



CNR: KAHC010263172010

NC: 2026:KHC:50977
RSA No. 632 of 2010

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 632 OF 2010 (DEC/INJ)

BETWEEN:

1. SMT SUVARNAMMA
W/O LATE BYRAPPA
SINCE DEAD BY LRS
- 1(A) A LAKSHMAMMA
W/O KRISHNAMURTHY
AGED ABOUT 55 YEARS
- 1(B) KIRAN KUMAR
S/O KRISHNAMURTHY
AGED ABOUT 35 YEARS
- 1(C) SHASHIKALA
D/O KRISHNAMURTHY
AGED ABOUT 33 YEARS
- 1(D) RUNUKA
D/O LATE SUVARNAMMA
AGED ABOUT 49 YEARS
- 1(E) B. NATARAJA
S/O LATE SUVARNAMMA
AGED ABOUT 47 YEARS
- 1(F) RAMESHA G.B
S/O LATE SUVARNAMMA
AGED ABOUT 45 YEARS

...APPELLANTS

(BY SRI. B.M. SIDDAPPA, ADVOCATE)

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AND:

1. SMT PAPAMMA
W/O LATE BORAIAH
SINCE DEAD BY LRS
R2 TO R4 ARE LR_s OF R1

2. G B BORAIAH
S/O LATE BORAIAH
AGED 36 YEARS

3. B GIRISH KUMAR
S/O LATE BORAIAH
AGED 30 YEARS

R1 TO R3 ARE R/OF
GOPALAPURA, CHITRADURGA TOWN.

4. B.RAVI S/O LATE BORAIAH
AGED ABOUT 32 YEARS
GOPALAPURA, CHITRADURGA-577 501.

...RESPONDENTS

(BY SRI. R.V. JAYAPRAKASH, ADVOCATE R2 TO R4;
V/O DATED 05.06.2025, R2 TO R4 ARE LR_s
OF DECEASED R1)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGMENT AND DECREE DATED 04.01.2010 PASSED IN
R.A.NO.67/2009 ON THE FILE OF THE ADDL. DISTRICT &
SESSIONS JUDGE, CHITRADURGA, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGEMENT AND DECREE DATED
30.07.2009 PASSED IN O.S. NO.55/2005 ON THE FILE OF THE
PRL. CIVIL JUDGE (SR.DN) & CJM, CHITRADURGA.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

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ORAL JUDGMENT

The captioned appeal is by defendant No.1 questioning the concurrent judgments rendered by the Courts below declaring plaintiff as the absolute owner of the suit schedule property and consequently, granting injunction restraining the defendant from interfering with plaintiff's peaceful possession and enjoyment over the suit schedule property. The concurrent findings are under challenge by the defendant.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. Facts leading to the case are as follows:

Plaintiff filed a suit seeking relief of declaration of title over the suit schedule property and for consequential relief of injunction. The suit schedule property is a site measuring 70x40 feet. The plaintiff's case is that his late

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father, namely Muchugante Boraiah, purchased the property from erstwhile owner Jellappanaika, S/o Palaiah under registered sale deed dated 08.01.1948. Plaintiff further asserted that the municipality thereafter acquired Sy.No.39 measuring 13 acres 18 guntas excluding 11 guntas. Plaintiff asserted that his father had put up a black-tiled house while the remaining portion was retained as a vacant site with fence on all four sides. The plaintiff further pleaded that about 15 years prior to the institution of the suit, the existing black-tiled house standing over the suit schedule property was replaced by a Mangalore tiled house. It was further asserted that the khata in respect of the suit schedule property stood in the name of the plaintiff's brother, Chinnobaiah, until his death. The plaintiff's property, bearing Site No.21, is stated to be abutting Site No.20 on its western side, which was owned by one Mehernagar. In respect of Site No.20, the said Mehernagar had instituted O.S.No.376/1982 against the plaintiff and his brother. The said suit, having been



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dismissed, was carried in appeal and ultimately came to be considered by this Court in RSA No.263/1990. In the said proceedings, a categorical finding was recorded regarding the location and identity of the adjoining properties, including that Site No.21 extended upto the Southern Conservancy Road and that there was no encroachment or overlapping of Site No.21 over Site No.20.

4. The plaintiff further alleged that defendant No.1, having no property abutting the plaintiff's suit schedule property, nevertheless attempted to create entries and documents in the municipal records in respect of the said property, allegedly in collusion with the concerned municipal officials. According to the plaintiff, defendant No.1, on the strength of such purported municipal records, attempted to lay a claim over the suit schedule property and sought to interfere with the plaintiff's possession by attempting to put up a structure thereon. It is in these circumstances that the plaintiff was



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constrained to institute the present suit seeking appropriate reliefs in respect of the suit schedule property.

5. The defendant No.1, entered appearance, filed written statement and stoutly denied the entire averments made in the plaint. Defendant No.1 though admitted the title of Jellappanaika, however disputed plaintiff's title and the sale deed obtained by plaintiff's father. Defendant No.1 also specifically pleaded that she is not party to the earlier proceedings and therefore the finding recorded in the earlier round of litigation would not bind on defendant No.1 and sought for dismissal of the suit.

6. Plaintiff and defendant lead in oral and documentary evidence. Trial Court decreed the suit declaring plaintiff as absolute owner and in possession and granted injunction which is affirmed by the Appellate Court in RA No. 67/2009.

7. Heard learned counsel for the appellant/defendant No.1 and learned counsel for the



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plaintiffs. The counsels on record have extensively addressed their arguments adverting to the pleadings and oral and documentary evidence. Perused the judgments and decrees passed by the Courts below and the material on record.

8. This Court, vide order dated 21.10.2010 was pleased to admit the appeal on the following substantial question of law:

"(1) Whether in the face of a finding in favour of the appellant in respect of the property bearing K.T.No.8646 measuring 25x30 feet situated at Gopalapura Road, 5th Block, Chitradurga City, could however be held against the appellant on the basis of the alleged observation by this Court in an earlier appeal in RSA.No.263/90 as if it were a finding of fact by this Court?"

9. Since the substantial question of law turns upon the effect of the judgment rendered by this Court in the earlier round of litigation, it would be appropriate to first

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examine the pleadings of defendant No.1. The relevant portion of the written statement reads as under:

“Allegations made in para 2 of the plaint, that originally land bearing Sy.No.39 measuring 13A-29g of Kelagote Village, belonging to one Jellappanaika S/o Palaiah is admitted as true. It is false to allege that from whom an extent of 70 ft x 40 ft was purchased by the Plaintiff’s father late Muchugunte Boraiah through Regd. Sale deed dated 8/1/1948. It is true to contend that thereafter the Municipality had acquired 13 acres 18 guntas of land in the said Sy.No. for formation of NGO’s sites.”

(Emphasis supplied)

10. The above admission assumes significance. Defendant No.1 admits that Sy.No.39 measured 13 acres 29 guntas and that the Municipality acquired only 13 acres 18 guntas out of the said extent for formation of sites. She also admits the original ownership of the land. Therefore, the acquisition by the Municipality was confined to 13 acres 18 guntas and cannot, merely by reference to the survey number, be extended to the entire extent of 13 acres 29 guntas.



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11. The defence of defendant No.1 with regard to the earlier proceedings in O.S.No.376/1982 also requires to be noticed. The relevant portion reads as under:

"It may be true that Meharnagar had filed a suit against the Plaintiff and his brother in O.S.376/82 before this court for permanent injunction in respect of her site No.20 which came to be dismissed on 23/2/1985, against which an appeal in R.A.31/85 filed by her against the plaintiff and his brother was allowed on 24/2/1990. It may be true to allege that the findings in the said appeal is to be effect that the property of the plaintiff extends up to Southern conservancy road, and there is no any encroachment or over lapping of site No.21 in site No.20 and the boundaries have been identified, as to the East: site No.20; West: Road, North: Road and South: Conservancy. The said allegations may be true only subject to the production of the certified copies of the Judgment and decree and therein the above facts, if narrated or pointed out, otherwise, all the said allegations are denied as false and will be contrary to the contents of the said judgment and decree as alleged in the plaint."

(Emphasis supplied)

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12. The certified copies of the judgment and decree in R.A.No.31/1985 arising out of O.S.No.376/1982 and the judgment and decree of this Court in RSA No.263/1990 are produced as Exs.P-20 and P-21. The findings recorded in the earlier proceedings, read as a whole, establish the location of Site No.21 belonging to the plaintiff to the west of Site No.20 and further establish that the plaintiff's property extends upto the conservancy road.

13. However, the question before this Court is not whether the said findings, by themselves, bind defendant No.1. Admittedly, she was not a party to the earlier proceedings. The real question is whether the Courts below have treated those findings as the sole basis for recording a decree in favour of the plaintiff, without independently examining the plaintiff's title. The answer, on a consideration of the record, is clearly in the negative.

14. Defendant No.1 herself has set up a specific case as to the manner in which she claims title and



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possession over the suit schedule property. In paragraph 7 of the written statement, she has pleaded as under:

"The husband of the Defendant No.1 by name Bhappa who is no more, during his life time along with the defendant and their children have been in continuous possession and enjoyment for more than 30 years in respect of measurement for more than 30 years in respect of measurement East-West 30 feet, Out of which 23 1/2 feet, constructed North-South 25 feet and there in a Mangalore tiled house has been constructed out of which 13 3/4 feet constructed towards Northern side for more than 30 years back and in the same remaining vacant site towards southern direction said measurement some little portion is still vacant towards southern portion of the defendant No.1's house, the said property is having Sl.No.8646 property No.16425, situated at Vth Block, now katha stands in the name of the defendant No.1 totally bounded by East-Meharnagar, West-Road/conservancy: North-compound Wall, vacant site and Mangalore tiled house, South: Conservancy and Mahardudrappa's house. The then City Municipal Council, Chitradurga have acquired Sy.No.39 to the total extent of 13 acres 18 guntas for the purpose of formation of sites and to grant the sites to the needy citizens and for the citizens who have no sites. Since the said property was already been in continuous possession and enjoyment of the defendant No.1 and her husband and their children for more than

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30 years, with Mangalore tiled constructed house, along with some portion of vacant site in front of the house stated above, during the year 1998-99 as per the resolution and order dated 19/2/1998 of the then President, the Commissioner of the then City Municipality have pleased to order to allot grant to the extent of 25 feet x 30 feet bearing Sl.No.8646 property No.16425 of Gopalapura road, in Chitradurga town by fixing and after collecting Rs.100/- per square feet amounting to Rs.7,000/- vide receipt No.083871 dated 23/2/1998 and regularized by opening katha in the name of the defendant No.1."

(Emphasis supplied)

15. The above pleading does not disclose that the suit schedule property was specifically allotted to defendant No.1 out of the land acquired by the Municipality. What is asserted is that the property was in her possession and that such possession was subsequently regularised by the Municipality. The distinction is material. Mere acquisition of a portion of Sy.No.39 does not establish that the particular property claimed by defendant No.1 formed part of the acquired extent.



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16. More importantly, defendant No.1 has simultaneously pleaded adverse possession. The relevant portion reads as under:

"The defendant No.1 her husband, during his life time are in continuous possession and enjoyment in peaceful manner, as an absolute owner thereon, perfected the title in respect of the said property, without any disturbance, interference, for more than statutory period of 30 years and same property is allotted by the competent Municipality by allotting the same, the endorsement, assessment and katha extract, tax paid receipt and electricity bill, positive and negative photos are clearly discloses that, the defendant No.1 is the absolute owner and is in peaceful possession and enjoyment of the said property."

(Emphasis supplied)

17. The above pleading exposes a fundamental inconsistency in the defence. Defendant No.1, on the one hand, asserts that she perfected title by adverse possession by being in possession for more than the statutory period. On the other hand, she claims title on the basis of an allotment/regularisation by the Municipality. If



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title is claimed under a municipal allotment, the source of such title has to be established. If title is claimed by adverse possession, the plea necessarily proceeds on the basis that the title is vested in Plaintiff and that the possession has become adverse to such owner for the statutory period. The two pleas, as pleaded in the present case, are mutually inconsistent and, in any event, neither has been established so as to displace the plaintiff's registered title.

18. The plaintiff, on the other hand, traces his title to the registered sale deed dated 08.01.1948 executed in favour of his father, which is marked as Ex.P-1. The plaintiff has further relied upon the assessment extracts, katha extracts and tax paid receipts. The Trial Court, while answering Issue No.1 in the affirmative, has considered the registered sale deed and the evidence led by the plaintiff. The First Appellate Court has independently re-appreciated the material and has adverted to the



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registered sale deed in paragraph 12 of its judgment in R.A.No.67/2009.

19. Therefore, the contention that the Courts below have decreed the suit merely by relying upon the judgment in RSA No.263/1990 cannot be accepted. The plaintiff's title has been considered independently on the basis of Ex.P-1 and the other documentary material. The earlier litigation has only been noticed in the context of the identity, location and boundaries of the property.

20. There is another circumstance which lends considerable support to the plaintiff's case. Defendant No.1 has admitted that Sy.No.39 measured 13 acres 29 guntas, whereas the Municipality acquired only 13 acres 18 guntas. The plaintiff's case is that his father had purchased the property under a registered sale deed dated 08.01.1948, much prior to the acquisition proceedings. The defence does not establish that the property covered



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under the plaintiff's sale deed was included in the 13 acres 18 guntas subsequently acquired by the Municipality.

21. In fact, the very nature of the defence raised by defendant No.1 strengthens the plaintiff's case. Defendant No.1 does not set up an independent antecedent title. Her case is one of long possession, followed by alleged municipal regularisation, coupled with a plea of adverse possession. Such a defence cannot, without proof of a legally sustainable source of title or the ingredients necessary to constitute adverse possession, defeat a registered title of an earlier date.

22. The findings recorded in the earlier litigation concerning Site Nos.20 and 21 have to be understood in this limited context. They are relevant to establish the identity and topography of the adjoining properties. The plaintiff's Site No.21 was found to be situated to the west of Site No.20 and to extend upto the conservancy road. Defendant No.1 herself has referred to the said

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proceedings in her written statement. Hence, the said findings cannot be brushed aside altogether while appreciating the identity of the property, though they cannot be treated as *res judicata* against defendant No.1.

23. The substantial question of law, therefore, proceeds on a premise which is not borne out by the record. There is no material to conclude that the Courts below treated the observations made in RSA No.263/1990 as a binding finding of fact against defendant No.1 and decreed the suit solely on that basis. On the contrary, the Courts below have examined the plaintiff's title documents and the defence of defendant No.1 and have thereafter taken note of the findings in the earlier proceedings only as corroborative material concerning the identity and location of the property.

24. This Court, sitting in second appeal, finds no perversity or error of law in the concurrent findings recorded by the Courts below. The plaintiff has established



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his title on the strength of the registered sale deed and supporting documents, whereas defendant No.1 has failed to establish a better title or a legally sustainable basis to defeat the plaintiff's title. Accordingly, the substantial question of law framed by this Court is answered in the ***Negative.***

25. For the foregoing reasons, the second appeal, being devoid of merits, stands ***dismissed***. The judgment and decree passed by the Courts below are affirmed.

No order as to costs.

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(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 3 Sl No.: 2