



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.965 OF 2017 (RES)

BETWEEN:

SMT. BEGUM RESHMA BANU
W/O NAYAZ SHERRIF
AGED ABOUT 34 YEARS
R/AT NO.237, 13TH CROSS,
KEB COLONY, UDAYAGIRI
MYSURU-570 019

...APPELLANT

(BY SRI. NAGARAJA S, ADVOCATE)

AND:

SRI MOHAMMED DASTAGEER
S/O LATE AMEER JAAN
AGED ABOUT 58 YEARS
R/AT NO.116, NEW NO.128
KESARE 3RD STAGE, NARASIMHARAJA,
MOHALLA, MYSURU - 570 019

...RESPONDENT

(BY MS.RANJINI.T FOR SRI M.RAVINSON, ADVOCATES)

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Location:
HIGH
COURT OF
KARNATAKA

THIS RSA IS FILED UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE AGAINST THE JUDGMENT AND DECREE DATED 17.12.2016 PASSED IN RA NO.96/2016 ON THE FILE OF THE II ADDITIONAL DISTRICT JUDGE, MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 17.03.2015 PASSED IN O.S.NO.1603/2012 ON THE FILE OF THE V ADDITIONAL I CIVIL JUDGE & JMFC, MYSURU.



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 S.Nagaraja, learned counsel for the appellant
and Ms.T.Ranjini, Advocate for Sri M.Ravinson, learned counsel
for the respondent.

2. Parties are referred to as plaintiff and defendant as per
their original ranking before the Trial Court, for the sake of
convenience.

3. Unsuccessful plaintiff is the appellant in this Second
Appeal.

4. Facts of the case are as under:

4.1 A suit for possession came to be filed in O.S
No.1603/2012 on the file of V Additional I Civil Judge and
JMFC, Mysuru, in respect of the following immovable property:

*"All that piece and parcel of residential house bearing
Municipal Door No.116, New No.128, totally
measuring about 25 x 36 feet consolidating to 900
feet situated at Momin Nagar, 3rd Stage, Kesare,
N.R.Mohalla, Mysuru, and bounded on:*



East by : Plaintiff's property,
West by : Road,
North by : Road,
South by : Plaintiff's property,"

4.2 Plaintiff claimed that she is the donee having had the registered gift deed from her husband Sri Nayaz Sharif. Therefore, she is the absolute owner of the suit property and defendant is in illegal possession of the suit property.

5. Suit was resisted by the defendant contending that the husband of the plaintiff did not possess any right to execute the gift deed in favour of the plaintiff, and defendant is in occupation of the suit property based on independent title.

6. Learned Trial Judge based on the rival contentions of the parties raised the following issues:

- i. *Whether the plaintiff proves that the husband of the plaintiff became the owner of the schedule property by virtue of Will executed by his father, Anwar Sharif?*
- ii. *Whether the plaintiff proves that her husband Nayaz Sharif executed the Hiba in favour of the plaintiff on 22.11.2011 and thereby the plaintiff became the owner of the schedule property?*



- iii. *Whether the plaintiff proves that defendant is in unauthorized possession of the schedule property?*
- iv. *Whether the defendant proves that the suit is not properly valued for the purpose of court fee and jurisdiction and this Court has no pecuniary jurisdiction to try this suit?*
- v. *What order of decree?*

7. In order to prove her case, plaintiff got examined herself as PW-1 and placed on record an unregistered sale deed based on which gift deed came to be marked, as Exhibit P-1, registered gift deed as Exhibit P-2, encumbrance certificate, SAS, consent letter issued by Islam Board, Police NCR and acknowledgment as Exhibits P-3 to P-10.

8. As against the material evidence placed on record on behalf of the plaintiff, one Mudaseer Ahmed was examined as D.W.1 and Bibi Jan, was examined as D.W.2 who executed the registered gift deed in favour of the defendant.

9. On behalf of the defendant, general power of attorney, registered gift deed, voters' ID, electricity bills, SAS



declarations, Tax paid receipts, sale deed dated 15.03.1985 were exhibited and marked as Exhibits D-1 to D-10.

10. Learned Trial Judge on conclusion of the recording of evidence, heard the arguments of the parties in detail and on cumulative consideration of the oral and documentary evidence on record held that plaintiff failed to prove that she is the owner of the suit property by virtue of the Will executed by Anwar Shareef in favour of her husband and therefore, dismissed the suit of the plaintiff.

11. Being aggrieved by the same, plaintiff filed an appeal in R.A No.96/2016 on the file of the II Additional District Judge, Mysuru.

12. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-application of the material on record, dismissed the appeal of the plaintiff by a considered judgment dated 17.12.2016, *inter alia* holding in paragraph 12 as under:

12. The nature of the suit is for recovery of possession which implies that the defendant was not the licensee, but was having possession of the suit property.



*Considering the long standing possession of suit property by the defendant it is difficult conceive that he is mere licensee. At this juncture, the plaintiff cannot contend that the defendant was mere licensee. As rightly submitted by the learned counsel for the respondent under Ex.D1, the testator who happens to be the father-in-law of the plaintiff did not have any valid title. Hence, he could not have conveyed any better title by Will to his son. Hence, even the husband of the plaintiff could not gift the suit property in favour of his wife who is the plaintiff herein. Possession is prima facie title to the property. Even the parent document of the defendant is not worth conferring valid title upon him for the very reason that it is not registered. The maxim *In pari delicto potior est conditio possidentis*, meaning that in equal fault the condition of possessor is more favourable, governs the case. The defendant being in possession has better title against entire world except against true owner. He can be evicted only by person having better title to defendant. In this case, the plaintiff has failed to show that she has better title to the suit property than that of the defendant. Defendants induction into possession of suit property at the instance of plaintiffs father in law also doesn't find support from materials on record. Hence, in my opinion the plaintiff was not entitled to the possession of suit property. The lower Court rightly appreciating those facts and proposition of law has rightly dismissed the suit of the plaintiff. Concurring with the reasonings rendered by the lower Court and*



answering the aforesaid point in negative, I proceed to pass the following:

: ORDER :

- ♦ *The appeal is dismissed with costs.*
- ♦ *The impugned judgment and decree of the lower Court is hereby confirmed.*
- ♦ *Draw decree accordingly.*
- ♦ *Send the LCR to the trial Court along with copy of this judgment immediately."*

13. Being further aggrieved by the same, plaintiff has preferred the present Second Appeal on following grounds.

- *It is submitted that the Judgment and Decree passed by the courts below are against to the facts and circumstances and the evidence available on record. Hence the Judgment and Decree passed by the courts below are not sustainable in law and they are liable to be set-aside.*
- *It is submitted that the Courts below failed to consider the material evidence available on record in the proper perspective.*
- *It is submitted that the Courts below failed to consider the Ex-P1 registered sale deed which is standing in the name of the father-in-law of the plaintiff from whom the husband of the plaintiff succeeded & in turn the gift deed has been executed as per Ex-P2 in favour of the plaintiff*



- *It is submitted that the Courts below failed to consider the title of the plaintiff in respect of the suit schedule property wherein the plaintiff has acquired the title through Ex-P2.*
- *It is submitted that the Courts below erred in dismissing the suit and coming to the conclusion that the Ex-P2 is not valid without considering and appreciating Ex-P2 in the proper perspective.*
- *It is submitted that the Courts below erred in coming to the conclusion that the Ex-P2 has been disproved without considering and appreciating the material evidence available on record.*
- *It is submitted that the Courts below have come to the conclusion that the Ex-P2 cannot be considered without appreciating the law relating to it.*
- *It is submitted that the Courts below erred in relying upon Ex-D10 which is unregistered sale deed and has come to the conclusion that the defendant has acquired the title in respect of the suit schedule property through Ex-D10 the document which is not sustainable in law.*
- *It is submitted that the Courts below erred in relying upon Ex- D2 gift deed which was executed during the pendency of the suit.*
- *It is submitted that the Courts below erred in relying upon the tax paid receipts, which does not disclose the same pertaining to the suit schedule property.*



- *It is submitted that the Trial Court has erred in coming to the conclusion that the suit is barred by limitation in the absence of pleadings and without framing any issue regarding the limitation.*
- *It is submitted that the First Appellate Court has erred in coming to the conclusion that the possession is prima facie title to the property without considering and appreciating the evidence available on record.*
- *It is submitted that the First Appellate Court has erred in coming to the conclusion that the defendant being in possession has better title even though Ex-D10 sale deed has not been relied upon by the First Appellate Court.*
- *It is submitted that the First Appellate Court has erred in dismissing the appeal without even considering and appreciating the evidence available on record. The judgment and decree passed by the First Appellate Court is not the speaking order."*

14. Sri Nagaraj, learned counsel for the appellant/plaintiff, reiterating the grounds urged in the appeal memorandum would contend that propounded title of the defendant is subsequent to the filing of the suit. Therefore, suit document



ought not to have been relied on by both the Courts while dismissing the suit of the plaintiff.

15. He would further contend that unregistered Will or sale deed can be relied upon in respect of the transaction among mohammadans. Therefore, husband of the plaintiff had every right to execute the gift deed in favour of the plaintiff which is a registered document.

16. Therefore, the finding recorded by the learned Trial Judge that the plaintiff is not the owner of the suit property cannot be countenanced in law, as title that has been propounded before the Trial Court is the registered gift deed.

17. Sri Nagaraja, would also contend that learned Judge in the First Appellate Court being the Court of First Appeal, was required to re-assess the material on record both on facts and on law. The cryptic order passed by the First Appellate Court in the impugned judgment would go to show that the First Appellate Court had pre-determined to dismiss the appeal and thus sought for admitting the appeal on following substantial questions of law.



"(a) Whether the judgment and decree passed by the Courts below are justified without considering the material evidence which establishes the title of the plaintiff as per Ex-P1 & Ex-P2?

(b) Whether the judgment and decree passed by the Courts below are justified in coming to the conclusion that the Ex-P2 is not valid and the same has been disproved without considering the same in accordance with law?

(c) Whether the judgment and decree passed by the Courts below are justified in dismissing the suit relying upon Ex-P10 which is unregistered sale deed?

(d) Whether the judgment and decree passed by the Courts below are justified in coming to the conclusion that the suit is barred by Limitation in the absence of pleadings and the issue regarding the question of Limitation?

(e) Whether the judgment and decree passed by the Courts below are justified in holding that the defendant being in possession has better title without considering and appreciating the material evidence available on record?"



18. *Per contra*, Ms.T.Ranjini, learned counsel for the respondent/ defendant while opposing the appeal grounds would submit that both the Courts have rightly appreciated the material on record and rightly dismissed the suit of the plaintiff and sought for dismissal of the appeal.

19. She would further contend that when husband of the plaintiff did not derive any right, title or interest under Exhibit P-1, executing a gift deed by the husband of the plaintiff in favour of the plaintiff through registered gift deed did not transfer any right, title or interest in respect of the suit property. Therefore, the finding recorded by the learned Trial Judge that plaintiff has failed to prove the ownership rights over the suit property is just and proper.

20. Consequently, dismissal of the suit needs to be upheld by dismissing the present appeal.

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

22. On such perusal of the material on record, it is found from the records itself that the husband of the plaintiff



conveyed the suit property through a registered gift deed to the plaintiff based on an unregistered sale deed.

23. Oral Hiba alone is permitted under the provisions of Mohammedan law and not any other instrument.

24. Thus, contentions urged on behalf of the appellant that based on unregistered sale deed, husband of the plaintiff derived right to convey the suit property in favour of the plaintiff through a registered gift deed has been rightly negated by the learned Trial Judge which has been rightly re-appreciated by the learned Judge in the First Appellate Court.

25. When suit itself is one for possession based on the premise that the plaintiff is absolute owner of the suit property and when the plaintiff failed to make out ownership over the suit property, dismissal of the suit by both the Courts is just and proper which requires no further consideration in this appeal.

26. Accordingly, there is no merit in the substantial questions of law raised in the appeal memorandum referred to supra.



27. Hence, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 74