



NC: 2026:KHC:51764
RSA No. 23 of 2020

CNR: KAHC010455212019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 23 OF 2020 (DEC/INJ)

BETWEEN:

SMT. RENUKAMMA P
W/O. MARIYAPPA,
AGED ABOUT 48 YEARS,
R/O. DEVIKERE VILLAGE,
NOW RESIDING AT
JAGALUR TOWN, JAGALUR TALUK,
DAVANGERE DIST – 577 528.

...APPELLANT

(BY SMT. NIREEKSHA D.J, FOR
SRI. H.R. SHOWRI, ADVOCATES)

AND:

SMT. SUVARNAMMA
W/O. GOVINDAPPA,
OCC-ASSISTANT TEACHER,
R/O. DEVIKERE VILLAGE,
NOW RESIDING AT I.B QUARTERS,
JAGALUR TOWN, JAGALUR TALUK,
DAVANGERE DIST – 577 528.

...RESPONDENT

(BY SRI. N S BHAT, ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC 1908 AGAINST THE JUDGMENT AND DECREE DATED 29.06.2019 PASSED IN RA NO 74/2017 ON THE FILE OF THE ITINERARY SENIOR CIVIL JUDGE, JAGALUR DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 23.09.2017 PASSED IN OS NO 50/2013 ON THE FILE OF THE CIVIL JUDGE AND JMFC JAGALUR.

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



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CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

This Regular Second Appeal by the plaintiff in O.S. No. 50/2013 on the file of the learned Civil Judge and JMFC, Jagalur (for short, the 'trial Court') is directed against the impugned judgment and decree dated 23.09.2017 passed by the trial Court which dismissed the suit so also the appeal in R.A. No. 74/2017 was also dismissed by the Itinerary Senior Civil Judge, Jagalur (for short, the 'first appellate Court') vide judgment and decree dated 29.06.2019 thereby confirming the judgment and decree passed by the trial court.

2. The trial Court records having been received and with the consent of both sides, the appeal is admitted to consider the following substantial questions of law:

(1) Whether the first appellate Court committed an error in disposing of the application I.A. No. 3 filed by the appellant under Order XLI Rule 27 CPC, vide a separate order dated 12.10.2018 and also disposing of I.A. No. 4 filed by the appellant plaintiff under Order XXVI Rule 9 CPC for appointment of Court Commissioner to conduct local inspection by way of a separate order dated 16.03.2019



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without disposing of the main appeal and keeping the same pending after ultimately disposing of the main appeal by a separate order?

(2) Whether the trial Court and first appellate Court were justified in dismissing the suit for declaration, mandatory injunction and possession filed by the plaintiff by relying upon Section 34 of the specific relief Act after upholding the claim of title of the plaintiff over the suit schedule property without appreciating that the respondents-defendants themselves admitted that they had nothing to do with the suit schedule property as claimed by the plaintiff?

(3) Whether the judgments and decrees passed by the trial Court and first appellate Court are based on no evidence and by ignoring and overlooking the admissible evidence, thereby resulting in erroneous conclusion?

3. Heard learned counsel for the appellant and learned counsel for the respondent and perused the material on record.

4. A perusal of the material on record will indicate that the appellant plaintiff instituted the aforesaid suit against the respondent defendant for declaration of title, mandatory injunction and possession in relation to the suit schedule immovable property which is described hereunder as hereunder.



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“The site bearing K. No. 1494/1152/190 measuring 20 x 30 feet situated at Indira Extension, Jagalur Town, Jagalur Taluk bounded as follows:

East : Site No. 191

West : Site No. 89

North : Road

South : Conservancy”

5. It is the specific contention of the plaintiff that she was the absolute owner in lawful and peaceful possession and enjoyment of the suit schedule property and that the respondent defendant having illegally and high-handedly trespassed into the suit schedule property had put up illegal and unauthorised construction over the same, thereby constraining the plaintiff to institute the aforesaid suit seeking the aforesaid reliefs against the respondent defendant.

6. The respondent defendant having entered appearance, filed written statement and contested the suit, not only disputing and denying the alleged title and possession of the plaintiff over the suit schedule property, but also contending that the property claimed by the plaintiff is false and incorrect and the said property is actually Site No. A16 as detailed in the written statement. The aforesaid pleading put forth by the defendant clearly indicates that there was



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a serious dispute as regards identity, location, boundaries, measurements, schedule etc. of the property as claimed by the appellant plaintiff in the suit apart from denying the title and accordingly having denied the title, identity etc. as claimed by the plaintiff over the suit schedule property and having specifically contented that the property claimed by the appellant plaintiff was actually property No. A16 belonging to the defendant, the defendant sought for dismissal of the suit.

7. Based on the aforesaid readings, the trial court framed the following issues:

ISSUES

- 1) *Whether the plaintiff proves that, she is owner of suit schedule property?*
- 2) *Whether the plaintiff proves that, defendant constructed structure in the suit property without authorization?*
- 3) *Whether the defendant proves that plaintiff is estopple as pleaded in para No. 7(c) of written statement?*
- 4) *Whether the defendant proves that suit of the plaintiff is barred by limitation?*
- 5) *Whether the defendant proves that Pattana Panchayath, Jagalur is necessary party to this suit?*
- 6) *Whether plaintiff is entitled for declaration?*



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- 7) *Whether plaintiff is entitled for possession?*
- 8) *Whether plaintiff is entitled for relief of permanent injunction?*
- 9) *What order or decree?*

8. The plaintiff examined herself as PW1, examined four witnesses as PWs.2 to 5 and documentary evidence at Exhibits P1 to P5 were marked on behalf of the plaintiffs while the defendant examined herself as DW1 and three witnesses DW2 to DW4 and documentary evidence Exhibits.D1 to D17.

9. After hearing the parties, the trial Court answered Issue No. 1 in favour of the appellant thereby declaring her to be the owner of the plaint schedule property. However issue No. 2 was answered against the plaintiff by holding that the plaintiff had not proved that the defendant had put up unauthorised construction over the suit schedule property. Further the trial Court answered issue No. 3 in favour of the defendant by holding that the plaintiff having acquiesced to the putting up of construction over the suit schedule by the defendant, the plaintiff was estopped from seeking mandatory injunction directing demolition of the unauthorised construction being put up by the defendant over the suit schedule



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property. So also, the trial Court answered issue No. 4 relating to limitation against the defendants and the remaining issues were answered against the plaintiffs by the trial Court which proceeded to dismiss the suit filed by the plaintiff against the defendant.

10. Aggrieved by the aforesaid judgment and decree passed by the trial Court, the plaintiff approached the first appellate Court which formulated the following points for consideration.

- 1. Whether the appellant proves that the trial Court without considering the oral and documentary evidence nor considering the identity of the suit property in a proper manner has come to the wrong conclusion?*
- 2. Whether the appellant proves that the judgment and decree passed by the Court below is perverse, capricious, illegal and one sided and the interference of this appellate Court is necessary?*
- 3. What order?*

11. During the pendency of the appeal, the plaintiff/ appellant filed two applications, viz. I.A. No. 3 under Order 26 Rule 9 CPC to appoint Court commissioner to conduct a local inspection of the plaint schedule property and I.A. No. 4 under Order XLI Rule 27 CPC for production of additional evidence. By order dated



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12.10.2018 and 16.03.2019, the first appellate Court dismissed both the applications filed by the appellant-plaintiff and proceeded to dismiss the appeal also by passing the impugned judgment and decree which is assailed in the present appeal.

12. As stated supra, the following substantial questions of law arise for consideration.

(1) Whether the first appellate Court committed an error in disposing of the application I.A. No. 3 filed by the appellant under Order XLI Rule 27 CPC, vide a separate order dated 12.10.2018 and also disposing of I.A. No. 4 filed by the appellant plaintiff under Order XXVI Rule 9 CPC for appointment of Court Commissioner to conduct local inspection by way of a separate order dated 16.03.2019 without disposing of the main appeal and keeping the same pending after ultimately disposing of the main appeal by a separate order?

(2) Whether the trial Court and first appellate Court were justified in dismissing the suit for declaration, mandatory injunction and possession filed by the plaintiff by relying upon Section 34 of the specific relief Act after upholding the claim of title of the plaintiff over the suit schedule property without appreciating that the respondents-defendants themselves admitted that they had nothing to do with the suit schedule property as claimed by the plaintiff?



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(3) Whether the judgments and decrees passed by the trial Court and first appellate Court are based on no evidence and by ignoring and overlooking the admissible evidence, thereby resulting in erroneous conclusion?

13. A perusal of the impugned judgment and decree and the material on record before the first appellate Court will clearly indicate that the first appellate Court committed grave and furious procedural irregularity and patent illegality in disposing of I.A. No. 3 and I.A. No.4 filed under Order XLI Rule 27 CPC and under Order XXVI Rule 9 CPC by keeping the main appeal pending. But subsequently disposing of the appeal on merits which is contrary to well settled principles of law governing the procedure for disposal of aforesaid applications filed by a party during the pendency of the appeal. In addition thereto, the appellant plaintiff have taken up a specific ground and also urged the aforesaid substantial questions of law inter alia contenting that disposal of I.A. No. 3 and I.A. No. 4 by separate orders without disposing of the main appeal is a clear violation/contravention of well settled principles of law governing procedure for disposal of aforesaid applications during the pendency of the appeal which is sufficient to set aside the aforesaid orders passed by the first appellate Court. As a



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consequence of which the impugned judgment and decree passed by the first appellate Court also deserves to be set aside.

14. In addition thereto, a perusal of the application filed by the appellant plaintiff under Order XXVI Rule 9 CPC will clearly indicate that it is the specific contention of the plaintiff that the plaintiff is the owner of the plaint schedule property as described in the Schedule to the plaint as stated supra. While the respondent defendant does not put forth any claim in relation to the plaint schedule property and on the other hand claims an altogether different property which is shown as hereunder:

“Property No. A16, Kata No. 420, Assessment No. 405, old No. 2305 situated Indrabadavu, Jagalur town.”

having acquired the same from her husband who had in turn purchased the same from one Ananda s/o K.P. Obaiah vide Registered Sale Deed dated 22.07.1993. It is a matter of record and an undisputed fact that while the sale deed relied upon by the plaintiff in relation to property bearing number A16 is marked as Exhibit P1.



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15. It is also relevant to state that as noticed to supra, having regard to the specific contention urged by the respondent defendant that the property claimed by the plaintiff is not the property number shown in their schedule. But In reality, but actually property No. A16, there arises a serious dispute as regards identity, location, schedule, measurement, boundaries in respect of the property claimed by both sides and accordingly, it would be just and proper for appointment of a Court Commissioner to elucidate the issues in controversy between the parties and failure to appreciate this by the first appellate Court has resulted in erroneous conclusion.

16. Under these circumstances, I am of the considered opinion that the order dated 16.03.2019 rejecting I.A. No. 4 filed by the appellant plaintiff under Order XXVI Rule 9 CPC is clearly illegal and contrary to law and the same deserves to be set aside.

17. Insofar as the application filed by the appellant plaintiff under Order XLI Rule 27 CPC seeking permission to produce additional documents is concerned, in the light of setting aside of the order passed on I.A. No. 4 by the first appellate Court, the order passed



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by the first appellate Court rejecting I.A. No. 3 under Order XLI Rule 27 CPC also deserves to be set aside and as a result of which the impugned judgment and decree passed by the first appellate Court also deserves to be set aside and the matter remitted back to the first appellate Court for reconsideration afresh and in accordance with law. The substantial question of law No.1 is answered in favour of the appellant accordingly.

18. Regarding Substance to Question of Law No. 2: In view of the disposal of the present appeal by answering Substantial Question of Law No. 1 in favour of the appellant, substantial question of law No. 2 is not required to be considered for the purpose of the present order.

19. In the result, i pass the following:

ORDER

- (i) Regular Second Appeal is hereby partly allowed;
- (ii) Impugned judgment and decree dated 29.06.2019 passed in R.A. No. 74/2017 by the learned Itinerary Senior Civil Judge, Jagalur is hereby set aside. So also the Order dated 12.08.2018 passed in R.A. No. 74/2017 on I.A. No. 3 as well as the Order



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dated 16.03.2019 passed on I.A. No. 4 in R.A. No. 74/2017 is hereby set aside. The application filed by the appellant under Order XXVI Rule 9 CPC for appointment of a Court Commissioner hereby stands allowed. The matter is remitted back to the first appellate Court for reconsideration afresh and in accordance with law. The first appellate Court shall appoint a Court Commissioner to conduct local inspection of the plaint schedule property and the property claimed by the defendant and secure a report and proceed further in accordance with law.

(iii) Liberty is reserved in favour of both parties to file their respective memos of instructions before the Court Commissioner.

(iv) Liberty is also reserved in favour of both parties to file objections, if any, to the report of the Court Commissioner and examine/cross examine him, if so advised and in accordance with law.

(v) Liberty is also reserved in favour of both parties to adduce additional oral and documentary evidence before the first appellate Court.

(vi) The first appellate Court shall appoint a Court Commissioner as directed in the present order and secure a report and thereafter



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proceed further and dispose of the appeal in accordance with law bearing in mind the observations made in the present order.

(vii) All rival contentions and all aspects of the matter are kept open and no opinion is expressed on the merits/ demerits of the rival contentions.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

BVV/BMC
List No.: 1 Sl No.: 55