

Naganna (Dead) By Lrs. / Smt Devamma vs Siddaramegowda (Since Deceased) By Lrs on 19 March, 2025

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Bench: Sudhanshu Dhulia

2025 INSC 369

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO (s). 3688/2024

NAGANNA (DEAD) BY LRS./
SMT. DEVAMMA & ORS.

Appellant(s).....

VERSUS

SIDDARAMEGOWDA (SINCE DECEASED)
BY LRS. & ORS.

Respondent(s).....

JUDGMENT

PRASANNA B. VARALE, J:-

1. The present appeal arises from the judgment and order dated 13.03.2014 passed by the High Court of Karnataka at Bangalore in RSA No. 856 of 2011, wherein the High Court allowed the Regular Second Appeal and reversed the judgment and decree passed by the Civil Judge (Senior Division), J.M.F.C. and M.A.C.T in Regular Appeal No. 10 of 2009 on 10.02.2011, which had affirmed the judgment and NEETU SACHDEVA Date: 2025.03.20 13:41:15 IST Reason:

decree passed by the Civil Judge (Junior Division) and J.M.F.C. in OS No. 606 of 1999 on 12.04.2007.

2. For convenience and continuity, parties would be referred to with reference to their rank in the original suit.

BRIEF FACTS

3. The brief facts are as follows:

3.1 The suit schedule vacant site and A house bearing Khata No. 71 of Chaluvearasinakoppalu village, Pandavapura taluk was in possession and enjoyment of plaintiff's father Late Siddegowda till his lifetime, which was allotted to him in a oral partition which took place between Siddegowda and his brothers Kalegowda. However, the khata in respect of the above continued in the name of Kalegowda, brother of plaintiff's father Siddegowda, who was managing the properties. After the demise of the Siddegowda, the plaintiff allegedly continued with the possession of the scheduled suit property. 3.2 At the instigation of the second defendant, the first defendant began to interfere with the peaceful possession and enjoyment of the suit schedule site and tried to pluck tender coconuts from the coconut tree raised and reared by the plaintiff on the suit site and tried to disfigure the suit schedule property for which the plaintiff filed a suit OS No. 259/1994 seeking permanent injunction against the defendants.

3.3 It was stated by the plaintiff that the first defendant with the support of the second defendant got the khata of the suit schedule property transferred to his name and the khata was changed as 111 instead of 71. From the written statement filed by the first defendant, the plaintiff became aware about a sale deed dated 03.03.1993 vide which the first defendant purchased the suit property from second defendant.

3.4 The plaintiff averred that the alleged sale in favour of defendant no. 1 is illegal, void, fraud, and conferred no title either on the first defendant or to the second defendant. It was stated that the defendants were never in possession of the suit property and had fraudulently entered their names in the khata extract. The plaintiff submitted that he was the true owner of the property and that the defendant had forcefully taken over possession of the suit property. 3.5 The OS No. 259/1994 filed by the late Original Plaintiff was later withdrawn by him on the basis of a compromise reached between the parties.

3.6 On 15.09.1995, a Panchayat Pallu Patti was executed between the Lakshamma, wife of Kalegowda and the plaintiff on the basis of which the plaintiff perfected his title over the subject property. Since the defendant tried to interfere with the possession yet again, the plaintiff was constrained to file another suit OS No. 606/1999 before the Ld. Civil Judge (Junior Division) & J.M.F.C, Pandapura seeking permanent injunction, cancellation of the sale deed dated 03.03.1993 and recovery of possession. The original Plaintiff, Naganna died subsequent to the institution of the OS No. 606/1999 and thus, his LRs were brought on record.

3.7 The Ld. Civil Judge (Junior Division) and J.M.F.C. vide judgment dated 12.04.2007 decreed the suit by inter alia cancelling the alleged sale deed dated

03.03.1993 as it was void, invalid and not binding on the plaintiff. The defendant was thus restrained from interfering with the peaceful possession and enjoyment of the suit schedule property by way of permanent injunction. The defendants were directed to handover the possession of the suit property within the period of three months.

3.8 Aggrieved by the same, Defendant No. 1 preferred Regular Appeal No. 10/2009 before Ld. Civil Judge (Sr. Division) & J.F.M.C., Pandavpura. The First Appellate Court vide judgment dated 10.02.2011 confirmed the judgement and decree passed by the Trial Court and dismissed the appeal.

3.9 Aggrieved by the judgment and order of the First Appellate Court, the Defendant No. 1 filed second appeal RSA No. 856/2011 before High Court of Karnataka. While hearing the second appeal, the High Court had framed the following substantial question of law:

“Whether in the absence of the title deeds over the immovable property bearing Khata No. 71 and 111, the Trial Court was justified in decreeing the suit in favour of the plaintiffs and cancelling the sale deed and directing delivery of possession?” 3.10 The High Court, vide judgment dated 13.02.2014, allowed the second appeal and set aside the concurrent findings of the Trial Court and the First Appellate Court. It was observed that the documents relied upon by the plaintiff were not title deeds and were only assessment extracts which do not suggest that they were the owners of the scheduled property. There was no record to corroborate the claim that there was an oral partition between the father Siddegowda and Kalegowda . The High Court also observed that the palli pattu dated 15.09.1995 does not mention Khata No. 71 or 111. Hence, there is no conclusive proof about the ownership of the property. 3.11 Aggrieved by the said judgment of the High Court, the plaintiffs are before us by way of filing a Special Leave Petition.

SUBMISSIONS 4.1 It was submitted by the Ld. Counsel for the Appellants that Respondent No. 2 i.e the seller was not connected with the property owned by the Appellants and the sale deed executed in favour of the Respondent No. 1 was without any lawful title. The material on record reveals that there is an admission from Respondent No. 1 that the property was looked after by Siddegowda and his brother Kalegowda and that Respondent No. 2 was nowhere connected to the suit schedule property. There is no record to indicate the change of khata in favor of the second defendant. On the other hand, five witnesses had deposed in favour of the Appellant. 4.2 The learned counsel further submitted that it is not necessary for a person claiming injunction to prove his title to the suit property and it is sufficient that he proves that he was in lawful possession of the same and that he was dispossessed by a person who was not having any title over the property. The law is clear that a suit for injunction was maintainable, and the issue of title was not directly and substantially involved in the suit. It is further stated that the High Court exceeded its jurisdiction under Section 100 of Civil Procedure Code, 1908 by entering into the question of facts and travelled beyond the pleadings which was not subject matter of any issue and has upset a well-reasoned judgement which was upheld by the first appellate court.

4.3 Per contra, Ld. Senior counsel for the Respondent submitted that the Appellant was never in possession of the property which was owned by the Respondents. The burden of proof in a suit for title and possession lies on the plaintiff and he/she is supposed to prove his title to the suit property by clear evidence. Further, it is well settled that revenue records do not confer any title. To buttress this submission, the learned senior counsel had relied upon the judgement of this court in the case of Union of India and Ors. vs. Vasavi Cooperative Housing Society Limited and Ors¹. 2014 (2) SCC 269.

4.4 Ld. Senior counsel further submitted that the suit property is in possession of Respondent No. 1 and therefore, it raises a strong and clear presumption in favour of the Respondent No. 1. The counsel also submitted that the Appellant had filed a suit against the owner of the northern half of the property bearing No. 111 against one Vedavathi which was dismissed by the Court of Civil Judge observing that the plaintiff had failed to prove his title to the said property.

ANALYSIS

5. We have heard the learned counsel representing the parties and have gone through the material placed before this Court. While admitting the regular second appeal, the High Court of Karnataka formulated two substantial questions of law for consideration, namely:

“(1) In the absence of title deeds over immovable property bearing khata No.71 and khata No.111 whether the Trial Court was justified in decreeing the suit recording a finding that khata No.71 and khata No.111 were one and the same and cancelling the sale deed Ex.P6 conveying property in khata No.111 in favour of the defendant and directing delivery of possession of the said immovable property to the plaintiff as well as permanent injunction?

(2) Whether the Lower Appellate Court was justified in confirming the aforesaid finding of the Trial Court?”

6. It was vehemently submitted by learned senior counsel for the respondents that the plaintiff miserably failed to produce any material before the Trial Court to establish the factum of his possession over the suit property. It was submitted that the documents which were relied upon by the plaintiff were only the extracts of the revenue record. The plaintiff before the Trial Court had examined five witnesses apart from the revenue records.

7. While dealing with the documents, it was observed by the High Court that Ex.P-2 is the demand register extract. It relates to assessment No.71, the name of the owner is shown as Kalegowda, S/o. Muddegowda. Except this, there are no details about the property. Similarly, Ex.P-3 is also the demand register extract which relates to assessment No. 62/1. The owner is shown as Naganna S/o. Siddegowda and the measurements or boundaries of the property are not mentioned. Ex.P-4 is the demand register extract for the year 1984-85. It relates to assessment Nos. 62/1 and 62/2. 62/1 stands in the name of Naganna, S/o. Siddegowda. Measurements of the property are not mentioned. However, the boundaries are given. Ex.P-6 is the sale deed executed in favour of the first defendant

which shows that the 2nd defendant had sold site No.111 of Cheluvarasinakoppalu Village measuring East-West 45 ft. North- South 35 ½ ft bounded on the East by Galli and house of Andanigowda, West by house of Ningegowda, North by road and South by Maduve and road. Ex. P-7 is the palu patti between Lakshamma, her children, Naganna and Andanigowda. It relates to assessment No.62/1 and khatha No. 59/73. There is no mention of khatha No.71 or 111 in Ex. P-7. Ex. P-8 is the mahazar. It shows that the appellant had applied for grant of licence and it was resisted by the plaintiff. It is mentioned in Ex. P8 that the plaintiff is in possession of the suit schedule property. Exhibits P-9 to P 11 are the endorsements stating that the documents asked by Smt. C. S. Padmamma are not available.

8. On the critical assessment of these documents, the High Court has placed on record its observation in following terms:

“The evidence on record does not prove that the plaintiff is the owner of the suit schedule property. The Courts below have failed to consider this. The Trial Court should have considered all issues separately, but has failed to do it. It is relevant to note, there is serious dispute with regard to title of the suit schedule property. The plaintiff has not sought for declaration. The Courts below were not justified in holding that the plaintiff is owner of the suit schedule property and he is entitled to recovery possession. Admittedly, the 1st defendant is in possession of the suit schedule property. The plaintiff cannot depend upon the weakness of the 1st defendant's case. The plaintiff must stand or fall on the strength of his own case. In the present case, the plaintiff has failed to prove that he is the owner of the suit schedule property. Therefore, the Trial Court as well as the Appellate Court have erred while holding that the plaintiff is the owner of the suit schedule property and he is entitled to recover possession and the sale deed executed in favour of the 1st defendant i.e., the appellant herein is invalid and void.”

9. At the cost of repetition, it can be stated that there was no certainty of the scheduled property. Respondent No.1 in his written submission had said that the plaintiff failed to produce any documents of title. The plaintiff also failed to disclose the date or year of the alleged “oral partition” in the family. It was also submitted by the learned counsel for the respondent that the so-called partition deed placed on record at Ex.7 relates to entirely different property and it is in no way related to the suit property. Another interesting feature which is revealed after perusal of the written submission is that the plaintiffs have filed another suit against the purchaser of northern half the property bearing no.111, namely Vedavathi. The said suit was numbered as OS No. 108 of 2003 in the Court of Civil Judge at Pandavapura. The learned Civil Judge, Pandavapura by his judgment and decree dated 2.3.2024 dismissed the suit filed by the appellant - plaintiff against the said Vedavathi holding that the appellant - plaintiff failed to prove his title to the said property. Thus, in the cognate suit also it is held that the appellant-plaintiff has no title to the northern half of the very same property. The copy of the judgment and decree dated 02.03.2024 is also placed on record along with the written submissions.

10. In the said suit, the learned judge framed the issue namely:

(i) Whether the plaintiff proves that, he is an absolute property?

(ii) Whether the plaintiff deed. Dated owner of the suit schedule proves that, the sale deed. dated 03.03.1993 executed by 20th defendant in favour of the 1s defendant in respect of the suit schedule property is void and not binding upon him ?

(iii) Whether the plaintiff entitled the relief sought in the suit ?

(iv) What order or decree ?

11. The learned Trial Court on evaluation of the material placed on record answered the issue in negative. In the said suit also the documents in support of the submission of plaintiff were the extracts of the assessment register. There was also no certainty of the suit property. The Trial Court was pleased to observe that the plaintiff is the owner of khatha No.71, later it was amended as khatha No.73 and it was stated that new khatha No. 111 has been assigned to said khatha No.73. One who comes before the court with a declaration that, he is the absolute owner of the schedule property, he must plead the correct property number, extent and also boundaries before the court with cogent and acceptable evidence. On critical assessment of the material placed on record, the Trial Court arrived at the conclusion that the plaintiffs had failed to prove their ownership over the scheduled property by adducing acceptable oral and documentary evidence.

12. As stated above, the High Court in the present case found that the documents relied upon by the plaintiff to showcase that he was in possession of the property i.e. the revenue record extracts fall short to establish the case of the plaintiff. There was also no certainty about the suit of the property. On the contrary, there were ambiguity on the suit property. The High Court, thus considering these aspects has addressed the issue correctly and we are unable to find any error in the reasoning as well as the conclusion drawn by the High Court.

13. Accordingly, the present appeal fails and is dismissed.

14. Pending application(s), if any, stand(s) disposed of accordingly.

15. No order as to costs.

.....J. [SUDHANSHU DHULIA]J. [PRASANNA B. VARALE] NEW DELHI;

MARCH 19, 2025.