



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1429 OF 2017 (INJ)

BETWEEN:

SRI. NANJUNDE GOWDA
S/O RAME GOWDA,
AGED ABOUT 53 YEARS
R/O PAMPINA HOSAHALLI VILLAGE,
BELAGOLA HOBLI,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT - 571 438.

...APPELLANT

(BY SRI. LEELADHAR H.P, ADVOCATE)

AND:

1. K.T. SUDINDRANATH
S/O K.H. THIMMAIAH,
AGED ABOUT 61 YEARS
2. K.T. HARINDRANATH
S/O K.H. THIMMAIAH,
AGED ABOUT 59 YEARS,

BOTH ARE R/O ANDRI ROAD,
NO.3, SHANTHINAGAR,
BENGALURU - 560 027.

BOTH ARE REP. BY THEIR
POWER OF ATTORNEY HOLDER
SRI. BHEEMESH, S/O NINGAIAH,
AGED ABOUT 54 YEARS
R/O HEBBALU, MYSORE - 570 001

...RESPONDENTS

(BY SRI. K.N. NITISH, ADVOCATE FOR R1 AND R2)

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 25.03.2017 PASSED IN RA NO.9/2014 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND JMFC., SRIRANGAPATNA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 12.09.2013 PASSED IN OS NO.332/2009 ON THE FILE OF THE PRL. CIVIL JUDGE, SRIRANGAPATNA.

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. H.P. Leeladhar, learned counsel for the appellant and Sri. K.N. Nithish, learned counsel for the respondents.

2. The present appeal is the plaintiff's second appeal challenging the judgment of the First Appellate Court, reversing the decreeing of the suit, filed by the plaintiff in OS No.332/2009 in RA No.9/2014.

3. Facts of the case are as under :

3.1 A suit for bear injunction came to be filed by the appellant herein in OS No.332/2009 in respect of



following property (hereinafter referred to as suit property):

SCHEDULE

Land situated at Mogarahally Village, Belagola Hobli, Srirangapatna Taluk, bearing Sy.No.26/1a 2/p extent 0.02 guntas of dry land bounded on:

East : Land of Bhagyalaxmi and Madamma

West: K.R.S. Mysore Road

North : Land of Y.No.26/1a-3 belongs to VIjaya

South : Road

3.2 Plaintiff claimed that he purchased the suit property from erstwhile owner Sri. Krishnegowda through a registered sale deed dated 24.11.1997.

3.3 It is further contented that Krishnegowda had purchased the suit property from K. Rathnamma, son of Kannaswamy under a registered sale deed dated 28.08.1995.

3.4 It is also contented that after purchase of the suit property, revenue entries were mutated in the name



of the plaintiff and RTC extract reflect the name of the plaintiff.

3.5 When such being the factual aspects of the matter, defendants without any right, title or interest started interfering with the suit property. Therefore, suit was necessitated.

3.6 Pursuant to the suit summons, defendants entered appearance filed written statement contending that suit property belonged to mother of the defendants whereas vendors of plaintiff namely Krishnegowda and K. Rathnamma, who are defendants No.20 and 22 in OS No.86/2000, on the file of Additional Civil Judge, Srirangapatna and they suffered a decree which got confirmed before the First Appellate Court. Therefore, any sale deed executed by Krishnegowda, Rathnamma would not transfer any right, title or interest in respect of the suit property and as such, suit is to be dismissed.



3.7 Learned trial Judge after considering the rival contentions of the parties, raised necessary issues and after recording the evidence of the parties, decreed the suit of the plaintiff.

3.8 Being aggrieved by the same, defendants filed an appeal before the First Appellate Court in RA No.9/2014.

3.9 Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of the material record, allowed the appeal and dismissed the suit of the plaintiff.

4. Being further aggrieved by the same, it is the plaintiff who has filed the present appeal on following grounds:

- *The appellant submit that the 1st Appellate Court has failed to consider the 1st appeal as per the provisions of under Section 96 of the code of civil procedure and passed an appropriate order but the entire reading of the impugned order of the 1st appellate Court is lacking to the same and liable to be set aside. The trial court though*



the appellant produced document Ex.P13 to 15 which are the sale deeds executed by Nagaraju and his wife Sharadha in favour of Bhagyalakshmi and portion of land in Sy.No.26/1A-2, 0.81 Guntas out of 1.34 hectares and further one Smt. A.T.Sharadamma, W/o Thirumalai executed a sale deed in favour of N.Siddegowda, S/o Lingegowda under registered sale deed dated 21.3.1994 are the properties which are totally separate properties in between on the southern side there is a road has been formed by Bhagyalakshmi. Further, the said Bhagya Lakshmi sold 2 Aers of land out of 081 Guntas of land purchased under the registered sale deed dated 25.1.1993 from A Nagaraj and Smt. Sharada to K.Rathnam, S/o Kannaswamy the vendors vendor of plaintiff and this identity of the property are totally different in support of the same the appellant produced herewith a sketch along with Additional document to show the property sold to Bhagya Lakshmi and the property sold to Sidde Gowda and different properties in between properties there is a road when that being the case the 1st appellate court without taking into consideration of the fact on issue has jumped to the conclusion wrongly pass the judgment application of mind. without

- *The 1st appellate court has jumped to the conclusion framing points for consideration that whether injunction simplicitor without seeking declaration of title is maintainable and also another issue points consideration whether findings are reasoned given by the trial court issue No.1 to 3 are affirmative and issue No.4 as per the*



final order thereby resulted in decreeing the suit of the respondent, plaintiff are in accordance with facts, law each other and both points clubbed together and come to and probabilities wherein both points are contradicting the conclusion that the trial court has come to the conclusion that without seeking declaration suit for injunction simplicitor is not maintainable is totally illegal and contrary to law.

- *The 1st appellate court failed to see that in absence of the authenticated document in O.S.No.86/2000 claims to be on the file of the Additional Senior Civil Judge. Srirangapatna wherein vendors vendor are parties to the suit have given a finding to the effect that there sisters were absolute owners of land bearing Sy.No.26. As such paternal uncle Nagaraj and his wife has no authority to execute sale deed which is null and void which is totally without jurisdiction of the 1st appellate court when in fact the said findings in O.S.No.86/2000 not produce before the 1st appellate court thereby exceed its jurisdiction to allow the appeal.*
- *The court below failed to see that the O.S.No.86/2000 filed by the one A.T. Sharada since dead by LR's K.T. Sudindranath and Harindranath who are the defendants No.1 and 2 in O.S.No.332/2009 and Smt. Vimala, Srikantha, Jyothi, Manjunath and Geetha Rakash are the plaintiff and the said suit in O.S.No.86/2000 and against the 21 persons for the suit for declaration and possession was dismissed vide its judgment and decree dated*



8.1.2010. Copy of the judgment and decree is produced along with additional document for kind perusal when that being the case the findings of the 1st appellate court is totally illegal and contrary to law.

- *The 1st appellate court also failed to see that the appellants is not parties to the said suit any findings given render by that court is not binding on the appellant. This cardinal principle has not been appreciated by the appellate court.*
- *It is submitted that the appellants have purchased the suit schedule property under registered sale deed dated 24.11.1997, 3 years earlier to filing of the suit in O.S.No.86/2000. When that being the case the respondent deliberately not made the appellants as a party to the said proceedings and obtained the order behind back of the appellants which is nothing but fraud played on the appellant. As such the fraud vitiates the entire proceedings thereby the order of the appellate court is null and void and liable to be set aside.*
- *Even otherwise entire reading of the 1st Appellate Court clearly reveals that the 1st Appellate Court has erred in framing the 1st point with predetermine mind when in fact Ex.P13 to 15 clearly demonstrates that the appellants who are bonafide purchaser for value are put in possession of the property. As such title follows possession. When that being the case unless and until the sale deed is cancelled the claim of the respondent does*



not survive and this fact has not been looked into by the 1st Appellate Court. impugned order. thereby erred in passing the impugned order.

- *The much reliance placed on the 1st Appellate Court in respect of the Ex.D1 to D8 are not pertaining to O.S.No.86/2000 and but it is pertaining to [O.S.No. 14/2003](#), [O.S.No. 12/2003](#), [O.S.No. 11/2003](#), and [O.S.No. 13/2003](#), are clearly demonstrates that the Ex.D1 to 4 and D5 to 8 are not pertaining to O.S.No.86/2000 or the property purchased by the appellant. On the contrary, in all the above said proceedings the appellants are not parties. When that being the case the court below failed to see that those findings does not bind the appellant thereby entire order passed by the 1st Appellate Court is not only without application of mind but also contrary to law.*
- *Even otherwise the plaintiff need not seek any declaratory suit in the absence of any dispute regarding the identity of the property when there is no dispute regarding the identity of the property the question of declaration does not arise at all. The reliance placed by the 1st Appellate court 2007(1)KCCR page No.42 is not applicable to the case on hand and it was Wrongly applied by the court below.*
- *The Court below failed to see that in the absence of a material particulars merely denial of title is not sufficient to over come document registered under the registration*



Act wherein Section 91 of the Evidence Act come to the protection of the plaintiff and they cannot be prole evidence other than cancellation of sale deed. As such burden on the respondent not on the plaintiff this cardinal principle has not been looked by the court below.

5. Sri H.P. Leeladhara, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that First Appellate Court failed to note that plaintiff was in possession of the suit property by virtue of the sale deed executed by Sri Krishnegowda who in turn got the property through a registered sale deed executed by Smt. Rathnamma.

6. Therefore, plaintiff was successful in establishing that he was in lawful possession of the suit property which has been rightly appreciated by the Trial Judge but wrongly interpreted by the First Appellate Court resulting in miscarriage of justice and sought for admitting the appeal on the following substantial questions of law:



SUBSTANTIAL QUESTION OF LAW

i) Whether the 1st Appellate Court is justified in formulating point No.1 and 2 on the contrary in the absence of a judgment and decree either in O.S.No.86/2000 (already dismissed) or any proceedings?

ii) Whether the 1st Appellate Court justified I reversing the well considered Judgment and decree of the trial court in the absence of the plaintiff is already to any of the proceedings which effect the right, title and interest in possession of the suit schedule property of the appellant?

iii) Whether the court below justified in mere denial of title in the absence of duly registered sale deed which there is a presumption under law there is the possession and title hence the question of additional relief seeking that there is presumption under Section 70 of the Evidence Act about possession and enjoyment of the suit schedule property of the katha, supported by RTC encumbrance tax paid receipt, Mutation register?

7. He would further contend that defendants claiming that their mother is the owner of the properties and she did not join the sale executed by Nagaraju who is the brother of the mother of the defendants in favour of Bhagyalakshmi; Bhagyalakshmi in turn selling the favour



of K.Ratnam and K.Ratnam further selling the properties in favour of Krishnegowda and plaintiff being the purchaser of the suit properties from Kirshnegowda, has thus traced the title to the suit property and thus sought for admitting the appeal.

8. Per contra, learned counsel for the respondents would oppose the appeal grounds by supporting the impugned judgment by contending that in the sale deed executed by Nagaraju in favour of Bhagyalakshmi, mother of the defendants namely A.T.Sharadamma was not a party. Taking advantage of the fact that name of the wife of Nagaraju being Sharadamma, fraud has been played on Bhagyalakshmi and when Nagaraju or his wife Sharadamma are not the owners of the suit properties, sale in favour of Bhagyalakshmi by Nagaraju and his wife Sharadamma did not convey any right, title or interest.

9. As such, any subsequent sale deed executed by Bhagyalakshmi in favour of K.Ratnam, K.Ratnam in favour of Krishnegowda and Krishnegowda selling the same



properties in favour of the plaintiff, no right, title or interest has flown and those aspects of the matter was already subject matter of the suit filed by the defendants in O.S.No.86/2000 wherein said aspect has been highlighted and Court has recorded a categorical finding that the sale deed executed by Nagaraju and his wife – Sharadamma in favour of Bhagyalakshmi did not grant any share and thus sought for dismissal of the appeal.

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

11. On such perusal of the material on record, it is to be noted that K.Ratnam and Krishnegowda are parties to the earlier suit filed by the defendants in O.S.No.86/2000. They suffered a decree to the effect that sale deed executed by Bhagyalakshmi in favour of K.Ratnam and K.Ratnam in turn executing the sale deed in favour of Krishnegowda did not convey any right, title or interest in respect of the suit properties.



12. When such is the factual aspect of the matter, which are evident from production of Exs.D.1 to D.8 which are the certified copies of the orders of the First Appellate Court in respective Regular Appeals arising out of original suit in O.S.No.86/2000 and other matters, the First Appellate Court reappreciating the material on record and holding that plaintiff is not in lawful possession of the suit properties inasmuch as plaintiff's vendor did not get any right, title or interest to sell it in favour of the plaintiff is just and proper.

13. Further, only confusion that has been created perhaps is that name of wife of Nagaraju is also Sharadamma. Pertinently Nagaraju none other than the brother of A.T.Sharadamma. Therefore, while tracing the title, it has been mentioned that Sharadamma and Nagaraju together have executed the sale deed in favour of Bhagyalakshmi and therefore, Bhagyalakshmi selling the properties in favour of K.Ratnam, K.Ratnam in turn selling the suit properties in favour of Krishnegowda and



Krishnegowda in turn selling the properties in favour of the plaintiff has resulted in not transferring the title to suit property as the property belonged to A.T. Sharadamma who is sister of Nagaraju.

14. Therefore, the finding recorded by the First Appellate Court that plaintiff failed to establish the lawful possession over the suit properties is just and proper which requires no interference by this Court having regard to the scope of Section 100 of Code of Civil Procedure as is held in the case of ***Afsar Sheikh and Another v. Soleman Bibi and Others*** reported in ***AIR 1976 SC 163***.

15. At this juncture, learned counsel for the appellant would request the Court that valuable consideration has been paid by the plaintiff to his vendor – Krishnegowda and therefore, plaintiff should be permitted to file the suit for declaration.



16. It is always open for the plaintiff to seek redressal of his grievances by initiating appropriate proceedings.

17. Needless to emphasize that if in any such proceedings are initiated, defendants are entitled to object such proceedings in all respects in accordance with law and such a right is reserved for the parties.

18. With that observation, following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

KAV,SNC
List No.: 1 Sl No.: 48