



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1804 OF 2013 (RES)

BETWEEN:

LATE PUTTADEVAMMA,
W/O LATE MALLANNA,
SINCE DECEASED BY HER LRS,

1.(a) SMT. SHIVAMMA,
W/O NAGANNA,
AGED ABOUT 45 YEARS,

1(b) SMT. RATHNAMMA,
W/O SIDDAPPA,
AGED ABOUT 40 YEARS,

2. NAGARAJU,
S/O LATE MALLANNA,
AGED ABOUT 50 YEARS,
ALL OF THE ABOVE
REPRESENTED BY THEIR
POWER OF ATTORNEY HOLDER
SRI.S.SUBBANNA,
S/O LATE SIDDALINGAPPA,
AGED ABOUT 58 YEARS,
R/O YERAGANAHALLI,
T.NARASIPURA TALUK.
MYSORE DISTRICT - 570 001.

...APPELLANTS

(BY SMT. DIVYA KRISHNA, ADVOCATE;
SMT.VIDYA T.S., ADVOCATE)

Digitally
signed by
SUNITHA K S
Location:
HIGH COURT
OF
KARNATAKA



AND:

SRI. NAGARAJAPPA,
S/O SOMAPPANNA BASAPPA,
MAJOR,
R/O YERAGANAHALLI VILLAGE,
MUGUR HOBLI,
T.NARASIPURA TALUK,
MYSORE DISTRICT - 570 001.

...RESPONDENT

(BY SRI.A.MADHUSUDHANA RAO, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGMENT & DECREE DATED 19.8.2013 PASSED IN R.A.NO.1/2001 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., T.NARASIPURA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 29.8.1988 PASSED IN O.S.NO.76/1987 ON THE FILE OF THE MUNSIFF & JMFC., T.NARASIPURA.

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

1. This Regular Second Appeal is filed by the appellants challenging the judgment and decree dated



19.08.2013 passed in R.A.No.1 of 2001 by the learned Senior Civil Judge and JMFC, T. Narasipura.

2. For convenience, the parties are referred to based on their rankings before the trial Court. Appellants No. 1(a), 1(b) are the legal representatives of the deceased plaintiff No.1 and appellant No.2 was plaintiff No.2 and the respondent was the defendant.
3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit against the defendant for redemption of mortgage regarding the suit schedule property. It is the case of the plaintiffs that the plaintiffs are the owners and in possession of the suit schedule property. They mortgaged the suit schedule property with possession under a registered mortgage deed dated 23.03.1981 for a sum of ₹4,000/- in favour of the defendant, and on the same day executed a registered mortgage deed by conditional



sale in favour of the defendant. The plaintiffs put the defendants in possession of the suit schedule property, to enjoy the same for a period of 6 years. The plaintiffs requested the defendant to receive the mortgage amount of ₹4,000/- from them and to redeliver the possession of the property by executing a deed of retransfer, expressing the discharge of mortgage amount before the completion of 6 years as stipulated in the registered mortgage deed. The defendant went on giving evasive reasons to avoid redelivery of the possession of the property to the plaintiffs. Hence, a cause of action arose for the plaintiffs to file a suit for redemption of the suit schedule property. Accordingly, prays to decree the suit.

5. The defendant filed a written statement admitting the execution of a registered mortgage deed with a conditional sale and that the said conditions stipulated are not enforceable. Hence, the suit filed by the



plaintiffs is not maintainable and accordingly, prays to dismiss the suit.

6. The trial Court, based on the pleadings of the parties, framed the following issues.

1. Whether the plaintiffs proves that the suit schedule property mortgaged by conditional sale dated 23.03.1981 to the defendant?

2. Whether the plaintiffs are entitled for mesne profits? If so at what rate?

3. Whether the defendant proves that there is no privity of contract between himself and the plaintiffs?

4. To what relief and cost?

7. To substantiate the case on behalf of the plaintiffs, plaintiff No.2 entered the witness box as PW.1, examined two other witnesses as PW.2 and 3 and marked 4 documents as Exs.P1 to 4. In rebuttal, the defendant examined himself as DW.1, examined one



witness as DW.2, and marked 7 documents as Exs.D1 to D7.

8. The trial Court after recording the evidence, hearing both sides, and after appreciating the entire evidence on record, answered issue No. 1 against the plaintiff, issue No. 2 does not survive for consideration, issue No. 3 against the defendant, issue No. 4 in favour of the defendant and issue No. 5 as per the final order. The suit of the plaintiffs was dismissed vide judgment dated 29.08.1988.
9. The plaintiffs, aggrieved by the dismissal of the suit in O.S.No. 76 of 1987, preferred an appeal in RA No. 1 of 2001 on the file of the learned Senior Civil Judge, T.Narasipura.
10. The first appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:



- 1. Whether the document dated 23.03.1981 is a deed of mortgage by conditional sale or a conditional sale with an agreement to repurchase?*
 - 2. Whether the proposed amendment to introduce alternative relief by the appellants is barred by limitation?*
 - 3. Whether the appellants/plaintiffs prove that judgment and decree of the trial Court warrants interference of this Court?*
 - 4. What order or decree?*
11. The first appellate Court, after re-appreciating the entire evidence on record, answered points No.1 and 3 in the negative, point No.2 in the affirmative, and point No.4 as per the final order. The appeal was dismissed with costs vide judgment dated 19.08.2013.
12. The legal representatives of deceased plaintiff Nos.1 and 2 aggrieved by the impugned judgments, filed this Regular Second Appeal.



13. Heard the arguments of the learned counsel for the plaintiffs, and the learned counsel for the defendant.
14. Learned counsel for the plaintiffs submits that the plaintiffs examined three witnesses as PW1 to PW3 and produced the documents. She also submits that the defendant examined two witnesses as DW1 and DW2. However, the first appellate court being the final fact finding court has not re-appreciated the entire evidence on record. The judgment and decree passed by the first appellate court is not in compliance with Order XLI Rule 31 of Code of Civil Procedure.
15. To buttress her argument, she has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***H. Siddiqui (D) By Lr vs A. Ramalingam***¹ . Hence, she submits that the first appellate court is required to frame the proper points for adjudication and has to

¹ AIR 2011 SC 1492



answer each issues framed by the trial Court, and has to re-appreciate the entire evidence on record. The said exercise has not been done by the first appellate Court, and the judgment and decree passed by the first appellate Court is contrary to the mandate laid down by the Hon'ble Apex Court in the case of ***H.Siddiqui (D) By Lr*** (supra). Hence, on these grounds, she prays to allow the appeal and to set aside the judgment and decree passed by the first appellate Court, and remit the matter to the first appellate court.

16. *Per contra*, learned counsel for the defendant supported the impugned judgment. He submits that the trial Court considering the entire evidence on record has rightly dismissed the suit. He submits that if the court comes to a conclusion that the judgment and decree passed by the first appellate court is not in compliance with Order XLI Rule 31 of CPC, the matter be remitted to the first appellate court and not to the



trial court. Hence, on these grounds, he prays to dispose of the appeal.

17. This Court vide order dated 18.06.2026, reframed the following substantial question of law:

“Whether the appellants prove that the judgment and decree passed by the first Appellate Court is not in compliance with Order 41 Rule 31 of CPC and contrary to the mandate laid down by the Hon’ble Apex Court in the case of ***H. Siddiqui (D) By Lr vs A. Ramalingam*** reported in ***AIR 2011 SC 1492?***”

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

Regarding substantial question of law:

19. The plaintiffs have filed a suit for redemption of mortgage alleging that the plaintiffs have executed a mortgage deed in favour of the defendant for an amount of ₹4,000/-, and it was agreed that the said mortgage is to be redeemed within 6 years from the date of execution of a mortgage deed. Before the



completion of 6 years, the plaintiffs requested the defendant to receive the mortgage amount, and to execute a deed of transfer for expressing the discharge of mortgage amount before the completion of six years, but the defendant denied.

20. The plaintiffs examined 3 witnesses as PWs.1 to PW3 and the defendant examined two witnesses as DWs.1 and 2. The trial court considering the evidence on record dismissed the suit. The plaintiffs aggrieved by the judgment and decree passed in O.S.No.76/1987 preferred an appeal in R.A.No.1/2001 on the file of the learned Senior Civil Judge, T.Narasipura.

21. From the perusal of the entire judgment of the first appellate court, it is clear that the first appellate court has not reappreciated the evidence placed on record. The first appellate court has not discussed the evidence of PW.1 to PW.3 and DW.1 and DW.2. The judgment



and decree passed by the first appellate court is not in compliance with Order XLI Rule 31 of CPC.

22. The Hon'ble Apex Court in the case of ***H. Siddiqui dead by LRs Vs. A. Ramalingam*** reported in ***AIR (2011) SC 1492***, had an occasion to deal with the requirements of the provisions of Order XLI Rule 31 of the CPC, 1908. The Hon'ble Apex Court has observed that the said provisions provide guidelines for the first appellate Court as to how the Court has to proceed, and decide the appeal. It is further observed that the provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. It must be evident from the judgment of the first appellate Court that the Court has properly appreciated the facts and evidence, applied its mind and decided the case, considering the material on record. In paragraph No.18 of the judgment of the Hon'ble Apex Court, after considering



its several judgments, the Hon'ble Apex Court observed
thus:

"18. It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record the mere general expression of concurrence with the trial Court judgment rather it must give reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions.

(emphasis supplied)

23. From the perusal of the entire judgment, it discloses that the first appellate court has not reappreciated the entire evidence on record. Thus, the impugned judgment passed by the first appellate court is in contrary to the judgment passed by the Hon'ble Apex Court in the case of **H. Siddiqui** (referred supra).



24. The plaintiffs have filed an application for the amendment of the plaint. The first appellate court has rejected the said application on the ground of delay and laches. The plaintiffs have challenged the order passed on the said application. The first appellate court while considering the application for amendment to the pleading, the court is required to consider whether the proposed amendment changes the nature of case, and the cause of action. Insofar as limitation is concerned, the said aspect has to be kept open and adverse party can raise the issue in the subsequent pleading in view of the proposition laid down by the Hon'ble Apex Court in the case of ***Ragu Thilak D. John Vs. S. Rayappan and others***², wherein the Hon'ble Apex Court held that, "If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought

² AIR 2001 SC 699



by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for.”

25. The first appellate court has committed an error in rejecting the application filed under Order 6 Rule 17 of the CPC. Thus, even the said application is required to be reconsidered by the first appellate court. In view of the above discussion, I answer the substantial question in the ***affirmative***.

26. In view of the above discussion, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is ***allowed***.



- ii. The impugned judgment passed in R.A.No.1/2001 by the Senior Civil Judge, T. Narasipura, dated 19.08.2013 is hereby set aside.
- iii. The appeal in R.A.No.1/2001 is restored to its original file.
- iv. The first appellate court is directed to reconsider the application for amendment to the plaint, and to reappreciate entire evidence on record and to pass the judgment after assigning the reasons.
- v. It is made clear that this court has not made any adjudication on the merits in issue.
- vi. All contentions of the parties are kept open.
- vii. The parties are directed to appear before the first appellate court on **03.08.2026** without awaiting any further notice.



viii. The Registry is directed to transmit the records to the first appellate court.

ix. The appellant seeks leave of the court to withdraw I.A.No.3/2014 with liberty to file said application before the first appellate court. Submission is placed on record. The appellant is permitted to withdraw I.A.No.3/2014 with the aforesaid liberty.

x. I.A.No.2/2014 is disposed of accordingly.

xi. Pending applications, if any, stands disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS