



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 24TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

REGULAR SECOND APPEAL NO. 763 OF 2005 (DEC)

BETWEEN:

RAMESH KRISHNA NAYAK,
AGED ABOUT 49 YEARS,
R/O. BELEKERI, ANKOLA TALUK,
NORTH CANARA DISTRICT,
ANKOLA-581314.

... APPELLANT

(BY SRI. SANGRAM S. KULKARNI, ADVOCATE)

AND:

1. NARYANA RAMA NAYAK,
SINCE DECEASED BY HIS LR'S.
- 1A. BEERAMMA GOPAL NAYAK,
AGE. 60 YEARS, OCC. AGRICULTURE/HOUSEWIFE,
R/O. BEELEKERI, ANKOLA.
- 1B. SHANTARAM NARAYAN NAYAK,
AGE. 55 YEARS, OCC. AGRICULTURE,
R/O. KUNTAGAVI, NEERKOLLI, ANKOLA.
- 1C. PRAKASH NARAYAN NAYAK,
AGE. 50 YEARS, OCC. AGRICULTURE,
R/O. KUNTAGAVI, NEERKOLLI, ANKOLA.
- 1D. SAVITA TIMMANNA NAYAK,
AGE. 45 YEARS, OCC. HOUSEWIFE,
R/O. HILLUR VILLAGE, MEDEKATTI.

... RESPONDENTS

(BY SRI. ASHOK C. ANGADI, ADVOCATE FOR
SRI. HAREESH NAYAK, ADVOCATE FOR 1A-1D)

THIS RSA IS FILED U/S 100 CPC AGAINST THE JUDGMENT
AND DECREE DATED: 16.02.2005 PASSED IN RA.NO. 77/2001 ON





THE FILE OF THE PRL.CIVIL JUDGE (SR.DN.), KARWAR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED:23.7.2001 PASSED IN OS.NO.72/1997 ON THE FILE OF THE CIVIL JUDGE (JR.DN.), ANKOLA.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

ORDER

This appeal is filed praying to set-aside the judgment and decree dated 16.02.2005 passed in R.A.No.77/2001 by learned Prl. Civil Judge (Sr.Dn) Karwar confirming the order dated 23.07.2001 in O.S.No.72/1997 on the file of learned Civil Judge (Jr.Dn) Ankola.

2. The appellant was defendant and respondent was plaintiff in O.S.No.72/1997 on the file of learned Civil Judge (Jr.Dn) Ankola.

3. The parties will be referred to as per their rank in the Trial Court. The respondent-plaintiff died during the pendency of this appeal and his legal heirs were brought on record.

4. The plaintiff has filed a suit in O.S.No.72/1997 against the appellant-defendant seeking the relief of



declaration that he is the owner in possession of the suit property since sale deed dated 19.06.1997 is void, illegal and created and sought relief of injunction and delete the name of appellant-defendant in the revenue records pertaining to the suit property.

5. It is the case of the plaintiff that he is the owner of the property bearing survey No.13/1ka, totally measuring one acre and 20 guntas and out of that he is the owner of the 20-1 1/3 guntas and out of that he has sold only an extent of 10 guntas to the defendant but in a sale deed the defendant fraudulently mentioned 20-1 1/3 instead of 10 guntas, as the plaintiff is ill-literate and aged person, and his eyes and ears are not properly working. The defendant in his written statement contended that he entered into sale agreement in the year 1982 to purchase the entire extent of 20-1 1/3 guntas from the plaintiff and as there was condition not to alienate and he purchased the same after completing 15 years by sale deed dated 19.06.1997 and he has already paid Rs.25,000/- to the



plaintiff. He contended that the said sale deed has been executed and got mutated his name in the records of rights. He contended that he is in possession of the entire property and therefore, the plaintiff is not entitled for relief of injunction and sought dismissal of suit.

6. Based on the said complaint, the trial Court has framed the following issues:

"1. Whether the plaintiff proves that for the reasons stated in Paras-3 and 4 of the plaint, he has sold only an area of 10 gunthas in the suit land to the defendant and not the entire area of the suit land of 20 gunthas 1 1/3 annas?"

2. Does the plaintiff further prove that the defendant by taking undue advantage of illiteracy and old age and by way of fraud and misrepresentation, the defendant got transferred the whole area of the suit land of 20 gunthas 1/3 annas by way of registered sale-deed, dated, 19-6-1997 in his favour?"

3. Whether the plaintiff further proves that the Sale-deed, dated, 19-6-1997 in respect of the entire suit land in favour of the defendant is null and void and same is not binding on him?"

4. Does the plaintiff further prove that he has been in lawful possession and wahiwat of 10 gunthas and 1/3 annas



of the remaining portion of the suit land, as on the date of the suit?

5. Whether the plaintiff proves alleged interference in his remaining portion of the suit land by the defendant as alleged?

6. Whether the defendant proves that since from the year, 1982, he has been in lawful possession and enjoyment of the entire suit land as of right, continuously, openly to the knowledge of the plaintiff and that he has become the owner of the same by way of adverse possession?

7. Whether the defendant further proves that the Court fee paid on the plaint by the plaintiff is not proper and correct?

8. Whether the defendant further proves that the valuation of the suit property exceeds the pecuniary jurisdiction of this Court and assuch, this Court has no jurisdiction to entertain and try the present suit?

9. Whether the plaintiff is entitled for the equitable reliefs of declaration and consequential relief of permanent injunction and also for rectification of record of rights as prayed for in the suit?

10. What Order or Decree?"

7. The plaintiff has been examined himself as P.W.1 and got marked Exs.P.1 to 7. The defendant got examined himself as DW.1 and got examined two



witnesses as DWs.2 to 3 and got marked at Ex.D1 to 3. The commissioner was appointed during the course of the trial and he gave report which is at Ex.C.1 and hand sketch is at Ex.C.2. The trial Court after hearing the arguments of both sides has answered the issue Nos.1 to 5 and 8 in the affirmative, issue Nos.6 and 7 in the negative, issue No.9 partly in the affirmative and decreed the suit. Aggrieved by the said judgment and decree passed by the trial Court, the defendant has filed appeal in R.A.No.77/2001, before the Principle District and Sessions Judge Karwar, (first Appellate Court). The first appellate Court, after hearing the arguments of both sides formulated the points for consideration and dismissed the appeal confirming the judgment and decree passed by the trial Court. Aggrieved by the said judgment and decree passed by the trial Court and first appellant Court, the defendant has filed the present appeal. The present appeal came to be admitted to consider the following substantial question of law:



"Whether the Courts below were justified in granting declaration that what is sold under Ex.P.4 is only 10 guntas of land and not 20 guntas, when what is mentioned in the sale deed is 20 guntas of land?"

8. Heard the learned counsel appearing for appellant and learned counsel for the respondents.

9. Learned counsel for the appellant would contended that the defendant has purchased the entire extent of 20-1 1/3 from the plaintiff by registered sale deed dated 19.07.1997 and in the same possession has been delivered to the defendant. The plaintiff as on the date of filing the suit was not in possession of the entire extent of 20-1 1/3 guntas. The plaintiff has not sought for possession but only sought for declaration and injunction. The plaintiff is not in possession of suit property measuring 10-1 1/3 guntas as on the date of suit. Therefore, the suit of the plaintiff seeking declaration and without seeking relief of possession is not maintainable. He prayed to formulate an additional substantial question of law in that regard. He further contended that the



Hon'ble Apex Court in the case of **ANATHAULA SUDHAAKAR VS. P BUCHI REDDY (DEAD) BY LRS AND OTHERS** reported in **(2008) 4 SCC 594**, held that where the plaintiff is not in possession or not able to establish possession, he has to file the suit for declaration, possession and injunction. He contends that the plaintiff has not sought relief of possession. Therefore, suit only for declaration and injunction is not maintainable. He further contends that as per Section 91 of the Indian Evidence Act, it is sufficient to produce registered sale deed to establish the purchase of the property by the defendant and therefore, there is no need of evidence to prove the terms of said sale deed. He contends that the plaintiff has not denied the execution of the sale deed and its registration. What the plaintiff has denied is that the extent of land as mentioned in the sale deed. Plaintiff even though pleaded that his eyes and ears are not working properly but he has faced cross examination and read documents and heard questions, it shows that his eyes and ears are functioning properly. As the value of the



property is increased, the Plaintiff with a malafide motive, to grab the property has filed the suit against the defendant. The trial Court instead of casting the burden on the plaintiff to establish fraud pleaded by him has asked defendant to establish that he has purchased the extent of property which is mentioned in the sale deed. The first appellate Court did not reappreciate the evidence on record. With this, he prayed to allow the appeal.

10. Per contra learned counsel for the plaintiff would contend that plaintiff is aged person and ill-literate and the defendant by playing fraud mentioned total extent of 20-1 1/3 guntas in the sale deed in the place of 10 guntas. The plaintiff immediately coming to know the same within 4 months of the sale deed has filed suit seeking declaration that he is owner in possession of the suit property measuring 10-1 1/3 guntas. The defendant and his witnesses failed to establish that the plaintiff has executed the sale deed to the entire extent of 20-1 1/3 guntas. He contends that the trial Court and first appellate



court have rightly appreciated the evidence on record and rightly decreed the suit. With this, he prayed to dismiss the appeal.

11. Considering the contentions raised by the learned counsel for the appellant/defendant, additional substantial question of law requires to be framed. The said additional substantial question of law reads as under:

“ Whether the suit filed that the plaintiff seeking relief of declaration and injunction without seeking possession is maintainable”?

12. Heard further arguments on the said additional substantial question of law.

13. The defendant has purchased 20-1 1/3 guntas of land under sale deed dated 19.06.1997-Ex.D.1. The said sale deed has been executed by plaintiff in favour of the defendant. On perusal of the said sale deed-Ex.D.1, the possession of the property purchased under it has been delivered to the purchaser. The defendant in his pleading has stated that he is in possession of the entire



extent of 20-1 1/3 guntas of land by virtue of said sale deed-Ex.D.1. The plaintiff has sought for relief of declaration of title to the extent of 10-1 1/3 guntas and injunction in respect of the suit property. Under sale deed-Ex.D.1, the possession of the entire extent of land measuring 20-1 1/3 guntas has been delivered by the plaintiff to the defendant. The plaintiff in plaint averments has not asserted that even after the sale deed, he is in possession of the property measuring 10-1 1/3 guntas of land. The Possession of the entire land has been delivered to the defendant by registered sale deed-Ex.D.1. Defendant by virtue of said sale deed-Ex.D.1, is in possession of the 20-1 1/3 guntas of land. The plaintiff has only sought for declaration and an injunction in respect of 10-1 1/3 guntas of land. Plaintiff was not in possession of any extent of property in suit survey number. Plaintiff ought to have sought for possession of the 10-1 1/3 of guntas of land from the defendant. The suit seeking declaration and injunction without the relief of possession is not maintainable, in view of the decision of the Hon'ble



Apex Court in case of **ANATHAULA SUDHAAKAR VS. P BUCHI REDDY** (supra). The Hon'ble Apex Court has held in para 13.3 as under:

"13.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction".

14. In view of the same, suit of the plaintiff filed for relief of declaration and injunction without relief of declaration is not maintainable. Additional substantial question of law is answered accordingly.

15. Plaintiff has pleaded fraud on the part of the defendant in mentioning the extent of the property in sale deed dated 19.06.1997. The plaintiff has not denied the



execution of the sale deed-Ex.D.1 by him. He pleaded that defendant has played fraud on him in mentioning the extent of land in sale deed. The plaintiff claimed that as the fraud was played on him the said sale deed dated 19.06.1997 to the extent of 10-1 1/3 is void, illegal and created one. The plaintiff has not sought for any rectification of the said sale deed as required under section 26 of the Specific Relief Act, which reads as under:

"26. When instrument may be rectified.—

(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under subsection (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its



discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim."

16. As per the sub-section (1) of Section 26 of the Specific Relief Act through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not express the real intention, the parties may institute suit to have instrument rectified. The plaintiff has not sought any relief of rectification of the sale deed dated 19.06.1997. The suit without seeking such relief of rectification of the sale deed or any declaration regarding the contents of the said sale deed. The suit for the bare



relief of declaration and injunction against a registered document i.e. sale deed is not tenable.

17. As the plaintiff has pleaded fraud by defendant it is for him to establish the said fraud. The said sale deed dated 19.06.1997 is the registered document and to establish the contents of the said documents, the defendant need not lead any evidence to prove the terms of the said sale deed except producing the document itself in view of Section 91 of the Indian Evidence Act, 1872. The defendant has produced the sale deed at Ex.D.1. As the defendant has produced documents itself there is no need for him to give evidence to prove terms of the said sale deed in view of Section 91 of the Indian Evidence Act. The plaintiff who is disputing the extent of the land in said sale deed, which is one of the terms of the sale deed, the burden is on him to prove that the fraud has been played on him in mentioning extent of the property in the said sale deed.



18. The plaintiff in his plaint has stated that he is ill-literate and his eyes and ears are not working properly. He has not stated the said aspect in his evidence.

19. The trial Court and the first appellate Court on reading the evidence of the witness to the sale deed, have held that it is for the defendant to establish that contents of the sale deed were read over to the plaintiff at the time of registration of the document and the defendant has failed to establish the same. The trial Court and the first appellate Court erred in holding so since the burden of proving the fraud is on the plaintiff.

20. The defendant has contended that he is in possession of the property since 1982 and he has grown trees. The said aspect has been established by the Commissioner's report Ex.C-1 wherein it is shown that some trees exist in the said property. It is not the case of the plaintiff that he has grown the trees in the said property.



21. Considering all these aspects, it is held that the trial Court and the first appellate Court have erred in granting the relief of declaration and injunction in respect of 10-1 1/3 guntas of land even though the extent of entire property measuring 20-1 1/3 guntas of land is mentioned in the sale deed. Substantial question of law is answered accordingly.

22. In the result, the following:

ORDER

The appeal is allowed.

The judgments and decrees passed by the trial Court in O.S. No.72/1997 dated 23.07.2001 and the first appellate Court in RA No.77/2001 dated 16.02.2005 are set aside. The suit of the plaintiff in O.S. No.72/1997 is dismissed.

Sd/-
JUDGE

AM, AC & KMV
CT:BCK
List No.: 2 Sl No.: 1