



CNR: KAHC010366162020

NC: 2026:KHC:39165
RSA No. 1323 of 2021
C/W RSA No. 326 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1323 OF 2021

C/W

REGULAR SECOND APPEAL NO. 326 OF 2023

IN RSA No. 1323/2021

BETWEEN:

1. NARAYANA K. SHETTY
S/O LATE KAMPU SHETTY
AGED ABOUT 60 YEARS
2. SMT. KRISHNAVENI
D/O KAMPU SHETTY
AGED ABOUT 69 YEARS
3. SMT. REVATHI
D/O KAMPU SHETTY
AGED ABOUT 66 YEARS

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA

APPELLANT NO.1 TO 3 ARE CHILDREN
OF LATE KAMPU SHETTY AND ARE
R/A KANNARPADI KADEKAR POST
UDUPI TALUK AND DIST - 576 103.

...APPELLANTS

(BY SRI. G BALAKRISHNA SHASTRY, ADVOCATE)



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AND:

1. KAMALA SHETTY
W/O LATE KURUMBILA SHETTY
AGED 79 YEARS
2. UMESH SHETTY
S/O LATE KURUMBILA SHETTY
AGED 59 YEARS
3. RAMESH SHETTY
S/O LATE KURUMBILA SHETTY
AGED 57 YEARS
4. USHA RGHURAM RAI
D/O LATE KURUMBILA SHETTY
AGED 53 YEARS
5. DINESH SHETTY
S/O LATE KURUMBILA SHETTY
AGED 50 YEARS
6. ASHA VIJAYA SHETTY
D/O LATE KURUMBILA SHETTY
AGED 48 YEARS

RESPONDENTS NO.1 TO 6 ARE
RESIDING AT C/O SHOP NO.5 AND 6
LIONS CLUB COMPLEX
OPP: SARASWATHA BANK
KANCHERI ROAD, PALGHAR
MUMBAI - 401 404.



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7. FRANCI SURESH DILIMA
S/O J.R. DILIMA
AGED 50 YEARS
R/AT DOOR NO.54-6-62B
MISSIONS COMPOUND
UDUPI TALUK AND DISTRICT - 576 101.

...RESPONDENTS

(BY SRI. A/ KESHAVA BHAT, ADVOCATE FOR
SRI. S.K. ACHARYA, ADVOCATE FOR C/R7;
R1 TO R6 - NOTICE IS HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 08.06.2020
PASSED IN RA.NO.15/2013 ON THE FILE OF THE PRINCIPAL
DISTRICT JUDGE, UDUPI. ALLOWING THE APPEAL AND THE
JUDGMENT AND DECREE DATED 19.01.2013 PASSED IN
O.S.NO.127/2002 ON THE FILE OF THE PRL. SENIOR CIVIL
JUDGE, UDUPI.

IN RSA NO. 326/2023

BETWEEN:

NARAYANA K SHETTY
S/O KEMPU SHETTY
AGE 63 YEARS
R/O KANNARPADY OF
KADEKAR VILLAGE AND POST,
TALUK AND DIST UDUPI - 576 101.

...APPELLANT

(BY SRI. G. BALAKRISHNA SHASTRY, ADVOCATE)

AND:

1. FRANCIS SURESH D'LEEMA
S/O LATE J.R. D'LEEMA
AGE 54 YEARS,
R/O DOOR NO.3-126B,



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VEERA HANUMAN RAOD,
CHITPADY TALUK AND DIST
UDUPI - 576 101.

2. NAGESH POOJARY
S/O LATE ANGRA POOJARY
AGE 52 YEARS
R/O KANNARPADY OF KADEKAR VILLAGE
AND POST TALUK AND
DIST UDUPI - 576 101.

...RESPONDENTS

(BY SRI. A. KESHAVA BHAT, ADVOCATE AND
SRI. S.K. ACHARYA, ADVOCATE FOR R1)

THIS RSA IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGMENT AND DECREE DATED 11.02.2022
PASSED IN RA.No.24/2016 ON THE FILE OF THE
ADDITIONAL SENIOR CIVIL JUDGE, AND ACJM, UDUPI,
ALLOWING THE APPEAL AND SETTING ASIDE THE
JUDGMENT AND DECREE DATED 16.02.2016 PASSED IN OS
No.73/2001 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE
AND JMFC, UDUPI.

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



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CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Though the matters are listed for admission, with the consent of the parties, both the appeals are taken up for final disposal.

2. Heard.

3. These two appeals arise out of the *lis* between the same parties in respect of two lands of which the plaintiffs who are the appellants have sought for cancellation of the sale deed dated 20.01.2001.

4. Property as claimed by the plaintiffs is described hereunder and hereinafter referred to as suit property:

"The immovable property situated in Kadekar Village of Udupi

Taluk, held on tenancy right bearing Nos. as follows:

<i>Sl.No.</i>	<i>S.No.</i>	<i>Kissam</i>	<i>Extent A.C.</i>
<i>1</i>	<i>84/8A2</i>	<i>Dry</i>	<i>0-06</i>
<i>2</i>	<i>84/8B</i>	<i>Dry</i>	<i>0-24</i>



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5. Facts of the case in the nutshell which are shorn off unnecessary details are as under:

5.1. Plaintiffs claiming to be the owners of the suit properties, filed a suit for injunction in O.S.No.73/2001 and another suit in O.S.No.127/2002 for the relief of cancellation of the sale deed dated 20.01.2001 executed by defendant Nos.1 to 6 in favour of defendant No.7.

5.2. Both the suits were contested.

5.3. Suit for bare injunction was filed before the Civil Judge, Junior Division whereas suit for cancellation which was valued at Rs.79,800/- which is having pecuniary jurisdiction of Civil Judge, Senior Division.

5.4. Both the suits on contest, ended in favour of the plaintiffs. O.S.No.127/2002 was decreed in part whereas suit in O.S.No.71/2001 was decreed as prayed for.

5.5. Operative portion of the judgment and decree in O.S.No.127/2002 which reads as under:

"Suit of the plaintiff is partly decreed. No order as to costs.



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The sale deed dated 20.01.2001 executed by the defendant Nos.1 to 6 in favour of defendant No.7 in respect of Sy.No.83/2B is cancelled (Document No.3312/2001)."

6. Being aggrieved by decreeing of the suit, defendant No.7 who is the purchaser of the property bearing Sy.No.83/2B of Kadekar village, Udupi, filed two appeals.

7. As against the judgment in O.S.No.127/2002, appeal was filed before the Principal District Judge, Udupi in RA No.15/2013 whereas as against the judgment and decree passed in O.S.No.73/2001, appeal was filed before the Civil Judge, Senior Division, Udupi in RA No.24/2016.

8. On contest, both the appeals were allowed and suit of the plaintiffs in O.S.No.73/2001 and O.S.No.127/2002 were dismissed.

9. Being aggrieved by the judgment of the First Appellate Court in both the appeals, RSA No.1323/2021 is filed as against the judgment of RA No.15/2013 and RSA No.326/2023 is filed as against judgment of RA No.24/2016.



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10. Learned counsel for the appellants in both the appeals, reiterating the grounds urged in the appeal memorandum would contend that both the judgments of the First Appellate Court are incorrect inasmuch as the property that belonged to the plaintiffs have been clandestinely sold by defendant Nos.1 to 6 in favour of defendant No.7 which was rightly appreciated by the learned Trial Judge in O.S.No.127/2002 and learned Trial Judge in O.S.No.73/2001 and rightly decreed the suits and cancelled the sale deed executed by defendant Nos.1 to 6 in favour of defendant No.7 insofar as suit property is concerned and thus sought for admitting the appeals on the following substantial questions of law in both the appeals:

IN RSA No.1323/2021

1. Whether the 1st Appellate Court has erred in reversing the Judgement and Decree of the Trial Court in OS No.127/2002 and the Judgement and Decree of the First Appellate Court is arbitrary, perverse and illegal?

2. Having held that, Issue No.1 has not been properly framed by the Trial Court and the Trial Court has wrongly thrown burden on the plaintiffs to prove that, Sy.No.83/2B do not exists, whether the First Appellate



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Court has erred in law in not re-framing the said issue and remand the matter to the Trial Court?

3. The dispute between the plaintiffs and defendant No.7 being one relating to the boundaries and situation of the properties sold to Defendant No.7 under Sale Deed dated 20/01/2001, whether the Learned Trial Judge has erred in dismissing the application for appointment of Commissioner and for that reason, the Judgement and Decrees of the Trial Court and the First Appellate Court are liable to be set-aside?

4. Whether the First Appellate Court has erred in law in holding that, suit filed by the plaintiffs for cancellation of the Sale Deed dated 20/01/2001 is not maintainable in law?

IN RSA No.326/2023

1) Whether the First Appellate Court is justified in law in reversing the judgment and decree of the Trial Court dated 16.02.2016 in OS No.73/2001 and the judgment and decree of the First Appellate Court is arbitrary, perverse and illegal?

ii) Whether the First Appellate Court is justified in law in allowing the appeal in view of dismissal of OS No.127/2002 which is pending for consideration in RSA (FR) No.1234/2020 before this Hon'ble Court?



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iii) Whether the First Appellate Court is justified in law in holding that the Plaintiff have failed to establish that eastern side of his property there exists water canal - parambathodu and the Defendant No.1 has proved that towards eastern side of the property of the Plaintiff, there is the property in Sy.No.83/2B to the extent of 11 Cents and thereafter towards eastern side of Sy.No.83/2B there is a Paramoku Thodu in absence of any material document and in absence of any non mentioning of boundaries in the document under which Defendant No.1 is claiming right Exhibit D.2 = Exhibit P.50?

iv) Whether the First Appellate Court is justified in law in not framing proper points for consideration as required under Order XLI Rule 31(a) of CPC?"

11. Learned counsel for the appellants would further contend that a road has been laid by defendant No.7 in the property of the plaintiffs to have access to their property which is adjacent property of the plaintiffs and they also dug a pit to erect an electric pole in the land belonging to the plaintiffs which necessitated them to approach the concerned authorities and made necessary complaint to respective authorities who inspected the spot and when defendant No.7 did not heed to the request made by the plaintiffs, both the suits were necessitated.



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12. Thus dismissal of both the suits by the Appellate Courts have resulted in grave miscarriage of justice and thus sought for admitting the appeal.

13. Per contra, learned counsel for respondent/defendant No.7 in both the appeals supports the impugned judgments.

14. He would also contend that property purchased by defendant No.7 is in Sy.No.83/2B which has got nothing to do with the suit properties and that is the finding recorded by both the Appellate Courts in categorical terms while dismissing the suit of the plaintiffs and thus sought for dismissing of both the appeals.

15. Having heard the arguments of both the parties, this Court perused the material on record meticulously including the Trial Court Records.

16. In order to appreciate the case of the parties, this Court has referred to the deposition of plaintiff No.1 who is examined as P.W.1 in O.S.No.127/2002. More particularly his cross-examination.



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17. In such cross-examination, plaintiff No.1 who is examined as P.W.1 has categorically admitted that he has no dispute with regard to item No.1 in Ex.P.1 wherein ten cents of the land is belonging to the defendants.

18. He also admits that therefore he has not sought for cancellation of the sale deed with regard to 10 cents of the land.

19. It is further admission that he cannot say whether land in Sy.No.83/2B is existing in Kadekaru village or not. He also admits that a road has been laid after the spot inspection has been conducted by the authorities and said road reaches the land of the defendants.

20. He further admits that he has signed a complaint along with other neighbours with regard to formation of the said road.

21. He also admits that he does not use the said road. He further admits that in another suit i.e., O.S.No.73/2001, Court Commissioner had been appointed but he did not



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measure the land belonging to him though he visited the suit property thrice.

22. Pertinently, in order to overcome the admission elicited through the cross-examination of P.W.1, an alleged bajudar – Vasu Shetty has been examined as P.W.2 in O.S.No.127/2002. Said Vasu Shetty in his cross-examination, admits that he does not know who has filed the suit. But the suit is for 30 cents of the land. At the second breath, he submits that in whole 30 cents, there is a mud wall naturally formed out of the rain washing out the earth (ਢੌ). If it is so, then none of the parties could be in possession of that land for their utilization.

23. Further, he has answered that said natural mud wall ‘(ਢੌ)’ is 20 feet in width and 34 in length and all nine persons of Narayana Shetty’s family are having right over the said land.

24. He has also answered that in the suit property there are number of trees. He did not admit the sketch that has been shown to him. He admits that there exists a road on the



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eastern side of the suit property and there is a small bridge over the water course (ತೋಡು) to reach the land of the defendants and which has been constructed about six years earlier.

25. He has pleaded ignorance as to who constructed the said bridge. He admits that from the highway to reach the land of Kamala Shetty - defendant No.1, said bridge has been constructed and he is not aware who has purchased the said land. He failed to identify defendant No.7 who was present before the Court.

26. These admissions are appreciated by both the Appellate Courts in its proper perspective both for denying the relief of injunction as well as the cancellation of the sale deed.

27. It is the specific case of the plaintiffs that property that has been sold by defendant Nos.1 to 6 in favour of defendant No.7 includes the property of the plaintiffs.

28. In such circumstances, the appropriate relief that should have been claimed by the plaintiffs was to seek for declaration and not for cancellation of the sale deed.



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29. Admittedly, plaintiffs failed to make out the case by placing village map that while so transferring the land to defendant No.7, defendant Nos.1 to 6 have sold the property of the plaintiffs.

30. Sy.No.83/2B is the subject matter of the sale by defendant Nos.1 to 6 in favour of defendant No.7. Whereas the land that is claimed by the plaintiffs are in Sy.No.84/8A(2) and 84/8B of Kadekar village. P.W.2 clearly admitted that on any one of the sites of the property of the plaintiffs, property of Kamala Shetty was in existence.

31. This would clarify that Sy.No.83/8A(2) and 83/2B is a distinct land which did not have a common boundary of any of the suit properties of the plaintiffs. Therefore, the authorities taking a call in forming a road after giving notice to all the concerned and said road was to reach the land of defendant No.7 sold by defendant Nos.1 to 6 is thus established which has been rightly appreciated by the learned Judge in the First Appellate Court in RA No.15/2013.



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32. As such, this Court does not find any merit in any one of the substantial questions of law raised in both the appeals.

33. Accordingly, following:

ORDER

- i. Admission is declined.
- ii. Appeals are ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 60