HC-KAR

NC: 2026:KHC:17161
RSA No. 1036 of 2009

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 1036 OF 2009 (DEC/INJ)

BETWEEN:

1. A. VENKATESH PRABHU
SINCE DECEASED REP. BY LRS.

1(a). SMT. PADMA PRABHU
W/O A. VENKATESH PRABHU
AGED ABOUT 62 YEARS.

1(b). SRI. ATTUR SHANKAR PRABHU
S/O A. VENKATESH PRABHU
AGED ABOUT 39 YEARS.

1(c). SRI. ATTUR SANDESH PRABHU
S/O A. VENKATESH PRABHU
AGED ABOUT 39 YEARS.

Digitally signed by CHAYA S A
Location: HIGH COURT OF KARNATAKA

APPELLANTS NO.1(a) TO 1(c) ARE R/AT
MANDAKINI, KODIALBAIL WEST,
30 FT. ROAD
MANGALURU - 575 003.

2. JAYASHREE PAI KATEEL
W/O K.N. PAI
AGED ABOUT 66 YEARS
R/AT CRAWFORDA VILLE
INDIANA 47933, USA.

3. K. KESARI PRABHU
W/O K. DAMODAR PRABHU
AGED ABOUT 65 YEARS

R/AT NEJARAO LANE
MANGALURU - 575 003.

4. SHANTHI PAI
W/O VISHWANATHA PAI
R/AT OPP. ALL INDIA STATION
BRAHMAVAR
UDUPI DISTRICT.

... APPELLANTS

(BY SRI. RAJENDRA M.S., ADVOCATE)

AND:

1. BALAKRISHNA PRABHU
S/O LATE VASUDEVA PRABHU
AGED ABOUT 48 YEARS
R/AT USHAKIRAN, CHILIMBI
MANGALURU.

CARRYING ON BUSINESS
UNDER THE NAME AND STYLE
M/S. ATTUR VASUDEVA PRABHU
VENKATESHA BUILDING
P.B. NO.121, BUNDER, J.M. CROSS ROAD
MANGALURU - 575 001.

... RESPONDENT

(BY SRI. P. KARUNAKAR, ADVOCATE FOR C/RESPONDENT)

THIS R.S.A. IS FILED U/S. 100 OF CPC AGAINST THE JUDGMENT & DECREE DATED 13.04.2009 PASSED IN R.A.NO. 25/2008 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE, MANGALURU, ALLOWING/PARTLY ALLOWING/DISMISSING THE APPEAL AND CONFIRMING/SETTING ASIDE THE JUDGMENT AND DECREE DATED 11.01.2008 PASSED IN OS.NO.183/2004 ON THE FILE OF THE II ADDL. CIVIL JUDGE (SR.DN), MANGALURU, DAKSHINA KANNADA.

THIS REGULAR SECOND APPEAL HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ***E.S. INDIRESH J.,*** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH

CAV JUDGMENT

1. This appeal is filed by the plaintiffs challenging the Judgment and Decree dated 13.04.2009 passed in RA.No.25/2008 on the file of the I Addl. District Judge, D.K., dismissing the appeal and confirming the Judgment and Decree dated 11.01.2008 passed in O.S.No.183/2004 on the file of the II Addl. Civil Judge (Sr.Dn.), Mangaluru, D.K., dismissing the suit of the plaintiffs.

2. For the sake of convenience, the parties in this appeal shall be referred to in terms of their status and ranking before the Trial Court.

3. The plaint averments are that the father of the plaintiffs - A. Shankara Prabhu had taken the suit schedule 'A' property on perpetual lease / Moolageni from its owner - Henry Everest Vincent Fernandes as per the

registered Moolageni Chit dated 19.08.1968. Thereafter, father of the plaintiffs was in possession and enjoyment of the suit A schedule property. It is also stated that the said Henry Everest Vincent Fernandes was landlord of some other adjacent properties and had given to one Attur Vasudeva Prabhu - paternal uncle of the plaintiffs and father of the defendant as per registered Sale Deed dated 24.06.1969. It is further stated that, father of the plaintiffs - A. Shankar Prabhu died on 27.06.1974 leaving behind his two sons namely, A. Venkatesha Prabhu (plaintiff) and Surendra Prabhu. It is the case of the plaintiffs that the plaintiff No.1 was aged about 18 years at the time of demise of his father and as such, after the death of their father - A. Shankar Prabhu, the plaintiffs were in joint business with their paternal uncle - Attur Vasudeva Prabhu. It is further stated in the plaint that, the documents pertaining to the land properties were in the custody of Attur Vasudeva Prabhu, as he was managing the affairs of the fami0ly. It is also stated that, the uncle

of the plaintiffs - Attur Vasudeva Prabhu used to take the signature of the plaintiff No.1 on various occasions in connection with the management of the land in question. It is further stated that, the uncle of the plaintiffs - Attur Vasudeva Prabhu managed to get the signature of the plaintiff No.1 and his brothers to sell the portion of the land having Moolageni holdings to third parties. It is further stated in the plaint that plaintiffs believing the version of father of defendants, have put their signatures on the documents placed by the father of the defendants without suspecting fraud being committed by the father of the defendants and therefore, the plaintiffs have preferred O.S.No.183/2004, seeking relief of declaration with consequential relief.

4. After service of summons, the defendant entered appearance and has filed written statement denying the plaint averments and contended that there was a partition on 18.07.1978 in the family of the plaintiffs and defendants and the demarcation of the property has been

made in the aforementioned partition. It is further stated that, the Moolageni Deed dated 10.08.1968 and registered Sale Deed dated 24.06.1969 were made in the name of the father of the plaintiffs as Moolagenidar to avoid stamp duty and registration charges, at the time of acquiring the property in question. It is also stated that, another portion of the schedule property covered under the deed dated 19.08.1968 was purchased in the name of Radhakrishna Nayak - nephew of Shankar Prabhu and Vasudeva Prabhu and therefore, it is contended by the defendants that, the plaintiffs cannot take advantage of the mode of documentation and to assert that, the father of the plaintiffs was a Moolageni tenant. It is the specific case of the defendant that, at no point of time the father of the plaintiffs - Shankar Prabhu paid rent to any person as required to identify as a tenant under the Moolagenidar and therefore, sought for dismissal of the suit.

5. On the basis of the rival pleadings, the Trial Court has formulated issues for its consideration. In order to

establish their case, plaintiffs examined plaintiff No.1 as PW1 and got marked 16 documents as Exs.P1 to P16. On the other hand, the defendant examined two witnesses as D.W.1 and D.W.2 and produced 27 documents as Exs.D1 to d27.

6. The Trial Court, after considering the material on record, by its Judgment and Decree dated 11.01.2008, dismissed the suit of the plaintiffs and being aggrieved by the same, the plaintiffs preferred Regular Appeal in R.A. No.25/2008 on the file of the I Addl. District Judge, Dakshina Kannada at Mangaluru. The said appeal was resisted by the defendants. The First Appellate Court, after re-appreciating the facts on record, by its Judgment and Decree dated 13.04.2009, dismissed the appeal and confirmed the Judgment and Decree passed by the Trial Court in O.S.No.183/2004.

7. Being aggrieved by the Judgment and Decree passed by the Courts below, the appellants / plaintiffs have

preferred this Regular Second Appeal under Section 100 of CPC.

8. This Court, vide order dated 04.02.2010, formulated the following substantial questions of law:

> " (1) The mulageni deed on which the appellants were relying being a registered deed, whether the Trial Court.. was justified in allowing oral evidence to be tendered contrary to the tenor of the said document?
>
> (2) Whether the Courts below were justified in negating the mulageni deed as being a nominal document which was executed not to be acted upon, in the light of the same having been referred to any other document such as sale deed Ex.D5, under which the respondent's father had purchased the neighbouring property?
>
> (3) Whether the Courts below were right in proceeding on the basis that the suit was not barred by limitation?"

9. I have heard Sri. Rajendra M.S., learned counsel for the appellants and Sri. P. Karunakar, learned counsel for the respondents.

10. Sri. Rajendra M.S, learned counsel for the appellants contended that, both the Courts below have failed to consider the fact that, the father of the plaintiffs was given the moolageni rights in respect of the schedule A property and the said moolageni deed is a registered document and the same is reflected in the RTC records as marked before the Trial Court and therefore, it is argued that, both the courts below have failed to notice the presumption under Secion 133 of the Karnataka Land Revenue Act.

11. It is further argued by the learned counsel for the appellants that, the finding recorded by the Courts below that the plaintiffs have failed to prove their possession and moolageni deed was never acted upon by the parties is misconceived and contrary to records. It is further contended that, both the Courts below have failed to notice that, the moolageni was created by Sri. Henry

Everest Vincent Fernandes and that Sri. Vasudeva Prabhu became the owner of the property after nearly an year after creation of moolageni in favour of Sri. Vasudeva Prabhu. It is submitted that, both the Courts below failed to notice that non possession of original lease deed does not mean that no title passes under the said document. The finding recorded by the lower appellate Court that the plaintiffs ought to have examined Sri. Henry Everest Vincent Fernandes is incorrect as the moolageni lease is a permanent tenant obtained by the father of the plaintiffs as per the registered Moolageni Deed 1968 (Ex.P3) and therefore, it is contended that, the finding recorded by the Courts below requires to be interfered with. In this regard, learned counsel for the appellants places reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Raghuram Rao and Others Vs. Eric P. Mathias and others*** reported in **2002 (2) SCC 624** and in the case of ***Charles Rego Vs. Father Muller's Charitable Institute and Others*** reported in **ILR 2009 KAR 487** and argued

that, the moolagenidar is a tenant holding a perpetual lease and therefore, sought for interference of this Court. Learned counsel for the appellants places reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Bistappa Rama Naik and Another Vs. State of Karnataka, Rep. by its Secretary, Revenue Department and Others*** reported in **ILR 2002 KAR 191** and argued that, as the name of the father of the plaintiffs was continued in the RTC extracts for a considerable period and the same was not challenged by the defendants before the competent Revenue Court and therefore, the entry made in the RTC extracts would prove that the plaintiffs are in possession of the suit schedule property.

12. Sri. Rajendra, learned counsel for the appellants contended that, though the Courts below have concurrently held against the appellants herein, however, the findings recorded by both the Courts below are perverse and contrary to law and therefore, this Court is

having jurisdiction to interfere under Section 100 of CPC. In this regard, he referred to the Judgment of the Hon'ble Supreme Court ***KN Nagarajappa and Others Vs. H Narasimha Reddy*** reported in **2021 (18) SCC 263**. It is also argued by the learned counsel for the appellants that the land being a non agricultural land and therefore, finding recorded by both the Courts below that the ownership on the Moolagenidar would confer occupancy right and therefore, the finding recorded by both the Courts below requires to be interfered with in view of the Judgment of this Court in the case of ***Clarence Pais and Others Vs. The State of Karnataka and Others*** reported in **2024 (1) KLJ 425** and accordingly, sought for interference of this Court.

13. Per contra, Sri. Karunakar, learned counsel for the respondents argued that, as both the Courts below on facts held against the plaintiffs and therefore, this Court is having limited jurisdiction to interfere with the Judgment and Decree passed by both the Courts below under

Section 100 of CPC. It is the categorical submission by the learned counsel appearing for the respondents that the plaintiffs have not produced any document of payment of rent by the father of the plaintiffs to prove the moolageni of the land in question and therefore, sought for dismissal of the appeal.

14. Heard the learned counsel appearing for both the parties and perused the material on record.

15. On careful perusal of the original records would indicate that the controversy in the present appeal is as to 21 cents of land bearing Sy.No.57/3A and Sy.No.57/4 of Boloor Village, Mangaluru Taluk and District. It is the case of the plaintiffs that, as per the registered Moolageni Chit dated 19.08.1968 (Ex.P3), the owner of the property - Henry Everest Vincent Fernandes, executed Moolageni Chit in favour of A. Shankar Prabhu (father of the plaintiffs). The father of the plaintiffs A. Shankar Prabhu died on 27.06.1974. It is the case of the plaintiffs that, during lifetime of A. Shankar Prabhu, he had sold portion of his

moolageni holding to third parties. It is also to be noted that, the plaintiffs complained that, the defendant has constructed a compound wall separating the property of the plaintiffs and defendant at the eastern side of the defendant's property. It is pertinent to mention here that, as per the registered Sale Deed dated 24.06.1969, wherein, Henry Everest Vincent Fernandes had executed another sale deed, selling the moolageni rights in respect of the Sy.No.57/3A measuring 71 cents and in Sy.No.57/4, measuring 18 cents in favour of A. Vasudeva Prabhu (father of the defendants). Perusal of the finding recorded by the Courts below would indicate that the father of the plaintiffs and father of defendants acquired an extent of 1.59 acres by resorting to moolageni and purchased the ownership rights. It is the contention of the plaintiffs that the father of the plaintiffs A. Shankar Prabhu having acquired the schedule 'A' property as per registered moolageni chit has been acted upon by entering his name

in the revenue records and he was in actual possession and enjoyment of the same.

16. The perusal of the documents would indicate that, the father of the plaintiffs - A. Shankar Prabhu had sold a portion of his moolageni holdings to third parties and thereafter, the partition was effected in the family of Shankar Prabhu and Vasudeva Prabhu as per Ex.P4. It is pertinent to mention here that, the plaintiffs have utterly failed to produce any documentary evidence to establish the payment of rent by their father - A. Shankar Prabhu before the Trial Court. On careful consideration of the finding recorded by the Trial Court at para Nos.23 and 26, I am of the view that, the finding recorded by both the Courts below, dismissing the suit of the plaintiffs is just and proper as the P.W.1 has not deposed as to the payment of rent in respect of the 'A' schedule property. It is pertinent to mention here that, the production of the payment receipts in respect of the moolageni right is mandatory to establish the execution of the registered

moolageni chit and therefore, I am of the view that, the finding recorded by the Trial Court on issue Nos.1 and 2 is just and proper and no interference is called for in this Appeal.

17. Though the learned counsel for the appellants submitted as to the erroneous finding by both the Courts below, however, the material fact for adjudication of the dispute between the parties is based on the production of the document as to payment of rent by the moolagenidar and as such, in the absence of such material document, I am of the opinion that there is no infirmity in the Judgment passed by the Trial Court.

18. Nextly, in so far as the arguments advanced by the learned counsel for the appellants as to the entries made in the RTC extracts, it is to be noted that, no notice was issued to the defendant before making entries in the RTC extracts by the competent authority and as such, as the plaintiffs have failed to produce any document to establish the date on which the right of moolageni was subsisting in

favour of the father of the plaintiffs and therefore, the contentions raised by the appellants cannot be accepted.

19. Looking into the finding recorded by both the Courts below, I am of the view that, the Trial Court has examined the controversy between the parties in threadbare and has rightly arrived at a conclusion that the plaintiffs have failed to produce the necessary documents to establish the right in respect of the schedule 'A' property. Hence, there is no perversity in the Judgment and Decree passed by both the Courts below and therefore, the substantial question of law noted above, is answered in favour of the defendants.

20. Hence, the appeal is hereby dismissed.

SD/-
(E.S.INDIRESH)
JUDGE

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List No.: 1 Sl No.: 62