IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 1757 OF 2019 (INJ)

BETWEEN:

1. SRI SRINIVAS
   AGED MAJOR

2. SRI RAMESH
   AGED MAJOR

3. SRI ASHWATHNARAYANA
   AGED MAJOR

   ALL ARE SONS OF
   SRI PUTTA ARASAIAH
   R/AT PATTANAGERE VILLAGE
   KENGERI HOBLI
   BENGALURU SOUTH TALUK
   BENGALURU-560 098

...APPELLANTS

(BY SRI. MANMOHAN P.C, ADVOCATE FOR
SRI. J.C KUMAR, ADVOCATE)

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

AND:

SRI. B.R VENKATRAM
S/O LATE DR RAMAPPA
AGED ABOUT 49 YEARS
R/AT NO.356, 1ST CROSS
II MAIN, HMT LAYOUT
ANAND NAGAR
BENGALURU-560 024

...RESPONDENT

(BY SRI. A CHANDRACHUD FOR, ADVOCATE FOR C/R)

THIS RFA IS FILED U/S.96 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 12.07.2019 PASSED IN OS.NO.10019/2015 ON THE FILE OF THE LVI ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU DECREEING THE SUIT FOR PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 01.10.2026 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 directed against the Judgment and Decree passed by the learned XX Additional City Civil and Sessions Judge, Bengaluru, in O.S.No.10019/2015 (for short, "the Trial Court"), whereby the Trial Court decreed the suit of the Respondent/Plaintiff for permanent injunction. For the sake of convenience, the parties are referred to by their respective ranks held before the Trial Court.

2. The respondent herein, as plaintiff, instituted the original suit in O.S.No.10019/2015 seeking a decree of permanent injunction against the appellants/defendants to restrain them from illegally interfering with or disturbing the plaintiff’s peaceful possession and enjoyment of the suit schedule property. The suit schedule property is specifically described as Site No. 37, carved out of converted non-

agricultural land in Survey No. 54, situated at Pattanagere Village, Kengeri Hobli, Bengaluru South Taluk.

3. Before the Trial Court, the plaintiff contended that he acquired absolute ownership, title, and lawful physical possession over the suit schedule property by virtue of a registered Sale Deed dated 30.07.2004 (Ex.P-11), executed in his favour by the legal heirs of late Shivanna, represented by their General Power of Attorney holder Sri Putta Arasaiah, and was duly put in possession of the suit property. Subsequent to the said purchase, the agricultural land having been validly converted for non-agricultural use by order of the Deputy Commissioner, Bangalore in Order No. BDS/ALN/SR(S)33/1994-95 dated 29.08.1994, municipal revenue entries were mutated, and the Bruhat Bengaluru Mahanagara Palike (BBMP) issued khata certificate and extract (Ex.P-12 and Ex.P-13) in the name of the plaintiff. The plaintiff has been paying property taxes regularly to the municipal authorities, as evidenced by tax-paid receipts marked as Ex.P-3 to P-10 and Ex.P-14 to P-17.

4. Upon service of summons, the appellants/defendants appeared and defendant No. 3 filed a

Written Statement resisting the suit claims in toto. The principal line of defence set up by the defendants was that the original owner, Venkatarasa alias Venkatadasa, had alienated 2 acres of land in Sy. No. 54 during his lifetime in favour of Shivanna under a registered Sale Deed dated 27.12.1957 (Ex.D-4), who in turn re-conveyed the same to Hanumakka, who is grandmother of the appellants, under a registered Sale Deed dated 30.04.1964 (Ex.D-5) and delivered physical possession thereof. The defendants asserted that in proceedings under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for brevity, "the PTCL Act"), the Assistant Commissioner restored the land under orders passed in 1982. Consequently, they contended that upon the death of Shivanna, his legal representatives possessed no alienable right, title, or interest to convey the property in favour of the plaintiff under Ex.P-11.

5. The Trial Court, upon completing pleadings, framed issues touching upon lawful physical possession and alleged acts of interference. The plaintiff examined his Special Power of Attorney holder as PW-1 and marked documents Ex.P-1 to Ex.P-21. On behalf of the defendants, defendant No. 3 was examined as DW-1 and documents Ex.D-1 to Ex.D-29 were

marked. Upon detailed consideration of the oral and documentary evidence on record, the Trial Court arrived at the conclusion that the plaintiff had proved his lawful possession and enjoyment over the suit schedule property as on the date of filing the suit and decreed the suit for permanent injunction. Aggrieved by the said judgment and decree, the defendants have preferred this Regular First Appeal.

6. The learned Counsel appearing for the appellants/defendants vehemently contended that the Trial Court committed a grave error in law as well as on facts in decreeing the suit. The plaintiff instituted the suit in the year 2015, whereas the Special Power of Attorney (Ex.P-1) was executed subsequently on 25.11.2016 while the plaintiff was residing in UAE. PW-1 admitted during cross-examination that he was not present at the Sub-Registrar's office at the time of execution of the Sale Deed (Ex.P-11) and was not aware of the earlier suit filed by the plaintiff. Under Order III Rules 1 and 2 of CPC, an attorney can depose only in respect of acts done by him in exercise of the power granted, but cannot depose for the principal in respect of acts done by the principal. Relying on ***JANKI VASHDEO BHOJWANI V. INDUSIND BANK LTD.*** - **(2005) 2 SCC 217**, the learned counsel argued that PW-1 had

no personal knowledge of the suit transactions or the alleged interference on 09.10.2015, rendering his evidence without legal sanctity.

7. He further submitted that the vendors of the plaintiff under Ex.P-11 suffered from a total lack of title under the principle of *nemo dat quod non habet*. Shivanna had already sold the entire extent of 2 acres in Sy. No. 54 in 1957 under Ex.D-4, which was subsequently conveyed to Hanumakka under Ex.D-5 in 1964. Thereafter, Hanumakka sold the land to Sanjeevaiah (Ex.D-6), who sold it to G. Nagaraj (Ex.D-7), and G. Nagaraj executed a GPA in favour of Hanumakka (Ex.D-8). Under Assistant Commissioner proceedings dated 04.10.1982 (Ex.D-9), the land was resumed and restored under the PTCL Act in favour of the original land owner Hanumakka—the grandmother of the defendants. Thus, Shivanna's legal representatives had no title or possession left to convey in 2004 to the plaintiff under Ex.P-11.

8. The learned counsel also urged that the suit schedule property is claimed to fall under Survey No. 54, whereas the vendors of the plaintiff held rights, if any, only in Survey No. 56, thereby creating a fatal discrepancy in survey

numbers and identification of the property. Proceedings under the PTCL Act were initiated under Ex.P-18/P-19, and similar suits filed by other site holders in the very same survey number were dismissed under Exs.D-18 to D-29. The Trial Court failed to appreciate these statutory bars and judicial findings. The suit as framed for bare permanent injunction, without seeking the consequential relief of declaration of title or recovery of possession despite a serious cloud on title, was expressly barred by the proviso to Section 34 of the Specific Relief Act, 1963, in light of ***ANATHULA SUDHAKAR V. P. BUCHI REDDY*** - **(2008) 4 SCC 594**. Accordingly, he prayed to allow the appeal.

9. *Per contra*, the learned counsel appearing for the respondent/plaintiff supported the judgment and decree of the Trial Court, submitting that the appeal is devoid of merits. PW-1 is not a stranger or a third party; he is the blood sibling (elder brother) of the plaintiff. After the suit was instituted, the plaintiff had to travel to UAE for work commitments. Inevitably, he executed the Special Power of Attorney (Ex.P-1) authorizing his brother to prosecute the case. PW-1 possessed complete personal knowledge of the property, the purchase transaction, and the revenue records, and actively participated in managing

the property. Execution of a Power of Attorney at a subsequent stage during the pendency of a suit to continue proceedings is fully permissible in law under Order III Rule 1 of CPC.

10. He further submitted that plaintiff acquired the property under a registered Sale Deed dated 30.07.2004 (Ex.P-11) and was put in actual physical possession. The property was converted for non-agricultural use, Khata was mutated in the plaintiff's name by CMC and subsequently BBMP (Ex.P-2, P-12, P-13), and taxes have been paid continuously from 2008–09 to 2015–16 (Ex.P-3 to P-10, P-14 to P-17). The PTCL Act has no application to the suit schedule property, as it is a converted layout site. Under Ex.P-18 and Ex.P-19 (Order of the Assistant Commissioner dated 07.01.2019), defendant No. 3 filed an application under the PTCL Act to restore land in Survey Nos. 53 and 54, which was dismissed after due inquiry. In the said PTCL application, 23 sale deeds were called in question, but the plaintiff’s registered Sale Deed (Ex.P-11) was not even subject to challenge.

11. Learned counsel further submitted that the GPA holder of the plaintiff’s vendor—Putta Arasaiah—was the father of defendant Nos. 1 to 3. Putta Arasaiah had seven children,

and except for defendant Nos. 1 to 3, no other child questioned the Sale Deed executed in favour of the plaintiff. Furthermore, during cross-examination on 02.01.2019, 13.03.2019, and 14.03.2019, DW-1 (defendant No. 3) made unequivocal admissions that the suit schedule property purchased under Ex.P-11 is a distinct site formed in a converted layout, that the land claimed by the defendants under Ex.D-9 and the suit schedule property are different properties, and that the defendants are not in physical possession of the suit schedule property. In a suit for permanent injunction under Section 38 of the Specific Relief Act, 1963, the inquiry is strictly confined to lawful possession as on the date of the suit. The plaintiff proved physical possession backed by BBMP khata and tax receipts. In view of the explicit admission of non-possession by DW-1, the Trial Court rightly decreed the suit. Accordingly, he prayed to dismiss the appeal.

12. Having heard the learned counsel for both parties and perused the Trial Court records in extenso, following points arise for consideration and determination in this appeal :

1. *Whether a Special Power of Attorney executed during the pendency of the suit in favour of a blood*

relative is legally valid to prosecute and continue the suit,

2. *Whether Sri Putta Arasaiah (father of defendants Nos. 1 to 3), acting as the GPA holder of the legal heirs of Late Shivanna, could validly execute the registered Sale Deed (Ex.P-11) in favour of the plaintiff, and whether the defendants are precluded from challenging the same after a lapse of over 10 to 12 years without seeking cancellation;*

3. *Whether the Trial Court was justified in recording a finding that the respondent/plaintiff was in lawful, settled physical possession and enjoyment of the suit schedule property as on the date of institution of the suit;*

4. *Whether the non-seeking of a relief for declaration of title renders the suit for bare permanent injunction non-maintainable under the proviso to Section 34 of the Specific Relief Act, 1963;*

5. *Whether the impugned Judgment and Decree dated 12.07.2019 passed in O.S. No. 10019/2015 suffers from any illegality, perversity, or jurisdictional error warranting interference by this Court.*

13. I have given my anxious consideration to the rival contentions raised by learned counsel appearing for both sides and carefully perused the Trial Court records.

14. As could be gathered from records, on the question of the validity of the GPA executed during the pendency of the suit and the competence of PW-1's deposition, this Court finds no substance in the contention raised by the appellants. Order III Rule 1 of CPC, explicitly provides that any appearance, application, or act in or to any Court required or authorized by law to be made or done by a party may be made or done by the party in person, or by his recognized agent. There is no legal bar under the CPC preventing a plaintiff who personally institutes a suit from subsequently appointing a recognized agent or attorney under Order III Rule 2 CPC to prosecute, lead evidence, and continue the suit on his behalf due to subsequent exigencies, such as employment abroad. Execution of Ex.P-1 on 25.11.2016 to continue the suit instituted in 2015 is fully valid and legally effective.

15. Regarding the competence of PW-1 to depose, the decision of the Hon'ble Supreme Court in ***JANKI VASHDEO BHOJWANI V. INDUSIND BANK LTD.*** - (2005) 2 SCC 217 lays down that an attorney holder cannot depose in place of the principal in respect of matters of which only the principal has personal knowledge. However, the Hon'ble Supreme Court in subsequent decisions, including ***MAN KAUR V. HARTAR***

SINGH SANGHA **-(2010) 10 SCC 512** and ***AMERDEEP SINGH V. HARVEEN KAUR*** - **(2017) 8 SCC 746**, clarified that where a Power of Attorney holder is a close family member who has personal knowledge of the transactions, property management, and revenue records, such attorney is fully competent to depose on behalf of the principal. PW-1 is the elder brother of the plaintiff. The records reveal that PW-1 personally handled the property matters, oversaw municipal khata mutations, paid taxes, and was fully conversant with the physical possession of the site. Furthermore, PW-1's testimony is overwhelmingly corroborated by documentary evidence comprising Ex.P-1 to Ex.P-17 and cross-examination admissions of DW-1. Therefore, the testimony of PW-1 cannot be brushed aside under Order III Rules 1 and 2 of CPC.

16. On the validity of conveyance by Putta Arasaiah, the effect of Ex.D-10, and the bar of limitation, a critical scrutiny of the material on record demolishes the defence set up by the appellants. The General Power of Attorney holder who executed the registered Sale Deed dated 30.07.2004 (Ex.P-11) in favour of the plaintiff on behalf of the legal heirs of Shivanna was none other than Sri Putta Arasaiah—the father of defendant Nos. 1 to 3. Even if the contention of the defendants

regarding restoration under Ex.D-10 dated 15.06.2009 in favour of Putta Arasaiah and his sons is considered, the same cannot hold much water in the eye of law. Since Putta Arasaiah is the *de facto* and *de jure* vendor who executed the registered Sale Deed (Ex.P-11) transferring title and delivering physical possession of the suit schedule property to the plaintiff, neither he nor his sons claiming through him can turn around to impeach or repudiate the conveyance executed by their own predecessor-in-title.

17. Under the doctrine of feeding the grant by estoppel embodied in Section 43 of the Transfer of Property Act, 1882, where a grantor purports to transfer property representing that he has authority to do so, any subsequent interest, title, or restoration acquired by or conferred upon such grantor or his legal heirs in the very same property automatically operates to validate and feed the prior grant made in favour of the transferee. Thus, any benefit of restoration accruing under Ex.D-10 in favour of Putta Arasaiah directly enures to the benefit of the plaintiff, perfecting his title and confirming his lawful possession. Putta Arasaiah had seven children, and out of the seven children, except defendant Nos. 1 to 3, no other family member or legal representative ever questioned or

challenged Ex.P-11. DW-1 specifically admitted during cross-examination that he and his family were fully aware of Ex.P-11 for over 10 to 12 years prior to the suit. Under Article 59 of the Limitation Act, 1963, the statutory period of limitation to cancel or set aside a registered instrument is three years from the date of knowledge. The defendants took no legal action before any competent Civil Court to seek cancellation of Ex.P-11 within three years, and having permitted the registered conveyance deed to remain unchallenged for over a decade, they cannot collaterally impeach its validity in a suit for bare injunction. Ex.P-18 and Ex.P-19 further reveal that defendant No. 3 filed a subsequent application under the PTCL Act seeking cancellation of various sale deeds in Survey Nos. 53 and 54, which was dismissed after due inquiry. Even otherwise, the appellants/defendants have not challenged the Sale Deed executed by his father in favour of the plaintiff in such proceedings.

18. On lawful possession and the effect of DW-1's admissions, the plaintiff established his possession through a chain of uncontroverted documentary evidence comprising the registered Sale Deed dated 30.07.2004 (Ex.P-11), Conversion Order issued by the Deputy Commissioner, Bangalore in 1994,

khata certificate and khata extract issued by BBMP standing in his name (Ex.P-12 and Ex.P-13), and continuous tax-paid receipts from 2008–09 up to 2015–16 (Ex.P-3 to P-10 and Ex.P-14 to P-17). Revenue entries and municipal khata certificates carry a statutory presumption of correctness regarding physical possession and enjoyment unless displaced by cogent rebuttal evidence. The cross-examination admissions of DW-1 recorded on 02.01.2019, 13.03.2019, and 14.03.2019 conclusively prove that the suit schedule property is a site formed in a converted layout, that the ancestral land claimed by the defendants under Ex.D-9 and the suit schedule property are different properties, and that neither defendant No.3 nor any of the other defendants are in physical possession of the suit schedule property. Once the sole testifying defendant categorically admitted that the defendants are not in physical possession of the suit site, the Trial Court was fully justified in holding that the plaintiff proved his lawful physical possession. Defendant Nos. 1 and 2 did not file any written statement nor did they enter the witness box, and DW-1 admitted adducing evidence without any authorization on their behalf.

19. On maintainability under the proviso to Section 34 of the Specific Relief Act, 1963, the principles laid down in

ANATHULA SUDHAKAR stated *supra*, state that where a plaintiff is in lawful, peaceful possession of a property and his possession is interfered with, a suit for bare injunction lies. A prayer for declaration of title is necessary only where the plaintiff is out of possession or where a serious, genuine cloud is cast on the plaintiff's title requiring complex adjudication. Here, the plaintiff established lawful possession backed by registered title deeds, conversion orders, BBMP Khata entries, and tax receipts. DW-1 admitted that the defendants are out of possession and that the suit schedule property is distinct from their claimed ancestral land. The mere assertion of a baseless claim in the written statement by a defendant who is admittedly out of possession does not create a genuine cloud on title so as to compel a plaintiff in physical possession to seek a declaration of title. Furthermore, Full Bench decisions of this Court establish that once agricultural land is validly converted for non-agricultural use under Section 95 of the Karnataka Land Revenue Act, 1964, and layout sites are formed, the property ceases to bear the character of agricultural granted land, taking it outside the purview of the PTCL Act. Therefore, the suit as framed only for permanent injunction was fully maintainable under Section 38 of the Specific Relief Act, 1963.

20. This Court finds no perversity, misdirection, or jurisdictional error in the judgment and decree dated 12.07.2019 passed in O.S.No.10019/2015 and all the points raised in this appeal are accordingly answered in favour of the respondent/plaintiff. As such, the appeal is being devoid of merits, fails both on facts and on law.

21. Accordingly I pass the following:

ORDER:

1. The Regular First Appeal is ***dismissed*****.**

2. The judgment and decree dated 12.07.2019 passed by the XX Additional City Civil and Sessions Judge, Bengaluru, in O.S.No.10019/2015 is hereby confirmed.

SD/-
(RAJESH RAI K)
JUDGE

PKS/V