



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR
REGULAR SECOND APPEAL NO. 1648 OF 2025 (DEC/POS)

BETWEEN:

SRI MANU G L
S/O SRI LAXMIPATHI,
AGED ABOUT 44 YEARS,
OCC AGRICULTURIST,
R/AT NAGENAHALLI VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT- 577 522

...APPELLANT

(BY SRI. NANDISH PATIL.,ADVOCATE)

AND:

SRI K C VEERENDRA PATEL
S/O CHANNAPPA,
AGED ABOUT 66 YEARS,
OCC: AGRICULTURIST,
SANTEBENNUR VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT- 577 522

... RESPONDENT


Digitally
signed by B
LAVANYA

Location:
HIGH
COURT OF
KARNATAKA

THIS REGULAR SECOND APPEAL IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 23.07.2025 PASSED IN RA NO.94/2024 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, CHANNAGIRI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 30.10.2024 PASSED IN OS NO.6/2020 ON THE FILE OF II ADDITIONAL CIVIL JUDGE AND JMFC, CHANNAGIRI. DECREETING THE SUIT.

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



CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is filed by the appellant/defendant challenging the judgment and decree rendered by the Senior Civil Judge & JMFC, Channagiri in R.A. No. 94/2024 dated 23.7.2025, dismissing the appeal and confirming the judgment of decree rendered by the II Additional Civil Judge & JMFC, Channagiri in O.S No.6/2020 dated 30.10.2024,

2. Parties to the proceedings shall be referred to as plaintiff and defendant for the sake of brevity.

3. The brief facts of the case are as follows:

3.1 The plaintiff filed a suit against the defendant for declaration of his title with respect to suit 'A' schedule property and consequential relief of possession of 'B' schedule property and *mesne* profits from the defendant.

3.2 It is the case of plaintiff that he is the lawful owner and in enjoyment of the property bearing Sy.No.40



of Nagenahalli village to an extent of 23 guntas which is assigned new Sy.No.40/3 of Nagenahalli village. He purchased the said property from one N. B. Jayappa through a registered sale deed dated 07.05.2002 and on the same day, the possession of the property was delivered to him. The *khata* and the revenue entry stand in the name of plaintiff.

3.3 It is further case of the plaintiff that before purchasing the 'A' schedule property, the plaintiff was owning the land in Sy.No.40 to the north of the said property assigned as Sy.No.40/1 and Sy.No.40/2. To the south of his property, land in Sy. No. 40 to an extent of 3 acres 10 guntas belongs to the defendant. The said Sy.No. 40 was subjected to *hissa podi* survey and thereafter the property of plaintiff was assigned with Sy. No.40/1, Sy.No.40/2 and Sy.No.40/3 and the property of defendant assigned with Sy.No.40/4. Plaintiff was cultivating his property on the basis of *guttige* from others. The defendant while cultivating his property



through the tractor, the ridge which was there in the southern edge of suit 'A' schedule property was pulled out and shifted to the northern side in the property of the plaintiff. Several requests were made by the plaintiff to the defendant not to encroach his property. But illegal attempts were continued by the defendant, thereby encroaching portion of the property of the plaintiff. A surveyor conducted *hudbast* /survey in 'A' suit schedule property on 07.08.2019 in presence of adjacent owners by issuing notice, whereby the plaintiff came to know that an extent of 19 *guntas* in the southern part of suit 'A' schedule property was encroached, which is shown as B schedule property. It is pursuant to this *hudbast*, the plaintiff demanded the defendant to vacate the encroached portion, which was not heeded to by the defendant and since 'B' schedule property is a wet land with irrigation facility of two crops, the plaintiff sought from the defendant's mesne profits. In view of the fact that the defendant did not get away from the encroachment or



heed to the request made by the plaintiff, left with no other alternative, the plaintiff filed a suit for declaration and possession of 'A' and 'B' schedule properties respectively.

3.4 Upon summons being served, the defendant appeared and filed written statement denying the claim of the plaintiff and took up a plea in the written statement that the defendant is in enjoyment and possession of the 0-19 guntas of encroached 'B' schedule property since 1976 for more than 12 years as its absolute owner. Hence, it is adverse to the interest of the plaintiff. Therefore, he has perfected his right, title and interest over 'B' schedule property by way of adverse possession. Accordingly, sought for dismissal of the suit.

3.5 Based on the pleadings, the trial Court framed the following issues for consideration:

"1. Whether the plaintiff proves that he is the absolute owner of the plaint schedule 'A' and 'B' properties?"



- 2. Whether the plaintiff proves that he is entitled for the recovery of possession with respect to 'B' schedule property?*
- 3. Whether the plaintiff is entitled to mesne profit? If so, at what rate?*
- 4. Whether the defendant proves that the suit is not maintainable?*
- 5. Whether the plaintiff is entitled for the relief as sought for?*
- 6. What order or decree?*

Additional Issue framed on 17.08.2021

- 7. Whether the defendant proves that they are in possession of 19 guntas of encroached suit property since 1976 as such they are the owners and perfect their title through adverse possession?"*

3.6 In order to substantiate the issue and prove his case, the plaintiff examined himself as PW.1 and examined the Surveyor as PW.2 and got marked documents as Exs.P1 to P7 and closed his side. Whereas, the defendant examined himself as DW.1 and got marked one document as Ex.D1 in his favour.

3.7 Based on the materials placed on record, both oral and documentary and on the basis of the arguments



adduced by learned counsels for parties, learned trial Judge came to the conclusion that the plaintiff successfully established and proved his case of ownership over 'A' schedule property as the same was not denied and so also, the encroachment made in 'B' schedule property. On the basis of cogent and corroborative piece of evidence coupled with expert's report and survey report at Exs.P5 to P7, the trial Court decreed the suit of the plaintiff and directed the defendant to handover the actual possession of 'B' schedule property as demarcated in the survey reports within a period of three months from the date of this judgment, failing which, the plaintiff could get possession of 'B' schedule property in the manner known to law.

3.8 Aggrieved by the judgment and decree rendered by the trial Court, the defendant preferred an appeal before the first Appellate Court in RA.No.94/2024. Upon appearance of the respondent-plaintiff before the first Appellate Court and upon reconsideration and re-



analysis of the entire materials placed before the trial Court, both oral and documentary, the first Appellate Court formulated the following points for consideration:

- "1. Whether the trial court was justified in concluding that the plaintiff has proved ownership over the suit properties?*
- 2. Whether the judgment and decree under appeal are illegal, perverse and against the facts of the case thereby warranting interference by this court? If so to what extent?*
- 3. What order or direction?"*

3.9 After having a re-look on the entire gamut of materials, both oral and documentary and the impugned judgment and decree rendered by the trial Court, so also, the arguments addressed by learned counsels for parties, the first Appellate Court did not find favour with the appellant-defendant, agreed with the contentions of the plaintiff and the judgment rendered by the trial Court, dismissed the appeal preferred by the appellant-defendant and confirmed the judgment and decree rendered by the trial Court.



3.10 Being aggrieved by the concurrent finding of two Courts, the appellant-defendant is before this Court in this second appeal.

4. It is the vehement contention of Sri Nandish Patil, learned counsel for appellant-defendant that the judgments and decree rendered by both the Courts are perverse, illegal and arbitrary and the same is liable to be set aside for several reasons. Firstly, he contends that the trial Court and the first Appellate Court have not taken into consideration the materials placed on record, both oral and documentary, more specifically, the evidence of PW.2, who has not stated in his evidence that there is encroachment with regard to 'B' schedule property. On the contrary, he has stated that he cannot say whether there is an encroachment in the 'B' schedule property. Secondly, learned counsel vehemently contends that in the written statement, the defendant has pleaded that the suit is not maintainable as it is barred by law of limitation. Despite



making such a plea, the trial Court has not raised an issue to that effect but answered the same in its judgment.

4.1 Learned counsel further contends that it is for the plaintiff, who comes before the Court to establish his case on his own merits rather than standing on the weakness or admissions of the defendant. In the present case, he contends that the plaintiff has fully relied upon the report of the Surveyor-PW2 to contend that there is an encroachment whereas it runs contrary to the evidence adduced in the examination-in-chief and cross-examination of PW.2. He further contends that the first Appellate Court has also committed a serious illegality in not appreciating this aspect, though it was vehemently argued with regard to the non-framing of an issue of limitation. On these grounds, he seeks to set aside the judgment and decree rendered by both the Courts and consequently to frame the substantial question of law to delve further to consider the case on merits.



5. At this stage, after hearing learned counsel for appellant for substantial amount of time, this Court is not inclined to issue notice to the respondent. This Court does not find good ground or cogent reason on merits to frame substantial question of law as none exist for the following reasons:

Admittedly, the suit is filed by the plaintiff for the relief of declaration and possession of 'A' and 'B' schedule properties respectively. The plaintiff relies upon Ex.P1, which is the sale deed executed on 07.05.2002 to show his ownership over the 'A' schedule property. The khatha and pahani have been entered in the name of the plaintiff. However, the aspect of the plaintiff being owner of 'A' schedule property has not been denied by the defendant. The plaintiff is not seeking any portion of the property belonging to the defendant, who is the adjacent owner of Sy.No.40/4 measuring to an extent of 3 acres 10 guntas with karab of 0-7 guntas.



6. In the written statement filed by the defendant, it is pleaded that in the event the trial Court comes to the conclusion that the defendant is in possession of 0-19 guntas of encroached suit 'B' schedule property since from 1976 for more than 12 years and enjoying the same as if he is the absolute owner and in possession of the same, it is adverse to the interest of the plaintiff and has perfected the right, title and interest over the said suit 'B' schedule property by way of adverse possession. In my humble opinion, such a statement made by the defendant in his written statement is a very dangerous statement made, wherein he has accepted the ownership of the plaintiff over the encroached portion in the 'B' schedule property.

7. It is needless to mention that when a person claims adverse possession over a portion of the property or 'B' schedule property, then invariably admits the ownership of the opposite party, the plaintiff herein to be the owner of the said 'B' schedule property. In the present case, the trial Court as well as the first Appellate



Court have delved into the merits of the case and the evidence adduced by PWs.1 and 2. Based on the documents produced by both the parties, more specifically, the survey report and the *hudbast* sketch produced at Exs.P6 and P7, the trial Court as well as first Appellate Court were satisfied with the plaintiff. Apart from proving his ownership of the 'A' schedule property by production of Ex.P1, the plaintiff has also proved the encroachment by way of Exs.P6 and P7. Accordingly, the trial Court decreed the suit of the plaintiff, which upon reconsideration and re-appreciation of the entire materials once again and upon re-hearing learned counsels on this point of the encroachment and the plea of adverse possession having been taken as an alternative plea, cannot bind the defendant, whereas the plaintiff has to prove his case on his own rather than on the pleadings of the defendant, which cannot be accepted, in my humble opinion, for the reason that apart from the statements so made, both the Courts have relied upon the documents



produced by the plaintiff at Exs.P1 to P7 and has arrived at a finding of a case made out by the plaintiff for grant of such a relief.

8. Section 100 of CPC deals with the scope and powers of the Appellate Court. It is a no more *res integra* to state that the powers as contemplated under Section 100 CPC are very narrow and limited. This Court, in several catena of judgments, has held that the Appellate Court sitting in the second appeal is not required to appreciate the evidence on record unless there is perversity shown in the judgments rendered by the trial Court as well as the first Appellate Court. When two Courts have already considered the question of fact and the question of law to a large extent in detail, even if this Court finds third opinion on the opinions already expressed concurrently by both Courts, it is a general Rule that this Court should refrain from imposing its third opinion merely for the sake of interference when there is no cogent material placed on record.



9. The question of framing of substantial questions of law would depend upon if there is any illegality or perversity in the judgments rendered by the trial Court as well as the first appellate Court. Having considered the submissions of learned counsels for the parties and having perused the impugned judgments of both the Courts and having gone through the records, I do not find any perversity or illegality in the judgments rendered by both the Courts. The appellants have not made out any good ground for this Court to frame any substantial question of law, as no such question of law, in my opinion, exists to be framed to decide the case on hand. The reasons assigned and conclusion arrived at by both the Courts are just and proper. I do not find any cogent reason to interfere with the well reasoned judgments rendered by both the Courts.

10. In view of the discussions made hereinabove, learned counsel for plaintiff has made a valiant attempt to impress upon this Court to formulate substantial questions



of law. He claimed in this case to further delve upon the matter, in my respectful opinion, there is no such substantial question of law to be framed as both the Courts have elaborately dealt with all these matters and after consideration of the materials placed on record have arrived at a right conclusion of the plaintiff having proved his ownership and also the encroachment over the property.

Accordingly, I pass the following:

ORDER

This appeal is ***dismissed***, at the stage of admission itself. No substantial question of law requires to be framed.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

GSS,LB
List No.: 1 Sl No.: 44