IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR SECOND APPEAL NO.1835 OF 2008

BETWEEN:

SMT. JOGERA YELLAMMA,
W/O. LATE HOLIYAPPA,
SINCE DECEASED BY HIS LR'S.

1A. BASAVARAJ JOOGI,
S/O. JOGERAHOLIYAPPA,
AGE: 45 YEARS,
OCC: AGRICULTURE.

1B. JOGERA GEETA, W/O. SURESH,
AGE: 36 YEARS, OCC: HOUSEWIFE.

1C. S. GANESH, S/O. SURESH,
AGE: 20 YEARS, OCC: STUDENT.

1D. MADU J., D/O. SURESH,
AGE: 18 YEARS, OCC: STUDENT.

Digitally signed by SAMREEN AYUB DESHNUR
Location: High Court of Karnataka, Dharwad Bench

1E. A. PRAJWAL, S/O. SURESH,
AGE: 16 YEARS, OCC: STUDENT.

1F. REKHA JOGI,
W/O. MANJUNATH,
AGE: 34 YEARS, OCC: HOUSEWIFE.

1G. ABHISHEK J.,
S/O. MANJUNATH,
AGE: 15 YEARS, OCC: STUDENT.

1H. ANANYA J., D/O. MANJUNATH,
AGE: 12 YEARS, OCC: STUDENT.

ALL ARE RESIDENTS OF KULAHALLI VILLAGE
OF HARAPANAHALLI TALUKA
AND VIJAYANAGAR DISTRICT.

… APPELLANTS

(BY SRI MANJUNATH A. KARIGANNAVAR, ADVOCATE)

AND:

SRI EDIGARA CHANDRAPPA,
S/O. PITAMBARAPPA,
AGED ABOUT 46 YEARS,
AGRICULTURIST,
R/AT: KULAHALLI VILLAGE OF
HARAPANAHALLI TALUK &
DAVANAGERE DISTRICT - 583 131.

…RESPONDENT

(BY SRI S.G. VISHWANATH &
SRI G.C. KANTHRAJU, ADVOCATES)

THIS RSA IS FILED UNDER SECTION 100 OF C.P.C., PRAYING TO CALL FOR THE ENTIRE RECORDS OF O.S.NO.138/1999, ON THE FILE OF THE COURT OF CIVIL JUDGE (JR. DN.) AT HARAPANAHALLI, AND R.A.NO.60/2005, ON THE FILE OF THE COURT OF THE CIVIL JUDGE (SR. DN.) AT HARIHARA; AND PASS A JUDGMENT AND DECREE ALLOWING THIS APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 22.12.2007, PASSED IN R.A.NO.60/2005, BY THE COURT OF THE CIVIL JUDGE (SR. DN.) AT HARIHARA AND RESTORE THE JUDGMENT AND DECREE DATED 02.09.2005, PASSED IN O.S.NO.138/1999, BY THE COURT OF CIVIL JUDGE (JR. DN.) AT HARAPANAHALLI, WITH COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR FINAL HEARING, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.06.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

Defendant No.1 in O.S. No.138/1999 on the file of learned Civil Judge (Junior Division), Harapanahalli, has maintained this regular second appeal praying to set aside the judgment and decree dated 22.12.2007 passed in R.A. No.60/2005 by the learned Civil Judge (Senior Division), Harihar (hereinafter referred to as 'the first appellate court'), reversing the judgment and decree dated 02.09.2005 passed in O.S. No.138/1999.

2. Brief facts leading to this appeal are as under:

(i) The plaintiff viz., Sri Edigara Chandrappa maintained the suit in O.S. No.138/1999 against the defendant i.e. Jogera Yellavva for the relief of mandatory injunction directing the defendant to remove the construction put up over a portion, more fully described as 'ABCD' in the rough sketch annexed to the plaint, failing which to permit him to demolish such construction at the cost of the defendant.

(ii) The case of the plaintiff is that he is the owner of House No.41 situated in II Ward of Kulahalli Village of Harappanahalli Taluk and that it is his ancestral property. According to him there was a hut of defendant at a distance of 8 feet from the eastern wall of plaintiff's house and it was a passage existed in between those houses from time immemorial. It was being used by the plaintiff and the neighbors. In the month of December 1998, the defendant demolished her hut and constructed a new house by encroaching upon the passage and resting the cement roof sheet of her house on the western wall of the plaintiff's house. Thereby, she blocked the passage existed in between their houses from time immemorial. In the above circumstances, the plaintiff sought for an order of mandatory injunction directing the defendant to demolish the illegal and unauthorized construction put up over the passage.

(iii) On service of summons, the defendant appeared before the Trial Court, filed her written statement and contested the suit. The defendant admitted

that there was a space in between the houses of the plaintiff and the defendant. However, she denied the contention that it was a passage being used by the plaintiff or the public. She claimed that she had purchased the said portion from one Sri Sannayallappa for a sum of Rs.1,500/- and it is her absolute property. She further denied alleged encroachment upon any property and contended that she constructed the house in her property by obtaining license from concerned panchayat. According to her there was a common wall in between the houses of the plaintiff and the defendant and she has even paid a sum of Rs.3,100/- to the plaintiff for its usage as common wall. In view of the same, the defendant prayed for dismissal of the suit.

(iv) Based on the pleadings, the Trial Court framed the following issues:

> *"1. Whether the plaintiff proves that there is a passage in between the house of the plaintiff and the hut of the defendant by creating a 8 feet gap since time immemorial?*

2. *Whether the plaintiff further proves that, the plaintiff and neighbouring owners are making use of the same?*

3. *Whether the plaintiff further proves that, the defendant has constructed the house by encroaching upon this passage, and blocked the lane for which they have no manner of right?*

4. *Whether the plaintiff proves that, the defendants are liable to demolish the construction which is in the passage, and to allow the passage to make use by the plaintiff and also by the publics?*

5. *Whether the plaintiff is entitled for the relief of Mandatory Injunction as prayed in the suit?*

6. *To what order?"*

(v) During the trial, the plaintiff deposed before the trial court as PW-1, examined two more witnesses, and got marked documents at Ex.P1 to Ex.P12. The defendant adduced her evidence as DW-1, examined three more witnesses, and got marked documents at Ex.D1 to Ex.D7.

(vi) Subsequently, the trial court heard the arguments of both sides, considered materials on record and answered Issue Nos.1 to 5 in the negative. Accordingly, the trial court dismissed the suit with cost.

(vii) Being aggrieved, the plaintiff preferred an appeal in R.A. No.60/2005. On service of notice, the defendant appeared before the first appellate court through her counsel. The said court secured the trial court record and heard the parties on merits of the case. The first appellate court framed the following points for its consideration:

> *"(1) Whether the plaintiff proves that there is a passage in between his house and hut of the defendant with measurement of 8'?*
>
> *(2) Whether the plaintiff proves that the defendant has encroached the passage and constructed her house by resting cement sheets on the western wall of the plaintiff?*
>
> *(3) Whether the defendant proves that she is the pattedar of the passage having purchased them from one Sanna Yellappa for Rs.1,500-00?*
>
> *(4) Whether the defendant proves that she has constructed the house by obtaining construction permission from the Grama Panchayat?*
>
> *(5) Whether the defendant proves that the Western Wall of the plaintiff is a common-wall?*
>
> *(6) Whether plaintiff can maintain the suit?*
>
> *(7) Whether the Judgment & Decree of the Trial Court require interference?*
>
> *(8) What Order?"*

(viii) The first appellate court answered Point Nos.1, 2, 6 and 7 in the affirmative and Point Nos.3 to 5 in the negative. Accordingly, the first appellate court allowed the appeal with cost, set aside the judgment and decree of the trial court and decreed the suit as prayed for.

(ix) Feeling aggrieved, the defendant preferred this second appeal.

3. This Court admitted the appeal on 23.10.2010 for considering the following substantial questions of law:

> *"(i) Is as to whether the lower appellate court was just in casting the burden on the defendant to establish that the suit passage which was claimed as a public passage by the plaintiff was the property of the defendant?*
>
> *(ii) Whether the lower appellate court was justified in reversing the finding of the trial court in this regard without holding that the trial court was in error in casting the burden on the plaintiff?"*

4. Initially, on service of notice of this appeal, the plaintiff had appeared before the Court through his counsel. Meanwhile, the appeal came to be dismissed on 10.01.2012 as the defendant failed to file paper book in spite of

sufficient opportunity. Then, the defendant maintained necessary applications praying to recall the order of dismissal by condoning the delay. On service of notice of those applications, learned Counsel for the plaintiff sought time to file objections. Afterwards, he gave notice of retirement to the plaintiff and retired from the case on 29.10.2022. This Court allowed those applications vide Order dated 15.03.2023 and restored the appeal on file.

5. Meantime, once again the appeal was dismissed on account of the death of the defendant and failure to bring her legal representatives on record. Subsequently, the legal representatives of the defendant maintained the applications to recall the order of dismissal and sought permission to come on record and to prosecute the appeal. Those applications were allowed on 01.07.2025.

6. After retirement of his counsel, the plaintiff did not appear before this Court either in person or through his counsel and failed to contest the appeal.

7. Sri Manjunath A. Karigannavar, learned Counsel appearing for the Defendant vehemently submitted that the first appellate court grossly erred in reversing the well reasoned judgment and decree of the trial court, without properly considering the pleadings of the parties and the evidence on record. He submitted that the first appellate court failed to notice that the plaintiff was not the owner of the house No.41 and he had no right to maintain a suit for mandatory injunction. He submitted that the plaintiff has not adduced any evidence before the court to prove existence of passage as averred in the plaint, but the first appellate court proceeded to decree the suit by relying on the weakness in defendant's case which is against the well settled legal principles. He further submitted that the materials on record also indicate acquiescence on the part of the plaintiff by allowing the defendant to proceed with the construction of her house and without objecting the alleged encroachment or illegal construction at initial stage. He also submitted that the first appellate court reversed the judgment and decree of the trial court by drawing an

adverse inference against the defendant than based on merits of the case of the plaintiff. For the foregoing reasons, he contended that the plaintiff was not entitled for the relief of mandatory injunction and that the first appellate court committed serious error in reversing the judgment and decree of the trial court.

8. The plaintiff namely Sri Edigara Chandrappa maintained the suit in O.S. No.138/1999 praying for a decree of mandatory injunction directing the defendant to demolish the construction in the portion marked as 'ABCD' in the rough sketch appended to the plaint and in default, to demolish the same at the cost of the defendant.

9. In Schedule–A, the plaintiff has described the property as the house bearing Door No.41 in II Ward at Kulahalli Village of Harappanahalli Taluk, bounded on East by House of Marthandappa, West by Lane of 8 feet encroached by defendant, North by Rastha and South of Sandhu. In Schedule–B, the plaintiff has given rough sketch, showing location of the houses of the plaintiff, the

defendant and Sri Marthandappa as well as the disputed lane measuring 8 feet X 40 feet and alleged encroached portion as ABCD.

10. The plaintiff maintained the suit with a specific contention that he is the owner of house bearing Door No.41 of II Ward of Kulahalli Village and that it is his ancestral property. The defendant, in her written statement, admitted about there being a space of 8 ft. in width in between her house and the house of the plaintiff. However, she neither admitted nor denied the ownership of the plaintiff over house bearing Door No.41. It is well settled that the initial burden of proving the case always on the person who approaches the court. During his evidence, the plaintiff reiterated the averments of the plaint and claimed that he is the owner of house bearing Door No.41. However, as per Ex.P1, house bearing No.41 stands in the name of Sri Edigara Pitambrappa, the father of the plaintiff. Further, during his cross-examination, the plaintiff categorically admitted that the suit property stands in his father's name and that his father is alive. The trial court

took note of this uncontroverted piece of evidence. However, the first appellate court proceeded to hold that the defendant never disputed the ownership of the plaintiff over house bearing Door No.41, which is factually incorrect.

11. Further, the trial court on appreciating the evidence placed before it held that the plaintiff has failed to establish there was a public passage in between the houses of the plaintiff and the defendant and it was being used by the plaintiff and others as contended in the plaint. Whereas, the first appellate court proceeded to draw an adverse inference against the defendant on the ground that though in her written statement the defendant contended about purchase of the passage from Sri Sannayallappa, she failed to prove the aspect. It is true that in her written statement the defendant admitted about existed space of 8 ft. in between their houses. However, she has specifically contended that it was not a public passage and that the plaintiff or other public were not using the said space. In spite of such a categorical stand of the defendant, the first appellate court chose to draw an adverse inference without

satisfying itself whether the plaintiff has discharged the burden on him of proving existence of a public passage. The reasoning of the first appellate court indicates that its conclusion is not based on any positive evidence adduced on the side of the plaintiff but solely by drawing adverse inference and relying on weakness of the defendant.

12. The trial court proceeded to dismiss the suit even on the ground of laches and acquiescence on the part of the plaintiff. Whereas, the first appellate court over-ruled such finding of the trial court on the ground that the defendant has failed to put forth her grievances by way of reply to the notice issued on behalf of the plaintiff. Except the said reasoning, the first appellate court did not appreciate other relevant facts of the case to overturn well reasoned finding of the trial court.

13. The plaintiff maintained the suit on 31.08.1999 by claiming that the cause of action arose on 11.12.1998 and during July 1999, when the defendant constructed the house in his absence. According to the plaintiff the

defendant and her sons demolished their house in the first week of December 1998 for constructing a new house and they intended to encroach upon the passage and construct their house upto the western wall of the plaintiff. It is stated that under such circumstances the plaintiff gave an application to the Secretary of the Village Panchayat along with a rough sketch, requesting them not to allow the defendant to construct her house until resolution of the dispute and not to give any licence. It is further stated that on or about 08.02.1999, the plaintiff received a telegram about serious illness of his father-in-law, due to which he had to be away from the village and stay in Koppa Taluk for about five months. It is contended that when the plaintiff returned to the village, he found the defendant having constructed her house completely by encroaching the lane and blocking the passage which existed from time immemorial.

14. The above narration of the plaint coupled with other materials on record clearly indicate that there was delay on the part of the plaintiff in initiating legal action to

protect his alleged rights and laches on his part in allowing the defendant to proceed with the construction in the disputed place. The documents on record show that after submitting a representation to the Gram Panchayat on 11.12.1998, the plaintiff did nothing to stop the defendant from proceeding with the construction except issuing a legal notice, that to in the month of August, 1999.

15. It is pleaded that the plaintiff was out of village for about five months after receiving a telegram on or about 08.02.1999 regarding serious illness of his father-in-law. Whereas, in his representation dated 11.12.1998, produced as Ex.P.3, it is stated that the defendant is constructing the house by joining their wall to the wall of the plaintiff's house. Thereby, it becomes clear that the defendant had taken up the construction of her house much prior to the date or period alleged in the plaint. The first appellate court ignored all these relevant factors, which have bearing on the relief claimed by the plaintiff, which is discretionary. The findings recorded by the first appellate court indicate that it totally ignored these relevant aspects

while exercising its responsibility of reappraisal of evidence and particularly before reversing the findings recorded by the trial court.

16. It is time and again held that the plaintiff must stand on his legs and prove his case on his ground and not on the weakness of the other side. When the person who approaches the court fails to discharge the initial burden on him, no relief can be granted to such person. The shifting of onus of proof on other side or drawing up of an adverse inference would arise only when the plaintiff succeeds in making out his case. In the present case, the first appellate court has wrongly cast burden on the defendant and drawn wrong inferences from proved/admitted facts, by applying the law erroneously. For the foregoing reasons, the substantial questions of law framed in this appeal are answered in the negative.

17. In the result, this Court proceeds to pass the following:

ORDER

(i) The regular second appeal is allowed.

(ii) The judgment and decree dated 22.12.2007 passed in R.A.No.60/2025 by the learned Civil Judge (Senior Division), Harihar reversing the judgment and decree dated 02.09.2005 passed in O.S. No.138/1999 by the learned Civil Judge (Junior Division), Harapanahalli, is set aside.

(iii) Consequently, the judgment and decree dated 02.09.2005 passed in O.S. No.138/1999 by the learned Civil Judge (Junior Division), Harapanahalli, dismissing the suit of the plaintiff is restored.

(iv) Draw decree accordingly.

(v) The Registry is directed to send back the records for reference in the appeal to the concerned courts.

Sd/-
(B. MURALIDHARA PAI)
JUDGE

KMS/RH
CT- ASC