NC: 2026:KHC:22440
RSA No. 1383 of 2025

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

REGULAR SECOND APPEAL NO.1383 OF 2025 (DEC)

BETWEEN:

1. SRI B.SHIVANNA
   S/O.LATE M.S.BASAVARAJU
   AGED ABOUT 79 YEARS

2. SRI S.DHARMARAJ
   S/O.B.SHIVANNA
   AGED ABOUT 49 YEARS

   BOTH ARE R/AT
   D.NO.4872
   THYAGARAJA COLONY
   NANJANGUD TOWN-560 031

...APPELLANTS

(BY SRI SUNIL S.RAO FOR
SRI T.SESHAGIRI RAO, ADVOCATES)

Digitally signed by B LAVANYA
Location: HIGH COURT OF KARNATAKA

AND:

SRI SADARALAIAH
S/O.CHOWDAIAH
MAJOR
R/AT KADALURU
SRIRAMA MANDIRA ROAD
WARD NO.22
BEHIND SATYAGRAHA SOUDHA
SHIVAPURA VILLAGE
MADDUR TALUK
MANDYA DISTRICT-571 429

...RESPONDENT

(BY SRI P.MAHESHA, ADVOCATE)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC PRAYING TO SET ASIDE THE JUDGMENT

AND DECREE DATED 02.06.2025 PASSED IN RA.NO.53/2024 BY THE SENIOR CIVIL JUDGE AND JMFC, NANJANGUD, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.09.2024 PASSED IN OS.NO.3/2021 BY II ADDITIONAL CIVIL JUDGE AND JMFC, NANJANGUD.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the plaintiffs challenging the judgment and decree dated 19.09.2024 passed in O.S.No.3/2021 by II Additional Civil Judge and JMFC, Nanjanagud, (for short, 'the trial Court') dismissing the suit of the plaintiffs, which on challenge before the Senior Civil Judge and JMFC, Nanjanagudu (for short, 'the first Appellate Court') in RA.No.53/2024, came to be dismissed vide judgment and decree dated 02.06.2025 and the judgment and decree of the trial Court came to be confirmed.

2. Parties shall be referred to as per their status before the trial Court.

3. Brief facts of the case are as under:

The plaintiffs filed a suit against the defendant for the relief of declaration and possession. It is the case of the plaintiffs that the land bearing Sy.No.42 measuring 0-32 guntas situated at Chamalapura Village, Nanjangudu was allotted to plaintiff No.1 by way of oral partition and in the said partition, Sy.No.42 was newly phoded as Sy.No.42/2B1. Out of 0-32 guntas, the plaintiffs and their family members sold the property to an extent of 0-12 guntas in favour of the defendant for their legal necessities by virtue of a registered sale deed dated 19.02.1997. After the said sale deed registered in favour of the defendant, the property to an extent of 0-12 guntas was further phoded as 42/2B3. It is the case of the plaintiffs that at the time of making phodi of the land sold to the defendant, the defendant colluded with the revenue officials, encroached upon the plaintiffs' land towards North-South and got the phodi done illegally. It is the case of the plaintiffs that while getting the phodi done, the

defendant in collusion with the revenue officials got phoded 60-00 feet width instead of 26-00 feet and the defendant encroached the width of 34-00 feet of plaintiffs' land and got converted the said land. It is further pleaded that the defendant did not have any title or ownership over the property measuring to an extent of North-South: 34-00 feet width. Therefore, it was stated that the defendant has encroached the portion of the property belonging to the plaintiffs.

3.1 It is further pleaded by the plaintiffs that the plaintiffs had earlier filed a suit in O.S.No.27/2012, which came to be dismissed on 19.11.2019. The defendant had also filed a suit in OS.No.283/2012 for permanent injunction against plaintiff No.2, which was decreed on 28.09.2018 and plaintiff No.2 preferred an appeal before the Senior Civil Judge, Nanjanagud in RA.No.29/2018, which came to be dismissed on 02.03.2020. After dismissal of the appeal, the present suit came to be filed by the plaintiffs.

3.2 Upon summons being served, the defendant appeared before the trial Court, filed the written statement denying the averments made by the plaintiffs and took up a plea that the suit is not maintainable on the ground of law of limitation and also took up a plea that the time had lapsed and the plaintiffs cannot seek the remedy of instituting the present suit as the same is hit by Article 65 of the Limitation Act, 1963. Several other contentions were taken by the defendant in the written statement.

3.3 Based on the pleadings of the parties, the trial Court has formulated the following issues for consideration:

> *"1. Whether the plaintiffs prove that they are the absolute owner of the suit 'A' schedule property as contended in the plaint?*
> *2. Whether the plaintiffs prove that the defendant has encroached the property measuring 34 feet in north to south as contended in the plaint?*
> *3. Whether the defendant proves that the suit is not properly valued and court fee paid is not sufficient?*
> *4. Whether the defendant proves that the suit is barred by law of limitation?*

5. Whether the defendant proves that this court has not having pecuniary jurisdiction to entertain the suit?

6. Whether the plaintiff is entitled for the relief of declaration as sought for?

7. Whether the plaintiff is entitled for the relief of possession as sought for?

8. What order or decree?"

3.4 In order to prove the case and substantiate the issues, plaintiff No.1 examined himself as PW.1 and got marked documents as Exs.P1 to Ex.P9. Whereas, the defendant examined as DW.1 and got marked documents as Exs.D1 to D31.

3.5 Upon hearing learned counsels for parties and on the basis of the evidence adduced, both oral and documentary, the trial Court came to the conclusion that the plaintiffs have not produced any materials before the Court to show that the defendant has encroached upon the property measuring to an extent of 34-00 feet width in North-South belonging to the plaintiffs and on the basis of the evidence adduced and the cross-examination of the

witness, did not agree with the contentions put-forth by the plaintiffs and agreed with the contentions of the defendant and accordingly, dismissed the suit of the plaintiffs.

3.6 Being aggrieved by the judgment and decree rendered by the trial Court, the plaintiffs preferred an appeal before the first Appellate Court in RA.No.53/2024. Upon appearance of the defendant before the first Appellate Court, the matter was taken up for reconsideration once again and the first Appellate Court upon re-look and reconsideration of the materials placed on record, both oral and documentary and the impugned judgment and decree of the trial Court and the contentions of learned counsels for both parties, formulated the following points for consideration:

> *"1. Whether the appellants/ plaintiffs prove that the Trial Court has not properly evaluated the evidence in proper manner?*

2. *Whether the appellants / plaintiffs further prove that interference of this court is required to set aside the judgment of the Trial Court?*
3. *What order?*"

3.7 The first Appellate Court reconsidered the matter once again by taking into consideration the entire gamut of materials placed before the trial Court and also upon hearing learned counsels for parties with regard to the rival contentions, came to the conclusion that as per Sections 101 to 103 of the Indian Evidence Act, 1872, the burden was always cast upon the person who approaches the Court to produce materials before the Court to get a definite relief in the plaint. The first Appellate Court also came to the conclusion that the plaintiffs having not produced the sale deed executed in the year 1997 in favour of the defendant and also PW.1 in the course of cross-examination had admitted that execution of the sale deed, they never measured the property and also took into consideration the earlier litigation between the parties. The plaintiffs and the defendant also not denied the same. The

first Appellate Court also came to the conclusion that the defendant is in possession of the suit schedule property legally as he is the absolute owner of the property which is not disputed by the plaintiffs as they have sold 0-12 guntas of land to the defendant by virtue of the registered sale deed. Therefore, the first Appellate Court came to the conclusion that the plaintiffs failed to prove the title of the suit schedule property to the extent mentioned in the schedule and also the fact that the defendant is in legal possession and ownership of the suit schedule property by virtue of a registered sale deed and not by way of any illegal encroachment. On these grounds, the first Appellate Court was not satisfied with the contentions put-forth and did not find any illegality or perversity in the judgment and decree rendered by the trial Court and accordingly, after careful re-look of the matter once again, dismissed the appeal of the plaintiffs and confirmed the judgment and decree rendered by the trial Court.

3.8 It is these two concurrent findings of fact which has led the plaintiffs to approach this Court in this second appeal.

4. Learned counsel for appellants-plaintiffs vehemently contends that the impugned judgments and decree of both the trial Court as well as the first Appellate Court are not sustainable in law, both on facts and on the question of law. Hence, the same calls for interference by this Court for framing substantial question of law under Section 100 of CPC.

4.1 It is the contention of learned counsel for appellants-plaintiffs that both the Courts failed to give weightage to Ex.P7-the Commissioner's report with a sketch which clearly established an encroachment to an extent of 34-00 feet in the land of the plaintiffs which was not sold by the plaintiffs to the defendant. It is also contended that the Commissioner's report and the finding were based on the spot inspection in the presence of both

the parties, which was not taken into consideration, despite there being admissions in the evidence. Therefore, ignoring the material evidence on record, the impugned judgment and decree is vitiated. It is also vehemently contended by learned counsel for plaintiffs that the trial Court and the first Appellate Court have committed a fundamental irregularity in placing the entire reliance and the onus on the plaintiffs to prove the case. Despite the fact that the plaintiffs have established their ownership of the suit schedule property by producing relevant material, the trial Court and the first Appellate Court have ignored the same and committed an error in not granting the relief to the plaintiffs.

4.2 It is also contended by learned counsel for appellants-plaintiffs that both the Courts have committed an error where the suit is barred by law of limitation as the starting point for the limitation is the date of sale and that the plaintiffs' cause of action arose later when the encroachment was discovered. Therefore, the question of

limitation in the present case would not arise as it is during the hadbast that it was discovered by the plaintiffs with regard to the encroachment of the defendant of the land belonging to the plaintiffs.

4.3 Learned counsel also contends that the trial Court and the first Appellate Court have committed an illegality by taking into consideration that the plaintiffs had affixed their signature in the hudbast mahazar, taking it as a consent for the encroachment having been done illegally by the defendant. It is further contended that it is a settled law that a mere signature on the revenue document does not extinguish the vested right of the plaintiffs over the property for which they are the lawful owners. It is further contended by learned counsel that Section 34 of the Specific Relief Act, 1963 mandates that when a person claims a lawful title faces denial of rights, the Court must consider the declaratory relief if supported by a *prima facie* evidence. The plaintiffs in the present case had demonstrated title and possession of

0-32 guntas less 0-12 guntas which is already sold to the defendant. This fact has been conveniently ignored by both the Courts, which causes jurisdictional error and miscarriage of justice to the plaintiffs.

4.4 It is further contended that the defendant's possession was lawful only to an extent of 0-12 guntas of land i.e. 26-00 feet width, which he had purchased from the plaintiffs and any further possession or acquisition of the property by the defendant is contrary to the sale deed and therefore, it would become an encroachment of the excess land to what was sold by the plaintiffs to the defendant. It is further contended by learned counsel for appellants that these crucial aspects have been conveniently ignored by both the trial Court as well as the first Appellate Court and that the encroachment over the land of the plaintiffs is not a one-time act but a recurring and continuing wrong. Therefore, the question of limitation coming against the plaintiffs is far-fetched and the same is illegal, perverse and requires to be set aside.

4.5 It is also contended by learned counsel for appellants-plaintiffs that any weight given to the revenue entries or the phodi and the conversion records, it would not grant any right to the defendant to squat or encroach the property of the plaintiffs and would also not become a conclusive proof of title or possession. On these grounds, learned counsel for appellants contends that the judgment and decree rendered by the trial Court and affirmed by the first Appellate Court is perverse, illegal and the same deserves to be set aside by framing substantial questions of law as urged in the appeal memo.

5. *Per contra*, learned counsel for respondent-defendant vehemently contends that there is no illegality or perversity in the judgments and decree rendered by the trial Court as well as the first Appellate Court. The suit is filed by the plaintiffs for the relief of declaration and therefore, it is for the plaintiffs to establish their case with regard to preponderance of probabilities by placing relevant materials with regard to title and encroachment,

if any, made by the defendant in the suit property belonging to the plaintiffs. However, the same has not been done by the plaintiffs. No material is placed before the trial Court or the first Appellate Court to show that the defendant has encroached upon any portion of the property as it is admitted by the plaintiffs that the extent of 0-12 guntas of land has been sold by the plaintiffs in favour of the defendant and pursuant to which, he has been put in possession of the property and thereafter, revenue records are changed in the name of the defendant. The defendant has in fact got the portion of the property converted to industrial purpose and a portion of it in the front has been retained to the agricultural purpose.

5.1 It is also the vehement contention of learned counsel for respondent-defendant that after the sale of the property in favour of the defendant while putting up the boundaries, an hudbast was conducted by the revenue authorities and in the hudbast, when the concerned department came to measure the property and the

boundaries, the plaintiffs had participated in the said hudbast and they are also the signatories to the mahazar drawn by the concerned revenue authorities, which is not in dispute and the same is produced and marked as an exhibit, which is not challenged or questioned. Now, the plaintiffs cannot deny the same as they have voluntarily participated and affixed their signature in the said revenue proceedings while hudbast was created for drawing up of fence and the boundary stones were installed.

5.2 It is also vehemently contended by learned counsel that it was for the plaintiffs to come before the Court by producing relevant material as contemplated under Sections 101 to 103 of the Indian Evidence Act, 1872 to put-forth their best piece of evidence and onus was on the plaintiffs to prove as to whether the defendant had encroached any portion of the property, when the plaintiffs themselves had sold 0-12 guntas of land, admittedly to the defendant. Therefore, he contends that having not produced any material to the contrary and

having admitted in the evidence with regard to the signature in the hudbast conducted by the revenue authorities while installing the stones to create the boundary, now the plaintiffs are estopped from taking upon the stand. It is also contended that pursuant to the sale of 0-12 guntas in favour of the defendant, plaintiff No.1 had given the remaining portion of 0-20 guntas of land to plaintiff No.2 and even in that proceedings, at the time of the mahazar drawn for the survey conducted for hudbast, the signature has been affixed by both the plaintiffs and there was no quarrel with regard to the boundaries of either plaintiff No.2 or that of the affected. Hence, he seeks dismissal of the appeal.

6. I have heard learned counsels for parties. It is apparently seen that there is no dispute to the fact that initially, the plaintiffs were the owners of the land measuring to an extent of 0-32 guntas in Sy.No.42, which was later phoded as Sy.No.42/2B1 and subsequently, after selling the property to an extent of 0-12 guntas to the

defendant by way of a registered sale deed dated 19.02.1997 and after the hudbast was conducted and the stone walls were erected over the boundaries, the defendant came into possession of the portion which was sold to him. Apparently, it is also seen that when the hudbast was conducted, the plaintiffs had participated in the mahazar and affixed their signature. No quarrel was made to that effect and no issues were raised at that point of time. However, the plaintiffs having kept quiet, suddenly raised the issue in the year 2021, when the suit came to be filed on the premise that the defendant had encroached 34-00 feet width in North to South of the property.

7. It is apparently seen that the plaintiffs have not disputed with regard to the sale of 0-12 guntas of land in favour of the defendant, which later was phoded and re-assigned with new number as 42/2B3. In pursuance to the same, it is also not in dispute that the defendant is in possession and enjoyment of the said portion of the

property. A small portion in the front side towards the main road is in the agricultural status and the behind portion has been converted to non-agricultural status. Both the plaintiffs and the defendant are in their respective possession and enjoyment of the said property. If it was the case of the plaintiffs that there was encroachment to an extent of 34-00 feet, the plaintiffs ought to have raised this issue at the earliest point of time. Having not done so and having signed the hudbast and the mahazar drawn by the revenue authorities while the boundaries were put up after the purchase by the defendant, it may not be permissive for the plaintiffs to raise this issue in the year 2021, when the present suit is filed.

8. The trial Court and the first Appellate Court have considered the entire gamut of materials placed including the evidence adduced by both the parties and have come to the conclusion that the plaintiffs were unable to prove and establish the alleged fact of any encroachment by the

defendant in any portion of the property of the plaintiffs rather it has come to the conclusion that the defendant is in possession of his portion of the property by a lawful method of registered sale deed is his favour.

9. The first Appellate Court having reconsidered the matter once again after looking into the entire gamut of materials once again and reconsidered the whole evidence, both oral and documentary, did not find favour with the plaintiffs, agreed with the findings rendered by the trial Court and did not find any error or illegality in the judgment and decree rendered by the trial Court.

10. I have given my careful consideration to the contentions urged by learned counsel for appellants and learned counsel for respondent. When both the Courts have concurrently come to the conclusion on facts with regard to the issue involved, have negatived the claim of the plaintiffs and upheld the contentions of the defendant, it may not be permissible for this Court to impose its own

views, even if it differs from two concurrent opinions expressed by both the Courts.

11. Section 100 of CPC deals with the scope and powers of the Appellate Court. It is a no more *res integra* to state that the powers as contemplated under Section 100 CPC are very narrow and limited. This Court, in several catena of judgments, has held that the Appellate Court sitting in the second appeal is not required to appreciate the evidence on record unless there is perversity shown in the judgments rendered by the trial Court as well as the first Appellate Court. When two Courts have already considered the question of fact and the question of law to a large extent in detail, even if this Court finds third opinion on the opinions already expressed concurrently by both Courts, it is a general Rule that this Court should refrain from imposing its third opinion merely for the sake of interference when there is no cogent material placed on record.

12. The question of framing of substantial questions of law would depend upon if there is any illegality or perversity in the judgments rendered by the trial Court as well as the first appellate Court. Having considered the submissions of learned counsels for the parties and having perused the impugned judgments of both the Courts and having gone through the records, I do not find any perversity or illegality in the judgments rendered by both the Courts. The appellants have not made out any good ground for this Court to frame any substantial question of law, as no such question of law, in my opinion, exists to be framed to decide the case on hand. The reasons assigned and conclusion arrived at by both the Courts are just and proper. I do not find any cogent reason to interfere with the well reasoned judgments rendered by both the Courts.

13. Having perused the substantial questions of law sought to be formulated by learned counsel, this Court is of the opinion that no such questions of law arise for consideration in this appeal, as this Court is not sitting in

an appellate jurisdiction to reconsider the evidence, so also, it is not the case of the appellants that the evidence that is placed on record is not at all considered and ignored. Under the circumstances, there is no question of law that requires to be framed.

14. Accordingly, I pass the following:

ORDER

This appeal is ***dismissed***, at the stage of admission itself. I do not find any substantial questions of law to be framed.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

LB
List No.: 1 Sl No.: 30