



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

REGULAR FIRST APPEAL NO. 1885 OF 2016 (INJ)

BETWEEN:

1. SRI SANJAY JAIN
S/O PANNALAL JAIN
AGED ABOUT 41 YEARS
DOOR NO.1459
GROUND FLOOR
23RD MAIN, 28TH CROSS,
BANASHANKARI II STAGE,
BANGALORE-560 070.
2. SHRI RAJ SINGH BHUTORIA
S/O UMMED SINGH BHUTORIA
AGED ABOUT 43 YEARS
R/AT NO.290/2, 15TH CROSS,
5TH PHASE, J.P.NAGAR
BANGALORE-560 078.

...APPELLANTS

(BY SRI. SHIVA SRINIVASAN., ADVOCATE FOR
SRI. ADITYA D., ADVOCATES)

AND:

SRI P. VIKRAM
S/O SRI. R. PRAKASH
AGED ABOUT 22 YEARS,
R/AT NO.33, 12TH MAIN,
J.P.NAGAR, 5TH PHASE
BANGALORE-560 078.

...RESPONDENT





(BY SRI. PRAMOD NAIR, SENIOR COUNSEL FOR
SMT. NEHARICA SAHAY., ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 09.09.2016
PASSED IN OS NO.7073/2010 ON THE FILE OF THE XX ADDL.
CITY CIVIL AND SESSIONS JUDGE, (CCH 32), BENGALURU
CITY, DECREETING THE SUIT FOR PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL JUDGMENT

This appeal is by the defendant Nos.1 and 2 represented
by Power of Attorney Holder being aggrieved by the Judgment
and decree dated 09.09.2016 passed in O.S.No.7073/2010 on
the file of XX Additional City Civil and Sessions Judge (CCH-32),
Bengaluru, by which the suit of the plaintiff-respondent herein
for the relief of permanent injunction has been decreed as
sought for.

2. The above suit in O.S.No.7073/2010 is filed by the
plaintiff against the defendants containing *interalia* that suit
property being site bearing No.36 measuring East to West 45
feet and North to South 62 feet in all measuring 2790 sq. ft.
and bounded on East by: Road, West by: Site No.23, North by:



Private Property, South by Site No.35 (R.Radhakrishna's property) with compound wall and existing shed with electricity connection, was carved out of land bearing Sy.No.10/9 of Sarakki Agrahara Village, Bengaluru South Taluk which originally belonged to one T.M.Thammaiah in terms of deed of sale dated 30.04.2005. Said T.M.Thammaiah in turn had purchased the land from one Govindaraju and Gopalakrishna, both sons of one Vamakeshavaraju, who in turn had acquired the same in terms of partition dated 20.03.1957. The said vendor of the plaintiff had entered into agreement of sale of schedule property with one R. Radhakrishna in terms of an agreement dated 22.11.2005. Since the said agreement did not materialize, plaintiff purchased the same with the consent and concurrence of the said agreement holder R.Radhakrishna, he having joined the execution of the deed of sale in favour of the plaintiff. Plaintiff is in possession and enjoyment of the suit property and has obtained electricity connection. That defendants having no right, title and interest over the suit property, had come to the spot on 05.10.2010 threatening the plaintiff that they would demolish the shed existing on the suit property and would also disconnect the electricity connection



constraining the plaintiff to approach the Court by filing the suit.

3. Written statement came to be filed by the defendants, denying the claim of the plaintiff on the suit property of he being the owner in possession. It is contended that one S.Krishnaraju, son of Narayanaraju, had offered to sell sites in property bearing No.56 situated in Sarakki Agrahara Village, Bilekahalli Group Panchayath, which the defendant had negotiated and purchased the same by paying the valuable consideration. In furtherance to which S.Krishnaraju had executed a registered deed of gift dated 21.05.1982. Thereby, defendant No.1 became the owner and possessor of the property. Thus defendant No.1 is in possession and enjoyment of Site bearing No.36/56 ever since the date of execution of deed of gift in the year 1982-83 which has been assigned khatha No.56. That the said property forms part of land in Sy.No.10/8. Defendant No.1 has put up a watchman shed and has obtained electricity connection. That the property purchased by the plaintiff was acquired by the Government which is reflected in the revenue records. Vendors of the plaintiff has filed a suit in O.S.No.6048/2005 based on



imaginary cause of action against defendant No.1. He had also filed another suit in O.S.No.5383/2007 which was contested by defendant No.1 by filing a written statement. Infact plaintiff along with his supporters and unruly elements on 05.10.2010 had come near the property of the defendants, attempted to interfere with their possession and not the defendants as alleged. Hence sought for dismissal of the suit.

4. Trial Court framed the following issues:

- 1. Whether the plaintiff is in lawful possession and enjoyment of the suit property?*
- 2. Whether the plaintiff is prove the alleged interference of the defendants is true?*
- 3. What order of decree?"*

5. One R.Prakash, General Power of Attorney holder of the plaintiff has examined himself as PW1 and exhibited 25 documents marked as Exhibits P1 to P25. Similarly, one Prakash Chand Bhutoria, General Power of Attorney Holder of defendants has been examined as DW1 and has exhibited 22 documents marked as Exhibits D1 to D22.



6. On appreciation of pleadings and evidence, trial Court answered Issue Nos.1 and 2 in the affirmative and consequently decreed the suit as sought for. Being aggrieved the present appeal.

7. Sri.Shiva Srinivasan, learned counsel appearing for the appellants taking this Court through the records submits that there exists no property bearing Site No.36 as claimed by the plaintiff whereas the property claimed by the plaintiff is the one which belongs to the defendant No.1, he having acquired the same in terms of deed of gift produced at Exhibit-D5. He submits there exists a serious dispute with regard to very identity of the property. Besides, the defendants has set up their own independent title. Therefore, a suit for bare injunction ought not to have been entertained by the trial Court. The plaintiff/respondent ought to have been directed to file a suit for substantial relief. He submits trial Court has not appreciated the material pleading and the evidence brought on record more particularly documents in the nature of Exhibits D1 to D22 which prove and establish the right, title, interest and possession of the defendants over the suit property. He submits



these aspects of the matter go to the very root of the matter, warranting interference at the hands of this Court.

8. Per contra Sri.Pramod Nair, learned Senior counsel appearing for the plaintiff/respondent at the outset drawing the attention of this Court to Exhibit-P25, which is a copy of Exhibit-D5, a deed of gift under which the defendants are claiming right, title and interest, brings to the attention of this Court an inserted/added portion in the schedule to the said document which indicate addition of words, **"being Site No.36"**. He juxtaposes the same with the original of the said document which is Exhibit-D5 deed of gift produced by the defendants schedule of which do not contain such insertion/addition. He submits that such a document as that of Exhibit P25 has come into existence admittedly at the instance of defendants while he had attempted to obtain illegal electricity connection based on the said document. In furtherance to this he draws attention to the deposition of DW1 recorded on 06.08.2016 wherein upon confrontation of the said insertion at Exhibit P25 the witness has pleaded his absolute ignorance as to how Site No.36 is shown in Exhibit-D6. He also draws attention of this Court to the cross examination of said



DW1 recorded on 19.08.2016 wherein the said witness has admitted about defendant No.1 having submitted the application to the BESCO for obtaining connection and copy of the application shown to him along with the document marked as Exhibit-P25. The said witness has further deposed that defendants had paid Rs.14,000/- to Rs.18,000/- for purchasing the suit property. He also draws attention of this Court to the further admission of the witness to the effect under Exhibit-D5, Site No.36 is not conveyed. Thus, pointing out this inconsistency and contrary stand taken by the defendants, he submits that in a suit for bare injunction, the requirement of establishing prima facie case, meeting the requirement of preponderance of probability has been established by the plaintiff by producing the title and the revenue documents and the defendants under the shadow of denying the title of the plaintiff cannot seek to oust the suit. Hence there has been no error or illegality committed by the trial Court warranting interference.

9. Heard and perused the records.

10. The points that arise for consideration are:



(i) Whether the plaintiff has proved he being in lawful possession of the suit property?

(ii) Whether the trial Court has committed any error in granting the relief of judgment and decree of permanent injunction?

11. Plaintiff in furtherance to his claim of ownership and possession of the property has produced a deed of sale dated 07.01.2009 executed by T.M.Thammaiah represented by his power of attorney holder R.Prakash. The schedule described in the said deed of sale specifically refers to the property being Site No.36, Khatha No.10/9 of Sarakki Agrahara Village having measurement East to West 45 feet, North to South 62 feet, in all measuring 2790 sq. ft. bounded on the East by: Road, West by: Site No.23, North by: Private property and South by: Site No.35. He has produced tax paid receipts in respect of the aforesaid property as seen in Exhibit P3, Exhibit P4 and the self-assessment returns as found at Exhibit P5, Exhibit P7. He has also produced certain sale deeds as per Exhibits P10, 12, P13 pertaining to sites which are situated around the suit property. He has also produced a sketch at Ex.P14 showing the situation/location of suit property and the said surrounding sites.



12. The vendors of the plaintiff is the purchaser of Site No.36 as per Exhibit P10. Exhibit P11 is a partition deed which has been entered into amongst the family members of Vamakeshavaraju. Another sale deed dated 30.04.2005 found at page 51 of the trial Court records produced along with the partition deed at Exhibit P11 is also executed by the children of said Vamakeshavaraju in favour of certain T.S.Vasanth Kumar, conveying Site No. 37 which is situated on the southern side of the suit property of the plaintiff.

13. Exhibit P12 is another deed of sale executed by the legal representatives of said Vamakeshavaraju in favour of G.Ramakrishna Reddy in respect of Site No.24 situated on the eastern side of the property. Similar is the deed of sale at Exhibit P13 in respect of the adjacent Site No.35. Exhibit P14 is the sketch showing existence of Site No.35 amidst the sites which are subject matter of the aforesaid deeds of sale.

14. Exhibit P19 is the order passed by this Court dated 14.10.2011 in W.P.No.12222-12223/2011 filed by the defendant No.1 against the BESCOM with regard to certain



dispute pertaining to disconnection of power supply. Exhibit P22 is the telephone bill.

15. Based on these documents the trial Court has come to the conclusion of plaintiff having proved his title and lawful possession over the property.

16. On the contrary defendants have produced and relied upon Exhibit D5, a deed of gift purportedly executed by one S. Krishnaraju, son of Narayanaraju on 21.05.1982 in favour of the defendant No.1. The schedule to the said deed of gift refers to a vacant site bearing portion of Khatha No.56 in Sarakki Agrahara, Bilekahalli Group Panchayath, Bengaluru South Taluk, bounded on East by: Road, West by: site No.23 of Bengani, North by: Private Property, South by: portion of Khatha No.57 (site).

17. Exhibit D5 is the original deed of gift dated 21.05.1982 produced by the defendants. It does not contain Site No.36. Whereas Exhibit D6 is the Encumbrance Certificate. At the top of the Encumbrance Certificate there is a reference to Site No.36 though no such details are found at the prescribed column.



18. Exhibit D8 is the tax register extract of the Bommanahalli City Municipal Council which refers to Site No.56 and there is no mention of Site No.36.

19. Though defendants have contended that the property being claimed by the plaintiff is distinct and different from that of the property owned and possessed by the defendants, as rightly pointed out by the learned Senior counsel for the plaintiff, document at Exhibit P25 which is a copy of Exhibit D5 contains the words "being Site No.36" apparently inserted and added. This has been confronted to DW1 during the cross-examination recorded on 19.08.2016 wherein DW1 has deposed: "the defendant had submitted application to the BESCO for obtaining the connection and the copy of the application is shown to me along with the document is marked as Exhibit P25."

20. The said witness in his further chief examination recorded on 06.08.2016 referred to Exhibit D6, D7 and D20 and has stated as under:

"I do not have any other documents pertaining to the suit schedule property. I can produce the layout plan



before the court. I do not have any idea that how Site No. 36 was shown in Exhibit D6, D7 and D20."

21. The said witness in his further cross-examination on 19.08.2016 has deposed as under:

"The defendant has paid Rs.14,000/- or Rs.18,000/- for purchasing the suit schedule property. The defendant and his vendor Krishnaraju were known to each other even prior to the purchasing the suit schedule property.....Under the Exhibit D5, Site No.36 is not conveyed."

22. Defendants have pre-verified their case every stage. While in the written statement they have disputed the identity of the property, they have apparently attempted to represent the BESCOM Authorities that their site bears No.36. Defendants own documents produced at Exhibit D6 to D7, D20 reflect site No.36 which even according to them is not the one acquired under the deed of gift.

23. As rightly pointed out by learned Senior counsel if the defendants have acquired the right under the deed of gift there is no question of them paying consideration of Rs.14,000/- or Rs.18,000/- as the case may be. Gift as well



known is conveyance made out of love and affection not for any monetary consideration.

24. Since there is no dispute by the defendants of they having made an application to the BESCO for obtaining the connection by submitting the application along with the document marked as Ex.P25, an irresistible conclusion is required to be drawn with regard to apparent manipulation of the records by the defendants, disentitling them from seeking any equitable relief.

Points answered accordingly.

Appeal fails and is dismissed with cost of Rs.25,000/- payable to the "Karnataka Legal Services Authority". Judgment and decree dated 09.09.2016 passed in O.S.No.7073/2010 by the trial Court is confirmed.

**Sd/-
(M.G.S. KAMAL)
JUDGE**