

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1<sup>ST</sup> DAY OF DECEMBER, 2009

BEFORE

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

REGULAR SECOND APPEAL NO.57/2008

BETWEEN:

1. Sri. N.K.Ningegowda,  
S/o. Late Sri.Karigowda,  
Aged about 51 years.
2. Sri. N.N.Rajashekara,  
S/o. Sri. N.K.Ningegowda,  
Aged about 29 years.
3. Sri. N.Dhananjaya,  
S/o. Sri. N.K.Ningegowda,  
Aged about 27 years.

All are residents of  
Natanahalli Village,  
Akkihebbal Hobli,  
K.R. Pete Taluk,  
Mandya District - 571 426.

... APPELLANTS

(By Sri. B.Roopesh and Sri. M.K.Sandeep Advs.,)

AND :

Sri. Javaraiah,  
S/o. Late Sri. Channaiah,  
Aged about 74 years,  
R/o. Natanahalli Village,  
Akkihebbal hobli, K.R. Pet Taluk,  
Mandya District - 571 426.

... RESPONDENT

This RSA is filed under Section 100 of CPC against the Judgement & Decree dated: 5.11.2007 passed in R.A.No.103/2006 on the file of the Civil Judge, (Sr.Dn.) Krishnarajapet, dismissing the appeal and confirming the Judgment and Decree dated: 20.07.2006 passed in OS.No. 188/2003 on the file of the Civil Judge (Jr.Dn) & JMFC., K.R.Pet.

This appeal coming on for admission this day, the Court delivered the following:

#### JUDGMENT

Defendants are appellants. Respondent/plaintiff has filed a suit for permanent injunction contending that, he is the owner of the suit property having purchased the same under a registered sale deed from the sons of Patel Thimme Gowda, i.e, Shri.Shivaram Gowda and Shri. Krishne Gowda. The katha has also been mutated in the name of plaintiff. According to him, the property having delivered in pursuance of sale deed, he held and enjoyed by him and that he manufactured 30,000 bricks in the suit property by having a brick-kiln therein. He has also stated that, in addition, he has grown crops like horse gram and



ragi etc. in the suit property. According to him, the defendants who have no manner of right, title or interest, unnecessarily attempted to interfere with his possession and also lift the bricks, apart from the attempt to cut and remove the standing crops. Hence, suit for permanent injunction was filed in the Trial Court.

2. Appellants/defendants filed the written statement admitting that, plaintiff is in lawful possession and enjoyment of suit property and that he has grown the crops therein. However, they have denied that, the plaintiff has manufactured the bricks in the suit property and according to them, the vendors of plaintiff and defendants being close relatives, the defendants were allowed during the year 1998-99 to manufacture 25,000 bricks in the suit property by constructing of bricks-kiln therein. According to them, the bricks have been manufactured by them in the suit property and they are entitled to remove the same.



3. Based on the pleadings of the parties, the Trial Court framed the following issues:

- i) Whether the plaintiff proves that he was in possession and enjoyment of suit property as on the date of this suit?
- ii) Whether the plaintiff proves the alleged interference?
- iii) Whether the plaintiff proves that he is entitled for permanent injunction?
- iv) What order or decree?

4. Plaintiff deposed as P.W.1 and examined as P.W.2. Exs.P1 to P4 were marked in the evidence of plaintiff. For defendants, 1<sup>st</sup> defendant deposed as D.W.1, one of the plaintiff's vendor was examined as D.W.2 and three other witness were examined as D.Ws. 3 to 5. No documents were produced and marked. Appreciating the evidence on record with reference to rival contentions, learned trial Judge has held that, plaintiff is the absolute owner of the suit property and is in possession and enjoyment of the same and that defendants having no manner of right, are not entitled to interfere with the lawful possession and enjoyment of the suit property by

plaintiff nor are they entitle to remove the bricks. Hence the suit was decreed.

5. Aggrieved, defendants/appellants filed first appeal in the Court below. The findings of the Trial Court both on facts and in law, were challenged in the first appeal. Considering the rival contentions urged for consideration by learned counsel appearing for the parties, the following parties were raised for consideration:

- i) Whether the Trial Court erred in not framing proper issues?
- ii) Whether the Trial Court erred in not believing the oral evidence of D.W.1 to D.W.5 with regard to the bricks?
- iii) Whether the judgement and decree of the Trial Court calls for any modification at the hands of this court?
- iv) What order?

6. After re-examining the record and re-appreciating the evidence on record, the learned appellate Judge did not find any ground to interfere with the findings recorded by the Trial Court. The learned appellate Judge having re-



appreciated the evidence has arrived at the same conclusion as was arrived at by the learned trial Judge. As a result, the appeal was dismissed. Challenging the said decrees, this second appeal has been preferred.

7. Learned Counsel for the appellants contended that the judgements/decrees impugned herein are contrary to the material evidence on record and are opposed to S.38 of the Specific Relief Act and hence, substantial questions of law as proposed in the appeal memorandum arise for consideration. He submitted that the appeal may be admitted for hearing on the substantial questions of law formulated in the appeal memorandum. I do not find merit in the contentions.

8. Appellant do not dispute the fact that respondent has purchased the suit property on 21.05.2003. They also do not dispute the possession and enjoyment of the suit property by respondent/plaintiff. Their only case is that, the vendors of plaintiff had permitted them to manufacture bricks during the years 1998-99 and an account of the



permission so granted, they have manufactured 25,000 bricks which are lying on the suit property and that they are entitled to the same. The alleged manufacture of bricks is during the year 1998-99. The sale of suit property in favor of plaintiff is on 21.05.2003. Since the sale deed does not recite anything about the brick-kiln being in existence in the suit property either by the vendors or any third person, defendants have no right to remove the same. In view of S.8 of Transfer of Property Act, the sale of the property in favor of plaintiff includes all attachment to the suit property which was sold under the sale deed dated 21.05.2003. In the said view of the matter, the Courts below have correctly appreciated the evidence on record and their findings are neither perverse nor illegal to interfere in second appeal. There is concurrent finding on facts, which is supported by the admission of defendants and other evidence. Hence, no case arises for consideration in second appeal.



As a result, the second appeal is devoid of any substantial question of law and hence, stands rejected.

Sd/-  
JUDGE

Ksj/-