



CNR: KAHC010439672017

NC: 2026:KHC:47341
RSA No. 2174 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2174 OF 2017 (DEC/INJ)

BETWEEN:

SRI. N. MAHADEVA
AGED ABOUT 50 YEARS
S/O. LATE H. NINGAIAH
R/AT VINAYAKA COLONY
T. NARASIPURA TOWN
MYSURU DISTRICT-571 124.

...APPELLANT

(BY SRI. C. MOHAN, ADVOCATE FOR
SRI. P NATARAJU., ADVOCATE)

AND:

1. SRI. T. MAHADEVA
AGED ABOUT 65 YEARS
S/O LATE MADDUREGOWDA
R/AT D. NO.415, KADLE RANGAMMA STREET
T. NARASIPURA TOWN
MYSURU DISTRICT-571 124.

2. SRI. V. R. ANAND
AGED ABOUT 36 YEARS
S/O RANGASWAMY
R/AT D. NO. 262, OLD KURUBA STREET
T. NARASIPURA
MYSURU DISTRICT-571 124.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 11.9.2017
PASSED IN RA NO.8/2011 ON THE FILE OF THE SENIOR CIVIL
JUDGE AND JMFC, T.N.PURA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 23.4.2011

Digitally signed by
DHANALAKSHMI
MURTHY

Location: HIGH
COURT OF
KARNATAKA



**NC: 2026:KHC:47341
RSA No. 2174 of 2017**

CNR: KAHC010439672017

PASSED IN OS NO.87/1998 ON THE FILE OF THE CIVIL JUDGE AND JMFC, T.NARASIPURA..

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. This present second appeal is filed by the defendant No.1 challenging the decreeing of the suit in O.S.No.87/1998 confirmed in RA.No.8/2011 declaring that the plaintiffs are the owners of the property: A site measuring East to West 40 feet; North to South 62 feet (i.e., 0-02 guntas in Sy.No.3/1A1, situated at T.Narasipura Elle, bounded on East by: Site of Smt.Karagamma w/o Puttamadegowda, West by: Land of Ganigeri Doreswamy; South by: Land of Bhasashab and Bannur Sab and North by: Lands of vendors i.e., Madaiah and K.Nanajaiah (hereinafter referred to as the 'suit property').

2. The facts of the case are as under:

2.1 A suit for declaration and consequential injunction in respect of the suit property came to be filed by the



NC: 2026:KHC:47341
RSA No. 2174 of 2017

CNR: KAHC010439672017

plaintiffs in O.S.No.87/1998. Plaintiffs contended that plaintiff No.1 had purchased the suit property from the previous owners, Madaiah and K.Nanjaiah through a registered sale deed dated 05.11.1996.

2.2 Ever since purchase, plaintiffs are in possession of the suit property. Plaintiff No.2, being the son of the plaintiff No.1, is also in possession of the suit property and revenue entries were mutated in the name of plaintiff No.1.

2.3 It is further contented that defendants though not having any interest in respect of the suit property, in utter collusion, encroached upon the suit property measuring East to West 13 feet, North to South 23½ feet. Therefore, there was a notice issued by the plaintiffs on 03.11.1997. Despite service of notice, there was no compliance to the callings of the notice, but an untenable reply was received and which necessitated the plaintiffs to approach the Court of law with a prayer for declaration and injunction.



**NC: 2026:KHC:47341
RSA No. 2174 of 2017**

CNR: KAHC010439672017

2.4 Pursuant to the suit summons, defendant No.1 appeared through counsel and filed written statement on his behalf. Defendant No.2 adopted the said written statement. Defendant No.1 contented that the landed property bearing Sy.No.3/1A2, Municipal No.1722 totally measuring East to West 33 feet and North to South 66 feet. Out of which, defendant No.1 purchased eastern half portion measuring East to West 16½ feet and North to South 66 feet from Smt.Prema wife of Late Shivaswamy and her sons, namely, Shivakumar and Rajasekhar through a registered sale deed dated 26.02.1997. It is further contented that after purchase, a dwelling house was constructed on the suit property after obtaining necessary license from the competent authority.

2.5 It is also contention of the defendant No.1 that the land in Sy.No.3/1A2 originally belonged to T.Madduregowda, who was the husband of the plaintiff No.1 and father of the plaintiff No.2. He having sold three guntas of land to Sannaiah in the year 1947 under the



CNR: KAHC010439672017

registered sale deed and said Sanaiah in the year 1984, had sold the property to Shivaswamy. Shivaswamy was in possession and enjoyment of the suit property as rightful owner and thus, the contra allegations claimed in the plaint are incorrect and thus, sought for dismissal of the suit.

2.6 Learned Trial Judge after raising necessary issues and after recording the evidence of the parties, took into consideration the rival contentions of the parties and total extent of the land that was available in Sy.No.3 at the first instance, which was subsequently phoded into Sy.No.3/1A1 and Sy.No.3/1A2 and decreed the suit of the plaintiff as prayed for.

2.7 Being aggrieved by the same, it is the defendants, who filed the appeal before the First Appellate Court in R.A.No.8/2011.

2.8 Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties



CNR: KAHC010439672017

in detail and after forming necessary points for consideration, re-appreciated the very same material evidence on record and dismissed the appeal of the defendants.

2.9 Being further aggrieved by the same, defendant No.1 is before this Court in this appeal.

3. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that the title is traced by the defendants by virtue of the sale deed executed by husband of the plaintiff No.1, father of the plaintiff No.2, who has in turn sold to Shivaswamy and Shivaswamy in turn sold the same to Sanaiah and as such, the defendants have specifically pleaded and proved his title to the suit property, which has been ignored by both the Courts and wrongly decreed the suit of the plaintiffs and thus, sought for admitting the appeal on the following substantial questions of law.



CNR: KAHC010439672017

"1. Whether the courts below are justified in law in decreeing the suit though the 1st respondent failed to prove the existence and identify of the suit schedule property by producing the relevant documents like sketch and survey report?

2. Whether the courts below committed an error in law in not noticing that originally the property of the appellant belongs to the family of the 1st respondent who have sold the same in favour of the vendor's vendor of the appellant and now the appellant by obtaining the licence constructed a house and the 1st respondent can't deny the title of the appellant ?

3. Whether the courts below committed an error in law in ignoring the report of the court commissioner?

4. Whether the courts below in the facts and circumstances of the case committed an error in law in granting the relief of mandatory injunction ?"

4. In the light of the arguments put forward on behalf of the appellant, this Court perused the matter on record meticulously.



CNR: KAHC010439672017

5. On such meticulous consideration, the Trial Court has rightly come to the conclusion that the suit property is different from the property that has been purchased by the defendants vide Ex.D3.

6. In that regard, the admission of DW1 is specifically noted by the learned Trial Judge in paragraph 11 of its judgment wherein DW1 has categorically admitted that he does not know how many times the land in Sy.No.3 has been phoded. Likewise, he admits plaintiffs are mother and son and he has no relationship whatsoever with the suit property and his property.

7. Therefore, it should not now lie in the mouth of the appellant that suit property and the property purchased by the defendant No.1 under Ex. D3 are one and the same. Therefore, he is affected by the decree of the declaration and consequential injunction.



**NC: 2026:KHC:47341
RSA No. 2174 of 2017**

CNR: KAHC010439672017

8. Taking note of these aspects of the matter, this Court does not find any legal infirmity, which would merit the substantial questions of law for further consideration.

9. Accordingly, the following the order:

ORDER

Admission declined. Appeal dismissed.

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

DM
LIST NO.: 1 SL NO.: 30