



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 1740 OF 2013 (DEC)

BETWEEN:

SMT. GOWRAMMA @ MARIYAMMA
W/O LATE B.C. KALEGOWDA,
AGED ABOUT 64 YEARS,
R/AT HARUR VILLAGE,
KASABA HOBLI,
CHANNAPATNA TALUK ,
RAMANAGARA DISTRICT - 571 511.

...APPELLANT

(BY SRI. SUBBA SHASTRY N., ADVOCATE)

AND:

1. H. LINGE GOWDA
SINCE DECEASED, REP. BY LRS.

1(a). SMT. GOWRAMMA
W/O LATE LINGE GOWDA,
AGED ABOUT 77 YEARS.

2. SRI. H. RAJANNA
S/O LATE MOTEGOWDA,
AGED ABOUT 51 YEARS.

BOTH RESPONDENTS 1(a) AND 2 ARE
R/O HARUR VILLAGE, KASABA HOBLI,
CHANNAPATNA TALUK,
RAMANAGARA DISTRICT - 571 511.

...RESPONDENTS

(BY SRI. V.F. KUMBAR, ADVOCATE)

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by CHAYAS A
Location: HIGH
COURT OF
KARNATAKA



THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST THE JUDGEMENT AND DECREE DATED 12TH JULY, 2013 PASSED IN REGULAR APPEAL NO.104 OF 2012 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, CHANNAPATTANA, RAMANAGAR DISTRICT, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DATED 18TH DECEMBER, 2009 PASSED IN ORIGINAL SUIT NO.141 OF 1993 ON THE FILE OF PRINCIPAL CIVIL JUDGE (JR.DN.) AND JMFC., CHANNAPATNA.

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

This appeal is preferred by the defendant challenging the judgment and decree dated 12th July, 2013 passed in Regular Appeal No.104 of 2012 on the file of the Senior Civil Judge and JMFC., Channapatna, Ramanagar District (for short, hereinafter referred to as '*First Appellate Court*'), allowing the appeal and setting aside the judgment and decree dated 18th December, 2009 passed in Original Suit No.141 of 1993 on the file of the Principal Civil Judge (Jr.Dn.) and JMFC., Channapatana (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of the plaintiffs came to be dismissed.



2. For the sake of convenience, the parties in this appeal are referred to as per their ranking before the Trial Court.

3. The plaint averments are that, plaintiffs claim to be the absolute owners in possession of the suit schedule property bearing Khaneshumari No.109/A and 109/B which are situated adjacent to each other having common boundary at Harur Village, Channapatna Taluk. It is further averred that the plaintiff No.1 and his brother Motegowda (father of the plaintiff No.2) have acquired the suit schedule property as per the registered Sale Deed dated 31st May, 1948 and settlement deed dated 10th January, 1954. It is the case of plaintiffs that the plaintiffs are in joint possession of the suit schedule property and after the demise of the father of plaintiff No.2 also, the plaintiff No.2 is continued to be in joint possession with the plaintiff No.1. It is further averred in the plaint that the suit schedule property is measuring 40 x 80 feet and the plaintiffs have reserved the same for construction of house, however, they utilised the same for the purpose of storage of natural manure. At that juncture, the defendant, who is the



neighboring owner of the suit schedule property encroached the portion of the property belonging to the plaintiffs and constructed the house and thereby, the remaining area was reduced approximately to an extent of 40 x 45 feet. For which, the plaintiffs have put-up fencing and are in possession of the same and as such, the plaintiffs preferred the instant suit, seeking relief of declaration with consequential relief of possession *inter alia* damages from the defendant.

4. After service of notice, defendant entered appearance and filed detailed written statement denying the averments made in the plaint. It is the case of the defendant that the defendant acquired the portion of property through her father by way of succession and remaining portion has been purchased by her husband namely B.C. Kalegowda under the registered Sale Deed dated 28th August, 1978 from Motegowda S/o Moogalingegowda (father of the plaintiff No.2 and also the brother of the plaintiff No.1). It is also stated in the written statement that, after the demise of husband of the defendant, the defendant succeeded to the property and as such, sought for dismissal of the suit.



5. The Trial Court, based on the pleadings on record, framed the issues for its consideration.

6. In order to establish their case, Plaintiffs examined two witnesses as PW1 and PW2 and got marked 13 documents as Exhibits P1 to P13. On the other hand defendant examined two witnesses as DW1 and DW2 and got marked 7 documents as Exhibits D1 to D7. The Court Commissioners have been examined as CW1 and CW2 and marked 10 documents as Exhibits C1 to C10.

7. The Trial Court, after considering the material on record, by its judgment and decree dated 18th December, 2009 dismissed the suit and being aggrieved by the same, the legal representative of the of the plaintiff No.1 and the Plaintiff No.2 preferred Regular Appeal No.104 of 2012 before the First Appellate Court and same was resisted by the defendant. The First Appellate Court, after re-appreciating the material on record, by its judgment and decree dated 12th July, 2013, allowed the appeal and set-aside the judgment and decree dated 18th December, 2009 passed by the Trial Court in Original Suit No.141 of 1993 and as such, the suit of plaintiffs



came to be decreed in their favour. Being aggrieved by the same, the defendant preferred this second appeal.

8. This Court, by order dated 28th June, 2016 admitted the appeal to consider the following substantial questions of law:

- i) *Whether the Lower Appellate Court is justified in reversing the judgment and decree of the trial Court without considering the oral and documentary evidence on record?*
- ii) *Whether the Lower Appellate Court is justified in reversing the judgment and decree of the trial Court when in Exs.P.1 and P.2, there is no mention of property number or the measurement as to the extent of the properties and when the identity of the property is in question without following the mandatory procedure as contemplated under Order VII Rule 3 of the Code of Civil Procedure, 1908?*
- iii) *Whether the Lower Appellate Court is justified in reversing the judgment and decree of the trial Court in the facts and circumstances of the present case?*

9. Heard Sri. Subba Shastry N., learned counsel appearing for the appellant and Sri. V.F. Kumbar, learned counsel appearing for respondents.



10. Sri. Subbas Shastry, learned counsel appearing for the appellant contended that the Trial Court after considering the material on record, rightly dismissed the suit, however, the same has been erroneously interfered with by the First Appellate Court. It is argued by learned counsel appearing for the appellant that the defendant has disputed the title of the plaintiffs and same has not been properly answered by the First Appellate Court. It is further argued by learned counsel appearing for the appellant that, Exhibits P1 and P2 are disputed by the defendant in the suit as the same do not contain the property number or measurement and therefore, those documents cannot be considered as basis for conferring title to the plaintiffs.

11. Learned counsel appearing for the appellant also submits that the defendant is claiming right over the portion of suit schedule property based on the registered Sale deed executed in favour of her husband and therefore, the finding recorded by First Appellate Court requires interference by this Court. It is also contended by the learned counsel appearing for the appellant that the First Appellate Court misread the



material on record and the identity of the suit schedule property itself was under challenge in the suit. In this regard, learned counsel appearing for the appellant drew the attention of Court to Exhibits D1 to D7 and Exhibit C1-report of the Commissioner and submitted that the First Appellate Court has committed an error in tallying with the boundaries of the suit schedule property.

12. Learned counsel appearing for the appellant, by referring to the Exhibit D1-Registered Sale Deed, submitted that the father of the plaintiff No.2 sold the portion of the schedule property in favour of the husband of the defendant. Finally, learned counsel appearing for the appellant argued that, there is a variance in the pleadings and evidence by the plaintiffs and there is no dispute that the father of the plaintiff No.2 had sold the portion of the schedule property in favour of the husband of defendant and therefore, the First Appellate Court has committed an error in considering the material on record. Accordingly, sought for interference of this Court.

13. Per contra, Sri. V.F. Kumbar, learned counsel appearing for respondents submitted that the First Appellate



Court, after re-appreciating the material on record, rightly decreed the suit, considering the boundaries mentioned in the Exhibits P1 and P2. Accordingly, sought for dismissal of the appeal.

14. In the light of the submission made by the learned counsel appearing for the parties, it is the case of the plaintiffs that the plaintiffs are the absolute owners of the suit schedule property bearing Khaneshumari No.109/A and 109/B, which are adjacent to each other having common boundary situated at Harur Village, Channapatna Taluk. The suit schedule property is acquired by the plaintiff No.1 and his brother viz., father or the plaintiff No.2 as per the registered Sale Deed dated 31st May, 1948 (Exhibit P2) and Settlement Deed dated 10th January, 1954 (Exhibit P1). It is also not in dispute that, the father of the plaintiff No.2 namely Motegowda and the plaintiff No.1 are the brothers having acquired the aforementioned property as per Exhibits P1 and P2.

15. The Trial Court, after considering the material on record, at paragraph No.15, arrived at a conclusion that, Exhibits P1 and P2 do not contain the Khaneshumari number



and the extent of the suit schedule property in question, except mentioning the boundaries in the aforementioned Deeds. The Trial Court, dismissed the suit by considering the boundaries mentioned in the aforementioned Deeds prevail over the measurement by tallying with the Exhibit D2-Demand Register Extract. The Trial Court, having considered the boundaries mentioned in Exhibits P1 and P2, tallied the same with the boundaries stated in the Report of Commissioner-Exhibit C8 and arrived at a conclusion that the boundaries conform to each other. On the other hand, perusal of Exhibit D1 makes it clear that, the father of the plaintiff No.2 had sold the schedule property mentioned in Exhibit D1 in favour of the husband of the defendant. The Trial Court, dismissed the suit on the on the basis of the boundaries shown in the schedule to the property in question and the sketch provided by the Commissioner at Exhibit C8, which would indicate that, the house of the defendant is situated towards Western side of the vacant space shown in the sketch. The finding recorded by the Trial Court, particularly on issue Nos.1 to 3 and 6 to 8 and the finding recorded by the First Appellate Court on Point No.1, wherein the First Appellate Court by looking into the boundaries



mentioned in Exhibits P1 and P2 as well as the evidence of DW1, arrived at a conclusion that the defendant has acquired the title over the property mentioned at Exhibit D1, is covered by land of Marisiddaiah, Thimmaiah and the house of Chikkonu on the East, Road on the West, Property of Nanjegowda on the North and property of Maramma Temple towards South. By looking into the schedule mentioned at the Exhibit D1, in which, the husband of the defendant had purchased from the father of plaintiff No.2, the First Appellate Court arrived at a conclusion that, the schedule in the Exhibit D1 does not cover the schedule mentioned either at Exhibit P1 or P2. The finding recorded by the First Appellate Court is based on the documents referred to by the defendant, particularly Exhibits D1 and D3. It is well established principle in law that, in a suit for declaration, it is the duty of the plaintiff to prove the case based on the documents to substantiate the title over the suit schedule property. On careful consideration of the finding recorded by the First Appellate Court, particularly to the finding at Paragraphs 8(i) and (j), the First Appellate Court had arrived at a conclusion that, the measurement of the property of the plaintiffs is to the extent of 40 x 80 feet and the measurement



of 40 feet of the property belonging to the plaintiffs is based on the schedule at Exhibit D1, is without acceptable evidence on record. Therefore, taking into consideration the divergent opinion expressed by the Courts below, I am of the view that, it is a fit case to remand the matter to the First Appellate Court to reconsider the issue afresh in the light of the documents mentioned at Exhibits P1, P2 and D1, so also, the evidence of the Court Commissioner.

16. It is pertinent to mention here that, though the Court Commissioners have been examined as CW1 and CW2 and marked Exhibits C1 to C10, the First Appellate Court has not considered the documents referred to by the Court Commissioners in the impugned judgment and decree. It is well settled principle in law that, it is duty of the First Appellate Court to adjudicate the First Appeal as required under Order XLI Rule 31 of the Code of Civil Procedure in consonance with the dictum of the Hon'ble Supreme Court in the case of **SANTHOSH HAZARI vs. PURUSHOTTAM TIWARI (DEAD) BY LRS** reported in (2001)3 SCC 179. Therefore, in order to answer the substantial question of law referred to above, I am of the view that, the re-appreciation of finding of facts is



required to be made by the First Appellate Court. Hence, I pass the following:

ORDER

- (i) Regular Second Appeal ***allowed;***
- (ii) Judgment and Decree dated 12th July, 2013 passed in Regular Appeal No.104 of 2012 on the file of Senior Civil Judge and JMFC., Channapatna, Ramanagar District is hereby set aside and the matter is remanded to the First Appellate Court for fresh consideration in accordance with the observation made above;
- (iii) Since the parties are represented through their counsel parties are directed to appear before the First Appellate Court on 03rd June, 2026 at 11.00 am.
- (iv) The First Appellate Court is requested to decide the appeal within a period of six months from the date of appearance of the parties;

**SD/-
(E.S. INDIRESH)
JUDGE**

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List No.: 2 Sl No.: 45