



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM
REGULAR FIRST APPEAL NO. 613 OF 2011 (DEC/INJ)

BETWEEN:

1. SRI. A.C. HANUMANTHAPPA
S/O LATE CHIKKAHANUMAIAH
AGED ABOUT 54 YEARS
R/AT AVALAHALLI VILLAGE
UTTARAHALLI HOBLI
BANGALORE SOUTH TALUK.

...APPELLANT

(BY SMT. DEEPIKA .K, ADVOCATE)

AND:

1. THE COMMISSIONER
BANGALORE CITY CORPORATION
(NOW NAMED AS BRUHAT BENGALURU
MAHANAGARA PALIKE)
N R SQUARE, BANGALORE-560002.

...RESPONDENT

(BY SRI. B.V. MURALIDHAR, ADVOCATE)

THIS RFA IS FILED U/SEC.96, O-41, RULE-1 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 23.10.2010
PASSED IN O.S.376/2002 ON THE FILE OF THE XXVII-ADDL.
CITY CIVIL JUDGE, BANGALORE, DISMISSING THE SUIT FOR
PERMANENT INJUNCTION.

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





CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the unsuccessful plaintiff directed against judgment and decree dated 23.10.2010 passed in O.S.No.376/2002 on the file of the learned XXVII Additional City Civil Judge, Bangalore City, whereby the plaintiff's suit seeking relief of declaration that he is the owner of the 'B' schedule property, which is the part of 'A' schedule property and for the relief of mandatory injunction is dismissed by trial Court.

2. For the sake of brevity, the parties are referred to as per their rankings before the Trial Court.

3. Facts leading to the case are as under;

The plaintiff instituted the present suit asserting absolute title over the suit schedule property and complaining of unauthorized interference by the defendant-Corporation. It is the specific case of the plaintiff that he purchased Schedule 'A' property under a



registered sale deed dated 23.10.1986 executed by the erstwhile owner, Smt.Thimmajamma. According to him, the local Corporator, acting out of personal animosity and in collusion with the officials of the defendant-Corporation, illegally utilized a portion of his vacant site for formation of a public road without initiating any lawful acquisition proceedings. The plaintiff initially instituted a suit for bare injunction. However, upon alleging that the Corporation had high-handedly formed a road during the pendency of the dispute, he sought amendment of the plaint. The portion allegedly encroached and converted into a road is described as Schedule 'B' property measuring 13 feet x 65 feet. On these pleadings, the plaintiff sought appropriate declaratory and mandatory reliefs.

4. Upon service of summons, the defendant-Corporation entered appearance and filed a detailed written statement denying the material averments of the plaint. The Corporation disputed the very title of the plaintiff over both Schedule 'A' and Schedule 'B'



properties. It was specifically contended that the road in question was not newly formed, but had been in existence from long prior to the alleged interference and therefore, the question of acquisition of private property did not arise. On these grounds, the defendant sought dismissal of the suit.

5. On the basis of the rival pleadings, the trial Court framed necessary issues and additional issues for consideration. The parties were afforded full opportunity to adduce oral and documentary evidence in support of their respective claims. Upon appreciation of the evidence on record, particularly the evidence led by the plaintiff and in the absence of substantial rebuttal evidence on certain aspects, the trial Court answered Additional Issue No.1 partly in the affirmative. However, while doing so, it recorded a categorical finding that the plaintiff failed to establish lawful ownership over Schedule 'A' property. Consequent upon this finding, the remaining issues were



answered against the plaintiff and the suit came to be dismissed.

6. I have heard the learned counsel appearing for the plaintiff and the learned counsel appearing for the defendant–Corporation. I have also carefully perused the entire records of the case, including the pleadings, oral evidence and documentary material placed before the trial Court.

7. In the light of the contentions urged and the findings recorded by the trial Court, the following points arise for consideration in this appeal:

(i) Whether the finding of the trial Court that the plaintiff has failed to establish his title over Schedule 'A' property is perverse, contrary to the evidence on record, and therefore calls for interference by this Court?

(ii) Whether the trial Court was justified in refusing the relief of mandatory injunction on the ground that the plaintiff failed to prove the



exact point of time at which the road was formed by allegedly utilizing his property?

(iii) What order?

Findings on Point Nos.(i) & (ii):-

8. In order to substantiate his claim of title, the plaintiff has relied upon Ex.P.2, which is described as the sale deed. A careful examination of Ex.P.2, however, reveals that the document produced is not the original sale deed allegedly executed by the erstwhile owner, Smt.Thimmajamma, but only a supplementary sale deed stated to have been executed for the purpose of rectifying certain errors in the original parent document. The original sale deed, which forms the very foundation of the plaintiff's claim of title, has not been produced before the Court. No satisfactory explanation is forthcoming as to why the best primary evidence has been withheld.

9. It is further evident from the recitals that the property in question is a revenue site. The layout sketch



relied upon by the plaintiff is admittedly an unapproved layout plan. A perusal of the said sketch discloses inconsistencies with regard to the topographical features and the existence of the alleged link road. While the plaintiff asserts that the defendant has formed a road by encroaching upon Site No.3, the photograph marked at Ex.P.3 depicts a link road connecting to a main road. However, the unapproved layout plan produced by the plaintiff does not show any main road abutting the northern side of Site No.3. Thus, there is a clear discrepancy between the documentary material and the photographic evidence relied upon by the plaintiff himself. The layout sketch does not depict the existence of an east-west main road adjoining Site No.3, whereas the photograph suggests connectivity to such a road. These contradictions go to the root of identification and location of the suit property.

10. In the light of these material inconsistencies, this Court is of the considered view that the plaintiff has



failed to establish the precise location and identity of Site No.3. The non-production of the original sale deed casts a serious cloud on the plaintiff's claim of title. When the plaintiff asserts ownership over a revenue site formed in an unapproved layout, the burden lies heavily upon him to clearly identify the property and correlate it with cogent documentary evidence. The unapproved layout plan relied upon does not convincingly demonstrate the existence of the main road allegedly connecting the link road which, according to the plaintiff, runs through his property.

11. Further, though the plaintiff contends that his brothers own the adjoining western and eastern portions and have constructed residential houses thereon, the photograph marked at Ex.P.3 does not depict the existence of such residential structures. The absence of such material features in the photograph creates further doubt regarding the plaintiff's version and the very existence and identification of Site No.3 in the manner pleaded.



12. In a suit seeking declaration of title, the initial and primary burden squarely rests upon the plaintiff to establish lawful ownership over the suit schedule property. The plaintiff must succeed on the strength of his own case and cannot derive advantage from any alleged weakness in the defence. In the present case, the withholding of the original sale deed being the best evidence of title warrants drawing of an adverse inference under Section 114(g) of the Indian Evidence Act, 1872. The failure to produce primary title documents, without satisfactory explanation, significantly undermines the credibility of the claim.

13. Apart from the doubtful title, the plaintiff has also failed to furnish specific pleadings or evidence as to when the alleged road was formed. The plaint is conspicuously silent as to the date, period or circumstances under which the Corporation is said to have laid the road. There is absolutely no independent evidence, not even minimal or corroborative material, to establish that the defendant-Corporation has encroached upon a



private property and formed a road thereon. On the contrary, even a close scrutiny of the photograph at Ex.P.3 indicates that the link road appears to run in continuation through adjoining properties and does not establish that it passes through the plaintiff's alleged Site No.3.

14. When the existence of the road itself is evidenced in the photograph and when the identification of the plaintiff's site is shrouded in uncertainty, it cannot be presumed that the road was formed upon the plaintiff's private property. The cumulative effect of the doubtful title, absence of approved layout, inconsistencies in topographical depiction, non-production of original documents and lack of cogent proof regarding alleged encroachment, renders the plaintiff's claim wholly unsubstantiated.

15. This Court, on an independent re-appreciation of the entire oral and documentary evidence, finds no reason to take a view different from that of the trial Court. The



plaintiff has failed to prove his title as well as the alleged act of illegal formation of road. In the absence of clear proof of encroachment, the discretionary relief of mandatory injunction cannot be granted. Once the foundational issue of title fails, the consequential relief must necessarily fail.

16. An additional circumstance which assumes significance is that a similar suit instituted by the plaintiff's brother seeking identical reliefs has been withdrawn. The plaintiff asserts that Schedule 'A' property forms a portion of Site No.3. If parallel claims in respect of the same site by close family members have not been pursued to logical conclusion and have been withdrawn, this circumstance further weakens the credibility of the present claim and operates against the plaintiff's case.

17. For all the aforesaid reasons, this Court is of the considered opinion that the findings recorded by the trial Court are well reasoned and based on proper appreciation



of evidence. No perversity or illegality is demonstrated warranting interference in appeal. Accordingly, Point No.(i) is answered in the "**Negative**" and Point No.(ii) is answered in the "**Affirmative.**"

18. **Point No.(iii)** :- For the foregoing reasons, this Court proceeds to pass the following;

ORDER

(i) The appeal is devoid of merits and accordingly, stands ***dismissed***.

(ii) Pending applications, if any, are also dismissed.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE