



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2310 OF 2017 (INJ)

BETWEEN:

1. GOWRAMMA
W/O P A BELLAPPA,
AGED ABOUT 57 YEARS
2. P A BELLAPPA
S/O ANNAPPA NAIKA,
AGED ABOUT 66 YEARS

BOTH ARE RESIDENTS OF KUDURUVANI
SINGANABIDRE POST
THIRTHAHALLI TALUK - 577 220

...APPELLANTS

(BY SRI. UMESHA A., ADVOCATE FOR
SRI. VASANTHA A.K., ADVOCATE)

AND:

SATHYANARAYANA
S/O RAMA NAIKA,
AGED ABOUT 50 YEARS
R/O KUDURUVANI,
SINGANABIDRE POST,
THIRTHAHALLI TALUK - 577 220

...RESPONDENT

(BY SRI. PRASANNA D.P., ADVOCATE)

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by
SHARADAVANI
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Location: High
Court of
Karnataka





THIS RSA IS FILED UNDER SECTION 100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 09.08.2017 PASSED IN RA NO.2/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, THIRTHAHALLI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 23.3.2015 PASSED IN OS NO.108/2011 ON THE FILE OF THE ADDL. CIVIL JUDGE AND JMFC, THIRTHAHALLITRIAL COURT DECREED THE SUIT.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. Umesha A. for Sri. Vasantha A.K., learned counsel for the appellants and Sri. Prasanna D.P., learned counsel for the respondent.

2. The present second appeal is filed by the plaintiffs Smt. Gowramma and Bellappa against defendants Sathyanarayana alias Sathisha and others, challenging the reversal of the finding recorded by Trial Judge and dismissing the suit in O.S. No.108/2011 by passing the Judgment in RA No.2/2016 dated 09.08.2017



by the First Appellate Court at Theerthahalli. Appeal came to be admitted on the following substantial questions of law:

" The substantial question of law involved in this appeal is whether the appellate court is justified in setting aside the order of the trial court by giving a finding contrary to the evidence on record."

3. Facts of the case are as under :

3.1 A suit for permanent injunction came to be filed by the plaintiffs against the defendants in the respect of the following immovable property (hereinafter referred to as the suit property).

"A" SCHEDULE PROPERTIES

ವಾದಿಯು ತೀರ್ಥಹಳ್ಳಿ ತಾಲ್ಲೂಕು, ಮಂಡಗದ್ದೆ ಹೋಬಳಿ, ಕುಳುಂಡೆ ಗ್ರಾಮದ ಸ.ನಂ. '532ರಲ್ಲಿ 25 ಗುಂಟೆ ಖುಷ್ಕಿ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ಮನೆ, ಕೊಟ್ಟಿಗೆ, ಕಣ, ಹೂತೋಟ, ಹಿತ್ತಲು, ಸೌದೆ ಕೊಟ್ಟಿಗೆ, ಟಿಲ್ಲರ್ ಕೊಟ್ಟಿಗೆ, ಗೋಬರ್ಗ್ಯಾಸ್, ಬೋರ್ವೆಲ್, ಪೈಪ್ಲೈನ್ ಮತ್ತು ತೆಂಗಿನ ಮರ, ಮಾವಿನ ಮರ, ಹಲಸಿನ ಮರ, ಹುಣಸೇ ಮರ, ಅಂಟ್ರಾಳದ ಮರ ಇವುಗಳನ್ನು ಒಳಗೊಂಡಿರುತ್ತದೆ. ಸದರಿ ಸ್ವತ್ತಿನ ಸುತ್ತಲೂ ಕಲ್ಲುಕಂಬ ಮತ್ತು ಮುಳ್ಳುತಂತಿಬೇಲಿಯನ್ನು ನಿರ್ಮಿಸಿಕೊಂಡು ಸಂಪೂರ್ಣ ಮಾಲಿಕತ್ವ ಹಕ್ಕಿನೊಂದಿಗೆ, ಸ್ವಾಧೀನ ಅನುಭವ ಹೊಂದಿದ ಸ್ವತ್ತಿನ ಚೆಕ್ ಬಂದಿ



ಪೂರ್ವಕ್ಕೆ : ಬೇಲಿ ನಂತರ ತಿಮ್ಮನಾಯ್ಕರವರ ಮನೆ,
ಪಶ್ಚಿಮಕ್ಕೆ: ಬೇಲಿ ನಂತರ 1ನೇ ಪ್ರತಿವಾದಿಯವರ ಮನೆ.
ಉತ್ತರಕ್ಕೆ: ಬೇಲಿ ನಂತರ ಬಂಡೀದಾರಿ,
ದಕ್ಷಿಣಕ್ಕೆ : ಸ.ನಂ. 54ರ ತರಿ ಭಾಗಾಯ್ತು ಜಮೀನು

"B" SCHEDULE PROPERTIES

ವಾದಿಯು ತೀರ್ಥಹಳ್ಳಿ ತಾಲ್ಲೂಕು, ಮಂಡಗದ್ದೆ ಹೋಬಳಿ, ಕುಳುಂಡೆ
ಗ್ರಾಮದ ಸ.ನಂ.53:2 ರಲ್ಲಿ 3 ಎಕರೆ 00 ಗುಂಟೆ ಖುಷ್ತಿ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ವಾದಿಯ
ಮಗ ಹೊಸದಾಗಿ ಕಟ್ಟಿರುವ ಮನೆ ಸೇರಿದಂತೆ ಉಳಿದ ಜಾಗದಲ್ಲಿ ಸಿಲ್ವರ್ ಗಿಡ
ಗೇರು, ಅಕೇಶಿಯಾ, ಮಾವು ಸಪೋಟಾ, ಅಂಟಾರ್ಜದ ಗಿಡಗಳನ್ನು ಬೆಳೆದಿರುತ್ತಾರೆ.
ಸದರಿ ಸ್ವತ್ತಿನ ಸುತ್ತಲೂ ಕಲ್ಲುಕಂಬ ಮತ್ತು ಮುಳ್ಳುತಂತಿಬೇಲಿಯನ್ನು
ನಿರ್ಮಿಸಿಕೊಂಡು ಸಂಪೂರ್ಣ ಮಾಲಿಕತ್ವ ಹಕ್ಕಿನೊಂದಿಗೆ, ಸ್ವಾಧೀನ ಅನುಭವ
ಹೊಂದಿದ ಸ್ವತ್ತಿನ ಚೆಕ್ ಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಬೇಲಿ ನಂತರ ಸ.ನಂ.5324 ಕೆ ಪಿ ಚನ್ನಪ್ಪನವರ ಖುಷ್ತಿ
ಪಶ್ಚಿಮಕ್ಕೆ: ಬೇಲಿ ನಂತರ ಸ.ನಂ.531 ಕೃಷ್ಣಪ್ಪ, ಸುಶೀಲಮ್ಮ,
ನಾರಾಯಣ ನಾಯ್ಕ ತಿಮ್ಮನಾಯ್ಕರ ಖುಷ್ತಿ
ಉತ್ತರಕ್ಕೆ : ಬೇಲಿ ನಂತರ ಸ.ನಂ. 51 ಜಯಮ್ಮ ಬಿನ್ ದಿ ವೇದಪ್ಪ
ಗೌಡರ ಖುಷ್ತಿ
ದಕ್ಷಿಣಕ್ಕೆ : ಸ.ನಂ. 54ರ ತರಿ

3.2 It is contented that the suit property was
granted by the Land Tribunal on 31.08.1978. There is no
dispute that there was a joint grant in favour of Sri. Rama
Naika, son of Sri. Shesha Naika and Sri. Fakeer Naika.



Parties claim under their respective rights under their respective grantees.

3.3 As per the grant order, parties were in possession of the suit property is the contention raised in the plaint.

3.4 Plaintiff further contended that in respect of 3 acres 25 guntas of dry land, in the 25 guntas, there existed house, cattle shed, flower garden, backyard, fuel shed, tiller shed, gober gas, bore well, pipeline and few trees like coconut trees, mango trees, jack fruit trees, tamarind tree etc., were grown.

3.5 It is also contention of the plaintiffs that the extent of the land that has fallen to the share of the plaintiffs has been fenced, having the boundaries as mentioned in the schedule as above.

3.6 In the balance three acres of land, a new house was built by the son of the plaintiffs and few other trees



were grown by developing the land and investing the huge sum of money.

3.7 The remaining three acres of land was fenced with barbed wire fencing with stone pillars and thus plaintiffs continued to be in possession of their portion of the property and without there being any right, title or interest, defendant started interfering with the suit property and therefore filed a suit for bare junction.

3.8 Pursuant to the suit summons, defendants entered appearance and filed written statement denying the plaint averments in *toto*.

3.9 It is maintained that first defendant also having landed property in No.53, 54 and 55 of Kulunde Village, Mandagadde Hobli, Tirthalli Taluk.

3.10 It is also contented that the defendant No.1 inherited the said property through Rama Naik who is his father and died in the year 1988 and thereafter there is a division of the property inherited through Rama Naik



between defendant No.1 and his brothers on 20.02.1999 and thereafter the portion that has fallen to the share of defendant No.1, mutation of revenue entries has taken place in MR No.5/2000-01.

3.11 It is further contented that, in the partition among the defendant No.1 and his brothers, defendant No.1 got 1 acre 17 guntas of dry land situated in Sy.No.53 of Kulunde Village, which is mentioned as Item No.3 in the 'E' Schedule of the said partition and those lands are tenanted lands of the properties of defendant No.1.

3.12 He further contended that because of the evil and jealous attitude towards the defendant No.1, it is the plaintiffs who tried to interfere with the property owned by the defendant No.1 which was registered and a false suit has been filed by the plaintiffs.

3.13 Based on the rival contentions, learned trial Judge raised necessary issues and after recording the evidence, placed reliance on the Exhibit P24 and Exhibit P6



which is the mutation extract, decreed the suit of the plaintiff.

3.14 Being aggrieved by the same, defendant No.1 filed an appeal before the First Appellate Court in RA No.2/2016.

3.15 Learned Judge in the First Appellate Court, after securing records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, allowed the appeal of the defendant No.1 and dismissed the suit of the plaintiff *inter alia* holding in paragraphs No.23 to 25 as under:

23. In the further cross examination of PW.1 dtd:2-07-2013 P.W.1 has clearly admitted that about 2-3 years back he had made application for survey to identify where 3 acre 25 guntas of land is allotted which clearly goes to show that at the time of filing of the earlier suit by defendant No.1 the plaintiff was not clear as to the exact location of the 3 acres 25 guntas granted by the Land Tribunal. It is clearly admitted that there is Kharab land in Sy.No.53 and location of the Kharab land is not at all shown in Ex.P.6.



24. Even though in the cross examination of DW.1 he has shown ignorance to entire sub division proceedings of Sy.No.53 of 1 2 3 4. However he has stated that there was partition about 25 years back between the brothers and the father of DW.1 and no survey was conducted at that time and only on the basis of possession and enjoyment the partition was carried out. Hence the evidence placed on record by the plaintiff goes to show that the boundaries given by the plaintiff to the plaint "A" and "B" schedule properties are misleading and even assuming boundaries to be correct however the situation of the road is not at all mentioned and it is also suppressed that the neighbouring occupants are the original ancestors of the family members of plaintiff No.1 whose property in Sy.No.53/1 is not subdivided and the property granted under Land Tribunal Order is not surveyed to scale as per the actual possession and enjoyment. Though the plaintiff has stated there are separate houses in 'A' schedule and 'B' schedule however measurement of the houses is not at all mentioned either in 'A' or 'B' schedule properties on the other hand it is admitted that the defendants also have separate house constructed in their property.

25. The learned trial judge has granted the relief of permanent injunction observing that though the lands were not measured at the time of partition however later it was measured by the Land Tribunal however no such documents are forth coming except Ex.P.6 which does not disclose the actual possession and enjoyment of the properties granted to all the grantees. On what basis



Ex.P.6 subdivision is carried out and under whose directions the survey and subdivision is made as per Ex.P.6 is not forth coming. In addition when Rama Naik s/o Shesha Naik and Pakira Naik were together granted occupancy rights by single grant what made the survey department to effect subdivision by showing the location of only the suit schedule 'A' and 'B' schedule properties is also not forth coming. Hence Ex.P.6 document is not sufficient to show the location of the property of both the plaintiffs and defendants has it is a incomplete document and is not survey conducted after notice to all the interested parties. In addition the location of the road in between sy.No.53 is left unexplained. Hence though the plaintiff has produced Ex.P.6 however the plaintiff has sought for the relief of permanent injunction of 'a' schedule property and 'B' schedule property and in the description of the property is including House, 3 sheds, plantation, gobergas, Borewell, pipeline, Coconut trees, Mango and Jack fruit trees, Tamarind tree....and others fees and though it is stated to be surrounded by wire fence however there is no material to establish that all these plantations with sheds and borewell come within the boundaries mentioned in the schedule. The trial court has much relied on Ex.P.6 sketch and hence interference is called for in the Judgment and decree passed by the trial court. Hence for the said reasons I answer Points No.1 to 4 in the Affirmative.



4. Being further aggrieved by the said finding recorded by the learned Judge in the First Appellate Court in dismissing the suit of the plaintiff, it is the plaintiffs who have filed the present appeal before this Court.

5. As referred to supra, appeal came to be admitted on the aforesaid substantial questions of law.

6. Sri. Umesha for Sri. Vasantha A.K., learned counsel for the appellant, reiterating the grounds urged in the appeal would contend that grant of the land in favour of the predecessors of the plaintiffs vide Exhibit P24 is not in dispute. So also the revenue entries standing in the name of the plaintiffs is not in dispute.

7. Therefore learned Trial Judge rightly appreciated the evidentiary value of oral testimony of plaintiffs and probative value of the documentary evidence and rightly decreed the suit which has been set aside by the learned Judge in the First Appellate Court without



sufficient material on record and thus sought for allowing the appeal on the aforesaid substantial questions of law.

8. He would invite the attention of the entries made in Exhibit P6 which is the Mutation Register Extract and argued that the same has not been properly appreciated by plaintiff in the First Appellate Court resulting in miscarriage of justice and sought for allowing the appeal by answering the substantial questions of law in favour of the plaintiffs.

9. Per contra, Sri. T.P. Prasanna, learned counsel for the respondents would support the judgment of the First Appellate Court.

10. He would further argue that a grant of three acres twenty five guntas of land to the predecessors of the plaintiffs and first defendant is not dispute vide Exhibit P24. But the location of the property as is described in the plaint is not established.



11. Therefore suit for bare injunction is rightly dismissed by the First Appellate Court and thus sought for dismissal of the appeal by answering the substantial questions of law against the appellants.

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

13. On such perusal of the material on record, it is crystal clear that it is not in dispute that lands were granted vide Exhibit P24 to the predecessors of the plaintiffs as well as the defendants.

14. Measurements in Survey Nos.53, 54 were separately made in the Grant Order vide Exhibit P24 dated 31.12.1978. Pursuant to the same, respective parties enjoyed their property.

15. It is in this regard, that the discussion made by the First Appellate Court in Paragraph No.25 as referred to supra assumes importance.



16. Exhibit P6 is the document to establish that there is a mutation of revenue entries vide Exhibit P24.

17. Learned Judge in the First Appellate Court has noted that when there is a joint grant in favour of Ramanaika and Fakeer Naika, how can there be a mutation of the revenue entries based on the statement given by the plaintiffs alone is a question that remains unanswered.

18. Further, at whose instance the Exhibit P6 came into existence and what are the applications that are filed to seek for 3 acres 25 guntas of the land in favour of Gowramma and balance in favour of the Sri. K.P. Chinnappa, S/o. Fakeer Naika vide Exhibit P6 is not forthcoming. No other supporting documents were placed on record by the plaintiffs in this regard.

19. Merely mentioning three acres twenty five guntas recorded in revenue records in favour of first plaintiff Gowramma vide Exhibit P6 and balance land



measuring three acres twenty five guntas in favour of Sri. K.P. Chinnappa would not be sufficient enough to show that plaintiffs have been in possession of the suit properties as is mentioned in the suit.

20. Pertinently, the said mutation has taken place in Mutation Proceedings No.31/2007-08 by Order dated 18.06.2008. What prevented the parties to seek for respective revenue entries to be mutated on and from 1978 is a question that remains unanswered.

21. Admittedly, a suit was earlier filed by the first defendant in O.S.No.24/2008 against the plaintiffs, Shashidhar and Sandeepa. Order sheet that has been placed on record vide Exhibit P7 substantiate the same. The said suit was filed on 31.01.2008.

22. Exhibit P6 has come into being almost five months later after the said suit in O.S.No.24/2008 came to be filed. In other words, till such time, there was no dispute as to the enjoyment of the property by the parties.



23. It is in this regard, the contents of the written statement of the first defendant assumes importance about the partition that has taken place within the members of the family of first defendant and mutation proceedings that has taken place pursuant to said partition and those proceedings are of the year 2000 and 2001 in M.R. No.5/2000-01.

24. If it is so, what prevented the plaintiffs to apply for transfer of revenue entries in the year 2000-01 itself or objected for the mutation proceedings in the year 2000-01 is a question that remains unanswered. Plaint is silent on these aspects of the matter.

25. Division once has taken place within the family of the first defendant who claim under Fakeer Naika, which was in the knowledge of the plaintiffs, long silence in not applying for the mutation of revenue entries till July 2008 is again a question that remains unanswered on behalf of the plaintiffs.



26. Taking note of these aspects of the matter and also having regard to the scope of the suit being only one for permanent injunction, the learned Judge in the First Appellate Court was justified in dismissing the suit.

27. Pertinently, there is no dispute that the grant was joint grant between Rama Naika and Fakeer Naika vide Exhibit P24.

28. Therefore, the right of plaintiffs claiming under Exhibit P24 is not lost. At any rate unless there is a specific averment as to the possession of the suit property which is supported by necessary documentary evidence on record, only on the basis of Exhibit P6, decreeing of the suit by the Trial Court was rightly set-aside by the learned Judge in the First Appellate Court by supplying the cogent and convincing evidence in the impugned judgment.

29. As such, the substantial question of law is necessarily to be answered against the appellants who are



the plaintiffs and accordingly it is answered in the 'negative'.

30. Having said so, it is always open for the plaintiffs to substantiate their rights in a duly constituted proceedings before the appropriate forum in accordance with law.

31. In view of the foregoing discussions, following Order is passed:

ORDER

(i) Appeal ***dismissed***.

(ii) No costs.

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

SNC
List No.: 1 Sl No.: 75