



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 1182 OF 2018 (POS)

BETWEEN:

SRI. V.C. SHEKAR,
S/O VEERABHADRAIAH,
R/AT NO.301, 8TH CROSS,
FIRST MAIN, VIJAYANAGAR,
BENGALURU - 560 040.

...APPELLANT

(BY SRI. G. BALAKRISHNA SHASTRY., ADVOCATE)

AND:

1. SRI. S.P. GURURAJAN,
S/O S.P. PARAMSHWAIAH,
SINCE DEAD BY LR'S

1(a). BHARATHI,
W/O LATE GURU RAJAN,
AGED ABOUT 61 YEARS,

1(b). ABHAY S.G.,
S/O LATE GURU RAJAN,
AGED ABOUT 37 YEARS,

1(c). GEETHANJALI S.G.,
D/O LATE GURU RAJAN,
AGED ABOUT 40 YEARS,



R/AT NO.15/2,
BAYAMMA LAYOUT,
PAPAREDDY PALYA,
NAGARABHAVI ROAD,
BENGALURU - 560 072.

AND ALSO AT:

SITE NO.13 AND 22,
ASSESSMENT NO.15/2,
MALAGALU VILLAGE,
KHATA NO.15/2,
BBMP FORM "B" PROPERTY,
NO.15/2 13/22,
RAJARAJESHWARI CM WARD NO.8,
MALAGALU VILLAGE,
YESHWANTHPURA HOBLI,
BENGALURU NORTH TALUK.

...RESPONDENTS

(BY SRI.G. YATHISH, J. NADIG AND

SRI. KRISHAN KUMAR K. K., ADVOCATE FOR R1 (A TO C))

THIS RFA IS FILED UNDER SECTION 96 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED:13.04.2018
PASSED IN OS NO.8343/2013 ON THE FILE OF THE V ADDL.
CITY CIVIL JUDGE, BANGALORE, DISMISSING THE SUIT FOR
EVICTION.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This Regular First Appeal by the plaintiff in O.S.No.8343/2013, assailing the Judgment and Decree dated 13.04.2018 passed by the V Addl. City Civil Judge, Bengaluru City (CCH-13)¹.

2. The Trial Court under the impugned order, declined to grant the reliefs sought in the suit and dismissed the suit.

3. The parties are referred to as per their ranking before the Trial Court.

4. Facts germane to file the present appeal are as under:

AS PER THE PLAINTIFF:

4.1 The plaintiff/ appellant filed the suit in O.S.No.8343/2013 seeking following reliefs:

¹ 'the Trial Court', for short



- a) *Directing the defendant to quit and deliver the vacant possession of the schedule property to the plaintiff.*
- b) *Direct the defendant to pay a sum of Rs.15,000/- per month towards damages to the plaintiff.*
- c) *To grant such other relief which this Hon'ble Court deems fit in the circumstances of this case.*

4.2 It is the case of the plaintiff that he is the absolute owner of the property bearing Site Nos.13 and 22, measuring East to West on the northern side 73 feet and southern side 65 feet and North to South 33 feet (hereinafter referred to as 'Suit Schedule Property²').

4.3 It is the claim of the plaintiff that he has purchased the suit schedule property from one Mr.Vijay under a registered Sale Deed dated 21.08.2006 registered on 13.10.2006 in the office of the Sub-Registrar, Bengaluru North Taluk vide Document No.BLN-1-44968-2006-07 of Book No.1, stored in CD No.BLND343. The registered Sale Deed was executed

² 'the SSP', for short



by the defendant being the General Power of Attorney holder of Mr.Vijay. As per the recital of the sale deed, the plaintiff was put in possession of the SSP as absolute owner, earlier the SSP was under the jurisdiction of Rajarajeshwarinagar CMC, now is under Bruhat Bengaluru Mahanagara Palike. The plaintiff is paying property taxes to the concerned authorities and even his name is entered in the revenue records of the concerned authority.

4.4 It is further contended that owner Mr.Vijay acquired title to the SSP by virtue of a Sale Deed dated 25.11.2004 executed by his vendors Munivenkatamma, Munivenkatappa @ Thammayya and Krishna (Ex.P4).

4.5 The plaintiff further claims that there is a small house consisting of two bedroom, hall, kitchen & toilet in the SSP, which was being occupied by the defendant with the permission of earlier owner Mr.Vijay, and



after sale with the permission of the plaintiff, till issuance of notice of termination.

4.6 It is contended that the defendant represented the plaintiff that he is the General Power of Attorney holder of Mr.Vijay and executed Sale Deed in respect of the SSP in his favor as per Ex.P1. Since the defendant was residing in the house in SSP, he requested the plaintiff to allow him to continue to reside in the schedule property till he gets alternative accommodation and move out. The plaintiff considering his request, permitted him to reside in the SSP till he gets alternate accommodation.

4.7 Later on, the defendant on one or the other pretext, protracted to vacate the SSP. The plaintiff under the impression that the defendant is an aged man, is buying time to vacate the property and provided him sufficient time to vacate the SSP. However, when the defendant denied vacating the property, despite the



request of the plaintiff in gross abuse of plaintiff's rights, the plaintiff issued notice on 05.07.2013 (Ex.P5) terminating the permission, and demanded possession of the SSP. The defendant replied to the same with untenable contentions (Ex.P6). Thereafter, the plaintiff instituted the present suit in O.S.No.8343/2013 for the reliefs, which we have already extracted above.

AS PER THE DEFENDANT:

4.8 In response to the suit summons, the defendant appeared through his counsel and filed written statement denying the entire plaint averments. However, admitting the fact that Vijay - the vendor of the plaintiff acquired title to the suit schedule property under Sale Deed dated 25.11.2004 and a house in the suit schedule property is being occupied by him.

4.9 The defendant contended that the plaintiff is not the owner of the SSP and he has not purchased the same



from its owner Mr.Vijay. The plaintiff has created the GPA and when the defendant was suffering from injuries sustained in road traffic accident, he was forcibly taken to the office of the Sub-registrar on the premise that, he has to sign as a witness to a loan document, has illegally got the Sale Deed registered, in his name through him as a GPA holder of said M.Vijay.

4.10 He contended that the GPA is a bogus one and even over written the date in it. The GPA is notarized, as if the same was executed two years back. Original owner Vijay has not executed the GPA in favor of the defendant. The plaintiff in garb of GPA and the Sale Deed, trying to knock off the valuable property.

4.11 He further claims that no amount is paid either to him or the owner - Mr.Vijay by the plaintiff and no rights transferred in favor of the plaintiff. The plaintiff



and his friend by name Suresh, have played fraud in obtaining the Sale Deed.

4.12 The defendant contended that, when he is not the GPA holder of the original owner of the SSP, the sale deed executed by him in favor of the plaintiff does not hold any water. He also contended that he is residing in the SSP with the permission of its owner Vijay. He further contended that the suit is bad for non-joinder of proper and necessary parties and sought to dismiss the suit.

4.13 The Trial Court upon completion of pleadings, framed the following issues:

- 1) *Whether the plaintiff proves that Mr.M.Vijay has executed General Power of Attorney in favor of defendant?*
- 2) *Whether the plaintiff proves that the defendant is put in possession of the suit property?*
- 3) *Whether the suit is bad for non-joinder of necessary parties?*



4) *What relief is plaintiff entitled?*

5) *What order or decree?*

4.14 The plaintiff in order to prove his case, examined himself as PW.1 and produced seven documents and got them marked as Ex.P1 to P7 and closed his side. The defendant examined himself as DW.1 and produced five documents, however only Ex.D1 to D4 were marked. So far as the fifth document, the Trial Court having found that the said document has written on an insufficiently stamped paper, impounded the same and directed the office to calculate the duty and penalty and to put up the same on 04.11.2016. The office thereafter, calculated the amount between the dates 01.12.2016 and 16.01.2017 and stated that, the stamp duty and penalty payable was Rs.1,45,904/- in the order sheet. However, the fact remain that the defendant has not made good the said amount. However, with the permission of the Writ Court in



W.P.No.33671/2017, the defendant led evidence. While cross-examining the defendant, the plaintiff confronted the said document to the defendant, for which there was no objection and the same was marked as Ex.D5 instead of Ex.P8, as the document was confronted in the cross-examination of the defendant on behalf of the plaintiff.

CONCLUSION OF THE TRIAL COURT:

4.15 The Trial Court upon hearing the parties and appreciating the evidence, both oral as well as documentary, dismissed the suit primarily on the point that the plaintiff has not produced the original GPA, though the Trial Court in unequivocal terms observed in its judgment in Page No.16, Paragraph No.10, last 8 lines which reads as under:

"The defendant was the General Power of Attorney holder of the said Vijay and defendant was represented as a General Power of Attorney on behalf of the vendor by name Vijay while registering the sale deed dated 21/08/2006 which was registered on 13/10/2006. To support



*the said contention, plaintiff has produced the
General Power of Attorney of the defendant."*

4.16 However, the Trial Court observed that the plaintiff has failed to produce original GPA, as such he has not proved the sale deed. In that view of the matter, the plaintiff has no right in the suit schedule property.

4.17 In so far as Issue No.3 is concerned, the Trial Court observed that the defendant has taken a specific contention that the suit is bad for non-joinder of necessary party stating that the defendant is nowhere concerned to the SSP and one Mr.Vijay is the owner of the SSP and his presence is very much required in the suit for proper adjudication and further that, Mr.Vijay had executed the Sale Deed in favor of one Mrs.Girijamma in respect of the suit schedule property on 29.04.2005. Though the Trial Court observed that the defendant has not examined the said Girijamma in respect of the sale deed,



however holds that since the defendant has denied the title of the plaintiff, the plaintiff ought to have made Vijay as party/litigant to the suit and holds that the presence of Vijay is necessary and on that count concluded that, the defendant has proved that the suit is bad for non-joinder of necessary party for not impleading Mr.Vijay and answered the said issue in the Affirmative, against the plaintiff.

4.18 The Trial Court entirely burdened the case on the shoulders of the plaintiff that, he has failed to examine the said M.Vijay - the owner of the SSP who has executed Sale Deed through his GPA holder i.e., the defendant, to prove his case. In that an eventuality, the plaintiff has not proved the sale deed and ultimately concluded that, the plaintiff has failed to prove the issues shouldered on him and dismissed the suit in its entirety. It is this judgment and decree passed by the Trial Court is called in question in this appeal by the plaintiff.



5. Heard, Sri.G.Balakrishna Shastry, learned counsel appearing for the plaintiff and Sri.Yathish J.Nadig, learned counsel appearing for Sri.Krishna Kumar.K.K, learned counsel for the legal representatives of the deceased defendant.

6. Since the original defendant died during the pendency of the appeal, his legal representatives are brought on record as respondents 1(A to C).

SUBMISSION OF COUNSEL FOR THE PLAINTIFF:

7. Sri.G.Balakrishna Shastry, learned counsel appearing for the plaintiff, on short count submitted that, the entire reasons of the Trial Court is lingering on the failure of the plaintiff to produce the original GPA executed by Vijay - owner of the suit schedule property in favor of the defendant. It is the specific contention of the plaintiff that the original GPA is with the defendant, however he has produced the copy of the same, which even recorded by the Trial Court in its judgment.



7.1 Learned counsel submits that, only person who could deny the title of the plaintiff is Mr.Vijay and not the defendant. It is not necessary under Section 34 of the Specific Relief Act, to seek for declaratory relief in respect of the SSP against mere denial of right which has accrued under the registered Sale Deed executed by a person, claiming as a GPA holder of original owner. When the original owner though even according to the defendant is aware of the sale deed, has not raised any objection or taken any action in respect of the SSP, it is not open for the defendant to deny the rights of the plaintiffs, when he himself under the GPA executed the Sale Deed.

7.2 Learned counsel submits that the plaintiff purchased the property way back in the year 2006, under a registered Sale Deed. In the absence of any denial by the original owner, there is no necessity for the plaintiff to implead the original owner in respect of specific relief sought in the suit. The relief sought in



the suit is only for a decree, directing the defendant to quit and deliver the vacant possession of the suit schedule property and for *mesne* profits by way of damages @ Rs.15,000/- per month.

7.3 Learned counsel further submits that even according to the defendant, Mr.Vijay is the original owner and he is in permissive possession of the property with the permission of Vijay, his possession of the SSP after Sale Deed even as per the plaintiff in his suit is admitted and continued on the assurance of defendant that he will vacate the SSP immediately after he finds alternative accommodation.

7.4 Learned counsel Sri.G.Balakrishna Shastry, with all vehemence submits that a person who is in permissive possession, cannot deny the right of the true owner to seek possession of the property after issuance of notice, terminating the permission to continue in the property, as he has no right to deny



the landlord his right to enjoy his own property, by taking all sorts of contentions which are not sustainable in law.

7.5 He submits that the Trial Court has failed to consider that, the plaintiff had confronted the defendant with the document relating to the GPA, a copy of which has even been mentioned by the Trial Court in its Judgment to contend that, there is a GPA, in order to contradict the defendant's statement in the written statement, denying the execution/ existence of the said GPA. The document though marked as Ex.D5 by the Trial Court, ought to have been marked as Ex.P8, since the said document is confronted in the cross-examination of the defendant on behalf of the plaintiff, only to the limited extent of contradicting the stand/ statement of the defendant in the written statement, wherein he has specifically denied that there is no GPA executed and it is a created one and



further contended that the date in it has been over-written.

7.6 Learned counsel contended that the right accrued under a registered Sale Deed, executed by the said defendant himself as a GPA holder of original owner, now cannot be dislodged only on the self-serving statement of the defendant. The plaintiff has proved his case on the preponderance of probabilities by producing both the original as well as certified copy of the Sale Deed at Ex.P1. The defendant also identified his signature on the Sale Deed marked as Ex.P1(a). The Trial Court weighed much on the fact that no receipt was produced to show payment of sale consideration, ignoring the acknowledgment in the registered Sale Deed before the Sub-registrar that, a sum of Rs.9,36,000/- had been paid in the presence of witnesses.



7.7 Learned counsel further submits that the defendant in his cross-examination has unequivocally admitted that he has done his B.Sc and has studied Kannada till S.S.L.C and thereafter, his medium of instruction is in English. However, he states in his cross-examination that he has signed the sale deed as a witness. A person who is a degree holder having knowledge of Kannada as well as English, cannot deny his signature on the sale deed as an Executor, and pleaded that he has signed as a witness. He has signed the sale deed in the capacity of GPA holder of original owner Vijay. It is clearly visible in the certified copy as well as original Sale Deed produced before the Trial Court. The defendant further admits in the cross-examination that he has not taken any action against the plaintiff and said Suresh by lodging any police complaint on the basis of his contention that the GPA is a created document and he was made to sign forcibly on the sale deed. There



is nothing forth coming either in the written statement or in his evidence that, he has informed this matter to Vijay to take action against the plaintiff. In that view of the matter, the Trial Court read the entire evidence in a misdirection and driven its judgment only on the self-serving statement of defendant in the absence of any corroborative evidence on the wrong direction. It is the defendant who should have been shouldered to examine said Vijay, even to deny the GPA when the copy of the same is produced and there is a clear recital in the sale deed that, the defendant has executed the sale deed on behalf of Vijay as his GPA holder. In that view of the matter, learned counsel sought to allow the appeal and set-aside the Judgment and Decree of the Trial Court.

SUBMISSION OF COUNSEL FOR THE DEFENDANT:

8. In contrast, Sri.Yathish J.Nadig, learned counsel appearing for the defendant with all vehemence submits in



support of the Judgment and Decree of the Trial Court that, the Trial Court has properly considered the evidence both oral and documentary and the pleadings and come to right conclusion that the plaintiff has failed to prove his case, as the burden is always on him to prove his right to claim the relief sought in the suit. When there is a denial of GPA by the defendant, the plaintiff ought to have taken steps to get the original GPA from the defendant or the plaintiff ought to have examined the original owner Vijay in support of his case. The Trial Court having properly considered this aspect of the matter, has rightly dismissed the suit, which does not call for any interference at the hands of this Court. With this, he sought to dismiss the appeal.

9. Having considered the rival submissions, we have perused the entire appeal paper, so also the Trial Court record. The following points would arise for our consideration:



- (1) *Whether the Trial Court is right in answering Issue Nos.1 and 2 against the plaintiff?*
- (2) *Whether the Trial Court is right in answering Issue No.3 for non-joinder of necessary party against the plaintiff?*
- (3) *Whether the Trial Court is right in dismissing the suit filed by the plaintiff?*

10. Our answer to above points for consideration is in the **Negative** and in favor of the plaintiff, for the following:

ANALYSIS:

REASONS

11. **POINT NOS.1 & 2:** It is the claim of the plaintiff that he purchased the SSP in the year 2006. The defendant who was in permissive possession with the permission of Vijay - the plaintiff's vendor, continued in possession of the property after the plaintiff permitted him to continue in possession till he finds alternative accommodation. However, when the defendant protracted



the matter on one or the other pretext to vacate and handover the possession of the property, the plaintiff issued notice, which was replied by the defendant by taking untenable contentions, which clearly shows the intention of the defendant to squat over the property indefinitely. The plaintiff filed the suit for a decree, directing the defendant to vacate and deliver the vacant possession of the suit schedule property along with damages from the date of issuance of notice @ Rs.15,000/- per month.

12. The case of the defendant is that he was not the GPA holder of original owner Vijay and he is in permissive possession of the property with the permission of Vijay (earlier owner - vendor of plaintiff) and the plaintiff has no right over the SSP. The contention of the defendant as per Ex.P6 Reply notice is that, the Deed was executed in favor of plaintiff only to enable him to avail loan, without sale consideration and there is no transfer of possession. In that view of the matter, the defendant is



continuing in possession of the property on his own with the permission of original owner Vijay. As such, the suit filed by the plaintiff is not maintainable and required to be dismissed.

13. A perusal of the Reply notice clearly shows that there is no denial of execution of the Sale Deed by the defendant. However, he has stated that the said Sale Deed was executed without consideration and transfer of possession, only to facilitate the plaintiff to obtain loan and no rights transferred under the said Deed. However, a complete turn around is taken in the written statement to contend that, the defendant was not the GPA holder and GPA is a created document by the plaintiff to knock off the SSP and there is no Sale Deed executed and he has signed the document as a witness on the representation that the document would be used for availing loan. This statement of the defendant contradicts to his first statement made in Ex.P6 Reply notice, so also his statement that he has



signed the document as a witness is negated in the presence of Ex.P1 and his signature in Ex.P1(a).

14. It is admitted by the defendant that he is a B.Sc degree holder and knows both Kannada and English. It is apt to extract the cross-examination of the defendant on this line, which reads as under:

"I have done my B.SC. I have studied Kannada till SSLC and then thereafter my medium of instructions in English. Myself and Suresh had been in the car on 13/10/2006 to the Sub-Registrar office. I have signed as a witness on Ex.P1 dated 13/10/2006. I cannot say as to how many pages I have signed as witness in that Ex.P1.

Que: Did you not object for signing Ex.P1?

Ans: I did asked them as to why so many signature and they informed me that my signature as a witness.

*They have also taken my thumb impression as well as photo. The document now shown to me is the original sale deed dt 21/8/2006 (Both the counsels submits that the certified copy of this sale deed is already marked as Ex.P1). Witness has identified the document and it is marked as **Ex.P1(a)**. The photos and*



the Signatures appearing in Ex.P.1(a) are my own. I have not lodged any complaint to the police stating that my signature has been obtained under duress or misrepresentation on the sale deed dt 13/10/2006 or subsequently thereafter. I had even not issued any legal notice in this regard because I came to know about the sale deed when Ex.P5 was issued to me. After seeing the legal notice Ex.P5, I thought about the matter as I had not got any property or executed any document in my favor. Then I remembered about me signing as a witness to the sale deed as above stated. Thereafter I also did not institute any suit or lodge complaint about that sale deed. Witness volunteers that I have issued reply to said notice. I also did not file any complaint against Suresh."

15. A perusal of cross examination and admissions by the defendant clearly shows that, he is not an uneducated and rustic ruralist. He is having knowledge as a degree holder and knowledge of both language i.e., Kannada and English. He cannot say that he was asked to sign the document as a witness and signed the same, whereas the said statement itself is negated with the



presence of Ex.P1, wherein, he has signed as GPA holder of Vijay who is the original owner of the SSP. The defendant has identified the document at Ex.P1 and signature & photographs found therein as Ex.P1(a).

16. He further admits that he has not lodged any complaint stating that his signature on the Sale Deed dated 21.08.2006 was obtained under duress or misrepresentation, nor he has staked this issue subsequently, especially in legal notice. Though in a feeble voice, he attempted to state that he came to know about the Sale Deed, when Ex.P5 notice was issued, however in the very next line, he admitted that after verifying Ex.P5, he realized he had not got any property or executed any document. This evidence clearly pre-supposes that, there is a Sale Deed executed by the defendant in the capacity of GPA holder of original owner Mr.Vijay.

17. The Trial Court weighed much on non-production of original GPA, which according to the plaintiff



is with the defendant. The plaintiff proved his case by producing original Sale Deed, katha certificate and tax paid receipt for the reliefs claimed in the suit, within the four of preponderance of probabilities. Once the plaintiff discharged his initial burden, the burden shifts on the defendant. Except the self-serving testimony of the defendant that there is no GPA in his favor, so also he has not executed the Sale Deed and it was just a document for obtaining loan, that too, he has signed it as a witness and not as a vendor, he has not produced any cogent evidence to corroborate his stand. The Trial Court has misread the document which is confronted and marked in the cross-examination of the defendant. There is a clear assertion by the plaintiff that, the said document was confronted only to contradict the statement of the defendant that though he has not denied the GPA in his notice, but denied the same in the written statement, only to that limited extent, the said document was confronted.



18. There is a clear mention of GPA executed by Vijay in favor of the defendant dated 06.02.2004. Though the defendant stated that the said GPA dated 06.02.2004 is canceled, however there is nothing forthcoming as to, when it was cancelled, mentioning the specific date and whether it was cancelled in accordance with law or not. The defendant has not examined the executor of the said document to prove his case. Though he denied the GPA as it was created by the plaintiff, the same is negated in the document which he earlier tried to produce but impounded, which was subsequently confronted to him by the plaintiff only for the limited purpose to contradict his statement regarding the GPA. The Trial Court failed to consider this aspect of the matter and was of the opinion that the plaintiff has failed to prove his case for non-production of original GPA.

19. The Trial Court further observed that the plaintiff ought to have produced the document from the office of the Sub-registrar, since the document is



registered on the basis of the GPA. Once the Trial Court has stated in its judgment, which we have already extracted above that, the defendant has executed the Sale Deed on the basis of the GPA and the plaintiff in order to support his contention, produced the said GPA, the Trial Court has completely erred again burdening the plaintiff for production of original document, when he has specifically stated that it is with the defendant.

20. Further, the Trial Court burdened the plaintiff for not examining Mr.Vijay, which is not the requirement of law, as he has proved his case for the reliefs sought by means of production of registered Sale Deed and subsequent documents thereon by proving his case.

21. The standard of proof required in Civil case is based on preponderance of probabilities, and not proof beyond a reasonable doubt as is required in a Criminal case. The Trial Court has failed to consider this aspect of



the matter and misdirected itself in holding that the plaintiff has failed to prove his case.

22. Furthermore, the defendant never claimed that he is the owner of the property or he is in possession against the interest of the plaintiff, but his claim is that he is in permissive possession of the property with the permission of original owner Vijay. Since there is a transfer of ownership by way of registered Sale Deed through defendant himself under the registered GPA executed by original owner Vijay in favor of the plaintiff in the year 2006, now he cannot contend that the plaintiff has no right to claim the possession of the property, which he was permitted to continue after the sale deed.

23. A person who is in permissive possession of the property cannot deny the original owner his right to enjoy his own property. The Trial Court has misconstrued all the judgments referred by the plaintiff in his support and misread the same. Hence, we answer Point Nos.1 and 2 in



favor of the plaintiff, holding that the plaintiff proved his ownership on the property that he has purchased the same from the defendant as a GPA holder of Vijay and the defendant is in permissive possession by the earlier owner and continued after sale deed with the permission of the plaintiff.

24. **POINT NO.3:** So far as the issue of misjoinder of necessary party is concerned, except the self-serving testimony of the defendant, he has not made out a case to consider, what is the necessity of presence of Vijay in the case, for the adjudication regarding the relief sought in the suit. The plaintiff is claiming under the registered Sale Deed executed by the defendant himself as a GPA holder of Vijay. The Sale Deed was not denied in Reply Notice Ex.P6, but surprisingly denied in its entirety in the Written statement. The defendant is permitted to take inconsistent but not contradictory defences. The suit is filed for possession and *mesne* profit for damages for unauthorized occupation, which he continued after termination of



permissive possession by issuance of notice under Ex.P5. The Trial Court failed to consider this aspect of the matter. No worthwhile reason is forthcoming from the Judgment of the Trial Court on Issue No.3. A mere denial of title by a person not connected with the rights of the property in the absence of any adverse claim, the presence of earlier owner is not necessary.

25. The ingredients of Section 34 of the Specific Relief Act, in unequivocal terms states that, any person entitled to any legal character, or to any right as to any property, may institute a suit against any person 'denying, or interested to deny', his title to such character or right. The denial must be very much specific and asserted. A mere denial of title may not drive over a party to file a suit seeking declaration by making all the parties necessary for the relief. The relief sought in the present case asserts importance. The relief sought in the suit is a decree, for direction to the defendant to vacate and deliver the vacant possession of the property and for *mesne* profits by way of



damages @ Rs.15,000/- per month. The plaintiff claimed right under the registered Sale Deed. In that view of the matter, the reasons subscribed by the Trial Court on Issue No.3 is not sustainable in law. Accordingly, the same is set-aside and answered in favor of the plaintiff.

CONCLUSION:

26. In that view of the matter, the Judgment of the Trial Court dislodging the claim of the plaintiff is wholly unsustainable in law and required to be set-aside. Accordingly, we answer all the points for consideration in the **Negative** and in favor of the plaintiff. However, the plaintiff has not produced any cogent evidence to claim the relief of *mesne* profits by way of damages @ Rs.15,000/- per month. In that view of the matter, the plaintiff is at liberty to make claim of *mesne* profits by adducing cogent and proper evidence on the prevailing rate on monthly basis for occupation in the vicinity and claim the same in the Execution proceedings. For the foregoing reasons, we proceed to pass the following:



ORDER

- i. The Regular First Appeal is ***allowed***.
- ii. The Judgment and Decree dated 13.04.2018 passed by the V Addl. City Civil Judge, Bengaluru City (CCH-13) in O.S.No.8343/2013, is set-aside. The plaintiff's suit is decreed with costs throughout.
- iii. The defendant is hereby directed to vacate and deliver the vacant possession of the suit schedule property within three months from today, failing which the plaintiff can take recourse under law, by filing Execution Petition against the defendant seeking possession of property.
- iv. The plaintiff is also at a liberty to seek for *mesne* profit by way of damages, which he claims @ Rs.15,000/- per month in the Execution proceedings, by producing



cogent and corroborative evidence, in so far as prevailing rate for the enjoyment of the property in the vicinity, for unauthorized continuation of house in the suit schedule property, subsequent to issuance of notice Ex.P5 withdrawing the permission earlier granted to reside in the property and demanding possession.

27. The Registry is directed to draw the decree accordingly.

28. In view of disposal of the appeal, pending interlocutory applications, if any, stands disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN
List No.: 1 Sl No.: 5
ct-vn