



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.679 OF 2020 (DEC/INJ)

BETWEEN:

SRI GURUMALLAPPA
AGED ABOUT 48 YEARS
S/O VEERABHADRA
R/A BASAVANATHUR VILLAGE
KUSHALNAGAR HOBLI
SOMWARPET TALUK,
KODAGU DISTRICT-571 234.

...APPELLANT

(BY SRI. DILIP KUMAR, ADVOCATE)

AND:

1. SMT. C M KECHAMMA
AGED ABOUT 71 YEARS
W/O LATE C P MADAPPA
2. P V GAVIKUMARI
AGED ABOUT 45 YEARS
D/O LATE C P MADAPPA
W/O K S VISHWANATHA
RESIDING AT CONVENT BANE,
CHOWDLU VILLAGE AND POST,
SOMAWARPETE TALUK,
KODAGU DISTRICT – 571 236.
3. C M HEMANTH
AGED ABOUT 43 YEARS
S/O LATE C P MADAPPA
4. C M JAGADISH
AGED ABOUT 40 YEARS

Digitally
signed by
MAHATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



S/O LATE C P MADAPPA

RESPONDENT NOS.1, 3 AND 4 ARE
RESIDING AT SIGEHOSUR VILLAGE,
KUSHALNAGAR HOBLI,
SOMAWARAPETE TALUK,
KODAGU DISTRICT – 571 234.

5. GOVINDA @ GOVINDAPPA
SINCE DECEASED
AGED ABOUT 85 YEARS
S/O BORAMMA,
RESIDING AT SIGEHOSUR VILLAGE,
KUSHALNAGAR HOBLI,
SOMAWARAPETE TALUK,
KODAGU DISTRICT.

(DECEASED DURING PENDENCY
OF O.S.No.93/2015 LEAVING THE APPELLANT
AS THE LR VIDE REG. WILL DATED 16.08.2010)

...RESPONDENTS

(BY SRI A.MADHUSUDHAN RAO, ADVOCATE FOR R1 TO R4)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE
DATED 18.12.2019 PASSED IN R.A.NO.21/2019 ON THE FILE
OF THE PRINCIPAL DISTRICT JUDGE, KODAGU, MADIKERI,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 25.03.2019 PASSED IN OS.NO.93/2015
ON THE FILE OF THE SENIOR CIVIL JUDGE, SOMAWARAPETE.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

Heard Sri Dilip Kumar, learned counsel for the appellant and Sri A. Madhusudhan Rao, learned counsel for respondent Nos.1 to 4.

2. Second appeal is by the defendant No.2 challenging decreeing of the suit filed by the plaintiffs in O.S.No.93/2015, confirmed by the First Appellate Court in R.A.No.21/2019.

3. Operative portion of the order of the Trial Court reads as under:

"It is ordered and decreed that the suit is decreed with cost.

It is further ordered and decreed that it is declared that the plaintiffs are the absolute owners of suit schedule property.

It is further ordered and decreed that it is further declared that the sale deed dated 31-12-2014 registered as document No.SMP-1-02503/2014-15 and will deed dated 16-8-2010 bearing No.46/2010-11 are null and void and not binding on the plaintiffs.

It is further ordered and decreed that the defendant, his agents and claiming through or under him are hereby restrained from interfering of the plaintiffs' peaceful possession and enjoyment over the suit land by way of permanent injunction."



4. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

5. A suit for declaration and permanent injunction came to be filed in respect of the following property (hereinafter referred to as "suit property"):

"All that piece and parcel of the property bearing Sy.No.1/34 measuring to an extent of 2.00 acres situate at Sigehosur Village, Kushalnagar Hobli, Somwarpet Taluk, Kodagu District, bounded on the East: by land in Sy.No.1/3(Eshwara's property): West: by land in Sy.No.1/33; North: by stream and land in Sy.No.1/31; and South:by land in Sy.No.1/35."

6. It contended that husband of plaintiff No.1 and father of the plaintiff Nos.2 to 4 purchased the suit property under Ex.P1 sale deed. Vendors of the plaintiffs got the suit property through sale deed executed by Lakyappa in favour of Venkataramana Shetty. Vendors of the father of plaintiffs are the wife and children of said Venkatramana Shetty. Lakyappa purchased the property from Boramma who was granted the land by the Government.



7. Thus, plaintiffs claimed that they are the absolute owners in respect of the suit property. No doubt the earlier tracing of the title is not pleaded in the plaint.

8. First defendant being the son of Boramma executed the sale deed in favour of defendant No.2 based on the title possessed by Boramma, which is granted by the Government.

9. When there was an interference with the plaintiffs peaceful possession and enjoyment of suit property, suit got necessitated.

10. Suit on contest came to be decreed as referred to supra.

11. Being aggrieved by the same, second defendant filed an appeal before the First Appellate Court in R.A.No.21/2019.

12. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and dismissed the appeal of the second defendant and confirmed the judgment of the Trial Court and also dismissed the application filed by the plaintiffs to place additional evidence on record.



13. Both the Courts took into consideration the probative value of the revenue proceedings with regard to the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 which is marked before the Trial Court vide Ex.D34 and thereafter suit is decreed.

14. Being further aggrieved by the same, defendant No.2 has preferred the present appeal on the following grounds and substantial questions of law:

- *That the impugned Judgments and decree is perverse, arbitrary and capricious and the same is untenable in the eye of the law and is liable to be set aside.*
- *It is submitted that the Courts below erred in not appreciating that the suit filed by the plaintiffs/respondents is not maintainable either on law or on facts and the same is liable to be dismissed.*
- *It is submitted that the Courts below erred in not appreciating that in a suit filed by the plaintiffs for declaration it is necessary for the plaintiffs to prove their case by cogent evidence, including documentary evidence, by proving the clear transfer of title and that the suit for declaration cannot be decreed on the basis of any lacuna in the case of the defendants or by any ineffective*



presentation in his case. It is submitted that the Courts below failed to appreciate that the fundamental duty of the court is to render justice to the parties by the correct and proper application of the laws moreso in cases where the defendant is from rural backgrounds without knowing the intricacies of law and coming from economically weaker and backward communities has limited resources to obtain proper assistance.

- *It is submitted that the Courts below erred in not appreciating that in a suit for declaration and permanent injunction filed by the plaintiffs claiming to be in possession of the schedule property on the basis of an alleged sale deed executed in favour of their vendors, Kamala and M.V. Subramani Shetty, from whom the plaintiffs claim to have purchased the schedule property, the claim of possession is based on the transfer of title and that the same must be proved to have been validly made by necessary cogent evidence of the same which is not available in the records produced by the plaintiffs in the Courts below.*
- *It is submitted that the Courts below erred in not appreciating that the plaintiffs claim to have purchased the suit schedule property from Smt.Kamala and Sri. M. V. Subramani Shetty, but the plaintiffs have not proven that their vendors had any valid title or possession of the suit schedule property.*



- *It is submitted that the Courts below erred in not appreciating that the said alleged sale deed allegedly executed by Smt. Kamala and M.V. Subramani Shetty in favour of the plaintiff's predecessor is invalid and is not binding on this defendant and the said sale deed is created just to deprive the rights of the defendants. It is submitted that the Court below erred in not appreciating that the alleged transfer of title from the mother of the defendant No. 1 and defendant No. 1 is a sham transaction and has no sanctity or validity in the eye of law and the said document was never acted upon and conferred no right, title, interest or possession over the schedule property and the alleged conveyance being illegal in law was not acted upon and the possession of the schedule property always was with the defendant No. 1 and his mother until it was conveyed to defendant No. 2/appellant herein. It is submitted that the Courts below erred in not appreciating that the suit for declaration is not maintainable in law without joining all the proper and necessary parties to the suit which include the alleged vendors of the plaintiffs predecessor, and that the suit had to be dismissed also on the ground of non-joinder of necessary parties.*
- *It is submitted that the Courts below erred in not appreciating that Smt. Boramma, the mother of the defendant no. 1 belonging to the Dombara Caste, a Scheduled Caste, was granted the suit*



schedule property bearing Sy. No.1/34 measuring to an extent of 2.00 acres situated at Shigehosuru Village, Kushalnagar Hobli, Somawarapete Taluk by way of a grant in the year 1968 under the Coorg Land Revenue Regulations

- *It is submitted that the Courts below erred in failing to apply the law with respect to the issue of caste certificates in respect of persons belonging to the Schedule Caste and the mandatory procedure for variation/cancellation of the same. It is submitted that the Courts below has been misled regarding the validity of the Schedule Caste Certificate issued to the defendant No. I who belongs to the Dombara community by the authorized authority in the prescribed format. It is submitted that the Courts below erred in not appreciating that the alleged challenge the said certificate is not as per the mandatory requirement of law as per statute and as has been mandated by catena of decisions of the Hon'ble Apex Court which have clearly laid down the mandatory procedure and process to deal with challenges to Caste Certificates issued to Schedule Castes. It is submitted that the Courts below erred in not appreciating that it is a rule of law that when the statutory provision prescribes a particular procedure for a particular process like challenge to a Caste Certificate issued to Schedule Caste persons the said statutory procedure must be followed and only the authority prescribed*



therein can adjudicate the same. It is submitted that the Courts below erred in not appreciating that the Caste Certificate issued to the defendant No.1 as belonging to the Dombara Caste, a Schedule Caste has not been set aside or cancelled by the appropriate authority that is the statutory authority authorized to do so by following the due process of law.

- *It is submitted that the Courts below erred in not appreciating that when at an undisputed point and even in the year 1980 the defendant No. 1 was held to belong to the Dombara Caste, a Schedule Caste, the same could not have been varied to a different caste by a process or authority not authorized under law. It is submitted that the Courts below erred in not appreciating that a certificate issued by the proper authority can only be set aside under the prescribed mandatory provisions and by the prescribed authority only. It is submitted that the Courts below erred in not appreciating that the Caste Certificate of defendant No. 1 as belonging to Dombara Caste, a Schedule Caste is issued by the proper authority in the prescribed form as can be seen even in Ex. P-4 produced by the plaintiffs themselves. It is submitted that the Courts below erred in not appreciating that no certificate cancelling the same has been issued by the authority mandated under law after following the prescribed mandatory procedure. It is submitted that the*



Courts below erred in not appreciating that in the absence of a proper cancellation by the prescribed authority following the mandated procedure the Caste Certificate of defendant No. 1 as belonging to Dombara Caste, a Schedule Caste is valid. It is submitted that the Courts below erred in not appreciating that the safeguards and procedures with respect to Caste Certificates have been mandated in law in order to prevent manipulations by influential and vested interests from depriving the poor and socially backward persons by concoction of false Caste Certificates.

- *It is submitted that the Courts below erred in not appreciating that the plaintiffs have failed to prove that the said Smt. Boramma and her son, the defendant no.1 sold the schedule property by way of a valid transfer to one Smt. Kamala and M.V.Subramani Shetty or that the alleged conveys was ever acted upon by the parties or that Smt. Kamala and M.V. Subramani Shetty were ever in possession of the suit schedule property at any point of time. It is submitted that the Courts below erred in not appreciating that the revenue records stood in the name of Smt. Boramma and later her son and later mutated into the name of the defendant No. 2 who has purchased the same by way of a registered sale deed numbered as document No. SMP/1/02503/2014-15, dated 31.12.2014 which shows that neither the plaintiffs nor alleged vendors were ever in possession of the*



suit schedule property. It is submitted that the RTC and revenue records of the suit schedule property stand in the name of the defendant No.2/appellant herein. It is submitted that the Courts below erred in not appreciating that since the date of his purchase the defendant No.2/appellant is in possession and enjoyment of the suit schedule property and is cultivating the agricultural land by growing crops therein and he has also put up a small house/storehouse in the schedule property to facilitate agricultural operations and store agricultural implements and produce. It is submitted that the Court below erred in not appreciating that the tax paid receipts stand in the name of the defendant/appellant herein who has paid the tax on the schedule property to the government. It is submitted that the Courts below erred in not appreciating that the defendant No. 2/appellant herein had clear title and possession of the suit schedule property and that he has even obtained agricultural loan from the PLD bank by pledging the suit schedule property and his title and possession has not been rebutted by any cogent evidence of the plaintiffs.

- *It is submitted that the Courts below failed to appreciate that even though it has held that Boramina has been granted the suit schedule property by the government under the provision of the Coorg Land Grant Rules the transfer of title from the said Boramma to the alleged purchasers*



Smt. Kamala and M.V. Subramani Shetty has not been properly pleaded nor has the plaintiff led evidence of the same. It is submitted that the Courts below erred in not appreciating that the claim was of possession being one through acquisition of title the same was fatal to the case of the plaintiffs and the suit in the court below was liable to be dismissed. It is submitted that the Courts below erred in not appreciating that there was no valid transfer of title or possession of the suit schedule property to Smt. Kamala and M. V. Subramani Shetty and the said Smt. Kamala and M.V. Subramani Shetty had no right, title, interest of the schedule property at any point of time. It is submitted that the said Smt. Kamala and M.V. Subramani Shetty were never in possession of the suit schedule property at any of time and the possession always remind in the hands of Gowramma and her son Govinda (since deceased) until the same was transferred to the defendant No. 2/Appellants.

- *It is submitted that the Courts below erred in not appreciating that in view of the fact that the Plaintiffs claim to be the owners of the suit schedule property without disclosing how they obtained valid ownership, title and possession of the said land the suit for declaration and injunction was not maintainable as the Plaintiffs had failed to plead his lawful title and possession to the suit schedule property or to prove the*



same. It is submitted that the Courts below erred in not appreciating that the plaintiffs have intentionally suppressed material facts and has deliberately been vague in their pleadings of how they have obtained valid title and lawful possession of the suit schedule property. It is submitted that the Courts below erred in not appreciating that the Plaintiff was relying on concocted and fictitious documents fraudulently obtained to file this suit and hence he has not furnished the necessary and exact pleadings regarding his acquisition of the title and lawful possession to the suit schedule property. It is submitted that the Courts below erred in not appreciating that this is being done to intentionally mislead the Court and obtain favourable orders by deliberately suppressing the facts that the suit schedule property is in the lawful possession of the Defendant No.2/Appellant herein who has constructed a store house in the suit schedule property and are cultivating the suit schedule property. It is submitted that the Courts below erred in not appreciating that the Defendants are in occupation and are cultivating the suit land uninterruptedly to this day. It is submitted that the Courts below erred in not appreciating that the transfer of title and possession from defendant No.1 to defendant No.2 is by way of a valid conveyance and the defendant No. 2 has been put in actual physical possession of the property and



the revenue records of the suit schedule property have been mutated into the name of the name of the defendant No. 2/Appellant herein.

- *It is submitted that the Courts below erred in not appreciating that the Plaintiffs have no right, title or interest in the suit schedule property and there is no lawful transfer of title from the original owner Boramma or her son late Govinda, (since deceased) to C.P. Madappa the predecessor of the Plaintiffs/respondents herein. It is submitted that the Courts below erred in not appreciating that the claim of the Plaintiffs is based upon concocted and fraudulent documents which confer no right, title or interest in the suit schedule property to the Plaintiffs. That the Plaintiffs have on the basis of the fraudulent and concocted documents misled the Court as to the validity and legality of the alleged transfer of the suit schedule property to the plaintiffs and the court below has grievously heard in failing to observe that the plaintiffs have failed to prove transfer of valid title or possession to them in a manner required under law. It is submitted that the Courts below erred in not appreciating that by fraudulent concoction and misrepresentation, the Plaintiffs are seeking to dispossess the Defendants/appellant from the suit schedule property where he has built a store house on the suit schedule premises and along with his family cultivating the agricultural lands therein.*



- *It is submitted that the Courts below erred in not appreciating that Ex.P-1, the alleged sale deed allegedly executed by Smt. Kamala and M. V. Subramani Shetty in favour of C.P. Madappa in the year 1971 is not valid in the eye of law and confers no right, title, interest in the suit schedule property to the plaintiffs nor do the plaintiffs obtain possession of the suit schedule property by virtue of the same. It is submitted that the Courts below erred in not appreciating that the so called sale deed, Ex. P-1, allegedly executed by Smt. Kamala and M.V. Subramani Shetty in favour of C.P. Madappa in the year 1971 is without any preexisting right to Smt. Kamala and M.V. Subramani Shetty and the plaintiffs cannot claim on the basis of alleged sale deed which confers no rights on the plaintiffs and which is not binding on the defendant/appellant herein.*
- *It is submitted that the Courts below erred in not appreciating that the plaintiffs/respondents have deliberately suppressed material facts and have made vague pleadings to mislead the court to obtain favourable orders by manipulating the process of law and have approached the court with unclean hands and are not entitled to any reliefs as prayed for in the suit. It is submitted that the plaintiffs being influential and powerful are seeking to abuse the process of law and mislead the courts and the court below erred in not appreciating the same and has been misled in*



applying the law and has shifted the burden on the defendants to prove their case.

- *It is submitted that the Courts below erred in not appreciating that the alleged sale deed allegedly executed by Smt. Kamala and M.V. Subramani Shetty in favour of C.P. Madappa in the year 1971, Ex. P-1, has been created which is not binding on this defendant and the suit for declaration and injunction is not maintainable merely on the basis of the alleged sale deed, Ex.P-1, and has to be dismissed at the threshold. It is submitted that the Court below erred in not appreciating that the suit is bad for non-joinder of all the necessary parties.*
- *It is submitted that the Courts below erred in not appreciating that the suit for declaration and injunction is not maintainable as the plaintiffs have no right, title or interest in the schedule property and they are not in possession and enjoyment of the suit schedule property at any point of time and the relief sought in the suit cannot be granted. It is submitted that the Court below erred in not properly appreciating the pleadings and evidence on record and has by strange and perverse reasoning laboured to uphold the case of the plaintiffs and disregard the evidence and case of the defendants.*
- *The Trial Courts have misunderstood the fundamental principles governing the grant of*



declaration and permanent injunction and the law relating to the grant of agricultural land, and also the law applicable to the issue and cancellation of schedule caste certificates by the statutory authorities and has grievously erred in applying the applicable law to the case. It is submitted that the Courts below erred in not appreciating the fundamental requirements of law required to interpret the law applicable the facts of the case and by strange convoluted reasoning unknown to law decreed the suit of the plaintiffs.

- *The reasoning of the courts below is unsupported by the facts of the case and is impermissible in the eye of the law. It is submitted that no issue was framed or evidence led to support the conclusion that the alleged sale deed Ex. P-1, was a valid document and the Trial Courts has misled itself both with respect to facts and law and blindly supported the case of the plaintiffs even in the absence of pleadings, issue or evidence regarding the same.*
- *It is submitted that the Courts below by an erroneous interpretation of law and misreading of evidence erroneously held that the plaintiffs are in possession of the suit schedule property by virtue of the alleged sale deed Ex.P-1, and by wrongly casting the onus and burden on the defendant No. 2 to prove possession erroneously held that the defendant No. 2 has not proved his possession over the suit land. It is submitted that the Court*



below by an erroneous interpretation of law and without any evidence erroneously held that the plaintiffs have sufficiently proved to the satisfaction of the Court that the plaintiffs are owners of the suit schedule properties and that the sale deed of the defendant No. 2 dated 31.12.2014 and will dated 16.08.2010 are null and void. It is submitted that the Courts below erred in not appreciating that even the prayer in this regard cannot be granted when the plaintiff has not sought cancellation of the sale deed nor paid proper court fee for the same. It is submitted that the said finding is without basis, unsupported by the evidence in the case and is untenable in the eye of law. It is submitted that the Courts below erred in not appreciating that the plaintiffs are not entitled to any right, title or interest in the suit schedule properties even under Ex. P-1. It is submitted that the Courts below erred in not appreciating that the deed Ex. P-1, is not binding on the appellant and the court below has not read or appreciated the documentary evidence placed on record and has failed to apply the law applicable to the case.

- *It is submitted that the courts below has not framed proper issues regarding the nature of the suit schedule property. That the courts below has not framed proper issues regarding the right, title and interest of the persons who have executed the sale deed Ex. P-1, and the rights of the plaintiffs*



therein and has erred in adjudicating the claims in the suit. It is submitted that the courts below has clubbed all the issues and the reasons are contrary to one another which is against the provisions of C.P.C. It is submitted that the courts below has erred in formulating the points at issue in the suit and has erred in the appreciation of the facts and the law applicable to the facts and circumstances of the case.

- *The Courts below failed to appreciate that the alleged sale deed Ex.P-1, is a void document insofar as the defendants/appellant is concerned. It is submitted that the court below failed to frame necessary issues in this regard and has not considered the facts and the law regarding the same and has erred in this regard.*
- *The Courts below failed to appreciate that the suit schedule property was always under the possession of the defendant No.1 who is cultivating the said agricultural land during his lifetime until its conveyance to the defendant No. 2 by way of valid sale deed and that that the plaintiffs were never in possession of the same in any status whatsoever at any point of time. It is submitted that the defendant No. 1 died during pendency of O.S.93/2015 and the defendant No.2/appellant is the only legal heir as per the registered Will dated 16.08.2010. It is submitted that the courts below failed to appreciate the significance of the same and that no other LRs of*



defendant No 1 was sought to be impleaded which conclusively shows the validity of the registered Will dated 16.08.2010. The courts below has ignored the same and the Court below failed to appreciate the settled position of law regarding the impleading of legal representative and has grievously erred in decreeing the suit of the plaintiff.

- *The Courts below failed to appreciate that the appellant who is economically weak and not influential is being harassed to knock off her property by intimidation and clever schemes concocted through misrepresentation and abuse of the process of the Courts.*

- *Substantial Questions of Law.*
 - (a) *Whether the Courts below could have decreed the suit for declaration in the absence of pleadings regarding the flow of title?*

 - (b) *Whether the Courts below could have granted decree of declaration and injunction when the date of acquisition of title and possession is not forthcoming in the pleadings.*

 - (c) *Whether the Courts below was correct in law to accept the contentions of the plaintiff inspite of*



*many loopholes and inconsistencies
by a misinterpretation of the settled
propositions of law?"*

15. Sri Dilip Kumar, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that the sale in favour of Lakyappa by Boramma itself did not convey any right, title or interest in Lakyappa as the sale is earlier to the grant order itself. Therefore, no right, title or interest has flown under the sale deed executed by Lakyappa in favour of Venkatramana Shetty and vendors of the father of the plaintiffs and thus, Boramma retained the right, title and interest in respect of the suit property after the grant which was succeeded by the first defendant who in turn sold the property by a registered sale deed in favour of second defendant.

16. Thus, it is the second defendant who is the owner of the property and there cannot be declaration and injunction against the true owner and thus sought for admitting the appeal.

17. He would further contend that since the title is not raised in the plaint, defendant did not have a chance to meet



the pleadings of the plaint with regard to the title. Therefore, for want of pleadings, the material evidence placed on record cannot be looked into by the Trial Court.

18. Therefore, judgment recorded by the Trial Court as well as the First Appellate Court holding that plaintiffs are the owners of the property suffers from legal infirmity and thus, sought for admitting the appeal.

19. He would further contend that the documents available in Ex.D34 (c) would go to show that after the remand of the matter by this Court in the writ proceedings with regard to the validity of the grant in favour of Boramma and the alienation made in favour of Lakyappa, the matter was referred to Assistant Commissioner. Assistant Commissioner has passed an order stating that the alienation made by Boramma is null void and void, and ordered that the applicant/defendant No.1 who is the legal heir of grantee – Boramma be put in possession of the suit property.

20. Therefore, counsel for appellant would argue that decreeing of the suit by both the Courts has resulted in miscarriage of justice and sought for admitting the appeal.



21. Per contra, Sri A. Madhusudhan Rao, learned counsel for the contesting respondents would support the impugned judgments by contending that the title is raised by placing necessary documentary evidence on record and the defendant has contested the validity of those documents by cross examining the plaintiffs witness and therefore for want of pleadings, plaintiffs cannot be non-suited.

22. He would further contend that when the parties have joined the issues knowing-fully well of each other's case, the plea of want of pleadings would get itself into insignificance and therefore, the same cannot be a ground for admitting the appeal.

23. Sri Rao would also contend that the title that has been continuously flown from Boramma to plaintiffs father has been established by placing necessary documentary evidence on record. Therefore, the contentions urged on behalf of the defendant that Boramma's son had the title to execute the sale deed in the respect of the suit property in favour of defendant No.2 cannot be countenanced in law as Boramma herself has parted away all right, title and interest in the suit property in favour of Lakyappa.



24. Therefore, it is the argument of Sri Rao that the decreeing of the suit is just and proper and thus sought for dismissal of the appeal.

25. Having heard the arguments of both sides, this Court perused the material on record meticulously.

26. On such perusal of the material on record, the common vendor of the plaintiffs predecessors-in-title and the defendants predecessors-in-title is none other than Boramma. Boramma was granted the land by the Government.

27. According to defendants, sale deed in favour of Lakyappa by Boramma was much before the grant order itself. No material particulars are forthcoming in this regard except the saguvali chit which has been placed on record.

28. Be it what it may, there is a sale that was executed by Boramma in favour of Lakyappa which was not challenged by Boramma in her lifetime. Therefore, the vendor of the second defendant being the son of Boramma did not have any right to challenge the alienation made by Boramma which was not challenged by her in her lifetime.

29. Lakyappa in turn sold the property in favour of Venkatramana Shetty. Venkatramana Shetty during his lifetime



enjoyed the property as the absolute owner of the property and after his death, his wife and children have sold the property in favour of the father of the plaintiff.

30. Thus, there is a tracing of title though not pleaded in the plaint. What will be the effect of the variance between pleading and proof is no longer *res integra*.

31. Hon'ble Apex Court in the case of ***Ram Sarup Gupta (Dead) by LRS vs Bishun Narain Inter College and others*** reported in **1987 AIR SC 1242** has clearly ruled that when once both the parties place their respective evidence on record and join the issues, want of pleadings would get into insignificance. Want of pleadings cannot be a ground to non-suit a particular party to suit.

32. Therefore, the contentions urged on behalf of the appellant that plaintiffs did not plead the title in their suit and therefore, decreeing the suit of the plaintiffs cannot be upheld in the law, cannot be countenanced.

33. The next question that is canvassed before this Court for admission of the appeal that the proceedings initiated by the revenue authorities in respect of the alienation made by Borama and the writ proceedings before this Court.



34. Admittedly, there is an order whereby the matter was relegated to Assistant Commissioner. Assistant Commissioner thereafter heard the arguments of the parties and dismissed the application filed by the son of Booramma.

35. Later on he appealed against the said order of the Assistant Commissioner before the Deputy Commissioner and Deputy Commissioner dismissed the proceedings and the order passed by the Assistant Commissioner was upheld. These aspects are reflected in Ex.D.34.

36. Therefore, the ground that no title had flown in favour of Lakyappa by virtue of the provisions of PTCL Act cannot be a ground to admit the appeal for further consideration.

37. The second defendant has purchased the property from son of Boramma. When Boramma had already parted away her right, title and interest in favour of Lakyappa, nothing remained for her son to convey the property in favour of defendant No.2.

38. Moreover, suit is filed by the plaintiffs seeking relief of declaration and injunction. Defendant No.2 did not choose to



get his title adjudicated by filing necessary counter claim and payment of Court fee.

39. In a suit filed by the plaintiffs, defendant cannot urge that his contra title needs to be adjudicated in the absence of counter claim and payment of Court fee.

40. Thus, viewed from any angle, this Court does not find any good grounds to admit the appeal on the aforesaid substantial questions of law.

41. Accordingly, the following:

ORDER

- (i) Admission is declined.
- (ii) Appeal is dismissed.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR
List No.: 1 Sl No.: 76