



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. 1580 OF 2018 (DEC)

BETWEEN:

1. SMT. SHAMBHAVI @ RADHA KAMATH
W/O. LATE G. KRISHNANDA KAMATH,
SINCE DEAD BY HER LRS
- 1(A). G. JANARDHAN KAMATH
S/O LATE G. KRISHNANANDA KAMATH,
AGED ABOUT 62 YEARS
- 1(B). G. RAMACHANDRA KAMATH
S/O LATE G. KRISHNANANDA KAMATH,
AGED ABOUT 60 YEARS
- 1(C). YOGINI KAMATH
W/O LATE G. MANJUNATH KAMATH,

ALL ARE R/O SRI DURGA KRIPA
TEMPLE SQUARE,
MANGALORE - 575 001.

...APPELLANTS

(BY SRI. VISHWAJITH RAI M, ADVOCATE FOR A1(A TO C))

AND:

1. THE COMMISSIONER
CITY CORPORATION,
MANGALORE - 575 001.
2. THE COMMISSIONER
MUDA, CORPORATION CITY,
MANGALORE - 575 001.

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



3. SRI. B. NARAYANA PAI (DEAD)
S/O. LATE B. SRINIVAS PAI,
SINCE DEAD BY HIS LR'S

3(A). B. RAMADAS PAI
AGE MAJOR

3(B). GURUDATT PAI
AGE MAJOR

3(C). B. MANOHAR PAI
AGE MAJOR

3(D). B. TRIVIKRAM PAI
AGE MAJOR

ALL ARE CHILDREN OF R3
AL ARE R/AT G.T. ROAD
TEMPLE SQUARE,
MANGALORE - 575 001.

...RESPONDENTS

(BY SRI. VIJAY KRISHNA BHAT M, ADVOCATE FOR R3 (A TO D))

THIS RSA IS FILED U/S.100 OF CPC, AGAINST THE
JUDGMENT AND DECREE DATED 28.04.2018 PASSED IN
RA.NO.108/2014 ON THE FILE OF THE PRINCIPAL SENIOR
CIVIL JUDGE AND CJM MANGALURU D.K. DISMISSING THE
APPEAL AND CONFIRMING THE ORDER DATED 23.09.2014
PASSED ON IA.NO.IV IN OS.NO.539/13 ON THE FILE OF THE IV
ADDL.CIVIL JUDGE AND JMFC MANGALURU D.K.

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.Vishwajith Rai M., learned counsel for legal representatives of the appellant and Sri.Vijay Krishna Bhat M., learned counsel for respondent Nos.3(a) to (d).

2. Plaintiff is the appellant in this second appeal challenging the rejection of the plaint under Order VII Rule 11(d) of Code of Civil Procedure in O.S.No.539/2013 dated 23.09.2014 which was confirmed by the First Appellate Court in RA No.108/2014 dated 28.04.2018

3. Facts of the case are as under:

4. A suit was filed with the following prayer:

"1) To set aside the approved single layout to The property of the 3rd defendant in Proceeding bearing no.ಮನಪ್ರಾ: ನಯೋಸ: ವಿನ್ಯಾಸ: 767/2012-13, dtd.30-06-2012, by the 2nd defendant by declaring that the same is null and void, illegal and opposed to the provisions of law.

2) To set aside the building plan with license bearing no. E2 BA 52/2012-13 dtd.24-11-2012 issued by the 1st



defendant by declaring that the same is null and void, illegal and opposed to the provisions of law.

3) For a permanent prohibitory injunction restraining the 3rd defendant, his men and servants, assignees in interest, his legal heirs, legal representatives, and anybody claiming through or under him from construction of building and leach pit by virtue of the building license dtd.24-11-2012 issued in proceeding bearing no.E2 BA 52/2012-13 by the 1st defendant."

5. In the plaint, it is contended that plaintiff is the owner-in-possession of enjoyment of 17 cents of land in TS No.137/1 of Kasaba Bazar village which is situated within the corporation limits of Mangalore with a residential house bearing No.13-8-976 morefully described in 'A' schedule property.

6. After acquisition of the schedule property, plaintiff renovated his house situated therein and obtained necessary license.

7. Defendant No.3 is in possession of 2.25 cents of land in TS No.137/1 of Kasaba Bazar village, Mangalore, which is situated in the southern side of the plaint property.



8. It is further contended that to demarcate the southern and northern boundaries of plaintiff and defendant No.3, there existed a compound wall with laterite stone which is belonging to the plaintiff.

9. According to the further plaint averments, defendant No.3 and his family members residing in their portion of the property, demolished the entire said building with an intention to put up the new residential house and in the said process, it has come to the knowledge of the plaintiff that in collusion with defendant Nos.1 and 2, building license is obtained which is incorrect and single layout approved plan was obtained from defendant No.2 which is detrimental to the interest of the plaintiff.

10. It is also contended that there is a well situated in the property of the plaintiff and the drainage and other effluents are now sought to be left in a 'pit' which would affect the well water and therefore, filed the suit.



11. Suit was opposed by filing written statement and also an application under Order VII Rule 11(a) and (d) of Code of Civil Procedure.

12. Defendant No.3 contended that there is no cause of action to the suit and also contended that suit is barred by provision of Karnataka Town and Country Planning Act and Karnataka Municipal Corporation Act.

13. Application was opposed by the plaintiff by filing detailed written objections.

14. Learned Trial Judge after hearing the parties, dismissed the application filed by the defendant under Order VII Rule 11(a) of Code of Civil Procedure but allowed the application filed under Order VII Rule 11(d) of Code of Civil Procedure noting the fact that suit before the Civil Court is not maintainable in view of the aforesaid statutory provision.

15. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.108/2014.

16. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in



detail and by noting the principles of law enunciated by the Supreme Court in the case of ***Shiva Kumar Chadha v. Municipal Corporation of Delhi*** reported in ***1996 (6) Kar. L.J. 107 (SC)*** held that suit before the Trial Court is not maintainable and dismissed the appeal.

17. Being further aggrieved by the same, plaintiff is before this Court, in this second appeal.

18. Learned counsel for the legal representatives of appellants reiterating the grounds urged in the appeal memorandum would contend that approach of the Trial Court in rejecting the plaint under Order VII Rule 11(d) is incorrect as the material evidence placed on record did not warrant rejection of the plaint and suit should have been adjudicated on merits.

19. He would also contend that principles of law enunciated in the aforesaid judgment of the Hon'ble Supreme Court are no doubt correct but facts in the case on hand are different. Therefore, rejection of the plaint is incorrect 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 is barred under Section 9 of the Code of Civil Procedure is correct?*
- ii. Whether the finding recorded by the Courts below that the suit is barred by law under Order VII Rule 11(d) of the Code of Civil Procedure is correct?*
- iii. Whether the finding recorded by the Courts below that the appellant has got an alternative remedy and hence the suit is not maintainable is correct?"*

20. Per contra, learned counsel for legal representatives of contesting respondent No.3 would contend that the apprehension itself has now being lost inasmuch as the drain water from the bathroom, washroom, toilet etc., are now let to the municipal drainage and there is no 'pit' in existence.

21. Further, he would contend that original plaintiff and defendant No.3 are no more and the apprehensions are incorrect and thus sought for dismissal of the appeal.



22. He would also contend that when there is a clear bar under the statute to maintain a civil suit, rejection of the plaint under Order VII Rule 11(d) of Code of Civil Procedure does not warrant any interference by this Court, in this second appeal and thus sought for dismissal of the appeal.

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

24. On such perusal of the material on record, it is crystal clear that Karnataka Town and Country Planning Act and Karnataka Municipal Corporation Act referred to supra, there is a clear bar to maintain the civil suit in respect of the actions attributable to the authorities though there is no dispute that based on the violations of the conditions, a suit is maintainable.

25. Taking note of the plaint relief as referred to supra, rejection of the plaint by the Trial Court confirmed by the First Appellate Court following the settled principles of law requires no interference.



26. Accordingly, following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.
- iii. However, dismissal of the present appeal or rejection of the plaint shall not come in the way of the plaintiff working out his remedy before the appropriate forum in accordance with law if the cause survives.

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

KAV
List No.: 1 Sl No.: 57