



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.44 OF 2019 (DEC/INJ)

BETWEEN:

J K JAYAVIBHAVA
S/O J S KARIBASAPPA
AGED 58 YEARS
AGRICULTURIST
R/O BASAVANA BEEDI,
HOLALKERE TOWN,
PIN-577 526

...APPELLANT

(BY SRI R SHASHIDHARA, ADVOCATE)

AND:

1. RUDRAMMA
W/O CHANNABASAPPA
DIED ON 18.10.2022
THE RESPONDENTS NO.2 AND 3 ARE
LR's OF RESPONDENT NO.1
2. J S MURUGESH
S/O J C SIDDAPPA
AGED 43 YEARS
BUSINESS AND AGRICULTURIST
R/O ANJANEYA BEEDI,
HOLALKERE TOWN,
HOLALKERE -577526
3. J S DEVARAJ
S/O J C SIDDAPPA
AGE 44 YEARS
AGRICULTURIST & BUSINESS,
R/O ANJENEYA BEEDI,

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



HOLALKERE TOWN,
HOLALKERE – 577 526

4. SHIVLINGAMMA
W/O J K PRAKASH
AGE 63 YEARS, AGRICULTURIST
AND HOUSE HOLD WORK,
R/O BASAVANA BEEDI,
HOLALKERE TOWN-577 526
5. SHUBHA
W/O KANTHARAJ
HOUSE WIFE ,
BIN KHEDIA CEN MAINTENANCE ,
K C KANTHARAJ, MAINTENANCE ENGINEER,
UAE BOX-2424,
DUBAI, UAE AND ALSO
R/O HOLALKERE TOWN-577526
6. SHARADAMMA
W/O VIJAY KUMAR
AGE : 53 YEARS
HOUSE HOLD WORK
AND AGRICULTURIST,
R/O ANJANEYA BEEDI,
HOLALKERE TOWN-577 526
7. SINDU
W/O MANJUNATH
AGE 28 YEARS
HOUSE HOLD WORK
R/O ANJANEYA BEEDI
HOLALKERE TOWN-577 526
8. SHEELA
D/O J K VIJAY KUMAR
AGE 29 YEARS
R/O ANJANEYA BEEDI,
HOLALKERE TOWN-577 526



9. SMITHA
D/O J K VIJAY KUMAR
HOUSE HOLD WORK,
R/O ANJANEYA BEEDI
HOLALKERE TOWN-577 526
10. J V MANJUNATH
S/O J K VIJAY KUMAR
AGE :21 YEARS
STUDENT
R/O ANJANEYA BEEDI
HALALKERE TOWN-577 526
11. P VINAY
S/O J K PRAKASH
AGE :41 YEARS
R/O HOLALKERE TOWN,
AGRICULTURIST,
R/O BASAVANA BEEDI,
HOLALKERE TOWN-577 526
CHITRADURGA DISTRICT.

...RESPONDENTS

(BY SRI. SHIVAKUMARAPPA T C, ADVOCATE FOR R1 TO R3;
(R4, R6, R7, R8, R9, R10 SERVED;
VIDE ORDER DATED 05.06.2026, TREAT R2 AND R3 AS LRS OF
DECEASED R1;
VIDE ORDER DATED 05.06.2026 NOTICE TO R5 AND 11 IS
DISPENSED WITH)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE
DATED 19.07.2018 PASSED IN R.A.NO.90/2016 ON THE FILE
OF THE SENIOR CIVIL JUDGE AND JMFC, HOLALKERE
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 30.07.2016 PASSED IN OS.NO.38/2009
ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC,
HOLALKERE.



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri R. Shashidhara, learned counsel for the appellant and Sri Shivakumarappa T.C., learned counsel for respondent Nos.1 to 3.

2. Plaintiff's second appeal, challenging the dismissal of the suit in O.S.No.38/2009, confirmed in R.A.No.90/2016, whereby suit of the plaintiffs for declaration and injunction was dismissed.

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

3.1. A suit in O.S.No.38/2009 with a prayer for declaration and permanent injunction in respect of the following property (hereinafter referred to as 'suit property') came to be filed by the plaintiffs, contending that property bearing old Kaneshmari No. 623P in Holalkere town was purchased by the grandfather of plaintiff Nos.8 and 9 in a Court auction. Thereafter, adjacent property was purchased from



A.S.Nagashetty @ Nagappashetty for valuable consideration on 19.03.1943 and from the date of purchase plaintiffs are in possession and enjoyment of the same:

SCHEDULE

A site measuring about more or less east-west 135 feets, north-south 15 ½ +10 feets, situated at in between Basavana Beedi and Anjaneya Temple Road, bearing old khaneshumari No.623 of Holalkere Town and bounded by:

<i>East</i>	<i>:</i>	<i>Road</i>
<i>West</i>	<i>:</i>	<i>Road</i>
<i>North</i>	<i>:</i>	<i>House of Sangappa, now house and compound of N.S. Devaraju,</i>
<i>South</i>	<i>:</i>	<i>House of defendants and space of house of plaintiffs.</i>

3.2. A house was existing in the said property being dilapidated in condition fell down long back, but debris are still remaining in the suit property.

3.3. It is further contented that after the death of grandfather of plaintiff Nos.8 and 9, Karibassappa being the father of plaintiff Nos.8 and 9 succeeded to the suit property and till his death he was enjoying the property.



3.4. After the death of J.S. Karibassappa, it is the plaintiffs who are in possession and enjoyment of the suit property and the same is used for storing fuel (ಸೌದೆ) and growing few flowers and some trees.

3.5. It is also contented by the plaintiffs that defendants have no manner of right over the suit property and they are also relatives of the plaintiffs, taking advantage of their house being situated towards the southern side of the suit property, started interfering with the suit property.

3.6. Defendants colluding with the Municipality, changed the khatha of the suit property illegally and therefore, plaintiffs had to file the suit with the prayer that plaintiffs are the owners of the suit property and defendants are to be restrained from interfering with the suit property.

4. Pursuant to the suit summons, defendants entered appearance through their Advocate and filed written statement denying the plaint averments in *toto*.

4.1. They further contended that Sri Channabassappa, S/o Siddappa is the husband of defendant No.1 and grandfather of defendant Nos.2 and 3. J.C.Siddaraju is the sole



son of defendant No.1 and defendant Nos.2 and 3 are the sons of Siddappa.

4.2. Defendant No.1 purchased the vacant site and houses through the registered sale deed from lawful vendors on 02.11.1938, 05.11.1938 and on 24.04.1944 with specific boundaries and measurements and those sites are situated side by side and adjacent to each other.

4.3. Revenue entries are mutated and they have established 'Nagadevathe' in the properties purchased under the sale deed dated 24.04.1944 and defendants are performing pooja continuously to the said deity till date. Thus, they contended that suit is to be dismissed.

5. Based on the rival contentions, learned Trial Judge raised necessary issues and the additional issue and after recording the evidence of the parties in detail and on hearing the arguments of both sides dismissed the suit of the plaintiffs.

6. Being aggrieved by dismissal of the suit, plaintiffs filed an appeal before the First Appellate Court in R.A.No.90/2016.

7. Learned judge in the First Appellate Court after securing the records, heard the arguments of the parties and



on re-appreciation of the material evidence on record, dismissed the appeal by considered judgment dated 19.07.2018, *inter alia* holding in paragraphs 17 to 22 as under:

17. In order to substantiate the case of the plaintiffs the plaintiff No.9 reiterated the plaint averments in his examination-in-chief. On perusal of the documents produced by the plaintiffs i.e., Ex.P1 sale deed dated 19-03-1943 wherein the property number is mentioned as khanesumari No.623 purchased for valuable consideration of Rs.100/- towards northern side-tiled house including back yard which is bounded as towards East and West-Government Road, towards-South-remaining property of the same number and towards North-House of Jambige Sangappa. On perusal of the schedule property described in the plaint i.e., measurement is shown as East-West 135 feet and North-South 15 ½ feet + 10 feet bearing khanesumari No.623 bounded as East-West road, towards North- House of Sangappa and now house and compound of N.S. Devaraju and towards South-House of defendants and space of house of plaintiffs. The plaintiffs mainly relied upon the Ex.P1 but the description of the suit property is entirely differ from the boundaries shown in the Ex.P1. The plaintiffs have described the measurement of the suit property in the plaint schedule but in Ex.P1 measurements are not mentioned and moreover the boundary discloses in the Southern side and Northern side are differ from the boundaries described in the suit schedule. The plaintiffs have not produced khanesumari extract in respect of the



suit schedule property before the court. The plaintiffs have averred in the plaint that due to mistake plaintiffs and their ancestors have not changed the khata in the Municipal Records. Mere producing Ex.P1 is not enough it requires full pledged proof before the court. The plaintiff came before the court sought the declaratory relief that he was the lawful owner and in actual possession of the suit schedule property under such circumstances the heavy burden lies upon the plaintiff to prove ownership of the property by adducing cogent and probable evidence. On perusal of the oral evidence of PW-1 to PW-4 no doubt the witnesses are deposed in support of the case of the plaintiff but perusal of the cross-examination of PW-2 to PW-4 they have not deposed with regard to the exact measurement of the suit property and moreover they have clearly elicited that they doesn't know what is the measurement of the suit property. The PW-2 clearly stated that the assessment extracts of the suit properties are stands in the name of defendants. The learned counsel for defendants confronted the photographs to the witness and clearly admitted the photographs which are respectively marked as Ex.D1 to Ex.D6. The defendants have also produced the certified copy of the registered sale deed which are respectively marked as Ex.D7 to Ex.D9. The defendants have also clearly stated that the grand-father Channabasappa during his lifetime purchased the vacant sites by virtue of the registered sale deeds dated 02-11-1938, 05-11-1938, 24-04-1944 and the defendants are produce the assessment extracts in respect of the said property but the plaintiffs have not produced any assessment extracts and the Ex.P1 produced by the PW-1



is not at all acted upon. The learned counsel for plaintiff cross-examined to the DW-1 put the suggestion that the suit schedule property was purchased by the grand-father of plaintiff through the auction and this suggestion was admitted by DW-1 but DW-1 further elicited that they have purchased property measuring 135x15 feet from the grand-father of plaintiff in khanesumari No.623. The learned counsel for plaintiff during the course of argument submitted that the lower court has not appreciated the admission given by the DW-1 with regard to the boundaries of the suit property. In view of this argument and also perusal of the cross-examination of DW-1 it reveals that no doubt the DW-1 has admitted the boundaries as suggested by the learned counsel for plaintiff but DW-1 voluntarily stated that towards southern side of the suit property the house of the defendants are situated along with open site. The DW-1 categorically the said open site belongs to the plaintiff. Therefore the arguments advanced by the learned counsel for plaintiff is not justifiable. On perusal of the judgment of the lower court wherein the lower court properly arrived the conclusion by observing that there is no material to show that old khanesumari number changed into khanesumari No.623 and neither ancestor of the plaintiff nor plaintiffs have changed the khata of the property and there is no material before the court how the suit property will be changed into 623 to 623P. The lower court properly observed that in the absence of sufficient materials with regard to the ownership of the plaintiff in respect of suit property.



18. It is pertinent to note that the plaintiff has only produce the Ex.P1 and based upon the said Ex.P1 sought the declaratory relief and the learned counsel for plaintiff during the course of argument stated that the said Ex.P1 itself is an title deed and by virtue of the said title deed the plaintiffs are the owner of the suit property. In view of this argument it reveals that mere producing Ex.P1 is not enough to come to conclusion that plaintiffs are the owners of the suit property, on the contrary the defendants have also produced the title deeds and tax paid receipts and assessment register extracts. When the defendants are contrary produce the documents to disprove the evidence of the plaintiff then onus will shift to the plaintiff to prove his case by adducing cogent and probable evidence. Therefore the lower court properly arrived the conclusion and also referring the decision in the lower court which is aptly applicable to present case in hand. In the said decision their lordship has clearly held that in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge his onus. The plaintiff has failed to discharge his onus.

19. The plaintiff has specifically taken contention that the defendants causing obstruction for his peaceful possession and enjoyment of the suit property. On perusal of the oral and documentary evidence adduced by the plaintiff wherein no such evidence come before the court with regard to the interference caused by the defendants. The PW-1 clearly admitted in his cross- examination that in Ex.P1 no measurement is mentioned and approximate measurement



is mentioned in the description of the suit property. It is settled principle that plaintiff has knocking the door of this court plaintiff must establish identity of the suit property in proper manner. It is also settled principle that plaintiff ought to have established the lawful possession over the suit property as on date of suit. The plaintiffs have not at all produced any iota of document to show that plaintiffs have lawful possession over the suit property. Moreover the learned counsel for defendants confronted the photographs i.e. Ex.D1 to Ex.D6 to PW-1 who clearly admitted the contents of photographs as such plaintiff has failed to establish lawful possession over the suit property as on date of suit, under such circumstances question of interference doesn't arise.

*20. It is pertinent to note that the plaintiff come before the court sought the declaratory relief and permanent injunction then the plaintiff must establish his case by adducing cogent and probable evidence and came before the court with the clean hands. The plaintiff has suppressed the material facts with regard to the title deeds of the defendants as the defendants clearly admitted in their evidence that the properties are purchased from the grand-father of the plaintiff as such this material facts is suppressed by the plaintiff therefore the plaintiff must sought the relief with the clean hands. Therefore it is relevant to rely the decision reported in **2008(4) KCCR 2587 (Lakshminarayana Sony and Another Vs. C.Basha)** wherein their lordship has held that:*



EQUITY -He who seeks equity must do equity and he who seeks equity shall approach with the clean hands.

21. It is relevant to rely the another decision reported in **2008(4) KCCR 2161 (L.R. Gangadharappa Vs. The Assistant Commissioner, Chitradurga Sub-Division, Chitradurga and Others)** Wherein their lordship has held that:

EQUITY- He who seeks equity shall do equity and come with clean hands - Person seeking equity not approaching in clean hands cannot have remedy.

22. In view of the above principles that if person seeking equity not approaching in clean hands cannot have remedy. In the instant case also the lower court properly arrived the conclusion after considering the evidence on record and there is a some mistake crept in the annexure of the judgment and deposition with regarding to the marking of the documents it cannot be fatal to the case as such giving direction to lower court to correct the annexure i.e., list of documents exhibited on side of plaintiff and defendants."

8. Being further aggrieved by same, plaintiff No.9/appellant is before this Court in this second appeal.



9. Sri R. Shashidhara, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that learned Trial Judge even though noted the fact that the defendants were not able to prove that the suit property is the temple property, failed to decree the suit resulting in miscarriage of justice.

10. He would further contend that when there is a valid sale deed in favour of the plaintiffs executed by erstwhile owner namely, Nagashetty @ Nagappashetty, learned Trial Judge ought to have believed that plaintiffs are the owners of the suit property.

11. Defendants without there being any semblance of title over the suit property interfered with the suit property and thus plaintiffs were entitled for decree as prayed for and thus sought for admitting the appeal on the following substantial questions of law:

- 1. Whether the both the Courts below are right in law in dismissing the suit of the plaintiffs, though the plaintiffs are prove the possession and ownership over the suit property by adducing cogent evidence?*



2. *Whether the both the Courts below are right in law in dismissing the suit of the plaintiffs, though the boundaries mentioned in the Ex.P.1 and boundaries of the suit property are one and the same?*
3. *Whether both the Courts below are right in law in dismissing the suit of the plaintiffs, though the DW-1 admitted during cross examination about the measurement of the suit property?*
4. *Whether both the Courts below are right in law in not granting permanent injunction, though the defendants admitted the possession of the suit property?*

12. Per contra, Sri Shivakumarappa T.C., learned counsel for the respondent Nos.1 to 3 would support the impugned judgment by contending that since the suit is one for declaration and injunction, plaintiffs were required to either sale or sink on their own and cannot depend upon the weakness in the case of the defendants and having failed to establish title over the suit property, both the Courts were justified in dismissing the suit of the plaintiffs and thus sought for dismissal of the appeal.

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



14. On such perusal of material on record, as could be seen from the plaint averments itself, plaintiffs purchased the suit property from Nagashetty @ Nagappashetty and adjacent properties through Court auction. Having purchased the same, sale deed executed by Nagashetty @ Nagappashetty. It is no doubt produced and placed on record.

15. However, how the vendors of the plaintiffs got the properties not mentioned in the plaint.

16. On perusal of the sale deed, said Nagashetty @ Nagappashetty said to have purchased the suit property in a Court auction. No particulars are forthcoming or any other documentary evidence is placed on record to establish that Nagashetty @ Nagappashetty had title to part away in favour of the plaintiffs.

17. In other words, mere marking of the sale deed itself would not be sufficient enough to establish the title over the suit property, especially when the prayer is one for declaration and permanent injunction.

18. Needless to emphasize that the relief of declaration is a '*judgment in rem*'. In such circumstances the scrutiny with regard to the title has to be carried out by the Court which is



required to declare that a particular person is the owner of the property and such decree would not only operate against the defendants in the given suit but also against the rest of the world.

19. Therefore, the learned Trial Judge considering the probative value of the sale deed placed on record by the plaintiffs and negating the prayer of declaration by holding that plaintiffs failed to make out the title to the suit property and also observing that plaintiffs cannot take advantage of the weakness in the case of the defendants is just and proper which was upheld by the First Appellate Court not only accepting the reasons supplied by the learned Trial Judge, but also by supplementing the additional reasons, requires no interference by this Court having regard to the scope of Section 100 of Code of Civil Procedure.

20. Thus, when the plaintiffs have suffered concurrent finding of the fact that they are unable to make out the title to the suit property, this Court does not find merit in any one of the substantial questions of law raised in this appeal memorandum referred to supra.



21. Consequently, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

MR
List No.: 1 Sl No.: 99