



IN THE HIGH COURT OF KARNATAKA,AT DHARWAD

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 2043 OF 2007 (INJ)

BETWEEN:

BETWEEN:

G.B JADEPPA,
SINCE DEAD BY HIS LRS.

1(a) SMT. HANUMAKKA,
W/O LATE SRI G. B. JADEPPA,
AGED ABOUT 69 YEARS,
R/O. NEAR SRIKRISHNA TEMPLE,
PATTANASERAGU, ORUVAI,
HAGARIBOMMANAHALLI,
VIJAYANAGARA DISTRICT - 583 212.

1(b) SMT. RAMALINGAMMA,
D/O. LATE SRI G. B. JADEPPA,
W/O. THIMMAPPA,
AGED ABOUT 48 YEARS,
R/AT #266, HALEOOR,
NEAR SUNKALAMMA TEMPLE,
PATTANASERAGU, ORUVAI,
HAGARIBOMMANAHALLI,
VIJAYANAGARA DISTRICT-583 212.

1(c) Y. MALLIKARJUNA,
S/O. LATE SRI G. B. JADEPPA,
AGED ABOUT 46 YEARS,
R/O. NEAR SRI KRISHNA TEMPLE,
PATTANASERAGU, ORUVAI,
HAGARIBOMMANAHALLI,

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Location:
HIGH COURT
OF
KARNATAKA



VIJAYANAGARA DISTRICT-583 212.

- 1(d) SMT. AMBAMMA,
D/O. LATE SRI G. B. JADEPPA,
W/O SRI DODDASWAMY,
AGED ABOUT 44 YEARS,
R/AT WARD NO. 2,
NEAR OLD SCHOOL M. GANGALAPURA,
METRIKI, SANDUR, BALLARI-583 152.
- 1(e) SMT. GANGAMMA,
D/O. LATE SRI G. B. JADEPPA,
W/O. SRI. NINGAPPA,
AGED ABOUT 42 YEARS,
R/AT. LINGADAHALLI, ANATHAPURA,
SANDUR, BALLARI -583 152.
- 1(f) SMT. ERAMMA,
D/O. LATE SRI. G. B. JADEPPA,
W/O. SHANKARAPPA,
AGED ABOUT 40 YEARS,
R/O. 9TH WARD, NEAR EDURU BASAVANNA TEMPLE,
KURUGODU, HAGARIBOMMANAHALLI,
VIJAYANAGARA DISTRICT - 583 212.
- 1(g) BASAVARAJ G,
S/O. LATE SRI. G. B. JADEPPA,
AGED ABOUT 37 YEARS,
R/O. NEAR SRIKRISHNA TEMPLE,
PATTANASARAGU, ORUVAI,
HAGARIBOMMANAHALLI,
VIJAYANAGARA DISTRICT - 583 212.

...APPELLANTS

(BY SMT V VIDYA IYER, ADVOCATE)

AND:

KURUBARA YADERI SUNKAPPA,
SINCE DEAD BY HIS LRS.



- 1(a) SMT. JADEMMA,
W/O. KODAL GADILINGAPPA,
D/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 49 YEARS,
R/O. SINDIGERI VILLAGE AND POST,
BALLARI TALUK AND DISTRICT - 583 101.
- 1(b) SMT. UMADEVI,
W/O. GANGADHARA,
D/O. LATE K HEDDERI SUNKAPPA,
AGED ABOUT 47 YEARS,
R/O. GONAHALLI VILLAGE AND
HAMPADDEVANAHALLI POST,
HOSAPETE, VIJAYANAGARA DISTRICT-583 201.
- 1(c) HONNUR SWAMY,
S/O. LATE K HEDDERI SUNKAPPA,
AGED ABOUT 45 YEARS,
R/O. PATTANASARAGU VILLAGE
AND ORAVAI POST,
BALLARI TALUK AND DISTRICT - 583 113.
- 1(d) BASAVARAJ,
S/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 39 YEARS,
R/O. PATTANASERAGU VILLAGE
AND ORAVAI POST,
BALLARI TALUK AND DISTRICT-583 113.
- 1(e) VIRUPAKSHI,
S/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 37 YEARS,
R/O. PATTANASERAGU VILLAGE
AND ORAVAI POST,
BALLARI TALUK AND DISTRICT - 583 113.
- 1(f) SMT. PARVATI,
W/O. KURI GAVISIDDAPPA,
D/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 35 YEARS,
R/O NEAR RAMULAMMA TEMPLE,



BANDIHATTI VILLAGE AND POST,
BALLARI TALUK AND DISTRICT - 583 101.

1(g) SHIVA MURTHY,
S/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 33 YEARS,
R/O. PATTANASARAGU VILLAGE
AND ORAVAI POST,
BALLARI TALUK AND DISTRICT - 583 113.

1(h) MANJUNATH,
S/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 31 YEARS,
R/O. PATTANASARAGU VILLAGE
AND ORAVAI POST,
BALLARI TALUK AND DISTRICT - 583 113.

1(i) SMT. PAVITHRA,
D/O. LATE K. HEDDERI SUNKAPPA,
AGED ABOUT 28 YEARS,
R/O/ PATTANASARAGU VILLAGE,
AND ORAVAI POST,
BALLARI TALUK AND DISTRICT - 583 113.

2. UPPARA SESHAPPA,
SINCE DEAD BY HIS LRS.

2(a) SMT. JANAKAMMA,
W/O. LATE SRI UPPARA SESHAPPA,
AGED ABOUT 70 YEARS,
R/O. PATTANASERAGU VILLAGE,
KURUGODU TALUK,
BALLARI DISTRICT - 583 116.

2(b) SMT. LALITHAMMA,
D/O. LATE SRI UPPARA SESHAPPA,
W/O. DEVAPPA,
AGED ABOUT 50 YEARS,
R/O #96,0,0, AADAPUR VILLAGE,
KOPPAL TALUK, KOPPAL DISTRICT - 583 229.



2(c) V. CHIDANANDA,
S/O. LATE SRI UPPARA SESHAPPA,
AGED ABOUT 48 YEARS,
R/O. PATTANASERAGU VILLAGE,
KURUGODU TALUK, BALLARI DISTRICT - 583 116.

2(d) SMT. PARVATHAMMA,
D/O. LATE SRI UPPARA SESHAPPA,
W/O. UPPARA BHIMANNA,
AGED ABOUT 46 YEARS,
R/O. WARD NO. 02, HOUSE NO. 258,
POTHAPPA KATTE, KOLAGALLU, BALLARI-583 102.

2(e) SMT. LAKSHMI,
D/O. LATE SRI UPPARA SESHAPPA,
W/O. BASAVARAJ,
AGED ABOUT 44 YEARS,
R/O. 11TH LINE, WARD NO. 9,
LINGARAJ CAMP GANGAWATI,
KOPPAL DISTRICT - 583 227.

2(f) U. ERANNA,
S/O. LATE SRI UPPARA SESHAPPA,
AGED ABOUT 42 YEARS,
R/O. PATTANASERAGU VILLAGE,
KURUGODU TALUK, BALLARI DISTRICT - 583 116.

2(g) SMT. THAYAMMA,
D/O. LATE SRI UPPARA SESHAPPA,
W/O. SRI RAMANNA,
AGED ABOUT 40 YEARS,
R/O. BANDISUNKAPUR,
KHAIRWADGI, LINGSUGUR,
RAICHUR DISTRICT - 584 125.

...RESPONDENTS

(BY SRI S.G. KADADAKATTI, ADVOCATE FOR R2(a TO g);
R1(a) TO R1(i)- NOTICE SERVED)



THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGEMENT & DECREE 6.7.2007 PASSD IN R.A.NO.62/2005 ON THE FILE OF THE II ADDL. CIVIL JUDGE (DR.DN.), BELLARY, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 16.4.2005 PASSED IN O.S NO. 111/99 ON THE FILED OF THE III ADDL. CIVIL JUDGE (JR. DN), BELLARY.

THIS RSA HAVING BEEN HEARD AND RESERVED ON 16.12.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY AT BENGALURU BENCH, COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

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

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. Being aggrieved by the judgment of the Trial Court in O.S.No.111/1999 dated 16.04.2005 and the judgment of the First Appellate Court in R.A.Nos.62 and 66/2005 dated 06.07.2005, the plaintiff is before this Court in appeal.

3. The factual matrix in the case may be stated as below:



a) The plaintiff contends that he is in lawful possession and enjoyment of the suit schedule property, which is described as the land bearing Sy.No.303A/2A/2A measuring 4 acres out of 7.25 acres situated at Orbhavi Village, Ballari Taluk bounded by land of Kariganur Gangappa on the East, Kanki Jadeppa on the West, Kariganur Erappa and Kanki Jadeppa on the North and the remaining plaintiff's land on the South. He further contended that the suit schedule property is the ancestral property and the name of the plaintiff appears in the record of rights since in the year 1982.

b) Defendant Nos.1 and 2 are residents of the same village and are on inimical terms with the plaintiff. Defendant No.1 is cultivating an extent of 3.25 acres by manipulating the record of rights in collusion with the revenue authorities.



c) The plaintiff alone is in physical possession to the effect of 7.25 acres and the present suit is only in respect of the 4 acres of land in the same.

d) It is alleged that the defendants are claiming rights over the suit schedule property and tried to interfere with the same and therefore, there was a need for filing the present suit.

e) It is stated that Sy.No.303/A2 was totally measuring 13.42 acres and it was the ancestral property of the plaintiff. In the year 1970-71, the plaintiff had borrowed a sum of Rs,3,200/- from P.L.D. Bank, Ballari, by mortgaging 4 acres of the land and for various reasons, he could not repay the loan and therefore, the Deputy Commissioner has auctioned 4 acres of land and distributed to eligible people.

f) The beneficiaries under the said auction did not come forward to purchase it and also the



plaintiff repaid the loan amount of Rs.7,211/- to the Deputy Commissioner and as such, by order dated 10.01.1988 (Ex.P.14) it was reassigned to the plaintiff.

g) The defendants though having no right title or interest over the suit schedule property are interfering in the possession and therefore, they are liable to be restrained by an order of permanent injunction.

4. The defendants appeared and filed written statement denying the plaint averments. The contention of the defendants is as below:

a) Apart from denying the plaint averments, the defendants denied the title of the plaintiff over the suit property. They also took up the contention that since the defendant denies the title, the plaintiff has to go for a suit for declaration of title.



b) It was contended that there is another suit bearing O.S.No.422/1998 filed by one Smt. Thippamma, which is identical to the present suit. It was also submitted that one Kolli Thimmappa and another have filed O.S.No.243/99 in respect of the same property.

5. On the basis of the above contentions, the following issues and additional issues were framed by the Trial Court:

"ISSUES

1. Whether the plaintiff proves that he is in possession of plaint schedule property as on the date of suit?
2. Whether the plaintiff further proves that defendant is interfering with peaceful possession and enjoyment of plaint schedule property by plaintiff?
3. Whether the plaintiff is entitled to the relief sought for?
4. What Order or Decree?

ADDITIONAL ISSUES

1. Whether the plaintiff proves that he has absolute ownership and title to the suit schedule property?



2. Whether Court fee is paid sufficient and Court has pecuniary jurisdiction?"

6. The plaintiff was examined as PW1 and one witness was examined as PW2 and Exs.P1 to P57 were marked in evidence. Defendant was examined as DW1 and three witnesses were examined as DWs.2 to 4. Exs.D1 to D5 were marked in evidence.

7. After hearing the arguments, the Trial Court answered issue Nos.1 and 2 in the 'affirmative' and issue No.3 and additional issue Nos.1 and 2 in the 'negative' and proceeded to dismiss the suit. In other words, the Trial Court dismissed the suit on the ground that plaintiff has failed to prove the title and that the Court fee paid is insufficient.

8. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.62/2005 and the defendant No.1 approached the First Appellate Court in



R.A.No.66/2005. The First Appellate Court framed the following points for consideration:

1. Whether the trial court is erred in coming to the conclusion that, the plaintiff is in possession of suit schedule property and there is an interference by the defendants?
2. Whether the trial court is justified in framing Additional Issue as to the title and ownership in a bare injunction suit?
3. Whether the trial court erred in holding that, the trial court has no pecuniary jurisdiction?
4. Whether the impugned judgment and decree needs to be interfered with?
5. What Order?"

9. After hearing the arguments, the First Appellate Court answered point Nos.1 and 3 in the 'affirmative', point No.2 in the 'negative' and answering point No.4 'partly in the affirmative', dismissed the R.A.No.62/2005 and partly allowed R.A.No.66/2005. However, the dismissal of the suit in O.S.111/1999 was confirmed.



10. Being aggrieved, the plaintiff approached this Court in second appeal. During pendency of this appeal, the appellant died and his legal representatives are brought on record. Similarly, respondent No.1 as well as respondent No.2 also died and their legal representatives are brought on record.

11. At the time of admission, the following substantial question of law was framed by this Court.

“Whether the Courts below had erred in law in dismissing the suit inspite of holding that the plaintiff was in possession of the suit property?”

12. The arguments by learned counsel appearing for the appellants and learned counsel for the respondents were heard.

13. Learned counsel appearing for the appellants would submit that the Trial Court had come to the conclusion that the plaintiff is in possession and enjoyment



of the suit schedule property which measures 4 acres by virtue of the proceedings before the Deputy Commissioner as per Ex.P14. However, the Trial Court had dismissed the suit on the ground that the Court fee paid is not proper and that, it had no pecuniary jurisdiction to entertain the suit. The Trial Court also held that plaintiff had failed to prove his absolute ownership and title over the suit property. It is submitted that the suit filed by the plaintiff was only for injunction based on the possession of the plaintiff. Admittedly, the plaintiff had mortgaged the property to the PLD Bank and the property was brought for auction towards the recovery of the loan amount. The Deputy Commissioner had allotted the lands under Section 77 of the Karnataka Land Reforms Act, 1961 to the people belonging to the oppressed class and distributed the same to the poor. However, none had come forward to receive the said property and therefore, the possession was not given. In the meanwhile, the plaintiff had deposited the entire balance of the loan amount and as such, the Deputy



Commissioner by virtue of the order which is at Ex.P14, assigned the entire land to the plaintiff. Therefore, the plaintiff is in possession and enjoyment of the same.

14. She further contends that the defendants do not have any seldom of rights, title or possession over the suit schedule property and their written statement do not disclose as to in what capacity the defendants are in possession. The defendants have simply produced Ex.D3 and few other revenue records to show that their name appears in the revenue records but it has no basis and as such, the Trial Court as well as the First Appellate Court have erred in holding that the plaintiff is not in possession of the property. It is pointed out by the learned counsel for the appellants that the First Appellate Court though reverses the finding regarding the pecuniary jurisdiction; it holds that revenue proceedings had not been concluded. Therefore, it holds that when the revenue proceedings had not concluded, it cannot be held that the plaintiff is in possession of the property. It is submitted that these



findings of the Trial Court as well as the First Appellate Court are in no way concerned to the possession of the plaintiff for the suit schedule property. Ex.P14-the order of the Deputy Commissioner reverting/reassigning the land to the plaintiff is conclusive and therefore, the effect of Ex.P14 was not considered by the Trial Court as well as the First Appellate Court. Hence, she seeks to decree the suit by setting aside the judgments of the Trial Court and the First Appellate Court.

15. *Per contra*, learned counsel appearing for the respondents submits that the Exs.D3, D4 and D5 clearly show that the name of the defendants were appearing in respect of the suit schedule property. He submits that a suit filed by one Thippamma was also in respect of the suit schedule property and this aspect was admitted by PW1 in the cross-examination. Therefore, the finding in the said suit would be relevant and as such, the case of the plaintiff is doubtful. It is contended that the entry of the name of the defendants in a revenue record is in no way effectively



rebutted by the plaintiff and therefore, the judgment of the First Appellate Court is justifiable.

16. The learned counsel for the respondents/defendants has also placed reliance on the judgment in the case of **T.L. Nagendra Babu v. Manohar Rawal**¹, wherein it was held that *though there was no specific issue on the point, the Court can give a finding on a legal plea taken in the written statement and the Court cannot dispose of the legal plea in a casual manner*. He also relied on the judgment in the case of **Akkamma and others v. Vemavathi and others**², wherein it was held that *in a suit for declaration and injunction, application filed after delay of 26 years, possession is not proved and title is proved; there is no bar in the Specific Relief Act to grant the stand-alone declaratory decree*. He also relied on the judgment in the case of **Anathula Sudhakara v. P. Buchi Reddy (dead) by LRs and others**³, wherein it was held

¹ 2005 (1) KCCR 447

² 2022 (3) KCCR 2273 (SC)

³ (2008) 4 SC 594



that *under Section 100 of CPC, re-examining the questions of fact and going into the questions which were not pleaded is not permissible.* He also relied on the judgment in the case of **Darayas Bamanshah Medhora v. Nariman Bamanshah Medhora**⁴ wherein it was held that *appeal against only one decree is not maintainable when the other decree is not questioned.* Lastly he relied on judgment in the case of **K.H. Eshwarappa v. Rathnamma and others**⁵ where it was held that *in a bare injunction suit against the defendants, despite the title of the property being in dispute, the same requires adjudication and therefore, a suit for injunction is not maintainable.* He also relied on the judgment in the case of **Naganna Dead by LRs Smt. Devamma and others v. Siddarammegowda (since deceased) by LRs and others**⁶ wherein, it was held that *in a suit for title and recovery of possession, the plaintiff must prove their own title through clear and*

⁴ AIR 2002 Gujarat 166

⁵ 2025 (1) KCCR 869

⁶ 2025 INSC 369



convincing evidence and cannot rely on the weakness of the defendant's case.

Analysis and conclusion:

17. Learned counsel for the appellant contended that the entire property bearing Survey No. 303A/2A/2A totally measured 7 acres 25 cents and it was his ancestral property with effect from 1982 and the plaintiff's name was appearing in the record of rights. It was his contention that the defendants are residents of the same village and they are in inimical terms with the plaintiff and the record showed that defendant No.1 is in cultivation to the extent of 3.25 acres. It is his allegation that defendant No. 1 managed to manipulate the entry of his name in the records in collusion with the revenue authorities and in fact, it is the plaintiff who is the cultivator to the extent of 7.25 acres. However, the plaintiff has restricted his claim in respect of 4 acres only. He has further contended that there were changes in the survey numbers from time to time and the



plaintiff had borrowed a loan of Rs.3,200/- by mortgaging 4 acres of the land to the PLD bank, Ballari and since he could not redeem the land, it was brought for sale and then it was purchased by the Deputy Commissioner, Ballari, for distribution of the same to the downtrodden. Since none came forward to purchase it, the Deputy Commissioner, Ballari, reverted the land in favour of the plaintiff in the year 1987-1988 and the land was reassigned to the plaintiff by way of an order since the plaintiff had paid the dues to the Deputy Commissioner. It is contended that the defendants obstructed for the possession and enjoyment of the plaintiff in respect of the said 4 acres of land and as such, he sought for an injunction.

18. In order to prove this aspect, the plaintiff has to establish that where exactly the land measuring 4 acres is situated in the total area measuring 7.25 acres. Obviously, the plaintiff is not seeking any injunction in respect of 3.25 acres which he claims that it belongs to him.



19. The Trial Court had framed an issue in respect of title also since the defendants had denied the title of the plaintiff. In fact, the said issue of ownership over the suit schedule property was a subject matter of another suit, which was filed by Thippamma through the plaintiff. The Trial Court as well as the First Appellate Court have considered the question of possession and the interference by the defendants over the suit schedule property measuring 4 acres. There are some disputes in respect of the record of rights as observed by both the Courts. It is pertinent to note that 4 acres of land out of 7.25 acres was mortgaged and it was in the hands of the PLD Bank and later with the Government and thereafter, it had reverted back to the plaintiff. A perusal of these documents, which are at Exhibit P45, P46, P47 and P48 show that the said 4 acres of land was reverted back to the plaintiff. Obviously, these documents do not mention the boundaries of the said 4 acres of land. This aspect had been observed by a Division Bench of this Court, in Writ Appeal No. 4621/2001,



which was disposed of on 22.03.2005. This Court has also noticed that the plaintiff, while borrowing certain sum of money from the PLD Bank, Ballari has mortgaged 4 acres of land out of 13 acres comprised in Survey No. 303/A2 situated in Orbhavi Village, Ballari taluk as a security and later in pursuance to the Reconveyance Deed executed by the Deputy Commissioner, the land reverted back to the plaintiff. The said reconveyance was quashed by the learned Single Judge, but the same was reversed by the Division Bench of this Court and as such, the reconveyance of the mortgage of property has been established. However, in para 2 and 3 of the Judgment, this Court notices as below:

"2. We have heard the learned Counsel for the parties and perused the material documents appended to the writ appeal. There is a serious controversy between the parties on the question whether the Government re-conveyed the same land which was mortgaged by the appellant. When it is the contention of the appellant that it is so, that claim is disputed by the third respondent. At the time of hearing, it was brought to our notice that the appellant has already



instituted the following two suits in the Civil Court: i) Suit O.S No.111/99 in the Court of the Principal Civil Judge and M.F.C., Bellary, for perpetual injunction, and (ii) Suit O.S No. 422/98 on the file of the same Court for declaration and both the suits are pending adjudication. We are also told that the third respondent herein is a party to both the suits.

3. The above noted controversy which arises out of the pleadings of the parties could very well be for decision of the Civil Court on the basis of the evidence that may be adduced by the parties. For the limited purpose of deciding this appeal suffice it to state that it is not within the legitimate power of this Court under Article 226 of the Constitution to pronounce upon the validity of Re-Conveyance Deed. That could be done only by a competent Civil Court. Therefore, that part of the order of the learned Single Judge quashing Annexure"F" cannot be sustained, and accordingly, we set aside the part of the order of the learned Single Judge insofar as he has quashed Annexure "F" dated 16.01.1988. However, we have no good reason to interfere with the order of the learned Single Judge insofar as he has quashed Annexure "G", the order of the Tahsildar dated 04.11.1988. All the contentions raised by the parties in this proceedings with regard to the question whether the same land which was mortgaged by the



appellant in favour of the P.L.D. Bank while borrowing loan has been reconveyed under Annexure "F" dated 16.1.1988, are left open to be agitated before the Civil Court."

This observation clearly show the real controversy between the parties.

20. Now the question is, *whether the 4 acres of the land which was reconveyed by the Deputy Commissioner in favour of the plaintiff is identifiable and the possession has been established.* Obviously, the present suit is only for injunction and a question of title is not involved. Though the Trial Court had framed an issue regarding the title, the First Appellate Court has rightly considered this aspect and held that the issue regarding title could not have been framed by the Trial Court when another suit in respect of the title is pending. There cannot be any qualm about this finding of the First Appellate Court. It is worth to note that in a suit for injunction, the pleadings in respect of the title to the property are not available. The parties had not adduced the



evidence in respect of the title. But only such of the documents pertaining to the title which would *prima facie* show the possession are produced. Therefore, framing an issue at the fag end of the trial, at the time of judgment is not proper. On this count also, when the pleadings are only in respect of injunction, an issue framed and decided would create complications, as such issue would be bereft of any pleadings of the parties. Therefore, finding of the First Appellate Court in respect of an additional issue framed by the Trial Court concerning the title cannot be faulted with.

21. Insofar as the possession is concerned, in para 21 of the judgment, the First Appellate Court observes that though PW1 had stated that record of rights is entered in the name of the defendants and he had questioned the same through application preferred before the Tahsildar, in cross-examination he had stated that he has given 1.46 acres to Sheshappa through an agreement and 6.71 acres went to Hanumantappa and the remaining land was given by Basappa to the plaintiff. The First Appellate Court



observes that there have been transactions by the plaintiff and it concerns to 13.42 acres. Therefore, it observes that the internal transactions between the parties are not properly authenticated through reliable document so as to confirm the possession with specific boundaries. Hence, it holds that the possession of the plaintiff over the property measuring 4 acres in the said survey number is not ascertainable.

22. The perusal of the documents would show that the survey sketches are not available in respect of the 4 acres of land which is claimed by the plaintiff. Admittedly, there are transactions between the parties in respect of 13.42 acres and it is evident that the bifurcation of these portions which were alienated are not available. In other words, out of 13.42 acres, there is no records to show how 7.25 acres came in the hands of the plaintiff and out of it he had mortgaged only 4 acres in which portion of 7.25 acres is also not available. The mortgage and reconveyance deeds show that 4 acres out of 7.25 acres was the subject matter



and it does not specify the boundary. If that is so, the reconveyance remains to be a paper re-conveyance and therefore, the identification of the 4 acres in the suit survey number should have been established by the plaintiff. It is not known why the plaintiff is seeking the injunction only in respect of 4 acres leaving out 3.25 acres. The plaintiff has not disclosed as to why 3.25 acres is not in dispute and the plaint is silent in respect of the remaining portions of the property which totally measures 13.42 acres.

23. Be that as it may, the flow of title to the plaintiff from his ancestors is also not available on record. Though the question of title is not involved in the present suit, when the plaintiff asserts that the land had flowed to him from his ancestors, the flow of title was coupled with a possession is also to be established. Therefore, when the possession of 13.42 acres and later it reduced to 7.25 acres and now the claim is only in respect of 4 acres has not been properly explained by the plaintiff in the plaint, this aspect has been considered by both the Courts. It is also pertinent to note



that the observations of this Court in the writ appeal show that the identity of the four acres of land is in dispute. Consequently, unless the possession over the four acres of land is established with proper documents, it is not possible for any Court to only rely on the revenue records and presume a possession of the plaintiff.

24. It should be borne in mind that revenue records if they are kept in due course of business by the Revenue Department, attain the character of an evidence showing the possession of the property. But there have been disputes between the parties and certain entries have also been made without following the due procedure. In that circumstance, the revenue entries cannot be documents which really depict the possession over the property. In fact, this aspect was considered by the Trial Court. It may be noted that the disputes in respect of the revenue entries cannot be a ground to ascertain the possession. They would only aid the Court in ascertaining the possession. It seems the plaintiff based on the documents and the revenue



entries wants to assert his possession. However, the revenue entries though show that plaintiff was reconveyed with 4 acres by the Deputy Commissioner, they failed to show where exactly the 4 acres of land is situated in the total extent of 7.25 acres or 13.42 acres. The survey sketches which are available do not specify the 4 acres of land over which the plaintiff is asserting possession.

25. Under these circumstances, there being several transactions in respect of the suit survey number between the parties and there being several bifurcations in the revenue records without there being a survey sketch in that regard, it is not possible to hold that the plaintiff is in possession. Obviously, the reliance of the plaintiff is on several mutation entries and documents which are not chronologically depicted. Under these circumstances, a mere suit for injunction without there being any ascertainment of flow of title and the corresponding revenue entry is not sustainable.



26. Therefore, this Court does not find any reason to hold that the Trial Court as well as the First Appellate Court had erred in holding that the possession of the plaintiff was not established. It is pertinent to note though the trial Court holds that the legal possession of 4 acres is shown, there are revenue disputes and therefore, injunction cannot be granted. Of course, the said finding was not sustainable which has been rectified by the First Appellate Court. First Appellate Court notices that though the revenue entries show 4 acres of land in the name of the plaintiff, the location of the said 4 acres of land is not established and therefore, it is not possible to grant any injunction. In other words, the substantial question of law is to be read as if it is pertaining to the identification of the property. The First Appellate Court has nowhere held that the plaintiff was in possession of the property. Obviously, the point No.1 and 3 framed by the First Appellate Court has been answered in the affirmative to mean that the trial Court had erred in holding that the plaintiff is in possession of the property.



27. Therefore, this Court do not find any merit in the present appeal and as such, the same is hereby dismissed.

Sd/-
(C M JOSHI)
JUDGE

tsn*

List No.: 19 Sl No.: 2