

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 21ST DAY OF JULY 1998

BEFORE

THE HON'BLE MR. JUSTICE T.N.VALLINAYAGAM

REGULAR SECOND APPEAL NO.721/1992

A.K.Durgappa,
s/o. late Bhimanna, major,
House No.104,
Millaghatta, 2nd cross,
Bhootappanakeri,
Shimoga-577 201. :APPELLANT

(BY Sri. U.S. Sanjeeva Murthy, Adv.)

-vs-

Sri. Mannina Narasaiah,
s/o. late Puttaiah,
since dead, rep. by his L.Rs.
1(a) Smt. Puttalakshamma,
w/o. late Mannina Narasaiah,
1(b) Sri. Narasimha Murthy,
s/o. late Mannina Narasaiah,
1(c) Smt. Mannina Narasamma,
d/o. late Mannina Narasaiah,
1(d) Smt. Lakshminarasamma,
d/o. late Mannina Narasaiah,

Cause title amended as
per court order dt: 22.6.1993.

:RESPONDENTS

(BY Sri. M.V.Maheshwarappa, for L.Rs of 1(a to d)

Regular Second appeal against the
Judgment and decree passed by the Addl.
Dist. Judge, Shimoga, in R.A.NO.26/1988
on his file dated 17.2.92 confirming those
of the Addl. Civil Judge, Shimoga, in O.S.
No.216/1986 on his file dated 4.7.1988.

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This appeal coming on for hearing this day, the court delivered the following:

JUDGMENT

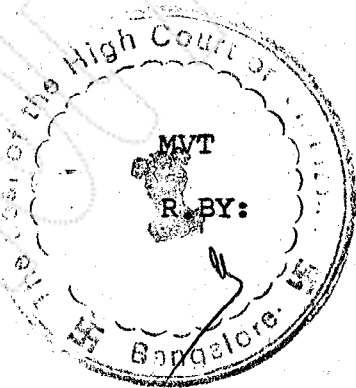
The plaintiff is aggrieved by the dismissal of his suit for declaration of title, possession and mesne profits in respect of site No.38/1, bearing Municipal Khatha No.4334/1, measuring 21' x 48' by the courts below.

2. Admittedly, the suit site was originally granted to the defendant as could be seen in para-2 of the written statement and the same was sold to the plaintiff under a registered sale deed dt: 21.9.66. The defendant attack the sale deed as nominal and not binding. Though the courts below have accepted the sale as true and found the title in favour of the plaintiff, they have chosen to non-suit the plaintiff on the question of adverse possession. Once the registered sale deed comes to play, the legal position is, the property being vacant site, possession goes with the rightful owner. This aspect of the

law has not been considered by the courts below which is an error apparent on the face of the record. The plea of adverse possession raised by the defendant is not supported by any pleadings or the essential ingredients of adverse possession nor any proof is forthcoming from the evidence available to substantiate such plea. I have therefore no hesitation to set aside the judgment and decree of the courts below, holding that the adverse possession has not been proved at all. Further holding that the approach made by the courts below is perima facie perverse and error apparent on the face of the record, the judgment and decree of the courts below are set aside and the second appeal is allowed. Suits decreed with costs.

sd/-

JUDGE



C. BY: *[Signature]*

'COPY'

[Signature]
Assistant Registrar
High Court of Karnataka

Bks Bangalore.

29.9.78