HC-KAR

NC: 2026:KHC:60578
RFA No. 594 of 2009

CNR: KAHC010426202009

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE JYOTI M

REGULAR FIRST APPEAL NO. 594 OF 2009 (INJ)

BETWEEN:

SMT. K.SHANTHI
W/O. MR. A.K.SELVAKUMAR
AGED ABOUT 43 YEARS,
R/AT NO.653, 6TH MAIN,
6TH CROSS, HAL, 3RD STAGE,
BENGALURU - 560075.

...APPELLANT

(BY SRI. V.RANGARAMU, ADVOCATE)

AND:

1. SRI M.VENKATESHAPPA
SINCE DECEASED
REPRESENTED BY HIS LEGAL HEIRS

Digitally signed by PREMCHANDRA M R
Location: HIGH COURT OF KARNATAKA

1(A) MR. V.RAMESH,
S/O. SRI. VENKATESHAPPA,
AGED MAJOR,

1(B) MR. V.SRINIVASA,
S/O. SRI. VENKATESHAPPA,
AGED 41 YEARS,

1(B)(I) SMT. ASHA,
AGED ABOUT 45 YEARS,
W/O. LATE V.SRINIVAS

1(B)(II) MR. RAKESH S.,
AGED ABOUT 23 YEARS,
S/O. LATE V.SINIVAS

BOTH ARE RESIDING AT NO.580
SAPPALAMMA TEMPLE ROAD,
KADIRENAHALLI, BANASHANKARI,
SECOND STAGE, BENGALURU-560070.

1(C) MR. V.CHETAN,
S/O. SRI VENKATESHAPPA,
AGED ABOUT 29 YEARS,

RESPONDENTS NO.1(A) AND 1(C) ARE
R/AT KADIRENAHALLI VILLAGE,
SRI. SUPPLAMMA TEMPLE ROAD,
2ND MAIN, BSK 2 STAGE,
BENGALURU-560070.

1(D) SMT. SUSHEELA,
D/O. VENKATESHAPPA,
AGED ABOUT 47 YEARS,
R/AT NO.2/3, 6TH CROSS,
HANUMAIAH LAYOUT,
HANUMANAGIRINAGAR,
CHIKKALASANDRA,
BENGALURU-560061.

1(E) SMT. SUNANDA,
D/O. VENKATESHAPPA,
AGED ABOUT 43 YEARS,
R/AT KADIRENAHALLI VILLAGE,
SRI. SUPPLAMMA TEMPLE ROAD,
2ND MAIN, BSK 2 STAGE,
BENGALURU-560070.

1(F) SMT. SHALINI,
D/O. VENKATESHAPPA,
AGED ABOUT 35 YEARS,
R/AT NO.320, GOUDARAPALYA,
SUBRAMANYAPURA ROAD,
BENGALURU-560070.

2. SRI. LAKSHMINARAYANAPPA
S/O. LATE MAISTRY MUNISWAMAPPA
AGED ABOUT 64 YEARS,
R/AT NO.69, 2ND WEST CROSS,
L.M.COLONY, YESHWANTHPURA
BENGALURU - 560022.

…RESPONDENTS

(BY SRI. A.SOMARAJU, ADVOCATE FOR R1(A AND C TO E);
SRI. MANJUNATHA M., ADVOCATE
FOR R1(B)(I AND II) -ABSENT;
R1(F) SERVED AND UNREPRESENTED;
SRI. K.DHIRAJ KUMAR, ADVOCATE FOR R2 - ABSENT)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 5 OF THE CODE OF CIVIL PROCEDURE.

THIS REGULAR FIRST APPEAL IS LISTED FOR FINAL HEARING, THIS DAY, THE JUDGMENT IS DELIVERED AS UNDER:

ORAL JUDGMENT

Sri. V. Rangaramu, counsel for the appellant, and Sri. A. Somaraju, counsel for respondent Nos. 1 (A & C to E), appeared in person.

There is no representation on behalf of counsel for espondent No. 1 (B) (i and ii) and respondent No. 2.

2. The present appeal challenges the Judgment and Decree dated 12.03.2009, passed by the Court of XXIV Additional City Civil and Sessions Judge, Bangalore City (CCH-6), in O.S. No. 2849/2004.

3. For convenience, the parties are referred to as per their status and ranking before the Trial Court.

4. The averments in the plaint are as follows.

The plaintiff, Sri. M. Venkateshappa, filed a suit for a declaration that he is the absolute owner of the suit schedule property, that the sale deed dated 22.05.1992 in respect of the suit schedule property is not binding on him, and for restraining the defendants or anybody claiming under them from interfering with the plaintiff's possession of the suit schedule property.

In the plaint, it has been stated that on 14.12.1988, the joint family members entered into an oral partition, and in the said partition, the suit schedule property was

allotted to the share of the plaintiff. He was put in exclusive possession of the schedule property. It is also stated that during 1993, one of his brothers, namely Chandrappa, filed a suit for the relief of partition in O.S.No.4545/1993 against the plaintiff and the other brothers. The suit was ultimately compromised, and in terms of the compromise petition filed by the parties, a decree was passed on 09.09.1996. In the said compromise petition, the parties clearly confirmed that the suit schedule property fell to the share of the plaintiff and that he is in possession of the same.

It is stated that the first defendant, a party to an oral partition dated 14.12.1988 and a compromise decree in O.S.No.4545/1993, knowing fully well that the schedule property had fallen to the plaintiff's exclusive share, is alleged to have executed a sale deed in favor of the second defendant on 22.05.1992. Contending that the first

defendant committed fraud, the plaintiff filed the suit seeking the relief as stated supra.

Upon service of the summons, defendant No.1 filed a written statement denying the averments of the plaint. He admitted that an oral partition had taken place on 14.12.1988 and that the suit schedule property was allotted to the plaintiff, but denied the plaintiff's exclusive possession. He also admitted the filing of the suit in O.S.No.4545/1993 and the compromise decree thereon.

It has been specifically stated that during 1991-92, the plaintiff had to solemnize the marriages of his daughters. Accordingly, he approached defendant No.1 and requested that a couple of sites which would come to his share be sold so as to raise money for the purpose of the marriages. Accordingly, after the plaintiff received the entire sale consideration from the prospective purchaser, the sale deed was executed by defendant No.1 along with the plaintiff. The entire sale consideration was received by

the plaintiff for his legal necessity. It is also stated that, as a matter of fact, the plaintiff was not entitled to any share in the joint family properties. On additional grounds, defendant No.1 sought dismissal of the suit.

The second defendant filed a detailed written statement and contended that the suit was not maintainable as it was barred by limitation. As on the date of filing the suit for partition, the suit property had been alienated, and despite such knowledge, defendant No.2 was not made a party to the proceedings. Hence, the decree obtained is by playing fraud on the Court.

It has been specifically stated that in 1987, the joint family members, i.e., the plaintiff and his brothers, formed sites in Sy.No.40/2 of Babusabpalya, Challakere village, K.R.Puram Hobli, Bangalore. Out of the sites formed, Sri.M.Venkateshappa, Sri.Lakshminarayanappa, Sri.Chandrappa and Sri.Seenappa offered to sell the sites to Smt.Leelavathi for valuable consideration of

Rs.12,000/- and entered into an agreement of sale in respect of site Nos.116 and 80, measuring 30 X 40 each. After receiving the entire sale consideration, they executed a GPA in favor of Smt.Leelavathi on 08.10.1990 and also swore to an affidavit stating that they had received the entire sale consideration, executed a GPA, and delivered possession to her. The plaintiff, being a party to the said documents, cannot say that he is unaware of the same. The said purchaser sold the property in favor of these defendants, and on the request of the said Smt.Leelavathi, the first defendant executed a sale deed dated 22.05.1992, and the second defendant was put in possession of the suit property. On additional grounds, defendant No.2 sought dismissal of the suit.

The Trial Court framed the issues, marked the documents as exhibits, and recorded the parties' evidence. The plaintiff testified as PW1 and produced six documents, marked as Exs.P1 to P6. The defendants did not enter the

witness box or produce any documents. By Judgment and Decree dated 12.03.2009, the Trial Court decreed the suit, declaring the plaintiff the absolute owner of the property in question, holding that the sale deed executed by defendant No.1 in favor of defendant No.2 was not binding on him, and restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Under these circumstances, defendant No.2 has filed this appeal under Section 96 of the CPC.

5. Counsel for the respective parties advanced several contentions.

Counsel for the appellant submits that the Judgment and Decree of the Trial Court are contrary to the material evidence on record.

He further submits that the Trial Court erred in decreeing the suit. It is also submitted that the Trial Court

ought to have dismissed the suit as not maintainable in law, as the suit filed by the plaintiff is for a declaration of title without seeking possession. It is further submitted that the Trial Court ought to have dismissed the suit, considering clause No.9 of the compromise petition filed in O.S.No.4545/1993, marked as Ex.P2. It is vehemently contended that the suit was barred by limitation when the plaintiff had knowledge of the execution of the sale deed dated 22.05.1992 in favor of defendant No.2/appellant.

It is contended that the Trial Court ought to have dismissed the suit, as none of the exhibits marked P1 to P6 disclosed the identity of the suit schedule property, such as its measurements, khata number, and boundaries, except for mentioning site No.80. It is further submitted that the Trial Court ought to have answered issue No. 2 in the affirmative, as the plaintiff failed to prove the oral partition made on 14.12.1988 as pleaded in the plaint. It is vehemently contended that, even in the absence of

cross-examination of PW1 and any evidence from the defendants' side, the Trial Court ought to have dismissed the suit.

It has been strenuously urged that the matter may be remanded to the Trial Court to enable the defendants to adduce evidence.

Lastly, he submits that, from any angle, the Judgment and Decree of the Trial Court are liable to be set aside, and the appeal may be allowed.

Per contra, counsel for respondent Nos. 1(A and C to E) has justified the Judgment and Decree of the Trial Court and submits that the appeal lacks merit and may be dismissed.

6. Heard the arguments and perused the records with care.

7. The following points arise for determination.

1. Whether the Trial Court's Judgment and Decree dated 12.03.2009, declaring the plaintiff the absolute owner of the property and holding that the sale deed executed by defendant No. 1 in favor of defendant No. 2 is not binding, warrants interference on appeal.
2. Whether the plaintiff's suit was legally maintainable when it sought a declaration of title without seeking possession.
3. Whether the suit was time-barred in light of the sale deed dated 22.05.1992.
4. Whether the compromise decree in O.S. No. 4545/1993 (Ex.P2) establishes the plaintiff's ownership claim.
5. Did defendant No. 1 have the right, title, or interest to execute the sale deed in favor of defendant No. 2.

8. The facts are sufficiently stated and do not require repetition.

The property originally belonged to Mestri Muniswamappa, who had four sons, including the plaintiff. Under the oral partition dated 14.12.1988, the suit

property was allotted to the plaintiff, Sri.M.Venkateshappa. The compromise petition in O.S. No. 4545/1993 reaffirmed that the property fell to the plaintiff's share. Defendant No.1 admitted in his written statement that the property belonged to the plaintiff, but vaguely alleged that a GPA authorised someone to act, without substantiating that claim. The defendants neither entered the witness box nor produced documents to support their contentions.

Based on Exs.P1 to Ex.P6 and the plaintiff's testimony, the Trial Court correctly held that defendant No.1 had no right to alienate the property. The appellant's pleas of limitation and maintainability are untenable because the plaintiff's title was established by the compromise decree and the suit was properly framed.

The appellant's argument that the suit was not maintainable without possession is misconceived. The plaintiff sought a declaration of title against an alienation

by someone with no right to convey. Having established ownership under the oral partition and compromise decree, the Trial Court was justified in granting declaratory relief.

The limitation plea is equally untenable. The plaintiff’s right arises from the compromise decree (Ex.P2), and the defendants failed to establish that the suit was time-barred. Their vague allegation concerning GPA authorization was unsupported by evidence. Their failure to testify or produce documents further weakens their case.

A substantial amount of argument is canvassed on behalf of the appellant that sufficient opportunity was not accorded, hence the matter requires remand. The contention cannot be accepted. The reasons are apparent. A perusal of the Trial Court's order sheet shows that the suit was posted for cross-examination of PW1 on 20.08.2008. On that date, counsel for the defendants

sought an adjournment, which the Court granted subject to payment of costs of Rs.100/-, and adjourned the matter to 11.09.2008. On 11.09.2008, counsel for the defendants again sought time. However, the Trial Court recorded the cross-examination of PW1 as 'nil' and adjourned the matter to 22.10.2008. On 22.10.2008, the Trial Court recorded that there was no further evidence on behalf of the plaintiff and posted the matter for the defendants' evidence to 24.11.2008. On 24.11.2008, as the defendants remained absent, the matter was adjourned to 10.12.2008 for their evidence.

On 10.12.2008, despite the defendants' absence, an application was filed on their behalf. The Trial Court, subject to payment of costs of Rs.250/-, allowed the defendants to cross-examine PW1 on the next date of hearing and adjourned the matter to 12.01.2009. On 12.01.2009, at the request of the defendants' counsel, the matter was further adjourned, subject to payment of costs

of Rs.250/-, with a direction to cross-examine PW1 on 27.01.2009. However, on 27.01.2009, both the defendants and their counsel were absent. Consequently, the cross-examination of PW1 was again recorded as 'nil', and the matter was posted for the defendants' evidence to 16.02.2009. On 16.02.2009, as the defendants and their counsel were again absent, the defendants' evidence was closed by recording it as 'nil', and the matter was posted for arguments on merits to 25.02.2009. On 25.02.2009, the plaintiff was present, arguments were heard, and the matter was posted for judgment to 12.03.2009. Accordingly, the Trial Court pronounced its judgment on 12.03.2009.

The aforesaid chronology of events clearly demonstrates that the Trial Court afforded the defendants several opportunities to cross-examine PW1 and adduce their evidence. Despite being granted repeated adjournments, including opportunities subject to payment

of costs, the defendants failed to avail themselves of the same. In these circumstances, the contention that the defendants were not afforded sufficient opportunity to cross-examine PW1 and lead their evidence, and that the matter therefore warrants remand to the Trial Court, is devoid of merit and is liable to be rejected.

9. The Trial Court's findings are based on cogent evidence. Defendant No.1 had no right, title, or interest in the property, and the sale deed executed in favor of Defendant No.2 is not binding on the plaintiff. The Appellate Court finds no grounds to interfere.

ORDER

1. The appeal is devoid of merit. The Trial Court's Judgment and Decree dated 12.03.2009 are affirmed.

2. Accordingly, the appeal stands ***dismissed***.

3. Any interim orders stand discharged. Pending interlocutory applications, if any, are disposed of.

SD/-
(JYOTI M)
JUDGE

CH
List No.: 1 Sl No.: 31