

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR JUSTICE M.G.S.KAMAL

REGULAR FIRST APPEAL NO. 50 OF 2011

BETWEEN:

SRI G THIMMAIAH
SINCE DECEASED BY HIS LR'S

1(a) THIMMAKKA
D/O G. THIMMAIAH
AGED ABOUT 54 YEARS

1(b) GIRIYAPPA T.,
S/O G. THIMMAIAH
AGED ABOUT 51 YEARS

1(c) MUDALAGIRIYAPPA T.,
S/O G. THIMMAIAH
AGED ABOUT 46 YEARS

R/AT CHIKKAGOLLARA HATTI
NAGADEVANAHALLI DAKHALE
KENGARI HOBLI
BANGALORE SOUTH TALUK-560 056.

2 . SRI GOVINDAPPA
SINCE DECEASED BY HIS LR'S

2(a) CHITTAMMA
W/O GOVINDAPPA
AGED ABOUT 65 YEARS

2(b) THIMMAKKA
D/O GOVINDAPPA
AGED ABOUT 43 YEARS

Digitally
signed by
SUMA B N
Location:
HIGH
COURT OF
KARNATAKA

R/AT CHANDANAHOSAHALLI VILLAGE
DOBBASPET POST,
NELAMANGALA TALUK
BENGALURU RURAL DISTRICT - 562 111.

- 3 . SRI SIRIYAPPA
S/O LATE SRI MUDDAIAH
AGED ABOUT 50 YEARS
CHIKKAGOLLARA HATTI
NAGADEVANAHALLI
DAKHALE, KENGERI HOBLI
BANGALORE SOUTH TALUK - 560 056.

... APPELLANTS

(BY SRI. MALLAIAH M R., ADVOCATE)

AND:

1. SRI PUJARI CHIKKANNA
SINCE DEAD BY HIS LRS
- 1(a) SMT THIMMAKKA
W/O LATE SRI PUJARI CHIKKANNA
AGED ABOUT 58 YEARS
- 1(b) SRI MARANNA
S/O LATE SRI PUJARI CHIKKANNA
AGED ABOUT 31 YEARS
- 1(c) Ms.CHIKKATHAYAMMA
D/O LATE SRI PUJARI CHIKKANNA
AGED ABOUT 22 YEARS

ALL ARE R/O NO.1/18,
CHIKKAGOLLARAHALLI
NAGADEVANAHALI DHAKALE
KENGERI HOBLI
BANGALORE - 560 056.

- 1(d) SMT. JAYAMMA
W/O SRI SIDALINGAIAH
AGED ABOUT 39 YEARS
SAMPIMARADHAPALYA,
KALYA, KASABA HOBLI,

MAGADI TALUK,
BANGALORE RURAL DISTRICT - 562 120.

1(e) SMT BHAGYAMMA
W/O SRI KRISHNAMURTHY
AGED ABOUT 37 YEARS
AGALKOTE, MAGADI TALUK
BANGALORE RURAL DISTRICT-562 120.

1(f) SMT SAROJAMMA
W/O SRI THAMMAIAH
AGED ABOUT 31 YEARS

1(g) SMT RATHNAMMA
W/O SRI PAPANNA
AGED ABOUT 25 YEARS

BOTH ARE R/O NO.1/1B,
CHIKKAGOLLARA HATTI
NAGADEVANAHALLI DAKHALE
BANGALORE SOUTH TALUK - 560 056.

2) SRI CHIKKANNA
S/O SRI ARAVAIAH
AGED ABOUT 36 YEARS
CHIKKAGOLLARA HATTI
NAGADEVAHALLI DAKHALE
KENGARI HOBLI
BANGALORE SOUTH TALUK - 560 056.

... RESPONDENTS

(BY SRI. H. KANTHARAJ SENIOR ADVOCATE A/W
SRI. K. SURYANARAYANA RAO, ADVOCATE FOR R1(a to g)
AND R2)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED
01.10.2010 PASSED IN O.S.NO.8642/1995 ON THE FILE OF
THE XIV ADDL. CITY CIVIL JUDGE, BANGALORE, (CCH 28),
DECREEING THE SUIT FOR POSSESSION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED ON 24.06.2026 FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE M.G.S.KAMAL

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE M.G.S.KAMAL)

1. This Regular First Appeal is by the defendants, being aggrieved by the judgment and decree dated 01.10.2010 passed in O.S.No.8642/1995 on the file of XIV Additional City Civil Judge, Bangalore, CCH No.28 (hereinafter referred to as `trial Court') in and by which the trial Court, while decreeing the suit of the plaintiffs for possession, has directed defendants/appellants to deliver vacant possession of the suit Schedule A, B and C properties situated in land bearing Sy.No.1/1B of Nagadevanahalli-Kengeri-Hobli, Bangalore South Taluk, within four months from the date of the decree.
2. The subject matter of the suit is the following three items of the properties:

Schedule `A' Property

"All that piece and parcel of house property constructed in land bearing Sy.No.1/1B of Nagadevanahally, Kengeri Hobli, Bangalore South Taluk in an area measuring an extent of about 40' East to West and 21' North to South and bounded on all the sides by the land bearing Sy.No.1/1B of Nagadevanahally. Roofing of this property is titled and this property concerns the first defendant.

Schedule `B' Property

All that piece and parcel of house property constructed in land bearing Sy.No.1/1B of Nagadevanahally, Kengeri Hobli, Bangalore South Taluk in an area measuring an extent of about 15' East to West and 21' North to South and bounded on all the sides by the land bearing Sy.No.1/1B of Nagadevanahally. Roofing of this property is of asbestos sheet and this property concerns the second defendant.

Schedule `C' Property

All that piece and parcel of house property constructed in land bearing Sy.No.1/1B of Nagadevanahally, Kengeri Hobli, Bangalore South Taluk in an area measuring an extent of about 25' 9' East to West and 30' 6' North to South and bounded on all the sides by the land bearing Sy.No.1/1B of Nagadevanahally. Roofing of this property is of Asbestos Sheet and this property concerns the third defendant."

3. Brief facts of the case are:

Originally Pujari Chikkanna-plaintiff No.1 and Chikkanna-plaintiff No.2 filed the above suit against the defendants/appellants contending *inter alia*;

- (a) that they purchased land bearing Sy.No.1/1B of Nagadevanahalli, Kengeri Hobli, Bangalore-South Taluk, measuring 1 acre 16 guntas including 1

gunta of Kharab from their vendor in terms of deed of sale dated 15.10.1990. That there was a temple known as Maramma Temple situated in the said land for over a century. That the grandfather and father of the first plaintiff were the pujaris in the said temple. After the demise of the father of the first plaintiff, the first plaintiff was performing the duties of the pujari and was maintaining the said temple. As the said temple was in a dilapidated condition, the first plaintiff had it reconstructed. That the entire land is being used for the purpose of conducting jathras and other religious rituals. In view of the plaintiffs' attachment to the temple, the vendor of the plaintiffs had permitted them to use the land for religious purposes. As such, they were in possession and control of the land even before they purchased it.

- (b) Defendants who frequented the said temple became acquainted with the first plaintiff. About eight years ago, they had requested the first plaintiff to permit them to put up a temporary structure in small portions of the subject land, as they did not have

other place for residential purposes. The first plaintiff having taken a sympathetic view, had permitted the defendants to put up a temporary structure as requested. Accordingly, the defendants started residing in the said temporary residential units along with their families. The portions of aforesaid land in possession of defendant Nos.1 to 3 are shown as plaint 'A', 'B' and 'C' schedule properties respectively.

- (c) The defendants had agreed to vacate and hand over the said portions in their occupation as and when requisitioned by the plaintiffs. In furtherance thereof, the plaintiffs were reminding and requesting the defendants to vacate and hand over the portions in their possession. However, the defendants not only refused to oblige the said requests and demands but also attempted to have their names entered in the revenue records of the village, purporting to establish their right in respect of the said portions of the land. The plaintiffs accordingly had filed objections before the land revenue authorities.

(d)The plaintiffs caused issue of legal notice to the defendants, calling upon them to quit and deliver vacant possession of the Schedule A, B and C properties. Though the said notices have been received, the defendants have not replied to the same. The defendants have now secured alternate accommodations. Despite having alternate accommodations, they continued to sit over the suit properties. Hence, the suit for possession.

4. In their written statement, denying the plaint averments and alleging suppression of facts by the plaintiffs, the defendants have contended *interalia*;

4.1 That the alleged deed of sale dated 15.10.1990 is not genuine transaction and the same has not created any right or title in favour of the plaintiffs in respect of the subject land. The said deed of sale is executed in collusion between the plaintiffs and their vendor, namely Sri. Doddaiiah, S/o Junjamaraiah. At the time of execution of the deed of sale, there was no vacant site whatsoever and the entire extent of land in Sy.No.1/1B excluding the premises of the temple, was fully developed and

constructed. There were about 32 houses owned and possessed by different persons. The sale deed was executed only to create a false litigation and to extract money from the occupants of the portion of the property which were occupied by persons for over 3 to 4 decades.

4.2 That, originally, Aravaiah and Halehatti Junjiah were brothers owning land in Sy.No.1/1B. Aravaiah had three sons, namely Badajjaiah, Maraiah, and Chikkalingaiah.

4.3 Halehatti Junjiah had four sons, namely Junjegowda, Aravaiah, Maraiah, and Karechikkanna.

4.4 Junjegowda had three sons and two daughters, namely Jungaiah, Sannappa, Doddaiiah, Junjamma, and Chikkamma.

4.5 First plaintiff, Pujari Chikkanna, is the son of Sannappa, the second son of Junjegowda. Second plaintiff- Chikkanna, is the son of Aravaiah, who is the son of Chikkajunjaiah. Vendor of the plaintiffs namely Doddaiiah is the son of Junjamaraiah, who is the eldest son of Chikkajunjaiah.

4.6 Vendor of the Plaintiffs Doddaiiah and the second plaintiff Chikkanna are the great grandsons of Aravaiah and the first plaintiff pujari Chikkanna is the great grandson of Halehatti Junjiah.

4.7 That plaintiffs and their vendor are thus the co-sharers belonging to the same joint family. The purported purchase from a co-sharer, who is also a member of the same joint family, is only to create a false case.

4.8 Defendant No.1 is also the great-grandson of Halehatti Junjiah through eldest daughter of his son Jungegowda. That first plaintiff is the brother of the wife of defendant No.1.

4.9 That, in the year 1948 or so, the entire village was originally deserted in view of a dreaded disease. Number of persons constructed houses in Sy.No.1/1B and have been residing there for over 40 years. Long before the plaintiffs purported to purchase the subject land, there have been about 32 houses.

4.10 The properties described in the suit as Schedule A, B and C are the houses that were constructed in or about the year 1948-49. The properties were thus held by the persons in occupation, including the defendants, in their own right, openly and continuously for over 46 years, to the knowledge of the original owners and adverse to the original owners. Defendants and their predecessors have thus perfected their title by adverse possession. The names of the defendants have been entered in the registers maintained by the concerned panchayats for about 20 years. Electricity supply has been provided to the houses since 1977.

Contending as above, sought dismissal of the suit.

5. Trial Court framed the following issues for its consideration:

"(i) Whether the valuation of the suit properties and the court fee paid are proper?

(ii) Whether the plaintiffs prove that the defendants were in permissive possession of the schedule properties under them subsequent to the purchase on 15.10.1990?

(iii) Whether the defendants prove to be in possession of the schedule items since 1948-1949 from the time of their ancestors?

(iv) Whether the plaintiffs are entitled to possession of the schedule items?

Additional Issue:

1. Whether the plaintiffs prove that the suit is maintainable?"

6. Original plaintiff passed away and is thus represented by the legal representatives. On behalf of the plaintiffs, one Maranna has been examined as PW1 and exhibited 32 documents marked as Exhibits P1 to P32. On behalf of the defendants, four witnesses have been examined as DW1 to DW4 and have exhibited 70 documents marked as Exhibits D1 to D70.

7. Trial Court, advertent to the issues framed, has accepted the case of the plaintiffs that they are absolute owners of suit schedule properties and that the defendants were indeed permitted by the plaintiffs to put up temporary structures thereon. The contention of the defendants being in possession for over 40 years and perfecting their title and interest over the suit schedule properties by adverse possession has been negated. Accordingly, the trial Court decreed the suit as noted above. Being

aggrieved, the defendants are before this Court by way of this appeal.

8. Learned counsel for the appellants, reiterating the grounds urged in the memorandum of appeal, submitted;

(a) that the deed of sale executed by Doddaiiah in favour of the plaintiffs is a false and bogus document. The said deed of sale is silent about the existence of any structure on the land. The contention of the plaintiffs that they permitted the defendants to put up temporary structure eight years prior to filing the suit is contrary to the contents or the recitals of the deed of sale dated 15.10.1990.

(b) The plaintiffs have not provided any documentary evidence to prove the entitlement of Doddaiiah over the property subject matter of the said deed of sale.

(c) The identity of the suit schedule properties has not been proved and established by the plaintiffs in the manner known to law.

- (d) That the predecessor of the plaintiffs' vendor was allotted northern portion of land in Sy.No.1/1B. The portion of the property in occupation of the defendants is the southern portion retained by Badajja and Maraiah, which were subsequently conveyed in favour of Junjamma in terms of a registered deed of gift dated 27.07.1961. Vendor of the plaintiffs thus did not have any share, right, title, and interest over the property subject matter of the said deed of gift.
- (e) 32 houses had been in existence for over several decades, and the defendants were in occupation of three houses which were in existence since 1948-49. Neither the plaintiffs nor their vendors were in occupation of the property at any point in time.
- (f) A suit for possession without seeking a declaration was not maintainable. Since a serious dispute with regard to title of the plaintiffs was raised and questioned by the defendants, the plaintiffs without establishing their title, could not have maintained the suit.
- (g) The plaintiffs have deliberately not examined plaintiff No.2, who was of a tender age, was an incompetent

witness and had no personal knowledge with regard to the alleged permissive possession granted by the plaintiffs in favour of the defendants.

(h) No evidence has been led by the plaintiffs to prove the plea of permissive possession. No witness has been examined in this regard. Non-examination of plaintiff No.2 and Doddaiiah to prove the factum of permissive possession ought to have been held in favour of the defendants.

(i) The plea of adverse possession raised by the defendants was not against the plaintiffs. The defendants have not admitted the plaintiffs' title or possession of the property. Their plea of adverse possession is against the true owner. Plaintiffs are not the true owners. The trial Court erred in casting the burden on the defendants to prove their possession over the property.

(j) Neither the plaintiffs nor their vendor were in possession of the property within 12 years next before the date of filing of the suit, as such their right, if any, to seek possession stood extinguished under Section 27 of the Limitation Act.

(k) Since the defendants had specifically pleaded that they had been in possession of the property since 1948-1949 and had produced the documents or evidence to prove the same, the trial Court ought to have dismissed the suit.

Contending as above sought for dismissal of the suit and allowing of the appeal.

9. Learned Senior Counsel appearing for the respondent, justifying the judgment and decree passed by the trial Court, contended:

(a) That the plaintiffs have based their suit for possession on the deed of sale dated 15.10.1990 which was executed and registered by their vendor, Doddaiiah. Revenue records have been mutated in the name of the plaintiffs. Survey sketch and the survey records indicate existence of the property purchased by the plaintiffs.

(b) Non-examination of plaintiff No.2 in the light of the documentary evidence is therefore not fatal to the case of the plaintiffs.

(c) Defendants who had set up the plea of adverse possession have failed to discharge the elementary requirement of the plea of adverse possession. Documents relied upon by the defendants do not pertain to the suit schedule properties. The trial Court has therefore rightly come to the conclusion of decreeing the suit.

Hence seeks for dismissal of the appeal.

10. Heard and perused the records.

11. The points that arise for consideration are:

(i) Whether the trial Court is justified in accepting the case of the plaintiffs, that they are the owners in possession of the Plaint Schedule 'A' 'B' and 'C' properties, and they granting permission to the defendants to occupy the same prior to the execution of the deed of sale dated 15.10.1990?

(ii) Whether the trial Court is justified in holding that the defendants have not been in possession of the Plaint Schedule 'A' 'B' and 'C' properties, adverse to the interest of the plaintiffs?

(iii) Whether the trial court has properly appreciated the evidence placed on record?

Regarding Point No.1:

12. Specific case of the plaintiffs is that they purchased land in Sy.No.1/1B measuring 1 acre 16 guntas in terms of deed of sale dated 15.10.1990. That there existed a

temple over the said land for over a century, maintained and rebuilt by the forefathers of the plaintiffs. That even prior to the execution of the said deed of sale, their vendor had permitted them to utilize the land for the purpose of the temple. Thus, the plaintiffs had permitted the defendants to put up temporary structures on the portions of the land described as the suit schedule 'A' 'B' and 'C' properties.

13. Defendants, on the other hand, denying the case of the plaintiffs, have specifically contended that the deed of sale is a sham document. That the suit schedule properties were originally owned by Aravaiah and Halehatti Junjiah. That the plaintiff No.1 and defendant No.1 are the great grandsons of Halehatti Junjiah and plaintiff No.2 is the great grandson of Aravaiah.

14. In their affidavit evidence defendants have deposed that the portion of the land in which the suit 'A' 'B' and 'C' schedule properties are located belong to one Junjamma, who had acquired the same in terms of registered deed of gift dated 27.07.1961. Said Junjamma has delienated portion of land and had retained a portion which consisted of suit schedule

properties. That they are in possession of suit 'A' 'B' and 'C' schedule properties for over 46 years in their own rights to the knowledge of original owners and adverse to the title of the original owners.

15. Since plaintiffs are seeking relief of possession based on title, it is incumbent upon the plaintiffs to prove their legal ownership and to establish their rights to evict the defendants more particularly when the defendants have denied the case of the plaintiffs.

16. Appropriate to refer to the documentary evidence produced by the plaintiffs. First of which is the deed of sale dated 15.10.1990 produced and marked as Ex.P1. The said document is executed by Doddaiiah, son of Junjamaraiah. The said vendor has claimed to have acquired the property subject matter of the deed of sale through his ancestors; though no specific details are provided thereunder in this regard. The schedule to the said deed of sale read as under;

-: ಷೆ ಡ್ಯೂ ಲು :-

"ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಕೆಂಗೇರಿ ಹೋಬಳಿ, ನಾಗದೇವನಹಳ್ಳಿ
ಗ್ರಾಮದ ಸರ್ವೆ 1/1ಬಿ (ಒಂದನೇ ಸೆಟ್ ಒಂದು ಬಿ)ನೇ ನಂಬರು ಖುಷ್ಕಿ

0-01 ಗುಂಟೆ ಖರಾಬು 1-16 (ಒಂದು ಎಕರೆ ಹದಿನಾರು ಗುಂಟೆ)
ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಸರ್ಕಾರಿ ನಕಾಶೆ ದಾರಿ, ಮತ್ತು ಸರ್ವೆ ನಂ.1/1ಸಿ ವುಳ್ಳ
ಜುಂಜಮ್ಮನ ಜಮೀನು;

ಪಶ್ಚಿಮಕ್ಕೆ: ಕೆಂಪಮ್ಮನ ಖಾತೆ ಜಮೀನು ಮತ್ತು ಸರ್ವೆ ನಂ.1/1ಎ ವುಳ್ಳ
ಜುಂಜಮ್ಮನ ಜಮೀನು;

ಉತ್ತರಕ್ಕೆ: ಸರ್ವೆ 3/4ನೇ ನಂಬರು ಮತ್ತು 2/10ನೇ ನಂಬರು
ಕರಿಯಮ್ಮನ ಜಮೀನು ಮತ್ತು ಜವರಪ್ಪನ ಜಮೀನು (2/6ನೇ
ನಂಬರು);

ದಕ್ಷಿಣಕ್ಕೆ : ಹಳೇ ಗ್ರಾಮ ರಾಣಾ, ಮತ್ತು ಸರ್ವೆ 1/7ನೇ ನಂಬರು
ಗಿರಿಧರ ಪ್ರಭುರವರ ಜಮೀನು ಮತ್ತು ಕೆಂಪಮ್ಮನ ಜಮೀನು.

*ಈ ಮಧ್ಯೆ ಮೇಲ್ಕಂಡ ಚಕ್ಕುಬಂದಿಗೊಳಪಟ್ಟ 01ಗುಂಟೆ ಖರಾಬು ಸೇರಿ
1-16 ಒಂದು ಎಕರೆ ಹದಿನಾರು ಗುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನು ಈ ಶುದ್ಧ
ಕ್ರಯಪತ್ರಕ್ಕೆ ಸೇರಿರುತ್ತೆ. ಷೆಡ್ಯೂಲ್ ಜಮೀನಿನಲ್ಲಿ ಬೆಳೆ ಬಾಳತಕ್ಕ
ಗಿಡಮರಗಳು ಯಾವುದೂ ಇರುವುದಿಲ್ಲ. ಸದರೀ ಜಮೀನಿನ ಈಗಿನ
ಮಾರುಕಟ್ಟೆ ಬೆಲೆ 42,000.00 ರೂಪಾಯಿಗಳಾಗಿರುತ್ತದೆ".*

17.Perusal of the schedule to the aforesaid deed of sale do
not indicate the existence either of a temple or of any
houses including the houses purportedly constructed by
the defendants 1, 2 and 3 on the suit schedule 'A' 'B' and
'C' properties as claimed by the plaintiffs.

18. Ex.P2 is a mutation register extract dated 17.12.1990
which indicate the name of the plaintiff Nos.1 and 2

having been mutated to an extent of 1 acre 16 guntas of land in Sy.No.1/1B.

19. Ex.P3 is an RTC extract for the years 1979-80 to 83-84.

The said RTC pertains to land in Sy.No.1/1 measuring 3 acres 6 guntas. Column No. 9 of the said document indicates the name of Badajja bin Arava Junjamma.

20. Ex.P4 is the RTC extract for the years 1984-85, 1985-

1986, 1986-87 in respect of land in Sy.No.1/1 measuring 3 acres 6 guntas. Column No.9 of the said document reflect name of Badajja, son of Arava Junjamma, Kempamma, wife of Malagappa to an extent of 22 guntas. However name of Doddaiiah is also referred to in column No.12.

21. Exhibit P5 is the RTC extract for the year 1990-1991 in

respect of land bearing Sy.No.1/1B measuring 1 acre 38 guntas inclusive of 1 gunta of kharab land. Perusal of the said RTC extract indicate name of Badajja bin Aravaiah has been rounded off and name of one Kempamma, wife of Malagappa being entered to an extent of 22 guntas. Name of Pujari Chikkanna, the plaintiff being shown to an extent of 1 acre 16 guntas. Similar is the RTC extract

produced at Ex.P6 for the year 1991-1992 in respect of Sy.No.1/1B measuring 1 acre 37 guntas.

22. Exhibit P9 is a survey sketch in respect of land bearing re-survey No.1/1. The said documents seem to have been prepared by Tahsildar, Bangalore South Taluk on 07.10.1987. There is no mention of land bearing No.1/1 being bifurcated into Sy.No.1/1B or Sy.No.1/1C. In the said sketch it is seen that an extent of 16 guntas of land is earmarked and shown in pink colour within which existence of a temple and houses are shown. Thus, the said document indicate the existence of houses even as in the year 1987 around the said temple.

23. Ex.P10 is another survey sketch which is dated 25.06.1990. The said sketch indicate bifurcation of land in Sy.No.1/1 into Sy.Nos. 1/1A, 1/1B and 1/1C.

24. Juxtaposition of the survey sketch at Ex.P9 with the survey sketch at Ex.P10 indicates that an extent of 16 guntas of land, which is shown in pink colour consisting of temple and houses in Ex.P9 has been carved out and given a different survey number as Sy.No.1/1C in Ex.P10.

25. What is therefore purchased by the plaintiffs as per Ex.P1 deed of sale dated 15.10.1990 is Sy.No.1/1B and not Sy.No.1/C.

26. Pertinent to note that in the said deed of sale at Ex.P1 eastern boundary is shown as Government Road and land belonging to Junjamma in Sy.No.1/1C and western boundary is shown as Kempamma's land and land in Sy.No.1/1A belonging to Junjamma. Further the deed of sale at Ex.P1 has come into existence on 15.10.1990, which is subsequent to the survey sketch at Ex.P9 prepared on 07.10.1987 as well as Ex.P10 dated 25.06.1990. There is no any explanation given either in the plaint or in the oral evidence with regard to non-mentioning of the existence of the temple and/or the buildings in the deed of sale at Ex.P1. Therefore the only conclusion that can be drawn is that 16 guntas of land assigned with Sy.No.1/1C which consisted of temple and the buildings existing thereon, has never been part of the said deed of sale and only the vacant land, assigned Sy.No.1/1B, is conveyed under the sale deed at Ex.P1. This also finds support from the RTC extracts at Exs.P16 to 22 wherein the original extent of land in Sy.No.1/1B is shown as 1 acre 37 guntas. While the land subject matter of the deed of sale at Ex.P1 is 1 acre 16 guntas.

27. Survey Sketches at Exs.P9 and P10 are reproduced hereunder for easy reference:

EXHIBIT P9

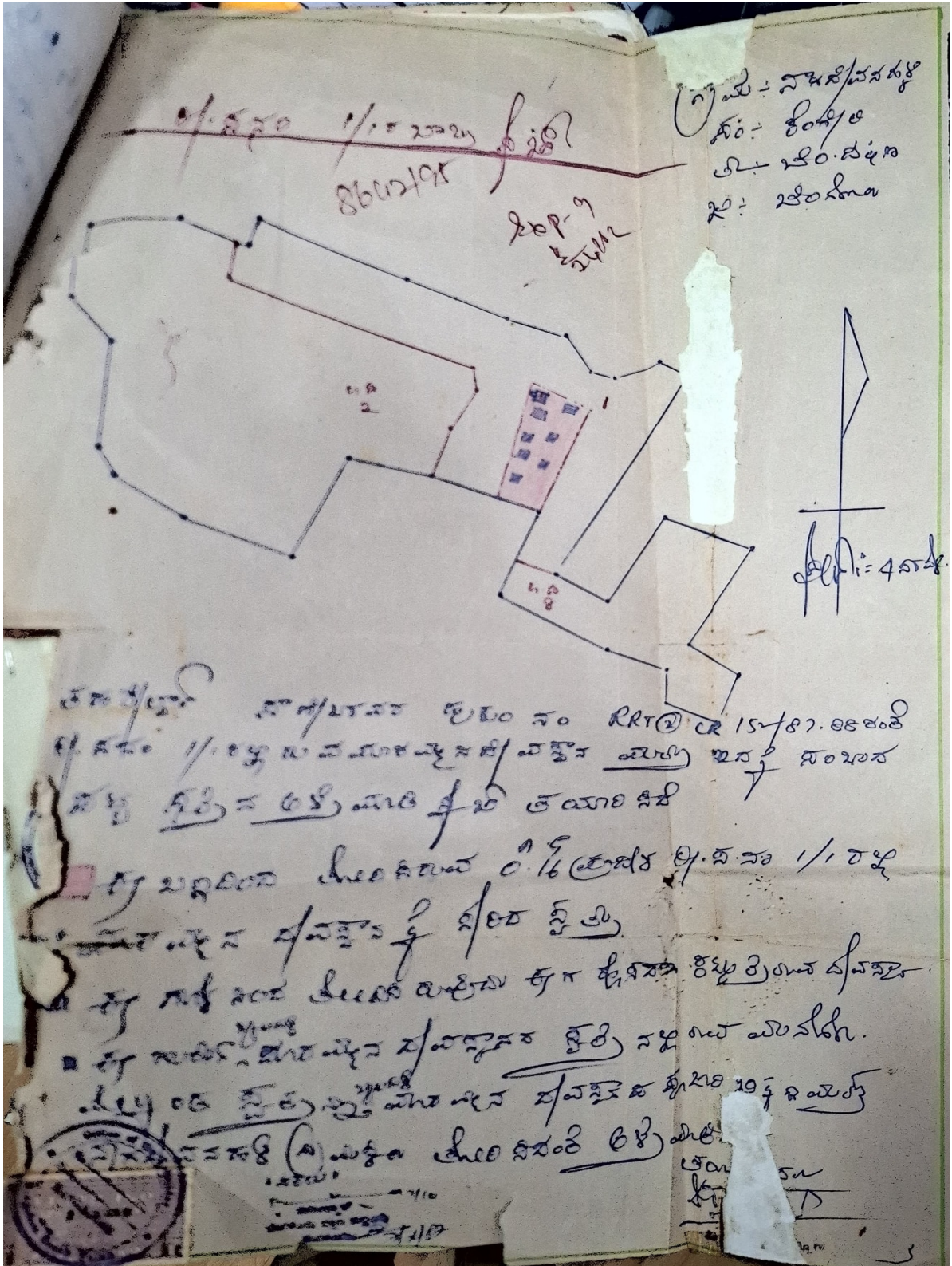


EXHIBIT P10

28. As already noted above on the east of land subject matter of deed of sale at Ex.P1 is the Government road and land in Sy.No.1/1C belonging to Junjamma. Another aspect to be seen is that survey sketch at Ex.P10 which indicate existence of a road on the eastern side of land is Sy.No.1/1B leading from the village to Bengaluru. The existence of this road is not shown in the said deed of sale at Ex.P1. The depiction of this road is found in Ex.P10 prepared on 25.06.1990, much prior to execution of the said deed of sale at Ex.P1.

29. Appropriate also to refer to the contents of the notices that were issued on behalf of the plaintiffs to the defendants. Paragraph 2 of the said notices which are produced as Exhibits P28 to P31 indicate that about eight years ago defendants had allegedly approached the plaintiffs seeking permission to put up some temporary structure for residential purpose on the ground of they not having premises to reside. Accordingly, the plaintiffs had permitted them to raise the temporary structures. The said notice has been issued on 14.11.1995. In other words, the alleged permission was granted by the plaintiffs in favour of the defendants sometime in the year

1986-1987. Specific contention in the plaint is that it is only thereafter defendants put up the structures on the portion of the property purchased by the plaintiffs. As noted above, the portion of the property purchased by the defendants falls in Sy.No.1/1B and there is no house shown to be existing in Sy.No.1/1B in the survey sketch at Ex.P10 which is prepared on 25.06.1990. On the other hand, Ex.P9 the survey sketch prepared on 07.10.1987 reflect existence of houses within 16 guntas of land earmarked therein, which is shown as bearing Sy.No.1/1C in Ex.P10, which portion is shown to be falling on the eastern side of Sy.No.1/1B being claimed by the plaintiff.

30. Clearly as contended by the defendants, land being allegedly purchased by the plaintiffs do not include the land shown as Sy.No.1/1C in Ex.P10 which admittedly consisted of temple and houses at least as early as and prior to 1987.

31. The pleadings and the oral evidence of the plaintiffs are not in consonance with the documentary evidence produced by them. Plaintiffs therefore, in the considered view of this Court, failed to establish right, title and interest and possession either of their vendor or

themselves over the subject property prior to filing of the suit. The trial Court, has not appreciated this aspect of the matter, even while accepting the case of the plaintiffs as pleaded.

32. The specific defence set up by the defendants is that originally Sy.No.1/1 belonged to forefathers of the plaintiffs and defendants namely Aravaiah and Halehatti Junjiah. That plaintiffs and defendants are their great grand children. In furtherance to said plea in the affidavit evidence it is contended that the land in Sy.No.1/1 of Nagadevanahalli, totally measure 3 acres 6 guntas originally belonged to one Aravaiah son of Junjappa @ Allattappa. Junjaiah @ Allattappa had two sons namely Allatte Junjaiah and Aravaiah. They had divided the said land long back. Avaraiah had three sons namely Chikka Junjaiaha, Badajja and Maraiah. Chikka Junjaiah had further divided the land by taking his 1 acre 2 guntas of land on the northern side of Sy.No.1/1. The boundaries of the said 1 acre 2 guntas of land shown in the affidavit as East by: Sy.No.2/6, West by: remaining land in Sy.No.1/1, North by: Sy.No.2/11, Sy.No.2/10 and

Sy.No.2/6, South by: the remaining land in Sy.No.1/1 retained by Badajja and his brother Maraiah.

33. Chikka Junjaiah had died leaving behind two sons namely Junja Maraiah and Aravaiah. Junja Maraiah had got one son i.e. Doddaiah and Aravaiah had got two sons namely Chikkanna and Eranna. Though Doddaiah and his brothers Chikanna and Eranna constituted joint family, Chikkanna and plaintiff No.1 had created the sale deed through Doddaiah in respect of Sy.No.1/1B to an extent of 1 acre 16 guntas describing the said property, which was not owned and possessed by Doddaiah and Chikkanna. Allata Junjaiah had four sons namely Junjegowda, Haraiah, Maraiah and Kere Chikkanna. Junjegowda in turn had three sons namely Junjaiah, Sannappa and Doddaiah and two daughters namely Junjamma and Chikkamma. Junjamma is the mother of defendant No.1 and wife of defendant No.1 Sannamma is the daughter of Sannappa and sister of plaintiff No.1 Pujari Chikkanna.

34. Badajja and his brother Maraiah who owned 2 acres 4 guntas of land out of 3 acres 6 guntas in Sy.No.1/1 had conveyed the said extent of 2 acres 4 guntas in favour of

Junjamma in terms of registered deed of Gift dated 27.07.1961 as per Ex.D1. The boundaries given in the said deed of gift to an extent of 2 acres 4 guntas are East by: Javaregowda Ajjappa's property, West by: Junjegotda's property, North by: remaining land in the same survey number belonging to donor's brother's son Junjamaraiah, South by Junjegotda's property. Pursuant to the said deed of gift, mutation entries have been affected vide M.R.No.6/1960-61. In furtherance to said deed of gift dated 27.07.1961, Junjamma has sold an extent of 22 guntas of land in favour of Kempamma, wife of Mallappa in terms of registered deed of sale dated 18.05.1975, to description of boundaries of the said 22 guntas of land given in the said deed of sale are East by: Sri Maramma Temple and Junjaiah, West by: Srikantaiah, Nanjundappa and others lands. North by: Junjamaraiah i.e., plaintiff's vendor Doddaiah's father and plaintiff's grandfather Chikka Junjaiah South by: Chikka Kulla. The said document is marked as Ex.D3.

35. Junjamma has further sold an extra 22 guntas of land in the eastern side of entire Sy.No.1/1, New Sy.No.1/1C, in favour of wife of defendant No.1, Sannamma, in terms of

the registered deed of sale. Junjamma had further sold an extent of 27 guntas of land in favour of K.H.Manjappa, who in turn sold the same in favour of one Priyadarshini and M.Krishnappa.

36. Thus, after selling said portions of land, an extent of 13 guntas of land remained in possession of the villagers in which two Maramma temples existed. The said portion also consisted of the houses which is earmarked as Sy.No.1/1C.

37. The documents produced by the defendants, namely the deed of gift at Ex.D1 and the deed of sale at Ex.D3 executed by Junjamma, have remained undisputed and uncontroverted by the plaintiff. The relationship between the plaintiffs, defendants, and the forefathers has also remained unchallenged.

38. Comparative analysis of the evidence led by the defendants with that of the evidence led by the plaintiffs indicates that long prior to the execution of the deed of sale dated 15.10.1990 at Ex.P1 by Doddaiiah in favour of the plaintiffs, a registered deed of gift at Ex.D1 came to be executed in favour of Junjamma by Badajja and

Maraiah, conveying 2 acres 4 guntas of land being the southern portion of 3 acres 6 guntas of land in Sy.No.1/1. This extent of 2 acres 4 guntas of land being southern portion of land in Sy.No.1/1 can be found with reference to the sketch produced by the plaintiffs at Ex.P9 and Ex.P10. If southern portion of the land in Sy.No.1/1 was subject matter the deed of gift and deed of sale as per Ex.D1 and D3 respectively at an undisputed point in time, land being claimed by the plaintiffs in terms of deed of sale dated 15.10.1990 at Ex.P1, being 1 acre 16 guntas of land on southern side becomes unbelievable and therefore cannot be countenanced.

39. In any event, as already noted above, 16 guntas of land in which there exists temples and houses has been delineated and earmarked as Sy.No.1/1C in the sketch at Exhibits 9 and 10, which is not subject matter of the sale deed. The case put forth by the defendants is therefore acceptable and credible. The trial Court has lost sight of this aspect of the matter while accepting the case of plaintiffs and rejecting the case of the defendants.

40. Another aspect of the matter to be seen is the photographs produced by the defendants at Ex. D31 to

D43. Perusal of the said photographs, which remain undisputed, indicates the existence of several houses, including the houses in occupation of the defendants. From the photographs, it appears that the houses shown therein must have been in existence for several decades, as contended by the defendants. They do not appear to have come into existence just about eight years prior to the filing of the suit. Houses of this nature in rural India have survived the harshness of the weather for over several decades and still exist. That merely because the houses have been constructed with mud and mortar with tiled roofs, it cannot be considered as the temporary structures. The photographs also indicate the existence of roads, drinking water facilities, electricity poles, and electricity connections being provided to all the houses, including the houses in the possession of the defendants. In that view of the matter, the claim of the plaintiffs, as seen in the notice noted above, that they permitting defendants to put up temporary structures somewhere eight years prior to filing the suit cannot be accepted.

41. What remains unclear is that basis on which the plaintiff selected on Plaint Schedule 'A' 'B' and 'D' properties,

when the plaintiffs have purportedly purchased 1 acre 16 guntas of land in terms of Ex.P1 schedule of which as noted above do not indicate the existence of any structure, and even according to the plaintiffs, an extent of 16 guntas of land subject matter of Ex.P9 consists of several houses.

42. Thus, the trial court is not justified in accepting case of case of the plaintiffs that they are the owners in possession of the Plaint Schedule 'A' 'B' and 'C' properties, and that they granted permission to the defendants to occupy the same prior to the execution of the deed of sale dated 15.10.1990.

Regarding Point No.2:

43. The trial Court do not seem to have taken note of the plea of adverse possession raised by the defendants in their written statement in proper perspective. The defendants, as seen in the written statement, have not sought to contend that they have perfected their right by adverse possession specifically against the plaintiffs or their vendor Doddaiiah. It is the specific case of the defendants that neither the plaintiffs nor the vendor had

any portion of the land left on the southern side of Sy.No.1/1 inasmuch as the said land was the subject matter of the deed of gift in favour of Junjamma. It is their specific case that Junjamma, after having alienated a portion of the land, retained 16 guntas of land which consisted of a temple and houses and the same did not belong either to the plaintiffs or their vendor. Therefore, plea of adverse possession, if any, could have been only against Junjamma. The trial court seemed to have taken this plea as a plea of adverse possession against the plaintiffs and their vendor, and applying the principle of adverse possession, has held it against the defendants.

44. Thus, the trial Court is not justified in holding that the defendants have not been in possession of the Plaint Schedule 'A' 'B' and 'C' properties, adverse to the interest of the plaintiffs.

Regarding Point No.3:

45. For the aforesaid reasons and analysis the trial Court in the considered view of this Court has not appreciated the pleading and evidence in proper perspective and has thus erred in decreeing the suit as sought for.

46. Plaintiffs have not disclosed their relationship with their vendor Doddaiiah. They have not also disclosed their relationship with the defendants. Schedule to the sale deed dated 15.10.1990 at Ex.P1 more particularly the eastern boundary mentioned as above read with survey sketch at Ex.P9 and Ex.10 makes it crystal clear that land in Sy.No.1/1C measuring about 16 guntas in which the temple and houses including suit schedule 'A', 'B' and 'C' properties situated had never been part of the deed of sale, yet plaintiffs have pursued the matter for all these years. They, therefore are required to be mulcted with costs.

47. Plaintiffs are liable to pay cost of Rs.10,000/- payable to "High Court Legal Services Committee".

46. Points raised are answered accordingly.

47. Accordingly, the following:

ORDER

(i) Appeal is ***allowed***.

(ii) Judgment and decree dated 01.10.2010 passed in O.S.No.8642/1995 on the file of the XIV Addl. City Civil Judge, Bengaluru, is set aside.

(iii) Suit in O.S.No.8642/1995 is dismissed with cost.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

SBN