



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1694 OF 2014 (INJ)

BETWEEN:

RENUKAMMA
AGED ABOUT 51 YEAR,S
W/O KALLAPPA
III DIVISION, CN HALLI
TUMAKURU DISTRICT – 572214

...APPELLANT

(BY SRI. VINAYA KEERTHY M., ADVOCATE)

AND:

Digitally
signed by
KIRAN
KUMAR
Location:
HIGH COURT
OF
KARNATAKA

1. LAKSHMIDEVAMMA
AGED ABOUT 51 YEAR,S
W/O SIDDARAMAIAH
2. MEENAKSHI
AGED ABOUT 33 YEARS,
D/O SIDDARAMAIAH
W/O SHAMBULINGAIAH
3. BHAVYA
AGED ABOUT 30 YEARS,
D/O SIDDARAMAIAH
W/O MALLIKARJUNAIAH
4. DIVYA
AGED BAOUT 26 YEARS,



D/O SIDDARAMAIAH
W/O UMESH

5. RADHA
AGED ABOUT 24 YEARS,
D/O SIDDARAMAIAH
W/O PARAMESHWARAIAH

6. CHANDRAKALA
AGED ABOUT 22 YEARS,
D/O SIDDARAMAIAH

ALL ARE RESIDENTS OF
HALE SENDI ANGADI ROAD,
LINGANAYAKANAHATTI
CN HALLI TOWN
TUMAKURU DISTRICT – 572 214

...RESPONDENTS

(BY SRI. S. RAJU, ADVOCATE FOR R2 TO R6
V/O DATED 23.08.2025 APPEAL AGAINST R1 IS DISMISSED AS
ABATED)

THIS RSA IS FILED UNDER SEC.100 R/W ORDER XLII OF
CPC., AGAINST THE JUDGMENT AND DECREE DATED 19.9.2014
PASSED IN R.A.NO.17/2012 ON THE FILE OF THE SENIOR
CIVIL JUDGE, ITINERATE COURT, C.N.HALLI, ALLOWING THE
APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 03.01.2012 PASSED IN O.S. No.50 OF 2000 ON THE
FILE OF THE CIVIL JUDGE JMFC., CHIKKANAYAKANAHALLI.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



ORAL JUDGMENT

1. This regular second appeal is filed by the defendant challenging the judgment and decree dated 19.09.2014 passed in R.A. No.17 of 2012 by the learned Senior Civil Judge, Itenerate Court at Chikkanayakanahalli.
2. For the sake of convenience, the parties are referred to based on their ranking before the Trial Court, the appellant was the defendant and the respondents were the plaintiffs.
3. Brief facts leading rise to the filing this appeal are as follows:
4. The plaintiffs have filed a suit for perpetual injunction. It is the case of the plaintiffs that the suit schedule property is 4 feet vacant space in the northern side of the suit schedule property, which was left out by the plaintiffs' previous owner for storage of firewood and for cleaning the vessels and



also for construction of a water tank. After purchase of the said property by Siddaramaiah (*husband and father of the plaintiffs*), they have constructed a bathroom in the said 4 feet vacant space in the northern side of the suit schedule property. It was further contended that the defendant, even though did not have any manner of right, title or interest whatsoever over the vacant space, tried to demolish the bathroom constructed in the said area. Hence, a cause of action arose for the plaintiffs to file a suit for perpetual injunction.

5. The defendant filed a written statement denying the averments made in the plaint and contended that the 4 feet space was for conservancy/*oni* which existed for a long time, even prior to the construction of the house of the defendant and the plaintiffs. The title deeds of the defendant's and plaintiff's properties clearly indicate the existence of the said conservancy/*oni*. The deeds referred to by the



plaintiffs also reflected the existence of the said conservancy/oni.

6. Based on the same, the defendant filed a counter-claim seeking for removal of the bathroom constructed in the said vacant space during the pendency of the suit and the said extent was described as a written statement schedule property.
7. The plaintiffs did not file a written statement to the counter-claim made by the defendant.
8. The Trial Court, based on the pleadings of the parties, framed the following issues and additional issues:
 - (i) Whether the plaintiff proves that he is in lawful possession and enjoyment of the 4 feet vacant space towards north to south, situated in the northern side of the suit schedule property?
 - (ii) Whether the plaintiff further proves the interference by the defendant to



the said 4 feet vacant space as
alleged in para -5 of the plaint?

(iii) Whether the plaintiff is entitled for
the relief of Permanent Injunction?

(iv) What Order or Decree?

Additional Issue:

Whether the defendant is entitled
for the counter claim as sought for?

9. To substantiate their case, the plaintiffs examined through General Power of Attorney holder as PW1, examined one witness as PW2 and marked 11 documents as Exhibits P1 to P11.
10. The defendant examined herself as DW1, examined two witnesses as DW2 and DW3 and marked seven documents as Exhibits D1 to D7.
11. The Trial Court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered issue Nos.1 to 3 in



the in the negative and additional issue No.1 in the affirmative and issue No.4 as per the final order.

12. The suit of the plaintiffs was dismissed and the counter-claim of the defendant was allowed and the plaintiffs were directed to remove the bathroom put up on "A-B-C-D" portion of the Oni, as shown in the written statement schedule property.
13. The plaintiffs, aggrieved by the judgment and decree passed in O.S. No.50 of 2000, preferred an appeal in R.A. No.17 of 2012.
14. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:
 - (i) Whether the trial Court judgment is not based on evidence, facts and law?
 - (ii) Whether the appellant prove that the judgment and decree passed by the trial Court is capricious?



15. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 to 3 in the affirmative and point No.4 as per the final order; the appeal came to be allowed and the judgment and decree dated 03.01.2012 passed in O.S. No.50 of 2000 was set aside and consequently, the suit of the plaintiffs was decreed and a decree for permanent injunction was granted restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property and the counter-claim filed by the defendant was dismissed.
16. The defendant aggrieved by the judgment and decree dated 19.09.2014 passed in R.A. No.17 of 2012, filed this regular second appeal.
17. Heard the arguments of the learned counsel for the defendant and learned counsel for the plaintiff.



18. Learned counsel for the defendant submits that the First Appellate Court committed an error in passing the impugned judgment. He submits that the plaintiffs had challenged the decree passed by the Trial Court in respect of only dismissal of their suit and the plaintiffs did not challenge the decree passed on the counter-claim. Hence, he submits that a single appeal filed by the plaintiffs is not maintainable. He submits that the plaintiffs did not challenge the allowing of a counter-plaint. Hence, it operates as *res judicata*. Hence, on these grounds, he prays to allow the appeal.
19. *Per contra*, learned counsel for the plaintiffs supported the impugned judgment and submitted that the defendant has admitted the possession and title deeds of the plaintiffs. The First Appellate Court has rightly decreed the suit and dismissed the counter-claim. Hence, on these grounds, he prays to dismiss the appeal.



20. This Court vide Order dated 02.06.2026, admitted the appeal to consider the following substantial questions of law:

“Whether the First Appellate Court is justified in reversing the judgment and decree passed by the Trial Court based on the weakness of the defendant without considering the well established principles of law that the plaintiff must establish his case independently and cannot depend upon the weakness of the defendant?”

Reg. Substantial question of law:

21. The plaintiffs, in order to prove their case, have examined the General Power of Attorney holder as PW1 who has deposed that the plaintiffs are the owners of the suit schedule property and there is a 4 feet space in between the properties of the plaintiffs and the defendant, and the plaintiffs have spent a huge amount and have put up a bathroom. The defendant is making a hectic attempt to demolish it.



22. It is contended that the defendant has no right, title or interest over this 4 feet space enjoyed by the plaintiffs, and the plaintiffs had purchased the property bearing No.239 under a registered sale deed dated 23.11.1982. The defendant had purchased the property under a registered sale deed dated 29.12.1997, which is situated towards the north of the property of the plaintiffs. Towards north of the suit schedule property, the plaintiff's previous owner had left 4 feet vacant space and he constructed a wall on the outer border and using it for the purpose of cleaning vessels and to store firewood and has constructed water tank.
23. The plaintiffs, in order to prove their case, produced a document as Exhibit P1, which is the general power of attorney. It discloses that the plaintiffs have executed a general power of attorney in favour of PW1 to depose on behalf of the plaintiffs in O.S. No.50 of 2000. Exhibits P2 and P3 are the registered



sale deeds. Exhibits P4 and P5 are the Nil Encumbrance Certificates. Exhibits P6 and P7 are the letters issued by the Municipality.

24. The plaintiffs also examined one Lakshmana as PW2. He has reiterated the averments made in the examination-in-chief of PW1.
25. In rebuttal, PW1 during his cross-examination has admitted that there is a conservancy/*oni* in between the plaintiffs' and defendant's properties and a bathroom is constructed by the plaintiffs in the said *oni*.
26. The defendant examined herself as DW1 and deposed that there is an *oni* existing between the properties of plaintiffs and defendant, and the plaintiffs have no right to construct a bathroom in the said *oni*, as such the *oni* constructed by the plaintiffs is illegal. The *oni* existing between the



plaintiffs and defendant's property is in existence since time immemorial.

27. The defendant, in order to prove her defence, examined two witnesses as DW2 and DW3 and they have deposed about the existence of *oni* in between the properties of the plaintiffs and the defendant. The defendant has produced the registered sale deeds marked as Exhibits D1 and D2. The defendant produced the photographs marked as Exhibits D5 to D7 to show that the plaintiffs have constructed a bathroom in the 4 feet space by encroaching upon it.
28. From the perusal of the entire records, it clearly discloses that there exists a *oni* between the properties of the plaintiffs and defendant and the said *oni* is left for the use and enjoyment by the plaintiffs and defendant. The defendant has no right to make a construction over 4 feet space.



29. The defendant has sought for a counter-claim alleging that the plaintiffs have constructed a bathroom illegally by encroaching in the space meant for *oni*. The plaintiffs have failed to prove that they are in lawful possession and enjoyment of 4 feet vacant space towards north to south, situated in the northern side of the suit schedule property.
30. The Trial Court considering the material on record dismissed the suit filed by the plaintiffs and decreed the counter-claim made by the defendant.
31. The plaintiffs aggrieved by the dismissal of the suit in O.S. No.50 of 2000, preferred an appeal in R.A. No.17 of 2012.
32. Admittedly, the plaintiffs have filed a single appeal challenging the dismissal of suit and also the decree of counter-claim. The First Appellate Court placing reliance on an alleged admission of defendant has reversed the judgment and decree passed by the



Trial Court and consequently, decreed the suit of the plaintiffs and dismissed the counter-claim.

33. The First Appellate Court without considering that the Trial Court has dismissed the suit and decreed the counter-claim made by the defendant, without examining whether a single appeal is maintainable against the dismissal of the suit and the decree of counter-claim.
34. In order to consider the case on hand, it is necessary to examine Section 96 of the Code of Civil Procedure, 1908, ("CPC" for short) and whether an appeal lies from every decree passed by the Court exercising the original jurisdiction.
35. By virtue of Order VIII Rule 6A(2) of CPC, a decree passed on a counter-claim is also included within the expression of "decree", as a counter claim is a mandate to have the same effect as a cross suit and to be governed by the same Rules applicable to the



suits. Consequently, the decree on the plaint and decree on the counter-claim, though distinct in origin, however they together constitute a composite decree arising out of a common judgment. The decree passed on the counter-claim was not challenged by the plaintiffs and was therefore held to have attained a finality and to operate as *res judicata*.

36. In contrast, in the present case, the plaintiffs by preferring a single first appeal, have challenged both the decree passed on the plaint and the decree passed on the counter-claim, after paying the requisite court fee, and the First Appellate Court adjudicated the entire matter on its merits and reversed the judgment and decree passed in both the decrees.

37. A single appeal against the dismissal of suit and the decree of counter-claim is not maintainable and if the



counter-claim is not challenged, then its finding would become final and would operate as a *res judicata*.

38. The Division Bench of High Court of Himachal Pradesh in the case of ***Shri Ramesh Chand vs. Om Raj and others***, in R.S.A. No.57 of 2017 disposed of on 17.05.2022, at paragraph 42 has held as under:

"42. The principles deducible from the afore-discussed law can be summarized as follows:

- (i) When two suits are consolidated and tried together with common issues framed and common evidence led by the parties, resulting in a common judgment and decree, the same can be subjected to challenge by way of a single appeal at the instance of the aggrieved party;
- (ii) Where a single appeal is filed questioning the judgment and decree passed in two suits, which were consolidated and decided by a common judgment, decision of such single appeal, by a common judgment, reversing or modifying the claim in one suit out of the two, can be challenged by the aggrieved party also, in a single appeal.



- (iii) When two suits though not consolidated but are decided by a common judgment, resulting into preparation of two separate decrees, the aggrieved party would be required to challenge both of them by filing separate appeals;
- (iv) When both the suit and the counter claim are decreed by a common judgment, regardless of whether separate decree has been prepared in the counter claim, both would be required to be challenged by separate appeals;
- (v) In a case where two separate appeals are required to be filed against judgment of the suit and the counter claim and if appeal is filed only against one and not against the other, non filing of appeal against such judgment and decree would attach finality thereto and would attract not only the principle of resjudicata but also waiver and estoppel and the judgment and decree not appealed against would be taken to have been acquiesced to by the party not filing appeal;
- (vi) When however, two appeals are filed against a common judgment passed by the trial Court, both by the plaintiff and the defendant, and are disposed of by the first appellate Court by modifying / reversing / affirming judgment of the trial Court, the aggrieved party, would be required to challenge both by two separate appeals, in absence of



which, non-filing of appeal against one shall attract bar of the principles of res-judicata against another.

- (vii) Where more than one appeals are required to be filed or are filed and one or more of them are dismissed for default, delay or any other similar reason, any such situation would attract res judicata and such dismissal would satisfy the requirement of appeal being heard and finally decided on merits "in a former suit" for the purpose of attracting principles of res judicata."

39. In the present case, the suit filed by the plaintiffs was dismissed and the counter-claim made by the defendant was decreed.

40. It is not out of place to mention here that the plaintiffs did not file a separate appeal against the decree passed in the counter-claim and against dismissal of suit by the Trial Court. Thus, it is clear that the decree passed in the counter-claim to the effect that it has attained a finality.

41. In view of the above discussion, this Court is of the considered opinion that a single appeal which was



filed by the plaintiffs before the First Appellate Court will not serve the purpose. Since, the decree passed in the counter-claim has attained finality, no useful purpose would be served by entertaining the first appeal filed by the plaintiffs.

42. If this appeal is allowed, still this Court would not be within its right to grant any other relief to the plaintiffs other than what has been granted by the Trial Court. Further, the First Appellate Court reversed the judgment and decree passed by the Trial Court on the ground that the defendant has made a counter-claim alleging that the plaintiffs have encroached upon 4 feet space and constructed a bathroom illegally and unauthorisedly, when the plaintiffs and the defendant are using the said 4 feet space.

43. The First Appellate Court has reversed the judgment on the weakness of the defendants. The First



Appellate Court has failed to consider the well established principle of law that the plaintiff must establish his case independently and cannot depend upon the weakness of the defendant. The said view is supported by the judgment of the Hon'ble Apex Court in ***Union of India and Others v. Vasavi Co-operative Housing society Ltd. and others*¹**.

44. Thus, the impugned judgment passed by the First Appellate Court is arbitrary and erroneous. In view of the above discussion, I answer the substantial question in the ***negative***.

45. Accordingly, I proceed to pass the following order:

ORDER

- (i) This Regular Second Appeal is ***allowed***;
- (ii) The judgment and decree dated 19.09.2014 passed in R.A. No.17 of 2012 by the learned

¹ AIR 2014 SC 937



Senior Civil Judge, (Itinerate Court) Chikkanayakanahalli, is ***set aside;***

- (iii) The judgment and decree passed in O.S. No.50 of 2000 dated 03.01.2012 passed by the learned Civil Judge and JMFC, Chikkanayakanahalli, is ***restored;***
- (iv) No order as to the costs.
- (v) In view of the disposal of appeal, pending interlocutory applications do not survive for consideration and are accordingly disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**