



CNR: KAHC010211512014

NC: 2026:KHC:40786
RSA No. 808 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 808 OF 2014 (POS)

BETWEEN:

1. MR. FRANCIS JOSEPH
SON OF JOSEPH,
AGED ABOUT 65 YEARS,
- 1(A) MRS. SHOBHARANI
W/O MR. NIRMAL KUMAR
AGED ABOUT 38 YEARS
R/AT No.46, BAZAR STREET
NEAR 515, ARMY BASE WORKSHOP
GOWTHAMPUR, HALASURU
BENGALURU – 560 008
- 1(B) MRS DEEPARANI
W/O MR. JANARNATHANAM
AGED ABOUT 38 YEARS
R/AT No.6,5TH R STREET
PP AMMAN KOVIL
BASIN BRIDGE
WASHERMANIPET
CHENNAI – 600021
- 1(C) MRS. RAJINA
W/O MR. FRANCIS
AGED ABOUT 62 YEARS
No.592, 3RD BLOCK
KUSHALANAGARA TOWN
SOMWARPETE TALUK
KODUGU, KARNATAKA – 571 234

Digitally
signed by
SHILPABAI S
Location:
HIGH
COURT OF
KARNATAKA



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- 1(D) MR. KANIKYA DAS
S/O MR. FRANCIS
AGED ABOUT 34 YEARS
No.592, 3RD BLOCK
KUSHALNAGARA TOWN
SOMWARPETE TALUK
KODUGU, KARNATAKA – 571 234
2. MR. NADAHA JOSEPH,
SINCE DECEASED
REPRESENTED BY HIS
LEGAL REPRESENTATIVES,
- 2(A) MRS. NIRMALA,
W/O. LATE NADAHA JOSEPH,
AGED ABOUT 53 YEARS,
R/AT HOUSE NO.3-90, 3RD BLOCK,
KUSHALANAGAR TOWN,
SOMWARPET TALUK,
KODAGU DISTRICT-571 276.
- 2(B) MR. ALEXANDER
S/O. LATE NADAHA JOSEPH,
AGED ABOUT 30 YEARS,
R/AT HOUSE NO.3-90, 3RD BLOCK,
KUSHALANAGAR TOWN,
SOMWARPET TALUK,
KODAGU DISTRICT-571 276.
- 2(C) MRS. ASHA RANI
D/O. LATE NADAHA JOSEPH,
AGED ABOUT 28 YEARS,
R/AT HOUSE NO.3-90, 3RD BLOCK,
KUSHALANAGAR TOWN,
SOMWARPET TALUK,
KODAGU DISTRICT-571 276.
- 2(D) MR. ARUN KUMAR
S/O. LATE NADAHA JOSEPH,
AGED ABOUT 27 YEARS,



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R/AT HOUSE NO.3-90, 3RD BLOCK,
KUSHALANAGAR TOWN,
SOMWARPET TALUK,
KODAGU DISTRICT-571 276.

3. MR. ANTHONY JOSEPH
S/O. JOSEPH,
DEAD BY HIS LEGAL REPRESENTATIVES

3(A) MRS. SUSHEELA
W/O LATE ANTHONY JOSEPH
AGED ABOUT 57 YEARS
No.592, 3RD BLOCK
KUSHALNAGAR TOWN
SOMWARPETE TALUK
KODUGU, KARNATAKA – 571 234

3(B) MRS. ALIJABETH RANI
D/O LATE ANTHONY JOSEPH
AGED ABOUT 36 YEARS
No.592, 3RD BLOCK
KUSHALNAGAR TOWN
SOMWARPETE TALUK
KODUGU, KARNATAKA – 571 234

3(C) MRS. MARIYAMMA
W/O HARISH B
D/O LATE ANTHONY JOSEPH
AGED ABOUT 33 YEARS
No.592, 3RD BLOCK
KUSHALNAGAR TOWN
SOMWARPETE TALUK
KODUGU, KARNATAKA – 571 234

3(D) MRS JANCY A
W/O FRANCIES XAVIOR
D/O LATE ANTHONY JOSEPH
AGED ABOUT 28 YEARS
BADAGI KOAPPLU,
K HOSAKOTE HOBLI



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MAGGE, HASSAN,
KARNATAKA - 573 129

...APPELLANTS

(BY SRI. S N SAMEER & M K NIYAZUDDIN, ADVOCATES)

AND:

MR. S.K. BHAGAVAN
S/O. S.KRISHNARAJ SHETTY,
AGED ABOUT 53 YEARS,
R/AT RATHA BEEDI,
KUSHALANAGAR TOWN,
SOMWARPET TALUK,
KODAGU DISTRICT-571236.

...RESPONDENT

[BY SRI. C M NAGABHUSHAN, ADVOCATE FOR
SRI. K N VASUKI & VISHWANATH GUPTA C R (NOC)]

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 26.4.2014 PASSED IN
R.A.NO.9/2003 ON THE FILE OF THE SENIOR CIVIL JUDGE,
MADIKERI, ALLOWING THE APPEAL AND SETTING ASIDE THE
JUDGEMENT AND DECREE DTD 20.12.2002 PASSED IN
OS.NO.171/1998 ON THE FILE OF THE CIVIL JUDGE (JR.DN)
SOMWARPET.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



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ORAL JUDGMENT

This regular second appeal is filed by the appellants challenging the judgment and decree dated 26.04.2014 passed in RA No. 9 of 2003 by the Court of learned Senior Civil Judge, Madikeri (***First Appellate Court*** for short).

2. For the sake of convenience parties are referred to based on their ranking before the Trial Court¹. Appellants were the defendants and respondent was the plaintiff before the Trial Court.

3. Brief facts leading rise to the filing of this regular second appeal are as follows:

3.1. Plaintiff filed a suit for the relief of vacant possession and for arrears of rent. It is the case of the plaintiff that, the suit schedule property being a residential house situated in Sy.No.12/3 measuring 0.02 acres and Sy.No.12/4B measuring 0.26 acres bearing Door No.3-92 situated at 3rd Block, Kushalnagar Town, Somwarpet

¹ OS No. 171 of 1998 before the Court of learned Civil Judge (Jr. Dn.), Somwarpet



Taluk, Kodagu District belongs to the plaintiff and he had acquired the said property under a deed of partition dated 15.02.1993. The father of the defendants was a tenant under Sri. S.Krishnaraja Shetty, the father of the plaintiffs on a monthly tenancy. It is contended that, Sri. Joseph was initially paying a monthly rent of ₹20/- which was enhanced periodically to ₹50/- and thereafter, to ₹100/- per month. The said Joseph passed away in 1982 and after his demise, the defendants being his sons/legal heirs, continued to reside in the suit schedule property. The defendants did not pay the monthly rent from the month of January 1994 to the plaintiff despite several requests and demands. The plaintiff filed a petition for eviction of the defendants under the provisions of Karnataka Rent Control Act, 1961 in HRC No. 2 of 1997, the said HRC petition was closed vide order dated 21.08.1998 on the premise that the provisions of Karnataka Rent Control Act, 1961 has no application to the premises in question. The plaintiff had issued a legal notice under Section 106 of the



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Transfer of Property Act, 1882 terminating the tenancy of the defendants and also called upon the defendants to vacate the premise and hand over the same to the plaintiff. The defendants replied to the said legal notice, wherein the defendants denied to vacate the suit schedule property. Hence, a cause of action arose for the plaintiff to file a suit for ejectment.

3.2. The defendants filed a written statement denying the averments and the allegations made in the plaint. The defendants had specifically contended that there exists no relationship of landlord and tenant between the plaintiff and the defendants. It is the father of the defendants namely Sri. Joseph had constructed a house on a paisary land in Sy.No.127 of Mullusoge Village prior to 1964 and that the said Sri. Joseph was in exclusive possession and enjoyment of the said house on his own rights and that in exercise of his rights, had even obtained electricity connection in his name even as on 13.07.1964. The plaintiff being the resident of the property in



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Sy.No.123 situated adjoining the property in Sy.Nos.127 and 122, and being a rich and influential person, was trying to knock off the property of the defendants. Hence, they pray to dismiss the suit.

3.3. The Trial Court, based on the rival pleadings of the parties, framed the following issues:

- "1. Whether the plaintiff proves that there is a relationship of landlord and tenant between plaintiff and defendants in respect of suit schedule property?*
- 2. Whether the plaintiff further proves that defendants and their father Joseph were paying rent in respect of suit property as alleged in para 2 of the plaint?*
- 3. Whether the plaintiff proves that defendants are liable to pay the arrears of rent since end of December 1993 till the filing of suit at the rate of Rs.100/- per month?*
- 4. Whether the plaintiff proves that he requires the suit property for immediate demolition and reconstruction of shopping complex?*
- 5. Whether the plaintiff proves that he is entitled for the relief as claimed?*



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6. *What Order and Decree?"*

3.4. The plaintiff, to substantiate his case, examined three witnesses as PW1 to PW3 and marked fifty-two documents as Exs.P1 to P52. In rebuttal, defendant No.2 was examined as DW1 and marked 15 documents as Exs.D1 to D15.

3.5. The Trial Court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered all issue Nos.1 to 5 in negative and issue No.6 as per the final order. The suit of the plaintiff was dismissed vide judgment and decree dated 20.12.2002.

3.6. The plaintiff, aggrieved by the dismissal of suit in OS No. 171 of 1998 before the Trial Court, preferred an appeal in RA No. 9 of 2003 before the First Appellate Court.



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3.7. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- "1. *Whether the plaintiff proved his ownership over the suit schedule property?*
2. *Whether the plaintiff proved the landlord and tenancy relationship between him and the defendants?*
3. *Whether the Judgment and Decree passed by the Trial Court needs interference?*
4. *What Order?"*

3.8. The plaintiff was examined as PW1 before the First Appellate Court and produced eighteen documents marked as Exs.P53 to P70. During the pendency of the appeal, a Court Commissioner was appointed. The Court Commissioner was examined as CW1 and the Commissioner's report was marked as Exs.C3 to C9.

3.9. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 to 3



in the affirmative, point No.4 as per the final order. The regular appeal was allowed vide judgment and decree dated 26.04.2014. The judgment and decree dated 20.12.2002 passed in OS No. 171 of 1998 by the Trial Court was set aside. Consequently, the suit of the plaintiff was decreed. The defendants were thereby directed to vacate the suit schedule property and deliver the vacant possession of the same to the plaintiff within one month from the date of the judgment.

4. The defendants, aggrieved by the judgment and decree dated 26.04.2014 passed in RA No. 9 of 2003, preferred this regular second appeal.

5. Heard the arguments of the learned counsel for the defendants and learned counsel for the plaintiff.

6. Learned counsel for the defendants submits that, during the pendency of the suit, a Court Commissioner was appointed and he has submitted a report. The Court Commissioner had admitted that, he has



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not verified the documents such as original sketch, survey records, town planning issued by the Town Municipal Corporation or the revenue documents to state that whether the suit schedule property forms a part of Sy.No.127. The Court Commissioner further admitted that, the suit schedule property forms a part of Sy.No.123. This evidence being available on record, neither the Trial Court nor the First Appellate Court has considered the evidence of the Court Commissioner. The judgment and decree passed by the First Appellate Court is without consideration of the Court Commissioner's report and evidence. The entire case is based on the Commissioner's report and evidence of the Court Commissioner. The impugned judgment passed by the First Appellate Court is without application of mind. Hence, he submits that, the judgment and decree passed by the Courts below are arbitrary and erroneous and are not in compliance with Order XLI Rule 31 of the Code of Civil Procedure, 1908 ('**CPC**' for short) and is in contrary to the proposition of



the Hon'ble Apex Court in the case of ***H. Siddiqui (Dead) by LRs Vs. A. Ramalingam***². Hence, he submits that, the matter be remitted to the First Appellate Court and the First Appellate Court be directed to re-appreciate the entire evidence on record. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned counsel for the plaintiff submits no objection to remit the matter and he submits that, the First Appellate Court has not properly re-appreciated the entire evidence on record. Hence, on this ground, he prays to allow the appeal.

8. Perused the records and considered the submissions of the learned counsel for the parties.

9. This Court, vide order dated 25.07.2014, admitted the appeal to consider the following substantial questions of law:

"i) *When the defendants had resisted the suit of the plaintiff for his ejectment denying the jural*

² (2011) 4 SCC 240



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relationship of landlord and tenant and disputing the identity of property, was the appellate court justified in decreeing the suit ignoring that a serious question of title had arisen between the parties?

ii) Is the decree of eviction justified when on evidence, it is shown that the defendants are in possession of land bearing different survey numbers, while eviction is sought in respect of different properties?"

Reg. Substantial Question of Law (ii):

10. Substantial question of law (ii) is taken for consideration. If this substantial question of law is answered in the affirmative, then the matter has to be remitted to the First Appellate Court. Hence, substantial question of law (i) does not arise for consideration.

11. The plaintiff filed a suit for ejectment contending that, the defendants are in possession of the suit schedule property as tenants and prior to the filing of the instant suit, the plaintiff has already initiated eviction proceedings under the provisions of the Karnataka Rent Control Act. During the pendency of the said proceedings,



the Karnataka Rent Control Act was enacted and if the premises is more than 14 sq.mts., then the provisions of the Karnataka Rent Control Act are not applicable. The eviction petition came to be closed on the ground of provisions that the provisions of Karnataka Rent Control Act are not applicable to the premise in question. The plaintiff got issued a termination notice under Section 106 of the Transfer of Property Act terminating the alleged tenancy of the defendants and called upon the defendants to vacate and hand-over the possession of the suit schedule property and the defendants have not paid the rent after the demise of their father who was earlier the tenant of Sri. S.Krishnaraja Shetty. The defendants replied to the said legal notice denying the contents of the legal notice.

12. The plaintiff, to substantiate his case, examined himself as PW1. He reiterated the plaint averments in the examination-in-chief and produced the documents marked as Exs.P1 to P52. The plaintiffs also examined two



witnesses as PW2 and PW3 to prove the jural relationship as a landlord and tenant between the plaintiff and defendants.

13. During the pendency of the regular appeal before the First Appellate Court, a Court Commissioner was appointed. He was examined as CW1 and marked seven documents as Exs.C3 to C9, wherein the Court Commissioner had submitted a report that the suit schedule property is not situated in Sy.No.127; the suit schedule property is different and Sy.No.127 is different.

14. Admittedly, the First Appellate Court, without considering the Commissioner's report that the suit schedule property is not situated in Sy.No.127 and it is situated in a different survey number, has passed the impugned judgment. The First Appellate Court being the final fact finding Court, is required to re-appreciate the entire evidence on record and has to answer each issue framed by the Trial Court. From the perusal of the



impugned judgment, it clearly discloses that the First Appellate Court has not properly re-appreciated the entire evidence on record. Hence, the impugned judgment passed by the First Appellate Court is not in compliance with Order XLI Rule 31 of CPC. To reverse the findings of the Trial Court, the First Appellate Court is required to reassign the reasons for reversing the judgment and decree passed by the Trial Court.

15. The Hon'ble Apex Court in a recent judgment in the case of ***Lakshmi Vs. Gopi and Others***³, has held in paragraph No.5 that, Section 96 of CPC permits the Appellate Court to deal with both questions of law and fact, which reads as follows:

"5. Section 96 of the Civil Procedure Code, 19083, permits the Court to deal with both questions of law and fact which is reproduced below:

"96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the

³ 2026 SCC OnLine SC 1338



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Court authorized to hear appeals from the decisions of such Court.

- (2) An appeal may lie from an original decree passed ex parte.*
- (3) No appeal shall lie from a decree passed by the Court with the consent of parties.*
- (4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees."*

The Court in first appeal is the final court of fact. The facts once determined by the Appellate Court are not open to challenge before the High Court, and even this Court does not undertake re-appreciation of evidence under Article 136 until and unless some glaring error such as complete misdirection is pointed out."

16. The impugned judgment and decree passed by the First Appellate Court is also in contrary to the proposition of law laid down by the Hon'ble Apex Court in the cases of **H. Siddiqui** (supra) and **Lakshmi** (supra). Hence, the impugned judgment passed by the First Appellate Court is liable to be set aside.



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17. In view of the above discussion, I answer substantial question of law (ii) in the affirmative.

18. In view of answering substantial question of law (ii), substantial question of law (i) would not arise for consideration. Accordingly, I proceed to pass the following:

ORDER

- i. The regular second appeal is ***allowed;***
- ii. The impugned judgment and decree dated 26.04.2014 passed in RA No. 9 of 2003 by the First Appellate Court is hereby ***set aside;***
- iii. The appeal in RA No. 9 of 2003 is restored to its original file;
- iv. The First Appellate Court is directed to pass the judgment in compliance with Order XLI Rule 31 of CPC in terms of the judgments rendered by the Hon'ble Apex Court in the cases of ***H. Siddiqui*** (supra) and ***Lakshmi*** (supra);



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- v. The Registry is directed to transfer the records to the First Appellate Court;
- vi. The First Appellate Court is directed to dispose of the appeal as expeditiously as possible;
- vii. All the contentions of the parties are kept open;
- viii. The parties are directed to appear before the First Appellate Court on **15.09.2025** without awaiting any further notice;
- ix. Learned counsel for the appellants/defendants and the respondent/plaintiff seek leave of the Court to withdraw IA Nos. 1 of 2015 and 1 of 2024 with a liberty to file applications before the First Appellate Court. Leave granted. A liberty is reserved to the appellants/defendants and the respondent/plaintiff to file applications before the First Appellate Court for production of additional evidence;
- x. If such an application is filed, the First Appellate Court is directed to consider and pass an appropriate order in accordance with the law;



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- xi. Other pending IA(s) in this appeal, if any, shall stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

PA
List No.: 2 SI No.: 6