



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 78 OF 2013 (INJ)

BETWEEN:

1. HARNAHALLI GRAM PANCHAYAT
HARNAHALLI,
SHIMOGA TALUK AND DISTRICT
REPRESENTED BY ITS PANCHAYAT DEVELOPMENT
OFFICER
SRI. T.S. RUDRASWAMY
S/O T C CHANNABASAIHAH
AGED ABOUT 36 YEARS
2. MANJULA NAGARAJ
PRESIDENT OF GRAMA PANCHAYAT OFFICE
HARNAHALLI
SHIMOGA TALUK AND DISTRICT-573122
3. HONALLI CHANDRAPPA
VICE PRESIDEN OF GRAMA PANCHAYAT OFFICE
HARNAHALLI-573122
SHIMOGA TALUK AND DISTRICT

...APPELLANTS

(BY SRI. M.R. RAJAGOPAL, SR. COUNSEL FOR
SRI. H N BASAVARAJU.,ADVOCATE)

AND:

1. SHAIK AHAMMED
S/O PACHAMIYA SAB
AGED ABOUT 53 YEARS

Digitally
signed by
SHILPABAI S

Location
HIGH COURT
OF
KARNATAKA





R/O HARNAHALLI VILLAGE
SAVALANGA ROAD
KUMSI HOBLI-573122
SHIMOGA TALUK AND DISTRICT

2. ABDUL KAREEM
S/O PACHAMIYA SAB
SINCE DECEASED BY HIS LEGAL REPRESENTATIVES
- 2(A) SMT. ASHRAF UNNISA
W/O LATE ABDUL KAREEM
AGED ABOUT 62 YEARS
- 2(B) SRI. ABDUL RAHEEM
S/O LATE ABDUL KAREEM
AGED ABOUT 40 YEARS

BOTH ARE R/O HARANAHALLI VILLAGE
SAVALANGA ROAD
KUMSI HOBLI
SHIVAMOGGA TALUK AND DISTRICT.

3. ABDUL SATTAR
S/O PACHAMIYA SAB
AGED ABOUT 47 YEARS
R/O HARNAHALLI VILLAGE
SAVALANGA ROAD
KUMSI HOBLI-573122
SHIMOGA TALUK AND DISTRICT

...RESPONDENTS

(V/O DATED 14.09.2016 APPEAL AGAINST R2 ABATED
SRI. MOHAMMED TAHIR, ADVOCATE FOR R1 & R3 AND R2(A)
AND (B) (NOC))

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 17.12.2011 PASSED IN
R.A.NO.90/2009 ON THE FILE OF PRINCIPAL SENIOR CIVIL
JUDGE AND C.J.M, SHIMOGA, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGEMENT AND DECREE DTD 2262009



PASSED IN OS.NO.321/2006 ON THE FILE OF III ADDITIONAL CIVIL JUDGE (JR.DN.) AND J.M.F.C., SHIMOGA. TRAIL COURT DISMISSED THE SUIT. APPELLATE COURT ALLOWED THE APPEAL SUIT FOR PERMANENT INJUNCTION.

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. The appellants have challenged the judgment and decree dated 17.12.2011 passed in R.A. No.90 of 2009 by the learned Principal Senior Civil Judge and C.J.M., Shivamogga, by which the appeal was allowed, and the judgment and decree dated 22.06.2009 passed in O.S. No.321 of 2006 by the learned III Addl. Civil Judge (Jr.Dn.) and JMFC, Shivamogga, was set aside.
2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court. The appellants were the defendants and the respondents were the plaintiffs.



3. The facts leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit for perpetual injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property. It is the case of the plaintiff that Khaneshumari No.175 and its new Nos.539/328/360/328; 329/1; 327/1, situated to the west of the property sold to Ismail Khan by the plaintiffs' father Pacha Miya Sab, measuring 189' in length and 108' in width, bounded on east by the property sold to Ismail Sharif, west by road leading to kote, north by Agalada Gode, south by Government Road.
5. It is contended that Khaneswari No.175, measuring 108 yards X 36 yards, belongs to one Gundamma, wife of Srinivasa Rao. After her death, his nephew Venkoba Rao executed a sale deed for Rs.30/- in



favour of Jameela Sahebara Hayath Sab on 18.11.1911.

6. Again, Venkoba Rao executed another sale deed in favour of Mohammed Hussain S/o. Late Jameela Sahebara Hayath Sab dated 20.09.1920 and the same was registered.
7. The said property was purchased by the plaintiff's father, Pacha Miya Sab under the registered sale deed dated 02.07.1936. Out of that, the plaintiff's father had sold some portion of the vacant site in favour of Fakruddin Sab on 23.03.1959. Pacha Miya Sab, through the second wife Smt.Hazarabi Pacha Miya Sab, had executed a settlement deed in favour of the plaintiffs on 27.04.1959. The plaintiffs were minors at that time and were represented by their mother Hazarabi as a guardian. Defendant Nos.1 and 2 are interfering with the plaintiffs' peaceful possession over the suit schedule property. Hence, a



cause of action arose for the plaintiffs to file a suit for perpetual injunction.

8. The defendants filed a written statement denying the averments made in the plaint and it is contended that neither Gundamma nor Venkoba Rao have any right to execute a registered sale deed. The Panchayat has formed another road on the western side of *marigaddige* and taking advantage of the changed circumstances, the plaintiffs filed the present suit.
9. It is contended that there is a *marigaddige* and a small temple in front of gaddige and are situated in area measuring 240 feet from western road towards the southern side, and northern boundary measures nearly 140 feet.
10. The Panchayath has constructed a public lavatory and urinals 40 years back. There is an Arali tree standing in the property and the Panchayath has



raised the trees adjacent to the Sawalanga road measuring east-west [240' x 140'] / 2 and north-south [150' + 140'] / 2.

11. It is contended that the plaintiffs are well aware of the fact and it is a panchayat property. The plaintiffs have no right, title or interest over the suit schedule property, as well as there is no cause of action to file a suit for perpetual injunction. Hence, prays to dismiss the suit.
12. The Trial Court, based on the pleadings of the parties, framed the following issues:
 - (i) Whether plaintiffs prove that they are in lawful possession of the suit property?
 - (ii) Whether plaintiff prove the description of suit property is correct?
 - (iii) Whether plaintiff prove defendants interfered with their possession of suit property?



- (iv) Whether plaintiffs are entitled for the relief sought for?
- (v) What order or decree?

13. The plaintiffs, to substantiate their case, examined three witnesses as PW1 to PW3 and marked 15 documents as Exhibits P1 to P15.
14. In rebuttal, the defendants examined three witnesses as DW1 to DW3 and marked two documents as Exhibits D1 and D2.
15. The Trial Court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered issue Nos.1 to 4 in negative; issue No.5, as per the final order. The suit of the plaintiff was dismissed vide judgment dated 22.06.2009.
16. The plaintiffs, aggrieved by the dismissal of suit in O.S. No.321 of 2006, preferred an appeal in R.A.



No.90 of 2009 on the file of the learned Principal Senior Civil Judge and CJM, Shivamogga.

17. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for adjudication:

(i) Whether the appellants prove that the judgment and decree passed by trial Court in O.S.no.321/2008 dated 22.06.2009 is impugned one and interference by this Court is required?

(ii) What order or decree?

18. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in affirmative and point No.2 as per the final order. The appeal was allowed and the judgment and decree passed by the Trial Court was set aside; consequently, the suit of the plaintiffs was decreed and restrained the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of



the suit schedule property measuring 180 feet in length and 108 feet in width.

19. The defendants aggrieved by the judgment and decree passed in R.A. No.90 of 2009 preferred this second appeal.
20. This Court, vide order dated 11.12.2020 admitted the appeal to consider the following substantial questions of law:

- (i) Whether the first appellate court is justified in reversing the judgment and decree of the trial Court?***
- (ii) Whether the first appellate court is justified in decreeing the suit for permanent injunction when the plaintiffs have failed to establish their lawful possession over the suit schedule property on the date of filing the suit?***



21. Heard the arguments of the learned Senior Counsel for the defendants.
22. Sri. Mr. M.R.Rajagopal, learned Senior Counsel appearing for the defendants submitted that the First Appellate Court committed an error in passing the impugned judgment. He submitted that the plaintiffs have failed to establish their possession over the suit schedule property. He submitted that in a suit for bare injunction, the plaintiff is required to prove the possession and interference. Admittedly, in the instant case, the plaintiffs have failed to establish their possession over the suit schedule property. The First Appellate Court, without considering the said aspect, has committed an error in reversing the judgment and decree passed by the Trial Court. Hence, on these grounds, he prays to allow the appeal.



23. Learned counsel for plaintiff Nos.1 and 3 submits that the defendants have admitted the possession of the plaintiffs over the suit schedule property. He submits that the facts admitted need not be proved as per Section 58 of the Indian Evidence Act. The First Appellate Court considering the admission of the defendants regarding the possession of the plaintiffs over the suit schedule property has rightly decreed the suit. Hence, on these grounds, he prays for dismiss the appeal.

Reg. Substantial Questions of Law:

24. Both the substantial questions of law are interlinked and they are taken together for discussion to avoid the repetition of facts.
25. The plaintiffs filed a suit for perpetual injunction contending that the suit schedule property was owned and possessed by one Gundamma wife of Srinivasa Rao. After her death, his nephew Venkoba Rao executed a sale deed for Rs.30 in favour of



Jameela Sahebara Hayath Sab on 18.11.1911. Again, Venkoba Rao has executed another sale deed on 20.09.1920 in favour of Mohammed Hussain Sab s/o. Late Jameela Sahebara Hayath Sab and the same was registered. The property was purchased by the plaintiff's father, Pacha Miya Sab, under a registered sale deed dated 02.07.1936, and out of that, plaintiff's father sold some portion of the vacant site in favour of Fakrudeen Sab on 23.03.1959, and Pacha Miay Sab, through the second wife Smt.Hazarabi Pacha Miya Sab executed a settlement deed in favour of the plaintiffs on 27.04.1959. The plaintiffs were minors at that time and defendant Nos.1 and 2 are interfering with the plaintiff's possession.

26. The plaintiffs, in order to establish that they are in possession of the suit schedule property, examined three witnesses as PW1 to PW3 and marked 15 documents as Exhibits P1 to P15.



27. During the course of cross-examination of DW1, defendant No.1 himself has admitted that the plaintiffs are in possession and enjoyment of the suit schedule property measuring east to west 180 feet, north to south 108 feet, and he has clearly stated that the defendants had no intention to interfere with the peaceful possession and enjoyment of the suit property by the plaintiffs.
28. In a suit for bare injunction, the Court is required to consider whether the plaintiff is in possession of the suit schedule property and the alleged interference.
29. Admittedly, the plaintiffs have established their possession over the suit schedule property and also the interference by the defendants. The said aspect was not properly considered by the Trial Court and committed an error in dismissing the suit of the plaintiffs.



30. The First Appellate Court, considering the admission of the defendants regarding the possession of the plaintiffs over the suit schedule property, has recorded its finding in paragraphs 14 and 15, which read as follows:

"14. Against this, the evidence of the defendants' side is that of DW1, who is the 1st defendant, had categorically stated on par with the written statement averments and relied upon Ex.D1 and Ex.D2. He is a Secretary from 2001 in Harnahalli Panchayath. He admits that the plaintiffs are in possession of the suit schedule property. He admits that to the East of the suit schedule property, there is a property belonging to one Ismail Sab. According to him, the property situated to the West of the suit schedule property belongs to Harnahalli Panchayath. He admits that as per Ex.P1, the property belongs to the plaintiffs and the khata is also standing in their name. He admits that on 07.02.1936, as per Ex.P2, the father of the plaintiffs had purchased the property, but he has stated that there is a



variation in boundaries. He admits that about the issuance of notices to the plaintiffs to do furnace work by leaving 21.05 feet from the road. Basing on the complaint given by the Panchayath, the police have issued a notice to the 1st plaintiff as per Ex.P12.

15. DW2 is one Balaram Rao, who is the witness has stated that the plaintiffs are in possession and enjoyment of the house property and vacant space situated towards the eastern side of Old Kote road adjacent to the old house of the plaintiffs up to the teak wood tree is more than 200 feet.”

31. The plaintiffs have produced the settlement deed dated 27.04.1959, Exhibit P1 and the sale deed dated 06.07.1936 Exhibit P2 to establish the possession over the suit schedule property.
32. The First Appellate Court, considering the entire evidence on record, has rightly reversed the judgment and decree passed by the Trial Court.



33. As observed above, in a suit for bare injunction, the Court is required to see the possession and the alleged interference by the defendants as on the date of filing of the suit.
34. The First Appellate Court has recorded a finding that the plaintiffs are in possession of the suit schedule property and there is interference by the defendants and has rightly passed the judgment. I do not find any error in the impugned judgment.
35. In view of the above discussion, I answer both the substantial questions of law in the ***affirmative***.
36. In the result, I proceed to pass the following order:

ORDER

- (i) The Regular Second Appeal is ***dismissed***.
- (ii) In view of the dismissal of the appeal, pending interlocutory applications, if any, do not



survive for consideration and
are accordingly disposed of.

Sd/-
(ASHOK S.KINAGI)
JUDGE

RK
List No.: 2 Sl No.: 2