



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1206 OF 2018 (DEC)

BETWEEN:

1. SMT. G LAKSHMIDEVAMMA
D/O. GIRIJAMMA,
AGED ABOUT 82 YEARS
SINCE DEAD BY HER LEGAL REPRESENTATIVES

1(A) SMT. MEENAKSHI
W/O. RAMESHA
AGED ABOUT 37 YEARS
R/O. VINOBA NAGAR,
SANNAMANE BRIDGE ROAD,
SAGAR TOWN-577 401.

...APPELLANTS

(BY SRI. M.S. RAJENDRA, ADVOCATE A1(A)
V/C/O DATED 12.06.2026 APPEAL STANDS
DISMISSED AS ABATED IN R/O A1)

AND:

1. G N KRISHNAMURTHY
S/O. NARAYANAPPA,
AGED ABOUT 53 YEARS
R/O. VINOBA NAGAR,
SAGAR TOWN-577 401.

2. GOWRISHANKARA JOIS
S/O. CHANDRASHEKARA JOIS,
AGED MAJOR, LECTURER,
NEAR USHA BLOOD BANK,
VINAYAKA NAGAR, 4TH CROSS,

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



OPP. SRIGANDHA LADIES HOSTEL,
SHIMOGA-577 201.

3. K R SHREEDHARA BHATTA
S/O. RAMACHANDRA BHATTA,
AGED ABOUT 60 YEARS
R/O. KALASE VILLAGE,
ML HALLI POST,
SAGAR TALUK-577 401

...RESPONDENTS

(R1, R2, R3 ARE SERVED)

THIS RSA IS FILED U/S. 100 OF CPC 1908 AGAINST THE JUDGEMENT DECREE DATED 08.02.2017 PASSED IN R.A.NO. 52/2014 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, AND JMFC., SAGAR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DATED 01.04.2014 PASSED IN OS.NO.214/2010 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC., SAGAR 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 learned Counsel Sri M.S.Rajendra, for second appellant.

2. Appeal stood dismissed as abated in respect of first appellant. Plaintiff No.2 is the appellant in this Second



Appeal as appellant No.2. Parties are referred to as per their original ranking before the Trial Court.

3. Facts of the case are as under:

3.1 A suit for relief of declaration of the title and permanent injunction came to be filed by both the plaintiffs in O.S. No.214/2010 in respect of three properties which are described as Schedule 'A', Schedule 'B' and Schedule 'C'.

3.2 Details of those properties are extracted hereunder for ready reference:

"ಶೆಡ್ಯೂಲ್ 'ಎ'

ತಾ: 06-05-1967 ರಂದು ವಾದಿಯು ಸೇಲ್ ಸರ್ಟಿಫಿಕೇಟ್ ಮೂಲಕ ಪಡೆದ
ಪೂರ್ಣ ಸ್ವತ್ತಿನ ವಿವರ:-

ಸಾಗರ ನಗರಸಭೆ ವ್ಯಾಪ್ತಿಯ ವಾರ್ಡ್ ನಂಬರ್ 12, ವಿನೋಬನಗರದ ಸಣ್ಣಮನೆ
ಸೇತುವೆ ರಸ್ತೆಯಲ್ಲಿರುವ ಚಾಲ್ತಿ ಸಾಲಿನ ಅಸೆಸ್ಮೆಂಟ್ ನಂಬರ್ 114:114:105 ಕ್ಕೆ ಒಪ್ಪಿದ 26 X
102+97/2 ಅಳತೆಯ ನಿವೇಶನ ಹಾಗೂ ಇದರಲ್ಲಿರುವ ಮಂಗಳೂರು ಹಂಚಿನ ಮನೆ,
ಈ ಸ್ವತ್ತನ್ನು ನಕ್ಷೆಯಲ್ಲಿ ಎ.ಬಿ.ಎಫ್.ಜಿ.ಕೆ.ಎಲ್.ಎಂ.ಎನ್.ವೈ.ಸಿ. ಎಂತ ಗುರ್ತಿಸಲಾಗಿದೆ.
ಇದಕ್ಕೆ ಗಡಿಗಳು:-

ಪೂರ್ವಕ್ಕೆ : ಗೌರಿಶಂಕರ ಜೋಯ್ತರ ಸೊತ್ತಿನ ಗಡಿ (2ನೇ ಪ್ರತಿವಾದಿ)

ಪಶ್ಚಿಮಕ್ಕೆ : ಜಿ.ಎನ್.ಕೃಷ್ಣಮೂರ್ತಿ ಇವರ ಸೊತ್ತಿನ ಗಡಿ (1ನೇ ಪ್ರತಿವಾದಿ)

ಉತ್ತರಕ್ಕೆ : ಪುರಸಭೆ ರಸ್ತೆ



ದಕ್ಷಿಣಕ್ಕೆ : ನೀರು ಕಾಲುವೆ ಹಳ್ಳ

ಶೆಡ್ಯೂಲ್ 'ಬಿ'

ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ 1 ನೇ ಪ್ರತಿವಾದಿ ಅತಿಕ್ರಮಿಸಿದ ಸ್ವತ್ತಿನ ವಿವರ:-

ಸಾಗರ ನಗರಸಭೆ ವ್ಯಾಪ್ತಿಯ 12ನೇ ವಾರ್ಡ್, ವಿನೋಬನಗರದ ಸಣ್ಣಮನೆ ಸೇತುವೆ ರಸ್ತೆಯಲ್ಲಿರುವ ಸಾಲಿನ ಅಸೆಸ್ಮೆಂಟ್ ನಂಬರ್ 114:114:105 ನೇ 26 X 102+97/2 ಅಳತೆ ಜಾಗದ ಪೈಕಿ ಪಶ್ಚಿಮ ದಿಕ್ಕಿನ ದಾವಾ ನಕಾಶೆಯಲ್ಲಿ ಎ.ಸಿ.ವೈ.ಎನ್.ಎಂ.ಟಿ.ಡಿ ಎಂತ ವಿವರಿಸಿದ

$1' + 4' - 3'' + 5' - 3'' / 3 \times 97'.6''$ ಅಡಿ ಜಾಗ. ಇದಕ್ಕೆ ಗಡಿಗಳು:-

ಪೂರ್ವಕ್ಕೆ : ದಾವಾ ಸೊತ್ತಿನ ಉಳಿದ ಜಾಗ

ಪಶ್ಚಿಮಕ್ಕೆ : 1ನೇ ಪ್ರತಿವಾದಿ ಸೊತ್ತು

ಉತ್ತರಕ್ಕೆ : ರಸ್ತೆ

ದಕ್ಷಿಣಕ್ಕೆ : ನೀರು ಕಾಲುವೆ ಹಳ್ಳ

ಶೆಡ್ಯೂಲ್ 'ಸಿ'

ದಾವಾ ಎ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನಲ್ಲಿ 2 ನೇ ಪ್ರತಿವಾದಿ ಅತಿಕ್ರಮಿಸಿದ ಸ್ವತ್ತಿನ ವಿವರ:-

ಸಾಗರ ನಗರಸಭೆ ವ್ಯಾಪ್ತಿಯ 12ನೇ ವಾರ್ಡ್, ವಿನೋಬನಗರದ ಸಣ್ಣಮನೆ ಸೇತುವೆ ರಸ್ತೆಯಲ್ಲಿರುವ ಸಾಲಿನ ಅಸೆಸ್ಮೆಂಟ್ ನಂಬರ್ 114 :114: 105 ನೇ 26 X 102+97/2 ಅಳತೆ ಜಾಗದ ಪೈಕಿ ಪೂರ್ವ ದಿಕ್ಕಿನ ದಾವಾ ನಕಾಶೆಯಲ್ಲಿ $1' + 3 / 2 \times 50$ ಮತ್ತು $1 + 3 / 2 \times 52$ ಅಡಿ

ವಿಸ್ತೀರ್ಣದ ಜಾಗ, ಈ ಸ್ವತ್ತನ್ನು ದಾವಾ ನಕಾಶೆಯಲ್ಲಿ ಬಿ.ಎಫ್.ಜಿ.ಕೆ.ಎಲ್.ಹೆಚ್.ವಿ.ಇ.

ಎಂತ ಗುರುತಿಸಿದೆ. ಇದಕ್ಕೆ ಗಡಿಗಳು:-

ಪೂರ್ವಕ್ಕೆ : 2ನೇ ಪ್ರತಿವಾದಿ ಸ್ವತ್ತು

ಪಶ್ಚಿಮಕ್ಕೆ : ದಾವಾ ಸ್ವತ್ತಿನ ಅಂದರೆ ವಾದಿ ಸ್ವಾಧೀನದ ಉಳಿದ ಜಾಗ

ಉತ್ತರಕ್ಕೆ : ಕಾಂಪೌಂಡ್ ಗಡಿ

ದಕ್ಷಿಣಕ್ಕೆ : ಬೇಲಿ ಗಡಿ."



3.3 Suit on contest came to be decreed as prayed for, holding that plaintiffs are the owners of the properties having purchased the same from the auction sale held by the Municipality. Document of title is the sale certificate dated 06.05.1967 marked at Exhibit P1. Case of the plaintiffs further reveals that they have paid the taxes to the Municipality vide Exs.P2 to P6 and got mutated their names in the revenue records.

3.4 It is further case of the plaintiffs that defendants without there being any right, title or interest encroached upon the suit property whereby the suit property in 'B' schedule got reduced to 21 ft. instead of 26 ft. and therefore, sought for declaration and injunction. A Court Commissioner was appointed in the suit to inspect the spot and file a report. Court Commissioner visited the spot and noted that there is an encroachment on eastern and western portion whereby, East to West measurement has been reduced by 5 ft. and based on such report, learned Trial Judge decreed the suit of the plaintiffs as prayed for.



3.5 Being aggrieved by the same, the first defendant filed an appeal before the First Appellate Court, challenging the decree passed by the Trial Court, who was the neighbour on the northern side.

3.6 Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and modified the decree passed by the learned Trial Judge and allowed the appeal filed by the first defendant and dismissed the suit of the plaintiffs.

3.7 Being aggrieved by the same, plaintiffs have preferred the present appeal.

3.8 During the pendency of the present appeal, first appellant died and no steps are taken to bring the legal representatives of deceased on record and no applications were filed and therefore appeal was dismissed as abated. However, since a memo is filed reporting that second appellant is the only legal representative of the first appellant, same was accepted by this Court.



4. Learned counsel for the second appellant Sri M. S. Rajendra, would contend that First Appellate Court grossly erred in reversing the judgment of the Trial Court and dismissing the suit of the plaintiffs in the teeth of the Sale Certificate issued by the Town Municipal Commissioner, Sagar.

5. He further emphasized that in the Sale Certificate, there is a specific mention as to the measurement of the suit property as 26 ft. East to West and $102 + 97 / 2$ on the North to South. It is the 'A' schedule property. In the 'A' schedule property, it is shown that on the eastern side, house of Sheshagiriyappa and Narayanappa is situated and on the western side, house of Krishnappa S/o Nagappa is situated. On the northern side, there is a main road and southern side there is a backyard and it is also shown as water course.

6. It is further emphasized by learned Counsel Sri M.S.Rajendra, that there is an encroachment by the defendants, whereby East to West measurement has been



reduced by 5 ft. and therefore learned Trial Judge was justified in decreeing the suit and without noticing the said aspect of the matter and ignoring the probative value of the report filed by the Court Commissioner, First Appellate Court reversing the judgment of the Trial Court has resulted in grave miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

- "a. Whether the Lower Appellate Court is justified in allowing the appeal in the absence of any material or in the absence of any believable evidence by the Appellant to allow his appeal and to set aside the Judgment of the Trial Court?*
- b. Whether the Lower Appellate Court is justified in holding that the Plaintiffs have failed to prove that they are the absolute owners of Suit Schedule 'A' property inspite of producing the title documents and other concerned documents to Court?*
- c. Whether the court below is justified in dismissing the suit of the plaintiffs even after the plaintiff proves the fact that the Defendants are in*



possession of more extent of property than what was granted to them by the Town Municipal Council, by way of Court Commissioner's Report?

d. Whether the lower Appellate court has erred in dismissing the suit of the plaintiff having regard to the fact that the plaintiff was successful in proving the fact that the extent of the property of the plaintiff was diminished, and none else other than the Defendants could encroach the same?"

7. None appears for the respondents though served with the notice of the appeal.

8. Having heard the arguments of learned Counsel Sri M. S. Rajendra, this Court perused the material on the record meticulously. On such perusal of the material on the record, there is no dispute that the Town Municipal Commissioner has issued the Sale Certificate marked at Ex.P1 in favour of the plaintiffs in respect of the suit properties.



9. Admittedly, the measurement shown in the said Sale Certificate is East to West 26 ft. and North to South 102+97 / 2 ft. In the Sale Certificate itself, there is a specific mention in respect of the boundaries. On the eastern side, there existed the house of Sheshagiriappa and Naranayappa and on the western side, there existed a house of Krishnappa S/o Nagappa. If it is so, there cannot be any encroachment East to West.

10. In other words, when two houses are already in existence at the time of issuance of Sale Certificate, merely mentioning the East to West measurement as 26 ft. in the Sale Certificate would not by *ipso facto* result in an encroachment.

11. In the plaint, there is lack of pleadings as to when exactly the said encroachment has taken place. In fact, to establish that plaintiffs were put in possession of 26 ft. at the time of issuance of Sale Certificate, no material is placed on record. Sale Certificate is based on



the revenue records maintained by the Town Municipal Commissioner and what was actually available on the spot was not proved by the plaintiffs especially having sought for a judgment for declaration of the title. If two houses were already in existence in the East to West, there cannot be any further encroachment inasmuch as even before the sale certificate came to be issued, those houses were in existence.

12. It is not the case of the plaintiffs either that there was a vacant space that was existing in the eastern and western boundaries occupied by the houses of Sheshagiriappa and Narayanappa and Krishnappa S/o Nagappa, which got encroached subsequent to issue of sale Certificate. Further more, the first defendant G.N. Krishnamurthy, is not the neighbour of plaintiffs on East or West.

13. Second defendant is Sri Gowrishankara Jois and third defendant is Sri K.R.Shreedhdara Bhatta, who



purchased the property from Sri Gowrishankara Jois, who are also on the eastern side, perhaps having purchased the property from Sheshagiriyappa. Anyway particulars in this regard is missing in the plaint averments.

14. Nevertheless, on northern and southern boundary, there is no encroachment as there is a road on the northern side and on the southern side water course.

15. Therefore, the encroachment if any, is only to the extent of 5 ft., as could be seen from the Court Commissioner's report East to West. Since already houses were in existence and plaintiffs are unable to show that as on the date of sale certificate, they were put into the possession of the property to the extent of 26 ft. East to West and no efforts are made by the plaintiffs to summon the officials of Town Municipal Council or to show what was the actual vacant site that was available on the East to West at the time of issuance of sale certificate, the learned Judge in the First Appellate Court rightly re-appreciated



the material evidence on record and reversed the judgment of the Trial Court and dismissed the suit.

16. Having regard to these factual aspects being concluded by the First Appellate Court on re-appreciation of the material evidence by exercising the power under Section 96 CPC, the substantial questions of law raised in the appeal referred to supra do not merit for further consideration.

17. Accordingly, the following :

ORDER

- i) Admission is declined.
- ii) Appeal is ***dismissed***.
- iii) In view of the above, pending I.As., if any stand disposed of.

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

JT/-
List No.: 1 Sl No.: 65