NC: 2026:KHC:9202
RFA No. 318 of 2012

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 318 OF 2012 (DEC/INJ)

BETWEEN:

1. SMT. M.A. SHAHNAZ
D/O MOHAMMAD ARIFULLA
AGED ABOUT 28 YEARS
R/AT NO.2, 8/4 10TH "A" CROSS
ANEPALYA, BANGALORE-560047.

...APPELLANT

(BY RASHEED KHAN, ADVOCATE)

AND:

1. SRI. ANTHONY STEPHEN
S/O S.A. JOICE
AGED ABOUT 40 YEARS
R/AT NO. 1504, BDA QUARTERS
AUSTIN TOWN, III STAGE
BANGALORE-560047.

Digitally signed by AJ BHAGYA
Location: HIGH COURT OF KARNATAKA

2. SRI. GUNDAPPA
SINCE DEAD BY HIS LRS

(A) SMT. KULLAMMA
W/O LATE GUNDAPPA
AGED MAJOR

(B) SRI. CHINNATHAYAPPA
S/O LATE GUNDAPPA
AGED MAJOR

(C) SMT. LAXMAMMA
D/O LATE GUNDAPPA
AGED MAJOR

(D) SMT. GANGAMMA
D/O LATE GUNDAPPA
AGED MAJOR

3. SRI. G. SATISH
S/O GUNDAPPA
AGED ABOUT 46 YEARS

R2(A) TO R2(D) AND R3 ARE
R/AT NO.28, MARIAMMA KOIL STREET
NEELASANDRA
BANGALORE-560047.

…RESPONDENTS

(BY SRI. P. VENKATARAMANA, ADVOCATE FOR C/R1;
V/O DATED 06.11.2016 APPEAL DISMISSED AGAINST R2(A AND B);
V/O DATED 08.01.2021 NOTICE TO R2(C AND D) ARE DISPENSED WITH;
R3 SERVED AND UNREPRESENTED)

THIS RFA IS FILED U/SEC. 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 24.01.2012 PASSED IN O.S.NO.10910/1998 ON THE FILE OF THE XXVIII-ADDL. CITY CIVIL JUDGE, MAYO HALL, BANGALORE, DECREEING THE SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the defendant No.3 assailing the judgment and decree rendered in O.S.No.10910/1998, wherein the plaintiff's suit seeking relief of declaration of title and for possession is decreed.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. Facts leading to the case are as under:

Plaintiff instituted a suit seeking declaration of title based on registered sale deed obtained by plaintiff from one A.P. Srinivasulu under registered sale deed dated 01.07.1998. Plaintiff specifically asserted that plaintiff’s site bearing No.8-C measures 20x30 feet and the same is part and parcel of Sy.No.7. Alleging that defendant No.3 on the strength of sale deed executed by defendant No.1 under registered sale deed dated 10.05.1999 pertaining to Site No.2 illegally trespassed and dispossessed plaintiff and therefore, suit is filed asserting title over Site No.8-C.

4. On receipt of summons, defendant No.3 entered appearance, filed written statement and stoutly denied the entire averments made in the plaint. Per contra, defendant No.3 asserted title to the property measuring 23x30 feet pertaining to Site No.2 in Sy.No.8/4. Defendant No.3 asserted that post-purchase, she has put up construction and she is residing and plaintiff has no semblance of right insofar as site No.2 is concerned. Defendant No.3 alleged that plaintiff cannot seek relief of declaration and injunction without producing layout plan pertaining to Sy.No.7. Defendant No.3 specifically contended that defendant No.3's property bearing Site No.2 is part and parcel of Sy.No.8/4 situated at 10th cross and it measures 23x30 feet while plaintiff's site bearing No.8-C is part and parcel of Sy.No.7 measuring 20x30 feet.

5. Based on rival claims, trial Court formulated appropriate issues. Plaintiff and defendant No.3 were permitted to lead oral and documentary evidence in support of their claim. The core issue that was raised by

the trial Court was in regard to identity of the suit schedule property and whether defendant No.3 illegally dispossessed plaintiff on 14.10.1998.

6. Trial Court on assessing oral and documentary evidence, while answering Issue No.1 in the affirmative recorded a categorical finding that the sale deed obtained by defendant No.3 pertaining to site No.2 does not convey title under Ex.P-21 as defendant No.1 had already conveyed the site in favour of one Muniswamy through sale deed dated 30.05.1968 who in-turn sold it in favour of M. Kharar Hussain under registered sale deed dated 19.12.1979, which are marked as Exs.P-24 and P-25 respectively. The trial Court also adverted to the encumbrance certificate indicating that Site No.2 is formed in Sy.No.8/4. Consequently, suit was decreed and defendant No.3 is directed to hand over possession.

7. Learned counsel appearing for defendant No.3 reiterating the grounds urged in the appeal memo would

point out that defendant No.3 has not seriously questioned plaintiff's title. Since defendant No.3 is asserting title over Site No.2 which is part and parcel of Survey No.8/4 and therefore, both the properties being distinct and separate, plaintiff's fictitious suit seeking possession of Site No.8-C has virtually tried to lay a claim over defendant No.3's Site No.2 situated in Survey No.8/4.

8. Per contra, learned counsel appearing for the plaintiff straight away taking this Court through Ex.P-51 has demonstrated that two private layouts were formed while the plaintiff's Site No.8-C is part and parcel of Sy.No.7, the disputed Site No.2 is part and parcel of a layout formed in Site Nos.8/4, 9/1 and 10. The layout formed in Sy.Nos.7 and 8/4, 9/1 and 10 are adjacent to each other. The same can be gathered from the layout plan marked at Ex.P-51. Referring to these crucial documents and also the manner in which defendant No.1 has reconveyed Site No.2 having already sold Site No.2 in Sy.No.8/4 in favour of one Muniswamy vide Ex.P-24 under

sale deed dated 30.05.1968, he would point out that defendant No.1 had no subsisting right to convey Site No.2 situated in Sy.No.8/4. He would also highlight the mischievousness of defendant No.1 and defendant No.3. Referring to the sale deeds, he would point out that defendant No.3 obtains sale deed pertaining to Site No.2 without referring to survey number and cleverly later obtains a rectification deed and then inserts Survey No.8/4. He would further point out that the execution petition filed in Ex.Petition No.25124/2023 based on decree passed in O.S.No.10910/1998 is executed and possession is taken by plaintiff.

9. Having heard learned counsels on record, this Court has meticulously examined the pleadings in the plaint and in the written statement. This Court as a final fact-finding authority has independently assessed the oral and documentary evidence. The following points would arise for consideration:

i) Whether the trial Court was justified in holding that defendant No.1 having already alienated Site No.2 in Sy.No.8/4 under registered sale deed dated 10.05.1999, had no subsisting right, title or interest to execute a rectification deed dated 04.10.2000 in favour of defendant No.3?

ii) Whether sale deed obtained by defendant No.3 under Ex.P-21 read with rectification deed vide Ex.P-22 pertains to fictitious or non-existent property?

iii) Whether the Trial Court was justified in concluding that the plea of defendant No.3 that he purchased a distinct and different property is illusory, and that in substance his claim overlaps with the suit schedule property, and further holding that the plaintiff has established valid title and is consequently entitled to seek recovery of possession of the suit schedule property?

iv) Whether the trial Court committed any perversity or illegality and would warrant interference at the hands of this Court?

Finding on Point Nos.i and ii:

10. The admitted factual matrix clearly discloses that Site No.2 measuring 33×40 feet in old Sy.No.8/4 was originally purchased by defendant No.1 on 05.11.1965. The subsequent chain of alienations is not in dispute. Defendant No.1 sold the very same Site No.2 to Muniswamy under Ex.P-24 dated 30.05.1968 and thereafter under Ex.P-25 dated 19.12.1979, the property stood alienated in favour of Kharar Hussain, both documents consistently describing the property as Site No.2 in Sy.No.8/4 with identical boundaries.

11. Despite the aforesaid alienations, defendant No.1 once again purported to sell Site No.2 under a registered sale deed dated 10.05.1999 in favour of one Shahnaz. This transaction assumes critical significance. Once defendant No.1 had conveyed the property under a registered instrument, his right, title, and interest stood completely extinguished. From that date onwards,

defendant No.1 was divested of all authority to deal with or correct any aspect of the said property.

12. In this backdrop, the subsequent sale deed dated 10.05.1999 relied upon by defendant No.3 under Ex.P-21 and the rectification deed dated 04.10.2000 under Ex.P-22 require close scrutiny. The rectification deed seeks to introduce Sy.No.8/4 and to cure alleged defects in the earlier sale deed. However, a rectification deed cannot create title, nor can it revive a right that had already been extinguished by a prior alienation.

13. The law is well settled that a rectification deed can only correct clerical or typographical errors in a subsisting and valid transaction. It cannot be used as an instrument to convey property or perfect title where the executant had none on the date of execution. On the date of execution of Ex.P-22, defendant No.1 had no semblance of right or interest left in Site No.2, having already sold it under a registered deed dated 10.05.1999.

14. The Trial Court has therefore rightly concluded that defendant No.1 could not have executed the rectification deed dated 04.10.2000 in favour of defendant No.3, and that the very foundation of defendant No.3's claim collapses. The inevitable consequence is that the sale deed in favour of defendant No.3, read with the rectification deed, relates to a fictitious and non-existent property, incapable of identification on ground.

15. This Court finds no infirmity in the reasoning of the Trial Court on this aspect. The finding is firmly rooted in documentary evidence and settled principles governing conveyance. Accordingly, Point Nos.(i) and (ii) are answered in the ***Affirmative***.

Finding on Point No.iii:

16. This Court has carefully and independently examined the documentary evidence relied upon by the plaintiff in support of his claim of title and possession. The plaintiff's sale deed dated 01.07.1998, marked as Ex.P-6,

clearly discloses that the plaintiff purchased a site measuring 20 feet × 30 feet, bearing Sy.No.7, Site No.8-C. The boundaries recited therein are definite, unambiguous, and internally consistent. Of particular significance is the eastern boundary, which expressly refers to Site No.4 comprised in Sy.Nos.8/4, 9/1, and 10, thereby clearly identifying the location of the suit schedule property and eliminating any ambiguity as to its identity.

17. The plaintiff has further substantiated his claim of possession by producing municipal records and tax paid receipts marked at Exs.P-7 to P-20. These documents demonstrate continuous assessment and payment of taxes in respect of the suit schedule property. Significantly, these records both precede and succeed the alleged purchase set up by defendant No.3, and their evidentiary value has not been impeached in cross-examination nor rebutted by any contra evidence.

18. When the evidence produced by defendant No.3 is examined in juxtaposition, it becomes apparent that the plea that he has purchased a distinct and different property is illusory. The boundaries recited in the sale deed relied upon by defendant No.3 do not correspond either with the boundaries of the plaintiff's property or with the description of Site No.2 in Sy.No.8/4. The unexplained change in dimensions, the conspicuous absence of the survey number in Ex.P-21, and the inconsistent boundary descriptions cumulatively establish that the property claimed by defendant No.3 lacks clear identity. In substance, while professing to claim a different property, defendant No.3 is virtually asserting a right over the suit schedule property.

19. It is also borne out from the material on record that defendant No.3, on the strength of a fictitious and legally unsustainable sale deed marked at Ex.P-21, has unlawfully interfered with and dispossessed the plaintiff from the suit schedule property. The plaintiff has

convincingly established the very existence and identity of Site No.8-C situated in Sy.No.7 through the registered sale deed at Ex.P-6, corroborated by municipal records, tax paid receipts, and the sketch marked at Ex.P-51. These documents cumulatively demonstrate that the suit schedule property is a distinct, identifiable site recognized by statutory authorities.

20. In contrast, the sale deed relied upon by defendant No.3 at Ex.P-21 suffers from fundamental infirmities, including absence of survey number, inconsistent boundaries, and a defective chain of title emanating from a vendor who had no subsisting right to convey the property. The so-called title set up by defendant No.3 is therefore not merely defective but is tainted by fraud and misrepresentation, rendering the document incapable of conferring any lawful right. Acting under the guise of such a fraudulent instrument, defendant No.3 has dispossessed the plaintiff, who was otherwise in lawful possession of the suit schedule

property. The records thus clearly establish that the dispossession of the plaintiff was not lawful but was a direct consequence of defendant No.3 asserting rights under a void and non-existent conveyance.

21. Accordingly, this Court has no hesitation in holding that the plaintiff has succeeded in proving both lawful title and prior possession over Site No.8-C in Sy.No.7 and that the subsequent dispossession by defendant No.3, founded on Ex.P-21, is illegal and unsustainable in law. The Trial Court has also rightly placed reliance on Ex.P-51, the sketch, which provides a visual depiction of the properties in question. The sketch unmistakably demonstrates that the suit schedule property claimed by the plaintiff does not overlap with the vague and indeterminate property described in defendant No.3's documents. This finding assumes added significance in light of the admitted fact that the plaintiff has already executed the decree and taken lawful possession through

due process of Court, thereby reinforcing the conclusion that the plaintiff's title and possession stand crystallized.

22. The interlocutory applications filed by the appellant/defendant No.3 seeking to introduce a Commissioner's report pertaining to unrelated litigation and to recall the order dated 06.11.2016 were also rightly rejected by the Trial Court. These applications were clearly aimed at filling lacunae in the appellant's case and reopening issues that had already attained finality. It is well settled that an appellate Court cannot permit a party to improve its case by introducing collateral material at a belated stage, particularly when such material has no direct bearing on the identity of the suit schedule property.

23. On overall assessment of the aforesaid evidence, this Court finds no infirmity in the conclusion of the Trial Court that defendant No.3's assertion of having purchased a different property is unsustainable and that,

in effect, she is laying claim to the suit schedule property. The plaintiff, on the other hand, has clearly established lawful title and possession and is therefore entitled to seek and retain recovery of possession of the suit schedule property. Accordingly, Point No.(iii) is answered in the ***Affirmative***.

Finding on Point No.iv:

24. At this juncture, it becomes necessary for this Court to advert to the statutory scheme under the Transfer of Property Act, 1882, which squarely governs the rights of the parties. Section 7 of the Act mandates that a person competent to transfer property must be entitled to the transferable interest in the property at the time of transfer. Once defendant No.1 executed a registered sale deed dated 10.05.1999 conveying Site No.2 in old Sy.No.8/4 in favour of Shahnaz, his entire right, title, and interest in the said property stood divested.

25. Section 8 of the Transfer of Property Act further clarifies that unless a different intention is expressed, a transfer of property passes forthwith to the transferee all the interest which the transferor is capable of passing in the property. Consequently, upon execution of the sale deed dated 10.05.1999, defendant No.1 ceased to retain any residuary or reversionary interest in Site No.2 so as to deal with the same in any manner whatsoever.

26. In the absence of any subsisting right, title, or interest, defendant No.1 was legally incapacitated from executing either a fresh conveyance or a rectification deed in respect of the very same property. A rectification deed, in law, presupposes the existence of a valid and subsisting transaction. It cannot be employed as a device to re-transfer property or to validate an otherwise void conveyance executed by a person who had already exhausted his title.

27. Further, Section 54 of the Transfer of Property Act defines "sale" as a transfer of ownership in exchange for a price paid or promised. Once ownership stood transferred under the registered sale deed dated 10.05.1999, defendant No.1 was completely denuded of ownership rights. Any subsequent document executed by him in respect of the same property is therefore rendered void *ab initio*, being hit by the doctrine that no one can convey a better title than what he possesses.

28. In that view of the matter, the rectification deed dated 04.10.2000 relied upon by defendant No.3 does not merely suffer from a curable defect but is fundamentally void, as it emanates from a person who had no transferable interest on the date of its execution. The Trial Court was therefore fully justified in holding that the sale deed obtained by defendant No.3 pertains to a fictitious and non-existent property, incapable of conferring any legal right.

29. This Court also takes note of the subsequent events placed on record. The decree for possession granted in favour of the plaintiff has already been executed, and possession has been lawfully delivered to the plaintiff through due process of Court. The learned counsel appearing for the plaintiff has produced the relevant execution records evidencing delivery of possession, which remain uncontroverted.

30. Once a decree has attained finality and has been executed, the appellate Court would be slow to unsettle settled possession, particularly when the decree itself is founded on sound findings of fact and law. The attempt of the appellant to indirectly challenge the execution by relying on collateral documents or proceedings from unrelated litigation is wholly misconceived and legally impermissible.

31. Therefore, viewed both from the standpoint of statutory provisions under the Transfer of Property Act and

the subsequent enforcement of the decree, this Court finds no ground to interfere with the judgment and decree passed by the Trial Court.

32. This Court, sitting in first appeal under Section 96 CPC, is conscious of its duty as a final fact-finding authority. However, interference is warranted only when the findings of the Trial Court are perverse, illegal, or based on no evidence. In the present case, the Trial Court has undertaken a comprehensive analysis of the documentary evidence, the chain of title, and the legal effect of prior alienations. The conclusions arrived at are logical, well-reasoned, and supported by the record.

33. This Court finds no perversity or misapplication of law warranting interference. On the contrary, the appeal appears to be a speculative attempt to resurrect a claim founded on a void transaction. Accordingly, Point No.iv is answered in the ***Negative***.

34. In view of the foregoing discussion, this Court holds that the appellant/defendant No.3 has failed to make out any ground to interfere with the well-reasoned judgment and decree passed by the Trial Court.

35. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The appeal is ***dismissed***;

(ii) The judgment and decree dated 24.01.2012 passed in O.S.No.10910/1998 by the Trial Court are hereby confirmed.

(iii) All pending interlocutory applications, if any, stand disposed of.

(iv) No order as to costs.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

CA
List No.: 1 Sl No.: 16