HC-KAR

NC: 2026:KHC:61764
RFA No. 407 of 2020

CNR: KAHC010499272019

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. 407 OF 2020 (INJ)

BETWEEN:

SMT. LINGAMMA
SINCE DECEASED BY HER LRS

SMT ANURADHA
WIFE OF N.R PARAMESH
AGED ABOUT 35 YEARS,
NO.15/63, 8TH CROSS, 4TH MAIN (OLD)
7TH CROSS, 7TH MAIN, (NEW)
SRINIVASANAGAR, BANALORE-560 050

...APPELLANT

(BY SRI. SRINIVAS MANOHAR KULKARNI,
SRI. GURUPRASAD P,
SRI. SRIKANTH, ADVOCATES)

AND:

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

1. SMT. JYOTHI MAHESH
WIFE OF MAHESH R
AGED ABOUT 39 YEARS,

2. SMT RAMAKKA
WIFE OF MUNIRAJU
AGED ABOUT 56 YEARS

1 AND 2 RESIDING AT
NO.272, 4TH MAIN, 7TH CROSS,
SRINIVASANAGAR
BANGALORE-560 050

...RESPONDENTS

(BY SRI. B.V. MANJUNATH GOWDA AND
SMT. VEENA L, ADVOCATES FOR R1 AND R2)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 05.08.2019 PASSED IN OS.No.8294/2013 ON THE FILE OF THE XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, DISMISSING THE SUIT FOR PERMANENT AND MANDATORY INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

This Regular First Appeal is filed by the appellant-plaintiff challenging the judgment and decree passed by the XXXIX Additional City Civil Judge, Bengaluru (for short, "the Trial Court"), whereby the Trial Court dismissed the plaintiff's suit for a decree for possession of the suit schedule property and mandatory injunction against the defendants.

2. For the sake of convenience, the parties are referred to according to their respective rankings before the Trial Court. The appellant is the plaintiff and the respondents are the defendants.

3. The brief facts of the case for the disposal of this appeal are that the original plaintiff, Smt. Lingamma (since

deceased, represented by her legal representative), instituted the suit for mandatory injunction against the defendants, contending that she was the absolute owner of the property bearing No. 15/63, situated at Srinivasanagar, Bengaluru, measuring East to West 45 feet and North to South 18 feet (described as schedule 'A' property), having acquired the same under a registered Sale Deed dated 16.02.1972. Pursuant to the purchase, her name was entered in the khatha records and she had been paying property taxes regularly. She further contended that she had constructed a dwelling house measuring 33 feet × 18 feet, leaving a vacant space measuring 8 feet × 18 feet (described as suit schedule 'B' property) within the suit schedule 'A' property.

4. It was the case of the plaintiff that the defendants, who own the adjoining property situated towards the eastern side, encroached upon a portion of the suit schedule 'A' property measuring East to West 8 feet and North to South 12 feet (described as suit schedule 'B' property). According to the plaintiff, the encroachment took place in July 2005. She further alleged that the defendants attempted to put up construction

over the encroached portion and, on 02.12.2013 and 06.12.2013, made attempts to dig and erect pillars in the suit schedule property, despite her objections. Hence, the plaintiff instituted the suit seeking a decree for mandatory injunction directing the defendants to vacate and deliver vacant possession of the suit schedule 'B' property and, in default, permitting her to demolish the construction thereon at her own cost, along with a decree of permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit schedule 'A' property.

5. The defendants appeared and contested the suit by filing their written statement, denying the plaintiff's title and the alleged encroachment. They also disputed the jurisdiction of the Court and denied the plaintiff's claim regarding the construction, vacant space, khatha, and payment of property taxes. It was their specific contention that defendant No. 2 was the absolute owner of the property bearing No. 77, formed in Sy. No. 42/1 of Gavipura Village, having purchased the same under a registered Sale Deed dated 27.11.2003, which was subsequently gifted to defendant No. 1 under a registered Gift

Deed dated 14.11.2013. According to the defendants, an existing house had been constructed on the said property during 1982–83, which was in a dilapidated condition and was demolished by them in November 2013 for the purpose of putting up a new construction. They further contended that the suit schedule 'B' property forms part of their own site and is in their lawful possession and enjoyment. Accordingly, they denied the alleged encroachment and sought the dismissal of the suit.

6. Based on the pleadings, the Trial Court framed appropriate issues for consideration. Upon the death of original plaintiff Smt. Lingamma, her legal representative, one Anuradha, was brought on record. To establish her case, the legal heir was examined as PW.1 and documents were marked as Exs.P1 to P24. On behalf of the defendants, defendant No. 1 was examined as DW.1 and documents were marked as Exs.D1 to D13. Upon appreciation of the oral and documentary evidence, the Trial Court dismissed the suit, which is under challenge in the present appeal.

7. Heard the learned counsel Sri Srinivas Manohar Kulkarni, Sri Guruprasad P., and Sri Srikanth for the appellants, and the learned counsel Sri B.V. Manjunath Gowda and Smt. Veena L. for the respondents.

8. The primary contention of the learned counsel for the appellant/plaintiff is that the Trial Court committed an error in dismissing the suit despite having answered Issue No. 1 in the affirmative by holding that the plaintiff was the absolute owner of the suit schedule property. It was argued that the Trial Court failed to properly appreciate the oral and documentary evidence, particularly the plaintiff's testimony regarding her possession of the property and the alleged encroachment of the suit schedule 'B' property by the defendants.

9. The learned counsel further submitted that, in a suit for injunction, the material consideration is whether the plaintiff was in possession of the suit schedule property as on the date of institution of the suit. However, the defendants had not elicited anything in their cross-examination to disprove the

plaintiff's possession. It was also contended that the Trial Court erroneously insisted upon separate documents to establish that the schedule 'B' property formed part of the schedule 'A' property, even though the former is a portion of the latter.

10. It was further contended that the Trial Court mis-applied the provisions of the Limitation Act by holding that the suit was barred under Article 113. According to the learned counsel, Article 65 of the Limitation Act was applicable to the relief of recovery of possession, and the period of limitation ought to have been reckoned from November 2013, when the plaintiff allegedly came to know of the active construction over the encroached portion. Therefore, the suit was well within the period of limitation.

11. The learned counsel also contended that the Trial Court erred in holding that the plaintiff ought to have sought the relief of declaration instead of an injunction, particularly when the defendants had admitted her ownership of the suit schedule property. In this regard, reliance was placed on the plaint in O.S. No. 4075/2016, which was marked as Ex.P21.

Hence, it was submitted that the impugned judgment and decree suffer from erroneous appreciation of evidence and misapplication of law and are liable to be set aside by decreeing the suit. With these submissions, he prays that the appeal be allowed.

12. *Per contra,* the learned counsel for the respondents/defendants, supporting the impugned judgment and decree, contended that defendant No. 1 was gifted the northern portion of the site bearing Municipal No. 42/1-77 (New No. 25, PID No. **163W74-2-1**), measuring **East to West** on the northern side 24 feet 10 inches and southern side 22 feet 9 inches, and Eastern side 19 feet 2 inches and Western side 18 feet 10 inches, situated at Gavipura, Ward No. 54, Srinivasa Nagara, 7th Cross Road, Bengaluru, under a registered Gift Deed dated 14.11.2013 executed by her mother, Smt. Ramakka (defendant No. 2). The said Ramakka had purchased the property on 27.11.2003 from **Smt. Ramakka and Smt. Muniyamma**, who had in turn purchased it in 1980. According to the learned counsel, all revenue documents stand in the name of defendant No. 1 along with the khatha

certificate. A dilapidated house existed on the said property, which was demolished, and in 2014, new construction commenced, which was unlawfully opposed by the plaintiff without any right, title, or interest. According to the learned counsel, the schedule 'B' property forms an integral part of defendant No. 1's property. Furthermore, the plaintiff failed to place any document or evidence to prove that she is the owner of the schedule 'B' property. Accordingly, he prays for the dismissal of the appeal.

13. Having heard the learned counsel for the parties, the points arising for my consideration are:

i. Whether the plaintiff proves that she is the owner of the suit schedule 'B' property and that the defendants illegally encroached upon the same without having any right, title, or interest?

ii. Whether the Trial Court is justified in holding that the suit is barred by limitation?

iii. Whether the impugned order suffers from any perversity or illegality calling for interference?

14. As could be gathered from records, the plaintiff has proved her ownership in respect of the suit schedule 'A' property by producing sufficient documents and evidence, namely Exs.P1 to P5 and Exs.P17 to P20 i.e., the Sale Deed and revenue documents pertaining to the suit schedule 'A' property. Even otherwise, the defendants have not disputed the ownership of the plaintiff in respect of the suit schedule 'A' property. Furthermore, in the earlier suit filed by defendant No. 1 against the legal heir of the plaintiff, Anuradha, in O.S. No. 4075/2016 (marked as Ex.P21), defendant No. 1 herself categorically admitted that the plaintiff is the owner of the suit schedule 'A' property. The boundaries in Ex.P17 clearly tally with the suit schedule 'A' property. Thus, it is evident that the plaintiff is the owner of the suit schedule 'A' property and, as per Ex.P7 and Ex.P9 photographs, a dwelling house exists thereon.

15. As regards the suit schedule 'B' property, according to the defendants, the property was legally conveyed through a proper chain of title and was subsequently gifted to defendant No. 1. The documents produced by the defendants (Exs.D2 to

D7) reveal that defendant No. 1 is the absolute owner of the property measuring a total extent of 428 sq. ft. as per Ex.D6, out of which the plaintiff claims rights over 96 sq. ft. (the suit schedule 'B' property). It is evident from the records that the plaintiff failed to produce any iota of evidence or documents in respect of the suit schedule 'B' property apart from the schedule 'A' property. On the other hand, the photographs produced by the plaintiff herself (Exs.P6 to P9) clearly reveal that the suit schedule 'B' property forms part of the total extent of 428 sq. ft. belonging to defendant No. 1. The photographs further show that the plaintiff's suit schedule 'A' property is fully constructed and enclosed with a compound wall towards the eastern side. In her cross-examination, PW.1 did not explain why she left 96 sq. ft. of land vacant towards the eastern side after constructing her house and enclosing that portion. Furthermore, she admitted in her cross-examination that the staircase seen in the photographs marked as Exs.P6 and P8 belongs to the defendants. She also admitted that the defendants demolished their shed and are currently erecting pillars on that portion, that the defendants own a house

situated towards the southern side of the pillars, and that the defendants' house is adjacent to the southern boundary of her property. In such circumstances, it is evidenced that the plaintiff failed to prove that she is the owner of schedule 'B' property that the defendants have encroached upon the plaintiff's property as claimed. Accordingly, Point No. (i) is answered in the negative.

16. The Trial Court, while answering Issue No. 3 regarding limitation, observed that the suit was barred under Article 113 of the Limitation Act as it was not filed within three years from July 2005, when the alleged encroachment took place. The contention of the learned counsel for the appellant that Article 65 of the Limitation Act applies (granting a 12-year limitation period for recovery of possession based on title) holds good only when the plaintiff successfully establishes title over the disputed suit property. In the present case, as held under Point No. (i), the plaintiff has failed to establish her title or ownership over the suit schedule 'B' property. Consequently, the plaintiff cannot fall back on Article 65 to claim a 12-year limitation period for recovery of possession. Insofar as the bare

relief of mandatory injunction is concerned, the cause of action accrued in July 2005 as per the express pleading in the plaint, and the suit filed in 2013 is clearly barred by limitation under Article 113 of the Limitation Act. Even on merits, for want of title over the schedule 'B' property, the claim for possession fails. Accordingly, Point No. (ii) is answered in the affirmative.

17. Having answered Point No. (i) in the negative and Point No. (ii) in the affirmative, I am of the considered view that the Trial Court is fully justified in dismissing the suit filed by the plaintiff. There is no illegality or perversity in the impugned judgment and decree, and the same does not warrant any interference.

Accordingly, the appeal is ***dismissed***.

SD/-
(RAJESH RAI K)
JUDGE

PKS/V
List No.: 1 Sl No.: 15