

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF JUNE 1998

BEFORE

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

R.S.A.No.326/1992

1. Sri.Pyrappagari,
Venkatarayappa,
S/o Hanumanthappa,
aged about 55 years,
r/o Gandlachinta Sadali,
Hobli, Sidlaghatta tk,
Kolar Dist.
2. Sri.Petemuniyappa,
aged about 84 years.
3. Chikkanarasimhappa
S/o Doddchinnappa,
aged about 64 years.
4. Smt.Siddamma,
W/o late Chinnathinmaiah,
49 years.

Appellants 2 to 4 are
r/o Nakkalahalli, Sadali
Hobli, Sidlaghatta Tk,
Kolar Dist.

..Appellants.

(By Sri.B.T.Parthasarthy, adv)

And;

1. Sri.V.Rajanna,
S/o late Narasappa,
59 years, r/o
Venkatapura, Sadali
Hobli, Sidlaghatta tk,
Kolar Dist.

2. Sri.Yerrappa,
S/o Dasa//agari,
Kadirappa, r/o
Nakkalahalli, Sadali
Hobli, Sidlaghatta Tk,
Kolar Dist.

..Respondents.

(By Sri.M.Ram Mohan, adv for R.1)

This R.S.A is filed under Sec.100 of CPC against the judgment and decree dt 5.9.91 passed in R.A.No.27/90 on the file of the Civil Judge, & JMFC, Chintamani, dismissing the appeal confirming the judgment and decree passed by the Munsiff, Siddlaghatta in O.S.No.38/88 dt 19.7.90.

This R.S.A coming on for hearing this day, the court delivered the following:-

J U D G M E N T

Defendants 1,2,3 and 5 are the appellants. The 4th defendant has not been made as respondent. The suit for injunction on the ground that the plaintiff is the owner of the property and the defendants who are trying to disturb the possession was decreed by the trial court and the same came to be confirmed by the first appellate court. Hence, the defendants are before this court in this second appeal.

2. There were six items of landed property which the plaintiff claim as ancestral property

acquired by his father. After his death the plaintiff succeeded. The defence set up by the defendants was that the plaintiff's father and Venugopal's father were the divided brothers. Regarding Item Nos.1 and 6 Form-No.7 has been filed by one Neeraganti Kamaiah. Regarding Item No.5 the husband of the 5th defendant Chikka Thimaiah had purchased 2 acres 10 guntas under a registered sale deed dt 30.1.1978 from the said Venugopal and in turn the said Chikka Thimaiah has executed an agreement of sale to sell away 2 acres 10 guntas to 5th defendant. Thus, the 5th defendant claim to be in possession of the property. It was also mentioned in paragraph-7 of the written statement that excepting the 5th defendant other defendants have no interest over the schedule properties and they are the unnecessary parties to the suit. This written statement is filed as a common written statement by all the defendants. So the question that remains for consideration is whether the 5th defendant can disturb the possession of the plaintiff. The claim of the 5th defendant is based on the sale deed which is followed by agreement of sale from one Venugopal. The said Venugopal in whom the

defendant

5th/claims title appears to have filed O.S.No.90/89 on the file of Munsiff, Siddlaghata claiming title over the suit property and the suit came to be dismissed for default. Therefore, rightly, the courts below have found that Venugopal have no right over the property and consequently the 5th defendant cannot have the right at all. Therefore, the title of the plaintiff cannot be questioned and the possession can not be disturbed by the defendant.

3. Apart from concurrent finding of fact rendered by the courts below, I also find no reasonable material to interfere with the judgment and decree of the courts below. Confirming the same, the second appeal is dismissed as having no merit at all.

sd/-
Judge

mv/-