

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 15<sup>TH</sup> DAY OF JUNE 2016

BEFORE

THE HON' BLE MRS JUSTICE B.V.NAGARATHNA

RSA NO 2239 OF 2012

BETWEEN

RAMAIAH S/O LATE KEMPAIAH  
SINCE DEAD BY HIS LRS

1. SMT JAYAMMA W/O LATE RAMAIAH  
AGED ABOUT 64 YEARS  
R/O DONIKANA BELUR ROAD,  
CHIKMAGALUR CITY - 577101.

2.SURESH BABU  
S/O LATE RAMAIAH  
AGED ABOUT 36 YEARS  
R/O DONIKANA BELUR ROAD  
CHIKMAGALUR CITY - 577101

3.HARISH BABU  
S/O LATE RAMAIAH  
AGED ABOUT 31 YEARS  
R/O DONIKANA BELUR ROAD  
CHIKMAGALUR CITY - 577101.

4.SMT MADHUMATHI  
W/O SIDDARAJU  
AGED ABOUT 44 YEARS  
R/O PURLENI ARSIKERE TALUK  
HASSAN DISTRICT - 573103.

5.SMT SMITHA W/O GANGADHAR  
AGED ABOUT 42 YEAS  
R/O HALEBEEDU POST,  
BELUR TALUK, HASSAN DISTRICT

... APPELLANTS

(BY SRI. VIGHNESHWAR S SHASTRI,  
SRI.VINOD GOWDA &  
SMT.SANDHYA U. PRABHU. ADVS.)

**AND**

SATHYANARAYANA RAJU,  
S/O LATE VENKATARAJU  
SINCE DEAD BY HIS LRS :

1. SMT PADMAVATHI,  
W/O LATE SATHYANARAYANARAJU  
AGED ABOUT 58 YEARS  
KARTHIKERE VILLAGE AND POST  
CHIKMAGALUR TALUK AND  
DISTRICT - 577101

2.HEMARAJU S/O VENKATARAJU  
AGED ABOUT 36 YEARS  
KARTHIKERE VILLAGE AND POST  
CHIKMAGALUR TALUK AND  
DISTRICT - 577101.

3.LAXMANARAJU S/O VENKATARAJU  
AGED ABOUT 61 YEARS  
KARTHIKERE VILLAGE AND POST  
CHIKMAGALUR TALUK AND  
DISTRICT - 577101.

4.DODDARAJU S/O VENKATARAJU  
AGED ABOUT 56 YEARS  
KARTHIKERE VILLAGE AND POST  
CHIKMAGALUR TALUK AND

DISTRICT – 577101.

5.SMT GAYATHRI W/O MANJIAIAH  
AGED ABOUT 39 YEARS  
R/O NO 29, OPP PEPSI GODOWN  
MANJUNATHA NAGARA,  
MANJUNATHA NILAYA  
BANGALORE 73.

6. H.M. NAGARAJ, ADVOCATE,  
S/O LATE H.C.MALLAPPA,  
71 YEARS, SHIVASHAKTHI NILAYA,  
BELUR ROAD, CHICKMAGALUR – 577101.

... RESPONDENTS

(BY MISS. ANUSHA, ADV.  
FOR A MADHUSUDHANA RAO, ADVOCATE)

RSA FILED U/S 100 OF CPC., AGAINST THE  
JUDGMENT & DECREE DATED:24.9..2012 PASSED IN  
R.A.NO.60/2008 ON THE FILE OF THE ADDITIONAL  
DISTRICT JUDGE, CHIKMAGALUR, DISMISSING THE  
APPEAL AND CONFIRMING THE JUDGMENT AND DECREE  
DATED:4.9.2008 PASSED IN OS.NO.51/2001 ON THE FILE  
OF THE CIVIL JUDGE (SR.DN) CHIKMAGALUR ETC.

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

### JUDGMENT

Appellants/plaintiffs have preferred this Regular  
Second appeal, assailing judgment and decree passed in  
R.A.No.60/2008, dated 24.9.2012 by the Additional  
District Judge at Chickmagalur, by which the judgment and

decree of the Court of the Civil Judge (Sr.Dn) at Chickmagalur, dated 4.9.2008 has been confirmed.

2. For the sake of convenience, the parties herein shall be referred to, in terms of their status before the trial Court.

3. The original plaintiff filed the suit seeking the relief of declaration that he is the absolute owner in possession of the suit schedule property and for a consequential relief of permanent injunction against the defendants from interfering with the suit property and also to set aside the findings in HRC.4/1994, on the file of the Addl. Munisiff, Chickmagalur, holding that the defendants are the landlords and that the plaintiff is the tenant of the suit schedule property, described as a thatched house measuring country tiled house with bamboo roofing measuring in all 13'x44', bearing municipal Assessment No.1049/680 morefully described in the schedule.

4. According to the plaintiff, the suit property initially belonged to one Smt. Mallamma, who had married Hanumanthappa. They had no male heir, but had a daughter by name Lakshamma. Lakshamma had a son who is the plaintiff. Plaintiff is having a house property towards north of the schedule property. Mallamma pre-deceased Hanumanthappa and the mother of plaintiff - Smt.Lakshamma had also died much earlier. Therefore, plaintiff was brought up by his grand-parents namely, Hanumanthappa and Mallamma. Hanumanthappa died on 5.12.1964. Prior to that Hanumanthappa had bequeathed suit schedule property to the plaintiff and Kamalamma under a registered Will dated 24.12.1959. Thereafter, plaintiff constructed a RCC building by demolishing the old structure. Hanumanthappa was the only heir of Mallamma, who had bequeathed the suit property under registered Will dated 24.12.1959. Plaintiff was working in Mysore Coffee Curing Works, Chickmagalur, till 1976 and he took voluntary retirement. Thereafter, plaintiff occupied the suit property and constructed the R.C.C. building in

the adjoining site. Plaintiff has lost the original Wills stated to have been executed by Hanumanthappa while transporting his belongings from Mysore Coffee Curing Works' Quarters to the schedule property. That plaintiff was not a tenant of the suit property at any point of time. The defendants by playing fraud and on the basis of a false geneological tree claimed that the plaintiff is a tenant under them on a monthly rent of Rs.35/-. The defendant filed HRC. No.4/94 on the file of the Additional Civil Judge (Jr.Dn) at Chickmagalur. Plaintiff contended that there was no relationship of landlord and tenant in the said petition, but the said judge had allowed the HRC petition and ordered eviction of the plaintiff on the ground that plaintiff had not proved the Will in his favour. That the rent control proceedings are summary in nature and that serious questions of title regarding the schedule property were not determined, but the said court held that the plaintiff was the tenant under the defendants. The decision rendered by the Rent Control Court is not valid in law. The said court could not have held that the defendants are the owners of

the suit property. Hence, the finding of the Rent Control Court is without jurisdiction. Plaintiff is the owner of the suit property in possession of the same and that the defendants are attempting to set up title for themselves. Hence, the suit was filed seeking declaration and permanent injunction.

5. In response to the suit summons and court notices, defendants appeared through their counsel and filed their written statement. Defendant No.1 filed his written statement which was adopted by defendant Nos.2 and 3. In the written statement, it is admitted that the suit schedule property belonged to Mallamma, but the further averments are that Mallamma had married Hanumanthappa and they had a daughter, by name Lakshmamma and that the plaintiff is the son of Lakshmamma and that Lakshmamma had a foster daughter by name Kamalamma are denied. While denying other allegations, it is contended that Hanumanthappa had not executed any Will dated 24.12.1959 bequeathing

site measuring 17' x 44' to the plaintiff or to Kamalamma. It is contended that the findings given in HRC 4/1994 are correct and proper. It is further contended that the Mallamma –the original owner of the property was the sister of grand father of the defendants. One Nagaraju and his wife Lakshmamma had a son by name Mariraju and daughter by name Mallamma. Mallamma had never married in her life time. The said Mariraju, brother of Mallamma, had two sons and a daughter namely, Venkataraju, Thirumalaraju and Venkatamma. The said Venkataraju had three sons i.e. defendants 1 to 3. Another son of Mariraju namely, Thirumalaraju had died leaving behind three daughters namely, Smt.Lakshmamma, Mariyamma and Bhagyamma. Among them, Lakshmamma died unmarried but the other two daughters i.e. Mariyamma and Bhagyamma had been married and living with their respective husbands. These two daughters relinquished their rights in the suit property to defendant No.1. Since Mallamma died issueless, defendants became legal heirs of Smt. Mallamma. After



her death, defendants leased the suit schedule property to the plaintiff on a monthly rent of Rs.30/- which was enhanced to Rs.35/- later. At the request of the defendants, plaintiff was paying municipal taxes by deducting the same in monthly rent. HRC 4/1994 was filed by defendants against the plaintiff for recovery of vacant possession of the suit property when plaintiff failed to pay the rent and that proceeding ended in the eviction of the plaintiff. Being unsuccessful in those proceedings, plaintiff has filed the present suit on the basis of a concocted Will and that the plaintiff has no right title and interest in the suit property. Therefore, defendants sought dismissal of the suit.

6. On the basis of the aforesaid pleadings, the trial court framed the following issues for its consideration;

*"1) Whether the plaintiff proves that he is the owner of schedule premises?*

*2) Whether the finding of the HRC Court is not binding on plaintiff?*

*3) Whether the plaintiff proves that he is entitled for the relief sought?*

*4) Whether the defendants prove that the suit is not maintainable in law?*

*5) Whether the defendants prove that court fee paid is sufficient?*

*6) What decree or order?"*

7. During the pendency of the suit, plaintiff died and his legal heirs were brought on record. In order to substantiate their case, plaintiff examined two witnesses and they produced twenty three documents which were marked as Ex.P.1 to Ex.P.23. Defendants let in the evidence of two witnesses as D.W.1 and D.W.2. They produced thirty nine documents which were marked as Ex.D.1 to Ex.D.39. On the basis of the said evidence, the trial court answered issue Nos.1 to 3 in the negative, issue Nos.4 and 5 in the affirmative and dismissed the suit by its judgment and decree dated 4.9.2008. Being aggrieved by the dismissal of the suit, the legal heirs of the plaintiff

filed R.A. No.60/2008 before the First Appellate Court, which on hearing the learned counsel for the parties framed the following points for its consideration;

*" 1) Whether the appellants have made out a valid ground to set aside the judgment and decree passed in O.S.No.51/2001 dated 4.9.2008?*

*2) Whether the appellants have made out a valid ground to interfere with the findings given by the trial Court?*

*3) What order Order?"*

It answered point Nos.1 and 2 in the negative and dismissed the appeal by confirming the judgment and decree of the trial court. Being aggrieved by the judgment of the First Appellate Court, the legal heirs of the original plaintiff have preferred this Regular Second Appeal.

8. I have heard learned counsel for the appellants and learned counsel for respondent Nos.1 to 4 and 6. Respondent No.5 is served and unrepresented.

9. Appellants' counsel submitted that the courts below were not right in dismissing the suit of the original plaintiff. He contended that the plaintiffs though produced Ex.P.1 and Ex.P.2 being the Will executed by Hanumanthappa, husband of Mallamma, the original owner of the suit property, the Will may not have been proved in accordance with law, nevertheless the plaintiff was entitled to succeed to the suit schedule property as the grand son of Mallamma. He contended that Mallamma and Hanumanthappa had a daughter by name Lakshamma. Plaintiff is the son of Lakshamma, who had pre-deceased Mallamma. Plaintiff was brought up by his grand parents i.e. Mallamma and Hanumanthappa and therefore as their legal heir, he was entitled to succeed to the suit schedule property, even if for a moment it is stated that the Will was not proved in accordance with law. He further contended that the findings given in the eviction proceedings could not have been the basis for coming to any conclusion in the matter. In the present case, as the plaintiff had produced several documents in order to prove

that he was entitled to succeed to the suit schedule property as an heir of Mallamma and Hanumanthappa, the judgment and decree of the trial court dismissing the suit which has been affirmed by the First Appellate Court are incorrect. He further contended that substantial questions of law would arise in this appeal and that the appeal may be admitted for a detailed hearing.

10. Per contra, learned counsel for the respondents 1 to 4 and 6 supporting the judgment and decree of the First Appellate Court which has affirmed the judgment and decree of the trial court contended that though voluminous evidence has been produced by the plaintiff, there is no piece of evidence to come to a conclusion that Mallamma was married to Hanumanthappa and that the plaintiff was their grandson through Lakshamma. She contended that the suit schedule property no doubt belonged to Mallamma who was the sister of the grand father of the defendants. Mallamma, was not married and she had no issues, she died. The defendants were entitled to succeed to her

estate. The courts below have rightly come to the said conclusion not based solely on the finding given in the eviction proceedings filed by the defendants against the plaintiff earlier, but independently on the basis of the evidence on record. Learned counsel contended that in the absence of there being any finding in favour of the appellant to the effect that he was the grand-son of Mallamma and therefore entitled to succeed to the suit schedule property, the courts below were right in dismissing the suit and that no substantial question of law would arise in this appeal.

11. Having heard the learned counsel for the parties and on perusal of the material on record as well as the original records, it is noted that the suit schedule property being the property of Mallamma has been admitted by both sides. However, the controversy is with regard to succession to the said property. In this regard, plaintiff has relied upon Ex.P.1 and Ex.P2 stated to be the Wills of Hanumanthappa executed as husband and successor to

late Mallamma, in favour of the plaintiff bequeathing the said property to him. Ex.P.1 and Ex.P.2 have not been proved in accordance with law inasmuch as no attesting witness has been examined. In fact, even in H.R.C.No.4/1994 filed by the defendants against the plaintiff herein, the Will was not proved. In fact, in that proceeding there is a finding that there was no material to come to a conclusion that Hanumanthappa had succeeded to the estate of Mallamma including the suit property as her husband.

12. Be that as it may. The trial Court has considered the evidence produced by the plaintiff and has come to a conclusion that even in the absence of the Will of Hanumanthappa being proved, there was no material to come to a conclusion that Hanumanthappa was indeed the husband of Mallamma who had succeeded to her estate under Section 15(2) of the Hindu Succession Act, 1956. In that regard, the defendants produced the pleadings and the judgment in HRC. No.4/1994 and also the certified

copy of the order passed in HRRP No.779/2000 by this court to contend that in those proceedings this Court had also confirmed the finding that the plaintiff was a tenant of the suit schedule property. Apart from that, certified copy of the judgment in O.S. No.211/1993 has been produced as Ex.D.35, which was a suit filed by the plaintiff against respondent No.6 herein Sri. H.M.Nagaraj. That suit was dismissed by judgment and decree dated 20.7.1996 against which R.A. No.89/96 was filed by the legal representatives of the plaintiff, the said appeal was also dismissed by judgment and decree dated 4.8.2003. The judgment and decree passed in R.A. No.89/96 is produced as Ex.D.37. In that judgment the issues raised in O.S.No.211/1993 has been extracted as under;

*" 1) Whether the plaintiff proves that he is the owner and in lawful possession of the suit schedule property as on the date of the suit?*

*2) Whether the plaintiff further proves that the defendant has encroached upon 2' of the land in*



*schedule property and put up a staircase by violating the sanctioned plan?*

*3) Whether the plaintiff further proves that the defendant has put up the stair case over the suit schedule property and thereby has made an ariel encroachment of the suit schedule property?*

*4) Whether the plaintiff further proves that the defendant kept two windows on the northern side of his property by violating the plan?*

*5) Whether the plaintiff is entitled to permanent injunction as prayed for?*

*6) Whether the plaintiff is entitled for mandatory injunction as prayed in the plaint?*

*7) Whether the defendant proves that he and his predecessors in title have been in continuous possession and enjoyment of 2' open space from time immemorial between the plaint schedule property and northern wall of his residence of the house and perfected his right over this portion of property by virtue of adverse possession?*

8) *What order or decree?*

The issues were answered as under:

*Issue No.1 : In the negative ;*

*Issue No.2 : In the negative ;*

*Issue No.3 : In the negative ;*

*Issue No.4 : In the negative ;*

*Issue No.5 : In the negative ;*

*Issue No.6 : In the negative ;*

*Issue No.7 : In the negative ;*

*Issue No.8 : As per the final order. "*

13. In R.A.No.89/1996, the First Appellate Court had raised the following points for its consideration;

*" 1) Whether the appellant has proved the alleged encroachment of 2' and also the alleged ariel encroachment by the defendant over his property?*

*2) Whether the appellant has proved that respondent has violated the approved plan and building licence?*

*3) Whether the appellant is entitled for mandatory and permanent injunctions sought by him?*

*4) Whether the judgment and decree of the trial court needs any interference?*

*5) What order?*

It answered the said points as under;

*Point No.1: In the negative ;*

*Point No.2 : In the negative ;*

*Point No.3 : In the negative ;*

*Point No.4 : In the negative ;*

*Point No.5 : As per the final orders "*

Consequently, the appeal filed by the appellants herein, was dismissed. Therefore, in two earlier proceedings, the right, title and interest of the plaintiff vis-à-vis suit schedule property have not been established for the reason that the plaintiff had failed to prove that Hanumanthappa was the husband of Mallamma who had succeeded to her estate including the suit schedule

property on her death. Therefore even in the absence of Ex.P.1 and Ex.P2, the Will of Hanumanthappa not being proved in the suit out of which the present appeal arises and in the absence of the relationship between Hanumanthappa with Mallamma being established and consequently the relationship of plaintiff with Mallamma has also not been established. The courts below were right in holding that no decree for declaration of title in favour of the plaintiff could be granted. Consequently, the other reliefs were also rejected. The First Appellate Court confirmed the judgment and decree of the trial court. I do not find any error or infirmity in the same. In my view, no substantial question of law would arise in this appeal.

14. The appeal is hence dismissed. Parties to bear their respective costs.

Sd/-  
**JUDGE**

Msu