**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 28TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MRS JUSTICE K.S.HEMALEKHA

RSA NO. 100236 OF 2023 (POS)

BETWEEN:

VAHABSAB
S/O. MOHAMMADHUSENSAB IMMUSABANAVAR,
AGED ABOUT 58 YEARS, OCC. AGRICULTURIST,
R/O. DARGA CIRCLE, AKKIALUR,
TQ. HANGAL, DIST. HAVERI-581102.

... APPELLANT

(BY SRI. S.G.KADADAKATTI, ADVOCATE)

AND:

SMT. JAYASHREE
W/O. BASALINGAPPA MALAGI
AGE: 46 YEARS,
OCC. AGRICULTURIST AND HOUSEHOLD WORK,
R/O. PETE ONI, AKKIALUR,
TQ. HANGAL, DIST. HAVERI-581102.

... RESPONDENT

(BY SRI. B.M.PATIL, ADVOCATE)

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Date: 2024.12.19 10:39:36 +0530

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 17.11.2022 PASSED IN R.A.NO.73/2022 ON THE FILE OF THE FAMILY COURT, HAVERI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 06.11.2019, PASSED IN O.S. NO.22/2018 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, HANGAL, DECREEING THE SUIT FILED FOR POSSESSION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MRS JUSTICE K.S.HEMALEKHA

ORAL JUDGMENT

Assailing the concurrent findings of facts recorded by the Courts below, the defendant is before this court in this regular second appeal.

2. Parties herein are referred to as per their rank before the trial court, for the sake of convenience.

3. R.S.NO. 167/1 measuring 3 acres 5 guntas area shown by letter "ABCD" in the hand sketch annexed to the plaint (hereinafter referred as a the 'suit property' for the sake of convenience). The mother-in-law of the plaintiff was the absolute owner of R.S.No 167/1 having purchased under registered sale deed, that mother-in-law of plaintiff relinquished R.S No. 167/1 in favor of plaintiff and accordingly ME.No.701 has been certified on 05.12.1986, pursuant to which the plaintiff is in lawful possession and enjoyment of R.S. No. 167/1. In the year 2010 Taluka Surveyor conducted a survey, having found that the defendant who is the owner of the adjoining

property has encroached in R.S. No. 167/1 there was settlement before the elders and defendant handed over possession of the encroached portion to the plaintiff, that again the defendant has encroached by removing the boundary stones and hence the present suit for delivery of vacant possession of the encroached portion.

4. Defendant *inter alia* denied the ownership of the mother-in-law of the plaintiff over the suit property and the ownership of the plaintiff. Defendant stated that the P.T.Sheet prepared by the Taluka Surveyor was without notice to the plaintiff, the P.T.Sheet prepared cannot be relied on and there is no encroachment as claimed by the plaintiff.

5. The trial Court based on the pleadings framed the necessary issues. In order to substantiate their claim, the power of attorney holder of the plaintiff was examined as PW1, one witness as PW2, marked documents at Exs.P1 to P38. On the other hand, the defendant examined himself as DW1, no documents were marked.

6. Before the trial Court on the application filed by the plaintiff the Surveyor was appointed as a Court Commissioner to survey the suit property. The Commissioner submitted the report, he was examined as CW1 and Exs.C1 to C8 were marked. As per the Commissioner's Report, the encroachment by defendant was found to an extent of 6 guntas 13 annas. The trial Court considering the oral and documentary evidence more particularly the Report submitted at Ex.C8 and the P.T.Sheet at Ex.P18, arrived at a conclusion that the encroached area has been reduced to an extent of 6 acres 13 guntas, the plaintiff is entitled for possession of vacant area within a period of 30 days. Aggrieved, the defendant preferred appeal before the First Appellate Court. The First Appellate, while appreciating the entire oral and documentary evidence, placing reliance upon the Commissioner's Report and P.T.Sheet held that the defendant had encroached over the suit property with an indication of "ABCD" portion and confirmed the judgment

and decree of the trial Court. Aggrieved the defendant is before this court.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the material on record.

8. This Court on 25.10.2024 appointed the ADLR as a Court Commissioner to conduct a survey and measure suit Sy. Nos. 167/1 and 167/2 on consent of both sides. Pursuant to which the Court Commissioner, ADLR, Hanagal has submitted the report stating that the defendant has encroached the area of the plaintiff as indicated in the hand sketch map produced along with the Report and has categorically stated that the encroachment made by the defendant is 6 guntas 13 annas as held by Courts below. The trial Court based on the Commissioner's Report and the P.T.Sheet arrived at a conclusion that the encroachment by the defendant is to the extent of 6 Guntas 13 annas in plaintiff's property affirmed by the First Appellate Court. For the foregoing reasons the

concurrent findings of fact does not warrant any interference under section 100 CPC and no substantial question of law arises for consideration and this Court pass the following:

ORDER

i) The Regular Second Appeal is hereby ***dismissed***.

ii) The judgment and decree of the Courts below stands ***confirmed***.

Pending I.As., if any, do not survive for consideration.

SD/-

(JUSTICE K.S.HEMALEKHA)

RH
CT:PA
List No.: 1 Sl No.: 39