(2025) 02 SC CK 0050

Supreme Court Of India

Case No: Civil Appeal No. 2550 Of 2025 (Arising Out Of Special Leave Petition (Civil) No.23115 Of 2022)

M/s B N Padmanabhaiah And Sons	APPELLANT
Vs	
R N Nadigar & Ors	RESPONDENT

Date of Decision: Feb. 14, 2025

Acts Referred:

- Code of Civil Procedure, 1908 - Order 1 Rule 8, Order 6 Rule 17
- Specific Relief Act, 1963 - Section 38

Hon'ble Judges: J.B. Pardiwala, J; R. Mahadevan, J

Bench: Division Bench

Advocate: Sahil Bhalaik, Tushar Giri, Siddharth Anil Khanna, Ritik Arora, Shivam Mishra, Gowtham Polanki, Gulshan Jahan, Murshlin Ansari, D P Chaturvedi, Tarun Kumar Thakur, Abhay Choudhary M, Vivek Ram R, Anuradha Mutatkar, V. N. Raghupathy, Raghavendra M. Kulkarni, Mythili S, M. Bangaraswamy, Venkata Raghu Mannepalli, Shiv Kumar, Vaishnavi

Final Decision: Disposed Of

Judgement

R. Mahadevan, J

1. Leave granted.

2. The appellant has preferred this appeal assailing the judgment and final order dated 01.10.2021 passed by the High Court of Karnataka at

Bengaluru Ã¢â‚¬Å“the High CourtÃ¢â‚¬ in R.S.A.No.2823 of 2010 thereby setting aside the judgment and decree passed by the Presiding Officer, Fast Track

Court-II, Tumkur Ã¢â‚¬Å“the First Appellate CourtÃ¢â‚¬ on 31.08.2010 in R.A.No.478/2009 (Old R.A.No.67/2007) and decreeing the suit in O.S. No. 505 of

1989 filed by the plaintiffs before the Principal Civil Judge (Junior Division), Tumkur Ã¢â‚¬Å“the trial CourtÃ¢â‚¬â€‹.

3. The Respondent No.1 is the third plaintiff; the appellant herein is the first defendant; and the Respondent Nos.2 and 3 are the Defendant Nos.3 and

2 in the suit.

4. The aforesaid suit in O.S.No.505/1989 was filed by the Plaintiff Nos.1 to

4 who are former students of Government Higher Secondary School, now known as Government Junior College, Tumkur, along with others, in a

representative capacity before the trial Court, praying for the following reliefs:

a) For a declaration that the decree obtained by the 1st defendant in O.S.No.80/1978 on the file of the Munsif Court, Tumkur is not binding on the 3rd defendant

or anybody interested as a rate paying citizen of the State of Karnataka including the plaintiffs.

b) For further declaring that the 3rd defendant is the rightful owner of the Suit property.

c) For a direction to the 1st defendant to deliver the possession of the Suit property to the Government / 3rd defendant;

d) For a consequential injunction restraining the 1st defendant from interfering with the possession of the 3rd defendant; and

(e) For costs and such other reliefs.

Vide order dated 24.01.1994, at the instance of the plaintiffs, amendment was ordered and clause (d) of the prayer made in the suit was deleted.

5. Upon examining both oral and documentary evidence, viz., PW1 to PW2 and DW1 and Exs.P1 to P45 and Exs.D1 to D49 and after hearing both

sides, the trial Court vide judgment and decree dated 28.02.2007, partly dismissed and partly allowed the suit in the following terms:

(i)Decree passed in O.S. No. 80/78 on the file of Munsif Court, Tumkur, filed by Defendant No.1 is partly binding effect in respect of the relief of permanent

injunction and accordingly, the said suit is partly decreed, as the said decree is not binding on Defendant No.3 or anybody interested as a rate paying citizens of

the State of Karnataka including the Plaintiffs as the said suit was not for the relief of declarations.

(ii)Declared that Defendant No.3 is the rightful owner of the suit scheduled property and they are entitled to get the possession of the same from the Defendant

No.1 as per the due procedure of law.

6. Challenging the aforesaid judgment and decree passed by the trial Court, the appellant / Defendant No.1 filed a Regular Appeal bearing No.478 of

2009 before the First Appellate Court. Vide judgment and decree dated 31.08.2010, the First Appellate Court allowed the said appeal and set aside the

judgment and decree passed by the trial Court in O.S.No.505 of 1989. Aggrieved by the same, the Respondent No.1 / third plaintiff preferred a

Regular Second Appeal bearing No.2823 of 2010.

7. Vide judgment and final order dated 01.10.2021, the High Court allowed the second appeal and set aside the judgment and decree passed by the

First Appellate Court, and decreed the suit as prayed for. The High Court also directed that the possession of the suit schedule property consisting of

the school building operated by the Government and any vacant space in possession of Defendant No.1, be delivered to the Government. Aggrieved

by the same, the appellant / Defendant No.1 is before us with the present Civil Appeal.

8. When the matter was taken up for hearing on 16.12.2022 Ã¢â‚¬Ëœ Issue notice to the respondents In the meanwhile, the status quo existing as on today,

to continue.Ã¢â‚¬â„¢, this Court granted an order of status quo.

9. The learned counsel for the appellant, at the outset, submitted that earlier, the appellant preferred a suit in O.S.No.80 of 1978 for permanent

injunction restraining the Public Work Department and the State of Karnataka from interfering with his peaceful possession and enjoyment of the suit

schedule property and after due contest, the suit was decreed in his favour; and the appeals filed by the authorities before the First Appellate Court

and the High Court were dismissed; and hence, the decree of permanent injunction obtained by the appellant is conclusive and binding on the parties.

However, without impleading themselves as parties to the earlier suit and contesting it, Respondent No.1 and others, claiming to be former students of

Government Higher Secondary School (now known as Government Junior College, Tumkur) and as rate payers or persons interested in protecting

property of the public, preferred the present suit in O.S.No.505 of 1989 in a representative capacity, for declaratory reliefs in favour of the

Respondent No.2 / State of Karnataka with respect to the same property owned by the appellant. Thus, according to the learned counsel, the plaintiffs

have no locus standi to maintain the present suit against the appellant.

9.1. It is further submitted that the present suit came to be filed in 1985, whereas the subject property has been in the possession of the appellant since

1970 vide a registered sale deed and therefore, the suit is hopelessly barred by limitation. Without properly considering the same, the High Court

decided the issue of limitation in favour of the plaintiffs stating that the suit was filed in the interest of the public as well as the institution.

9.2. Placing reliance on the decision of this Court in Annaimuthu Thevar (dead) by LRs v. Alagammal and others (2005) 6 SCC 202, the learned

counsel submitted that in the earlier suit between the appellant and Respondent No.2 for permanent injunction, the issue of title with respect to the suit

property was decided in favour of the appellant and hence, the finding relating to title, will operate as res judicata in the present suit, where title was an

issue, arising out of which is the present appeal. However, the High Court erred in holding that the proceedings are not hit by res judicata on the

ground that the nature of the reliefs sought in both the suits are different. According to the learned counsel, the Respondent No.2 / State of Karnataka

had contested the earlier suit at three forums and therefore, merely because a third party instituted the present suit for declaration in favour of

Respondent No.2, the legal bar of res judicata cannot be brushed aside. Thus, it is submitted that the present suit is clearly an attempt to do something

indirectly what cannot be done directly.

9.3. It is also submitted that the original Survey No.81 was subdivided into Sy. nos. 81/1, 81/2 and 81/1A and the same can be derived from Ex. P24

and Ex. P27 and hence, the issue of forfeiture could not have been decided against the appellant as there was no document to prove the alleged

forfeiture. However, the High Court erred in relying on earlier proceedings instituted by the successors in interest of Md Bokhari, wherein it was

pointed out that the land belonging to Md Bokhari was forfeited due to non-payment of arrears of land revenue and by necessary implication it was

assumed that the land of successors in interest of Lankey would also be deemed to be forfeited. According to the learned counsel, merely because the

successors in interest of Md bokhari failed to deny the forfeiture of their lands and the Survey number was similar in those proceedings, by necessary

implication it cannot be deduced that the land of the appellant was also necessarily forfeited. Moreover, the appellant was not a party to the

proceedings instituted by successors in interest of Md Bokhari. Even if the appellant had no title, he had perfected his title by the law of adverse

possession, as the appellant and his predecessors in title were in possession and enjoyment of the property for more than 60 years.

9.4. Thus, the learned counsel submitted that the impugned order passed by the High Court suffers from serious infirmities and illegalities and hence,

the same should be set aside by this Court.

10. Per contra, the learned counsel for the Respondent No.1 / third plaintiff in the present suit submitted that the Plaintiff Nos.1 to 4 are former

students of the Government Junior College, Tumkur, and are vitally interested in preserving the institutionÃ¢â‚¬â„¢s property and thus, have locus standi to

file and maintain the present suit. In this regard, reference was made to the decision of this court in Kalyan Singh v. Chhoti and others (1990) 1

SCC 266, wherein it was held that members of a community can maintain a suit in representative capacity for preserving the property of community.

10.1. Continuing further, the learned counsel submitted that the earlier suit filed by the appellant was only for permanent injunction and there was no

issue of title to the property involved. That apart, during the pendency of the suit, the appellant filed an interlocutory application seeking amendment of

the plaint by adding the relief of declaration of title. However, the said application was subsequently, withdrawn by the appellant. Moreover, there was

no finding with regard to title in the earlier suit. Therefore, the decree of injunction would not operate as res judicata in the subsequent suit for

declaratory reliefs. In this regard, reference was made to the decision of this court in Anathulla Sudhakar v. P.Bucchi Reddy by LRs and others

(2008) 4 SCC 59.

10.2. It is also submitted that the suit property was forfeited in the year 1919 due to non-payment of land revenue and consequently, it was resumed

by the Government and hence, the appellant has no valid title to the suit property.

10.3. Stating so, the learned counsel submitted that the High Court after examining the entire evidence available on record, correctly decreed the suit

as prayed for, by the order impugned herein, which need not be interfered with by this court.

11. The learned counsel for the Respondent No.2 / State of Karnataka submitted that the reliefs sought in the earlier suit and in the present suit are

altogether different and Respondent No.1 was not a party to the earlier suit. Further, the issue of title over the disputed land between the parties was

not decided in the earlier suit, which was filed only for permanent injunction. That apart, Respondent No.1 and others filed the present suit in

O.S.No.505/1989 in a representative capacity. Therefore, the principle of res judicata does not apply to the present suit.

11.1. Elaborating further, the learned counsel submitted that the land in dispute bearing Sy.No.81 of Tumkur originally belonged to one Syed Md.

Bokhari and Lankey and both failed to pay arrears of land revenue and therefore, their lands were forfeited and resumed by the Government. It is also

submitted that once the land was forfeited, due to non-payment of arrears of land revenue, Syed Md. Bokhari and Lankey lost their ownership and

they were estopped from entering into any transaction with respect to the suit land in any manner. Despite the appellant being aware of the same,

proceeded to purchase the suit property from the legal heirs of Lankey. Thus, it is submitted that this transaction was void and hence, the appellant

cannot claim any right, title and interest over the suit property.

11.2. It is also submitted that the earlier suit filed by the appellant was for permanent injunction under section 38 of the Specific Relief Act, whereas,

the present suit filed by the plaintiffs under Order 1 Rule 8 of CPC in a representative capacity had a wider scope than an ordinary suit and hence, the

same was maintainable before the trial Court. That apart, since the present suit was filed in the interest of public as well as Institution, the delay could

not come in the way of entertaining the same. Therefore, the learned counsel submitted that the appeal filed by the appellant, with an intent to grab the

land belonging to the Government, lacks merits and is liable to be dismissed.

12. We have heard the learned counsel appearing for the parties and also perused the materials placed before us.

13. As already stated above, the plaintiffs 1 to 4 claiming themselves as former students of Government Higher Secondary School, now, known as

Government Junior College, Tumkur, filed the suit in O.S.No.505 of 1989 in a representative capacity seeking declaration in favour of the Respondent

No.2 / Defendant No.3 - State of Karnataka and for direction to the appellant / Defendant No.1 to deliver possession of the suit property to the State.

The suit schedule property is a land bearing Survey No.81/1 measuring 6 acres 30 guntas, but the subject matter in issue is 15 guntas of land. After

due contest, the trial Court decreed the suit partly, which was set aside by the First Appellate Court on appeal filed by the appellant. However, the

High Court decreed the suit as prayed for by the plaintiffs, by the order impugned in this appeal.

14. It is borne out from the records that original Sy.No.81 of Tumkur comprised totally 7 acres 15 guntas of land, of which, 15 guntas of land was

acquired by the Indian Railways, 5 acres 3 guntas remained in the Khata of Mohamad Bokhari and 1 acre 37 guntas remained in the Khata of

Lankey. The Government took over 2 acres 22 guntas from the Khata of Mohamad Bokhari and 1 acre 10 guntas from the Khata of Lankey vide

order dated 10.09.1919. In respect of the said lands, revenue/kandayam was not paid to the Government and hence, they were resumed by the

Government and thereafter, the said lands were reflected as Government lands. Objections were invited from the public giving two yearsÃ¢â‚¬â„¢ time,

and upon no objections being received, in the year 1933-34, record of rights and index of lands were accordingly, prepared. Subsequently, Sy.No.81

was divided into Sy.No.81/1 measuring 6 acres 30 guntas and 81/2 measuring 10 guntas.

14.1. According to the Respondent No.2, the land measuring 6 acres 30 guntas situated in Sy.No.81/1 was shown as Town Extension, i.e., the land

belonging to Mokam Ramaswamy Setty. Of the 6 acres 30 guntas, 19 guntas was shown as a road leading from the Railway Station to

Someshwarpuram and remaining 6 acres 11 guntas were shown as the Government High School Compound, Tumkur. Subsequently, in 1960, one

Mohiddin Bibi as the legal representative of Mohamad Bokhari, acquired the land measuring 2 acres 4 guntas from the remaining 6 acres 11 guntas of

land. Later, the Secretary of Sarvodaya High School namely C.K.Gopal Rao purchased the said land and with sanction on 23.12.1968, formed a layout

for 3 acres 15 guntas. Thereafter, the authorities of the said school attempted to take possession of the land belonging to Government High School,

which compelled the Headmaster of the Government High School to obtain a prohibitory order on 25.10.1969 from the Taluka Magistrate, against the

Secretary of Sarvodaya High School, Mohidin Bibi etc., against which, the Secretary of Sarvodaya High School preferred an appeal before the

Karnataka Appellate Tribunal, which came to be dismissed on 28.01.1971. Meanwhile, in 1970, the Head Master of Government High School,

Tumkur, made an application before the Competent Authority for cancellation of measurement effected in Sy.No.81/1 and pursuant to the same,

cancellation order was passed by the Tahsildar on 11.05.1972. Consequently, the Tahsildar rectified the index of lands on 16.06.1972 and issued a

copy on 25.06.1973 restoring the entire measurement of 6 acres 30 guntas in the name of Town Extension. Thereafter, Sarvodaya High School

claimed ownership under Mohamad Bokhari and filed O.S.No.268 of 1981 before the District Munsif, Tumkur, which came to be dismissed on

14.11.1988. The said Sarvodaya High School filed a Regular Appeal in R.A.No.117 of 1988 and the same also came to be dismissed. Thereafter, the

said School filed R.S.A. No.349 of 1999, which was also dismissed on 28.06.2005. As a result, Sarvodaya High School has no right over the said

property. It is thus, stated by the Respondent No.2 that the suit property belonged to the Government and was in possession of the Government High

School.

14.2. On the other hand, the appellant averred that as per the revenue records, Sy No 81 was 7 acres and 15 guntas, of which, one Lankey owned 1

acre and 37 guntas and Md. Bokhari owned 5 acres and 18 guntas. Out of LankeyÃ¢â‚¬â„¢s 1 acre 37 guntas, 1 acre and 10 guntas was acquired for the

Government High School, Tumkur and 12 acres for Municipal Road running from the Railway Station to Someshwara extension in 1919. The

remaining 15 guntas continued to be in the possession of Lankey and later, by his son Chikkanna, prior to 1928. Similarly, out of total 5 acres and 18

guntas of Md Bokhari, 15 guntas was acquired for railways; 7 guntas for municipal road; 2 acres and 22 guntas for the Government High School.

LankeyÃ¢â‚¬â„¢s son Chikkanna who owned the 15 guntas and was in possession prior to 1928 sold the 15 guntas to one Chowdhary Abdul Haq on

29.11.1928 under a registered sale deed. The revenue khata was made out in the name of Chowdhary Abdul Haq, who sold it to Abdul Razak under a

registered sale deed on 18.07.1938. Subsequently, the said 15 guntas was converted for non-agricultural purposes by order of the Revenue

Commissioner in Order No.DIS.254/42-43 and was renumbered by the Tumkur Municipality in the name of Abdul Razak in 1944. Thereafter, the

legal heirs of Abdul Razak mortgaged the said property to the appellant in 1959 and eventually sold it to the appellant vide a registered sale deed dated

07.12.1970. Since then, the appellant has been in possession of the same. It is further averred by the appellant that the original Sy. No. 81 was sub-

divided as 81/1, 81/2 and 81/1A, as evident from Exs.P.24 and P.27 and there was no document to prove that the entire land in Sy.No.81 was

resumed by the Government due to non-payment of land revenue by the original owner. Thus, according to the appellant, he is a bona fide purchaser

of 15 guntas of land in Sy.No.81/1A of Tumkur, which is the subject matter in dispute in O.S.No.505 of 1989, from the legal heirs of Lenkey.

15. Be that as it may. Earlier, the appellant / Defendant No.1 filed a suit in O.S. No. 80 of 1978 before the Principal Munsif Court, Tumkur, against

the Public Works Department and State of Karnataka, for permanent injunction in respect of the same subject property, alleging that he had

purchased the suit property (vacant land) from the legal heirs of Abdul Razak for a valuable sale consideration on 07.12.1970 and thereafter, the

property was registered in the name of the appellant on 11.02.1971. It was further alleged that to the north and east of the suit property, there was an

open field belonging to the Government High School, in which, the State had proposed to construct a Government GirlsÃ¢â‚¬â„¢ Hostel and hence, there

was a likelihood of the suit property being encroached upon by them. After examining the oral and documentary evidence, the trial Court held that the

appellant was in lawful possession of the suit property, and thus, decreed the suit in favour of the appellant, vide judgment dated 30.11.1981.

Challenging the same, the State preferred R.A.No.2/82, which was dismissed by the First Appellate Court, vide judgment dated 07.04.1984. The

further appeal in RSA No.717/1984 preferred by the State also came to be dismissed on 11.02.1985. The Defendants / authorities did not claim any

right, title and interest over the suit property. There was no record to state whether any appeal against the said judgment of the High Court, is pending

or disposed of, by this Court. In such circumstances, based on the available materials, it can be inferred that the decree of permanent injunction

granted by the trial Court in favour of the appellant, became final and conclusive in respect of the suit property.

16. Pertinently, it is to be pointed out that during the pendency of the earlier suit, the appellant filed an interlocutory application under Order VI Rule 17

praying to amend the plaint for declaration of title, which was allowed. However, he gave up the claim of declaration of title on 05.12.1979 and

pressed only for the relief of permanent injunction against the encroachment made by the State officials over the suit property and the same was

granted in his favour on 30.11.1981.

17. Admittedly, neither the plaintiffs in the present suit nor the Government High School, were made parties to the earlier suit filed by the appellant

which was solely between the appellant and the State, only for the relief of permanent injunction in respect of the suit property. It is also an admitted

fact that the decree granted in O.S.No.80 of 1978 in favour of the appellant was challenged by the State before the appellate courts, but ended in

dismissal. In the present suit, from which this appeal arises, the Plaintiff Nos.1 to 4 claim to be former students of the Government Higher Secondary

School now known as Government Junior College, Tumkur, while the remaining Plaintiffs and Defendant Nos.4 to 20 are citizens, rate payers or

persons interested in protecting public property. Pursuant to the direction issued by the Government of Karnataka vide order dated 21.11.1972 in the

appeal proceedings between Sarvodaya High School and the Headmaster of the Government High School, that if the parties are interested in

ascertaining their claims as to the ownership of the land, they may approach the Civil Courts for appropriate reliefs, the said plaintiffs preferred the

present suit in O.S. No. 505 of 1989 in a representative capacity inter alia seeking a declaration that the decree obtained by the appellant in

O.S.No.80/1978 is not binding on the Respondent No.2 / State and also a declaration that the Respondent No.2 / State is the rightful owner of the suit

property. As the previous suit was decided on merits and has attained finality, Respondent No.2/State is bound by the terms of the decree. Further, as

Plaintiffs in the present suit were not parties to the previous suit and they made no attempt to implead themselves therein, having complete knowledge

of the earlier round of litigations between the appellant and the State, they have no locus standi to file the present suit, specially in a representative

capacity, wherein they are attempting to obtain reliefs for respondent No.2/State, which itself is barred from encroaching the suit property. Therefore,

we are of the opinion that the present suit filed by the plaintiffs is not maintainable.

18. Though it was contended on the side of the contesting Respondents that the suit schedule property was never in possession of the appellant /

Defendant No.1 or in possession of his predecessors in title and the appellant did not get the actual possession of the suit property under the alleged

sale and he trespassed into the property illegally and now, put up stone slabs only in 1985, i.e., after the suit in O.S. No. 80/1978 came to be attained

finality; till then, the Respondent No.2 / Defendant No.3 was in actual possession of the same by using it as playground; and thus, the possession of

the appellant over the suit property is unlawful and he is liable to be ejected, we cannot accept the same, as it is evident that the Respondent No.2 /

State did not claim any right, interest or title over the suit property and they did not adduce any concrete evidence to show that the suit property was in

actual possession of the Government in the earlier round of litigations in O.S. No. 80/1978. As such, they cannot now be permitted to raise the same in

the subsequent suit filed by the third parties, that too, in a representative capacity. However, the trial Court erroneously entertained the suit and partly

decreed the same in favour of the plaintiffs. Though the said decree was set aside by the First Appellate Court, the High Court decreed the suit as

prayed for, by the judgment and order impugned in this appeal.

19. In view of the reasons stated above, the suit from which the present appeal arises, is not maintainable in law and is liable to be dismissed. Hence,

we need not go into the other contentions raised by the parties.

20. In fine, we set aside the judgments and decrees / orders passed by the Courts below and dismiss the suit filed by the Respondent No.1 and other

plaintiffs. However, we make it clear that we are not expressing any opinion on the issue of title of the property and it is for the parties to approach

the competent civil court for appropriate relief by adducing necessary oral and documentary evidence.

21. Accordingly, this appeal stands disposed of. The parties shall bear their own costs.

22. Connected miscellaneous application(s), if any, shall stand disposed of.