



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 445 OF 2013
(DEC/INJ)

BETWEEN:

1. MACHAPPA
SINCE DEAD BY HIS LRS
- 1(A) SMT RAMAKKA
W/O LATE MACHAPPA
AGED ABOUT 86 YEARS
R/AT KUTHANDAHALLI VILLAGE
KASABA HOBLI
SIDLAGHATTA TALUK
CHIKKABALLAPUR DISTRICT - 562 105
- 1(B) SMT RATHNAMMA
AGED ABOUT 58 YEARS
W/O SEENAPPA
R/AT BOMMANAHALLI VILLAGE
KASABA HOBLI
SIDLAGHATTA TALUK
CHIKKABALLAPURA DISTRICT - 562 105

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Location:
HIGH COURT
OF
KARNATAKA





2. SRI BYRAREDDY
AGED ABOUT 41 YEARS
S/O CHIKKANANJAPPA
R/AT KUTHANDAHALLI VILLAGE
KASABA HOBLI
SIDLAGHATTA TALUK
CHIKKABALLAPUR DISTRICT - 562 105

...APPELLANTS

(BY SRI. G B MANJUNATHA., ADVOCATE)

AND:

SRI K NARAYANASWAMY
AGED ABOUT 55 YEARS
S/O MUNISHAMY
R/AT KUTHANDAHALLI VILLAGE
KASABA HOBLI, SIDLAGHATTA TALUK
CHIKKABALLAPUR DISTRICT - 562 105

...RESPONDENT

(BY SRI. V K NARAYANASWAMY, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 7.12.2012 PASSED IN
R.A.NO.136/2005 ON THE FILE OF ITINERY SENIOR CIVIL
JUDGE AND JMFC, SIDLAGHATTA, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGEMENT AND DECREE DTD
7.11.2005 PASSED IN OS.NO.139/1997 ON THE FILE OF
ADDITIONAL CIVIL JUDGE (JR.DN.), SIDLAGHATTA.



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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellants challenging the judgment and decree dated 07.12.2012 passed in R.A.No.136 of 2005 by the learned Itinerary Senior Civil Judge and JMFC, Sidlaghatta, and the judgment and decree dated 7.11.2005 passed in O.S.No.139 of 1997 by the learned Principal Civil Judge, (Jr. Dn.), Sidlaghatta.
2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellants were the legal representatives of the defendant No.1 and the respondent was the plaintiff.
3. Brief facts leading rise to the filing of this appeal are as follows:



4. The plaintiff filed a suit against the defendants for declaration and permanent injunction. It is the case of the plaintiff that the plaintiff's father Munishamy acquired the suit schedule property in the auction conducted by the Government. Thereafter, the Tahsildar, Sidlaghatta, issued a grant certificate in favour of the plaintiff's father on 03.03.1952. Khata was transferred in the name of the plaintiff's father. His father was in continuous possession and enjoyment of the suit schedule property along with the plaintiff. His father had two sons namely, the plaintiff, and one Byra Reddy. The Plaintiff's father passed away about five years back prior to the filing of suit. His brother, Byra Reddy was representing the estate of their father. The plaintiff and his brother got divided the properties orally. In the said oral partition, the suit schedule property fell to the share of the plaintiff. It is contented that the defendants are the strangers to the family of the plaintiff. The



defendants have no right, title or interest over the suit schedule property and they are trying to dispossess the plaintiff from the suit schedule property, illegally. The plaintiff requested the defendants not to interfere with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, but the defendants did not give any heed to the request made by the plaintiff. Thus, a cause of action arose for the plaintiff to file a suit for declaration of title and consequential relief of permanent injunction. Accordingly, prays to decree the suit.

5. During the pendency of the suit, defendant No.1 died. His LRs were brought on record. The Legal heirs of defendant No.1 filed a written statement contending that defendant No.2 is the sister's son of Machapa i.e., defendant No.1. Defendant No.1(a) and 1(b) are the daughters of late Machapa. Defendant No.2 was brought up by late Machappa



since from his childhood and provided education and performed the marriage of defendant No.2. It is contended that Machappa died on 24.10.2002, and said Machappa had executed a registered will dated 28.09.2002. It is further contended that defendant Nos.1(a) and (b) have no objection regarding the bequeath of the suit property in favour of defendant No.2 by their father. Hence, on these grounds, prays for dismissal of the suit.

6. Defendant No.2 filed a separate written statement contending that the plaintiff had furnished the wrong boundaries to grab the property of the defendants and others. The sketch prepared by the concerned officers while granting the land in Survey Nos. 76 and 77 of Kuthandahalli village, in Survey No.76, Block No.4 to an extent of 4 acres was granted to the plaintiff's father. The sketch prepared by the revenue officer discloses the land of the plaintiff, defendants and others. The plaintiff filed a false suit against the



defendants and hence, prays to dismiss the suit of the plaintiff with costs.

7. The trial Court, based on the pleadings of the parties framed the following issues and additional issues.

- 1. Whether the plaintiff proves that he is the absolute owner and in actual and peaceful possession of the plaint schedule property?*
- 2. Whether the plaintiff further proves the alleged interference of the defendants over the plaint schedule property?*
- 3. Whether the defendants prove that the boundaries as shown by the plaintiff in the plaint to the plaint schedule property are not correct?*
- 4. Whether the plaintiff is entitled for the decree of declaration and permanent injunction?*
- 5. What order or decree?*

8. The plaintiff to substantiate his case examined himself as PW.1, examined one witness as PW.2 and marked 24 documents as Exs.P1 to P24. In rebuttal, defendant No.2 examined himself as DW.1 and defendant No.1(b) was examined as DW.2, examined



4 witnesses as DWs.3 to 6 and marked 10 documents as Exs.D1 to D10.

9. The trial Court, after appreciating the verbal and documentary evidence, answered issue Nos. 1 to 4 in the affirmative and additional issue No.1 in the negative and consequently decreed the suit of the plaintiff with costs vide judgment dated 07.11.2005.
10. The legal representatives of defendant No.1 and defendant No.2 aggrieved by the judgment and decree passed in O.S.No.139 of 1997, preferred an appeal in RA No.136 of 2005 on the file of Itinerary Senior Civil Judge and JMFC, Sidlaghatta.
11. The first Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

i. Whether the trial Court is justified in holding that the plaintiff has proved his title and possession over the suit schedule property?



*ii. Whether the judgment and decree of
the trial Court warrants interference?*

iii. What order?

12. The first Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in the affirmative, point No.2 in the negative and point No.3 as per the final order. The appeal was dismissed. The judgment and decree passed in O.S.No.139 of 1997 was confirmed.
13. The legal representatives of defendant No.1 and defendant No.2, aggrieved by the impugned judgments filed this Regular Second Appeal.
14. Heard the learned counsel for the legal heirs of defendant No.1 and defendant No.2 and the learned counsel for the plaintiff.
15. Learned counsel for the Legal heirs of defendant No.1 and defendant No.2 submits that the plaintiff has not shown the correct boundaries of the suit schedule property. He submits that the defendants have



seriously disputed regarding the boundaries of the suit schedule property. The plaintiff has not produced any records to show the correct boundaries of the suit schedule property. He also submits that the plaintiff by showing the wrong boundaries, is trying to encroach upon the land of the defendants. Hence, he submits that both courts below have not properly appreciated the evidence placed on record. Hence, on these grounds, he prays to allow the appeal.

16. *Per contra*, learned counsel for the plaintiff submits that 4 acres of land in Survey No.76 was granted in favour of plaintiff's father in 1952 as per Ex.P1. He submits that, 4 acres of land was granted in favour of defendant No.1. He submits that in 1951, a survey sketch was prepared as per Ex.P8. He submits that the plaintiff is in possession of the suit schedule property as per Ex.P1 and Ex.P8. The trial court as well as the first appellate court considering Ex.P1 and Ex.P8, have rightly held that the plaintiff is



the absolute owner and in possession of the suit schedule property and the defendants are trying to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. He also submits that there is no substantial question of law that arises in this appeal. He also submits that the disputes regarding the boundaries cannot be termed as a substantial question of law, it is only a question of fact. To buttress his argument, he has placed reliance on the judgment passed by this Court in the case of **Smt. Muniyamma vs. Chikka narayanappa**¹. Hence, on these grounds, he prays to dismiss the appeal.

17. This Court admitted the appeal to consider the following substantial Question of law:

*"Whether the findings of the court below is
perverse?"*

¹ 2024 (4) KCCR 3388



Reg. substantial question of law:

18. The plaintiff filed a suit for declaration of title and consequential relief of permanent injunction. The plaintiff, to substantiate his case, examined himself as PW.1 and he reiterated the plaint averments in the examination-in-chief and to prove that the plaintiff is the absolute owner of the suit schedule property, the plaintiff has produced the documents Ex.P1 is the grant certificate, which discloses that the state has granted 4 acres of land in favour of plaintiff's father in 1952 and possession of the land was delivered in favour of plaintiff's father. Ex.P2 is the auction proceedings, which discloses that the survey No.76 was auctioned on 03.03.1952, wherein the plaintiff's father was the highest bidder and accordingly he paid the auction amount and on the same day, Form No.1 was issued in favour of plaintiff's father as per Ex.P1. Ex.P3 is the official memorandum. Ex.P4 is the RTC extract of suit land



bearing survey No.76 measuring 4 acres stands in the name of Narayana swamy, earlier it was standing in the name of plaintiff's father, subsequently name of the plaintiff was entered in the revenue record vide M.R.No. 53/91. Ex.P5 is the RTC extract stands in the name of plaintiff's father Munishami. Ex.P6 is the mutation extract which discloses that the property was transferred after the demise of the plaintiff's father and there was partition effected between the plaintiff and his brother Byra Reddy and in the said partition the suit schedule property fell to the share of plaintiff. Ex.P7 is the mutation register. Ex.P8 is the survey sketch which discloses that the father of the plaintiff is in possession of the property shown in the red colour in Ex.P8. Exs.P9 and 10 are land revenue receipts. Exs.P11 to 20 are the RTC extracts relating to the suit schedule property for the year 2001- 2002, 1998-99 to 2000 stands in the name of the plaintiff in column No.9 and Ex.P21 and



Ex.P22 are the land revenue receipts. Ex.P23 is the mutation extract which discloses that the suit property was transferred in the name of the plaintiff after the demise of his father. Ex.P24 is the certified copy of the Will, executed by Machappa, son of Byrappa in favour of his sister Muniyamma and sister's son Byrappa relating to Survey No.76 measuring 4 acres of land.

19. In rebuttal, defendant No.2 examined himself as DW.1 and reiterated the written statement averments in the examination-in-chief and produced the documents Exs.D1 to D7 and deposed that the suit survey was granted in favour of defendant's father Machappa, who executed the Will bequeathing the said property in favour of defendant No.2 on 28.09.2002 and produced the copy of the certificate of grant issued in favour of defendant's father i.e., Ex.D1 and based on Ex.D1 the name of Machappa was muted in the revenue records and the name of



Machappa was found in the RTC Extract from 1975-76 to 1977-78.

20. From the perusal of the entire evidence on record, it clearly discloses that the defendants have not disputed the grant of 4 acres of land in the suit survey number in favour of plaintiff's father as per Ex.P1. On 14.12.1950, survey was conducted and sketch was prepared in respect of Survey No.76, block No.4 towards eastern side shown the land of one Narayanappa and Venkatarayappa; West side Gomala land; North side gomala and Kunte and south by defendants' 4 acre of land in block No.5. To prove that the suit land with said boundaries was granted in favour of plaintiff's father, the sketch prepared on 14.12.1950 is sufficient and it is sufficient to held that the Government granted 4 acres of land in Survey No. 76, Block No.4 in favour of the plaintiff's father.



21. Both courts below have concurrently recorded a finding of fact that the plaintiff is claiming the declaration of title and possession, on the basis of the land acquired by his father, and thereafter got the property through oral partition held between him and his brother. Both courts below have rightly passed the impugned judgment. I do not find any perversity in the impugned judgments. In view of the above discussion, I answer substantial question of law in the negative.

22. Accordingly, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is ***dismissed***.
- ii. The judgments and decrees passed by the courts below are hereby confirmed.
- iii. No order as to the costs.



In view of the dismissal of the appeal, pending IAs, if any, would not survive for consideration and they are accordingly disposed of.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS
CT:KHV