



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.257 OF 2008 (DEC)

BETWEEN:

1. SRI. BASAVANNIPPA RUDRAPPA DODDAGOUDRA,
SINCE DECEASED BY HIS LRS.
- 1A. SMT. MALLAVVA W/O. BASAVANNIPPA DODDAGOUDRA,
AGE: 62 YEARS, R/O. SOMANAHALLI,
TQ. HIREKERUR, DIST. HAVERI.
- 1B. SRI. MOHAN S/O. BASAVANNIPPA DODDAGOUDRA,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. SOMANAHALLI,
TQ. HIREKERUR, DIST. HAVERI.
- 1C. SMT. LATHA W/O. KANIMESHAPPA NANDIHALLI,
AGE: 38 YEARS, OCC. HOUSEHOLD,
R/O. SOMANAHALLI,
TQ. HIREKERUR, DIST. HAVERI.
- 1D. SRI. SATISHA S/O. BASAVANNIPPA DODDAGOUDRA,
AGE: 36 YEARS, OCC. AGRICULTURE,
R/O. SOMANAHALLI,
TQ. HIREKERUR, DIST. HAVERI.

...APPELLANTS

(BY SRI. CHETAN MUNNOLI, ADVOCATE)

AND:

1. SRI. SHIDLINGAPPA DODDAGOUDA DODDAGOUDRA
SINCE DECEASED BY HIS LRS.
- 1A. SMT. MALLAVVA W/O. SHIDDALINGAPPA DODDAGOUDRA,



AGE: 45 YEARS, R/O. SOMANAHALLI,
TQ. HIREKERUR, DIST. HAVERI.

1B. SRI. RAJU S/O. SHIDDALINGAPPA DODDAGOUDRA,
SINCE DECEASED BY HIS LRS.

1B(I). SMT. REKHA W/O. RAJU DODDAGOUDRA,
AGE: 35 YEARS, OCC. HOUSEHOLD WORK,
R/O. SOMANAHALLI-581111,
TQ. HIREKERUR, DIST. HAVERI.

1B(II). KUMARI KAVYA D/O. RAJU DODDAGOUDRA,
AGE: 10 YEARS, OCC. STUDENT,
R/O. SOMANAHALLI-581111,
TQ. HIREKERUR, DIST. HAVERI.

1B(III). KUMARI VARSHA D/O. RAJU DODDAGOUDRA,
AGE: 7 YEARS, OCC. STUDENT,
R/O. SOMANAHALLI-581111,
TQ. HIREKERUR, DIST. HAVERI.

SINCE RESPONDENT NO.R1(B)(II) AND R1(B)(III)-ARE
MINORS R/BY. THEIR GURDIAN AND NATURAL MOTHER
I.E. RESPONDENT NO.(B)(I)
SMT. REKHA W/O. RAJU DODDAGOUDRA)

2. SRI. BASAVANNIPPA DODDAGOUDA DODDAGOUDRA
S/O. LATE DODDAGOUDA DODDAGOUDRA,
AGED ABOUT 55 YEARS, OCC. AGRICULTURE,
PRESENTLY R/AT. BELAGAVI, TQ. SHIKARIPURA,
DIST. SHIMOGA-577427.

...RESPONDENTS

(BY SRI. AVINASH BANAKAR, ADVOCATE FOR R1(A);
R1(B)-DECEASED, R2-NOTICE SERVED;
R1(B)(I), R1(B)(II), R1(B)(III)-HELD SUFFICIENT;
R1(B)(II) AND R1(B)(III)-ARE MINORS R/BY. R1(B)(I))

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO
SET ASIDE/REVERSE THE IMPUGNED JUDGMENT AND DECREE DATED
29.09.2007 MADE BY THE LEARNED CIVIL JUDGE (SR.DN.) AND PRL.
JMFC, HIREKERUR IN R.A.NO.113/2006 AND RESTORE THE JUDGMENT
AND DECREE DATED 18.11.2006 IN O.S.NO.43/2002 RENDERED BY
THE LEARNED CIVIL JUDGE (JR.DN.) AND JMFC, HIREKERUR, IN THE
INTEREST OF JUSTICE.



THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 19.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

This appeal arises out of the divergent findings in O.S.No.43/2002 by learned Civil Judge (Junior Division) and JMFC at Hirekerur and R.A.No.113/2006 by learned Civil Judge (Senior Division) and Itinerate Court, Hirekerur dated 29.09.2007. By the impugned judgment, the First Appellate Court had decreed the suit by reversing the dismissal of the Trial Court. The defendant No.1 before the Trial Court is in appeal before this Court.

2. The parties would be referred to as per their rank before the Trial Court for the sake of convenience.

3. The factual matrix that is necessary for the purpose of this appeal may be summarized as below:

- a. The suit property is a cattle shed situated in Gram Panchayat No.11 (portion of Survey No.1/10) measuring 2 ½ guntas and it is bounded by the



remaining 2 ½ guntas in the said survey number on the northern side.

- b. The suit schedule property was owned by the family of one Doddagouda. Doddagouda had four sons i.e. Channabasappa, Basavannippa, Dundappa and Shidlingappa.
- c. It is the case of the plaintiff that, during lifetime of Doddagouda, a partition had been effected in the family properties and in the said partition, Survey No.1/10, measuring 5 guntas came to be allotted commonly to the said Channabasappa and the plaintiff-Shidlingappa. The said partition was recorded in mutation entry No.249, dated 17.12.1985.
- d. The Survey No.1/10 was again divided among the said Channabasappa and Shidlingappa and the northern portion came to the share of the plaintiff- Shidlingappa. He had constructed a cattle shed in the said property and his brother Channabasappa has constructed a residential house.



- e. It was contented by the plaintiff that in the revenue records i.e., RTC, the name of the plaintiff appears as the owner and possessor and the property was not converted into non-agriculture.
- f. The plaintiff came to know that the Panchayat officials had given a Panchayat No.11 and name of the plaintiff was appearing for some years and later, his name was deleted and the name of the defendant No.1 was entered. Therefore, he had given a representation to the Zilla Panchayat, but it has not been considered.
- g. The suit schedule property was never the property belonging to his brother Basavannippa (Defendant No.2) and he colluded with the Panchayat officials and got his name entered though he had no right, title or interest over the same.
- h. The defendant No.1 got his name entered in the Panchayat records and started obstructing the enjoyment of the plaintiff and therefore, the plaintiff was constrained to file the suit.



- i. The plaintiff sought a declaration that he is the owner of the suit schedule property and as a consequence, the defendant No.1 be restrained from obstructing the enjoyment of the suit schedule property by the plaintiff.

4. On service of notice, the defendant No.1 appeared through his counsel and filed the written statement. The defendant No.2, who is the brother of the plaintiff, did appear before the Trial Court, but he did not file any written statement.

5. The contention of defendant No.1 is summarized as below:

- a. It is his contention that there was no such partition as contented by the plaintiff on 17.12.1985 as per M.E.No.249. The defendant No.1 contended that the defendant No.2 has sold the Panchayat No.11 in Survey No.1/10 to the defendant No.1 under a registered sale deed dated 09.08.1982 for a consideration of Rs.2,000/- and as such, he is in possession and enjoyment of the same.



- b. The defendant No.1 after ascertaining that the name of the defendant No.2 is appearing in the Panchayat records for VPC No.11, bonafide believed it and purchased the property.
- c. It is his contention that the VPC No.11, which is part of Survey No.1/10, measuring 2 ½ guntas, was allotted to the defendant No.2 in the partition and accordingly, the name of the defendant No.2 was appearing in the Panchayat records. After purchasing the property, the defendant No.1 has constructed a cattle shed (warjat) and he is in possession since the date of the sale deed.
- d. He contends that the defendant No.2 and the plaintiff knew that the defendant No.1 has purchased the suit schedule property under a valid sale deed in the year 1982 and it was during the lifetime of the propositus-Doddagouda. Therefore, when the plaintiff knew about the purchase of the suit schedule property by the defendant No.1 in



the year 1982, the suit is being filed in the year 2002 is barred by time.

- e. He contends that the alleged partition of the year 1985 is not binding on the defendant No.1 and it is a bogus entry and the name of the defendant No.2 was entered in the Panchayat records, much prior to the year 1981-1982 and therefore, the suit deserves to be dismissed.

6. On the basis of the above contentions, the Trial Court has framed the following issues:

"1) Whether plaintiff proves that, his title over the suit schedule property and also in lawful possession as on the date of the suit?

2) Does the plaintiff prove obstruction by defendant No.1 as alleged in para-7 of the plaint?

3) Whether defendant No.1 proves that, valuation of the suit and court fee paid by the plaintiff is not proper and correct?

4) Whether defendant No.1 proves that, suit of the plaintiff is barred by limitation?

5) Whether defendant No.1 is entitled for the compensatory cost U/s.35 (a) of CPC?



6) Whether plaintiff is entitled for the relief of declaration and consequential relief of injunction as prayed for?

7) What order or decree?"

7. The plaintiff entered the witness box and deposed as PW1 and Exs.P1 to 24 were marked. One witness was examined as PW2. The defendant No.1 was examined as DW1 and three witnesses were examined as DW2 to DW4. Exs.D1 to D9 were marked in evidence.

8. After hearing the arguments by both the sides, the Trial Court by impugned judgment dated 18.11.2006, dismissed the suit with costs.

9. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.113/2006. After hearing the arguments, the First Appellate Court reversed the impugned judgment and decreed the suit. Being aggrieved, the defendant No. 1 is before this Court in appeal.

10. It is pertinent to note that this Court has framed three substantial questions of law on 12.03.2008, 26.06.2004 and 08.08.2024 as below:



**Substantial Question of Law framed on
12.03.2008**

"Whether the Lower Appellate Court was justified in holding that the plaintiff is the exclusive owner of the suit schedule property having acquired the same at a family partition on 17.12.1985 when the 2nd Defendant, the member of joint family had sold the schedule property to the 1st Defendant under registered sale deed dated 9.8.1982?"

**Substantial Question of Law framed on
26.06.2024**

"Whether the First Appellate Court was justified in allowing the appeal filed by the plaintiff without specifically interfering with and setting aside the findings recorded by the Trial Court on Issue No.4 that the suit was barred by limitation?"

**Substantial Question of Law framed on
08.08.2024**

"Whether, under the facts and circumstances involved in the case, the suit is maintainable in the absence of relief of declaration that the sale deed executed on 09.08.1982 by the defendant No.2 in favour of defendant No.1, is maintainable?"

ARGUMENTS:



11. The learned counsel appearing for the appellant/defendant No.1 submits that the alleged partition between Doddagouda and his four children, including the defendant No.2 and the plaintiff had taken place in the year 1985 and a mutation entry came to be effected as per Ex.P6. Evidently, the said mutation entry was in pursuance to a report/varadi given to the Village Accountant as per Ex.P14. Thus, it is evident that the said partition was reported to the revenue authorities in the year 1985. He further points out that the records are not available as to how the name of the defendant No.2 was entered for VPC No.11 in the year 1981-1982. The Panchayat records, including resolutions to enter the name of the defendant No.2 were not available as per the endorsements/letters issued by the Panchayat as per Ex.P11. What is available on record is that the name of the defendant No.2 was entered for VPC No.11 in the year 1982. He further submits that Ex.P14 was submitted to the revenue authorities on 17.12.1985 as per the endorsement that may be found on it. Therefore, when the suit survey number i.e. Survey No.1/10 was partitioned in the year 1985, half portion of Survey No.1/10, comprising of VPC No. 11, which is the suit property, was not



standing in the name of the said Doddagouda or anybody else in the Panchayat records. In the year 1982 itself, VPC No.11 was entered in the name of the defendant No.2.

12. It is his contention that by virtue of the sale deed dated 09.08.1982, the defendant No.1 purchased the suit schedule property from the defendant No.2 for valuable consideration. Thus, the suit schedule property was transferred by one of the family member of Doddagouda, who was party to the alleged partition in the year 1985 to the defendant No.1 in the year 1982. Therefore, when the said Doddagouda, the plaintiff, the defendant No.2 and his brothers Chanabasappa and Dundappa, partitioned the property in the year 1985, they could not have included the suit property. Inclusion of the suit property in the partition of the year 1985, is without any right, title or interest and they had lost the title over the suit property by virtue of the sale deed in favour of defendant No.1 as per Ex.D1.

13. He further contends that the plaintiff, the defendant No.2 and his brothers as well as Doddagouda knew about the sale of the suit schedule property in favour of the defendant No.1 in the year 1982 and therefore, they could not have included the



same in the partition of the year 1985. Such inclusion in a partition document is only with an intention to defraud the defendant No.1.

14. He further contends that when the plaintiff is party to the said partition in the year 1985, he being a member of the joint family was well aware of the transactions made by the defendant No.2 prior to the said partition. He cannot contend that he was unaware of the said transactions with the defendant No.1 and therefore, the knowledge in respect of the sale in favour of the defendant No.1 has to be imputed to him in the year 1982 itself. Obviously, the plaintiff has filed this suit in the year 2002 and therefore, the suit is barred by time. Even if it is held that the plaintiff is claiming possession, it has to be held that 12 years have lapsed and therefore, the plaintiff does not have any right to file the suit.

15. His next submission is that the plaintiff was part of the member of the joint family in the year 1982 and therefore, unless he seeks a declaration that the sale deed as per Ex.D1 is cancelled, the suit was not maintainable. In this regard, he places reliance on the judgment in the case of ***Bhimasi***



Fakirappa Bijjur and Others V/s Nagesh Bhimappa Waddar @ Maktedar and Others¹ rendered by the Division Bench of this Court. In this decision it was held that there is no bar for a member of the joint family to alienate his share. It was also held that if the non-executant of a sale deed seeks rights, he has to seek declaration and he need not seek annulment of the sale deed.

16. Per contra, learned counsel appearing for the respondent-plaintiff contends that there is no record to show that the suit schedule property was at any time converted as a non-agricultural property. It may be true that it was not used for the agricultural purposes and therefore, the suit property was basically an agricultural property and as such, the revenue records depict the title to the property. He contends that simply because a cattle shed was constructed and a Panchayat number was given as 11, it cannot be said that the title had vested with the defendant No.2. It was the joint family property and there was a partition in the year 1985 and therefore, the plaintiff and his brother-Chanabasappa got the suit schedule property

¹ 2023(3) KAR LJ 203



commonly and the northern half portion measuring 2 ½ guntas fell to the share of the plaintiff. It is his contention that the defendant No.1 purchasing the suit schedule property based on the entry in the name of the defendant No.2 in the Panchayat records, cannot be upheld for any reason. He submits that as on the date of transaction between the defendant No.1 and defendant No.2, the property was standing in the name of Doddagouda and therefore, mentioning of the name of the defendant No.2 in the Panchayat records would not be in any way enure to the benefit of the defendant No.1. Therefore, he contends that the judgment of the First Appellate Court considers these aspects and no indulgence is required in the decree passed by the First Appellate Court. It is pointed out that no records are available in the Panchayat as to how and when the name of the defendant No.2 was entered for the Panchayat No.11. Therefore, the entry of the name of the defendant No.2 itself is erroneous and cannot be upheld.

17. His next contention is that the report/varadi given to the revenue authorities in the year 1985 reporting the partition mentioned that the partition had taken place about 4-5 years



earlier. Therefore, in the year 1982, there is no room to predict that the name of the defendant No.2 was validly entered in the Panchayat records. Hence, he contends that the defendant No.2, with an ulterior motive of defrauding the plaintiff from the suit schedule property, has executed the sale deed in the year 1982 in favour of the defendant No.1. Therefore, he contends that the impugned judgment of the First Appellate Court is justifiable and no interference can be made.

ANALYSIS AND CONCLUSIONS:

18. The first substantial question of law framed by this Court is in respect of the validity of the family partition on 17.12.1985 and the effect of the sale deed executed by the defendant No.2 as a member of the joint family in favour of defendant No.1 on 09.08.1982.

19. The second substantial question of law is in respect of the bar of limitation.

20. The third substantial question of law is in respect of the need for a declaration to declare the sale deed dated 09.08.1982 to be void and whether it acts as a precondition for



maintainability of the suit. Let me consider the third substantial question of law at the beginning. Evidently, the plaintiff was not a party to the sale deed dated 09.08.1982 produced at Ex.D1. It was a sale deed entered into between the defendant No.1 and the defendant No.2 *inter se*. A perusal of Ex.D1 shows that nothing is mentioned in the said sale deed which would show that apart from the defendant No.2, there are other sharers in respect of the said property. It mentions that the defendant No.2 wanted to settle at Balligavi, which is away from Somanahalli of Hirekerur Taluk and therefore, to purchase another property, the defendant No.2 is selling the suit schedule property. The sale deed do not mention as to how the defendant No.2 had obtained title over the same. Therefore, when the plaintiff was not a party to Ex.D1, it cannot be said that he had to seek a declaration that the said sale deed is void. The said sale deed binds the share of the defendant No.2 only. The defendant No.2, if is proved to have no title in respect of the property involved, cannot transfer any title. Therefore, the suit is maintainable when the plaintiff expresses his ignorance about the Ex.D1. The plaint does not mention anywhere that the defendant No.2 had sold the property to defendant No.1. Therefore, unless the knowledge of Ex.D1 is



imputed to the plaintiff, it cannot be held that the suit is not maintainable. The plaintiff is entitled to seek his relief ignoring the Ex.D1. Therefore, absence of the relief of declaration that the sale deed dated 09.08.1982 to be void cannot affect the maintainability of the suit. In the result, the third substantial question of law is answered in the 'negative'.

21. The other two substantial questions of law are interlinked to each other. For this, it is necessary to look into the evidence on record.

22. The First Appellate Court in the impugned judgment has recorded certain erroneous facts. First Appellate Court does not frame any specific points for consideration, which affect the findings on the issues. It takes up the points No.1 and 2 together and comes to the conclusion that the impugned judgment of the Trial Court is not sustainable. In paragraph No.13, the First Appellate Court observes as below:

*13) "*** It is admitted fact that prior to partition in the year 1982 alongwith father and all other brothers were in joint family members. the said partition on 17/12/85 if it is believed as true, if the same is taken into consideration, the court*



comes to the conclusion that document is produced by the plaintiff clearly reveals that deft. No.2 has not been allotted any share by way of either registered partition or by the partition or by with documents evidence in the partition. Therefore it is the case of plaintiffs that suit property is not allotted to deft.No.2, but it was allotted in favour of Channabasappa, i.e. 1st son of Doddagouda and later on to show that khata is made in favour of deft. No.2, there is no documentary evidence in favour of deft. No.2. The trial court has blindly accepted the evidence on record in respect of defendants without looking to the documents produced by the plaintiffs before the court."

23. It may be noted that the evidence on record shows that the southern portion of Survey No.1/10, measuring 2½ guntas was in possession of Chanabasappa and it was bearing the Panchayat No.12. This aspect is not denied either by the plaintiff or by the defendant No.1. It is also an admitted fact that son of Chanabasappa, namely Basavaraj, had sold the said 2½ guntas in favour of the defendant No.1 under a registered sale deed dated 14.02.2003. Admittedly, the said portion sold by the Basavaraj son of Chanabasappa, covers the half portion which has been allotted to Chanabasappa in the partition of the year



1985. What the partition document mentions in respect of the other portion of Survey No.1/10 is that it was allotted to Shidlingappa i.e., plaintiff. But prior to the said partition in the year 1985, the property was standing in the name of the defendant No.2 in Panchayat records as VPC No.11. If the property which had fallen to the share of Chanabasappa in the partition was bearing the Panchayat No.12, why the partition document of the year 1985 did not mention that the other half belongs to Basavannippa is not known. Therefore, the observation of the First Appellate Court that there is no documentary evidence to show that how the name of the defendant No.2 was mentioned in the records appears to be without appreciating the evidence. Obviously, even the observation that prior to the partition in the year 1982 along with father and all other brothers they were in joint family is also erroneous since the partition is of the year 1985.

24. In paragraph No.15, the First Appellate Court observes that the property purchased by the defendant No.1 was not by a person who is competent to sell the same. It holds that the defendant No.2 did not had any title to the property and



therefore, it comes to the conclusion that the tax paid receipts etc., would not constitute the title and as such, the suit deserves to be decreed.

25. In paragraph No.17, it holds as below:

"17) I have looked into evidence of DW.1 to 4. DW.1 has deposed with regard to the same that of W.S. averments. On perusal of his evidence it is clear that deft. No.1 is also bonafide purchaser and he has not looked into title deed and also partition deed in between 4 brothers, who are sons of Doddagouda. Hence without looking to the genuine documents, same is made in favour of deft.No.1. Hence the said sale deed is taken by the deft. No.1 is illegal and against the facts on record. On perusal of evidence of Dw.2 to 4 who are supporting to the Dw.1 case."

26. It is evident that the First Appellate Court has not assigned any cogent reasons to overcome the conclusions reached by the Trial Court. The judgment of the First Appellate Court falls short of re-appreciation of the evidence and therefore, it doesn't answer the reasons assigned by the Trial Court in dismissing the suit.

27. Let me consider the evidence on record to ascertain whether the Trial Court was right in coming to the conclusion



that the defendant No.2 had the title in the year 1982 while he sold the property to the defendant No.1.

28. The Exs.P1 to P5 are the RTC's of Survey No.1/10 measuring 5 guntas. There is no doubt that in the year 1981 to 1983, the name of the propositus-Doddagouda was appearing for Survey No.1/10. It is pertinent to note that in a portion of the said property, there was a house. The entry of the crops show that only three guntas was used for growing Ragi and Jowar and the remaining two guntas was occupied by a house. Later, from the year 1985 onwards, the name of the plaintiff and his brother-Chanabasappa was entered and obviously, it was in pursuance to the partition recorded as per M.E.No.249 dated 17.12.1985. It is worth to note that the tax assessment register extract of the Panchayat, Tavargi produced at Ex.P7 for the year 1981-1982 to 1985-1986 show the name of the defendant No.2. In the year 1999-2000, it showed the name of the plaintiff. Obviously, it is the dispute which is involved in the present suit. The Ex.P11 shows that the Panchayat doesn't have the records as to how and in what manner, the name of the defendant No.2 was entered for VPC No.11. It simply mentioned that on 31.08.1982,



the name of Doddagouda was deleted and the name of the defendant No.2 was entered for VPC No.11. Ex.P14 happens to be the certified copy of the report submitted to the revenue authorities by all the sharers with the request to make the entries as per the partition and obviously, acting on this document, the revenue authorities have mutated the names as per the mutation entry No.249 at Ex.P6.

29. It is to be noted at this juncture that, the varadi as per Ex.P14 is signed by the plaintiff as well as the defendant No.2 and Chanabasappa and it was during the lifetime of their father-Doddagouda.

30. The Ex.P17 is a representation submitted by the plaintiff to the President of the Zilla Panchayat. In this representation, the plaintiff mentioned that there was a partition in the family of himself, his father and brothers sometime around 17.12.1984. It is pertinent to note that the plaintiff do not mention that partition was affected prior to 1982.

31. In the said representation, he also mentioned that when he requested the Panchayat Officials to record his name to



the suit schedule property, he came to know that it was already given VPC No.11 and it was standing in the name of defendant No.1 on the basis of a sale deed executed by defendant No.2 in favour of defendant No.1. Therefore, he alleges that there was some fraud and therefore, he seeks redressal of the same.

32. Ex.P.19 is the sketch prepared by the revenue authorities in respect of R.S.No.1/10. This document is not of any help since it is the combined map of the property, which bears VPC No.11 and 12.

33. So far as the documents of the defendant No.1 is concerned, he has produced the Tax Assessment Register Extract of the Panchayat of VPC No.11 for the year 1981-82 to 2000-2001, where the name of the defendant No.2 was entered and later, it was bracketed and the name of the defendant No.1 was entered. Subsequently, from the year 1994-95, the name of the plaintiff was entered for VPC No.11. Ex.D.4 happens to be the sale deed executed by the son of Channabasappa concerning the southern property, which had fallen to the share of Channabasappa. Ex.D.5 is the Tax Assessment Register Extract for the year 1981-82 to 1993-94 and it shows the name of



Channabasappa for VPC No.12 and the name of defendant No.2 was rounded off and the name of defendant No.1 was entered for VPC No.11.

34. Ex.D.8 and 9 are the tax paid receipts in respect of VPC No.11 produced by the defendant No.1. The testimony of DW2-Basavarajappa S/o.Channabasappa shows that in his cross examination he admits that earlier 5 Guntas was under the Khata of his father and the plaintiff. He denies that it was jointly enjoyed by his father and the plaintiff, but says that it was allotted to the defendant No.2. In other words, his testimony shows that the property in fact was allotted to Channabasappa and the defendant No.2. He admits that the plaintiff is permanently residing at Balligavi of Shikaripura Taluk, but not in his village. Thus, the testimony of DW2 doesn't support the contention of the plaintiff.

35. The DW3 happens to be Dundappa, who is another brother of the plaintiff and the said Channabasappa. He also states that the VPC No.11, measuring about 2½ guntas was in the possession and enjoyment of the defendant No.2 and he has sold the same to defendant No.1. In his cross-examination, he



reiterates that 5 guntas in Survey No.1/10 was in fact allotted to Channabasappa and the defendant No.2 and it was never allotted to the plaintiff. He states that there was partition in respect of the houses in the year 1976-77 and accordingly the names were entered. In his cross-examination, it is elicited that in the year 1986, they found that the name of the plaintiff was entered in the revenue records and they had asked the plaintiff to get his name deleted. This testimony of DW2 and DW3 throws light in respect of the manner in which the partition was effected in the family and it is their case that the partition was much earlier in respect of the house properties, but in so far as other properties, a Varadi was given in the year 1985. The testimony of DW2 and DW3 shows that the suit schedule property was enjoyed by the defendant No.2 and his name was found in the panchayat records. Even the revenue records also show that only about 3 guntas was used for raising the crops and remaining portion was a house. In that view of the matter, the house standing in the name of the defendant No.2 in the year 1982 cannot be disputed. The said property, which was standing in the name of the defendant No.2, was sold to defendant No.1. Therefore, the evidence on record shows that the reasoning of



the Trial Court that plaintiff was not in possession of the property but it was the defendant No.2, who was in enjoyment of the same has to be accepted. This being the fact, which is borne out from the records, let me turn to the legal position.

36. The Ex.P.6, the mutation entry, obviously records an earlier partition. As per the earlier partition, a report was given. If that is so, it has to be held that the plaintiff knew about portion of Survey No.1/10 being occupied by the defendant No.2 in the form of cattle shed, which also finds place in the revenue records. The plaintiff cannot deny that Survey No. 1/10 was used partly for raising crops and partly for a house existed in it. If that is so, the necessary inference that is to be drawn is that, the house property was occupied by the defendant No.2. The plaintiff cannot deny that in the portion of the house mentioned in Ex.P.1 to 4, it was the defendant No.2 who enjoyed it. Therefore, the allotment of the share to the plaintiff as per the memorandum of partition or the Varadi given to the revenue authorities as per Ex.P.6 (mutation entry) and Ex.P.14 (Varadi) appears to be erroneous only in respect of mentioning the name of the plaintiff instead of the defendant No.2. In other words, the error that



crept in Ex.P.14 was that for Survey No.1/10, it was jointly given to the Channabasappa and the defendant No.2. Therefore, the necessary inference that is to be drawn from the revenue records, panchayat records and the testimony of the witnesses, pointedly shows that it was the defendant No.2 who got the property in the partition, but wrongly it was mentioned as the plaintiff.

37. In that view of the matter, the conclusions of the Trial Court have to be upheld. With this let me consider the question relating to limitation, which encompasses the second substantial question of law.

38. The Trial Court, in the impugned judgment, notes that as per the sale deed executed by defendant No.2-Basavannepa in favour of defendant No.1/appellant, his name was entered in the property tax assessment register for the year 1982-83 itself. Such entry of the name of the defendant No.1 for the house property, which is situated in Survey No.1/10 and occupied by the defendant No.2, was to be held well within the knowledge of the plaintiff since he was member of the joint family.



39. The Trial Court observes that Article 58 of the Limitation Act is applicable and the plaintiff has produced the tax assessment extracts at Ex.P.8 to Ex.P.10 pertaining to the year 1999-2000 and earlier to it, the name of the defendant No.1 was appearing in the records. It also notices that the plaintiff had filed an application to the panchayat for 'Durasti' work on 27.09.1998. At that time itself, he had knowledge of the fact that the defendant No.2 had sold the property in favour of defendant No.1. It is pertinent to note that Ex.P.10 shows the name of the plaintiff and the correction has been made as per the application given by him on 27.09.1998. Obviously, the plaintiff had come to know about the sale deed executed by defendant No. 2 in favour of defendant No.1 in the year 1998. Therefore, this application submitted by the plaintiff goes contrary to the testimony of PW1 that he had not given any application to the panchayat to enter his name for VPC No.11. This aspect has been considered by the Trial Court in Paragraph 31 of its judgment.

40. Therefore, when the plaintiff came to know that the name of the defendant No.1 was appearing in the panchayat records in the year 1998 itself or a little prior to it, the limitation



starts to run from that date. The title of the defendant No.1 came to the knowledge of the plaintiff prior to 27.09.1998. Therefore, claim for declaration should have been made within three years from such date. The present suit was filed on 04.03.2002. Obviously, it is beyond the period of limitation.

41. Under these circumstances, the date of knowledge to the plaintiff that the suit schedule property was under the title of the defendant No.1 was prior to three years from the date of filing of the suit. Obviously, the plaintiff had not paid any tax in respect of VPC No.11 from 27.09.1998 till the filing of the suit. He had come to know about the entries that were found in the panchayat records prior to 27.09.1998, which invariably indicated that the said property was owned by the defendant No.1. Therefore, the finding of the Trial Court that the suit is barred by time has to be upheld. Conspicuously the First Appellate Court did not consider the question of limitation at all. There is absolutely no finding as to why the judgment of the Trial Court on the issue of limitation has to be reversed. It simply holds that the defendant No.1 cannot be a bona fide purchaser and proceeds to reverse the judgment of the Trial Court.



42. In that view of the matter, the second substantial question of law has to be answered to the effect that the suit was barred by limitation. In view of the above conclusions on the substantial questions of law, the appeal deserves to be allowed. Hence, the following:

ORDER

- (i) *The appeal is allowed.*
- (ii) *The judgment of the First Appellate Court in R.A.No.113/2006 is hereby set aside and the judgment of the Trial Court dismissing the suit in O.S.No.43/2002 is hereby confirmed.*
- (iii) *In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of.*

SD/-
(C M JOSHI)
JUDGE