

**(2000) 12 KAR CK 0046**

**In the Karnataka High Court**

**Case No :** Regular Second Appeal No. 23 of 1993 and Revision Petition No. 204 of 2000

Sri. Nagendrappa

APPELLANT

Vs

Sri. Ranganna since deceased by his L.Rs. and Others

RESPONDENT

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**Date of Decision :** 15-12-2000

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, Order 47 Rule 1, 100  
Constitution of India, 1950 — Article 14, 16  
Registration Act, 1908 — Section 49  
Transfer of Property Act, 1882 — Section 54

**Citation :** (2001) 1 KCCR 601

**Hon'ble Judges :** T.N. Vallinayagam, J

**Bench :** Single Bench

**Advocate :** M.P. Eshwarappa, for K.G. Nayak, for the Appellant; Anant Mandagi, for Respondent 1(a), for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

T.N. Vallinayagam, J.—This Review Petition is filed by the Defendant in the suit and the Appellant in Regular Second Appeal No. 23 of 1993. The above second appeal was referred against the judgment and decree in R.A. No. 22 of 1988 reversing the judgment and decree of the Munsiff Court in O.S. No. 132 of 1986. The suit was one for declaration of ownership of the property and for injunction restraining the Defendant from interference of peaceful possession. The suit was decreed and even the learned Munsiff has passed an order "In view of this undertaking given by the Defendants before the Hon'ble High Court, the Defendants are directed to remove building put up on the portion of suit site encroached by Defendant No. 1".

2. The case was that the Plaintiff's father Settappa purchased the suit property from its owner Boraiah under an unregistered stamp paper sale deed dated 10.10.1955 for cash consideration of Rs. 25.00 accompanied by delivery of possession and the said Boraiah got the schedule property for his share at a

partition which took place between himself and his elder brother Chikkappa. After the death of his father, the Plaintiff as his undivided son succeeded to the suit schedule property. Katha stands in the name of the Plaintiff. When there was disturbance in the enjoyment of the property, the suit came to be filed. The first Defendant resisted the suit contending that he is the owner of the site bearing H. No. 28 of Harogere village measuring East-West 8 yards and North-South 9 yards, but the Plaintiff has given wrong boundaries and claimed the suit site as his own. Thus the suit was resisted.

3. The trial Court on the basis of documents produced while framing as many as 6 issues, came to the conclusion that the Plaintiff is the owner of the property and he is in lawful possession of the said property. It is also held that the boundaries of the said property as given in the plaint is correct. An appeal was filed by the Defendant in Regular Appeal No. 22 of 1988. The appeal was allowed and the suit was dismissed holding that there is no proof of exclusive possession of the respective portions. The second appeal was admitted on the following question of law:

(1) Whether the Appellate Court was justified in ignoring Ex.P1 on the ground that it is not in accordance with Section 54 of Transfer of Properties Act?

(2) Whether the Appellant was entitled for relief of injunction?

The second appeal was ultimately allowed setting aside the judgment and decree of the First Appellate Court on the ground that Ex.P1, the sale deed cannot be held to be valid and possession of the property was said to have been taken on the basis of the recitals of the sale deed. Once Ex.P1 is taken as a valid document, there cannot be a different conclusion as arrived at by the First Appellate Court. Ultimately, the second appeal came to be allowed. In the review which was filed belatedly and the delay was, however, excused, it is contended by the Defendants that Ex.P1 has not been properly considered by this Court and the recitals in Ex.P1 regarding delivery of possession cannot be accepted. Three grounds were raised in the review application, one is regarding Ex.P1, the second ground raised was that this Court cannot, sitting in second appeal, interfere with the finding recorded by the First Appellate Court. Another ground raised was that the First Appellate Court has not ignored Ex.P1 inspite of the bar u/s 49 of the Registration Act and based on it, it has given a finding on the title and possession of the suit property which fact is not considered by this Court. These are the only grounds raised in the review Petition. During the pendency of the review application, it was brought to the notice that undertaking was given before this Court by the Defendants that they would surrender the possession. But they have not yet surrendered the possession of the property. Therefore, as condition precedent the delay was condoned. As far as considering the review, I had directed the Defendants to comply with the orders of this Court and accordingly, the possession of the property took place and the undertaking stood fulfilled.

4. Learned Counsel for the Petitioner has relied upon various judgments starting

from 1) Chinnasami Chetty and Others Vs. Manickammal and Another, to the effect that:

Where the sale is only for amount less than Rs. 100/-, the non-registration of the document is not fatal to the validity of the transfer if the transferee is able to establish a prior oral sale and delivery of possession in pursuance thereof, i.e., an oral sale sufficiently dissociated from the unregistered sale deed, that the one can be regarded as independent of the other.

2) AIR 1946 59 (Privy Council) :

Where a Plaintiff sues in ejectment, he can succeed on the strength of his own title. There is no obligation upon the Defendant to plead possible defects in the Plaintiff's title which might manifest themselves when the title is disclosed. It is sufficient that in the written statement the Defendant denies the Plaintiff's title, and under this plea he can avail himself of any defect which such title discloses.

3) The Union of India (UOI) Vs. Pandurang Kashinath More, :

.. In the absence of the particulars all that the opposite side could do would be simply to deny that there had been discrimination and this is what the Appellant had done in its written statement in this case. We think that when the Appellant in its written statement said that there had been no violation of Articles 14 and 16, it meant that there had been no arbitrary or hostile discrimination as alleged in the plaint, otherwise of course the written statement would be meaningless. In such a state of the pleadings it could not be said the Appellant had admitted that there had been discrimination.

Therefore, it seems to us that on the pleadings of this case it would be proper to hold that there had been no allegation by the Respondent of any hostile discrimination. If, however, the plaint is to be construed as containing a sufficient allegation of discrimination, the written statement should be understood as denying it. A Plaintiff cannot complain if general allegations made by him in the plaint are answered by equally general allegations in the written statement. If the Respondent, therefore, was allowed to make the case of hostile discrimination, it would have been the Court's duty to read the written statement as containing a denial of this allegation and to see that the Respondent established by evidence such discrimination. We have earlier referred to the evidence and held that it was not so established at all.

4) Raghunath and Others Vs. Kedar Nath, :

...For these decisions have been superseded by subsequent legislation, i.e., by the enactment of Act 21 of 1929 which by inserting in Section 49 of the Registration Act the words "or by any provision of the Transfer of Property Act, 1822" has, made it clear that the documents in the supplemental list i.e., the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act fall within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any

transaction affecting any immovable property comprised therein, and do not affect any such Immovable property. We are accordingly of the opinion that Ex.A-26 being unregistered is not admissible in evidence.

5) For the proposition that whether admission by the Defendant can be taken for the purpose of deciding issue, the following decision is relied upon reported in Shipping Corporation of India Ltd. and Another Vs. Nissar Export Corporation, .-

We might mention that the Respondent-Plaintiff did not contend in the Trial Court, that the allegations contained in paragraph 6 of the plaint were not traversed by the Appellants and should therefore be deemed to have been admitted. No objection was raised to the learned Trial Judge raising an issue on the matters stated in paragraph 6 of the plaint. We do not think that the Respondent should have been permitted in these circumstances to raise for the first time in the appeal the contention that a part of his claim must be deemed to have been admitted for the reason that it was not traversed in the written statement.

6) On the question of power of this Court u/s 100, the following decision is relied upon in Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., :

There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. This principle has been laid down in a series of judgments of this Court in relation to Section 100, CPC after the 1976 amendment.

The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate Court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible.

5. Learned Counsel for the Respondent-1A Sri Anant Mandagi relied upon the dictum of the Supreme Court in Parsion Devi and Others Vs. Sumitri Devi and Others, reported in (1997) 8 Supreme Court Cases 715 for the scope of review under Order 47, Rule 1 Code of Civil Procedure. It is held as under:

...There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long-drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review Petition in the

facts and circumstances of the case was not permissible.

6. Having considered the submissions made, now let me consider the question as to whether the questions raised in second appeal, viz.,

1) Whether the Appellate Court was justified in ignoring Ex.P1 on the ground that it is not in accordance with Section 54 of Transfer of Properties Act?

2) Whether the Appellant was entitled for relief of injunction?

to be considered. On perusal of Ex.P1, English translation which was supplied shows that the sale has taken place and this is what mentioned therein "I having sold a site, etc., and I have delivered the possession of the same this day itself of the aforesaid property in your favour". The consideration mentioned is Rs. 25/-. It is also mentioned therein "in the presence of the persons who have signed below, I have delivered possession of the same this day itself. You, your son, grand son can enjoy this property". This document is certainly for consideration of Rs. 25/- only and consequently no registration is necessary as contended by the Petitioner/Defendant in the review application. Thus it is clear that the possession has been delivered. Therefore, even it is construed to be an unregistered sale deed, delivery of possession having been mentioned therein within the meaning of Section 54 of the Transfer of Property Act, it cannot be said that Ex.P1 is invalid.

7. It is also to be seen that in the plaint, there is specific allegation that the Plaintiff had purchased the property for Rs. 25/- and property has been delivered. In written statement, there is no specific denial within the meaning of Order 1, Rule 9 of the Code of Civil Procedure. On the other hand, the only claim made in para-5 of the written statement was that Defendant No. 1 is the owner of site bearing Kaneshumari No. 28 which is not the suit schedule property and East-West measurement is mentioned as 8 yards whereas the Plaintiff mentioned as 9 yards and North-South is 9 yards whereas the Plaintiff claimed as 7 yards. South is mentioned as site in the plaint whereas south is shown to be road in the Defendant's description. The only allegation of the Defendant appears to be that the Plaintiff has given wrong boundaries to Kaneshumari No. 46 and it is the ancestral property of the first Defendant. A Commissioner was appointed and he has given a report. It is seen that the first Defendant has clearly admitted that the sketch prepared by the Commissioner is correct. The Commissioner has found the site measuring East-West 9 yards, North-South 7 yards and is shown with letters BD-EF that is what claimed by the Plaintiff. This aspect of the case is completely over-looked by the First Appellate Court which has wrongly understood the facts and also the law. As mentioned supra, Section 54 of the Transfer of Properties Act reads:

54. In the case of tangible Immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible Immovable property takes place when the seller places the buyer, or such person as he directs; in possession of the property.

The ingredient of this section has been completely satisfied in the present case and the finding contravened by the First Appellate Court is an error apparent on the face of the record. Consequently, this Court has right in interfering in second appeal and especially in reversing the judgment. In this view, I do not find any grounds to entertain the review Petition and in the light of the Supreme Court judgment mentioned supra, the power of review is not available to this Court since the judgment already delivered is shown to be having unanimity as mentioned above in the Supreme Court dictum.

8. In the result, this review Petition is dismissed. No costs.