

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 1213 OF 2007 (DEC)

BETWEEN:

1. SMT CHINNAMMA
W/O LATE MALLAPPA
AGED 68 YEARS

MALLAPPA S/O LATE NAGAPPA
DEAD BY LR

2. SRI M NANJAPPA
S/O LATE MALLAPPA
AGED 47 YEARS

BOTH ARE R/OF VATTALPURA VILLAGE
VATTALDHAKLE, MUGUR HOBLI
T.NARASIPURA TALUK
MYSORE DISTRICT

3. GANGADHARA
S/O MALLAPPA

4. BUDDAPPA
S/O MALLAPPA

BOTH ARE R/AT GALAL GUNDI VILLAGE
SAGAR TALUK, SHIMOGGA-577 401.

...APPELLANTS

(BY SMT. G JAYASHREE, ADVOCATE FOR APPELLANT NO.1;
SRI. A. MADHUSUDHANA RAO, ADVOCATE FOR APPELLANT
NO.2
SRI. S.D.N. PRASAD, ADVOCATE FOR A3 AND A4)



AND:

NANJAPPA
S/O LATE LINGAPPA,
DEAD BY L.RS.

1. SMT.NAGAMMA
W/O LATE NANJAPPA
SINCE DEAD BY LRS ALREADY ON RECORD
2. SRI NINGANNA
S/O LATE NANJAPPA
AGED 46 YEARS
3. REVANNA
S/O LATE NANJAPPA
SINCE DEAD BY HIS LRs
- 3(A) SMT. NAGARATHNAMMA
W/O LATE REVANNA
AGED ABOUT 45 YEARS
R/AT VATALPURA VILLAGE
VATALU DHAKLE, MUGUR HOBLI
T. NARASIPURA TALUK
MYSORE DISTRICT.
- 3(B) SMT. MEGHANA
W/O SRI. GIRISH
AGED ABOUT 22 YEARS
R/AT BENAKANAHALLI VILLAGE
SOSALE HOBLI, T. NARASIPURA TALUK
MYSORE DISTRICT.
- 3(C) **SMT. MEGA
W/O MAHADEVASWAMY
AGED ABOUT 20 YEARS
R/AT BILIGERE VILLAGE
BILIGERE POST, NANJANGUD TALUK
MYSORE DISTRICT.**
- 3(D) **SMT. MEGA
W/O RAJASHEKAR
R/AT BINEKANAHALLI
SOSLE (H), T. NARASIPURA (T)**

MYSORE DISTRICT.

4. SHIVANNA
S/O LATE NANJAPPA
AGED 42 YEARS
5. NANJAMMANI
D/O LATE NANJAPPA
AGED 38 YEARS
6. KAMINI
D/O LATE NANJAPPA
AGED 34 YEARS
7. NANJUNDASWAMY
S/O LATE NANJAPPA
AGED 32 YEARS
8. RAJAPPA
S/O LATE NANJAPPA
AGED 28 YEARS
9. CHINNAMMA
D/O LATE NANJAPPA
AGED 25 YEARS
10. MANJAMMA
D/O LATE NANJAPPA
AGED 24 YEARS

R1 TO R10 ARE R/OF VATALPURA VILLAGE
VATTALUDHAKLE, MUGUR HOBLI
T.NARASIPURA TALUK
MYSORE DISTRICT-570 012.

MALLAPPA S/O LATE NAGAPPA
DEAD BY L RS

11. PARAMESHA
S/O LATE MALLAPPA
AGED 42 YEARS
R/O VATALPURA VILLAGE,
MUGUR HOBLI, T.NARASIPURA TALUK,
MYSORE DISTRICT-570 012.

12. SHIVAPPA
S/O LATE MALLAPPA
AGED 40 YEARS
13. GANGADHARA
[TRANSPosed AS PER COURT ORDER]
14. BUDDAPPA
[TRANSPosed AS PER COURT ORDER]
15. NAGAMMA
D/O MALLAPPA
AGED 42 YEARS
16. RAVATHI
D/O MALLAPPA
AGED 32 YEARS

R12 TO R16 ARE R/AT
GILALGUNDI VILLAGE, SAGAR TALUK
SHIMOGA DISTRICT-577 401.

...RESPONDENTS

(BY SRI. GIRIDHAR S V, ADVOCATE FOR R2, R4, R5, R6, R8,
R9, R10 AND R3(1) IN IA 1/2023;
R11 AND R14 ARE SERVED;
V/O DATED 17.12.2009, NOTICE TO R12, R13, R15 AND
R16 ARE HELD SUFFICIENT;
V/O DATED 10.08.2023, R2 TO R10 ARE LR's OF
DECEASED R1;
V/O DATED 10.01.2024, VAKALATH FILED ON BEHALF OF
R4, R7 AND R8 IS ACCEPTED;
R3(A) AND (B) ARE SERVED;
V/O DATED 27.06.2025, NOTICE TO R3(C) IS DISPENSED
WITH FOR THE TIME BEING)

THIS RSA IS FILED U/S 100 OF CPC AGAINST THE
JUDGEMENT AND DECREE DATE 24.01.2007 PASSED IN
RA.NO.14/2001 ON THE FILE OF THE CIVIL JUDGE (SR.DN.)
T.NARASIPURA, PARTLY ALLOWING THE APPEAL AND SETTING
ASIDE THE JUDGEMENT AND DECREE DATED 21.08.1993
PASSED IN OS.NO.311/1985 ON THE FILE OF THE MUNSIFF
AND JMFC., T.NARASIPUTTA.

THIS APPEAL, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.09.2026, THIS DAY, JUDGMENT WAS PRONOUNCED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CAV JUDGMENT

The captioned Regular Second Appeal is preferred by the original defendant No.1-Chinnamma and one M. Nanjappa, assailing the concurrent judgments and decrees passed by the Courts below, whereby the suit of the plaintiff came to be decreed granting the relief of perpetual injunction and restraining defendant No.1 from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. For the sake of convenience and brevity, the parties shall be referred to as per their rank before the Trial Court.

3. The facts leading to the filing of the present appeal, in brief, are as under:

The plaintiff instituted the suit seeking a declaration that he is a mortgagee in possession of the suit schedule

property and consequently sought a decree of perpetual injunction restraining defendant Nos.1 to 3 from interfering with his peaceful possession and enjoyment thereof. The plaintiff specifically pleaded that the father of defendant No.1, namely, Nanjundappa, had delivered possession of the suit schedule property in his favour under a registered mortgage deed dated 16.02.1971 and that, since then, he has been in lawful possession as a mortgagee in possession. Reliance was also placed upon the revenue records, particularly the RTC extracts for the period from 1981 to 1985, wherein the plaintiff's name was reflected.

4. The plaintiff further pleaded that the suit schedule property had earlier been mortgaged by Nanjundappa in favour of one Shivappa under a mortgage deed dated 22.04.1959. According to the plaintiff, it was he who discharged the said mortgage and secured redemption of the property from Shivappa, whereafter he continued in lawful possession thereof. Alleging that defendant Nos.1 to 3, without any semblance of right,

were attempting to interfere with his possession and dispossess him from the suit schedule property, the plaintiff instituted the suit.

5. The defendants contested the suit by filing their written statement and stoutly denied the averments contained in the plaint. While disputing the plaintiff's claim of being a mortgagee in possession, defendant No.1 asserted that she is the absolute owner of the suit schedule property, having purchased the same from her step-brother and his minor son under a registered sale deed dated 13.05.1963. It was therefore contended that defendant No.1 had been in lawful possession of the property from the date of the said sale deed. Defendant No.2, being her husband, and defendant No.3, being her husband's brother, were stated to be assisting her in cultivating the suit schedule property. On these grounds, the defendants sought dismissal of the suit.

6. The parties went to trial and adduced both oral and documentary evidence. The learned Trial Judge, upon

appreciation of the material on record, particularly the registered mortgage deeds, the oral evidence of the earlier mortgagee, namely Shivappa, examined as PW.2, and the recitals contained in the sale deed relied upon by defendant No.1, came to the conclusion that the plaintiff had established his lawful possession over the suit schedule property as on the date of the suit. Consequently, the suit came to be decreed, restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

7. Aggrieved by the said judgment and decree, the defendants preferred an appeal. The learned Appellate Court, while concurring with the finding recorded by the Trial Court insofar as possession was concerned, partly allowed the appeal. The Appellate Court held that the plaintiff was not entitled to the declaratory relief sought for and further held that such relief was barred by limitation. However, insofar as the relief of perpetual injunction was concerned, the finding of the Trial Court was affirmed.

8. Heard the learned counsel appearing for the appellants/defendants and the learned counsel appearing for the respondent/plaintiff.

9. Before proceeding to examine the rival contentions, it would be apposite to extract the substantial questions of law framed by this Court vide order dated 19.01.2010. The same read as under:

"(i) Whether the First Appellate Court having held that the respondent was not entitled to claim a declaratory relief of the effect that the respondent was a mortgagee in possession, could yet refer to the mortgage deed which was the basis of the said suit relief and hold that the respondent had established possession over the said property?

(ii) Whether the First Appellate Court was justified in over looking the registered sale deed in favour of the appellant, which declares such possession in favour of the appellant?"

Finding on the substantial questions of law:

10. Before this Court proceeds further, it would be apposite for this Court to extract the stand taken by

defendants at para 3 of the written statement. Same is extracted which reads as under:

"3. It is utterly false to say that the defendants 1 to 3 are not having any right, or interest in the suit schedule property. The first defendant is the owner having purchased the suit schedule property from its previous owner one Chikkananjappa alis Puttabuddi and his then minor sons through a registered sale deed dated 13.5.1963. Ever since the date of purchase the first defendant is cultivating the suit schedule land and defendant No.2 being her husband defendant-3 her husband's brothers are assisting her in her possession, cultivation and enjoyment of the suit schedule land. The khata, pahani and R.T.C. of the suit schedule land stands in the name of plaintiff. The certified copies of R.R. 5 and R.R. 6 photostat copy of the registered sale deed is produced herewith. As the copies of RTC and pahani from the year 1963 to up to date is not available immediately, they will be produced within 15 days when receive. Therefore, the question of interference of defendants does not arise. They have every right to possess cultivate and enjoy their legitimate rights over the suit schedule property and there is no question of plaintiff suffering any injury at all."

11. On a close reading of the pleadings, particularly paragraph 3 of the written statement, it emerges that defendant No.1 claims both title and possession over the suit schedule property on the strength of the registered sale deed dated 13.05.1963 executed in her favour by her step-brother, Chikkananjappa, son of Nanjundappa. On the other hand, the plaintiff, who is admittedly the son-in-law of Nanjundappa, traces his possessory rights to the registered mortgage deed executed in his favour. Thus, while defendant No.1 asserts that she has been in possession of the suit schedule property from the date of the aforesaid sale deed, the plaintiff claims possession pursuant to the mortgage transaction. In view of the rival claims as to possession, it would be apposite for this Court to examine the recitals contained in the sale deed marked as Ex.D-1. The relevant portion of the recitals reads as under:

". ಇಲ್ಲಿಂದ ಮುಂದೆ ಇದರಕ್ಕೆ ಅ ಸೈ ಭೋಗ್ಯ ವ್ಯವಹಾರ ಚತುಷ್ಟಯಕ್ಕೂ ನೀವೇ ಬಾಧ್ಯರಾಗಿ ಸರ್ಕಾರಿಕಂದಾಯಕೊಟ್ಟು ಕೊಂಡು ನಿಮ್ಮ ಪುತ್ರ ಪೌತ್ರ ಪಾರಂಪರ್ಯವಾಗಿ ಸುಖದಿಂದ ಅನುಭವಿಸಿಕೊಂಡು ಬರುವುದು ಈ ಜಮೀನಿನ ಮೇಲೆ

ಮೇಲ್ಕಂಡ ಪೂರ್ದಾದಿ ವಿನಃ ಮತ್ಯಾರಿಗೂ ಆಧಾರ ಬೋಗ್ಯ ವಗೈರೆಂತ ಮಾಡಿರುವುದಿಲ್ಲ ಅಂತಾ ಭಾಡಿಕವೇನಾದರೂ ಕಂಡು ಬಂದಲ್ಲಿ ನಾನೇ ನನ್ನ ಇರ್ವು ಚರಿಸ್ಥಿರ ಚರ ಆಸ್ತಿಗಳಿಂದ ವಿಲೇವಾಡಿ ಕೊಡಲು ಬದ್ಧರಾಗಿರುತ್ತೇನೆ ಮೇಲ್ಕಂಡ ಕ್ರಯದ ಮೊಬಲಗಿನ ಪೈಕಿ ಪೂರ್ವಾದಿ ಸಾಲ ಎರಡುನೂರು ರೂಪಾಯಿಗಳ ಭೋಗ್ಯದ ಸಾಲ ತಾವೇ ತೀರಿಸಿಕೊಂಡು ದಾಖಲಂ ಬಗ್ಗೆ ಸದ್ರಿ ಜಮೀನು ನಿಮ್ಮ ವಶದಲ್ಲಿ ಕೊಳ್ಳುವುದರ ಮೂಲ್ಕ ಬೋಗ್ಯದ ಸೂತ್ತು ಸಹ ನಿಮ್ಮ ಸುಪರ್ಧಿಗೆ ಪಡಿಯಬಹುದು ಉಳಿಕೆ ಮೂರುನೂರು ರೂಪಾಯಿಗಳನ್ನು ಪತ್ರ ರಜಿಸ್ಟರ ಆದ ನಂತ್ರ ಹಣ ಪಡಿದ ರಸೀತಿ ಮೂಲಕ ಪಡೆಯುತ್ತೇನೆ. ಈ ಮೇಲೆ ಕ್ರಯದ ಮೊಬಲಗು ಪೂತ್ತಾ ಸಂದಾಯವಾಗಿರುತ್ತೆ. . . .
. . ."

12. On a careful reading of the aforesaid recitals contained in the registered sale deed dated 13.05.1963, on the basis of which defendant No.1 claims title and possession over the suit schedule property, it is evident that the recitals themselves do not record delivery of possession in favour of defendant No.1 at the time of execution of the sale deed by Chikkananjappa. On the contrary, the recitals assume significance in the context of the rival claims as to possession and, prima facie, do not support the specific assertion of defendant No.1 that she was put in possession of the suit schedule property pursuant to the said sale transaction. On the contrary, the recitals expressly indicate that possession of the suit schedule property was not handed over to defendant No.1 and that her brother, Chikkananjappa, while conveying the

property under the said sale deed, reserved liberty to defendant No.1 to secure possession of the suit schedule property. These recitals, therefore, materially belie the specific assertion of defendant No.1 that she was put in possession of the property from the date of the sale deed.

13. The next and equally significant piece of evidence which requires consideration is the evidence of PW.2–Shivappa, who was the earlier mortgagee in respect of the suit schedule property under the mortgage transaction of the year 1959 and whose mortgage was admittedly redeemed by the plaintiff. Shivappa has been examined as PW.2. His evidence assumes considerable significance in appreciating the plaintiff's claim of possession pursuant to the subsequent mortgage transaction. The relevant portion of the examination-in-chief of PW.2 reads as under:

"About 35 years back one Nanjundappa of our village had mortgaged a land property to me. That is the disputed property of this case. I was in possession of the suit property as mortgagor for about 10 years. My mortgagor Nanjundappa got

redeemed the mortgage paying back the mortgage amount. That amount the plaintiff had paid to Nanjundappa. Three days earlier to it, Nanjundappa had registered the suit property in favour of the plaintiff. Therefore, after redemption of the mortgage executed in my favour. Plaintiff came to be in possession of the suit property. The 1st defendant was not in possession and enjoyment of the suit property at any point of time. Likewise Nanjundappa's son Puttabuddi was also not in possession of the suit property at any point of time. Earlier to my possession of the suit property, one Madappa was in its possession as mortgagee. During the existence of mortgage in my favour, I was in possession and enjoyment of the suit property.

To the East of the suit property and adjacent to it, I have my land which is in my cultivation.

Cross examination by Sri K B B

When Ex.P.2 was executed in my favour I had seen the documents of title of the suit property. I cannot say the day, month and year of Ex.P.2. Nanjundappa had cleared earlier mortgage loan. I cannot say as how many days earlier to Ex.P2 that mortgage was redeemed. I cannot say the date on which Ex.P2 was redeemed, and so also the date of mortgage in favour of the plaintiff. I know that the

suit property was been sold to the 1st defendant. It is not true to say that suit property was no in my possession at point of time. My name is not shown in pahani records. It is not true to say that to favour the plaintiff I am dposing false. It is not true to say that the suit property is in the 1st defendant's possession since the date of sale of the same in her favour."

14. A significant aspect which emerges from the evidence of PW.2 is that, although defendant No.1 cross-examined PW.2 at length, no specific suggestion was put to him that defendant No.1 had herself discharged the mortgage amount and secured redemption of the mortgage in her favour after obtaining the sale deed dated 13.05.1963. Though PW.2, in the course of his cross-examination, admitted that he was aware of the sale deed executed by Chikkananjappa in favour of defendant No.1, he categorically denied the suggestion that defendant No.1 was in possession and enjoyment of the suit schedule property at any point of time. Significantly, no further suggestion was made to PW.2 regarding payment of the

mortgage amount by defendant No.1 or her having secured redemption of the mortgage. On the contrary, PW.2 has consistently deposed that it was the plaintiff who, during the lifetime of Nanjundappa, paid the mortgage amount and secured redemption of the mortgage, whereafter the plaintiff came into possession of the suit schedule property. This part of the testimony of PW.2 has remained substantially unshaken in cross-examination.

15. The aforesaid evidence of PW.2 receives further corroboration from the testimony of PW.4, who is a witness to the mortgage deed marked as Ex.P-2. PW.2 has identified his signature on Ex.P-2, which is marked as Ex.P-2(a). Likewise, PW.4 has identified his signature on Ex.P-2, marked as Ex.P-2(d). PW.4 has specifically deposed that it was the plaintiff who paid the mortgage amount of Rs.200/- to his father-in-law, Nanjundappa, who, in turn, paid the said amount to Shivappa-PW.2 and secured redemption of the earlier mortgage. Thus, the oral evidence of PW.2, read in conjunction with the evidence of

PW.4 and the recitals contained in Ex.P-2, lends material support to the plaintiff's assertion that it was he who secured redemption of the earlier mortgage and thereafter continued in possession of the suit schedule property.

16. In the backdrop of the aforesaid evidence, the question that arises for consideration is whether the learned Trial Judge was justified in holding that the plaintiff was in lawful possession of the suit schedule property as on the date of institution of the suit. While considering the said question, the evidence on record has to be appreciated cumulatively, particularly the recitals contained in Ex.D-1, the registered sale deed relied upon by defendant No.1, the absence of any recital evidencing delivery of possession in her favour, the evidence of PW.2, the earlier mortgagee, and the corroborative testimony of PW.4. The recitals in Ex.D-1, coupled with the evidence of PW.2, assume considerable significance, particularly when defendant No.1 claims that she was put in possession pursuant to the sale deed dated 13.05.1963.

17. Having regard to the aforesaid material, this Court is of the considered view that the learned Trial Judge was justified in recording a finding that the plaintiff was in lawful possession of the suit schedule property as on the date of the suit. The finding is not based merely on the revenue entries relied upon by the plaintiff, but is supported by the registered mortgage transaction evidenced by Ex.P-2, the evidence of the earlier mortgagee-PW.2, the testimony of PW.4 and, significantly, the recitals contained in Ex.D-1, which do not evidence delivery of possession to defendant No.1. Consequently, the decree for perpetual injunction granted by the learned Trial Judge, restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, calls for no interference.

18. Though the learned Appellate Court concurred with the finding recorded by the Trial Court insofar as the plaintiff's possession is concerned, it proceeded on an erroneous premise that the plaintiff had sought a declaration of title over the suit schedule property. The

plaintiff's claim for injunction is founded on a distinct basis, namely, his assertion that he was a mortgagee in possession pursuant to the registered mortgage deed executed by Nanjundappa. The plaintiff does not claim title to the property on the basis of the said mortgage; rather, his case is that, by virtue of the mortgage transaction and the subsequent redemption of the earlier mortgage, he was put in possession and continued to remain in lawful possession. Therefore, the nature and scope of the relief sought by the plaintiff assumes significance. In that regard, it would be apposite to extract the prayer made in the plaint, which reads as under:

"Wherefore, the plaintiff humbly prays that this Hon'ble court to pass a judgment and decree - Declaring that the plaintiff is the mortgagee in possession of the suit schedule property and for permanent injunction, restraining the defendants No.1 to 3 from illegally interfering with the peaceful possession and enjoyment of the suit schedule property and to restrain the defendants No.1 to 3 permanently from remaining bricks from the suit schedule property with court costs and such other reliefs as the Hon'ble court deems fit under the

circumstances of the case, in the interest of justice and equity."

19. A plain reading of the aforesaid prayer makes it evident that the declaration sought by the plaintiff is not a declaration of title over the suit schedule property. The plaintiff has sought a declaration that he is a "mortgagee in possession" and such declaration is only incidental to and in aid of the substantive relief of perpetual injunction. The foundation of the suit is the plaintiff's assertion of lawful possession over the suit schedule property pursuant to the mortgage transaction, and the consequential apprehension of interference by the defendants. Therefore, the declaration sought is essentially intended to establish the character and source of the plaintiff's possession and cannot be construed as an independent prayer for declaration of title.

20. This position is further fortified by the manner in which the plaintiff has valued the relief and paid the court fee. On examination of the relevant averments in the

plaint, it is evident that the plaintiff has valued the suit and paid the court fee under Section 26(c) of the Karnataka Court Fees and Suits Valuation Act, 1958, treating the principal relief as one for injunction based on possession. There is no separate valuation or payment of court fee treating the suit as one seeking an independent declaration of title. The learned Appellate Court, therefore, fell into error in treating the prayer for declaration that the plaintiff is a mortgagee in possession as though the plaintiff had sought a declaration of title to the suit schedule property.

21. Though the Appellate Court has proceeded on an erroneous understanding of the nature of the declaratory relief, it has nevertheless concurred with the finding of the learned Trial Judge that the plaintiff was in lawful possession of the suit schedule property as on the date of the suit and has affirmed the decree for perpetual injunction. In view of the concurrent finding on possession, which is supported by the documentary and oral evidence on record, no interference is warranted with the ultimate

relief granted in favour of the plaintiff. Consequently, the substantial questions of law framed by this Court are answered in the negative. The judgment relied upon by the learned counsel appearing for defendant No.1, in the facts and circumstances of the present case, has no application.

22. Accordingly, both the substantial questions of law framed by this Court are answered in the ***Negative***, and against the appellants.

23. For the foregoing reasons, this Court finds no merit in the appeal. Accordingly, the appeal stands ***dismissed***. The judgments and decrees of the Courts below, insofar as they grant the relief of perpetual injunction in favour of the plaintiff, are hereby affirmed.

No order as to costs.

Digitally Signed By:
SACHIN SHANKAR MAGADUM
Verified

(SACHIN SHANKAR MAGADUM)
JUDGE

CA