



IN THE HIGH COURT OF KARNATAKAAT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.619 OF 2021 (DEC/INJ)

BETWEEN:

RANGA REDDY
S/O LATE HUCHAPPA
AGED ABOUT 65 YEARS
AGRICULTURIST
RESIDENT OF DOGGANAHALLI
C N DURGA HOBLI
KORATAGERE TALUK
TUMAKURU DISTRICT-572129

...APPELLANT

(BY SRI BHARATHI.M, ADVOCATE)

AND:

BALARAMAIAH
S/O CHENNIGARAMAIAH
AGED ABOUT 60 YEARS
C N DURGA HOBLI
KORATAGERE TALUK
TUMAKURU DISTRICT-572129

...RESPONDENT

(BY SRI. SOMASHEKHARAIAH R P,ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 20.03.2021 PASSED IN R.A.NO.5032/2019 ON THE FILE OF THE IV ADDITIONAL DISTRICT JUDGE, TUMAKURU, SITTING AT MADHUGIRI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 10.08.2015 PASSED IN O.S.NO.135/2003 ON THE FILE OF THE CIVIL JUDGE AND JMFC, KORATAGERE.

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Location:
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COURT OF
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THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Smt. Bharathi M., learned counsel for the appellant
and Sri Somashekharaiiah R.P., learned counsel for the
respondent.

2. Plaintiff is the appellant in this second appeal
challenging the dismissal of the suit in O.S.No.135/2003, dated
10.08.2015, on the file of Civil Judge and JMFC., Koratagere,
confirmed in R.A.No.5032/2019, dated 20.03.2021, on the file
of IV Additional District Judge Tumakuru, sitting at Madhugiri.

3. Facts which are utmost necessary for disposal of
the present appeal are as under:

3.1. A suit for declaration and permanent injunction in
respect of the following property (hereinafter referred to as
'suit property') came to be filed by the plaintiff claiming that he
is in possession of the suit property adversely to the interest of
the defendant as well as the entire public at large and the
property occupied by him is the Government property in which



he is in possession from the year 1942 till upto the date when the defendant interfered with his peaceful possession and enjoyment of the suit property:

"Sy.No.120, measuring 5 acres out of this 2 acres of land which is bounded on

East : Govt Land,

West : Sy.No.54 and 55

North : Rest of the land in Sy.No.120

South: Plaintiff land in Sy.No.111 situated at Dogganahalli, C.N.Durga Hobli, Koratager Taluk."

3.2. Plaintiff further contended that he is the owner of Sy.No.111 of Dogganahalli Village. Plaintiff's uncle by name Puttanna acquired the title in Sy.No.111 by virtue of the revenue sale. After death of Puttanna, he left behind his wife and two daughters. Plaintiff and said legal heirs of Puttanna are in joint possession and enjoyment of the family properties and plaintiff is the manager of the same.

3.3. It is further contented that khatha of the suit property is in the name of plaintiff and daughters of Puttanna



are married and plaintiff has been in possession and enjoyment of the land in Sy.No.111 as manager of the family of Puttanna.

3.4. It is further contented that to the North of the land in Sy.No.111 there lies a land being Sy.No.120 of Dogganahalli village. The said land was carved out of original land bearing Sy.No.51, which was Government kharab land at an undisputed point of time. Puttanna leveled the said portion of the land by clearing the jungle and he commenced cultivation by raising the crops in the said land. Puttanna had also put up stone fence all around the land which had been levelled by him in the year 1942.

3.5. After Puttanna, plaintiff and his father have been in possession and enjoyment of the said land. Since it was a kharab land which the Puttanna leveled it and enjoyed the same since from 1942, he is in possession as the owner of the land by way of adverse possession. Partition of the land in Sy.No.51 took place and granted to Chikarangappa and he was cultivating the said land to the North of the land leveled by Puttanna.



3.6. It is also contented by the plaintiff that even though five acres of the land was granted to Chikarangappa, he was not cultivating the entire extent of the granted land and after Chikkarangappa, several other persons have purchased the property and they have been enjoyment of the land which was in possession of Chikarangappa.

3.7. It is further contention of the plaintiff that Chikkarangappa has sold the property to Huchappa. From Huchappa the land was transferred to Gangarudraiah by sale. From Gangarudraiah, Rudraiah purchased the land and from Rudraiah, present defendant purchased the land. Therefore, there are several transfers that took place in respect of the land which was granted to Chikkarangappa and now the same is renumbered as 120 and it is only to the extent of two acres of the land on Southern side of Sy.No.120 which was in possession of the plaintiff from the time immemorial without any disturbance.

3.8. Therefore, Puttanna and his descendants and now plaintiff are in enjoyment of two acres of land in Sy.No.120 for a period of more than six decades and sought for declaration



that plaintiff is the owner in possession of two acres of the land as is mentioned in the plaint schedule and thus, sought for injunction against the defendant.

4. Pursuant to the suit summons, defendant entered appearance and denied the plaint averments in *toto* and sought for dismissal of the suit.

5. Learned Trial Judge, after raising necessary issues, noted that there is no pleading nor proof for having enjoyed the suit property adversely to the interest of all concerned and dismissed the suit of the plaintiff.

6. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in R.A.No.5032/2019.

7. Learned Judge in the First Appellate Court, after securing the records heard the arguments of parties in detail and on re-appreciation of the material on record dismissed the appeal of the plaintiff *inter alia* holding in paragraphs 26 and 27 as under:

"26. In the light of above settled position of law, when the plaint averments as well the evidence adduced by the plaintiff are re-appreciated, it reflects to the naked eyes that the plaintiff has simply asserted that his uncle was



cultivating an extent of 2 acres out of the then Sy. No: 51 from the year 1942, but no single piece of document had been placed on record to substantiate the said aspect of matter, and since the plaintiff was only aged about 47 years in the year 2003, it has to be inferred that he was not even born in the year 1942 and therefore, not personally aware of his uncle coming into such possession of the suit schedule property, as claimed in the suit, under the Government. In addition to it, the very plaintiff having had admitted the grant of an extent of 5 acres out of then Sy.No.51 in favour of Chikkarangappa ought to have denied the title of the Government or to challenge the grant so made in favour of beneficiary including the subsequent alienations made in favour of various persons including the present defendant from the year 1962 to till the date of suit I.e, abruptly for more than 40 years on record and thereby, he has acquiseized to the title and actual possession of defendant and his vendors/predecessors in title. That apart, when the reliance had been placed on the sketch marked at Ex.P.5 is also set-at rest by the competent authority as per the order under Ex.D71, absolutely, no other piece of oral or documentary evidence placed on record would show either the title or actual possession including alleged encroachment by the plaintiff as claimed in the suit. It is also felt relevant at this juncture to observe that, even today, the plaintiff do not admit the title of defendant over the suit property, but his claim is that the original grantee including vendors to the defendant did not possessed the land to the extent of 05 acres as per the grant certificate, and he continued to be in possession since the year 1942,



which could be highly unacceptable under the given facts and circumstances of the case. So also, there is absolutely no basis for the plaintiff to come into possession of the suit schedule property from the original grantee or the vendor to this defendant. Since the law mandates that the person must be lawfully inducted but his possession should become adverse subsequent to such induction, which is not seen in the present case in hand. Since the plea of adverse possession intend to defeat the rights of true owner, the plaintiff cannot even seek equities but to establish his case by specific pleading and evidence by brining all the necessary constituents, such as, nec vi, nec clam and nec precario as laid by the Hon'ble Supreme Court of India in the catena of decisions.

27. In that view of the matter, in fact, the learned trial Court having had taken up issue No.1 and 2 together for common discussion from relevant Paras.8 to 14 has elaborately discussed the pleadings and evidence adduced by both side at a great length in the right perspective by making prper reference to the decisions on the point. In deed, it has touched upon the case from all possible intristic touchstones and thereby, rightly and properly concluded that the plaintiff has utterly failed to establish his claim for grant of declaration of title and permanent injunction on the basis of adverse possession. Said reasoning as well as finding being the proper, correct and legal would not even call for second opinion and thus, deserve to be confirmed. While doing so, it is also felt relevant to observe that the suit filed by the very defendant



/ respondent in O.S.No.194/2003 having had been decreed and thus, confirmed in R.A.No.177/2012, the title as well as the actual possession of the defendant over the land measuring 5 acres in Sy.No.120 of Doddanahalli village remain unaffected and deserve to be accepted to have attained finality. Same would rather bind the plaintiff. In that view of the matter also, taking into consideration of the totality of the facts and circumstances of the case this Court is of the further considered opinion that no error or illegality is found to have committed by the learned trial Court under the impugned judgment and decree and the same being just, proper and correct would deserve to be confirmed. With the above observation and for the reasons stated supra, I am inclined to answer the points No.3 and 4 in the negative."

8. Being further aggrieved by the same, plaintiff has filed the present second appeal on the following grounds:

- *The impugned judgment and decrees passed by the courts below, suffer from illegality of substantial nature, resulting in failure of justice. Hence they are liable to be set aside and the suit to be decreed as prayed for.*
- *The courts below have failed to notice that having regard to the pleadings, an issue relating to the appellant perfecting his title by reason of adverse possession in respect of the suit property is required to be framed and for rendering the decision on that issue parties should be given opportunity to lead evidence and establish their*



respective case. Without framing an issue and recording finding that the appellant has not proved his title to the property by reason of adverse possession, is highly illegal and unsustainable. The parties must be made known as to what type of the evidence they are required to produce before the court and that can be done only by framing necessary issues on the pleadings. The trial court, in paragraphs 11, 12 and 13 goes on discussing the case and records finding on the question of the appellant perfecting his title by reason of adverse possession. This is illegal.

- *The appellate court, while considering the appeal on merits, in paragraphs 26 to 36, records finding that the appellant has not established his title to the suit property by reason of adverse possession. In fact, it could be noticed in the judgment of the appellate court that point No.3 is relating to the appellant establishing his title to the suit property by reason of adverse possession. The appellate Court has failed to notice the illegality committed by the trial court in not framing an issue and not providing opportunity to the parties to establish their case. The very approach made by the appellate Court is apparently illegal and hence the judgment of the appellate Court is liable to be set aside.*
- *The courts below have failed to notice that in paragraph 3 of the plaint the appellant has specifically pleaded that one Chikkarangappa was granted land in Sy. No.51 and he was in possession excluding the area which was*



unauthorisedly occupied by Puttanna the uncle of appellant and the same was purchased by Gangarudraiah and in turn by Rudraiah and the respondent has purchased from the said Rudraiah. The respondent, in his written statement in paragraph 3, has stated that "It is true that after Huchappa, many people have purchased Sy. No.120 and later on defendant purchased it from Rudraiah". He does not say as to how Huchappa got 5-00 acres of land in Sy. No.120. The courts below have failed to notice that no document is produced by the respondent to establish how Huchappa became the owner of 5-00 acres of land. The documents produced at Ex.D-1 to D7, D-8 to D-10, D13, D15, D24, D25 & D27 are not at all related to the disputed 2-00 acres of land which is the suit properties. Those documents do not give any link with respect to grant of land either to Huchappa or the predecessors in title of the defendant. As such it is clear that the judgments have been rendered by the courts below without application of mind and without considering the evidence on record.

- *The appellant court has committed illegality in permitting the respondent to produce additional evidence in the course of the appeal by allowing the application filed under Order 41 Rule 27 of the CPC. If the appellant Court thinks that additional evidence is required from either of the parties, it should have permitted the parties to adduce further evidence and rebuttal. As such the procedure adopted by the appellate court is prima facie*



illegal and consequently the impugned judgment is vitiated.

- *The appellate court has committed illegality in dismissing the application filed by the appellant under Order 26 Rule 9 & 10 of the CPC for appointment of a commissioner to make spot inspection and submit report with regard to the person in actual possession and enjoyment of the disputed property. The appellate court has erroneously rejected the application on erroneous ground that the appellant is asking the court to collect evidence on his behalf. This approach of the appellate Court is illegal and unsustainable."*

9. Smt. Bharathi, learned counsel appearing for the appellant reiterating the grounds urged in the appeal memorandum would contend that from the year 1942, Puttanna enjoyed the suit property by leveling the Government kharab land and even though there was a grant of five acres of land to Chikkarangappa who is the predecessors-in-title of the defendant, Chikkarangappa himself did not enjoy the entire five acres of land and two acres of the granted land was enjoyed by Puttanna and his descendants for a period of more than six decades without disturbance from anybody. Therefore, the suit ought to have been decreed.



10. She would further contend that both the Courts failed to note that Sy.No.120 of Dogganahalli village was carved out of original Sy.No.51 and there is no material on record to show that Chikkrangappa enjoyed five acres of land as per the grant order and several transfers that has taken place from Chikkrangappa would make it clear that he was not in possession of entire five acres of land.

11. Therefore, two acres of land enjoyed by the plaintiff and his predecessors-in-title namely, Puttanna, the suit ought to have been decreed and thus, sought for admission of the appeal on the following substantial questions of law:

- i. *"Whether the courts below are justified in law in recording finding on the question of the appellant acquiring the title to the suit property by reason of adverse possession, without framing issue and without of affording opportunity to lead evidence ?*
- ii. *Whether courts below are justified in law dismissing the suit of the appellant on the basis of documents produced by the respondent which have nothing to do with the disputed property ?*
- iii. *Whether the appellant court is justified in law in passing the judgment when it allowed the respondent to produce additional evidence before the appellate court ?*



iv. Whether the appellant Court is justified in law in dismissing the application filed by the appellant under Order 26 Rule 9 and 10 of the CPC for appointment of a commissioner ?”

12. Per contra, Sri Somashekharaiiah R.P., learned counsel for the respondent would oppose the appeal grounds and support the impugned judgments by contending that in the case on hand there is neither proper pleading nor proof for the adverse possession. There is no dispute as to the property enjoyed by the plaintiff in Sy.No.111.

13. However, with regard to two acres of the land which has been claimed as adverse possession, plaintiff has not made out any title and therefore, the dismissal of the suit by both the Courts is just and proper and sought for dismissal of the appeal.

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

15. On such perusal of the material on record, the sale deed in favour of Puttanna is not in dispute i.e. in respect of land in Sy.No.111.

16. What is the disputed portion is the two acres of land said to have been enjoyed by Puttanna and subsequently by



the plaintiff being the manager of the Puttanna's family adversely to the interest of the Government as well as the defendant.

17. There is no dispute with regard to the grant of five acres of land carved out of original Sy.No.51 which is now renumbered as Sy.No.120 of Dogganahalli village in favour of Chikkarangappa. There are several alienations that Chikkarangappa has made.

18. However, to establish that Chikkarangappa has enjoyed only three acres of the land which he transferred to several people there is no other material on record nor there is any proof to establish that adversely to the interest of Chikkarangappa after the grant, plaintiff enjoyed the property for more than a period of twelve years.

19. No documentary evidence is placed on record before the Trial Court to establish the same. Before the First Appellate Court a feeble attempt is no doubt made to place additional evidence on record which was rejected by the learned Judge in the First Appellate Court.

20. First Appellate Court did consider the material on record and found that there is no proof of when exactly the



plaintiff started enjoying the suit property adversely to the interest of the real owner and therefore, upheld the judgment of the Trial Court in dismissing the suit of the plaintiff.

21. Thus, on factual aspects, two Courts have concurrently held that plaintiff failed to prove all ingredients to grant the decree of declaration by way of adverse possession in respect of the suit property.

22. As such, this Court does not find any merit in the substantial questions of law raised in the appeal memorandum.

23. Consequently, the following:

ORDER

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

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