



CNR: KAHC010420972023

NC: 2026:KHC:40778
RSA No. 1446 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1446 OF 2023 (INJ)

BETWEEN:

BHAGIRATHI
AGED ABOUT 70 YEARS,
D/O. LATE NAGAPPA GOWDA,
KUNTIKANA HOUSE,
KOLTHIGE VILLAGE,
PUTTUR TALUK, DK - 574 201

...APPELLANT

(BY SRI. K. SHRIHARI, ADVOCATE)

AND:

1. UPENDRA
AGED ABOUT 50 YEARS,
S/O. SHANTHAPPA GOWDA
KUNTIKANA GUNDI MAJALU
KOLTHIGE VILLAGE,
PUTTUR TALUK, DK - 574 201

2. HITHAKSHI
AGED ABOUT 43 YEARS,
W/O UPENDRA
KUNTIKANA GUNDI MAJALU
KOLTHIGE VILLAGE,
PUTTUR TALUK, DK - 574 201

3. PUSHPAVATHI
AGED ABOUT 49 YEARS,
W/O. LATE PARAMESHWARA GOWDA

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



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KUNTHIKANA GUNDI MAJALU
KOLTHIGE VILLAGE
PUTTUR TALUK, DK - 574 201

4. MAILAPPA GOWDA
AGED ABOUT 56 YEARS,
HIGHER PRIMARY SCHOOL TEACHER
BERIKE HOUSE,
KOLTHIGE VILLAGE
PUTTUR TALUK,
DK - 574 212

5. BALAGANGADHARA
AGED ABOUT 46 YEARS,
S/O KOOSANNA GOWDA
KORTHIMAR (KUDKULI) HOUSE
KOLTHIGE VILLAGE
PUTTUR TALUK, DK - 574 212

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.04.2023
PASSED IN RA.NO. 05/2021 ON THE FILE OF THE PRINCIPAL
SENIOR CIVIL JUDGE AND JMFC, PUTTUR TALUK, D.K.
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 15.12.2020 PASSED IN O.S.NO127/2009
ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC,
PUTTUR, D.K.

THIS APPEAL, 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. Heard Sri. K. Srihari, learned counsel for the appellant. This Court did not deem fit to issue notice to the respondents.

2. Facts of the case are as under:

2.1. A suit for bare injunction in respect of the following property (hereinafter referred to as 'suit property' for short) came to be filed. Plaintiff claims that there was a suit in the year 1952 and said suit ended in a compromise. The predecessor of the plaintiff has been allotted the suit property in the said compromise decree. There was a subsequent partition in respect of the same property and thereby plaintiff is in continuous possession and enjoyment of the suit property.

SCHEDULE

*Immovable properties situated in Kolthige Village of
Puttur Taluk, D.K.*



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<i>S.No.S.D.No.</i>	<i>Kissam</i>	<i>Extent</i>	<i>Assessment</i>
306-1A2		0-26	0.16

2.2. Plaintiff further contended that there is a commercial building in the suit property and her son is carrying out the business in the said property and Defendant No.3, who has no manner of right, title or interest over the suit property, started interfering with the suit property, holding deadly weapons in their hand, tried to demolish the stone pillars and also removed the fence and therefore suit for permanent injunction came to be filed.

2.3. Pursuant to the suit summons, defendants entered appearance and filed written statement denying the plaint averments in *toto*. On the contrary, defendant No.3 contended that in the suit property there is a tiled roof house and a hotel is being run in the said property and plaintiff is not in possession of the suit property and sought for dismissal of the suit property.



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2.4. Learned Trial Judge after raising necessary issues, recorded the evidence of the parties and on appreciation of the material on record, recorded a categorical finding that plaintiff is not in possession of the suit property nor established the fact of interference by defendant No.3 or her son and dismissed the suit of the plaintiff.

2.5. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.5/2021,

2.6. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, dismissed appeal of the plaintiff.

3. Being further aggrieved by the same, plaintiff has filed the present second appeal on following grounds and substantial questions of law:



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GROUND:

- *The Judgments passed by the Trial Court and the First Appellate Court is not maintainable. The Hon'ble Trial Court and First Appellate Court ought to have appreciated the evidence on record in the right perspective and rendered their decision.*
- *It is submitted that the Suit filed by the Appellant is for bare injunction. However, the Hon'ble Trial Court and the First Appellate Court in their Judgments have discussed about the title to the Schedule Property, which is not permissible when the suit is only for bare injunction. Hence, such observations made by the Courts are liable to be set aside.*
- *The Hon'ble Trial Court and First Appellate Court failed to note that as per the records produced by the Appellant before the Trial Court, the possession is with the Appellant. The Hon'ble Trial Court and First Appellate Court have misinterpreted the evidence both oral and documentary and come to a wrong conclusion that the Appellant has failed to prove possession. It was the observation made by the Hon'ble Trial Court and the First Appellate Court that the RTC stands in the name of the Appellant and her children. It had further observed that RTC is not a document of title, which cannot be decided in a suit for bare injunction. Hence, based on the RTC it could have been safely concluded that the Appellant was and is in the possession of the Schedule A Property and there is no*



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evidence to rebut the same. This crucial aspect has been lost sight by the Hon'ble Trial Court and First Appellate Court.

- *On the perusal of Exhibit P 10, the true copy of Panchayath Resolution dated 26/03/1988, it exhibits that there is other survey number which was overwritten and replaced by Sy. No. 306/1A2. It is important to note that the Respondents have produced the certified copies of the same exhibit without showing any such replacements. Even though the same was admitted by the Defendant No. 3 in her evidence, the Courts have failed to appreciate this fact. Hence, from which it can be concluded that the Defendants did not approach, either the Hon'ble Trial Court or the First Appellate Court with clean hands.*
- *As per the recitals of the Compromise Deed executed in O S No. 320/1952, which is at Exhibit P11, it clearly shows that the possession of Schedule A Property was not handed over to the Defendant No. 3's father in law. Hence, the Defendant No. 3 claiming possession over the Suit Schedule Property does not arise at all.*
- *It is submitted that the RTC of the Schedule Property stands in the name of Appellant and her children, which remains unchallenged even now. In addition to the same, the Defendant No. 4, Maliappa Gowda, who deposed as DW2, in his cross examination admitted that he is not aware as to who is in the possession of*



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the Schedule A Property. This important oral evidence ought to have been appreciated by the Hon'ble Trial Court and First Appellate Court while rendering their decisions.

- *Further the Defendant No. 4 in his cross examination admitted that after the execution of compromise decree in O S No. 320/1952, Sri Rukmayya Gowda, was in the possession of Schedule A Property, who is none other than father in law of Appellant. Hence, from which it can be safely concluded that after the death of Sri Rukmayya Gowda his daughter in law i.e., the Appellant continued in possession in respect of Schedule A Property.*
- *The Defendant No. 4, in his cross examination admitted that there exists three houses in the Schedule A Property and he also admitted that in one house, Sri Hariprasad, son of the Appellant herein, is having his shop. Hence, the Defendant No. 3, even though very well aware of Appellant Son's possession over the Schedule A Property she did not disclose the same to the Hon'ble Trial Court. Hence, this important piece of oral evidence is contradictory to the case of Defendant No. 3.*
- *It is submitted that the Defendant No. 3 to prove her possession over the Suit Schedule Property has placed the Exhibit D1 i.e., the Sketch prepared by Revenue Inspector, Puttur. The author of the said document*



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i.e., the Revenue Inspector was not examined to prove its authenticity. Hence, Judgments passed by the Hon'ble Trial Court and First Appellate Court relying upon Exhibit D1 is liable to be interfered by this Hon'ble Court.

- *It is submitted that the Defendant No. 3 to prove her possession over the Schedule A Property has produced the tax paid receipts, business license issued by the competent authorities. On perusal of the said documents it no where depicts that the House No. 7-65A or 7-91 or 7-65 exists in the Schedule A Property. Hence, the Hon'ble Trial Court and First Appellate Court placing reliance on such documents to render their decisions are not sustainable.*
- *The Appellants humbly seek the leave of this Hon'ble Court to raise, urge and plead such other grounds at the time of hearing this Appeal.*

SUBSTANTIAL QUESTIONS OF LAW

- 1. Whether the Trial Court and First Appellate Court have erred in placing reliance on Exhibit D1, i.e., the Sketch prepared by the Revenue Inspector without examining him in the present case?*
- 2. Whether the Trial Court and First Appellate Court have erred in placing reliance on documents filed by the Respondent No. 3, while passing the Judgments?*



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2. Whether the Trial Court and First Appellate court have erred in not considering the evidence placed by the Appellant in its right perspective to prove her possession over the Schedule A Property?

4. Sri. K. Srihari, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not properly appreciated the material evidence on record and wrongly interpreted the documentary evidence placed on record and dismissed the suit of the plaintiff resulting in miscarriage of justice.

5. He would further contend that the factum of compromise between the parties in OS No.320/1952 marked at Exhibit P11 is not in dispute. Therefore, plaintiff claiming right in respect of the suit property subsequent to that by virtue of the partition in the year 2008 by entering into deed of Partition dated 24.07.2008.



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6. Therefore, the trial Judge ought not to have dismissed the suit of the plaintiff and sought for admitting the appeal on the aforesaid substantial questions of law.

7. Sri. Srihari would also contend that PW2 being the Secretary of the Kolthige Gram Panchayat, was summoned only to speak about the alterations made in the Panchayat records. But she spoke about the possession of the property by defendant No.3 which is outside the scope of summoning the witness, which has been made much out of by the learned Trial Judge in dismissing the suit of the plaintiff and thus sought for admitting the appeal on the aforesaid substantial questions of law.

8. In the light of the arguments put forward on behalf of the plaintiff-appellant, this Court perused the material on record meticulously.

9. On such perusal of the material on record, as could be seen from the schedule, the property number



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that has been mentioned as No.306-1A2. Such a number is not in existence in respect of the suit property as the Panchayath has given a separate number. Separate numbers that were given to is 7-91 and 7-65A. The number that has been given is the door number.

10. In other words, Panchayath has taken note of the existence of the building and assessment carried out and thereafter given the door number. The photograph that has been placed on record by the plaintiff vide Exhibits P7 to P9 to show that there exists a commercial building wherein son of the plaintiff by name Hariprasad is carrying on a business. Admittedly in the Panchayat records, no such commercial building is in existence in respect of the suit property.

11. On the contrary, photographs placed by the defendants would go to show that there is a tiled roof house. Necessary documents are placed on record by the defendants to establish that in the said tiled roof house, a



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hotel is being run. Necessary license is also placed on record for running the hotel therein.

12. Furthermore, plaintiff in her cross-examination specifically admitted that she has not seen defendant No.3 and her son.

13. It is the specific case of the plaintiff that it is the defendant No.3 and her son who interfered with the possession of the suit property by demolishing the fence as well as the stone pillars with the aid of deadly weapons including hammers.

14. According to plaintiff, it is her son Hariprasad who has seen the demolishing of the fencing as well as the stone pillar. For the reasons best known to the plaintiff, she did not choose to examine her son Hariprasad.

15. If there exists a commercial building in the suit property, question of demolition of the stone pillar and fencing would not arise at all. The variance in the pleading



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and proof is taken note of by the learned trial Judge by discussing with the oral as well as the documentary evidence and noted that defendants were successful in establishing that there exists a tiled roof house and a hotel being run and a shamiana business being run.

16. PW2 also admits in her cross-examination that there is a shamiana business being run by the defendants. Even though the PW2 was called into lead the evidence with regard to the discrepancy in the panchayat records, an admission elicited in the cross-examination of PW2 can be taken note of by the Trial Court especially when the suit is one for bear injunction.

17. Plaintiff could have examined the bajudars, relatives or at least her son to establish that they are in actual possession of the suit property. As could be seen from the schedule, no measurements are furnished, nor existence of any building is furnished, nor any boundaries is furnished.



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18. If at all if there exists a RCC building as is contented by the plaintiff in the suit property, it should have been assessed by the Grama Panchayath for tax.

19. Likewise, it should have been found in Exhibit P7 to P9 which are the photographs. Neither photographs establish the existence of a RCC building as is contented by the plaintiff nor the same finds a place in the Schedule of the plaint.

20. Therefore, mere mentioning that existing buildings without there being a specific reference to the RCC building, the building that has been mentioned is to be construed as the tiled roof house which the defendant is in occupation.

21. Since the suit is one for bear injunction, plaintiff having failed to establish her possession over the suit property much less lawful possession, dismissal of the suit by Trial Court confirmed by First Appellate Court needs no



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interference and regard to scope of Section 100 of the Code of Civil Procedure.

22. Accordingly, following Order:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

Observations made in the judgment shall not affect the rights of the parties in the pending suit.

**Sd/-
(V SRISHANANDA)
JUDGE**

SNC
List No.: 1 Sl No.: 62