



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

REGULAR FIRST APPEAL NO. 583 OF 2010 (INJ)

BETWEEN:

SRI. SELVARAJ V.
S/O LATE P. VENKATASWAMY
AGED ABOUT 63 YEARS
RESIDING AT NO.11 AND 12A,
MUNISHWARA TEMPLE STREET,
CLEVELAND TOWN,
BANGALORE-560005

...APPELLANT

(BY SRI. NAGARAJ S JAIN, ADVOCATE)

AND:

1. SRI. G. MUNIVENKATAPPA
S/O DODDAGUNDAPPA
AGED ABOUT 54 YEARS,
RESIDING AT NELAGULI DHAKALE
UTTARA HALLI HOBLI,
BANGALORE SOUTH TALUK.

2. SRI. N. ANJANAPPA
S/O LATE NANJAPPA
AGED ABOUT 80 YEARS,

R2 IS DEAD
R3 TO R5 ARE TREATED AS
LRS OF DECEASED R2

3. SRI KRISHNA MURTHY @ KRISHNAPPA
S/O N. ANJANAPPA

4. SRI. RAJANNA
S/O N. ANJANAPPA



5. SRI. SRIDHARA
S/O N. ANJANAPPA

RESPONDENT NOS.3 TO 5 ARE
RESIDING AT CHELAKERE VILLAGE,
BABUSARAPALYA, BANASWADI POST,
BANGALORE-560043

6. SRI. M. CHELUVARAJU
S/O SRI MUTU
RESIDING AT HENNUR VILLAGE,
KASABA HOBLI,
BANGALORE NORTH TALUK.

...RESPONDENTS

(BY SRI. S.Z.A. KHURESHI, ADVOCATE FOR RESPONDENT NO.1;

VIDE ORDER DATED 20.09.2013, RESPONDENT NOS.3 TO 5 ARE
TREATED AS LEGAL REPRESENTATIVES OF DECEASED RESPONDENT
NO.2;

VIDE ORDER DATED 23.03.2015, SERVICE OF NOTICE TO
RESPONDENT NO.6 IS DISPENSED WITH)

THIS RFA IS FILED UNDER SECTION 96 ORDER XLI RULE 1
AND 2 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED
22.03.2010 PASSED IN O.S.7876/2006 ON THE FILE OF THE XVII-
ADDL. CIVIL JUDGE, (CCH-16), BANGALORE CITY, 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 R. NATARAJ

ORAL JUDGMENT

The plaintiff in O.S.No.7876/2006 on the file of the XVII
Additional Civil Judge, Bengaluru City (CCH-16) (henceforth
referred to as 'Trial Court') has filed this appeal challenging the



judgment and decree dated 22.03.2010 passed therein by which, the suit filed by him was dismissed.

2. For the sake of convenience, the parties shall henceforth be referred to as they were arrayed before the Trial Court. The appellant was the plaintiff and the respondents were the defendants before the Trial Court.

3. (i) A suit in O.S.No.7876/2006 was filed for perpetual injunction in respect of a house bearing Site No.1, House List khata No.160, situated at Babusabarapalya, Chelakere Dhakale, K.R. Puram Hobli, Bengaluru South Taluk, measuring East to West 46 feet and North to South 30 feet. The plaintiff claimed that he had purchased the suit property in terms of a sale deed dated 27.10.1994 from the defendant No.2 for valuable consideration and that the sale deed was duly registered as document No.6725/94-95. After purchase, he was placed in possession of the suit property and all the revenue records stood in his name. He claimed that Horamavu Agara Village Panchayat had issued Form No.12 in his name and was also receiving the property tax. He claimed that he had paid the property tax and was also paying water and



electricity charges. He had constructed two rooms on the suit property and in one of the rooms, security guards were staying while other room was used by him as and when he visited the suit property.

(ii) The plaintiff claimed that he received an electricity bill dated 26.08.2006 that was issued in the name of defendant No.1. This generated suspicion in the mind of the plaintiff and after making enquiry, he came to know that defendant Nos.1 and 2 had conspired and had brought about a sale deed registered in the name of defendant No.1 by giving different khata. The plaintiff also made enquiry in the Office of the Sub-Registrar and came to know that the sale deed dated 03.04.2006 was executed by the defendant No.2 in favour of defendant No.1. The plaintiff thereafter obtained a copy of the sale deed and he found that defendant No.2 and his sons had sold the suit property to the defendant No.1 by mentioning a non-existent khata No.107/163. The plaintiff therefore, lodged a complaint before the police and thereafter, followed it up by filing a suit for perpetual injunction to protect his possession.



4. The suit was contested by the defendant No.1 who *inter alia* denied the averments made in the plaint and also denied that defendant No.2 had executed a sale deed in favour of the plaintiff and that the plaintiff was placed in possession of the suit property and that the revenue records stood in the name of the plaintiff. He also denied that the plaintiff had paid property tax in respect of the suit property. He also denied that the plaintiff had obtained electricity and water connection to the suit property. He claimed that the defendant No.2 had conveyed the suit property to the plaintiff and therefore, there was a cloud on the title of the plaintiff and hence, suit for bare injunction was not maintainable.

5. The defendant No.3 also filed written statement denying the execution of the sale deed by defendant No.2 in favour of the plaintiff and termed the sale deed as fictitious and that the defendant No.2 had no authority in law to execute a sale deed in favour of the plaintiff. He also contended that the documents relied upon by the plaintiff did not concern the suit property and that the property bearing site No.1 was identified as house list No.107/163 and not house list No.107/160.



6. The defendant No.5 adopted the written statement filed by the defendant No.3.

7. Based on these contentions, the Trial Court framed the following issues:-

- (i) *Whether the plaintiff proves that he is in lawful possession and enjoyment of schedule property?*
- (ii) *Whether the plaintiff further proves that the defendants are interfering over the suit schedule property?*
- (iii) *Whether the plaintiff proves he is entitled for the injunction as sought for?*
- (iv) *What Order or Decree?*

8. In support of the averments made in the plaint, the plaintiff was examined as PW.1 and he marked Exs.P1 to P16. The defendant No.1 was examined as DW.1 and defendant No.3 was examined as DW.2 and Exs.D1 to D6 were marked.

9. Based on the oral and documentary evidence, the Trial Court held that the plaintiff had admitted Ex.D1, which was an affidavit executed by the defendant No.2 in favour of the plaintiff in respect of site No.2. It held that the sale deed



at Ex.P1, which purportedly was in respect of site No.2 was drawn up in respect of site No.1 and therefore, a cloud was cast on the title of the plaintiff to the suit property. The Trial Court therefore, held that the sale deed at Ex.P1 executed by the defendant No.2 in favour of the plaintiff was doubtful and in order to clear this doubt, the plaintiff was bound to file a suit for declaration of his title. The Trial Court relied upon the judgment of the Hon'ble Apex Court in **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and others [(2008) 4 SCC 594]** and dismissed the suit in terms of its judgment and decree dated 22.03.2010.

10. Being aggrieved by the said judgment and decree, the plaintiff is before this Court.

11. The learned counsel for the plaintiff contended that prior title of the defendant No.2 to the suit schedule property is not in dispute. He contends that the defendant No.2 had executed sale deed at Ex.P1 in favour of the plaintiff in the year 1994, while sale deed in favour of defendant No.1 was much later i.e., in the year 2006. Thus, he contends that the plaintiff was the earlier purchaser and in view of Section 48 of the



Transfer of Property Act, 1882, it was his sale that had to take precedence over the sale in favour of defendant No.1. He contends that there was no cloud on the title of the plaintiff and the Trial Court committed an error in blindly relying upon the judgment of the Hon'ble Apex Court in the case of **Anathula Sudhakar**, referred supra. He invited the attention of the Court to the aforesaid judgment of the Hon'ble Apex Court and contended that it is not an inviolable rule that in every suit for injunction where defendant disputes the title of the plaintiff, the plaintiff should seek for declaration of his rights. He contends that only when the defendant's defence is substantial, which goes to the root of the matter and which generates doubt about the title of the plaintiff, the Court can insist that the plaintiff should seek for declaration of title. He therefore, contends that the Trial Court committed an error in dismissing the suit. He also contends that DW.1 admitted that there were two sheds which were erected on the suit property. He also admitted that structures so put up was provided with electricity and water connection. However, the defendant No.1 did not produce any material to show that the electricity and water connection stood in his name. On the contrary, the plaintiff had produced and



marked Exs.P10 to P12 and P14, which were electricity bills in respect of installation at the suit schedule property which stood in the name of the plaintiff. He therefore, contends that the plaintiff had not only proved his title to the suit property but also possession of the suit property. He therefore, submits that the Trial Court must have decreed the suit but has wrongly dismissed on the premise that the plaintiff had failed to seek for declaration of his title.

12. Per contra, learned counsel for the defendant No.1 submitted that the plaintiff had admitted that defendant No.2 had executed an affidavit (Ex.D1), which showed that defendant No.2 had agreed to sell site No.2 in favour of the plaintiff and that Ex.P1 had to be in respect of the site No.2 and not site No.1. He therefore, submits that the plaintiff and defendant No.2 were *consensus ad-idem* over the fact that what was agreed to be sold was site No.2 and not site No.1. Thus, he contends that there was a cloud on the title of the plaintiff and it was incumbent upon the plaintiff to remove the cloud by seeking for declaration of his title. He also contends that if the plaintiff had purchased the site No.2 and not site No.1 then the sale deed in favour of the defendant No.1 was



not affected, which was in respect of site No.1. Thus, he contends that the Trial Court was justified in requiring the plaintiff to sue for declaration of title and hence, the Trial Court was justified in dismissing the suit. He also contends that PW.1 had admitted that the complaint at Ex.P15 was based on Ex.D1 and hence, had to be construed that the plaintiff was all along under the impression that property conveyed to him was not site No.1 but was site No.2 and therefore, the Trial Court was justified in dismissing the suit.

13. I have considered the submissions of the learned counsel for the plaintiff as well as the learned counsel for the defendant No.1. I have also perused the material on record.

14. After considering the contentions urged and after pursuing the material on record, following point would arise for consideration:

"Whether the Trial Court was justified in dismissing the suit on the ground that the plaintiff had failed to seek for declaration of title along with injunction?"



15. The defendant No.1 who filed his written statement, denied the averments made in the plaint. He did not set up his defence in specific terms. All that defendant No.1 stated in his written statement was that the sale deed executed in favour of the plaintiff by the defendant No.2 was forged and fabricated and that there was a serious cloud over the lawful title of the plaintiff and therefore, suit for bare injunction was not maintainable. A perusal of the entire written statement does not show that defendant No.1 had claimed that the property purchased by the plaintiff was not site No.1 but site No.2 and that the sale deed was wrongly executed in favour of the plaintiff in respect of site No.1. Be that as it may, if the boundaries of the sale deed at Ex.P1 is perused and compared with the boundaries of the sale deed executed in favour of the defendant No.1, it is invariable that the property claimed by the plaintiff and the property claimed by the defendant No.1 were the same. It is also to be noticed that both the plaintiff and the defendant No.1 had purchased the property from defendant No.2. Assuming that defendant No.2 had executed some agreement (Ex.D1) in favour of the plaintiff in respect of site No.2, the sale deed at Ex.P1 was not in respect of site No.2 but



was in respect of site No.1. In a suit for injunction based on title, the Court was only bound to incidentally look into the question whether the plaintiff had title to the property and whether he was in possession of the suit property. So far as this is concerned, Ex.P1 demonstrably indicated that it was the plaintiff who was the earlier purchaser and therefore, he was lawful owner of the suit property having purchased it from the defendant No.2, who was also the previous owner. The other documents placed on record by the plaintiff clearly go to show that a structure exists on the suit property which is provided with electricity and water supply. In the cross-examination of DW1, he deposed as follows:-

"A sheet rooted house is in existence on the suit schedule property. It has got electricity connection. The house has got water supply connection also. Both water and electricity connections have not been changed in my name, since the case is pending. Both the offices have told me that after the disposal of the case, they will change in my name. The water connection and electricity connections are not standing in any name. It is false to suggest that electricity and water connections are in the name of the plaintiff."



16. The defendant No.1 has not attempted to produce any documents in this regard to establish that the electricity connection and the water connection did not stand in the name of the plaintiff or that it stood in his name. Therefore, it is clear from the evidence on record that it was the plaintiff who was in possession of the suit property and the defendant No.1 having managed to obtain sale deed from defendant No.2 much later in the year 2006, could not disturb the possession of the plaintiff in the suit schedule property. The Trial Court misdirected itself in requiring the plaintiff to sue for declaration of title more particularly, when the title of his vendor was not in dispute. In a suit for injunction, it is not always necessary for the plaintiff to seek for declaration of his title. The judgment of the Hon'ble Apex Court in **Anathula Sudhakar**, referred supra, is also clear on this. The Hon'ble Apex Court while adverting to the above, held as follows:

"14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when



some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's



possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally."

17. The Trial Court instead of considering the case from this stand point, has virtually conceded to the defence of the defendant No.1 that a cloud is cast on the title of the plaintiff in respect of the suit property when the title of the plaintiff was clear and distinct. In that view of the matter, the impugned judgment and decree passed by the Trial Court warrants interference. Accordingly, the point for consideration framed by this Court is answered and it is held that it is not necessary in every suit for injunction, the plaintiff has to seek for



declaration of his title and in the instant case, there was no cloud on the title of the plaintiff requiring him to seek for declaration.

18. Hence, the following order is passed:

ORDER

- (i) The appeal is ***allowed***.
- (ii) The judgment and decree dated 22.03.2010 passed by the XVII Additional Civil Judge, Bengaluru City (CCH-16) in O.S.No.7876/2006 is set aside.
- (iii) The suit filed by the plaintiff in O.S.No.7876/2006 is decreed and the defendants are restrained from interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule property.

19. In view of disposal of the appeal, pending I.As., if any, do not survive for consideration and the same stand disposed off.

Sd/-
(R. NATARAJ)
JUDGE