



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.171 OF 2017 (DEC/INJ)

BETWEEN:

1. SRI DODDAPAPANNA
S/O LATE KUPPANAYAKA,
AGED ABOUT 71 YEARS,
2. SRI RAJANNA
S/O LATE CHIKKAPAPANNA,
AGED ABOUT 38 YEARS,
3. SRI VARADARAJU
S/O LATE CHIKKAPAPANNA,
AGED ABOUT 36 YEARS,
4. SMT. RAJAMMA
W/O LATE CHIKKAPAPANNA,
AGED ABOUT 61 YEARS,

ALL ARE R/AT KALIYUR VILLAGE,
TALAKADU HOBLI,
T. NARASIPURA TALUK,
MYSORE DISTRICT,
PINCODE : 571442

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signed by
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Location:
HIGH
COURT OF
KARNATAKA

(BY SRI. B VIJAY SHETTY, ADVOCATE)

...APPELLANTS

AND:

1. D MAHADEVAIAH
S/O LATE DEVARASANAYAKA,
AGED ABOUT 84 YEARS,



2. SMT. PUTTAMADAMMA
D/O LATE PARASURAMANAYAKA AND
CLAIMS AS WIFE OF D MAHADEVIAH,
AGED ABOUT 78 YEARS,

3. SRI. VYASARAJU
S/O. SIDDANAYAKA
AGED ABOUT 41 YEARS

ALL ARE RESIDING AT KALIYUR VILLAGE,
TALAKADU HOBLI,
T. NARASIPURA TALUK,
MYSORE DISTRICT,
PIN : 571442

...RESPONDENTS

(BY SRI B N ANJAN KUMAR, ADVOCATE FOR R1 AND R2,
ADVOCATE;
R3-SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE
DATED 17.10.2016 PASSED IN R.A.NO.6/2011 ON THE FILE OF
THE SENIOR CIVIL JUDGE AND JMFC, T.NARASIPURA,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 12.04.2011 PASSED IN O.S.NO.192/1999
ON THE FILE OF THE CIVIL JUDGE, AND JMFC, T.NARASIPUR.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

Heard Sri B.Vijay Shetty, learned counsel for the appellants and Sri B.N. Anjan Kumar, learned counsel for respondent Nos.1 and 2.

2. Parties are referred to as plaintiffs and defendants for the sake of convenience as per their original ranking in the Trial Court.

3. Defendants' Second Appeal challenging the judgment dated 12.04.2011 in O.S.No.192/1999 on the file of the Civil Judge and JMFC, T.Narasipura, confirmed in R.A No.6/2011 dated 17.10.2026 on the file of the Senior Civil Judge and JMFC, T.Narasipura.

4. Appeal came to be admitted on 22.03.2017 after hearing the parties on the following substantial questions of law.

(1) Whether the Courts below were justified in decreeing the suit of the plaintiffs on the ground that oral partition pleaded by the plaintiffs is admitted by the defendants even though defendants have not made any such admission either in their written statement or in their evidence?



(2) Whether the Courts below were justified in decreeing the suit of the plaintiffs placing reliance on Ex.P.1-registered Gift Deed dated 18.08.1961 and holding that the properties referred in the gift deed Ex.P.1 had fallen to the share of the donor Sri. Parashurama Nayaka under the partition deed Ex.P.6 dated 02.06.1960 though properties mentioned under the Ex.P.1 are different from properties shown to have been allotted to the share of Sri. Parashurama Nayaka under Ex.P.6?

(3) To consider any other substantial questions of law that may arise for consideration while hearing the appeal."

5. Facts which are utmost necessary for disposal of the present appeal are as under:

5.1 A suit for declaration, mandatory injunction and permanent injunction came to be filed by the plaintiffs in respect of following properties which are divided into 'A' and 'B' schedule. 'B' schedule is part of 'A' schedule property, hereinafter referred as 'suit properties'.

'A' SCHEDULE

*Site bearing khatha No.21/12 measuring East to West
10 Molas, South to North 16 Molas, denoted by letters*



as 'ABCD' is bounded on East by: Major portion of shed in road, which leads to Cauvery River, West by : Half portion of house of defendants 1 and 2; South by: Galli, and North by: Site of defendants 1 and 2.

'B' SCHEDULE

In 'A' schedule property illegally occupied portion which putting thatched shed which is denoted letters 'EFGD' measuring East to West 9 feet <South to North about 10 feet and is bounded on East by major portion of shed put up in the road, leading to Cauvery river, West and North by 'A' schedule property of plaintiffs, South by Galli. Both items of properties are situated at Kaliyur village, Talakadu Hobli, T.N.Pura Taluk."

5.2 In the plaint, it is contented that Parashuramanayaka and Kuppanayaka are own brothers. During their lifetime they divided the properties under unregistered 'palupatti' dated 02.06.1960. It is the specific contention of the plaintiffs that in the respect of 'B' schedule property there was no partition in 'palupatti' dated 02.06.1960 which is on the eastern side of their residential house, on account of not getting the necessary particulars with regard to that site. However, it is further contented that a few months later, when they got the



particulars, there was an oral partition with regard to the vacant site.

5.3 Parashuramanayaka on account of love and affection, executed a registered gift deed in favour of his sole daughter who is the second plaintiff. Ever since the gift deed, second plaintiff is in possession and enjoyment of the suit properties and plaintiffs have used the suit property for storing for haystack and firewood.

5.4 It is also contented that khatha of the property is standing in the name of first plaintiff by consent of second plaintiff (first plaintiff is the husband of second plaintiff) for the sake of convenience. It is further contention of the plaintiffs that, in order to put up construction of a new house on the suit property, plaintiffs filed an application to Kaliyur Grama Panchayath seeking for licence. The Panchayath after following the necessary legal requirements, granted licence on 19.07.1999.

5.5 Defendants who are the neighbours, without having any right, title or interest in respect of the suit properties, have put



up a thatched shed on the road by encroaching the suit site on the eastern side and clandestinely leased to third and fourth defendants and thereby interfered with the properties of the plaintiffs in 'A' schedule which is denoted by the letters 'ABCD' in the rough sketch and 'B' schedule property denoted as 'EFGD' which is part and parcel of 'A' schedule property.

6. Pursuant to the suit summons, defendants entered appearance and filed written statement denying the plaint averments in *toto*.

7. They contended that there is no cause of action to the suit and suit claim is barred by limitation.

8. It is also contended that father of the second plaintiff has executed the alleged gift deed when he was in drunken state of mind. Therefore, it is null and void.

9. Defendants also contended that second plaintiff was married to Puttamadanaika and he is living with her in the suit house and has got children from her who died about six years back. Second plaintiff is getting old age pension till today as widow of Puttamadanaika.



10. It is further contented by the defendants that the gift does not disclose the oral partition. Therefore, the said gift is created for the purpose of the suit and sought for dismissal of the suit.

11. It is further contented that suit site belonged to defendants and it is part of their property. Prior to 1965, the shed was put up in the suit property which was leased out to defendant Nos.3 and 4. As such, there is no cause of action to the suit and sought for dismissal of the suit.

12. Defendant Nos.3 and 4 filed written statement denying the plaint averments and they contented that 'A' and 'B' schedule properties belong to defendant Nos.1 and 2 since 35 years and they have put up thatched hut in the scheduled property since 1986 and defendant Nos.3 and 4 are residing in the hut by paying ₹350/- rent per year. Therefore sought for dismissal of the suit.

13. Based on rival contentions of the parties, learned Trial Judge raised necessary issues and after recording the evidence of the parties in detail decreed to the suit of the plaintiffs with



costs. Operative portion of the Trial Court Judgment reads as under:

"The suit filed by the plaintiff's are hereby decreed with cost.

It is hereby declared that the plaintiff's are the absolute owners of plaint 'A' and 'B' schedule properties.

The defendants are hereby restrained from illegally interfering with the plaintiff's peaceful possession and enjoyment of 'A' and 'B' schedule properties permanently.

It is hereby directed the defendant No.1 and 2 to deliver the vacant possession 'B' schedule property to plaintiff's within 2 months, if failed to do so, the plaintiff's are liberty to get vacant possession through by appointing court commissioner, at the cost defendant No.1 and 2."

14. Being aggrieved by the same, it is the defendants who filed an appeal before the First Appellate Court. Among them, appellant Nos.2 to 4 are the legal representatives of deceased defendant No.2. It is defendant Nos.1 and 2 who have filed appeal in R.A No.6/2011. Defendant Nos.3 and 4 did not choose to challenge the judgment in decree passed by the



learner Trial Judge. Material on record would disclose that during the pendency of the suit, defendant Nos.3 and 4 vacated the thatched shed and shed also got collapsed and debris were found.

15. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail, re-appreciated the material evidence on record and dismissed the appeal of defendant Nos.1 and 2.

16. Being further aggrieved by the same, defendant No.1 and legal representative of defendant No.2 have filed the present appeal.

17. Sri B. Vijay Shetty, learned counsel for the appellants would contend that the Trial Court and First Appellate Court failed to properly appreciate the case of the plaintiffs and wrongly recorded a finding that defendants admitted the oral partition in the written statement and their evidence and wrongly decreed suit.

18. He would also contend that both the Courts misdirected themselves in placing reliance on Exhibit P-1 which is the



registered gift deed dated 18.08.1961 holding that properties referred to in the gift deed had fallen to the share of Sri.Parashuramanayaka under the unregistered partition deed/ Exhibit P-6 dated 02.06.1960. It is his further contention that the properties mentioned in Exhibit P-1 did not tally with the properties mentioned in Exhibit P-6. There is variation with regard to the boundaries therein. Therefore, Parashuramanayaka did not get the right to gift the property in favour of plaintiff No.2 vide Exhibit P-1.

19. Therefore, decreeing of the suit by both the Courts is incorrect and sought for allowing the appeal on the aforesaid substantial questions of law.

20. *Per contra*, learned counsel for the respondent Sri B.N.Anjan Kumar, learned counsel for respondent Nos.1 and 2 would support the impugned judgments by contending that, only with regard to one boundary there is a mistake in Exhibit P-1, but there is a clear admission in the cross- examination DW-1 about the existence of the suit property. Therefore, both the Courts were justified in decreeing the suit. As such, the



first substantial question of law is to be answered against the appellants.

21. He would further contend that insofar as the alleged discrepancy is concerned, when there is a clear admission with regard to the existence of the shed in between the road which leads to the Cauvery river, and the easternmost boundary of the defendants' property which was not subject matter of unregistered partition dated 02.06.1960, the oral partition in respect of the vacant site, dividing it between Parashuramanayaka and Kuppanayaka has been established by placing necessary material evidence on record and thus sought for answering the second substantial question of law also against the appellants and sought for dismissal of the appeal.

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

23. On such perusal of the material on record, it is noticed that relationship among the parties is not in dispute.

24. DW-1 in his cross-examination categorically admitted that Parashuramanayaka and Kuppanayaka being the brothers, had



several properties in Kaliyur village. DW-1 is none other than the son of Kuppanayaka. He categorically admitted that all the properties belonging to them is divided by 'palupatti' on 02.06.1960.

25. In fact this is not a stray admission as is canvassed on behalf of the appellants. If it is a stray admission or if it is incorrect admission, he should have been re-examined by the counsel for defendants before the Trial Court.

26. It is settled principles of law and requires no emphasis that 'admission is the best evidence and it need not be proved further by placing any other evidence'.

27. In the further cross-examination, DW-1 specifically admits that in the oral partition, in the house which had 12 pillars, his father got eastern side of the said house and Parashuramanayaka got western side of the house. He further admits that there existed a vacant site on the eastern side of the property.

28. Therefore, existence of the suit property as propounded by the plaintiffs and not including the same in the oral partition



that took place on 02.06.1960 stands established by placing necessary material evidence on record and in the admission of DW-1.

29. DW-2 is aged 34 years and he is son of D.W-1. DW-2 is examined on the ground that DW-1 is illiterate.

30. In other words, to improve upon the admissions given by DW-1, this witness has been examined on behalf of the defendants. He admits in his cross-examination that his grandfather-Kuppanayaka and Parashuramanayaka have entered into an unregistered partition and he has read the same. He admits that the defence taken by the defendants that on the western side, the wall was dilapidated is not written in Exhibit P-6. He further admits that out of sympathy, his grandfather had been granted the house property measuring 'half ankana(ಅರ್ಧ ಅಂಕಣ)'. He also admits that the suit property measures East to West 10 mola and North to South 16 mola. The said property is situated on the eastern side of their dwelling house. He further admits that towards further east of the said property, road is in existence which leads to Cauvery river.



31. These aspects of the matter would make it clear about the existence of the suit property and the admission of the oral partition between the parties. No doubt, in the written statement such an admission is not forthcoming.

32. Thus, the admission which is referred to by the learned Trial Judge and the learned Judge in the First Appellate Court though not found in the written statement, by cross-examination of DW-1 and DW-2, the oral partition is not only established, but also existence of the suit property in between the road which leads to Cauvery river and the eastern boundary of the property that has fallen to the share of the kuppanayaka in the unregistered partition deed dated 02.06.1960 is established.

33. Further, DW-2 categorically admits that out of sympathy, DW-2's grandfather, namely Kuppanayaka has been granted extra share in the house measuring 'half ankana(ಅರ್ಧ ಅಂಕಣ)'.

34. Therefore, contentions urged on behalf of the defendants that 'suit property was in existence', is not established.



35. In the plaint itself, a foundation is laid by the plaintiffs that the suit property could not be included in the oral partition that took place on 02.06.1960 for want of necessary details and soon thereafter when they found the details of the suit property, that was also divided between them equally.

36. DW-2 conveniently gave an evasive answer as to the measurement of the property on the northern side which has fallen to their share. DW-1 gave evasive answer stating that he is an illiterate and therefore, he could not know the contents of the unregistered partition deed dated 02.06.1960 marked at Exhibit P-1.

37. Only on the ground that one of the boundaries mentioned in Exhibit P-1 did not tally with the boundaries mentioned in Exhibit P-6, which is a registered gift deed, this Court cannot hold that plaintiffs failed to prove their right, title and interest in respect of the suit property.

38. At the cost of repetition, it is to be noted that, it is the defendants who have taken up the responsibility to prove that there is no existence of the suit property at all. But, DW-1



categorically admits that 'ಪೂರ್ವದ ರಸ್ತೆ ಮತ್ತು ನಿವೇಶನ ಸೇರಿಸಿ ಶೆಡ್ ಕಟ್ಟಿಸಿ ನಾನೆ ಬಾಡಿಗೆಗೆ ನೀಡಿದೆ ಅಂದರೆ ಸರಿ' meaning thereby, the vacant site that was in existence on the eastern side of the property of the defendant including the road had been utilized for construction of thatched shed and gave it to the defendant Nos.3 and 4 on rental basis.

39. He further admits that it is defendant Nos.3 and 4 who are doing the liquor business in the shed. He has also stated that from the edge of that shed to his house, there exists about 5 feet vacant space. He further admits that on the further eastern side of the shed, there exists a road which leads to Cauvery river.

40. These admissions when kept in juxtaposition with the boundaries of Exhibit P-1 and Exhibit P-6, plaintiffs have successfully established the existence of the suit property. DW-1 has also admitted that the shed has fallen down and defendant Nos.3 and 4 have vacated the shed about 3 to 4 years prior to date of cross-examination, being 02.02.2011.

41. These aspects of the matter, when viewed cumulatively, the learned Trial Judge and the learned Judge in the First



Appellate Court were justified in properly appreciating the oral and documentary evidence placed on record with pragmatic approach and to harmoniously resolve the discrepancy between the oral and documentary evidence on record.

42. In fact, it is the duty of the Court to muster the evidence and strike a harmonious balance and true construction of the contents of a document vis-à-vis the oral testimony.

43. 'Men may lie; Documents Not' is a famous principle while appreciating the material evidence in a given case.

44. When parties enter into a *lis* knowingly each other's case and lead the evidence, the burden that is placed on the party under Section 101 of the Indian Evidence Act would get into insignificance.

45. In the case on hand, after thoroughly cross examining PW-1, to put forward the case of the defendant and having not been successful in doing so, except suggesting the case of the defendant, the admission made by DW-1 and DW-2 about the existence of the suit property and DW-1 categorically admitting the oral partition that took place on 02.06.1960 which is



evidenced by unregistered 'palupatti' dated 02.06.1960, the entire defence taken by the defendants got itself demolished by such admission.

46. In order to plug the loophole in the case of defendants, in view of the admission made by DW-1, DW-2 is examined who is literate and has read the Exhibit P-1 dated 02.06.1960 gave further admission about the existence of the suit property.

47. In other words, the attempt made to improve upon the case of the defendants by examining DW-2, ended in a failure. Therefore, both the Courts were justified in noting the admissions of the defendants with regard to the oral partition as well as the discrepancies found in the document and the oral evidence and thus justified in decreeing the suit.

48. In the evidence of defendants at several places admissions have been elicited and at different intervals of time, which would go to show that the admissions are not stray in nature and such admissions are elicited after knowing each other's case. Such admissions elicited in the cross-examination cannot be brushed aside as out of context or stray admission.



49. Thus, the substantial questions of law raised while admitting the appeal on 22.03.2017 will have to be necessarily answered against the appellants and accordingly they are answered.

50. In view of the foregoing discussion the following:

ORDER

- (i) Appeal is meritless and is hereby ***dismissed***.
- (ii) No order as to costs.

Sd/-
(V SRISHANANDA)
JUDGE

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List No.: 1 Sl No.: 80