**IN THE HIGH COURT OF KARNATAKA,**

**KALABURAGI BENCH**

**DATED THIS THE 22ND DAY OF MARCH, 2025**

**BEFORE**

**THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE**

**REGULAR SECOND APPEAL NO. 7161 OF 2009 (DEC)**

**BETWEEN:**

CHANMALLAYYA
SINCE DECEASED BY HIS

1. SHIVAYYA S/O CHANMALLAYYA
(DECEASED)

2. RACHAYYA S/O CHANMALLAYYA
(DECEASED)

3. SUSHALABAI
D/O CHANMALLAYYA
AGE: 41 YEARS,
OCC: AGRICULTURE,

4. NEELAMMA
D/O CHANMALLAYYA
AGE:49 YEARS,
OCC: AGRICULTURE,

5. SUMITRA
D/O CHANMALLAYYA
AGE: 26 YEARS,
OCC: AGRICULTURE,

6. SULOCHANA
D/O CHANMALLAYYA
AGE: 20 YEARS,
OCC: AGRICULTURE,

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

ALL ARE RESIDENCE OF SHAHAPUR,
TQ: SHAHAPUR,
DIST: YADGIR – 585 223.

…APPELLANTS

(BY SRI AMEETKUMAR DESHPANDE, SENIOR COUNSEL FOR
SRI DESHPANDE G.V., ADVOCATE)

**AND:**

ERAWWA
W/O BASAWARAJ SWAMI
SINCE DECEASED BY LRS,

Amended as per order dated 11.11.2024.

1(a) SARASWATI
W/O MAHADEVAYYA HUGGELIMATH,
AGE: 60 YEARS,
OCC: HOUSEWIFE,
R/O: HUGGELIMATH (KEB),
MUKHAM, C.B. COLONY, NEAR
CHANNABASAVESHWARA KAMAN,
TQ: SHAHAPUR,
DIST: YADGIR – 587 129.

1(b) BANNAYYA
S/O MAHADEVAYYA HUGGELIMATH,
AGE: MAJOR,
OCC: AGRICULTURE,
R/O: HUGGELIMATH (KEB),
MUKHAM, C.B. COLONY, NEAR
CHANNABASAVESHWARA KAMAN,
TQ: SHAHAPUR,
DIST: YADGIR – 587 129.

1(c) BASAMMA
D/O MAHADEVAYYA,
AGE: MAJOR,
OCC: AGRICULTURE,
R/O: HUGGELIMATH (KEB),
MUKHAM, C.B. COLONY, NEAR
CHANNABASAVESHWARA KAMAN,

TQ: SHAHAPUR,
DIST: YADGIR – 587 129.

1(d) JAYASHREE D/O MAHADEVAYYA,
AGE: MAJOR,
OCC: AGRICULTURE,
R/O: HUGGELIMATH (KEB),
MUKHAM, C.B. COLONY, NEAR
CHANNABASAVESHWARA KAMAN,
TQ: SHAHAPUR,
DIST: YADGIR – 587 129.

1(e) MANJUNATH S/O GOURISHANKAR,
AGE: 40 YEARS, OCC: BUSINESS,
R/O: HUGGELIMATH (KEB),
MUKHAM, C.B. COLONY, NEAR
CHANNABASAVESHWARA KAMAN,
TQ: SHAHAPUR,
DIST: YADGIR – 587 129.

2. BANAMMA
W/O SHIVAYYA
AGE: 45 YEARS, OCC: HOUSEHOLD,
R/O: TEGGINMATH, WARD NO.7,
SHAHAPUR, DIST: YADGIRI – 585 223.

…RESPONDENT

(BY SRI NOTICE TO R1 (A), R1(C) AND R1(E) AND R2 ARE SERVED BUT UN-REPRESENTED;
V/O DATED 11.11.2024 NOTICE TO R1(B) AND R1(D) IS SUFFICIENT)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 11.06.2009 PASSED BY THE LEARNED CIVIL JUDGE (SR.DN.) AT SHORAPUR, SITTING AT SHAHAPUR, IN R.A.NO.15/2004, CONFIRMING THE JUDGMENT AND DECREE DATED 29.09.1993 PASSED IN O.S.NO.59/1992 (O.S.NO.60/68) BY THE LEARNED MUNSIF AT SHAHAPUR AND TO PASS ANY OTHER APPROPRIATE ORDER, IN THE INTEREST OF JUSTICE.

THIS REGULAR SECOND APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

**ORAL JUDGMENT**

(PER: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE)

This second appeal is arising out of the concurrent finding in a suit for declaration and possession which was dismissed by the Trial Court and later confirmed by the First Appellate Court.

2. Brief facts as noticed from the pleadings are as under :

- The suit property is an agricultural land bearing Sy.No.129 measuring 10 acres 02 guntas known as Karki hola in Itaga Village, Shahapur Taluk.

- The relief sought for by the plaintiff is as under:

i) It be declared that the sale-deed alleged to have been executed by the plaintiff on 27.03.1965 is forged and it is ineffective and invalid against the plaintiff.

ii) That the possession of the suit land bearing Sy.No.129 of K.No.254 known as Karki hola of Itaga

Village, Taluk Shahapur Smith Shirwar be declined dispossessing the defendants No.1 and 2.

iii) The cost amounting to Rs.900/-.

iv) Mesne profits *"pendente lite"* be awarded.

3. The suit is filed on 27.03.1968.

4. The plaintiff claims that she is the owner of the property and there was a dispute between the plaintiff and her mother on one side, and one Sidramayya Swami on the other. It is stated that defendant No.1 was looking after the Court proceedings on behalf of the plaintiff. The suit against Sidramayya Swami was settled in terms of the compromise entered into between the parties to the suit.

5. According to the plaintiff after conclusion of the said proceedings, defendants No.1 and 2 started demanding money from the plaintiff on the premise that the settlement took place because of the intervention and efforts of defendants No.1 and 2. However, the plaintiff refused to meet the illegal demand made by defendants No.1 and 2 and this being the position with an intention to dispossess the plaintiff from the suit land,

the defendants created a forged sale-deed dated 27.03.1965 in respect of the suit property and registration was done when the plaintiff was away in her husband's house at Narayanpeth. It is stated that the deed is registered in collusion with the officials in the Sub-Registrar's office as well as the witnesses to the said sale-deed.

6. The plaintiff alleges that she was dispossessed in the first week of April 1965 and immediate cause of action arose on 02.02.1968 when the plaintiff came to know a sale-deed is registered in respect of suit property.

7. The defendants contested the suit and disputed the allegation and contented that the plaintiff has executed sale-deed, transferred the possession and title and received the entire consideration amount and they are in exclusive peaceful possession of property as absolute owner.

8. The Trial Court framed the followings issues :

i) Does plaintiff prove that defendant No.1 created a false and forged sale-deed by impersonation and plaintiff has not executed the suit sale-deed ?

ii) Whether the suit is valued properly and Court Fee paid thereon is sufficient ?

iii) To what relief, the parties are entitled to ?

9. Initially, the suit was dismissed on contest. Thereafter, the plaintiff had filed an appeal and same was dismissed and then the plaintiff had filed second appeal before this Court in RSA No.1002/1971 and same was allowed in part. The matter was remitted to the first appellate Court for fresh consideration and the first appellate Court remanded to the trial Court.

10. After the remand, the suit was decreed. Then the defendants filed First Appeal and the First Appeal is dismissed and the defendants filed the second appeal in RSA No.294/1982 and filed an application to produce additional documents i.e., the original registered sale-deed.

11. The respondent/purchaser had produced the original registered sale-deed in the second appeal before this Court, as he had only produced the certified copy of sale-deed before the Trial Court. The RSA No.294/1982 was allowed on 20.12.1991 and the matter was remitted to the Trial Court.

12. The Trial Court afforded the opportunity to the parties to lead evidence relating to their contention based on the registered sale-deed.

13. It is relevant to note that when defendants produced the original sale-deed before this Court in the earlier second appeal and this Court has noticed that the original sale-deed produced before this Court was damaged considerably.

14. After the second remand, the Trial Court recorded the evidence on the original sale-deed and concluded that the sale-deed is not established. Aggrieved by the aforementioned judgment and decree, defendants filed first appeal and same is dismissed. Hence the present second appeal.

15. The appeal is admitted on 16.09.2010 to consider the following substantial question of law :

> *"Whether both the Courts below were justified in recording a finding that the defendants have failed to prove the proper execution of the document in question when the burden was essentially on the plaintiff ?"*

16. Shri Amitkumar Deshpande, learned Senior counsel appearing for the plaintiff/appellants would contend that the suit is one for declaration and possession which is filed exactly three years after the date of the execution of the registered sale-deed would clearly demonstrate that the possession is transferred to the defendants pursuant to the registered sale-deed. If at all, there was illegal forcible dispossession pursuant to registered sale-deed, then suit would have been filed much earlier. The burden is on the plaintiff to prove her contention that the sale-deed is forged. However, the Trial Court and the First Appellate Court have decided the case as if the burden is cast on the defendants to prove the execution of the sale-deed. Merely because one of the witnesses to the sale-deed didn't support the case of the defendants, the Trial Court and the First Appellate Court could not have held that sale-deed is not valid as the defendants have adduced evidence of another witness who has admitted the execution of the sale-deed by the plaintiff.

17. It is also urged that witness who has not supported the case of the defendants relating to the execution of the sale-deed, has only stated that when he signed the sale-deed, there

was no signature of any person on this sale-deed. In this context, he would urge that he cannot be treated as a witness to the sale-deed and the evidence led on behalf of the defendants would clearly demonstrate that the sale-deed duly executed.

18. It is also further urged that the plaintiff has questioned the sale-deed and the issue is framed casting the burden on the plaintiff to prove the allegation relating to forgery and the plaintiff not having chosen to get her thumb impression examined from the expert, the Courts should have drawn adverse inference against the plaintiff.

19. Learned Senior counsel would also urge that the sale deed is duly registered, and carries a presumption that it is executed by following all the procedures. The identifying witness before the Sub-Registrar has identified the plaintiff. Unless the evidence is led to establish that the plaintiff was not before the Sub Registrar, the Court could not have held that the execution of the sale-deed is not proved. In support of his contention, he relied on the following judgments:

a. *(2021) 15 SCC 300 – Rattan Singh and others vs. Nirmal Gill and others*

b. *(1996) 7 SCC 122 – Hans Raji (Smt.) vs. Yosodanand.*

20. Respondents though served, they are not represented by anyone.

21. This Court has considered the contentions raised and perused the impugned judgments and decree and also the evidence placed on record.

22. Initially, the defendants did not produce the original sale-deed. However, the certified copy of the registered sale deed was produced in the first instance. In the second appeal before this Court on the earlier occasion, the defendants produced the original sale-deed. As already noticed by this Court, some of the pages of the sale-deed were damaged and the entire contents of the sale-deed were not available. Nevertheless, it is to be noticed that the certified copy was produced before the Trial court in the first instance itself. Though, the plaintiff contended that the signature or thumb impression on the sale-deed is forged, the sale-deed produced before this Court by the defendants by way of additional

document was not complete in all respect, certainly contains some pages which had thumb impression of the vendor mentioned in this said sale-deed. Thus, after the remand, it was open for the plaintiff to get her thumb impression compared with the thumb impression on the sale-deed.

23. It is to be noted that the burden of proving the case was on the plaintiff as Issue No.1 has rightly framed casting the burden on the plaintiff. The plaintiff has not chosen to get the thumb impression examined by the expert. However, the plaintiff has chosen to examine one witness who is signatory to sale-deed, who has stated that when he signed a document, there was no signature of the plaintiff. Under what circumstances then he signed and why he signed the sale deed is not forthcoming.

24. It is further relevant to note that the sale-deed is not a compulsory attestable document. The law does not mandate the person claiming under the sale-deed to prove the document only through the witness to the said sale-deed. It can be proved even otherwise. Nevertheless, the defendants have examined another witness to the sale-deed. He has stated

that the sale-deed is executed by the plaintiff and it is duly registered before the Sub-Registrar. The endorsement in the sale-deed would also reveal that plaintiff was present before the Sub-Registrar and identified by one of the witnesses before Sub-Registrar. This being the position, the Court has to attach presumption to the legal process which is involved in execution and registration of the sale-deed. Of-course the presumption is rebuttable. However the question is whether the plaintiff has led evidence to rebut the presumption.

25. On going through the evidence placed before the Trial Court, this Court is of the view that the presumption available in respect of a registered document was not rebutted by the plaintiff by leading cogent evidence. As already noticed, plaintiff has not made any attempt to get her thumb impression examined by an expert, if the plaintiff was so sure that it is the case of impersonation as alleged in the plaint. For what reason, the plaintiff has not chosen to get her thumb impression examined is not forthcoming.

26. After going through the judgment and decree passed by the Trial Court as well as the First Appellate Court, it

can be safely concluded that both the Courts have erred in holding that the defendants have failed to establish the sale-deed though the burden is cast on the plaintiff. No doubt, it is true that though the burden is cast on the plaintiff, onus does lie on the defendants to establish their case and this Court is of the view that the burden is not discharged by the plaintiff. Nevertheless, the defendants have led evidence to substantiate their contention relating to due execution of the sale-deed by the plaintiff.

27. It is also relevant to note that in case, the plaintiff was really dispossessed on account of fictitious sale-deed in the year 1965, the plaintiff could not have kept quite for three years before instituting the suit. The very fact that the defendant/vendor was in possession of the property since 1965 even according to the plaint averment, would indicate that he was put in possession of the property pursuant to a registered sale-deed. If not, there would have been an action against the plaintiff much before the action which was initiated in the year 1968.

28. This Court has also referred to the aforementioned judgments wherein the Hon'ble Apex Court has held that there is a presumption relating to the validity of registered document. The Apex Court has also held that examination of attesting witness is not necessary to prove the execution of sale-deed and it all depends upon the facts and circumstances of each case. In the instant case, the defendants examined the witness to the sale-deed and has already noticed the presumption available in respect of registered document is not rebutted by the plaintiff, by adducing satisfactory evidence to hold that the sale-deed is outcome of fraud and misrepresentation.

29. For the aforementioned reasons, this Court is of the view that the substantial question of law has to be answered in favour of the appellants and against the respondents. Hence the following :

**ORDER**

(i) Appeal is ***allowed***.

(ii) Impugned judgment and decree dated 11.06.2009 passed by the Senior Civil Judge, Shorapur sitting at Shahapur in R.A.No.15/2004 and the judgment and decree

dated 29.09.1993 passed by the Court of the Munsiff, Shahapur in O.S.No.59/1992 (O.S.No.60/68) are set-aside.

(iii) Consequently, the suit in O.S.No.59/1992 on the file of Civil Judge, Shahapur is dismissed.

**Sd/-**
**(ANANT RAMANATH HEGDE)**
**JUDGE**

SN
List No.: 1 Sl No.: 46