

KARN010021192019



**IN THE COURT OF THE III ADDL. DISTRICT &
SESSIONS JUDGE, RAMANAGARA.**

: PRESENT:

Sri. M. DEVARAJA BHAT, B.Com. LL.B.
III Addl. District & Sessions Judge,
Ramanagara.

DATED THIS THE 28th DAY OF JULY 2022

R.A. No. 113/2019
(Old R.A.No.24/2013)

BETWEEN:

**1) Sri. Muniraju, S/o. Late
Narasimhaiah, Aged about 35
years,**

**2) Sri. Manjunatha S/o. Late
Narasimhaiah, Aged about 32
years,
Appellants 1 & 2 both are
Residing at Karikaldoddi
Village, Bidadi Hobli,
Ramanagara Taluk,
Ramanagara District.**

**:APPELLANTS/
DEFENDANTS 2 & 3**

(Represented by Sri.S.Nagaraju, Advocate)

AND

**1. Sri. S.V. Rajagopalachari,
S/o. Obalachari, Aged about
62 years, Residing at
Padmanabha Nagara,
Bengaluru. (Since Dead) by
his Legal Heirs:-**

**1(a) Smt. Vasundhara, W/o of
Late Rajagopalachari, Aged
about 45 Years**

**1(b) Smt. Geetha, D/o of Late
Rajagopalachari, Aged about
25 years,**

**1(c) Smt. Roopa, D/o of Late
Rajagopalachari, Aged about
20 years,**

**1(d) Smt. Manushree D/o of
Late Rajagopalachari, Aged
about 19 years,**

**All are residing at No.77/1,
2nd Main Road, Padmanabha
Nagara, Bengaluru.**

**: Lrs of 1st
RESPONDENT /
PLAINTIFF.**

**2. Sri. Krishnappa, S/o
Dasappa @ Gundappa, Aged
about 62 years, Residing at
Karikaldoddi Village, Bidadi
Hobli, Ramanagara Taluk,
Ramanagara District.**

**: 2nd RESPONDENT /
1st DEFENDANT.**

(Respondents 1 (a) to (d) represented by Sri. S.Hanumanthu, Advocate, Respondent No.2 is represented by Sri. K.B. Vijayakumar, Advocate).

Nature of the Case	: Appeal against the Judgment decreeing the suit for Declaration and Permanent Injunction.		
Date of Institution of the Appeal	: 07.02.2013.		
Date of Judgment Pronounced	: 28.07.2022.		
Duration of the Appeal	Year/s	Month/s	Day/s
	09	05	21

J U D G M E N T

This is an Appeal preferred under Section 96 of the Civil Procedure Code challenging the Judgment and Decree passed in O.S. No. 209/2007 dated 14.12.2012 on the file of the Court of the Principal Civil Judge and Judicial Magistrate First Class, Ramanagara, (hereinafter referred to as ***“the Trial Court”***).

2. This is a suit for Declaration of Title and for Permanent Injunction. The Appellants were Defendants 2 and 3 before the Trial Court. The Respondents were the Plaintiff and 1st Defendant before the Trial Court. For the sake of convenience, the parties are referred to as their ranks before the Trial Court.

3. **Pleadings of the Parties:-**

Averments pleaded in the Plaint: - The Original Deceased Plaintiff/Sri. S.V. Rajagopalachari, in the suit pleaded in the Plaint as hereunder: -

That the Plaintiff purchased the suit property from 1st Defendant on 06.11.2003 under a Registered Sale Deed for Rs. 1,24,000, that since the said sale, he is in possession of the suit property as an absolute owner, that the Defendants 1 to 3 colluding with each other filed a suit for partition with respect to the suit property in O.S.No.68/2005 and have obtained Preliminary Decree, that based on the same, the Defendants have got changed the katha of the suit property to their names without obtaining Final Decree, and hence the Plaintiff has filed the suit for the above mentioned reliefs.

4. Averments pleaded in the Written Statement of the 1st Defendant : -

The 1st Defendant has filed his Written Statement and has contended as follows: -

While denying the Plaint averments, the 1st Defendant has contended that the suit property is the ancestral property of himself and the Defendants 2 and 3, that the suit property originally belonged to his mother Smt.Kempamma who had sold it in favour of Smt.Parvathamma under a nominal Sale Deed dated 02.07.1974, but had not delivered possession to Smt.Parvathamma, that after the death of his mother, Smt.Parvathamma sold the suit property in his favour under a Registered Sale Deed dated 04.06.1987 and it is a joint family property, that he had borrowed Rs.45,000 from the Plaintiff agreeing to repay the same along with interest at 3% per month, and as a security towards the loan amount the Plaintiff has obtained the signature to a document stating that it was an agreement and has played fraud upon him, that he has already repaid the entire loan amount with interest but the Plaintiff has failed to return the original documents and has filed this suit and hence he prayed to dismiss the suit.

The Defendants 2 and 3 have filed separate written statement and has contended that the suit property was the joint family property and the Defendant No.1 being the Kartha of the joint family had no exclusive right to alienate the same without their knowledge or consent, that they had filed a suit for partition in O.S. No. 68/2005 which was decreed, that based on the same, the katha was changed and hence prayed to dismiss the suit.

5. **Issues framed by the Trial Court: -**

The Trial Court on the strength of the respective pleadings of the parties framed the following Issues: -

- 1). Whether the Plaintiff proves that he is the absolute owner of the suit schedule property?
- 2). Whether the Plaintiff proves that he is in possession of the suit schedule property ?
- 3). Whether the Plaintiff proves the alleged interference by the Defendants?
- 4) What Order or Decree ?

6. **Evidence available on record: -**

Oral evidence: - On behalf of the Plaintiff before the Trial Court oral evidence of P.W. 1 and 2 had been recorded. On behalf of the 1st Defendant oral evidence of DW1 and 2 had been recorded.

Documentary evidence: - On behalf of the Plaintiff, Exs. P. 1 to 10 were marked. On behalf of the 1st Defendant, Exs.D.1 to 3 were marked.

7. **Findings recorded by the Trial Court:-**

After hearing the arguments and perusing the records, the Trial Court passed the Impugned Judgment and Decree and decreed the suit by answering Issue No. 1 and 3 in the Affirmative.

8. Being aggrieved by the said Judgment and Decree the Defendants 2 and 3 preferred this Appeal on the following **grounds: -**

That the Impugned Judgment and Decree is not maintainable in law and the same is liable to be set aside, that the Trial Court failed to note that the suit property is joint family property and appellants are also in possession of the suit property, that the

Trial Court failed to note that the First Respondent/Plaintiff is not in possession of the suit property and hence the suit for declaration and permanent injunction is not maintainable , that the Trial Court failed to note that there is no partition between appellants and 2nd Respondent, that the Trial Court failed to note that the appellants are also having right in the suit property and they are in possession of the suit property, that the Trial Court failed to note that the Plaintiff was failed to examine any of the neighbourers of the suit property to prove his possession, that the Trial Court erred in holding that the decree passed in partition suit is not binding on the plaintiff, that the impugned judgement is erroneous, perverse and capricious and hence they prayed to set aside the impugned judgement.

9. **Arguments of the Learned Advocate for the Plaintiff: -**

The Learned Advocate for the Plaintiff Sri.S.Hanumanthu has reiterated the contentions of the Plaintiff in the Plaint and oral and documentary evidence in his arguments. He has supported the findings of the Trial Court.

10. **Arguments of the Learned Advocates for the 1st Defendant and Defendants 2 and 3 : -**

The learned Advocate for the 1st Defendant Sri.K.B.Vijayakumar and the learned Advocate for the Appellants/Defendants 2 and 3, Sri. S.Nagaraju, have submitted their arguments in line with their contentions in the Written Statement and opposed the Judgment and Decree of the Trial Court.

11. **Points for consideration: -** On the strength of the pleadings of the both parties, the submissions made by the learned Counsel for the both parties, oral and documentary evidence, the findings recorded by the Trial Court, and the grounds urged in the Appeal Memo, the following Points arise for consideration in the present Appeal:-

- (1) Whether the Plaintiff is entitled for the relief of Declaration of his title over the suit properties and the relief of Permanent Injunction as prayed in the Plaint?

(2) Whether the Impugned Judgement and Decree calls for interference?

(3) What Order?

12. My findings are as follows:-

Point No.1: - In the Affirmative,

Point No.2: - In the Negative,

Point No.3: - As per my final order for the following reasons.

REASONS.

13. First of all, I wish to mention that what should be the approach of the First Appellate Court is categorically explained by the Hon'ble Supreme Court in the decision reported in **2001(3) S.C.C. 179 (Santhosh Hazari vs. Purushotham Tiwari)**. In paragraph 15, it is held as follows: -

“The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record

findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi & Ors. vs. Bijendra Narain Choudhary*, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court

is entitled to interfere with the finding of fact (See Madhusudan Das vs. Smt. Narayani Bai & Ors., AIR 1983 SC 114). The rule is __ and it is nothing more than a rule of practice __ that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.(See Sarju Pershad Ramdeo Sahu vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the Principal obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second

appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one."

14. Further, the Court has to take note of the Section 99 of the Code of Civil Procedure, which provides that

"No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder or non-joinder of parties or causes of action of any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court, provided that nothing in this Section shall apply to non-joinder of a necessary party."

15. One more important point to be noted here is that the Appellate Court has to bear in mind about Section 167 of the Indian Evidence Act, while appreciating the facts and evidence while dealing with appeals. The said Section reads as follows: -

"No new trial for improper admission or rejection of evidence. - The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is

raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.”

16. Keeping in my mind about the above aspects, I now to analyse the contentions of the Appellants/Plaintiffs and the oral and documentary evidence adduced by them, with reference to the findings and reasoning given by the Trial Court in the impugned judgment and the grounds urged in the Appeal memo.

17. **Point No. 1 : -** The sum and substance of the contentions of the Plaintiff is that he is the absolute owner of the suit property by virtue of Ex.P.1/the Registered Sale Deed dated 06.11.2013 and that the Decree passed in Ex.P9 is not binding on the Plaintiff.

18. In order to appreciate the contentions of both parties, I arrange the documents produced by both parties with reference to their contentions in chronological order.

19. According to the contentions of the 1st Defendant, the suit property originally belonged to his grand mother Smt.Venkatamma. The said Smt. Venkatamma has executed Ex.D.2/Registered Gift Deed dated 22.11.1970 in favour of her daughter, Smt. Kempamma. Smt. Kempamma is the mother of the 1st Defendant. The further contention of the 1st Defendant is that his mother Smt. Kempamma sold the said properties in favour of Smt. Parvathamma on 02.07.1974. During cross-examination of PW1 an attempt was made by putting a suggestion that the said Sale Deed was a nominal Sale Deed. However, the PW1 has denied the said suggestion. Mere putting a suggestion and its denial is not amount to proof of the contentions of the 1st Defendant. Apart from the said suggestion there is no positive evidence to show that the said Sale Deed was a nominal Sale Deed. Hence, the 1st Defendant has failed to prove the said aspect.

20. The further contentions of the 1st Defendant is that thereafter the said Smt.Parvathamma sold the said property in favour of 1st Defendant as per

Ex.P.2/Registered Sale Deed dated 04.06.1987 executed by Smt. Parvathamma in favour of the 1st Defendant.

21. In the said circumstances, the suit property is the self-acquired property of the 1st Defendant and the same is not a joint family property of the Appellants/Defendants 2 and 3 as contended by them.

22. Thereafter the 1st Defendant sold the suit property in favour of the Plaintiff as per Ex.P.1/Registered Sale Deed dated 06.11.2003.

23. The 1st Defendant has contended that he borrowed Rs.45,000/- from the Plaintiff and as a security for the said loan transaction Ex.P1 was got executed by the Plaintiff stating that the same was only an agreement and thereby the Plaintiff has played fraud upon him and he has not executed the said Ex.P1.

24. Since the Ex.P1 is a registered document, it has a presumptive value regarding its due execution. For the said aspect I wish to refer a decision reported in **A.I.R. - 2006 - S.C. - 3608 =**

(2006) 5 - S.C.C. - 353 (Prem Singh and Others vs Birbal and Others). It is to be noted that a similar view is taken in the subsequent decision reported in **(2009) 12 - S.C.C. - 95, (Bellachi (dead) by Lrs vs. Pakeeran)**. Therefore, a heavy burden lies on a party who assails it.

25. The 1st Defendant has not proved the alleged loan transaction with the Plaintiff and that the Plaintiff has played fraud upon him. He has not examined any independent witness including Sri.Siddappa who was the person negotiated between the Plaintiff and 1st Defendant for the said loan transaction as per the contentions of the 1st Defendant. Therefore, the said contention of the 1st Defendant is not proved at all.

26. Ex.P.3 is the True Extract of Mutation Register dated 23.06.2006 and the Katha was changed in pursuance to Ex.P1 in favour of the Plaintiff.

27. It is to be noted that though the Plaintiff has purchased the suit property in 2003, the Katha was changed in 2006. At the time of changing the said

Katha, the 1st Defendant has objected, as could be seen from the evidence of P.W.1 during his cross-examination.

28. At the same time, on 26.05.2005, the brother of the 1st Defendant and father of Appellants Sri. Narasimaiah has filed O.S.No.68/2005 against the 1st Defendant claiming partition of the suit property.

29. In the said suit, the 1st Defendant was placed Ex-parte. Subsequently, the said suit was decreed as per Ex.P.9/Certified Copy of the Judgment in O.S.No.68/2005 dated 30.09.2006.

30. It is the contention of the Plaintiff that after the Ex.P9, the Appellants got changed the Katha in their favour and started to interfere with his possession and hence, he filed the present suit.

31. The Advocate for the Appellants has argued that their father instituted the said suit on 26.05.2005 and at that time, the katha was not standing in the name of the Plaintiff and hence, he was not made as a party to the suit in O.S.No.68/2005 and hence, the said decree is binding on the Plaintiff.

32. It is true that as on the date of institution of O.S.No.68/2005, the katha was not changed in the name of the Plaintiff. The said katha was changed only on 23.06.2006 as per Ex.P3. The PW1 during his cross-examination has deposed that he was under the impression that the katha would be changed automatically and without any efforts from him and hence, he had not made any attempts to change the katha immediately after the execution of Ex.P1. The said evidence is in accordance with the provisions of Karnataka Land Revenue Act.

33. For the said aspect I wish to refer a decision reported in **1980(1) - KAR.L.J. - 419 (N.Shivanna vs. State of Karnataka)**, wherein at Para No.7 it is held as follows:-

“Thus, it is clear that at the time of registration of the document itself, the necessary fees for making entries in the record of rights is collected by the registering authority. Further a statutory duty is cast upon the registering authority to make a report of the acquisition of right to the prescribed officer. Section 129(1) thereof further provides that the prescribed officer shall enter in the register of mutations every report made to him under sub-section (1) of Section 128 or received by him under sub-section (2) or sub-section (4) of the said

Section. Thus, it is clear that in the case of acquisition of right under a registered document required to be entered in the record of rights and the Register of mutations the person acquiring the right under such document need not make a report as per sub-section (1) of section 128 of Karnataka Land Revenue Act, and it is incumbent upon the registering authority to make a report of the acquisition of right to the prescribed officer who shall, on receipt of such report, enter in the register of mutation every report made to him. That being so, the failure on the part of the prescribed officer to make entries in pursuance of the report made by the registering authority of the acquisition of right cannot jeopardize the right acquired by the Petitioner under a registered deed."

34. Therefore, in view of the ratio of above-mentioned decision and in view of Section 128 of the Karnataka Land Revenue Act, I cannot accept the said arguments of the learned Advocate for the Appellants.

35. The learned Advocate for the 1st Defendant has argued that the attesting witness to Ex.P1 is PW2 and he is none other than the Father-in-Law of the Plaintiff and the Plaintiff has not examined any independent witnesses or neighbors. It is to be noted that the Sale Deed is not a compulsorily

attestable document. Hence, the provision of Section 68 of the Indian Evidence Act is not applicable. Further the Plaintiff need not prove any further aspect including about his possession by examining other witnesses. By filing a suit in O.S.No.68/2005 behind the back of the Plaintiff and got an exparte decree in the said suit itself shows the mala-fide intention of the Defendants. Therefore, the said conduct of the Defendants is to be taken into consideration while appreciating the contentions and evidence of the Defendants. When such being the case as discussed by me earlier, the suit property is not the family property of the Defendants and it is the self-acquired property of the 2nd Defendant and he has executed Ex.P1/Sale Deed in favour of the Plaintiff and hence, he is to be declared as owner of the suit property. Hence, the Trial Court has rightly decreed the suit and the same is not liable to be interfered. Therefore, I answer this **Point in the Affirmative.**

36. **Point No. 2 :-** After re-appreciation of the contentions and evidence of Plaintiffs as discussed by me above, I am of the opinion that the suit is to be decreed. The Impugned Judgment is well-

reasoned. Hence, the finding of the Trial Court is not liable to be set aside. There are no merits in the Appeal and the same is liable to be dismissed. Hence, I answer this **Point in Negative**.

37. **Point No. 3:-** Therefore, I proceed to pass the following Order.

: O R D E R :

The Regular Appeal No.113/2019 (Old Regular Appeal No.24/2013) challenging the Judgment and Decree passed in O.S. No. 209/2007 dated 14.12.2012 on the file of the Court of the Prl. Civil Judge and Judicial Magistrate First Class at Ramanagara is dismissed.

Consequently, the Judgement and Decree passed in O.S. No. 209/2007 dated 14.12.2012 on the file of the Court of the Prl. Civil Judge and Judicial Magistrate First Class at Ramanagara is hereby confirmed.

The Appellants are directed to pay costs to the legal heirs of the 1st Respondent throughout.

Draw up Decree accordingly.

***The Office is directed to return
the Trial Court Records with copy of
this Judgment to the Trial Court
immediately.***

(Dictated to the Typist Copyist, typed by her directly on the computer, transcribed by her, corrected by me and pronounced in the open court on **28th day of July 2022**).

(M. DEVARAJA BHAT)
III Addl. District & Sessions Judge,
Ramanagara.