

**(2010) 02 KAR CK 0110**

**In the Karnataka High Court**

**Case No :** Regular Second Appeal No. 772 of 2004

Chandrashekhar Sangappa Alias Sanganna Nagur APPELLANT

Vs

Muddappa Gangappa Jogur (Since Deceased) by his L.Rs. RESPONDENT  
and Others

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**Date of Decision :** 05-02-2010

**Acts Referred:**

**Citation :** (2011) 2 KarLJ 170 : (2011) 4 KCCR 480 SN

**Hon'ble Judges :** H.N. Nagamohan Das, J

**Bench :** Single Bench

**Advocate :** S.S. Hallalli, for the Appellant; Sanjay A. Patil and G.G. Chagashetti, for the Respondent

**Final Decision :** Allowed

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## Judgement

H.N. Nagamohan Das, J.—This second appeal is directed against the judgment and decree dated 2-7-2004 in R.A. No. 206 of 2004 passed by the I Additional District Judge at Bijapur.

2. Appellant is Plaintiff and Respondents are Defendants before the Trial Court. In this judgment, for convenience, the parties are referred to their status before the Trial Court.

3. Plaintiff contends that originally the house property bearing No. 143 situated in Ward No. 1, Sindagi Town belongs to the joint family of Gundappa Hipparagi and his brother Tippanna. In a partition, the schedule property had fallen to the share of Tippanna. After the demise of Tippanna, his wife Ningawwa gifted the schedule property in favour of one Narayan Jamadar under a registered gift deed dated 7-9-1982. Subsequently, the said Narayan Jamadar sold the schedule property in favour of the Plaintiff under a registered sale deed dated 11-11-1983. The Plaintiff further contends that he is in possession and enjoyment of the plaint schedule property. The mutation is in his name and he has paid taxes. Since the Defendants tried to interfere with the Plaintiff's possession and enjoyment of the

schedule property and that they have denied his title, he filed O.S. No. 217 of 1991 seeking declaration of title and perpetual injunction.

4. The Defendants entered appearance before the Trial Court and filed their written statement inter alia contending that the plaint schedule property bearing No. 143 is not in existence. The Defendants further contended that the plaint schedule property is in their possession and enjoyment having acquired the same under 3 registered sale deeds dated 8-4-1963, 20-10-1965 and 7-6-1978. The Defendants also contended that the original owner Gundappa Hipparagi had sold the entire lands owned by him and there was nothing remaining in his hands to be partitioned with his brother Tippanna or his wife Ningawwa. On these grounds the Defendants opposed the claim of the Plaintiff.

5. On the basis of the pleadings, the Trial Court framed the following issues for its consideration:

1. Does Plaintiff prove that he is owner of the suit property Sindagi TMC No. 143?
2. Whether Defendant proves the suit house purchased by Defendant 1 from Gundappa Narasingappa Hipparagi in 3 pieces in 1963, 1965, 1978 and he is the owner and is in possession?
3. Does Plaintiff prove obstruction by Defendants?
4. Whether Defendant proves that suit is not properly valued and Court fee paid is insufficient, market value of the suit property is Rs. 70,000/- and this Court has no jurisdiction to try the suit?
5. Is Plaintiff entitled to decree sought for?
6. What order or decree?

6. Before the Trial Court, the Plaintiff examined 2 witnesses as P. Ws. 1 and 2 and got marked Exts. P. 1 to P. 16. The Defendants examined 3 witnesses as D. Ws. 1 to 3 and got marked Exts. D. 1 to D. 9. The Trial Court on appreciation of the pleadings, oral and documentary evidence held that the Defendants failed to prove and establish that their vendor Gundappa Hipparagi was the owner of property bearing Nos. 143-A, B and C. Therefore, the Trial Court held that Plaintiff is having a better title than Defendants and consequently decreed the suit of the Plaintiff. Aggrieved by this judgment of the Trial Court, the Defendants filed an appeal before the lower Appellate Court in R.A. No. 206 of 2004. The lower Appellate Court, after hearing the arguments on both sides framed the following 3 points for its considerations

1. Whether the Court below was justified in declaring the Plaintiff as owner of the suit property?
2. Whether the Court below was justified in granting consequential relief of permanent injunction restraining the Defendants from causing obstruction to the peaceful possession and enjoyment of the suit property by the Plaintiff?

3. What order?

7. The lower Appellate Court on re-appreciation of the entire material on record held that Plaintiff has failed to prove and establish his title to the schedule property. The lower Appellate Court further held that Ningawwa w/o Tippanna had no title in the plaint schedule property and consequently, the Plaintiff and his vendor have not derived any title. Accordingly, the lower Appellate Court allowed the appeal, set aside the judgment of the Trial Court and dismissed the suit of the Plaintiff. Hence this second appeal.

8. This Court vide order dated 9-9-2004 while admitting the second appeal framed the following substantial questions of law:

1. Whether the findings of the First Appellate Court is acceptable in the light of the defective sale deed in the case on hand?

2. Whether the ownership of the property by way of registered sale deeds by lawful owner can be questioned or reopened after 20 years of peaceful possession and enjoyment of the property?

9. Heard arguments on both sides and perused the entire appeal papers.

10. Learned Advocates on both sides fairly submit that the issues framed by the Trial Court are incorrect. The pleadings on hand gives raise to the following issues:

1. Whether Plaintiff proves that he is the owner in possession and enjoyment of plaint schedule property?

2. Whether Defendants prove that the plaint schedule property is in their possession having acquired the same under 3 registered sale deeds of the years 1963, 1965 and 1978?

3. Whether there is interference by Defendants with Plaintiff's possession and enjoyment of the schedule property?

4. What order or decree?

11. This Court on the basis of the above issues can give a finding if there is sufficient evidence on record. In the instant case, both the Courts below have not given a finding as to whether the plaint schedule property falls within the property claimed by the Defendants. Further there is no property evidence on record from both sides since such an issue was not framed by the Trial Court. Therefore, in the absence of any such evidence on record, it is not possible for this Court to give a finding on issue No. 2 framed above. Therefore, the parties are to be provided an opportunity to lead evidence on the issues framed above.

12. For the reasons stated above, the following order:

The appeal is hereby allowed. The impugned judgment and decree dated 2-7-2004 in R.A. No. 206 of 2004 passed by the I Additional District Judge at

Bijapur and the judgment and decree dated 25-6-1998 passed in O.S. No. 217 of 1991 on the file of the Principal Civil Judge (Junior Division) at Sindagi are hereby set aside. The matter is remanded to the Trial Court for fresh disposal in accordance with law after providing an opportunity to both the parties. It is made clear that the Trial Court shall not be influenced by any of the observations made in the impugned judgment and also this judgment. In view of the pendency of the proceedings between the parties for a long time, the Trial Court is hereby directed to dispose of the suit within a time frame of 6 months from the date of receipt of a copy of this order.