



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1437 OF 2018 (INJ)

BETWEEN:

SRI. VISHWANATH
S/O LATE GANGE,
AGED ABOUT 67 YEARS
R/AT BATTI, PADIL MANE,
MALALLI, MANGALURU - 575 008.

...APPELLANT

(BY MISS. ANANYA RAI, ADVOCATE FOR
SRI. VISHWAJITH RAI M, ADVOCATE)

AND:

SMT. SARVANI
W/O KUSHAL KUMAR,
AGED ABOUT 38 YEARS
R/AT SRI DEVI PRASAD
SKANDA NAGARA, PADDAI PADAVU
KINNIKAMBLA, MANGALURU - 575 005.

...RESPONDENT

(BY SRI. UDAYA PRAKASH MULIYA, ADVOCATE)

THIS IS RSA FILED U/S.100 OF CPC, AGAINST THE JUDGMENT AND DECREE DTD 31.01.2018 PASSED IN RA.NO.134/2016 ON THE FILE OF THE III ADDL.SENIOR CIVIL JUDGE, MANGALURU D.K. DISMISSING THE APPEAL AND CONFIRMING THE ORDER DTD 02.09.2016 PASSED IN OS.NO.968/2014 ON THE FILE OF THE II ADDL.CIVIL JUDGE AND JMFC, MANGALURU D.K.

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

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Location:
HIGH
COURT OF
KARNATAKA



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Miss.Ananya Rai, learned counsel appearing on behalf of Sri.Vishwajith Rai M., learned counsel for the appellant and Sri.Udaya Prakash Muliya, learned counsel for the respondent.

2. Plaintiff's second appeal challenging the dismissal of the suit in O.S.No.968/2014 dated 02.09.2016 which was confirmed by the First Appellate Court in RA No.134/2016 dated 31.01.2018.

3. Facts of the case are as under:

3.1. A suit for bare injunction came to be filed in respect of the following property (hereinafter referred to as suit property):

SCHEDULE A

Immovable property situated at Tenkullipady village of Mangaluru Taluk, comprised in

<i>S.No.</i>	<i>Extent A-C</i>	<i>Which portion</i>
<i>19/1</i>	<i>3-11</i>	<i>Full Sub Division</i>

With all easementary and mamool rights etc., appurtenant thereto."



3.2. Plaintiff claims the suit relief by contending that suit 'A' schedule property and other properties are obtained on 'chalageni basis' by Lingu Poojari who is the grandfather of the plaintiff who died intestate.

3.3. Plaintiff and others thus acquired right, title and interest over the suit property by inheritance. Son of Lingu Poojari by name Dasappa filed a declaration claiming occupancy rights over the land Tribunal after the Land Reforms Act came into force and Tribunal after due enquiry, granted occupancy rights by order dated 29.06.1977 in favour of son of Lingu Poojari namely Dasappa.

3.4. Plaintiff also contended that Tribunal granted occupancy right though in the name of Dasappa, the occupancy rights enure to the benefit of entire family of Lingu Poojari and thus the plaintiff is entitled for the share in the property and thus sought for order of injunction.

3.5. It is also contended that a suit for partition in O.S.No.43/2013 was filed on the file of Principal Civil Judge, Mangalore in respect of seeking share in the suit properties.



4. Pursuant to the suit summons, defendant entered appearance and filed written statement admitting the fact that property earlier belonged to Lingu Poojari.

5. Defendant also admitted that defendant got occupancy rights before the Land Tribunal. However, defendant denied that plaintiff filing the suit as one of the co-owner in possession of the suit property.

6. Defendant denied the fact that Praveen Anchan is not at all related to the family of Lingu Poojari but contended that he is son of Laxmi's sister's daughter (a far relative).

7. Defendant further contended that plaintiffs and others filing the suit for partition is duly contested.

8. Based on the rival contentions, learned Trial Judge raised necessary issues and after the recording of the evidence of the parties, noted the fact that there cannot be an injunction against the true owner and dismissed the suit.

9. Learned Trial Judge also noted that efficacious remedy for the plaintiff is the suit for partition in O.S.No.43/2013 and thus dismissed the suit of the plaintiff.



10. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.134/2016.

11. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappreciation of the material on record, dismissed the appeal of the plaintiff *inter alia* holding in paragraph Nos.16 to 19 as under:

"16. From the pleadings and contention of the plaintiff, it is clear that the plaintiff claims to have co- owner of the plaint schedule property. According to him one Praveen Anchan who is not at all related to the family of Lingu Poojary and he is the son of Laxmi's sister daughter claimed right over the schedule property along with other properties by alleged and purported Will of Laxmi. Praveen Anchan has no right, title and interests whatsoever nature in the schedule property sold 20 cents of land in the schedule property to the defendant as per the registered sale deed dated:26.10.2012. Further according to the plaintiff he came to know the said fact only when he and others have filed a suit for partition and separate possession in O.S.No.43/2013 on the file of the Principal Senior Civil Judge, Mangaluru against the other legal heirs of Lingu Poojary claiming share in the schedule property and other properties. In the said suit, the plaintiff has also made Praveen Anchan as party so as to decide the case in his presence. In the said suit, the said Praveen Anchan filed his written statement and stated that he sold 20 cents of land in Sy No.19/1 to the



defendant herein. That shows that cause of action for filing the suit for bare injunction had accrued to the plaintiff when the Praveen Anchan who is the one of the defendant who disclose the sale of the property in his written statement. Further according to the plaintiff he has already filed the suit for partition before Principal Senior Civil Judge, Mangaluru in O.S.No.43/2013 against the other legal heirs of Lingu Poojary and Praveen Anchan claiming share in the schedule property and other properties. In the said suit itself, the plaintiff could also claim permanent injunction as well as temporary injunction by impleading respondent herein as one of the defendant.

17. It is pertinent note here that Section 41(h) of the Specific Relief Act provides that an injunction cannot be granted when equally efficacious relief certainly be obtained by any other usual mode of proceeding. The relief of partition and separate possession is equally efficacious, rather more efficacious, remedy than the suit for injunction simplicitor. It is settled position of law that where the plaintiff claims the injunction on the basis of inheritance and succession, his remedy is in suit for partition which he has already filed before the Principal Senior Civil Judge Mangalore and suit for injunction simplicitor is not tenable. This position was clarified by the decisions relied by the learned trial court judge. Therefore, that by reason the principle underlying section 41 (e) of the Specific Relief Act, when the plaintiff seeks injunction so as to deny the execution of sale deed by Praveen Anchan in favour of the respondent herein cannot be specifically enforced, such an injunction has to



be refused. Similarly, when a suitor of such a type would have equally efficacious relief available so as to enforce the contracts by taking appropriate remedy, without recourse to it, it would be indeed difficult to extend the discretionary relief of permanent injunction. It is also pertinent note here that as per Clause (h) of section 41 of the Specific Relief Act would require the Court to refuse such a type of prayer for injunction. On the other hand, although the plaintiff came to the Court with the allegation that the defendant has claiming ownership over the suit property on the basis of the registered sale deed and is trying to hold the property obviously without seeking to complete his title. To such a case, the principles underlying Clause (h) of section 41 of the Specific Relief Act can be extended so as to refuse such an ancillary relief.

18. Thus the legal position is well settled by this Court that when remedy of a suit for partition is available to the plaintiff, he cannot file a suit for injunction simplicitor nor he can claim temporary injunction in pending suit for injunction simplicitor. In view of the above circumstances, as the suit for injunction simplicitor itself is not tenable.

19. The learned trial court, by considering all these aspects, has rightly dismissed the suit. This court found no reason to say that the said finding of the trial court is erroneous one. The learned trial court, by properly appreciating facts and pleadings and carefully assessing the legal aspects rightly dismissed the suit. The reasons assigned by the trial court for dismissing the suit appears to be sound, logical and well founded. This court found no grounds to say that the impugned judgment is against to



law, facts, evidence and probability of the case. No grounds are made out for the interference and intervention of this court with the impugned judgment. Hence this point No.1 answered in the Negative.”

12. Being further aggrieved by the same, plaintiff filed the present second appeal.

13. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that the finding recorded by both the Courts that there cannot be injunction against the true owner and efficacious remedy is available in O.S.No.43/2013 is incorrect as in a joint family coparcenary property, every sharer will have right in every inch of the land.

14. Therefore, both the Courts ought to have considered the case of the plaintiff on merits and should have decreed the suit and thus sought for admitting the appeal on following substantial questions of law:

- i. “Whether the finding recorded by the courts below that the suit filed by the appellant under Order II Rule 2 of Code of Civil Procedure is correct?*
- ii. Whether the courts below erred in holding that by virtue of Section 41 of the Specific Relief Act, the suit filed by the appellant is not maintainable?*



iii. Whether the judgment and decree passed by the Lower Appellate Court is correct in view of the Order XIV Rule 2 of Code of Civil Procedure?

15. Per contra, learned counsel for the respondent would contend that the finding recorded by both the Courts that plaintiff is not entitled for injunction is well within the scope of Section 41 of Specific Relief Act which has been rightly considered by the Trial Court and properly appreciated by the First Appellate Court and thus sought for dismissal of the appeal.

16. He would also point out that suit filed by the plaintiff in O.S.No.43/2013 is dismissed on merits and the appeal filed against the said judgment and decree is also dismissed and matter is now pending before this Court in another second appeal and if plaintiffs succeed in the said second appeal. It is always open for the plaintiff to work out his remedy before the appropriate Forum and thus sought for dismissal of the appeal.

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



18. On such perusal of the material on record, in the case on hand, there is no dispute as to the relationship. However, plaintiff disputed the relationship of Praveen Anchan.

19. It is outside the scope of the present appeal to enquire out about those disputed aspects of the matter as the relief is one for grant of only permanent injunction.

20. Learned Trial Judge while discussing the said aspect of the matter in paragraph No.9 has dealt in detail about the right of the plaintiff seeking order of injunction by referring to the settled position of law enunciated by the Hon'ble Apex Court in the case of ***Municipal Corporation of Delhi v. Suresh Chandra Jaipuria*** reported in ***AIR 1976 SC 2621*** and also in the case of ***Premji Ratansey Shah and Others v. Union of India and Others*** reported in ***1994 (5) SCC 547***.

21. Learned Judge in the First Appellate Court also took into consideration while reappreciating the material aspects of the matter that the provisions of Section 41(h) of the Specific Relief Act would come in the way of plaintiff seeking remedy against the defendants; more so having regard to the fact that plaintiff had already filed a comprehensive suit for partition.



22. Moreover, on factual aspects as well, it is to be noted that when a comprehensive suit filed by the plaintiffs, which is now subject matter of another second appeal before this Court, rejection of suit for permanent injunction alone is just and proper.

23. Taking note of these aspects of the matter, denial of the injunction to the plaintiff by the Trial Court as well as the First Appellate Court needs no interference as there is no substantial questions of law involved in this matter to be adjudicated.

24. Accordingly, the following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.

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

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List No.: 1 Sl No.: 55