

# Sri. K N Rajanna vs Sri K P Anantha Padmanabha on 12 September, 2024

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NC: 2024:KHC:37606  
RSA No. 2396 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

REGULAR SECOND APPEAL NO.2396 OF 2017 (INJ)

BETWEEN:

SRI K.N.RAJANNA,  
S/O. K.P. NAGARAJIAH,  
AGED ABOUT 60 YEARS,  
BRAHMADEVA METALS,  
KALYANI MAIN ROAD,  
SHRAVANABELAGOLA-573 135,  
CHANNARAYAPATNA TALUK,  
HASSAN DISTRICT.

... APPELLANT

(BY SRI BHUJABALIAH Y.C., ADVOCATE)

AND:

SRI K.P. ANANTHA PADMANABHA,  
S/O LATE B. PADMAIAH,  
AGED ABOUT 57 YEARS,  
PADMASHREE METAL STORE,  
KALYANI MAIN ROAD,  
SHRAVANABELGOLA-573 135,  
CHANNARAYAPATNA TALUK,  
HASSAN DISTRICT.

... RESPONDENT

(BY SRI N. SUKUMAR JAIN, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST  
THE JUDGMENT AND DECREE DATED 11.10.2017 PASSED IN  
R.A.NO.57/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND  
JMFC, CHANNARAYAPATNA., ALLOWING THE APPEAL AND SETTING  
ASIDE THE JUDGMENT AND DECREE DATED 01.08.2016 PASSED IN

Digitally signed by  
MAHALAKSHMI B M  
Location: HIGH  
COURT OF  
KARNATAKA

O.S.NO.307/2011 ON THE FILE OF THE PRL. CIVIL JUDGE AND  
JMFC. , CHANNARAYAPATNA.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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RSA No. 2396 of 2017

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

Assailing the legality and correctness of the judgment and decree in RA No.57/2016 dated 11.10.2017 on the file of the Senior Civil Judge and JMFC, Channarayapatna (hereinafter referred to as the 'First Appellate Court'), reversing the judgment and decree in O.S. No.307/2011 dated 01.08.2016 on the file of the Principal Civil Judge and JMFC, Channarayapatna (hereinafter referred to as the 'trial Court' for short), whereby, the First Appellate Court decreed the suit of the plaintiff for permanent injunction.

2. The parties herein are referred to as per their rank before the trial Court for the sake of convenience.

3. Suit seeking for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the conservancy and oni, and to put up water pipe in the oni situated NC: 2024:KHC:37606 towards the eastern side of the suit schedule property measuring 27 1/2 feet towards North-South and 2 1/4 feet towards East-West. The plaintiff and the defendant are adjacent owners purchased from common vendor, as the purchased property was in dilapidated condition, the plaintiff and the defendant demolished the building, while putting up construction, the plaintiff and the defendant entered into an agreement for use of oni between the properties of the plaintiff and the defendant. It is the case of the plaintiff that when the plaintiff tried to put up lavatory pipe and water pipe in the oni as agreed as per the terms of the agreement dated 21.07.2001, the defendant obstructed and hence, the present suit.

4. On notice, the defendant appeared and filed his written statement. The defendant admitted about the agreement dated 21.07.2001 agreed between the plaintiff and defendant, however, contended that the plaintiff had violated the rules and conditions mentioned in the agreement dated 21.07.2001 and as such, the agreement NC: 2024:KHC:37606 was not acted upon. The defendant contended that the plaintiff has no right and title over the said oni and the present suit is filed to harass the defendant and sought for dismissal of the suit.

5. The trial Court on the basis of the pleadings framed the following issues:

"1. Whether the plaintiff proves that, towards eastern side of suit property there is a oni measuring 27 1/2 feet towards north-south and 2 1/4 feet towards east-west?

2. Whether plaintiff proves that alleged interference made by the defendant?

3. Whether the plaintiff entitled for the relief as sought for?

4. What order or decree?"

6. In order to substantiate their claim, the plaintiff examined himself as PW.1 and marked documents at EXs.P1 to P25. On the other hand, the defendant examined himself as DW.1 and marked documents at EXs.D1 to D13.

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7. The trial Court on the basis of the pleadings, oral and documentary evidence, arrived at the conclusion that the plaintiff has proved that towards the eastern side of the property, there is a suit property (oni) measuring 27 1/2 feet towards north-south and 2 1/4 feet towards east-west, that the plaintiff has failed to prove the execution of Ex.P.2 and by judgment and decree, the trial Court dismissed the suit of the plaintiff.

8. Aggrieved, the plaintiff preferred appeal before the First Appellate Court, the First Appellate Court while re-appreciating and reconsidering the entire oral and documentary evidence, reversed the judgment and decree of the trial Court and decreed the suit of the plaintiff, granting permanent injunction restraining the defendant from causing obstruction to the use and enjoyment of the conservancy and to lay pipeline for passing of toilet water and rain water. Aggrieved by the decreetal of the suit by the First Appellate Court, the defendant is before this Court in the Regular Second Appeal.

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9. Heard the learned counsel for the parties and perused the material on record.

10. Suit of the plaintiff is for injunction in respect of an area measuring 27 1/2 feet and 2 1/4 feet which according to the plaintiff is a oni (suit property). The case of the plaintiff rests on EX.P2, the agreement which has been entered between the plaintiff and the defendant. The defendant in his written statement admitted about the agreement entered between the plaintiff and defendant on 21.07.2001. The relevant portion of the written statement at para No.20 reads as under:

"20. aÁçAiÀÄÄ F WÀ£À £ÁâAiÀiÁ®AiÀÄPÉÎ ±ÄÄzÀÝ °À, ÀÛçAzÀ ¥Àj°ÁgÀ ¥ÀqÉAiÀÄ®Ä §AçgÄÄªÄÄç®è. zÁªÁzÀ°è °ÉÄ¼Ä ¨ÉÄPÁVgÄÄªÄ CA±ÀUÄ¼Ä£ÄÄß °ÉÄ¼ÄzÉ C£Äß C£ÄÄPÀÆ®PÁÏV JPAÏuÉUÄ¼Ä£ÄÄß, ÀàµÀÖ£ÉªAiÁrPÉÆAqÄÄ, ÄÄ¼ÄÄî, ÄAUÄwUÄ¼Ä£ÄÄßªÄÄÄAzÉ MrØ ¥Àj°ÁgÀªÄÄÄß ¥ÀqÉAiÀÄ®Ä ¥ÄæAiÀÄvÄß ¥ÀqÄÄwÛgÄÄvÁÛgÉ.ªÁçªÄÄvÄÄÛ

F YÀæw<sup>a</sup>ÁçAiÄÄ £ÀqÄÄ<sup>a</sup>É YÀæVÉãÄPÄ<sup>a</sup>ÁzÀ MqÄÄ§rPÉUÄ¼ÄÄ çÄ: 21-07-2001 gÄAzÄÄ GAmÁVzÄÄÝ, , ÄzÄj MqÄÄ§rPÉAiÄÄ YÀæPÁgÄ<sup>a</sup>Áç YÀæw<sup>a</sup>ÁçAiÄÄgÄÄ MqÄÄ§rPÉAiÄÄ RZÄð£ÄÆß "sÄj , ÄÄ<sup>a</sup>À µÄgÄwÜ£Ä°è C¼ÄÄ<sup>a</sup>Är<sup>1</sup> °ÉÆgÄUÉ UÁ½ YÉÊYÄ£ÄÄß °ÁQ PÄZÄÑ £ÄPÉëAiÄÄ°èAiÄÄ PÉJ<sup>-</sup>i « "sÁUÄzÄ°è °ÉÄ¼ÄÄ<sup>-</sup>ÄzÄ M¼ÄÄZÄgÄÄr YÉÊYÄUÄ¼ÄÄ<sup>a</sup>ÄÄÆ®PÄ °ÉÆgÄ°ÉÆÄUÄ®Ä C<sup>a</sup>ÄPÁ±Ä<sup>a</sup>ÄiÄrPÉÆArzÄÄÝ , ÄzÄj ¤ÄgÄÄUÄ¼ÄÄ£ÄÄß °ÉÆgÄUÉ NC: 2024:KHC:37606 °ÉÆÄUÄ®Ä "ÉÄgÉ C<sup>a</sup>ÄPÁ±Ä« ®è<sup>a</sup>ÉÄÄ§ÄzÄ£ÄÄß YÀæw<sup>a</sup>ÁçAiÄÄÄ MYÄÄÄ<sup>a</sup>ÄÄç®è. F CA±ÄUÄ¼ÄÄ£ÄÄß<sup>a</sup>ÁçAiÄÄÄ<sup>a</sup>ÄÄgÉ<sup>a</sup>ÄiÄZÄÄvÁÛgÉ."

(emphasis supplied)

11. The defendant having categorically admitted in his written statement about the execution of the agreement between the plaintiff and the defendant on 21.07.2001, the trial Court was not justified in arriving at a conclusion that the plaintiff has failed to prove EX.P2, admitted facts need not be proved, when the party agreed to admit by any writing under their hands in light of Section 58 of the Indian Evidence Act, 1872 ('the Act' for short) and the corresponding Section 53 of the Bharatiya Sakshya Adhiniyam, 2023 ('BSA, 2023 for short), the defendant having admitted in his written statement about the terms of the agreement dated 21.07.2001, the plaintiff cannot be insisted upon to prove his case as held by the Trial Court. The execution of the agreement being admitted, if there was any violation by the plaintiff, the defendant could have challenged the agreement and the NC: 2024:KHC:37606 Courts cannot blindfold to a document which is admitted by a party thereto in a proceedings.

12. The First Appellate Court being the last fact finding Court has re-appreciated the entire oral and documentary evidence, independently, by framing point for consideration which reads as under :

"1. Whether judgment and decree passed by trial Court in O.S. No.307/2011 dated 01.08.2016 is illegal, perverse, capricious and against principles of law and justice and liable to be interfered by this Court?"

13. The First Appellate Court at para Nos.16 and 17 has given reasoned order by following the provisions of law for reversing the judgment and decree of the trial Court. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Act and Section 53 of BSA Act, 2023, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The manner in which the First Appellate Court has reassessed and reconsidered the NC: 2024:KHC:37606 entire oral and documentary evidence, this Court is of the considered view that the same does not warrant any interference under Section 100 CPC and no substantial question of law arises for consideration in the present appeal. Hence, this Court pass the following: -

ORDER i. The Regular Second Appeal is dismissed.

ii. The judgment and decree of the First Appellate Court stands confirmed.

Sd/-

(K.S. HEMALEKHA) JUDGE YKL