

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

R.F.A.No.727/2007 DATED: 11-12-2019

SHRI K MUNISWAMAPPA AND OTHERS VS. SMT H PARVATHAMMA

**JUDGMENT**

Appeal is directed against the Judgment and decree dated 22.12.2006 passed in O.S.No.5539/99 wherein suit filed for declaration and permanent injunction came to be partly decreed. Being aggrieved by the said Judgment and decree the defendants have come up in appeal.

2. In order to avoid confusion and overlapping, parties are referred to as per their rankings before the trial court.

3. The brief facts leading to the legal proceedings are that; plaintiff is the absolute owner in peaceful possession and enjoyment of the property bearing No.7, Khatha No.98/49 situate at Puttenhalli- Uttarahalli Hobli, within the village limits of Sarakki Grama Panchayath, Bengaluru South Taluk, Bengaluru. He further claims that the entire suit schedule property originally belonged to defendants

and on 19.12.98 a registered sale deed was executed by defendants through their power of attorney holders in favour of the plaintiff selling schedule property measuring East to West by 30 feet and North to South 50 feet and that plaintiff since the said date is enjoying possession and ownership of the property. It is stated in registered sale deed that there exists a road having a width of 24 feet. It is serving as approach road from the main road which is known as Puttenahally-Kothnur Main Road to reach the schedule property and other abutting properties as well.

4. The defendants having sold the schedule property to the plaintiff and the connected and respective adjoining properties to others. Later adopting high handed attitude.

5. The purchasers of the residential sites from the defendants have constructed the buildings and are residing there. It is also stated that the defendant is men of muscle, money power and unlawfully making preparations to put up construction over the road adjoining the schedule property on the northern side. Said road having width of 24 feet on the northern side is the only approach road to reach suit schedule property and the other residents are constantly using it right from

their entry into their respective properties purchased from the defendants. Thus, the plaintiff claims that her right was denied by the defendants over the road and the plaintiff is deprived of her legal and legitimate right over the schedule property having purchased through registered sale deed dated 19.12.98.

6. The defendant entered appearance and filed written statement and denied the right of plaintiff over the road in accordance with the present format of the plaint and area claimed therein as schedule. He claims that the schedule property is wrongly described to knock of excess measurement than what was purchased by plaintiff under the registered sale deed dated 19.12.98.

7. Learned trial Judge examined the aspects of right of schedule property with road measuring 24 feet on the northern side, existence of road for plaintiff and other residents, interference by the defendants, the responsibility of the defendants 2 and 3 to prove no road is in existence, mis-joinder and non-joinder of proper and necessary parties, court fee and entitlement of the plaintiff for the relief sought in the case.

8. The trial Judge was accommodated with the oral evidence of PW-1-K.Ramaiah, PW-2 -C.P.Raja and documentary evidence on behalf of the plaintiff are:

Ex.P-1 - Power of attorney  
Ex.P-2 - Original Sale deed  
Ex.P-3 - Khatha extract Ex.P-4  
to P-6 - Kandayam paid receipts  
Ex.P-7 - Layout plan  
Ex.P-8- Encumbrance certificate  
Ex.P-9 to P-13 - Photos  
Ex.P-9(a) - Negatives  
Ex.P-13(a)  
Ex.P-14 & 15 - Police endorsements Ex.P-16  
-Certified copy of the Sale deed  
Ex.P-17-  
Tax receipt  
Ex.P-18- Sanctioned Plan  
Ex.P-19 - Newspaper `Sanjevani`

9. Oral evidence of DW-1 -Smt.H.Parvathama and documentary evidence Exhibit D-1-General Power of attorney on behalf of defendant. Learned trial Judge decreed the suit in part.

The operative portion of the Judgment is as under:

#### ORDER

The suit of the plaintiff is partly decreed, declaring that the plaintiff has got common right on 24 feet wide road running on the northern side as public road for use of herself,

defendants and other residents of the locality and issue Permanent Injunction against the defendants restraining the defendants, their men, agents and others on behalf of them from interfering with the peaceful possession and enjoyment of the said 24 feet wide road left for the public.

10. Learned counsel for appellants Sri Nagaiah would submit that there is violation of the terms of power of attorney executed by the defendants in favour of Sri.K.Sudhakar and Sri.K.Suryaprakash as power of attorney holders and marked as Exhibit D-1 dated 22.04.1997 defines the measurement of the property that was authorized to be sold by the power of attorney holders and the said holders have gone in violation of the terms of said power of attorney and have done material unauthorized act to the prejudice of the defendants. Further the same was neither authorized nor ratified subsequently.

11. The measurement of the schedule property mentioned in the registered sale deed East to West 30feet

and North to South 50 feet as against the authorized extent mentioned in Exhibit D-1 –General Power of Attorney East to West 37 ½ feet and North to South 40 feet.

12. Thus, there has been a gross violation of the terms of power of attorney which does not bind the defendants. Learned counsel would further submit that defendants are not bound by the act of their attorneys.

13. Learned counsel for plaintiff Sri H.S.Prashanth would submit that the right of the plaintiff over the said road on the northern side could be conspicuously seen even during night times and its existence and the width of the said road is 24 feet is spoken to and asserted by all the localites entering residence abutting the schedule property and also those who are regularly using the said road for commuting.

14. Learned counsel would further submit that the plaintiff purchased the property on 19.12.98 and ever

since the day of purchase he is in possession of the schedule property and thereafter constructed the house wherein the plaintiff is residing along with his family members. Learned counsel would further submit that along with plaintiff the other residents in their respective houses abutting the schedule house of plaintiff and also subsequent houses and residents while they are using the road as 24 feet. Thus, he would submit irreparable hardship and inconvenience would be caused not only to the plaintiff but entire cluster of residents who resides in the said locality and have their houses abutting the schedule road of 24 feet width.

15. Learned counsel for plaintiff Sri H.S.Prashanth would submit the averments made by the plaintiff are not isolated without the support of the document. In this connection learned counsel would submit firstly Exhibit P-2 is the registered sale deed executed by the defendants through their power of attorney holders conveying the suit schedule property in favour of the plaintiff. Exhibit P-16 is the certified copy of the sale deed executed by the father

of defendant in favour of PW-2 –C.P.Raja and who also has constructed a house over it and reside. Further Exhibit P-7 is the layout plan which shows the existence of road and also the schedule property and Exhibit P-18 which is the sanction plan of the schedule property wherein the schedule house of the plaintiff is built and the measurement of the road on northern side is mentioned as 24 feet. Exhibit P-2 registered sale deed executed by power of attorney holders of defendants in favour of plaintiff wherein measurement stated in the schedule is East to West 30 feet North to South 50 feet and mentioning is loud and clear in the said document. Further insofar as northern side of the property in the sale deed it is mentioned as 24 feet road. Similarly the existence of 24 feet road is established in Exhibit P-16 which is the sale deed said to have been executed by the father of defendant. The suit almost runs like a representative suit.

16. In the over all context and circumstances of the case all the documents produced by plaintiff before the trial court fortifies her contention of mentioning of 24 feet road on the northern side of her property and house. The plaintiff also claims the house is in alignment of her

property and also has the benefit of northern side road having 24 feet measurement.

17. Learned counsel for appellants Sri Nagaiah submitted that mentioning of the measurement of the road does not go to the additional benefit of the plaintiff.

18. Learned counsel for respondent Sri H.S.Prashanth would submit that mentioning of the measurement at 50 Feet North to South is effected cautiously in the full fledged sale deed dated 19.12.98 which is marked as Exhibit P-2. Learned counsel further submits that the defendants are estopped from claiming that the extent of property sold north to south 50 feet is unauthorized as attorney confirmation authority to execute registered sale deed of the schedule property measuring East to West 37 ½ feet and North to South 40 feet. Registered power of attorney Exhibit D-1 was executed in favour of the said attorneys Sri.K.Sudhakar and Sri.K.Suryaprakash by the defendants.

19. Thus, a contract of agency was between them.

Known principles of contract of agency are whatever a person can do by himself can do through another. He who does an act by another does it by himself. In this connection the measurement of the land that was authorized to be sold therein is East to West by 37 ½ feet and North to South 40 feet. The total extent comes to 1,500 sq. feet.

20. Incidentally the property that was conveyed by the power of attorney holders Sri.K.Sudhakar and Sri.K.Suryaprakash under Exhibit P-2 sale deed is East to West 30 feet and North to south by 50 feet. Totally measuring 1,500 sq. ft.

21. It is not the question of product of measurement that is being taken into consideration. It is stated to be a house situated in a layout. The existence of 24 feet road on the northern side does not appear to be in dispute. The measurement of 24 feet width is confirmed in Exhibits-P-2, 16 and 18. However, the alteration of measurement matters most as East to West is shortened to 30 feet but

north to south is extended by 10 feet. And the measurements in the registered sale deed East to West by 30 feet and north to south by 50 feet. This causes material topographical change that cannot be allowed.

22. Learned counsel for respondent would submit that to the eastern side Ramaiah's house and to western side it is remaining property of the defendants. In the circumstances when the measurements are not mentioned with reference to

the directions it may be called as ambiguity capable of providing more than one meaning, but when the document specifically mentions measurement as East to West 37 1/2 North to South 40 feet in the enabling document power of attorney Exhibit D-1 it could not have changed in the sale deed Exhibit P-2 executed in favour of the plaintiff.

23. With all this, the court does not approve the mentioning of measurement of the schedule property as stated in the plaint. However, on the basis of available materials, evidence and circumstances the width of the

road is 24 feet and the same is not disturbed by this court and it prevails as the measurement are inter changed as 30 ft x50 feetinstead of 37 ½ ft x 40 ft.

24. The wrong measurements by interchanging directions may cause material impact. Regard being had to be fact that rectification of the instrument is not sought by the plaintiff and it is liable to be set aside.

With this observation, I find the learned Judge has failed to apply his mind regarding measurement of the schedule property with reference to sale deed as east to west 30 feet and north to south 50 feet and Judgment and decree is liable to be set aside to the said extent.

The Judgment and decree in respect of the measurement of the schedule property is set aside to be modified as East to West 37 ½ ft and North to South 40 ft.

However, it is confirmed hereby that the width of the measurement of the road 24 feet is not connected to the

present disposal and the court does not meddle with width of the road existing.

Appeal is disposed of accordingly.