



CNR: KAHC010611512024

NC: 2026:KHC:41845
RSA No. 1508 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1508 OF 2024 (INJ)

BETWEEN:

1. MR. K. NAGARAJ
AGED ABOUT 64 YEARS,
SON OF LATE K. SEETHARAMA
RESIDING AT SRI GANESH NILAYA,
NEAR HOTEL PRAVASI, THALLUR VILLAGE,
KUNDAPURA - 576 201
UDUPI, KARNATAKA
2. MR. GANESH K.N.
AGED ABOUT 28 YEARS,
SON OF K. NAGARAJ
RESIDING AT SRI GANESH NILAYA,
NEAR HOTEL PRAVASI,
THALLUR VILLAGE,
KUNDAPURA - 576 201
UDUPI, KARNATAKA

(BY SRI. N.S. SRIRAJ GOWDA, ADVOCATE)

...APPELLANTS

AND:

1. SRI. K. SEETHARAMA SHETTY
AGED ABOUT 70 YEARS,
SON OF SRI. K. KRISHNAYYA SHETTY,
RESIDING AT, KK SHETTY COMPOUND,
KALYANASWAMY ROAD, KUNDAPURA - 576 217
UDUPI, KARNATAKA

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Location:
HIGH
COURT OF
KARNATAKA



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2. SMT. JYOTI S. SHETTY
AGED ABOUT 60 YEARS,
WIFE OF K. SEETHARAMA SHETTY,
RESIDING AT KK SHETTY COMPOUND,
KALYANASWAMY ROAD,
KUNDAPURA - 576 217
UDUPI, KARNATAKA
3. SRI. N. SRIDHAR RAO
AGED ABOUT 69 YEARS,
SON OF LATE SRI. N.S. PARAMESHWARAYYA,
RESIDING AT AITHALABETTU ROAD,
PARAMESHWARI
KOTESHWARA VILLAGE,
KUNDAPURA - 576 222
UDUPI, KARNATAKA
4. SRI. N. RAMESH RAO
AGED ABOUT 70 YEARS,
SON OF LATE SRI. N.S. PARAMESHWARAYYA,
NOW RESIDING AT NO.39,
2ND MAIN, PP LAYOUT,
KATHRIGUPPE
BENGALURU - 560 085

...RESPONDENTS

(BY SRI. MANJUNATHA B., ADVOCATE FOR C/R1)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 15.07.2024 PASSED IN RA NO.46/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE, KUNDAPURA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 17.03.2008 PASSED IN OS NO.8/2002 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JR. DN.), KUNDAPURA.



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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 N.S.Sriraj Gowda, learned counsel for the
appellant and Sri Manjunatha B., learned counsel for
Caveator/Respondent No.1.

2. Present second appeal is filed by Appellant Nos.2
and 3, who have purchased the following property
(hereinafter referred to as 'suit property') challenging the
dismissal of the suit in O.S.No.8/2002:

"Plaint 'A' Schedule

*Immovable properties situated in Kundapura Kasaba
Village falling under Ward No. 5 of Kundapura
Municipality.*

Property Item No. 1

Janjra No: 1

Survey No. and S.D.No: 149-4 (Southern portion)

Kisam (Nature of Land): Bagayattu (Garden)

Extent: 0-16 (Acre-Cents)

Boundaries for Item No.1:

East: Road



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South: The stone wall (Pagara) situated within this S.D. portion, which lies to the North of the properties in S.No.149-9 and 149-6.

West: S.No.150 property

North: 'B' Schedule property (in the partition suit)

Property Item No. 2

Janjra No: -2

Survey No. and S.D. No: 149-5

Kisam (Nature of Land): Bagayattu (Garden)

Extent: 0-03 (Acre-Cents)

These two properties include the buildings situated therein. These buildings are more than 60 years old (as of 1990).

The holders of this share shall be the right-holders to permanently use the water from the well situated in the portion partitioned/allotted to the 2nd party (Mr. Shridhara Rao) for the purpose of the buildings and garden located in their own share of the property.

Plaint B schedule

Portion of the plaint 'A' schedule bearing Municipal Door No.282A (Old Numbers 223-B)

*(1) The southern portion of the old building leased to M/s. Ajantha Printing Press, represented by Smt. Veena A.,
Kodgi;*

2) two shop rooms on the eastern road side, one shop room being vacant and another shop room leased to "Prakash Radio Services"; and

(3) the upstairs of the two shop rooms in (2) above, and Ajantha Printing Press, used earlier as law office of late Sri N. S. Parameshwarayya, Advocate)



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Plaint 'C' Schedule

Immovable properties situated in Kundapura Kasaba Village- falling under Ward No.5 of Kundapura Municipality.

Property Item No. 1

*Survey Number and S.D. Number: 149-4
(Northern portion / "Baada" portion)
Kisam (Nature of Land): Bagayattu (Garden)
Extent: 0-19 (Acre-Cents)*

Boundaries for Item No. 1:

*East: Road
South: 'A' Schedule property (in the partition deed)
West: Property in S.No. 150
North: The stone wall (Pagara) situated at the Northern side of this S.D. portion*

The building situated on this property was constructed in the year 1965. It consists of a tiled roof upper floor (upstairs) and hotel rooms.

There is a path measuring 14 links in width on the eastern side of this property for ingress and egress. The holders of this share shall not object to the 1st share-holders (Party No. 1) using this path.

The 1st share-holders have the right to draw water from the well situated in this ('C' Schedule) property for the permanent use of the buildings and garden in their own portion. The holders of this ('C') share have no right to cause any form of hindrance or obstruction to them in the exercise of this right."



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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 in O.S.No.8/2002 in respect of the suit property by contending that Sri.N.Ramesh Rao, the original plaintiff who is the absolute owner of 'A' schedule property as it was allotted to him on ancestral rights at a family partition through a registered partition deed dated 20.05.1990 bearing No.185/90-91. A portion of the original property along with some other property allotted to the 3rd defendant in this suit, was the subject matter of a lease in favour of a hotel by name 'Hotel Gokul' owned by late M.Gopalakrishna Bhat till his death and after his death, his son Sri.M.Krishnamoorthy Bhat.

3.2. The 3rd defendant being the younger brother of the plaintiff - Sri.N.Ramesh Rao, had joined the execution of the release deed in favour of Hotel Gokul.



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3.3. Smt. Veena A. Kodgi was the proprietress of the Ajanta Press, which is also a portion of 'A' schedule property. It is further contended that plaint 'B' schedule property bears the Municipal Door No.282-A (old No.223-B). It consisted of a portion that was in possession of N.Prakash Rao, another lessee. Plaint 'C' schedule property was allotted to the plaintiff at a partition and plaint 'B' schedule property and 'C' schedule property were enjoyed by Hotel Gokul on lease basis. Owner of the said hotel M.Krishnamoorthy Bhat was depositing the lease rentals in the Court in the eviction petition filed by him bearing HRC.No.5/1993 against the plaintiff and 3rd defendant. Since the plaintiff and the 3rd defendant could not reach an amicable settlement regarding the apportionment of lease rent among themselves, the lease rentals were being deposited before the Court and in the month of November 2001, M. Krishnamoorthy Bhat, being be the proprietor of M/s. Hotel Gokul delivered the vacant portion of the 'B' schedule property to the plaintiff.



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3.4. The Plaintiff fixed locks to three rooms in the upstairs and Krishnamoorthy has delivered vacant portion of 'C' schedule property to the 3rd defendant. The deliver receipt executed by the 3rd defendant in favour of the said lessee together with a true copy of the agreement dated 23.10.2001 was placed on record.

3.5. The plaintiff further contended that in the middle of December 2001, the 1st defendant claiming to have acquired the suit 'C' schedule property started visiting the 'B' and 'C' schedule properties and taking advantage of the fact that the plaintiff is resident of Bangalore, attempted to forcibly encroach into the 'B' schedule property by breaking open the locks fixed by the plaintiff to three rooms in the upstairs. The attorney of the plaintiff objected the unlawful activity of the 1st defendant.

3.6. The 1st defendant threatened the attorney of the plaintiff with dire consequences and therefore, a legal notice was issued. The 1st defendant acting for himself and



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on behalf of the 2nd defendant fixed a metal sheet door to the staircase in part of the 'B' schedule property and locked the same. Thus, access to the upstairs of the 'B' schedule property was restricted to plaintiff. It is also alleged that the 1st defendant fixed a lock to the gate in the eastern side which was having an entrance to access and exit from the 'B' schedule property.

3.7. It is further contended by the plaintiff that the 1st defendant in collusion with the other defendants has demolished the compound wall of the 'A' and 'B' schedule properties on the western side and demolished a partition wall in the upstairs of 'B' schedule property and he has broken the locks which were fixed by the plaintiff in respect of three rooms in 'B' schedule property and thus, sought for grant of mandatory injunction as he lost the possession on 10.12.2001 and suit was filed under Section 6 of the Specific Relief Act, for the efficacious relief of restoration of the possession of the 'B' schedule property.



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4. Pursuant to the suit summons, the 1st defendant entered appearance and filed written statement denying the plaint averments. He contended that he is the owner of the property and after the partition, respective portion of the various buildings in the plots were reported to Town Municipality, Kundapura and he has purchased the property. Therefore, he cannot be prevented from usage of the property.

5. Learned trial Judge, after raising necessary issues, recorded the evidence of the parties and dismissed the suit of the plaintiff.

6. Admittedly, in the plaint itself, it was specifically mentioned that the suit was filed under Section 6 of the Specific Relief Act. In respect of a suit filed under Section 6 of Specific Relief Act, as per sub-section (3) of the Section 6, no appeal would lie. If the plaintiff is non-suited in such suit, he must buy a regular suit in accordance with law.



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7. Therefore, very appeal before the First Appellate Court filed by the original plaintiff - N.Ramesh Rao in R.A.No.46/2009 itself was not maintainable.

8. When the original plaintiff - N.Ramesh Rao could not digest the dismissal of the suit, he has sold the same in favour of Sri.Ramachandra. The said Ramachandra did not pursue the remedy in accordance with law. However, he said to have sold the suit property in favour of the present appellants.

9. Thus, even though the appeal was decided on merits and second appeal has been filed, on the question of maintainability itself, the present second appeal cannot be admitted for further consideration.

10. Moreover, if a person purchases the property under disputed title, he cannot maintain a suit for mandatory injunction or for recovery of the possession of the property by filing a suit for injunction.



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11. Remedy for such persons lies elsewhere and dismissal of the appeal thus, does not affect the rights of the appellants herein who are required to take necessary recourse to law for redressal of their grievances.

12. With the above observation, the following:

ORDER

Appeal is meritless and hereby ***dismissed.***

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

SNB
List No.: 1 SI No.: 77