IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 655 OF 2020 (INJ)

BETWEEN:

1. SMT. VIMALA BAI
W/O SR DINESH KUMAR
AGED ABOUT 45 YEARS
RESIDING AT NO. 466
'GEETHANJALI NILAYA'
1ST 'B' CROSS, 3RD B MAIN ROAD
MATHIKERE, BANGALURU - 560 054

2. SRI SURESHKUMAR JAIN
S/O SHANKARLAL JAIN
AGED ABOUT 46 YEARS
RESIDING AT NO.1078
5TH CROSS, 4TH MAIN
K.N EXTENSION
BANGALURU - 560 054

...APPELLANTS

(BY SRI. VISWANATHA SETTY V, ADVOCATE)

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

AND:

SRI. L. NANJAPPA
S/O LATE N LINGAIAH
AGED ABOUT 65 YEARS
R/AT HOUSE NO.25
CONSTRUCTED IN SITE NO.4
IN SY NO.5/2 MAGADI ROAD
CHORD ROAD CIRCLE
NEAR PETHI PETROL BUNK
BANGALURU - 560 079

...RESPONDENT

(SERVICE OF NOTICE HELD SUFFICIENT)

THIS RFA IS FILED UNDER SEC.96 R/W. ORDER 41 RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 10.10.2019 PASSED IN OS NO.3909/2008 ON THE FILE OF THE XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-40) BANGALORE CITY DECREEING THE SUIT FOR PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 15.10.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

This Regular First Appeal is preferred against the Judgment and Decree dated 10.10.2019 passed in O.S. No.3909 of 2008by the XXXIX Additional City Civil and Sessions Judge, Bengaluru City (CCH-40) (for short, the Trial Court"), whereby the Trial Court decreed the plaintiff's suit for permanent injunction. For convenience, the parties are referred to by their original ranks before the Trial Court.

2. Brief facts of the case, necessary for the disposal of the appeal are that plaintiff instituted O.S. No.3909 of 2008 seeking permanent injunction, asserting that his father, late N. Lingaiah, acquired Site No.4 carved out of Survey No.5/2 of Jedahalli Village, Yeshwanthapura Hobli, Bengaluru North Taluk, under a registered sale deed dated 12.12.1959 executed by

one Sadashivaiah. It was submitted that N. Lingaiah was put in actual physical possession, constructed a cement sheet residential house, resided there with his family, and got his name mutated in Municipal khatha and city survey records. Following the demise of N. Lingaiah and his wife, the plaintiff succeeded to the property, paid Municipal taxes, and had his khatha confirmed by the Deputy Commissioner on 05.09.2001. Such being the facts, the appellants/defendants allegedly attempted to forcible dispossess the plaintiff/respondent. As such, plaintiff filed the suit against the defendants.

3. The defendants entered appearance and filed a joint written statement denying the plaint averments, contending that the plaintiff was an unauthorized encroacher and that no old structure existed on site. The Trial Court framed appropriate issues regarding the dispute between the parties. In answer to the same plaintiff examined himself as PW.1 and marked Exs.P.1 to P.21. Defendant No.2 was examined as DW.1, their vendor N. Gopi as DW.2, and Exs.D.1 to D.20 were marked.

4. Upon appreciation of oral and documentary evidence, the Trial Court decreed the suit restraining the

defendants from interfering the lawful possession of plaintiff. Aggrieved thereby, the defendants have preferred this appeal.

5. Heard learned counsel Sri. Vishwanatha Shetty for the appellants. Though notice served to respondents/plaintiff, he remained absent.

6. Learned counsel for the appellants/defendants primarily contented that plaintiff failed to prove his right, title, and possession over the suit schedule property. According to him, defendant No.1 purchased a portion of the suit property from one Gopi under Ex.D1 (Absolute Sale Deed dated 15.10.2007), and defendant No.2 purchased the remaining portion from the same Gopi under Ex.D2. Originally, the property measuring 6 acres 31 guntas belonged to Ram Bhat, Ancham Bhat, and Narasimhaiah Bhat. After Ancham Bhat's death, his legal heir Giriyamma inherited the property, which subsequently passed to her daughter Seethamma, and then to Seethamma's daughter Puttamma. Puttamma sold her 5/8th share to one Hanumanthaiah under a registered sale deed dated 15.03.1971. Hanumanthaiah obtained an injunction decree in O.S. No.412/2006 dated 14.08.2006 against one Marappa for 4 acres 9 guntas in Sy.No.5 of Jedahalli Village.

Hanumanthaiah later sold the property to K.R. Srinivasa vide sale deed dated 24.08.1998. K.R. Srinivasa mortgaged the property to State Bank of Hyderabad, which initiated recovery proceedings before the Debt Recovery Tribunal (DRT) in O.A. No.323/2000. In the DRT public auction, Gopi emerged as the highest bidder, and a sale certificate was issued in his favor on 08.02.2005 for land in Sy.No.5. Subsequently, the said Gopi divided the property into two portions and sold them to Defendants No.1 and 2 vide Exs.D1 and D2, placing them in possession.

7. He also relied upon Ex.D19, the order passed by the Debt Recovery Tribunal in O.A. No.323/2000, which was filed by the Bank against K. Srinivas and another for recovery of debt. In those proceedings, the plaintiff was impleaded as an objector and explicitly stated that he had been dispossessed of the property. Consequently, the plaintiff's claim in this suit that he remains in possession of the property is untenable. It was further contended that the suit property belongs to the defendants. As the Trial Court failed to appreciate these material facts, he prays that the appeal be allowed

8. Having heard learned counsel for the appellant, the principal question that arises for consideration is whether the plaintiff has established his possession over the suit schedule property and whether the Trial Court was justified in granting the relief of permanent injunction.

9. As could be gathered from records, the plaintiff has instituted the suit seeking a decree of permanent injunction in respect of the suit schedule property, contending that his father acquired the property under a registered sale deed dated 12.12.1959 and that, after his father's demise, he succeeded to the property and continued in possession and enjoyment thereof. The defendants, on the other hand, claim to have purchased portions of the property from N. Gopi under registered Sale Deeds Exs.D.1 and D.2.

10. In support of his claim, the plaintiff has produced the registered Sale Deed dated 12.12.1959 executed in favour of his father, marked as Ex.P.1, city survey records (Ex.P.4), municipal khatha certificates and extracts (Exs.P.2, P.3, P.14, and P.15), and property tax-paid receipts (Exs.P.6 and P.16 to P.18). These documents, when considered cumulatively, lend support to the plaintiff's contention regarding his long-standing

possession of the suit schedule property. Though municipal and revenue entries do not, by themselves, confer title, they constitute relevant evidence for examining the claim of possession.

11. In contrast the defendants-appellants rely upon the chain of transactions concerning the larger extent of land in Sy. No. 5 of Jedahalli Village, including the sale in favour of Hanumanthaiah, the subsequent conveyance to K.R. Srinivasa, the mortgage and recovery proceedings before the Debt Recovery Tribunal in O.A.No.323 of 2000, and the sale certificate issued in favour of N. Gopi on 08.02.2005. They vehemently contended that N. Gopi subsequently conveyed portions of the property to them under Sale Deeds at Exs.D.1 and D.2 and delivered possession thereof. However, the existence of these transactions do not, by themselves, establish that the property purchased by the appellants is the suit schedule property.

12. In this regard, the evidence of DW.2, N. Gopi, the vendor of the appellants, assumes significance. The admissions elicited from him during cross-examination indicate that the property purchased by the appellants under Ex.D.1 and D2 is

situated in Sy.No.5/3, whereas the suit schedule property claimed by the plaintiff is situated in Sy.No.5/2. This evidence, considered alongside the documentary material on record, supports the plaintiff's contention that the respective properties are distinct and separate. Consequently, the appellants' reliance upon Exs.D.1 and D.2 do not establish their entitlement to interfere with the plaintiff's possession over the suit schedule property.

13. Regarding the appellant’s contention that the plaintiff admitted to being dispossessed of the property in the DRT proceedings, a careful scrutiny of the order passed in O.A. No. 323/2000 reveals that the said proceeding pertained to Site No. 1, formed out of Survey No. 5/1. In contrast, the suit schedule property is Site No. 4, formed out of Survey No. 5/2. Under these circumstances, any admission made by the plaintiff in the O.A. has no bearing on the dispute concerning the suit schedule property. Furthermore, the survey sketch relied upon by the defendants clearly depicts that Survey Nos. 5/1 and 5/2 are distinct properties. While the plaintiff claims possession over Site No. 4 in Survey No. 5/2, the defendants claim title and possession over Site No. 1 in Survey No. 5/1.

14. The appellants have also relied upon the judgment and decree passed in O.S.No.412 of 2006. However, this plaintiff was not a party to the said proceedings. Therefore, the findings recorded therein cannot, by themselves, be treated as conclusive against this plaintiff, and their relevance must be assessed with reference to the subject matter and the parties to the earlier suit.

15. It is well settled that, in a suit for permanent injunction simpliciter, the principal consideration is whether the plaintiff was in possession of the suit schedule property as on the date of institution of the suit and whether such possession was threatened by the defendants. A person in settled possession cannot be dispossessed forcibly except by due process of law. In the present case, the documentary evidence produced by the plaintiff, coupled with the testimony of DW.2 concerning the identity of the properties, supports the plaintiff's claim of possession.

16. In such circumstances, when the vendor of the defendants admitted the different identifications of the properties belonging to the plaintiff and defendants, the remedy lies to the defendants to file a comprehensive suit

against the plaintiff in respect of the properties they claim title and possession as held by the Hon'ble Apex Court in the case of ***ANATHULA SUDHAKAR REDDY VS BUCHI REDDY (dead) by LRs***, reported in (2008) 4 SCC 594.

17. Upon re-appreciation of the evidence, this Court finds no perversity, illegality, or material mis-appreciation of evidence in the findings recorded by the Trial Court warranting interference.

ORDER:

1. The Regular First Appeal filed by the appellants/defendants is hereby ***dismissed***.

2. The Judgment and Decree dated 10.10.2019 passed by the learned XXXIX Additional City Civil and Sessions Judge, Bengaluru City (CCH-40), in Original Suit No.3909 of 2008 is hereby confirmed.

SD/-
(RAJESH RAI K)
JUDGE

PKS/V