



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR FIRST APPEAL NO.163 OF 2012

BETWEEN:

SRI. V. SHAMANNA,
AGED ABOUT 59 YEARS,
S/O. LATE J. VENKATASWAMY,
R/AT NO.11, OLD NO. 57, WARD NO. 28,
JANGAMA MAISTRY LANE,
2ND CROSS BALEPET, BANGALORE-560 053.

...APPELLANT

(BY SRI. B.N. JAYADEVA, ADVOCATE)

AND:

SMT. SUGUNA,
AGED ABOUT 57 YEARS,
D/O. LATE J. RAMAKRISHNAPPA,
R/AT. NO.10, OLD NO. 57/1, WARD NO.28,
JANGAMA MAISTRY LANE, 2ND CROSS,
BALEPET, BANGALORE-560 053.
DECEASED LRS.

1(a). SRI. RAJENDRA PRASAD,
AGED ABOUT 64 YEARS,
S/O. LATE SRI. RAMAKRISHNA,
R/AT. NO.14, 2ND CROSS, J.M LANE,
BALEPET, BANGALORE-560 053.
DECEASED LRS.

1(a)(i) SMT. VIJAYA,
AGED ABOUT 61 YEARS,
W/O LATE MR. R. RAJENDRA PRASAD.

YASHAVANT
NARAYANKAR

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YASHAVANT
NARAYANKAR
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1(a)(ii) SMT. R. GUNASHEELA,
AGED ABOUT 37 YEARS,
S/O. LATE MR. R. RAJENDRA PRASAD.

1(a)(iii) MR. R MADHUSUDAN,
AGED ABOUT 33 YEARS,
S/O. LATE MR. R. RAJENDRA PRASAD.

ALL ARE R/AT: NO.14, SECOND CROSS,
J.M. LANE, BALEPET, BANGALORE-560 053.

1(b) SMT. KALPANA,
AGED ABOUT 45 YEARS,
W/O. LATE SRI. RAMACHANDRA R
R/AT. NO.14, 2ND CROSS, J.M LANE,
BALEPET, BANGALORE-560 053.

...RESPONDENTS

(BY SRI SATHISH K, ADVOCATE FOR R1(a) (i) TO (iii) & R1(b))

THIS RFA IS FILED UNDER SECTION 96 R/W. ORDER 41
RULE 1 OF CPC, AGAINST JUDGMENT AND DECREE DATED
16.01.2012 PASSED IN O.S.NO.4277/2008 ON THE FILE OF
XLIV ADDL.CITY CIVIL & SESSIONS JUDGE, BANGALORE (CCH-
45), DECREETING THE SUIT FOR PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON
19.09.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT
THIS DAY AT DHARWAD BENCH, THE COURT DELIVERED THE
FOLLOWING:

CORAM: HON'BLE MR. JUSTICE C M JOSHI



CAV JUDGMENT

The present appeal is filed by the defendant in O.S.No.4277/2008 assailing the judgment and decree dated 16.01.2012 passed by the learned XLIV Additional City Civil and Sessions Judge, Bangalore (CCH 45), whereby the appellant had been restrained from causing interference to the peaceful possession and enjoyment of the suit schedule property by the plaintiff/respondent.

2. The brief facts i.e., relevant for the purpose of this appeal may be summarized as below:

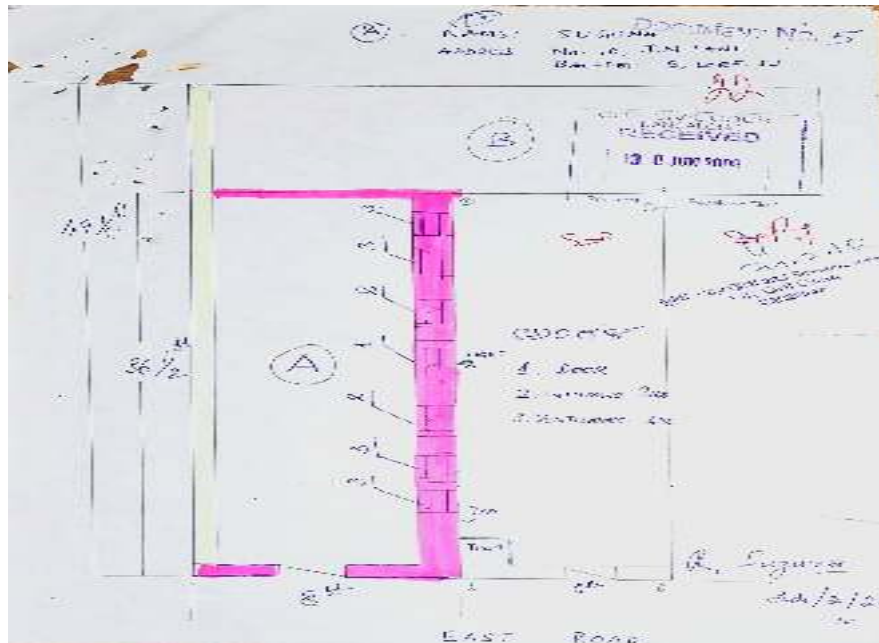
(a) The suit schedule property is described to be House No.57/1, Municipal New No.10 measuring east-west 36½ ft and north-south 8 ft with a common passage shown by the letters 'ABCD' in the hand sketch annexed to the plaint, situated at Jangam Maistry Lane, 2nd Cross road, Balepet, Bengaluru.

(b) The plaintiff claims that she is the absolute owner of the suit schedule property and he acquired the same by way of registered gift deed dated 13.03.1974. The suit schedule property was earlier owned by one Jangamappa, who had



NC: 2025:KHC:52195
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acquired it under registered partition in the year 1950. Thereafter, by Will dated 15.01.1951, a portion of the property acquired by him was bequeathed in favour of Mangamma, who is his daughter. The other portion was bequeathed to his grandsons viz., Narayan, Srinivas and Rajanna. The said Mangamma, who had acquired suit schedule property measuring $36\frac{1}{2}$ ft X 8 ft with a toilet in the adjoining passage, executed a gift deed (Ex.P1) on 13.03.1974 in favour of the plaintiff. The defendant, who happens to be the descendant in the title under the said Narayana, Srinivas and Rajanna is residing in the western portion of the suit schedule property.





(c) It is the case of the plaintiff that there is a common passage on the northern side of the suit schedule property, which leads to the house of the defendants on the western side and is adjoining the property belonging to the plaintiff. The plaintiff and defendant are jointly using the said common passage with water tap and toilet. While the plaintiff has been in continuous and uninterrupted possession of the suit schedule property, the defendant caused interference for such enjoyment claiming that the northern wall running east-west of the property of the plaintiff (shown as 'AB') belongs to the defendant and therefore, there was a cause of action for the suit. On the said ground, the plaintiff sought the injunctive relief against the defendant.

3. On service of summons, the defendant appeared and filed the written statement.

a) The defendant denied the plaint averments and contended that the measurement of the property of plaintiff i.e., 36½ ft east-west and 8 ft north-south is incorrect. In fact, the property did not measure as stated by the plaintiff but it is 30 ½ ft east-west and 8 ft north-south. He also denied that



there is any passage as alleged by the plaintiff and there is no such easementary right, which has accrued in favour of the plaintiff. Neither the plaintiff nor anyone of her family at any point of time did reside in the suit property and there is no such common passage as claimed. It is his contention that the premises were used as workshop by one Uday Carto Punch and therefore, the plaintiff residing in the property with her family is totally false. The defendant's property measures 19 ½ ft east-west and 28½ ft., north-south and there are no windows or ventilators as contended by the plaintiff on the northern wall of his property. It is his contention that the mother of the defendant-Ramakka purchased the same in the year 1962 and the defendant having purchased it in the year 1963, he continues to remain in the possession of the property bearing Old No.57 and New No.11 and at no point of time, the open space measuring 30 ½ ft east-west 7¼ ft north-south was used as a common passage. It is exclusive property belonging to the defendant to have access to his residential portion on the western side of the passage. When the plaintiff had acquired the property under a gift in the year 1974, she had voluntarily closed the windows and ventilators that were opening out into



the passage and therefore, the question of plaintiff acquiring the easementary right does not arise.

b) It is contended that the defendant is paying taxes in respect of the said passage as well as his house and it is the plaintiff, who after removing the roof of her house attempted to break open the wall and trying to close the windows and ventilators claiming that the property belongs to her. Therefore, the defendant sought for dismissal of the suit.

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

- 1. Whether the plaintiff proves the correctness of the description of the suit schedule property?*
- 2. Whether the plaintiff proves the possession of the suit schedule property as on the date of the suit?*
- 3. Whether the plaintiff proves that the defendant is trying to disturb the use and occupation of the common passage of the suit schedule property?*
- 4. Whether the plaintiff is entitled to the reliefs claimed?*
- 5. What Order or Decree?*



5. The plaintiff was examined as PW1 and Ex.P1 to 9 were marked and defendant was examined as DW1 and Ex.D1 to Ex.D24 were marked. After hearing both the sides, the Trial Court answered issue No.1 to 4 in the affirmative and decreed the suit.

6. Being aggrieved, the defendant is before this Court in this appeal.

7. Learned counsel appearing for the appellant/defendant would submit that the claim of the plaintiff is in fact regarding the easementary right of the plaintiff over the passage which is adjoining the property owned by the plaintiff. He submits that though the suit is styled as one for injunction, the plaintiff is seeking easementary right in the passage. He submits that, in the plaint, the plaintiff is seeking common rights in the passage and seeking injunction in respect of said common rights. It is pointed out by him that unless the plaintiff seeks declaration of such easementary right in the suit schedule property, the claim regarding the easementary right is not sustainable in law. In this regard, he places reliance on the judgment in the case of ***Bachhaj Nahar v. Nilima Mandal***



and another¹ wherein at paragraph 20, it was observed as below:

"20. The pleadings necessary to establish an easement by prescription, are different from the pleadings and proof necessary for easement of necessity or easement by grant. In regard to an easement by prescription, the plaintiff is required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of twenty years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. For claiming an easement of necessity, the plaintiff has to plead that his dominant tenement and the defendant's servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severance of such ownership and that without the easementary right claimed, the dominant tenement cannot be used. We may also note that the pleadings necessary for establishing a right of passage is different from a right of drainage or right to support of a roof or right to watercourse. We have referred to these aspects

¹ (2008) 17 SCC 491



only to show that a court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence.”

8. He also places reliance on the judgment in the case of **D.Ramanatha Gupta v. S.Razaack**² wherein it was held that in a suit for injunction based on prescriptive easement right, the plaintiff should seek for a declaration from the Court that he has so acquired prescriptive right of easement.

9. He also relies on the judgment of this Court in the case of **B.N.Pavan Kumar v. Harish Kumar T.**,³ where again the need for a declaration of easementary right was discussed and it was held that without a declaration, a decree for easement rights cannot be passed.

10. He further submits that the Will executed by Jangamappa, which is produced at Ex.D1 would show that there is no such easementary right, which has been created. Though in the penultimate paragraph of the Will it was mentioned that the courtyard (passage) is to be used in

² AIR 1982 Karnataka 314

³ RFA No.1343/2015 DD 31.12.2019



common, in the latter part of the Will the testator clarifies that Mangamma would be entitled for her property along with toilet situated in the said passage and nothing else. Therefore, he submits that the Will does not create any easementary right and as such, the decree passed by the Trial Court is not sustainable in law.

11. Per contra, learned counsel appearing for the respondent/plaintiff submits that the flow of title is to be examined to ascertain whether there is any easementary right created or not. He submits that Mangamma acquired the rights in respect of her property measuring 36½ ft east-west and 8 ft north-south together with the absolute ownership over the toilet under the gift deed. It is submitted that the gift deed specifically recites that the property consists of a house and front yard (ಅಂಗಳ) including the two doors, two large sized windows, three ventilators and a water tap. Therefore, Mangamma had gifted the entire property, which she had acquired under the registered sale deed dated 15.01.1951 and as such, the plaintiff would get rights in the passage also. She being in continuous possession and enjoyment of the property



along with common passage and toilet, has acquired rights and therefore, the judgment of the Trial Court is proper and correct. It is submitted that the contention of the defendant that the plaintiff should have sought a declaration is not sustainable simply because the will dated 15.01.1951 and the gift deed executed by Mangamma are clear enough in saying the nature of the rights bequeathed and transferred to the plaintiff. It is submitted that there is no cloud over the plaintiff's title and in view of the settled legal position laid down in the case of ***Anathula Sudhakar v. P.Bhuchi Reddy (Dead) by LRs***⁴, a suit for injunction simpliciter is maintainable when there is no cloud on the title. Therefore, it is contended that the Trial Court, upon appreciation of the oral and documentary evidence, has rightly decreed the suit in favour of the plaintiff. Lastly, he submitted that without prejudice to the contentions urged, the plaintiff submits that the defendant has unequivocally admitted the plaintiff's possession over the suit schedule property to the extent of 30½ ft east-west and 8 ft north-south and in view of the said admission, the decree of the Trial Court to that extent may be modified.

⁴ 2008 (4) SCC 594



12. After hearing the arguments advanced by both the sides, the points that arise for consideration in this appeal are as under:

- 1) Whether the plaintiff has got any easementary right in the common passage adjoining the suit schedule property?
- 2) Whether the prayer for declaration of such easementary right was essential?
- 3) To what relief the parties are entitled to?

POINT NO.1 & 2:

13. A perusal of the records would reveal that the entire property belonging to the plaintiff and the defendant was owned by B.V.Jangamappa and he had acquired the rights under a partition deed dated 16.12.1950. The said Jangamappa had executed Will on 15.01.1951 bequeathing 'A' schedule property in favour of his grandsons i.e., Narayana, Srinivas and Rajanna, who are sons of Venkataswamappa born to his wife Sharadamma. He had another wife i.e. Ramakka and the defendant is the son born to the said Ramakka.



14. The other portion of the property shown as 'B' schedule in the Will was bequeathed to Mangamma, who was the daughter of Jangamappa. The said Mangamma has gifted her property to the plaintiff herein, who happens to be the daughter of brother of Mangamma. These aspects are not in dispute.

15. The said Narayana, Srinivas and Rajanna have sold their portion of the property to none else than Ramakka, who was their step-mother under registered sale deed dated 09.03.1962. The said Ramakka sold the property to one Subbayya under registered sale deed dated 01.08.1962 and thereafter she again purchased back the said property under a sale deed dated 10.04.1963. Therefore, after the demise of Ramakka, it is the defendant, who has inherited the property which was willed in favour of Narayana, Srinivas and Rajanna.

16. In other words, it is an admitted fact by both sides that the properties are inherited by them from the common ancestor B.V.Jangamappa under the Will dated 15.01.1951. Therefore, it is the said Will, which acquires importance in



ascertaining the nature of the rights acquired by the plaintiff herein.

17. A perusal of the Ex.D1-Will would indicate that Mangamma was bequeathed with a building situated on the south-east corner of the property which measures 36½ ft north-south and 8 ft east-west. The Will also mentioned that in the property, which is bequeathed to Mangamma, there is a toilet room. Then it mentions that in the property bequeathed to his grandsons, there is a front yard of their house. Though initially the testator mentioned that the toilet and the front yard are to be used only by his grandsons and the daughter, later he states that it is not correct and clarifies that daughter would get only a toilet and she is at liberty to use it by fixing a door on the eastern side. He further clarifies that his grandsons have to construct their own toilet in their front yard.

18. This averment in the Will would show that no such easementary right was created by the said Jangammappa through his Will. The plaintiff was asked to fix a door to the toilet on the eastern side facing the road, and use it. If we examine the sketch and the photographs, which are produced,



it is evident that the Will does not permit the plaintiff to fix a door on the northern side of her property. There is no such common passage over which the plaintiff had any right. The bequeathing is clear enough in saying that the toilet has to be fixed with door on the eastern side. For better understanding, the description of 'B' schedule as mentioned in the Will is reproduced below:

“ಬಿ ಷೆಡ್ಯೂಲ್:

1)ನೆ ನನ್ನ ಮಗಳು ಮಂಗಮ್ಮನಿಗೆ ಸೇರಬೇಕಾದ್ದು ಮೇಲ್ಕಂಡ ಎ.ಷೆಡ್ಯೂಲ್ ಒಂದನೇ ಐಟಂನಲ್ಲಿ ಕಂಡಿರುವಂತೆ ನನ್ನ ಮೂರು ಜನ ಮೊಮ್ಮಕ್ಕಳಿಗೂ ಸೇರಬೇಕಾದ್ದು ಮೇಲ್ಕಂಡ ಎ.ಷೆಡ್ಯೂಲ್ ಒಂದನೇ ಐಟಂನಲ್ಲಿ ಕಂಡಿರುವಂತೆ ನನ್ನ ಮೂರು ಜನ ಮೊಮ್ಮಕ್ಕಳಿಗೂ ಸೇರಿರುವ ಮುನ್ಸಿಪಲ್ ನಂಬರು 54 ಐವತ್ತು ನಾಲ್ಕು ವುಳ್ಳ ಮನೆ ಪೈಕಿಯಲ್ಲಿ ಪೂರ್ವ ದಿಕ್ಕಿನ ಆಗ್ನೇಯ ಮೂಲೆಯಲ್ಲಿ ಇರುವ ತಾರ್ತಿ ಕಟ್ಟಡ ಪೂರ್ವ ಪಶ್ಚಿಮ ಅಡಿ ಮುಖತಾರೂವರೆ ದಕ್ಷಿಣೋತ್ತರ ಅಡಿ ಯಂಟು ಈ ಅಳೆಯಲ್ಲಿರುವ ತಾರ್ತಿ ಕಟ್ಟಡವು ನನ್ನ ಮಗಳು ಮಂಗಮ್ಮನಿಗೆ ಸೇರಬೇಕು ಮತ್ತು ನನ್ನ ಮಗಳಿಗೆ ಸೇರಿರುವ ಸ್ವತ್ತಿನಲ್ಲಿ ಕಕ್ಕಸು ಇರುತ್ತದೆ ಮತ್ತು ನನ್ನ ಮೊಮ್ಮಕ್ಕಳಿಗೆ ಸೇರಿರುವುದರಲ್ಲಿ ಅಂಗೈವಿರುತ್ತೆ. ಈ ಅಂಗಳವನ್ನು ಕಕ್ಕಸನ್ನು ನನ್ನ ಮೊಮ್ಮಕ್ಕಳು ಮತ್ತು ನನ್ನ ಮಗಳೂ ಸಹ ಸೇರಿ ವುಪಯೋಗಿಸಬೇಕು. ಮೇಲ್ಕಂಡ ವಿಷಯಗಳೆಲ್ಲವೂ ನನ್ನ ಕಾಲಾ ನಂತ್ರದಲ್ಲಿ ನಡೆಯಬೇಕು. ಈ ವಿಲ್ಲಿನ ವಂದನೇ ಪೇಜಿನ ಮೇಲಿಂದ ಐದನೆ ಕಾಲಾ ಪಂಜ್ಜಿಯಲ್ಲಿ ಮೃ ಬಾಬು ವಂದು ಅಕ್ಷರವನ್ನು ಹೊಡೆದು ಅದರ ಮೇಲು ಭಾಗದಲ್ಲಿ ಮಪ್ಪ ಯೆಂಬ ಯರಡು ಅಕ್ಷರಗಳನ್ನು ಕುಂಟ ಪಂಗ್ತಿ ಬರದಿರುತ್ತೆ. ಮೇಲೆ



ಬರೆದಿರುವುದು ನನ್ನ ಮಗಳು ಮಂಗಮ್ಮನಿಗೆ ಸೇರಿರುವ
ಕಕ್ಕಸನ್ನು ಮತ್ತು ನನ್ನ ಮೊಮ್ಮಕ್ಕಳಿಗೆ ಸೇರಿರುವ ಅಂಗಳವನ್ನು
ವುಭಯತ್ರರು ವುಪಯೋಗಿಸುವುದು ಯೆಂದು ಬರೆದಿರುತ್ತೆ.
ಇದು ಅಲ್ಲ ನನ್ನ ಮಗಳಿಗೆ ಸೇರಿರುವ ಕಕ್ಕಸು ಅವಳಿಗೆ
ಸೇರಬೇಕು ಪೂರ್ವ ದಿಕ್ಕಿನಲ್ಲಿ ಬಾಗಿಲನ್ನು ಇಟ್ಟುಕೊಂಡು
ತಿರುಗಾಡಬೇಕು ನನ್ನ ಮೊಮ್ಮಕ್ಕಳು ಅವರಿಗೆ ಸೇರಿರುವ
ಅಂಗಳದಲ್ಲಿ ಕಕ್ಕಸು ಮಾಡಿಕೊಳ್ಳಬೇಕು.”

(emphasis supplied)

19. Thereafter, the conveyance made by the grandsons of Jangamappa until the mother of the defendant obtains it under the sale deed dated 10.04.1963 shows that whatever that was bequeathed by the said Jangamappa had been transferred from time to time to the said Ramakka. There is no modification of description of the property in the conveyance deeds. The gift deed executed by Mangamma in favour of the plaintiff shows the description of the property gifted as below:

“ದಾನದ ಸ್ವತ್ತಿನ ವಿವರಾ”

“ಬೆಂಗಳೂರು ಸಿಟಿ, ಕಾರ್ಪೊರೇಷನ್ 7ನೇ
ಡಿವಿಜನ್‌ಗೆ ಸೇರಿರುವ ಬೆಂಗಳೂರು ಸಿಟಿ. ಬಳೇಪೇಟೆಗೆ
ಸೇರಿದ, ಜಂಗಮ ಮೇಸ್ತಿ ಗಲ್ಲಿ, 2ನೇ ಕ್ರಾಸಿನಲ್ಲಿರುವ
ಮುನಿಸಿಪಲ್ ಡೊರ್ ಮಾಜಿ 57/1 ನಂತರಾ 10ನೇ
ನಂಬರಾಗಿ ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಖಾತ್ತಾ ಸಹಾ ಇರತಕ್ಕ ಸ್ವತ್ತಿಗೆ
ಚಕ್ಕುಬಂದಿ:-

ಪೂರ್ವಕ್ಕೆ : ಜಂಗಮ ಮೇಸ್ತಿಗಲ್ಲಿ
ಪಶ್ಚಿಮಕ್ಕೆ : ರಾಮಕನವರ ಮನೆ



ಉತ್ತರಕ್ಕೆ : ಹಾಲಿನ ಡೈರಿ ಹೊನ್ನಪ್ಪನವರ ಮನೆ
ದಕ್ಷಿಣಕ್ಕೆ : ಸರಿಗೆ ನಾರಾಯಣರಾಜು ಮನೆ

ಈ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ವ ಪಶ್ಚಿಮ 36-6
ಮೂವತ್ತಾರೂವರೆ ಅಡಿಗಳು, ಉತ್ತರ ದಕ್ಷಿಣ 8-0 ಎಂಟು
ಅಡಿಗಳೂ ಈ ರೀತಿ ಅಳತೆಯುಳ್ಳ ಸೈಟು ಮತ್ತು ಇದೇ
ಸೈಟಿನ ಮೇಲೆ ಇರತಕ್ಕ ಮನೆ ಮತ್ತು ಇದರಲ್ಲಿ ಅಂಗಳದ
ಕಡೆ ಇರುವ ಎರಡು ಬಾಗಿಲುಗಳು, ದೊಡ್ಡ ಸೈಜಿನ
ಕಿಟಕಿಗಳು ಎರಡು ಇರುತ್ತೆ. ಅಲ್ಲದೆ ಮೂರು
ವೆಂಟಲೇಟರುಗಳು ಲೈಟು, ಕೊಳಾಯಿ, ಸಹಾ ಇರತಕ್ಕ ಸ್ವತ್ತನ್ನೆ
ನಿನಗೆ ದಾನವಾಗಿ ಕೊಟ್ಟಿರುತ್ತೇನೆ.”

20. It is pertinent to note that either the Will at Ex.D1 or the gift deed at Ex.P1 show that there is no mention of creating of any easementary right or the right of common usage of passage. The property which was bequeathed to Mangamma was exclusive and it included the toilet, which is said to be the passage leading to the house of the defendant as per the sketch produced. The photographs also reflected the same. The gift deed does not mention anything about the toilet, which is situated in the said passage. Obviously, the toilet is situated outside the gifted property measuring 36½ ft north-south and 8 ft east-west.

21. The oral testimony of the PW1 shows that she denies that the Will mentions about the fixing of the door to the



toilet towards the eastern side. Obviously, her contention as depicted in paragraph 24 of her deposition is contrary to the Will. She had not at all acquired any common right of usage of the passage. The Will did not mention bequeathing of any common rights to Mangamma and therefore, Mangamma had not transferred any such common right in the passage. Therefore, the claim of the plaintiff over the suit schedule property in the form of an easementary right cannot be accepted.

22. In the cross-examination of DW1, there is categorical suggestion that the property, which was bequeathed to Mangamma, which thereafter was gifted to the plaintiff is measuring only 30½ ft X 8 ft. Therefore, to that extent, there is no dispute by the defendant. It is worth to note that the Will and the gift deed speak about the measurement of the property owned by the plaintiff to the extent of 36½ ft east-west X 8 ft north-south. Therefore, the contention of the defendant that the property of the plaintiff measures only 30½ ft is not supported by any documentary evidence and as such, it cannot be of any relevance. It is also worth to note that the documents show that the property adjoining the passage is having



ventilators and windows belong to the plaintiff. This cannot be disputed. Obviously, the plaintiff has not sought for any easementary right of light or air. It has come in the evidence that the plaintiff herself had closed the said ventilators and the windows. With these factual aspects, let us consider the question of law.

23. The judgment of the Hon'ble Apex Court in the case of ***Bachhaj Nahar (referred supra)*** is clear in saying that the declaration of an easementary right is essential. There should be pleadings to establish the easement by prescription and the continuous long use. It is necessary that the evidence has to be led in order to prove such easementary right. The plaintiff has not pleaded that she has got easement by prescription in respect of light and air through the windows and ventilators. But in the evidence, it has come that the plaintiff had closed the said windows and ventilators. From perusal of the photographs, it cannot be ascertained as to whether there were any doors towards the eastern side of the property of the plaintiff. The Will does not speak of any such doors as well. Under these circumstances, when there is no such pleadings regarding the right of easement by prescription, it cannot be



held that the Will as well as gift deed creates a easementary right. When there is no such prayer is sought and documents do not depict such easementary right, a declaration regarding right was essential. Hence, Point No.2 is answered in the affirmative.

24. What is sought by an injunction is only in respect of the property, which was bequeathed and gifted in favour of the plaintiff. Therefore, the description of the property so far as it relates to the common passage marked in the sketch as 'ABCD' was not belonging to the plaintiff and as such, injunction cannot be granted in respect of the same. However the house No.57/1 Municipal New No.10 measuring east-west 36.6 ft x 8 ft north-south, is belonging to the plaintiff. Injunction can be granted only in respect of the said property but not the remaining part, which describes common passage. There was no such right being created in favour of the plaintiff in respect of the common passage, the suit claim in respect of said common passage deserves to be dismissed. The plaint does not mention anything about the toilet which is situated in the said common passage, for which the plaintiff was required to fix a



door towards eastern side as per the Will. Therefore, it is not necessary for this Court to say anything in respect of the same.

25. In the light of the above, after re-appreciation of the evidence on record and considering the question of law involved in the matter, this Court is of the view that the impugned judgment of the Trial Court is not sustainable fully. The Trial Court considers the gift deed at Ex.P1 and holds that it being a thirty years old document, has to be relied upon, though formal proof is not let in. The Trial Court also observes that the defendant admits the gift made by the Mangamma in favour of the plaintiff. The Trial Court observes that water connection is in the independent name of the defendant is not proved. It further observes that DW1 say that the southern wall of the house of the plaintiff is owned by him. There cannot be any reason to say that the defendant can claim anything in the wall belonging to the house of the plaintiff. Thus, it is evident that the Trial Court had again wrong in holding that the plaintiff has right in the common passage also. The Trial Court failed to note the averments made in the Will of Jangamappa and the gift deed of Mangamma. Therefore, when there is no declaration sought in respect of the prescriptive easement, the



decree passed by the Trial Court could not have been covered the 'ABCD' portion mentioned in the hand sketch. In that view of the matter, the impugned judgment of the Trial Court deserves to be interfered with. Hence, point No.1 is answered in the negative.

26. For the aforesaid reasons, the claim of the plaintiff insofar as the passage shown as 'ABCD' in the sketch deserves to be dismissed. Whereas the relief in respect of property bequeathed to Mangamma is to be upheld. Hence, the following:

ORDER

- (i) *The appeal is allowed in part.*
- (ii) *The defendant or anybody claiming under him are restrained by an order of permanent injunction from causing interference for peaceful possession and enjoyment of the property bearing house No.57/1, Municipal No.10 measuring east-west 36½ ft and north-south 8 ft. The suit in respect of the rights claimed in the common passage marked as 'ABCD' in the sketch is dismissed.*



- (iii) The impugned judgment of the Trial Court is modified accordingly.*
- (iv) Costs made easy.*
- (v) 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

YAN
CT:PA
List No.: 19 Sl No.: 1