



CNR: KAHC010460932017

NC: 2026:KHC:36293
RSA No. 2434 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2434 OF 2017 (DEC/INJ)

BETWEEN:

R. KENCHIAIAH DEAD BY LRS

1. SMT. JAYAMMA,
W/O. LATE R. KENCHIAIAH,
AGED ABOUT 61 YEARS,
2. DR. VENKATESH,
S/O LATE R. KENCHIAIAH,
AGED ABOUT 41 YEARS,
3. K. GIRIJA,
D/O LATE R. KENCHIAIAH,
AGED ABOUT 37 YEARS,
ALL ARE R/O. MADAPURADA DODDI VILLAGE,
ATHAGUR HOBLI,
MADDUR TALUK - 571 428.

...APPELLANTS

(BY SMT. ARCHANA MURTHY P., ADVOCATE)

AND:

1. SMT. GOWRAMMA,
W/O LATE DOODA THAYAMMA,
AGED ABOUT 75 YEARS,



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2. PUTTA THAYAMMA,
W/O RAMANNA,
AGED ABOUT 49 YEARS,
3. SMT. CHIKKOLAMMA,
W/O. HANUMANTHAIAH,
AGED ABOUT 46 YEARS,
4. SMT. LAKSHMAMMA,
W/O. CHANDRAIAH,
AGED ABOUT 41 YEARS,
RESPONDENTS 1-4 ARE
R/O CHATRADALINGANADODDI VILLAGE,
ATHAGUR HOBLI, MADDUR TALUK - 571 428.
5. SMT. LAKSHMAMMA,
W/O LATE KULLANINGAIAH,
DEAD
(R6 & 7 ARE LRs OF R5)
6. SRI. KARIYA,
S/O LATE KULLANINGAIAH,
AGED ABOUT 44 YEARS,
7. SRI. PUTTASWAMY,
S/O KULLANINGAIAH,
AGED ABOUT 42 YEARS,
RESPONDENTS NO.5-7 ARE
R/O CHANAKAKERE VILLAGE,
ATHAGUR HOBLI,
MADDUR TALUK - 571 428.

...RESPONDENTS

(BY SRI. PRAMOD R., ADVOCATE FOR R1 TO R4, R6 AND R7;
R6 AND R7 ARE TREATED AS LRS OF DECEASED R5 VIDE
ORDER DATED 02.06.2026)



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THIS RSA IS FILED U/S.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 21.08.2017 PASSED IN R.A.NO.20/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE, MADDUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 31.08.2012 PASSED IN OS.NO.94/2008 ON THE FILE OF THE ADDL.CIVIL JUDGE AND JMFC., MADDUR.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Smt. Archana Murthy, learned counsel for the appellants and Sri. Pramod R., learned counsel for the contesting respondents.

2. The present second appeal is filed by the plaintiff challenging the dismissal of the suit in O.S. No.94/2008 confirmed in R.A. No.20/2012.

3. Facts of the case are as under :



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3.1 A suit in O.S. No.94/2008 came to be filed against the respondents in respect of following immovable property (hereinafter referred to as the suit property) for the relief of declaration and permanent injunction.

SCHEDULE

Land in Survey No.48/10, measuring 1.00 acres, situated at Dundanahalli Village, Athagur Hobli, Maddur Taluk, is bounded on the East by land of Hombaiah, West by remaining land of Lakshmamma, North by Ramesh, and South by Channapatna - Maddur Road.

3.2 Plaintiff contended that sister-in-law of the plaintiff purchased the suit property in the name of minor children of the plaintiff from one Sri. Kariya, under registered sale deed for a valuable consideration.

3.3 It is further case of plaintiff that from the date of purchase of the suit property, sister-in-law of the plaintiff is in possession and enjoyment of the suit property and after death of his minor children he has got changed the katha of the suit property into his name and thereafter it is plaintiff who is in possession and enjoyment



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of the suit property without any interference as an absolute owner thereof.

3.4 Plaintiff further contented that the revenue entries in respect of the suit property stood in the name of the plaintiff and plaintiff is paying required taxes to the concerned authorities and therefore he is enjoying the suit property as absolute owner in possession without any interference from anybody.

3.5 However, defendants who possess no manner of right, interest or title in the respect of the suit property, filed a suit in O.S. No.52/2005 for partition and separation against Lakshmamma and others who are none other than daughter-in-law and grandchildren of the vendor of the plaintiff. First defendant being the daughter-in-law of Sri Kariya and defendants No.2 to 4 being the granddaughters of late Kariya alias Parase started interfering with the suit property based on the suit filed by them.



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3.6 It is further contented that defendants in the suit in O.S. No.52/2005 have filed a written statement where there is a mention of as to the previous partition of the family properties of Kariya alias Parase, who sold the property in favour of the plaintiff's minor children and two others namely Ranganayaka and Hombaiah. Despite revealing such factual aspects, the suit in O.S. No.52/2005 continued without impleading the necessary parties and in the said suit, there was a decree granting half share to the defendants therein.

3.7 Defendants filed a final decree proceedings pursuant to the said decree in FDP No.1/2007 and commission warrant was issued for partition of the property of half share granted to the defendants in the said suit and the same was objected on the basis of the oral partition said to have taken place and selling of the property by the father-in-law of the first defendant in favour of the plaintiff on 14.10.1976.



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3.8 It is further contented that the sale deed executed by Kariya in favour of the defendants was not challenged and by virtue of the decree passed in O.S. No.52/2005, defendants are unnecessarily interfering with the suit property and therefore suit got necessitated.

3.9 Pursuant to the suit summons, defendants No.1 and 2 appeared before the Court and filed written statement and defendants No.3 and 4 adopted written statement filed by defendants No.1 and 2. Defendants No.5 to 7 did not choose to contest suit by filing necessary written statement.

3.10. In the written statement filed by defendants No.1 and 2 all the plaint averments were denied except the fact that there was a decree passed in O.S. No.52/2005. It has been contented by the defendants that earlier suit was necessitated in respect of the lands in Sy.No.48-P11 and No.48-P8, measuring 3 acres 39 guntas



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and 1-00 acre respectively with common boundaries on the East by : Sanne Gowdara Chikka Mariyappa's land, West by : lands of Doddathayamma and Sharadamma, North by : The land of Rameshav s/o. Mariyappa and on the Southern side : Road.

3.11. It is further contented that suit in O.S. No.52/2005 is not an *ex-parte* decree and the suit was decreed after contest. Therefore plaintiff cannot maintain the suit for declaration and injunction in respect of the property for which the defendants have been declared as the owners in O.S. No.52/2005 and thus sought for dismissal of the suit.

3.12. Learned trial Judge after raising necessary issues recorded the evidence of the parties and heard the arguments of the parties and dismissed the suit of the plaintiff *inter alia* holding in paragraphs No.14 and 15 as under:



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14. The survey number of the property and boundaries mentioned in the alleged sale deed i.e., ExP1 do not tally with the survey number and boundaries mentioned in the plaint schedule as they vary. No doubt, PW1 to 3 have stated boundaries mentioned in the plaint schedule, but the plaintiff neither pleaded nor adduced evidence as to why the survey number and boundaries mentioned in the plaint differ with the survey number and boundaries mentioned in the sale deed Ex.P.1. Further, as per recitals of the alleged sale deed, the property mentioned in the deed was granted to said Karia by the government, but the plaintiff has pleaded that the suit schedule property fell to the share of the said Karia in the family partition, which is contrary to the recitals in the alleged sale deed. The PW1 has admitted in the cross-examination that at the time of selling of the property no documents were standing in the name of the said Karia. Further he has deposed that ನಾನು ಕರಿಯಯ್ಯನ ಕಡೆಯಿಂದ ಖರೀದಿ ಮಾಡಿದಾಗ ಆತನ ಹೆಸರಿಗೆ ಯಾವುದೇ ದಾಖಲಾತಿಯಾಗಿರಲಿಲ್ಲ. ಅದು ಸರ್ಕಾರಿ ಜಮೀನಾಗಿಯೇ ಉಳಿದಿತ್ತು ಎಂದರೆ ಆತ ನನ್ನ ಜಮೀನು ಎಂದು ಹೇಳಿದಕ್ಕೆ ಖರೀದಿ ಮಾಡಿದ್ದೇನೆ. ದಾವಾ ಹಾಕುವ ಪೂರ್ವದಲ್ಲಿ ಪರಸೆ ಕರಿಯಯ್ಯನ ಹೆಸರಿನಲ್ಲಿ ಎಷ್ಟು ಆರ್.ಟಿ.ಸಿ. ಇದೆ ಎಂದು ನೋಡಿರುವುದಿಲ್ಲ. ಆ ಬಗ್ಗೆ ಸದರಿ ಅಸ್ತಿಯ ಮೇಲೆ ಯಾವುದೇ ಖಣಭಾರ ಇರುವ ಬಗ್ಗೆಯು ದಾಖಲಾತಿ ನೋಡಿರುವುದಿಲ್ಲ, It clearly goes to show that the said NIOR DIVI right to sell the property mentioned in the alleged ಆರ್.ಟಿ.ಸಿ. ತೆಗೆದು sale deed. The PW2 at one instance has deposed that the plaintiff has purchased the suit schedule property and at another instance, he has deposed that the sister-in-law of the plaintiff purchased the suit property. In his cross-examination, he has stated that he does not know who has filed the suit and against whom it is filed. He does not know the transactions of the alleged sale deed and when the property was granted to Karia and he did not see RTC pertaining to said Karia. The PW3 also



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stated the he does not know the alleged sale transaction personally. Admittedly, PW2 and 3 are not the signatories to the alleged sale deed and they have not participated in the alleged sale transaction. The ExP3 and 4 the mutation and RTC extract pertain to Survey no.48/P10 and ExP2, mutation register extract pertains to survey no. 48, but they are not pertaining to the property described in the alleged sale deed. In the circumstances, the plaintiff utterly failed to prove the mode of acquisition of the property described in the alleged sale deed by the said karia.

15. defendants. Further, no cogent and convincing evidence is forth coming with respect to actual possession of the plaintiff over the suit schedule property on the date of suit and the alleged interference by the In addition, the PWI has admitted in his cross examination that ಪ್ರತಿವಾದಿಗಳು ನನ್ನ ಸ್ವಾಧೀನ ಅನುಭವಕ್ಕೆ ತೊಂದರೆ ಕೊಡುತ್ತಿದ್ದ ಬಗ್ಗೆ ಪೋರ ಕಡೆ, ಯಾವುದೇ ಪರ್ಯಾಯ ಮಾಡಿಲ್ಲ. ಅವರು ನನಗೆ ಯಾವುದೇ ತೊಂದರೆ ಕೊಟ್ಟಿಲ್ಲ. The PW3 has also stated in his cross examination that ಪ್ರತಿವಾದಿಗಳು ವಾದಿಗಳಿಗೆ ಯಾವಾಗ ತೊಂದರೆ ಕೊಟ್ಟರೆಂದು ಗೊತ್ತಿಲ್ಲ. ಈ ತೊಂದರೆಗೆ ಸಂಬಂಧ ಪಟ್ಟಂತೆ ವಾದಿಯ ಕಡೆಯಿಂದ ಯಾವುದೇ ರೀತಿಯ ದೂರನ್ನು ಕೊಡಿಸಿರುವುದಿಲ್ಲ. ವಾದಿಯ ಸ್ವಾಧೀನಕ್ಕೆ ಪ್ರತಿವಾದಿಗಳು ತೊಂದರೆ ಕೊಟ್ಟ ಬಗ್ಗೆ ಯಾವುದೇ ರೀತಿಯ ಪಂಚಾಯಿತಿ ವ್ಯಕ್ತಿ ಸೇರಿಸಿರುವುದಿಲ್ಲ. It is pertinent to note here that, in the 1 instant case, defendants no.5 to 7 did not contest the suit. Defendants no.1 to 4 filed written statement, but failed to prove their case effectively with cogent and sufficient evidence. However, the general principle of law is that whenever a party approaches the court for a relief, based on the pleadings and issues, he has to prove his case. A suit has to be decided based on merits and demerits of the party who approaches the court. Weakness of the defendants cannot be considered as a trump card for the plaintiff. On this aspect I would place my reliance on the decision reported in 2004(1) KCCR 662, In the between K.Gopala reddy and



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Suryanarayana and others. circumstances, I have no hesitation to hold that the said Karia had no salable right to sell the property mentioned in the sale deed, the suit schedule property is not acquired under the alleged sale deed by sister-in-law of the plaintiff, he is not in its possession and there is no alleged interference by the defendants. Accordingly, the issue no.1 and 3 are answered in the negative and issue no.2 is answered in the affirmative.

3.13. Being aggrieved by the same, the plaintiffs have filed an appeal in R.A. No.20/2012.

3.14. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, dismissed the appeal of the plaintiffs *inter alia* holding in paragraphs No.29 to 31 as under:

29. It is also very clear from the evidence of PW.1 and PW.3 that there are no instances of the alleged interference by the defendants in respect of the possession over the suit schedule property. It is relevant to note that, the plaintiff has to show his right in respect of the suit schedule property to allege the interference at the hands of the defendants. But, as the clouds are showered on the title of the plaintiff over the suit



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schedule property, I am of the opinion that the alleged interference is not proved by the plaintiff.

30. It is to be noted that whenever a suit for declaration has been filed under Sec.34 of Specific Relief Act the discretion is vested with the Court to declare the status or right of any person. In that regard, the Court has also to see that whether the party seeking such declaration has shown the legal character or any right as to any property and the same is denied by the another. But, in the case on hand, the plaintiff has failed to satisfy the ingredients of the aforesaid provision of law. He has not shown the right and title of deceased Kariya to convey the same in favour of the plaintiff, if a party has no title, he cannot convey the better title in anybody's favour. Hence, the discretionary power cannot be exercised by the Court to declare the title of the plaintiff over the suit schedule property.

31. In the light of the above said discussion, if we look in the judgment rendered by the learned trial Judge, I find no such infirmities and no illegalities in the observations made with respect to the issues framed in the said suit. The trial Court has properly appreciated the oral as well as the documentary evidence placed on record and I am of the opinion that no such interference is called for. The learned trial Judge has rightly observed the burden which was on the plaintiff to prove his title over the suit schedule property and has rightly considered the failure of the plaintiff in proving his title and



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possession over the suit schedule. Hence, no interference is called for. Further, the plaintiff/appellant has urged in the present appeal to remand the case in order to enable the plaintiff to address his arguments on merits. But, on going through the order sheet of O.S.94/2008, it is very clear that the learned trial Judge has provided sufficient opportunities to the appellant/plaintiff from 24.09.2010 to 07.04.2012 and finally by considering the fact that the plaintiff has not opted to address the arguments, the case was posted for judgment. Under such circumstances, the contention of the appellant/plaintiff that no suitable and appropriate opportunities were given to the plaintiff to address the arguments is not sustainable. The learned trial Judge has considered all the materials placed on record in accordance with law. Further, the learned trial Judge has rightly declined to grant the relief in favour of the plaintiff. Hence, I am of the opinion that the judgment rendered by the Trial Court is appropriate and whatever the grounds urged in the appeal are not substantiated by the appellant / plaintiff,. Accordingly, I answer these Points in the negative.

4. Being further aggrieved by the same, plaintiff's have filed the present second appeal on the following grounds and substantial questions of law:



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GROUND

- *That the Impugned judgments are illegal and against the facts and circumstances of the case besides being arbitrary one.*
- *That the respondents 1 to 4 herein filed O.S number 52/2005 against the respondents 5 to 7 herein for partition in respect of the land bearing SY No: 48/p 11 and 48/ p A8 and same was decreed. so the courts below clearly held that the land in question that is land bearing SY 48/p10 in this suit is not the subject matter in O.S number 52/2005. Having held So courts below ought to have decreed the suit of the appellants when they proved that that they are the bonafide purchasers of the suit property, as per the registered sale deed dated 14.10.1976.Failure to do so as resulted in the miscarriage of Justice.*
- *That one Kariya who executed a registered sale deed in respect of the land bearing SY number 48/p 10 to the father of the appellant, also executed a registered sale deed in respect of land bearing SY number 48 /p 9 to one Ranganayak on 14.10.1976(i.e. on the same day). So the said Ramanayak also filed a suit for declaration and injunction against the respondent herein (in which the facts, Grounds and the respondents are one and the same) in O.S number 93/2008 and the trial court has decreed the same so the trial court ought to have decreed the suit of the appellant.*



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- *That the appellants are the absolute owner of the land bearing SY number 48/p 10 as per the registered sale deed executed by one Kariya (Grand father of the respondent P 2 to 4 and 6& 7). They have not challenged the sale deed executed by the Kariya.*
- *That the appellant hearing clearly proved that he is the absolute owner of the S.S.P by producing the sale deed, mutation registered EC and RTC vide Exp1 to P4 respectively and also by leading the oral evidence. So courts below ought to have decreed the Suit instead of dismissing it.*
- *That as per the sale deed the sister in law of the appellants father was in possession and enjoyment of the S.S.P. Then after the death of the minor sons of the appellant the appellant Father was in possession of the same. So Court below ought to have decreed the suit by considering the oral and documentary evidence of the appellants.*
- *That the land in question was granted to Kariya by the government is an admitted fact and he sold the same to the father of the appellants 2 to 3 is also not in dispute. So Court below ought to have decreed the suit of the appellants because the respondents herein are not having any local stands to challenge the very sale deed executed by Kariya in the year 1976.*



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- *That the appellants herein clearly proved their possession by producing the sale deed, mutation and RTC etc but the trial court wrongly held that the appellants failed to prove the possession which is wrong.*
- *That the court below wrongly held that property was not identified though the appellants clearly stated boundaries and block number in respect of the Suit property.*
- *That the Lower appellate court without alleging any reason and without any base wrongly held that the appellants have failed to show the right and title of the Kariya which is wrong.*

SUBSTANTIAL QUESTION OF LAW

1. Whether the court below were justified in dismissing the suit of the appellant without giving a finding to the effect that the very sale deed executed by Kariya in favour of the Puttanarasamma is a valid or not?

2 whether the courts below were justified in dismissing the suit of the appellant though the appellant proved their title by producing the sale deed, E.C, Rtc etc?

5. Smt. Archana Murthy, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts failed to



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note that there was a valid sale deed in favour of the plaintiff and the title to the suit property is traced in view of the sale deed executed by Kariya in favour of the minor children of the first defendant and later on which was purchased by the plaintiff and the revenue entries got mutated. Therefore plaintiff was in possession of the property and thus the decree passed in O.S. No.52/2005 did not bind the case of the plaintiff and dismissal of the suit by the trial Judge as well as the learned Judge in the First Appellate Court on the ground of the identity of the property is against the material evidence on record and thus, needs to be reconsidered by this Court by admitting the appeal on the aforesaid substantial questions of law.

6. Per contra, Sri. Pramod R., learned counsel for respondents No.1 to 4, 6 and 7, supports the impugned judgment.



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7. He would contend that decree in O.S. No.52/2005 is a decree that has been passed after contest.

8. He would further contend that trial Judge and learned Judge in the First Appellate Court took into consideration about the identity of the property as is mentioned in the plaint schedule has not been established by the plaintiff. Therefore the possession if any is only on the basis of the sale deed symbolic in nature and the revenue entries. But actual possession remained with the defendants and therefore, dismissal of the suit is just and proper and thus sought for dismissal of the present second appeal.

9. Having heard the arguments of both sides this Court perused the material on record meticulously.

10. On such perusal of the material on record, no doubt plaintiff has placed on record the sale deed in his favour. But so far as the identity of the property which



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was conveyed to him under the sale deed was not established by placing necessary material evidence on record.

11. In fact, property earlier belonged to Kariya is not in dispute. Further, the suit in O.S. No.52/2005 similar issue was raised and the suit was contested by filing necessary written statement by the defendants therein and thereafter suit came to be agreed granting half share.

12. Pertinently, the Judgment passed in O.S.No.52/2005 was not challenged and final decree proceedings came to be initiated to execute the decree granting half share in FDP No.1/2007 wherein the Commissioner has been appointed and thereafter there was a Final Decree.

13. The plaintiff did not object for any of these aspects of the matter and in the plaint itself, there is a mention about the suit in OS No.52/2005 and decree that is sought for is that the said judgment is not binding.



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14. Such a declaration is impermissible as a duly constituted Court has passed the decree after contest and seeking a declaration to nullify a decree passed by the competent Court that too after contest cannot be declared as null and void. More so, when it has ended in passing of Final Decree.

15. At the most, the plaintiff could have challenged the said decree if it affected the rights of the plaintiff before the Appellate Forum. Having failed to do so, the frame of the suit itself is bad and dismissal of the suit by Trial Judge as well as learned Judge in the First Appellate Court is thus just and proper which does not require any further consideration before this Court by admitting the appeal on the aforesaid substantial questions of law having regard to the scope of Section 100 of the Code of Civil Procedure.



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16. Accordingly, following Order:

ORDER

- (i) Admission declined.
- (ii) Regular second appeal is ***dismissed***.

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

SNC
List No.: 1 Sl No.: 69