



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1544 OF 2013 (DEC/INJ)

BETWEEN:

SIDDAHANUMAIAH,
S/O LATE GANGAIAH,
AGED ABOUT 66 YEARS,
R/A KODIHALLI MAJARE,
MULUKUNTE POST,
GULUR HOBLI,
TUMKUR TALUK AND DISTRICT - 572 118.

...APPELLANT

(BY SRI. MADHUKAR DESHPANDE &
SMT.K.P.YOSHODHA, ADVOCATES)

AND:

1. GANGAHANUMAIAH,
S/O LATE SANJEEVAIAH,
AGED ABOUT 60 YEARS,
R/A KODIHALLI MAJRE,
MULUKUNTE POST,
GULUR HOBLI,
TUMKUR TALUK,
TUMKUR DISTRICT - 572 118.
2. HANUMANTHAIAH,
S/O LATE SANJEEVAIAH,
R/A KODIHALLI MAJRE,
MULUKUNTE POST,

Digitally
signed by
SUNITHA K S
Location:
HIGH COURT
OF
KARNATAKA





GULUR HOBLI,
TUMKUR TALUK,
TUMKUR DISTRICT - 572 118.

3. NARAYANAPPA,
S/O LENKAPPA,
AGED ABOUT 66 YEARS,
R/A KODIHALLI MAJRE,
MULUKUNTE POST,
GULUR HOBLI,
TUMKUR TALUK,
TUMKUR DISTRICT - 572 118.

4. G. RAMAIAH,
S/O LATE GANGAIAH,
AGED ABOUT 55 YEARS,
R/A KODIHALLI MAJRE,
MULUKUNTE POST,
GULUR HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 118.

...RESPONDENTS

(BY SRI. S.C.VIJAY KUMAR, ADVOCATE FOR R1 AND R2;
SRI.M.V.ANOOP KUMAR, ADVOCATE FOR R3;
SRI.SANTHOSH S NAGARALE, ADVOCATE FOR R4)

THIS RSA IS FILED U/S.100 OF CPC., AGAINST THE
JUDGMENT & DECREE DATED 27.6.2012 PASSED IN
R.A.NO.277/2008 (OLD NO.155/2006) ON THE FILE OF THE
PRESIDING OFFICER, FAST TRACK COURT-I, TUMKUR,
ALLOWING THE APPEAL AND REVERSING THE JUDGMENT AND
DECREE DATED 10.7.2006 PASSED IN OS.NO.324/2002 ON
THE FILE OF THE I ADDL. CIVIL JUDGE (JR.DN) & JMFC.,
TUMKUR.



THIS APPEAL, COMING ON FOR FINAL HEARING, 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 appellant challenging the judgment and decree dated 27.06.2012 passed in R.A.No.277/2008 (old No.155/2006) by the Fast Track Court-I, Tumkur (for short 'the first appellate Court'), confirming the judgment and decree passed in O.S.No.324/2002 dated 10.07.2006 by the learned I Additional Civil Judge, (Jr. Dn) and JMFC, Tumkur (for short 'the trial Court').
2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellant was defendant No.2 and respondent Nos.1 and 2 were the plaintiffs and other respondents were the defendants.



3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit for declaration and permanent injunction. It is the case of the plaintiffs that plaintiff No.1 is the absolute owner and in possession of item No.1 of the suit property and plaintiff No.2 is the absolute owner and in possession of item No. 2 of the suit property. Further, it is the case of the plaintiffs that the plaintiffs' father by name Sanjeevaiah had two brothers by name Gangappa and Karehanumaiah. All the three brothers effected a partition of ancestral and joint properties on 10.07.1958 and a memorandum of partition was effected on the same day. In the said partition, along with four properties 1-0.5 guntas of property in survey No.22/2 were allotted to the share of Sanjeevaiah i.e., father of the plaintiffs. Thereafter, they were enjoying the properties fell to their share respectively.



5. Further, the plaintiffs' father had purchased one acre of land in survey No.22/2 from his siblings under a registered sale deed dated 05.08.1959. Thus, he was in possession and enjoyment to the extent of two acres 5 guntas of land in survey No.22/2. He was in peaceful possession and enjoyment of the suit schedule property till his death. After his death, the plaintiffs came in possession of the suit schedule properties. It is contended that the defendants have no right, title or interest over the suit schedule properties. Thus, the defendants made an attempt to interfere with the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties. Hence, a cause of action arose for the plaintiffs to file a suit for declaration of title and permanent injunction.
6. The defendants filed a written statement denying the averments made in the plaint, and contended that Lenkappa had purchased one acre 10 guntas of land



in survey No.22/2 from Gangappa under a registered sale deed dated 03.10.1960 and Lenkappa was put in possession. Hence, Lenkappa was in possession and enjoyment of the suit property till his death. After his demise, the defendant No.1 continued in peaceful possession and enjoyment of the suit property. He planted 300 areca nut trees and coconut trees. The said land is covered by barbed wire fence. It is also contended that defendant No.1's name is entered in the revenue records as a owner in possession.

7. It is also contended that father of defendants No.2 and 3 by name Gangaiah had purchased one acre 10 guntas of land in survey No.22/2 from his brother under a registered sale deed dated 16.06.1969. During his life time, Gangaiah was in possession and enjoyment of suit property. After his demise defendants No.2 and 3 continued in possession and enjoyment of the said property. It is contended that the plaintiffs have no right, title or interest over suit



schedule property. It is also contended that the plaintiffs are not in possession of the suit schedule properties. Hence, the suit for mere declaration of title and permanent injunction is not maintainable without seeking a consequential relief of possession. Hence, prays to dismiss the suit.

8. The trial Court, based on the rival pleadings of the parties framed the following issues.

- 1. Whether the plaintiffs prove their title over the suit schedule property?*
- 2. Whether the plaintiffs prove that he is in possession over the suit schedule property as on the date of suit?*
- 3. Whether the plaintiffs prove the interference by the defendants over the peaceful possession and enjoyment of the suit schedule property by the plaintiffs?*
- 4. Whether the plaintiffs are entitled for the relief as sought?*
- 5. What order or decree?*



9. The plaintiffs to substantiate their case, plaintiff No.1 was examined as PW.1, examined one witness as PW.2 and marked 7 documents as Exs.P1 to 7. In rebuttal, defendant No.1 was examined as DW.1, examined two witnesses as DWs.2 and 3 and marked 8 documents as Exs.D1 to D8.
10. The trial court after recording the evidence, hearing both sides and assessing the verbal and documentary evidence answered issues No.1 to 4 in the negative, issue No.5 as per the final order and dismissed the suit of the plaintiffs.
11. The plaintiffs, aggrieved by the dismissal of the suit in O.S.No.324/2002 preferred an appeal in R.A.No.227/2008 (old No.155/2008 on the file of Fast Track Court-1, Tumkur.
12. The first appellate court after hearing the learned counsel for the parties, framed the following points for consideration.



- 1. Whether learned trial judge erred in holding that plaintiffs are absolute owners and in possession of suit property?*
 - 2. Whether additional documents produced by appellants under I.A.No.2 are necessary to pass more effective judgment?*
 - 3. Whether findings of learned trial judge is perverse and arbitrary and interference by this Court is required?*
 - 4. What order or decree?*
13. The first appellate court after re-appreciating the entire evidence on record, answered points No.1 and 3 in the affirmative, point No.2 in the negative, and point No.4 as per the final order.
14. The first appellate court allowed the appeal and set aside the judgment and decree passed in O.S.No.324/2002 dated 10.07.2006 and consequently decreed the suit of the plaintiffs and declared that the plaintiffs are the absolute owners and in possession of suit property and decreed for



permanent injunction was granted restraining the defendants permanently from interfering in their peaceful possession and enjoyment of the suit properties vide judgment dated 27.06.2012.

15. The defendants aggrieved by the judgment and decree passed in R.A.No.277/2008(old No.155/06) filed this Regular Second Appeal.
16. Heard the arguments of the learned counsel for the defendants and the learned counsel for the plaintiffs.
17. Learned counsel for the defendants submits that both the courts below have concurrently recorded a finding of fact that the plaintiffs are not in possession of entire suit schedule properties. He submits that the plaintiffs have not sought the relief of possession. He submits that the suit filed by the plaintiffs is not maintainable as per Proviso to Section 34 of the Specific Relief Act, 1963, and to buttress his arguments, he has placed reliance on the judgment



of the Hon'ble Apex Court in the case of ***Vasantha (Dead) Thr. L.R.vs. Rajalakshmi @ Rajam (Dead) Thr. Lrs.***¹

18. He submits that the first Appellate Court has committed an error in passing the impugned judgment. Hence, he submits that the impugned judgment passed by the first Appellate Court is contrary to the mandate laid down by the Hon'ble Apex Court in the case of ***Vasantha (Dead) Thr. L.R.*** (referred supra). He submits that the impugned judgment passed by the first Appellate Court is arbitrary and erroneous. Hence, on these grounds, he prays to allow the appeal.

19. *Per contra*, learned counsel for the plaintiffs submits that the plaintiffs are the absolute owners and in possession of the suit schedule properties under a registered sale deed and the name of the plaintiffs

¹ 2024(5) SCC 282



were entered in the revenue records. He submits that there is a presumption under Section 133 of the Karnataka Land Revenue Act, regarding the entries in the revenue records. The trial Court drawing the presumption under Section 133 of the Karnataka Land Revenue Act has rightly held that the plaintiffs are in possession of the suit schedule properties. Hence, the first Appellate Court was justified in passing the impugned judgment. Hence, on these grounds, he prays to dismiss the appeal.

20. This Court vide order dated 18.10.2019, admitted the appeal to consider the following substantial question of law:

1. *"Whether the plaintiffs without seeking consequential relief could have maintained the suit for declaration under Section 34 of the Specific Relief Act?; and*



2. Whether the first appellate court could have reversed the finding on title without properly appreciating Ex.P4 to Ex.P7?

21. Perused the records and considered the submissions of the learned counsel for the parties.

Regarding substantial question of law No.1:

22. The plaintiffs have filed a suit for declaration of title to the properties 1 and 2 as shown in the plaint schedule. It is the case of the plaintiffs that one Sanjeevaiah is the father of Gangappa and Karehanumaiah, who are the two brothers of plaintiff's father Sanjeevaiah. Three brothers got divided ancestral and joint family properties by means of palupatti dated 10. 07.1958 and item No. 1 of the suit schedule property fell to the share of the plaintiffs' father. There exists 3 acres 13 guntas in land bearing survey No.22/2 situated at Kodihalli, Gulur Hobli, Tumkur and remaining 1 acre 4 guntas



of land each fell to the share of Gangaiah and Karihanumaiah respectively in Survey No. 22/ 2.

23. The plaintiffs' father had purchased one acre of land in Survey No.22/2 from his siblings under a registered sale deed dated 05.08.1959. The plaintiffs' father acquired 2 acres 5 guntas of land in Survey No. 22/2 i.e., item Nos. 1 and 2 of the suit schedule properties. He is in possession and enjoyment of the suit schedule properties. The plaintiffs and their siblings got divided the properties under a registered partition deed dated 08.03.2001 and in the said partition, item No. 1 of the suit schedule property fell to the share of plaintiff No.1. Item No.2 of the suit schedule property fell to the share of plaintiff No.2. Since the plaintiffs are in possession of their respective shares based on the partition, names of the plaintiffs were entered in the revenue records. The uncles of the plaintiffs have no any right or interest over the suit schedule properties. The



defendants are making attempts to dispossess the plaintiffs from the suit schedule properties. The plaintiffs requested not to interfere with the peaceful possession and enjoyment of the suit schedule properties but the defendants did not give any heed to the request made by the plaintiffs. Hence filed a suit for declaration of title and permanent injunction.

24. The plaintiffs to substantiate their case, plaintiff No. 1 was examined himself as PW1 and he reiterated the plaint averments in the examination-in-chief and got marked 7 documents as Exhibit P1 to P7. During the course of cross examination of PW.1, it was suggested that the plaintiffs were not in possession of the suit schedule properties and the defendants were in possession of the suit schedule properties. The said suggestion was denied by PW.1. The plaintiffs examined one Karehanumaiah, who is the own brother of the plaintiffs' father as PW2. He has deposed that there was a partition effected between



himself, Gangaiah and father of the plaintiffs and he deposed that he and Gangaiah sold 01 acre of land in Survey No. 22/2 in favour of father of the plaintiffs under a registered sale deed dated 05.08.1989. He also submits that partition was effected on 10.07.1958, under a partition deed marked as Exhibit P2.

25. During the course of cross-examination, he admitted that the defendants are in possession of the suit schedule properties. Further, the plaintiffs have produced the documents Exhibit P4 to Exhibit P7 i.e., RTC Extracts. From the perusal of Exhibit P4 to Exhibit P7 does not disclose the plaintiffs were in possession of 2 acres of land in Survey No. 22/2 of Kodihalli Village. Further PW2 has admitted that the plaintiffs are not in possession of the entire suit schedule properties and he also admitted the boundaries of the defendants' property as described in the written statement.



26. In rebuttal, defendant No.1 was examined as DW1. He has deposed that the plaintiffs are not in possession of entire extent of land and the defendants are in possession of the suit schedule properties. To prove the possession of defendants over the suit schedule properties, examined two witnesses as DW2 and DW3 and they have deposed that the defendants are in possession of the suit schedule property and the plaintiffs were never in possession of the property up to the extent as claimed in the plaint. The defendants produced the records marked as Exhibit D1 to D8.
27. From the perusal of the cross-examination of PW1 and PW2, as the PW1 and PW2, they have admitted that they are not in possession of the entire extent of 2 acres of land and they have admitted that the defendants have made an encroachment in the property of the plaintiffs. Admittedly, the defendants are in possession of portion of suit schedule



properties and the plaintiffs have not sought for the consequential relief of possession as per Section 34 of the Specific Relief Act, 1963, which reads as follows:

"The proviso to Section 34 of the Specific Relief Act, 1963, provides that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

28. Admittedly, in the instant case, from the perusal of Exhibit P4 to P7 i.e., RTC extracts produced by the plaintiffs clearly discloses that the plaintiffs are not in possession of the entire suit schedule property. The plaintiffs have not sought further consequential relief of possession. Hence, the suit filed by the plaintiffs is not maintainable as per proviso to Section 34 of the Specific Relief Act.
29. The Hon'ble Apex Court in the case of **Vasantha (Dead) Thr. L.R. vs. Rajalakshmi @ Rajam**



(Dead) Thr. Lrs., held that declaration of suit without a consequential relief, suit for declaration of title without seeking recovery of possession is not maintainable when the plaintiffs were not in possession.

30. Admittedly in the instant case, the plaintiffs are not in possession of the suit schedule property and the plaintiffs have failed to seek further relief of possession. Hence, the suit filed by the plaintiffs for mere declaration of title and permanent injunction, without seeking consequential relief of possession, is not maintainable. The said aspect was not considered by the first appellate court and committed an error in passing the impugned judgment, further without considering proviso to Section 34 of the Specific Relief Act. The impugned judgment passed by the first Appellate Court is in contrary to the mandate laid down by the Hon'ble Apex Court in the case of **Vasantha (Dead) Thr. L.R.** (referred supra). In



view of the above discussion, I answer the substantial question of law 1 in the negative.

Regarding substantial question of law No.2:

31. The first appellate court has not consider the contents of Ex.P4 to P7. Ex.P4 to P7 clearly discloses that the plaintiffs are not in possession of the entire extent of land. As observed above, this Court has already recorded a finding in substantial question No.1, as the plaintiffs are not in possession of the suit schedule property, hence the suit filed by the plaintiffs is not maintainable as per proviso to Section 34 of the specific relief Act, 1963 and the suit filed by the plaintiffs is not maintainable.

32. The first appellate court committed an error in reversing the judgment and decree passed by the trial Court by placing reliance on Exhibit P4 to Exhibit P7. The plaintiffs have not examined any adjacent owners to prove that they were in possession and



enjoyment of the entire suit schedule property. Thus, the first appellate court committed an error in re-appreciating the entire evidence on record. The impugned judgment passed by the first appellate Court is arbitrary and erroneous and the same is liable to be set aside. In view of the above discussion, I answer substantial question of law No. 2 in the negative.

33. Accordingly, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is ***allowed***.
- ii. The judgment and decree passed in R.A. No.277/2008(old No.155/2006) by the learned Fast Track Court - I, Tumkur is hereby set aside.
- iii. The judgment and decree passed in O.S.No.324/2006 dated 10.07.2006 by



the learned I Additional Civil Judge
(Jr.Dn.) and JMFC, Tumkur is restored.

iv. No order as to the costs.

v. Pending interlocutory application/s, if any,
stands disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS