



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.514 OF 2026 (INJ)

BETWEEN:

SMT RUKMINIBAI
W/O LATE PAKKIR NAIK,
AGED ABOUT 78 YEARS,
R/O NEAR YELLAMMA MILL,
TOLAHUNSE VILLAGE-577007,
DAVANAGERE TALUK,

...APPELLANT

(BY SRI. HALLI SHANTAPPA BASAPPA, ADVOCATE)

AND:

SMT RUKMINIBAI
W/O P.R.KRISHNANAIK,
AGED ABOUT 60 YAERS,
R/O KTJ NAGARA,
14TH CROSS, 2ND MAIN,
DAVANAGERE-577001,

...RESPONDENT

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 3.02.2026 PASSED IN RA NO.157/2024 ON THE FILE OF II ADDITION SENIOR CIVIL JUDGE AND JMFC, DAVANAGERE. DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 30.09.2024 PASSED IN O.S.NO.593/2016 ON THE FILE OF 4TH ADDITIONAL CIVIL JUDGE AND JMFC, DAVANAGERE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

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KARNATAKA



ORAL JUDGMENT

Heard Sri Halli Shantappa Basappa, learned counsel for the appellant.

2. This Court did not deem it fit to issue notice to the respondent.

3. Parties are referred to as plaintiffs and defendant as per their original ranking before the Trial Court, for the sake of convenience.

4. Plaintiff No.1 is said to have died on 24.06.2025. As such, unsuccessful plaintiff No.2 has approached this Court through this Second Appeal challenging the judgment and decree dated 30.09.2024 passed in O.S.No.593/2016 by the IV Addl. Civil Judge and JMFC, Davanagere, confirmed by the II Addl. Senior Civil Judge and JMFC, Davanagere, in R.A.No.157/2024 dated 03.02.2026.

5. Plaintiffs filed a suit for bare injunction in respect of the following property hereinafter referred to as the 'suit property'



having purchased the same from the original owner-
K.G.Revanasiddappa.

“ದಾವಣಗೆರೆ ತಾಲ್ಲೂಕು, ತೋಳಹುಣಸೆ ಗ್ರಾಮದ ವ್ಯಾಪ್ತಿಗೆ ಸೇರಿದ, ಸ್ವತ್ತಿನ

ಸಂಖ್ಯೆ.33/ಎ ಅಳತೆ 45 X 31 ರ ಅಡಿವುಳ್ಳ, ಹಾಲಿ ಜಾಗಕ್ಕೆ ಇರುವ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ: ಕನ್ನರವೆನ್ನಿ

ಪಶ್ಚಿಮಕ್ಕೆ: ಬಾಡಾ ರಸ್ತೆ

ಉತ್ತರಕ್ಕೆ: ಕನ್ನರವೆನ್ನಿ

ದಕ್ಷಿಣಕ್ಕೆ: ರಸ್ತೆ.”

6. Plaintiffs contended that in the sale deed of the plaintiffs, on the southern boundary there is a mention that there exists a road. It is plaintiffs' case that defendant being the third purchaser of the site No.34 started interfering and encroached the road and therefore suit was necessitated.

7. Defendant filed written statement denying the plaint averments. It was contended that defendant has purchased site No.34A from her vendor who purchased it from another vendor and that vendor had purchased the same from original owner-K.G.Revanasiddappa who had formed sites in Sy.No.77 and site No.34A is one such site.



8. It was further contended that there existed a road on the southern side of the suit property of the plaintiff and sought for dismissal of the suit.

9. Learned Trial Judge, after raising necessary issues, recorded the evidence of the parties.

10. In the cross-examination of PW-1(plaintiff No.1), it is elicited that Exhibit P-10 is the site map prepared by the original owner K.G.Revanasiddappa wherein there is a mention that Site No.33 which is the property of the plaintiffs is having the boundary as East by road, West by Bada road, North by Site No.32 and South by private property.

11. In the site plan, if these are the boundaries for Site No.33, how Revanasiddappa, who is the author of Exhibit P-10, could sell the property in favour of the plaintiffs, showing that there exists a site on the southern side is a question that remains unanswered by the plaintiffs.

12. Pertinently, plaintiffs did not examine their vendor, namely Revanasiddappa, who was the owner of the land in Sy.No.77. Further plaintiff No.1 examined as P.W.1 admits in



the cross-examination that on the southern side of his site there exists Site No.34. However he has pleaded ignorance that the same has been purchased by the defendant. In his cross-examination, it is also elicited that the entire area on the southern side of his site belongs to Revanasiddappa, who is his vendor.

13. No doubt in the cross-examination of defendant certain admissions are elicited by the plaintiffs to the effect that there is rectification to his sale deed in respect of boundaries are concerned.

14. Learned Trial Judge ignored the admission elicited in the cross-examination and recorded a finding that plaintiffs failed to prove that there existed a road on the southern side and dismissed the suit of the plaintiffs.

15. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in R.A No.157/2024.

16. 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 plaintiffs *inter alia* holding in paragraphs 20 to 23 as under:

20. I have bestowed my thoughtful consideration to the rival submissions made by both sides. It is not in dispute the plaintiff No.2 is the absolute owner and in possession of the suit property by virtue of registered sale deed dated 04/06/1983 which is marked as Ex.P1. Further, it is not in dispute as per the boundaries mentioned in the sale deed at Ex.P1 the southern boundary of suit schedule property is shown as road. On perusal of sale deeds as well as rectification deed produced by the defendant, it clearly shows southern side of suit property the defendant has purchased site No.34A. The plaintiff No.2 as well as defendant has purchased respective sites from the same vendor by name Revanasiddappa. During the course of arguments learned counsel for appellants stoutly contended by relying the sale deed of vendor of the defendant which is marked as Ex.D1, it clearly shows that towards northern side of property of defendant it is mentioned as remaining property of taluk society. Admittedly the sale deed of the plaintiff No.2 is earlier to the sale deed of vendor of defendant. The learned counsel for the appellants stoutly contended the original owner Revanasiddappa has no right to execute the sale deed in respect of road which is in existence towards southern side of suit property by creating sale deed as site No.34A in the name of Nanjappa as per Ex.D1.



21. It is pertinent to note that the site plan produced by the plaintiffs themselves at Ex.P10 clearly demonstrates the existence of site No.34A towards southern side of suit property. In addition to site plan at Ex.P10 the PW1 is also unequivocally admitted during the course of cross-examination that towards southern side of suit property there is a site which belongs to Revanasiddappa and further voluntarily deposed that there is a road towards southern side of suit schedule property. Further, PW1 pleads ignorance of existence of site No.34A which has been purchased by defendant towards southern side of suit property. By considering the oral and documentary evidence adduced by both sides it appears there is no road on the southern side of suit property as contended by plaintiffs.

22. In the present case there is serious dispute with regard to southern side of suit property. Once there is a dispute with regard to boundaries no injunction can be granted. Moreover, according to plaintiffs southern side of suit property there is a road and according to defendants southern side of suit property he has purchased site No.34A from her vendor. Therefore, it appears there is serious cloud towards southern side of suit property, when there is serious cloud with regard to southern side of suit property mere suit for injunction is not maintainable as held by Hon'ble Apex Court in the case of Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors reported in AIR 2008 SC 2033. In this decision their lordship have clearly



observed when suit for injunction is enough and when declaration and possession is necessary. The relevant paragraphs are reproduced as under:

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to



establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

23. In view of the ratio extracted in the aforesaid decision when defendant has seriously disputed the existence of road towards southern side of suit property and claiming that site No.34A is in existence which has been purchased by her. In such situation the plaintiffs ought to have filed suit for declaration and mere injunction is not maintainable. Accordingly, trial court by considering the oral and documentary evidence produced by both parties rightly come to the conclusion that there is no road on the southern side of suit property as contended by plaintiffs and ultimately dismissed the suit."

17. Being further aggrieved by the same, plaintiff No.2 is before this Court in this appeal on following grounds and substantial questions of law:

GROUND

- *It is submitted that, impugned judgments and decree of the both the courts below are highly illegal, besides being erroneous. As such same is liable to be set-aside.*
- *It is submitted that, judgements and decree of the both the courts below are capricious, perverse, and same is required to interference by this Hon'ble court.*



- *It is submitted that, the trial court has committed a serious error in dismissing the suit of the plaintiff's without appreciation of oral and documentary evidence on records and dismissed the suit merely on the ground that, during the cross examination the PW-1 has ignorance to answer to questions and comes to conclusion that, there is no road on southern side of suit schedule property. As such same is liable to be set-aside.*
- *It is submitted that, the lower appellate court was also committed a serious error in dismissing the appeal as suit for injunction is not maintainable by relying on the judgement of APEAX COURT in Anathula Sudhakar V/S P.Buchi Reddy, in facts, the plaintiff's have not claiming any owner ship over the southern side of suit schedule property and the suit of the plaintiff's is that, that there is road on southern side of schedule property and it is only the road to used only for the purpose of road and further contended that, in case, the defendant has encroach the road towards southern side, it is very in-convenience to reach the schedule property, and also daily activities and further it is lot of in-convenience to reach railway station, both the courts below have not considered this aspect of the matter while dismissing the suit of the plaintiff's. As such same is liable to be set-aside.*
- *It is submitted that, the trial court was committed a serious error in not considering the cross examination of the defendant/ DW-1 specifically admitted that rectification deed EXD-4 was rectified after filing the suit*



and also failed to considered the sale deed of the plaintiffs and the sale deed of the defendant while dismissing the suit of the plaintiff's, in facts, the sale deed of the defendant dated 29/6/1963, it shows southern side Rukminibai site and same has been shown in the 2nd sale deed dated 20/10/1990 also shown same and similarly sale deed dated 2/5/2002, the defendant sale deed towards southern side plaintiff site is shown and after lapse of 15 years, the defendant has rectify the sale deed dated 27/04/2017 from the developer without rectifying the earlier two sale deeds dated 29/6/1963, and also 20/10/1990, the developer has no right to rectify the sale deed dated 2/5/2002, because of that, he has no title over the site No 34A, in fact there is no pleadings in the written statement about fraud and mistake of the parties. As such same is liable to be set aside.

SUBSTANTIAL QUESTIONS OF LAW

- a) *Whether both the courts below right in law justifying in dismissing the suit of the plaintiff's?*
- b) *Whether both the courts below right in law justifying in dismissing the suit of the plaintiff's without considered the earlier sale deeds of Nanjappa dated 29/6/1983 and also sale deeds of A Hanumanaik, dated 20/10/1990, in turn the defendant has purchased the same from A Hanumanaik?*



- c) *Whether both the courts below right in law justifying in relied on the rectification of same 27/04/2017, that executed by deed dated original owner K.G.Revanasiddappa, who has no right if any execute any rectification of sale deed of the defendant?*
- d) *Whether both the lower appellate court right in law justifying in relied on of APEAX COURT in Anathula Sudhakar V/S P.Buchi Reddy, in facts, no disputing ownership of the property and only dispute with regard to Road towards southern side of the plaintiff's?*
- e) *Whether both the courts below right in law justifying in dismissing the suit of the plaintiff's without considered proposition of law under section 26 of Specific Relief Act.?"*

18. Sri S.B.Halli, learned counsel for the appellant/ plaintiff No.2 reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not appreciated the case of the appellant properly and wrongly dismissed the suit of the plaintiffs.

19. He would further contend that when there is a clear admission by the defendant that her sale deed got rectified by rectifying the boundaries of her sale deed, same ought to have been considered by the learned Trial Judge and should have



believed the boundaries mentioned in the sale deed executed by the erstwhile owner in favour of the plaintiffs wherein it has been mentioned that there exists a road on the southern side and ought to have decreed the suit and thus sought for admitting the appeal on the aforesaid substantial questions of law.

20. This Court bestowed its best attention to the relevant aspects of the matter and noted that Exhibit P-10 is the document that is relied on by the plaintiffs which is the site plan or layout plan which has been prepared by the owner of the property who is none other than the vendor of the plaintiffs himself in respect of Sy.No.77 of Tholahunase village, Davanagere.

21. In Exhibit P-10, pertinently the boundaries mentioned to Site No.33 which is the subject matter of the suit, are different and what has been conveyed in the sale deed executed by Revanasiddappa is different.

22. As per site plan, plaintiffs have got roads on the eastern side and on the northern side. Towards the southern side, in



Exhibit P-10 there is a mention as site No.34. Therefore, plaintiffs cannot contend that boundaries mentioned in their title sheet is correct and defendant is trying to encroach upon the southern side road.

23. Pertinently, plaintiffs did not choose to examine the author of Exhibit P-10 who is none other than their own vendor. Plaintiffs also failed to examine the bajudars on the northern, eastern and western side of the boundaries mentioned in their said deed.

24. On the contrary, as per Exhibit P-10 on the eastern and northern side there are roads existing in respect of the suit property. In other words, site purchased by the plaintiffs is a corner site as per Exhibit P-10.

25. If it is so, there cannot be a third road on the southern side as well. Therefore, the discrepancy found in Exhibit P-10 and the sale deed executed by vendor of the plaintiffs which is the suit document is not explained by the plaintiffs.

26. As such, dismissal of the suit is just and proper as it is the plaintiffs who approached the Court with a prayer of



injunction and have to establish all necessary facts with cogent and convincing evidence placed on record and cannot take advantage of the weakness in the case of the defendant.

27. Thus, this Court does not find merit in any one of the substantial questions of law raised in the appeal memorandum.

28. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

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List No.: 1 Sl No.: 64