



CNR: KAHC010253772018

NC: 2026:KHC:53270
RSA No. 1354 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 1354 OF 2018 (DEC/INJ)

BETWEEN:

1. SATHISH. G SINCE DECEASED BY LRS
- 1A. GEETHA B S/O LATE SATISH.G,
AGED ABOUT 52 YEARS.
- 1B. SURAJ S GOSHWAL S/O LATE SATISH G,
AGED ABOUT 25 YEARS
- 1C. TEJAS S GOSHWAL S/O LATE SATISH G,
AGED ABOUT 12 YEARS

SINCE MINOR, REPRESENTED
BY HIS MOTHER AND NATURAL GUARDIAN
GEETHA.B

ALL ARE RESIDING AT NO.124B,
10TH MAIN, 2ND STAGE
NEAR NAGAPURA WARD OFFICE,
WOC ROAD,
MAHALAKSHMIPURAM LAYOUT
BENGALURU – 560 086.

...APPELLANTS

(BY SRI. MANOHAR N., ADVOCATE)

AND:

1. SMT. ASWATHAMMA,
W/O LATE P SRIRANGACHAR,
AGED ABOUT 55 YEARS,
RESIDING OF

Digitally
signed by
VANDANA S
Location:
High Court
of Karnataka



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DODDABETTAHALLY VILLAGE,
VIDYARANYAPURA POST,
BANGALORE-560 097.

2. MR NATARAJ,
S/O LATE P SRIRANGACHAR,
AGED ABOUT 36 YEARS,
RESIDING OF
DODDABETTAHALLY VILLAGE,
VIDYARANYAPURA POST,
BANGALORE-560 097.
3. MR RAGHU,
S/O LATE P SRIRANGACHAR,
AGED ABOUT 34 YEARS,
RESIDING OF
DODDABETTAHALLY VILLAGE,
VIDYARANYAPURA POST,
BANGALORE-560 097.

...RESPONDENTS

(RESPONDENTS SERVED & UNREPRESENTED)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT DECREE DTD 20.02.2018 PASSED IN R.A.NO. 297/2012 ON THE FILE OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL FILED AGAINST THE JUDGEMENT AND DECREE DTD 22.11.2011 PASSED IN OS.NO.135/2007 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JR.DVN) BENGALURU RURAL DISTRICT BENGALURU.

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



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CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

Heard learned counsel appearing for the appellants.
The respondents though served remained unrepresented.

2. This Regular Second Appeal by the plaintiff in O.S. No. 135/2007 on the file of the learned Principal Second Civil Judge (Junior Division), Bangalore Rural District, Bangalore is directed against the impugned judgment and decree dated 22.11.2011 passed by the trial Court, which dismissed the suit for declaration, permanent injunction and other reliefs filed by the appellant plaintiff against the respondents-defendants in relation to the suit schedule immovable property which was confirmed by the first appellate Court in R.A. No. 297/2012 filed by the appellant whereby the first appellate Court dismissed the said appeal filed by the appellant-plaintiff.



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3. Heard Learned counsel for the appellant and perused the material on record. The respondents having been served with notice of the appeal have chosen to remain unrepresented and have not contested the appeal.

4. After hearing the learned counsel for the appellant and on perusal of the material on record, the following substantial questions of law arise for consideration in the present appeal.

(1) Whether the first appellate Court was justified in dismissing the application filed by the appellant under Order XLI Rule 27 CPC, without appreciating that the additional documents produced by the appellant plaintiff were relevant and necessary for the purpose of adjudication of the issues in controversy between the parties?

(2) Whether the impugned judgment and decree passed by the trial Court and first appellate Court are correct and proper?

5. Learned counsel for the appellant would reiterate the various contentions urged in the appeal and refer to the



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impugned judgment and decree as well as the material on record in order to contend that during the pendency of the appeal before the first appellate Court, the appellant filed I.A. No. 1 under Order XLI Rule 27 CPC seeking production of additional documents by way of additional evidence which was incorrectly and erroneously dismissed by the first appellate Court. It was further submitted that since there is a serious dispute as regards identity, location, schedule, measurements, boundaries, etc. in relation to the suit schedule immovable property as contented by the plaintiff and the defendant, it is necessary that a Court Commissioner be appointed for the purpose of elucidating the issues in controversy between the parties. It was therefore submitted that the impugned judgment and decree passed by the trial Court and first appellate Court be set aside and I.A. No. 1 filed by the appellant plaintiff before the first appellate Court be allowed and the matter remitted back to the trial Court for reconsideration afresh and in accordance with law and by permitting the



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appellant plaintiff to file an application for appointment of a Court Commissioner for the purpose of conducting local inspection and thereafter to proceed further in the matter.

6. As stated supra, the respondents having been served with notice of the appeal have chosen to remain unrepresented and have not contested the appeal.

7. Regarding substantial question of law No. 1: A perusal of the material law on record will indicate that in the aforesaid suit filed for declaration, permanent injunction and other reliefs sought for by the appellant plaintiff against the respondent defendant, there arose a serious dispute as regards Identity, Location, Measurement and Schedule boundaries of the properties claimed by the appellant plaintiff. In this context, it is relevant to state that the trial Court proceeds to dismiss the suit on the ground that the appellant plaintiff had not established the identity of the suit property and that the boundaries and measurements putforth by the appellant



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plaintiff was contrary to the material on record and consequently rejected the claim of the appellant plaintiff.

8. Aggrieved by the impugned judgment and decree of the trial Court, the appellant plaintiff approached the first appellate Court and filed an application under I.A. No. 1 under Order XLI Rule 27 CPC. In pursuance of the same, the first appellate Court framed the following points for consideration.

1. *Whether the plaintiff has made out sufficient cause for allowing I.A. No. I filed under Order XLI Rule 27 of C.P.C. to lead additional evidence?*
2. *Whether the plaintiff has established that he is the lawful owner of the site as described in the suit schedule?*
3. *Whether the plaintiff has established that defendant has illegally taken possession of the suit schedule property during the pendency of the suit?*
4. *Whether the appellant has established the illegal interference by the defendants to as alleged by him?*
5. *Whether the interference is called for in the impugned judgment of the trial Court?*
6. *What order?*



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9. While dealing with point number 1 relating to I.A. No.1, application for additional evidence, the first appellate court came to the conclusion that there was no pleading in the plaint with regard to the said document and the appellant was seeking to produce the said document for the purpose of filling up the lacunae in the evidence already on record. In my considered opinion, having regard to the findings recorded by the trial Court and the application filed by the appellant plaintiff by producing documents which were relevant and material for the purpose of adjudication of the issues in controversy between the parties, it was necessary that an opportunity be provided to the appellant plaintiff to produce and tender the said document in evidence by allowing the application I.A. No. 1 filed by the appellant plaintiff and failure to do so has resulted in erroneous conclusion.

10. It is also relevant to state that since there was a serious dispute as regards identity, location, schedule,



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measurement, boundaries etc. of the suit schedule property as claimed by the plaintiff it was necessary that a Court Commissioner be appointed for the purpose of conducting local inspection of the suit schedule property. Under these circumstances I am of the considered opinion that the substantial question of law No.1 deserves to be answered in favour of the appellant by holding that the first appellate Court committed an error in rejecting I.A. No. 1 for additional evidence filed by the appellant plaintiff and by consequently allowing the said application filed by the appellant plaintiff and permitting him to adduce additional evidence as sought for by him. Accordingly substantial question of law No. 1 is answered in favour of the appellant by setting aside the judgment and decree passed by the first appellate Court in so far as it relates to rejecting I.A. No. 1 for additional evidence filed by the appellant plaintiff.



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11. Regarding substantial question of law No. 2: The next question that arises for consideration is the procedure to be followed after setting aside the judgment and decree of the first appellate Court.

12. In this regard, it is necessary to extract the provisions contained in Order XLI Rule 28 CPC which reads as under.

"28. Mode of taking additional evidence.-

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court."

13. As stated supra, apart from the fact that the documents sought to be produced by the appellant plaintiff by way of additional evidence are relevant and necessary for the purpose of adjudication of the issues in controversy between the parties, it is also necessary to appoint a Court



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Commissioner for the purpose of conducting local inspection of the suit schedule property and to enable the trial Court to proceed further in this regard. Under these circumstances, it would be just and appropriate to set aside the impugned judgment and decree of the trial Court as well as first appellate Court and remit the matter back to the trial court for reconsideration afresh and by reserving liberty In favour of the appellant plaintiff to file an application under Order XXVI Rule 9 CPC for appointment of a Court Commissioner and to proceed further in the matter. Accordingly substantial question of law No. 2 is also hereby answered in favour of the appellant plaintiff.

14. For the aforesaid reasons, I proceed to pass the following order:

ORDER

(i) The appeal is hereby allowed.



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(ii) Judgment and decree passed in O.S. No. 135/2007 by the learned Prl. II Civil Judge (Jr. Dn.), Bangalore Rural District, Bangalore dated 22.11.2011 and judgment and decree passed in R.A. No. 297/2012 by the learned I Addl. District & Sessions Judge, Bengaluru Rural District, Bengaluru dated 20.02.2018 are hereby set aside.

(iii) Matter is remitted back to the trial Court for reconsideration afresh and in accordance with law.

(iv) The application I.A. No.1 filed by the appellant plaintiff in R.A. No. 297/2012 before the first appellate Court is hereby allowed.

(v) The registry is directed to transmit I.A. No. 1 filed in R.A. No. 297/2012 to the trial Court immediately without any delay.

(vi) Liberty is reserved in favour of the appellant plaintiff to file an application under Order XXVI Rule 9 CPC for appointment of a Court Commissioner to conduct local inspection of the suit schedule property.



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(vii) Liberty is reserved in favour of both sides to file their respective memos of instructions before the Court Commissioner and file objections to the Commissioner's report and also examine/cross examine him/her if they so desire.

(viii) Liberty is reserved in favour of both parties to adduce additional oral and documentary evidence in support of their respective claims.

(ix) All rival contentions on merits are kept open and no opinion is expressed on the merits/demerits of the rival contentions.

(x) The trial court is directed to dispose of the suit as expeditiously as possible.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BVV
List No.: 1 Sl No.: 53