



CNR: KAHC010334842007

NC: 2026:KHC:49532
RSA No. 1319 of 2007

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 1319 OF 2007

BETWEEN:

1. SRI SHIVAPPA
S/O VYDYAPPA
DEAD BY LRS
- 1(A) PUTTATHAYAMMA
W/O SHIVAPPA
AGED ABOUT 55 YEARS
- 1(B) MAHENDRA
S/O LATE SHIVAPPA
AGED ABOUT 35 YEARS
- 1(C) NAGENDRA .K.S
S/O LATE SHIVAPPA
AGED ABOUT 33 YEARS

APPELLANTS 1(A) TO 1(C) ARE
R/AT KALKERE VILLAGE
ARAKERE HOBLI
SRIRANGAPATNA TALUK
MANDYA DISTRICT-571 438.

- 1(D) SMT. PARVATHAMMA
W.O KUMAR
AGED ABOUT 38 YEARS
R/AT HALLENAHALLI VILLAGE
DODDA HOBLI,

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SRIRANGAPATNA TALUK
MANDYA DISTRICT.

...APPELLANTS

(BY SRI. G. BALAKRISHNA SHASTRY, ADVOCATE)

AND:

1. SHIVALINGAMMA
AGE MAJOR
W/O BASAVANNA
2. VYDYAPPA S/O SIDDAMALLAPPA
DEAD BY LRS
- 2(A) RATHNAMMA
W/O VYDYAPPA
- 2(B) RANI
D/O VYDYAPPA
AGE MINOR
- 2(C) PARVATHAMMA
D/O VYDYAPPA
AGE MINOR
- 2(D) MADEVAMMA
D/O VYDYAPPA
AGE MINOR
- 2(E) PUSHPA
D/O VYDYAPPA
AGE MINOR

2(B) TO 2(E) ARE REP. BY
LR SMT. RATHNAMMA
THEIR NATURAL MOTHER



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3. CHANNAPPA
AGE MAJOR
S/O BASAPPA
4. PUTTABASAMMA
AGE MAJOR
W/O CHANNAPPA

ALL ARE R/AT KALKERE VILLAGE
ARAKERE HOBLI, SRIRANGAPATNA TQ
MYSORE DIST.- 571 438.

...RESPONDENTS

(BY SRI. V. SRINIVAS, ADVOCATE FOR R2(A);
R2(B TO E) MINORS REP. BY R2(A);
V/O DATED 10.06.2010, NOTICE TO R1, R3 AND R4
DISPENSED WITH)

THIS RSA IS FILED U/S 100 OF CPC AGAINST THE
JUDGEMENT AND DECREE DATED 12.01.2007 PASSED IN
RA.NO.34/2001 ON THE FILE OF THE ADDL.CIVIL JUDGE
(SR.DN.) SRIRANGAPATNA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGEMENT AND DECREE DATED
09.02.2001 PASSED IN OS.NO.438/1993 ON THE FILE OF THE
CIVIL JUDGE (JR.DN.) SRIRANGAPATNA.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned second appeal is at the instance of the
unsuccessful plaintiff, calling in question the concurrent
judgments and decrees rendered by the Courts below,

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whereby the plaintiff's suit seeking a decree directing defendant Nos.1, 3 and 4, jointly or severally, to execute a rectification deed in his favour by rectifying the reference to Sy.Nos.376/8 and 376/11 as Sy.Nos.376/19 and 376/17, respectively, has been dismissed on the ground that the suit is barred by the principles of *res judicata*, in view of the judgment and decree rendered in the previous round of litigation. It is these concurrent findings which are assailed in the present appeal.

2. Learned counsel appearing for the plaintiff would vehemently contend that the defendants did not choose to lead any rebuttal evidence and, therefore, the Courts below could not have adjudicated upon the plea of *res judicata*. He would contend that there was no rebuttal evidence whatsoever and that the judgment and decree rendered in the previous round of litigation, at the instance of the plaintiff, were not produced before the Trial Court so as to enable it to examine whether the ingredients of

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Section 11 of the Code of Civil Procedure, 1908 (for short, "the CPC") were satisfied. It is, therefore, his contention that the finding recorded by the Courts below that the present suit is barred by *res judicata* is without any evidentiary foundation.

3. Learned counsel appearing for the plaintiff, taking this Court through the last page of the judgment rendered by the Court of first instance, would further contend that no documents were produced by the defendants and that, admittedly, the defendants did not enter the witness box. According to him, in the absence of such evidence, the question as to whether the present suit was barred by the principles of *res judicata* could not have been adjudicated upon. He would submit that both the Courts below have proceeded to dismiss the suit by invoking Section 11 of the CPC and that the conclusions and reasons recorded by the Trial Court suffer from perversity and are palpably erroneous. On such premise,

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he would contend that the substantial question of law framed by this Court warrants a deeper examination.

4. Per contra, learned counsel appearing for the defendants, taking this Court through the pleadings, particularly paragraph 2 of the plaint, would contend that the plaintiff himself has candidly admitted the previous round of litigation as well as the consequences flowing therefrom. He would therefore submit that, in the face of such unequivocal admissions in the plaint, there was no necessity for the defendants to lead any rebuttal evidence. He would contend that the concurrent judgments rendered by the Courts below, being based upon the plaintiff's own pleadings and admissions, do not warrant interference in the present Second Appeal. He would accordingly seek dismissal of the appeal.

5. Having heard the learned counsel for the parties and having perused the judgments under challenge, it would be apposite to first extract the substantial question



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of law framed by this Court vide order dated 13.12.2010,
which reads as under:

*"Whether both the Courts below had erred
in dismissing the suit on the ground that the suit
was barred by principles of res-judicata?"*

Finding on substantial question of law:

6. The rival submissions give rise to an interesting question for consideration. Learned counsel appearing for the plaintiff has articulated the contention that, in the absence of any rebuttal evidence being led by the defendants, the Courts below had no material before them to examine whether the present suit was barred under Section 11 of the CPC. At the first blush, the submission advanced by learned counsel for the plaintiff appears attractive. However, on a careful examination of the pleadings, particularly the specific averments contained in paragraph 2 of the plaint, this Court is of the considered view that the said contention cannot be accepted. The



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plaintiff himself has placed before the Court the entire factual background relating to the previous litigation and has expressly pleaded the judgment rendered therein and its consequences. In that view of the matter, it would be apposite to extract paragraphs 2 and 3 of the plaint as well as the prayer contained in paragraph 8, which read as under:

"2. One Vydyappa in collusion with one Siddalingaiah appears to have taken a sale deed of the schedule properties and on the strength of the void sale began to interfere with the plaintiff peace possession. Thereupon the plaintiff was obliged to file a suit in O.S.No.246/1980 on the file of the Munsiff, Srirangapatha for a declaration and permanent injunction with respect to the suit schedule properties against defendants. Plaintiff's vendor and also the purchaser vydyappa. The suit of the plaintiff in O.S.No.246/80 was decreed as prayed for. The said Vydyappa who was defendant 5 in O.S.No.246/1980 preferred an appeal against the Judgment and decree before the Civil Judge, allowing the appeal partly has made an observation declaring the plaintiff as owner of the lands within the



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boundaries as stated to the schedule in the plaint in O.S.No.246/1980 and now the schedule to the plaint also and restraining the 5th defendant Vydyappa therein permanently from interfering with the plaintiff's peaceful possession and enjoyment of the land within the boundaries as stated in the schedule to this plaint. As there was mistake in the phode numbers which had not been corrected by the competent party, civil Judge has held that the plaintiff is not the owner of land bearing Survey No.376/19 376/17 which are the subject matter of this suit. As a matter of fact it is Survey Nos.376/19 and 376/17 which are situated within the boundaries mentioned in the plaint. The learned Civil Judge while answering point number 2 in his judgment, the rectification deed executed by Channappa and Puttabasamma has held that plaintiff has not taken a rectification deed from the first defendant.

3. The Survey Number situated within the boundaries mentioned in the plaint schedule are Survey Nos.376/19 and 376/17 respectively. The mentioning of the wrong Survey Number 376/11 and 376/8 respectively are not by mutual mistake and these two Survey Numbers do not come within the plaint schedule boundaries. The correct survey numbers within the plaint schedule properties are

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*Survey Number 376/19 an 376/17 respectively.
XXXX*

8. Prayer for Judgment: Plaintiff prays for a judgment and Decree in his favor directing defendants 1, 3 and 4 together or separately to execute a rectification deed in favor of the plaintiff rectifying Sy.Number 376/8 and 376/11 to survey number 376/19 of Kalkere village which are wrongly mentioned in the sale deed dated 04-04-1978 and consequently on 22-12-1979 Sale deed of Survey Nos which are situated within the plaint schedule boundaries which has resulted in mutual mistake for recovery of court costs from defendant 1, 3 and 4 failure to do so, the court may be pleased to execute the rectification deed with right to recover the cost thereof from Defendant 1, 3 and 5."

7. A plain reading of paragraph 2 of the plaint makes it abundantly clear that the plaintiff had earlier instituted a comprehensive suit in O.S.No.246/1980 against the very parties and in respect of the very subject matter. The controversy in the earlier suit, as pleaded by the plaintiff himself, was essentially with regard to the discrepancy between the survey numbers mentioned in



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the plaintiff's sale deed and the boundaries of the property claimed by him. The plaintiff's case was that, though the sale deed referred to Sy.Nos.376/8 and 376/11, the boundaries actually corresponded to Sy.Nos.376/19 and 376/17. The defendants, on the other hand, were tracing their title to the original owner on the strength of registered sale deeds and asserted that they had purchased Sy.Nos.376/19 and 376/17.

8. The Trial Court in the earlier proceedings, namely O.S.No.246/1980, decreed the suit in favour of the plaintiff. The said judgment and decree were, however, called in question by defendant No.5 therein, namely Vydyappa, in R.A.No.44/1986. The Appellate Court, while partly allowing the appeal, modified the decree and declared the plaintiff to be the absolute owner of Sy.Nos.376/11 and 376/8, subject to the boundaries referred to therein, while declining the plaintiff's claim insofar as Sy.Nos.376/19 and 376/17 were concerned.



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9. Significantly, the aforesaid factual position is not sought to be disputed by the plaintiff. On the contrary, the plaintiff himself has narrated the previous litigation and its outcome in the plaint. The plaintiff has specifically acknowledged that the appeal in R.A.No.44/1986 was allowed in part and that the decree passed by the Trial Court was correspondingly modified. Thus, the very foundation on which the defendants rely for invoking the principle of *res judicata* is found in the plaintiff's own pleadings.

10. It is in this factual backdrop that the contention advanced by the plaintiff regarding want of rebuttal evidence has to be examined. The plea of *res judicata* ordinarily involves an examination of the pleadings, issues and the decision rendered in the earlier proceedings and, depending upon the facts of a given case, may require appropriate evidence. However, the present case stands on a different footing. The plaintiff himself has pleaded the

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institution of O.S.No.246/1980, the judgment and decree passed therein, the filing of R.A.No.44/1986, the modification of the decree by the Appellate Court and, more importantly, the finding recorded therein with regard to the very survey numbers which form the subject matter of the present suit. Therefore, the defendants were not required to prove by independent oral evidence facts which the plaintiff himself had expressly pleaded and admitted.

11. The crucial aspect is that the plaintiff, having suffered the judgment and decree in R.A.No.44/1986 and having not challenged the same in accordance with law, cannot maintain a subsequent suit seeking, in substance, to reopen and overcome the conclusions reached by the Appellate Court in the earlier proceedings. The adjudication rendered in the previous round of litigation, insofar as the rights claimed by the plaintiff in respect of Sy.Nos.376/19 and 376/17 are concerned, has attained

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finality. The plaintiff cannot, by couching the relief in the form of a prayer for execution of a rectification deed, indirectly seek to unsettle what has already been conclusively adjudicated in the earlier proceedings.

12. Therefore, the submission that the defendants ought to have entered the witness box or produced the judgment and decree in the earlier proceedings as independent evidence does not, in the facts of the present case, advance the plaintiff's case. The plaintiff's own pleadings disclose the existence of the earlier litigation and its outcome. The question before the Courts below was not founded upon a disputed or concealed factual circumstance requiring proof through rebuttal evidence; rather, it arose directly from the plaintiff's own narration of the previous proceedings and the decree rendered therein.

13. This Court is, therefore, unable to find any perversity or patent illegality in the concurrent findings



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recorded by the Courts below. The plaintiff, having consciously referred to the earlier litigation in the plaint and having acknowledged the adverse findings recorded in R.A.No.44/1986, cannot maintain the present proceedings as a means of circumventing the final adjudication rendered in the earlier round of litigation. Permitting such a course would effectively enable a litigant to reopen a concluded adjudication by merely altering the form of the relief sought.

14. In the circumstances, the concurrent findings of the Courts below that the present suit is barred by the principles of *res judicata* do not suffer from any error warranting interference in the exercise of jurisdiction under Section 100 of the CPC. The substantial question of law framed by this Court is accordingly answered in the **Negative**. Consequently, the second appeal is devoid of merits and is liable to be dismissed.

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15. Accordingly, the second appeal is ***dismissed***.
The judgments and decrees rendered by the Courts below
stand affirmed.

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(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 3 Sl No.: 7