is nothing but the self-serving testimony.

24. On the contrary, the sale deed placed on record coupled with the final decree in OS No.183/1985 would make it clear that the road was the exclusive property of the defendant and therefore, the trial judge rightly dismissed the suit of the plaintiff and granted counter claim to the written statement schedule property.



25. In view of the above factual aspects of the matter concurrently recorded by both the Courts, this Court does not find merit in the substantial questions of law raised in the appeal.

26. Consequently the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE