



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1978 OF 2013 (DEC)

BETWEEN:

1. CHIKKAGOVINDA
SINCE DECEASED BY HIS LEGAL REPRESENTATIVES
- 1(A) SMT. PUTTALAKSHMAMMA
W/O LATE CHIKKAGOVINDA
AGED ABOUT 72 YEARS
- 1(B) DEVIRAMMA
D/O LATE CHIKKAGOVINDA
AGED ABOUT 53 YEARS
- 1(C) SAROJAMMA
D/O LATE CHIKKAGOVINDA
AGED ABOUT 51 YEARS
- 1(D) RANAMMA
D/O LATE CHIKKAGOVINDA
AGED ABOUT 48 YEARS

ALL RESIDENTS OF UPPARA BEEDHI
RAMASAMUNDRA, WARD No.28
CHAMARAJNAGAR DISTRICT – 571 313

...APPELLANTS

(BY SRI. SHARATH KUMAR, ADVOCATE A1(A-D))

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signed by
SHILPABAI S
Location
HIGH COURT
OF
KARNATAKA





AND:

1. GOVINDA
S/O LATE NARAYANASWAMY,
SINCE DECEASED REP. BY HIS LEGAL
REPRESENTATIVES
- 1(A) MAHADEVAMMA
W/O LATE GOVINDA
AGED ABOUT 75 YEARS
- 1(B) MANJUNATH
S/O LATE GOVINDA
AGED ABOUT 55 YEARS
- 1(C) SONDHA
S/O LATE GOVINDA
AGED ABOUT 55 YEARS
- 1(D) NATA
S/O LATE GOVINDA
AGED ABOUT 45 YEARS
- 1(E) RAJENDRA
S/O LATE GOVINDA
AGED ABOUT 38 YEARS
- 1(F) GEETHA
D/O LATE GOVINDA
AGED ABOUT 30 YEARS

ALL ARE R/AT BAGIRATHI NAGAR
BEHIND TALUK OFFICE
WARD No.25
CHAMARAJNAGAR TOWN
CHAMARAJNAGAR DISTRICT – 571 313

...RESPONDENTS

(BY SRI. GIRISH B BALADARE., ADVOCATE FOR R1(A-F))



THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DTD 16.9.2013 PASSED IN R.A.NO.10/2009 ON THE FILE OF SENIOR CIVIL JUDGE AND CJM, CHAMARAJANAGAR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD 18.12.2008 PASSED IN OS.NO.151/2006 ON THE FILE OF ADDITIONAL CIVIL JUDGE (JR.DN.) AND JMFC, CHAMARAJANAGAR.

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

This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 16.09.2013, passed in R.A.No.10/2009 by the learned Senior Civil Judge, and CJM, Chamarajanagar, whereby reversing the judgment and decree dated 18.12.2008 passed in O.S.No.151/2006 by the learned Additional Civil Judge (Jr. Dvn.) and JMFC, Chamarajanagar.

2. For the sake of convenience, parties are referred to based on their ranking before the trial Court. The appellant was the defendant and the respondent was the



plaintiff. The plaintiff filed a suit for declaration, possession and permanent injunction.

3. The brief facts leading rise to the filing of this appeal are as follows:

The plaintiff alleges that out of the property purchased by Narayanaswami the eastern 2 ankanam i.e., the property lying on the eastern side of the suit schedule property which was collapsed and has been kept vacant. One Ganesh S/o Hanumanthashetty in collusion with the officials of the Municipality of Chamarajanagar had got illegally created the documents and claimed the right over the portion of the suit property. The plaintiff filed a suit in O.S.No.138/2002 against Ganesh before the learned Civil Judge, Chamarajanagar. The said suit was decreed in respect of the property in the said suit in favour of the plaintiff. As per the directions of the District Court, Chamarajanagar in R.R.No.7/2004 and the defendant is denying the title of the plaintiff, so the plaintiff filed a suit



for declaration to declare that he is the owner in a suit for declaration of owner of the suit schedule property and for delivery of the possession. Hence, a cause of action arose for the plaintiff to file a suit for declaration, possession and permanent injunction.

3.1. The defendant filed a written statement denying the averments made in the plaint except admitting the Court proceedings and the defendant further, to be Madappana of Honnur Village, Taluk Yelandur. The said Doddamalappa was in possession and enjoyment of the said house. He sold the house along with one dry land in favour of the father of the plaintiff namely Narayanaswamy under a registered sale deed dated 15.04.1946 and delivered the possession of the same. Out of the property purchased by Narayanaswami, the eastern two ankanam portion was collapsed and same was kept vacant and the said vacant space is situated towards the eastern side of the present suit property. The plaintiff further alleged that the house property which was



purchased by Narayanaswami are bounded with the boundaries. The father of the plaintiff sold two ankanam out of 8 ankanam on the western side in favour of Doddagovinda. After selling the said portion, Narayanaswami leased out two ankanam house in favour of the defendants out of remaining 6 ankanam making 6 ankanam into three portion. The said Narayanaswami was residing in two ankanam in between the portion sold to Doddagovinda and the suit schedule two ankanam house. There being so the defendant was paying the rent till the death of Narayanaswamy and after his demise, he stopped paying the rent. The plaintiff got issued a legal notice under Section 21(a), (h) and (p) of the Karnataka Rent Control Act and initiated a HRC No.1/1991 proceedings under the Rent Control Act. The said eviction petition came to be dismissed due to boundaries mentioned in the suit schedule property being wrong. It is contended that the defendant had purchased the property under a registered sale deed dated 26.06.1967 from one



Venkatashetty for valuable consideration. The suit schedule property and the property purchased by the defendants are different because the said boundaries are different. Hence, there is no nexus between the suit property and the property purchased by the defendant. There is no cause of action to file a suit. Hence, the suit filed by the plaintiff is not maintainable. Hence, prays to dismiss the suit.

3.2. The Trial Court, based on the rival pleadings of the parties, framed the following issues:

- (1) Whether the plaintiff proves that he is the absolute owner of the suit property?*
- (2) Whether the plaintiff proves that the defendant is in possession of the suit property as contended in the plaint?*
- (3) Whether the plaintiff is entitled the relief of declaration and possession from the defendant?*
- (4) What order or decree?*



3.3. The plaintiff, to substantiate his case, examined himself as PW1 and examined one witness as PW.2 and marked 11 documents as Exs.P1 to P11. In rebuttal, the defendant examined himself as DW.1 and marked 13 documents as Exs.D1 to D13. The Trial Court, after recording the evidence, hearing on both the sides and after appreciating the verbal and documentary evidence, answered issue Nos.1 to 3 in the negative and issue No.4 as per the final record. The Trial Court dismissed the suit of the plaintiff vide judgment dated 18.12.2008.

3.4. The plaintiff, aggrieved by the dismissal of suit, preferred an appeal in R.A.No.10/2009 by the learned Senior Civil Judge and CJM, Chamarajanagar.

3.5. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- (1) *Whether the plaintiff proves the existence of the suit schedule property?*



- (2) *Whether the plaintiff proves that he has furnished the correct boundaries of the suit schedule property?*
- (3) *Whether the plaintiff proves that he is the absolute owner of the suit property?*
- (4) *Whether the plaintiff proves that the defendant is in possession of suit property as contended in the plaint?*
- (5) *Whether the plaintiff proves that he is entitled for the relief of declaration and possession of the suit property?*
- (6) *Whether the interference of this Court is required?*
- (7) *Whether the judgment passed by the Hon'ble Trial Court is proper and correct?*
- (8) *What order?*

3.6. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 to 6 in the affirmative, point No.7 in the negative and point No.8 as per the final order. The appeal was allowed. The judgment and decree passed in O.S.No.151/2006 was set aside and consequently, the suit of the plaintiff was decreed and defendant was given three months time to hand over the possession of the suit schedule property to



the plaintiff is at liberty to take appropriate legal action to take the possession of the suit schedule property.

3.7. The defendant, aggrieved by the judgment and decree dated 16.09.2013 passed in R.A.No.10.2009 by the learned Senior Civil Judge and CJM, Chamarajanagar, filed this Regular Second Appeal.

4. This Court admitted the appeal on 18.11.2020 to consider the following substantial questions of law:

- (1) Whether on the facts and circumstances of the case the Appellate Court was right in decreeing the suit when the identity of the suit schedule property itself was in dispute?*
- (2) Whether the First Appellate Court is justified in relying upon the evidence and report of PW.2-Commissioner?*

5. Heard the arguments of the learned counsel for the defendant, and also learned counsel for the plaintiff.



6. Learned counsel for the defendant submits that the First Appellate Court has committed an error in reversing the judgment and decree passed by the trial Court. He also submits that the First Appellate Court has reversed the judgment and decree passed by the trial Court on the basis of the Commissioners report without independently examining the evidence lead by both the parties. He also submits that there is a dispute in regard to the identity of the schedule property. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned counsel for the plaintiff submits that the defendant in the written statement has specifically pleaded that the property purchased by the defendant is different. Because the said boundaries are different and there is no nexus between the suit property and the property purchased by the defendant. When there is no nexus between the property of the plaintiff and the property of the defendant, the First Appellate Court has



rightly decreed the suit. The First Appellate Court has rightly re-appreciated the entire evidence on record and passed the impugned judgment. He also submits that the Commissioner was appointed and he has submitted a report and the First Appellate Court placing a reliance on the Commissioners' report held that the boundaries mentioned by the Court Commissioner tallies with the boundaries mentioned in the sale deed dated 15.04.1946. Hence, on these grounds, he prays to dismiss the appeal.

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

9. **Reg. Substantial Questions of Law**
Nos.1 and 2: Since, substantial questions of law Nos.1 and 2 are interlinked with each other, they are taken together for a common discussion to avoid the repetition of facts.



10. The plaintiff, in order to prove his case, examined himself as PW.1 and he reiterated the plaint averments in the examination-in-chief and in order to prove the ownership, he has produced the registered sale deed marked as Ex.P1 . The plaintiff has produced the certified copy of the sale deed is marked as Ex.P2. From the perusal of Ex.P2 it is clear that on 15.04.1946 one Maleddevaru @ Doddamallappa executed a registered sale deed in favour of Narayanaswami under a registered sale deed dated 15.04.1946. Narayanaswamy has purchased under the said sale deed two properties were sold by Maleddevaru in favour of Narayanaswamy. The other properties not the subject matter of the suit property. Ex.P5 is the certified copy of the endorsement issued by Sub-Registrar, Chamarajanagar, where it is mentioned that as per sale certificate issued in execution No.1932-33 bearing No.1039, which was issued by the Munsif Court Nanjanagudu, Ex.P6 is the mutation register extract which contend information that the khatha of the property



bearing Sy.No.619/2 had been changed into the name of Puttabasappa as per the sale certificate issued by the Munsif Court Nanjanagudu, Ex.P7 is the Nil Encumbrance Certificate, Ex.P8 is the certified copy of the report submitted by the Court Commissioner appointed in O.S.No.138/2002. He has opined that the plaintiff filed a suit against one Ganesh in O.S.No.138/2002 in respect of two ankana house, which is part and parcel of the house and the father of the plaintiff had purchased under the registered sale deed dated 15.04.1994, Ex.P9 is the spot mahazar conducted by the court commissioner, which contains the signature of the plaintiff namely Govinda and the signature of Govinda was the defendant in O.S.No.138/2002 and other villagers.

11. The plaintiff, examined the court commissioner, who was appointed in O.S.No.138/2002 as PW.2. He has conducted the spot mahazar in O.S.No.138/2002, wherein the trial Court did not consider the evidence of PW.2 the Commissioner, who was appointed in O.S.No.138/2002.



The Court consider the evidence of the commissioner who was appointed in O.S.No.138/2002 and also consider Exs.P8 and P9 and recorded that there is nothing on the record to disbelieve the information available in the said report of the commissioner namely Exs.P8 and P9. Thus, the cumulative effect of all these things is that the suit schedule property is in existence.

12. Further, the defendant examined himself as DW.1 and reiterated the written statement averments in the examination-in-chief and produced the document Ex.D1 is the registered sale deed dated 26.06.1967. From the perusal of the recital of Ex.D1, it is clear that the defendant has purchased the house property and the boundaries shown in the registered sale deed is as follows:

*Two ankanam house bounded on east by Gully,
west by the house of Narayanswami, north by
Hanumanthashetty and south by Venkatashetty.*



13. Further, from the perusal of Exs.P1 and D1, the northern side have a common boundary namely house of Hanumanthashetty. Further, the defendant in the written statement has specifically pleaded that the suit schedule property and the property which was purchased by him under the sale deed dated 26.06.1967 have no nexus with each other. Considering the pleadings in the written statement that the property of the plaintiff and the property of the defendant are different. The First Appellate Court considering the entire evidence on record and also regarding the identity of the suit schedule property, has rightly passed the impugned judgment. Further, the defendant has also pleaded that he had acquired the title by way of adverse possession. The plaintiff has denied the title of the plaintiff over the suit schedule property. Hence, the defendant cannot claim adverse possession by way of possession until the defendant admits the title of the plaintiff over the suit schedule property. Further, the plaintiff has also filed the eviction proceedings under the



Rent Control Act, which came to be dismissed on the ground that there is complicated question of facts and proceedings initiated under the Karnataka Rent Control Act are summary in nature. Thus, the plaintiff is entitled for possession. The First Appellate Court has rightly re-appreciated the entire evidence on record and passed the judgment. Further, there is no dispute in regard to the identity of the suit schedule property. As far as the dispute in regard to the boundary/identity is concerned, is not a substantial question of law as held by the Hon'ble Apex Court in the case of **KONDIBA DAGADU KADAM VS SAVITRIBAI SOPAN GUJAR AND OTHERS** reported in **1999 (3) SCC 722**, explained the possession of law in para No.6, which reads as follows:

If the question of law termed as substantial question stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be



arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it Cannot be termed to be an error either of law or procedure requiring interference in second appeal. This Court in Reserve Bank of India & Anr, v. Ramakrishan Govind Morey, AIR (1976) SC 830 held that whether trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.

14. Hence, the First Appellate Court relying upon the commissioner's report and evidence of PW.2, has rightly passed the judgment. Hence, I do not find any error in the impugned judgment. Hence, in view of the above discussion, I answer substantial questions of law are in affirmative.



15. Accordingly, I proceed to pass the following:

ORDER

- i. The Regular Second Appeal is ***dismissed.***
- ii. Pending application(s), if any, shall stand disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SSB