



CNR: KAHC010232312021

NC: 2026:KHC:39358
RSA No. 900 of 2021
C/W RSA No. 807 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 900 OF 2021 (DEC/INJ)

C/W

REGULAR SECOND APPEAL NO. 807 OF 2021 (DEC/INJ)

IN RSA No. 900/2021

BETWEEN:

SHRI. MUNIYAPPA
S/O LATE MARANNA
SINCE DEAD BY HIS LRS

1. SRI. M. RAJU
AGED ABOUT 49 YEARS
S/O LATE MUNIYAPPA
RESIDING AT NO.169, 34TH CROSS
JOOGANAHALLI 2ND BLOCK,
RAJAJINAGAR, BANGALORE - 560 010.
2. SMT. JAYAMMA
AGED ABOUT 62 YEARS
W/O LATE MUNIYAPPA
RESIDING AT NO.169, 34TH CROSS
JOOGANAHALLI 2ND BLOCK
RAJAJINAGAR, BANGALORE - 560 010.
3. SMT. PADMA
AGED ABOUT 44 YEARS
D/O LATE MUNIYAPPA
R/O NO.855, PIPELINE,
NORTH CROSS GOKUL 1ST STAGE,
4TH PHASE, YESHWANTHPUR
BANGALORE - 560 022.

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KARNATAKA



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4. SMT. BHAGAYAMMA
AGED ABOUT 40 YEARS
D/O LATE MUNIYAPPA
R/O NO.29, 2ND MIAN ROAD
KARIYAPPA LAYOUT
YERRAYANAPALYA
RAMMURTHYNAGAR
BENGALURU - 560 016

...APPELLANTS

(BY SRI. MOHD USMAN SHAIKH, ADVOCATE)

AND:

SHRI. B. VIJAY GUJJAR
S/O BABURAO GUJJAR
AGED ABOUT 71 YEARS
R/O NO.208, 1ST FLOOR,
PARAKASHNAGAR,
DR. RAJKUMAR ROAD,
BANGALORE - 21.

...RESPONDENT

(BY SRI. T.N. VISWANATHA, ADVOCATE FOR C/R)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 03.11.2020 PASSED IN RA.No.32/2017 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 07.04.2017 PASSED IN OS.No.120/2014 (OLD OS.NO.33/2008) ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC MAGADI.

IN RSA NO. 807/2021

BETWEEN:

SHRI. MUNIYAPPA
S/O LATE MARANNA
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...RESPONDENT

(BY SRI. T.N. VISWANATHA, ADVOCATE FOR C/R)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 03.11.2020 PASSED IN RA.NO. 33/2017 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE ORDER DATED 07.04.2017 PASSED IN OS.NO.534/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., MAGADI.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. Mohammed Usman Shaikh, learned counsel for the appellants Sri. T.N. Vishwanatha, learned counsel for the respondents.

2. Parties are referred to as the plaintiff and defendant as per their original ranking in OS No.120/2014.

3. These two appeals are filed by the plaintiffs in O.S.No.120/2014 and defendants in O.S.No.534/2014 challenging the dismissal of the suit for declaration and



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injunction and decreeing the suit of the respondents granting injunction respectively in respect of the following property (hereinafter referred to as the suit property).

SCHEDULE

All that piece and parcel of the property bearing Sy.No.127/2, measuring 2 Acres 39 guntas of Basavanahalli Village, solur Hobli, Magadi Taluk, bounded on :

*East by : Ramaiah's property
West by : Gangamaraiah's property
North by: Basavaiah property
South by : Junjaiah @ Ayya's property.*

4. Facts of the case are as under :

4.1. Plaintiff filed a suit for declaration and injunction in respect of the suit property, contending that his grandmother Thimmakka, purchased the suit property from Sri Nanjappa on 16.04.1960 through a registered sale deed to the extent of 2 acres 39 guntas out of the total extent of 3 acres 24 guntas.



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4.2. It is his case that, Thimmakka was in possession and enjoyment of the suit property all along and after sale of the land in favour of Thimmakka by the erstwhile owner, taking advantage of illiteracy of Thimmakka, vendor of the Thimmakka dealt with the property and several other transactions took place in respect of the suit property, without there being any right, title or interest having sold the property in favour of Thimmakka.

4.3. It is further contented by the plaintiff, when he visited the suit property from the villagers he came to know that defendant has purchased the suit property in the year 2005 by registered sale deed. Therefore, questioned the defendant as to why he has interfered with the peaceful possession and enjoyment of the suit property which was in his occupation after the death of his grandmother.



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4.4. It is his case that after death of grandmother, his father and himself were cultivating the suit land by digging a bore well in the suit property and also constructing a house measuring 30 feet x 40 feet.

4.5. Pursuant to the suit summons, defendant entered appearance and filed written statement and also filed another suit for bare injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property.

4.6. Defendant categorically denied the plaint averments in *toto* including the identity of the plaintiff. Defendant took a specific contention that plaintiff is not the grandson of Thimmakka and he is a stranger to the suit property.

4.7. Defendant also contended that after verifying the records in respect of the suit property, he has purchased the property by way of a sale deed dated 22.06.2005.



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4.8. Based on the rival contentions, learned trial Judge raised necessary issues and after recording the evidence of the parties, dismissed the suit of the plaintiff and decreed the suit of the defendant for injunction.

4.9. Being aggrieved by the same, plaintiff filed two appeals in RA No.32/2017 challenging the dismissal of his suit and RA No.33/2017 challenging the decreeing of the suit of the defendant.

4.10. Learned Judge in the First Appellate Court after securing the records, heard the arguments of both the parties in detail and on re-appreciation of the material evidence on record, dismissed both the appeals of the plaintiff not only agreeing with the reasons assigned by the Trial Court, but also supplementing additional reasons including the question of limitation.

5. Being further aggrieved by the same, these two appeals are filed by the plaintiff.



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6. Sri. Mohammed Usman Shaikh, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not properly appreciated the probative value of Exhibit P1 which is a registered sale deed executed by the erstwhile owner Nanjappa, son of Nanjundaiah in favour of Smt. Thimmakka.

7. He would emphasize that plaintiff being the grandson of Thimmakka, succeeded to the property of Thimmakka after the death of Thimmakka and his father. Therefore, Trial Court ought to have decreed the suit of the plaintiff and dismissed the suit of the defendant.

8. Sri. Mohammed Usman Shaikh also contended that the First Appellate Court did not subscribe its view with regard to the finding recorded by the learned Trial Judge that there is a dispute as to the identity of the very plaintiff himself, but failed to decree the suit of the plaintiff on the question of limitation and other aspects of the



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matter, which was not the scope of the appeal before the First Appellate Court especially when the appeal is filed by the plaintiff.

9. Counsel for appellant also emphasizes that material documents placed on record would go to show that the sale deed executed by Nanjappa in favour of Timmakka was not cancelled at any point of time. When once the suit property has been conveyed out of 3 acres 24 guntas, the original owner Nanjappa did not have right, title or interest in respect of the suit property again to be conveyed in favour of the defendant. Thus, the dismissal of the suit of the plaintiff and decreeing the suit of the defendant has resulted in grave miscarriage of justice and sought for admitting the appeal on the following substantial questions of law in each of these appeals:

Substantial questions of law in RSA No.900/2021

1) Whether appellate court is right in passing the impugned judgment, in violation of the settled position of law such as



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(i) A question which did not arise from the pleadings and which was not the subject-matter of an issue cannot be decided by the court.

(ii) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings.

(iii) A court cannot make out a case not pleaded.

(iv) That court should confine its decision to the question raised in pleadings.

2) Whether appellate court is justified in traveling beyond the scope of pleadings?

3) Whether appellate court is justified in holding that sale deed dated 16/04/1960 the Ex-p-1 as not valid on the face of section 55(1) and (2) of Transfer of Property Act, which assures implied warranty of title?

4) Whether the Appellate court is right in interpreting that section '7' of Transfer of Property Act to the effect that only absolute owner of immovable property can sell it?

5) Whether the appellate court justified in misconstruing the sale deed as not at all a sale deed?



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6) Whether the Appellate court is right in depriving the appellant of the schedule property holding that the vendor of the appellant was incompetent to execute the sale deed?

Substantial Question of Law in RSA No.807/2021:

1) Whether appellate court is right in passing the impugned judgment, in violation of the settled position of law such as

(i) A question which did not arise from the pleadings and which was not the subject-matter of an issue cannot be decided by the court.

(ii) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings.

(iii) A court cannot make out a case not pleaded.

(iv) That court should confine its decision to the question raised in pleadings.

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6) Whether the Appellate court is right in depriving the appellant of the schedule property holding that the vendor of the appellant was incompetent to execute the sale deed?

10. Per contra, learned counsel for the respondent/subsequent purchaser of the suit land by virtue of the sale deed dated 22.06.2005, supports the impugned judgments. He would further contend that plaintiff utterly failed to establish before the Court that he is the grandson of Thimmakka. He also pointed out that to suit the names occurring in the sale deed especially the husband of Thimmakka, plaintiff gone on changing his version and categorical admission in his cross-examination that he does not remember his grandfather's name.

11. He would invite attention of this Court that in the appeal filed by him before the revenue authorities, he has shown his father's name as Maranna whereas in the driving license admitted by him, he has shown his father's name as Muniswamappa.



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12. He would also point out that consistently in the voter's lists; father's name of the plaintiff has been shown as Muniswamappa.

13. Pertinently, in Ex.P.1, the husband name of Thimmakka is shown as Maranna. It has been styled as Thimmakka 'Kom' Maranna which has been misread by the plaintiff as Kumaranna and has conveniently given his father's name in the voter id as Kumarappa.

14. When two to three documents are placed on record consisting different names of the father of the plaintiff, it was incumbent on the part of the plaintiff to establish with cogent evidence that he is the grandson of Thimmakka which he failed and therefore, suit was rightly dismissed by the Trial Court.

15. He would also contend that land in Sy.No.127/1 is sold as per Ex.D.9 and not Sy.No.127/2. Therefore, the First Appellate Court rightly reappreciated the material evidence on record and dismissed the appeal filed by the plaintiff and therefore, sought for dismissal of both the appeals.



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16. He would further point out that defendant is able to place necessary evidence on record to establish his possession over the suit property by revenue entries, photographs wherein bore well is being dug by the defendant by spending his own money.

17. Therefore, the contentions urged on behalf of the plaintiff was rightly rejected by both the Courts and sought for confirmation of the injunction order granted by the Trial Court upheld by the First Appellate Court by dismissing the appeal filed by the plaintiff.

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

19. On such perusal of the material on record, it is noticed that it is the plaintiff who has approached the Court with a prayer for declaratory relief in respect of the suit property expect marking Ex.P.1 and RTC extract vide Exs.P.2 to 4, there is no other material on record to establish the possession over the suit property by the plaintiff.



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20. Patta book that has been placed on record in the name of Thimmakka shows that she is the wife of Maranna. Suggestions were made to the plaintiff to the effect that Thimmakka as is shown in Exs.P.2 to 4 including the patta book, Thimmakka is not the wife of Kumarappa or Kumaranna as is propounded by the plaintiff all along in the plaint and deposed before the Court in the examination-in-chief affidavit.

21. Further, whenever there is an identity of the person, such person is required to place necessary proof under Section 50 of the Indian Evidence Act.

22. How to prove a relationship is no longer *res integra*. Hon'ble Apex Court in the case of ***Dolgobinda Paricha v. Nimai Charan Misra and Others*** reported in ***AIR 1959 SC 914*** in paragraph No.7, it has been held as under:

"7. It is necessary to state here that how the conduct or external behaviour which expresses the opinion of a person coming within the meaning of Section 50 is to be proved is not stated in the section. The section merely says that such opinion is a relevant fact on the subject of relationship of one person to another in a case where the court has to form an opinion as to that relationship. Part II of the Evidence Act is headed "On Proof". Chapter III



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thereof contains a fascicule of sections relating to facts which need not be proved. Then there is Chapter IV dealing with oral evidence and in it occurs Section 60 which says inter alia:

"60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds."

If we remember that the offered item of evidence under Section 50 is conduct in the sense explained above, then there is no difficulty in holding that such conduct or outward behaviour must be proved in the manner laid down in Section 60; if the conduct relates to something which can be seen, it must be proved by the person who saw it; if it is something which can be heard, then it must be proved by the person who heard it; and so on. The



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conduct must be of the person who fulfils the essential conditions of Section 50, and it must be proved in the manner laid down in the provisions relating to proof. It appears to us that that portion of Section 60 which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of Section 50 in the sense that opinion expressed by conduct must be proved only by the person whose conduct expresses the opinion. Conduct, as an external perceptible fact, may be proved either by the testimony of the person himself whose opinion is evidence under Section 50 or by some other person acquainted with the fact which express such opinion, and as the testimony must relate to external facts which constitute conduct and is given by persons personally acquainted with such facts, the testimony is in each case direct within the meaning of Section 60. This, in our opinion, is the true interrelation between Section 50 and Section 60 of the Evidence Act. In Queen Empress v. Subbarayan [(1885) ILR 9 Mad 9, 11] Hutchins, J. said:

"That proof of the opinion, as expressed by conduct, may be given, seems to imply that the person himself is not to be called to state his own opinion, but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to us to afford an exceptional way of proving a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge."



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While we agree that Section 50 affords an exceptional way of proving a relationship and by no means prevents any person from stating a fact of which he or she has special means of knowledge, we do not agree with Hutchins, J. when he says that the section seems to imply that the person whose opinion is a relevant fact cannot be called to state his own opinion as expressed by his conduct and that his conduct may be proved by others only when he is dead or cannot be called. We do not think that Section 50 puts any such limitation."

23. To establish such relationship of the plaintiff with Thimmakka, plaintiff had the opportunity of examining his father who was alive till up to the year 2013. No such attempt is made by the plaintiff.

24. Uncles or any other relatives of the plaintiff could have been examined to establish that plaintiff is the grandson of Thimmakka whose name is found in Ex.P.1. But no such attempt is made by the plaintiff.

25. Further, plaintiff is claiming that he is in possession of the suit property. It is his specific say that his grandmother was cultivating the land till up to the year 1992 and thereafter



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it is the father of the plaintiff and plaintiff together cultivated the land.

26. A specific suggestion is made in the cross-examination of P.W.1 that he is a driver by profession which was denied. When the copy of the driving license obtained from the RTO office is confronted, P.W.1 admits that it contains his signature though he denied about the identity of the photograph found in the said document.

27. Said document is placed on record and marked as Ex.D.1 before the Trial Court as P.W.1 admitted the said document.

28. On perusal of Ex.D.1, it is crystal clear that name of the father of the plaintiff is shown as 'Muniswamappa' and not as Maranna, Kumaranna or Kumarappa. What has been styled in Ex.P.1 is Thimmakka Kom Maranna. To suit the stand taken by the plaintiff, it has been mentioned that Thimmakka's husband name is Kumaranna instead of Maranna.

29. In fact, when the revenue proceedings took place after he came to know about the sale deed of the defendant, he



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has styled himself as son of Maranna which is up against the records before the Governmental authorities wherein fathers name of the plaintiff is shown as Muniswamappa.

30. Voters list that has been placed on record after confronting the same and marked as exhibit before the Trial Court, would go to show that not once, but atleast in two to three elections, his name has been shown as son of Muniswamappa instead of Maranna, Kumaranna or Kumarappa.

31. A new voter's ID card is placed on record after the cross-examination wherein the father's name of the plaintiff is shown as Kumarappa. Therefore, plaintiff is required to place on record whether he is the son of Maranna, Kumaranna, Kumarappa or Muniswamappa.

32. Plaintiff utterly failed to prove these aspects of the matter.

33. It is also pertinent to note that very cleverly, P.W.1 failed to answer the specific question put to him as to name of his grandfather. P.W.1 evasively answered the said question that he has forgotten the name of his grandfather. If it is so



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how the name of Kumarappa would appear in the voter card which has been subsequently placed on record is a question that remains unanswered.

34. Further, to establish the possession over the suit property, expect producing Exs.P.2 to 4 and the patta book in the name of Thimmakka, no other document is forthcoming.

35. On the contrary, overwhelming material evidence is placed on record by the defendant to show his possession over the suit property on and from the date of purchase of the suit property i.e., 22.06.2005.

36. In fact a bore well is being dug by the defendant which has been stated by the plaintiff that his father has dug the bore well. No documentary evidence is placed on record by the plaintiff to show that his father has dug the bore well and obtained the electricity connection.

37. P.W.1 has specifically stated that electricity connection to the bore well is in the name of his father and failed to produce any material on record.



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38. Likewise, he has stated that there is a house constructed by his father measuring 20 feet x 40 feet in the suit property.

39. What has been seen in the photograph that has been placed on record by the defendant is a temporary structure that has been constructed in his suit property with hollow bricks which may not measure more than 15 feet x 20 feet.

40. These aspects of the matter would only go to show that plaintiff somehow wanted to lay claim on the suit property claiming himself to be the grandson of Thimmakka.

41. When there are material evidence which has been rightly appreciated by both the Courts and the factual finding has been recorded that the plaintiff failed to prove that he is the owner of the suit property including point of limitation and held that suit was filed in the year 2008 and renumbered as 2014 and therefore suit was in time.

42. Having regard to the scope of Section 100 of Code of Civil Procedure, this Court does not find any infirmity or



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perversity in the impugned judgments so as to admit the appeal for further consideration as no legal issue is involved.

43. Thus from the above discussion, this Court is of the considered opinion that the substantial questions of law raised in the appeal memorandum do not merit for further consideration.

44. Accordingly, the following:

ORDER

- i. Admission is declined.
- ii. Appeals are ***dismissed***.

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

SNC/KAV
List No.: 1 Sl No.: 44