



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1169 OF 2022 (INJ)

BETWEEN:

NAGARATHNAMMA
D/O. MARALURIAH,
AGED ABOUT 56 YEARS,
R/O. DODDAGUNI,
NITTUR HOBLI,
GUBBI TALUK - 572 211.

...APPELLANT

[BY SRI UMESH MOOLIMANI, ADVOCATE FOR
SRI S V PRAKASH, ADVOCATE (PH)]

AND:

1. T. H. NAGABHUSHANA
S/O. HULIYAPPA,
AGED ABOUT 46 YEARS,
R/O. 10TH CROSS,
S.S. PURAM,
TUMAKURU-572 102.
2. P. SAVITHA
W/O. MAHENDRABABU,
AGED ABOUT 46 YEARS,
R/O. AKSHAYA,
GANGOTHRI ROAD,
GANGOTHIRI EXTENSION,
TUMAKURU-572 102.
- D. NARASIMHAMURTHY
DEAD BY HIS LRS.,
3. MAHADEVA
S/O. LATE D. NARASIMHAMURTHY,

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



NC: 2026:KHC:5329
RSA No. 1169 of 2022

AGED ABOUT 45 YEARS,
R/AT OLD BATAWADI VILLAGE,
BATAWADI,
TUMAKURU-572 102.

MUNIYAPPA
DEAD BY HIS LRS.,

4. NARENDRA,
S/O. LATE MUNIYAPPA,
AGED ABOUT 55 YEARS,
R/AT OLD BATAWADI VILLAGE,
BATAWADI,
TUMAKURU - 572 102.
5. KUMBISWAMY
AGED ABOUT 59 YEARS,
S/O. DHALIGAIAH,
R/O. BATAWADI,
TUMAKURU - 572 102.
6. LAKSHMIKUMAR
AGED ABOUT 57 YEARS,
S/O DHALIGAIAH,
T/O BATAWADI,
TUMAKURU - 572 102.

...RESPONDENTS

[BY SRI NAGENDRA KUMAR K., ADV. FOR C/R1 & R2 (PH)]

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE 24/2016 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, TUMAKURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.12.2015 PASSED IN OS No 167/2001 ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC, TUMAKURU.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



ORAL JUDGMENT

Challenging judgment and decree dated 18.04.2022 passed by III Additional Senior Civil Judge and J.M.F.C., Tumakuru, in R.A.no.24/2016 and judgment and decree dated 19.12.2015 passed by II Additional Civil Judge and J.M.F.C., Tumakuru, in O.S.no.167/2001, this second appeal is filed.

2. Sri Umesh Moolimani, learned counsel appearing for Sri S.V. Prakash, advocate for appellant submitted that appeal was by plaintiff in O.S.no.167/2001 filed for permanent injunction restraining defendants from interfering with plaintiff's possession and enjoyment over property bearing Municipal Khata no.10931, situated at 2nd Division, Tumakuru (i.e. Site no.53/B measuring East - West : 30 feet, North - South : 65 feet framed in Sy.no.23 of Batawadi village, Kyathasandra sammath, Tumakuru, bounded by East - Site No.53/C; West - Site No.53/A; North - Road and South - Sy.No.24 (hereinafter referred to as '**Suit Property**').

3. In plaint, it was stated that plaintiff was lawful owner in enjoyment of *Suit Property* having purchased it under



registered sale deed dated 31.10.1996. And as defendants attempted to interfere, suit was filed.

4. After service of summons, defendant no.3 did not appear and was placed *ex-parte*. Defendants no.1 and 2 filed written statement denying plaintiff averments contending that Sy.no.23 of Batawadi village, Tumakuru Taluk totally measuring 05 Acres 38 guntas originally belonged to defendants no.3 to 6. Out of same, they had sold an extent of 11 guntas in favour of defendant no.1 under registered sale deed dated 12.06.1997 and delivered possession. Thereafter, same was got converted for non-agricultural use by defendant no.1 and he applied for formation of layout. When defendants no.4 to 6 caused interference, defendant no.1 filed O.S.no.713/1997 against them. Same was decreed holding defendant no.1 as absolute owner of written statement schedule property. It was further stated that defendant no.1 had sold site no.2 therein in favour of defendant no.2 under registered sale deed dated 29.04.1999. It was alleged that plaintiff had concocted documents in collusion with N. Narasimharaju and his wife C. Indiramma and filed suit and there was no merit in suit claim and sought for dismissal.



5. Based on pleadings, trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves her lawful possession over the suit schedule property on the date of suit?*
- 2) *Whether the plaintiff proves that the defendants have interfered with her peaceful possession and enjoyment of the suit schedule property?*
- 3) *Whether the plaintiff is entitled to the relief as claimed in the suit?*
- 4) *What Order or Decree?*

6. In trial, plaintiff examined herself as PW.1 and got marked Exhibits-P1 to P34. In rebuttal, defendant no.1 and three others deposed as DWs.1 to 4 and got marked Exhibits-D1 to D14.

7. On consideration, trial Court answered issues no.1 to 3 in affirmative and issue no.4 by decreeing suit.

8. Aggrieved by judgment and decree dated 19.12.2015 passed in O.S.no.122/2001, plaintiff therein filed appeal in R.A.no.22/2016, while defendants no.1 and 2 in present suit filed R.A.no.24/2016 on various grounds. Since both appeals were between same parties, first appellate Court clubbed them and framed following common points:



- 1) *Whether the suit for bare injunction without seeking the comprehensive relief of declaration is maintainable?*
- 2) *Whether the applications filed under Order 41 Rule 27 of CPC in both suits deserves to be allowed?*
- 3) *Whether the impugned judgments and decrees of the trial Court needs the interference of this Court?*
- 4) *What order?*

9. After answering, points no.1 and 2 in negative, point no.3 in partly affirmative, first appellate Court answered point no.4 by dismissing R.A.no.22/2016 confirming judgment and decree passed in O.S.no.122/2001, and allowing R.A.no.24/2016 and consequently set-aside judgment and decree passed in O.S.no.167/2001. Aggrieved thereby, plaintiff in O.S.no.167/2001 has preferred this second appeal.

10. It was submitted, first appellate Court committed grave error in holding that suit for bare injunction was not maintainable and plaintiff ought to have filed comprehensive suit, merely on ground that defendants had also staked claim over suit property. It was submitted, observations of first appellate Court were contrary to material on record. It was not



justified in disbelieving Ex.P1 - registered sale deed in favour of plaintiff and therefore following substantial questions of law would arise for consideration:

- a. Whether the 1st Appellate Court justified in allowing the Appeal and setting aside the trial Court judgment and decree holding that the plaintiff failed to prove her possession of the suit schedule property?*
- b. Whether the 1st Appellate Court has committed an error in holding that the plaintiff title to the suit schedule property shrouded with shadow of cloud as such she ought to have laid the comprehensive suit?*
- c. Whether the 1st Appellate Court judgment and decree are sustainable under law?*
- d. Whether the 1st Appellate Court has committed an error in not considering the documentary evidence in proper and right perspective?*
- e. Whether under the facts and circumstances of the case 1st*



Appellate Court is justified in reversing the judgment and decree of perpetual injunction?

11. On other hand, Sri K. Nagendra Kumar, learned counsel for caveator/respondents no.1 and 2 opposed appeal. It was submitted, in written statement, defendants had not only denied plaintiff's title but also specifically asserted title by referring to registered deeds and trial Court had followed ratio laid down by Hon'ble Supreme Court in case of **Anathula Sudhakar v. P. Buchi Reddy**, reported in **2008 (4) SCC 594**. It was submitted, since defendant set-up a specific claim of title and substantiated with sufficient particulars, plaintiff would require to seek relief of declaration. In absence, first appellate Court was justified in reversing decree. Therefore, no substantial question of law arose for consideration and sought for dismissal.

12. Heard learned counsel for parties, perused impugned judgment and decree and record.

13. From above, it is seen, this appeal is by unsuccessful plaintiff against divergent findings in suit for permanent injunction. Admittedly, plaintiff claims to be owner



in possession of *suit property* by virtue of registered sale deed dated 31.10.1996 - Exhibit-P1 and alleging interference by defendants filed suit for bare injunction. On appearance, defendants not only denied interference but also denied/disputed plaintiff's title and set-up rival claim by referring to registered sale deeds and decree passed in earlier suit.

14. Thereafter, both parties led evidence in support of their respective claims and produced title deeds. While passing impugned judgment, trial Court adverted to rival pleadings and material on record and held plaintiff established possession and interference by defendants and granted decree of permanent injunction.

15. In appeal, first appellate Court took note of specific contention urged about maintainability of suit without relief of declaration. It took note of specific pleading by defendants doubting existence of *suit property* and setting up rival title. Referring to decision of Hon'ble Supreme Court in **Anathula Sudhakar**'s case (supra), first appellate Court held suit would



not be tenable and allowed appeal, set-aside judgment and decree passed in O.S.no.167/2001 and dismissed it.

16. Though learned counsel for appellant has contented that in suit for bare injunction, trial Court would not be required to address question of title, Hon'ble Supreme Court in **Anathula Sudhakar's** case (supra) has held there would be no bar against Courts determining question of title as incidental to claim for permanent injunction. However, it noted that despite specific plea of rival title, plaintiff had failed to seek for declaration. Claim of defendant was substantiated not only with registered sale deed but also decree of declaration passed in O.S.no.713/1997. Therefore, it arrived at conclusion that plaintiff's suit without specific prayer for declaration of title would be untenable and dismissed same.

17. It is seen that said conclusion is arrived by first appellate Court after re-appreciation of entire material on record and following ratio laid down by Hon'ble Supreme Court in **Anathula Sudhakar's** case (supra). Therefore no case of perversity of finding or error in conclusion is established.



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Consequently, no substantial question of law arise for consideration. Appeal is ***dismissed***.

In view of dismissal of appeal, I.A.no.2/2022 is also *dismissed*.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD
List No.: 1 SI No.: 34