HC-KAR
NC: 2026:KHC:61981
RFA No. 228 of 2017
CNR: KAHC010537192017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

REGULAR FIRST APPEAL NO. 228 OF 2017 (INJ)

BETWEEN:

SMT. L UMA BAI
W/O V.A.LAKSHMIPATHY
AGED ABOUT 52 YEARS
R/AT NO.5/12, 4TH E BLOCK, 10TH A MAIN
RAJAJINAGAR, BANGALORE-10.

...APPELLANT

(BY SRI. G BALAKRISHNA SHASTRY (NOC).,ADVOCATE)

AND:

1. A PATTABIRAMAN
   SINCE DEAD REPRESENTED BY
   RESPONDENT NO.3 AS LR

2. SRI V GOPALA KRISHNAN
   S/O SRI VENKATARAMAN
   AGED ABOUT 57 YEARS
   R/AT NO.1774, SAMPIGE ROAD
   MALLESWARAM, BANGALORE-560 003.

3. SMT. RAJESHWARI
   W/O V GOPALA KRISHNAN
   AGED ABOUT 49 YEARS
   R/AT NO.1774, SAMPIGE ROAD
   MALLESWARAM, BANGALORE-560 003

...RESPONDENTS

(V/O DATED:31.07.2024 R3 IS TREATED AS LRS
OF DECEASED R1: V/O DATED:24.05.2021

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NOTICE TO R2 & R3 IS HELD SUFFICIENT)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED: 7.1.2017 PASSED IN OS NO.3315/2011 ON THE FILE OF THE XVIII ADDL. CITY CIVIL JUDGE, BENGALURU, DISMISSING THE SUIT FOR PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL JUDGMENT

This Regular First Appeal is filed by the plaintiff under Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC'), challenging the judgment and decree dated 07.01.2017 passed by the XVIII Additional City Civil and Sessions Judge, Bengaluru City (for short, 'Trial Court'), in O.S.No.3315/2011, whereby the suit filed by the plaintiff for permanent injunction has been dismissed.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3.The brief facts of the case are as follows:

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The land bearing Sy.No.25, measuring 1 acre 20 guntas, situated at Basavanapura Village, K.R. Puram Hobli, Bengaluru, originally belonged to one Annappa. One K.M.Rajendran purchased 30 guntas of land from Annappa under a registered sale deed dated 25.05.1995 and thereafter formed residential sites in the said land. The plaintiff purchased the suit schedule property from K.M.Rajendran under a registered sale deed dated 15.10.2001. It is the case of the plaintiff that, pursuant to the said sale deed, she was put in possession of the suit schedule property and has been in peaceful possession and enjoyment of the same.

4. It is further contended that the defendants, who are strangers to the suit schedule property and have no manner of right, title or interest therein, attempted to interfere with the plaintiff's peaceful possession and enjoyment of the property. In this regard, the plaintiff lodged a complaint before the jurisdictional police on

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20.10.2010. Since no action was taken on the said complaint and the defendants continued their alleged interference, the plaintiff instituted the suit on 09.05.2011 seeking the relief of permanent injunction.

5. On service of summons, defendant Nos.1 to 3 entered appearance. Defendant No.1 filed the written statement denying the plaintiff's right, title and possession over the suit schedule property. Defendant Nos.2 and 3 did not file their written statements.

6. On the basis of the pleadings of the parties, the Trial Court framed the following issues:

> *(i) Whether the plaintiff proves that she is in lawful possession of the suit schedule property as on the date of the suit?*
>
> *(ii) Whether the plaintiff further proves that the defendants are interfering with the use and enjoyment of the suit schedule property by the plaintiff?*

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(iii) Whether the plaintiff is entitled to the reliefs sought for?

(iv) What order or decree?

7. The parties adduced oral and documentary evidence in support of their respective contentions. Upon appreciation of the evidence on record, the Trial Court answered issue Nos.1 to 3 in the negative and consequently dismissed the suit by judgment and decree dated 07.01.2017. Being aggrieved by the same, the plaintiff has preferred the present appeal.

8. Learned counsel appearing for the appellant/ plaintiff has raised the following contentions:

(i) Firstly, the plaintiff purchased the suit schedule property under a registered sale deed dated 15.10.2001. The said sale deed clearly describes the property, its measurements and boundaries. The defendants have not specifically disputed the boundaries mentioned therein. The plaintiff has also produced photographs to establish

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the existence and identity of the suit schedule property. During the cross-examination of DW.1, the relevant documents were confronted to the witness. However, without properly appreciating the oral and documentary evidence, the Trial Court has erroneously held that the plaintiff has failed to establish the identity and existence of the suit schedule property.

(ii) Secondly, during the pendency of the suit, one Smt.Nirmala Sripathi instituted O.S.No.26770/2012 against the plaintiff herein. In the said suit, the present plaintiff filed a counterclaim seeking permanent injunction in respect of the very same suit schedule property. Subsequently, the said suit came to be dismissed and the counterclaim was decreed, granting permanent injunction in favour of the plaintiff herein. The judgment and decree passed in O.S.No.26770/2012 have now been produced before this Court along with an application filed under Order XLI Rule 27 of CPC.

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(iii) Thirdly, learned counsel contended that the plaintiff has also produced additional documents, including the khata extract and registered sale deeds pertaining to the neighbouring properties, to establish the identity, existence and boundaries of the suit schedule property. These documents have a direct bearing on the controversy involved in the suit. The Trial Court, without properly appreciating the evidence available on record, has dismissed the suit principally on the ground that the identity of the suit schedule property has not been established and that proceedings in O.S.No.26770/2012 were pending. Since the subsequent judgment and decree in the said suit and the other relevant documents are now available, learned counsel submits that the impugned judgment and decree are liable to be set aside and the matter requires reconsideration.

9. Though the respondents have been served with notice, they have remained unrepresented.

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10. I have considered the submissions made by learned counsel appearing for the appellant and perused the judgment and decree passed by the Trial Court, the evidence available on record and the additional documents produced along with the application filed under Order XLI Rule 27 of CPC.

11. The following points arise for consideration in this appeal:

(i) Whether the additional documents produced by the appellant/plaintiff are necessary for effective adjudication of the controversy involved in the suit?

(ii) Whether the Trial Court was justified in dismissing the suit on the ground that the plaintiff failed to establish the identity and existence of the suit schedule property?

(iii) Whether the impugned judgment and decree call for interference and whether the matter requires remand for fresh consideration?

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12. The specific case of the plaintiff is that she purchased the suit schedule property from K.M. Rajendran under a registered sale deed dated 15.10.2001. According to the plaintiff, the suit schedule property measures 2,400 square feet and is bounded on the east by Site Nos.18A and 19A, on the west by road, on the north by road and on the south by road. In support of her claim, the plaintiff has relied upon the registered sale deed, photographs and oral evidence.

13. It is not in dispute that the plaintiff has instituted the suit seeking the relief of permanent injunction. In a suit of this nature, the plaintiff is required to establish her lawful possession over the identifiable suit schedule property as on the date of institution of the suit and the alleged interference by the defendants. The question of possession has to be determined on the basis of the pleadings and the oral and documentary evidence available on record.

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14. The Trial Court has dismissed the suit primarily on the ground that the plaintiff has failed to establish the identity and existence of the suit schedule property. While arriving at the said conclusion, the Trial Court has also taken note of the pendency of O.S.No.26770/2012 and the injunction proceedings therein.

15. It is relevant to note that, during the pendency of the present suit, Smt. Nirmala Sripathi instituted O.S.No.26770/2012 against the plaintiff herein. The plaintiff herein filed a counterclaim in the said suit seeking permanent injunction in respect of the property claimed by her. It is submitted that the said suit has subsequently been dismissed and the counterclaim has been decreed, granting permanent injunction in favour of the plaintiff herein. The judgment and decree passed in the said suit have now been produced before this Court by filing an application under Order XLI Rule 27 of CPC.

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16. Apart from the said judgment and decree, the plaintiff has also produced the khata extract and registered sale deeds of the neighbouring property owners. According to the plaintiff, these documents are necessary to establish the existence, identity and boundaries of the suit schedule property.

17. Order XLI Rule 27 of CPC provides for production of additional evidence before the Appellate Court in specific circumstances. It is well settled that additional evidence cannot be permitted merely to fill up lacunae in the case of a party. However, where the Appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause, additional evidence may be permitted, subject to satisfaction of the statutory requirements.

18. The controversy between the parties substantially relates to the identification of the suit schedule property and the plaintiff's alleged possession

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over the same. The additional documents produced by the plaintiff, particularly the judgment and decree in O.S.No.26770/2012 and the registered sale deeds pertaining to the neighbouring properties, have a material bearing on the said controversy.

19. The judgment and decree in O.S.No.26770/2012 are subsequent developments which require examination. The effect of the decree passed on the counterclaim, the identity of the property involved in the said proceedings and its relevance to the present suit are matters which require proper consideration. The said decree cannot, by itself, be treated as conclusive proof of the plaintiff's possession against the present defendants without examining the identity of the properties, the parties to the proceedings and the legal effect of the decree in O.S.No.26770/2012.

20. Likewise, the khata extract and the sale deeds of the neighbouring property owners may assist in

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determining the location and boundaries of the suit schedule property. However, their evidentiary value can be assessed only after affording an opportunity to the defendants to dispute the documents and adduce rebuttal evidence, if any.

21. It is also necessary to observe that the mere production of registered sale deeds of neighbouring properties does not, by itself, conclusively establish actual possession of the property. Nevertheless, the description of the property, its boundaries, the surrounding circumstances and the other evidence produced by the parties are relevant factors which require consideration to determine whether the plaintiff has established her possession over an identifiable property.

22. The plaintiff has specifically relied upon the registered sale deed dated 15.10.2021 and the boundaries mentioned therein. She has also produced photographs and adduced oral evidence. The defendants have disputed

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her claim of possession. Therefore, the identity of the property and the question of lawful possession require consideration upon a proper appreciation of the entire evidence.

23. The Trial Court has recorded a finding against the plaintiff regarding the identity and existence of the suit schedule property. However, in view of the subsequent judgment and decree in O.S.No.26770/2012 and the additional documents now produced, the said finding requires reconsideration. The documents sought to be produced are directly relevant to the principal controversy involved in the suit.

24. Having regard to the nature of the dispute and the additional documents produced, this Court is satisfied that the said documents are required for effective adjudication of the matter. The application filed under Order XLI Rule 27 of CPC therefore deserves to be

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allowed, subject to proof, admissibility and relevancy of the documents before the Trial Court.

25. The next question is whether this Court should itself appreciate the additional evidence or remit the matter to the Trial Court for fresh consideration.

26. Since the dispute involves the identification of the suit schedule property, the boundaries mentioned in the registered sale deed, the alleged possession of the plaintiff and the effect of the judgment and decree passed in O.S.No.26770/2012, the additional documents produced by the plaintiff require examination and the defendants must be afforded an opportunity to contest their admissibility, authenticity and evidentiary value. The parties may also be required to adduce further evidence regarding the identity and possession of the property.

27. In these circumstances, this Court is of the considered opinion that merely receiving the additional documents and deciding the appeal on the existing record

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may not be sufficient for complete and effective adjudication of the controversy. Since the Trial Court has dismissed the suit on the ground that the identity and existence of the suit schedule property have not been established, and as the additional evidence produced herein has a direct bearing on the said finding, a fresh consideration of the matter is warranted.

28. Therefore, having regard to the facts and circumstances of the case, this Court is satisfied that the judgment and decree passed by the Trial Court require interference and that the matter deserves to be remitted to the Trial Court under Order XLI Rule 23-A of CPC for fresh consideration, after affording reasonable opportunity to both parties to adduce additional evidence.

29. It is made clear that this Court has not expressed any opinion on the merits of the respective claims of the parties or on the ultimate entitlement of the plaintiff to the relief of permanent injunction. All contentions of the

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parties are kept open to be considered by the Trial Court in accordance with law.

Accordingly, the points framed for consideration are answered in favour of remand, and the following:

ORDER

(i) The appeal is allowed.

(ii) The judgment and decree dated 07.01.2017 passed by the XVIII Additional City Civil and Sessions Judge, Bengaluru City, in O.S.No.3315/2011 are hereby set aside.

(iii) The application filed by the appellant/plaintiff under Order XLI Rule 27 of CPC is allowed. The additional documents produced along with the said application shall be transmitted to the Trial Court for consideration in accordance with law, subject to their proof, admissibility and relevancy.

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(iv) The matter is remitted back to the Trial Court for fresh consideration and disposal in accordance with law.

(v) The Trial Court shall afford reasonable opportunity to both parties to produce additional documents and adduce further oral and documentary evidence, if any, particularly with regard to the identity, boundaries and possession of the suit schedule property.

(vi) The Trial Court shall also consider the judgment and decree passed in O.S.No.26770/2012, its legal effect and its relevance to the controversy involved in the present suit.

(vii) The Trial Court shall reconsider the matter afresh, on the basis of the entire evidence available on record, including the additional evidence, without being influenced by any

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observations made by this Court on the merits of the dispute.

(viii) All contentions of the parties on merits are kept open.

(ix) In view of the disposal of the appeal, all other pending applications, if any, stand disposed of.

(x) Registry is directed to transmit the Trial Court records along with the additional documents to the concerned Trial Court, forthwith.

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(H.T. NARENDRA PRASAD)
JUDGE

CM
LIST NO.: 1 SL NO.: 57