



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 03RD DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR
REGULAR SECOND APPEAL NO.5279 OF 2009 (INJ)

BETWEEN:

1. JINNAPPA S/O. KUBERAPPA YALLUR,
AGE ABOUT 51 YEARS.
2. PAYAPPA S/O. KUBERAPPA YALLUR,
AGED ABOUT 49 YEARS
BOTH RESIDENTS OF KOGALGIRI,
POST. ARWATGI, DIST. DHARWAD-580007.

...APPELLANTS

(BY SRI P.V.GUNJAL, ADVOCATE.)

AND:

RUDRAPPA MUDAKAPPA KARIYAVAR,
AGED ABOUT 63 YEARS,
RESIDENT OF KOGALGIRI,
POST. ARWATGI, DIST. DHARWAD-580007.

...RESPONDENT

(BY SRI MANJUNATH JADAI, ADVOCATE.)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 23.03.2003, PASSED IN O.S.NO.87/1999, BY THE III ADDITIONAL CIVIL JUDGE (JR.DN.) AND JMFC, DHARWAD AND THE JUDGMENT AND DECREE DATED 30.09.2008, PASSED IN R.A.NO.107/2003, BY THE II ADDITIONAL CIVIL JUDGE (SR.DN.), DHARWAD, CONFIRMING THE JUDGMENT AND DECREE OF THE TRIAL





COURT AND DISMISSED THE SUIT OF THE PLAINTIFF, IN THE INTEREST OF JUSTICE AND EQUITY.

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

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

This Regular Second Appeal is filed by the defendants challenging the judgment and decree dated 30.09.2008, passed in R.A.No.107/2003, by the II Additional Civil Judge (Sr.Dn.), Dharwad (First Appellate Court), thereby, the judgment and decree dated 23.03.2003, passed in O.S.No.87/1999, by the III Additional Civil Judge (Jr.Dn.), Dharwad (Trial Court), is confirmed.

2. For the purpose of convenience and easy reference, ranking of the parties is referred to as per their status before the trial Court.

3. The plaintiff has filed suit for declaration and permanent injunction to declare that the suit property bearing VPC No.32A and 32B (formerly known as VPC



No.54) measuring east-west 120 feet and north-south 14½ feet situated at Aravatagi/Kogilageri Gram Panchayat. It is stated that the plaintiff's father has purchased the suit schedule property described above from one Yashawant Tavanappa Patil in the year 1950 along with other properties through registered sale deed. On the same day the plaintiff's father was put into possession and the plaintiff has continued possession over the property. Therefore, contended that the defendant is falsely claiming title over the suit property. Therefore, the plaintiff is constrained to file suit for declaration and permanent injunction.

4. The defendants have appeared through their counsel and filed the written statement and contended that the property bearing VPC No.54 and VPC No.32A and 32B are different properties and not one and the same. Therefore, by producing the hand sketch map with the written statement has taken pleading that the property bearing VPC No.54 and VPC No.32A and 32B are different properties. Therefore, prayed to dismiss the suit.



5. The Trial Court and the First Appellate Court have concurrently held that the property bearing VPC No.54 and VPC No.32A and 32B are one and the same. Therefore, decreed the suit of the plaintiff.

6. Against the concurrent finding of both the Trial Court and the First Appellate Court, the defendants have preferred the present appeal by raising various grounds and contending involved substantial questions of law.

7. This Court on 19.03.2014, while admitting the appeal has framed the following substantial questions of law for consideration in the appeal.

- i) Whether the trial Court and the First Appellate Court have committed a serious error without looking to the serious dispute raised in regard to the identify of the suit property, more particularly, without appointing a commissioner for elucidating the matter in dispute?
- ii) Whether the First Appellate Court and the trial Court have ignored material evidence placed on record, more particularly, in regard to the limitation and as such, the judgment and decree of both the Courts are perverse and illegal?



8. From considering the evidence adduced by both the parties, it is seen that the plaintiff has not produced convincing evidence even on its preponderance of probabilities to show that VPC No.54 and VPC No.32A and 32B are the same properties. No doubt, admittedly as per registered sale deed the plaintiff's father has purchased the property bearing VPC No.54. The defendants are not disputing that the plaintiff is owner of the property bearing VPC No.54. But it is rival contention of the defendants that the said property bearing VPC No.54 is different than that of property bearing VPC No.32A and 32B. The plaintiff has produced Exs.P.8 and P.9, which are property extracts showing that the defendants are the owners of property bearing VPC No.32A and 32B and the description of property as house property. Whereas, it is the case of plaintiff that suit property is house property. The same documents are produced by defendants as Exs.D.4 and D.5. The plaintiffs have not produced any documents to prove that the property bearing VPC No.54 is the same as that of



the property bearing VPC No.32A and 32B. If the property is same and new number for old number is given by the competent authorities of Gram Panchayat, but the plaintiff has not produced any evidence showing that the number of property is changed from VPC No.54 to VPC No.32A and 32B.

9. Therefore, without expressing any opinion on the merits of the case involved in the case, and the substantial question of law are touching discussion on merits in the case, therefore, by keeping open answering the substantial questions of law, the case is remanded to the Trial Court for fresh disposal, for the reason that the suit is for declaration as the plaintiff is claiming declaration of title over the property. Whereas, the defendants are claiming that the property bearing VPC No.54 and VPC No.32A and 32B are different properties.

10. Therefore, by giving liberty to both the parties to adduce further evidence in this regard, the case is liable to



be remanded to the Trial Court for fresh disposal. Hence, the judgment and decree passed by both the Trial Court and the First Appellate Court are to be set aside. Hence, I proceed to pass the following:

ORDER

- i) The appeal is allowed.
- ii) The judgment and decree dated 30.09.2008, passed in R.A.No.107/2003, by the II Additional Civil Judge (Sr.Dn.), Dharwad and the judgment and decree dated 23.03.2003, passed in O.S.No.87/1999, by the III Additional Civil Judge (Jr.Dn.), Dharwad, are hereby set aside.
- iii) The matter is remanded to the Trial Court for fresh disposal on its merit, in accordance with law.
- iv) The Trial Court is at liberty to frame fresh issues at its discretion.



v) Both the parties are permitted to adduce any further evidence.

vi) The Trial Court shall not be influenced by any of the observations made herein which are only for the purpose of remanding the case to the Trial Court.

vii) Both the parties shall appear before the Trial Court on 24.02.2026 without expecting any notice from the Court.

viii) Nine months time is granted to the Trial Court to dispose of the suit from 24.02.2026.

ix) No order as to costs.

**Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE**

MRK
CT-AN
List No.: 1 Sl No.: 18