



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1649 OF 2013

(DEC/INJ)

BETWEEN:

SRI C A ISMAIL @ MAMMALI
S/O LATE AHAMMED HAJI,
AGED ABOUT 38 YEARS,
RESIDING AT GUNDIKERE,
BETOLI VILLAGE,
VIRAJPET TALUK,
S.KODAGU - 571218

...APPELLANT

(BY ADLAW PARTNERS & LEGAL CONSULTANTS
SRI. HIDAYATHULLA M H.,ADVOCATE)

AND:

1. THE PRESIDENT
BETOLI HIGHER PRIMARY SCHOOL,
BETOLI - 571218
GUNDIKERE BETTERMENT COMMITTEE
2. THE HEAD MASTER
BETOLI HIGHER PRIMARY SCHOOL,
BETOLI - 571 218
GUNDIKERE BETTERMENT COMMITTEE
3. THE BLOCK EDUCATION OFFICER

Digitally
signed by
KIRAN
KUMAR
Location:
HIGH COURT
OF
KARNATAKA



- CHICKPET,
VIRAJPET – 571 218
4. THE PRESIDENT,
BETOLI GRAM PANCHAYATH 571 218
5. THE PRESIDENT
TALUK PANCHAYATH,
PONNAMPET – 571 216
6. THE DEPUTY COMMISSISONER
KODAGU DISTRICT,
MADIKERI. – 571 201
7. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE – 560 001

...RESPONDENTS

(BY SRI. THARANATH POOJARY, AAG A/W
SMT. RASHMI RAO, HCGP, FOR R3, R6 AND R7
R1, R2, R4 & R5 ARE SERVED)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 16.7.2013 PASSED IN
R.A.NO.25/2012 ON THE FILE OF II ADDITIONAL D.J. COURT,
KODAGU, MADIKERI SITTING AT VIRAJPET, DISMISSING THE
APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD
28.1.2012 PASSED IN OS.NO.97/2004 ON THE FILE OF SENIOR
CIVIL JUDGE, VIRAJAPET.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



ORAL JUDGMENT

This regular second appeal is filed by the appellants challenging the judgment and decree dated 16.07.2013 passed in RA No. 25 of 2012 by the Court of learned II Addl. District Judge, Kodagu-Madikeri, Sitting at Virajpet (**'First Appellate Court'** for short) confirming the judgment and decree dated 28.01.2012 passed by the Court of learned Senior Civil Judge, Virajpet (**'Trial Court'** for short) in OS No. 97 of 2004.

2. For the sake of convenience, the parties are referred to based on their rankings before the Trial Court. Appellant was the plaintiff and respondents were the defendants.

3. Brief facts leading rise to the filing of this appeal are as follows:

3.1. The plaintiff filed a suit for declaration of ownership and injunction in respect of the suit schedule property. It is the case of the plaintiff that the suit



schedule property is the ancestral property of Late Ahammed Haji, who was the father of the plaintiff. The suit schedule property was a *Jamma Bane* property and was fenced and cultivated by the plaintiff's father during his lifetime. Late Ahammed Haji bequeathed the suit schedule property in favour of the plaintiff under a registered will dated 04.02.1987. He passed away in 1991. After his demise, the plaintiff became the absolute owner of the suit schedule property by virtue of a will dated 04.02.1987. The plaintiff is cultivating the suit schedule property by growing coffee and other crops. The revenue records are standing in the name of one C.A.Fareed, the *pattadar* of the plaintiff's family. There was no interference or disturbance to the plaintiff's peaceful possession and enjoyment of the suit schedule property by anyone, much less the defendants at any point of time till the year 2004. On 06.10.2004, the plaintiff was surprised and shocked to receive a notice from defendant No.4 calling upon the plaintiff to attend the *Panchayat* on 11.10.2004 to take



appropriate decision on the property gifted by his father for construction of a Betoli Higher Primary School, Gundigere. Defendant Nos.1 to 3, at the instigation of some unruly, frustrated and vested elements, started claiming an extent of 0.50 acre (50 cents) based on the alleged registered gift deed dated 07.10.1964, alleged to have been executed by the plaintiff's father in favour of the then *Panchayat* Board (defendant No.4) and the then Taluk Board (defendant No.5) for specific purpose of construction of a school building for the children of Betoli Villagers. Neither the plaintiff nor the defendants were aware of the alleged gift deed till 06.10.2004. The gift of the land was for specific purpose of construction of a school building. The defendants have not constructed a school building for more than 40 years and hence, the defendants have lost their right over the suit schedule property and the defendants have no right or interest over the property. Further, the suit schedule property which is alleged to have been gifted for the purpose of construction



of a school building was neither handed over to the defendants nor is being used by the defendants for the purpose of constructing the school. It is also contended that, the defendants tried to interfere with the plaintiff's peaceful possession and enjoyment towards the suit schedule property and also denied the title of the plaintiff. Hence, a cause of action arose for the plaintiff to file a suit for declaration of title and permanent injunction.

3.2. The president of defendant No.1 filed a written statement along with defendant Nos.2 and 3. It is contended that, the plaintiff has no *locus standi* to file a suit for declaration of title and injunction. It is contended that, the father of the plaintiff gifted the suit land for the purpose of construction of a school, and it is denied that the plaintiff is the absolute owner and in possession and enjoyment of the suit schedule property. It is also denied that the father of the plaintiff has bequeathed the suit schedule property as per the registered will. It is contended that, the registered will is cooked up and



forged. It is also contended that, the said gift deed was not cancelled till date. As per the gift deed dated, an area of 0.50 acres in the suit schedule property was donated to defendant Nos.1 to 3 under adjoining to the Sy.No.268/1. After the gift of the suit schedule property, defendant Nos.1 to 3 are in lawful possession and enjoyment of the suit schedule property. The court fee paid by the plaintiff is incorrect. Hence, prays to dismiss the suit against defendant Nos.1 to 3.

3.3. Defendant No.4 filed a separate written statement contending that one M.A.Abbas is not the president of Betoli Higher Primary School. On 09.11.2004, Betterment Committee was changed and one M.S.Ummer has been appointed as a President, such reconstitution of notice was issued to all the old Betterment Committee members including President and also the new members.

3.4. The Trial Court, based on the rival pleadings of the parties, framed the following issues:



- "1. *Whether the plaintiff proves his title to the suit schedule properties?*
2. *Does he prove the alleged obstruction of the defendants?*
3. *Does he entitle for the relief of declaration and permanent injunction against the defendants?*
4. *Does 4th defendants prove that one Mr.M.A Abbas colluded with the plaintiff and filed the written statement?*
5. *What Order or a decree?"*

3.5. The plaintiff, to substantiate his case, examined himself as PW1, examined two witnesses as PW2 and PW3 and marked eight documents as Exs.P1 to P8. In rebuttal, the defendants examined three witnesses as DW1 to DW3 and marked two documents as Exs.D1 and D2.

3.6. The Trial Court, after appreciating the entire evidence on record, answered Issue Nos.1 to 4 in the negative and Issue No.5 as per the final order. The suit of the plaintiff was dismissed vide judgment dated 28.01.2012.



3.7. The plaintiff, aggrieved by the dismissal of suit in OS No. 97 of 2004, filed an appeal in RA No. 25 of 2012 on the file of the First Appellate Court.

3.8. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- "1) *Whether the plaintiff proves that Ahammed Haji during his lifetime bequeathed the suit schedule property under registered Will dated 4.2.1987 and thus plaintiff become absolute owner of thee suit schedule property?*
- 2) *Whether the plaintiff is in lawful possession and enjoyment of the suit schedule property as on the date of the suit?*
- 3) *Whether the judgment and decree in appeal call for any interference?*
- 4) *What order?"*

3.9. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 to 3 in the negative, point No.4 as per the final order. The appeal was dismissed vide judgment dated 16.07.2013.



4. The plaintiff, aggrieved by the impugned judgments, preferred this regular second appeal.

5. Heard the arguments of the learned counsel for the plaintiff and learned Additional Advocate General for the defendant Nos.3, 6 and 7.

6. Learned counsel for the plaintiff submits that, the father of the plaintiff gifted the suit schedule property in favour of defendant Nos.1 to 3 for the purpose of construction of a school. Defendant Nos.4 and 5 have not constructed the school for more than 40 years. He submits that, the gift is a conditional gift. The conditional gift only becomes complete on compliance of the condition in the deed. Admittedly, there is no compliance of a condition imposed in the gift deed. To buttress his argument, he has placed a reliance on the judgment of the Hon'ble Apex Court in case of ***S. Sarojini Amma Vs. Velayudhan Pillai Sreekumar [(2019) 11 SCC 391]***. He submits that, the Trial Court, without considering that there is no compliance of a condition mentioned in the gift deed and



the gift deed is incomplete, passed the impugned judgments. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned Additional Advocate General submits that, the father of the plaintiff executed the gift deed by accepting the consideration amount of ₹50/- and delivered the possession of the suit schedule property. He submits that, there is no such condition imposed in the gift deed. He further submits that, the entire case of the plaintiff is based on a will and the plaintiff has not examined the attesting witnesses as required under Section 68 of the Indian Evidence Act and he also submits that, the property gifted in favour of defendant Nos.4 and 5 is to the extent of 0.50 acres, wherein the plaintiff is claiming an area of more than 2 acres. The property is not identifiable. He further submits that, the plaintiff has not sought for a relief of declaration of a cancellation of a registered gift deed. He further submits that, the suit filed



by the plaintiff is barred by limitation. Hence, on these grounds, he prays to dismiss the appeal.

8. This Court, on 29.06.2016, admitted the appeal on the following substantial questions of law:

- (1) Where the Courts below justified in dismissing the suit for permanent injunction on the basis of a Gift Deed dated 07.10.1964 (Ex.P2), when the gift was made without valid acceptance as per Section-122 & 123 of the Transfer of Property Act, 1882?*
- (2) Were the Courts below justified in dismissing the suit of the plaintiff, without accepting the gift and taking physical possession of the gifted property and the donee will acquire valid title by way of gift deed without identity of the gifted property after a long lapse of 40 years?*
- (3) Were the Courts below justified in dismissing the suit holding that the defendants-respondents herein are in possession of the suit schedule property, without giving any findings about the identity of the gifted property, when the plaintiff-appellant has disputed the very identity of the gifted property, as described in the gift deed?*
- (4) Were the Courts below justified in not decreeing the suit of the plaintiff, under the facts and circumstances of the case?*

9. Perused the records and considered the submissions of the learned counsel for the parties.



Reg. Substantial Questions of Law Nos.1 and 2:

10. Substantial questions of law Nos.1 and 2 are inter-linked with each other, hence, taken together for a common discussion.

11. The plaintiff filed a suit for declaration of title and permanent injunction on the ground that the suit schedule property was owned and possessed by the father of the plaintiff i.e., late Ahmmed Haji. During his lifetime, he had bequeathed the suit schedule property in favour of plaintiff under a registered Will dated 04.02.1987. The suit schedule property was fenced and cultivated during the lifetime of Ahmmed Haji. After his demise, the plaintiff has succeeded to the suit schedule property based on the registered Will dated 04.02.1987. It is contended that the said land was donated to defendant Nos.4 and 5 for the purpose of construction of the school. It is contended that the said gift was a conditional gift and defendant Nos.4 and 5 did not construct a school till date. The plaintiff, in order to prove his case, plaintiff No.1 examined himself as



PW1 and he reiterated the plaint averments in the examination-in-chief and he has deposed that the suit schedule property was owned and possessed by the father of the plaintiff and during his lifetime, he had executed a Will bequeathing the suit schedule property in favour of the plaintiff, and the plaintiff is in possession of the suit schedule property. Defendant Nos.4 and 5 are not in possession and enjoyment of the suit schedule property. The alleged gift deed executed by the father of the plaintiff in favour of defendant Nos. 4 and 5 was not acted upon as the said gift deed was a conditional gift deed. Even after lapse of more than 4 decades, defendant Nos.4 and 5 have not constructed the school and the plaintiff has produced the documents marked as Exs.P1 to P8. The plaintiff has produced the certified copy of the registered gift deed executed by the plaintiff's father in favour of defendant Nos.4 and 5. During the course of cross-examination, it was suggested to PW1 that the father has gifted the suit schedule property in favour of defendant Nos.4 and 5 and



the defendants are in possession and enjoyment of the suit schedule property. The said suggestion was denied by PW1. The plaintiff also examined two witnesses to prove the possession over the suit scheduled property.

12. In rebuttal, the defendants examined three witnesses as DW1 to DW3, wherein they have deposed that the plaintiff's father had executed a registered gift deed in donating the suit land for the purpose of construction of a building and they also deposed that the plaintiff's father had taken Rs.50/- as consideration. The plaintiff's father had delivered the possession of the suit schedule property in favour of defendant Nos.4 and 5 and defendant Nos.4 and 5 are in possession of the suit schedule property. During the course of cross-examination, it was suggested to DW1 to DW3 that, as on today, the suit schedule property is the open land and no building has been constructed. The said suggestion has not been seriously denied by DW1 to DW3.



13. From the perusal of the entire evidence on record, it is clear that the suit schedule property was owned and possessed by the plaintiff's father. He had executed a registered Will marked as Ex.P2. From the perusal of the recital of Ex.P2, it clearly discloses that the land was donated for the purpose of construction of a school. In order to consider the case on hand, it is necessary to consider Section 122 of the Transfer of Property Act, 1882 (for short 'the Act of 1882').

14. Sections 122 to 126 of the Transfer of Property Act, 1882, which reads as under:

122. "Gift" defined.—*"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*

Acceptance when to be made.—*Such acceptance must be made during the lifetime of the donor and while he is till capable of giving, If the donee dies before acceptance, the gift is void.*

123. Transfer how effected.—*For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.*



Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property.—*A gift comprising both existing and future property is void as to the latter.*

125. Gift to several, of whom one does not accept.—*A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.*

126. When gift may be suspended or revoked.—*The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.*

15. A conditional gift with no recital of acceptance and no evidence in proof of acceptance, when the possession remains with the donor as long as he is alive, does not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor the deed of gift might be cancelled.

16. Admittedly, the said Will was executed by the plaintiff's father. There is a recital in Ex.P2 regarding the



delivery of possession. From the perusal of the RTC extract produced by the plaintiff it clearly discloses that the plaintiff is the owner and in possession of the suit schedule property. The defendants did not challenge the entries in the name of the plaintiff. There is a presumption under Section 133 of the Karnataka Land Revenue Act, 1964 in regard to the entries in the RTC extract. The gift deed was executed in 1964. But till today the respondents have not fulfilled the conditions mentioned in the gift deed.

17. The Hon'ble Apex Court in the case of ***S. Sarojini Amma Vs. Velayudhan Pillai Sreekumar***¹, wherein the Hon'ble Apex Court had occasion to consider Section 122 of the Act of 1882 at para No.18 which reads as follows:

*"18. We are in agreement with the decision of this Court in **RENINKUNTLA RAJAMMA** (supra) that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift as defined in Section*

¹ (2019) 11 SCC 391



122 of the Transfer of Property Act must be satisfied. A gift is transfer of property without consideration. Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed."

18. Admittedly, in the instant case, the deed of transfer was executed for consideration and was in a condition that the donors should construct a school building over the suit land. Admittedly, defendant Nos.4 and 5 have not constructed any school over the property. During the pendency of this appeal, on 13.11.2025, at the instance of both the parties, a commissioner was appointed to ascertain whether the conditions mentioned in the gift deed were fulfilled or not? The Court Commissioner, after visiting the spot, has submitted a report, wherein the commissioner has opined that the defendants have not constructed any building on the land in Sy.No.279/1 and the said land is in possession of the plaintiff. It was however notice that over a short to moderate span of years, the plaintiff has planted coffee plants, 4 to 6. Banana trees and there exist some other



wild trees. Insofar as structure in the land in Sy.No.268/1 is concerned, the said land is not the subject matter of the suit. The defendants have not filed any objection to the commissioner's report. From the perusal of the commissioner's report, the defendants have not constructed a building over the schedule property and the defendants did not comply with the conditions mentioned in the gift deed, and suit property is in possession of the plaintiff. The gift will be complete only if the conditions are fulfilled as per Section 122 and 123 of the Act of 1882. Considering the revenue records and the commissioner's report, this Court is of the opinion that the defendants did not comply with the conditions mentioned in the registered gift deed, and there was no complete gift of the property in question by the plaintiff's father in favour of defendant Nos.4 and 5, and physical possession was not delivered to defendant Nos.4 and 5.

19. The plaintiff had acquired a title by virtue of a registered Will deed, the plaintiff did not examine the



attesting witnesses. There is no reference about the suit property in the Will alleged to have been executed by plaintiff's father in favour of the plaintiff. Even without considering the stand taken by the plaintiff that he has become the absolute owner by virtue of a registered Will alleged to have been executed by his father in favour of him. Admittedly, the petitioner is a Mohammedan. After the demise of father, he inherited the property. The plaintiff's father is no more and the plaintiff has inherited the suit schedule property. Thus, both the Courts below have failed to consider the said aspect and committed an error in dismissing the suit of the plaintiff.

20. Learned Additional Advocate General submit that the portion of the land was gifted by the plaintiff's father. But, at present, the plaintiff is claiming the suit schedule property to the extent of more than 2 acres. Admittedly, the plaintiff's father was the owner and in possession of the entire suit property. Though 0.50 acres was gifted, but as observed above, the gift was incomplete



as the conditions were not fulfilled by defendant Nos.4 and 5. The submission of the learned Additional Advocate General that the plaintiff has not acquired any title by virtue of Will does not hold water. Further, the defendants have not examined any witnesses to establish their possession over the suit schedule property. In view of the above discussion, I answer substantial question of law Nos.1 and 2 in the negative.

Reg. Substantial question of law No.3:

21. The defendants contended that the defendants are in peaceful possession of the suit schedule property. Admittedly, the total extent of the suit schedule property was 2 acres 50 cents. Though in the registered gift deed the boundary has been shown but the trial Court without giving any findings about the identity, there is no dispute in regard to the identity of the property in regard to the portion of the property gifted in favour of defendant Nos.4 and 5. As there is no dispute in regard to the identity,



hence, the question of answering substantial question of law No.3 does not arise for consideration.

Reg. Substantial question of law No.4:

22. As I have already recorded findings in substantial question of law Nos.1 and 2 holding that the plaintiff's father was the owner and in possession of the suit schedule property and gifted the portion of the suit land measuring 50 cents in favour of defendant Nos.4 and 5 subject to condition that defendant Nos.4 and 5 should construct a school and the gift was with consideration. The said transaction is contrary to Section 122 and 123 of the Act, of 1882. Both the Courts below have committed an error in passing the impugned judgments. The judgments and decrees passed by the Courts below are arbitrary and erroneous.

23. In view of the above discussion, I answer substantial question of law No.4 in the negative.

24. Accordingly, I proceed to pass the following:



ORDER

- i. The Regular Second Appeal is ***allowed.***
- ii. The judgments and decree passed by the courts below are hereby set aside.
- iii. The suit of the plaintiff is decreed.
- iv. It is declared that the plaintiff and his family members are the owner of the suit schedule property. The defendants are permanently restrained from interfering, disturbing the lawful possession and the enjoyment of the suit schedule property of the plaintiff.
- v. Pending IA(s) in this appeal, if any, shall stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

PA, SSB