

IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 13<sup>TH</sup> DAY OF JANUARY 2012

BEFORE

THE HON'BLE MR JUSTICE DILIP B. BHOSALE

R.S.A. NO.2098/2005

BETWEEN

1. AMRUTHEGOWDA  
S/O NANJEGOWDA  
AGED ABOUT 45 YEARS
2. MALLIKARJUNA @ MALLESHA  
S/O NANJUNDEGOWDA  
AGED ABOUT 50 YEARS

BOTH RESIDING AT:  
KUPPEHOSAHALLI VILLAGE  
ALUR TALUK  
HASSAN DISTRICT - 573201

...APPELLANTS

(BY SMT KAVITHA H C, ADV.)

AND

PATEL RANGEGOWDA  
S/O THIRUMALEGOWDA  
AGED ABOUT 76 YEARS  
R/A KUPPEHOSAHALLI VILLAGE  
ALUR TALUK AND HASSAN DISTRICT-573201

DEAD REPTD. BY LRS:

- a) SHEKARAPPA  
S/O LATE RANGEGOWDA  
R/O KUPPEHOSAHALLI  
GUDDENAHALLI POST  
ALUR TALUK, HASSAN DISTRICT
- b) PUTTASWAMY

S/O LATE RANGE Gowda  
 R/O KUPPEHOSAHALLI  
 GUDDENAHALLI POST  
 ALUR TALUK  
 HASSAN DISTRICT.

... RESPONDENTS

(RESPONDENTS SERVED)

RSA FILED U/S 100 CPC AGAINST THE JUDGMENT AND DECREE DATED: 30.6.2005 PASSED IN RA.NO.235/2005 ON THE FILE OF THE ADDL SESSIONS JUDGE & PRESIDING OFFICER, FAST TRACK COURT-III, HASSAN, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED: 4.7.2001 PASSED IN OS.NO.49/2000 ON THE FILE OF THE CIVIL JUDGE (JR.DN.) & JMFC, ALUR.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**ORAL JUDGMENT:** This second appeal is directed against the judgment and order dated 30.06.2005 rendered by Additional Sessions Judge & Presiding Officer, Fast Track - III, Hassan in Regular Appeal No.235/2005 by which the judgment and decree of the Trial Court in O.S.No.49/2000 was set aside and the suit filed by the respondent-plaintiff for permanent injunction has been decreed.

2. The case of the plaintiff is that he is an absolute owner of the suit property and he is in possession and enjoyment of the same. He claims that he purchased this property ad-measuring 12 acres 16 guntas from one Hulagudi Narasimhachar Swamy (for short "Swamy") on 3.2.1966 under a registered sale deed. Since, the defendants, who have no right, title or interest over the suit property, started interfering and disturbing the plaintiff's possession, he instituted the present suit for injunction simplicitor. On the other hand, the case set up by the defendants is that the suit property was originally belonging to Swamy and the said Swamy had put the defendants in possession of 16 guntas of land out of the ~~suit~~ property measuring 12 acres 16 guntas. This piece of 16 guntas of land touches the defendants' property. The defendants in the written statement stated that Swamy had constructed a Mangalore tile house and a well in the 16 guntas of land which was given in their

possession and they are in physical possession of the house and the well since before execution of the sale deed in favour of the plaintiff. In support of their contention they have placed reliance of khata extract of the house and tax paid receipt.

3. This Court while admitting the appeal framed the following substantial question of law for determination:

“Whether the Lower Appellate Court was justified in decreeing the suit of the plaintiff in the absence of the original sale deed showing the extent of land purchased by the plaintiff?”

4. The plaintiff has set up a positive case that he purchased the suit property measuring 12 acres and 16 guntas under registered sale deed dated 3.2.1966 and since beginning, he is in possession thereof continuously. The defendants' claim that 16 guntas out of the land purchased by

the plaintiff was given in their possession by Swamy. The defendants, however, have not produced any material/evidence in support of their case. The only documents relied upon by the defendants in support of their case are khata extract and tax receipt. These two documents in my opinion would not help the defendants to prove their right over the disputed land of 16 guntas or their possession over the said portion of land. It is true, the appellants though claimed that they became owner of the entire land measuring 12 acres 16 guntas on the basis of the sale deed executed by Swamy, they did not produce original sale deed on record. However, it is pertinent to note that the defendants produced at Ex.D-1, a certified copy of the sale deed executed by Swamy in favour of the appellants on record which clearly show that Swamy was the owner of 12 acre 16 guntas of land situated at Kuppehosahalli Village. The certified copy of the registered sale deed, produced by the

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defendants was taken on record and admitted in evidence. In view thereof, in my opinion, merely because the plaintiff did not produce original sale deed, that would not affect his case in any manner whatsoever. The sale deed was not in dispute and even the title of the plaintiff over the land purchased under the registered sale deed has not been disputed by the defendants.

5. It is against this backdrop, the Appellate Court after having gone through the sale deed has rightly observed that there is no reference to the 16 guntas of land or Mangalore tile house and the well in the landed property purchased under the sale deed and which the defendants are claiming to be in possession. The Appellate Court has further taken into consideration the judgment and decree in O.S.196/1999 to hold that the suit property measuring 12 acres 16 guntas is in possession of the plaintiff. It is true that defendants were not

parties to the said suit, but the said judgment further supports the case of plaintiff. Merely because original sale deed was not produced by the plaintiff on record, it cannot be said that the certified copy of the sale deed dated 3.2.1966 was wrongly acted upon by the Appellate Court. Moreover, the defendants have not disputed the contents of the certified copy of the sale deed produced on record. The certified copy clearly shows the area of land purchased by the plaintiff. The question of law framed at the stage of admission is accordingly answered in the affirmative.

6. The appeal is accordingly dismissed. No costs.

Sd/-  
JUDGE