



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF JANUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V HOSMANI
REGULAR SECOND APPEAL NO. 1618 OF 2024 (INJ)

BETWEEN:

ANDANAPPA,
S/O LATE SANNA MANJAPPA @ MANJANNA,
AGED ABOUT 73 YEARS,
AGRICULTURIST,
R/O NIDIGE , SHIVAMOGGA TALUK ,
AND DISTRICT - 577 201.

...APPELLANT

[BY SRI NARAYAN MAYYAR, ADVOCATE (PH)]

AND:

SMT L PREMA,
W/O M SIDDAPPA,
AGED ABOUT 61 YEARS,
HOUSE MAKER / HOUSEHOLD WORK,
R/O HONNAVILE VILLAGE,
BIDARE POST, NIDIGE HOBLI,
SHIVAMOGGA TALUK AND DISTRICT - 577 222.

...RESPONDENT

[BY SRI SAMPAT ANAND SHETTY, ADVOCATE (PH)]

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 02.09.2024 PASSED IN RA NO.130/2022 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 22.11.2022 PASSED IN OS NO.112/2016 ON THE FILE OF THE IV ADDITIONAL CIVIL JUDGE AND JMFC, SHIVAMOGGA.

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

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and decree dated 02.09.2024 passed by Principal Senior Civil Judge And CJM, Shivamogga, allowing RA no.130/2022 and set-aside judgment and decree dated 22.11.2022 passed by IV Additional Civil Judge And JMFC, Shivamogga, in OS no.112/2016, this second appeal is filed.

2. Sri Narayan Mayyar, learned counsel for appellant submitted, appeal was by plaintiff in OS no.112/2016 filed for permanent injunction restraining defendant from interfering with plaintiff's possession and enjoyment of residential site no.37, measuring 35 ft. X 71 ft., demand register no.41, situated at Manchenahalli village, Nidhige Gram Panchayat, Shivamogga, having Tamarind, Neem and Coconut trees etc. ('**suit property**' for short).

3. In plaint, it was stated, having purchased suit property under registered sale deed dated 01.09.1983 from Kumarswamy S/o Shamachar, plaintiff was put in possession



and he became owner of suit property. Thereafter, he planted trees thereon. It was further stated, Shamachar - father of his vendor had filed OS no.706/1980, in which interim order of temporary injunction was granted and though challenged in M.A.no.7/1981, it was dismissed and later suit was ended in compromise.

4. It was further stated, defendant claiming to be have purchased site, attempted to interfere with plaintiff's possession. It was stated, plaintiff had showed title documents to defendant and also filed application with Gram Panchayat to take action against defendant. But on 30.01.2016, defendant accompanied with bad elements attempted to interfere with plaintiff's possession. Same was somehow resisted and thereafter, suit was filed.

5. On appearance, defendant filed written statement denying plaint averments. It was stated, though, it appeared Shamachar had filed suit against Lakshmappa and his son - Raja and suit schedule therein was site no.37 and Khanesumari no.41, measuring 35 ft. X 71 ft., identity of same was not established. Appending rough sketch, it was stated, plaintiff's



property was shown with letters 'ABCD', school building with 'EFGH' and Government property with letters 'KDAEHJK'. It was stated towards north site of Ramappa and Lakshmappa, (five sites measuring 120 ft. X 40 ft.) and on eastern side 4 sites measuring 25 ft. X 60 ft. existed. It was stated, defendant had purchased site marked with letters 'LMNKJ' measuring (62 ft. + 76 ft.)/2 X 200 ft., from Smt.Jayashree W/o Sureshkumar and others under registered sale deed dated 09.12.2015, identified in 11-E sketch drawn on 08.08.2015. It was stated, property was described with correct boundaries in sale deed and referring to same, Form no.9 was issued by Gram Panchayat. It was stated, tamarind trees were situated in said site and plaintiff had no right over same. It was also stated there was RCC building of 8 squares. Denying allegations of interference or threat, sought for dismissal of suit.

6. Based on pleadings, trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves that, he is in possession and enjoyment over the suit schedule property?*
- 2) *Whether the plaintiff proves that alleged interference by the defendant over the suit schedule property?*



3) *Whether the plaintiff is entitled for the relief as sought for?*

4) *What order or decree?*

7. In trial, plaintiff examined himself and one witness as PWs.1 and 2 and got marked Exhibits-P1 to P9. On behalf of defendant, three witnesses were examined as DWs.1 to 3 and got marked Exhibits-D1 to D17.

8. On consideration, trial Court answered issues no.1 to 3 in affirmative and issue no.4 by decreeing plaintiff's suit. Aggrieved, defendant filed RA.no.130/2022 on various grounds.

9. Based on same, first appellate Court framed following:

POINTS

1) *Whether the trial court has erred, arbitrary and without considering the facts, holding that, the suit of the plaintiff is decreed?*

2) *Whether the impugned judgment and decree of the Court below under appeal warrants interference by this Court?*

3) *What order?*

10. Answering points no.1 and 2 in affirmative, point no.3 was answered by allowing appeal, setting aside trial Court



decree and dismissing suit. Hence, plaintiff had filed this appeal.

11. Learned counsel submitted that appeal was by plaintiff against divergent findings in suit for permanent injunction. It was submitted, suit property was a vacant house site, wherein plaintiff had grown trees after purchasing it under Ex.P1 - registered sale deed. It was submitted, though sketch was got marked by defendant as Ex.D5, defendant failed to examine its author. Despite same, trial Court relied on it. It was further submitted, while passing impugned judgment, trial Court referred to Ex.P3, order of temporary injunction passed in OS no.706/1980 granted in favour of plaintiff's vendor in suit filed against Laksmanna and another. Said order was confirmed in Ex.P5, dismissing appeal. It was submitted, even Ex.P6 - demand register extract and Ex.P7 - tax paid receipt were produced. It was submitted, PW.2 had stated plaintiff was in possession of suit property by mentioning its boundaries, which sustained cross-examination. Attention was also drawn to suggestion by defendant during cross-examination of PW.1 that having encroached defendant's property, plaintiff had filed false



suit. Referring to same, trial Court concluded, plaintiff's vendor had title and possession over suit property before selling it to plaintiff.

12. Under above circumstances, first appellate Court was unjustified in observing that plaintiff had failed in establishing title and possession over suit property while allowing appeal. In view of above, it was submitted, following substantial questions of law would arise for consideration:

1. *Whether the lower Appellate Court is justified in reversing the judgment and decree granted by the Trial Court with cogent reasons?*
2. *Whether the lower Appellate Court is justified in commenting on the Plaintiff's title and possession, even if the Trial Court gave elaborated findings on Ex.P1 to Ex.P4 documents?*
3. *Whether the lower Appellate Court is justified in holding that the Plaintiff is not in possession of the schedule property, when the Interim Order of Injunction passed in O.S. No. 706/1980 passed by the then Munsif Court, Shivamogga in favour of the Plaintiff's vendor's father namely N.K. Shamachar as per Ex.P3 and also Ex.P4 wherein the right of the said N.K. Shamachar is confirmed?*
4. *Whether the lower Appellate Court is justified in not giving any finding on the observation made by the Trial Court on Ex.D8, Ex.D9 & Ex.D17 and granting decree of Permanent Injunction against the Defendant?*
5. *Whether the lower Appellate Court is justified in allowing the appeal of the Defendant and without*



properly examining the oral and documentary evidences of the Plaintiff?

13. Learned counsel prayed for allowing appeal by answering above substantial questions of law in favour of appellant.

14. On other hand, Sri Sampat Anand Shetty, learned counsel for respondent/defendant opposed appeal. It was submitted, plaintiff failed to establish suit property was in existence within specific boundaries mentioned in plaint schedule. Plaintiff did not produce any material to corroborate Ex.P1 - sale deed nor established his possession as on date of suit. Even trial Court observed that failed to establish change in khata in name of plaintiff though Ex.P1 was allegedly executed in 1983. It further observed, in Ex.P1 title of vendor was not traced and concluded that sale deed was not acted upon. It also observed, plaintiff failed to establish possession over suit property. Despite same, suit was decreed, but rightly reversed in appeal. It was submitted, impugned judgment and decree passed by first appellate Court was on finding of fact, which could not be interfered with in appeal under Section 100 of



CPC. Submitting that no substantial question of law arose for consideration, he prayed for dismissal of appeal.

15. Heard learned counsel, perused impugned judgment and decree and record.

16. This is appeal under Section 100 of CPC is by plaintiff in suit for permanent injunction. While trial Court decreed suit, appellate Court dismissed it.

17. Main grounds of challenge are that in a suit for bare injunction, plaintiff was not required to establish title. He had produced sale deed under which he derive title as Ex.P1. To substantiate his possession over suit property. In order to establish possession, plaintiff produced order of temporary injunction granted to his vendor in OS no.706/1980, final order in suit and order dismissing appeal thereagainst as Exs.P3 to P5, apart from Demand Register Extract, Tax Paid receipts as Exs.P6 and P7. It was submitted, that plaintiff also produced photographs and CD as Exs.P8 and P9.

18. On other hand, defendant while admitting plaintiff's title in one breath denied it in another, that too without any



basis. Disputing existence of suit property would not be justified, when defendant himself suggested to PW.1 that after encroaching on property of defendant, he had filed false suit. It was further submitted, first appellate Court failed to traverse observations of trial Court with regard to Exs.D8 - sale deed, Ex.D9 - partition deed and Ex.D17 - Form no.9.

19. As held by Hon'ble Supreme Court in case of **Anathula Sudhakar v. Buchi Reddy**, reported in **2008 (4) SCC 594**, in a suit for permanent injunction, plaintiff would not be required to establish title nor trial Court required to examine or give findings on title. It is seen, in written statement, defendant referred to hand sketch wherein property purchased by plaintiff was shown marked with letters 'ABCD', which would amount to admission of plaintiff's property. It is however seen defendant specifically disputed boundaries of suit property and also claimed that tamarind tree was situated in his property. Even first appellate Court noted plaintiff's failure to produce khata in his name though sale deed was of 1983 and there was specific dispute about plaintiff's possession over suit property. But only material produced to establish possession were sale



deed, demand register extract and tax paid receipt apart from order of temporary injunction granted in favour of his vendor in earlier suit against some other persons.

20. It is seen, plaintiff seeks to rely on orders passed in OS no.706/1980. Admittedly, as per Ex.P4, it ended in compromise, whereunder suit was dismissed as withdrawn. Further, order at Ex.P3 is only an interim order passed on *prima facie* considerations and not after trial. Moreover, defendants in said suit were some other parties. Thus said material would not be sufficient to establish possession.

21. Apart from above, it is seen, in his cross-examination, plaintiff as PW.1, it is elicited that there are no documents to substantiate boundaries of suit property and that he had filed suit as defendants had encroached on suit property, merged with own property, created false document and sold it to others. He also admits that none of references made in boundary description of suit property in OS no.706/1980 exist. In para-6 of his cross-examination, even PW.2 admits defendant had encroached upon plaintiff's



property. Said admission would lead to conclusion that plaintiff was not in possession of suit property.

22. Though, plaintiff seeks to rely on Exs.P6 and P7 - demand register extract and tax paid receipt, in absence of corroborative material such as khata, mere demand register extract cannot establish possession. On other hand, even Ex.P7 - tax paid receipt would be unreliable, as it does not mention suit property. On contrary, when plaintiff asserts suit property to be vacant site, Ex.P7 indicates collection of property tax on building. Exs.P8 and P9 - photographs and CD would not be of any assistance to plaintiff.

23. While passing impugned judgment and decree, first appellate Court has observed unreliability of documents produced by plaintiff to establish possession. Based on said finding, it proceeded to reverse trial Court judgment. It is seen, conclusion arrived at are on re-appreciation of entire material on record and by assigning reasons. No case of perversity of findings is established.



24. Hence, no substantial question of law arises for consideration. Appeal is ***dismissed***.

In view of dismissal of appeal, pending application is ***disposed of***.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD
List No.: 1 SI No.: 46