



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 64 OF 2023 (POS)

BETWEEN:

1. SRI MARIHUTCHEGOWDA
S/O HUTCHEGOWDA
AGED ABOUT 85 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430
(SINCE CEAD BY HIS LRs)
- 1(A) SMT.PUTTA LINGAMMA
W/O LATE MARIHUCHEGOWDA,
AGED ABOUT 71 YEARS,
R/AT BANAGAHALLI VILLAGE,
KASABA HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT -571430.
- 1(B) SRI.DEVEGOWDA
S/O LATE MARIHUCHEGOWDA,
AGED ABOUT 46 YEARS,
R/AT BANAGAHALLI VILLAGE,
KASABA HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT-571430
- 1(C) SMT.MANILA
W/O NAVEENA,

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



AGAED ABOUT 34 YEARS,
R/AT S.HONNALAGERE VILLAGE,
CHIKKARASINAKERE HOBLI,
MADDURU TALUK,
MANDYA DISTRICT-571422

- 1(D) SRI.RJAESHA
S/O LATE MARIHUCHEGOWDA,
AGED ABOUT 34 YEARS,
R/AT BANAGAHALLI VILLAGE,
KASABA HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT-571430
2. SRI. CHIKKANNAOWDA
S/O HUTCHEGWODA
AGED ABOUT 83 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
LMALAVALLI TALUK
MANDYA DISTRICT-571430
(SINCE CEAD BY HIS LRs)
- 2(A) SMT. SHIVALINGAMMA
W/O LATE CHIKKANANGOWDA
AGED ABOUT 65 YEARS,
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430
- 2(B) SRI.B.C.NAGESHA
S/O LATE CHIKKANNAGOWDA
AGED ABOUT 35 YEARS,
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430



- 2(C) SRI.B.C.ANAND
S/O LATE CHIKKANNAGOWDA
AGED ABOUT 28 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430
- 2(D) SMT. NAGAMMA
W/O A.M.CHANDRAKUMAR
AGED ABOUT 37 YEARS
R/AT NO.144/1
AMRUTHESWARANAHALLI,
GOWDAGERE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430
- 2(E) SMT. SHEELA
W/O DHARANESH
AGED ABOUT 30 YEARS,
R/AT MALLURU PATNA
CHANNAPATNA TALUK
RAMANGARA DISTRICT-562160

...APPELLANTS

(BY SRI. RAJESH MAHALE, SENIOR COUNSEL FOR
SRI. BASAVANNA M.D, ADVOCATE FOR A1[A TO D]
& A2 [A TO E])

AND:

1. SMT NAGAMMA
W/O LATE MADEGOWDA
AGED ABOUT 56 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430



2. SMT. SAVITHRAMMA
D/O LATE MADEGOWDA
AGED ABOUT 38 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430
3. SRI. DEVEGOWDA
S/O LATE MADEGOWDA
AGED ABOUT 32 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT-571430
4. SRI. ANANDA
S/O LATE MADEGOWDA
AGED ABOUT 30 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT - 571430
5. SMT. PAVITHRA
D/O LATE MADEGOWDA
AGED ABOUT 25 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT - 571430
6. SRI. NINGARAJEGOWDA
S/O LATE MADEGOWDA
AGED ABOUT 27 YEARS
R/AT BANAGAHALLI VILLAGE
KASABA HOBLI



MALAVALLI TALUK
MANDYA DISTRICT-571430

...RESPONDENTS

(BY SRI. MAHAMAD TAHIR A ADVOCATE FOR
SRI. VARUN J. PATIL, ADVOCATE FOR R1 TO R4 & R6;
VIDE ORDER DATED 08.01.2025 NOTICE TO R5 IS HELD
SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.09.2022
PASSED IN RA.NO.21/2020 ON THE FILE OF THE IV
ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA.
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 23.03.2020 PASSED IN O.S.NO.1/2018
ON THE FILE OF THE SENIOR CIVIL JUDGE, MALAVALLI.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

1. This matter is listed for admission. Heard the
learned counsel for the appellants and the learned counsel
for the respondents.

2. The factual matrix of case of
plaintiffs/respondents before the Trial Court while seeking
the relief of possession of the suit schedule property in
view of the judgment and decree dated 18.06.2009 in
O.S.No.250/1997 and as observed in R.A.No.97/2009



dated 29.06.2016. The main contention of the plaintiff in the said suit that husband of the first plaintiff and father of other plaintiffs by name Madegowda had purchased the item Nos.1 and 2 of the schedule properties which is morefully described in the schedule and the same was purchased through sale deed dated 28.04.1978 from the father and mother and the same was purchased with common boundaries. While selling the property, instead of mentioning the correct survey number, inadvertently, the wrong Sy.No.91/7 and Sy.No.24/8 have been mentioned in the sale deed. But, the extent of the properties and the boundaries are correctly mentioned in the sale deeds of Madegowda and his mother Mallamma. As both of them were innocent rustic villagers were not aware of the wrong survey numbers mentioned in the sale deeds. However, they have exercised their right over the properties as absolute owners. That apart, they were under the bonafide impression that, since they have purchased the properties under registered sale deeds, the khata would be made to



their names automatically. The said Madegowda and Mallamma were died leaving behind the plaintiffs as their only legal heirs and the plaintiffs became the absolute owners of the suit schedule properties. The defendants have no manner of right, title or interest whatsoever in the suit properties. But, in the year 1997, they made an illegal attempt to interfere with the possession of the plaintiffs which made them to file a suit in O.S.No.250/97 for declaration of title and consequential relief of permanent injunction against the defendants, the said suit came to be decreed and the same is challenged before the First Appellate Court in R.A.No.97/2009 and the Appellate Court dismissed the appeal confirming the judgment and decree of the Trial Court for declaratory relief and modified the judgment to the extent of direction to the defendants to hand over the possession of the property with an observation that plaintiffs are at liberty to recover the possession in due process of law and the same was challenged before this Court in R.S.A.No.1794/2016 which



is pending adjudication. In the meanwhile, the plaintiffs have challenged the revenue entries of the suit properties in the names of the defendants before the Assistant Commissioner, Mandya in R.Mis.No.110/1996-97. But, the said petition came to be dismissed with an observation that the parties to get adjudication of their grievance before the civil Court. The said order was also challenged before the Deputy Commissioner and the same also came to be dismissed with the same observation. Hence, the plaintiffs are constrained to file a present suit for recovery of possession from the defendants as their ownership was already declared and the defendants refused to hand over the possession of the suit schedule property despite request. On receipt of the suit summons, the defendants appeared and filed written statement denying the averments of the plaint and contended that the properties which were purchased are different properties and also contend that suit is barred by limitation on the ground that when the earlier suit was filed and interim order was



sought by invoking Order 39 Rule 1 and 2 of CPC and the same came to be dismissed. The limitation starts from that date with regard to the possession is concerned. It is contended that the plaintiffs ought to have filed the present suit within 12 years from the date of purchase of the property or from the date of dismissal of CRP.No.497/1999 and hence, the suit is barred by limitation.

3. The Trial Court considering the pleadings of the parties, framed the Issues with regard to whether the plaintiffs are entitled for possession and whether suit is barred by limitation. The Trial Court having considered both oral and documentary evidence, particularly the evidence of P.W.1 and Ex.P.1 to Ex.P.4. On the other hand, defendants failed to adduce any despite opportunity was given and even not fully cross-examined P.W.1 and answered the Issue No.1 as affirmative and Issue No.2 as negative in coming to the conclusion that the plaintiffs are entitled for the relief of possession in view of the earlier



suit in O.S.No.250/1997 wherein the rights of the plaintiffs have been declared that they are the owners. However, the same is modified in the appeal and given liberty to recovery of possession. The Trial Court having considered the material on record, comes to the conclusion that the very contention that the suit is barred by limitation cannot be accepted and nothing is placed on record by adducing any evidence in proving the contention that the suit is barred by limitation.

4. Being aggrieved by the said judgment and decree, an appeal is filed in R.A.No.21/2020 before the Appellate Court. The First Appellate Court having considered the grounds urged in the appeal framed the point for consideration whether the suit is maintainable or not and whether the suit is barred by limitation and whether the Trial Court has hurriedly proceed to pass the judgment and whether it requires interference of the First Appellate Court. The First Appellate Court having re-assessed both oral and documentary evidence placed



on record, comes to the conclusion that the Trial Court has not committed any error and appreciated the material available on record, particularly taking into note of documents of Ex.P.1 to Ex.P.4 and also the earlier proceedings particularly R.A.No.97/2009. The defendants have clearly admitted the sale deeds of the plaintiffs and the mistake that is crept in the sale deeds and comes to the conclusion that no grounds are made out to interfere with the findings of the Trial Court and also while answering point Nos.4 and 5, in detail discussed in paragraph No.31 that they are the absolute owners and also taken note of the reasoning given in the earlier R.A.No.97/2009 and defendants have also failed to prove that the suit is barred by limitation except taking the defense that they have not led any evidence and also with regard to the opportunity is concerned and considering the material available on record, sufficient opportunity was given to the defendants and therefore, they cannot contend that no opportunity was given and answered all



the point for consideration as negative and confirmed the judgment of the Trial Court.

5. Being aggrieved by the finding of both the Courts i.e., concurrent finding, the present second appeal is filed before this Court by the defendants. The counsel would vehemently contend that both the Courts failed to consider the limitation. Both the Courts not framed proper issues in pursuance to the written statement filed by the contesting defendants and dismissed the appeal without considering the provisions of Order 41 Rule 23 of the Code of Civil Procedure is proper and correct and also fails to consider Order 21 Rule 23A of Code of Civil Procedure.

6. The counsel also during his argument would vehemently contend that the Appellate Court has not given any liberty to seek the relief of possession. In the absence of such liberty, question of approaching the Court once again by filing a separate suit is not maintainable. The counsel also brought to notice of this Court that the proviso of Order 2 Rule 2 of Code of Civil Procedure is very



clear that there cannot be any second suit when the earlier suit was not filed for the relief of declaration and possession and cannot seek the relief of possession in its subsequent suit.

7. The counsel in support of his argument relied upon the judgment of the Apex Court reported in **(2020) 19 Supreme Court Cases 57** in case of **Nazir Mohamed V/s Kamala and Others** and counsel also would vehemently contend that the Trial Court passed an order that the appellants has not pleaded the adverse possession and also the finding of the Appellate Court that liberty was given earlier to file a suit for seeking the possession and the said observation made by the Appellate Court is erroneous and having referred the judgment above, brought to notice of this Court paragraph Nos.42 to 49 and also paragraph Nos.51 with regard to the relief of possession. It is well settled law that when a plaintiff wants to establish that defendant's original possession was permissive or it is for the plaintiff to prove



this allegation and if he fails to do so, it may be presumed that possession was adverse, unless there is evidence to the contrary. The counsel referring this judgment would contend that there is no need to plead the adverse possession, if adverse possession is proved. The very approach of both the Courts is erroneous.

8. Per contra, the counsel appearing for the respondents brought the notice of this Court the liberty given in the earlier appeal in R.A.No.97/2009 and copy of earlier judgment passed by the Principal District Judge at Mandya in terms of Ex.P.4 operative portion, it is very clear that plaintiffs are given at liberty to get the possession of suit schedule Item Nos.1 and 2 properties from the defendants with due process of law and hence the very contention of the appellants' counsel that no such liberty was given is against the material on record. The counsel also brought to notice of this Court that in the earlier round of litigation, at the first instance, the Trial Court granted the decree of declaration and injunction was



rejected and directed to deliver the possession and the same is modified in the appeal. Since, there was no any relief is sought for possession, question of granting the relief of possession doesn't arise and hence, when the liberty was given, the present second suit is filed and there is no any bar to file a second suit for the relief of possession is concerned when the liberty is given. Hence, the appellants cannot find fault with the relief of the possession ordered by the Trial Court and confirmed by the First Appellate Court and hence it does not requires any interference.

9. Having heard the learned counsel for the appellants and also the learned counsel for the respondents, it is not in dispute that the respondents/plaintiffs earlier filed the suit for the relief of declaration and injunction. It is also not in dispute that suit was decreed and the relief of permanent injunction was dismissed, but possession was ordered. It is also not in dispute that in the earlier appeal, the same was



modified, confirming the judgment of granting the relief of declaration in favour of the respondents/plaintiffs, but, set-aside the order of delivery of possession and given the liberty to file a suit and get the possession under due process of law.

10. The main contention of the counsel appearing for the appellants before this Court is that no such liberty is given, but, on perusal of the order passed by the Appellate Court earlier in R.A.No.97/2009 on the file of Principal District Judge at Mandya, vide ordered dated 29.06.2016, allowing the appeal partly, liberty was given to the plaintiffs to get the possession of the suit schedule Item Nos.1 and 2 that is the issue with regard to Item Nos.1 and 2 with due process of law. Hence, the first contention of the appellants' counsel that no liberty was given is against the material on record. The document at Ex.P.4 is very clear that such liberty was given to get the possession of the suit schedule property particularly Item Nos.1 and 2 from the defendants with due process of law.



Accordingly, the suit is filed for the relief of possession. The Trial Court framed the Issue No.1 in view of the observation made by the earlier R.A.No.97/2009 regarding possession as claimed by the plaintiff. The second contention of the counsel that under Order 2 Rule 2 of CPC, there cannot be a second suit and waiving of right when the earlier suit was filed. It is not in dispute that earlier filed the suit by the plaintiffs for the relief of the declaration to declare that they are the absolute owner in possession of the suit schedule property, but specifically they have pleaded in the earlier suit that they were in possession as well as they are the owners. But, they have not sought for any relief of possession earlier. But, during the trial only, the Court comes to the conclusion that the plaintiffs are not in possession. But, the Trial Court granted the relief of possession without the relief of the possession they have sought and hence the same is modified in the subsequent appeal in R.A.No.97/2009.



11. The very contention of the appellants' counsel that when the application filed under Order 39 Rule 1 and 2 of CPC was rejected, limitation starts, cannot be accepted and interim order merges with the final order and that too only after consideration of material during the course of trial, comes to the conclusion that possession was not proved. When the order was passed by the Trial Court directing to deliver the possession, the same has been challenged by the appellants herein before the Appellate Court in R.A.No.97/2009 and the appellants have succeeded in part. But, the liberty which was given to file a separate suit was not challenged and the same has attained its finality. Now, the appellants cannot blow hot and cold that there was no such liberty and the same is not as attained finality. Hence, the very contention of the appellants that there was no such liberty and also Order 2 Rule 2 of CPC pressed into service cannot be accepted.



12. It is also important to note that though the appellants participated in the Trial Court proceedings and filed the written statement, but not led any evidence and though raised the issue of limitation, but not led any evidence before the Trial Court also. But, only ground urged is that no opportunity was given. The Trial Court also given an opportunity, but not utilized the opportunity. The Appellate Court while considering the grounds which was urged with regard to the opportunity is concerned, it is observed that an opportunity was given, but opportunity was not utilized.

13. It is also important to note that the sale deed was taken place in the year 1978 and when the suit was filed in the year 1997, the respondents/plaintiffs are fighting for the recovery of possession from last almost 27 years to get back the possession from the plaintiffs. When the possession is ordered under due process of law, without contesting the matter before the Trial Court, the appellants adopted the method of delaying the possession



in filing the second appeal. The Court has to take note of the conduct of the appellants also. Instead of delivering the possession as directed by the Trial Court, filed an appeal without even contesting the matter before the Trial Court.

14. The Appellate Court also considered both oral and documentary evidence available on record and considered the material on record with regard to the question of fact and question of law. Hence, I do not find any error on the part of the Trial Court in granting the relief of possession and also the Appellate Court indeed had discussed with regard to the material available on record in confirming the judgment of the Trial Court. Hence, no ground is made out to admit the second appeal and frame substantive question of law and hence there is no any merit in the second appeal.

15. The judgment relied upon by the counsel appearing for the appellants reported in **(2020) 19 Supreme Court Cases 57** and principles laid down in the



judgment in paragraph Nos.42 to 49 as well as 51, no dispute with regard to the principle is concerned. Other contention of the appellants' counsel is that Trial Court made an observation that no adverse possession pleading was pleaded. But, when the title is declared by the Trial Court that the plaintiffs are the absolute owners of the property, first while seeking the relief of adverse possession, the defendant must admit the title of the plaintiffs while pressing the contention of adverse possession. But, in the case on hand, not admitted the title of the plaintiffs, but disputed the title, only after the declaration made by the Trial Court that the plaintiffs are the absolute owners. Now, pleaded the adverse possession. Hence, the judgment relied upon by the counsel appearing for the appellants will not come to the aid of the appellants. Hence, I do not find any error on the part of the Trial Court in coming to the conclusion that no adverse possession pleading before the Trial Court. The Appellate Court also having considered the material on



record, on account of liberty was granted to the plaintiffs to file a suit for the recovery of possession under due process of law and accordingly under due process of law, sought for the relief of possession and the same is considered by the Trial Court and Appellate Court and hence, no merit.

16. In view of the discussions made above, I pass the following:

ORDER

Second appeal is ***dismissed***.

**Sd/-
(H.P.SANDESH)
JUDGE**

RHS
List No.: 1 Sl No.: 28