



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 1541 OF 2018 (DEC/INJ)

BETWEEN:

1. SMT. NINGAMMA
W/O. LATE KEMPAIAH,
AGED ABOUT 77 YEARS,
2. P. PRAKASH
S/O. LATE KEMPAIAH,
AGED ABOUT 52 YEARS,

BOTH ARE R/O. DEVAR
MALLANAYAKANAHALLI VILLAGE,
NAGAMANGALA TAKLUK,
MANDYA DISTRICT-571 401.

...APPELLANTS

(BY SRI. RAJA L., ADVOCATE)

AND:

1. SMT. PADMAMMA
W/O. LATE MUDDELINGEGOWDA,
AGED ABOUT 52 YEARS,
R/O. DEVAMALLANAYAKANAHALLI
VILLAGE, DEVALAPURA HOBLI,
NAGAMANGALA TALUK-571 401,

NOW R/O. ANNAPURNESHWARI NILAYA,
NEW BRIDGE ROAD, KANAKA NAGARA,
BHADRAVATHI-577201.

2. M. JAYANTHI
D/O. LATE MUDDELINGEGOWDA,
AGED ABOUT 50 YEARS,

Digitally signed
by SHARANYA T
Location: HIGH
COURT OF
KARNATAKA



3. M. KUSUMA
D/O. LATE MUDELINGEGOWDA,
AGED ABOUT 45 YEARS,
4. M. SATHYANANDA
S/O. LATE MUDELINGEGOWDA,
AGED ABOUT 37 YEARS,
5. M. RAVEEN
S/O. LATE MUDELINGEGOWDA,
AGED ABOUT 37 YEARS,

R-2 TO R-5 R/O ANNAPOORNESHWARI
NILAYA NEW BRIDGE ROAD,
KANAKANAGARA, BHADRAVATHI.
SHIVAMOGGA DISTRICT-577201.

...RESPONDENTS

(BY SRI. K.N.NITISH, ADVOCATE FOR
SRI K.V. NARASIMHAN., ADVOCATE C/R1 & R5)

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE
JUDGMENT AND DECREE DATED 06.03.2018 PASSED IN
R.A.NO.34/2017 ON THE FILE OF THE IV ADDL. DISTRICT AND
SESSIONS JUDGE, MANDYA DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 08.12.2016
PASSED IN O.S.NO.67/2011 ON THE FILE OF THE SENIOR
CIVIL JUDGE AND JMFC, NAGAMANGALA.

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

JUDGMENT

This matter is listed for admission.

Heard the learned counsel appearing for the appellants and the
learned counsel appearing for respondents No.1 and 5.



2. This appeal is filed challenging the judgment and decree dated 06.03.2018 passed in R.A.No.34/2017 on the file of the IV Additional District and Sessions Judge at Mandya.

3. The factual matrix of the case of the plaintiffs before the Trial Court is that in a family partition taken place on 20.03.1967, the suit schedule property was allotted to the share of Muddelingegowda, who is the husband of the first plaintiff and father of plaintiff Nos.2 to 5 and they are in possession over the suit schedule property. The plaintiffs have sought for the relief of declaration and permanent injunction to declare that they are the absolute owners after the death of their father and they are in possession of the suit schedule property. The defendants have no right, title or interest in the suit schedule property. After the death of Muddelingegowda, the defendants having colluded with the local officials got fabricated the documents in respect of the suit schedule property and also changed the khatha in the name of first defendant. When the same came to the notice of the plaintiffs, they preferred an appeal before the Taluka Panchayath in Appeal No.7/2000-01, the same was dismissed. Against that order, an appeal was filed before the Zilla Panchayath in Appeal



No.36/2001 and obtained the stay in respect of illegal entries and defendants though not having any right in respect of the suit schedule property and they are trying to dispossess the plaintiffs from their lawful possession and enjoyment of the suit schedule property.

4. In pursuance of the suit summons, the defendants filed the written statement and contending that they are in lawful possession and enjoyment of the suit schedule property. At any point of time the plaintiff No.1 or her husband was/is in possession of the property and prayed the Court to dismiss the suit.

5. The Trial Court after considering both oral and documentary evidence placed on record has decreed the suit and granted the relief of declaration and permanent injunction. Being aggrieved by the judgment and decree of the Trial Court, an appeal was filed before the First Appellate Court in R.A.No.34/2017. The First Appellate Court also on re-appreciation of both oral and documentary evidence placed on record dismissed the appeal. Hence, the present second appeal is filed before this Court.



6. The learned counsel appearing for the appellants in the present appeal would vehemently contend that as on the date the appellants are in possession of the suit schedule property and both the Courts have committed an error in decreeing the suit in granting declaration and injunction and both the Courts have committed an error in taking note of the documents – Exs.P1 and P6. Ex.P6 is an unregistered document, which is compulsorily required for registration under the Registration Act. Hence, it requires interference of this Court. The learned counsel also would vehemently contend that the plaintiffs are in possession of the property based on the Relinquishment Deed executed by the husband of first plaintiff and father of plaintiff Nos.2 to 5.

7. Per contra, learned counsel appearing for the respondents No.1 and 5 would submit that both the Courts have taken note of both oral and documentary evidence placed on record and the property belongs to the family of the husband of the first plaintiff and the suit schedule property allotted to the share of the husband in the Palu-Patti dated 20.03.1967 and thereafter they are in possession of the suit schedule property. The learned counsel would submit that after



the death of the father of plaintiff Nos.2 to 5 and husband of the first plaintiff, the appellants made an attempt to change the khatha in their favour and the same has been questioned before the Taluka Panchayath and the appeal was dismissed. Against the said order, an appeal was filed before the Zilla Panchayath. The Zilla Panchayath was set aside the khatha transferred in favour of the appellants herein and thereafter the khatha was changed in favour of the plaintiffs/respondents and they are in possession of the suit schedule property.

8. Having heard the respective counsel and also on perusal of the material available on record, it is the claim of the plaintiffs that the suit schedule property was allotted in the family partition in favour of the husband of the first plaintiff and father of plaintiff Nos.2 to 5 and they are in possession of the property. Admittedly, no dispute with regard to the khatha was changed in favour of the appellants herein and the same was questioned before the Zilla Panchayath. The Zilla Panchayath passed an order in favour of the plaintiffs. The Trial Court had taken note of the material placed, particularly, the documents - Exs.P1 to P6, declared the plaintiffs as the absolute owners. The First Appellate Court also on re-appreciation of both oral



and documentary evidence placed on record and also taking note of the contentions of the appellants herein came to the conclusion that the Trial Court has not committed any error and the property belongs to the family of the plaintiff and they are in possession of the property and the revenue entries, which were changed subsequently were also set aside and as on the date of filing the suit property stands in the name of the plaintiffs. Though the defendants have relied upon the documents viz., Ex.D1-ZP order copy dated 25.01.2001, Ex.D2-ZP order copy dated 17.03.2008, Ex.D3-two tax paid receipts, Ex.D4-electricity bill and Ex.D5-residential address certificate, both the Courts came to the conclusion that the property was allotted in favour of husband of the first plaintiff and father of plaintiff Nos.1 to 5 and they are in possession of the suit schedule property. When such being the material available on record and also the learned counsel appearing for the appellants would contend that the Relinquishment Deed was executed in favour of the husband of the first plaintiff, in order to substantiate the same, no document is placed before the Court. Under the circumstances, I do not find any error committed by both the Courts in decreeing the suit and



confirming the same. Hence, no ground is made out to invoke Section 100 of CPC.

9. In view of the discussions made above, I pass the following:

ORDER

The appeal is dismissed.

In view of dismissal of the appeal, I.A.No.1/2018 for stay does not survive for consideration and the same stands disposed of.

**Sd/-
JUDGE**

CP
List No.: 1 SI No.: 35