IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR SECOND APPEAL NO.200410 OF 2022

(DEC/INJ)

BETWEEN:

YAMANAPPA
S/O RAMAPPA TALAWAR,
AGE: 55 YEARS,
OCC: AGRICULTURE AND PENSIONER,
R/O: H.NO.17, 1ST CROSS, 2ND MAIN BRUNDRA,
LAYOUT, MALLASANDRA HESRASATTA ROAD,
TQ: DASARAHALLI, BENGALURU – 57.

…APPELLANT

(BY SRI JAYANANDAYYA, ADVOCATE)

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

AND:

1. GURUPADAPPA
   S/O ERAPPA DENGI,
   AGE: 43 YEARS,
   OCC: AGRICULTURE,
   R/O: KOLHAR,
   TQ: BASAVANA BAGEWADI,
   DIST: VIJAYAPURA – 586 203.

2. SHARANAPPA
   S/O CHANDRAPPA TALAWAR
   @ KAMANKERI,
   AGE: 45 YEARS,
   OCC: AGRICULTURE,
   R/O: ANGADAGERI.

TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 203.

3. BASAPPA
S/O CHANDRAPPA KAMANAKERI
AGE: 51 YEARS,
OCC: AGRICULTURE,
R/O: ANGADAGERI,
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 203.

4. PARASAPPA
S/O CHANDRAPPA KAMANAKERI
AGE: 52 YEARS,
OCC: AGRICULTURE,
R/O: ANGADAGERI,
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 203.

5. THE GROUP GENERAL MANAGER,
NTPC LIMITED KOODAGI,
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 203.

…RESPONDENTS

(BY SRI DEEPAK V.BARAD, ADVOCATE for r1;
R2 TO R4 IS SERVED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CPC, PRAYING TO ALLOW THE APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE DATED 16.08.2022 PASSED IN R.A.NO.131/2018 BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE VIJAYAPURA AND CONSEQUENTLY, RESTORE THE JUDGMENT AND DECREE DATED 20.09.2018 PASSED IN O.S.NO.71/2013 BY THE ADDITIONAL SENIOR CIVIL JUDGE AND J.M.F.C., BASAVANA BAGEWADI, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR SECOND APPEAL, COMING ON FOR ADMISSION, 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 from divergent finding.

2. The suit in O.S No.71/2013 is filed for the relief of declaration and injunction. The plaintiff claimed declaration of title over the property bearing Sy No.173/1 measuring 5 acres 20 guntas including 4 guntas of Kharab land, Sy No.173/2 measuring 5 acres 20 guntas and Sy No.173/3 measuring 5 acres of Angadageri Village, Basavana Bagevadi Taluk, Vijayapura District.

3. The plaintiff also sought for consequential relief of injunction against 4th defendant. Defendants No.1 to 3 are said to be the vendors of the suit property in favour of the plaintiff and the plaintiff claims to have purchased the property under three registered sale deeds said to have been executed by defendants No.1 to 3 in the year 2011.

4. Defendant No.4 contested the suit and took a contention that, the properties do not belong to defendants No.1 to 3 and urged that the property was granted to defendant No.4.

5. The Trial Court dismissed the suit on the premise that the plaintiff is unable to establish the title.

6. Aggrieved by the dismissal of the suit, the plaintiff filed First Appeal before the First Appellate Court. The First Appellate Court allowed the appeal and held that the plaintiff is the owner of the property under registered sale deeds executed by defendants No.1 to 3 in favour of the plaintiff.

7. Consequently, the suit is decreed. Aggrieved by the decree passed by the First Appellate Court, defendant No.4 is before this Court in this Second Appeal.

8. The appellant has also filed an application seeking leave of the Court to produce additional documents. However, the documents are not produced along with the application. Subsequently, he has filed a memo along with additional documents and urged before this Court that, re-grant order in favour of defendant No.4 has to be taken into consideration.

9. Learned counsel appearing for the appellant would contend that the properties in question were granted under the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as 'the Act, 1961') and there was a re-grant of the lands in favour of the appellant and the same was not produced before the Trial Court, due to inadvertence and the said document would clearly demonstrate that the property belongs to defendant No.4 and defendants No.1 to 3 could not have executed a sale deed based on illegal mutation entries recorded in the name of defendants No.1 to 3 over the property. Thus, he would contend that the Appellate Court erred in allowing the appeal.

10. Learned counsel appearing for respondents No.1 to 3 would contend that the First Appellate Court passed a decree for declaration of title based on the registered sale deeds and the presumption arising from the registered sale deed is not rebutted by any evidence produced by defendant No.4 and it is also his contention that the application for production of additional documents is not maintainable, as documents are not produced along with the application and no reasons are

assigned as to why the alleged re-grant order is not produced before the First Appellate Court and the Trial Court.

11. It is his further contention that the property was transferred in favour of defendants No.1 to 3's mother by mother of defendant No.4, who happened to be the sister and this being a family arrangement, defendants No.1 to 3's mother acquired a valid title over the property and thereafter, there is a registered sale deed in favour of the plaintiff and as such the plaintiff has acquired valid title over the property.

12. This Court considered the contentions raised at the bar and perused the records.

13. The following substantial questions of law would arise for consideration:

i) Whether the appellant has made out a case for production of additional documents i.e., the re-grant order and Record of Right pertaining to the suit property.

ii) Whether the appellants establish the title over the property?

iii) Whether the plaintiff / respondent No.1 establishes title over the property based on the three registered sale deeds said to have been executed by defendants No.1 to 3.

14. It is noticed from the records and the pleadings that plaintiff is claiming title over the properties under three registered sale deeds said to have been executed by defendants No.1 to 3. Since the plaintiff's claim for title is based on three sale deeds alleged to have been executed by defendants No.1 to 3 and since the plaintiff is claiming title over the property, the Court is required to consider whether defendants No.1 to 3 did possess the marketable title as on the date of execution of aforementioned three registered sale deeds.

15. Since it is contended that there was an agreement between the mother of defendants No.1 to 3 and the mother of defendant No.4, wherein, the properties are said to have been transferred in favour of mother of defendants No.1 to 3, the Court is required to consider whether the said agreement between mother of defendant Nos.1 to 3 is valid under the eye of law. Since it is also urged that the re-grant under the Act, 1961, has to be construed as a grant in favour of the family and not just an individual, the Court is also required to consider whether mother of defendants No.1 to 3, is also the beneficiary

of re-grant order said to have been made in the name of defendant No.4.

16. All these contentions would emerge in view of the production of additional document i.e., the alleged re-grant order in favour of defendant No.4. The First Appellate Court as well as the Trial Court did not have the benefit of considering the re-grant order.

17. Under these circumstances, though there is lapse on the part of the appellant in not producing the alleged re-grant order, this Court is of the view that in the interest of justice, an opportunity should be given to the appellant as well as the plaintiff / respondent No.1 to establish their respective claims relating to the alleged re-grant order.

18. Hence, without expressing anything on the merits of the case, the appeal has to be allowed and matter has to be remitted to the Trial Court for fresh consideration.

19. Hence, the following:

ORDER

i) The appeal is ***allowed in part***.

ii) The impugned judgment and decree dated 16.08.2022 passed by the I Additional District Judge, Vijayapura in R.A No.131/2018 are set aside.

iii) The Judgment and Decree in O.S No.71/2013 dated 20.09.2018 on the file of Addl. Senior Civil Judge and JMFC, Basavana Bagewadi are set aside.

iv) The matter is remitted to the Trial Court for fresh consideration.

v) Since a new case is sought to be made out by the appellants before this Court, the parties are permitted to amend their respective pleadings before the Trial Court. If such an application is filed, the Trial Court shall permit amendment of the pleadings of both the parties and thereafter, the parties shall be permitted to lead evidence in respect of their respective claims.

vi) Since defendants No.1 to 3 did not appear before this Court, the Trial Court shall issue notice to defendants No.1 to 3.

vii) Other parties shall appear before the Trial Court on 28.04.2025 without any further notice.

viii) This Court has not expressed anything on the claim of either of parties on merits.

ix) Since there is an interim order before this Court not to alienate the property, said interim order shall continue till the disposal of the suit.

x) It is stated that Rs.8,99,000/- is deposited before this Court. The said amount shall be kept in bank deposit and shall be released in favour of the successful party in the Trial Court. The amount deposit before the Trial Court shall be kept in bank deposit if not already deposited and shall be released subject to the result of the suit.

xi) All contentions of the parties are kept open.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

THM/List No.: 1 Sl No.: 32