HC-KAR

NC: 2026:KHC:62614
RSA No. 908 of 2023

CNR: KAHC010245642023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 908 OF 2023 (INJ)

BETWEEN:

1. SMT.NINGAJAMMA
   W/O LATE THAMMEGOWDA,
   AGED ABOUT 80 YEARS,

2. SRI HARISHA
   S/O LATE VENKATESH,
   AGED ABOUT 40 YEARS,

3. KUMARA
   S/O LATE VENKATESH,.
   AGED ABOUT 33 YEARS,

   ALL ARE R/AT HOSAKOTE VILLAGE,
   CHUNCHANKATTE HOBLI,
   SALIGRAMA TALUK - 571 603,
   (PREVIOUSLY K.R. NAGAR TALUK)
   MYSURU DISTRICT.

...APPELLANTS

[BY SRI A.LOURDU MARIYAPPA, ADVOCATE]

AND:

1 . BASAPPASETTY H N.,
S/O LATE NANJAPPASETTY,
AGED ABOUT 65 YEARS,
MANAGER, SRI RACHAVATTI VEERABADRASWAMY
GADDIGE AND SRI NANJUNDESHWARA
KAMBI DEVARU OF HOSAKOTE,

Digitally signed by ANUSHA V
Location: High Court of Karnataka

CHUCHANAKATTE HOBLI,
SALIGRAMA TALUK - 571 603
MYSURU DISTRICT.

2 . SRI H B NANJAPPA
S/O BASAPPASETTY,
AGED ABOUT 63 YEARS,
R/AT HOSAKOTE VILLAGE,
CHUCHANAKTTE HOBLI,
SALIGRAMA TALUK - 571 603
(PREVIOUSLY K.R. NAGAR TALUK)
MYSURU DISTRICT.

3 . SMT.CHANDRAMMA
D/O LATE VENKATESH,
W/O KUMARA,
AGED ABOUT 40 YEARS,
MARRURKAVULU,
KATTEMALALVADI POST - 571 134
HUNASUR TALUK,
MYSURU DISTRICT.

4 . SMT.SAVITHA
D/O LATE VENKATESH,
W/O SRINIVASA,
AGED ABOUT 33 YEARS,
R/AT NERALE VILLAGE,
BIDARAKKA POST,
HALLIMYSURU HOBLI,
HOLENARASIPURA TALUK - 573 211,
HASSAN DISTRICT.

…RESPONDENTS

[NOTE: DEF.NO.2 VENKATESH (DIED AS ON 21.07.2017) AND DEF.NO.3 - SMT.BELLURAMMA (07.08.2007) AND DEF.NO.4 - SMT.KAMALAMMA (01.04.2016) EXPIRED AND THUS DEF.NO.2, 3 & 4 ARE NOT MADE PARTY TO THIS SECOND APPEAL].

[BY SRI PRITHVIRAJ B.N., ADVOCATE FOR R2 (PH);
R1 & R3 - SERVED; V/O/D 5.12.2025 NOTICE TO R4 IS D/W]

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 02.03.2023 PASSED IN RA NO.11/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, K.R.NAGARA, MYSORE DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 06.04.2015 PASSED IN OS NO.38/2011 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC, K.R.NAGARA.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and decree dated 02.03.2023 passed in RA no.11/2015 by Senior Civil Judge & JMFC, KR Nagar, dismissing appeal, confirming judgment and decree dated 06.04.2015 passed by Principal Civil Judge & JMFC., (Jr. Dn.), KR Nagar, in OS no.38/2011, this appeal is filed.

2. Sri A Lourdu Mariyappa, learned counsel for appellants submitted that Appeal was by defendant no.1 in OS no.37/2002 filed by Kapini Shetty S/o Late HS Muddappa Shetty and HB Rajanna S/o Basappa Shetty (plaintiffs no.1 and 2) for relief of declaration and permanent injunction, in respect of four lands.

3. In plaint, it was stated that Sri Rachavatti Veerabhadraswamy Gaddige '**Gaddige**' and Sri Nanjundeshwara Kambi Devaru were situated in Hosakote village. It was stated that lands were purchased in names of its devotees (1) Rachashettaru S/o Nanjappa Shetty, (2) Nanjappa Shetty @ Muddappa Shetty S/o Sannappa Shetty, (3) Adappa Shetty S/o Somashetty and (4) Veerabhadra Shetty S/o Vishakantashetty under registered sale deed dated 08.06.1931 from Sri Doddegowda S/o Doddegowda and Marigowda S/o Doddegowda. It was stated that said lands were '*sarvamanya'*, only boundaries without extents were mentioned in sale deed and purchasers put in possession. Subsequent survey settlement led to assignment of Sy.no.176/1 to extent of 39 guntas, Sy.no.177/1 to extent of 29 guntas, Sy.no.178/2 to extent of 11 guntas and Sy.no.179/01 to extent of 1 Acre 5 guntas, totally measuring 3 Acres 4 guntas of Hosakote village, Chunchanakatte Hobli, KR Nagara Taluk ('**suit properties**'). It was stated that from date of purchase, suit properties were managed by said four persons. It was stated by efflux of time plaintiff no.1 as son of Nanjappa Shetty @ Muddashetty

(purchaser no.2) was looking after Gaddige and its properties, while plaintiff no.2 as Archak of Gaddige was cultivating lands.

4. Such being case, defendant no.1 being a powerful woman, in collusion with revenue officials got her name entered in respect of suit properties under MR no.24/1992-93 dated 03.06.1993, even though she did not have any manner of right, title and interest over them. Plaintiff no.1 as Manager of Gaddige filed RA no.50/1998-99 before Assistant Commissioner, Hunsur and successfully challenged mutation, which was set-aside with direction to Tahsildar to pass considered order afresh. Thereafter, Tahsildar passed orders on 15.06.2001 refusing mutation. Aggrieved defendant no.1 filed RA no.54/2001-02 before Assistant Commissioner, Hunsur.

5. However after filing appeal, defendant no.1 and others began obstructing plaintiffs' enjoyment of suit properties illegally. Asserting that predecessors of plaintiffs namely HS Muddappashetty and Rajappa Shetty had filed OS no.400/1970 for declaration, possession and mandatory injunction against Sannamma (vendor of defendant no.1), Shivamma and Thimmaiah and obtained decree of declaration of title over suit

properties in favour of Gaddige for mandatory injunction on 24.11.1973 and relief of possession was denied, present suit for relief of permanent injunction against defendants, was filed.

6. On service of summons, defendant no.1 and 2 filed common written statement denying suit properties as belonging to Gaddige/plaintiffs. They asserted that defendant no.1 had purchased suit properties from Sannamma @ Sannakkayyamma under registered sale deed dated 14.10.1981 and was put in possession. And against mutation entering her name in revenue records, Kapanishetty filed revenue appeal, which was allowed with direction for fresh enquiry. When, Tahsildar refused mutation, defendant no.1 filed appeal.

7. Meanwhile, OS no.37/2002 was filed. During its pendency initially plaintiff no.1 and later Vishakanta Shetty impleaded in his place also died. Therefore, Chandrappa Shetty filed application and came on record.

8. It was stated that after filing of written statement by defendants and with sole intention to drag proceedings, plaintiffs withdrew said suit. In meanwhile, revenue

proceedings concluded with order to bring revenue records as per decree in civil suit. But, in collusion with Tahsildar, plaintiffs got their names mutated and began interfering with possession of defendants in name of Gaddige. Defendants denied existence of Gaddige in suit properties and about plaintiffs owning them. They alleged that filing of suit was with intention to knock off suit properties. Defendant no.1 specifically asserted to be in possession and cultivation of suit properties for growing Tobacco. And denying plaintiff no.1 as Manager and defendant no.2 as Archaka of Gaddige, prayed for dismissal of suit.

9. Based on pleadings, trial Court framed following:

ISSUES

1. *Whether plaintiffs prove that they are in actual possession and enjoyment of the suit schedule properties as on the date of filing the suit?*

2. *Whether plaintiffs prove the interference by the defendants?*

3. *Whether plaintiffs are entitled for the relief claimed?*

4. *What order or decree?*

10. In trial, plaintiff no.2 deposed as PW.1 and got marked Exs.P1 to P40. While defendant no.1 and two others deposed as DWs.1 to 3 and got marked Exs.D1 to D9.

11. On consideration, trial Court answered issues no.1 to 3 in affirmative and issue no.4 by decreeing suit. Since defendant no.3 died during pendency of suit, defendants no.1, 2, 4 to 8 filed RA no.11/2015 on various grounds including that judgment and decree by trial Court was contrary to evidence on record and capricious, that trial Court did not consider fact that khata of suit properties were never stood in name of Gaddige, that when title was in dispute, suit for bare injunction was not maintainable, that defendant no.1 was claiming interest over suit properties under registered sale deed and impugned judgment and decree was passed without plaintiffs proving their possession or interference by defendants. It was also contended that suit was without cause of action and filed in personal capacity not as representative suit etc. and as such untenable. On said grounds sought for allowing appeal and for dismissal of suit.

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

POINTS

1. *Whether the impugned judgment and decree dated 06.04.2015 passed by the trial Court in*

OS no.38/2011, in decreeing the suit is against law, facts, evidence and probabilities of the case and as such it is liable to be interfered with by this Court?

2. What order?

13. On consideration, points no.1 was answered in negative and point no.2 by dismissing appeal. Challenging concurrent erroneous findings, this appeal was filed.

14. At outset, it was submitted when subject matter of OS no.38/2011 was suit properties belonging to Gaddige, suit filed by plaintiffs in individual capacity was not maintainable. It was submitted earlier suit i.e. OS no.400/1970 was also in respect of suit properties and filed in representative capacity, present suit filed without leave under Order I Rule 8 of Civil Procedure Code, 1908 (**CPC**), ought to have been dismissed as not maintainable. In support of said submission learned counsel relied on decisions of Hon'ble Supreme Court in **Brigade Enterprises Ltd. v. Anil Kumar Virmani**, reported in **(2022) 4 SCC 138** and this Court in **Kotak Mahindra Bank Ltd. v. The Commercial Bank Retired Employees Association & Ors.**, reported in **2025 SCC OnLine Kar 16606** wherein it was held compliance with Order I Rule 8 of CPC was mandatory.

15. It was further submitted though in OS no.400/1970, relief of declaration and mandatory injunction was granted, relief of possession was refused on ground that only Archaks were entitled for enjoyment of suit properties and plaintiffs therein were not Archaks. It was submitted that Sannamma was wife of Archak – Veerabhadrashetty and who came into possession and enjoyment of suit properties after his death. Sannamma executed Ex.D1-registered sale deed in favour of defendant no.1 herein. Consequently, defendant no.1 had valid title over suit properties and suit for injunction against a person having title would not be maintainable.

16. It was submitted when plaintiffs were not in possession present suit would not be maintainable. In support of his submission learned counsel relied on decision of Hon'ble Supreme Court in **Vasantha v. Rajalakshmi**, reported in **(2024) 5 SCC 282**. It was submitted that both Courts failed to take note of and appreciate reason behind rejection of relief of possession in OS no.400/1970.

17. It was further submitted both Courts erred in relying on Exs.P18 to P21 and Ex.P24 to P35 - orders of

Tahsildar and Assistant Commissioner for holding plaintiffs being in possession of suit properties even when they had not attained finality. It was submitted RP no.70/2009-10 filed before Deputy Commissioner (DC) challenging said orders, was disposed of subjecting revenue entries to final decree in pending suit.

18. It was submitted that reliefs sought in OS no.37/2002 was initially for declaration of title and for permanent injunction. Plaintiffs later filed IA no.7/2009 for permission to amend plaint by deleting prayer for declaration. On rejection of application, plaintiffs approached this Court in WP no.21105/2010 and WP no.21607/2010, which allowed IA for amendment but with liberty to defendants to file additional written statement. In pursuance thereof, plaintiffs deleted prayer for declaration and retained suit only for permanent injunction. It was submitted, in their additional written statements, defendants no.1 and 2 had urged specific contention about maintainability of suit for bare injunction without prayer for declaration. It was submitted, both Courts failed to frame issues/point on said contention or consider it.

Concurrent error would give rise to substantial question of law as per ratio laid down by Hon'ble Supreme Court in case of **Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs & Ors** reported in **2008 (4) SCC 594.**

19. It was further submitted, both Courts failed to notice that while plaintiffs merely produced copies of title deed (Ex.P1) whereas defendant no.1 produced original registered Sale Deed (Ex.D1). Moreover, neither survey numbers nor extent was mentioned in Ex.P1 whereas Ex.D1 did not suffer from any such defect. That apart Ex.D1 dated 14.10.1981 being '30-year-old document', would attract presumptive value under Section 90 of Evidence Act, 1872 (EA). Even such failure would give rise to substantial question of law.

20. It was submitted, from date of sale by Sannamma on 14.10.1981, defendant no.1 was in possession for more than 40 years. In view of above, suit for bare injunction against defendants in settled possession would not be maintainable. Even said aspect was lost sight of by both Courts.

21. It was lastly submitted that judgment and decree by first appellate Court suffers from non-application of mind as

it did not re-appreciate entire material on record in light of pleading and evidence as required under Section 96 of CPC. Hence, following substantial questions of law would arise for consideration:

1. *When defendants denied plaintiffs' title over suit properties and relief of possession even in earlier suit was denied, whether suit for bare injunction without prayer for declaration or possession was maintainable ?*

2. *When as per plaintiff suit properties belonged to Gaddige which is a Trust, whether suit filed by plaintiffs in individual capacity was maintainable?*

3. *Whether both Courts erred in ignoring claim of defendant no.1 over suit properties was under registered sale deed?*

22. And prayed for answering same in favour of defendants while allowing appeal.

23. On other hand, Sri Prithviraj BN., learned counsel for plaintiff no.2 opposed appeal. At outset, it was submitted that substantive rights over suit properties were already adjudicated on basis of Ex.P1 - sale deed dated 08.06.1931 in

OS no.400/1970, declaring that suit properties belonged to Gaddige and were to be enjoyed only by Archak of Gaddige. It was submitted, relief of possession was declined in said suit only on ground that suit properties were to be enjoyed by Archak who actually performs Pooja and plaintiffs were not Archak. But, in year 1977-78, plaintiff no.2 was appointed as Archak and took over possession of suit properties and Devaramane from Sannamma who was defendant no.1 in OS no.400/1970. It was submitted, entire claim of defendant no.1 was based on Ex.D1 - sale deed dated 14.10.1981 incidentally executed by very same Sannamma, who did not derive title over suit properties. Therefore, she could not convey valid title over suit properties in favour of defendants.

24. It was submitted Exs.D2 to D6 - RTCs of suit properties from 1981 to 1993 showed names of Sanna Akkayamma, Muddappa Shetty, Appanna Shetty & Adappa Shetty in column no.9. Consequently, neither Sannamma or Sanna Akkayamma had exclusive ownership or possession over suit properties. Therefore, claim of title by defendant no.1 on

basis of sale deed executed by only Sannamma would be defective. Hence, defendants are not bonafide purchasers.

25. Apart from above, fact that for more than 10 years after Ex.D1 – sale deed, defendant no.1 did not attempt to get her name entered in revenue records, would also cast grave doubt on claim of being bonafide purchaser. And though during year 1992-93, her name was entered as per MR 24/1992-93, same was behind back of plaintiffs and immediately on coming to knowledge of plaintiffs, it was challenged, got set-aside and name of HM Kapini Shetty, Manager of temple was got entered vide MR 42/2001-02.

26. And though in present suit plaintiffs had initially sought relief of declaration & injunction, relief of declaration was deleted with permission of Court. Moreso as declaration was already given in OS no.400/1970 against Sannamma. It was submitted Exs.P3 to P10 - RTCs would show that as on date of suit, possession was with plaintiffs and Ex.P11 was receipt for having paid land revenue since year 2001-02. On contrary, defendants did not produce even a single record to show payment of land revenue. It was submitted, Ex.P12 -

Patta Book stood in name of HM Kapinishetty. Further, DW.3 admitted about plaintiffs' possession over suit properties. Thus, plaintiffs established their lawful possession over suit properties. On contrary, defendants neither established title nor possession.

27. It was submitted as defendant no.1 was claiming title and possession under sale deed executed by Sannamma who had already suffered decree of declaration of title in earlier suit and therefore, she had no title, whereas plaintiffs were claiming title not only on basis of registered sale deed but also on basis of earlier decree, adage 'possession follows title' used by Hon'ble Supreme Court in **Anathula Sudhakar**'s case (*supra*), would aptly apply to present case. And as both Courts had concurrently held in favour of plaintiffs by referring to entire material and as no substantial question of law would arise for consideration, there was no merit in appeal and sought for dismissal.

28. Heard learned counsel, perused impugned judgment, decree and records.

29. From above, it is seen that this Appeal under Section 100 of CPC is by defendants no.1, 5 and 8, who after death of Defendant no.2, 3 and 4 represented their estate as LRs. While defendants no.6 and 7 arrayed as respondents remained served unrepresented.

30. As noted above, appeal is against concurrent findings. In instant case, defendants claim title over suit properties and opposed suit for bare injunction. Defendants' source their title from Sannamma under Ex.D1 – sale deed executed on 14.10.1981. But with regard to very same suit properties, said Sannamma suffered decree dated 24.11.1973 in OS no.400/1970 wherein it was declared that suit properties belonged to Gaddige and were to be enjoyed by Archak. In fact, Sannamma is wife of Archak – Veerabhadrashetty who was one of four persons in whose names suit properties were purchased and said Veerabhadrashetty was enjoying suit properties as Archak and did not have any alienable right over suit properties. As a direct consequence, it has to be held that claim of title or about lawful possession of defendants would not sustain in law. Ex.D1 is admittedly executed after decree in

OS no.400/1970 and it is settled law that a person without title cannot confer better title than what he had. Even Exs.D.2 to D.9 show Sannamma's name jointly with Muddappashetty, Annappashetty and others.

31. While passing impugned judgment and decree, trial Court noted that, Ex.P2 - Mutation Register Extract and Exs.P3 to P10 - RTCs, Ex.P11 - Tax Paid receipt and Ex.P12 - Patta Book of suit properties bore name of HN Kapini Shetty, to conclude that plaintiff had established his lawful possession. And very claim of defendants to have title and possession over suit properties would amount to interference.

32. While answering point no.1 about judgment and decree passed by trial Court suffering from perversity, first appellate Court re-appreciated evidence and noted that name of HN Kapini Shetty appeared in Ex.P2 – Mutation Register Extract, Exs.P3 to P6 – RTC Extracts for year 2001-02, Exs.P7 to P10 – RTC Extracts for year 2008-09, Ex.P11 – Tax Paid receipt for year 2001 and Ex.P12 – Patta Book to concur with findings of trial Court. Consequently, contention about violation

of Order XLI Rule 31 of CPC i.e. failure to reappreciate material on record by first appellate Court would not be substantiated.

33. From above, both Courts have held claim of title and possession over suit properties by defendants is held to be unsustainable and findings are concurrent on appreciation of entire material. Contentions urged herein are as if in regular appeal and appellants failed to point out any substantial question of law arising for consideration. Hon'ble Supreme Court in case of **Hardial Singh v. Balbir Kaur and Anr.,** reported in **2022 SCC OnLine SC 311**, held that even gross errors cannot be ground for interference in second appeal.

34. Hence, appeal is devoid of merit and ***dismissed*** as such.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL,GRD
List No.: 1 Sl No.: 44