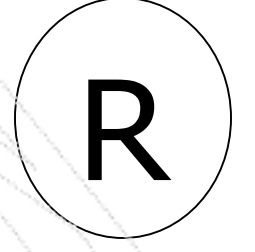


IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH



DATED THIS THE 10<sup>TH</sup> DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**RSA NO.200352/2022 (DEC/INJ)**

Between:

Gangappa S/o Huligeppa  
Age: 57 Years, Occ: Agriculture  
R/o Yeganur village  
Tq. & Dist. Raichur -- 584 101

...Appellant

(By Sri Harshavardhan R. Malipatil, Advocate)

AND:

Lingareddy S/o Hampanna  
Age: 69 Years, Occ: Agriculture  
R/o Yeganur village  
Tq. & Dist. Raichur – 584 101

...Respondent

(By Sri Sachin M. Mahajan, Advocate)

This Regular Second Appeal is filed under Section 100 of CPC praying to allow this appeal with cost and decree the suit of the plaintiff by setting aside the judgment and decree in R.A.No.8/2021 on the file of Principal Senior Civil Judge and CJM at Raichur and also

the judgment and decree of the learned II Additional Civil Judge and JMFC-IV at Raichur dated 24.03.2021 in C.S. No.195/2012 and consequently decree the suit of the plaintiff.

This Appeal is coming on for Admission this day, the Court delivered the following:

### **JUDGMENT**

The captioned second appeal is filed by unsuccessful plaintiff questioning the concurrent findings of the Courts below, wherein the suit filed by the plaintiff seeking relief of declaration and permanent injunction is dismissed.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The plaintiff has filed the present suit asserting title over the suit schedule property. The plaintiff traces his rights in the suit schedule property by contending that the suit schedule property was

owned by his maternal grandfather by name, Ganganna. It is specific case of the plaintiff that Ganganna had only one daughter by name Nagamma, who is the mother of the plaintiff herein. The present suit is filed by contending that the defendant has concocted a fictitious document and is trying to interfere in the suit schedule property and hence, the present suit.

4. On receipt of summons, the defendant has tendered appearance and filed written statement and denied the entire averments made by the plaintiff. The defendant has contended that his father purchased the property from plaintiff's maternal grandfather under sale deed dated 14.11.1963. The defendant has further contended that his father Hampanna, thereafter who acquired absolute right and title pursuant to the sale deed has bequeathed the property by way of will dated 11.06.1973. The

defendant also contended that his father's name was duly entered in patta book. The defendant also contended that since the market value of the suit property was less than Rs.100/-, the sale deed did not warrant any registration and therefore, his father purchased the suit schedule property under unregistered sale deed and therefore, sought for dismissal of the suit.

5. The plaintiff and defendant have let in oral and documentary evidence to substantiate their respective claims. The Trial Court having examined the evidence on record, answered issue No.1 in the Negative and issue No.2 was answered in the Affirmative. The Trial Court held that the defendant has succeeded in establishing his father's right over the suit schedule property. The Trial Court having examined the rebuttal evidence more particularly, the original tax paid revenue receipts vide Exs.D.3 to D.10

coupled with patta book, which is marked at Ex.D.1, has come to the conclusion that the defendant has succeeded not only in establishing his title but also possession and therefore, proceeded to dismiss the suit.

6. The appellate Court being final fact finding authority has independently assessed oral and documentary evidence and on independent examination of material on record has found that the plaintiff, who is the grandson of one Ganganna S/o Hanumappa cannot assert title over the suit schedule property. Referring to the rebuttal evidence, the appellate Court held that Ex.D.1, which is a patta book issued by the Government of Mysuru in the name of defendant's father clearly indicates that there is valid transfer of suit schedule property and therefore, the defendant's father acquired valid title under sale deed vide Ex.D.18. On these set of

reasoning, the appellate Court proceeded to concur with the findings of the trial Court. Consequently, the appeal was dismissed. These concurrent findings are under challenge in this appeal.

7. Heard the learned counsel appearing for the plaintiff and the learned counsel for the defendant.

8. I have given my anxious consideration to the material on record. The plaintiff is asserting title over the suit schedule property by contending that the suit schedule property was originally owned by his maternal grandfather. Learned counsel appearing for the plaintiff has strenuously argued and contended before this Court that there are no recitals in the sale deed indicating that his maternal grandfather parted with possession. Therefore, he has contended that the document set up by the defendant is a fictitious document. The plaintiff claims that he is in exclusive

possession. The suit schedule property was agreed to be sold by the plaintiff's maternal grandfather. The sale consideration is shown as Rs.95/-. Therefore, transfer in respect of tangible immovable property less than Rs.100/- does not require any registration. During trial, the plaintiff has not seriously disputed the sale deed and the same is forthcoming from the records. The Trial Court has noticed that on two occasions the plaintiff has not disputed the execution of sale deed, while handing over possession is seriously disputed.

9. To substantiate his claim that in regard to possession over the suit schedule property, there is absolutely no iota of evidence let in by the plaintiff. On the contrary, the defendant by way of rebuttal evidence, has produced copy of patta book and land revenue paid receipts. Coupled with these documents, the defendant has succeeded in eliciting from cross-

examination of P.W.2, who has admitted in unequivocal terms that the defendant's father was in fact cultivating the land in question.

10. This relevant part of cross-examination coupled with other clinching evidence clearly establish that the defendant is in possession. In the absence of clinching and cogent evidence, both the Courts were justified in holding that there is valid transfer of title in favour of the defendant's father pursuant to the sale deed executed by original owner on 14.11.1963 vide Ex.D.18.

11. The present plaintiff claims to be the grandson of one Ganganna S/o Hanumappa. The evidence on record indicates that the defendant's father is found to be in a physical possession of the suit land. This fact is elicited in cross-examination of P.W.2. It is a trite law that sale of an immovable property of value of less than Rs.100/- can be made



either by registered document or by delivery of possession. In such cases, vendee acquires complete title by mere delivery of possession of the property. Fact that there is in addition an unregistered sale deed cannot affect the good title acquired by him. Therefore, if there is a physical delivery of possession, an unregistered deed would not be rendered nugatory, only on account of existence of an unregistered sale deed. It is also trite law that the delivery need not be contemporaneous with the unregistered deed. If in pursuance of an unregistered sale deed, possession has been delivered, the buyer can fall back upon the title by delivery of possession although the unregistered sale deed by itself does not convey title. In the present case on hand, Ganganna, who is the maternal grandfather of the plaintiff herein never questioned the transaction during his lifetime.

12. Therefore, what emerges from the material on record is that the vendor i.e., grandfather of the plaintiff herein by appropriate acts has converted vendee's possession into that of an owner. Therefore, where delivery of possession is established, an unregistered instrument of sale would not be material. 1963 transaction is now sought to be challenged by the grandson of the vendor. Therefore, plain reading of Section 54 of the Transfer of Property Act (for short, 'the T.P. Act') clearly reveals that there are only two modes of transfer by sale and these are (i) registered instrument; and (ii) delivery of possession. The first overlaps the second, for a transfer may in all cases be made by a registered instrument. It is only in the case of tangible immovable property of value less than Rs.100/-, that the Section 54 of the T.P. Act allows the simpler alternative of delivery of possession. Therefore, in my opinion as in the

present case on hand, there is a transfer of property and its value is found to be less than Rs.100/-, the transfer is afforded by delivery of possession accompanied by an unregistered document. An unregistered sale deed vide Ex.D.18 carries evidentiary value and the same can be seen in evidence in order to show what was the character of the possession given by the vendor of the land to the purchaser. The transaction is of the year 1963. Therefore, it has to be presumed that vendor has transferred title and the same is authenticated by delivery of possession. There is evidence dehors the unregistered sale deed which is amply sufficient in my opinion to support the conclusion. Therefore, I am of the view that if there is alienation of immovable property, whose value is less than Rs.100/- and possession is given, then a transfer takes place under Section 54 of the T.P. Act.

13. The concurrent findings recorded by the Courts below on disputed question of fact is based on clinching rebuttal evidence and several significant admissions elicited in cross-examination of plaintiff's witnesses.

14. This Court cannot venture into re-assessing the oral and documentary evidence and such recourse is not permissible under Section 100 of Code of Civil Procedure. Therefore, I am of the view that appeal is liable to be dismissed on the ground that both the Courts below have found as a matter of fact that there was a sale accompanied by delivery of possession and that is a finding of fact which cannot be disputed. Therefore, no substantial question of law arises for consideration.

Accordingly, the Appeal is dismissed.

In view of disposal of main matter,  
I.A.No.1/2022 filed for temporary injunction does not  
survive for consideration.

**Sd/-  
JUDGE**

RSP