

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MARCH, 2010

BEFORE

THE HON'BLE Mr. JUSTICE K.L. MANJUNATH

REGULAR SECOND APPEAL No.760/2009

BETWEEN:

Venkateshappa since dead by L.Rs.

- a) Saraswathamma d/o Venkateshappa,
47 years,
 - b) susheelamma d/o Venkateshappa,
45 years,
R/at Palya village, Kasaba Hobli,
Srinivasapur Tq.
 - c) V.Gopalakrishna s/o Venkateshappa,
43 years,
 - d) Lakshamma d/o Venkateshappa,
41 years, R/at Ramakrishna Extension,
Srinivasapur Town, Srinivasapur Tq.
 - e) Manjunathareddy s/o
Venkateshappa, 39 years,
 - f) Narayanamma w/o Venkateshappa,
68 years,
- (a), (c), (e) and (f) are
R/o Volageranahalli village,
Kasaba Hobli, Srinivasapur Tq. ... APPELLANTS

(By Advocate Sri.A.Krishna Bhat)

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AND:

1. Patel Anjaneya Setty,
Since dead by L.Rs.

a) Srinivasaiah Setty s/o
Patel Anjaneya Setty,
61 years, R/o Volageranahalli
village, Kasaba Hobli,
Srinivaspur Tq.

2. Balappa s/o Govindappa,
51 years, R/o Volageranahalli
village, Kasaba Hobli.
Srinivaspur Tq.

.. RESPONDENTS

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This Regular Second Appeal is filed under Sec.100 of CPC against the judgment and decree dated 24.3.2009 passed in RA No.178/2008 on the file of II Addl. District Judge, Kolar, dismissing the appeal filed against the judgment and decree dated 27.6.2003 passed in OS No.135/1992 on the file of Civil Judge (Jr.Dn.) & JMFC., Srinivaspur.

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

J U D G M E N T

Appellant/plaintiff filed the suit for declaration of his title and for perpetual injunction in respect of two items of property viz., 1-09 acres of land situated in Sy.No.32/2

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and 3-21 acres of land in Sy.No.38/1 of Volageranahalli of Srinivasapura Tq., Kolar Dist. on the file of Prl. Munsiff at Kolar in O.S.No.3/1990, later on same was transferred to the Court of Civil Judge (Jr.Dn.), Srinivasapur and re-numbered as OS 135/1992. Defendant contested the suit dispute only in regard to 10 guntas of land in Sy.No.32/2 of Volageranahalli village on the ground that one Muniyamma wife of Balappa had sold the same to the father of 1st defendant, late Patel Muniswamy Shetty, under registered sale deed dated 26.6.1950 and requested the court to dismiss the suit in regard to the said extent. The suit was decreed except to an extent of 10 guntas. Against which the appellant filed an appeal before the District Judge, Kolar which appeal also came to be dismissed confirming the judgment and decree of the trial court. Being aggrieved by the concurrent findings of the courts below, present appeal is filed.

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2. Heard the counsel for the appellant.

3. Admittedly, plaintiff and 1st defendant are claiming title through a common vendor. Sale deed in respect of the father of the 1st defendant was earlier to the sale deed of the plaintiff. Therefore, this court is of the opinion that the courts below were justified in rejecting the prayer of the plaintiff in regard to 10 guntas of land which was acquired by the father of the 1st defendant from the vendor of the appellant-plaintiff much prior to the execution of the sale deed in favour of the plaintiff. Even if the plaintiff's sale deed shows the disputed extent of 10 guntas, plaintiff would not acquire any right or title as his vendor has no right to alienate 10 guntas of land since vendor had about to sold the same extent in favour of the father of the 1st defendant. In the circumstances, this court is of the opinion that no substantial questions of law arise in this appeal. Counsel for the appellant

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submits atleast court below should have granted relief of injunction. So far as this point is concerned, it is for the plaintiff to establish his lawful possession in order to get a decree for perpetual injunction. When the appellant is unable to establish his lawful possession over an immovable property, no court can grant injunction against the true owner. Accordingly, the said ground is also rejected.

4. Accordingly, the appeal is dismissed.

Sd/-
JUDGE

R/290310