



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.32 OF 2021

BETWEEN:

1. M.B. RAMESHCHANDRA
S/O BEERAPPA
AGED 62 YEARS
R/A MALLAYAPPANAHALLI VILLAGE
KASABA HOBLI
MALUR TLAUK-563 130
2. GOPAMMA
W/O RAMANNA
AGED ABOUT 67 YEARS
R/A HAROHALLI CROSS
MALUR, BENGALURU ROAD
MALUR TOWN-563 130

...APPELLANTS

(BY SRI K.VISHWANATHA FOR SRI HEGDE.V.S, ADVOCATES;
VIDE ORDER DATED 17.06.2026, APPEAL AGAINST
APPELLANT-2 STANDS DISMISSED AS ABATED)

AND:

1. MARKONDACHARI
S/O LATE KRISHNACHARI
AGED ABOUT 62 YEARS
R/A KPTCL QUARTERS
MALUR TOWN-563 130
2. A B VISHWESHWARIAIAH
S/O LATE A.V.BEERAPPA
AGED 65 YEARS

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



3. M S MAMATHA BAI
W/O M S NAGESHWARA RAO
AGED 42 YEARS

R2 AND R3 ARE RESIDING AT
1ST CROSS, ADARSHA NAGARA
MUNI REDDY LAYOUT
MALUR TOWN - 563 130

...RESPONDENTS

(BY SRI THRIMURTHY K P, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 27.07.2020 PASSED IN R.A.NO.105/2016 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE, KOLAR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 25.04.2016 PASSED IN O.S.NO.427/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, MALUR.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri K.Vishwanatha, advocate for Sri V.S.Hegde, learned counsel for the appellants and Sri K.P.Thrimurthy, learned counsel for the respondents.

2. Parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court, for the sake of convenience.



3. Defendant Nos.2 and 3 in O.S No.427/2011 (old No.346/2008) on the file of the Senior Civil Judge and JMFC, Malur, are the appellants challenging the decree passed in the said suit confirmed in R.A No.105/2006 by the judgment dated 27.07.2010 on the file of the I Additional District and Sessions Judge, Kolar, in this appeal.

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

5. A suit in O.S No.427/2011 (old No.346/2008) came to be filed in respect of the following house property hereinafter referred as 'suit property' for the relief of declaration.

"House property bearing Municipal katha No.3117 site No.18, Assessment No.2930/18 measuring East-West 45 feet and North- South 30 feet, situated at Munireddy layout, 1st Cross, Adarshanagar, bounded on the East by: Road, West by: House of Shardamma, North by: House of Vishwanath, South by:Susheelamma."

6. Suit on due contest came to be decreed and it was declared that plaintiff -Markondachary as the absolute owner of the suit property and registered sale deed dated 23.06.2008



executed by defendant No.2 in O.S No.427/2011 in favour of defendant No.3 would not bind the plaintiff.

7. Being aggrieved by the same, defendant Nos.2 and 3 filed an appeal before the First Appellate Court in R.A No.105/2016.

8. Learned Judge in the First Appellate Court, after securing the records and re-appreciation of the material on record, noted that second defendant based on a concocted power of attorney sold the property in favour of the third defendant. As such, the sale deed executed by second defendant in favour of third defendant would not bind the rights of the plaintiff, who is the absolute owner of the suit property and dismissed the appeal.

9. Being further aggrieved by the same, defendant Nos.2 and 3 are before this Court in this appeal on following grounds:

- *It is submitted that though the suit was not maintainable as the plaintiff has not sought the relief based on his title that he is the owner of the suit schedule property. The frame of the suit at the first instance was bad in law. As such the suit ought to have been dismissed on the legal ground itself.*



- *The Trial Court has not applied its mind to the material facts and evidence on record and mechanically passed the judgement.*
- *The 1st Appellate court has not considered entire grounds raised in the appeal and without application of mind confirmed the Judgment and Decree passed by the Trial court.*
- *Both the Court have wrongly held that the Power of Attorney dated 31.07.1999 set up by the defendant No.2 and 3 is not proved as such the plaintiff is entitled for the relief, is again unsustainable in law for the reason that the No issue was framed casting burden on the plaintiff to disprove the Power of attorney, on the face of the Registered sale deed 23.06.2008.*
- *1st Appellate Court has raised 1st point for consideration Casting burden on the 2nd defendant as to whether the defendants have proved that plaintiff has executed General Power-of-Attorney dated 31.07.1999(Ex-D2) authorizing the 2nd defendant to deal with the suit schedule Property. Having raised, the said point for consideration the 1st Appellate Court ought to have remitted back the suit framing the said issue and to lead evidence, on the said material fact. No opportunity was given to the 2nd and 3rd defendant to prove their case on the said issue. Hence, 1st Appellate Court has committed the grave error.*



- *Without framing the issue regarding proof of the General Power of Attorney both the courts have committed grave error, and subsequently holding that the sale deed dated 23.06.2008 executed by the 2nd defendant in favour of 3rd defendant is not binding on the plaintiff is highly illegal and contrary to law.*
- *The plaintiff initially filed the above said suit for declaration to declare that the registered sale deed dated 23.06.2008 executed by the 2nd defendant in favour of the 3rd defendant is not binding on the plaintiff without seeking declaration to declare the plaintiff is the absolute owner of the suit schedule property, which was not maintainable, however in order to cure the defect in the suit, filed an application for amendment to amend the prayer to declare that the plaintiff is the absolute owner and the same was allowed by the trial Court on 12.08.2013, by which time the period of limitation to seek such declaration was barred as the same was filed after 3 years. Hence, suit ought to have been dismissed on the said ground alone.*
- *Plaintiff came to know about the denial of his title by the defendants 2 and 3 when he visited the police station on 01.05.2008 and when the defendants showed the plaintiff, the registered sale deed 23.06.2008. Hence, the suit ought to have been amended within 3 years from the date of police complaint i.e. on 01.05.2008 and after the 2nd defendant denied his title in his written statement filed on 06.08.2009. Hence, relief claimed as*



to the ownership ought not to have been granted by the trial court.

- *The Plaintiff has not paid court fee after the allowing of amendment application to amend that he is the absolute owner of the suit schedule property. Grant of relief by the both the courts without insisting the court fee on the amended prayer, is highly illegal and on this count alone the suit ought to have been dismissed.*
- *The Trial Court committed grave error in clubbing the O.S.No.79/2013 with O.S.No.427/2011 as the frame of both the suit, cause of action and Parties are different and adjudication thereof is highly illegal."*

10. Sri Vishwanath, on behalf of Sri V.S.Hegde, learned counsel for the appellants would contend that both the Courts have not properly appreciated that special power of attorney executed by the plaintiff was duly proved. Based on said power of attorney, second defendant has sold the property in favour of third defendant as an agent of the plaintiff and therefore decreeing of the suit of the plaintiff has resulted in miscarriage of justice and sought for admitting the appeal on the following substantial questions of law.



1. *"Whether the Trial courts entertaining the suit after amendment of prayer regarding ownership which is hit by section 58 of the Limitation Act, 1963 as the application for amendment was filed seeking to declare that the plaintiff is the owner of the suit schedule property beyond 3 years after institution of the suit?"*
2. *Whether the findings given by the Trial court as to the genuineness of the General Power of Attorney without framing issues on the disputed facts under O.XIV (1) (1) is contrary to O.XIV (5) of the Code of Civil Procedure?*
3. *Whether the 1st Appellate Court after raising 1st point for consideration Casting burden on the 2nd defendant as to whether the defendants have proved that plaintiff has executed General Power-of-Attorney dated 31.07.1999(Ex-D2) authorizing the 2nd defendant to deal with the suit schedule Property, failed to frame issue in that regard or to remit the mater to the trial court to frame the said issue and decide the case, is contrary to section 107(1)(c) of the Code of Civil Procedure?*
4. *Whether the Grant of relief by the both the courts to the plaintiff, without insisting the court fee on the amended prayer in terms of Section 24(d) of the Karnataka court fees and Suit Valuation Act, 1958?"*



11. *Per contra*, Sri Thrimurthy, learned counsel for the contesting respondent/plaintiff would support the impugned judgments by contending that there is a categorical finding recorded that plaintiff has not executed any special power of attorney in favour of defendant No.2 and the same was concocted by defendant No.2 in order to deceive the plaintiff.

12. Therefore, when both the Courts have recorded a factual finding that the power of attorney was not a genuine document, decreeing the suit to plaintiff is just and proper which requires no further consideration in this appeal and sought for dismissal of the appeal.

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

14. On such perusal of the material on record, on sound appreciation of the material evidence placed on record including the admitted signatures of the plaintiff and the alleged signature of the power of attorney, the Trial Court has recorded a categorical finding that there is no proof that the plaintiff has executed the special power of attorney in favour of defendant



No.2 which was the basis for defendant No.2 to sell the property in favour of defendant No.3.

15. Said finding is supported by material evidence on record and re-appreciated by the learned Judge in the First Appellate Court.

16. Thus, this Court does not find any merit in any of the substantial questions of law as factual finding is against the appellants and no substantial questions of law are to be considered in this appeal.

17. Hence, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 55