IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 1562 OF 2021 (INJ)

BETWEEN:

SMT. VEERAMMA
SINCE DEAD BY LEGAL
REPRESENTATIVE

1. SMT. SIDDAMMA
D/O UDDANAIAH
W/O RUDRESHAIAH
AGED ABOUT 55 YEARS
R/A AMBALAGERE
DODDABELAVANGALA HOBLI
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT-561204

...APPELLANT

(BY SRI AKASH V.T., ADVOCATE)

AND:

SRI ESHWARAIAH
SINCE DEAD BY LEGAL REPRESENTATIVES

1. SMT. SIDDAMMA
W/O LATE ESHWARAIAH
AGED ABOUT 75 YEARS

2. SARVAMANGALAMMA
D/O LATE ESHWARAIAH
AGED ABOUT 50 YEARS

3. SMT. SAROJAMMA
D/O LAE ESHWARAIAH
AGED ABOUT 45 YEARS

RESPONDENTS NO.1 TO 3 ARE
RESIDING AT BANASHANKARI
KUNIGAL ROAD, TUMKUR-572103

ALSO AT AMBALAGERE
DODDABELAVANGALA HOBLI
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT-561004

…RESPONDENTS

(BY SRI SHANKARLINGAPPA NAGARAJ, ADVOCATE FOR
R1, C/R2 AND R3)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 06.03.2020 PASSED IN R.A.NO.10134/2016 (OLD NO.38/2015) ON THE FILE OF THE IV ADDL. DISTRICT AND SESSIONS JDUGE, DODDABALLAPURA.DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 30.06.2015 PASSED IN O.S.NO.403/2006 ON THE FILE OF THE PR. CIVIL JDUGE AND JMFC, DODDABALLAPURA.

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

JUDGMENT

This matter is listed for admission. I have heard the learned counsel for the appellant and also the counsel for the Caveator-respondent Nos.1 to 3.

2. The appellant herein has filed the suit in O.S.No.406/2006 seeking the relief of permanent injunction contending that property was purchased in the year 1956 by the husband of the plaintiff and property is in lawful possession

and enjoyment of the suit schedule property as on the date of the suit and also it is the contention that defendants are interfering with the possession of the plaintiff.

3. The defendant appeared and filed written statement denying the contention of the plaintiff contending that at no point of time plaintiff is in possession of the suit schedule property. The original owner of Sy.No.96 totally measuring 5 acres 30 guntas of Ambalagere Village was one late Channappa. The said Channappa has already alienated the said property in favour of defendant's father Gangappa under registered sale deed dated 20.05.1941. Ever since the date of purchase, the defendant's father was the absolute owner and possession of Sy.No.96 measuring 5.30 acres. After the death of father of defendant, the defendant is the absolute owner and in possession of the suit schedule property. The Trial Court having considered the material on record comes to the conclusion that plaintiff has not established his possession and dismissed the suit.

4. Being aggrieved by the said judgment and decree of the Trial Court, an appeal is filed in R.A.No.10134/2016

contending that Trial Court has committed an error in not relying upon the document particularly as on the date of filing of the suit, RTC extracts are standing in the name of the plaintiff/appellant and no document has been placed by the defendants to show that they are in possession of the suit property as on the date of filing of the suit. The plaintiff/Appellant also filed applications in I.A.Nos. VII and VIII under Order 41, Rule 27 of C.P.C. contending that total extent of 5 acres and 20 guntas of property was sold in favour of defendant's father in the year 1941 and also suit was filed by the original owner against the father of the defendants in O.S.No.397/1940 and the same was compromised on 29.5.1942, wherein a compromise was entered and he has categorically admitted that he is not having any right in respect of the suit schedule property and the property was sold in favour of the husband of the plaintiff in the year 1956 and also sought for permission to produce additional documents.

5. Learned counsel appearing for the appellant-plaintiff would vehemently contend that when applications are filed under Order 41, Rule 27 of C.P.C., the same was not considered and the First Appellate Court, while passing the

judgment, made a note before considering points for consideration that applications are filed but, no prayer was made in those applications seeking leave to adduce additional evidence. Therefore, no point for consideration is formulated regarding those applications or requirement of additional evidence and the very approach of the First Appellate Court is erroneous. When the applications are filed, even though there is no prayer seeking leave to adduce additional evidence and permission is sought to produce documents before the First Appellate Court, the First Appellate Court ought to have formulated the point whether the appellant-plaintiff has made out ground to allow the applications to produce additional documents, since those documents are necessary and the same is pleaded in the applications that those documents are necessary to consider the matter on merits. Hence, the very approach of the First Appellate Court is erroneous.

6. Per contra, learned counsel for the Caveator-respondent Nos.1 to 3 would vehemently contend that the First Appellate Court while considering the points for consideration i.e., point Nos.1 and 2, before assigning reasons, made it clear that no permission is sought to adduce additional evidence and

unless permission is sought to adduce additional evidence, the question of considering whether those documents are necessary or not does not arise. Learned counsel also would contend that the documents relied upon by the appellant is nothing but compromise decree and the compromise is very clear with regard to obtaining the sale deed and the very First Appellate Court considered all these material on record and passed the judgment and concurred with the finding of the Trial Court. Hence, it does not require any interference of this Court.

7. Having heard the learned counsel for the appellant and learned counsel for the Caveator-respondent Nos.1 to 3, no dispute with regard to the fact that entire property measuring 5 acres, 30 guntas was sold in favour of the vendor of the plaintiff and the appellant also not disputed the fact that earlier there was a sale deed in favour of the father of the defendant in the year 1941 and also sought for production of certified copies of the same in O.S.No.397/1940 before the First Appellate Court and the First Appellate Court, while considering the applications, instead of formulating the point whether those documents are necessary or not, comes to the conclusion that

no prayer is made in those applications seeking leave to adduce additional evidence. Hence, the question of considering the applications does not arise and the very approach of the First Appellate Court is erroneous and when the applications are filed to produce additional documents, the First Appellate Court ought to have considered whether those documents are necessary to decide the issue involved between the parties and whether it helps to consider the germane issues involved between the plaintiff and the defendants.

8. It is also important to note that suit is filed for the relief of bare injunction and not for declaration and only in order to establish the fact that there was compromise in the earlier suit between the original vendor and the father of the defendant, applications are filed to produce such documents. When such being the case, the First Appellate Court ought to have formulated the point and instead, made an observation that no prayer was made in those applications seeking leave to adduce additional evidence that the documents sought to be produced are necessary to consider the matter on merits. Whether the Court rejects or allows the applications and whether prayer is sought to adduce additional evidence is

immaterial, when permission is sought to adduce additional evidence to substantiate their case and the very approach of the First Appellate Court is erroneous and ought to have considered the applications. Hence, the judgment and decree of the First Appellate Court requires to be set aside and direction has to be given to the First Appellate Court to decide whether grounds are made out to allow the applications filed under Order 41, Rule 27 of C.P.C. and the First Appellate Court should not be too technical and reject the applications only on the ground that there is no prayer to adduce additional evidence and consider whether those documents are relevant to consider the case. Therefore, the First Appellate Court is directed to consider whether the appellant has made out any ground to consider the applications and the material available on record on merits and whether the Trial Court has committed an error in dismissing the suit.

9. In view of the discussion made above, I pass the following:

ORDER

(i) The appeal is allowed.

(ii) The impugned judgment and decree of the First Appellate Court is set aside and the

matter is remitted to the First Appellate Court to reconsider the same afresh along with applications filed under Order 41, Rule 27 of C.P.C. as observed hereinabove.

(iii) The parties and their respective counsels are directed to appear before the First Appellate Court on ***09.11.2023*** without expecting any notice from the First Appellate Court.

(iv) Even though the parties fail to appear before the Court, there is no need to issue notice to the parties which will cause delay in disposal of the matter.

(v) The suit is of the year 2006 and almost 17 years have elapsed. Hence, the First Appellate Court is directed to dispose of the appeal along with the applications within three months from the date of receipt of copy of this judgment.

Sd/-
JUDGE

AP,ST
List No.: 1 Sl No.: 60