



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.690 OF 2017 (INJ)

BETWEEN:

SRI B. H. SHIVANNA
S/O B. HUCHAVEEREGOWDA,
AGED ABOUT 68 YEARS,
R/O BELAVATTHA,
KADABA HOBLI, GUBBI TALUK,
TUMKUR DISTRICT-572 216,

...APPELLANT

(BY SRI M B CHANDRACHOODA, ADVOCATE)

AND:

THE SECRETARY
BELAVATTHA GRAMA PANCHAYATH,
BELAVATTHA, KADABA HOBLI,
GUBBI TALUK,
TUMKUR DISTRICT-572 216.

...RESPONDENT

(RESPONDENT IS SERVED BUT UNREPRESENTED)

THIS RSA IS FILED UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE, AGAINST THE JUDGMENT AND DECREE DATED 13.2.2017 PASSED IN R.A.NO.33/2012 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE, GUBBI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 17.07.2012 PASSED IN O.S.NO.63/2007 ON THE FILE OF THE CIVIL JUDGE AND JMFC, GUBBI.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

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Location:
HIGH
COURT OF
KARNATAKA



ORAL JUDGMENT

Heard Sri M.B.Chandrachooda, learned counsel for the appellant. None appears for the respondent.

2. Plaintiff's Second Appeal challenging the dismissal of the suit in O.S No.63/2007 on the file of the Civil Judge and JMFC, Gubbi, confirmed in R.A No.33/2012 on the file of the Additional Senior Civil Judge, Gubbi.

3. Parties are referred to as plaintiff and defendant as per their original ranking before the Trial Court.

4. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as follows:

4.1 A suit for bare junction was filed by the plaintiff in respect of the following immovable property hereinafter referred to as suit property:

"A vacant site along with a shed bearing K.No.345/1, measuring East-West 48 yards, North-South 26 yards situated at Belavatta village, Kadaba Hobli, Gubbi Taluk, bounded by:

*East: Panchayath Road,
West: Property of B.H.Veeregowda,
North: Road,
South: Property of the plaintiff."*



4.2 Plaintiff contented that the suit land was granted to him by the defendant and later same was cancelled. However, it is the case of the plaintiff that there was a re-grant of the same land to him and therefore, he is in lawful possession of the property and defendant has no right to dispossess him.

5. Pursuant to the suit summons, defendant entered appearance and resisted the suit on the ground that the plaintiff is not in lawful possession of the suit property.

6. Learned Trial Judge, after considering the oral and documentary evidence placed on record, by the judgment dated 17.07.2012 dismissed the suit *inter alia* holding at paragraphs 21 to 25 as under:

"21. I have perused the oral and documentary evidence produced by the plaintiff. The core issue is whether the plaintiff's possession is lawful one or not. No doubt, the documents produced by the plaintiff prima facie establish the possession of the plaintiff over the suit schedule property. But, the documents produced by the defendant establish that the alleged grant made in favour of father of plaintiff was cancelled. Once the grant is cancelled, it cannot be re-granted to the same person and the panchayath has no power to re-grant the said property. Therefore, the plaintiff cannot take shelter



*under the concocted documents. The possession of the plaintiff is not lawful one. One who is in wrongful possession is not entitled for any injunction against the rightful owner. In this regard, I would like to rely upon a decision reported in **1994(5) SCC 547 Premji Rataney Shah Vs. Union of India, wherein, the Hon'ble Apex Court has held that - Sec.47(J) of Specific Relief Act - A person in wrongful possession is not entitled to any injunction against the rightful owner to protect his possession.** In the present case also, the possession of the plaintiff is wrongful one. Though, the documents produced by the plaintiff show prima facie the possession over the suit schedule property, he is not entitled for injunction as he is in wrongful possession of the suit schedule property. Therefore, the ratio laid down by the Hon'ble Apex Court is aptly applicable to the case on hand.*

22. The learned counsel for the plaintiff has vehemently argued and submitted that there are so many admissions by the defendant's witnesses and their admissions clearly establish the possession of the plaintiff. Therefore, he prays to decree the suit on the basis of said admissions.

23. I have perused the oral evidence of defendant's witnesses. No doubt, some admissions are there regarding the possession of the plaintiff, but they will not help the plaintiff, as the plaintiff is in wrongful possession of the suit schedule property.



24. *The learned counsel for the plaintiff has vehemently argued that the plaintiff is in peaceful possession and enjoyment of the suit schedule continuously, peacefully uninterrupted for more than 30 years to the knowledge of one and all including the Govt. and thereby he perfected his title to the suit schedule property by way of adverse possession. On this aspect also, the plaintiff is entitled for relief of permanent injunction and prays to decree the suit.*

25. *On the otherhand, the learned counsel for the defendant has argued that there is no question of adverse possession available to the plaintiff, the possession of the plaintiff is wrongful one, without seeking the declaration of title he cannot claim the adverse possession, and the alleged documents produced by the plaintiff are not sufficient to grant relief and prays to dismiss the suit. In this regard, he had relied upon a decision reported in **KLJ 2011(1), Page 6 S.C. R.Hanumaiah and others Vs. Secretary, Govt. of Karnataka and others**. I have perused the decision. Mere vague or doubtful assertion that the plaintiff has been in adverse possession is not sufficient. Therefore, the contention of plaintiff cannot be accepted. Moreover, it is not a suit for declaration of title. It is only a suit for bare injunction. Hence, the question of considering the adverse possession as pleaded by the plaintiff does not arise."*

7. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in Regular Appeal No.33/2012.



8. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of the material on record dismissed the appeal.

9. Being further aggrieved by the same, plaintiff is before this Court.

10. Sri M.B.Chandrachooda, learned counsel for the appellant/plaintiff would contend that both the Courts failed to appreciate the scope of the suit inasmuch as, the learned Trial Judge has recorded a finding that plaintiff is no doubt in possession of the suit property, but it is wrongful possession. Therefore, denied the injunction, which is beyond the scope of injunction suit and thus sought for admitting the appeal for further consideration.

11. Respondent is served with notice and has remained absent.

12. After considering the material on record meticulously, this Court noted that the defendant/Panchayath had earlier granted the suit land to the plaintiff and subsequently cancelled the same.



13. It is the contention of the plaintiff that there is a re-grant of the suit property.

14. Admittedly under the provisions of the relevant statute, such a re-grant is impermissible which has been taken note of by the learned Trial Judge while dismissing the suit of the plaintiff, by following the principles of law enunciated in the the judgments on the said aspect of the matter.

15. However, since there is an observation by the learned Trial Judge that plaintiff has been able to make out that he was in possession of the property though it is wrongful possession, the respondent shall take the possession of the property from the plaintiff in accordance with law.

16. With that observation, Appeal stands ***dismissed***.

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

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List No.: 2 Sl No.: 65