



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 386 OF 2017 (DEC/INJ)

BETWEEN:

NARAYANAPPA
AGED ABOUT 70 YEARS,
S/O. DYAVARAPPA,
R/AT VITTAPPANAHALLI VILLAGE,
HUTHUR HOBLI, KOLAR TALUK - 563 101.

...APPELLANT

(BY SRI. Y.R. SADASHIVAREDDY, SR. COUNSEL FOR
SRI. RAHUL P, ADVOCATE)

AND:

1. THIMMARAJAPPA
AGED ABOUT 62 YEARS,
S/O. LATE RAMAPPA,
2. G. R. VENKATESHAPPA
AGED ABOUT 57 YEARS,
S/O. LATE RAMAPPA,
3. VENKATARAMA
AGED ABOUT 45 YEARS,
S/O. LATE RAMAPPA,

SL. NO. 1 TO 3 ARE RESIDING AT
GANGARASANAHALLI VILLAGE,
HOLUR HOBLI, KOLAR TALUK - 563 101.

4. LAKSHMAMMA
AGED ABOUT 51 YEARS,
W/O. LATE BYATAPPA,

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



RESIDING AT VITTAPPANAHALLI VILLAGE,
HUTHUR HOBLI, KOLAR TALUK - 563 101.

...RESPONDENTS

(BY SRI. RAJESH GOWDA, ADVOCATE FOR R2;
NOTICES TO R1, R3 AND R4 ARE SERVED AND
UNREPRESENTED)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 27.08.2016 PASSED IN
R.A.NO.70/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE AT
KOLAR, THE DISMISSING APPEAL AND UPHOLDING AND
CONFIRMING THE JUDGEMENT AND DECREE DTD 20.01.2014
PASSED IN OS.NO.12/2008 ON THE FILE OF THE I ADDL. CIVIL
JUDGE AND JMFC., KOLAR.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.Y.R.Sadasiva Reddy, learned Senior
Counsel for Sri.Rahul P., learned counsel for the appellant and
Sri.Rajesh Gowda, learned counsel for respondent No.2/plaintiff
aintiff No.2. Other respondents are served with the notice and
remained absent.

2. Defendant No.1 filed the present second appeal
challenging the decree of the suit in O.S.No.12/2008 dated
20.01.2014 which was confirmed by the First Appellate Court in
RA No.70/2014 dated 27.08.2016.



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

3.1. Defendant No.1 was the owner of the following immovable properties (hereinafter referred to as suit properties):

"Lands situated at Vittapanahalli village, Huthur Hobli, Kolar Taluk, Sy.No.102 acre, 1 acre 10½ guntas (old No.264) assessed at Rs.2.50 paise, bounded on:

East by: Jyothinagara Narayansetty's land

West by: Defendants land

North by: Shanbog Inamthi

South by: Kadirappa's land"

3.2. Defendant No.1 sold the same to the plaintiffs by registered sale deed dated 26.05.1977 marked at Ex.P.1 and mutation endorsement were transferred in the name of the plaintiffs.

3.3. It is alleged that plaintiffs in turn has sold the suit property in favour of husband of defendant No.2 on 14.07.1999. There were some disputes with regard to the



enjoyment of the property though revenue entries were standing in the name of husband of defendant No.2.

3.4. A suit in O.S.No.261/1999 came to be filed by defendant No.1 against husband of defendant No.2 for declaration and injunction which suit came to be decreed.

3.5. In the mean time, plaintiffs filed a suit in O.S.No.12/2008 for perpetual injunction at the first instance claiming that they are the successors of Ramappa who purchased the suit property on 26.05.1977 and later on converted the scope of the suit into declaration of title.

3.6. Pursuant to the suit summons, defendant No.1 entered appearance and defendant No.2 did not choose to contest the suit and she was placed *ex parte*.

3.7. Defendant No.1 filed written statement denying the plaint averments in *toto* and contended that he continues to be owner-in-possession of the suit property which is his ancestral property.



3.8. He would further contend that his father had four sons namely Venkateshappa, Krishnappa who are dead, Nareppa himself and Byatappa the husband of defendant No.2.

3.9. After the death of their father Dyavarappa, his sons continued to live jointly by enjoying the suit property and subsequently, Venkateshappa and Krishnappa got released from the joint family under registered relinquishment deed and therefore, defendant No.1 continued to be owner-in-possession of the entire suit property by mutating the revenue entries in his favour.

3.10. Defendant No.1 further contended that himself and his another brother – Byatappa, have nominally executed a sale deed in favour of the plaintiffs by borrowing the loan and for that purpose, a sale deed was executed on 26.05.1977.

3.11. He further maintains that it is a loan transaction though styled as sale deed but possession of the suit property continued with defendant No.1 despite such a sale deed.

3.12. He further contended that though there was no delivery of the possession even after execution of the sale deed



in favour of father of the plaintiffs – Ramappa on 26.05.1977, a sale deed was executed in favour of Byatappa by Ramappa on 14.07.1999 and based on the sale deed, Byatappa tried to interfere with the suit property. Therefore, defendant No.1 has to file a suit in O.S.No.261/1999 before the Principal Civil Judge, Kolar wherein the suit on contest came to be decreed.

4. Accordingly, it is contended that the plaintiffs have no right, title over the suit property and thus sought for dismissal of the suit.

5. Based on the rival contentions of the parties, learned Trial Judge raised following issues:

1. *"Whether the plaintiffs prove their title over the suit schedule property?"*
2. *Whether the plaintiffs prove their possession over the suit schedule property?*
3. *Whether the plaintiffs are entitled for the relief of declaration of title?*
4. *Whether the plaintiffs are entitled for the relief of permanent injunction?*
5. *What order or decree?"*



6. After recording the evidence of the parties, taking note of the fact that defendant No.1 had already sold the property and there is no document to substantiate that it is a nominal sale deed, learned Trial Judge decreed the suit of the plaintiffs.

7. It is also taken into consideration that the decree obtained by defendant No.1 against the husband of defendant No.2 namely Byatappa was a compromise decree and did not affect the rights of the plaintiffs in the original sale deed dated 26.05.1977.

8. Trial Court also noted that husband of defendant No.2 was a party in the suit in O.S.No.261/1999 and supported the plaintiffs and did not contest the suit.

9. Being aggrieved by the same, it is defendant No.1 who has filed an appeal before the First Appellate Court in RA No.70/2014.

10. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappraisal of the material evidence on record,



dismissed the appeal holding that defendant No.1 having sold the property on 26.05.1977 to Ramappa from whom the plaintiffs are claiming right, title or interest could not have resisted the suit even on the basis of the judgment and decree obtained in O.S.No.261/1999 which is filed only against the husband of defendant No.2 and got compromised and dismissed the appeal *inter alia* holding in paragraph Nos.22 to 24 as under:

"22. The double stand of the 1st defendant is very much surprising. It is the evidence of DW.1 that even though Ex.P1 and Ex.D2 has taken place at no point of time, he parted with possession of the schedule property with anybody. Then what was the necessity for DW.1 to move a memo and get these plaintiffs deleted from that suit when even Byatappa and Smt.Lakshamma had no possession over the schedule property. So, under these circumstances, according to me, it is the failure on the part of 1st defendant to show that he had a title and also possession over the schedule property on account of Ex.D1. It was also rightly addressed by the respondents counsel that merely because Ex.D1 has taken place wherein his two brothers have executed a relinquishment deed in his favour can it be straightaway be said that this defendant, Byatappa had become the absolute owner of the schedule property. Another important aspect is, through out 2nd defendant Smt.Lakshamma is not



supporting DW.1, it is one more doubt raising circumstance. So, even in the evidence of DW.2 who is a witness and he spoke about the possession of 1st defendant over the schedule property and nothing else. But this witness has not been cross-examination and coming to the evidence of DW.3. His evidence is more or less as that of the DW.2. But in the cross-examination this witness admits that he does not know who is in physical possession of the schedule property and also this litigation is pending between which of the parties.

23. But on the other hand, the evidence of 2nd plaintiff by name Venkateshappa s/o. Ramappa was to show that they are the absolute owners as they are the legal representatives of Ramappa and further he also gives reference to O.S. No.261/1999. In the cross-examination, the suggestion to this witness that Ex.P1 is a nominal sale deed has been denied by this witness. This witness also denies the suggestion that 1st defendant was in uninterrupted possession of the schedule property through out. When questions were posed in respect of Ex.D4 proceedings, this witness denies that he does not know. Further more, questions were posed in respect of Ramappa filing objections and then these plaintiffs before the revenue authorities objecting for change of katha in favour of 1st defendant. So, according to me, this evidence of PW.1 definitely supports Ex.P1.

24. Coming to the evidence of PW.2. She is the Star witness so far as this case is concerned. According to this lady, earlier the schedule property belonged to the 1st



defendant and her husband and also she supports Ex.P1. It is the evidence of PW.2 that Ramappa was put in possession of the schedule property by both the vendors. The relevant evidence of PW.2 is extracted as under:-

"Both of them for their legal necessity sold the schedule property in favour of plaintiffs' father late Ramappa under a registered sale deed and put the plaintiffs' father in possession. Katha was also made in the name of plaintiffs' father and now the plaintiffs are in possession and enjoyment of the schedule property by raising crops therein".

According to me, this goes a long way and this evidence of PW.1 has gone unchallenged. To show that Ex.P1 has been acted upon, Ex.P2 and 3 have also been placed. So, according to me, when PW.2 is not supporting DW.1 question of attaching importance to Ex.D1 and D2 or to D4 to D9 does not arise at all. Apart from that it was rightly argued that as original of Ex.D2 is not available the 1st defendant has failed to prove the custody of original of Ex.D1 and D2 and relying upon the latest revenue entries to show that Ex.D5 has been acted upon cannot enure to the benefit of 1st defendant. According to me, if the name of the 1st defendant has been entered in the RTC it is on the basis of Ex.D4, according to me, it is incomplete. Merely because Ex.D2 has taken place, plaintiffs cannot be deleted from Ex.D4 suit. In fact, it is the argument of the learned appellants' counsel that after deleting from the said suit, plaintiffs have not questioned the said order.



According to me, by then they had already filed a suit seeking for declaration and permanent injunction. Now, so far as this issue is concerned, the 1st defendant cannot prove his title over the schedule property for the reason that Ex.P1 is not set aside and Ex.D1 and D2 is not proved as original of the same is not produced question of taking into account Ex.D4 or recitals of Ex.D5 does not arise at all. Even assuming for the sake of argument that when Ex.D4 and 5 taken place this Ramappa had all authority to enter into compromise to show that no documents are produced. It is on the basis of Ex.D2 an effort is made by this appellant to show that he had become the absolute owner. The false claim of the 1st defendant falls to the ground that he was in uninterrupted possession of the schedule property on account of recitals found at Ex.P1 to Ex.P3 and evidence of PW.2. So, according to me, Ex.D1 and D2 have not set aside the sanctity of Ex.P1. Accordingly, I have answered this point No. 1 in the Negative."

11. Being further aggrieved by the same, defendant No.1 has filed the present second appeal.

12. Sri.Y.R.Sadashivareddy, Learned Senior Counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that when once Ramappa from whom the plaintiffs are claiming right, title or interest to the suit property, having sold the same in favour of defendant No.2



by registered sale deed dated 14.07.1999, they could not have maintained the suit as against the defendants for declaration and injunction. Therefore, granting of declaratory decree in favour of the plaintiffs in the teeth of the registered sale deed dated 14.07.1999 executed by Ramappa in favour of husband of defendant No.2 is *per se* impermissible and sought for admitting the appeal on following substantial questions of law:

1. *"Whether the Hon'ble First Appellate Court was justified in holding the item No.1 of the suit schedule properties is the self acquired property of deceased Dodda Abbaiah by reversing the findings of the Hon'ble Trial Court as the ancestral, joint family property, even though an issue as to whether the plaintiff proves that the schedule properties are the ancestral, joint family properties and not as to prove the self-acquired properties is framed and no pleadings or evidences produced regarding the same?"*
2. *Whether the Hon'ble First Appellate Court was justified in granting counter claim decree in favour of defendant No.3 and 4 who have not at all adduced any evidence and Trial Court not at all granted them the counter claim?*
3. *Whether the judgment and decree of Hon'ble First Appellate Court is sound and reason?*



13. He would further emphasize that approach of the Trial Court that defendant No.1 did not produce any document to show that he continued in possession of the suit property and failed to establish that the sale deed executed by defendant No.1 on 26.05.1977 in favour of Ramappa is the nominal sale deed is incorrect inasmuch as it is the plaintiffs who has approached the Court. As such, they were required to establish their title or interest over the suit property. As a defence, defendant No.1 has contended that the sale deed executed by him in favour of Ramappa was a nominal sale deed as he continued to be in possession of the suit property which has been taken note of in O.S.No.261/1999 while decreeing the said suit. Therefore, Sri.Y.R.Sadashivareddy, learned Senior Counsel sought for admitting the appeal for further consideration though wrong substantial questions of law are raised in the appeal memorandum by mistake.

14. Per contra, learned counsel for the respondent No.2/plaintiff No.2 would support the impugned judgments.

15. Having heard the arguments of both the parties, this Court perused the material on record meticulously.



16. On such perusal of the material on record, there are two sale deeds in respect of the suit property. One executed by defendant No.1 including Byatappa on 26.05.1977. Based on the said sale deed, revenue entries were mutated. Therefore, the contention of defendant No.1 that it is the nominal sale deed and it was a loan transaction remains as a plea on record without there being any plausible or possible proof.

17. Moreover, in respect of a sale deed that is executed in the year 1977, if an action is initiated in the year 2008 by the plaintiffs, defendant No.1 cannot maintain the plea that it is a nominal sale deed and he continued in possession of the suit property even after executing the sale deed in favour of Ramappa from whom the plaintiffs have laid a claim in respect of the suit property. Inaction on the part of defendant No.1 from the year 1977, till he filed a suit against Byatappa who is the husband of defendant No.2 in O.S.No.261/1999 is significant while appreciating the defence of defendant No.1.

18. It is also pertinent to note that defendant No.1 though impleaded Ramappa in O.S.No.261/1999, subsequently



deleted him and entered into compromise with Byatappa and obtained a decree.

19. Further, when Byatappa is a party to the sale deed along with defendant No.1 in respect of the sale deed dated 26.05.1977 marked vide Ex.P.1, Byatappa could not have again agreed for the compromise insofar as declaratory relief in favour of defendant No.1.

20. Be it what it may, when once the sale deed has been executed in favour of Ramappa by defendant No.1 and Byatappa in the year 1977, without cancellation of the same, no rights have shown in respect of the said property.

21. Now coming to the question of Ramappa executing the sale deed in favour of Byatappa on 14.07.1999 and therefore, no declaratory relief could have been granted is concerned, it is the matter between Byatappa and the plaintiffs and for which defendant No.1 has no locus to challenge the judgment and decree by filing an appeal before the First Appellate Court.



22. Learned Judge in the First Appellate Court appreciated these aspects of the matter and has properly and rightly dismissed the appeal. As such, when defendant No.1 has parted away with all his rights over the suit property only on the basis of the compromise against Byatappa in O.S.No.261/1991 cannot maintain the present second appeal in questioning the validity of the declaratory decree passed in favour of the plaintiffs.

23. This court does not find any merit in any one of the substantial questions of law referred to supra.

24. Hence, following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.

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

KAV
List No.: 1 Sl No.: 107