



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 21ST DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 2647 OF 2007 (DEC)

BETWEEN:

SMT. RUKMAVVA D/O. DUNDAPPA TALWAR,
AGE: MAJOR, OCC. AGRICULTURE,
R/O. NAGANUR, TALUK: GOKAK,
DIST. BELAGAVI.

...APPELLANTS

(BY SRI. SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

1. SRI. NAGAPPA S/O. RAYAPPA JIDDIMANI,
AGE: MAJOR, OCC. AGRICULTURE, R/O. NIPNAL,
TALUK: RAIBAG, DIST. BELAGAVI.
(SINCE DECEASED BY HIS LRS)

1A. GOURAVVA W/O. NAGAPPA JIDDIMANI,
AGE: 69 YEARS, OCC. HOUSEHOLD WORK,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1B. TIPPANNA S/O. NAGAPPA JIDDIMANI,
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1C. KALLAPPA S/O. NAGAPPA JIDDIMANI,
AGE: 54 YEARS, OCC. AGRICULTURE,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1D. DUNDAPPA S/O. NAGAPPA JIDDIMANI,
AGE: 50 YEARS, OCC. AGRICULTURE,



NC: 2025:KHC-D:16063
RSA No. 2647 of 2007

R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1E. BHEEMAPPA S/O. NAGAPPA JIDDIMANI,
AGE: 47 YEARS, OCC. AGRICULTURE,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1F. GANGAVVA D/O. NAGAPPA JIDDIMANI,
AGE: 45 YEARS, OCC. AGRICULTURE,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1G. PUNDALIK S/O. NAGAPPA JIDDIMANI,
AGE: 44 YEARS, OCC. AGRICULTURE,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

1H. LAKKAPPA S/O. NAGAPPA JIDDIMANI,
AGE: 36 YEARS, OCC. AGRICULTURE,
R/O. NIPNAL-591222,
TQ. GOKAK, DIST. BELAGAVI.

2. SHIVAJI M/O. RUKMAVVA TALWAR,
AGE: MAJOR, OCC. AGRICULTURE,
R/O. NAGANUR, TALUK: GOKAK,
DIST. BELAGAVI.

3. SRI. DILIP M/O. RUKMAVVA TALWAR,
@DILIP JOHN KALARKOPPA,
AGE: MAJOR, OCC. AGRICULTURE/SERVICE,
R/O. DHUPADAL, ANDNAGANUR, TALUK: GOKAK,
DIST. BELAGAVI.

...RESPONDENTS

(BY SRI. RAJASHEKHAR BURJI, ADVOCATE FOR R1(A-H);
R3-NOTICE SERVED; R2-NOTICE DISPENSED WITH)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET
ASIDE THE JUDGMENT AND DECREE DATED 13.07.2007 PASSED IN
R.A.NO.17/2006 ON THE FILE OF DISTRICT JUDGE, BELAGAVI
CONFIRMING THE JUDGMENT AND DECREE DATED 22.12.2005 PASSED
IN O.S.NO.43/1995 ON THE FILE OF PRINCIPAL CIVIL JUDGE, SENIOR
DIVISION, GOKAK AND THIS APPEAL BE ALLOWED WITH COSTS
THROUGHOUT IN THE INTEREST OF JUSTICE AND EQUITY.



THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 17.10.2025, 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 concurrent findings of the Trial Court and the First Appellate Court in O.S.No.43/1995 dated 22.12.2008 before the learned Civil Judge, Senior Division, Gokak, sitting at Raibag and the learned III Additional District and Session Judge, Belgaum in R.A.No.17/2006 dated 13.07.2007.

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

3. The case of the plaintiff as may be found from her pleadings is that:

- i) Defendant Nos.2 and 3 are the sons of the plaintiff and the suit lands are bearing Sy.No.101/1B measuring 1 acre 20 gunthas which is part of Sy.No.100/1 measuring 3 acres 32 gunthas situated at Nipnal Village in Raibag



Taluk. The said suit property as well as six other lands belonged to the plaintiff exclusively and they were her self-acquired properties. Defendant Nos.2 and 3 had no title or right in whatsoever manner and that the plaintiff was in possession of the same.

- ii) Defendant Nos.2 and 3 were assisting the plaintiff in the cultivation of the lands and the plaintiff used to raise loans from various banks and financial institutions. Defendant No.2 have taken advantage of the errands being sent through them by the plaintiff to the PLD Bank and Nipnal Co-operative Society and managed to obtain the signatures of the plaintiff on some papers. They used it as a Varadi record. The plaintiff never voluntarily submitted any Varadi (report) for the purpose of getting their names entered in the revenue records under M.E. No. 1927.



- iii) Defendants No.2 and 3 have no pre-existing rights prior to M.E.No.1927 under which their names were entered in the records.
- iv) The plaintiff learnt that defendant Nos.2 and 3 got their names entered in respect of Sy.No.101/1 as well as other lands, they have sold a portion of Sy.No.101/1 to defendant No.1 which is now re-numbered as 101/1B. The alleged sale deed by defendant Nos.2 and 3 in favour of defendant No.1 dated 02.09.1986 is unauthorized and is not binding on the plaintiff.
- v) It was contended that Sy.No.101/1 of which the suit land is part of it, was subject to a charge created by the plaintiff in favour of the PLD Bank and other financial institutions and therefore, it could not have been transferred in the name of defendant No.1. Such transfer by mutation entries is void and therefore, defendant No.1 is not entitled to claim any title on the strength of such void and invalid transfers.



vi) The plaintiff contended that a decree of declaration be made in her favour regarding the title to the suit land to the effect that the sale deed by defendant Nos.2 and 3 is not binding on the plaintiff and prayed for consequential relief of permanent injunction. Alternatively, she also prayed that if it is found that she is not in possession, the possession of the property may also be granted to her.

4. Pursuant to the summons issued by the Trial Court, defendant No.1 appeared and filed the written statement.

5. Defendant No.1 contends that the contentions of the plaintiff were false and frivolous and not in accordance with law. He denied the plaint averments. *Inter alia* he pleaded that the suit schedule property was the joint family property of the plaintiff and defendant Nos.2 and 3 and it was purchased by the plaintiff and defendant Nos.2 and 3 in the name of the plaintiff with the aid of the joint family funds and by joint labour. It was contended that there was



ancestral property and out of the income of the ancestral property, the suit schedule property was purchased. He further contends that plaintiff became old and she thought of partitioning the property and the suit property was given to the share of defendant Nos.2 and 3 in order to avoid the future complications. Therefore, the plaintiff gave a Varadi voluntarily and the suit land was given to the share of defendant Nos.2 and 3 and accordingly, M.E.No.1927 came to be recorded. The plaintiff had not challenged the said M.E.No.1927 for a period of more than 10 years. Defendant Nos.2 and 3 for their family necessity had offered to sell the suit schedule property to defendant No.1 and accordingly, he has purchased the same for a valuable consideration of ₹15,000/- under the sale deed dated 02.09.1986 and he was put in possession of the same. Therefore, the defendant has sought for dismissal of the suit.

6. In subsequent additional written statements filed, he contended that the plaintiff has no title over the suit schedule property and unless she proves her title, the suit is not maintainable.



7. Defendant Nos.2 and 3 despite service of summons, remained absent and as such were placed ex-parte.

8. On the basis of the above pleadings, the following issues and additional issues were framed by the Trial Court.

- "1. Whether the plaintiff proves that the suit land was the self acquired property purchased by her under registered sale deed dt.18.1.1963 she is exclusive owner of it?*
- 2. Whether the plaintiff proves that sale of suit land by deft.No.2 and 3 in favor of deft.No.1 is void and invalid?*
- 3. Whether the defendant No.1 proves that the suit land was ancestral and joint family property of plaintiff and defendants 2 and 3?*
- 4. Whether the defendant No.1 proves that suit land has been sold to him for legal necessity and family benefit of plff. And defendants 2 and 3?*
- 5. Whether the plaintiff proves that she is in exclusive possession and enjoyment of the suit land as alleged?*
- 6. Whether the deft.No.1 proves that he is put in actual possession and enjoyment of the suit 1 and by virtue of sale deed?*



7. *Whether the suit of the plff. is barred by limitation?*
8. *Whether the defendant No.1 proves that without seeking the relief of cancellation of sale deed dated 2.9.1986, the suit is not maintainable?*
9. *Whether the plaintiff is entitled for any of the relief claimed in the suit?*
10. *What decree or order?"*

9. The plaintiff was examined as PW.1 and one witness was got examined as PW.2. Ex.P.1 to 5 were marked. Defendant No.1 examined himself as DW.1 and two witnesses were examined as DW.2 and DW.3. Ex.D.1 to D.45 were marked in evidence.

10. After hearing the arguments by both the sides, the Trial Court answered issue Nos.1, 2, 5, 8, 9 in the **negative** and the remaining issues in the **affirmative** and proceeded to dismiss the suit.

11. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.17/2006. Before the First Appellate Court, notice **to defendant** Nos.2 and 3 were dispensed with.



12. The First Appellate Court heard the learned counsel for the appellant and respondent No.1. It framed the following points for consideration and answering the same in the **negative**, it dismissed the appeal.

"i) *Whether the judgment and decree of the trial court are erroneous and not based on the correct facts and circumstances of the case? If so, whether it requires interference by this Court?*

ii) *To what order?"*

13. Being aggrieved by the concurrent findings of the Trial Court and the First Appellate Court, the plaintiff is before this Court in second appeal. At the time of admitting the appeal, following substantial question of law was framed by this Court on 06.07.2012.

"Whether both the Courts below are justified in dismissing the suit without properly appreciating the fact that the defendant nos. 2 and 3 could not have sold property in favour of defendant no. 1 particularly when there is no valid records to show that defendant nos. 2 and 3 are exclusive owners of the property?"



14. The arguments by learned counsel appearing for the appellant and respondent No.1 were heard.

15. The learned counsel appearing for the appellant/plaintiff contends that both the Trial Court and the First Appellate Court have not appreciated the evidence in a proper perspective and they have not considered the law applicable to the properties held by a female Hindu. It is submitted that defendant Nos.2 and 3 could not have sold the property in favour of defendant No.1, when there is no valid title in their favour. In umpteen number of judgments, the High Court and the Hon'ble Apex Court have held that the transfer by mutation entry is not valid and it does not convey any title to the receiver. He submits that the plaintiff purchased the suit schedule property on 18.01.1963 and she was enjoying the same. A Varadi in favour of defendant Nos.2 and 3 to mutate their names in the year 1983 was without her knowledge and approval. Even if it is held that the mutation entry was effected in the name of defendant Nos.2 and 3, it is not valid under law. The suit schedule



property was a self acquired property of the plaintiff and therefore, it is her exclusive and individual property.

16. Secondly, he submits that the Varadi given to the revenue authorities is not in respect of any partition. There is absolutely no pleading on record on behalf of defendant No.1 to contend that the suit schedule property was put into the hotchpot and it was amalgamated as the joint family property of the plaintiff and defendant Nos.2 and 3.

17. Thirdly, he submits that the property purchased by defendant Nos.1 is 3 acres 10 guntas, but the records reveal that it is 3 acres 20 guntas and there is discrepancy in the description of the property purchased by defendant No.1. He further submits that the suit schedule property was held by a Hindu woman and therefore, it cannot and could not have been considered as the joint family property unless there is cogent and clear evidence in this regard. It is submitted that at no stretch of imagination, a transfer by mutation entry can be recognized under law and as such the



Trial Court and the First Appellate Court have erred in dismissing the suit of the plaintiff.

18. *Per contra*, learned counsel appearing for respondent No.1 submits that there is discrepancy in the identification of the property. He submits that the property purchased was 3 acres 10 guntas, but the property which was in the name of the plaintiff was 3 acres 32 guntas. He contends that suit schedule states that the total extent of the land was 3 acres 32 guntas, but the property bearing No.101/B is stated to be 3 acres 10 guntas. The original sale deed in favour of the plaintiff is for 3 acres 10 guntas only. Therefore, the plaintiff was not the owner at any point of time to the extent of 3 acres 32 guntas and as such the plaintiff has a discrepancy to that effect.

19. Secondly, he contends that as per Ex.D.16, the property belongs to Yamanavva, who is mother of the plaintiff and therefore, it is the property inherited by her. Hence, he contends that there is justification for contending that the suit schedule property is the joint property of the plaintiff and defendant Nos.2 and 3. Regarding conduct of



the plaintiff, he points out that PW.1 denies her own plaint as well as the vakalath and therefore, her testimony is not believable. He further contends that the plaintiff was the owner in respect of 6 lands. Eventhough similar mutation entries were effected in respect of the remaining lands, the plaintiff has not filed any suit in respect of the remaining properties which were mutated in the name of defendant Nos.2 and 3. Therefore, targeting defendant No.1 alone shows the conduct of the plaintiff to be unreliable.

20. Lastly, he contended that the suit is barred by time. It is admitted that the possession has been sought after lapse of more than 12 years and therefore, the suit has been rightly dismissed by the Trial Court and the First Appellate Court.

21. Countering the said submission, the learned counsel for the appellant relies on the judgment in the case of ***Siddanagouda and others vs. Smt. Kashibai alias Kantamma and others***¹ rendered by this Court. He also counters the submission of the learned counsel for the

¹ ILR 2019 Kar 843



respondent stating that the plaintiff was an illiterate woman and the provisions of Section 14 of the Hindu Succession Act would come in play to protect her rights. He contends that the defendants having not made any defence of adverse possession, the limitation runs from the date of knowledge of the alienation made by defendant Nos.2 and 3 and therefore, the suit is well in time.

22. The first aspect to be considered is that it is an admitted fact that the suit schedule property measuring 1 acre 20 gunthas was standing in the name of the plaintiff-Rukamavva. The mode of acquisition of the property as contented by her in the plaint was by way of a purchase from one from Hanumant Balu Mang and another. There cannot be any dispute regarding the mode of acquisition of the suit schedule property by the plaintiff in view of the certified copy of the sale deed of Rukamavva having been produced at Ex.P.4. In Ex.P.4, a portion of the said survey number measuring 3 acres 10 guntas was purchased by her. The description also is clear in Ex.P.4. Therefore, there cannot be any qualms in respect of this fact.



23. The nature of the property as contented by the defendant No.1 is that it was the joint family property of the plaintiff and the defendant Nos. 2 and 3 and they had put the suit schedule properties into a hotchpot and as such, they enjoyed it as joint family property. It is pertinent to note that the pleadings of the defendant No.1 is two fold.

24. In paragraph 5 of the written statement, the defendant No.1 contends that the suit property was the joint family property of the plaintiff and defendant Nos.2 and 3 and it was purchased by the plaintiff and defendant Nos.2 and 3 in the name of the plaintiff. *Prima facie*, this contention taken up by defendant No.1 in the written statement appears to be far-fetched for the simple reason that the property was purchased in the year 1963 as per Ex.P.4 and at the time of the purchase, obviously the plaintiff was aged about 25 years. It is also relevant to note that the sale deed executed by the defendant Nos.2 and 3 in favour of defendant No.1 is produced at Ex.D1 is dated 02.09.1986. The age of the defendant Nos. 2 and 3 is mentioned to be 35 years and 25 years, respectively. If this



is reckoned, in the year 1963, when the suit schedule property was purchased by the plaintiff, they were aged 12 years and 2 years, respectively. Therefore, the defendant Nos.2 and 3 contributing for the purchase of the suit schedule property does not arise. They were minors and therefore, they contributing for the purchase of the property cannot be accepted. In order to show that Rukamavva/the plaintiff had other properties, there is nothing on record to show the same.

25. Another feeble effort is made by the defendant No.1 to say that the property was really belonging to the mother of plaintiff i.e., Yamunavva. This appears to be not established conclusively. The record of rights produced by the defendants, particularly at Ex.D.16, would show that the name of Yamunavva was entered in respect of 3 acres 32 guntas of Survey No.100/1 and later the entry was changed to be in the name of the plaintiff by M.E.No.1116.

26. Though the defendant No.1 has produced several of the mutation entries, the one pertaining to M.E.No.1116 has not been produced. According to the



plaintiff, the said mutation entry gives the reason as to why the name of Yamunavva was rounded off and the name of the plaintiff was entered. This crucial link as to how the name of Yamunavva was appearing in the record of rights as per Ex.D.16 is not explained.

27. Be that as it may, the sale deed at Ex.P.4 clinchingly establish that the suit schedule property measuring 3 acres 10 guntas was purchased by the plaintiff under a sale deed from one Hanumant Balu Mang and another after paying the consideration amount. The above facts and circumstances would establish that it was the property acquired by a female Hindu during the minority of the defendant Nos.2 and 3. Obviously, the said property is the exclusive property of the plaintiff. The provisions of Section 14(1) of the Hindu Succession Act, 1956 are clear in this regard. The Hindu Succession Act, 1956 shows that any property acquired by a female Hindu would be her exclusive and absolute property. Section 14(1) of the Hindu Succession Act, 1956 reads as below:



"14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

28. When the defendant No.1 contends that it was the joint family property of the plaintiff and defendant Nos.2 and 3, the burden squarely shifts upon him to establish the said fact. Obviously, the records produced by the defendant



No.1 do not show that it was the joint family property of the plaintiff and defendant Nos.2 and 3. The defendant Nos.2 and 3 have executed the sale deed in favour of the defendant No.1 as per Ex.D.1. This sale deed does not mention that it was the joint family property of defendant No.2 and 3 and the plaintiff. They boast that they are the exclusive owners of the suit schedule property and they are in possession. Curiously, the Ex.D.1 mentions that Survey No.100/1 was measuring 3 Acres 32 Guntas and out of it, 1 acre 20 guntas has been sold. It is pertinent to note that the 3 acres 32 guntas, which is part of Survey No.100/1 is not forthcoming from the documents. In fact, Survey No.100/1 was measuring 3 acres 10 guntas as the same was purchased from the Hanumant Balu Mang and another. It appears that there are some mutations produced by the defendants at Ex.D.2, which show that there was a Hissa Form No.12 and as per it, on 30.05.1966 the Survey No.100/1 measuring 3 acres 32 guntas was entered in the name of one Yamunavva. It is not known, in what respect the Form No.12 was issued. As noted supra, mutation entry No. 1116 has not been produced by the defendant No.1. It



is also to be noted that Ex.D.5, M.E.No.1037, dated 03.01.1964 shows that 3 acres 10 guntas was purchased by Hanumant Balu Mang from the erstwhile owner Appasab Govindrao Kulkarni under a sale deed dated 13.08.1962. The record of rights at Ex.D.16 pertains to Survey No.100/1 measuring 3 Acres 32 guntas and there have been changes in the extent of the land between the year 1964-65 to 1973-74, and as per Ex.D.17 for the year 1974-75 to 1982-83.

29. It is worth to note that 3 acres 32 guntas was held by the plaintiff continuously. The entries changed in the name of the defendant Nos.2 and 3 on the basis of the Mutation Entry No.1927, which is the subject matter of the dispute in this suit. A certified copy of the Varadi alleged to have been given by the plaintiff, which she denies vehemently, is produced as Ex.D11. The said Varadi mentions that the Survey No.100/1 is stated to be measuring 3 acres 28 guntas. By including 4 guntas of Phot Kharab, it would be 3 acres 32 guntas.

30. Apart from this, there is no other property held by her in Survey No.100. Therefore, it is evident that when



the suit schedule property is the only property, which she possessed in Survey No.100, it goes to show that there were no other properties held by her and Ex.P.4 pertains to the suit schedule property only.

31. It is a settled principle of law that the mutation entries cannot convey the title to the property. As noticed supra, the plaintiff was the exclusive and absolute owner of the Survey No.100/1 measuring 3 acres 32 guntas. She could not have conveyed the same to the defendant Nos.2 and 3 by virtue of a Varadi or revenue record. The title will not convey under a Varadi given in favour of defendant Nos.2 and 3. When the property is the exclusive and absolute property of the plaintiff, at no stretch of imagination it can be held that a mutation entry by virtue of a Varadi as per Ex.D.11 had been conveyed to the defendant nos. 2 and 3.

32. The second prong of the argument is that the suit schedule property was put into the hotchpot and therefore, there was a partition among the plaintiff and defendant Nos.2 and 3. I am afraid this contention is an



argument off the cuff. In the written statement and the additional written statements filed by defendant No.1 nowhere it is stated that the plaintiff had put the suit schedule property into the hotchpot and therefore, it had attained the character of the joint family property where the defendant Nos.2 and 3 also had a share. It is pertinent to note that in the mutation entries produced by the defendant No.1, nowhere mention that the joint name of the plaintiff and the defendant No.2 and 3 was appearing in the revenue records at any point of time. On the other hand, the records also reveal that the suit schedule property was mortgaged to PLD Bank, Malaprabha Grameen Bank etc., It is not shown by the defendant No.1 that it was the defendant Nos.2 and 3, who had mortgaged the property to the said banks to avail loan on the above said property. Therefore, it is clear that the defendant Nos.2 and 3 had failed to establish that it was the joint family property acquired by the joint exertion of the plaintiff and defendant Nos.2 and 3 or that it was the property, which was put into the hotchpot.



33. As noted supra, the conveyance by way of a Varadi or mutation entry in the revenue records cannot be a valid conveyance. Curiously, the defendant Nos.2 and 3 have not appeared before the Trial Court. Therefore, the burden was on the defendant No.1 to establish that the defendant Nos.2 and 3 had a valid title, which they could convey to him. The Apex Court and the High Court in catena of decisions have held that the transfer by way of mutation is not permissible. It is settled proposition of law that any conveyance has to be by any mode known to law under the Transfer of Property Act. The only exception would be that the person holding title to the property may amalgamate the same by his conduct or by an express consent into the Hotchpot of the joint family and in such circumstances, the rights of such person, who has a share in the property, cannot extinguish but it would be a joint share. All along from the year 1963 when the plaintiff purchased the, suit survey number, till the year 1986 when the property was sold by the defendant No.2 and 3 to the defendant No.1, nothing is available on record to show that her conduct was to put the suit property into the hotchpot. The cross



examination of PW1 nowhere shows regarding any of such suggestions were made or she had admitted that she had put the properties into the hotchpot. Therefore, what is available from the cross examination of PW1 is that she and defendant No.3 are jointly earning their livelihood. She vehemently denies that these properties were purchased from the contributions made by the defendant Nos.2 and 3. Therefore, the judgment of the Apex Court in the case of ***Gurunath Manohar Pauskar Vs. Nagesh Siddappa Navalgund and others***², it was observed that a revenue record is not a document of title and it merely raises a presumption in regard to the possession. Under these circumstances, the substantial question of law has to be held in the negative.

34. The defendant Nos.2 and 3 were not the exclusive owners of the suit schedule property and they had no title in respect of the suit schedule property in whatsoever manner so that they could convey the same to the defendant No.1.

² AIR 2008 SC 901



35. Having come to the conclusion that the defendant Nos.2 and 3 could not have conveyed the property to the defendant No.1, let me turn my attention to the question of limitation raised by the defendant No.1. It is relevant to note that the Courts below have come to the conclusion that the suit is also covered by Article 58 of the Limitation Act. It is evident that nowhere in the plaint, the plaintiff admits that she had the knowledge of the mutation entry No.1927, pursuant to her Varadi given to the revenue authorities as per Ex.D.11. That being so, it was incumbent upon the defendant No. 1 to establish that the plaintiff knew about the contents of Ex.D.11.

36. Before considering the evidence in this regard, the position of law in this regard is to be seen. Article 58 of the Schedule to the Limitation Act, in a suit for declaration where Articles 56 and 57 do not apply, the plaint should be filed within a period of three years when the right to sue first accrues. On applying Article 58 to the prayer for declaration, that the sale deed dated 02.09.1986 is not binding, the suit filed after 3 years is clearly barred by



limitation. However, the plaintiff relies on Section 17 of the Limitation Act, which deals with the effect of fraud and mistake. It reads as below:

"17. Effect of fraud or mistake.—(1) *Where, in the case of any suit or application for which a period of limitation is prescribed by this Act—*

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:"



37. In the case of ***Saranpal Kaur Anand v. Praduman Singh Chandhok***³ it was observed by Supreme Court as below:

"11. The general principle, which also manifests itself in Section 17 of the Limitation Act, is that every person is presumed to know his own legal right and title in the property, and if he does not take care of his own right and title to the property, the time for filing of the suit based on such a right or title to the property is not prevented from running against him. The provisions of Section 17(1) embody fundamental principles of justice and equity viz. that a party should not be penalised for failing to adopt legal proceedings when the facts or the documents have been wilfully concealed from him and also that a party who had acted fraudulently should not be given the benefit of limitation running in its favour by virtue of such frauds. [Pallav Sheth v. Custodian, (2001) 7 SCC 549] However it is important to remember that Section 17 does not defer the starting point of limitation merely because the defendant has committed a fraud. Section 17 does not encompass all kinds of frauds, but specific situations covered by clauses (a) to (d) to Section 17(1) of the Limitation Act. Sections 17(1)(b) and (d) encompass only those fraudulent documents or acts of concealment of documents which have the effect of suppressing knowledge entitling the party to pursue

³ (2022) 8 SCC 401



his legal remedy. Once a party becomes aware of antecedent facts necessary to pursue legal proceedings, the period of limitation commences. [P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445]

12. *Therefore in the event the plaintiff makes out a case that falls within any or more of the four clauses to sub-section (1) to Section 17 of the Limitation Act, the period of limitation for filing of the suit shall not begin to run until the plaintiff or applicant has discovered the fraud/mistake or could with reasonable diligence have discovered it or if the document is concealed till the plaintiff has the means of producing the concealed document or compelling its production a fortiori.*

XXXXXX

14. *The word "diligence" read with the word "reasonable" in the context of Section 17(1) of the Limitation Act is subjective and relative, and would depend upon circumstances of which the actor called upon to act reasonably, knows or ought to know. Vague clues or hints may not matter. Whether the plaintiff/applicant had the means to know the fraud is a relevant consideration. It is manifest that Section 17(1) of the Limitation Act does not protect a party at fault for failure to exercise reasonable diligence when the circumstances demand such exercise and on exercise of which the plaintiff/applicant could have discovered the fraud. When the time starts ticking subsequent events will not stop the limitation. The time starts running from*



the date of knowledge of the fraud/mistake; or the plaintiff/applicant when required to exercise reasonable diligence could have first known or discovered the fraud or mistake. In case of a concealed document, the period of limitation will begin to run when the plaintiff/applicant had the means of producing the concealed document or compelling its production.

15. *Thus when the plaintiff relies on Section 17(1)(b) of the Limitation Act asserting fraud or mistake, he has to state the date on which he has discovered the fraud or mistake, and also state that he could not have discovered the fraud or mistake with reasonable diligence on a date earlier than on which he has based his cause of action."*

(emphasis by me)

38. Coming to the case on hand, in regard to Ex.D.11, it is not known whether the revenue authorities had conducted any enquiry on the basis of the Varadi given by the plaintiff as per Ex.D.11. The M.E.No.1927 at Ex.D.4 simply mentions that the plaintiff had grown old and she couldn't work and therefore the name of the defendant Nos.2 and 3 has to be entered and accordingly it was entered in the records. Under these circumstances, the contention of the plaintiff that she only came to know about the mutation entry and the alienation by defendant Nos.2



and 3 in favour of defendant No.1, two-three months prior to filing of the suit has to be examined.

39. The plaintiff, who is examined as PW1, states in her examination-in-chief that the suit schedule property was owned by her and she came to know about the deletion of her name from the revenue records few weeks prior to filing of the suit and the defendant No.2 and 3 have executed the sale deed in favour of defendant No.1 without her knowledge. In the cross-examination, she admits that the defendant No.3 is working as a school teacher at Sindikurabet, and in the house which is situated by the side of her land she and defendant No.2 are residing. She also admitted that the defendant No.3, whenever visits her village, he stays with the plaintiff. She also admitted that the other properties are being cultivated by the defendant No.1 on contractual basis. She also admits that she and the defendant No.2 live together and work together. Even then, she states that she does not know about the entry of the name of defendant No.2 and 3 in the revenue records. In her enthusiasm to deny the signature on the Varadi as per



Ex.D11, she denies her signature on vakalath and plaint also.

40. Her testimony does not allege any fraud being played upon her by the defendant No.2 and 3, but however she only says that she does not know as to how the name of defendant No.2 and 3 came to be entered in the revenue records. Conspicuously, the defendant No.2 and 3 did not appear despite service of summons.

41. This conduct of PW1 falls short of the requirement of Section 17(1) (b) and (d) of the Limitation Act. It is pertinent to note that in order to exclude the ticking of the limitation period from the date of either mutation entry 1927 or the sale deed, the plaintiff has to establish any of the grounds falling under Section 17(1) of the Limitation Act.

42. When the testimony of PW1, especially her cross-examination, is examined on the anvil of provisions of Section 17(1) of the Limitation Act, it is evident that the plaintiff had not shown any diligence. It is significant to note



that the period of limitation for filing the suit starts to run from the date of sale deed by defendant No.2 and 3 in favour of defendant No.1 and in order to exclude such time, she has to make out a case under Section 17(1) of the Limitation Act. The evidence of PW1, especially her examination-in-chief does not allege any fraud, but on the other hand, she admits that the defendant No.2 and 3 continued to live with her. It is not possible for this Court to believe that the defendant No.2-Shivaji, despite living with her and working together with her, had not disclosed the sale transaction with the defendant No.1. As discussed by the Hon'ble Apex Court in the judgment of ***Saranpal Kaur Anand (supra)*** the plaintiff has not established that she was diligent about her rights.

43. It is also relevant to note that the cross-examination of the PW1 shows that the names of defendant No.2 and 3 are also entered in respect of the other properties owned by her. Curiously, she has not taken any action in respect of the same. Thus, the testimony of PW1 that she was unaware of the entry of the names of



defendant No.2 and 3 in the revenue records and that they had sold the suit schedule property to the defendant No.1 as per Ex.D1 does not inspire this Court to believe her testimony. The version of PW1 that despite the defendant No.2 and 3 were living with her, she did not come to know about entry of the names of defendant No.2 and 3 and the sale of the suit schedule property to defendant No.1 is unbelievable.

44. In that view of the matter, the plaintiff is unable to establish that she falls in anyone of the circumstances envisaged under Section 17(1) of the Limitation Act and therefore, the suit is hit by law of limitation. Admittedly, the name of the defendant No.2 and 3 was entered in the revenue records in the year 1983. The plaintiff has not made any effort to show that Ex.D11 is a fraudulent document, except saying that the defendant No. 2 and 3 got her signature on a paper. Therefore, this Court is of the view that the conclusions of the Trial Court as well as the First Appellate Court regarding issue No.7 (on limitation) is proper and no interference is required by this Court. In that



view of the matter, the suit is not maintainable as it is barred by limitation and accordingly, the appeal stands dismissed.

45. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

SD/-
(C M JOSHI)
JUDGE

SSP-Paragraphs 1 to 21
YAN-Paragraphs 22 till end
List No.: 1 SI No.: 64