



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. 1203 OF 2014 (DEC)

BETWEEN:

SRI DEVARAJE GOWDA

S/O MULLE GOWDA

AGED ABOUT 59 YEARS

AGRICULTURIST & COFFEE PLANTER

RESIDENT OF BILAGOLA VILLAGE

BOGASE POST

CHIKMAGALUR TALUK

...APPELLANT

(BY SRI. LOKANATH K., ADVOCATE)

AND:

KUM. LALITHA PANDITH

SINCE DEAD, REP. BY HER LEGAL REPRESENTATIVE

SRI. KISHORE PANDITH

S/O LATE G N PANDITH

AGED ABOUT 63 YEARS

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH COURT
OF
KARNATAKA



R/AT RECKEE ESTATE
BILAGOLA VILLAGE
BOGASE POST
CHIKKAMAGALURU TALUK – 571 130

...RESPONDENT

(BY SRI. RAJASUBRAMANYA BHAT, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT & DECREE DTD 24.7.2014 PASSED IN R.A.NO.269/2010 ON THE FILE OF THE PRL. DISTRICT JUDGE, CHIKMAGALUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD 5.10.2010 PASSED IN O.S.NO.194/2004 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE, CHIKMAGALUR.

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

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

ORAL JUDGMENT

This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 24.07.2014 passed in R.A.No.269/2010 by the learned Principal



District Judge at Chikmagalur, challenging the judgment and decree dated 05.10.2010 passed in O.S.No.194/2004 by the learned Additional Senior Civil Judge at Chikmagalur.

2. For convenience, the parties are referred to, as per their ranking before the trial Court. The appellant was the defendant and the respondent was the plaintiff. The plaintiff filed a suit for declaration of possession.

3. Brief facts, leading rise to filing of this appeal are as follows:

It is the case of the plaintiff that one Kari Basave Gowda was the owner of the suit schedule properties, who alienated the same in favour of Gangamma under a registered sale deed dated 11.01.1962. The said Gangamma alienated the suit schedule properties in favour of the plaintiff under a registered sale deed dated 19.10.1992. The plaintiff is the permanent resident of Bengaluru, as such, she executed a general power of



attorney in favour of Madhukar G.Pandith to look after the suit schedule properties. The said general power of attorney holder had heart problem in 1997. Taking undue advantage, the defendant had encroached the suit schedule properties in 1997. The general power of attorney holder noticed the said encroachment in 1999 and requested the defendant to vacate the suit schedule properties. The defendant refused to vacate the suit schedule properties. Hence, a cause of action arose for the plaintiff to file a suit for declaration of title and possession. Hence, prays to dismiss the suit.

3.1. The defendant filed a written statement and disputed the vendor of the plaintiff never put the plaintiff in possession of the suit schedule properties. Prior to alienation in favour of the plaintiff i.e., 1910-1992, the defendant is in possession of the property and also consisting of dwelling house constructed and residing by the defendant. It is further contended that Gangamma



sold the property without survey of lands. It is denied that the defendant has encroached the suit property in 1997. It is contended that the plaintiff encroached the property measuring 1 acre adjacent to the suit schedule properties belonging to the family of the defendant and the defendant encroached the suit schedule properties belonging to the plaintiff and constructed a dwelling house and residing in the same with his family members. In 1985 there was a settlement which was reduced into writing. It is also contended that the defendant is in possession of the suit schedule properties for a statutory title by way of adverse possession. Hence, prays to dismiss the suit.

3.2. The Trial Court, based on the above said pleadings, framed the following issues:

- 1. Do the plaintiff proves that, she is the absolute owner of the suit schedule property ?*
- 2. Whether the plaintiff further proves that defendant has illegally encroached over the suit schedule property in the year 1997?*



- 3. Whether defendant proves that he has perfected his title over the suit property by way of adverse possession?*
- 4. Whether the plaintiff is entitled for the relief of declaration and possession?*
- 5. Whether the plaintiff is entitled for future mesne profits?*
- 6. Whether the suit is barred by limitation?*
- 7. What decree or order?*

3.3. The plaintiff, to substantiate his case, examined through power of attorney holder as PW1, and marked 03 documents as Exs.P1 to P3. In rebuttal, the defendant examined himself as DW1, and marked 04 documents as Exs.D1 to D4. The trial Court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence, answered issue Nos.1, 4 and 5 in the affirmative, issue No.2 partly in the affirmative, issue Nos.3 and 6 in the negative, issue No.7 as per the final order. The suit of the plaintiff was decreed. It is declared that, the plaintiff was the absolute owner of the suit schedule properties and directed the defendant to



deliver the possession of the suit schedule properties in favour of the plaintiff within three months from the date of the judgment and decree. Otherwise, the petitioner is at liberty to recover the possession from the defendant in accordance with law. The plaintiff is also entitled for future mesne profits under Order XX Rules 12 and 18 of CPC vide judgment dated 05.10.2010.

3.4. The defendant, aggrieved by the judgment and decree passed in O.S.No.194/2004, preferred an appeal in R.A.No.269/2010 on the file of the learned Principal District Judge at Chikmagalur.

3.5. The First Appellate Court, after hearing the learned counsel for the parties, has framed the following points for consideration:

1. *Whether the plaintiff is the absolute owner of the plaint schedule property?*
2. *Whether the defendant has perfected his title by adverse possession?*
3. *Whether the suit is barred by limitation?*



4. *Whether the plaintiff is entitled for the relief sought for?*
5. *Whether the judgment and decree passed by the trial Court is erroneous, calling for interference by this Court?*

3.6. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 and 4 in the affirmative, point Nos.2 and 3 in the negative, and issue No.5 in the negative for the following. The appeal was dismissed vide judgment dated 24.07.2014.

3.7. The defendant, aggrieved by the impugned judgment, filed this Regular Second Appeal.

4. Heard the arguments of the learned counsel for the defendants and also learned counsel for the plaintiff.

5. Learned counsel for the defendant submits that the defendant is in possession of the suit schedule properties prior to purchase by the plaintiff. He submits



that the vendor of the plaintiff has not put the plaintiff in possession of the suit schedule properties, and the defendant is in possession of the suit schedule properties for a statutory period of 12 years without interference, obstruction and perfected the title by way of adverse possession. He also submits that the trial Court has decreed the suit for declaration of title based on Ex.P2 and Ex.P3. The said documents are in revenue records. He submits that the trial Court has committed an error in decreeing the suit for declaration of title based on revenue records. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of **CORPORATION OF THE CITY OF BANGALORE VS M. PAPAIAH AND ANR.** reported in **AIR 1989 SC 1809**. Hence, on these grounds, he prays to allow the appeal.

6. Learned counsel for the plaintiff submits that the plaintiff had purchased the suit schedule properties under a registered sale deed and the said fact is admitted



by the defendant in the written statement and also in the evidence. He submits that the fact admitted need not be proved as per Section 58 of the Indian Evidence Act, 1872. He submits that Ex.P2 and Ex.P3 are the revenue records. He submits that the defendant is legally trespassed into the suit schedule properties in 1997 and the said fact came to the notice of the power of attorney holder of the plaintiff in 1999 and immediately, the power of attorney holder of the plaintiff requested the defendant to deliver the possession of the suit schedule properties. He submits that the defendant has failed to establish the requirement of Article 65 of the Limitation Act. He submits that the defendant has failed to establish that the defendant has perfected the title by way of adverse possession. He submits that the defendant has not sought for relief of declaration of title based on adverse possession. He submits that the judgment relied upon by the learned counsel for the defendant in the case of **CORPORATION OF THE CITY OF BANGALORE** (Supra), is not applicable to the



case on hand. He submits that there is a registered sale deed. The defendant admitted the ownership of the suit schedule properties in the written statement and also in the evidence. He submits that both the Courts below have rightly passed the impugned judgments. Hence, on these grounds, he prays to dismiss the appeal.

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

8. This Court, on 29.06.2016, admitted the appeal on the following substantial questions of law:

- 1. Were the Courts below justified in decreeing the suit of the plaintiff for declaration of title and possession only on the basis of Ex. P2 and Ex.P3-RTC extracts which are not documents of title in view of the decision of the Hon'ble Supreme Court in the case of Corporation of City of Bangalore Vs. M. Papaiah and another reported in AIR 1989 SC 1809 head note B?*



2. *Were the Courts below justified in decreeing the suit of the plaintiff without considering the material documents as per Ex.P1 which came into existence between the parties?*
3. *Were the Courts below justified in decreeing the suit of the plaintiff without considering oral and documentary evidence on record?*
4. *Whether the lower Appellate Court is justified in confirming the judgment and decree of the trial court without reappreciating the evidence on record as contemplated under order 41 Rule 31 of CPC ?*

9. **Reg. Substantial Questions of Law**

Nos.1 to 4: Substantial questions of law Nos.1 to 4 are inter-linked with each other, hence, they are taken together for a common discussion.

10. The plaintiff filed a suit for declaration of title and possession on the ground that the suit schedule properties are owned and possessed by one Kari Basave Gowda. He alienated the suit schedule properties in favour



of Gangamma under a registered sale deed dated 11.01.1962. The said Gangamma executed a registered sale deed in favour of the plaintiff on 19.10.1992. The plaintiff is the permanent resident of Bengaluru. The plaintiff had executed a power of attorney in favour of Madhukar G.Pandith to look after the suit schedule properties. The power of attorney holder of the plaintiff fell ill. Meanwhile, the defendant trespassed into the suit schedule properties in 1997. The said fact came to the knowledge of the power of attorney holder in 1999. The plaintiff requested the defendant to deliver the possession of the suit schedule properties.

11. The defence of the defendant is that though the defendant has admitted the title of the plaintiff over the suit schedule properties and also purchase made by the plaintiff under the registered sale deed dated 19.10.1992 in the written statement as well as in the evidence. The main defence of the defendant is that the vendor of the



plaintiff had not delivered the possession of the suit schedule properties under a registered sale deed. The defendant was in possession of the suit schedule properties prior to the execution of the registered sale deed in favour of the plaintiff. The defendant himself admitted the ownership of the plaintiff over the suit schedule properties under a registered sale deed dated 19.10.1992. In view of the admission made by the defendant in the written statement as well as in the evidence, it is settled law that the fact admitted need not be proved as per Section 58 of the Act of 1872. The plaintiff has produced the certified copy of the sale deed dated 19.10.1992 before this Court. Learned counsel for the defendant has submitted no objection for marking the said document by filing an application for production of additional document. The said application is allowed. The said document is marked as Ex.P4. From the perusal of recital of Ex.P4, it clearly discloses that the vendor of the plaintiff delivered the possession of the suit schedule



properties in favour of the plaintiff. The defendant, on the other hand, in order to prove that the defendant perfected the title by way of adverse possession, the defendant has not produced any other records. In view of the admission made by the defendant, both the Courts below have rightly passed the judgment declaring that the plaintiff is the absolute owner of the suit schedule properties. Further, the plaintiff has produced Ex.P4 before this Court i.e., the certified copy of the registered sale deed. In view of the production of the certified copy of the sale deed, substantial question of law No.1 may not survive for consideration.

12. The defendant claims that the defendant is in possession of the suit schedule properties for a statutory period for more than 12 years without any interruption, obstruction and perfected title by way of adverse possession. The adverse possession is a question of fact and in a claim of adverse possession, the title is not



disputed; what is alleged is only its extinction. A plea of adverse possession being based on facts which have to be raised to that effect, is not necessarily a legal plea. The plea of adverse possession raises a mixed question of law and fact. Where a person wants to base his title on it, he should specifically set up the plea. Unless the plea is raised, it cannot be entertained. A plea must be raised and it must be shown when possession became adverse, so that the starting point of limitation against the party affected can be found. The prayer clause may not be taken as a substitute for a plea. A person acquires title by way of adverse possession when he is in continuous, uninterrupted, hostile possession over a period of 12 years. In order to calculate 12 years period there should be a starting point. Therefore, the law mandates that the plaintiff who seeks a declaration that he has perfected his title by way of adverse possession should specifically plead the date from which his possession becomes adverse to that of the defendant. It is from that date if the plaintiff



shows continuous, uninterrupted possession for a period of 12 years, then the right of the defendant to the property stands extinguished and the plaintiff would acquire title by way of adverse possession.

13. It is a well- settled principle that a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. Therefore, a person who claims adverse possession should show:

- (a) On what date he came into possession,
- (b) What was the nature of his possession,
- (c) Whether the factum of possession was known to the other party
- (d) How long his possession has continued, and
- (e) His possession was open and undisturbed.



14. It is only on proof of all these ingredients the case of adverse possession is said to have been established. A person pleading adverse possession has no equities in his favour, since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

15. Admittedly, from the perusal of the written statement filed by the defendant, nowhere in the written statement the defendant has pleaded that on what date he came into possession; what was the nature of his possession; whether the factum of possession was known to the other party; and how long his possession has continued.

16. From the perusal of the written statement filed by the defendant, the defendant has not fulfilled the requirements of adverse possession as per Article 65 of



the Limitation Act, 1963. Both the courts below have concurrently recorded a finding that the plaintiff is the absolute owner of the suit schedule properties and the defendant is in illegal possession and has rightly passed the impugned judgments. The First Appellate Court has re-appreciated the entire evidence on record and the judgment and decree passed by the First Appellate Court is in compliance with Order 41 Rule 31 of CPC.

In view of the above discussion, I answer substantial question of law Nos.2 to 4 in the affirmative.

17. According, I proceed to pass the following:

ORDER

1. The Regular Second Appeal is ***dismissed***.
2. The judgments and decree passed by the Courts below are hereby confirmed.
3. No order as to the costs.



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4. Pending applications, if any, stands
disposed of.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SSB