



CNR: KAHC010585012025

NC: 2026:KHC:42059
CRL.A No. 1792 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE S RACHAIAH
CRIMINAL APPEAL NO. 1792 OF 2025 (A)

BETWEEN:

SRI. VENKATESHWARA RAJU,
S/O. LATE SUBBARAJU,
AGED ABOUT 48 YEARS,
R/AT NO.687/7,
3RD BLOCK,
RAJAJINAGAR,
BANGALORE - 560 010.
PRESENTLY RESIDING AT USA.

...APPELLANT

(BY SRI. SHASHANK KUMAR, ADVOCATE)

AND:

SRI. SHIVANNA,
S/O SRI. GADDEGOWDA,
AGED ABOUT 45 YEARS,
R/AT NO.59/2,
AKSHAYA COMPLEX,
11TH CROSS,
MALLESHWARAM,

Digitally
signed by
SUSHMA
LAKSHMI
B S
Location:
High
Court of
Karnataka



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BANGALORE – 560 003.

...RESPONDENT

(BY SRI. K.N. NITISH, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 341 CODE OF CRIMINAL PROCEDURE (FILED UNDER SECTION 380 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023) BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE ORDER DATED 28.07.2025, DISMISSING I.A.NO.9 UNDER SECTION 379 OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, PASSED IN O.S.NO.1386/2016, BY THE XI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU TO CONDUCT PRELIMINARY INQUIRY OR ALTERNATIVELY, EXERCISE POWERS VESTED WITH THIS COURT UNDER SECTION 380 OF BNS AND LODGE A COMPLAINT TO THE MAGISTRATE UNDER SECTION 379 OF BNS AGAINST THE RESPONDENT.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 04.08.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT MADE THE FOLLOWING:-



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CORAM: HON'BLE MR. JUSTICE S RACHAIAH

CAV JUDGMENT

1. This appeal has been filed by the appellant, being aggrieved by the order dated 28.07.2025, wherein the Trial Court dismissed I.A.No.9 filed under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') passed in O.S.No.1386/2016 by the XI Additional City Civil and Sessions Judge, Bengaluru.

Brief facts of the case:

2. The appellant is stated to be the owner and in peaceful possession and also enjoyment of the property bearing new No.1, old No.145, 3rd main road, Gayathri Devi Park Extension, Bengaluru. The measurement of the property is 2700 sq.ft. It is alleged that the respondent had fabricated and forged a sale deed dated 22.06.2001 along with a rectification deed dated 24.06.2002 to knock off the property.
3. The appellant filed a suit for injunction against the respondents with a prayer to declare the gift deed dated



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07.02.2014 as void and not binding on the appellant. The respondent No.1 filed a written statement. The appellant led his evidence on 23.11.2023. The evidence of the respondent No.1 was produced as Annexure-C. In the meantime, on 20.11.2024, the respondent No.1 filed an application under Order 8 Rule 1A(3) r/w Section 151 of the Code of Civil Procedure (for short 'CPC') along with accompanying affidavit stating that he was unable to produce the original sale deed and rectification deed since it was pledged with "Can Finance Home Ltd.," for loan purpose. In the meantime, the appellant filed an application under Order XI Rule 16 of CPC and asked the respondent No.1 to furnish the details of the loan account and other documents. The said application remained undecided. Being aggrieved by the false affidavit filed by the respondent, an application under Section 379 of BNSS was filed by the appellant seeking to initiate proceedings in respect of the said offence. However, the same has been rejected.



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4. Heard Sri Shashank Kumar, learned counsel for the appellant and Sri K.N. Nitish, learned counsel for the respondent.
5. The submission of learned counsel for the appellant is that the application filed by the appellant is appropriate and the Trial Court ought to have conducted a preliminary enquiry before passing any order on the affidavit filed by the respondent and ought to have directed the CMO of the concerned Court or any other Magistrate to take appropriate action in terms of the said provision. However, the same has not been considered properly. Consequently, the impugned order is passed, which is liable to be set aside and suitable direction may be issued to the Trial Court to take appropriate action on the false affidavit filed by the respondent and also sought for initiating contempt against the respondent. As such, learned counsel for the appellant prays to allow the appeal.
6. To substantiate his arguments, learned counsel for the appellant relied on the following judgments:



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- i) *Re: Suo Moto Proceedings against Mr. R Karuppan, Advocate*¹
- ii) *Pritish v. State of Maharashtra & Others*²
- iii) *K. Karunakaran v. T.V. Eachara Warriar & Another*³
- iv) *Gujarat Pipavav Port Ltd. v. Sharda Steel Corporation*⁴
- v) *Ranjit Singh v. The State of Pepsu (now Punjab)*⁵

7. *Per contra*, learned counsel for the respondent vehemently submitted that the appellant had filed a suit for declaration to declare that the gift deed dated 07.02.2014 executed by the second defendant in favour of the third defendant is concocted and not binding upon the appellant. The respondent, being a purchaser of the property, entered his appearance and filed a written statement and proceeded further to lead his evidence. The sale deed has to be produced to substantiate his

¹ AIR 2001 SC 2204

² AIR 2002 SC 236

³ (1978) 1 SCC 18

⁴ 2012 CrL.L.J. 3681

⁵ AIR 1959 SC 843



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evidence. However, there is an interim order of stay of the proceedings in O.S. No.1386/2016. Therefore, the respondent is unable to produce the said sale deed. Unless the authenticity of the said sale deed is examined, the Court cannot come to the conclusion that it is fabricated and bogus. Such being the fact, conducting preliminary enquiry on the alleged false affidavit cannot be sustained. Hence, the order passed by the Trial Court on I.A.No.9 is proper and appropriate. There is no reason to interfere with the said findings. Hence, the appeal has to be dismissed. Making such submissions, learned counsel for the respondent prays to dismiss the appeal.

8. Having heard learned counsel for the respective parties and also on perusal of the findings of the order passed by the Trial Court on I.A.No.9, the Trial Court arrived at a conclusion that there is a *bona fide* mistake committed by the respondent in saying in his affidavit that "Can Finance Home Ltd.," instead of "Can Fin Homes Ltd.,". The said findings, in my view, appear to be proper and appropriate.



9. On going through the judgments produced by the learned counsel for the appellant to substantiate his case, it is found that they are factually not applicable to the case on hand. Therefore, those judgments are not required to be considered in the case on hand. Mere filing of the alleged false affidavit with *bona fide* mistake cannot be construed as a false statement made before the Court. Moreover, the alleged document is required to be produced to verify its authenticity. Unless it is tested with examination and cross-examination, the Court cannot come to the conclusion that the said document does not exist. In fact, the appellant herein will get an opportunity to deal with the said document suitably in accordance with law. Therefore, I am of the considered view that initiating the proceedings against the respondent under Section 379 of BNSS appears to be premature and the enquiry on the said document is essential.
10. In the light of the observations made above, I proceed to pass the following:



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ORDER

The Criminal Appeal stands *dismissed*.

**Sd/-
(S RACHAIAH)
JUDGE**

BSS
List No.: 1 Sl No.: 57