



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 634 OF 2026 (DEC/INJ)

BETWEEN:

SRI SIDDAPPA
S/O. LATE NINGAPPA,
SINCE DEAD BY LRS.

1. SRI. SEKARAPPA,
S/O. SIDDAPPA,
AGED ABOUT 53 YEARS,
2. SMT. GOWRAMMA
W/O. CHIDAMBARA,
D/O. SIDDAPPA,
AGED ABOUT 49 YEARS,

BOTH ARE RESIDENT OF
GOLLARAHALLI VILLAGE,
JAVAGAL HOBLI, ARASIKERE TALUK,
HASSAN DISTRICT - 573 125.

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA

...APPELLANTS

(BY SRI. SOMASHEKHARAIHA R.P., ADVOCATE)

AND:

SRI. THIMMAPPA
S/O. LATE PATEL GIRIGOWDA,
SINCE DEAD BY LRS.

1. SRI. HANUMANTHAPPA G.T.
S/O. LATE THIMMAPPA,
AGED ABOUT 58 YEARS,



2. SRI RAMESH G. T.
S/O. LATE THIMMAPPA,
AGED ABOUT 56 YEARS,
3. SRI LOKESH G. T.
S/O. LATE THIMMAPPA,
AGED ABOUT 54 YEARS,
4. SRI GOVINDARAJU
S/O. LATE THIMMAPPA,
AGED ABOUT 53 YEARS,
5. SRI. SIDDESH G.T
S/O. LATE THIMMAPPA,
AGED ABOUT 51 YEARS,
6. SRI. JAYADEVAPPA
S/O. LATE SIDDAPPA,
AGED ABOUT 58 YEARS,

ALL ARE RESIDING AT
GOLLARAHALLI VILLAGE,
JAVAGAL HOBLI, ARASIKERE TALUK,
HASSAN DISTRICT - 573 125.

...RESPONDENTS

(BY SRI. CHETHAN B, ADVOCATE FOR C/R1)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 3.03.2026 PASSED IN RA NO.41/2023 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, ARSIKERE., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.07.2023 PASSED IN OS NO.3/2014 ON THE FILE OF ADDITIONAL CIVIL JUDGE AND JMFC, ARSIKERE.

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.Somashekharaiiah R.P., learned counsel for the appellants and Sri.Chethan B., learned counsel for respondent No.1.

2. Present second appeal is filed by the defendants challenging the concurrent finding declaring that respondent/plaintiff is the owner of the property bearing Sy.No.161/1A measuring 1 acre 35 guntas situated at Gollarahatti, Karagunda Dhakale village, Javagal Hobli, Arasikere Taluk bounded on East by property of Inahalli Sidduranna, West by property of defendant No.1, North by remaining property of the plaintiff and road and South by property of Thimappanahalli Siddappa (hereinafter referred to as suit property).

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

3.1. A suit for bare injunction came to be filed by the original plaintiff in respect of the suit property at the first



instance and when the defendants raised objection about the title in the written statement, plaint got amended and relief of declaration was also sought for.

3.2. Plaintiff contended that suit property belongs to the plaintiff and he is the owner-in-possession of the suit property and sought a declaration that sale deed dated 18.03.2005 executed by defendant No.2 – Jayadevappa in favour of plaintiff is not binding upon the rights of the plaintiff over the suit property and to restrain defendant No.2 or any person claiming under him from interfering the peaceful possession and enjoyment of the suit property.

3.3. Plaintiff also contended that father of the plaintiff namely Patel Girigowda under the registered sale deed dated 19.02.1959 purchased the suit property from its erstwhile owner.

3.4. Based on the said sale deed, revenue entries were mutated and after the death of father of the plaintiff, revenue entries were again mutated in the name of plaintiff. Thus, plaintiff contended that plaintiff and his children are owners-in-



possession of the suit property and they were paying taxes to the concerned authorities.

3.5. It is also contended that defendants having no right, title or interest over the suit property started interfering with the suit property.

3.6. It is further contended by the plaintiff that defendant No.2 - Jayadevappa was the owner of Sy.No.162 which he had sold to third parties several years ago and he was left with no property and about six months earlier to the filing of suit, defendant No.1 along with his children and their henchmen, came near the suit property and tried to interfere with the possession of the suit property.

3.7. Plaintiff with the assistance of the villagers, protected his possession and obtained revenue entries in respect of the suit property and noted that defendant No.2 clandestinely sold the suit property in favour of defendant No.1 by registered sale deed dated 18.03.2005.

3.8. Thereafter, plaintiff enquired about illegal acts of the defendant and filed complaint. Despite filing such criminal



complaint, defendants did not heed to the request made by the plaintiff and therefore, suit was necessitated.

4. Upon service of suit summons, both the defendants appeared before the Court and it is defendant No.1 who filed written statement and contested the suit.

5. Defendant No.1 contended in his written statement that plaintiff is not the owner of the suit property and he was never in possession of the suit property.

6. It is the specific case of defendant No.1 that plaintiff is the owner of land in Sy.No.161/2 to the extent of 2 acres 8 guntas and further contended that defendant No.1 purchased the suit property from defendant No.2 by registered sale deed dated 18.03.2005 and got mutated the revenue entries entered in his name and therefore, plaintiff has no right, title or interest over the suit property.

7. Defendant No.1 also contended that attempt made by the plaintiff in suppressing the material facts is only knock off the valuable property of defendant No.1 and sought for dismissal of the suit.



8. Based on the rival contentions of the parties, learned Trial Judge raised following issues:

1. *"Whether the plaintiff proves that plaintiff is the absolute owner of the suit schedule property?*
2. *Whether the plaintiff further proves that the sale deed executed by defendant No.2 in favour of defendant No.1 is not binding on plaintiff?*
3. *Whether the plaintiff further proves that defendants are interfering in plaintiff peaceful possession of the suit schedule property?*
4. *Whether plaintiff is entitled for judgment and decree as prayed for?*
5. *What order or decree?"*

9. In order to prove the case of the plaintiffs, plaintiff – Thimmappa got examined himself as P.W.1 and three more witnesses namely Lokesh, Kalyankumar and Jayadevappa as P.W.2 to 4. Among them, Lokesh G. T. is the son of the plaintiff who died during the pendency of the suit before the evidence of the plaintiff could be concluded.

10. On behalf of the plaintiff, 26 documents were placed on record which were exhibited and marked as Exs.P.1



to 26 comprising of General Power of Attorney, RTC extracts, mutation extracts, registered sale deed dated 19.02.1959, certified copy of the sale deed dated 18.03.2005, certified copy of the sale deed dated 10.06.1963, registered sale deed dated 10.06.1963, RTC extracts, encumbrance certificates, certified copy of the sale deed dated 05.10.1972 and mutation extracts.

11. As against the material evidence placed on record, Shekharappa being the son of defendant No.1 was examined as D.W.1 and placed on record 21 documents which were exhibited and marked as Exs.D.1 to D.21 comprising of index of land, records of rights, RTC extracts, complaint, Special Power of Attorney, original sale deed dated 18.03.2005, encumbrance certificate, report submitted by the revenue inspector, sketch in respect of Sy.No.161, mutation extract, sketches, Form No.5 and certified copy of judgment in CC No.2058/2012.

12. On conclusion of recording of the evidence, learned Trial Judge heard the arguments of the parties in detail and on cumulative consideration of the oral and documentary evidence placed on record, decreed the suit of the plaintiff.



13. Operative portion of the order of the Trial Court reads as under:

"The suit of the plaintiff is hereby decreed with cost.

Consequently, it is declared that the plaintiff is the owner and in possession of the suit schedule property.

Further, it is declared that sale deed dated 18.03.2005 executed by defendant No.2 in favour of defendant No.1 is not binding upon the rights of the plaintiff over the suit schedule property.

Further the defendants or any persons claiming under them are permanently restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property."

14. Being aggrieved by the same, defendant filed an appeal before the First Appellate Court in RA No.41/2023.

15. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on reappraisal of the material evidence placed on record, dismissed the appeal *inter alia* holding in paragraph Nos.26 to 28 as under:

"26. The plaintiff has also sought for the relief of declaration that the sale deed dated:18.03.2005 executed



by defendant No.2 in favour of defendant No.1 is not binding upon his rights over the suit property. As the Trial Court has given finding on Issue No.1 that the plaintiff has proved his title and possession over the suit property. After the demise of deceased plaintiff, his LRs were brought on record and they have partitioned the suit property. The defendant No.1 has taken contention that the defendant No.2 being the owner in possession of the suit property has sold the same in his favour under the registered Sale Deed dated:18.03.2005. It is contended by the defendant No.1 that the suit property was the ancestral property and it was in joint names of plaintiff and defendant No.2 and in order to avoid future litigation, the defendant No.2 has executed the said registered sale deed in his favour. While discussing Issue No.1, I have made it clear that the defendant No.1 has not produced any documentary evidence to show that the suit property is the ancestral property of defendant No.1. Further in the cross-examination of PW.4 and DW.1 who have stated contrary to the written statement of the defendant No.1. Further only on the basis of revenue entries made in the name of defendant No.2, after 2004 the defendant No.2 has executed the said registered Sale Deed in which it is recited about the mutation entry made in his name. But as per the said mutation entry which has been marked as Ex.P7, the plaintiff has acquired the suit property under partition held in between himself and his brothers. So, such being the case, the plaintiff being the owner in possession of the suit property and defendant No.2



without having any manner of rights has sold the same in favour of defendant No.1 under the registered Sale deed.

27. The learned Counsel of appellant has argued that the plaintiff has not properly valued the suit as per Section 38 of Karnataka Court Fees and Suits Valuation Act. The plaintiff has claimed the relief of declaration to declare that the sale deed which has been marked as Ex.D10 is void document, but he has not paid Court fee on market value of the suit property and he has paid Court fee only under Section 24(b) of Karnataka Court Fees and Suits Valuation Act and same is not considered by the Trial Court. That this plaintiff is not at all party to the said sale deed and hence the Court fee paid under Section 24(b) of Karnataka Court Fees and Suits Valuation Act is sufficient and plaintiff has paid proper Court fee. Therefore, in view of the above discussions, the Trial Court has rightly answered Issue No.2 in the Affirmative.

28. Further the plaintiff being the owner in possession of the suit property and possession has to be protected by the Court of law and he has proved his title and possession over the suit property and it is required for the Court for granting permanent injunction against the defendants. Though the appellant in his appeal memo has taken contention that the suit is barred by law of limitation under Section 58 and 59 of Limitation Act and after 10 years of execution of sale deed dated:18.03.2005, the plaintiff has filed this suit. As I have discussed above, this plaintiff is not the party to the said sale deed and as per the averments of the plaint, he



came to know about the said sale deed just prior to 15 days of filing of the suit and accordingly he filed the suit. So, the very suit filed by the plaintiff is not barred by law of limitation as contended by the appellant in his appeal memo. Further in the written statement, he has not at all taken contention that the suit is barred by law of limitation and no such issues were framed by the trial Court. Therefore, the Trial Court has rightly decreed the suit of the plaintiff and it is not required for this Court to interfere with the Judgement and Decree of the Trial Court. Hence, my findings to point No.1 is in the Affirmative and point No.2 is in the Negative."

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

- *That looking from any angle, the judgment and decree passed by both trial court and appellate court are bad in law. Hence, both Trial Court and Appellate court erred in decreeing the suit of the plaintiff.*
- *That, it is submitted that, the documents produced by the plaintiff himself, shows that towards the southern side of the plaintiffs' property shows the property of the defendant, and the same is produced under Exhibit Ex. D.12 and Ex.D.14 and further even before filing the suit, for declaration and injunction, the revenue mahazar conducted at the instance of the plaintiff, the land was visited by the Revenue officials, along with*



the survey officials and found that this defendant is in possession and enjoyment of the property and this being the position, the plaintiff without seeking possession from the defendant No.1, has filed the suit for declaration and injunction only. Hence, the suit itself filed by the plaintiff knowingly well that he is not in possession of the property have filed the suit only for declaration and injunction is not maintainable and the trial court as well as appellate court failed to appreciate the fact of revenue and survey mahazar as per Exhibit Ex.D-12 and Ex. D-14. Hence, the judgment and decree passed by Trial Court as well as Appellant court has nullity in the eye of law and accordingly the same are liable to be set aside.

- *That, it is further pertinent to note both Trial Court and Appellate Court fail to consider the fact that, the Defendant No.1 has availed loan from Karagunda Bank, i.e., agricultural loan, in the year 2005-06, as evident from Ex.D-4. Thus, as on the date of filing the suit, i.e., on 4/1/2014, the plaintiff was not in possession of the property and as such granting decree of permanent injunction is contrary to the oral and material evidence on record. Hence, the judgment and decree passed by Trial Court and Appellant are bad in law and liable to be set aside.*

- *That, further the application filed by the defendant under Order 26 Rule 9 of CPC, for appointment of Court Commissioner has been rejected on the ground*



that in a suit for grant of permanent injunction the same is maintainable, and the said application was rejected as per order dtd.5/11/2022, and thereafter the plaintiff on coming to know about the fact that he is not in possession of the property, and since the defendant/appellant denied the title and possession, got converted the suit for the relief of declaration and accordingly filed amended plaint 4/12/2023. It is to be noted, even prior to filing of the suit, the report of the revenue officers, including the survey department has submitted report to the effect that this defendant No.1 is in possession of the property, despite the Trial Court and Appellant Court have failed to analyze this aspect, thus erred in decreeing the suit. And as such judgment and decree passed by Trial Court and confirmed by the appellate court are liable to be set aside. on

- *That further the Exhibit P.11, sale deed produced by the plaintiff himself shows that there is existence of property of this Defendant No.1 in respect of land bearing Sy. No.161, measuring 2 acre 18 guntas, it is shown that towards East-Subedarana Halli, Chowdaiah's Land and towards West Minor Guardian Thimmappa's Land, towards North Karagunda and Gollarahalli Village boundary and towards South Gollarahalli village Ningappa's land. This document produced by the plaintiff himself under Exhibit P-11 shows that this defendant No.1 is in possession and enjoyment of the property way back in the year 1959, i.e., sale deed was registered on 19/2/1959. Hence,*



this shows that this defendant is in possession and enjoyment of the property even before sale deed dtd.18/3/2005. It is to be noted it is the contention of the defendant that their predecessors are in possession of the property and the same has been continued till today. But, since, the revenue documents are entered in the name of the vendor of the defendant No.1, in order to protect his right he got registered the property in his name in 18/3/2005. However, the trial court and appellate court failed to appreciate the true incidents and as such the judgment and decree passed by both trial court and appellate court are bad in law and liable to be set aside.

- *That though the plaintiff is not in possession of the property and on coming to know about the fact, he has sought for declaration. However, the trial court and appellate court failed to appreciate the true incidents and as such the judgment and decree passed by both trial court and appellate court are bad in law and liable to be set aside.*

17. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum, vehemently contended that both the Courts have grossly erred in decreeing the suit of the plaintiff.



18. He would further contend that relief as sought for by the plaintiff without seeking the prayer of the possession, suit for declaration was not maintainable and said aspect of the matter is not taken into consideration by both the Courts.

19. He would also contend that suit was barred by limitation and there is no proper reasoning assigned by both the Courts in this regard and thus sought for admitting the appeal for further consideration.

20. It is further case that defendant No.1 is not in possession of the suit property for a period of more than 80 years and constructed a house therein. Therefore, they are in possession and enjoyment of the suit property which is evident from the report of the revenue inspector filed into the Court marked at Ex.D.12 and in the teeth of such undisputed document, decreeing of the suit for injunction by the learned Trial Judge confirmed by the First Appellate Court suffers from perversity and has resulted in grave miscarriage of justice and sought for admitting the appeal on following substantial questions of law:



"1. Whether both the Trial Court and Appellate Court are erred in decreeing the suit of the plaintiff for declaration and injunction, without appreciating the fact, that according to the plaintiff themselves, the defendant No. 1 is in possession of the property as can be seen from the Mahazar drawn by the Revenue officials along with Survey officials long back in the year 2012-13, as per Ex.D-12 and Ex.D-14 in O.S. No.3/2014?

2. Whether, suit of the plaintiff is maintainable without seeking possession from the defendant No.1, that when the plaintiff himself admitted that this defendant is in possession and enjoyment of the property by growing Areca nut, Coconut and also living in the schedule property by constructing house from long time, that to in the presence of the villagers, revenue officials survey officers and further stated that he will not obstruct the possession of the defendant No.1?

21. Learned counsel for the appellant along with the appeal has filed certified copies of the documents which were exhibited by both the parties before the Court below along with memo dated 03.06.2026.

22. Per contra, learned counsel for respondent No.1 who has entered caveat opposes the appeal grounds.



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, in the case on hand, at an undisputed point of time, father of the plaintiff namely Patel Girigowda, purchased the suit property in the year 1959 and in that regard, registered sale deed is placed before the Court marked at Ex.P.11. Thereafter, revenue entries were also mutated in respect of the said property and there are continuous revenue entries in the name of father of the plaintiff and after the death of father – Patel Girigowda, name of the plaintiff came to be entered.

25. Without there being any semblance of right, there is a sale deed executed by defendant No.2 in favour of defendant No.1. The original sale deed marked at Ex.D.10 dated 18.03.2005 on perusal would not make out as to how Jayadevappa got the suit property except mentioning that he is the absolute owner of the suit property.

26. When there is already a sale deed executed by the erstwhile owner in favour of the father of the plaintiff on 19.02.1959 and revenue entries were mutated, all of a sudden



Jayadevappa claiming that he is the owner of the property and selling the same in favour of defendant No.2 is discussed at length by both the Courts.

27. Further, in the oral evidence of D.W.1, who is the son of defendant and Power of Attorney Holder of the defendant, there is a clear admission in cross-examination that he does not know how Jayadevappa became the owner of the suit property.

28. He further admits that he has got it mentioned in his affidavit which is filed in lieu of examination-in-chief that it is the ancestral property of Jayadevappa.

29. Who are the ancestors of Jayadevappa and what are the revenue entries which were standing in the name of ancestors of Jayadevappa, no documents whatsoever are produced.

30. He further admits that before the revenue entries got mutated in the name of Jayadevappa, revenue entries were standing in whose name is not known to him. He would further



admit that he has placed on record, the mutation proceedings in MR No.2/1985-86.

31. He also admits that in the said mutation proceedings, the narration would go to show that the property has fallen to the share of the father of the plaintiffs.

32. These admissions would be sufficient enough to hold that plaintiff is the owner of the suit property.

33. Further, when Jayadevappa had no right, title or interest over the suit property, what has been sold in Ex.P.10 to defendant No.1 is a question that remains unanswered on behalf of the defendant.

34. It is settled principles of law and requires no emphasis that a person who is not the owner of the property cannot transfer any right title or interest in respect of immovable property to any other person.

35. Thus, even though there is a registered sale deed vide Ex.D.10 which was executed by defendant No.2 in favour of defendant No.1 on 18.03.2005, no right have flown under the said sale deed to the defendant No.1.



36. Further, no answer is forthcoming as to why Jayadevappa who being defendant No.2 who also entered appearance before the Trial Court pursuant to the suit summons did not contest the suit.

37. On the contrary, Jayadevappa is cited as a witness and examined as P.W.4. In his testimony, there is a clear admission that Jayadevappa did not possess the ownership rights. Thus, the document marked at Ex.D.10 did not convey any right, title or interest in respect of the suit property.

38. Now coming to the question of entry in Ex.D.12 is concerned, admittedly, it is a report filed by the revenue inspector. In the said document, no doubt, there is a mention to the effect that on 24.05.2012, plaintiff was present and in respect of land bearing Sy.No.161/1A to the extent of 1 acre 35 guntas, defendant No.1 was in possession and he had grown coconut, areca nut and there is a dwelling house. In order to prove Ex.D.12, author of Ex.D.12 is not summoned and examined. Further, when Ex.D.12 was confronted to Lokesh - P.W.2, he has specifically denied the said document.



Therefore, mere marking of Ex.D.12 did not establish the contents of Ex.D.12.

39. Thus, the contentions urged on behalf of the defendants that they were in possession of the suit property for long period and they had improved the land into coconut and areca nut garden and they have got dwelling house apart from grave of the elders having not been established, decreeing of the suit by both the Courts is just and proper.

40. Thus, the substantial questions of law raised in the appeal memorandum as referred to supra have no merits to be considered by admitting the appeal for further consideration.

41. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 51