



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 411 OF 2017 (DEC)

BETWEEN:

1. SRI YADIHALLI BASAVARAJAPPA
S/O YADIHALLI CHANNABASAPPA,
AGED ABOUT 70 YEARS
OCC: RETIRED TEACHER,
R/AT BEVINAHALLI VILLAGE (ITTIGUDI)
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT - 577 001.
2. SRI YADIHALLI VIRUPAKSHAPPA
S/O YADIHALLI CHANNABASAPPA,
AGED ABOUT 64 YEARS
OCC: AGRICULTURIST,
R/AT BEVINAHALLI VILLAGE (ITTIGUDI)
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT - 577 001.
3. SRI YADIHALLI BASATTEPPA
S/O YADIHALLI CHANNABASAPPA,
AGED ABOUT 63 YEARS
OCC: AGRICULTURIST,
R/AT BEVINAHALLI VILLAGE (ITTIGUDI)
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT - 577 001

...APPELLANTS

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Location:
HIGH
COURT OF
KARNATAKA



(BY SRI. GURURAJ R., ADVOCATE FOR
SRI. AVINASH R., ADVOCATE)

AND:

HOSAMANI MURIGEMMA @ MULUGUND MURIGEMMA
W/O H RACHAPPA,
AGED ABOUT 68 YEARS
OCC: AGRICULTURIST,
R/O HALAVAGALU VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT - 577 001

...RESPONDENT

(BY SRI. MAHESH R. UPPIN, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 16.08.2016, PASSED IN
R.A.NO.15/2013, ON THE FILE OF THE SENIOR CIVIL JUDGE,
HARAPANAHALLI, DISMISSING THE APPEAL AND CONFIRMING
THE JUDGEMENT AND DECREE DTD 29.06.2012, PASSED IN
OS.NO.156/2008, ON THE FILE OF THE CIVIL JUDGE AND
J.M.F.C., HARAPANAHALLI.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri.Gururaj, for Sri Avinash R., learned
counsel for the appellants and Sri. Mahesh R. Uppin,
learned counsel for the respondent.



2. This is defendants' second appeal challenging the concurrent finding recorded by the Civil Judge, Harapanahalli, (hereinafter for brevity referred to as 'trial Court'), in O.S.No.156/2008, dated 29.06.2012, and by Senior Civil Judge and JMFC., Harapanahalli, (hereinafter for brevity referred to as 'first Appellate Court'), in R.A.No.15/2013, dated 16.08.2016, in declaring that plaintiff is the owner of the property measuring East to West 9 ft. and North to South 5 ft., out of East to West 25 cubits and North to South 50 cubits, in the property having Door No. 43, situated at Bevinahalli Village.

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

A suit for declaration and possession was filed in O.S.No.156/2008 by contending that, plaintiff is the absolute owner and possession of the property bearing Door No.43, situated in Bevinahalli village (hereinafter referred as 'suit property').



It is the further contention of the plaintiff that brother of the plaintiff namely Adhikar Channaveerappa had purchased the suit property through a registered Sale Deed dated 03.09.1968 and thereafter, brother of the plaintiff had executed a Gift Deed in favour of the plaintiff in respect of suit property on 08.12.1975. The plaintiff started residing in her house in the suit property and also enjoyed the open space measuring East to West 25 cubits and North to South 50 cubits adjacent to the house and revenue entries were mutated in the name of plaintiff.

Defendants Nos.1 to 3 are brothers, who have no right, title or interest over the suit property, started encroaching the suit property and they illegally put up a temporary shed in the vacant space belonging to the plaintiff measuring East to West 9 ft. and North to South 5 ft. The encroached portion was depicted in the rough sketch as 'ABCD'.

Therefore, plaintiff sought that she is the owner of the suit property, including the encroached portion and



sought for possession of the encroached portion marked as `ABCD' which is shown in the rough sketch filed along with the suit.

4. Pursuant to the suit summons, defendants entered appearance and they contended that, defendants are own brothers and they are the family members of late Yedihalli Channabasappa. The house bearing No.41 is standing in the name of said Yedihalli Channabasappa. Defendant No.3 is residing in that house and in the northern side of the said house, there is an ancestral property belonging to the defendants. Therefore, there is no encroachment nor any right, title or interest has flown to the plaintiff and therefore, sought for dismissal of the suit.

5. Based on the rival contentions of the parties, learned trial Judge framed following issues and an additional issue as under:



Issues:

1. *Whether the plaintiff proves that she is the absolute owner of the suit ABCD property shown in the rough sketch?*
2. *Whether the plaintiff proves that the defendants encroached the suit ABCD property?*
3. *Whether the plaintiff is entitled for the relief as prayed for?*
4. *What order or decree?*

Addl. Issues:

- i) *Whether the defendant proves that their ancestors have construed the house and same house and cattle shed repaired by the defendants?*
6. On conclusion of recording of evidence, learned trial Judge heard the arguments of the parties in detail and on cumulative consideration of the oral and documentary evidence placed on record, decreed the suit of the plaintiff. The operative portion of the trial Court judgment reads as under:

" The suit filed by the plaintiff against the defendants is decreed with cost.



It is hereby declared that the plaintiff is the absolute owner of the property measuring East-West 9 feet North-South 5 feet out of East-West 25 cubits and North-South 50 cubits in Door No.43 situated at Bevinahalli village.

The defendants are hereby directed to vacate the suit schedule property and deliver the possession to the plaintiff within 90 days from the date of this order."

7. Being aggrieved by the same, defendants filed an appeal before the first Appellate Court in R.A.No.15/2013.

8. Learned Judge in the first Appellate Court, after securing the records, heard the arguments of the parties in detail.

9. Before the first Appellate Court, two applications were also filed vide IA Nos.II and III for leading additional evidence and for appointment of the Commissioner.

10. Learned Judge in the first Appellate Court, on consideration of the arguments put forth on behalf of the



parties in detail, dismissed the appeal and also the applications *inter alia* holding in para Nos.27 and 28 as under:

" 27. Further in the plaint, the plaintiff has contended that the defendants have encroached ABCD portion, as discussed above the plaintiff establish that she is the owner of the 25 x 50 cubic. Even, the defendants have also admitted regarding the ownership of the plaintiff regarding house property, but he disputed regarding encroachment. As discussed above the defendants fails to prove that they are the owner of the property in dispute and from the oral and documentary evidence it shows that the plaintiff is the owner of the property in dispute. In the instant case the plaintiff contended that the defendants have constructed temporary shed to the extent of East-West:-9 and North-South:- 5 feet by encroaching the schedule property. The defendants in the written statement and also in the evidence as admitted regarding the existence of shed in the suit schedule property and also they have alleged that they have constructed the house and cattle shed towards northern side of their house and repair the house and cattle shed and not constructed any new shed. As discussed above no material is placed before this court to



show that shed which is in existence is belongs to the defendants. Moreover in order to show that the defendants have taken licence to construct shed or house they have not produced any licence given by the panchayath and further they have admitted that the ancestors of the defendants have constructed the shed in the southern side of their house property bearing No.40 & 41. But in order to prove this fact also no material is placed before this court. Under the above circumstances it shows that the construction made by the defendants is illegal in the land of the plaintiff. From this it is crystal clear that the defendants encroached the land of the plaintiff and constructed shed even though they have no right over the said land.

28. Further, in the instant case the defendants/appellants have filed application to appoint the court commissioner to visit the spot and to filed topographical pictures of the land in question, but in order to show that to measure the land not filed any application. Only to know the topographical pictures this application is filed, under the said circumstances if the appellants sought the relief for appointment of commissioner to measure the land the matter would have been different. But only he sought the appointment of commissioner to visit the disputed land and to prepare the



topographical pictures and also to prepare the sketch and nowhere in the application, he has not sought to measure the land in question. In the instant case it is not the case of the defendant that the disputed property is within the property of house No 40 or 41 only he taken contention that it is his ancestral property but as discussed above not proved the same. Under the above said circumstances the I.A., is liable for rejected, further 1.A.No.III is concerned he sought the same relief when the appointment of commissioner is rejected the question of amendment of appeal memo does not arise. Under such circumstances the judgment and decree of the trial court is not capricious, illegal and the findings of the trial court are in accordance with law and under such circumstances interference of this court is not necessary, accordingly point No.1 is answered as affirmative and point No.2 & 3 in the negative."

11. Being further aggrieved by the same, the defendants have preferred the present second appeal on following grounds and substantial questions of law:

- *The impugned judgment and decree passed by both the courts below are contrary to law, facts and*



evidence on record and hence same are liable to be set aside.

- *The reasonings and conclusions given by both the courts below are highly erroneous and illegal.*
- *Though DW1 has not admitted about the sale of vacant site by Dambalada Channaveerappa to plaintiff's brother Adikari Channaveerappa the trial court mislead itself by arriving at wrong conclusion that admitted facts need not be proved which is incorrect.*
- *The courts below while giving findings have shifted the entire burden on the defendants that they have failed to prove their contention about the ownership which are opposed to well settled principle of law i.e. the plaintiff has to prove his case independently and not on the weakness of the defendants.*
- *Virtually both the courts below passed their judgments based on the rough sketch produced by the plaintiff without considering any authenticated documents, thereby both the courts below committed a grave error in coming to the conclusion that the defendants have encroached East-West: 9 feet and North-South: 5 feet and thereby ordered for possession.*



- *The lower appellate court ought to have considered the application for appointment of Court Commissioner which was filed by appellants to make local inspection to the suit property to resolve the controversy between the parties and to arrive at just and proper conclusions.*
- *There is no proper reason as to how the courts below have come to conclusion that the defendants are in encroached portion of East-West: 9 feet and North-South: 5 feet without there being any authenticated documents to show that plaintiff is also owner to said alleged encroached portion in D.No.43.*
- *The courts below have grievously erred in holding that execution of the sale deed and gift deed have been validly proved by the plaintiff in the absence of proper oral and documentary evidence to substantiate the same.*
- *The courts below have failed to note that the suit is barred by limitation as per Article 58 of the Limitation Act.*
- *Proper presumptions have not been drawn and presumptions drawn are erroneous.*
- *Thus viewed from any angle the judgment and decree passed by the First Appellate Court in*



dismissing the suit is unjust, illegal and opposed to all canons of law and hence same is liable to be set aside.

**SUBSTANTIAL QUESTIONS OF LAW INVOLVED
IN THE APPEAL ARE AS FOLLOWS:**

a) Whether the courts below were right in decreeing the suit of the plaintiff for declaration and possession of East-West: 9 feet and North-South: 5 feet out of East-West: 25 cubits and North-South: 50 cubits in D.No.43 without there being any authenticated document to show that defendants have encroached said property?

b) Whether the courts below were right in decreeing the suit of plaintiff by shifting the entire burden on the defendants that the defendants have not proved their ownership which is opposed to well settled principles of law?

c) Whether the courts below were right in decreeing the suit filed by the plaintiff though the suit was barred by limitation as per Article 58 of the Limitation Act?

d) Whether the courts below were right in decreeing the suit of plaintiff when plaintiff failed to prove her case and execution of gift deed independently?

e) Whether the courts below were right in decreeing the suit based on the rough sketch filed



by the plaintiff in the absence of authenticated documents and without the aid of commissioner for local inspection of the suit property?

f) Whether the lower appellate court was right in dismissing the applications IA No.II & III for appointment of Court Commissioner when said applications were necessary to arrive at just and proper conclusion in the case on hand?

12. Sri Gururaj, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that the ancestral property belonging to Yedihalli Channabasappa consisted of the rickyard. In the said rickyard, a cow shed is no doubt constructed and that is not the property belonging to the plaintiff, which aspect of the matter has not been properly appreciated by learned trial Judge, as well as the learned Judge in the first Appellate Court.

13. Sri Gururaj would further contend that since there is a dispute as to the identity of the suit property as per the suit sketch denoted by letters 'ABCD', an application for appointment of a Commissioner was filed



before the first Appellate Court, so also, to place additional evidence, which has not been considered by the learned Judge in the first Appellate Court in proper perspective resulting in miscarriage of justice and thus, sought for admitting the appeal on the aforesaid substantial questions of law.

14. *Per contra*, Sri Umesh R Uppin, learned counsel for the respondent/plaintiff, supports the impugned judgment. He would further contend that there is no dispute that there is a Sale Deed executed by the erstwhile owner in favour of brother of the plaintiff, who in turn, executed a registered Gift Deed, wherein the measurements of the properties, including the open space, are mentioned and the defendants with averageness, and in order to grab the vacant space belonging to the plaintiff, illegally constructed a temporary cattle shed measuring 9 ft. East to West and 5 ft. North to South, despite the resistance offered by the plaintiff. Therefore, suit was necessitated, which has been rightly



appreciated by both the Courts below and rightly decreed the suit of the plaintiff, which requires no interference by this Court having regard to the scope of the second appeal, inasmuch as, factual aspects need not be gone into in the second appeal.

15. Having heard the arguments of both sides, this Court perused the material on record meticulously. On such perusal of the material on record, there is no dispute that the plaintiff is the owner of the suit property by virtue of the Gift Deed executed by her brother.

16. Her brother Adhikari Channabasappa purchased the suit property from erstwhile owner through a registered Sale Deed dated 03.09.1968.

17. It is also to be noted that revenue entries have been mutated in the name of the plaintiff and she was enjoying the property along with the vacant space.



18. All that the defendants are claiming that the cattle shed has been erected in the rickyard is the ancestral property of defendants.

19. To establish that the cattle shed is erected in the rickyard, which is an ancestral property, no documentary evidence is placed on record.

20. No doubt, on behalf of the defendants, three witnesses have been examined and what has been placed before the Court is the tax paid receipts and house katha extract. There is no Aakarband, survey sketch or any other document which would establish that there was a rickyard, which is ancestral property and not the subject matter of the Sale Deed executed in favour of Adhikari Channaveerappa, who in turn, executed the Gift Deed.

21. Thus, the learned trial Judge and learned Judge in the first Appellate Court were justified in recording a finding that there is an encroachment by the defendants to the extent of 9 ft. East to West and 5 ft. North to South



into the property of the plaintiff, wherein a temporary cattle shed has been erected by the defendants high handedly and therefore, declared the plaintiff as the owner of the suit property and directed removal of the temporary shed.

22. Having regard to the scope of the second appeal, this Court does not find any good grounds to interfere with the findings recorded by the learned trial Judge, confirmed by the learned Judge in the first Appellate Court with regard to factual aspects.

23. No other point of law is involved so as to interfere with the judgments of the trial Court and first Appellate Court.

24. Accordingly, the following:

ORDER

Admission declined.

Appeal is ***dismissed***.



**NC: 2026:KHC:26983
RSA No. 411 of 2017**

In view of the dismissal of the appeal, IA.No.2/2017
stands disposed of.

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

BK
List No.: 1 Sl No.: 70