



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 2035 OF 2013 (DEC/INJ)

BETWEEN:

1. SRI GOWDRA NAGAPPA
S/O LATE MALLAPPA,
AGED ABOUT 70 YEARS
AGRICULTURISTS,
R/O PUNABHAGGATTA VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT
2. SRI GOWDRA SIDDAPPA
S/O LATE MALLAPPA,
AGED ABOUT 55 YEARS,
AGRICULTURISTS,
R/O PUNABHAGGATTA VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT
3. SRI GOWDRA SHEKRAPPA
S/O LATE MALLAPPA,
SINCE DEAD BY HIS LEGAL REPRESENTATIVES
- 3(A) SRI. SIDDESHWARA GOWDA G
S/O GOUDRA SHEKRAPPA
AGED ABOUT 32 YEARS
- 3(B) SMT. GOUDRA NAGAMMA
D/O GOUDRA SHEKRAPPA
AGED ABOUT 38 YEARS

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH COURT
OF
KARNATAKA



3(C) SMT. SHRUTHI G
D/O GOUDRA SHEKRAPPA
AGED ABOUT 33 YEARS

4. SRI GOUDER SHANMUKHAPPA
S/O LATE MALLAPPA,
AGED ABOUT 50 YEARS

ALL ARE AGRICULTURISTS,
R/O PUNABHAGGATTA VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131

...APPELLANTS

(BY SRI. C M RAJANEESH., ADVOCATE FOR A1, A2 & A4 &
A3(A-C))
SRI. RAMESH, ADVOCATE)

AND:

SRI L PUJARI JAYANAIIKA
SINCE DEAD BY LEGAL REPRESENTATIVES

1. SRI DEVENDRANAIIKA,
AGED ABOUT 41 YEARS
S/O LATE L PUJARI JAYANAIIKA,
R/O CHANNAPURA TANDA,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131

2. SRI MURTI NAIKA
AGED ABOUT 36 YEARS,
S/O LATE L PUJARI JAYANAIIKA,
R/O CHANNAPURA TANDA,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131

3. SRI RAVINAIIKA
AGED ABOUT 34 YEARS,
S/O LATE L PUJARI JAYANAIIKA,
R/O CHANNAPURA TANDA,



HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131

4. SRI RAMESHNAIKA
AGED ABOUT 23 YEARS,
S/O LATE L PUJARI JAYANAICA,
R/O CHANNAPURA TANDA,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131
5. SMT L LALITHA BAI
W/O NAGARAJA NAIKA,
D/O JAYANAICA,
AGED ABOUT 39 YEARS,
R/O PUNABHAGHATTI THANDA,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131
6. SRI L PUJARI UMESHA NAIKA
S/O BHEEMA NAIKA,
AGED ABOUT 40 YEARS,
R/O CHANNAPURA TANDA,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131
7. SRI GOWDRA SHIVAPPA
S/O LATE GOWDRA MALLAPPA,
AGED ABOUT 75 YEARS,
AGRICULTURIST,
R/O PUNABHAGATTI VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT – 583 131

...RESPONDENTS

(BY SRI. G S BALAGANGADHAR, ADVOCATE FOR R1 TO R6
R7 SERVED)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 20.9.2013 PASSED IN
R.A.NO.25/2012 ON THE FILE OF THE II ADDL. SENIOR CIVIL



JUDGE, DAVANGERE, DISMISSING THE APPEAL FILED AGAINST THE JUDGEMENT AND DECREE DTD 29.2.2012 PASSED IN O.S.NO.3/2007 ON THE FILE OF THE CIVIL JUDGE & JMFC., HARAPANAHALLI.

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 appellants challenging the judgment and decree dated 20.09.2013 passed in RA No.25/2012 by the Court of the learned Senior Civil Judge and JMFC at Harapanahalli (***First Appellate Court*** for short).

2. For the sake of convenience, the parties are referred to based on their ranking before the Trial Court¹. The appellants were the defendants and respondent Nos.1 to 5 are the legal representatives of plaintiff No.1, respondent No.6 was plaintiff No.2 and respondent No.7 was defendant No.5 before the Trial Court.

¹ OS No.3/2007 on the file of the Court of learned Civil Judge at Harapanahalli



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

3.1. The plaintiffs filed a suit for declaration and permanent injunction against the defendants. It is the case of the plaintiffs that, the father of plaintiff No.1 and grandfather of plaintiff No.2 purchased the suit schedule property under the registered sale deed dated 13.07.1964 for consideration from the father of the defendants by name Late Goudra Mallappa. The possession of the suit schedule property was delivered in favour of the father of plaintiff No.1 and grandfather of plaintiff No.2. After purchase, the father of plaintiff No.1 developed the said land by spending huge amount and got converted the said land into an agricultural land. It is contended that, the mutation was not effected on the basis of registered sale deed due to illiteracy of father of plaintiff No.1 and plaintiffs. It is the case of the plaintiffs that, the plaintiffs are cultivating the suit schedule property by raising different crops. The defendants got entered their names



in the revenue records behind the back of the plaintiffs. The plaintiffs challenged the entries made by the defendants by filing appeal before the Assistant Commissioner, Harapanahalli in RA No.11/2005-06 by challenging the MR No.19/96-97. The defendants have denied the title of the plaintiffs over the suit schedule property. Hence, a cause of action arose for the plaintiffs to file a suit for declaration of title and permanent injunction.

3.2. The defendants filed their written statement and also sought a counter-claim. It is the case of the defendants that the suit schedule property is the ancestral property of their family, and their father had executed sale deed dated 13.07.1964 as a security for the loan availed by him in favour of father of plaintiff No.1. The said sale deed is a nominal one, but not absolute sale deed as contended by the plaintiffs. The defendants are in actual possession and enjoyment of the suit schedule property without any disturbance from anybody. The defendants



have perfected their title by way of adverse possession. It is contended that there was partition effected between defendant Nos.1 to 4. Based on the said partition, the suit schedule property was divided and the respective shares were allotted to the defendants, and mutation was effected as per MR No.19/96-97. Defendant Nos.1 to 4 sought for a declaration to the effect that they are the joint owners by way of adverse possession. They further pray to grant the relief of permanent injunction against the plaintiffs.

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

- "1. *Whether plaintiff proves that plaintiff No.1's father and 2nd plaintiffs grant father purchased the land to the extent of 12 acres out of 55.42 Acres for Rs.400/- through Registered Sale deed Dt:13/7/1964 from defendants father Late Goudar Mallappa of Punabhagatta?*
2. *Whether plaintiffs prove that the possession of the Suit land was taken during 1940?*



3. *Whether plaintiffs prove that they are in possession of the Suit Land?*
4. *Whether Plaintiffs prove the alleged obstruction?*
5. *Whether plaintiffs prove that M.R.No.19/96-97 Dt:15/11/1966 is illegal one?*
6. *Whetehr defendants prove that the document of the year 1964 was a nominal document executed as a security?*
7. *Whether defendants prove that they had discharged the loan as contended in W.S?*
8. *Whether defendant proves that adverse possession over the counter claim property?*
9. *Whether the defendant proves that suit is bad for non-joinder of necessary parties?*
10. *Whether the plaintiff is entitled the relief as claimed in the plaint?*
11. *Whether the defendant proves that suit is barred by law of limitations?*
12. *Whether the defendant is entitled the relief as claimed in the counter claim?*
13. *What Order or Decree?"*



3.4. The plaintiffs, to substantiate their case, plaintiff No.1 was examined as PW1, four witnesses were examined as PW2 to PW5 and marked six documents as Exs.P1 to P6. In rebuttal, defendant Nos.2 and 3 were examined as DW1 and DW2, four witnesses were examined as DW3 to DW6, and marked eighteen documents as Exs.D1 to D18.

3.5. The Trial Court, after appreciation of entire evidence on record, answered issue Nos.1 to 5 in the affirmative, issue Nos.6 to 9, 11 and 12 in the negative, issue No.10 partly in the affirmative and issue No.13 as per the final order. The suit of the plaintiffs was partly decreed vide judgment dated 29.02.2012. The Trial Court dismissed the suit for declaration of title and decreed the suit for permanent injunction.

3.6. The defendants, aggrieved by a portion of the judgment and decree passed by the Trial Court in OS No.3/2007 granting decree for permanent injunction,



preferred an appeal before the First Appellate Court in RA No.25/2012.

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

- "1. Whether the findings of the Trial court as against the defendants are erroneous and against the evidence?*
- 2. If so, whether rejection of the counter claim set up by the defendants is contrary to law?*
- 3. Whether plaintiffs are entitled the relief of declaration by the appellate court in the absence of filing any appeal or cross objection?*
- 4. Whether the judgement and decree of the Trial court calls for any interference ?*
- 5. What Order?"*

3.8. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 and 2 in the negative, point No.3 in the affirmative and point Nos.4 and 5 as per the final order. The appeal was



dismissed vide judgment dated 20.09.2013. While dismissing the appeal, the First Appellate Court had set aside the findings recorded by the Trial Court on issue Nos.9 and 10 (partly affirmative) and declared that the plaintiffs are the owners of the suit schedule property. Granting of permanent injunction by the Trial Court was confirmed and decree of the Trial Court was modified to the said extent.

4. Defendant Nos.1 to 4, aggrieved by the judgment and decree passed by the First Appellate Court in RA No.25/2012, filed this regular second appeal.

5. Heard the arguments of learned counsel for the defendants and learned counsel for the plaintiffs.

6. Learned counsel for the defendants submits that, the plaintiffs had sought a relief of declaration of title and permanent injunction, wherein the Trial Court had dismissed the suit for declaration of title and granted decree for permanent injunction. He submits that, the



plaintiffs did not prefer any appeal against dismissal of the suit for declaration of title. The defendants challenged the decree for permanent injunction granted by the Trial Court. The First Appellate Court modified the judgment and decree passed by the Trial Court without there being any cross-objection or independent appeal by the plaintiffs. The First Appellate Court had exceeded the jurisdiction and modified the decree passed by the Trial Court. He submits that, the First Appellate Court could not have modified the judgment and decree passed by the Trial court. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned counsel for the plaintiffs submits that, though the plaintiffs did not file an appeal against the dismissal of the suit for declaration of title, the First Appellate Court, exercising power under Order XLI Rule 33, has moulded the relief. To buttress his argument, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Mr. Albert Rodrigues**



and Another Vs. Mr. Valerian Rodrigues (Dead) by LRs and Another². He submits that, the First Appellate Court, in the absence of an appeal, was justified in moulding the relief. Hence, the impugned judgment passed by the First Appellate Court is just and proper, and does not call for interference at the hands of this Court. Hence, on these grounds, he prays to dismiss the appeal.

8. This Court, vide order dated 22.08.2014, admitted the appeal to consider the following substantial question of law:

"Whether the First Appellate Court is justified in decreeing the suit for declaration though no appeal was filed by the plaintiff in that regard despite the fact that the suit for declaration was dismissed by the Trial Court?"

Reg. Substantial Question of Law:

9. It is the case of the plaintiff that, the father of plaintiff No.1 had purchased the suit schedule property from the father of the defendants for valuable consideration under a registered sale deed, and possession

² RSA No.279/2013, disposed of on 01.03.2024



was delivered. On the basis of the registered sale deed, the name of the father of plaintiff No.1 was entered in the revenue records; father of plaintiff No.1 invested huge amount for development of the land and the said land was converted into agricultural land. It is contended that, the plaintiffs are in possession of the suit schedule property. The defendants are not in possession of the suit schedule property. It is also contended that, the plaintiffs, aggrieved by the entries made in the revenue records, preferred an appeal before the Assistant Commissioner. The defendants have denied the title of the plaintiffs.

10. The plaintiffs, to substantiate their case, plaintiff No.1 was examined as PW1 and he reiterated the plaint averments in the examination-in-chief. To prove that the father of plaintiff No.1 had purchased the suit schedule property under the registered sale deed, they have produced the original registered sale deed marked as Ex.P1. He submits that, there was a partition effected and in the said partition, the suit schedule property fell to the



share of the father of plaintiff No.1 and grandfather of plaintiff No.2. Ex.P3 is the agreement; Ex.P4 is the RTC extract; Ex.P5 is the notice copy of the revenue records; Ex.P6 is the mutation extract. During the course of cross-examination of PW1, it was suggested that, the defendants are the owners of the suit schedule property and they are in possession of the suit schedule property; the father of the defendants approached the father of plaintiff No.1 and requested to advance hand loan; Ex.P1 was executed a security for the purpose of repayment of loan; the said Ex.P1 is the nominal sale deed. The said suggestion was denied by PW1. The plaintiff examined the adjoining land owner as PW2. He had deposed that, he is the son of one Mothya Naika; Mothya Naika had purchased 20 acres of the property in Sy.No.407 from the father of defendants under registered sale deed dated 07.05.1971. During the course of cross-examination, he had admitted that the defendants are cultivating their portion of land. The plaintiffs examined one Nagya Naika as PW3. He had



deposed that, he is in possession of the land situated in the western side of the suit property; as per the schedule of the plaint, one Patel Pamapana Gowda is the owner of the western side of suit property. PW3 deposed that, the property of Pampana Gowda and his property are situated in the western side. The plaintiffs also examined one Gowdra Pampanna as PW4. He deposed that, plaintiffs are in possession of the suit schedule property. During the course of cross-examination, PW4 admitted that, the defendants are cultivating their portion of the property and the plaintiffs are cultivating the suit schedule property.

In rebuttal, defendant No.2 was examined as DW1, and he reiterated the written statement averments in the examination-in-chief, and he had deposed that, the defendants are the owners and in possession of the suit schedule property; the plaintiffs are not in peaceful possession and enjoyment of the suit schedule property. The defendants also examined one witness as DW2. He admitted that, they have given the boundary to the entire



counter-claim property and not the suit property. DW3 and DW4 are the attesting witnesses to the partition deed. DW5 is the adjoining owner of the suit property. DW6 is the son of attesting witness to the partition deed. DW7 is also the adjoining land owner who deposed that, the defendants are in possession of the suit schedule property.

11. From the perusal of the evidence of witnesses, it is clear that, the plaintiffs are claiming to be the owners based on the registered sale deed executed by the defendants' father in favour of the plaintiff No.1's father. Though the plaintiffs have produced the registered sale deed to establish the title over the suit schedule property, from the perusal of the RTC extract, it clearly discloses that the suit schedule property does not stand in the name of the plaintiffs. The Trial Court has held that, the plaintiffs, though had proved that they are the owners of the suit schedule property, but the Trial Court declined to grant the relief of declaration of title on the ground that the sale deed executed in favour of plaintiff No.1's father



is absolute sale and not nominal sale deed, and further, there is no recital in the registered sale deed that the sale deed executed by the father of plaintiff No.1 in favour of father of the defendant is nominal. The Trial Court has dismissed the suit for declaration of title and granted the relief of permanent injunction. The defendants, aggrieved by the decree for permanent injunction, preferred an appeal in RA No.25/2012 before the First Appellate Court. The First Appellate Court, after re-appreciating the entire evidence on record, dismissed the appeal. While dismissing the appeal, the First Appellate Court has modified the judgment and decree passed by the Trial Court by exercising the power under Order XLI Rule 33 of CPC and granted decree for declaration of title in favour of the plaintiffs in the absence of any cross-objection or independent appeal by the plaintiffs. The Trial Court has committed an error in decreeing the suit for permanent injunction when the plaintiffs are not entitled for the main relief of declaration of title. This Court has, in the case of



Mr. Albert Rodrigues (supra), already taken a view in paragraph No.30, which reads as follows:

"30. It is a suit for declaration with a further relief. Whether the further relief claim has, in a particular case as a consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held is not maintainable, no relief of injunction can be granted even against the true owner of the property, only when the person seeking the relief is in law full possession and enjoyment and also legally entitled to be in possession, not to dispossess in except in due process of law, so admittedly in the instant case, the trial Court dismissed the entire suit of the plaintiff wherein the appellate Court has confirmed the dismissal of the declaration of the suit, but however granted a relief of injunction, which is contrary to the law laid down by the Hon'ble Apex Court in case referred supra."

12. This Court has, in the case of **Mr. Albert Rodrigues** (supra), relying upon the judgment of the Hon'ble Apex Court, in paragraph No.29, held as follows:

"29. The appellate Court on re-appreciating the evidence confirmed the judgment of the trial Court in dismissing the suit for relief of declaration but however,



granted a relief of permanent injunction restraining the defendants from interfering with the user of PPP road shown in the plaint sketch by the plaintiff. The main suit is for the relief of declaration and injunction is an consequential relief. When the appellate Court has dismissed the suit for relief of declaration, the plaintiff is not entitle for the consequential relief of injunction the said view is supported by the judgment of Hon'ble Apex Court in the case of Padhiyar Prahladi Chenaji stated supra. Wherein, the Hon'ble Apex Court held at paragraph No.11.1 which reads as under:

"11.1 An injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of injunction can be granted. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law." "

13. The Trial Court has dismissed the suit for declaration of title, but granted the relief of permanent injunction. The relief granted by the Trial Court is contrary to the proposition of law laid down by the Hon'ble



Apex Court in the case of ***Padhiyar Prahladji Chenaji*** (supra). Defendant Nos.1 to 4, aggrieved by the judgment and decree for permanent injunction, preferred an appeal before the First Appellate Court. The plaintiffs did not prefer any appeal or cross-objection against dismissal of the suit for declaration of title. The First Appellate Court, exercising power under Order XLI Rule 33, has dismissed the appeal filed by the defendants. While dismissing the appeal, the First Appellate Court has set aside the findings recorded by the Trial Court on issue Nos.9 and 10 (partly affirmative) and declared that the plaintiffs are the owners of the suit schedule property. Exercising power under Order XLI Rule 33, the First Appellate Court has decreed the suit of the plaintiffs for relief of declaration in the absence of cross-objection under Order XLI Rule 22 or a separate appeal by the plaintiffs. The Hon'ble Apex Court has, in the case of ***Prahlad and Others Vs. State of Maharashtra and Another***³, referring the judgment of

³ (2010) 10 SCC 458



the Hon'ble Apex Court in the case of **Banarsi Vs. Ramphal**⁴, held in paragraph No.20 as follows:

"20. In Banarsi v. Ram Phal [(2003) 9 SCC 606 : AIR 2003 SC 1989] this Court construing the provisions of Order 41 Rule 33 CPC held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject-matter of the appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. (See SCC p. 619, para 15 : AIR para 15 at p. 1997.) It has also been held by this Court in Samundra Devi v. Narendra Kaur [(2008) 9 SCC

⁴ AIR 2003 SC 1989



100 : (2008) 3 SCC (Cri) 690] SCC (para 21), that this power under Order 41 Rule 33 CPC cannot be exercised ignoring a legal interdict.”

14. Admittedly, in the instant case, the Trial Court has dismissed the suit for declaration of title and the plaintiffs have not preferred any appeal against the dismissal of the suit for declaration of title. The plaintiffs have given up their claim seeking relief of declaration of title. Power exercised by the First Appellate Court is in favour of plaintiffs who have given up their claim by not preferring an appeal under Section 96 of CPC or cross-objection under Order XLI Rule 22 of CPC. The First Appellate Court cannot exercise the power when such part of the decree which has been permitted to become final in respect of dismissal of suit for declaration of title. The First Appellate Court could not have decreed the suit for declaration of title, that too, in the appeal filed by the defendants. The judgment and decree passed by the First Appellate Court by exercising power under Order XLI Rule



33 of CPC is in contrary to the mandate laid down by the Hon'ble Apex Court in the case of **Prahlad** (supra).

15. Further, the Hon'ble Apex Court has, in the case of **Lakshmanan and Others Vs. G. Ayyasamy**⁵, in paragraph Nos.7 to 9, held as follows:

"7. The learned counsel for the appellants Mr K.K. Mani submits that the grant of such relief by the High Court in exercise of its second appellate jurisdiction is contrary to law laid down by this Court in Banarsi v. Ram Phal [Banarsi v. Ram Phal, (2003) 9 SCC 606] . Paras 6 and 7 read thus: (SCC p. 614)

"6. The appeals raise a short but interesting question of frequent recurrence as to the power of the appellant court to interfere with and reverse or modify the decree appealed against by the appellants in the absence of any cross-appeal or cross-objection by the respondent under Order 41 Rule 22 CPC and the scope of power conferred on the appellate court under Rule 33 of Order 41 CPC.

7. The first question is whether without cross-objection by the respondent, could the appellate court have set aside the decree passed by the trial court and instead granted straightaway a decree for specific performance of contract. This would require reference to the principles underlying right to file an appeal and right to prefer cross-objection or when does it become necessary to prefer cross-objection without which decree under appeal cannot be altered or varied to the advantage of the

⁵ (2016) 13 SCC 165



respondent and/or to the disadvantage of the appellant."

It has also been held by this Court in Samundra Devi v. Narendra Kaur [Samundra Devi v. Narendra Kaur, (2008) 9 SCC 100 : (2008) 3 SCC (Cri) 690] , SCC para 21, that this power under Order 41 Rule 33 CPC cannot be exercised ignoring a legal interdict.

"15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The abovesaid provisions confer power of the widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject-matter of the appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence.



The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate court exercising power under Rule 33 of Order 41.” (Ram Phal case [Banarsi v. Ram Phal, (2003) 9 SCC 606] , SCC p. 619, para 15)

(emphasis supplied)”

8. *In support of the same proposition of law, the learned counsel for the appellants placed reliance upon another judgment of this Court in Pralhad v. State of Maharashtra [Pralhad v. State of Maharashtra, (2010) 10 SCC 458 : (2010) 4 SCC (Civ) 212] , wherein this Court after interpretation of Order 41 Rule 33 CPC has clearly*



held that in the absence of an independent appeal or cross-objection being filed by the aggrieved party, the relief which was denied by the courts below cannot be granted in the second appeal filed by the appellant.

9. In view of the law laid down by this Court on the same question of law as has been raised in this case, we are of the considered view that the principles laid down in the abovesaid cases are squarely applicable to the fact situation, therefore, we have to set aside the judgment and decree passed by the first appellate court, particularly the direction to the appellant-defendants to remove the windows in the western wall of the defendants and for closure of that area occupied by those windows. It is also needless to make an observation that the respondent-plaintiff had not even questioned the setting aside of the judgment and decree of permanent injunction granted by the first appellate court against the appellant-defendants regarding ingress and egress to the suit property, etc. etc."

From the perusal of the above, it is clear that, in a case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief



cannot be granted in favour of the plaintiff by the Appellate Court exercising power under Rule 33 of Order XLI. Considering the proposition of law laid down by the Hon'ble Apex Court in the case of **Lakshmanan** (supra), the judgment and decree passed by the First Appellate Court is arbitrary and erroneous. The First Appellate Court, while dismissing the appeal, could not have passed the judgment in favour of the plaintiffs decreeing the suit for declaration of title.

16. Learned counsel for the plaintiffs has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Commissioner of Income Tax Vs. M/s Sun Engineering Works (P.) Ltd.**⁶. In the said case, the Hon'ble Apex Court has held that, a decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Supreme

⁶ AIR 1993 SC 43



Court and not to pick out words or sentences from the judgment divorced from the context of the questions under consideration by the Court, to support their reasonings. Admittedly, in the instant case, the suit for declaration of title was dismissed by the Trial Court and no appeal was preferred by the plaintiffs. There is no question of picking out words or sentences from the judgment passed by the Trial Court.

16.1. Learned counsel for the plaintiffs has also placed reliance on the following judgments:

- i. ***Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others*⁷,**
- ii. ***Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others*⁸,**
- iii. ***Mahant Dhangir and Another Vs. Shri. Madan Mohan and Others*⁹,**
- iv. ***Shri Ravinder Kumar Sharma Vs. The State of Assam and Others*¹⁰,**

⁷ 1965 (3) SCR 550

⁸ (1975) 1 SCC 212

⁹ AIR 1998 SC 54



- v. ***Vaibhav Jain Vs. Hindustan Motors Pvt. Ltd.¹¹***
- vi. ***Rangarao Ramarao Deshpande Vs. Channappa Basappa Lakamanahalli and Others¹²,***
- vii. ***Sri U. Vijaya Kumar and Another Vs. Smt. Malini V. Rao¹³.***

I have perused the aforesaid decisions. There is no dispute in regard to the propositions of law laid down in the aforesaid judgments. However, the said judgments are not applicable to the case on hand.

17. In view of the above discussion, I answer the substantial question of law in the negative. Accordingly, I proceed to pass the following:

ORDER

- i. The appeal is ***allowed***;

¹⁰ AIR 1999 SC 3571

¹¹ Civil Appeal No.10192/2024, disposed of on 03.09.2024

¹² AIR 1975 Kar 155

¹³ ILR 2016 Kar 2670



- ii. The judgment and decree dated 20.09.2013 passed by the First Appellate Court in RA No.25/2012 and the judgment and decree dated 29.12.2012 passed by the Trial Court in OS No.3/2007 are set aside;
- iii. Consequently, the suit of the plaintiffs is dismissed;
- iv. Pending IA(s) in this appeal, if any, shall stand disposed of.

Sd/-
(ASHOK S.KINAGI)
JUDGE

PA
List No.: 2 SI No.: 5