



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1136 OF 2023 (DEC/INJ)

BETWEEN:

JAVAREGOWDA
S/O. SANNEGOWDA
@ KEMPENGOWDA,
AGED ABOUT 63 YEARS,
RESIDING AT MENAGARA VILLAGE,
MELUKOTE HOBLI,
PANDAVAPURA TALUK - 571 434.

...APPELLANT

(BY SRI. P. MAHESHA, ADVOCATE)

AND:

1. KEMPEGOWDA @ MONDEGOWDA
S/O BUNDEKYATHEGOWDA
AGED ABOUT 46 YEARS,
R/O. MENAGARA,
MELUKOTE HOBLI,
PANDAVAPURA TALUK - 571 434.

2. PUTTASWAMYGOWDA
S/O. KYATHEGOWDA,
AGED ABOUT 41 YEARS,
R/O. MENAGARA,
MELUKOTE HOBLI,
PANDAVAPURA TALUK - 571 434.


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Location:
HIGH
COURT OF
KARNATAKA



3. THE ASSISTANT EXECUTIVE ENGINEER
KPTCL PANDAVAPURA TOWN,
MANDYA DISTRICT - 571 434.

4. THE EXECUTIVE ENGINEER
KPTCL PANDAVAPURA TOWN,
MANDYA DISTRICT - 571 434.

5. THE SECRETARY
KPTCL, VIDYUTH BHAVANA,
CAUVERY BHAVANA,
BANGALORE - 560 009.

...RESPONDENTS

(BY SRI. THILAK RAJ S.V, ADVOCATE FOR R2;
SRI. H.V. DEVARAJU, ADVOCATE FOR R3 TO R5 (ABSENT);
R1 - SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 22.11.2022
PASSED IN RA.NO.5042/2016 ON THE FILE OF THE III
ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA
(SITTING AT SRIRANGAPATNA) DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED
13.06.2016 PASSED IN O.S.NO.200/2009 ON THE FILE OF THE
C/c. PRINCIPAL SENIOR CIVIL JUDGE AND JMFC,
PANDAVAPURA.

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri. P Mahesha, learned counsel for the appellant, Sri. Thilak Raj S.V., learned counsel for respondent No.2 and Sri. H V Devaraju, learned counsel for respondent Nos.3 to 5.

2. The present Regular Second Appeal is filed by the plaintiff in O.S.No.200/2009, being aggrieved by decreeing the suit in part and denying the relief of temporary injunction and mandatory injunction in respect of immovable property (hereinafter referred to as 'suit property') which was confirmed in RA.No.5042/2016.

3. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

4. A suit in O.S.No.200/2009 came to be filed seeking declaration of title and relief of temporary injunction and mandatory injunction in respect of the suit property. It is contended that the suit was originally instituted as O.S.No.6/1997 and was subsequently re-numbered as



O.S.No.200/2009 after remand by this Court in RSA.No.193/2012.

5. The plaintiff contended that lands bearing Survey Nos.47/4A measuring 25 guntas and 47/4B measuring 5 guntas situated at Menagara village, Melukote Hobli, Pandavapura Taluk, originally belonged to one Sri. Kyathegowda. The plaintiff purchased the said properties from Sri. Kyathegowda under a registered sale deed dated 25.08.1992 for valuable consideration. From the date of purchase, the plaintiff has been in possession and enjoyment of the suit property.

6. It is further case of the plaintiff that defendant No.1 without any right, title, or interest over the suit property, put up a hut in a portion of the schedule property and took electricity connection to the said property. Upon enquiry, the plaintiff came to know that Sri. Kyathegowda and his son had already sold a portion of the property in favour of defendant No.2 prior to executing the sale deed in favour of the plaintiff. In other words, earlier sale in favour of defendant No.2 in respect of a portion of the property was suppressed by Sri. Kyathegowda, while executing the sale deed in favour of



the plaintiff. Thus, the plaintiff sought for declaration and injunction.

7. Pursuant to the suit summons, defendant Nos.1 and 2 entered appearance and filed their separate written statements. The other defendants though subsequently impleaded and having appeared before the Court, did not choose to contest the suit by filing written statements, as they were only formal parties.

8. Defendant No.1, in his written statement, contended that the land bearing Survey Nos.47/4 measuring 36 guntas, originally belonged to Sri. Kyathegowda, who is the senior uncle son of the defendant.

9. It is further contended that the land was never re-numbered or sub-numbered. Out of the total extent of the land, 8 guntas situated on the southern side was converted for non-agricultural purpose by Sri. Kyathegowda and 3 guntas of land was utilized for the formation of the road leading from Tendekere to Mandya.



10. It is also contended that out of the said 8 guntas of land, Sri. Kyathegowda had sold an extent of 4 guntas, measuring 66 feet x 66 feet under a registered sale deed dated 04.01.1985. Therefore, the sale deed executed in favour of the plaintiff on 25.08.1992 did not transfer any right, title, or interest in respect of the portion of the property, which was already the subject matter of the sale deed dated 04.01.1985. Thus, defendant No.1 sought for dismissal of the suit.

11. The learned trial judge, after framing necessary issues, recorded the evidence of the parties and, upon appreciation of the same, decreed the suit of the plaintiff in part. The operative portion of the judgment and decree passed by the trial Court in O.S.No.200/2009 reads as under:

"Suit of the plaintiff is hereby partly decreed with costs.

The plaintiff is hereby declared as owner of the suit schedule property.

The suit of the plaintiff with regard to the relief of temporary injunction and mandatory injunction is hereby dismissed."



12. Being aggrieved by the said judgment and decree, the plaintiff preferred an appeal before the First Appellate Court in R.A.No.5042/2016. The said appeal came to be dismissed on merits.

13. Being further aggrieved by the judgment and decree passed by the First Appellate Court, the plaintiff has approached this Court by filing the present Regular Second Appeal.

14. Sri. P Mahesha, learned counsel for the appellant reiterating the grounds urged in the memorandum of appeal, contended that in the earlier round of litigation in O.S.No.6/1997, which ultimately culminated in RSA.No.193/2012, the plaintiff was declared to be the owner of the property to an extent of 25 guntas, taking note of the fact that the earlier sale deed had been executed in favour of defendant No.2.

15. Learned counsel also submits that, the matter was remitted to the trial Court only with regard to the remaining extent of 5 guntas of land, which came to be re-adjudicated in O.S.No.200/2009 after re-numbering of O.S.No.6/1997.



16. Learned counsel further contended that without noticing the said aspect of the matter, both the Courts below simply dismissing the suit, declaring that the plaintiff is the owner. But failure in granting the decree of mandatory injunction and permanent injunction has resulted in grave miscarriage of justice and sought for admitting the appeal on the following substantial questions of law:

"a) Whether the learned trial court and the learned appellate court has justified in dismissing the suit of the plaintiff only to an extent of 5 guntas of land in Survey No.47/4B?

b) Whether the learned courts below have justified in passing the judgment and decree by misreading the document on record?

c) Whether the learned trial court has justified in not considering the findings of this Hon'ble Court in the previous appeal filed in RSA.No.193/2012?"

17. *Per contra*, learned counsel for the respondents would support the impugned judgments and decrees passed by the Courts below.



18. Having heard the arguments of both sides and this Court perused the material on record meticulously.

19. On such perusal of the material on record, it is crystal clear that earlier round of litigation culminated in favour of the plaintiff with regard to an extent of 25 guntas of land covered under the registered sale deed dated 25.08.1992 is concerned. The said extent forms part of Survey No.47/4, which came to be sub-numbered as Survey No.47/4A. However, with regard to the remaining extent of 5 guntas of land, sub-numbered as Survey No.47/4B, the plaintiff could not have asserted any claim, inasmuch as prior to the execution of the sale deed dated 25.08.1992 in favour of the plaintiff, an extent of 4 guntas measuring 66 feet x 66 feet had already been alienated under a registered sale deed dated 04.01.1985.

20. Therefore, though there appears to have been suppression of the earlier transaction by Sri. Kyathegowda while executing the sale deed dated 25.08.1992 in favour of the plaintiff, the fact remains that, as on the date of the said sale deed Sri. Kyathegowda had no subsisting right, title or interest to convey the said extent of land to the plaintiff.



Admittedly, the defendants are in occupation of the said portion of the property.

21. In that view of the matter, the denial of the reliefs of mandatory injunction as well as the permanent injunction by the Courts below is just and proper and does not warrant interference in the exercise of jurisdiction under Section 100 of the Code of Civil Procedure. Hence, the following:

ORDER

The present Regular First Appeal is ***dismissed***.

It is made clear that the judgment and decree passed in RSA.No.193/2012 shall be binding on the defendants.

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

PHM
List No.: 1 Sl No.: 36