



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 385 OF 2020 (DEC/INJ)

BETWEEN:

1. KALLESHPAPPA
AGED ABOUT 61 YEARS
2. ESHWARALPPA
AGED ABOUT 55 YEARS
3. H.G. KUMARAPPA
AGED ABOUT 53 YEARS

APPELLANTS 1 TO 3 ARE
SONS OF LATE DODDAGANGAPPA @
DODDAGANGADHARAPPA
AGRICULTURISTS,
RESIDING AT HIRENALLUR
VILLAGE AND HOBLI, KADUR TALUK,
CHICKMAGALUR DISTRICT - 577 550.

...APPELLANTS

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signed by
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Location:
HIGH
COURT OF
KARNATAKA

(BY SRI. GURURAJ R, ADVOCATE)

AND:

1. MALLEDEVARU
S/O LATE DODDANNA
AGED ABOUT 76 YEARS
RESIDENT OF HIRENALLUR VILLAGE
HIRENALLUR HOBLI, KADUR TALUK,



CHICKMAGALUR DISRICT - 577 550.

2. SURESHA
S/O MALLADEVARU
AGED ABOUT 43 YEARS
RESIDENT OF HIRENALLUR VILLAGE
HIRENALLUR HOBLI, KADUR TALUK,
CHICKMAGALUR DISRICT - 577 550.
3. SMT. GEETHA
W/O YOGESHA
D/O MALLEDEVARU
AGED ABOUT 39 YEARS
RESIDENT OF NERALAKERE VILLAGE
TARIKERE TALUK,
CHICKMAGALUR DISTRICT - 577 228.
4. SHIVAPPA
S/O MALLEDEVARU
AGED ABOUT 41 YEARS
RESIDENT OF HIRENALLUR VILLAGE
HIRENALLUR HOBLI, KADUR TALUK,
CHICKMAGALUR DISRICT - 577 550.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 02.08.2019
PASSED IN RA.NO.58/2014 ON THE FILE OF THE SENIOR CIVIL
JUDGE, KADUR, DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DATED 07.10.2014 PASSED IN
OS NO.17/2008 ON THE FILE OF THE CIVIL JUDGE AND JMFC,
KADUR.



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Gururaj R., learned counsel for the appellants.

1. This Court did not deem it fit to issue notice to the respondents.

2. Plaintiffs are the appellants in the second appeal, challenging the dismissal of the suit in part, protecting their possession over the following property (hereinafter referred to as the suit property) and defendants were given the liberty to evict the plaintiffs in accordance with law. The said judgment and decree dated 07.10.2014 passed by the Trial Court in O.S.No.17/2008 was challenged before the First Appellate Court by the plaintiffs in R.A.No.58/2014 which came to be dismissed on merits by considered judgment dated 02.08.2019.

SCHEDULE

"Three guntas of Vacant land used as Hul Hithal situated at Hirehallur Village, in Sy.No.208/2 (Total extent 0-22 guntas) with barbed wire fence and life fence all round and is bounded as follows::

East - Government Road,



*West – Hithal of Kenchappa out of the same number,
North – Road lead to Melanahalli,,
South – Hithal of Basavarajappa."*

3. Facts of the case, which are utmost necessary for disposal of the present appeal, are as under:

Plaintiffs filed a suit with the relief of declaration and permanent injunction in respect of suit property contending that defendant No.1 is the owner of the property, which is land bearing Sy.No.208/2 situated at Hirehallur village, Hirehallur Hobli, Kadur Taluk. It is further contended that defendant No.1 agreed to sell the suit property in favour of the plaintiff No.1 for valuable consideration of ₹40/-. Since the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966, was in force, defendant No.1 executed an agreement to sell on 23.01.1982 and received sale consideration of ₹40/- and on the date of execution of the sale itself, plaintiff No.1- Doddagangappa @ Doddagangadharappa was put in possession and enjoyment of the suit property.

4. From the date of agreement, plaintiffs No.1 and other plaintiffs enjoyed the suit property and they have grown 6



tamarind trees. It is further contended by the plaintiffs that defendant No.1, who has no manner of right, title or interest over the suit property, filed a suit in O.S.No.458/2000 against the plaintiffs seeking relief of declaration and in the said suit, a Court Commissioner was also appointed. He visited the spot and filed a report. As per the commissioner report, it is noticed that it is the plaintiffs who are in possession of the property.

5. Plaintiffs further contended that as on the date of agreement to sell, the value of the property was less than ₹100 and therefore, the agreement is to be treated as sale deed and therefore, sought for declaration as prayed for.

6. Defendant No.1 opposed the suit by filing a written statement contending that admittedly defendant No.1 is the owner in possession of the property bearing Sy.No.208/2 measuring 22 guntas situated in Hirenallur village. It is further contended that the father of defendant No.1 had purchased the above property from Hebbagilu Hallappa under the registered sale deed dated 30.01.1937 and from the date of purchase, it is defendant No.1 who is in possession of the property.



7. The learned Trial Judge after raising necessary issues, decreed the suit in part. The operative portion of the Trial Court decree reads as under:

"The suit filed by the plaintiffs is hereby Partly decreed with costs.

The defendants are hereby restrained by way of permanent injunction from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs.

The defendants are at liberty to evict the plaintiffs from the suit schedule property in accordance with law.

Draw decree accordingly."

8. Being aggrieved by the same, the legal representatives of the original plaintiff filed the appeal before the First Appellate Court in R.A.No.58/2014.

9. The learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material evidence on record, dismissed the appeal, *inter alia*, holding in paragraph Nos. 15 and 16 as under:

"15. In the appeal, the appellants raised a contention that the trial court erred in coming to know of the limitation of land fragmentation Act. In the agreement no period is mentioned to execute the regular sale deed in favour of



purchaser and erred in dismissing the suit for the relief of specific performance of sale agreement and also to declare that the appellants are the owners of the suit schedule property by way of adverse possession. So far as rejecting the claim of appellants with regard to the specific performance of sale agreement, as per the recitals of the sale agreement, as on the date of sale agreement, the Land Fragmentation Act was in existence, for that reason it was not able to get register the sale deed, hence the 1st respondent has agreed to execute the registered sale deed after abolition of Fragmentation Act. The said Act was repealed on 03.12.1990. In the year 2000 itself the respondents have filed the suit against the appellants for declaration of title and consequential relief of permanent injunction. In that suit, the respondents have denied the execution of sale agreement appellants, that means the appellants have knowledge about denial of sale agreement, such being the fact the appellant could have raised contention as to the claim of specific performance of sale agreement or they could have filed counter claim about their claim but even after disposal of that suit, the appellants could have filed the suit for the relief of specific performance of contract. But without taking any due course of law in getting the registered sale deed, the appellants have filed the suit in O.S.No.17/2008 for the relief of permanent injunction, specific performance of the contract and also declaration of title by way of adverse possession. There is lot of time gap between the repealment of the land fragmentation act and filing of the suit by the appellants for the appropriate relief. When the appellants claiming right by virtue of the sale agreement executed by 1st respondent, the said sale agreement is not adverse to the interest of 1st respondent. By virtue of the sale agreement, adverse possession cannot be claimed as per law. Hence the contention of appellants as to their adverse possession over the suit schedule property is rightly rejected by the trial court. In O.S.No.458/2000 itself the respondent has denied the execution of sale agreement in favour of appellants. So the appellants had the knowledge about the refusal of specific performance of contract by the respondent in the year 2000 itself. Three years from the date of refusal for specific performance of contract, the appellants ought to have file the suit as per section 54 of the Indian limitation Act, the appellants have not filed the



suit for specific performance of sale agreement within time. Hence on issue No.3 and 6 the trial court has properly come to the conclusion and rejected the claim of appellants with regard to the specific performance of sale agreement. Whereas the appellants have proved their possession over the suit schedule property and interference of the respondents, they are entitled for possession of property till the respondents evicted them under due process of law.

*16. Viewing from any angle, the conclusion arrived at by the trial court is proper and it is in accordance with law. The grounds that are urged in the appeal are not supported with cogent evidence. Hence, this court is of the opinion that the judgment and decree passed by the trial court is based on sound reasoning and it does not call for any interference by this court. **Accordingly, point No.1 is answered in the negative.**"*

10. Being further aggrieved by the same, the plaintiffs have filed the present appeal.

11. Sri Gururaj R., learned counsel for the appellants, would contend that both the Courts have not taken into consideration that, having regard to the value of the suit agreement, plaintiffs were not required to file suit for specific performance and the agreement to sale itself should have been treated as a sale deed or, in the alternative, since plaintiffs are in possession of the suit property, they had perfected their title to the suit property by way of adverse possession and therefore were entitled for the declaratory decree as prayed for and thus



sought for admitting the appeal on the following substantial questions of law:

- i. Whether the judgment and decree passed by the courts below are contrary to pleadings and evidence on record?*
- ii. Whether the courts below erred in not considering the entire evidence on record and the documents produced by the appellants?*
- iii. Whether the courts below erred in not properly considering exhibits P1 to P16?*
- iv. Whether the first appellate court erred in coming to the conclusion that the judgment and decree of the trial court is based on sound reasoning?*
- v. Whether the interpretation of section 54 of the Indian Limitation Act, is proper?*
- vi. Whether the courts below were right in dismissing the suit and denying the relief sought by the appellants regarding specific performance of the contract as barred by limitation?*

12. In the light of the argument put forth on behalf of the appellants, this Court perused the material on record meticulously.

13. On such perusal of the material on record, admittedly the original plaintiff and subsequently their legal representatives are claiming rights under the agreement to sale dated 23.01.1982, said to have been executed by defendant No.1.



14. It is settled principle of law and requires no emphasis that the plaintiff cannot take an alternate plea. If he is claiming possession of the suit property under the agreement to sell, it should not lie in the mouth of the plaintiff that they have perfected the title to the suit property by way of adverse possession inasmuch as the pleadings are suffering from necessary details, namely 'nec vi', 'nec clam', 'nec precario' meaning thereby, on what date the plaintiff came into the possession of the property; what was the nature of possession; whether the factum of possession was known to the other party; how long this possession has continued; and that his possession was open and undisturbed.

15. When the original plaintiff himself claims that he is an agreement holder and he is put into the possession of the property by virtue of agreement to sell, by way of part performance of the agreement to sell, a plea of adverse possession is not available to the plaintiff.

16. Thus, dismissal of the suit with regard to declaratory relief by the Trial Judge confirmed by the First Appellate Court needs no interference in this appeal.



17. Accordingly, following:

ORDER

Admission is ***declined.***

Appeal is ***dismissed.***

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