



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 244 OF 2017 (INJ)

BETWEEN:

1. C NATARAJU
S/O LATE CHIKKMADAIAH AGED
ABOUT 47 YEARS,
2. JAGADEESH
S/O LATE THOTTADI NANJIAH ,
AGED ABOUT 43 YEARS,
3. MOTARAJU
S/O LATE MANCHAIAH
AGED ABOUT 53 YEARS
4. DINESHA
S/O LATE PUTTA MANCHA
AGED ABOUT 44 YEARS,

ALL ARE R/AT A K COLONY
SIDDAPPAJI ROAD,
KYATHAMARANAHALLI,
MYSURU - 570001.

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA

...APPELLANTS

(BY SRI. N S BHAT, ADVOCATE)



AND:

1. CHAMUNDI NINGAIAH
S/O LATE THIMMAIAH,
AGED ABOUT 67 YEARS,
2. NINGAIAH
S/O LATE THIMMAIAH
AGED ABOUT 53 YEARS,
3. SMT MADAMMA
W/O LATE MARISWAMAPPA NINGAIAH
@ MARININGAIAH,
AGED ABOUT 78 YEARS,
4. MARININGA
S/O LATE MARININGAIAH
AGED ABOUT 58 YEARS,
5. CHIKKAMOGA
S/O LATE MARININGAIAH
AGED ABOUT 58 YEARS,
6. CHAMUNDI
S/O LATE MARININGAIAH
AGED ABOUT 54 YEARS,
7. SMT NANJAMMA
W/O LATE CHIKKAMARAIAH
AGED ABOUT 68 YEARS,
8. RAJA
S/O LATE CHIKKAMARAIAH
AGED ABOUT 44 YEARS,



9. NINGAMARI
S/O LATE CHIKKAMARAI AH
AGED ABOUT 36 YEARS,

10. PUTTALINGA
S/O PUTTALAMMA,
AGED ABOUT 53 YEARS,

11. SADASHIVA
S/O HETHAIAH
AGED ABOUT 53 YEARS,

ALL ARE R/AT KYATHAMARANAHALLI,
A K COLONY, NAZARBAD MOHALLA,
MYSURU - 570001.

...RESPONDENTS

(BY SRI. SHIVANANDA R., FOR SRI P. NATARAJU, ADVOCATE
FOR R-1, R-4 AND R-5;
RESPONDENTS NO. 7,8,10,11 SERVED
NOTICE TO R-2, R-6 & R-9 HELD SUFFICIENT
VIDE ORDER DATED 31.01.2023)

THIS RSA IS FILED U/S 100 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 29.09.2016, PASSED IN
R.A.NO.102/2016, ON THE FILE OF THE II ADDL. DISTRICT
JUDGE, MYSURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED
02.07.2015, PASSED IN O.S.NO.1213/2007, ON THE FILE OF
THE IV ADDL. CIVIL JUDGE AND JMFC, MYSURU.



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri.N.S.Bhat, learned counsel for the appellants and Sri Shivananda R., for Sri P.Natarju, learned counsel for the respondents.

2. This second appeal is filed by defendant Nos.1, 2, 6 and 7 challenging the concurrent finding recorded by the IV Addl. I Civil Judge, Mysuru, (hereinafter for brevity referred to as `trial Court'), in O.S.No.1213/2007, dated 02.07.2015, and by the II Addl.District Judge, Mysuru, (hereinafter for brevity referred to as `first Appellate Court'), in R.A.No.102/2016, dated 29.09.2016.

3. Facts of the case in nutshell which are utmost necessary for disposal of the appeal are as under :



Nine plaintiffs have filed a suit for bare injunction against seven defendants in O.S.No.1213/2017, on the file of IV Additional I Civil Judge, Mysuru, by contending that Sri Mariningaiah, has got four sons by name Thimmaiah, Mariningaiah, Doddamaraiah, and Chikamaraiah. All the sons of Mariningaiah are no more and plaintiffs No.1 and 2 are the sons of Thimmaiah, and plaintiffs No.3 to 6 are the wife and children of Mariningaiah (junior) and plaintiffs No.7 to 9 are the wife and children of Chikkamaraiah, and Doddamaraiah died without any issue.

It is further contended by them that, land bearing Survey No.222/2, measuring 2 acres 26 guntas, including 3 guntas of kharab land, situated at Kyathamaranahalli village, is the ancestral property of the plaintiffs, which was acquired by Mysuru Urban Development Authority (MUDA) for the formation of residential layout in LAC No.53/1967-68.

Plaintiffs further contended that after acquisition, plaintiffs demanded for allotment of vacant site and



considering their request, MUDA left suit schedule property as a part of land losers' site. Surveyor visited the spot and prepared a sketch identifying the land of the plaintiffs.

Thereafter, plaintiffs have constructed a house by dividing the said property among sons of Mariningaiah. It is further contended by the plaintiffs that defendants who have no manner of right, title or interest in respect of suit property, are trying to interfere with the peaceful possession and enjoyment of the suit property. Therefore, suit came to be filed.

4. In pursuance to the suit summons, defendants entered appearance and filed written statement contending that, boundaries mentioned in the plaint are incorrect.

They further contended that the property that was left behind by MUDA in the acquisition proceedings is not the property which is in occupation of the plaintiffs.



As such, plaintiffs are not in possession of the suit property and thus, sought for dismissal of the suit.

5. Based on the rival contentions of the parties, learned trial Judge framed following issues and an additional issue as under:

Issues:

1. Whether the plaintiffs prove their peaceful possession and enjoyment over the suit schedule property as on the date of the suit?

2. Whether the plaintiffs prove that the alleged interference and efforts by the defendants to dispossess them from the suit schedule property?

3. Whether the plaintiffs are entitle for the relief as sought for?

4. What order or decree?

6. The trial Court after recording the evidence, noted that plaintiffs were successful in establishing that they are in possession and enjoyment of the suit property and decreed the suit.



7. Being aggrieved by the same, defendants Nos. 1, 2, 4, 6 and 7 filed an appeal in Regular Appeal No.102/2016.

8. The learned Judge of 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, *inter alia*, holding in Para Nos.16 to 19 as under:

"16. Ex.P27 is the survey sketch depicting the situation of suit property wherein it is stated that one Doddamaraiah is in possession of it. In corroboration of said fact, the plaintiff No.4 has admitted the suggestion that in Ex.P27 the boundaries described pertains to property possessed by his uncle. Ex.P27 also concerns with portion of Sy.No.222/3. Though exact date of preparing said sketch is not borne by said sketch however, in view of it forming part of Sy.No.222/2 and the southern and eastern boundary corresponding to suit property it could be reasonably held that the property depicted in Ex.P27 refers to suit property. The very arguments advanced by the appellants counsel that the property reserved for public utility is being misused itself lends credence



the plaintiffs' case of they being in possession of suit property and interference by the appellants, apart from establishing that defendants have clear knowledge of the identity of suit property. Therefore, the lower court was justified in holding that the plaintiffs are in possession of suit property.

17. As rightly submitted by the learned counsel for the respondents, the defendants are the third party to the suit property. As admitted by DW1 in his cross examination the defendants have no subsisting title to the suit property. Their concern is that the public property should not be misutilised. If it is the grievance of the defendants then they have to take recourse to the law for the protection of property and cannot take law into their own hands to disturb the peaceful possession of the plaintiffs. The possession of the plaintiffs holds good against the defendants except against the true owner. Upon perusing the impugned judgment, I do not find any error in appreciation of evidence or applying the principles of law. Hence, I concur with the judgment of lower court.

18. The four decisions of our Hon'ble High Court on which reliance is placed by the learned counsel for appellant could be distinguished on facts and with great deference to said decisions, I am of the opinion the same are not applicable to the facts



of the case. There is no dispute regarding the principles laid down therein.

19. In case of H.L.M.Dineshwar, the question involved appears to be regarding the plaintiffs' title and possession over the suit property and he had failed to prove the same. But in this case as already observed above, the plaintiffs have shown their possession over the suit property and in that injunction suit that is sufficient to entitle them to the relief. In case of Papamma and others there was rival claim by the defendants on the suit property. It is not the case herein. DW1 has specifically admitted that they have no title to the suit property and there only buttressing the public cause. Hence, even the said decision is not applicable to the case on hand. The decision of Hon'ble High court in case of Kanime Rangappa is concerned to the said facts and circumstances of the case. In this case, the plaintiffs have proved their possession over the suit property. The defendant had only disputed the boundaries and thereby attempted to show that there exists ambiguity regarding the identity of the suit property. But however as already observed above the evidence on record is sufficient to ascertain and identify the suit property. Hence, the said decision is not applicable to the case on hand. For the similar reason the decision of the Hon'ble High court in case



of K. Gopala Reddy is not applicable to the case on hand. Therefore, I answer point No.1 in negative and point No.2. in the affirmative."

9. Being further aggrieved by the same, Defendants No. 1, 2, 6 and 7 have preferred the present second appeal on the following grounds :

- *The impugned judgment and decree passed by the Courts below are illegal, invalid, contrary to law and material evidence on record.*
- *It is pertinent to note that as per Ex.D.2. property acquired by MUDA does not belong to the plaintiffs or their ancestors, it belongs to third person. As per Ex.D-1 no land losers site is allotted. The boundary suggested by defendants with respect to suit property towards his western side is admitted by P.W.1 in his Cross-examination. Thus the boundaries of property in plaint schedule are incorrect. All these material evidence on record are brushed aside by the Courts below.*
- *The Trial Court grossly erred in answering Issue No.1 to 3 holding that Issues 1 to 3 are inter-linked with each other to avoid the repetition and convenience, these issues are taken upon together for consideration, without discussing the each issue*



framed the finding given is incorrect. The trial Court answered the Issues 1 to 3 jointly as against to Rule 5 of Order XX of C.P.C. The first Appellate Court fails to exercise its discretion vested in it as per Sec. 96 of C.P.C. Hence, both Judgment and Decree are liable to be set aside.

- *The trial court erred in granting permanent injunction in the absence of actual plea of possession and its proof as on date of suit. The First Appellate Court overlooked this aspect of the matter.*
- *As per Ex.D-2 the copy of the Gazeette notification, the subject matter of land bearing Sy. No. 222/2, the said document discloses that one Mari @ Mada S/o. Marinnanja and Lakshamma w/o. Byrasetty was the owner of Sy. No. 222/2 are owners of the land, the land is situated at Kyathamaranahalli, all these aspects have been ignored by the courts below.*
- *The courts below grossly erred in not appreciating the fact that boundaries mentioned in the plaint are incorrect and P.W.1 himself admits during cross-examination that towards west by house property of Madamma of Hebbadi Village and not by Doddapapaiah's property and North by Puttamadaiah's property and South by Drain, further*



denied the suggestion of defense that you have mentioned the wrong boundary in the plaint as incorrect. P.W.1 admits that even today he is in possession of the boundary of Ex.P-27. But the courts below erred in decreeing the suit.

- *The courts below erred in not appreciating the fact that suit for bare injunction is not maintainable in view of non-possession of suit property by the plaintiff and denial of his title.*
- *The courts below erred in holding that during Cross-examination D.W.1 has categorically admitted the plaint schedule and wrongly come to the conclusion that plaintiffs are in possession of the suit schedule property. Weakness of the defendant cannot be considered as a trump card for the plaintiff.*

10. Sri N.S.Bhat, learned counsel for the appellants reiterating the grounds mentioned in the appeal memorandum would contend that plaintiffs are not in possession of the suit property and by falsely furnishing the boundaries, they are trying to interfere with the public road.



11. Therefore, the trial Court ought not to have decreed the suit, which has been mechanically upheld by the first Appellate Court and thus, sought for admitting the appeal on the following substantial questions of law:

i) Whether the Judgment and Decree passed by the courts below are sustainable in the eye of law?

ii) On facts and circumstances of the case, in the absence of possession as on date of suit and denial of his title, whether courts below justified in decreeing the suit for permanent injunction?

iii) In the absence of proof of possession based on documentary and oral evidence, whether courts below justified in considering a stray admission of D.W.1 is the basis for grant of permanent injunction?

iv) The title of plaintiff-is-being disputed and title also not clear, whether the suit for bare injunction is maintainable in the absence of relief of declaration.?

v) On facts and circumstances of the case, in the absence of identity of suit property and by not appointing Commissioner for the said purpose, Whether Courts below justified in granting equitable relief of permanent injunction?



vi) On facts and circumstances of the case, the boundaries mentioned in plaint schedule being incorrect, and inspite of admission of boundary of Ex. P-27 by the P.W.1, whether Courts below justified in decreeing the suit for permanent injunction?

vii) Whether Courts below justified in decreeing the suit, for permanent injunction solely based on judgment in O.S. No.440/2000 which is against MUDA?

12. *Per contra*, learned counsel for the respondents opposes the appeal grounds and submits that suit is one for bare injunction and trial Judge has noted the oral and documentary evidence on record in proper perspective and recorded a categorical finding that it is the plaintiffs who are in possession of the suit property and thus, rightly decreed the suit for bare injunction which needs no interference in the second appeal as no substantial question of law is involved in the present appeal.

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



On such perusal of the material on record, acquisition proceedings by the MUDA in respect of the land bearing Survey No.222/2 which was belonging to the ancestors of the plaintiffs, stands established by placing necessary oral and documentary evidence on record.

14. Likewise, leaving behind a vacant space, representing a residential site in the residential layout formed by the MUDA as compensation to the landowners, is also established by placing necessary material evidence.

15. A Surveyor of MUDA visiting and demarcating the portion of the acquired land which has to be left alone as site to the land losers, is also established by placing necessary material evidence on record.

16. Thus, the contentions urged on behalf of the defendants that there is a dispute as to the identity of the property cannot be countenanced in a law which has been rightly observed and a categorical finding has been recorded by the learned trial judge, which has been upheld



by supplementing additional reasons by the learned Judge in the first Appellate Court.

17. Admittedly, suit is one for bare injunction. Therefore, no other aspects need to be looked into, except the possession of the plaintiffs over the suit property.

18. Admittedly, defendants have no title to the suit property. Their apprehension is that by virtue of the prayer, public road would be affected. No such material is placed on behalf of the defendants.

19. Mere apprehension of the defendants thus, was rightly rejected by the learned trial Judge while decreeing the suit of the plaintiffs, which has been upheld by the first Appellate Court.

20. Accordingly, this Court is of the considered opinion that the substantial questions of law raised in the appeal would not merit for further consideration.

21. Hence, the following:



ORDER

Admission declined.

Appeal is ***dismissed***.

In view of the dismissal of the appeal, IA.No.2/2017
stands disposed of.

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

BK
List No.: 1 Sl No.: 67