



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 942 OF 2014 (DEC/INJ)

BETWEEN:

G. RAJU,
S/O LATE GUNDAPPA GOWDA,
AGED ABOUT 65 YEARS,
R/A EJIPURA VILLAGE,
VIVEKANAGAR POST,
BANGALORE - 560 047.

...APPELLANT

(BY SRI.K.KUMAR, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER,
BANGALORE DISTRICT,
BANGALORE.
2. THE CHIEF CONSERVATOR OF FORESTS
IN KARNATAKA,
ARANYA BHAVAN,
18TH CROSS, MALLESWARAM,
BANGALORE - 560 003.

...RESPONDENTS

(BY SMT.RASHMI RAO, HCGP FOR R1 AND R2 VIDE ORDER
DATED 05.07.2016)

THIS RSA IS FILED U/S.100 OF CPC., AGAINST THE
JUDGMENT & DECREE DATED 23.4.2014 PASSED IN

Digitally
signed by
SHILPA BAI S
Location:
HIGH
COURT OF
KARNATAKA



R.A.NO.441/2012 ON THE FILE OF THE III ADDL. DISTRICT & SESSIONS JUDGE, BANGALORE RURAL DISTRICT, SIT AT ANEKAL, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 1.10.2012 PASSED IN OS.NO.2543/2006 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., ANEKAL.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 23.04.2014 passed in R.A.No.441 of 2012 by the learned III Additional District and Sessions Judge, Bangalore Rural District sitting at Anekal, confirming the judgment and decree dated 01.10.2012 passed in O.S.No.2543 of 2006 by the learned Senior Civil Judge and JMFC, Anekal.



2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellant was the plaintiff and the respondents were the defendants.
3. Brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiff filed a suit for declaration of title and permanent injunction. It is the case of the plaintiff that property bearing Survey No. 252 (old No.156) situated at Mantapa village, Jigani Hobli, Anekal, measuring 4 acres was granted to one Smt. Tulasamma during 1964-1965. She was in possession and enjoyment of the suit schedule property till her death. After her demise, her grandson Suryanarayana succeeded to the property as an absolute owner. He sold the suit schedule property in favour of the plaintiff under a registered sale deed dated 18.04.1987. The plaintiff was put in possession of the suit schedule property and the revenue records stood in the name of the plaintiff. In December 1994, the plaintiff noticed that forest



official had erected the stones in a portion of the schedule property. Thereafter, the plaintiff got surveyed his property and found that defendant No.2 forest department has encroached 1 acre 33 guntas out of 4 acres on the southern side of the schedule property. The plaintiff got issued a legal notice under Section 80 of CPC, but the defendants did not reply to the notice under Section 80 of CPC. Hence, a cause of action arose for the plaintiff to file a suit for declaration of title and permanent injunction.

5. Defendant No.2- Deputy Commissioner filed a written statement contending that the plaintiff has encroached the forest land and the sale deed and documents are concocted. The vendor of the plaintiff had no right, title or interest over the forest land. It is contended that Survey Nos.156 and 171 belongs to Bannerghatta National Park. Defendant No.2 is in possession and enjoyment of the portion of the suit schedule property since 1931. It is contended that the Maharaja of Mysore



under the power vested under the provision of Section 35(III) of Mysore Forest Regulation, constituted reserved land for the purpose of District forest by notification in the year 1931 and declared 388 acres in Survey Nos. 156 and 171 has reserved for the District Forest in the Mantapa village. The plaintiff has no right, title or interest over the suit schedule property. There is no cause of action to file a suit for declaration of title and permanent injunction. Hence, prays to dismiss the suit.

6. The trial Court, based on the rival pleadings of the parties, framed the following issues:

1. Whether the plaintiff proves that the land described in the plaint with the boundaries mentioned was granted by the Government to Smt. Tulasamma during the year 1964-65?
2. Whether the plaintiff proves that he had purchased the plaint schedule property under the registered sale deed dated 18/04/1987?
3. Whether the plaintiff proves that he is in actual physical possession and enjoyment of the plaint schedule land?



4. Whether the plaintiff proves that the 2nd defendant had encroached an extent of 1 acre 33 guntas out of the extent of 4 acres of plaintiff schedule survey number on the southern side of the plaintiff schedule property?

Or Alternatively

Whether defendants prove that a portion of the plaintiff schedule area as claimed by the plaintiff falls within the Bannerghatta National Park Area?

5. Whether the defendants prove that suit is bad for non-compliance of mandatory provisions of section 80 of the Civil Procedure Code?

6. Whether the defendants prove that in the year 1964-65 there was no survey number bearing No. 252 (Old No. 156) of Mantapa Village?

7 Whether the defendants prove that Section 2 of Forest Act, 1980 prohibits use of Forest land or any portion thereof or Reserve Forest or State Forest for non-Forest purpose without prior approval of Central Government?

8. Whether defendants prove that there was no right of any authority to grant the Forest land without the release order of the State Government or Central Government?

9. If so, whether the defendants prove that plaintiff has no right, title or interest over the portion of Sy. No 156 of Mantapa Village?

10. Whether the plaintiff proves the alleged interference?



11. Whether the plaintiff proves that they are entitled for the relief of declaration, permanent injunction and mandatory injunction?

12. What order?

7.. The plaintiff, to substantiate his case, examined himself as PW1 and marked 23 documents as Exhibit P1 to P23. In rebuttal, defendants examined DW.1 and marked 10 documents as Exhibit D1 to Exhibit D10. The trial Court, after recording the evidence, hearing both sides, and assessment of verbal and documentary evidence, answered issues No. 1, 3, in the negative, 1st part of issues No.4 in the negative, 2nd part of issue No.4 in the affirmative, issue No.5, 10 and 11 in the negative, issues No.6 to 9 in the affirmative and issue No.12 as per the final order. The suit of the plaintiff was dismissed vide judgment dated 03.10.2012.

8. The plaintiff aggrieved by the dismissal of suit in O.S. No. 2543 of 2006 preferred an appeal in R.A.No. 441 of 2012 on the file of learned III Additional District and



Sessions judge, Bangalore Rural District, sitting at Anekal.

9. The first appellate court, after hearing the learned counsel for the parties, framed the following points for consideration:

- (1) Whether the appellant proves that the judgment and decree passed by the learned Sr.Civil Judge, Anekal in O.S.No.2543/2006 dated 01.10.2012 is suffering from any irregularities or illegalities and calls for interference by this Court in this appeal?
- (2) Whether the appellant proves that he is the owner in possession of entire suit property?
- (3) Whether the appellant proves that he is entitle for mandatory injunction as prayed in the plaint?
- (4) Whether the respondent No.2 proves that out of 4 acres shown in suit property, 2 acres 16 guntas comes within the boundaries of state forest as Bannerughatta National Park?



(5) What order?

10. The first appellate court, after re-appreciating the entire evidence on record, answered points No.1 to 3 in the negative, point No.4 in the affirmative and point No.5 as per the final order. The appeal was dismissed vide judgment dated 23.04.2014 and upheld the judgment and decree passed by the trial Court.
11. The plaintiff, aggrieved by the impugned judgments, filed this Regular Second Appeal.
12. Heard the arguments of the learned counsel appearing for the plaintiff and learned High Court Government Pleader for the respondents.
13. Learned counsel appearing for the plaintiff submits that the plaintiff is the absolute owner of the suit schedule property and he had purchased the suit schedule property under a registered sale deed. The vendor of the plaintiff put the plaintiff in possession of the suit schedule property and all the revenue records



were standing in the name of the plaintiff. He submits that during the pendency of the suit, a Court Commissioner was appointed and Court Commissioner has submitted a report stating that the entire portion of the suit schedule property falls within the forest area and remaining 1 acre 24 guntas is a separate property, which does not fall within a forest area. There is an overlapping in the survey numbers and the area. He submits that trial Court could have moulded relief by granting relief of one acre 24 guntas of land in Survey No. 252.

14. To buttress his argument, he placed reliance of the order of this Court in the case of ***Indira Bai versus Prof. Shyamasundar***¹. Hence, he also submits that the first appellate court has recorded a finding in paragraph No. 26 of the judgment. Admittedly, there is no dispute in respect of other parts of land. The trial Court could have decreed the suit in respect of other

¹ ILR 1988 KAR 1095



parts of the land by moulding relief under Order VII Rule 7 of CPC. The trial Court has dismissed the suit in its entirety. Thus, dismissal of the suit by the trial Court is contrary to the mandate laid down by this Court in the case of **Indira Bai** (referred supra). Hence, on these grounds, prays to allow the appeal.

15. *Per contra*, the learned High Court Government Pleader submits that the suit schedule property's entire land bearing Survey No. 252 is the forest land and the plaintiff is not the owner in possession of the Sy.No. 252. She submits that both courts below have concurrently recorded a finding of fact that the plaintiff is not in possession of entire extent of 4 acres. She submits that the Court commissioner has submitted a report showing that except 1 acre 24 guntas of land remaining land in Survey No. 252 is a part and parcel of the forest land. She submits that both courts below have rightly passed the impugned judgments. Hence, on these grounds, she prays to dismiss the appeal.



16. Perused the records, and considered the submissions of the learned counsel for the parties.

17. This Court, vide order dated 08.06.2026, admitted the appeal considering the following substantial question of law:

1. Whether both the courts below were justified in dismissing the suit in its entirety without considering the admission of the defendant in regard to the ownership of the plaintiff to the extent of 1 acre 24 guntas?
2. Whether both the courts below have committed an error in not moulding the relief under Order VII Rule 7 of the CPC, 1908 and contrary to the proposition of law laid down by the Division bench of this court in the case of ***Indira Bai versus Prof. Shyamsundar*** reported in ***ILR 1988 Kar 1095***?



Regarding substantial questions of law:

18. Both substantial questions of law are interlinked, hence, they are taken together for common discussion to avoid the repetition of facts.
19. The plaintiff filed a suit for declaration of title and permanent injunction, claiming that originally the suit schedule property was owned and possessed by Tulasamma. The said land was granted to Tulasamma during 1964-65 and the old survey number is 156. She was in possession of the suit schedule property till her demise. After her demise, her grandson sold the suit schedule property in favour of the plaintiff under a registered sale dated 18.04.1987. The vendor of the plaintiff put the plaintiff in possession of the suit schedule property to the extent of 4 acres in Survey No.252. Based on the registered sale deed dated 18.04.1987, name of the plaintiff was entered in the revenue records. The plaintiff is paying the kadayam of the suit land. The plaintiff to establish the ownership



of Tulasamma, produced Exhibit P1 is the certified copy of the saguvali chit. Exhibit P2 is the certified copy of the registered sale deed, which discloses that the plaintiff had purchased the suit schedule property from the grandson of Tulasamma dated 18.04.1984 in respect of land bearing Survey No.252 (old No. 156) measuring 04 acres. Exhibit P3 is the mutation extract which clearly discloses that on the basis of the registered sale deed Exhibit P2, the revenue authorities have passed an order to mutate the name of the plaintiff in the revenue records. Exhibit P4 to P8 are the certified copies of the RTC extract, which clearly disclose that the plaintiff is the owner in possession to the extent of 4 acres in Survey No. 252. Exhibit P9 is the copy of the survey sketch which discloses that the plaintiff prior to the filing of the suit got surveyed the land bearing Survey No.252. The surveyor has surveyed and prepared a sketch which discloses that the defendants encroached upon the remaining portion



of the land in Survey No. 252. The commissioner has prepared the sketch and opined that the defendant has encroached upon the land in Survey No.252 and survey sketch is marked as Exhibit P9. On the basis of survey sketch i.e. Exhibit P9, the plaintiff got issued a legal notice under Section 80 of the CPC, calling upon the defendant to hand over the alleged encroached portion in Survey No. 252. Exhibit P12 is the copy of the letter dated 10.04.1995. Exhibit P13 is the copy of the letter dated 07.11.1995. Exhibit P14 is the grant certificate which clearly discloses that Survey No. 252 (old No. 156) was granted in favour of Tulasamma. Exhibit P15 is the MR No.8/2002 to 2003. Exhibit P16 is the certified copy of the village Map. Exhibit P17 and P18 are two pahanis. Exhibit P19 and 20 are two mutation extracts. Exhibit P21 is the Government circular dated 06.09.1974. Exhibit P22 is the letter correspondence of the forest department and Exhibit P23 is the letter proceedings of the Government.



20. During the course of cross examination, it was suggested to PW.1 that Survey No. 252 is the part and parcel of the forest land and the plaintiff has no right, title or interest in survey No. 252 and The plaintiff is not in possession of any portion of Survey No. 252. The said suggestion was denied by PW1. In rebuttal, the respondent examined its officer as DW1. He reiterated the written statement averments in the examination-in-chief and produced the documents marked as Exhibit D1 to D10.

21. During the course of cross-examination, it was suggested to DW.1 that suit schedule property bearing Survey No. 252 was granted in favour of Tulasamma and she was in possession of the suit schedule property. After her demise, her grandson sold the property in favour of the plaintiff under a registered sale deed dated 18.04.1987 and the vendor of the plaintiff, put the plaintiff in possession of the suit



schedule property. The said suggestion was denied by DW1.

22. During the pendency of the suit, a court commissioner was appointed. He has surveyed the land and measured the suit property and also the property owned and possessed by the defendants/respondents. The commissioner has submitted a report stating that portion of the land bearing Survey No. 252 is the forest land and remaining land is the private land. The remaining land i.e., out of 4 acres, 2 acres 16 guntas is the forest land falls within a forest area and other survey land to an extent of 1 acre 24 guntas falls within Survey No. 252. Admittedly, the defendants have not denied the ownership of the plaintiff to the extent of 1 acre 24 guntas of land. The first appellate court has recorded a finding in paragraph No.26 which reads as follows:

26. The advocate for the plaintiff has taken another contention that though he



has filed a suit for declaration and injunction for 4 acres, the trial Court has dismissed the entire suit wrongly. In the case in hand, on going through the prayer of the plaintiff, he sought for declaration and possession over the encroached area as per the property mentioned in the sale deed. Admittedly, there is no dispute in respect of other part of the land, which does not come under the forest area. When there is no dispute in respect of that area, the arguments addressed by advocate for the plaintiff is not acceptable one.

(emphasis supplied)

23. The said finding recorded by the trial Court is contrary to the mandate laid down by the Division Bench of this Court in the case of **Indira Bai vs. Prof. Shyamasundar** (referred supra). The trial Court could have moulded a relief under Order VII Rule 7 of the CPC. On the contrary, the trial Court has dismissed the suit in its entirety. The defendant did not challenge the



findings recorded by both courts below in respect of the ownership of the plaintiff in respect of one acre 24 guntas in Survey No.252. As the plaintiff had purchased the said property under a registered sale deed dated 18.04.1987, on the strength of Registered sale deed dated 18.04.1987, the name of the plaintiff is entered in the revenue records. Further a court commissioner has already recorded a finding that the plaintiff is in possession to an extent of 1 acre 24 guntas in Survey No.252 and the remaining area purchased by the plaintiff under the registered sale deed dated 18.04.1987 is part and parcel of No. 156 i.e., forest land. The trial Court could have moulded a relief by granting a relief of declaration to the extent of 1 acre 24 guntas of land in Survey No. 252.

24. Both the courts below have committed an error in dismissing the suit in its entirety. Learned counsel for the plaintiff was justified in submitting before the first appellate court that the trial Court could have moulded



a relief and could have decreed the suit in part and declared that the plaintiff is the owner to the extent of 1 acre 24 guntas in Survey No. 252, on the contrary, has dismissed the suit in its entirety. The impugned judgments passed by the courts below are arbitrary and erroneous, and the same are liable to be set aside. In view of the above discussion, I answer substantial question No.1 in the negative, and substantial question No.2 in the affirmative.

25. Accordingly, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is ***allowed***.
- ii. The impugned judgments passed by the courts below, are hereby set aside.
- iii. Consequently, suit of the plaintiff is partly decreed.



- iv. It is declared that the plaintiff is the owner to the extent of 1 acre 24 guntas of land in Survey No. 252 as per the commissioner's report and the commissioner's report shall be part and parcel of decree.
- v. The defendants are restrained from interfering into the peaceful possession and enjoyment of the plaintiff in the land bearing Survey No. 252 to an extent of 1 acre 24 guntas.
- vi. No order as to the costs.
- vii. Pending interlocutory application/s, if any, stands disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS