

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5<sup>TH</sup> DAY OF AUGUST 2009

BEFORE

*THE HON'BLE MR.JUSTICE S. ABDUL NAZEER*

*REGULAR FIRST APPEAL NO.943/2002 (DEC)*

*C/W RFA.CROB.NO.50/2004*

*& RFA NO.191/1997.(DEC)*

*RFA NO.943/2002*

Between:

Sri H. Nagaraj,  
S/o late H.Subba Rao,  
Aged about 79 years,  
No.202, Jayalakshmi Apartments,  
No.57/1, 4<sup>th</sup> Main, 18<sup>th</sup> Cross,  
Malleshwaram,  
Bangalore – 560 055.

.... Appellant.

(By Smt. H.R. Vasuda, Adv.)

And :

- 1 Sri A. Narayanamurthy.
- 2 Sri A. Adiramaiah.
- 3 Sri A. Vishwanatha Gupta.
- 4 Sri A. Kanakaraju.

5 Sri A. Nagesh.

R1 to R5 are sons of K.Ashwatha-  
Narayana Setty, major,  
R/a No.1104, 2<sup>nd</sup> Cross,  
Avalahalli Main Road,  
Near Opposite Srinidhi Vidya Mandira,  
Srinagar, Bangalore – 560 050.

6 Bangalore Development Authority,  
Kumara Park West,  
Bangalore – 560 020,  
Reptd. By its Commissioner.

7 Commissioner,  
Bangalore City Corporation,  
Narasimharaja Square,  
Bangalore – 560 002.

.... Respondents.

(By Sri U. Abdul Khader, Adv. for R2  
Sri B.V. Muralidhar, Adv. for R7  
Sri B.S. Subbaramaiah, Adv. for R1 to R5)

**RFA.CROB.NO.50/2004**

Between:

- 1 Sri A. Narayanamurthy.
- 2 Sri A. Adiramaiah.
- 3 Sri A. Vishwanatha Gupta.

4 Sri A. Kanakaraju.

5 Sri A. Nagesh.

Cross Objectors 1 to 5 are sons of  
K.Ashwathanarayana Setty, major,  
R/a No.1104, 2<sup>nd</sup> Cross,  
Avalahalli Main Road,  
Near Opposite Srinidhi Vidya Mandira,  
Srinagar, Bangalore – 560 050. .... Cross objectors.

(By Sri Yoganarasimha, Adv.)

And:

1 Bangalore Development Authority,  
Kumara Park West,  
Bangalore – 560 020,  
Reptd. By its Commissioner.

2 Commissioner,  
Bangalore City Corporation,  
Narasimharaja Square,  
Bangalore – 560 002.

3 Sri H. Nagaraj,  
S/o late II.Subba Rao,  
Aged about 82 years,  
No.202, Jayalakshmi Apartments,  
No.57/1, 4<sup>th</sup> Main, 18<sup>th</sup> Cross,  
Malleshwaram,  
Bangalore – 560 055. .... Respondents.

(By Sri U. Abdul Khader, Adv. for R1 & R2  
Smt. H.R. Vasuda, Adv. for R3)

**RFA NO.191/1997**

Between:

Sri H. Nagaraj,  
S/o late H.Subba Rao,  
Aged about 70 years,  
Permanently r/a No.202,  
Jayalakshmi Apartments,  
No.57/1, 4<sup>th</sup> Main, 18<sup>th</sup> Cross,  
Malleshwaram,  
Bangalore – 560 055.

.... Appellant.

(By Smt. H.R. Vasuda, Adv.)

And :

- 1 Sri C.R. Seshapani,  
Major, No.207/4, 3<sup>rd</sup> Cross,  
1<sup>st</sup> Main, Hanumanthanagar,  
Bangalore – 560 019.
- 2 Sri K. Ashwathanarayana Setty,  
Since dead by his L.Rs.
- 2(a) A. Narayanamurthy.
- 2(b) Sri A. Adiramaiah.
- 2(c) Sri A. Viswanatha Gupta.
- 2(d) Sri A. Kanakaraju.
- 2(e) Sri A. Nagesh.

R2(a) to R2(e) are sons of K. Ashwatha-  
Narayana Setty, major,  
R/a No.1104, 2<sup>nd</sup> Cross,  
Avalahalli Main Road,  
Near Opposite Srinidhi Vidya Mandira,  
Srinagar, Bangalore – 560 050. .... Respondents.

{By Sri B.S . Subba Ramaiah, Adv. for R2(a) to R2(e)}

Regular First Appeal No.943/2002 is filed under Order 41 Rule 1 read with Section 96 of CPC against the judgment and decree dated 15.6.2002 in O.S.No.8198/1997 on the file of the XXVII Addl. City Civil Judge, Bangalore, partly decreeing the suit for declaration, etc.

RFA Cross Objection No.50/2004 is filed under Order 41 Rule 22 read with Section 96 of CPC against the judgment and decree dated 15.6.2002 passed on findings on issues 1 and 2 in O.S.No.8198/1997 on the file of the XXVII Addl. City Civil Judge, Bangalore, partly decreeing the suit, etc.

Regular First Appeal No.191/1997 is filed under Order 41 Rule 1 read with Section 96 of CPC against the judgment and decree dated 4.12.1996 in O.S.No.776/1981 on the file of the 1<sup>st</sup> Addl. City Civil Judge, Bangalore, dismissing the suit for declaration and possession, etc.

These Regular First Appeals and RFA.Cross Objection coming on for Orders this day, the Court delivered the following:

**JUDGMENT**

In RFA No.943/2002, the appellant has challenged the judgment and decree in O.S.No.8198/1997 dated 15.6.2002 on the file of the 27<sup>th</sup> Additional City Civil Judge, Bangalore. The appellant is defendant No.1, respondent Nos.1 to 5 are the plaintiffs and respondent Nos.6 and 7 are defendant Nos.2 and 3 in the said suit. The suit filed by the plaintiffs was for declaration that the sale deed dated 23.3.1998 executed by the Bangalore Development Authority in favour of the appellant is void and illegal. The court below has decreed the suit in part and held that the sale deed in question is void.

2. The plaintiffs have filed RFA.Cross Objection No.50/2004 against the partial dismissal of the suit in O.S.No.8198/1997 dated 15.6.2002.



3. In RFA No.191/1997, the appellant has challenged the judgment and decree dated 4.12.1996 in O.S.No.776/1981 on the file of the 1<sup>st</sup> Addl. City Civil Judge, Bangalore. The appellant is the plaintiff and the respondents are the defendants in the said suit. In the said suit, the appellant/plaintiff has sought for a declaration that he is the owner of the suit schedule property, which has been dismissed by the court below.

4. The parties to the aforesaid appeals and cross objection are common and the subject matter of both the suits is also common.

5. When the matter is taken up for orders today, learned Counsel for the parties submit that the matter has been amicably settled between the contesting parties. They have filed a joint memo reporting the terms of settlement, which are as under:



**"JOINT MEMO FILED BY APPELLANT  
AND R1 TO R5"**

Legal Representatives of the 2<sup>nd</sup> respondent submit as under:

Claiming to be the owner in possession of the site No.30, formed in Sy.No.48/3, Gavipuram Village, bearing B.D.A. site No.421, the appellant filed O.S.No.776/1991 against the Seshapani and Aswathanarayana Setty, the second defendant claiming that a site was belonging to Seshapani who sold the same to second defendant. In the meanwhile, CITB, had acquired the land for formation of the Hanumanthanagar Extension. The same layout had been transferred to the Corporation of the City of Bangalore. It was asserted that the site bearing No.32 (revenue) site No.421, in BDA records are one and the same.

Whereas, the irregular construction erected by Aswathanarayana Setty was regularised after area came into Municipal Administration of the Corporation of the City of Bangalore and there was serious dispute both as to title and possession of the site. While the 2<sup>nd</sup> respondent and after his death his



legal heirs continue to be in possession of the built house.

Whereas, O.S.No.776/1991 came to be dismissed on 4.12.1996 inter alia holding that the plaintiff is not entitled for declaration and possession.

Whereas, the appellant filed the RFA No.191/1997 which is pending and

Whereas, in the meanwhile, the Bangalore Development Authority executed a sale deed covering site No.421 in favour of the appellant which act was challenged by the respondent in O.S.No.8198/1997 impleading the appellant. BDA, Bangalore Mahanagara Palike, etc., which came to be decreed on 15.6.2002, and thus the sale deed in favour of the appellant is annulled, and

Whereas, both parties viz., appellant and 2<sup>nd</sup> respondent has noticed cloud over their title to property claimed by them and,



Whereas, the appellant has preferred R.F.A.No.943/2002 against the judgment in O.S.No.8198/1997 which RFA is pending and whereas, the respondents i.e. A.Narayana Murthy and others have also filed cross objections No.50/2004 in RFA No.943/2002.

Whereas, well wishers of both parties attempted to settle the matter in dispute between them and thus, negotiated a settlement the terms thereof are:

The respondents (A.Narayana Murthy) and his 4 brothers i.e. all children of late K.Aswathanarayana Setty) have received a sum of Rs.41,00,000/- lakhs (Rupees Fortyone lakhs only) from R.Nagaraj, the prospective purchaser paid on behalf of the appellant and thereby give up their claim, possession or any other conveyable title in favour of the appellant and acquit themselves of all their rights in as much as R.Nagaraj, has agreed to buy the property in question from H.Nagaraj, appellant and thus H.Nagaraj needs conveyable title to the property.



It is reported that H.Nagaraj also has agreed to sell his interest in the said site to R.Nagaraj, for a consideration of Rs.45,00,000/- (Rupees Fortyfive lakhs only) in favour of R.Nagaraj.

To vest conveyable title of the property in H.Nagaraj, the appellant, the 2<sup>nd</sup> respondent in withdrawal of all their claims, concedes the claims of H.Nagaraj. The respondent Nos.1 to 5 in token of accepting the arrangement above have agreed to be consenting attestors to the sale deed to be executed by the appellant H.Nagaraj.

The claim to property being self acquired of late Aswathanarayana Setty, grand children of Aswathanarayana Setty, have no right over the said property.

Parties pray recording the above, the judgments and decrees in O.S.No.776/1991 dated 4.12.1996 on the file of the City Civil Judge, and in O.S.No.8198/1997 dated 15.6.2002 passed by CCH No.9 Bangalore, be set aside and O.S.No.776/1991 be decreed and O.S.No.8198/1997 be dismissed with no

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costs. Consequently, both these appeals viz., RFA No.943/2002 and RFA No.191/1997 be allowed in the interest of justice and equity.”

6. It is evident from the joint memo that the contesting parties have signed the same. Having heard the learned Counsel for the parties, I am of the view that the compromise entered into between the parties is lawful, just and reasonable.

7. In the result, I pass the following:

**ORDER**

I. RFA No.943/2002 and RFA No.191/1997 are disposed of in terms of the joint memo.

II. Consequently, the judgment and decree in O.S.No.776/1981 dated 4.12.1996 on the file of the 1<sup>st</sup> Additional City Civil Judge, Bangalore, is set aside and the suit filed by the plaintiff therein stands decreed.

III. Similarly, the judgment and decree in O.S.No.8198/1997 dated 15.6.2002 on the file of the 27<sup>th</sup> Additional City Civil Judge,



Bangalore is set aside and the suit filed by the plaintiffs therein stands dismissed.

IV. In the light of the compromise entered into between the parties, Sri Yoganarasimha, learned Counsel appearing for the cross objectors in RFA Crob.No.50/2004 does not press the cross objection and it is accordingly dismissed as not pressed.

V. Draw the decree accordingly. No costs.

**Sd/-**  
**Judge**

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