

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21st DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR SECOND APPEAL NO. 2654 OF 2007 (INJ)

BETWEEN:

SRI. RAMAKRISHNA NAIKA
AGED ABOUT 59 YEARS,
S/O LATE GUDEER NAIKA
ALIAS RACHANAIKA,
R/AT: YALACHAHALLI VILLAGE,
YALAWALA HOBLI-571 130.
MYSORE TALUK AND DISTRICT.

...APPELLANT

(BY SRI. A. MADHUSUDHAN RAO, ADVOCATE)

AND:

1. SRI. DODDATHAMMA NAIKA
SINCE DEAD BY HIS LRS
- 1(a) SMT. JAYAMMA
W/O LATE DODDATHAMMANAIKA,
MAJOR.
- 1(b) SMT. JAYANTHI
W/O LATE RAVI,
MAJOR.
- 1(c) SRI. PUNEETHA
D/O LATE RAVI,
MAJOR.
- 1(d) SMT. THAYAMMA
D/O LATE DODDATHAMMANAIKA,
MAJOR.
- 1(e) SMT. SHAKUNTALA
D/O LATE DODDATHAMMANAIKA,
MAJOR,
RESPONDENTS 1(a) TO 1(e) ARE ALL
R/AT YALACHANAHALLI VILLAGE,
YELWALA HOBLI,

Digitally signed
by
NAGARATHNA
M
Location: High
Court of
Karnataka



MYSORE TALUK - 571 130.

2. MARISWAMY NAIKA
SINCE DEAD BY LRS
- 2(a) SMT. JAYAMMA
W/O LATE MARISWAMY NAIKA
MAJOR
- 2(b) SRI. RACHANA IKA
S/O LATE MARISWAMY NAIKA
MAJOR
- 2(c) SMT. RAJESHWARI
W/O LATE SWAMY NAIKA
MAJOR
- 2(d) SMT. SHASHIKALA
D/O LATE MARISWAMY NAIKA
MAJOR
- 2(e) SMT. PADMA
D/O LATE MARISWAMY NAIKA
MAJOR

ALL ARE RESIDING AT
YALACHANAHALLI VILLAGE,
YELWALA HOBLI, MYSORE TALUK- 571 130

...RESPONDENTS

(BY SRI. R S RAVI, SENIOR ADVOCATE FOR
SRI. AKARSH KUMAR GOWDA, ADVOCATE FOR
R1(1,2,4,5) AND R2(1-5);
R1(3)-SERVED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 07.08.2007 PASSED IN RA.NO.18/2002 ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE (SR.DN.) MYSORE, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DATED 22.11.2001 PASSED IN OS.NO.171/1993 ON THE FILE OF THE II CIVIL JUDGE (JR.DN.) AND JMFC., MYSORE. TRIAL COURT DECREED THE SUIT APPELLATE COURT ALLOWED THE APPEAL SUIT FOR PERMANENT INJUNCTION.

THIS REGULAR SECOND APPEAL HAVING BEEN HEARD AND RESERVED ON 20.08.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

This Regular Second Appeal is filed by the appellant/plaintiff, challenging the judgment and decree dated 07.08.2007 passed in R.A.No.18/2002 by the learned II Additional Civil Judge (Senior Division) and CJM, Mysore, allowing the Regular Appeal filed by the defendants and thereby setting aside the judgment and decree dated 22.11.2001 passed by the learned II Civil Judge (Junior Division) and JMFC, Mysore, in O.S.No.171/1993, whereby the suit filed by the plaintiff was decreed.

2. For the sake of convenience, the parties are herein referred to as per their ranking before the trial Court. The appellant is the plaintiff and the respondents are the defendants before the trial Court.

3. The brief facts of the appellant's case are as follows:

The appellant is in lawful possession and enjoyment of seven acres of land in Sy.No.56 of Yalachenahalli Village, Yelwala Hobli, Mysore Taluk. The appellant's grandfather was one Racha Naika. He had three sons. One of them was the father of the appellant, namely, Racha Naika @ Gudeer Naika.

The appellant's contention in the suit was that his grandfather died about 30 years ago and his three sons have been living separately for more than 50 years and enjoying the properties that fell to their respective shares. The total extent of land in Sy.No.56 was 14 acres, out of which 7 acres in the middle portion was allotted to the share of the appellant's father and the remaining extent was allotted to the shares of his other brothers.

4. In view of the larger share allotted to the appellant's father in Sy.No.56 of Yalachenahalli Village, the defendants were interfering with the appellant's peaceful possession and enjoyment of the suit property. Therefore, plaintiff filed the suit in O.S.No.171/1993 seeking a decree of permanent injunction against the defendants.

5. The defendants entered appearance and, *inter alia*, contended that in Sy.No.56 all the three brothers were allotted equally and that the appellant's father got 4 acres 27 guntas only and that he was not in possession of 7 acres of land. The trial Court, after recording the evidence, came to the conclusion that the appellant was in lawful possession and enjoyment of the suit property. A Commissioner was appointed. The appellant objected to the report filed by the Court

Commissioner, contending that the Commissioner could not give an opinion regarding the extent of land and possession of the respective parties. Therefore, the trial Court rejected the report of the Commissioner and ultimately decreed the suit in favour of the plaintiff and granted the relief of permanent injunction.

6. The respondents - defendants, being aggrieved by the judgment and decree, passed by the trial Court in O.S.NO.171/1993, preferred an appeal in R.A.No.18/2002 and the same was allowed, and the First Appellate Court set aside the judgment and decree passed by the trial Court. The appellant/plaintiff, being aggrieved by the judgment and decree passed by the First Appellate Court, preferred this Regular Second Appeal.

7. Heard Sri A. Madhusudhan Rao, learned counsel for the appellant and Sri R.S.Ravi, learned Senior counsel for Sri Akarsh Kumar Gowda, learned counsel for the respondents.

8. Sri A. Madhusudhan Rao, learned counsel for the appellant contended that the judgment and decree passed by the First Appellate Court, reversing the judgment and decree of the trial Court, was only on the ground that the appellant had not established his title in respect of the suit land. The First

Appellate Court was in error in holding that even in a suit for injunction, the question of title becomes relevant, though there may not be any issue in regard to title. Though, as a general principle, this view may be correct, insofar as this suit is concerned, it is contended that the issue regarding title was totally irrelevant. The First Appellate Court has conclusively held that, as per the revenue records, it was found that the appellant was in possession and enjoyment of seven acres of land in Sy.No.56. However, it was held that the appellant had not established the fact that seven acres of land was allotted to his share in the oral partition. This finding is perverse and capricious.

9. It is further contended that the property belonged to the propositus Racha Naika is not in dispute. Therefore, his three children must be deemed to have been in enjoyment of the entire property till the partition. It is contended that, in the division, the appellant's father was allotted 7 acres of land. In this background, so far as the relief of injunction is concerned, the question of title was wholly irrelevant, as it is not in dispute that at one time the appellant's father was the joint owner of the entire property. Once it is established that, as per the revenue records, appellant has been in possession of 7 acres of

land, the First Appellate Court ought to have dismissed the appeal filed by the respondents/defendants.

10. It is further contended that the trial Court has considered the oral and documentary evidence and rejected the report of the Court Commissioner on the ground that the Commissioner was not competent to give an opinion regarding the respective possession of the parties in respect of the extent of the land. The said finding cannot be either perverse or capricious. Therefore, the First Appellate Court could not have substituted its finding for that of the trial Court.

11. It is further contended that it cannot be disputed that among the members of a joint family, there can be an oral partition and on the basis of the revenue records, such partition can be established. Therefore, the parties agreed that there was an oral partition and the properties were allotted to the share of each one of the brothers. Therefore, the revenue records alone form the basis for determining whether 7 acres was, in fact, allotted and possession thereof was given to the appellant's father, Racha Naika @ Gudeer Naika. The appellant had, in fact, explained the reason for allotting 7 acres of land in favour of his father. The First Appellate Court has seriously committed an error in holding that Sy.No.19 of Yalachenahalli

Village was allotted to the share of the defendants, and the same has not been established. The revenue records, in fact, reflect that Sy.No.19 is standing in the name of the Horticulture Department. Therefore, there is a serious error committed by the First Appellate Court. Based on the above grounds, the appellant prayed to allow the appeal.

12. *Per contra*, learned counsel for the respondent contended that, in Sy.No.56, all three brothers were allotted equal shares among themselves, and the appellant's father was allotted 4 acres 27 guntas. He was not in possession of the entire extent of 7 acres of land. The Trial Court, without considering the material available on record, came to the conclusion that the appellant was in lawful possession and enjoyment of the suit schedule property. However, the First Appellate Court, after considering all the documents on record, concluded that the appellant had failed to prove his right, title, interest and possession over the entire extent of 7 acres of land and, therefore, was not entitled to seek a decree of permanent injunction. Accordingly, the First Appellate Court rightly allowed the appeal and set aside the judgment and decree passed in O.S.No.171/1993. Therefore, there is no warrant for interference by this Court. Hence, he prayed that the appeal is liable to be dismissed.

13. Having heard the learned counsel for the parties and having perused the pleadings, documents placed on record and the impugned order, the following substantial question of law arise for Court consideration:

1. Whether in the facts and circumstances of the case, the appellate Court was justified in reversing the judgment and decree passed by the trial Court on the ground without prayer for declaration, injunction cannot be granted?

14. In this case, the appellant/plaintiff had filed the suit for injunction simpliciter, claiming to be the owner and possessor of the suit schedule property. He narrated the flow of title to the suit land and asserted his possession over the suit land. Whereas, the respondents/defendants disputed the claim of the plaintiff and also contended that the plaintiff was the owner only to the extent of the land held by him. They have taken the contention that the plaintiff has been in possession of 4 acres 27 guntas and not total extent of 7 acres as contended by him. Further, grounds for non-maintainability of the suit were raised and it was specifically contended that the suit was not maintainable without seeking a relief of declaration. However, the trial Court decreed the suit and the same was set aside by the First Appellate Court.

15. It is well settled by a catena of judgments of the Hon'ble Apex Court that, in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that, in all such cases, the plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to the title and raises a cloud over the title of the plaintiff. In such circumstances, the plaintiff cannot maintain a suit for mere injunction.

16. In order to prove the possession of the plaintiff in respect of the suit schedule property, the plaintiff was examined as PW1 and he has relied upon Ex.P1, the records of right, wherein 7 acres of land has been shown in the name of Racha Naika @ Gudeer Naika and 3 acres 20 guntas of land each has been shown in the name of Doddamma Naika and Chikkamma Naika. Out of this property, in all, 5 acres 10 guntas of land was sold by the defendants and Chikkamma Naika, and the revenue records also disclose the same as per MR No.3/1984-85. The index of land, Ex.P2, also clearly demonstrates that the total extent of Sy.No.56 is shown as 13 acres 22 guntas only. As per Exs.P3 and P4, the RTC extracts in respect of Survey No.56, the total extent of land measuring in Sy.No.56 is 14 acres and, out of this property, 7 acres of

land has been shown in the name of Racha Naika @ Gudeera Naika and 1 acre 30 guntas each has been shown in the name of Chikkathamma Naika and the sons of Doddathamma Naika. Ex.P7 is the Mutation Register Extract. It clearly discloses that the khata has been changed in the name of the sons of Racha Naika. As per Ex.P7, the mutation extract, the khata of 7 acres of land was changed in the name of Gudeera Naika and the khata in respect of 3 acres 20 guntas each was changed in the name of Doddathamma Naika and Chikkathamma Naika. After the death of the father of the plaintiff, the plaintiff got the khata mutated in his name vide mutation extract bearing No.1/1992-93, under which the name of the plaintiff is shown.

17. On perusal of Ex.P9, the copy of the sale deed dated 09.03.1984, it is clear that Doddathamma Naika and Chikkathamma Naika sold 5 acres 10 guntas of land in favour of three persons. On the southern side of this land, there is a property belonging to Gudeera Naika. As per Ex.P10, the records of right in respect of land bearing Sy.No.56, the total extent is shown as 14 acres. Therefore, the khata to the extent of 7 acres of land in Sy.No.56 has been standing in the name of the plaintiff.

18. On the other hand the defendants have taken contention that, as per Ex.D1, the khata extract in respect of Sy.No.56 for the year 1982-84, 14 acres of land is shown in the name of the plaintiff, the defendants and Chikkathamma Naika. Column No.9 of the said document discloses that 7 acres of land is standing in the name of Gudeera Naika. It is the clear contention of the defendants that, prior to filing of the present suit, the plaintiff had raised an objection in respect of the allotment of the share of the defendants and therefore, they approached the revenue authorities in order to measure the land and to fix the boundary as well as the possession of the each parties in Sy.No.56. Accordingly, the Revenue Inspector visited the spot, drew a mahazar and measured the land. When the matter was pending before the Tahsildar, the plaintiff, in order to avoid the correction of khatas, approached the Court, claiming his right over 7 acres of land based on the revenue records. Though the plaintiff has taken the contention that he is in possession of 7 acres of land based on the record of rights, the same is not corroborated by any material particulars. According to the defendants, though 7 acres of land is shown in the khata extract, in fact, the plaintiff is in possession of only 4 acres 27 guntas.

19. As per the documents relied upon by the defendants and the oral testimony of DW1 to DW3 and the Court Commissioner, the Commissioner, before inspecting the land in question, had issued notice to DW2 and DW3, visited the land, got the land surveyed and drew a mahazar. DW1, in his evidence on oath has stated that the plaintiff is in possession of only 4 acres 27 guntas, Chikkathamma Naika is in possession of 1 acre 30 guntas and Doddathamma Naika is in possession of 2 acres 13 guntas. The remaining 5 acres 10 guntas was sold by the defendants and Chikkathamma Naika in favour of three purchasers under a registered sale deed. Therefore, though the plaintiff claimed that he is in possession of 7 acres, as per the oral testimony of the Court Commissioner and the evidence of DW1 to DW3, the plaintiff is in possession of 4 acres 27 guntas alone.

20. On the contrary, the plaintiff has not produced any document to establish that he has been in possession of 7 acres of land and that the defendants are not in possession of the suit schedule property. It is an admitted fact that, as per Ex.D8, the RTC extract, the land in Sy.No.19 was alienated to the Horticulture Department. Therefore, the contention of the plaintiff that the entire land bearing Sy.No.19, measuring 11 acres 17 guntas, was exclusively given to the share of the

defendant's father and that 7 acres of land was given to the share of the plaintiff's father in Sy.No.56, Ex.D8 does not come to the aid of the plaintiff.

21. Further, the plaintiff has not stated anything as to why and how 7 acres of land was allotted to the share of his father in a family partition. Further, prior to filing of the instant suit, the revenue proceedings were pending before the competent authority and the plaintiff, without waiting for the final adjudication of the revenue proceedings, filed the suit before the trial Court claiming that he is in possession of 7 acres of land in Sy.No.56. However, he failed to prove the possession of the entire extent of 7 acres. Admittedly, there is no partition between the father of the plaintiff and the father of the defendants in respect of Sy.No.56 and it seems that, there is no equal partition among the brothers in the family.

22. In the instant suit, the plaintiff has claimed permanent injunction against the other co-parceners. In a suit for permanent injunction, the only question which arises for consideration is as to whether the plaintiff is in lawful possession of the property in dispute as on the date of filing of the suit. Therefore, the plaintiff has to prove by convincing and cogent evidence that, as on the date of the suit, he was in

possession of 7 acres of land in Sy.No.56 and that this land was allotted to the share of his father in the family partition.

23. On the other hand, the defendants have not denied the possession of the plaintiff in Sy.No.56. But, as per the contention of the defendants, the possession of the plaintiff is only to the extent of 4 acres 27 guntas and not 7 acres as claimed by the plaintiff. Therefore, the plaintiff, without seeking the relief of partition or a declaration declaring him to be the absolute owner of 7 acres of land, cannot maintain a suit for mere injunction simpliciter.

24. Further, an injunction cannot be granted unless there is adjudication with regard to his title, right and interest, and possession over the land. Further, it is clear that the plaintiff has prayed for injunction on the basis that the suit land was allotted to him by a private partition and defendants Nos.1 and 2 threatened to dispossess him from the suit land.

25. On perusal of the cross-examination of PW1, it is clear that he has categorically admitted that defendants Nos.1 and 2 entered his land with an intention to take away the crops and tried to threaten him. This, by itself, cannot be a ground to grant an injunction, particularly when the defendants have a share in the same survey number. The plaintiff has also not

lodged any complaint against the defendants alleging that they attempted to take away the crops grown by him.

26. Further, the plaintiff has failed to prove the alleged interference in the manner known to law. Therefore, without determining the right, title and interest of the plaintiff and his possession over the suit property, no decree of permanent injunction can be granted in favour of the plaintiff.

27. In **Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs.**, reported in **(2008) 4 SCC 594**, the Hon'ble Apex Court held that where the plaintiff is in possession, but his title to the property is in dispute or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession by the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or is in dispute and he is not in possession or is not able to establish possession over the entire extent of the land, necessarily, the plaintiff will have to file a suit for declaration, possession and injunction. Therefore, it is clarified that a prayer for declaration will be necessary only if the denial of title by the defendant or the challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property.

28. In the present case, a clear doubt has been raised regarding the title of the plaintiff in respect of the suit property, and the plaintiff has not sought any relief of declaration. Therefore, the suit is not maintainable. When the plaintiff, in the present case, claims that he is in possession of 7 acres of land in Sy.No.56 on the ground that the same was allotted to the share of his father, the plaintiff has to prove his possession over the entire extent of 7 acres of land. The defendants have examined witnesses who are none other than the neighbouring landowners, and they have supported the contention of the defendants that the defendants are also in possession of some portion of the land in Sy.No.56. They have also deposed that the plaintiff is in possession of only 4 acres 27 guntas of land. Under such circumstances, the trial Court has wrongly concluded, on the basis of the revenue records, that the plaintiff is in possession of 7 acres of land in Sy.No.56.

29. Therefore, the First Appellate Court, after considering the oral and documentary evidence on record and in the light of ratio laid down in **Anathula Sudhakar's** case and in **Jharkhand State Housing Board v. Didar Singh and Another**, reported in **(2019) 17 SCC 692**, has rightly allowed the appeal filed by the defendants and set aside the judgment and decree passed by the trial Court in favour of the plaintiff.

30. In the facts and circumstances of the case, the defendants, by relying upon their title and possession in respect of the land in question, have successfully raised a cloud over the title of the plaintiff. In such circumstances, the plaintiff ought to have sought the relief of declaration. Thus, the trial Court committed an error in entertaining the suit for injunction and the First Appellate Court rightly set aside the decree passed by the trial Court.

31. Hence, in view of the above discussion, this Court is of the considered opinion that the judgment and decree impugned in the appeal deserve to be confirmed, and accordingly, the same is hereby confirmed.

32. However, at the time of hearing, a request was made on behalf of the plaintiff to direct the parties to maintain *status quo* for a period of three months to enable the plaintiff to avail himself of the appropriate remedies available under law. In view of the long pendency of the litigation, this Court deems it appropriate to direct the parties to maintain *status quo* with regard to possession for a period of three months.

33. Resultantly, with the above observations, the appeal is ***dismissed***, confirming the judgment and decree passed by the First Appellate Court.

In view of the dismissal of the appeal, the pending interlocutory applications, if any, stand disposed of, as they do not survive for consideration.

**Sd/-
(VENKATESH NAIK T)
JUDGE**

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