IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF DECEMBER, 2015

BEFORE

THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA

REGULAR SECOND APPEAL NO.7284/2010

BETWEEN:

DODDAPPA HULLAPPA WADED
AGED ABOUT 79 YEARS
OCC: OLD AGE
R/O BASAVANA BAGEWADI-586 203
DIST: BIJAPUR

... APPELLANT

(BY SRI RAJAVENKATAPPA NAIK, ADVOCATE)

AND:

SHIVALINGAPPA
SINCE DECEASED BY HIS LRs.

i) MAHADEVI
W/O SHIVALINGAPPA CHIKKOND
R/O B. BAGEWADI
TALUKA BAGEWADI - 586 203
DIST. BIJAPUR

ii) RAMESH
S/O SHIVALINGAPPA CHIKKOND
AGED ABOUT 25 YEARS
OCC: AGRICULTURE

R/O B. BAGEWADI- 586 203
DIST. BIJAPUR

iii) MALLIKARJUN
S/O SHIVALINGAPPA CHIKKOND
AGE: 30 YEARS
OCC: AGRICULTURE
R/O B. BAGEWADI- 586 203
DIST. BIJAPUR

iv) NAGAPPA
S/O SHIVALLINGAPPA CHIKKOND
AGE ABOUT 25 YEARS
OCC: AGRICULTURE
R/O B. BAGEWADI- 586 203
DIST: BIJAPUR

v) SUBHASH
S/O SHIVALINGAPPA CHIKKOND
SINCE DECEASED BY HIS L.Rs.

v (a) SMT. RATNAWWA
W/O SUBHASH
AGE: MAJOR, OCC: AGRICULTURE
RESIDENT OF NIDAGUNDI
TALUK B. BAGEWADI- 586 203
DIST. BIJAPUR

vi) SHANKAR GOWDA SON OF
SHIVALINGAPPA CHIKKOND
AGE: MAJOR,
RESIDENT OF BASAVANA BAGEWADI
TQ. B. BAGEWADI – 586 203
DIST. BIJAPUR

... RESPONDENTS

(BY SRI P. S. PATIL, ADV. FOR R1 TO R6;
SRI R. S. SIDHAPURKAR , ADV FOR R6)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 07.04.2010 PASSED IN R.A. 18/2009 ON THE FILE OF THE CIVIL JUDGE (SR.DN) AT BASAVANA BAGEWADI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 01.04.2009 PASSED ON O.S. NO.130/2001 ON THE FILE OF THE CIVIL JUDGE (JR.DN) AT BASAVANA BAGEWADI.

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

JUDGMENT

The appellant had filed O.S.No.55/1976 against the respondent – Shivalingappa Basappa Chikkond, in the Court of Munsiff at Basavana Bagewadi, to pass a decree for specific performance of contract. The suit having been contested, following issues were framed:

1. *Whether plaintiff proves that there was contemporaneous agreement on 21.06.1968 between defendant and Lakkavva to resale or to reconvey the suit land as alleged?*

2. *Whether plaintiff proves that will dated 18.11.1974 is valid?*

3. *Whether there is no cause of actions to the suit?*

4. *Whether this court has no jurisdiction to to try the suit?*

5. *Whether the suit is not in time?*

6. *Whether the suit of the plaintiff is not maintainable as contended in para 5 and 8 of W.S.?*

7. *Is plaintiff entitled to the reconveyance or resale of suit land?*

8. *Is plaintiff entitled to the possession sought?*

9. *What decree or order?*

The plaintiff got himself examined as PW.1, examined PWs.2 to 5 and marked Exs.P1 to P20. The defendant got himself examined as DW.1. On appreciation of the oral and documentary evidence led in the case, the Munsiff dismissed suit, with cost.

2. Assailing the said decree, R.A.No.2/1978 was filed, in the Court of Principal Civil Judge, at Bijapur. Taking into consideration the rival contentions and the record of the case, following points were raised for consideration:

1. *Whether the alleged agreement to reconvey dated 21.06.1968 is a valid document?*

2. *Whether the agreement to reconvey is proved as required by law?*

3. *Whether there could be a valid bequest of the right to get the property reconveyed under the will dated 04.09.1974?*

4. *Whether plaintiff is entitled to the reconveyance of the land together with possession?*

5. *What order?*

On a fresh assessment and independent appreciation of the oral and documentary evidence led by the parties, the appellate Judge, finding the appeal to be devoid of merit, dismissed the same, with cost.

3. The plaintiff filed RSA No.225/1980, assailing the said decrees. Finding that the plaintiff has failed to prove the execution of agreement to reconvey dated 21.06.1968 and that there is no legal evidence to prove the agreement, by a considered Judgment the second appeal was dismissed on 15.11.1990.

4. SLP No.2051/1991 filed against the said decrees was dismissed on 18.02.1991.

5. In the second round of litigation, O.S.No.130/2001 was filed in the Court of Civil Judge (Jr.Dn.) at Basavana Bagewadi, by contending that *since the SLP was dismissed without assigning any reasons, the plaintiff can re-agitate the matter once again*. In the said suit, amongst others, decree for specific performance of the very same contract, was sought. The suit was contested by filing written statement. It was contended, *inter alia*, that in view of the earlier proceedings between the parties, the doctrine of *res judicata* is attracted and that the suit is also barred by limitation. The following issues were raised:

1. *Whether suit of the plaintiff is hit by doctrine of res judicata?*
2. *Whether suit of the plaintiff is barred by the provisions of Section 12 of CPC?*
3. *Whether suit of the plaintiff is tenable in the present form?*
4. *Whether suit of the plaintiff is barred by limitation?*
5. *Whether the suit of the plaintiff is bad for non-joinder of necessary parties?*

6. *Whether this Court has got jurisdiction to try the suit?*

6. With the consent of both parties, the said issues were treated as preliminary issues and upon consideration, by a judgment/decree dated 01.04.2009, the suit was dismissed. It was held, that in view of the earlier proceedings between the parties in respect of the same subject matter, the Doctrine of *res judicata* is attracted and that the suit is also barred by limitation.

7. R.A.No.18/2009 was filed by the plaintiff, assailing the aforesaid decree of the trial Court. The appeal having been contested, the following points were raised for determination:

1. *Whether the trial Court erred in holding that the suit of the plaintiff is hit by doctrine of res judicata?*

2. *Whether the trial Court erred in holding that the suit of the plaintiff is barred by limitation?*

3. *Whether the trial Court erred in holding that the suit is barred U/S.12 of CPC?*

4. *Whether the trial Court is erred in answering issue No.7, issue NO.9, and issue No.10 in the negative?*

5. *Whether there are sufficient grounds to interfere in judgment and decree of the trial Court?*

6. *What order?*

8. All the points were answered in the negative and the appeal was dismissed, by the judgment/decree dated 07.04.2010.

9. This second appeal was preferred assailing the said decrees.

10. Learned counsel for the appellant contended that without affording opportunity to the plaintiff to adduce the evidence, the judgment and decree of dismissal of the suit suffers from material irregularity and the finding being based on conjectures and surmises, there is miscarriage of justice. He contended that the appellate Judge has misdirected himself in holding that the suit is hit by the principles of *res judicata* and that the suit is also barred by

limitation. Learned advocate submitted that there is wrong placing of burden of proof on the plaintiff and there is mis-interpretation of Sections 5, 12 and 14 of the Limitation Act and also Section 11 CPC. Learned Advocate, by placing reliance on the decision of the Apex Court, in ZARIF AHMAD (D) THROUGH LRS., V. MOHD. FAROOQ, reported in 2015 AIAR (CIVIL) 258, submitted that there being overlooking of relevant material, the finding in the impugned judgments being perverse and substantial questions of law having arisen, this second appeal, under Section 100 CPC is maintainable.

11. Per contra, learned advocates for the respondents made submissions supporting the impugned Judgments and decrees. They added that the impugned Judgments and decrees are based on the undisputed proceedings and well settled principles of law laid down by the Apex Court. Reliance was placed on certain decisions, a reference to which would be made herein below. Rejection

of this appeal was sought by contending that it does not involve any substantial question of law.

12. There being no dispute with regard to the earlier proceedings between the parties, noticed supra, the applicability of principles of *res judicata* in terms of Section 11 CPC is required to be examined.

13. In *Sheodan Singh Vs. Daryao Kunwar*, AIR 1966 SC 1332, Apex Court has laid down the ingredients of Section 11 CPC as follows:

"(9) A plain reading of S.11 shows that to constitute a matter *res judicata*, the following conditions must be satisfied, namely –

(I) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;

(II) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;

(III) The parties must have litigated under the same title in the former suit;

(IV) The Court which decided the former suit must be a Court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(V) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit. Further Explanation I shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided so that even if a suit was filed late, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as *res judicata* it will have to be seen whether all the five conditions mentioned above have been satisfied."

In the present case, it is not the case of the appellant, that any of the above conditions are not satisfied. A perusal of the record of the case shows, that the conditions, as enlisted by the Apex Court, in the decision noticed supra are satisfied.

14. In *Hope Plantations Ltd. Vs. Taluk Land Board*, *Peermade*, (1999) 5 SCC 590, with regard to the scope of Section 11 CPC, Apex Court has stated as follows:

"17. In Devilal Modi, v. STO the question before this Court was whether the principle of constructive res judicata could be invoked against writ petition filed by the appellant under Article 226 of the Constitution. The appellant had been assessed to sales tax for the year 1957-58 under the Madhya Bharat Sales Tax Act, 1950. He challenged the validity of the order of assessment by a writ petition which was dismissed by the High Court of Madhya Pradesh. The appellant's appeal by special leave to this Court was also dismissed. At the hearing of the appeal before this Court, the appellant sought to raise two additional points, but he was not permitted to do so on the ground that they had not been specified in the writ petition filed before the High Court and had not been raised at an early stage. On those points which were not allowed to be raised, the appellant filed another writ petition in the High Court challenging the validity of the very same assessment for the year 1957-58. The High Court considered the merits of the additional grounds urged by the appellant but rejected them. The appellant again came to this Court. This Court dismissed the appeal on the ground that the principle of constructive res judicata was applicable in the circumstances and referred to its earlier decision in Daryao v. State of U.P. holding that the

general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by Courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice.

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26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel"

and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata."

(emphasis supplied)

15. In *Satyadhyan Goshal & Others Vs. Deorajin Debi*, AIR 1960 SC 941, explaining the scope of principles of *res judicata*, Apex Court has held as follows:

"(7) The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between

past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S.11 of the Code of Civil Procedure; but even where S.11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

(emphasis supplied)

16. In *State of Panjab Vs. Bua Das Kaushal*, AIR 1971 SC 1676, Apex Court has held, that if necessary facts were present in the mind of the parties and it gone into by the Court, in such situation, absence of specific plea in the

written statement and framing of issue of *res judicata* by the Court is immaterial.

17. In *Sulochana Amma Vs. Narayanan Nair*, (1994) 2 SCC 14, with regard to scope of Section 11 CPC, Apex Court has held as follows:

> *"5. Section 11 of CPC embodies the rule of conclusiveness as evidence or bars as a plea as issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties or their privies in a Court competent to try such subsequent suit in which the issue has been directly and substantially raised and decided in the judgment and decree in the former suit would operate as res judicata. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies, been decided and became final, so that parties are not vexed twice over;*

> *vexatious litigation would be put to an end and the valuable time of the Court is saved. It is based on public policy, as well as private justice. They would apply, therefore, to all judicial proceedings whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil Courts."*
>
> *(emphasis supplied)*

18. Since the matter which is the subject matter of the present *lis* has stood determined in the first round of litigation, the appellant cannot be permitted to re-open the same by contending that 'SLP was dismissed by an unreasoned order'. S.11 CPC has been brought into the statute book with a view to bring the litigation to an end, so that, not only the opposite party is not put to harassment but also in larger public interest. It has been held by the Apex Court, in catena of decisions that the doctrine of *res judicata* was conceived not only in larger public interest but was also founded on equity, justice and good conscience.

19. Indisputably, all the issues pertaining to the suit property, between the parties, was adjudicated and determined in O.S.No.55/1976, R.A.No.2/1978 and RSA No. 225/1980, i.e., in the first round of litigation, by the Court(s) of competent jurisdiction. RSA No.225/1980 was dismissed by a considered Judgment as devoid of merit. Mere rejection of SLP by an unreasoned order does not entitle a party to litigate the same matter, again by second round of litigation, in as much as the decree passed by the Trial Court and the First Appellate Court, merged in the decree passed by the second appellate court, i.e., in RSA No. 225/1980.

20. Mere non holding of trial in the second round, when the aforesaid aspects are not in dispute, has not vitiated the impugned decree(s). The findings recorded in the first round of litigation operate as *res judicata*, since, the same issues have cropped up directly in the second round – present litigation, between the same parties.

Hence, the Courts below have not committed any error or illegality in passing the impugned decrees.

21. In view of the above, other contentions urged by the learned advocate for the appellant do not deserve any consideration. The decision, noticed supra, relied upon by the learned advocate for the appellant has no application. The present litigation is nothing but an abuse of process of Court by the appellant to harass the respondent, and the same has drained out the judicial time.

In the result, the rights of the parties having been completely adjudicated in the first round of litigation and as there is no substantial question of law arising for consideration, the appeal is rejected.

Consequently, Misc.Cvl.No.153763/2010 for permission to produce the additional evidence stands rejected.

Hence, I.A.2/2010 for stay does not survive for consideration and is disposed of accordingly.

Sd/-
JUDGE

Srt