



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 1015 OF 2016 (INJ)

BETWEEN:

SRI. KIRAN BARMAD PAIS
S/O LATE SRI. JOSH PAIS,
AGED ABOUT 54 YEARS,
R/AT GUNDIKHAN ESTATE,
KESAVINAMANE VILLAGE,
CHIKKAMAGALURU TALUK,
CHIKKAMAGALURU DISTRICT.

...APPELLANT

(BY SRI.SUYOG HERELE.E, ADVOCATE FOR SRI. KARTHIK A
BHARGAV, ADVOCATE)

AND:

1. M/S. ASSOCIATE AGRO ENTERPRISES
BY A REGISTERED PARTNERSHIP FIRM
CHAMUNDESHWARI ESTATE,
BISAGNI MUTT,
MEHLUHULUVATHI VILLAGE,
CHIKKAMAGALURU TALUK-573134
BY ITS PARTNERS:

SRI. JANKIRAN,
AGED ABOUT 54 YEARS

2. SRI. KODANDA RAM
AGED ABOUT 52 YEARS

Digitally
signed by
ALBHAGYA
Location:
HIGH
COURT OF
KARNATAKA



BOTH ARE SONS OF LATE SRI. M.R. RAMAIAH,
R/AT GOKULA HOUSE,
BENGALURU-560094.

...RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 16.03.2016 PASSED IN RA.NO.202/2011 ON THE FILE OF THE I ADDL. DISTRICT JUDGE, CHKKAMAGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 12.10.2011 PASSED IN OS.NO.38/2005 ON THE FILE OF THE ADDL SENIOR CIVIL JUDGE AND JMFC CHIKMAGALURU.

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

JUDGMENT

The captioned second appeal is filed by unsuccessful defendant No.2 assailing the concurrent judgments of the Courts below wherein plaintiff's suit for injunction simplicitor in O.S.No.38/2005 is decreed and defendants are permanently restrained from trespassing into the suit property and also from felling silver and other kind of trees standing in the suit schedule properties.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. The facts leading to the case are as under:



The plaintiff has filed the present suit alleging that he is the owner of 19 acres 26 guntas in Sy.No.64, 5 acres 3 guntas in Sy.No.65 and 20 acres in Sy.No.67. The plaintiff claims that all these three survey numbers have common boundaries. The plaintiff claims to be a registered partnership firm. It is specifically stated that suit properties were originally owned by Mysuru Chemicals Manufacturers Limited and the said company sold the properties to one H.S.Ballal and six others vide sale deed dated 26.08.1977. The said H.S.Ballal with a view to carry out business under the partnership firm entered into a deed of partnership on 15.09.1980 and therefore, the suit properties and other properties became assets of the said firm.

4. The present plaintiff firm further contended that the firm was compelled to file a suit for declaration and injunction through its Managing Partner in O.S.No.62/1980 against one C.Mathias. The said suit was decreed and the said C.Mathias preferred appeal before the Division Bench



of this Court in RFA.No.303/1989. The defendant No.1 is none other than the brother of one C.Mathias who are asserting right in respect of Sy.No.73. In O.S.No.62/1980, a Court Commissioner was appointed and the suit filed by the plaintiff firm against the defendant No.1's brother C.Mathias was decreed and confirmed by this Court in RFA.No.303/1989. The present suit is filed alleging that defendants are trying to trespass and interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule properties.

5. The defendants, on receipt of summons, tendered appearance and filed written statement. Though defendants admit that property was originally owned by Chamundeshwari Estate, however, defendants have pleaded their ignorance regarding plaintiff's title and ownership over the suit schedule properties and reconstitution of partnership firm. The defendants have also disputed the decree passed in O.S.No.62/1980. The defendants on the contrary are asserting and claiming the



area which is demarcated by the Court Commissioner in the previous litigation and therefore, are contending that they are in possession of the said portion. The defendants also admit that they have felled silver trees in Sy.No.73 which is absolutely owned by them.

6. The plaintiff and defendants to substantiate their respective claim have let in oral and documentary evidence.

7. The Trial Court having assessed the pleadings, oral and documentary evidence has answered issue Nos.1 to 3 in the affirmative and additional issue in the affirmative. The Trial Court referring to the evidence let in by the plaintiff held that plaintiff has succeeded in proving that certain silver trees which are marked by defendants fall within the plaint schedule properties and therefore, held that plaintiff has succeeded in establishing that defendants are trying to trespass into the plaint schedule properties. While answering additional issue in the affirmative, Trial Court also held that plaintiff has



succeeded in substantiating its possession over the suit properties as per the boundaries reflected in the plaint schedule.

8. Feeling aggrieved by the judgment and decree of the Trial Court, the defendants preferred appeal before the Appellate Court. The Appellate Court has independently assessed the entire evidence on record. The Appellate Court having taken cognizance of the decree passed in O.S.No.62/1980 and the Commissioner report submitted in earlier round of litigation in a comprehensive suit, concurred with the findings recorded by the Trial Court and held that plaintiff has succeeded in establishing its possession over the suit schedule properties. Consequently, the appeal is dismissed.

9. Heard learned counsel appearing for the defendant. Perused the concurrent judgments rendered by the Courts below.

10. The plaintiff firm is asserting that it is in lawful possession over the suit schedule properties while



defendant is disputing the possession of the plaintiff over the suit schedule properties. The defendants are seriously disputing the boundaries indicated in the Commissioner report submitted in earlier round of litigation. The defendants claim that the portion which is exclusively owned by the defendants is shown to be in possession of the plaintiff in the Commissioner report submitted in O.S.No.62/1980. Both the Courts having taken note of the Commissioner report submitted in the earlier round of litigation has come to conclusion that plaintiff's possession over the suit schedule properties is decided in a comprehensive suit filed by the plaintiff in O.S.No.62/1980. Both the Courts have also taken note of the fact that the said suit was filed by the plaintiff firm against the brother of the defendant No.1.

11. The contention of the learned counsel for the defendant that defendants are not disputing plaintiff's title over the suit schedule properties but, however, the boundaries indicated in the Commissioner report is false,



cannot be acceded to at this juncture. The judgment and decree rendered in O.S.No.62/1980 is confirmed by the Division Bench of this Court in RFA.No.303/1989. If plaintiff's title and possession over the suit schedule properties is decided by a competent civil Court and confirmed by the Division Bench of this Court, the contention of the defendants that they are entitled to seek a fresh local inspection is rightly rejected by the Trial Court.

12. In a bare suit for injunction, the Court is required to enquire as to whether plaintiff succeeds in establishing his lawful possession as on the date of filing of the suit. The second requisite condition that plaintiff has to satisfy is to establish interference by the defendants. Therefore, in a bare suit for injunction, there is no scope for local inspection and if permitted, the same would amount to collection of evidence. If plaintiff's possession and title is decided and concluded in earlier round of litigation, both the Courts taking note of the



Commissioner's report tendered in earlier round of litigation which is marked as Exs.P-7 and P-8 were justified in granting permanent injunction against the defendants. The fact that the defendants are still disputing the boundaries clearly establishes interference at the hands of the defendants. The defendants though admit title of Chamundeshwari Estate, they pleaded ignorance of plaintiff's title over the suit schedule properties. They are further disputing the boundaries indicated in the Commissioner report. All these factual aspects constitute interference. Therefore, the judgment and decree of the Courts below in granting permanent injunction against the defendants is in accordance with law and is based on legal evidence let in by the plaintiff and in absence of rebuttal evidence to counter the plaintiff's claim.

13. No substantial question of law arises for consideration. The appeal is devoid of merits and accordingly stands dismissed.



The pending interlocutory application, if any, does not survive for consideration and stands disposed of.

Sd/-
JUDGE

CA
List No.: 1 Sl No.: 1