



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 233 OF 2013 (INJ)

BETWEEN:

1. SRI. U. SURENDRA BHAT
SINCE DEAD REP BY HIS LEGAL REPRESENTATIVES
- 1(A) SMT. U. SUGUNA S BHAT,
AGED 63 YEARS,
W/O LATE U SURENDRA BHAT,
- 1(B) SRI. JAYARAM SURENDRA BHAT,
AGED 48 YEARS,
S/O LATE U SURENDRA BHAT,
- 1(C) SRI. ATUL SURENDRA BHAT,
AGED 47 YEARS,
S/O LATE U SURENDRA BHAT
- 1(D) SRI U. VISHWAMBHAR SURENDRA BHAT,
AGED 29 YEARS,
S/O LATE U SURENDRA BHAT

ALL ARE R/AT 'SULAKSHANA NIVAS,
KUKKIKATTE OF 76 BADAGABETTU VILLAGE,
UDUPI TALUK-576 107.

...APPELLANTS

[BY SRI. PUNDIKAI ISHWARA BHAT., ADVOCATE FOR A1(A-D)]

Digitally signed
by KIRAN
KUMAR R.
Location: HIGH
COURT OF
KARNATAKA



AND:

1. BIULLA IRENE VARTIK, AGED 76 YEARS,
(DEAD BY LRS)
W/O HENSEL THEODORE VARTIK,
R/AT KUKKIKATTE NO.76
BADAGABETTU VILLAGE,
UDUPI TALUK-576 107
- 1(A) JOYCEE, MAJOR,
D/O LATE BIULLA IRENE VARTIK,
R/AT SUKUVILAS, NO.76,
NEAR RAILWAY BRIDGE,
BADAGABETTU VILLGE,
KUKKIKATTE, UDUPI TALUK-576 107
- 1(B) NALINI, MAJOR,
D/O LATE BIULLA IRENE VARTIK
R/AT KUKKIKATTE NO.76
BADAGABETTU VILLAGE,
UDUPI TALUK-576 107
- 1(C) KAMALA, MAJOR,
D/O LATE BIULLA IRENE VARTIK
R/AT KUKKIKATTE NO.76
BADAGABETTU VILLAGE,
UDUPI TALUK-576 107
- 1(D) GABRIEL @ PREMA, MAJOR, (DEAD BY LRS)
S/O LATE BIULLA IRENE VARTIK,
R/AT SUKUVILAS, NO.76,
BADAGABETTU VILLAGE,
NEAR RAILWAY BRIDGE,
KUKKIKATTE, UDUPI TALUK-576 107
- 1(D)(1) SMT. JOYCE GABRIES WARTHIKA, MAJOR,
W/O LATE GABRIEL WARTHIK,
R/AT SUKUVILAS, NO.76,
BADAGABETTU VILLAGE,
NEAR RAILWAY BRIDGE,
KUKKUKATTE, UDUPI TALUK-576 101



- 1(D)(II) MR. PREETHAM,
MAJOR,
S/O LATE GABRIEL WARTHIK,
R/AT SUKUVILAS, NO.76,
BADAGABETTU VILLAGE,
NEAR RAILWAY BRIDGE,
KUKKUKATTE, UDUPI TALUK-576 101
- 1(E) BEN @ BENNANEIN,
MAJOR, S/O LATE BIULLA IRENE VARTIK,
R/AT SUKUVILAS, NO.76,
BADAGABETTU VILLAGE,
NEAR RAILWAY BRIDGE,
KUKKUKATTE,
UDUPI TALUK-576 107.

...RESPONDENTS

[BY SRI. VISHNU PRANEETH A , ADVOCATE FOR
SRI. S N PRASHANTH CHANDRA, ADVOCATE &
SRI. B V KRISHNA, ADVOCATE FOR R1(A TO C & E) &
R1(D) (1) (GPA VK FILED)
V/O DATED 10.07.2017 SERVICE OF NOTICE H/S IN R/O
R1(D)(2)]

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGMENT & DECREE DTD 25.9.2012 PASSED IN
R.A.NO.43/2000 ON THE FILE OF PRINCIPAL SENIOR CIVIL
JUDGE, UDUPI, DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DTD 21.8.1999 PASSED IN
OS.NO.255/1992 ON THE FILE OF PRINCIPAL CIVIL JUDGE
(JR.DN.), UDUPI.

THIS APPEAL, COMING ON FOR ADMISSION, 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 appellants challenging the judgment and decree dated 25.09.2012 passed in R.A. No.43 of 2000 by the learned Principal Senior Civil Judge, Udupi, confirming the judgment and decree dated 21.08.1999 passed in O.S. No.255 of 1992 by the learned Principal Civil Judge (Jr.Dn.), Udupi.
2. Parties are referred to based on their rankings before the Trial Court, the appellant was the plaintiff and the respondent was the defendant.
3. Brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiff filed a suit for permanent injunction and mandatory injunction. It is the case of the plaintiff that the suit schedule "A" properties were purchased by the plaintiff under the registered sale deed dated 12.04.1978. Insofar as Item No.1 of suit schedule



"A" properties, namely bearing Survey No.166/1B, (southern portion) measuring 1 acre 39 cents of land, was purchased by the plaintiff's father under the registered sale deed dated 29.10.1969 from one Sofia Esther Richard and others. Similarly, Item No.2 of suit schedule "A" properties, namely Survey No.166/1B (north-eastern portion) measuring 23 cents was purchased by the plaintiff under the registered sale deed 27.08.1975. The plaintiff is in possession of the entire suit schedule properties. The defendant has no right, title or interest over the suit schedule properties. The plaintiff's father put up a compound wall leaving 40 links space on south of the northern boundary of Item No.1 of suit schedule "A" property, and the said compound runs from west to east. After construction of compound wall, the defendant, her sister and family members have been making use of the said space. The defendant is not in possession of the suit schedule property.



5. The plaintiff contended that his house is situated in Item No.1 of the suit schedule property and the plaintiff is residing therein since from 1971. In item No.2 of suit "A" schedule property, there are jack fruit and mango trees, and one of the jack fruit tree was standing close to the western boundary line of Item No.1. The plaintiff being the owner of the entire suit schedule property is in possession thereof.
6. The defendant by trespassing into 'A' schedule property, started digging a well, as such, the plaintiff got issued a legal notice to the defendant. Hence, a cause of action arose for the plaintiff to file a suit for perpetual injunction and mandatory injunction.
7. The defendant filed a written statement denying the averments made in the plaint and contended that the defendant has dug up a well in her own property. It is also contended that 10 links width is situated on the southern portion of the property allotted to her in



the partition dated 23.06.1975. After the acquisition of a portion of the land by Konkan Railways, she started to dig a well in her property and the same is situated far away from the northern boundary of item No.1 suit schedule "A" property. It is contended that the plaintiff is not in possession of the suit schedule property. The suit filed by the plaintiff is not maintainable and there is no cause of action for the plaintiff to file a suit for perpetual injunction. Hence, she has prayed for dismissal of the suit.

8. The Trial Court, based on the rival pleadings of the parties, framed the following issues and additional issues:

Issues:

- (i) Whether the plaintiff proves that he has been in lawful possession and enjoyment of 1st and 2nd items of plaint 'A' schedule property?
- (ii) Whether the plaintiff proves the alleged interference with his



peaceful possession and enjoyment
of the plaint 'A' schedule property
by the defendant?

- (iii) Whether the plaintiff is entitled to
the relief of prohibitory injunction
prayed for?
- (iv) Whether the plaintiff is entitled to
the relief of mandatory injunction
prayed for?
- (v) What order?

Addl. Issues:

- (i) What is the correct northern
boundary of the 1st item of the
plaint 'A' schedule properties?
 - (ii) What is the correct western
boundary of the 2nd item of the
plaint 'A' schedule properties?
9. The plaintiff, to substantiate his case, examined
himself as PW1, examined one witness as PW2, and
marked nine documents as Exhibits P1 to P9.



10. In rebuttal, the defendant has not led any oral evidence.
11. During the pendency of the suit, a Court Commissioner was appointed. The Court Commissioner, after visiting the site, submitted a report, and the plaintiff filed objections to the Court Commissioner's report. The Court Commissioner was examined as CW1 and he got marked three documents as Exhibits C1 to C3.
12. The Trial Court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, has answered issue No.1 in the affirmative; issue Nos.2 to 4 in the negative, additional issue Nos.1 and 2 are held to be the one shown in the Commissioner's report and issue No.5, as per the final order. The suit was dismissed without cost, vide judgment dated 21.08.1999.



13. The plaintiff, aggrieved by the dismissal of the suit in O.S. No.255 of 1992, preferred an appeal in R.A. No.43 of 2000 on the file of the Principal Senior Civil Judge, Udupi.
14. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for adjudication :
 - (i) Whether the trial Court has not appreciated oral and documentary evidence produced by the appellant/plaintiff?
 - (ii) Whether the judgment and decree of the trial Court is also call for interference?
 - (iii) What decree or order?
15. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 and 2 in the negative, point No.3 as per the final order; the appeal was dismissed vide judgment dated 25.09.2012.



16. The plaintiff, aggrieved by the judgments passed by the Courts below, filed this Regular Second Appeal.
17. Heard the arguments of the learned counsel for the plaintiff and the learned counsel for the defendant.
18. Learned counsel for the plaintiff submits that the plaintiff is the absolute owner of Item No.1 of suit 'A' schedule property to the extent of 1 acre 39 cents and 3½ cents was acquired by Konkan Railways. He submits that since after the acquisition, there remains 1 acre 36 cents, the plaintiff has constructed a compound wall in 'A' schedule property. He submits that the defendant made encroachment over his property. He contended that by leaving 40 links space between the properties, he has constructed a compound wall. He submits that defendant has dug up a well, the schedule property on northern portion of Item No.1 of 'A' schedule property. He submits that defendant has no right, title or interest to dig a



well in Item No.1 of 'A' schedule property. The defendant had illegally dug up a well in item No.1 of 'A' schedule property and dumped mud in item No 2 of the suit schedule property.

19. The Trial Court has lost sight of the fact and committed an error in recording the finding that there is no cross-examination to CW1, though, in fact, the plaintiff has cross-examined CW1. The said observation by the First Appellate Court is contrary to the records. The impugned judgments passed by the Courts below are arbitrary and erroneous. Hence, on these grounds, he prays to allow the appeal.

20. *Per contra*, learned counsel for the defendant submits that both the Courts below have concurrently recorded a finding of fact that the plaintiff has failed to establish that he is in lawful possession and enjoyment of item Nos.1 and 2 of



suit "A" schedule properties and also alleged interference by the defendant.

21. He also submits that during the course of cross-examination, PW-1 has admitted that defendant and her sister requested the plaintiff's father to provide a pathway from the northern portion of Item No.1 of the suit 'A" schedule property and in that regard, plaintiff's father had constructed a compound wall from west to east in item No.1 of the suit schedule property by leaving 40 link space or pathway on the northern side and further, the said admission of PW1 is sufficient to hold that the plaintiff is not in possession of the suit schedule property. Hence, he submits that though the First Appellate Court has recorded a finding that there is no cross-examination to CW1, in fact, the Court Commissioner was cross-examined by the learned counsel for the plaintiff. However, due to inadvertence, the First Appellate Court has recorded a finding that there is no cross-



examination to CW1. He submits that the First Appellate Court, without looking into the deposition of CW1, has recorded the said observation. The said observation is contrary to the deposition of CW1.

22. He submits that insofar as possession is concerned, both the Courts below have concurrently recorded a finding that the plaintiff is not in possession of the suit schedule property. Further, he also submits that the suit for bare injunction without seeking a relief of declaration is not maintainable.

23. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in case of **Anatula Sudhakar v. P.Buchi Reddy (dead) by LRs and others** reported in **AIR (2008) SC 2033**. Hence, on these grounds, he submits that the impugned judgments passed by the Courts below are just and proper and do not call for any interference



at the hands of this Court. Hence, he prays to dismiss the appeal.

24. This Court, vide order dated 12.09.2024 admitted the appeal to consider the following substantial questions of law:

- 1) Whether the First Appellate Court was justified in recording the finding that the plaintiff has not cross-examined CW-1 when the plaintiff has filed objections to the commissioner's report and commissioner was cross examined as CW-1, by the plaintiff but in the deposition of CW-1, it is shown as examination-in-chief instead of cross examination?***
- 2) Whether both the Courts below were justified in ignoring Exs.P-1 to 4 which discloses the extent of properties purchased by the plaintiff?***



Reg. Substantial Question of Law No.1:

25. The plaintiff filed a suit for perpetual injunction and mandatory injunction claiming that the plaintiff had purchased item No.1 of 'A' schedule property under a registered sale deed dated 12.04.1978 and further, item No.2 of the suit schedule property was purchased under a registered sale deed dated 27.08.1975. The plaintiff claims to be the owner and in possession of 1 acre 39 cents and further, contended that the land to an extent of 3 cents was acquired by the Konkan Railways and the plaintiff is in possession of 1 acre 36 cents.
26. It is contended that the defendant has no right, title or interest over the suit schedule properties. Further, it is contended that the plaintiff's father had constructed a compound wall by leaving 40 link space and the said open space belongs to the



plaintiff and the defendant has no right, title or interest over the open space left by the plaintiff.

27. It is contended that the defendant has dug up a well in the open space, though the defendant has no right, title or interest to dig a well thereat.

28. The plaintiff, to substantiate his case, examined himself as PW1. He has reiterated the plaint averments in the examination-in-chief and in order to prove the case, the plaintiff got marked 9 documents as Exhibits P1 to P9:

- Exhibit P1, which is the registered sale deed executed on 12.04.1978;
- Exhibit P2 is the original registered sale deed dated 27.08.1975;
- Exhibit P3 is the certified copy of the registered sale deed dated 29.10.1969;
- Exhibit P4 is copy of the partition deed;



- Exhibit P5 is the application submitted to the Tahasildar, Udupi Taluk, requesting to order not to dig the well;
- Exhibit P6 is the acknowledgment for having submitted an application to the revenue authorities;
- Exhibits P7 to P9 are the RTC extracts relating to the suit schedule property, which discloses that the plaintiff is in possession to the extent of 1 acre 36 cents.

29. PW1 has admitted in the cross-examination that on the request made by the defendant and her sister, the father of the plaintiff provided a pathway on the northern portion of Item No.1 of suit 'A' schedule property and his father had constructed a compound wall from west to east in Item No.1 of suit 'A' schedule property by leaving 40 links space for the pathway on the northern side of the said wall and further, he has also admitted that the pathway has been left for the use of defendant in the partition deed marked as Exhibit P4 and also admitted that at



the time of purchase of Item No.1 of the suit schedule properties itself, the northern compound wall was in existence and he admits that he (PW1) had not got measured the suit schedule properties before purchasing the properties and he is not aware as to whether his father, before purchasing the suit schedule property, has surveyed item No.1 of the suit schedule property.

30. The plaintiff also examined one witness as PW2. He has reiterated the averments made in the examination-in-chief of PW1.
31. In rebuttal, the defendant has not entered the witness box.
32. During the pendency of the suit, an application was filed for appointment of Court Commissioner. The Trial Court allowed the application for appointment of a Court Commissioner. The commissioner executed the commission warrant and visited the spot and



submitted a report to the Trial Court. The plaintiff has filed the objection to the commissioner's report.

33. From the perusal of the deposition of CW1, it is clear that nothing has been elicited from the mouth of CW1 to disprove the averments made by CW-1 in his deposition.

34. Admittedly, the defendant has dug a well, and to ascertain whether the said well is dug in the property of the plaintiff or in the property of defendant, a commissioner was appointed and he has submitted a report stating that the said well is dug in the property of the defendant. Further, from the perusal of the Commissioner's report, it clearly discloses that the plaintiff is in possession of 1 acre 21 cents and not 1 acre 39 cents. The plaintiff has already cross-examined CW1, but the First Appellate Court has recorded a finding that there is no cross-examination



made by the plaintiff to CW1. The said observation is contrary to the records.

35. PW1 has also admitted that he has not challenged the entries made in the Record of Rights in regard to the measurement shown as 1 acre 21 cents insofar as item No.1 of the suit 'A' schedule property. Though the plaintiff has produced the registered sale deed marked as Exhibit P3, it clearly discloses that the plaintiff has purchased land to the extent of 1 acre 39 cents. But, the revenue records disclose that it is 1 acre 21 cents.

36. Admittedly, the plaintiff has filed a suit for perpetual injunction and mandatory injunction. The plaintiff has not sought the relief of possession.

37. Both the Courts below have rightly recorded a finding that the plaintiff is not in possession of the suit schedule properties and the plaintiff has failed to prove the alleged interference by the defendant with



the plaintiff's peaceful possession and enjoyment of
plaint "A" schedule property. The defendant has
denied the ownership of the plaintiff to the extent of
1 acre 36 cents.

38. The Commissioner has stated that the plaintiff was in
possession to the extent of 1 acre 21 cents. There is
a difference of 15 cents. The plaintiff did not seek
relief of possession in respect of 15 cents and the
defendant has denied the ownership of the plaintiff in
respect of 15 cents.

39. A suit for mere injunction without seeking a relief of
declaration is not maintainable, in view of the
proposition laid down by the Hon'ble Apex Court, in
case of **Anathula Sudhakar v. P.Buchi Reddy**
(dead) by LRs and others reported in **(2008) 4**
SCC 594, wherein the Hon'ble Apex Court has
formulated the questions and answers:



“ **21.** To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

- (a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.
- (b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in



the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

- (c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.



(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. "

40. Admittedly, a cloud has been raised over the plaintiff's title and admittedly, the plaintiff does not



have the possession to the extent of 15 cents. The plaintiff has not sought for the relief of declaration and possession in respect of 15 cents. Hence, the Courts below have rightly passed the impugned judgments.

41. As held above, the findings recorded by the First Appellate Court insofar as Commissioner was not cross-examined by the defendant is contrary to the records.
42. In view of the above discussion, I answer question No.1 in the ***negative***.

Substantial Question of Law No.2:

43. The Trial Court, considering Exhibits P1 to P4 i.e., the registered sale deeds and partition deed, has held that the plaintiff is in possession to the extent of 1 acre 21 cents and not 1 acre 39 cents. The Trial Court at paragraph 17 has considered Exhibits P1 to P4, the report of the Commissioner, as well as the



admission of PW1, who has clearly admitted that on the request made by the defendant and her sister, the plaintiff's father has left the said open space for the purpose of using it for ingress and egress by the defendant.

44. Thus, both the Courts below have rightly considered the entire evidence placed on record and rightly passed the impugned judgments.

45. In view of the above discussions, I answer substantial question of law No.2 in the ***negative***.

46. In the result, I proceed to pass the following order:

ORDER

(i) The Regular Second Appeal is ***dismissed***;

(ii) The impugned judgments and decrees passed by the Courts below are hereby confirmed;

(iii) Liberty is reserved to the plaintiff to file a comprehensive suit in



light of the judgment passed by the Hon'ble Apex court in the case of **Anathula Sudhakar** (*Supra*), if law permits.

(iv) No order as to the costs.

(v) After arguing the matter, learned counsel for the appellants submits that he will not press I.A. No.1 of 2015. Submission is placed on record. I.A. No.1 of 2015 is ***dismissed*** as not ***pressed***.

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

RK
List No.: 2 Sl No.: 2