



**NC: 2024:KHC-D:6529**  
**RSA No. 100237 of 2024**

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 18<sup>TH</sup> DAY OF APRIL, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR**

**REGULAR SECOND APPEAL NO. 100237 OF 2024 (DEC/INJ)**

**BETWEEN:**

BHEEMAPPA S/O. YAMANAPPA WALIKAR  
SINCE DEAD THROUGH HIS LRS

1. HANAMAVVA W/O. BHEEMAPPA WALIKAR,  
AGE: 70 YEARS, OCC: AGRICULTURE,  
R/O: CHIKKYARANAKERI, TQ. HUNGUND,  
DIST: BAGALKOT - 587112.
2. SANGAVVA W/O. FAKIRAPPA YARANKERI,  
AGE: 60 YEARS, OCC: AGRICULTURE,  
R/O: CHIKKYARANAKERI, TQ. HUNGUND,  
DIST: BAGALKOT - 587112.
3. MUDIYAVVA W/O. BHEEMAPPA SANGONDI,  
AGE: 55 YEARS, OCC: COOLIE,  
R/O: GULEDGUDDA, TQ. BADAMI,  
DIST. BAGALKOT - 587203
4. MUTTAPPA S/O BHEEMAPPA WALIKAR,  
AGE: 53 YEARS, OCC: AGRICULTURE,  
R/O: CHIKKYARANAKERI, TQ. HUNGUND,  
DIST. BAGALKOT - 587112.
5. GYANAPPA S/O. BHEEMAPPA WALIKAR,  
AGE: 48 YEARS, OCC: AGRICULTURE,  
R/O: CHIKKYARANAKERI, TQ. HUNGUND  
DIST. BAGALKOT - 587112.
6. YAMANAVVA W/O. BASAPPA NAIKAR,  
AGE: 26 YEARS, OCC. COOLIE,  
R/O ADAGAL, TQ. BADAMI,  
DIST. BAGALKOT - 587201.

...APPELLANTS

(BY SRI. SANTOSHKUMAR G.RAMPUR, ADVOCATE)





**AND:**

1. SMT. HANAMAVVA W/O. BASAPPA  
ALIYAS BASANAGOUDA NARASAPPAVAR,  
AGE: 81 YEARS, OCC: HOUSEHOLD WORK,  
R/O: CHIKKAYARANKERI, TQ. HUNGUND,  
DIST. BAGALKOT - 587112.
2. SMT. MUTTAVVA W/O. MALLAPPA HAVELI,  
AGE: 56 YEARS, OCC. HOUSEHOLD WORK,  
R/O BHAGAVATI,  
TQ./DT. BAGALKOTE - 587115.
3. SMT. YALLAVVA W/O. YALLAPPA BADAMI,  
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,  
R/O: KERUR, TQ: BADAMI,  
DT. BAGALKOTE - 587125.
4. SMT. PARVATI ALIYAS PARVATEVVA  
W/O. SANGAPPA ALIYAS SANGANAGOUDA  
NARASAPPAVAR,  
AGE: 34 YEARS, OCC: HOUSEHOLD WORK,  
R/O: CHIKKAYARANKERI,  
TQ. HUNGUND, DIST. BAGALKOTE - 587112.

...RESPONDENTS

(BY SRI.MRUTYUNJAYA S. HALLIKRI, ADVOCATE FOR C/R2  
AND R3.)

THIS REGULAR SECOND APPEAL IS FILED UNDER  
SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908,  
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE  
01.02.2024 PASSED IN R.A.NO.6/2019 ON THE FILE OF  
THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,  
BAGALKOTE, and the JUDGMENT AND DECREE DATED  
13.12.2018, PASSED IN O.S.NO.42/2017 ON THE FILE OF THE  
SENIOR CIVIL JUDGE, HUNGUND, and etc.,.

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



**JUDGMENT**

This regular second appeal is filed by the legal heirs of the sole defendant, challenging the judgment and decree dated 1.02.2024 passed in R.A.No.6/2019, by the Prl. District and Sessions Judge, Bagalkot (First Appellate Court) and the judgment and decree dated 13.12.2018, passed in O.S.No.42/2017, by the Senior Civil Judge & JMFC, Hunagund (Trial Court).

2. For the purpose of convenience, the ranking of the parties is referred to as per their status before the Trial Court.

3. The suit is filed by the plaintiffs seeking declaration that the compromise decree in O.S.No.165/2000 dated 15.10.2001 on the file Prl. Senior Civil Judge, Bagalkot is null and void and also sought for relief of permanent injunction against the defendants not to interfere with the possession of the plaintiffs over the suit property. The suit of the plaintiffs is partly decreed granting permanent injunction in favour of the plaintiffs.



But, rejected the prayer seeking declaration that the decree in O.S.No.165/2000, dated 15.10.2001 is null and void. Being aggrieved by this, the defendant has filed regular appeal before the First Appellate Court so far as grant of decree of permanent injunction. The plaintiffs had filed cross objection against the dismissal of relief of declaration to declare the compromise decree passed is null and void. The First Appellate Court has dismissed the cross appeal filed by the plaintiff and also the appeal filed by the defendant.

4. During the pendency of the regular appeal before the First Appellate Court, the defendant/appellant died. Accordingly, his legal heirs were brought on record and the legal heirs of the original defendant have preferred this second appeal.

5. It is the submission of learned counsel for the appellants/defendants that when the relief of declaration declaring the compromise decree as null and void is rejected, then consequential relief of permanent injunction



also could not have been granted. Therefore, he submits that both the trial Court and the First Appellate Court have committed error. Hence, prays to allow the appeal.

6. Further submitted that O.S.No.165/2000 challenging the compromise decree in O.S.No.165/2000 is barred by limitation and in the said compromise decree there was stipulation that the defendant was put into possession. Hence it proves possession of the appellant/defendant. A separate suit is not maintainable challenging the compromise decree. Therefore, decree for permanent injunction ought not to have been granted. Hence, challenged judgment and decree passed by both the trial Court and the First Appellate Court.

7. The learned counsel for the appellants places reliance on the following judgments of the Hon'ble Supreme Court.

- i) Civil Appeal No.2886/2012, decided on 29.02.2024 (Basavaraj vs. Indira and others.).



- ii) (2022) 2 SCR 455 (Padhiyar Prahladi Chenaji (deceased) through L.Rs. vs. Maniben Jagmalbhai (deceased) through L.rs. and others.).
- iii) (2020) 6 SCC 629 (Triloki Nath Singh vs. Anirudh Singh (D) Thr. L.Rs. and others.).

8. On the other hand, learned counsel for the plaintiffs/caveator respondents submitted that the earlier suit filed in O.S.No.165/2000 was for specific performance of contract and it was ended in compromise. Though there was stipulation in the said compromise that the defendant was put into possession, but actually the defendant was not put into possession. The aspect of possession can be considered independently on the basis of the evidence on record. To ascertain whether the defendant was put into possession, in this regard both the trial Court and the First Appellate Court have concurrently gave finding of fact that the defendant was not in possession. But the plaintiffs were in possession over the suit property. Accordingly the trial Court has granted decree for permanent injunction which is correctly confirmed by the First Appellate Court.



9. Further submitted that the defendant has not disputed that the plaintiffs are owners of the suit property, as the defendant earlier filed suit for specific performance of contract. Therefore the plaintiffs are owners of the property which is not disputed by the defendant and thus the plaintiffs are in possession of the property. Therefore, accordingly he has filed suit for permanent injunction for protecting his possession over the property and this is rightly considered by both the trial Court and the First Appellate Court. Thus, there is no substantial question of law involved in this appeal. Hence, prays to dismiss the appeal.

10. The plaintiffs have filed suit for the relief of declaration to declare that the compromise decree in O.S.No.165/2000 is null and void. The trial Court has dismissed the prayer of the plaintiffs seeking declaration in this regard which is confirmed by the First Appellate Court. The trial Court might have assigned reasons in not granting decree for declaration that the compromise



decree in O.S.No.165/2000 as null and void, but it is barred by limitation. When the plaintiffs' relief for declaration is rejected, then the defendant could not have any grievance against rejecting prayer for declaration. But the learned counsel for defendant/appellant much harping on the compromise decree by contending that it is barred by limitation and no independent suit is maintainable in challenging the compromise decree in O.S.No.165/2000. When the prayer of the plaintiffs is rejected with regard to the relief of declaration sought that the compromise decree in O.S.No.165/2000 is null and void, then the defendant has no locus to question the said findings. Then the appeal remains for consideration on the issue of permanent injunction granted by both the trial Court and the First Appellate Court.

11. There may be various reasons for rejecting prayer of declaration regarding compromise decree whether independent suit for seeking compromise decree as null and void or it is barred by limitation is on different





aspects and against this the plaintiffs have not preferred any second appeal. In what way the defendant is aggrieved by rejection of relief of declaration is not forthcoming in the submission made by the learned counsel for appellant/defendant. Therefore, as discussed above, the appeal remains for consideration on the question whether grant of permanent injunction is correct or not.

12. Just because in the compromise decree in O.S.No.165/2000 there may be stipulation regarding the defendant was put into possession, but that does not prove that the defendant was actually put into possession. There may be various stipulation in the compromise decree regarding possession over the property, but actual possession shall be proved by evidence independent of that stipulations in the said compromise decree or in any other document. This is rightly considered by both the trial Court and the First Appellate Court in considering the plaintiffs are in possession of the property. Moreover, the



defendant has not disputed the plaintiffs are owners of the suit property.

13. The very fact that the defendant has filed suit for specific performance of contract in O.S.No.165/2000 proves that the plaintiffs are owners of the property. Therefore the plaintiffs had filed a suit for permanent injunction as well as seeking declaration that compromise decree effected in O.S.No.165/2000 is null and void. When this being the fact, the defendant failed to prove possession over the suit property for want of evidence by the defendant and upon accepting the evidence of the plaintiffs proving the plaintiffs are in possession over the said property, accordingly grant of decree of permanent injunction is correct.

14. The rulings on which reliance is placed by the learned counsel for the appellants stated supra are not applicable in the present case for the reason that they are having different set of facts and circumstances and are not



same or similar to the case involved in this appeal. Therefore they are not applicable.

15. In the judgment in ***Basavaraj case (supra)***, the suit was filed for declaration to declare the sale deed is null and void and sought for the relief of permanent injunction, but when the main relief of seeking declaration is rejected, then the consequential relief of permanent injunction is also not maintainable. Therefore, when suit is filed for seeking ownership on the basis of cancelling the sale deed and such suit is dismissed, then it was held that consequential relief of permanent injunction also could not be granted. Therefore, when the plaintiff in that case has failed to prove his ownership, then there is no question of granting the relief of permanent injunction.

16. But here the facts are that the defendant has not disputed that the plaintiffs are owners of the property. Here the plaintiffs are owners of the suit land is not disputed and therefore the plaintiffs have filed suit for seeking decree for permanent injunction which is rightly



considered by both the trial Court and the First Appellate Court. Because of this difference in factual matrix in the above cited case and in the present case, the judgment relied upon by the learned counsel for appellants is not applicable in the present case.

17. Further, the other two judgments stated supra are pertaining to challenging the compromise decree by way of independent suit. In the present case the relief of seeking declaration that the compromise decree in O.S.No.165/2000 is rejected. In what way the appellant/defendant is aggrieved by rejection of declaration is not convinced to this Court. Therefore having difference in the factual matrix in the above stated case and present case, the above referred citations are not applicable in this case.

18. Therefore, when for the plaintiffs the relief claimed for declaration is refused, then the question of consideration remains as to whether grant of decree for permanent injunction is correct or not. On this issue both the trial Court and the First Appellate Court upon



appreciating the evidence on record both oral and documentary evidence that the plaintiffs have produced RTC extract and mutation entries coupled with the oral evidence of PW.2 and PW.3, who have stated the plaintiffs are in possession over the property, and accordingly granted decree of permanent injunction. Whereas the defendant has not produced any evidence to show that the defendant is in possession of the property except by contending that by virtue of the compromise decree in O.S.No.165/2000, the defendant is put in possession.

19. As discussed above, mere stipulation in any document/compromise decree to put defendant in possession cannot prove possession over the suit property, but the factum of possession over the property shall be proved independently by producing evidence regarding possession. But in this regard the defendant has failed to prove his possession over the property. In this regard the findings given by both the trial Court and the First Appellate Court that the plaintiffs are in possession of the



property is concurrent finding of fact which does not involve any substantial question of law for considering in this appeal.

20. Therefore, the appeal fails having no merit. Thus, it is liable to be dismissed at the admission stage itself. Accordingly the appeal is dismissed with cost of Rs.25,000/- (Twenty-Five Thousand Rupees) payable by the appellants/defendant to the respondents/plaintiffs.

**Sd/-**  
**JUDGE**

VB-para 1 to 5.  
MRK-para 6 to end.  
List No.: 1 SI No.: 26