

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR SECOND APPEAL NO.2080 OF 2011 (DEC/INJ)

BETWEEN:

DEVAMMA @ DEVI
D/O LATE CHALUVAIAH,
AGED ABOUT 47 YEARS,
RESIDING AT SUGGANAHALLI VILLAGE,
SRAVANABELAGOLA HOBLI,
CHANNARAYAPATNA TALUK-571 201.

...APPELLANT

(BY SRI K.N. NITISH, ADVOCATE, FOR SRI K.V. NARASIMHAN)

AND:

1. SRI BETTAIAH
S/O LATE BETTAIAH,
AGED ABOUT 72 YEARS.
2. SMT. JAVARAMMA
W/O BETTAIAH,
AGED ABOUT 62 YEARS.
3. SRI NANJUNDEGOWDA
S/O LATE SHIVANNA,
AGED ABOUT 50 YEARS.

RESPONDENTS ARE RESIDING AT
SUGGANAHALLI VILLAGE,
SRAVANABELAGOLA HOBLI,
CHANNARAYAPATNA TALUK-571 201.

...RESPONDENTS

(BY SRI SHRIKARA P. K., ADVOCATE, FOR R-3, &
R-1 & R-2 ARE SERVED AND UNREPRESENTED)

* * *

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by
NAGARATHNA
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Location: High
Court of
Karnataka



THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO ALLOW THE APPEAL AND SET-ASIDE THE JUDGMENT AND DECREE DATED 02.08.2011 PASSED IN REGULAR APPEAL NO.251 OF 2009 ON THE FILE OF THE LEARNED PRESIDING OFFICER, FAST TRACK COURT, CHANNARAYAPATNA.

THIS REGULAR SECOND APPEAL HAVING BEEN HEARD AND RESERVED ON 14.08.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

This regular second appeal is filed by the appellant-plaintiff challenging the judgment and decree dated 02.08.2011 passed in Regular Appeal No.251 of 2009 by the learned Fast Track Court, Channarayapatna, and the plaintiff prayed to decree the suit filed in Original Suit No.56 of 2005 on the file of learned Civil Judge (Senior Division), Channarayapatna.

2. For the sake of convenience, the parties are referred to as per their rankings before the trial Court. The appellant is the 'plaintiff' and the respondents are the 'defendants'.

3. The brief case of the plaintiff are that one Javarayya of Sugganahalli Village had three sons and a daughter, namely Dasayya, Yalakkayya, Neelayya and Thimmamma. The suit property was granted by the Government (prior to 1959)

through a *darkhast* in favour of Neelayya and he was put into possession. In the meantime, said Neelayya, Yalakkayya and Thimmamma died issueless and Dasayya succeeded to the suit property. Said Dasayya had a son, by name, Dasayya, and a daughter, by name, Thimmamma. The plaintiff is the daughter of Thimmamma and after the death of Dasayya and Thimmamma, the plaintiff succeeded to the suit property. Defendant No.1, brother of the plaintiff's husband and defendant No.2, wife of defendant No.1, having no right over the suit property, have got the revenue records changed to their names and have also executed a Sale Deed in favour of defendant No.3 under Ex.D4 alienating a portion of the land in Schedule 'A' property to the plaintiff, which is more fully described as Schedule 'B' property. In fact, they have no right to do so. However, the defendant causing interference in possession of the plaintiff over the suit property. Hence, a cause of action arose for the plaintiff to file a suit for declaration and permanent injunction.

4. Defendant Nos.1 and 2 appeared before the trial Court and have filed their written statement *inter-alia* contended that Yalakkayya and Dasayya have sold 3 acre of land in the suit survey number in favour of one K. S. Krishnappa through a

registered Sale Deed dated 06.07.1970, and in turn, Sri K. S. Krishnappa has sold 2 acre and 20 guntas of the said land in favour of one S.B. Devarasegowda through a registered Sale Deed dated 30.11.1970. In turn, S.B. Devarasegowda sold 1 acre and 30 guntas of the land in favour of defendant Nos.1 and 2 through a registered Sale Deed dated 14.04.1976. Therefore, defendant Nos.1 and 2 have been in a lawful possession of the property. Defendant Nos.1 and 2 have admitted that on 22.03.2004, they sold the said 1 acre and 30 guntas of the land in favour of defendant No.3. According to defendant Nos.1 and 2, the plaintiff is having land adjacent to the land owned by her mother and that she had knowledge about the possession of K. S. Krishnappa and S.B. Devarasegowda over the said property. As such, they denied plaintiff's claim of title or possession over the suit schedule property.

5. Defendant No.3 also filed his separate written statement and contended that he purchased the property from defendant Nos.1 and 2 and that he is in possession and enjoyment of the same. He contended that the said Sale Deed is a valid Sale Deed and the same is binding on the plaintiff.

The suit of the plaintiff is barred by limitation as she failed to challenge the earlier Sale Deeds in respect of the said property.

6. The trial Court, based on the pleadings of the parties, framed the following issues:

"1. Whether the plaintiff proves that the said deed dated 23.02.2004 executed defendant No.1 and 2 in favour of 3rd defendant is not binding on her right in the plaint B schedule?

2. Whether the plaintiff proves her title over the plaint "B" schedule?

3. Whether the plaintiff proves that she is in possession and enjoyment of plaint "B" schedule?

4. Whether the plaintiff proves that defendants have interfered for such of her possession and enjoyment?

5. Whether the defendants proves that the suit is barred by limitation and they have perfected their title over the suit land by adverse possession?

6. For what reliefs that parties are entitle to?

7. What Order or Decree?."

7. The plaintiff, to substantiate her case, examined herself as PW1, examined other two witnesses as PW2 and PW3 and marked in all twelve documents as per Exs.P1 to 12. In

rebuttal, defendant No.3 was examined as DW1, defendant No.1 was examined as DW2 and vendor of defendant No.1 was examined as DW3 and marked in all twenty-one documents as Ex.D1 to D21.

8. The trial Court, after recording the evidence, hearing both sides and appreciating the oral and documentary evidence, decreed the suit with costs by its order dated 24.08.2009. Being aggrieved by the judgment and decree passed by the trial Court, the defendants preferred an appeal in Regular Appeal No.251 of 2009 on the file of the learned Fast Track Court, Channarayapatna. The First Appellate Court, after hearing the learned counsel for the parties, framed the similar points for consideration/issues as that of the trial Court for its consideration, and after re-appreciating the oral and documentary evidence on record, allowed the appeal by its order dated 02.08.2011.

9. Being aggrieved by the judgment of the First Appellate Court, the plaintiff has filed this regular second appeal.

10. Heard the arguments of Sri K. N. Nitish, learned counsel appearing for Sri K. V. Narasimhan, learned counsel for

the appellant-plaintiff, and Sri Shrikara P.K., learned counsel for respondent No.3-defendant No.3.

11. Learned counsel for the appellant-plaintiff has contended that the judgment and decree of the First Appellate Court is opposed to probabilities of the case and material on record. The First Appellate Court has erred in not appreciating the documents and evidence in a proper perspective and it has resulted in passing of the impugned judgment and decree. The genealogical tree produced by the appellant at Ex.P9 is undisputed. In that light of the matter, the First Appellate Court could not have found that there is no evidence that Dasayya, son of Dasayya, died issueless and hence, the plaintiff has failed to prove that the plaintiff is the sole heir and has succeeded to the suit property left behind Neelayya or Dasayya, son of Javarayya, and this approach of the First Appellate Court is perverse and untenable. He further contended that, it is not in dispute that the suit land was initially granted to Neelayya through *darkhast*. In that light of the matter, the defendants had failed to prove as to how Yalakkayya and Dasayya derived the title over 3 acre of land in Schedule 'A' property to the plaint and to sell the same to Krishnappa and he, in turn, sold it to Devarasegowda and said

Devarasegowda sold it to defendant Nos.1 and 2. Hence, it is clear that defendant Nos.1 and 2 had no title to sell the suit property in favour of defendant No.3, but this aspect has not been properly appreciated by the First Appellate Court at all. Further, the admission of DW3 has not been considered by the First Appellate Court. It is admitted by the said witness that the suit property was granted to Neelayya and in order to alienate the same, permission from the Government was necessary. However, no such document of permission has been produced or exhibited. Further, it is an admitted fact that Neelayya belonged to Scheduled Caste and any alienation made without seeking prior permission of the Government is *void ab initio*. Thus, the case of the defendants is far from truth, unreal and deserved to be discarded at the threshold. Further, the defendants, by pleading adverse possession, had admitted to the ownership of the plaintiff over the suit property. It is pertinent to note that a person who claims ownership over a property by sale cannot, to the contrary, take a plea of adverse possession. In that view of the matter, the appeal filed by the defendants ought to have been dismissed by the First Appellate Court. He further contended that in the light of the facts and circumstances of the case, the trial Court had rightly come to

the conclusion that since the appellant is the sole legal heir of the family of Neelayya, she had succeeded to the suit property and hence, had rightly decreed the suit. The First Appellate Court, however, without appreciating any of these aspects, has allowed the appeal of the defendants. Further, the appreciation of evidence by the First Appellate Court is perverse and opposed to probabilities of the case. Thus, viewed from any angle, the judgment and decree of the First Appellate Court is unjust, illegal unsustainable and the reasoning given by the First Appellate Court is not correct. Hence, the learned counsel prays to allow the appeal.

12. *Per contra*, the learned counsel for respondent No.3-defendant No.3 has vehemently contended that the alleged grant of land in favour of Neelayya is not within his knowledge. The plaintiff has made unrighteous claim to make wrongful gain. There were several sale transactions taken place in respect of portion of Schedule 'A' property and they have denied the plaintiff's title and possession over the same. Defendant No.3 has only claimed that he purchased a portion of the property from defendant Nos.1 and 2 under a registered Sale Deed dated 22.03.2004 and that the suit of the plaintiff is

barred by law as she has not challenged the previous Sale Deeds. Hence, the learned counsel prays to dismiss the appeal.

13. Having heard the learned counsel for both parties, the following substantial question of law arises for consideration:

- i) In the absence of any evidence with regard to the non-availability of the primary evidence namely the original sale deed whereunder Sri. Yalakkayya and Sri. Dasayya said to have sold the property in favour of one Krishnappa who is stated to be the predecessor in title of defendants, whether, the Lower Appellate Court is justified in accepting Ex.D1 as the secondary evidence and on that basis reversing the judgment of the trial court and consequently dismissing the suit filed by the appellant/plaintiff.*
- ii) Whether the findings recorded by the Lower Appellate Court that the plaintiff has failed to prove her title to the property is perverse being contrary to the evidence and non-consideration of the material evidence on record?*

14. Admittedly, the plaintiff, Smt. Devamma @ Devi, has filed a suit for declaration of title and for permanent injunction in respect of land bearing Survey No.8/1, new Survey No.63, measuring 4 acre and 32 guntas situated in Gurigaranahalli Village, Shravanabelagola Hobli, Channarayapatna Taluk,

bounded on East by land of Lakshmamma, West by land of Kuntayya, North by land of Thammanna and others and South by land of Mariyanna and others. As per the case of the plaintiff, the suit schedule property was originally granted in favour of one Neelayya, son of Javarayya, through a *darkhast*. The said Javarayya had three sons and a daughter, namely Dasayya, Yalakkayya, Neelayya and Thimmamma. The said Neelayya, Yalakkayya and Thimmamma died issueless and the eldest son of Javarayya, namely Dasayya, succeeded to the schedule property. After the death of Dasayya, his children namely Dasayya and Thimmamma succeeded to the schedule property.

15. The plaintiff has contended that the defendants have no right or possession in respect of the schedule property. On the other hand, the defendants have denied the said aspect. In order to prove her case, the plaintiff was examined as PW1 and she relied upon documentary evidence. A perusal of Ex.P11-RTC extract and Ex.P12-Form No.5, one Neelayya was in possession and enjoyment of the property to an extent of 4 acre and 37 guntas in Survey No.63 of Gurigaranahalli Village and the endorsement found in the Record of Rights marked at Ex.P1 clearly demonstrated that the said land was granted to

Neelayya through a *darkhast* in the year 1958-1959. The aforesaid aspect is not disputed by the defendants. The plaintiff has claimed that she had succeeded to the same extent of the land in the said survey number through her mother, namely Thimmamma, daughter of Dasayya. However, the plaintiff has not placed any material to prove that she is the only legal heir to claim the property. Further, the contents of the revenue records produced by the plaintiff do not support her contention. A perusal of Ex.P5-patta pustaka, Thimmamma, wife of Chaluwayya (mother of the plaintiff), was having the land only to an extent of 1 acre and 10 guntas in Survey No.63 of Gurigaranahalli Village. Further, Ex.P1-RTC extracts clearly establishes that Bettayya, Son of Bettayya, is having 1 acre and 30 guntas of the land and Thimmamma, wife of Chaluwayya (mother of the plaintiff) is having 1 acre and 10 guntas of the land in Survey No.63 of Gurigaranahalli Village. Therefore, the said documents indicate that the said persons acquired the lands under the Sale Deeds.

16. According to the plaintiff, three months prior to the institution of the suit, defendant Nos.1 and 2 tried to interfere with the suit property and at that time, she came to know about the Sale Deed dated 23.02.2004 executed by defendant

Nos.1 and 2 in favour of defendant No.3 in respect of portion of Schedule 'A' property, which is more fully described as Schedule 'B' property and after coming to know about change of *khata* in the name of defendant No.3, she had filed an appeal before the Assistant Commissioner, Hassan, in R.A. No.8 of 2005, questioning the change of *khata* in respect of the schedule property. Further, according to the plaintiff, defendant Nos.1 and 2 had no right, title or possession over Schedule 'B' property and they had no authority to execute Sale Deed in favour of defendant No.3.

17. A perusal of the defence of the defendants, it clearly demonstrated that there were several sale transactions in respect of the suit schedule property right from 06.07.1970. In order to substantiate their oral testimonies, the defendants relied upon Ex.D1 to Ex.D4. As per Ex.D1-certified copy of the Sale Deed dated 06.07.1970, whereunder one Yalakkayya, son of Javarayya, Dasayya, elder brother Dasayya's son, jointly executed the Sale Deed in favour of one K. S. Krishnappa in respect of land bearing Survey No.8/1, measuring 2 acre and 20 guntas of Gurigaranahalli Village. Ex.D2-registered Sale Deed dated 30.11.1970 clearly demonstrated that said K. S. Krishnappa sold the land bearing Survey No.8/1,

measuring 2 acre and 20 guntas in favour of S. B. Devarasegowda. In turn, S.B. Devarasegowda sold a portion of the land bearing Survey No.8/1, measuring 1 acre and 30 guntas in favour of Bettayya, son of Bettayya (defendant No.1), out of total extent of 2 acre and 20 guntas purchased by him and further, there is a reference that S. B. Devarasegowda having sold remaining extent of the land in favour of Thimmamma (mother of the plaintiff). Therefore, defendant Nos.1 and 2, in turn, sold the land bearing Survey No.8/1, measuring 1 acre and 30 guntas in favour of defendant No.3 through a registered Sale Deed dated 23.02.2004 vide Ex.D4.

18. In fact, the plaintiff has not disputed these sale transactions. However, she has taken the contention that none of them i.e. Yalakkayya, Dasayya (son of Dasayya), Krishnappa, Devarasegowda and Bettayya had any right to sell the property. The plaintiff has not chosen to question any of the earlier Sale Deeds, except the Sale Deed executed by defendant Nos.1 and 2 in favour of defendant No.3. Further, the contents of Ex.P3 clearly demonstrated that *khata* of 1 acre and 37 guntas in Survey No.63 of Gurigaranahalli Village was

mutated in the name of Dasayya, son of Dasayya, as per the order passed in ICR 9/1990-91.

19. The plaintiff has produced a mutation registrar extract vide Ex.P4. The contents of Ex.P4 indicates that Thimmamma, wife of Chaluwayya (mother of the plaintiff), purchased 1 acre and 10 guntas of land in Survey No.8/1 from S. B. Devarasegowda. The contents of Ex.D3 clearly demonstrated that there is a reference about S. B. Devarasegowda having sold his remaining portion of Survey No.8/1 in favour of Thimmamma. In fact, the plaintiff is none other than the daughter of said Thimmamma. Therefore, the very document furnished by the plaintiff clearly demonstrated that her mother, Thimmamma, had purchased a portion of the land in Survey No.8/1 from the vendor of defendant No.1, i.e. S.B. Devarasegowda. Thus, the plaintiff is estopped from denying the authority of S. B. Devarasegowda and defendant Nos.1 and 2 to execute the Sale Deed in respect of the portion of the land in Survey No.8/1 of Gurigaranahalli Village. Admittedly, the plaintiff has not challenged earlier Sale Deeds-Exs.D1 to D4, more importantly, the Sale Deed executed by S. B. Devarasegowda in favour of her own mother, Thimmamma.

20. In this appeal, the plaintiff has taken contention that the schedule property was granted in favour of Neelayya, a member of Scheduled Caste. He sold the property within the non-alienation period, which amounts to *void ab initio*.

21. The plaintiff has not at all placed any material to show that Neelayya was a member of the Scheduled Caste and the plaintiff has also failed to furnish the original grant certificate before the Court. Therefore, from the material on record, it indicates that the plaintiff has not maintained the suit for declaration and other relief based on violation of terms of the grant or for questioning the Sale Deeds executed by Yalakkayya, Dasayya (son of Dasayya), Krishnappa, Devarasegowda and Bettayya. Further, the plaintiff has not at all placed any material, more particularly, grant certificate to show that the actual conditions under which the land came to be granted in favour of Neelayya through a *darkhast*.

22. A perusal of the material available on record clearly indicates that the trial Court rendered its judgment on the basis of assumptions and conjectures, rather than upon a proper appreciation and consideration of the material evidence on record. The trial Court presumed violation of terms of the grant

even in the absence of any grant certificate or other material to probabalise the same, proceeded to decree the suit of the plaintiff based on the weakness of the case of the defendants than deciding the case on merits of the material placed on record by the plaintiff. Therefore, it clearly establishes that the trial Court not assigned any reasons to ignore the conduct of the plaintiff in not challenging the earlier sale transactions, particularly, when the material on record indicate that even the mother of the plaintiff had purchased a portion of the suit schedule property from S. B. Devarasegowda under a registered Sale Deed dated 14.04.1976. In fact, the First Appellate Court has correctly analysed the facts, circumstances, oral and documentary evidence and rightly set aside the judgment and decree passed by the trial Court.

23. The plaintiff has filed this second regular appeal. The right of filing a second appeal is provided under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC') which confers jurisdiction on the High Court only when it is satisfied that the case involves a substantial question of law. For better appreciation, the said provision reads as under:

"100. Second appeal

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed ex parte .

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing

of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, "not formulated by it, if it is satisfied that the case involves such question."

24. The Hon'ble Apex Court has categorically held that the High Court acquires jurisdiction to deal with second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 of CPC and it cannot grant an interim order without framing substantial question of law. Under Section 100 of CPC, jurisdiction of the High Court to entertain a second appeal is confined only to such appeals, which involves a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the question of fact while exercising its jurisdiction under Section 100 of CPC.

25. In this appeal, in all, four sale transactions are taken place, but the plaintiff has not challenged the earlier sale transactions. She has failed to prove her possession. Hence, the First Appellate Court was justified in accepting Ex.D1 as the

secondary evidence and on that basis, reversed the judgment of the trial Court. Further, the plaintiff has failed to prove her title to the schedule property. Thus, the finding of the First Appellate Court is not perverted, which is in accordance with evidence adduced by the parties. Therefore, the First Appellate Court, based on oral and documentary evidence on record clearly analysed the fact, evidence, and proposition of law, has rightly allowed the appeal filed by the defendants and set aside the decree granted by the trial Court, which requires no interference by this Court. Hence, I do not find any error in the judgment of the First Appellate Court. Accordingly, I proceed to pass the following

ORDER

- i. Regular second appeal is ***dismissed***.
- ii. The judgment and decree dated 02.08.2011 passed in Regular Appeal No.251 of 2009 by the learned Fast Track Court, Channarayapatna, is hereby confirmed.
- iii. No order as to costs.

In view of the dismissal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are accordingly dismissed.

**Sd/-
(VENKATESH NAIK T)
JUDGE**

KVK