NC: 2025:KHC-K:1889
RSA No. 7329 of 2010

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR SECOND APPEAL NO. 7329 OF 2010 (INJ)

BETWEEN:

GUDUMA
W/O MEERASAB MULLA
AGE: 55 YEARS,
OCC: HOUSEHOLD,
R/O: KALDEVAN HALLI VILLAGE,
TQ: SHORAPUR,
DIST: YADGIR
(PREVIOUSLY GULBARGA DISTRICT)

...APPELLANT

(BY SRI SHIVASHARANA REDDY, ADVOCATE)

AND:

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

1. MALLESHAPPA
S/O JADEPPA PARAMGUND
SINCE DECEASED THROUGH LRS.

(a) BASAMMA
W/O LATE MALLESHAPPA
AGE: 50 YEARS,OCC: HOUSEHOLD,

(b) JADEPPA
S/O LATE MALLESHAPPA
AGE: 30 YEARS,OCC: AGRICULTURE,

(c) CHANDRASHEKHAR
S/O LATE MALLESHAPPA

AGE: 26 YEARS,OCC: AGRICULTURE,
R/O: KALDEVAN HALLI VILLAGE,
TQ: SHORAPUR,DIST: YADAGIR.

…RESPONDENT

(BY SRI B.V.JALDE AND SRI. MANJUNATH M. CHIDALLI, ADVOCATES)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC,. PRAYING TO SET ASIDE T THE JUDGMENT AND DECREE DATED 22.10.2008 IN R.A.NO.27/2008 PASSED BY CIVIL JUDGE (SR.DN) SHORAPUR IN CONFIRMING THE JUDGMENT AND DECREE IN O.S.NO.260/1999 DATED 24.06.2008 PASSED BY THE LEARNED CIVIL JUDGE (JR.DN) SHORAPUR IN DECREEING THE SUIT OF PLAINTIFF / RESPONDENT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR SECOND APPEAL, COMING ON FOR FINAL 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)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

2. This appeal is against a concurrent finding in a suit for injunction. The suit is decreed and defendants claim is dismissed. The suit is filed in respect of the property bearing Sy.No.3-43/1 measuring 20’ East-West and 15’ North-South bounded on the east by road, west by house of defendant, North by house of

Jettappa and South by road in Kaldevanahalli Village, Shorapur Taluk. Plaintiff claims that the said property was granted to him by the Government. Plaintiff makes a reference to his name in Form No.12.

3. The defendant contested the suit on the premise that the property bearing Plot No.3-43/1 measuring 45'x30' in Sy.No.225 of Kaldevanahalli Village was granted to the father of the defendant by Taluka Development Board, Shorapur in the year 1975.

4. The Trial Court has decreed the suit. The First Appellate Court dismissed the appeal.

5. This appeal is admitted on 16.08.2010 to consider the following substantial questions of law:

> "1. Whether the Courts below could declare the defendant as the absolute owner of the property in a suit for bare injunction on the basis of an issue to that effect? and
>
> 2. Whether the Courts below could accept the suit property as being the sub-division of a plot number, even without there being mutation entries in that regard?

6. It is noticed that no decree is granted declaring the defendant as the owner and decree granted is only for injunction in favour of the plaintiff. Hence, first substantial question of law framed above does not arise.

7. As far as second substantial question of law is concerned, it is noticed that there is no issue relating to the sub-division of the property. Hence, the said substantial question of law also does not arise.

8. On considering the materials placed on record, this Court is of the view that the following substantial question of law would arise for consideration:

> "When both the parties to the proceeding claim possession of the property based on the Government grant, whether the Courts below are justified in giving a finding on possession of the property without reference to the title deeds (Grant Orders)"?

9. From the description shown by the plaintiff, it is evident that the extent of the property mentioned in the suit is much less than the extent of the property over which the defendant is claiming right which is described in the written

statement. It is also forthcoming from the description of the property mentioned in the plaint that defendant's property is adjacent to the suit property.

10. Both Courts have concurrently given a finding that the plaintiff is in possession of the property. The defendant has failed to establish the alleged grant in the name of the father of the defendant.

11. The defendant has placed reliance on the decree passed by the Trial Court against the Panchayat in O.S.No.67/1993 and claimed that he is in possession of the property as mentioned in the written statement. Admittedly, the plaintiff is not a party in O.S.No.67/1993 and the said decree does not bind the plaintiff. It is also stated that Panchayat did not contest the said suit and it was virtually an exparte decree. Under these circumstances, the findings of the Court that the decree does not bind, the plaintiff cannot be found fault with.

12. It is also noticed that the plaintiff to establish his possession relied on the report of the Court Commissioner. The Courts have held that the report of the Court Commissioner

cannot be the basis to establish possession and title. No fault can be found with the said finding as well.

13. It is noticed in the plaint that the plaintiff has asserted his possession of the property based on the document at Exs.P.1 to P.4 which are not title deeds. Since the plaintiff has asserted his title and so also the defendant the finding relating to the possession should have been based on the title deeds. Hence, in the absence of title deeds the Trial Court could not have decided the question relating to possession when both the parties asserted their possession based on title.

14. Under the circumstances, without going to the merits of the respective claim of the parties, this Court is of the view that both the parties should be given an opportunity to lead better evidence in support of their respective claim.

15. Under the circumstances, the substantial question of law is answered holding that the finding relating to possession without reference to title deed is not justified. The matter is remitted to the Trial Court for fresh consideration.

16. Hence, the following:

ORDER

(i) The impugned judgment and decree dated 22.10.2008 passed in R.A.No.27/2008 passed by the Civil Judge (Sr.Dn.), Shorapur and the judgment and decree in O.S.No.260/1999 dated 24.06.2008 passed by the Civil Judge (Jr.D.), Shorapur are set-aside.

(ii) The matter is remitted to the Trial Court for fresh consideration in accordance with law.

(iii) It is made clear that both the appellant and the respondent are permitted to lead fresh evidence in support of their claim.

(iv) It is further made clear that this Court has not expressed any opinion on the merits of the claim of either of the parties.

(v) Parties shall appear before the Trial Court on **16.04.2025** without awaiting for any further notice from the Trial Court.

(vi) Trial Court Records be returned.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

Brn / List No.: 1 Sl No.: 44