



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MS. JUSTICE JYOTI M

REGULAR FIRST APPEAL NO. 901 OF 2012 (DEC/INJ)

BETWEEN:

SRI. P.RAJKUMAR,
S/O. K.M.PATALAPPA
AGED ABOUT 55 YEARS,
R/O. KALKERE VILLAGE,
HORAMAVU POST,
BENGALURU-560043

...APPELLANT

(BY SRI. BHARGAV G., ADVOCATE)

AND:

MRS. RASHEEDA BEGUM,
W/O. MR.MAHABOOB BASHA,
AGED ABOUT 52 YEARS,
R/AT NO.D-196, NORTH 5TH LANE,
ITI COLONY, BENGALURU-560016.

...RESPONDENT

(BY SRI. PRAKASH T.HEBBAR, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF THE CODE OF CIVIL PROCEDURE.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 06.07.2026, THIS DAY, AN
JUDGMENT IS PRONOUNCED AS UNDER:



CAV JUDGMENT

Sri.Bhargav. G., counsel for the appellant and Sri.Prakash T. Hebbar., counsel for the respondent appeared in person.

2. The present appeal is filed challenging the Judgment and Decree dated 02.04.2012 passed by the Court of IV Addl. City Civil and Sessions Judge, at Mayo Hall Unit, Bengaluru, in O.S.No.25160/2007.

3. For convenience's sake, the parties are referred to as per their status and ranking before the Trial Court.

4. The plaint averments are stated as follows.

One Gowramma was the mother of the defendant. The defendant and his family members were the absolute owners of the property bearing Sy.No.404, measuring 1 Acre 04 Guntas situated at Kalkere Village, K.R.Puram Hobli, Bangalore South Taluk. The property was acquired under a registered partition dated 12.07.1977.



After acquiring the said property, the defendant, his brother and his mother converted the land for non-agricultural purposes vide Order dated 21.07.1998. After the conversion, they formed a layout and sites in the said Survey number. The defendant and his brother had executed a power of attorney dated 18.03.1989 in favor of their mother, Gowramma. Gowramma has sold the sites formed in Survey No.404 based on the power of attorney on behalf of herself, the defendant and his brother to different purchasers.

The suit schedule site bearing No.10 was sold by Gowramma based on the power of attorney in favor of one Ravindra on 13.09.1989. Ravindra sold the property in favor of one L.Prasad under a registered sale deed dated 23.02.1994, and L.Prasad sold the said property in favor of the plaintiff under a registered sale deed dated 08.05.2006.

It is stated that the plaintiff is in possession of the property from the date of purchase. It is stated that after the purchase, the plaintiff paid the tax for the schedule property, and the Khata has been changed in her name with respect to the same.



The mother-in-law of the plaintiff was suffering from a stroke and hence they were constrained to move to Andhra Pradesh for treatment, and she stayed in Andhra Pradesh with her mother-in-law for some time till her death on 10.12.2006. After returning from Andhra Pradesh, the plaintiff visited the suit property on 23.12.2006, and she found that the defendant had put up the construction in the suit schedule property. Hence, she lodged the complaint and approached the Court of law seeking appropriate relief.

Upon the service of the summons, the defendant appeared and filed a written statement. It is contented that the layout was not formed and sites were never sold. It is also contented that there is no GPA and the Gowramma has not sold the property in favor of any person. Contenting that he is in possession of the property, the defendant, urging additional grounds, prayed for the dismissal of the suit.

The Trial Court framed the issues, and the documents were exhibited, and the parties adduced evidence. The Trial Court vide Judgment and Decree dated 02.04.2012 decreed the



suit. Hence, the defendant has filed this appeal under Section 96 of the CPC.

5. Counsel for the appellant first submitted that the suit was not maintainable on account of the non-joinder of proper parties. Next, it was urged that the plaintiff herself admitted that the defendant is in possession, and therefore the appropriate relief would have been recovery of possession of the property. It was further submitted that no issues were framed requiring proof by the defendant, which vitiates the proceedings. Thereafter, it was vehemently contended that at no point in time was the property sold to the plaintiff's vendor, thereby disputing the very foundation of the plaintiff's claim. Finally, urging additional grounds, counsel submitted that the suit is liable to be dismissed and the appeal must be allowed.

Counsel for the appellant placed reliance on the following decisions:

1. *EXECUTIVE OFFICER, ARULMIGU
CHOKKANATHA SWAMY KOIL TRUST,
VIRUDHUNAGAR V/S. CHANDRAN AND
OTHERS REPORTED IN (2017) 3 SCC 702.*



2. VASANTHA (DEAD) THROUGH LEGAL REPRESENTATIVE V/S. RAJALAKSHMI ALIAS RAJAM (DEAD) THROUGH LEGAL REPRESENTATIVES REPORTED IN (2024) 5 SCC 282.
3. UNION OF INDIA V/S. IBRAHIM UDDIN AND ANOTHER REPORTED IN (2012) 8 SCC 148.
4. SRI.ARALAPPA V/S. SRI.JAGANNATH AND OTHERS REPORTED IN ILR 2007 KAR 339.
5. M.N.PRABHAKAR REDDY @ M.N.PRABHAKAR AND ANOTHER V/S. M.N.SOMASHEKAR @ M.N.SOMASHEKAR REDDY AND OTHERS REPORTED IN 2024 SCC ONLINE KAR 25172.
6. CHANNEGOWDA AND ANOTHER V/S. N.S.VISHWANATH AND OTHERS REPORTED IN 2023 SCC ONLINE KAR 153.
7. AFSAR SHEIKH AND ANOTHER V/S. SOLEMAN BIBI AND OTHERS REPORTED IN (1976) 2 SCC 142.
8. SHAKEEL AHMED V/S. SYED AKHILAQ HUSSAIN REPORTED IN (2023) 20 SCC 655.

Counsel for the respondent first justified the Judgment and Decree of the Trial Court. It was argued that the plaintiff has nowhere pleaded that she is out of possession to warrant a prayer for recovery of possession. Next, it was vehemently contended that, since the defendant had raised certain illegal



constructions, the plaintiff sought a mandatory injunction, and such relief would sufficiently redress her grievance. Lastly, urging other grounds, counsel prayed for dismissal of the appeal.

Counsel for the respondent placed reliance on the following decision:

*VISHRAM AILAS PRASAD GOVEKAR AND
OTHERS V/S. SUDESH GOVEKAR (D) BY LRS.
AND OTHERS REPORTED IN AIR 2017 SC 583.*

6. Heard the arguments and perused the papers and records with care.

7. The following Points would arise for consideration.

- 1. Whether the defendant, not being the owner of the suit property, had any right to raise a construction over the suit property.*
- 2. Whether the relief of mandatory injunction sought on account of alleged illegal construction by the defendant is sufficient to redress the plaintiff's grievance.*



- 3. Whether the contention of the defendant that the plaintiff has not sought possession is sustainable in law.*
- 4. Whether the Trial Court's Judgment and Decree warrant interference in the appeal.*

8. The facts of the case have already been sufficiently set out and do not warrant reiteration.

The plaintiff asserted ownership over the suit property. During her absence from Bengaluru, the defendant took advantage of the situation and carried out illegal construction upon the property purchased by her. Consequently, she sought a declaration of her rights and a mandatory injunction.

From the pleadings, it is evident that the defendant, apart from denying execution of any power of attorney and contending that his mother had neither formed a layout nor sold sites, did not offer a substantial explanation regarding the sale deeds. On the contrary, in his cross-examination, the defendant pleaded ignorance about the formation of sites and execution of sale deeds.



A perusal of the records reveals that the suit property was initially sold to Ravindra, who subsequently conveyed it to Mr.L.Prasad, and Mr.L.Prasad thereafter sold it to the plaintiff. The defendant attempted to contend that the property was agricultural land, that no layout had been formed, and that no sale of sites had taken place. The Trial Court, however, extensively referred to the material on record and rightly concluded that the defendant had failed to establish his contention. In my considered view, the Trial Court was justified in arriving at such a conclusion, and hence, there is no necessity to interfere with that finding in the present appeal.

Let me address the points regarding the construction of the structure and the relief of the mandatory injunction.

A mandatory injunction is an order compelling a defendant to restore things to the condition in which they were when the plaintiff's complaint was made. According to the definition given by Salmond, a mandatory injunction is "an order requiring the defendant to do a positive act for the purpose of putting an end to a wrongful state of things created by him, or otherwise in fulfilment of the legal obligations, for



example, an order to pull a building which he had already erected to the obstruction of plaintiff's rights".

A mandatory injunction commands a party, plaintiff or defendant to perform a certain act or acts. The jurisdiction to issue a mandatory injunction is a discretionary jurisdiction which can be exercised only in a case that falls strictly within the four corners of Section 39 of the Specific Relief Act. It is a general rule that where an applicant can establish a legal obligation of the defendant to perform a particular act, a mandatory injunction or order will be made by a Court of equity enforcing that obligation.

It is pivotal to note that the defendant's mother had dealt with the suit's property. The defendant, however, failed to establish any independent right or title over the said property. In light of this failure, it can be safely concluded that the defendant was not entitled to raise any construction upon the suit property.

The defendant advanced a considerable argument contending that the plaintiff was out of possession and,



therefore, the suit for bare declaration and mandatory injunction was not maintainable.

The contention of the defendant that the suit for bare declaration and mandatory injunction is not maintainable must necessarily fail. The very nature of the relief sought, namely, a mandatory injunction for removal of the existing structure, reveals that the defendant had already assumed possession and carried out construction. Once the Court has determined that the plaintiff is the owner of the property and that the defendant has no right upon it, the consequential relief of mandatory injunction follows as a necessary step. In such circumstances, there is no requirement for the plaintiff to seek a separate relief of possession. Accordingly, the objection raised by the defendant regarding maintainability is rejected. The plaintiff, being the lawful owner of the property, is entitled to the relief of a mandatory injunction for removal of the existing structure. No separate relief of possession is required.

Lastly, counsel for the appellant, during his arguments, drew the Court's attention to Ex.P4. He contended that in the said document, reference is made to a sale deed dated



16.07.1977, whereas the genesis of the document was in fact a partition deed. By way of reply, counsel for the respondent invited the Court's attention to Ex.P2, the partition deed, and submitted that what is referred to in Ex.P4 is indeed the partition deed. He further pointed out that in Ex.P2 the number is shown as 1632, and that due to a typographical error, the date was incorrectly mentioned as 16.07.1977 instead of 12.07.1977.

A perusal of the records reflects that Ex.P4 refers to the partition deed and not to any sale deed, since the number 1632 corresponds to the partition deed. Hence, the contention advanced on behalf of the appellant fails. Accordingly, the points are answered.

9. The Trial Court's Judgment and Decree warrant no interference in the appeal. Resultantly, the appeal is ***dismissed***.

Counsel for the respective parties placed reliance on several decisions, but I do not think the law is in doubt. Each



decision turns on its own facts. The present case is also examined, considering the decisions referred to above.

Because of disposal of the appeal, interim order granted if any stands discharged and pending interlocutory applications if any are disposed of.

**Sd/-
(JYOTI M)
JUDGE**

MRP
List No.: 1 Sl No.: 1