



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

REGULAR SECOND APPEAL NO. 1387 OF 2014 (DEC/INJ)

BETWEEN:

1. MR JEENARAJ
S/O VARADAPPAIAH
AGED ABOUT 51 YEAS
2. DHARMAPAL SINCE DECEASED BY HIS LRS
- 2(a) SMT PADMASHREE
W/O LATE DHARMAPAL
AGED ABOUT 56 YEARS
- 2(b) SRI VIDHYANANDA
S/O LATE DHARAMAPAL
AGED ABOUT 38 YEARS
- 2(C) SMT PADMAJA @ PADMAVATHI
D/O LATE DHARMAPAL
AGED ABOUT 41 YEARS

APPELLANTS 1 TO 2(C)
R/O SOMPURA VILLAGE
HALSOR POST
TARIKERE TALUK-577228.
CHIKMAGALUR DISTRICT.

...APPELLANTS

(BY SRI. UMESH B.N., ADVOCATE)

AND:

1. NAZEER AHAMED
S/O LATE MOHAMMED HAYATH





AGED ABOUT 68 YEARS
R/A KESARAGOPPA GATE
HALSOR POST
TARIKERE TALUK-577228.
CHIKMAGALUR DISTRICT

...RESPONDENT

(BY SRI. Y.S.SATHISH CHANDRA, ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 16.7.2014 PASSED IN R.A.NO.28/2008 ON THE FILE OF I ADDL. DISTRICT JUDGE, CHIKMAGALUR, PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 16.4.2008 PASSED IN O.S.NO.40/2004 ON THE FILE OF THE CIVIL JUDGE (SR.DN) & PRL. JMFC., TARIKERE.

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

JUDGMENT

1. The defendants in O.S.No.40/2004 who were the respondents in R.A.No.28/2008 are before this Court in second appeal seeking the following reliefs:

- a) *Set aside the judgment and decree dated 16th July 2014 passed by the 1st Additional District Court Chikmagalur in RA No.28/2008, and be pleased to confirm the dismissal of suit vide judgment and decree dated 16/04/2008 passed in OS No. 40/2004 by the Civil Judge (Sr.Dn) & PRL JMFC at Tarikere.*
- b) *Pass any such other orders/reliefs as deems fit under the facts and circumstances of the case.*



2. The suit in O.S.No.40/2004 had been filed by the respondent herein seeking for the following reliefs:
 - a) *For declaration to declare that the plaintiff is the absolute owner of the 'B' schedule property*
 - b) *For consequential relief of permanent injunction against the defendants, their men or agents, restraining them from trespassing or interfering with the peaceful possession and enjoyment of the "B" schedule property by the plaintiff and disturbing plaintiff's possession over the same.*
 - c) *For court costs and such other reliefs as this Hon'ble court may deem fit to grant.*
3. The aforesaid declaration was sought for in respect of 25 guntas of kharab land said to be abutting and forming part of land in Survey No.87 situated at Lakkavalli Hobli, Tarikeri Taluk, Bengaluru which measured 4 acres. Consequent to the relief for declaration of title, a relief for injunction restraining the defendants was sought for.
4. The trial Court vide its judgment dated 16.04.2008 dismissed the suit by holding that the plaintiff had not established any title over the alleged 25 guntas of kharab land and they have not even established the existence of the kharab land abutting and forming part of the land in



Survey No.87 and as such came to a further conclusion that there being no kharab land and there being no documents which had been produced to establish either a title or possession of a plaintiff the suit was not maintainable and as such dismissed the suit.

5. Challenging the same, the plaintiff filed an appeal in R.A.No.28/2008 the first appellate Court vide its order dated 16.07.2014 partly allowed the appeal granting an order of injunction restraining the defendants from interfering with the possession of the plaintiff as regard 20 guntas of land said to be kharab land situated on eastern side of Survey No.87.
6. The first appellate Court based the same on Ex.P8 being a survey sketch prepared by the surveyor indicating that the plaintiff was in possession of 20 guntas of land situated on the Eastern side of Survey No.87. It is challenging the same, the defendants are before this Court.



7. The submission of Sri.Narayanareddy, learned counsel for the appellant is that the First Appellate Court could not have granted a relief of injunction by relying on Ex.P8 which came into existence subsequent to filing of the suit. Ex.P8 refers to alleged kharab land situated on the eastern side when the basis of the claim made by the plaintiff in the suit was that the kharab land was situated on the Northern and southern side of the land purchased by the defendants which has been subsequently partitioned between defendant Nos.1 and 2. It is further contended that all the averments made by the plaintiffs being with regard to the alleged kharab land on the Northern and southern side and possessory right has been alleged in respect of this Northern and southern side and no averment has been made as regard either possession or interference with 20 guntas of land on the eastern side. The First Appellate Court ought not to have considered Ex.P8 to partly allow the appeal and ought to have dismissed the appeal.
8. The contention of the learned counsel for the respondent is that Ex.P8 would establish the possession of the



plaintiff in respect of 20 guntas of land. There being no right with the defendants either as regard to ownership or possession in respect of 20 guntas situated on the eastern side of Survey No.87, there can be no grievance of the appellant in respect of the said land.

9. Having heard both the counsels, I am of the considered opinion that there is no substantial question of law which arises for being framed or considered by this Court in this second appeal. Though there are divergent findings by the trial Court and the First Appellate Court, the finding is with respect to the fact of possession and not as regard to any legal issue. Any aspect which does not give rise to a substantial question of law, any divergence in respect of a finding of fact cannot give rise to a second appeal, which can only be restricted to one which rises a substantial question of law.
10. In the present appeal, the only grievance that could be made out of the appellants/defendants is that the claim of the plaintiff being as regard possessory right on Northern and Southern side there being no kharab lands situated



at Northern and Southern side, there may be a possibility of the plaintiff at a later point of time by relying on the judgment of the First Appellate Court in R.A.No.28/2008 rise a claim as regard to the land which is owned and possessed by the defendants.

11. This grievance or apprehension on part of the defendants/appellants would have no basis. Since, the first appellate Court has categorically held that the injunction is with respect to the 20 guntas situated on the eastern side of the land of the respondent/plaintiff of Survey No.87. The land of the appellants/defendants being situated on the western side of the land of the plaintiff/respondent. The defendants not having any right as regard any land situated on the eastern side of the land of the plaintiff, the plaintiff cannot have any grievance nor can the plaintiff assert any right on northern or southern side of the land of the appellants/defendants on the basis of any kharab land since the plaintiff has failed to establish any kharab land.



12. With the above observation, the appeal stands disposed at the admission stage.

Sd/-
JUDGE

HB
List No.: 1 Sl No.: 25