

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.1/2021 (DEC/INJ)

BETWEEN:

SRI. T.R. NAVEEN KUMAR,
SON OF LATE RAJAGOPALA SETTY,
AGED ABOUT 34 YEARS,
RESIDING AT HOSADURGA VILLAGE,
Y.N. HOSAKOTE HOBLI,
PAVAGADA TALUK,
TUMAKURU DISTRICT-571 305.

... APPELLANT

(BY SRI FAYAQ SAB B.G., ADVOCATE)

AND:

1. SMT. LAKSHMAMMA,
WIFE OF LATE JULA NARASIMHAIAH,
AGED ABOUT 74 YEARS.

SINCE DEAD, REPRESENTED BY
LEGAL HEIRS AND REPRESENTATIVES.

- 1(a) SRI. BALARAMAPPA,
SON OF LATE JULA NARASIMHAIAH,
AGED ABOUT 66 YEARS.
- 1(b) SRI NARAYANAPPA,
SON OF LATE JULA NARASIMHAIAH,
AGED ABOUT 59 YEARS.

- 1(c) SRI. GOPALA,
SON OF LATE JULA NARASIMHAIAH,
AGED ABOUT 54 YEARS.

R1(a) TO (c) ARE RESIDING AT
HOSADURGA VILLAGE,
Y. N. HOSAKOTE HOBLI, PAVAGADA TALUK,
TUMAKURU DISTRICT-571 305.

2. SRI. KRISHNA MURTHY,
SON OF LATE JULA NARASIMHAIAH,
AGED ABOUT 49 YEARS,
RESIDING AT HOSADURGA VILLAGE,
Y. N. HOSAKOTE HOBLI, PAVAGADA TALUK,
TUMAKURU DISTRICT-571 305.

SMT. NIRMALAMMA,
W/O LATE RAJAGOPALA SHETTY,
AGED ABOUT 56 YEARS,
SINCE DEAD BY LRS.

3. SRI T.R. BALASUBRAMANYAM,
S/O LATE RAJAGOPAL SHETTY,
AGED ABOUT 60 YEARS,
RESIDING AT HOSADURGA VILLAGE,
Y. N. HOSAKOTE HOBLI, PAVAGADA TALUK,
TUMAKURU DISTRICT-571 305.

4. SRI T.R. SHASHIDHAR,
S/O LATE RAJAGOPALA SHETTY,
AGED ABOUT 27 YEARS,
RESIDING AT HOSADURGA VILLAGE,
Y. N. HOSAKOTE HOBLI, PAVAGADA TALUK,
TUMAKURU DISTRICT-571 305.

... RESPONDENTS

(BY SRI K.P. THRIMURTHY, ADVOCATE FOR
R1(a) TO (c) AND R2;
R3 AND R4 SERVED ARE UNREPRESENTED)

THIS R.S.A. IS FILED UNDER ORDER 42 RULE (1) R/W. SEC.100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 23.06.2020, PASSED IN RA NO.98/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC AT PAVAGADA DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 11.03.2016 PASSED IN O.S.NO.197/2009 ON THE FILE OF THE PRL.CIVIL JUDGE AND JMFC, AT PAVAGADA.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.12.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for respondent Nos.1(a) to (c) and 2.

2. This second appeal is filed against the concurrent finding.

3. The factual matrix of the case of the plaintiff before the Trial Court is that he is the lawful owner in possession of the suit schedule property and he has purchased the same from defendant No.1's husband Jula Narasimhaiah and his sons under a registered sale dated 26.01.1980. After the purchase, the khatha and pahani was mutated in his name and he was in peaceful possession of the suit schedule property. The suit

schedule property was purchased by the plaintiff when he was in joint family with his brother and thereafter by virtue of a partition between himself and his brothers, the suit schedule property was fallen to the share of the plaintiff as per M.R.No.18/1998-99. The said partition was mutated in the revenue records, but the Village Accountant has not written the name of the plaintiff in khatha and pahani. The plaintiff being innocent has also not verified the said fact for all these years. The defendant No.1's husband Jula Narasimhaiah and his brother Ramappa originally had larger extent of land in Sy.No.81 and they have sold large extent of other land to various persons. When things stood thus, the defendants have illegally obtained the khatha and pahani for an extent of 4 acres and 5 guntas and 3 acres in their name as per M.R.No.19/1994-95 and M.R.No.48/2007-08. Taking the advantage of such legal entries, the defendants are trying to deny the title of the plaintiff. Hence, filed a suit for the relief of declaration and permanent injunction.

4. In pursuance of the suit summons, defendant Nos.1 and 2 have filed the written statement denying the very

execution of the said deed and contended that originally Sy.No.81 of Hosadurga Village was a Government inam land which was granted in favour of husband of defendant No.1 Julia Narasimhaiah. The said Julia Narasimhaiah was in possession and enjoyment of the land measuring 7 acres 5 guntas and about 16 years back, he passed away leaving behind his wife and children. After the death of Julia Narasimhaiah, the defendants being the legal heirs have acquired and continued to be in possession of the suit schedule property and they are the owners of the property. Thereafter, by virtue of the application made by the defendants, the revenue authorities have effected the mutation, khatha and pahani and other revenue documents in the name of defendant No.1 to the total extent. As such, the defendants are the owners of the suit schedule property and they are in possession and enjoyment of the same.

5. The Trial Court having considered the pleadings of the parties, framed the following issues:

1. *Whether the plaintiff proves that he is the lawful owner in possession of the suit schedule*

property by virtue of sale deed dated 26.01.1980 as contended?

2. *Whether the plaintiff further proves the interference caused by the defendants to his peaceful possession and enjoyment of the suit schedule property?*
3. *Whether the plaintiff is entitled for the relief sought as prayed?*
4. *What order or decree?*

6. In order to substantiate the contention, the legal representative of the plaintiff, one Sri T.R. Balasubramanyam entered into the witness box and examined himself as P.W.1 and examined two witnesses on his behalf as P.W.2 and P.W.3 and has produced Exs.P.1 to 23. The defendant No.2 examined himself as D.W.1 and examined one witness as D.W.2 and got marked the documents at Exs.D.1 to 11. The Trial Court having considered both oral and documentary evidence, answered all the issues in the negative, particularly taking note of recitals of document Ex.P.7 in paragraph No.10 and in paragraph No.11 boundaries were also taken note of. With regard to the

possession is concerned, discussed the same in paragraph No.12 and taken note of Ex.P.18, which is M.R.No.18/1998-99, wherein the suit schedule property was not included in the said partition. In paragraph No.13 discussed that partition was taken place and the plaintiff got only 2 acres of land and not the entire extent of land and in paragraph No.14 comes to the conclusion that the entries in revenue records stands in the name of defendant No.2. The Trial Court also taken note of that P.W.2 and P.W.3 are two witnesses who speak about the possession of the suit schedule property and their evidence not supports the case of the plaintiff. At the most, he cannot claim the ownership over the entire property to the extent of 4 acres, since he claims that he was allotted only 2 acres and dismissed the suit.

7. Being aggrieved by the judgment and decree of the Trial Court, an appeal is filed in R.A.No.98/2016 and the First Appellate Court having considered the grounds urged in the appeal memo, formulated the points similarly as issues framed in the following manner:

1. *Whether the appellants establish their title and possession over the suit property?*

2. *Whether the judgment of the Trial Court is contrary to laws, evidence and probabilities hence needs to be interfered?*
3. *Whether the appellant is entitled the relief as sought for?*
4. *What order or decree?*

8. The First Appellate Court having re-assessed both oral and documentary evidence, taken note of Exs.P.1 and 9 are the same documents, which is the certified copy of mutation register extract of M.R.No.16/1982-83 and when an application is filed based on the sale deed for change of khata, the revenue authorities have not passed an order for change of katha, since the said land is an inan land and also the land not tallied with and mutation was not effected based on the sale deed. The First Appellate Court taken note of Exs.P.2, 3 and 4, all in respect of sale of the property in respect of remaining land and property stands in the name of different persons. The First Appellate Court also considered the recitals of Ex.P.7 sale deed that sale deed was executed for an amount of Rs.14,000/- as per the order passed in the execution. It also taken note of copy of the

mutation register extracts in M.R.No.18/1990-91, wherein survey numbers are mentioned as 91, 82/2, 88, 89 and 108, which was partitioned under a partition dated 31.08.1988. The present survey number was not mentioned in the partition, but subsequently the same was inserted. The First Appellate Court also taken note of discrepancy in the sale deed to the extent of 4 acres. Ex.P.19 discloses 4 acres 5 guntas and all the documentary evidence are discussed in paragraph No.21. In paragraph No.23, discussed with regard to that there was a partition. The defendants' documents are also discussed in detail and discrepancy with regard to 4 acres 5 guntas also discussed. In the cross-examination of D.W.1, he has expressed his ignorance regarding alienation of 4 acres 5 guntas. The First Appellate Court having re-assessed both oral and documentary evidence, in paragraph No.33 comes to the conclusion that the Trial Court discussed that the plaintiff's claim is in respect of 4 acres. But in the partition he got only 2 acres and also amendment application is filed restricting his claim only for 2 acres in the appeal memo. An observation is made that when the same is sought, boundary is also not modified and comes to

the conclusion that admittedly, the plaintiff is not in possession of the suit schedule property as the name of the plaintiff is not entered in the revenue records and even the plaintiff has not challenged the rejection of order of mutation and kept quiet and comes to the conclusion that though there was a sale deed, there was no any delivery of possession and not acted upon and confirmed the judgment of the Trial Court.

9. The main contention of the learned counsel for the appellant before this Court is that both the Courts were not justified in dismissing the suit of the plaintiff for the relief of declaration and permanent injunction when the claim is made based on the sale deed dated 26.01.1980 as per Ex.P.7. Both the Courts have not properly appreciated both oral and documentary evidence placed on record and the schedule property is the absolute property of Sri Rajagopala Shetty and the same was purchased for sale consideration of Rs.14,000/- under sale deed in Execution No.6/1979. The learned counsel contend that inspite of producing several documents, both the Courts committed an error.

10. This Court having considered the grounds urged in the second appeal as well as after hearing the arguments of the learned counsel, admitted the appeal on 21.04.2021 and framed the following substantial questions of law:

1. *Whether the defendants were estopped in law and by record from denying the title of the plaintiff to the suit property?*
2. *Whether the Trial Court and the First Appellate Court could have rejected the suit for declaration and injunction on the mere ground that the plaintiff had not got his name entered into the revenue records unmindful of the fact that entries in the revenue records cannot confer title?*
3. *Whether both the Courts erred in holding that the suit property could not have been sold only by the husband of defendant No.1 as it was a joint family property?*

11. The learned counsel for the appellant in his arguments would vehemently contend that both the Courts have committed an error in dismissing the suit and confirming the same. The learned counsel contend that in Survey No.81, the

total extent is 20 acres 13 guntas. The plaintiff's father had purchased 4 acres vide sale deed dated 26.01.1980 and Ex.P.7, the sale deed recitals are also very clear. The learned counsel would vehemently contend that subsequent to the purchase, M.R.No.16/1982-83 came into existence and the same was cancelled on the ground that the same is an inamti land. The learned counsel would submit that the only ground for dismissal of the suit is that in the partition, not included the suit schedule property and the same is not correct. The learned counsel also contend that cancellation of MR is without giving any opportunity. The learned counsel would vehemently contend that the respondents are estopped by denying the title. The learned counsel also contend that the MR was challenged and the same was dismissed and the same was not challenged subsequently and the fact that the property was purchased by the father of the plaintiff is not in dispute and the said sale deed is not questioned at any point of time. The learned counsel contend that in terms of Ex.P.7 sale deed, possession is delivered. But on account of death of the original owner, got changed the revenue records. The sale deed is also executed by the father,

mother and respondent No.1. The revenue records are not title, but both the Courts proceeded erroneously.

12. The learned counsel for the appellant relied upon the judgment of the Apex Court in the case of **DAMODHAR NARAYAN SAWALE (DEAD) THROUGH LEGAL REPRESENTATIVES v. TEJRAO BAJIRAO MHASKE AND OTHERS** reported in **(2023) 19 SCC 175** and brought to the notice of this Court paragraph No.54, wherein discussion is made with regard to the sale is concerned and also the effect of registration of document. The learned counsel also brought to the notice of this Court Sections 91 and 92 of the Evidence Act, 1872 regarding admissibility, suit for possession on strength of the title acquired through registered sale deed and transfer of ownership and title and principles also clarified in this judgment.

13. The learned counsel also relied upon the judgment of the Apex Court in the case of **SANJAY SHARMA v. KOTAK MAHINDRA BANK LTD. AND OTHERS** passed in **CIVIL APPEAL (SLP)(C)No.330/2017** dated **10.12.2024** and brought to notice of this Court paragraph No.27, wherein a

discussion was made with regard to the sale as the transfer of ownership in exchange for a price that is either paid, promised or part-paid and part-promised.

14. The learned counsel also relied upon the judgment of the Apex Court in the case of **KAUSHIK PREMKUMAR MISHRA AND ANOTHER v. KANJI RAVARIA @ KANJI AND ANOTHER** passed in **CIVIL APPEAL NO.1573/2023** dated **19.07.2024** and brought to the notice of this Court paragraph No.20.6 with regard to the challenging the sale deed and paragraph No.20.7 where counter claim was also discussed. The learned counsel also brought to the notice of this Court paragraph Nos.25, 26, 27, 28 and 30 wherein, it is held that a registered document carries with it presumption of correctness unless proved otherwise as per Section 114 of the Evidence Act read with Section 17 of the Act, 1908. The learned counsel also brought to the notice of this Court paragraph No.33.13 wherein, discussion was made with regard to pendency of registration on account of deficiency cannot enure any benefit to the vendor, who has already eliminated all his rights by executing the sale deed after

receiving the same consideration. The learned counsel referring this judgment would vehemently contend that when the sale deed was executed, it has got presumptive value.

15. The learned counsel also relies upon the judgment of the Apex Court in the case of **BAINI PRASAD (D) THROUGH LRS. v. DURGA DEVI** passed in **CIVIL APPEAL Nos.6182-6183/2009** dated **02.02.2023** and brought to the notice of this Court paragraph No.12.1, wherein the decision of the Apex Court in the case of **R.S. MADANAPPA v. CHANDRAMMA** reported in **AIR 1965 SC 1812** was referred, wherein it is held that its object is to prevent fraud and secure justice when the parties by promotion of honesty and good faith. It is further held that when one party makes a representation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

16. The learned counsel also brought to the notice of this Court the judgment of the Apex Court in the case of **P.KISHORE KUMAR v. VITTAL K. PATKAR** passed in **Civil Appeal**

No.7210/2011 dated **20.11.2023** and brought to the notice of this Court paragraph Nos.11 and 12, wherein discussion was made with regard to the Apex Court judgment in the case of **SAWARNI v. INDER KAUR AND OTEHRS** reported in **(1996) 6 SCC 223**, wherein it is held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. The learned counsel also brought to the notice of this Court paragraph No.14, wherein also similar issue was considered in the case of **JITENDRA SINGH v. STATE OF MADHYA PRADESH AND OTHERS**. The learned counsel also brought to the notice of this Court, paragraph Nos.26 and 27, wherein discussion was made with regard to the principles laid down in the judgment in the case of **SOMNATH BURMAN v. S.P. RAJU AND OTHERS**, wherein it is held that possession can be regarded as a better title against all, except the true and lawful owner.

17. The learned counsel also relied upon the judgment of the Co-ordinate Bench of this Court passed in **R.S.A.No.1462/2014** dated **02.06.2025** and brought to the

notice of this Court, the discussion made in paragraph No.7 that suit is one for declaration of title. The plaintiff, except producing the revenue records, has not produced title deeds. It is a well-settled law that a declaration of title based on the revenue entrees cannot be granted. The learned counsel also brought to the notice of this Court the decision of this Court in the case of **GURUNATH MANOHAR PAVASKAR AND OTHERS v. NAGESH SIDDAPPA NAVALGUND AND OTHERS** reported in **ILR 2008 KAR 1170**, wherein it is held that revenue records do not form a document of title, it merely raise a presumption of possession.

18. The learned counsel for the appellants referring these judgments would contend that these judgments are aptly applicable to the case of hand. There cannot be any declaration based on revenue records. The learned counsel would contend that when there is a sale deed in favour of the plaintiff's father vide sale deed dated 26.01.1980, both the Courts ought not to have dismissed the suit and confirmed the same and the said finding is against the material on record. Hence, this Court has to answer the substantial questions of law in the affirmative.

19. Per contra, the learned counsel for respondent Nos.1(a) to (c) and 2 in his arguments would vehemently contend that the Trial Court in detail discussed the material available on record, both the claim made by the plaintiff and the defendants and particularly in paragraph Nos.10 and 11 discussed the recitals of document Ex.P.7 and also the boundaries. Apart from that, in paragraph Nos.13 and 14 in detail discussed and comes to the conclusion that though there was a sale deed, the same was not acted upon and possession was not delivered and possession is with the defendants and absolutely no overt-acts are putforth before the Court to substantiate that at any point of time the plaintiff was in possession of the suit schedule property. P.W.2 and P.W.3 were examined to speak about the possession of the suit schedule property and their evidence also not supports the case of the plaintiff with regard to the possession and possession is also admitted by P.W.1 that immediately after the sale deed, they were not put in possession, but claims that they are in possession after 1990 and the same is not substantiated. The learned counsel also submits that suit is filed for the relief of

declaration to the extent of 4 acres and the very pleading and evidence of the plaintiff is that he was allotted only 2 acres and hence, he cannot claim a declaration to the whole extent and the same is also taken note of by the Trial court while dismissing the suit. The learned counsel contend that the First Appellate Court also re-assessed both oral and documentary evidence available on record and exercised its power under Order 41 Rule 31 of CPC and there was a claim that there was a partition and in the said mutation, not included the present survey number and only an insertion is made subsequently. Both oral and documentary evidence are considered by the Trial Court and the First Appellate Court and hence, it does not require any interference of this Court and there is no perversity in the finding of both the Trial Court as well as the First Appellate Court.

20. Having heard the respective learned counsel and having re-assessed the material available on record, both oral and documentary evidence, it is settled law that while considering the second appeal, the second Appellate Court need not look into the evidence available on record. However, if any perversity is found in the reasoning of the Trial Court and the

First Appellate Court ignoring the material available on record, then the Court can exercise its discretion invoking Section 100 of CPC. This Court has already framed the substantial questions of law whether the defendants were estopped in law and by record from denying the title of the plaintiff to the suit property, whether the Trial Court and the First Appellate Court could have rejected the suit for declaration and injunction on the mere ground that the plaintiff had not got his name entered into the revenue records unmindful of the fact that entries in the revenue records cannot confer title and whether both the Courts erred in holding that the suit schedule property could not have been sold only by the husband of defendant No.1 as it was a joint family property.

21. Having conscious about the substantial questions of law framed by this Court and considering the material on record, it is not in dispute that there was a sale deed in favour of the plaintiff's father, which was executed on 26.01.1980 and the same was executed by Jula Narasimhaiah and some of the other family members. It is important to note that Ex.P.7 is the sale

deed and there is a recital to the effect that, earlier suit was filed by the father of the plaintiff and there was a decree and execution petition was filed and hence, sale deed was executed. The recital of the document is also clear that consideration was passed with regard to owing the liability by Jula Narasimhaiah and hence, the sale deed is executed. It is also important to note that subsequent to the sale deed, M.R.No.16/1982-83 came into existence. It is also not in the dispute that the same was not given effect by entering the name of the plaintiff's father in the revenue records. The same was not given effect in view of the fact that the property was inamti land. Though there is a recital in the sale deed that possession is delivered, but material clearly discloses that no such possession was delivered. P.W.1 categorically admitted when a suggestion was made to P.W.1 that still the defendants are in possession of the property and cultivating the same, but P.W.1 admits that they are in possession from 1990. This admission takes away the case of the plaintiff with regard to the possession is concerned. Hence, it is clear that possession was not delivered as on the date of the execution of the sale deed.

22. It is also important to note that all the revenue records stands in the name of the defendants throughout. It is also important to note that the plaintiff claims that there was a division in the family and only 2 acres of land was allotted to the plaintiff in the partition taken place in year 1992. It is important to note that based on that partition, got mutated the property in the name of the family of the plaintiff and Ex.P.18 clearly discloses that while mutating the property, which fallen to the share of the plaintiff, not included the present survey number, wherein mentioned only Sy.Nos.91, 82/2, 88, 89 and 108 and the same is based on partition dated 31.08.1998. But in the report, included Sy.No.81 to the extent of 4 acres and allotment of land to the extent of 2 acres to the plaintiff and his brother i.e., 1 acre each. The document Ex.D.5, which is produced before the Court is very clear that when the mutation was made on 29.03.1999 under M.R.No.18/1998-99, only the above five survey numbers are included and not included Sy.No.81 and hence, the very claim in respect of this survey number that the same is allotted in the said partition is also doubtful. It is also important to note that when the document was not effected in

the name of the plaintiff, the same was not challenged and the same attained its finality and till filing of the suit, the same is not questioned.

23. Having considered the materials available on record and also the finding of the Trial Court and the First Appellate Court, it is very clear that the plaintiff is not in possession of the property and though there was a sale deed in the year 1980, the same is not acted upon. When the suit is filed for the relief of declaration and permanent injunction and when there is a clear admission on the part of P.W.1 that they are not in possession of the suit schedule property, ought to have sought for the relief of possession and no such relief is sought. In view of the judgment of the Apex Court in the case of **VASANTHA (DEAD) THROUGH LEGAL REPRESENTATIVE v. RAJALAKSHMI ALIAS RAJAM (DEAD) THROUGH LEGAL REPRESENTATIVES** reported in **(2024) 5 SCC 282**, mere declaration suit without seeking the relief of possession is not maintainable. The Trial Court in paragraph No.14 taken note of with regard to possession is concerned and no RTC is transferred in the name of the plaintiff. During the course of cross-

examination of P.W.1, it is suggested to him that after execution of the sale deed as per Ex.D.7, no mutation, pahani is mutated in the name of the plaintiff and in the year 1982, a mutation in favour of the plaintiff is striked out for which P.W.1 states that he came to know about this fact only two years back. Apart from this, RTC entries as per Ex.D.6 clearly shows that the property stands in the name of the defendants. Even though the plaintiff contended that he is in possession of the suit schedule property, the same is not substantiated by placing any documents on record. Hence, in the absence of any material to show that the plaintiff is in possession of the property and without seeking the relief of possession, the very suit is not maintainable.

24. The First Appellate Court taken note of the documents, which have been relied upon by the plaintiff in paragraph Nos.18 and 19 and re-assessed both oral and documentary evidence and even discussed with regard to subsequent to the partition when the transfer of property in the revenue records is sought, not included the same in the

application. In paragraph No.33, the First Appellate Court made an observation that the suit is filed for the relief of 4 acres, but he was not allotted with 4 acres and when such an observation is made by the Trial Court, an attempt was made before the First Appellate Court for seeking for amendment to the extent of 2 acres by deleting remaining extent, but boundaries are also not corrected. The First Appellate Court also made an observation that the sale deed was not acted upon till the year 1983 and the plaintiff has not taken any steps for challenging the revenue records and hence, comes to the conclusion that even though there was a sale deed and in terms of the sale deed, the parties have not acted upon. When such reasoning is given by the Trial Court and the First Appellate Court, this Court does not find any perversity in the appreciation of both oral and documentary evidence by the Trial Court as well as the First Appellate Court.

25. No doubt, the learned counsel for the appellant relied upon number of documents with regard to the title is concerned and the revenue documents do not confer any title and the same is settled law. Having re-assessed both oral and documentary evidence available on record, though there was a sale deed, the

same is not acted upon and even possession was not delivered and there is a clear admission on the part of P.W.1 that possession was not delivered, but an attempt is made that they are in possession of the property from 1990, but the same is not substantiated by placing any material on record. Hence, it is clear that possession was not with the plaintiff. This Court relied upon the judgment of the Apex Court in the case of **Vasantha** (supra), wherein it is held that the suit for declaration and permanent injunction is not maintainable without seeking the relief of possession. Hence, I do not find any ground to reverse the finding of both the Courts. The substantial questions of law are answered accordingly.

26. In view of the discussions made above, I pass the following:

ORDER

The second appeal is dismissed.

**Sd/-
(H.P. SANDESH)
JUDGE**

MD