



CNR: KAHC010292162019

NC: 2026:KHC:37032
RSA No. 1595 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1595 OF 2019 (DEC)

BETWEEN:

REVANAPPA
SINCE DEAD BY HIS LRS

SMT. SHIVAMMA
SINCE DEAD BY HER LRS

1. K.R.RAMANNA
S/O LATE REVANAPPA
AGED ABOUT 62 YEARS,
2. K.R. LOKESH
S/O LATE REVANAPPA,
AGED ABOUT 60 YEARS,
3. K.R. SURESH
S/O LATE REVANAPPA,
AGED ABOUT 58 YEARS,
4. K.R. SIDDESH
S/O LATE REVANAPPA,
AGED ABOUT 56 YEARS,
5. K.R. JAYAMMA
W/O SHIVALINGAPPA
D/ LATE REVANAPPA
AGED ABOUT 72 YEARS,

ALL ARE AGRICULTURISTS AND
R/A KADAJJI VILLAGE,

Digitally
signed by
MALATESH
K
Location:
HIGH
COURT OF
KARNATAKA





CNR: KAHC010292162019

NC: 2026:KHC:37032
RSA No. 1595 of 2019

DAVANAGERE TALUK,
DAVANAGERE DISTRICT - 577 002.

...APPELLANTS

(BY SRI. YOGESH V. KOTEMATH, ADVOCATE FOR
SRI. VIRUPAKSHIAH P.H, ADVOCATE)

AND:

1. K.V. VIRUPAKSHAPPA
S/O LATE VEERAPPA
AGED ABOUT 72 YEARS,
2. K.V. SHIVAMURTHAPPA
S/O LATE VEERAPPA,
AGED ABOUT 72 YEARS,

BOTH ARE AGRICULTURIST,
R/O KADAJJI VILLAGE,
DAVANAGERE TALUK
AND DISTRICT - 577 002.

3. K.R. NAGARAJAPPA
S/O LATE REVANAPPA
AGED ABOUT 62 YEARS,
R/O NALAVAGALU VILLAGE,
RANIBENNUR TALUK,
HAVERI DISTRICT - 581 110.
4. K.R. LAKSHMANA
S/O LATE REVANAPPA
AGED ABOUT 61 YEARS,
AGRICULTURIST,
R/O KADAJJI VILLAGE,
DAVANAGERE TALUK
AND DISTRICT - 577 002.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 01.06.2019
PASSED IN RA.NO.49/2018 ON THE FILE OF THE II
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, DAVANAGERE,



CNR: KAHC010292162019

DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 05.01.2018 PASSED IN OS.NO.522/2008 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE, DAVANGERE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.Yogesh V. Kotemath, learned counsel appearing on behalf of Sri.Virupakshaiah P. H., learned counsel for the appellants.

2. Unsuccessful plaintiffs are the appellants challenging the dismissal of the suit in O.S.No.522/2008 dated 05.01.2018 which was confirmed by the First Appellate Court in RA No.49/2018 dated 01.06.2019.

3. Facts of the case are as under:

3.1. A suit for declaration and consequential relief came to be filed in O.S.No.522/2008 by the plaintiffs.

3.2. Plaintiff contended that sale deed dated 27.04.1977 is a fake and created document which did not convey any right, title or interest in favour of father of defendant Nos.1 and 2 and therefore, plaintiffs who are the absolute owners-in-possession



CNR: KAHC010292162019

NC: 2026:KHC:37032
RSA No. 1595 of 2019

and enjoyment of 'A' schedule property which is morefully described hereunder and sought for permanent injunction:

"A portion of land in Sy.No.29/P to an extent of 17 guntas assessed at (whole schedule 'A' property) Rs.4.15 situated at Kadajji village in Davanagere Taluk bounded as follows:

East: Siddaveerappa's land in Sy.No.92/P

West: Passage for reaching the plaintiff's land from village road

North: Residential house of plaintiff Nos.1 and 2

South: Remaining portion of the land belonging to the plaintiffs in Sy.No.92/P

Market value of land is Rs.80,000/-."

4. Suit was contested. On due contest, suit was dismissed inter alia holding in paragraph Nos.13 to 15 as under:

"13. Partition deed dated 20.04.1979 which is registered document bears name of father of defendant Nos.1 & 2 towards north while discribingng boundaries of share of plaintiff No.1. If sale deed dated 20.04.1979 is created by the father of defendant Nos.1 & 2 his name would not have been mentioned in the partition deed dated 20.04.1979 which took place between plaintiff No.1 and



CNR: KAHC010292162019

his brother K.Siddaveerappa. Name of father of defendant Nos.1 & 2 appeared in records of rights pertaining to 'A' schedule property in the year 1995- 96 as Ex.D.1. Ex.D.1 was confronted document during cross of PW-1. Appearing name of father of defendant Nos.1 & 2 in the record of right implies that sale deed dated 27.04.1977 acted upon. It is settled principle that mere non mutation for long time, name does mean sale deed cannot be acted upon. Further admittedly mutations were not challenged by the plaintiffs. Ex.D.2 is registered original sale deed of 30 years old document which carry presumption for its execution. Thus, viewed from any angle sale deed dated 27.04.1977 in respect of 'A' schedule property is not illegal and created document. Plaintiffs failed to prove that father of defendant Nos.1 & 2 created sale deed dated 27.04.1977. Therefore, in view of above discussion, I am of the opinion that plaintiffs failed to prove the fact that sale deed dated 27.04.1977 in respect of 'A' schedule property is illegal and created. Therefore, I answer issue No.2 in the NEGATIVE.

14. Issue No. 3:- While discussing issue No.1, I have held that plaintiffs failed to prove the fact that they had been in possession since 20.04.1979. PW-6 produced Ex.P.25 private complaint stating defendant Nos.1 & 2 forcibly took possession of 'A' schedule property. Ex.P.28 is the protest petition. On perusal of Ex.P.28 it is noticed that rural police authorities have filed 'B' final report after investigation. But plaintiffs have not produced 'B' summary report filed by the police. 'B' report has not



CNR: KAHC010292162019

been filed by plaintiffs in order to avoid the disclosure of reasons assigned to file 'B' final report. Further in spite of filing 'B' final report PW-6 denies the fact. Therefore, testimony of PW-6 is not reliable. Thus Ex.P.26 to 30 also do not aid plaintiffs to establish defendant Nos.1 & 2 tried to trespass into 'A' schedule property. When plaintiffs failed to prove that they were in possession of 'A' schedule property, question of trying to trespass by defendant Nos.1 & 2 does not arise. Plaintiffs failed to prove that they were in possession of 'A' schedule property and defendant Nos.1 & 2 tried to trespass into 'A' schedule property. Therefore, in view of above discussion, I answer issue No.3 in NEGATIVE.

15. Issue No.4:- Plaintiff No.1 and his brother K.Siddaveerappa got divided Sy.No.92 on 20.04.1979 through registered partition deed. Share fallen to plaintiff No.1 mentioned with boundaries and towards north name of father of defendant Nos.1 & 2 mentioned. It is natural that both plaintiff No.1 & his brother inform about contents of partition deed. Father of defendant Nos.1 & 2 has no role to play at the time of registration of partition deed. If this fact taken into consideration, present suit of plaintiffs hopelessly barred by limitation. PW-1 during cross examination deposed that defendant Nos.1 & 2 were allowed to use 'A' schedule property 25 years ago. Further PW-1 deposed 15 years ago his father asked to remove woods i.e., to vacate 'A' schedule property but defendant denied to vacate the property when defendants Nos.1 & 2 denied to vacate 'A' schedule property 15 years



CNR: KAHC010292162019

ago, plaintiffs filed suit in the year 2009. Further PW-1 admitted he came to know about sale deed of defendants 15 years ago. Even if it is believed that defendants denied to vacate property 15 years ago and coming to know about sale deed of defendants 15 years ago is true, then also suit of the plaintiffs is barred by limitation. Viewed from any angle suit of the plaintiff is barred by limitation. Hence, I answer Issue No. 4 in the Affirmative."

5. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.49/2018.

6. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappreciation of the material evidence on record, did not accept the additional evidence that was sought to be placed on record and dismissed the appeal.

7. Being further aggrieved by the same, plaintiff has filed the present appeal on following grounds:

- *Both the Courts below have committed serious error in law and also facts in not appreciating both oral and documentary evidence on records. As such, the Judgments and Decrees are liable to be set aside.*



CNR: KAHC010292162019

- *That the Learned First Appellate Judge has committed serious error in law in not re-appreciating the evidence on record led in by the parties. Solely by reiterating the findings and conclusions arrived at by the Learned Trial Judge, the Learned First Appellate Judge has dismissed the appeal without assigning proper and valid reasons.*
- *It is submitted that, both the Courts below have committed serious error in dismissing the suit filed by the plaintiffs /appellants without assigning any valid and tenable reasons. Both the courts below failed to appreciate the fact that the 'A' Schedule Property was owned and enjoyed by the plaintiffs lead additional documents. The Learned 1 Appellate Judge ought to have allowed the said application to permitting the appellants to lead additional evidence so as to prove the case of the appellants / plaintiffs.*
- *Looking from any angle the Judgments and Decrees passed by both the Courts below are liable to be set aside, thereby decreeing the suit filed by the plaintiffs / appellants.*

8. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not properly appreciated that the plaintiffs being in possession of the suit property and revenue entries were standing in their name even after alleged sale



CNR: KAHC010292162019

deed dated 27.04.1977, dismissing the suit has resulted in miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

"i. Whether the Courts below were justified in passing the Judgments and Decrees without appreciating both oral and documentary evidence led in by the parties?

ii. Whether the Learned 1st Appellate Judge was justified in passing the Judgment and Decree without properly re-appreciating both oral and documentary evidence on record?

iii. Whether both the courts below were right in coming to the conclusion that the suit is barred by limitation?

iv. Is it proper and correct on the part of the courts below to accept the report of Commissioner in the absence of examination of the expert?

v. Whether the Courts below were justified in coming to the conclusion that the Partition Deed vide Ex.P1 is inadmissible in the absence of production of original Partition Deed?



CNR: KAHC010292162019

vi. Whether the Learned 1st Appellate Judge was justified in rejecting the application filed by the appellants under Order and that the defendant No.1 and 2 did not have any right, interest over the said property?

x. Both the courts below committed serious error in relying on the report of the Handwriting Expert even though the said report was not put to test and the expert was not examined before the Trial Court. The opinion of the commissioner ought not to have considered in the absence of his evidence.

xi. That the courts below failed to appreciate the fact that the partition deed vide Ex.P1 was produced before the court below. However on the sole ground that the original partition deed has not been produced, the courts below have drawn adverse inference against the plaintiffs and come to the conclusion that the ownership of the plaintiffs over the 'A' Schedule Property is not proved.

xii. It is submitted that, the plaintiffs had examined independent witnesses as PW 2, 3 and 4 to prove the ownership and possession over the plaintiffs over the 'A' Schedule property. Both the courts below have failed to



CNR: KAHC010292162019

consider the evidence of the witnesses in its right perspective.

xiii. Both the Courts below have come to the wrong conclusion that the alleged sale deed 27.04.1977 ought to have been challenged within a period of 3 years. Further, presumption under Section 90 of Indian Evidence Act has been drawn with regard to 30 years old document. As such, both the courts below committed error in applying the proper principles of law.

xiv. The Learned 1 Appellate Judge committed serious error in not considering the application filed by the appellants under Order 41 Rule 27 of CPC seeking to produce documents and 41 Rule 27 of CPC for production of documents to lead additional evidence?"

9. This Court did not deem it fit to issue notice to the respondents.

10. Having heard the arguments of learned counsel for the appellants, this Court perused the material on record meticulously.



CNR: KAHC010292162019

11. On such perusal of the material on record, Ex.P.1 is the registered partition deed whereby there was a partition in respect of the family properties wherein it has been shown that property of father of defendant Nos.1 and 2 is on the northern side. This registered partition deed is much earlier to the alleged sale deed.

12. If the sale deed that has been executed on 27.04.1977 vide Ex.D.1 in favour of father of defendants is to be considered as fake document, there was no necessity for the parties to the registered partition deed dated 20.04.1979 to show the name of father of defendant Nos.1 and 2 on the northern side.

13. Further, during the cross-examination of plaintiffs' witnesses, Ex.D.1 was confronted and there was no denial to the same.

14. Further, D.W.1 in his evidence has clearly stated that since the northern boundary of the property is shown as the property belonging to the father of defendant Nos.1 and 2



NC: 2026:KHC:37032
RSA No. 1595 of 2019

CNR: KAHC010292162019

in the partition deed, plaintiffs cannot claim that sale deed is a fake document.

15. Moreover, sale deed dated 1979 was sought to be cancelled in the year 2008.

16. Taking note of these aspects of the matter, dismissal of the suit by the Trial Court confirmed by the First Appellate Court needs no interference having regard to the scope of Section 100 of Code of Civil Procedure.

17. Hence, the following:

ORDER

- i. Admission declined.
- ii. Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

KAV
List No.: 1 Sl No.: 61