



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2354 OF 2017 (DEC/INJ)

BETWEEN:

K.S LAKSHMANAPPA
S/O JANAKAPPA SINCE DEAD BY HIS LRS

1. SUBADHRAMMA
W/O K S LAXMANAPPA
AGED ABOUT 77 YEARS
HOUSEHOLD AND AGRICULTURIST
R/O MAIN ROAD,
SORABA TOWN - 577 429
SHIVAMOGGA DISTRICT

2. NAGARATHNA
W/O S RAJAGOPAL
D/O LATE K S LAXMANAPPA
AGED ABOUT 63 YEARS
R/O 56-55, 6TH MAIN ROAD,
K H B COLONY, A D HALLI,
BASAVESHWARANAGARA
BENGALURU - 560 079

3. K L RAGHAVENDRA
S/O LATE K S LAKSHMANAPPA
AGED ABOUT 60 YEARS
R/O NO A-18/2 GEF BLOCK,

Digitally signed
by
SHARADAVANI
B
Location: High
Court of
Karnataka





INDUSTRIAL TOWN
BENGALURU - 560 010

4. K L RANGANATH
S/O LATE K S LAKSHMANAPPA
AGED ABOUT 58 YEARS
AGRICULTURIST
R/O MAIN ROAD,
SORABA TOWN - 577 429
SHIVAMOGGA DISTRICT

5. K L SRIDHARA
S/O LATE LAKSHMANAPPA
AGED ABOUT 55 YEARS
R/O NO 177, 69TH CROSS,
5TH BLOCK, RAJAJINAGARA
BENGALURU - 560 010

...APPELLANTS

(BY SRI. UMESH MOOLIMANI, ADVOCATE)

AND:

K RAGHAVENDRA
S/O SHESHAPPA
AGED ABOUT 66 YEARS
GOLDSMITH
R/O MAIN ROAD,
SORABA TOWN - 577 429
SHIVAMOGGA DISTRICT

...RESPONDENT

(BY SRI. R. GOPAL, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT AND DECREE DTD; 17.08.2017 PASSED IN
R.A.NO. 230/2012 ON THE FILE OF THE III ADDITIONAL



DISTRICT JUDGE, SHIVAMOGGA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD 16.10.2012 PASSED IN OS.NO.350/2007 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., SORAB.

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 Sri. Umesh Mulimani, learned counsel representing the counsel for the appellants and Sri. R. Gopal, learned counsel for the respondents.

2. Plaintiff is the appellant in the second appeal challenging the dismissal of the suit in O.S.No.350/2007, confirmed in R.A.No.230/2012.

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

3.1 A suit came to be filed with a prayer of declaration that the plaintiff is the owner and to restrain



the defendants from interfering with the following properties (hereinafter referred to as 'suit properties'):

ಶೆಡ್ಯೂಲ್

1. ದಾವಾ ಒಂದನೇ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತು: ಸೊರಬ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಕಾನುಕೊಪ್ಪ ಗ್ರಾಮದ ಸ.ನಂ.1/1 ರ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 10 ಎಕರೆ 24 ಗುಂಟೆ ಸ್ವತ್ತಿನ ಪೈಕಿ ಪೂರ್ವ ಭಾಗದಲ್ಲಿ ಬರುವ 08 ಎಕರೆ 05 ಗುಂಟೆ ಜಮೀನು. ಇದನ್ನು ದಾವಾದ ಕರಡು ನಕಾಶೆಯಲ್ಲಿ ತೋರಿಸಿದ ABCDEFGH ಪ್ರದೇಶ ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಕೊಡಕಣಿ ಗ್ರಾಮದ ಸ.ನಂ.50 ರ ಜಮೀನು.

ಪಶ್ಚಿಮಕ್ಕೆ: ಹರಗಿ ಹನುಮಂತಪ್ಪ ಹಾಗೂ ನಾರಾಯಣಪ್ಪ ಇವರ ಜಮೀನು.

ಉತ್ತರಕ್ಕೆ: ಕೊಡಕಣಿ ಗ್ರಾಮದ ಜಮೀನು.

ದಕ್ಷಿಣಕ್ಕೆ : ಸೊರಬ- ಶಿರಾಳಕೊಪ್ಪ ರಸ್ತೆ ಮತ್ತು ಸ ನಂ.1 ಪಿರ ಸ್ವತ್ತು.

2. ದಾವಾ ಎರಡನೇ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತು ಸೊರಬ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ ಕಾನುಕೊಪ್ಪ ಗ್ರಾಮದ ಸ.ನಂ.1/1 ರ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 10 ಎಕರೆ 24 ಗುಂಟೆ ಸ್ವತ್ತಿನ ಪೈಕಿ ಪಶ್ಚಿಮ ಭಾಗದಲ್ಲಿ ಬರುವ 02 ಎಕರೆ 19 ಗುಂಟೆ ಜಮೀನು. ಇದನ್ನು ದಾವಾದ ಕರಡು ನಕಾಶೆಯಲ್ಲಿ ತೋರಿಸಿದ PQRST ಪ್ರದೇಶ ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಹರಗಿ ಹನುಮಂತಪ್ಪ ಮತ್ತು ನಾರಾಯಣಪ್ಪ ಇವರ ಜಮೀನು.

ಪಶ್ಚಿಮಕ್ಕೆ : ಪ್ರತಿವಾದಿಯ ತಂದೆ ಶೇಷಪ್ಪ ಇವರಿಗೆ ಸೇರಿದ ಜಮೀನು.

ಉತ್ತರಕ್ಕೆ : ಕೊಡಕಣಿ ಗ್ರಾಮದ ಜಮೀನು.

ದಕ್ಷಿಣಕ್ಕೆ : ಸೊರಬ - ಶಿರಾಳಕೊಪ್ಪ ರಸ್ತೆ.

3.2 Plaintiff claim that plaintiff is the owner of the suit properties and the same has fallen to his share at a partition and he is in possession and enjoyment of the suit



properties and defendant being the brother, is interfering with the second item of the suit property and therefore sought for declaration and injunction.

3.3 Pursuant to the suit summons, defendant entered appearance and specifically contended that the lands of Kanukoppa Village in Soraba Taluk was measuring in all 34 acres 33 guntas and one Janakappa and his children namely Mariyappa, Sheshappa and Narayanappa were the children of Jankappa.

3.4 It is specifically contented by the defendant on 22.03.1953 there was a registered partition whereby on the Eastern side, 2 acres 33 guntas was allotted to Janakappa and father of the defendant namely Sheshappa got 10-00 acres of the land in the Western portion. Other sharers did not get any land in Sy.No.1.

3.5 It is also contented by defendant that after death of Janakappa, on 26.04.1969 in respect of the properties left behind by Janakappa, there was a partition



again. At that juncture, Maryiappa alias Kokkappa got 5 acres 24 guntas of the land on the Eastern side and father of the defendants Sheshappa got 2-00 acres of the land on the Western side by the side of the land of Malamma and Jayalakshmi. Likewise on the Northern side, plaintiff got 8 acres 05 guntas of land towards the Eastern side.

3.6 Before the said partition on 24.06.1969, Janakappa had given the land of 2 acres 31 guntas to his fifth son namely Ramaswamy Shetty, which he had sold to his wife Jayalakshmi.

3.7 Further, Janakappa had gifted 2-00 acres of wet land and 1-00 acre of dry land to his daughter Malamma in Sy.No.1. The land that was allotted to the father of the defendant Sheshappa was thus adjacent to the land that was gifted in favour of Malamma. Therefore the claim of the plaintiff that she is the owner in possession of suit Item No.2 is to be rejected and suit is to be dismissed.



3.8 Learned Trial Judge based on the rival pleadings, raised necessary issues and after recording the evidence recorded a specific finding that as per the recitals in Exhibit P73 which is a registered partition deed dated 26.04.1969, at an undisputed point of time, has been executed and rights of the parties have been settled and dismissed the suit of the plaintiffs in *toto*.

3.9 Being aggrieved by the dismissal of the suit only in respect of Item No.2 of the suit property, plaintiff filed an appeal before the Appellate Court in RA No.230/2012.

3.10 Learned Judge in the First Appellate Court after securing the records, heard the parties in detail and on re-appreciation of the material on record, noted that the plaintiff has failed to establish the identification of the suit Item No.2 as per the boundaries furnished by the plaintiff in the plaint, dismissed the appeal of the plaintiff *inter alia* holding in paragraphs No.24 to 26 as under:



24. In fact, at the time of trial, it was elicited that, initially, the plaintiff was cultivating 3 acres 20 guntas of land of Mariyappa under tenancy. The plaintiff had applied for the tenancy rights over entire 3A 20 Guntas of land which were in his cultivation. Thereafter, the plaintiff and Mariyappa had entered into an agreement on the intervention of elders of the village as per Ex.P-63 dated 07.07.1982. As per said agreement, they have settled the dispute and the plaintiff has agreed to relieve 1 acre 1 gunta of property to Mariyappa and accordingly the plaintiff has given a statement before the Land Tribunal which was marked as Ex.P-66. In Ex.P-63, it is stated that, the property allotted to the share of Mariyappa was totally measuring to an extent of 5 acres 25 guntas, out of that, the plaintiff had filed an application before the Land Tribunal for tenancy right in respect of the property measuring 3 acres 20 guntas, which was under his cultivation. On the eastern side of that property, the property belongs to Mariyappa i.e., the land measuring 3 acres 4 guntas is exist. Therefore, as per the contents of Ex.P-63 it is clear that, on the eastern side of the land granted in favour of plaintiff there is a property belongs to Mariyappa. There is no any document available on record to find out the exact boundaries of the land granted to the plaintiff in Sy.no.1 by the Land Tribunal.

25. When there is a serious dispute in respect of the identification of the suit schedule property, the relief of



declaration cannot be granted. When the suit of the plaintiff based on title, the property must and specifically has to be described and identified. Admittedly the property described as Item No.2 is the part and parcel of property which was came to the share of Mariyappa as per Ex.P-73 Registered Partition Deed. There is no any reference in Ex.P-73 that the properties allotted to the share of Mariyappa were situated in different places or spread over on different parts in sy.No.1. Therefore, in the absence of such any evidence on record, it has to be inferred that, it was a single plot allotted to the share of Mariyappa. Therefore, it has to be understood that, for the land allotted by the Land tribunal to the plaintiff, i.e for item no.2, one side of the boundary must be the property belongs to Mariyappa.

26. The appellant counsel has vehemently argued that, the defendant has admitted that he is in possession of 2 acres of excess land in Sy.no.1/1, therefore, it has to be inferred that the same land was granted in favour of the plaintiff by Land Tribunal. I do not find any substance in the argument canvassed by the learned counsel for the appellant. It is the duty of the plaintiff to prove his case in order to seek any relief, he can not stand on the weakness of the defendant to seek any relief. It is settled principle of law that, even on admission, title cannot be granted. The Hon'ble High Court of Karnataka in the case of Nagendra Babu Vs. Manohara in KCCR KAR 884 has held that:



" Unless the Court is satisfied with regard to the material details in the light of material evidence with regard to the identification of the property, no declaration and injunction can be granted."

The learned trial Judge has rightly observed that, though the plaintiff has succeeded to prove his title in respect of item no.1 of the suit schedule property, the plaintiff has failed to prove the identification of item no.2 and boundaries of the suit schedule property in order to succeed in the suit. I do not find any perversity or illegality in the impugned judgment and decree.

4. Being further aggrieved by the same, plaintiff has approached this Court in the second appeal.

5. Sri. Umesh Mulimani, learned counsel representing the appellants, who are the legal representatives of the original plaintiff, reiterating the grounds urged in the appeal memorandum would contend that there is no dispute as to the relationship among the parties and there is also no dispute with regard to the Item No.1 of the suit property.



6. But the learned trial Judge and learned Judge in the First Appellate Court have grossly misunderstood the scope and ambit of the suit inasmuch as plaintiff had sought for declaration that he is the owner of the suit property including Item No.2. Thus, dismissal of the suit has resulted in miscarriage of justice and sought for admitting the appeal on the following substantial questions of law:

- i. Whether on facts and in the circumstances of the case, the courts below are justified in dismissing the entire suit of the plaintiff notwithstanding plaintiff recording finding established his title and possession over item No. 1 of suit schedule property? that the has*
- ii. Whether the finding recorded by the courts below that the plaintiff has failed to prove the title, identity and possession over item No.2 of suit schedule property regard being had to ocular evidence produced by the plaintiff?*
- iii. Whether the below courts are justified in brushing aside the report and sketch submitted by the court commissioner who has been examined as CW1 without assigning any reasons whatsoever?*



- iv. Whether the courts below are justified in discarding the finding recorded by the court in [R.A.No. 90/1999](#) holding that the defendant in the present suit did not prove his possession over the suit schedule property in the earlier suit?*
- v. Whether the impugned judgment and decree passed by the lower appellate court is in conformity with Order XLI Rule 31 of Code of Civil Procedure in as much as it has failed to re-appreciate the entire materials on record which is sine-qua-non to decide the appeals filed under Section 96 of Code of Civil Procedure as held by the Hon'ble Apex Court reported in 2015 (2) KCCR page 1105, 2017 (6) Supreme 19 and 2016(4) KCCR page 2997.*

7. Per contra, Sri. R. Gopal, learned counsel for the respondents supports the impugned judgment.

8. He would further contend that the learned trial Judge as well as learned Judge in the First Appellate Court have rightly taken into consideration probative value of Exhibit P73 which is a registered partition between the father of the plaintiff and the father of the defendant on



26.04.1969. Therefore, second appeal needs to be dismissed as no substantial question of law is involved in the present appeal to be adjudicated.

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, it is pertinent to note that Janakappa was the owner of the properties and there was a partition during the lifetime of Janakappa himself.

11. However, after the death of Janakappa, one more partition took place on 26.04.1969, which is a registered document. The recitals therein including the boundaries in respect of item No.2 of the suit properties would clearly go to show that the description of the suit Item No.2 by the plaintiff is incorrect.

12. In fact, in Exhibit P73, there is a specific recital as to what the plaintiff has got under the said partition taking note of the fact that Janakappa during his lifetime



had allotted the Item No.5 therein in favour of Ramaswamy Shetty who in turn sold the same to his wife Jayalakshmi.

13. Janakappa had also gifted 2-00 acres of wetland and 1-00 acre of dry land to his daughter namely Malamma. Records clearly establish including the recital in Exhibit P73 that the property that has been allotted to the father of the defendant, namely Sheshappa would tally with the location of the land as per Exhibit P73.

14. Thus, the finding recorded by the Trial Judge is that the plaintiff failed to make out the description with the necessary boundaries to Item No.2 and dismissing the suit is just and proper.

15. In fact, learned Judge in the First Appellate Court while re-appreciating the factual aspects and the reasons assigned by the learned trial Judge for dismissing the suit has not only agreed with the reasoning recorded by the learned trial Judge, but also supplemented



additional reasons while raising the point that the plaintiff would make up the identity of the suit Item No.2 with the description as in the plaint and has recorded a categorical finding, the plaintiff has failed to establish the description of the suit Item No.2 and therefore rightly dismissed the appeal.

16. Since both the Courts have recorded categorical findings on the factual aspects of the matter, this Court does not find any merit in the aforesaid substantial questions of law to be adjudicated in the appeal.

17. Accordingly following Order:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed.***

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

SNC
List No.: 2 Sl No.: 49