



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 348 OF 2017 (INJ)

BETWEEN:

1. SMT. THAYAMMA
W/O LATE MAHADEVAPPA
AGED ABOUT 68 YEARS
2. SMT. VASANTHA
D/O LATE MAHADEVAPPA
AGED ABOUT 43 YEARS
3. SMT. SAKAMMA
D/O LATE MAHADEVAPPA
AGED ABOUT 38 YEARS

APPELLANT NO.1 TO 3 ALL ARE
RESIDING AT DODDARAYAPET VILLAGE
CHAMARAJANAGAR TALUK
AND DISTRICT - 571 313.

...APPELLANTS

(BY SRI. P. MAHESHA, ADVOCATE)

AND:

1. SMT NAGAMMA
W/O LATE P. PUTTASWAMAPPA
AGED ABOUT 71 YEARS
2. SRI. MADHU
S/O LATE P. PUTTASWAMAPPA
AGED ABOUT 31 YEARS
3. SRI. SHIVANNA
S/O MAHADEVAPPA



AGED ABOUT 51 YEARS

4. SRI. NANJUNDA SWAMY @ KARIAPPA
S/O MAHADEVAPPA
AGED ABOUT 42 YEARS

RESPONDENT NO.1 TO 4 ALL ARE
RESIDING AT DODDARAYAPETE VILLAGE,
CHAMARAJNAGAR TQ, AND DISTRICT - 571 313.

5. LATE LINGANNA
SINDE DEAD BY LR'S

- 5(A). SMT. USHA
W/O LATE LINGANNA
AGED ABOUT 50 YEARS

- 5(B). SRI. ABHISHEK
S/O LATE LINGANNA
AGED ABOUT 26 YEARS

- 5(C). SMT. AMBIKA
S/O LATE LINGANNA
AGED ABOUT 21 YEARS

RESPONDENT NO.5(A) TO 5(C)
ALL ARE RESIDING AT NO. 394
JALAPURI POLICE QUARTER,
MYSORE - 570 008.

6. THE SECRETARY
KODALUR GRAM PANCHAYATH
KODALUR VILLAGE
CHAMARAJNAGAR TQ, AND DISTRICT - 571 313.

...RESPONDENTS

(BY SRI. ANIL KUMAR A.S, ADVOCATE FOR
SRI. PARAMESWARAPPA C, ADVOCATE FOR R1 TO R4;
R6, R5(A TO C) - SERVED)



THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 10.11.2016 PASSED IN RA NO.33/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE AND CJM., CHAMARAJANAGAR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 27.02.2009 PASSED IN OS NO.214/20069 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN) AND JMFC., CHAMARAJANAGAR.

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.

2. Unsuccessful plaintiffs are the appellants challenging the dismissal of the suit in O.S.214/2006 dated 27.02.2009 which was confirmed in RA No.33/2009 dated 10.11.2016.

3. Facts of the case are as under:

3.1. Appellants herein filed a suit in O.S.No.214/2006 for the relief of permanent injunction in respect of the following property (hereinafter referred to as suit property):

"The house and vacant site property the house property bearing assessment No.40/1/26/1, measuring East to



West 21½ feet and North to South 25½ feet and the vacant site property bearing assessment No.40/2/26/2, measuring East to West 15 feet and North to South 25 feet and the said property are situated at Doddarayapete village Chamarajanagar Taluk and the said Doddarayapete village comes under the jurisdiction of Kudlur Grama Panchayath and the said property is bounded on:

East by: Road

West by: Galli next to that V. Nanjundashetty and Yalakkishetty's house property.

North by: Drainage and road.

South by: B.N.Basavanna and Huchappa's house property."

3.2. In the plaint, it is contended that plaintiff No.1 purchased the suit property through a registered sale deed dated 12.12.2002 for a valuable consideration of Rs.15,000/- from her vendor – Puttaswamappa.



3.3. It is further case that, after the purchase, plaintiff No.1 along with her daughters, were in possession and enjoyment of the suit property. Defendant No.1 is the wife of the vendor of plaintiff – Puttaswamappa, and defendant No.2 is their son.

3.4. Defendants though did not possess any right, title or interest in respect of the suit property, started interfering with the suit property on 18.09.2006. When they arrived near the suit property and picked up the quarrel, plaintiffs resisted their attempt and defendants went away.

3.5. Again on 08.12.2006, defendant Nos.1 to 4 with the aid of defendant No.5, came again near the suit property and started interfering with the suit property.

3.6. Defendant No.6 colluded with defendant Nos.1 to 5 in creating the revenue documents in favour of defendant Nos.1 to 4 and therefore, suit was necessitated.

4. Pursuant to the suit summons, defendants entered appearance through their Advocate.



5. Defendants contended that the plaintiffs are in fact trying to dispossess defendant Nos.1 to 4 from the suit property. Defendant No.6 visited to the spot and after verification of necessary documents from the plaintiffs as well as from defendant Nos.1 to 4, got satisfied that it is the plaintiffs who are trying to meddle with the suit property based on the sale deed said to have been executed by the husband of defendant No.1 and drew a mahazar. Therefore, defendants contended that there existed a 'galli or a passage' in between the property that has been purchased by the plaintiff and the property which is now in possession of the defendants measuring 14 feet x 15 feet as per the spot inspection carried out by defendant No.6 and therefore, sought for dismissal of the suit.

6. Defendant No.6 filed separate written statement on 04.04.2007 by contending that since there is no relief asked against defendant No.6, suit may be dismissed as against defendant No.6.

7. It is also contended by defendant No.6 that property bearing Sy.No.26/1 and 2 stands in the name of



plaintiff No.1 – Thayamma and property bearing Sy.No.27 measuring 15 feet x 14 feet stands in the name of Mahadevappa son of Nanjappa and therefore, appropriate orders be passed.

8. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and recorded the evidence of the parties and noted that plaintiffs were unable to prove that they were in possession of the suit property as is contended in the plaint and therefore, dismissed the suit of the plaintiff.

9. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.33/2009.

10. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappraisal of the material evidence on record, noted that though there is a registered sale deed in favour of plaintiff No.1 executed by Puttaswamappa, plaintiffs were unable to prove that they were in the possession of the suit property and boundaries mentioned in the sale deed and actual



boundaries mentioned in the suit did not tally with each other and therefore, there is a serious dispute as to the identity of the property and dismissed the appeal upholding the dismissal of the suit.

11. Being further aggrieved by the same, it is the plaintiffs who have approached this Court, in this second appeal on following grounds:

- *"The impugned Judgement and decree of learned Trial Court is illegal, erroneous and not maintainable either under Law or on facts.*
- *The learned courts below erred in dismissing the suit of the plaintiff on the ground of the measurement mentioned in the Registered Sale Deed is differs with the measurement stated in the assessment extract, therefore the entire Judgement and decree of both the courts below deserves to be set aside.*
- *Admittedly the plaintiff purchased Suit Schedule Property from her vendors who is none other than husband of 1st defendant and father of second defendant, and possession of*



plaintiff also admitted therefore, non granting of injunction in favour of plaintiff is erroneous.

- *The learned trial court held that the measurement in exhibit P2 Sale Deed is East West 15 ft. North South 24 Ft. But in the assessment number 40/2/26/2 measuring East West 15 ft North South 25 ft. There is an ambiguity regarding measurement. On this ground dismissing the suit in entirety contrary to the well established principles of law.*

- *It is held by the court below that there is a discrepancy in the measurement given in Suit Schedule Property and commissioner report since there is existence of East West 15 ft North South 19 ft additional property towards Northern side drainage shown in Suit Schedule Property, in fact the court below ought to have grant the lesser relief to the extent of measurement mentioned in the title deed without doing so dismissing the suit in entirety is not justified and same is contrary to the well established principles that, while rendering substantial justice court has to mould the relief.*



- *It is clear from the document produced by the defendant that the property of the plaintiff is existing as per exhibit D2, despite both the courts below not justified in dismissing the suit of plaintiff.*
- *Both the courts below erred in holding the plaintiffs have failed to examine the Panchayath officials to lead evidence in their favour, since the Panchayath has been arrived as 6th defendant they have filed a separate written statement and contesting the suit, it is not fair on the part of courts below expecting to support the case of plaintiff by the local body.*
- *Both the courts below erred in dismissing the suit of the plaintiff though they have produced the title deeds which is not disputed by the parties, therefore entire judgement and decree of courts below are contrary to the title deeds."*

12. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not properly taken into consideration that



the plaintiff No.1 being the owner of the suit property having purchased the same through a registered sale deed from Puttaswamappa, ought not to have been non-suited only on the ground that the boundaries did not tally.

13. He would further contend that defendant Nos.1 to 4 with the aid of defendant No.5, colluded with defendant No.6 and got the revenue entries mutated in the name though there is a registered sale deed in favour of plaintiff No.1 which aspect of the matter has not been considered by both Courts in proper perspective and wrongly dismissed the suit and thus sought for admitting the appeal on following substantial questions of law:

"i. Whether courts below justified in dismissing the suit of the plaintiff only on the basis discrepancy in measurement?

ii. Whether judgement and decree of courts below justified in view of well established principles of law boundary prevails over measurement?

iii. Whether judgement and decree of courts below justified in view of well established principles of law that the court can mould the relief while rendering substantial justice?



iv. Whether judgement and decree of courts below justified in not granting decree though the parties have not disputed Sale Deed in favour of Plaintiff?"

14. Per contra, learned counsel for the respondents supports the impugned judgments.

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

16. On such perusal of the material on record, it is noted that there is no dispute with regard to the sale deed executed by Puttaswamappa in favour of plaintiff No.1 on 12.12.2002.

17. It is the specific case of the plaintiff that they are in possession of the suit property soon after the sale deed came to be executed.

18. To substantiate the same, there is no material on record except the sale deed.



19. Further, the boundaries mentioned in the sale deed and the boundaries furnished in the suit property did not tally with each other.

20. It is that juncture, defendant No.6 conducted the spot inspection and drew a spot mahazar. He has specifically stated in the written statement as to the property purchased by the plaintiffs is the property bearing No.26/1 whereas the property which is claimed by the defendants is property bearing No.27.

21. Defendant Nos.1 to 4 also contended that there exists a 'galli' or passage in their additional written statement.

22. These aspects of the matter has been taken note of by the learned Trial Judge and recorded a categorical finding that the plaintiffs are unable to show the identity of the suit property based on the sale deed which has been executed in their favour by Puttaswamappa. Accordingly, dismissed the suit of the plaintiffs having regard to the prayer that the suit is one for bare injunction.



23. Learned Judge in the First Appellate Court has also reappreciated the same material on record and found that plaintiffs were unable to prove their possession over the suit property which is a *sine qua non* for granting the order of injunction and thus, rightly dismissed the appeal.

24. This Court, having regard to the scope of Section 100 of Code of Civil Procedure, cannot revisit into the factual aspects of the matter and there is no other point of law involved which can be adjudicated in this appeal.

25. Thus, the substantial questions of law raised in the appeal memorandum do not merit for further consideration.

26. Accordingly, following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.
- iii. However, it is always open for the appellants to work out their remedy in respect of the property that has



been purchased by them under the sale deed dated 12.12.2002 executed by Puttaswamappa in their favour in accordance with law.

- iv. Needless to emphasize that if any such suit is filed by the plaintiffs, defendants are at liberty to canvass all favourable points as their defence.

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 60