



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 1815 OF 2017 (DEC)

BETWEEN:

SHRI K.V. KANNAN
S/O K.VEDANTA IYENGAR,
AGED ABOUT 91 YEARS,
R/A "VEDANTA"
NO.601, 15TH CROSS,
J.P. NAGAR IST PHASE
BANGALORE
REPRESENTED BY GPA HOLDER
SHRI DASHARATHI K V.

1(a) MRS.JAMBU KANNAN
AGED ABOUT 84 YEARS
W/O LATE K.V. KANNAN

1(b) MR. DASHARATHI K.V,
AGED ABOUT 66 YEARS
S/O LATE K.V.KANNAN
R/AT "VEDANTA"
NO.601, 15TH CROSS,
J.P. NAGAR IST PHASE
BANGALORE.

1(c) MRS.SHEELA,
W/O LATE SRIPATNI K.V,
S/O LATE K.V. RAMAN
AGED ABOUT 57 YEARS

1(d) MRS.SHRUTHI RANJANI
D/O LATE SRIPATNI K.V.
S/O LATE K.V.KANNA.
AGED ABOUT 30 YEARS.

Digitally signed
by ANNAPURNA
G
Location: HIGH
COURT OF
KARNATAKA



1(e) MS. SRINIDHI,
D/O LATE SRIPATNI,
S/O LATE K.V.KANNAN,
AGED ABOUT 29 YEARS.

1(f) MR. SUDHARSHAN K.V.
S/O LATE K.V. SRIPATNI
S/O LATE K.V.KANNAN
AGED ABOUT 28 YEARS

1(a) & 1(c) TO 1(f) R/AT
FLAT NO.104, SRI.SAILAM
APARTMENT, NO.59,
4TH MAIN ROAD, GAVIPURAM,
EXTENSION,
BANGALORE- 560 019.

...APPELLANTS

(BY SRI.B.K. SAMPATH KUMAR, SENIOR COUNSEL FOR
SRI. SURAJ SAMPATH, ADVOCATE)

AND:

SHRI. R.S SRINIVASAN,
S/O R.S SEETHARMAIAH SETTY,
AGED ABOUT 55 YEARS,
PARTNER
M/S ASHOKA INDUSTRIES,
SY. NO.18/3, KALENA AGRAHARA,
BEGUR HOBLI,BANNERGHATTA ROAD
BANGALORE-560 076.

...RESPONDENT

(BY SRI.VIVEK S REDDY, SENIOR COUNSEL FOR
SRI. K.N. SUBBA REDDY, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 17.07.2017 PASSED IN OS.NO.393/2007 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE BENGALURU, RURAL DISTRICT BENGALURU, DISMISSING THE SUIT FOR DECLARATION, POSSESSION AND MANDATORY INJUNCTION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.09.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **UMESH M ADIGA J.**, PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This is plaintiff's appeal against the judgment and decree dated 17.07.2017 passed by the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru, (for short, 'trial Court'), in O.S.No.393/2007 .

2. Brief facts of the case of both the parties are that:

The plaintiff purchased the suit property bearing Survey No.19/1 Kalena Agrahara Village, Begur Hobli, Bannerghatta Road, Bengaluru measuring 1 acre 38 guntas under the registered sale deed dated 29.05.1964 from its owner Smt. Sarojamma and thus became owner and in possession of the said property. The plaintiff got converted the said land for non-agricultural use by the order dated 30.09.1984 passed by the Deputy Commissioner. Just prior to filing of the suit, both plaintiff and defendant came to



know for the first time that there were certain discrepancies in the extent of the property and the same were required to be rectified. Joint survey was conducted and it revealed that defendant had encroached to an extent of 18 guntas of land upon plaintiff's land in survey No.19/1 totally measuring 1 acre 38 guntas. Plaintiff negotiated with the defendant and requested to hand over the possession of the said 18 guntas of land. The defendant did not agree for the same. Therefore, he was constrained to file the suit seeking for the relief mentioned in the plaint.

3. The defendant in his written statement described in detail the flow of title of the land in survey No.19/1 and 19/2 to different persons. In addition to that he also contended as per Akarband, Hissa partrika, the land in survey No.19 was totally measuring of 3 acre 20 guntas plus phot kharab. It was phoded as per survey conducted on 10.04.1930. It was divided into two parts i.e. survey No.19/1 measuring 1 acre 38 guntas plus 1 gunta phot kharab situated towards northern side and survey No.19/2 measuring 1 acre 21 guntas plus 2 guntas phot kharab



situated towards southern side. Survey No.19/1 was standing in the name of Munivenkata @ Yella. The said order of survey and phodi was not challenged by either of the parties to the said proceedings. The survey sketch was prepared on 28.04.1930 and it indicates that survey No.19/1 was situated towards Bengaluru (North) and survey No.19/2 is situated towards Bannerghatta (South). The original owner of the respective area has been in possession and enjoyment of respective extent of the land mentioned therein.

4. Defendant further stated that one Smt. Rukminiyamma w/o Rangappa Shetty purchased survey No.19/1 from B.N. Sampath Kumar under the registered sale deed dated 25.03.1972. During the year 1980, Sri. Ashoka Industries entered into the partnership with Smt. Rukminiyamma to set up industries. Sri. S.N. Ashok, GPA holder of Smt. Rukminiyamma gave application in the year 1983 for conversion of the land for non-agriculture use in the name of Rukminiyamma.



5. It is further case of the defendant that M/s. Ashok Industries, after obtaining necessary permission from Hulimavu Gram Panchayat, constructed a building during the year 1983-84 and started business of production of corrugated boxes. Similarly, defendants constructed a building in his property by obtaining license/permission from the appropriate authority. The defendant has been in peaceful possession and enjoyment of survey Nos.19/1 measuring 1 acre 38 guntas and 18/3 measuring 1 acre 5 guntas to the knowledge of plaintiff. The averments in the plaint contrary to the above said facts are incorrect and denied.

6. It is further contention of the defendant that the suit is bad for non-joinder of necessary parties and mis-joinder of parties. The suit is barred by law of limitation. With these reasons, defendants prayed to dismiss the suit with cost.

7. From the rival contentions of the parties, trial Court framed necessary issues.



8. The trial Court recorded oral and documentary evidence led by both the parties.

9. The trial Court after hearing both the sides and appreciating the pleadings and evidence available on record, dismissed the suit by the impugned judgment and decree dated 17.07.2017.

10. We heard the arguments of learned Senior Counsels for the parties. Both the learned Senior Counsels also filed their respective written arguments.

11. The learned Senior Counsel for the appellant would submit that Kalena agrahara village was a Jodi Inam village. After coming into force of Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (for short 'Inams Abolition Act'), suit property and other lands situated in the said village were vested with the Government under the said Act. As per Section 5 of the Inams Abolition Act, persons who were in possession of the land as tenant or owner or purchaser of such property, has to file application for re-grant of such lands. The Special Deputy Commissioner



for Inams Abolition, after holding enquiry of such applications shall re-grant land to such applicant. All the rights and interest existing over such lands prior to coming into force of the Inams Abolition Act, ceases to exist after coming into force of the Inams Abolition Act. The revenue records of such lands which were vested in the State Government, become inoperative and they have no value. Therefore, the documents referred by the respondent are of no value.

12. Appellant further contended that on the application of Muniyamma, Special Deputy Commissioner re-granted survey No.19/1 to an extent of 1 acre 38 guntas in favour of Smt.Muniyamma. Predecessor in title of defendant applied for re-grant of land in survey No.19/2 and 1 acre 20 guntas were granted in favour of predecessors- in-title of vendors of the defendant. Appellant got converted the said land after its purchase and constructed the buildings in the said land. A few days prior to filing of the suit, plaintiff learnt that portion of his land was encroached by the defendants. A joint survey was conducted by both plaintiff



and defendant and during the said period, it was found that defendant had encroached to an extent of 18 guntas on the land belonging to appellant. Appellant requested and also issued notice to the defendant to hand over the possession the said encroached area to him. Defendant did not hand over the encroached area, therefore appellant was forced to file the suit. Respondent even by violating the court order constructed additional buildings in the encroached area.

13. It is further contended by the appellant that the plaintiff is seeking relief of possession on the basis of the title. As stated above, during the year 2006, appellant came to know about illegal encroachment by the defendant of his property. Therefore, the suit was in time.

14. Learned Senior Counsel for the appellant would further submit that the learned trial Judge has not appreciated evidence produced by the appellant properly. The suit was dismissed only on the basis of untenable survey map and report of the year 1930, which became inoperative after coming in to force of Inams Abolition Act. The learned trial Judge has not properly understood the provisions of the



Inams Abolition Act and hence the findings of the learned trial Judge are erroneous.

15. It is further contended that during the pendency of the appeal, the appellant filed I.A.No.1/2021 under Order 41 Rule 27 of CPC, seeking permission to produce the additional document. The said documents are very much necessary to substantiate the contention of appellant and those documents will assist the court in arriving at just conclusion. He further contends that learned trial Judge did not give sufficient time to the plaintiff to cross-examine DW-1 and hurriedly disposed off the matter. Therefore, appellant could not cross-examine DW-1. Appellant made an attempt before the trial court to recall DW-1 and said application was rejected without justifiable reasons. In view of the same, right of the appellant is seriously prejudiced. The said findings are not tenable, which needs interference by this Court. Therefore, prayed to set aside the impugned judgment and allow the appeal.

16. Learned Senior Counsel for respondent would submit that most of the facts of the case, in respect of flow



of title, are not in dispute. He further contends that looking to the boundary of sale deeds as well as mortgage deed executed from the year 1911 till 1964 during which the appellant purchased the property, it is shown that property of appellant is situated towards southern side of survey No.19. During the year 1930, the properties of Kalena Agrahara village were re-surveyed and during the survey settlement, Northern portion of survey No.19 measuring 1 acre 38 guntas was given as survey No.19/1 and Southern portion measuring 1 acre 20 guntas as survey No.19/2. Accordingly, map was prepared. The said orders of re-survey settlement and map were unchallenged till this day. According to the registered transfer deeds, the land of Muniyamma was bearing survey No.19/2 measuring 1.20 guntas. On appointed day of coming into force of Inams Abolition Act vendor of appellant was in possession of survey No.19/2 measuring 1 acre 20 guntas.

17. It is further contended that while applying for re-grant of the land on behalf of Muniyamma, her agent had filed application for re-grant of the land bearing survey



No.19/1. The concerned authorities without holding detailed enquiry granted the said land since there were no objection from anybody. Thus, while granting the land, survey numbers were inter-changed by the Special Deputy Commissioner contrary to the revenue records. Since said Muniyamma was in possession of 1 acre 20 guntas prior to coming into force of Inams Abolition Act, the Special Deputy Commissioner could not have granted more extent of land than the extent she was in possession. And on that basis, the appellant cannot claim more extent of land than his predecessor in title were entitled. The predecessor in title of the respondent were in possession of northern portion of survey No.19 i.e 19/1 measuring 1.38 guntas plus 1 gunta of kharab land, did not apply in time and on the contrary they submitted the application for re-grant of the land during the year 1966. At that point of time survey No.19/1 was granted in favour of Muniyamma. The Special Deputy Commissioner condoning the delay in filing the application for re-grant of the land, re-granted only to an extent of 1 acre 20 guntas which was available. In view of interchange



in the said survey numbers, subsequent to the grant order, less extent was shown in respect of land regranted to the respondent. However, within the boundaries of the property regranted to defendant, he is in possession and enjoyment of 1 acre 38 guntas. It is settled principle of law that boundaries prevail over the extent. Hence, plaintiff has no right to seek for possession of 18 guntas of the land.

18. The learned Senior Counsel for respondent further contended that while applying conversion of the land, the appellant filed declaration before the Special Deputy Commissioner that the land in his possession was only to an extent of 1 acre 20 guntas and he prayed to convert 1 acre 20 guntas of land for non-agricultural purpose. The said declaration clearly indicates that he was in possession of 1 acre 20 guntas and not 1 acre 38 guntas as contended. The appellant had also constructed a compound wall in between the land belonging to appellant and respondent long back. Therefore, question of encroachment of the land by defendant would not arise. Due to inflation in the land price, and looking to the revenue records, the appellant with greed



to get property of respondent, filed a false suit. The trial Judge properly appreciated the evidence and dismissed the suit, which does not call for interference. Hence, prayed for dismissal of the appeal.

19. Learned Senior Counsel for the appellant relied on the following judgments:

- *(2003) 7 SCC 146: State of Orissa vs. Nityanand Satpathy and others.*
- *(1977) 1 Kar.L.J.389(DB): Muniyallappa vs Krishnamurthy B.M. & others.*
- *(1974) 1 SCC 242 (Full Bench): Nagindas Ramdas vs Dalpatram Ichharam @ Brijram @ others.*
- *(2000) 3 SCC 536: Mushir Mohammed Khan (Dead) by LRs vs Sajeda Bano & others.*
- *(2006) 5 SCC 353: Prem Singh & Others vs Birbal & others.*
- *(2003) 8 SCC 319: Ram Chandra Singh vs Savithri Devi & Others.*
- *AIR 2017 SC 5852 (Full Bench): Harpal Singh vs Ashok Kumar & Another.*
- *ILR 2005 KAR 60 (DB): J.M. Narayana & Others vs Corporation of the City of Bangalore, by its Commissioner Office, Bangalore & others.*



- *Notification dated 16.01.2007 bearing No.UDD 92 MNY 2006.*
- *ILR 2020KAR 1449 (Full Bench): Jayamma & others vs The State of Karnataka, rep. by its Secretary, Department of Revenue & others.*
- *(2018) 8 SCC 67: Eureka Builders & others Vs. Gulabchand (since deceased by LRs & Others).*
- *(1995) SCC Online Kar 214: Vokkaligara Sannappa v. Vokkaligara Annaiah and another*
- *ILR 1996 KAR 1143:.. Puttappa Vs.Ramappa*

Learned Senior Counsel for the respondent relied upon the following judgment:

Stumpp Scheule & Somappa (P) Ltd vs. Chandrappa reported in ILR 1985 KAR 3872.

20. The following questions arise for our determination:

- Whether the learned trial Judge has erred in holding that there was no encroachment on plaintiff's land by the defendant?*



ii. Whether the land purchased by the plaintiff is situated towards northern side of survey No.19/1?

iii. Whether the learned trial judge is justified in holding that the suit is barred by time?

iv. Whether appellant be permitted to produce additional evidence?

v. Whether interference in the trial court findings is required?

Our answers to the above questions are in negative for the following reasons:

21. The appellant has been contending that he is the absolute owner and in possession of the property bearing Survey No.19/1 measuring 1 acre 38 guntas of Kalena Agrahara village (suit property). He purchased the suit property under the registered sale deed dated 29.05.1964 from Smt. Sarojamma. The appellant contended that the said land was Inam land since Kalena Agrahara village was a Jodi Inam village. After coming into force of Inams Abolition Act, the occupier of the land one Smt. Muniyamma, daughter



of Tana filed an application before the Special Deputy Commissioner for Inams Abolition seeking regrant of the land bearing survey No.19/1 measuring 1 acre 38 guntas of Kalena Agrahara village. The Special Deputy Commissioner in Case.No.14/22 of 1956 granted occupancy right in favour of Smt. Muniyamma to an extent of 1.39 guntas in Survey No.19/1 by an order dated 08.07.1957 and issued an endorsement to that effect. Plaintiff contended that the said property has following boundaries:

East by: By private properties (Sy. No. 17, 18 and Ors)
West by: The Bangalore – Bannerghatta Road
North by: Sy. No. 19/2 (Ashoka Industries) (Defendant)
South by: Govt. Rain Water channel

He contends that defendant had encroached to an extent of 18 guntas in survey No.19/1 towards northern portion of his land , which is noted in the plaint 'B' schedule.

22. The respondent in the written statement filed on 23.10.2007 and additional written statements filed on 23.01.2012 and 18.12.2014 contended the flow of title of both the property belonging to plaintiff as well as defendant,



which is narrated in the following table along with its relevant boundaries:

FLOW OF TITLE (PLAINTIFF)

Date	Transfer	Boundary	Exhibit
08.07.1957	Granting of Occupancy Rights Order of the Tahsildar	1 Acre 39 Guntas (Sy. No. 19/1) (Plaintiff) East by: By private properties (Sy. No. 17, 18 and Ors) West by: The Bangalore – Bannerghatta Road North by: Sy. No. 19/2 (Ashoka Industries) (Defendant) South by: Govt. Rain Water Drain Channel	Ex. P. 16
25.10.1961 Sale Deed	From Smt. Muniyamma to Smt. Sarojamma.	1 Acre 39 Guntas (Sy. No. 19/1) East by: By private properties (Sy. No. 17, 18 and Ors) West by: The Bangalore – Bannerghatta Road North by: Sy. No. 19/2 (Ashoka Industries)	



		(Defendant) South by: Govt. Rain Water channel	
29.05.1964 Sale Deed	From Smt. Sarojamma to Plaintiff (Late K. V. Kannan)	1 Acre 39 Guntas (Sy. No. 19/1) East by: By private properties (Sy. No. 17, 18 and Ors) West by: The Bangalore – Bannerghatta Road North by: Sy. No. 19/2 (Ashoka Industries) (Defendant) South by: Govt. Rain Water channel	Ex. P. 2

FLOW OF TITLE(RESPONDENTS)

Date	Transfer	Boundary	Exhibit
16.06.1911 Sale Deed	Venkata S/o Kunta Chinna To Yella Dasappa	Sy.No.19/2 East by : Hanumakka's Farm & Alalaganas' Farm West by: Bannerghatta Road North by: Bala's Farm South by: Chikkamutha's Farm	Ex.D.384 and Ex.D.384(a)
12.11.2010 10.04.1930		3 Acres 30 Guntas (Sy. No. 19) Akarband Hissa Fisal Pathrika	Ex. D. 23
28.04.1930		The abovementioned property was divided into two portions as 1 acre 38 guntas (Sy. No. 19/1) and 1 Acre 21 Guntas (Sy. No.	Ex. D. 56



		19/2). Above said land phoded in two parts. Northern portion was given sy.No.19/1 measuring 1.38 plus one gunta phoot kharab. Map shows following boundaries. East by: By private properties (Sy. No. 17, 18 and Ors) West by: The Bangalore – Bannerghatta Road North by: Sy. No. 19/2 (Ashoka Industries) (Defendant) South by: Govt. Rain Water Drain Road Southern portion was given sub-division No. as 19/2	
28.04.1930		(a) 1 acre 38 guntas Hissa Survey (Munivenkata Bin Yella) (b) 1 Acre 21 Guntas Hissa Survey (Tana Bin Anja)	Ex. D. 22
28.04.1930		Survey Sketch	Ex. D. 21
12.11.1930	From Munivenkata to P. Munishamy Rao	1 acre 38 guntas (Sy. No. 19/1) East by: Lands of Hanumakka and Allelliga. West by: Bannerghatta Road. North by: Land of Hulimavu Bala. South by: Land of Chikka Mutha.	
Sale deed			



11.03.1931 Sale deed	From P. Munishamy Rao to P. Rama Rao	1 acre 38 guntas (Sy. No. 19/1) Boundaries mentioned above	
30.07.1934 Sale deed	From P. Rama Rao to B. Nanjabyamma	1 acre 38 guntas (Sy. No. 19/1) East by: Lands of Hanumakka and Allelliga. West by: Bannerghatta Road. North by: Land of Hulimavu Bala. South by: Land of Chikka Mutha.	
21.08.1945 Sale deed	From B. Nanjabyamma to Muniyellappa	1 Acre 38 Guntas (Sy. No. 19/1) East by: Land belongs to Munellappa West by: Road North by: Land of Kala, S/o Bala South by: Land of Chikka Marappa's son Kaverapp	
18.07.1963 Sale deed	From Muniyellappa to Lakshmaiah	1 Acre 38 Guntas (Sy. No. 19/1) East by: Land belongs to Munellappa West by: Local fund Road (Bannerghatta Road) North by: Land bearing Sy. No. 10. South by: Land of Sarojamma and Kaverappa.	



02.07.1970 Sale deed	From Lakshmaiah to B. N. Sampath Kumar	1 Acre 38 Guntas (Sy. No. 19/1) East by: Land belongs to Munellappa West by: Local fund Road (Bannerghatta Road) North by: Land bearing Sy. No. 10. South by: Land of Sarojamma and Kaverappa.	
25.03.1972 Sale deed	From B. N. Sampath Kumar to Rukminiyamma	1 Acre 38 Guntas (Sy. No. 19/1) East by: Land belongs to Munellappa West by: Local fund Road (Bannerghatta Road) North by: Land bearing Sy. No. 10. South by: Land of Sarojamma and Kaverappa.	
27.08.1983	Conversion Order (to non agricultural land) in favour of Rukmiyamma	Same as above.	
04.07.1986 Sale deed	From Rukminiyamma to M/s. Ashoka Industries	1 Acre 38 Guntas (Sy. No. 19/1) East by: Land belongs to Munellappa West by: Local fund Road (Bannerghatta Road) North by: Land bearing Sy. No. 10.	



		South by: Land of Sarojamma and Kaverappa.	
--	--	--	--

23. Both the parties have got converted their respective lands for non-agricultural use (according to appellant he got converted 1 acre 20 guntas of land in Survey No.19/1 for non-agricultural use). Both have made a lot of developments in the respective portion of survey No.19.

24. Both side parties more or less have not seriously disputed above said facts.

25. The respondent produced voluminous documents i.e., revenue records as well as documents pertaining to obtaining of electricity connection and payment of electricity bills, permission to construct buildings etc. As rightly observed by learned trial Judge most of the documents are irrelevant to decide facts in issue except a few. The revenue records produced by the respondent indicate that from the year 1930 onwards southern portion of survey No.19 is re-numbered as 19/2 and northern portion was re-numbered as 19/1.



26. The respondent produced copies of title deeds from 1911-1945 at Exs.D384, 385, 386, 387, 388 and 389. All these documents show that after sub-division of survey No.19, the extent of northern portion of survey No.19 has been shown as 1 acre 38 guntas excluding 1 gunta of kharab land. These documents came into existence about 60 to 70 years prior to suit and at an undisputed point of time. There is no contrary evidence to disbelieve the contents of said documents.

27. It is not in dispute that the appellant had filed an application before the Deputy Commissioner for conversion of the land for non-agricultural use as per Exs.D3 to D9. Ex.D3 dated 13.05.1987 shows that the appellant requested Deputy Commissioner to convert the land bearing survey No.19/1 measuring 1 acre 38 guntas for non-agricultural use. The northern and southern boundaries of the property was mentioned as "North-the land of Muniyallappa, at present Ashoka Industries" and "South- water channel". The Office of the Deputy Commissioner by its letter dated 11.08.1987 asked the appellant to pay conversion charges of



Rs.1,97,906/-. The appellant wrote a letter dated 20.06.1987 as per Ex.D5, requesting the Deputy Commissioner to convert an extent of 1.20 guntas of land out of 1.39 guntas of land. The office of Deputy Commissioner vide Annexure-D6 intimated the appellant that they cannot convert portion of land for non-agricultural purpose. Thereafter, the appellant wrote a letter dated 13.05.1987 as per Ex.D5, stating that the extent of land available in his possession was only 1 acre 20 guntas and not 1 acre 38 guntas and he was ready to pay conversion charges to an extent of 1 acre 20 guntas of land and prayed for conversion of the same. According to his own statement he was in possession of the land to an extent of 1 acre 20 guntas.

28. The learned Senior Counsel for appellant contends in the oral arguments as well as in the written submissions that the appellant was unable to pay such a heavy amount of conversion charges, therefore for the sake of avoiding the payment of the same, he stated that he was in possession of 1.20 guntas and it will not affect his right in



respect of remaining portion of the land. The said submission is legally not tenable. It was specific declaration that he was in possession of 1acre 20 guntas and not 1 acre 39 guntas. Such a statement made voluntarily cannot be ignored. It is not the case of the appellant that at that time he got measured the property to bifurcate converted and non-converted land for the purpose of development. It appears that the said contention of the appellant is just to overcome Ex.D8 and hence not tenable. This fact also indicates that during the year 1987 also he knew that the land that was in his possession was only to an extent of 1 acre 20 guntas and not 1 acre 38 guntas as contended in the plaint.

29. The boundary mentioned in the application filed for conversion of land supports the contention of respondent. Admittedly, the appellant had executed registered lease agreements; some of them are produced at Exs.D11 to D13 dated 05.05.2005, 25.10.2005 and 15.11.2007. Even in the document executed during the year 2007, it is stated that "the lessors are the absolute owners of



immovable property to an extent of 1 acre 20 guntas situated in Bannerghatta road in Survey No.19/1 of Kalena Agrahara village, Begur hobli, Bengaluru, having purchased the same from Smt.Sarojamma under the registered sale deed dated 29.05.1964.”

30. The Learned Senior Counsel appearing for the appellant submits that only to an extent of 1.20 guntas of property was given on lease, therefore, there was no need for mentioning about the remaining extent of 18 guntas of land in the lease deed. The said submission is not tenable. It is clearly mentioned that an extent of 1 acre 20 guntas was purchased from Sarojamma vide sale deed dated 29.05.1964. There was no hurdle to state that “out of 1 acre 38 guntas purchased, 1.20 guntas was leased out.” Therefore, the said contention of appellant is coined only for the purpose of overcoming the contents of the Exs.D11 to 13. The appellant very well knew that he had purchased the property measuring 1 acre 20 guntas in survey No.19/2.

31. The respondent produced the survey map. It shows the southern boundary of the said property as



"stream" (water channel). In all the documents existed prior to the filing of the suit, including the plaint 'A' schedule, the southern boundary of survey No.19/1 is shown as "water channel/stream". If the property of the appellant is situated at Northern side, as contended by the appellant, then there is no chance that southern boundary of said land as "water channel". The southern boundary of said land must be the land belonging to respondent.

32. During the course of cross-examination, PW-2 admitted all the defence of the defendant regarding extent of land granted to both the parties, extent of the land held by respondent, that the land in possession of appellant is at southern side of survey No.19 and that construction of compound wall to bifurcate both the lands. The said evidence is discussed by the learned trial Judge in the impugned judgment in detail and there is no need of repetition. The contention of the appellant that PW-1 was well versed with the facts of the case. He was unable to appear before the court for further cross-examination due to old age and age related ailments. Under those



circumstances, the original appellant was forced to examine PW-2, who was not well acquainted with the facts of the case. Therefore, the admission given by PW-2 cannot be considered.

33. The submission of learned Senior Counsel for the appellant is not tenable in law. PW-2 is none other than the son of the deceased appellant. In his affidavit evidence, he stated that he was well conversant with the facts of the case and he reproduced the plaint averments in his affidavit. To prove his contention, the appellant wants to rely on the said evidence. But when it comes to admission given by him, he contents that it cannot be relied since he was innocent. The said approbation and reprobation is not permissible. When he was examined as a witness, his evidence shall be considered for appreciating the contentions of both the sides.

34. Evidence of PW-2 and documents produced by both the parties support the contentions of respondent. It unequivocally proves that appellant is in possession of southern portion of survey No.19. As per the revenue record, it is re-numbered as 19/2 and its extent is 1 acre 20 guntas.



Boundary of the properties mentioned in the sale deeds produced by both the parties from the year 1911 till 2007 reveals that appellant has been in possession of survey No.19/2. During the year 1958, the Deputy Commissioner for Inams Abolition though passed an order granting 1 acre 38 guntas in favour of Muniyamma in survey No.19/1, appellant or his predecessors in title never enforced their right to occupy the said land without any justifiable reasons and continued in possession of the land in which they were in possession prior to coming into force of Inams Abolition Act. That leads to an inference that appellant and predecessors in title were never in possession of survey No.19/1 measuring 1 acre 38 guntas. Nearly after lapse of about 48 years, from the date of the grant, appellant is claiming that respondent had encroached to an extent of 18 guntas in his land and seeking possession of the same incorrectly contending that he is in possession of northern portion of survey No.19. The said contention is not acceptable. The above said facts makes the case of respondent probable.



35. It is the contention of appellant that once the land is vested in the State Government as per provisions of Inams Abolition Act, the revenue records, re-survey map and other records existed prior to the vesting of the land are inconsequential and said records cannot be considered.

36. The Learned Senior Counsel for respondent submits that after coming into force of Inams Abolition Act, rights of the holders of such land ceases to exist and such land will be vested in the State Government free from all encumbrances. The said Act only modifies the rights of holder of such lands. The revenue records in respect of such lands will not become inconsequential. The person, who was in possession/occupation of such land could apply for re-grant of such land. Considering such applications by the Special Deputy Commissioner of Inams Abolition may re-grant such land to the person, who was occupying such lands. Vesting with Government does not wipe out revenue records. If the contention of appellant is acceptable then even survey numbers and extent of land would also to be changed.



37. The contentions of learned counsel for respondent is tenable. The Mysore (Personnel and Miscellaneous) Inams Abolition Act, 1954 came into force from the date of its Notification i.e. 19th day of March, 1955. Section 3 of the said Act deals with consequences of vesting of Inam lands to the State. Under the said provision, nowhere it is stated that whatever land records exist prior to that date of coming into force of the Inams Abolition Act, pertaining to the Inam lands ceases to operate or become invalidate.

38. Section 5 of the Inams Abolition Act reads as under:

5. Permanent tenants to be registered as occupants on certain conditions.-(1) Subject to the provisions of sub-section (2), every permanent tenant of the inamdar shall, with effect on and from the date of vesting, be entitled to be registered as an occupant in respect of all lands of which he was a permanent tenant immediately before the date of vesting:

Provided that no person who has been admitted into possession of any land by an inamdar on or after the first day of July, 1948, shall, except where the Deputy Commissioner after an examination of all the circumstances



otherwise directs, be entitled to be registered as an occupant in respect of such land.

(2) In addition to the annual land revenue payable in respect of the land, a permanent tenant entitled to be registered as an occupant of any land under sub-section (1), shall be liable to pay to the Government, as premium for acquisition of ownership of that land, an amount equal to twenty times such land revenue. The amount of premium shall be payable in not more than ten annual instalments along with the annual land revenue and in default of such payment, the amount due shall be recoverable as arrears of land revenue due on the land in respect of which it is payable:

[Provided that where a permanent tenant entitled to be registered as an occupant of land under sub-section (1) is shown as a registered occupant in the settlement register and other records referred to in Section 117 of the Land Revenue Code or where the rent paid by a permanent tenant entitled to be registered as an occupant under sub-section (1) ²[is not more than the land revenue], no premium shall be payable under this sub-section].

(emphasis supplied)

39. The above said provision reveals that whosoever occupied such land prior to coming into force of the Act, has to apply to the concerned officer/Deputy Commissioner for regrant of such land. The said officer after verification and enquiry has to pass order regranting lands to such person.



None of the provisions of Inams Abolition Act states that even revenue records existing prior to the appointed date become invalidate or ineffective. Therefore, the contention of the appellant that re-survey of lands, preparation of map etc., held during the year 1930 or documents coming to existence after the said survey and other documents existing prior to vesting of the land are inconsequential and cannot be enforced is legally not tenable.

40. It is settled principle of law that boundaries prevail over the extent of the land. The boundaries of the property belonging to both the appellant and respondent reveals that the appellant is in possession of survey No.19/2. It appears predecessors in title of the appellant had filed application before the authority immediately after coming into force of the Inams Abolition Act, as per Ex.D17, requesting to grant survey number as 19/1 measuring 1 acre 38 guntas. It appears same was inadvertently re-granted in the name of Muniyamma without ascertaining the factual particulars and accordingly, an endorsement was given on 16.07.1958.



41. As per the materials available on record, Muniyamma was in possession of the land situated towards southern side of survey No.19 measuring 1 acre 20 guntas prior to coming into force of Inams Abolition Act. After coming into force of Inams Abolition Act she had right to apply only to that extent of land for re-grant as provided under Section 5 of the Inams Abolition Act. The Special Deputy Commissioner for Inams Abolition had no authority to grant different land to the applicant, which he or she was not in possession prior to appointed date. Therefore the said order was not acted upon by Muniyamma or her successor in title. Therefore, she cannot become the owner of the said land. It is not her case that subsequent to passing of the said order, she started occupying the property bearing survey No.19/1 situated at northern side. The document, which was referred above shows that even during the year 2007, the boundaries of the lease deed shows that the appellant is in possession of the southern portion of the land in survey number 19. In view of these reasons, the



appellant cannot be declared as the owner of 18 guntas of land, which is subject matter of the suit.

42. The learned counsel for the appellant submits that as per provisions of Inams Abolition Act, Civil Court has no jurisdiction to decide correctness of re-grant order. Therefore, the civil court could not have sat as Appellate Court over the orders passed by Special Deputy Commissioner (Inams Abolition) and come to an opinion that the land granted to the appellant was survey number 19/2. The said contention is not acceptable. The trial Court has not set aside the regrant order or decided right of the parties under the provisions of Inams Abolition Act. The trial court considered as to whether appellant was in possession of 1 acre 38 guntas of land in survey No.19 as well as situation of the said land. It has also considered as to whether defendant had encroached any extent of the land belonging to appellant. The civil court has to decide such a disputed question. To grant the relief prayed in the suit, considering the said point is required. When the appellant approached the civil court it is necessary to consider said materials to



arrive at just conclusion. Therefore, the said contention of the appellant that civil court has no jurisdiction is not tenable.

43. The Learned Senior Counsel for the appellant submits that the trial Court had not given proper and sufficient opportunity to the appellant to cross-examine PW-2. Therefore, rights of the appellant is prejudiced. It is pertinent to note that trial Court in the impugned judgment observed that respondent filed lengthy evidence in the form of an affidavit running about 51 pages and produced irrelevant and unconnected documents. In the entire body of the judgment, the trial Court did not hold that due to non cross-examination of DW1, suit was dismissed. More or less the suit was dismissed on the basis of undisputed documents and evidence of PW-2. Hence, no prejudice is caused to the case of appellant due to non cross-examination of DW-1. The appellant had filed an application before the trial court to recall DW1 and said application was dismissed. It appears no further steps were taken by appellant to challenge the



said order. Therefore, on that ground, impugned judgment cannot be set aside.

44. The trial Court framed additional issues and held that suit was barred by time. The trial Court observed that for last 100 years respondent is in possession of the property. Therefore, the appellant lost his right. The records reveal that during the year 1930 when properties were re-surveyed, the survey numbers were inter changed. After coming into force of Inams Abolition Act, the lands vested in the Government and in the year 1958 mistakenly the land was re-granted in survey number 19/1 to an extent of 1 acre 38 guntas in favour of predecessors in title of the plaintiff. Though prior to vesting of the land, she was in possession of only 1 acre 20 guntas of the land situated towards southern portion of survey No.19, from 1958 till filing of the suit, for a period of about 47-48 years, the appellant or his predecessor in title did not file any suit claiming possession of the alleged encroached portion. As per Section 65 of the Limitation Act, the suit should be filed within a period of 12 years from the date when the



possession of the defendant becomes adverse to the plaintiff. In this case, respondent did not take the defense of adverse possession, that may not be necessary. The appellant or his predecessor in title for last about 100 years never claimed possession from the respondent or their predecessors in title. Undisputedly, defendant developed northern side of survey No.19 i.e. 19/1 with the knowledge of appellant. These facts show that he had acquiesced and was estopped from claiming the same. Due to long standing possession and enjoyment of disputed land, the appellant lost his right, if any, to claim possession. Therefore, the suit filed by the appellant is barred by limitation under Article 65 as well as Section 27 of the Limitation Act. The learned trial Judge considered the same and rightly held that suit was barred by time.

45. The appellant filed I.A.No.1/2021 under Order LXI Rule 27 of CPC seeking to produce additional evidence. He produced some of RTCs and Mutation records along with said application. Respondent filed objections to the said



application. Arguments were heard on the said application during main arguments.

46. Most of the facts of the case are not in dispute. These documents in no way helps the contentions of either of parties. While applying for regrant occupier of the land made mistakes in mentioning survey numbers (inter-changed) and regrant order was also passed in respect of very same lands. On that basis, revenue records were mutated. Hence, said revenue records intended to be produced are irrelevant and do not improve plaintiff's case.

47. The suit was filed in the year 13.02.2007. The suit was disposed of on 17.07.2017 and matter was pending for about 10 years before the trial Court. In the affidavit filed in support of I.A.No.1/2021, no justifiable reasons are shown to show that with all due diligence, he could not secure the said document and produce before the Court. Therefore, the application deserves to be rejected.



The decisions relied by the learned counsel for the appellant are not applicable to the facts and circumstances of the present case. Hence, detailed discussion is not required.

48. For the above said discussions, we are of the view that the appellant utterly failed to prove his contention before the trial Court and trial Court by properly appreciating pleadings and evidence on record and assigning valid reasons dismissed the suit. It does not call for any interference by this Court.

49. For the aforesaid reasons, we pass the following:

ORDER

The Appeal is ***dismissed*** with costs.

The judgment and decree dated 17.07.2017 passed by the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru in O.S.No.393/2007 is confirmed.

I.A.No.1/2021 filed by the appellant under Order LXI, Rule 27 of CPC is dismissed.



All the other pending I.As. stand disposed of.

Separate enquiry is ordered on application filed under Order XXXIX Rule 2A of CPC. The Registrar (Judicial) shall record evidence of the parties on the said application and submit the same to the Court.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

AG
List No.: 19 Sl No.: 1