



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.410 OF 2017 (INJ)

BETWEEN:

NITHYANANDA NAYAK
AGED ABOUT 57 YEARS,
SON OF RAMAKRISHNA NAYAK,
DOOR No.4-145,
OPP: YAKSHAGANA KALAKENDRA INDRALI,
POST: KUNJIBETTU-576 102,
SHIVALLI VILLAGE,
UDUPI TALUK AND DISTRICT.

...APPELLANT

(BY SRI SANATH KUMAR SHETTY.K FOR
SRI S K ACHARYA, ADVOCATES)

AND:

U. SHEETHALA SHENOY
AGED 37 YEARS,
D/O LATE U. KRISHNA SHENOY,
R/AT AYODHYAPATHI DHAM,
G.T. ROAD,
MANGALURU-576 001.

...RESPONDENT

(BY SRI. PRASANNA V R, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE DATED 03.02.2017 PASSED IN RA NO.49/2015 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE, UDUPI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 24.08.2015 PASSED IN OS NO.150/2012 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC., UDUPI.

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Location:
HIGH
COURT OF
KARNATAKA



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Sanath Kumar Shetty K., learned counsel appearing on behalf of Sri S.K. Acharya, counsel for the appellant and Sri. Prasanna V.R., learned counsel for the respondent.

2. Defendant has filed this second appeal challenging the judgment and decree dated 24.08.2015, in O.S.No.150/2012, passed by learned Principal Civil Judge and JMFC., Udupi which is confirmed in R.A.No.49/2015, dated 03.02.2017, on the file of Principal Senior Civil Judge, Udupi.

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

3.1. A suit for mandatory injunction came to be filed by the plaintiff in respect of the following immovable property contending that plaintiff is the owner of the suit property having been granted by the Government in proceedings bearing number HSDR;CR;97/82-83, dated 14.08.1982. The house



situated therein was renovated and it was assessed having door No.4-145:

"Description of the 'A' schedule premises

Tiled Residential Building bearing Udupi City Municipal Door No.4-145 existing in S.NO.70/2A, House Site, measuring 3 Cents (House Site No.6) of Shivalli Village, Udupi Taluk.

(In RTC shown as S.No.70/2A6P4)"

3.2. It is the specific case of the plaintiff that she has permitted the defendant to occupy the residential house as a licensee and since he turned hostile to the interest of the plaintiff, licence was terminated and directed defendant to vacate the House in occupation which is more fully described in the 'A' schedule to the plaint by issuing a legal notice on 16.06.2011.

3.3. Instead of complying with the callings of notice, defendant issued an untenable reply setting up a title in himself questioning the very grant of the plaintiff which necessitated the plaintiff to file the suit for mandatory injunction.

4. Learned Trial Judge after issuing the suit summons entertained the written statement filed by the defendant,



framed necessary issues and after due trial, noted the admission made by DW1 in his cross examination about Ex.P23 which is the grant order in favour of the plaintiff decreed the suit of the plaintiff.

5. Being aggrieved by the same, defendant filed an appeal before the District Court in R.A.No.49/2015.

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

7. Being further aggrieved by the same, defendant is before this Court in this second appeal on the following grounds:

- *The impugned judgment and decree passed by the Courts below is opposed to the facts and evidence of the case and the Trial Court completely accepted the case of plaintiff by improperly disbelieving the appellant's evidence and discarded the evidence of D.W.2 to 5. The admission given by P.W.1 in his evidence with regard to the long possession over 20 years was disbelieved by the trial court as well as lower appellate court.*
- *The Trial Court has wrongly disbelieved the evidence of D.W.1 to 5 while considering issue No.3 with reference*



to the acquired right of D.W.1 by way of adverse possession. Ex.P22 is the order passed by Assistant Commissioner cannot be believed at all for the simple reason that the grant order in favour of late U.Krishna Shenoy was not at all made available in the proceedings of Assistant Commissioner and the said document cannot be the basis of eviction order against the Appellant/Defendant.

- *The finding of the Trial Court that the production of tax receipts on the side of Appellant/Defendant does not accrue lawful right over the plaint property to which the appellant did not summon the proper persons to prove this documents is an erroneous finding when the appellant has taken clear stand that he has been in unauthorized occupation and enjoyment of the suit property against the ownership of government. Therefore, the issue in I.A.No.3 was improperly held against the appellant.*
- *When the appellant has pleaded adverse possession and has given sufficient evidence to prove the possession over the property beyond the prescriptive period to prove the issue regarding adverse possession to which he has given substantial evidence through the evidence of D.W.2 to 5 which was not at all considered in any portion of the discussion of the finding of the trial court as well as lower appellate court and both courts have improperly held that the attempt by the Appellant/Defendant is an half hearted attempt is an absurd finding and issue No.3 ought to have been held in the affirmative in favour of the appellant.*



- *The finding of the trial court that, the evidence of D.W.2 to 5 is not helpful to the case of Appellant/Defendant is not supported by way of any justifiable reasons.*
- *The lower appellate court has not read the pleadings as well as evidence on the side of Appellant/Defendant in a proper manner and improperly held that under what capacity he is in possession and enjoyment of suit property and therefore the case has to be understood that Appellant/Defendant is in permissive occupation of the suit property is without verification of pleadings as well as evidence of D.W.1 to 5 and misleading the evidence by the courts below.*
- *The judgment of the lower appellate court and its reasons given on point No.1 to 6 is improper and incorrect for the reason that the appellate court has held that the plea of the appellant is not permissible and the pleadings have not been supported by any valid document and on the strength of Ex.P.22 Hakkupatra, the case of plaintiff is proved and the judgment of the trial court cannot be interfered is a wrong finding and therefore the findings of the court below calls for interference under section 100 of C.P.C.*
- *As could be seen from the proceedings of the Tahsildar dated 23.1.2012, it clearly evidence the fact and reveals the factum of possession that the grantee Krishna Shenoy is not at all residing in the disputed property in question and it has been in the possession of his relative Appellant/Defendant and therefore on account of his long uninterrupted possession, issue No.3 ought to have*



been held in the affirmative favouring the Appellant/Defendant. On the other hand the courts below improperly gave its findings that on what capacity the Appellant/Defendant is in the possession of the plaint property is not forthcoming is the wrong finding of courts below and disbelieving the documentary evidence. This document also reveals that there is no information available with regard to the grant order and the remedy open to the appellant is to seek appropriate relief before the Civil Court. Therefore, the proceedings of the Tahsildar virtually favours the case Appellant/Defendant and of under these circumstances his established possession and enjoyment over the land in question cannot be defeated by way of a decree for mandatory injunction.

- *The courts below improperly believed the documents at Ex.P22 as well as P.25 on the ground that the revenue authorities have concurred with the proceedings of Tahsildar and therefore the case of plaintiff shall have to be believed when admittedly the plaintiffs have not entered the witness box and it is only the power of attorney holder has pleaded the case on the side of plaintiff and his evidence cannot be believed as he is not in the know how of the case of the plaintiff and therefore both courts below have overlooked the oral and documentary evidence and came to faulty conclusion by decreeing the suit as prayed for.*
- *Both courts have not properly appreciated the proceedings of the Tahsildar by which the spot inspection report clearly reveals the fact that there is no*



documents available with regard to the grant order favouring U.Krishna Shenoy and the original grantee is not at all residing in the disputed property and on the other hand it is the appellant is residing in the property in question and the only finding of the Tahsildar is that the proceedings cannot be set aside after the period of 30 years and overruled the objections of the appellant in a untenable manner and therefore the judgments of the courts below cannot be held to be proper and correct which calls for interference under Section 100 of C.P.C.

- *The trial court failed to note that when the original grantee Late U.Krishna Shenoy is not in possession and enjoyment of the disputed property in question as per the findings of the Tahsildar, Udupi dated 23.1.2012 thereby the plaintiffs can file a suit for mandatory injunction to seek a decree for delivery of possession which is totally against the mandate of law as rendered by catena of decisions of this Hon'ble Court as well as Hon'ble Apex Court and therefore the suit being defective in nature is liable to be dismissed.*
- *Viewed from any angle if the judgments rendered by the courts below are glanced in any manner, the same cannot be held to be proper and correct for the reason both courts below have improperly ignored the crucial evidence, admission of P.W.1 discarding the findings of Tahsildar and on various reasons that would be urged during the time of hearing of the appeal and the judgments rendered by the court below are unsustainable under law.*



8. After hearing the parties, appeal came to be admitted by order of this Court dated 02.03.2017 on the following substantial questions of law:

- 1. When possession of the suit property in the hands of husband of plaintiff No.1 namely U. Krishna Shenoy was defective as evident from the proceeding of the revenue authorities marked as Ex.P22, whether the judgments and decrees passed by the Courts below in decreeing the suit of the plaintiffs for the relief of mandatory injunction by directing the defendant to deliver the vacant possession of the suit property in favour of plaintiffs are sustainable in law?*
- ii) Whether the Courts below were justified in not holding that the suit for mandatory injunction seeking delivery of possession is not maintainable in law when there is no cause of action arose to file such suit?"*

9. Sri Sanath Kumar Shetty, learned counsel appearing on behalf of Sri S.K.Acharya, counsel for the appellant reiterating the grounds urged in the petition, would contend that in the absence of declaratory relief, suit for mandatory injunction *simpliciter* is not maintainable especially when the defendant has set up the adverse title in him and thus sought for allowing the appeal.



10. He would further contend that Ex.P.22 is defective grant order. Therefore, no rights have flown in favour of the plaintiff under the said document and as against the title that has been pleaded by the plaintiff, defendant has got a better title. Therefore, suit for mandatory injunction ought to have been dismissed and sought for allowing the appeal.

11. He would also contend that decreeing the suit by issuing a mandatory injunction to deliver the possession of the suit property is not maintainable and suit should have been one for possession by paying the necessary Court fee and thus, there was no cause of action to the suit which has been ignored by both the Courts and thus, sought for allowing the appeal.

12. Per contra, Sri Prasanna V.R., learned counsel for the respondent would support the impugned judgments.

13. He would further contend that apart from the admissions elicited in the cross examination of DW1 wherein Ex.P23 is admitted by DW1, the challenge made by defendant with regard to the validity of the grant ended in dismissal of the appeal filed by the defendant.



14. Therefore, contentions on behalf of the defendant, the plaintiff's title is defective based on Ex.P23 and sought for dismissal of the appeal.

15. He would also contend that in the plaint itself, it has been specifically pleaded that defendant was permitted to occupy the suit property as a licensee and when there is a termination of the license, suit for mandatory injunction is maintainable and there is no necessity to file suit for possession and thus, sought for dismissal of the appeal.

16. Having heard the arguments of both sides, this Court perused the material on record meticulously.

17. On such perusal of the material on record, in the cross examination of DW1, the grant order was confronted to him and since he has admitted the said document, which has been marked as Ex.P23.

18. Earlier to such admission, it has been specifically questioned by the counsel for plaintiff to DW1 about the acquaintance of Krishna Shenoy, but he has given an evasive answer that he does not know who is Krishna Shenoy.



19. What is the value to be attached to a testimony of such a person is a question that remains unanswered on behalf of the appellant.

20. Further, in the next breath, DW1 has stated that he has challenged the validity of Ex.P23.

21. It is found that such a challenge made by defendant was decided by the Appellate Authority vide Ex.P22 in favour of plaintiff.

22. Thus, the grant order in favour of the plaintiff stands established. Therefore, alleged contra title of the defendant is not proved.

23. Further, there is no other material evidence on record to hold that plaintiff is not the owner of the suit property.

24. No doubt a detailed reply is sent to the legal notice contending several aspects of the matter. But, all those aspects of the matter will be of no avail as plaintiff is the owner of the property by virtue of Ex.P23, which also attained finality vide Ex.P22 before the Appellate Forum.



25. Thus, the prime contention and the first substantial question of law raised in the appeal would necessarily be held against the appellant.

26. Now, coming to the question of a suit for mandatory injunction where delivery of possession is sought for whether maintainable or not is to be considered by this Court. Generally, when the title is in dispute and there is a finding to the effect that the contra title is probalitized by the defendant, plaintiff would not be entitled for mandatory injunction and in such circumstances, plaintiff has to plead for declaration and mandatory injunction.

27. But, when the defendant has set up the contra title and failed to establish the same and when there is a termination of the license as per the legal notice issued by the plaintiff, suit for mandatory injunction seeking delivery of the possession is definitely maintainable.

28. Therefore, second substantial question of law is also to be held against the appellant and accordingly they are answered.

29. At this stage, Sri Sanath Kumar Shetty would submit that since it is rainy season, three months time may be



granted to vacate and hand over the premises to the plaintiff.

Said submission is placed on record.

30. In view of the foregoing discussion following order is passed:

ORDER

- (i) Appeal is meritless and hereby dismissed.
- (ii) Appellant/defendant is granted three months time to vacate and hand over the premises to the respondent/plaintiff.

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

MR
List No.: 1 Sl No.: 91