



CNR: KAHC010384602021

NC: 2026:KHC:44378
RFA No. 1012 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 1012 OF 2021 (INJ)

BETWEEN:

SRI. S. MUNE GOWDA,
S/O LATE SRI SONNAMARAPPA,
AGED ABOUT 58 YEARS,
R/AT DASARAHALLI VILLAGE,
K.R. PURA HOBLI,
H.A. FARM POST,
BENGALURU - 560 024.

...APPELLANT

(BY SRI. G.B. NANDISH GOWDA, ADVOCATE)

AND:

1. SRI. MUNINARAYANA,
S/O SRI MUNIYAPPA @ MOTANNA
AGED ABOUT 40 YEARS,
2. SRI. ANAND KUMAR,
S/O SRI MUNIYAPPA @ MOTANNA,
AGED ABOUT 37 YEARS,
3. SRI. SATHISH,
S/O SRI MUNIYAPPA @ MOTANNA,
AGED ABOUT 34 YEARS,
4. SRI MUNIYAPPA @ MOTANNA
S/O PILLAPPA
AGED ABOUT 69 YEARS,



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ALL ARE R/AT AKASHVANI LAYOUT,
DASARAHALLI VILLAGE,
H.A. FORM POST,
BENGALURU - 560 024.

...RESPONDENTS

(VIDE ORDER DATED 01.06.2026 NOTICE TO
R1 TO R4 IS HELD SUFFICIENT, R4 SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED:20.07.2021
PASSED IN OS.NO.9013/2012 ON THE FILE OF THE LXXV
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGLAURU,
DISMISSING THE SUIT FOR PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

This appeal by the plaintiff, assailing the judgment
and decree passed by the trial Court dated 20.07.2021 in
OS.No.9013/2012 passed by LXXV Additional City Civil and
Sessions Judge, Bengaluru¹.

2. The parties are referred to as per the ranking
before the Trial Court.

¹ 'Trial Court' for short



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3. Facts germane to file the present appeal are as under:

3.1 The plaintiff filed suit seeking for permanent injunction against the defendants, alleging that the defendants are causing interference in the suit schedule property. During the pendency of the suit, it is alleged that the defendants said to have encroached a portion of the property towards southern side of the suit schedule property. An application came to be filed for amendment, taking a specific pleading and seeking a direction to defendants to remove the encroachment. The trial Court dismissed the application for amendment, which was the subject matter in WP.No.3882/2019.

3.2 During the pendency of the writ petition, the trial Court dismissed the suit on the premise that, the plaintiff has failed to prove the encroachment and interference by the defendants. Thereafter, the Writ



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Petition filed came to be dismissed as having rendered infructuous, in view of disposal of the suit itself. It is this judgment and decree passed by the trial Court is called in question in this appeal.

4. Heard, Sri.G.B.Nandish Gowda, learned counsel appearing for the appellant.

5. Notice to respondent Nos.1 to 3 held to be sufficient vide order dated 01.06.2026.

6. Sri.G.B.Nandish Gowda, with all vehemence submits that the trial Court has not provided appropriate opportunity to prove the case of the plaintiff to show that there is encroachment and interference by the defendants. The application came to be dismissed seeking for amendment to include pleadings and prayer thereon, for mandatory injunction. The said application was rejected. The Trial Court only on the premise that, the plaintiff failed to prove interference and encroachment of his suit schedule property, dismissed the suit.



7. The plaintiff was before the Trial Court, in which he has contended that the property came to the plaintiff through his father and is an ancestral property and the defendants are interfering in the peaceful possession and enjoyment of the suit schedule property. To buttress his argument, he has relied on the judgment of Hon'ble Apex Court in AIR 1960 SCC 941 and emphasizes on paragraph No.16 of the judgment. He further relied on the judgment of the Co-ordinate Bench of this Court in RSA.No.890/2015 disposed on 17.03.2022 and emphasizes on paragraph No.30 to contend that the trial Court committed an error in not permitting the appellant to amend his plaint and the particular prayer of mandatory injunction. In that view of the matter, learned counsel submits that the Judgment of the Trial Court, dismissing the suit requires consideration by providing appropriate opportunity to the plaintiff to establish his case.

8. Having considered the submission, the following points would arise for consideration:



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(1) Whether the Trial Court is right in dismissing the suit?

(2) Whether the application filed by the appellant/plaintiff under Order VI Rule 17 R/w Section 151 of CPC, deserved to be allowed?

9. My answer to above points for consideration are as under:

Point No.1: In the Negative.

Point No.2: In the Affirmative, for the following:

REASONS

10. **POINT NOS.1 & 2**: The application filed under Order VI Rule 17, read with Section 151 of Code of Civil Procedure, 1908 clearly shows that the appellant has sought for amendment to the plaint after paragraph No.5, to add paragraph No.5(a) and a prayer after prayer No.1 as prayer No.i(a), which reads are under:



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"5(a) The plaintiff respectfully submit that recently on 07.02.2016 when the plaintiff went to the suit schedule property and there to his utter shock and dismay he found that the Defendants had erected wall in the suit schedule property on the southern side of plaintiffs property encroaching in to 5 feet x 35 inside the suit schedule property.

i(a) Pass a Judgment and Decree of Mandatory Injunction directing the Defendants to demolish the wall and other construction made in the suit schedule property by the defendants on the southern side intruding in to 5 feet x 35 feet of the suit schedule property."

11. A perusal of the judgment passed by the trial Court shows that the plaintiff has failed to prove the interference and encroachment. The trial Court has dismissed the application seeking to introduce the pleading and prayer seeking mandatory injunction in view of encroachment, during the pendency of the suit. It clearly shows that the trial court has not afforded appropriate opportunity to the plaintiff. The *lis* required proper consideration and adjudication in the view of the amendment sought in the application.



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12. The averments made in the application shows that the defendants interfered in the peaceful possession of the plaintiff's suit schedule property and said to have encroached a portion of land at the southern side of the property to an extent of 5 feet x 35 feet. The encroachment complained was during the pendency of the suit. Denying the relief sought in the application by the plaintiff during the pendency of the suit, amounts to denial of right to the plaintiff, and in turn amounts to denial of principles of natural justice, to prove his case. Accordingly, this Court is of considered opinion that, the non-consideration of application for amendment, amounts to denial of fair opportunity to the plaintiff.

13. This Court, having considered the submissions, finds force in the argument of Sri.Nandish Gowda, in view of the judgment of the Co-ordinate Bench of this Court as well as the judgment of the Hon'ble Supreme Court, stated supra.



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14. A perusal of the judgment and the decree clearly shows that the trial Court has declined to grant opportunity to the plaintiff to amend the plaint and bring on record the pleadings as well as the prayer in the plaint. In that view of the matter, the trial Court has committed an error in not considering the case of the appellant in true perspective. It is further noticed that, the defendants in the cross examination have admitted the title and possession of the plaintiff. The defendants though served, not appeared before this Court. This shows that the apathy on the part of the defendants in conducting the case.

15. In that view of the matter, this Court is of the opinion that the, matter requires re-consideration by the Trial court on the application seeking amendment of pleading. The application filed by the appellant was dismissed and during the pendency of the Writ Petition, impugning the order passed by the Trial Court, the suit filed the plaintiff was disposed of. The petition filed seeking challenge to the impugned order on the



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application was dismissed as having rendered infructuous. The plaintiff has urged the same as the main ground in the appeal. In that view of the matter, this Court is of the opinion that the appellant has made out a case for remand, to establish his right and case in view of application filed seeking amendment. Accordingly, both the points are answered.

16. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

- (i) The appeal is ***allowed and remanded***.
- (ii) The Judgment and Decree dated 20.07.2021 passed by the LXXV Additional City Civil and Sessions Judge, Bengaluru in OS.No.9013/2012, is set-aside.
- (iii) The application filed by the appellant/plaintiff under Order VI Rule 17 R/w Section 151 of CPC is allowed. Plaintiff is permitted to amend the pleadings and



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file fresh amended complaint, within two weeks from the date of first appearance.

- (iv) The appellant is directed to appear before the Trial Court on **22.09.2026**, without awaiting any notice, and take steps in respect of the defendants who remained absent before this Court.
- (v) The Trial Court shall permit the appellant/plaintiff to carry out the amendment and urge all his rights on the basis of the amendment.
- (vi) Since the suit is of the year 2012, the Trial Court is directed to dispose of the same, as expeditiously as possible, within the outer limit of one year from the date of first appearance.
- (vii) Both the parties are directed to cooperate with the Trial Court without seeking any unnecessary adjournment.



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- (viii) Trial Court records secured, shall be sent forthwith without any further delay.
- (ix) Given the facts and circumstances of the case, no order as to costs.

**Sd/-
(T.M.NADAF)
JUDGE**

PK
List No.: 2 Sl No.: 21
ct-vn