



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 473 OF 2026 (INJ)

BETWEEN:

MR ANDREW D SILVA
S/O. SANTHAN D'SILVA
AGED ABOUT 60 YEARS,
R/AT YEREME HOUSE,
MODDUPERAR VILLAGE AND POST,
MANGALURU, D.K.

PRESENTLY R/AT GIRIRAJ TOWER,
OPP. SUNDAR NAGAR,
SAIBABA NAGAR, BAINDAR,
MEERA ROAD (E),
MUMBAI - 401 107

...APPELLANT

(BY SRI. M. VISHWAJITH RAI, ADVOCATE)

AND:

1. MRS MATILDA MIRANDA
D/O. LATE. MR.PASCAL MIRANDA,
AGED ABOUT 64 YEARS,
R/AT VALACHIL PADAVU, NAVAJYOTHI NAGAR,
PARANGIPETE, MANGALURU TALUK,
PRESENTLY AT "YEREME HOUSE",
MODDUPERAR VILLAGE AND POST,
MANGALURU TALUK - 575 001

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2. MR. GILBERT D'SILVA,
S/O. SANTHAN D'SILVA,
AGED ABOUT 73 YEARS,
R/AT YEREME HOUSE,
MODDUPERAR VILLAGE AND POST,
MANGALURU TALUK - 575 001.

3. MR. CYRIL D'SILVA
S/O. SANTHAN D'SILVA,
AGED ABOUT 64 YEARS,
R/AT YEREME HOUSE,
MODDUPERAR VILLAGE AND POST,
MANGALURU TALUK - 575 001

...RESPONDENTS

(BY SRI. SACHIN B.S., ADVOCATE FOR C/R1)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 8.12.2025 PASSED IN RA.NO.52/2025 ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE/FTSC-11(POCSO), D.K., MANGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 16.11.2019 PASSED IN OS NO.1198/2014 ON THE FILE OF LEARNED I 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

1. Heard Sri. M. Viswajith Rai, learned counsel for the appellant and Sri. Sachin B.S., learned counsel for the respondents.

2. Defendant No.1 is the appellant challenging the decree passed in OS No.1198/2014 confirmed in RA No.52/2025 in respect of the following properties (hereinafter referred to as the 'suit properties'.)

SCHEDULE 'A'

Agricultural immovable properties Survey No.36/26A2 kissam garden measuring to the extent of 0.34 cents, Survey No.33/26C2 kissam garden measuring to the extent of 0.18 cents, Sy.No.33/26AF2 kissam garden measuring to the extent of 0.14 cents, Survey No.33/12C kissam garden measuring to the extent of 0.04 cents, Survey No.33/12A kissam garden measuring to the extent of 0.15 cents and Survey No.93/4P dry measuring to the extent of 0.30 cents granted to Pascal Miranda in occupancy by the Land Tribunal, Mangalore situated at Muduperaru Village, Mangalore Taluk with improvements, right of roadway, right of water, easementary right, appurtenances etc.,



SCHEDULE 'B'

Agriculturan immovable properties No.93/4P7 dry measuring to the extent of 0.08 cents situated on the Northern side of 0.30 acres situated at Muduperaru Village, Mangalore Taluk with improvements, compound wall, fence, right of roadway, right of water, easementary right, appurtenances etc., and bounded on the North by property of 1st defendant, south by portion of same survey number sold to Celilia D'Souza measuring 20 cents, East by 20 links wide public road/property of 2nd defendant and West by property of Richard.

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

3.1 A suit for permanent injunction came to be filed in respect of the suit properties restraining the defendants and their henchmen from interfering with the B schedule property which is in peaceful possession and enjoyment of the plaintiff's property.

3.2 Plaintiff further contended that the land in Sy.No.36/26A2 which was kissam garden measuring to the



extent of 0.34 cents, land in Sy.No.No.33/26C2, measuring to the extent of 0.18 cents, Sy.No.33/26AF2 kissam garden measuring to the extent of 0.14 cents, likewise land in Sy.No.33/12C, measuring 0.04 cents and so also land in Sy.No.33/12A, to the extent of 0.15 cents and yet another land in Sy.No.No.93/4P, measuring 0.30 cents was granted to Sri. Pascal Miranda by the Land Tribunal, Mangalore. Lands were situated at Muduperaru Village, Mangalore Taluk with existing right of road way, right of water, easement rights etc.,

3.3 Plaintiff was in enjoyment of those properties. The boundaries to the said property were also mentioned stating that on the North side of the suit property there exist the property of the first defendant and Southern side by the land which was sold to Cecilia D'Souza to the extent of 20 cents and East by 20 links wide public road and property of the second defendant and on the Western side Property of Sri. Richard.



3.4 The subject matter of the suit is the aforesaid properties with the aforesaid boundaries which was more fully described as schedule 'B' property.

3.5 It is further contented that defendants without there being any right, title or interest started interfering with the peaceful possession and enjoyment of the schedule 'B' property which necessitated the plaintiff to file the suit.

3.6 Pursuant to the suit summons, defendants appeared before the Court and defendant No.2 did not choose to file a written statement. Defendant No.1 and defendant No.3 filed a common written statement admitting that first defendant is the resident of Mumbai and employed there.

3.7 In the written statement defendants denied the existence of 'B' schedule property and they contended that plaintiff has wrongly claimed the suit relief in respect of non-existing property and sought for dismissal of the suit.



3.8 Based on the rival contentions, the learned Trial Judge raised necessary issues and recorded the evidence of the parties.

3.9 In order to prove the case of the plaintiff, he got examined himself as PW1 and placed on record as many as nine documents which were exhibited and marked as Exhibit P1 to Exhibit P9, among them Exhibit P4 and Exhibit P5 are the relevant documents to trash out the *lis* between the parties.

3.10 As against the material evidence placed on record, it is the defendant No.1 who got examined as DW1 and placed on record six documentary evidence which were exhibited and marked as Exhibit D1 to Exhibit D6.

3.11 Thereafter, learned trial Judge, heard the arguments of the parties and decreed the suit of the plaintiff restraining the defendants and their agents from interfering with the peaceful possession and enjoyment of the 'B' Schedule property.



3.12 Being aggrieved by the same, defendants No.1 and 3 filed an appeal before the First Appellate Court in RA No.52/2025.

3.13 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 of the defendants 1 and 3.

4. Being further aggrieved by the same, it is the defendant No.1 alone who has filed the present appeal.

5. Sri. M. Vishwajith Rai, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that the probative value of Exhibit P4 and Exhibit P5 though questioned in *extenso* in the cross-examination of PW1, learned trial Judge ignored the answers elicited in the cross-examination of PW1 and considered the evidence of DW1 more than required, failing to note the fact that the suit was one for permanent injunction filed by the plaintiff and plaintiff could not have



succeeded on the weakness of the defendants and wrongly decreed the suit of the plaintiff which was mechanically upheld by the learned Judge in the First Appellate Court and sought for admitting the appeal on the following substantial questions of law:

i. Whether the courts below were decreeing the suit filed by the plaintiff for permanent injunction?

ii. Whether the suit could have been decreed when the plaintiff has shown in-correct boundaries in the plaint?

iii. Whether the courts below were right solely on Ex.P4 (RTC extract) to decree the suit when there was serious objection with regard to the existence of B Schedule property?

iv. Whether the courts below were right with regard to the finding given on the question of interference, when there is no pleading and evidence with regard to interference?

v. Whether the Appellate Court was right in rejecting the Application filed by the Appellant for additional evidence?

6. Sri. Rai would also contend that the First Appellate Court did not consider the additional evidence



placed on record to explain the case of the parties with documentary evidence, thus resulted in miscarriage of justice.

7. Per contra, Sri. Sachin B.S., learned counsel for the respondent/plaintiff supported the impugned judgment by contending that plaintiff has proved his case by placing necessary material evidence on record and can always take the advantage of the admission elicited in the cross-examination which is the precise purpose of cross-examining a witness.

8. Therefore judgment of the Trial Court as well as the First Appellate Court needs no interference having regard to the scope of Section 100 of the Code of Civil Procedure and thus sought for dismissal of the appeal.

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

10. On such perusal of the material on record, the prime defence that has been taken by the defendant Nos.1



and 3 in their common written statement is that there is no existence of 'B' Schedule property. The existence of 'B' schedule property is established by placing necessary material evidence on record especially Exhibit P4 and Exhibit P5.

11. The probative value of Exhibit P4 and Exhibit P5 was questioned in detail in the cross-examination of PW1. He has withstood such cross examination. There is no dispute that the lands were granted to the father of the plaintiff through Land Reforms proceedings.

12. Plaintiff is the daughter of the grantee who succeeded to the interest by virtue of the Land Reforms order. Insofar as 'B' schedule property is concerned, there is material evidence on record in the form of the admission elicited in the cross-examination of DW1 that on the Southern side of the property of the defendant, there lies the property of the plaintiff.



13. In other words, the boundaries mentioned for the 'B' schedule property as Northern boundary is property of defendant No.1 is established through the admission elicited through the cross-examination of DW1. Therefore, the existence of the 'B' Schedule Property stands established.

14. It was the case of defendant No.1 and 3 that since there is no existence of the property as is mentioned in B schedule, it is the defendants who are in possession of the property.

15. In view of the admission elicited in the cross-examination of DW1 as referred to supra, the existence of 'B' schedule property being established by the plaintiff and also the possession thereof.

16. In view of the further admission that first defendant does not know the contents of written statement and for the reasons best known to the defendants, third defendant is not examined nor any



'bajudar', and also taking note of the fact that the defendants are residing in Mumbai for their employment, this Court is of the considered opinion that decreeing of the suit by the learned trial Judge confirmed by the First Appellate Court is just and proper.

17. So far as additional evidence rejected by the First Appellate Court is concerned, the learned Judge in the First Appellate Court taking note of the scope of the appeal and especially decree of injunction being challenged by the defendants, rightly rejected the same as there was no scope to entertain the additional evidence for the first time before the First Appellate Court which were nothing but the documents which are in existence at the time of the contesting the suit itself.

18. Further, if the defendants are of the opinion that they are the owners of the property nothing prevented them to file a proper suit.



19. If the defendants are now also aggrieved, subject to all other defences available to the plaintiffs, they may seek regressal of their grievances in a proper forum with proper proceedings.

20. Accordingly, following Order:

ORDER

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

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

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List No.: 1 Sl No.: 64