



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 28 OF 2011 (DEC/INJ)

BETWEEN:

THE CITY MUNICIPAL COUNCIL
REP BY ITS COMMISSIONER
KOLAR.

...APPELLANT

(BY SRI. SRINIVASA.G, ADVOCATE)

AND:

KRISHNAVENAMMA
DEAD BY LRS

1. T S RANGARAJU
S/O.T R SAMPANGIRAMAIAH GUPTHA
AGED ABOUT 55 YEARS.
2. T S RAMESH
S/O.T R SAMPANGIRAMAIAH GUPTHA
AGED ABOUT 52 YEARS.
3. T S AMARNATH
S/O.T R SAMPANGIRAMAIAH GUPTHA
AGED ABOUT 49 YEARS.
4. T S BADARINATH
S/O.T R SAMPANGIRAMAIAH GUPTHA
AGED ABOUT 46 YEARS.

ALL ARE RESIDING AT M.C. CHOWK
DODDAPET, KOLAR – 563 101.

5. THE DIRECTOR OF MUNICIPAL ADMINISTRATION
IN KARNATAKA 9TH FLOOR,
VISHWEHWARIAIAH TOWERS
BANGALORE – 560 001.



6. THE DIRECTOR
AGRICULTURAL MARKETING COMMITTEE
RAJ BHAVAN ROAD
BANGALORE – 560 001.
7. THE ASSISTANT DIRECTOR
AGRICULTURAL MARKETING COMMITTEE
KOLAR DISTRICT - 563 101.

...RESPONDENTS

(BY SRI. SHAILESH.G. SHANKAR, FOR
SMT. VIJAYALAKSHMI, ADVOCATES FOR R-1 TO R-4
SRI. SPOORTHY HEGDE, AGA FOR R-5 TO R-7)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 27.09.2010 PASSED IN R.A.NO.266/2008 ON THE FILE OF THE PRESIDING OFFICER,FAST TRACK COURT-I,KOLAR,DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 04.10.2008 PASSED IN O.S.NO.05/2004 ON THE FILE OF THE III-ADDITIONAL CIVIL JUDGE (SR.DN), KOLAR.TRIAL COURT DECREED THE SUIT, APPELLATE COURT DISMISSED THE APPEAL. THE SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

THIS APPEAL IS BEING HEARD AND RESERVED ON 12.03.2026 COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

CAV JUDGMENT

This Regular Second Appeal by the 1st defendant in O.S.No.5/2004 on the file of the III Addl. Civil Judge (Sr.Dn.), Kolar, (for short 'the Trial Court') is directed against the impugned judgment and decree dated 04.10.2008, whereby the said suit filed



by respondent Nos.1 to 4 – plaintiffs against the appellant – defendant No.1 and respondent Nos.5 to 7 – defendant Nos.2 to 4 for declaration of title and permanent injunction in respect of the suit schedule immovable properties was decreed in favour of the plaintiffs against the defendants and confirmed by the Fast Track Court (FTC– I) at Kolar (First Appellate Court) which dismissed the appeal filed by the appellant – 1st defendant, thereby confirming the judgment and decree of the Trial Court.

2. On 29.11.2011, this Court admitted the present appeal to consider the following substantial questions of law:

“Heard learned Counsel for the appellant regarding admission.

Appeal is admitted for consideration of the following substantial questions of law:-

- (i) In the light of the specific defence of the appellant-defendant as to the plaintiffs not being in possession of the suit schedule property, whether the suit filed for relief of declaration and permanent injunction without seeking relief of possession was maintainable?*
- (ii) In the light of the specific defence of the appellant-defendant that the suit schedule property along with the adjacent property were*



granted to it by the Government for formation of building sites, whether the Government is a necessary party to the suit, if so, whether the suit without impleading the Government as a party is bad for non-joinder of the necessary party?

(iii) Whether the lower appellant Court is justified in law in refusing to permit the appellant-defendant to adduce additional evidence without going into the question as to whether the additional evidence sought to be produced is relevant for just decision of the case?

(iv) Whether the findings recorded by the courts below that the plaintiffs have proved their title to the suit schedule property is perverse and contrary to the evidence on record on account of non-consideration of the materials on record?

Call for records.

Pending disposal of this appeal, the judgment and decree passed by the courts below are stayed."

3. Heard learned counsel for the appellant and learned counsel for the respondent Nos.1 to 4 and learned AGA for the respondent Nos.5 to 7 and perused the material on record.

4. In addition to reiterating the various contentions urged in the appeal and referring to the material on record, learned counsel



for the appellant invited my attention to the records of the First Appellate Court including the order sheet maintained by the Court in order to point out that apart from the fact that the impugned judgments and decrees passed by the Trial Court and First Appellate Court are perverse and contrary to law and facts, the appellant – 1st defendant filed two applications before the First Appellate Court viz., I.A.No.2 under Order 26 Rule 9 r/w Section 151 CPC dated 09.03.2010 for appointment of a Court Commissioner to conduct local inspection of the suit schedule properties and I.A.No.3 under Order 41 Rule 27 r/w Section 151 CPC dated 24.06.2010 for permission to adduce / produce additional evidence / documents in the appeal. It was submitted that though respondent Nos.1 to 4 – plaintiffs contested / opposed the said applications by filing their statements of objections on 15.03.2010 and 25.06.2010 and detailed written arguments dated 21.07.2010 had been submitted by the appellant on merits as well as on I.A.Nos.2 and 3 before the First Appellate Court, which noted the same in the impugned judgment and decree, the First Appellate Court committed a grave and serious error of law and patent procedural illegality / infirmity in not disposing of or passing any



orders on the said I.A.Nos.2 and 3 while passing the impugned judgment and decree and the said omission on the part of the First Appellate Court in not passing any orders or disposing of the said I.A.Nos.2 and 3 clearly vitiates the impugned judgment and decree passed by the First Appellate Court, which deserves to be set aside and the matter remitted back to the First Appellate Court for reconsideration afresh in accordance with law.

4.1 It was further submitted by the learned counsel for appellant that even in the present appeal before this Court, the appellant had filed I.A.No.1/2024 dated 16.07.2024 under Order 41 Rule 27 CPC seeking permission to produce additional evidence / documents and the said application also deserves to be allowed and the said application also deserves to be transmitted / remitted back to the First Appellate Court for consideration along with I.A.Nos.2 and 3 and in accordance with law.

5. Per contra, while learned AGA appearing for respondent Nos.5 to 7 would support the contentions and claims urged by the learned counsel for the appellant, learned counsel for respondent Nos.1 to 4 – plaintiffs would vehemently oppose / refute the said contentions and submit that there was no merit in both I.A.Nos.2



and 3 filed by the appellant before the First Appellate Court and I.A.No.1/2024 filed before this Court and all the applications are liable to be dismissed and as such, the question of setting aside the judgment and decree of the First Appellate Court and remitting the matter back to the First Appellate Court for reconsideration afresh would not arise in the facts and circumstances of the instant case and as such, the present appeal is devoid of merits and the same is liable to be dismissed.

6. I have given my anxious consideration to the rival submissions and perused the material on record including the records of the First Appellate Court, order sheet, I.A.Nos.2 and 3 filed by the appellant before the First Appellate Court as well as I.A.No.1/2024 filed by the appellant before this Court and the objections filed by respondent Nos.1 to 4 to the said applications.

7. In view of the aforesaid facts and circumstances and submissions made by both sides, I deem it just and appropriate to frame the following additional substantial question of law that arises for consideration in the present appeal:

“Whether the First Appellate Court committed an error in not disposing of nor passing any orders on the applications – I.A.Nos.2



and 3 filed by the appellant under Order 26 Rule 9 and Order 41 Rule 27 CPC respectively in R.A.No.266/2008 while passing the impugned judgment and decree ?”

8. Heard learned counsel for the appellant and learned counsel for respondent Nos.1 to 4 and learned AGA for respondent Nos.5 to 7 on the additional substantial question of law framed supra and perused the material on record.

9. Before considering and dealing with the substantial questions of law framed by this Court on 29.11.2011, I am of the view that the additional substantial question of law framed supra requires to be considered by this Court for the purpose of disposal of the present appeal.

10. In this context, a perusal of the material on record will indicate that as stated supra, respondent Nos.1 to 4 – plaintiffs instituted the aforesaid suit in O.S.No.5/2004 against the appellant – 1st defendant - Kolar City Municipal Council and respondent Nos.5 to 7 – defendant Nos.2 to 4 / State for declaration of title and permanent injunction restraining the defendants from interfering with the plaintiffs’ possession and enjoyment of the suit schedule



immovable properties and for other reliefs. The said suit having been contested by the defendants, both parties adduced oral and documentary evidence and culminated in the impugned judgment and decree dated 04.10.2008, whereby the Trial Court decreed the said suit in favour of the plaintiffs against the defendants. Appellant – defendant No.1 filed the aforesaid appeal in R.A.No.266/2008, during the pendency of which it filed the aforesaid two applications viz., I.A.No.2 under Order 26 Rule 9 r/w Section 151 CPC dated 09.03.2010 for appointment of a Court Commissioner to conduct local inspection of the suit schedule properties and I.A.No.3 under Order 41 Rule 27 r/w Section 151 CPC dated 24.06.2010 for permission to adduce / produce additional evidence / documents in the appeal. The respondent Nos.1 to 4 – plaintiffs contested / opposed the said applications by filing their statements of objections on 15.03.2010 and 25.06.2010 and both sides having submitted arguments on merits as well as on the aforesaid applications, the appellant also filed a detailed written arguments dated 21.07.2010, pursuant to which, the First Appellate Court proceeded to dismiss the appeal filed by the appellant – 1st defendant. In this regard, it is pertinent to note that a perusal of the



impugned judgment and decree passed by the First Appellate Court will clearly indicate that both I.A.Nos.2 and 3 filed by the appellant as well as the objections filed by respondent Nos.1 to 4 have been referred to by the First Appellate Court in the impugned judgment and decree as hereunder:

"10. In the instant case, the advocate for appellant has also filed I.A.2 under Order 26 Rule 9 r/w sec. 151 CPC requesting for appointment of commissioner preferably Assistant Director of Land Records to make local investigation of the suit schedule property to find out whether there are houses constructed in the suit schedule property or not and also how many persons are in possession and enjoyment of the suit schedule property by constructing houses and also the area in which the water tanks and water supplying pipes are existing in the suit schedule property and also existing other salient features etc.

11. In support of said application, the appellant i.e., Commissioner, C.M.C., Kolar has submitted sworn statement contending that the appointment of commissioner as requested in this IA. is very necessary for the just decision of the case Originally the suit schedule property belongs to government where there are sites and public sites are in existence. To know the said fact, the appointment of commissioner is very necessary. Hence he has requested for allowing the said application, otherwise there is irreparable loss which will be caused to the Government.

12. The respondent no.1 to 4 have submitted their objections to this application stating that the application filed by the appellant is not maintainable either in law or on facts. The appointment of commissioner in the present case is totally unwarranted one because the parties to the suit have admitted in their evidence about existence of residential houses and sites in the suit schedule property. The only question in the present suit is that whether the plaintiffs/respondents were able to prove that the suit schedule property is their ancestral



property or the defendant no.1 has to prove that the suit schedule property is Under such circumstances, the belongs to government. appointment of commissioner as requested by appellant is not necessary. Hence he has requested for dismissal of the application.

13. The appellant has also filed I.A.3 under Order 41 Rule 27 r/w sec. 151 CPC requesting permission to produce additional documentary evidence as mentioned below:

- a) Certified copy of proceedings of the Government of Mysore, Order No. RD.100 LGK 72, Bangalore dated 10 January 1973,*
- b) Certified copy of the proceedings of the Government of Karnataka for confirmation of two sites in favour of the auction purchasers,*
- c) Certified copy of the survey map*
- d) Certified copy of the assessment register extract for the year 1970-71, 1980-81,*
- e) Certified copies of the judgment and decree passed in RA.14/1997 on the file of Prl. Civil Judge (Sr. Dn), Kolar dated 10-7-2000*
- f) Certified copies of property register extract*
- g) Deposition of the respondent no.1/plaintiff no.1 in OS.43/1978,*
- h) Deposition of the witness examined on behalf of the defendant by name V. Chandrashekar in OS.43/1978,*
- i) Certified copies of ERTC extracts for the year 1965 to 1975.*
- j) Lay-out plan (Blue print) approved by the Director, Town Planning Department.*

14. In support of his application, the appellant has filed sworn statement contending that the additional documentary evidence is required for the just and effective adjudication of the subject matter of the suit. The 1st defendant has failed to produce the said documentary evidence before the trial court as the trial court has failed to afford opportunities to him because the trial court was very hurried enough to



dispose off the subject matter of the suit as per the stipulated time fixed by the Hon'ble High Court of Karnataka. So the following documents are necessary to prove the defence which has been asserted by the 1st defendant before the trial court.

15. More specifically he has relied the deposition of plaintiff in OS.43/1978 and he has made underline in the said deposition with yellow colour wherein the measurement of the suit schedule property is not at all forthcoming, but there are boundaries. So the production of these documents and also appointment of commissioner is very necessary in the present case on hand.

16. The respondents have also filed objections to this application contending that the application filed by the appellant is not maintainable either in law or on facts. Moreover the Commissioner of City Municipality, Kolar has filed sworn statement with false grounds. So the additional documentary evidence is no way concerned for just decision of the subject matter of the case because the scope of subject matter of the suit before the trial court was only that if plaintiffs succeeded in proving that the suit schedule property is their ancestral property or the 1 defendant has to prove his contention that the suit schedule property is the government property.

17. The learned counsel for the respondents has vehemently argued by supporting the judgment and decree of the trial court. Further he has contended that the appellant being 1st defendant is not intending to give full stop for the judicial proceedings in respect of suit schedule property, because he is prolonging the matter with one or the other reasons even though he has failed before the trial court to prove that the suit schedule property is the Government property. Under such circumstances, he has requested for the dismissal of the appeal.

18. After hearing arguments from both the parties, the points that would arise for my consideration are:

- 1. Whether the trial court is justified in decreeing the suit of the plaintiff?*



2. *Whether there are material grounds for this court to interfere in the findings given by the trial court?*
3. *What order?*

19. *My findings on the above points are that:*

Point No.1: In affirmative

Point No.2: In negative

Point No.3: As per final order for the following:"

11. As can be seen from the aforesaid judgment of the First Appellate Court, despite having referred to both I.A.Nos.2 and 3, the First Appellate Court did not frame any point for consideration as regards the said applications and proceeded to dismiss the appeal without considering, disposing of or passing any orders on the said applications – I.A.Nos.2 and 3 and has passed the impugned judgment and decree as hereunder:

“REASONS

Point No.1 to 3:

“20. In the instant case, the plaintiffs have filed the present suit for the relief of declaration of their title and consequential relief of permanent injunction in respect of suit schedule property. More specifically the plaintiffs have contended that the suit schedule property is of their ancestral property. But the defendant no.1 has denied the contention of the plaintiffs contending that the suit schedule property is the government property on the basis of order No.RD.100 LGK 72, Bangalore dated 10-1-1973. So the



government transferred the suit schedule property in favour of 1st defendant directing to prepare layout plan. So the strong contention of the 1 defendant is that the suit schedule property is acquired by the government and transferred in his favour.

21. Now this court has to consider whether the plaintiffs are able to prove that the suit schedule property is their ancestral property. The plaintiffs have contended in their plaint that suit schedule property was bearing Su.No.163 measuring 18 guntas and Su No. 164 measuring 1-14 acres and now the said property bears assessment and Katha No.1564, 1566 and 1565 and the said property called as Thumsi Maddaiah Thopu and same is bounded on East: Bangalore-Madras road, West: Darga Inamthi North Keelukote Tank now it is Keelukote Extension and South Road thereafter Varadappa Mutt excluding over head water tanks The plaintiffs have contended that the suit schedule property originally owned by their ancestors Le. Narayanaiah had 1/4th share and grandfather of plaintiffs one Rangaiah Setty had half share and one Thumsi Muddaiah had 1/4th share in the suit schedule property and they were enjoying the said property as joint family property with absolute title and possession. In the year 1908, there was a partition in respect of the suit schedule property. In the said partition, joint family divided along with suit property amongst sons of Thumsi Narayanaiah S/o. Thumsi Krishnaiah sold 1/4th share in favour of Thumsi Rangaiah S/o. Thumsi Sampangi Ramaiah who is the grand father of plaintiff no.2 to 5



*through the registered sale deed dated 10-12-1919. The plaintiffs have contended that Thumsi Muddaiah's branch had half share in the suit property. Two sons of Thumsi Krishnaiah Le Thumsi Muddappa and Thumsi Narayanaiah had 1/4th share each and the remaining 1/4th share of Thumsi Muddappa sold by his sons T. M. Ramaiah Setty and T. M. Radhakrishynaiah Setty in favour of the father of plaintiff no.2 to 5 under a registered sale deed dated 18-10-1957 and they were in possession of the said property. Further the plaintiffs have contended that Thumsi Sampangi Ramaiah being the elder son of Rangaiah and also manager of the family was left with the ownership of entire properties by other family members. Further contended that after his death, his son and grandson namely Thumsi Rangaiah and T.R. Sampangi Ramaiah Gupta have succeeded to the estate of Thumsi Sampangi Ramaiah including the suit schedule property. The suit property lost the characteristics of agricultural land in the year 1960 and they came under the jurisdiction of municipal authorities of Kolar. The revenue records are containing as *THUMSI MADDAIANAVARA MANTAPA, NAGARA KATTE, ASHWATHA KATTE, ETC. On the basis of above averments, now this court has to consider whether the title of the suit schedule property passes as per the above assertion made by the plaintiffs So it is very necessary to consider the documents relied by the plaintiffs before the trial court.*

22. Ex. P1 is the genealogical tree which is not disputed by the defendants. Ex. P2 is the partition deed



which was of the year 1907-08. It is the prime document where there was a partition taken place in between the ancestors of plaintiffs. Defendant no.1's counsel has mainly relied the recitals which are forthcoming in the said partition deed which reads as under:

*“ಹೋಲಾರ ತಾಲ್ಲುಕು ಕಸಬಾ ಗ್ರಾಮಕ್ಕೆ
ಸರ್ವೆ.ನಂ.163/0-18 ಖಗ್ಗಿ 1-14 ಗುಂಟ ಜುಮ್ಮಾ 1.32 ಗುಂಟೆ
ಜಮೀನು ಸಹಾ ಬಿಟ್ಟು.....”*

The strong contention of the appellant's counsel is that the words denotes that Sy. No.163 and Sy. No. 164 totally measuring 1 acre 32 guntas was not the subject matter of the said partition deed. So the said extent is not the property of plaintiffs' ancestors. The remaining properties divided in 3 divisions among the parties to the deed. Ex.P3 is the sale deed dated 10-12-1919 executed in favour of one Rangaiah S/o. Thumsi Sampangi Ramaiah wherein the boundaries of Thumsi Muddaiahnavara Thopu denotes that East by road proceeding towards Bangalore, West by Dondurayara Thopu, North by Keelukote kere, South: road and Chayamma's mutt. The said property containing Honge, Tamarind and other kinds of treen and also stone built well. Gare Mantapa and Kallu Mantapa ExP4 in the another sale deed dated 8.10.1957 in respect of sale of 1/4 share. Ex. P5 is the lease deed. The description of the property is shown as property situated behind Sharada Talkies bearing Sy.No. 163 and 164 and municipal assessment and Katha No. 1564, 1566 and 1565, which is known as Thumsi Muddalah Thopu



bounded on East: Bangalore-Madras road, West: Darga Inamthi, North: Keelukote Tank and South: Varadappa Mutt and the construction thereon newly excluding mantap portion named as Thumsi Muddaiah mantap in Katha No. 1564 referred above. Ex. P6 and P7 are the copies of notice issued by Municipality. Ex. P8 is the assessment extract for the year 1961-62 wherein Serial number is mentioned as 1564 to 1566 and property number is shown as 1564, 1565 and 1566. The name of owner is shown as Thumsi Muddaiahnavara mantapa twice, thereafter Nagarakatte, Ashwatha Katte. Ex. P9 is the assessment extract for the year 1970-71 wherein Serial number is mentioned as 2070 and 2071 and property number is shown as 2070 and 2071. The name of owner is shown as Thumsi Muddaiahnavara mantapa twice, thereafter thopu, nagara Katte. Ex P10 is the assessment extract for the year 1988-89 wherein Serial number is mentioned as 3528 and 3529 and property number is shown as 2153 and 2154 and 1566 The name of owner is shown as Kallu malige measuring 24 ½ x 15, angala measuring 24 ½ x 22, Sri Muddaiahnavara mantapa and property no.2154 is shown as 280+320 x 265 thopu, Nagara katte and Nagarasabhe niveshana Ex. P11 is the assessment extract for the year 1990-91 in respect of SL.No.2153 and 2154 which bears property No.2153 and 2154 and the name of owner is shown as Muddaiahnavara Mantapa and property No.2154 is described as 280+320 x 265 thopu and Nagara katte, the name of occupier is shown as Purasabhe. Ex. P13 is the index of land dated 18-3-1985 for Sy.No. 163 and 164



which are measuring 0.18 guntas and 1 acre 14 guntas respectively which bears the signature of Tahsildar, Kolar Taluk and the column no.7 i.e. person in possession of government land or Inam land discloses the name of Thumsi Muddaiah S/o. Krishnaiah and column no.8 discloses as "ಪಿತ್ತಾಜಿತ್ ಅನುಭವ". Even on going through Ex. P14 Physal Pathrike in respect of Sy.Nos. 163 and 164 as per extent, there is an endorsement as "Sarakari", thereafter the name of "Thumsi Muddaiah' is appearing. Ex. P15 is records of rights in respect of Sy.Nos.163 and 164 and the name of Thumsi Muddalah S/o. Krishnaiah is appearing with an endorsement as "ಪಿತ್ತಾಜಿತ್ ಅನುಭವ". Ex P16 and 17 are the tax paid receipts. Ex P20 is the endorsement about sending information for installing public tap at their cost to T.R.Samprnagi Rama Gupta, Ex. P21 to P23 are the receipts for purchasing usufructs of tamarind trees situated in the suit schedule property.

23. Now it is very necessary to consider the documents which are produced by the defendants. Ex. D1 is the form no.5 record of rights in respect of Janjer No.269 and 270 which is standing in the name of Thumsi Muddaiah S/o. Krishnaiah. Ex D2 is Land Tax Assessment Register extract for the year 1999-2000 in respect of property No.3804 and 3805 wherein the entries discloses as "ನಗರಸಭೆ ನಿವೇಶನ, ತೋಪು ನಾಗರಕಟ್ಟೆ ಮತ್ತು ಎರಡು ನೀರಿನ ಟ್ಯಾಂಕ್" Ex.D1 is Land Tax Assessment Register extract for the year 1999-2000 in respect of property No.3806 and



3807 wherein the entries discloses as "ನಗರಸಭೆ ನಿವೇಶನ, ಅಶ್ವತ್ಥಕಟ್ಟೆ ಹುಣಸೇಮರಗಳು." Ex D4 is Land Tax Assessment Register extract for the year 1993-1994 in respect of property No. 3529 to 3532 wherein the entries discloses as " ತೋಪು ನಾಗರಕಟ್ಟೆ, ಎರಡು ನೀರಿನ ಟ್ಯಾಂಕ್, ಅಶ್ವತ್ಥಕಟ್ಟೆ ಮತ್ತು ಹುಣಸೇಮರಗಳು." Ex.D5 is Land Tax Assessment Register extract for the year 1978-1979 in respect of property No. 2154 to 2156 wherein the entries discloses as " ತೋಪು ಪೌರಸಭೆ ಮುನಿಸಿಪಾಲಿಟಿ ನಿವೇಶನ-ಇದರಲ್ಲಿ ಶ್ರೀಗಣೇಶ ದೇವಸ್ಥಾನ ಕಟ್ಟುವುದಕ್ಕೆ, ಎಸ್ ಚಂದ್ರಶೇಖರ್ ದೀಕ್ಷಿತ್‌ರವರಿಗೆ ಕೌನ್ಸಿಲ್ ತೀರ್ಮಾನ ಮಾಡಿದ್ದು" Ex.D6 is Land Tax Assessment Register extract for the year 1978-1979 in respect of property No.2157 and 2158 wherein the entries discloses as "ಮುನಿಸಿಪಾಲಿಟಿ ನಿವೇಶನ, ಅಶ್ವತ್ಥಕಟ್ಟೆ, ಹುಣಸೇಮರಗಳು, ಚಾಯಮ್ಮನ ದೇವಸ್ಥಾನ" and the property No.2157 is in possession of 'Pourasabhe' and property No. 2158 is shown as "ಬಾಡಿಗೆ", Ex.D7 is Land Tax Assessment Register extract for the year 1988-1989 in respect of property No.2154 to 2157 wherein the entries discloses as "ತೋಪು ನಾಗರಕಟ್ಟೆ, ಎರಡು ನೀರಿನ ಟ್ಯಾಂಕ್, ಅಶ್ವತ್ಥಕಟ್ಟೆ ಮತ್ತು ಹುಣಸೇಮರಗಳು" and it is stands in the name of City Municipality and also there is an endorsement as "ಏನಾಯಿತಿ". Ex. D8 is Land Tax Assessment Register extract for the year 1999-2000 in respect of property No.3811 and 3814 wherein the entries discloses as " ಮ 12 X 28 ½ ದೇವಸ್ಥಾನದ ಮನೆ, ಮ 28 X 30½



ದೇವಸ್ಥಾನದ ದಕ್ಷಿಣ ಭಾಗದ ಮನೆ, ಮ 227 X 154 ಚಾಯಮ್ಮನ
ದೇವಾಲಯ, ಕ 27 X 15, ಅಂ 27 X 14 ಗ್ರಂಥಿಗಂ ಚೆಲುವಯ್ಯನ
ಮಂಟಪೆ." Ex.D9 is Land Tax Assessment Register extract
for the year 1999-2000 in respect of property No. 3808 to
3810 wherein the entries discloses "ಚಾಯಮ್ಮನ ದೇವಸ್ಥಾನ,
ದೇವಸ್ಥಾನದ ಪಕ್ಕದ ಮನೆಗಳು" respectively. Ex.D10 is Land Tax
Assessment Register extract for the year 1993-1994 in
respect of property No. 3537 to 3539 wherein the entries
discloses as "ದೇವಸ್ಥಾನದ ದಕ್ಷಿಣದ ಕಡೆ ಮನೆ ಜಾಗ, ಚಾಯಮ್ಮನ
ದೇವಸ್ಥಾನ, ಗ್ರಂಥಿಗಂ ಚೆಲುವಯ್ಯನ ಮಂಟಪೆ" respectively. Ex.D11 is
Land Tax Assessment Register extract for the year 1993-
1994 in respect of property No.3533 to 3536 wherein the
entries discloses as "ಚಾಯಮ್ಮನ ದೇವಸ್ಥಾನ ಮೋಟಾರು ಷೆಡ್ಡು
ಚಾಯಮ್ಮ ದೇವಸ್ಥಾನ, ದೇವಸ್ಥಾನ ಪಕ್ಕದ ಮನೆಗಳು, ದೇವಸ್ಥಾನದ ಮನೆ "
respectively. Ex.D12 is Land Tax Assessment Register
extract for the year 1978-79 in respect of property No.2163
and 2164 wherein the entries discloses as "ಚಾಯಮ್ಮನ
ದೇವಸ್ಥಾನ, ಗ್ರಂಥಿಗಂ ಚೆಲುವಯ್ಯನವರ ತೋಪಿನಲ್ಲಿರುವ ಮಂಟಪೆ"
respectively. Ex. D13 is Land Tax Assessment Register
extract for the year 1978-79 in respect of property No.2159
and 2160 wherein the entries discloses as "ಚಾಯಮ್ಮನ
ದೇವಸ್ಥಾನ, ದೇವಸ್ಥಾನದ ಪಕ್ಕದಲ್ಲಿ ಮನೆ" respectively. Ex. D14 is
Land Tax Assessment Register extract for the year 1978-



79 in respect of property No. 2161 and 2162 wherein the entries discloses as "ದೇವಸ್ಥಾನದ ಬಾಜು ಮನೆ, ದೇವಸ್ಥಾನದ ದಕ್ಷಿಣದ ಕಡೆ ಮನೆ" respectively. Ex. D15 is Land Tax Assessment Register extract for the year 1988-89 in respect of property No. 2158 to 2161 wherein the entries discloses as "ಚಾಯಮ್ಮನ ದೇವಸ್ಥಾನ ಮೋಟಾರು ಮಿಷಿನ್, ಚಾಯಮ್ಮನ ದೇವಸ್ಥಾನದ ದೇವಸ್ಥಾನದ ಪಕ್ಕದಲ್ಲಿನ ಮನೆ, ದೇವಸ್ಥಾನದ ಬಾಜು ಮನೆ" respectively Ex. D16 is Land Tax Assessment Register extract for the year 1988-89 in respect of property No. 2162 to 2164 wherein the entries discloses as "ದಕ್ಷಿಣದ ಕಡೆ ಮನೆ ಜಾಗ, ಚಾಯಮ್ಮನ ದೇವಸ್ಥಾನ, ಗೃಂಧಿಗಂ ಚೆಲುವಯ್ಯನ ಮಂಟಪ" respectively. Ex.P18 is the document pertaining to janjer No.86 to 90 wherein it discloses that Sri Kanteshwara Water Supply, two water tanks and khajawada respectively. Ex D20, 22, 25, 27 and 29 are the RTC extracts in respect of Su. No. 164 measuring 1 acre 14 guntas having two water tanks wherein column no.9 shown as thopu Ex. D21, 23, 24, 26 and 28 are the RTC extracts in respect of Sy.No. 163 measuring 18 guntas having Ashwatha Katte wherein column no. 9 shown as thopu.

24. On perusal of above said documents, they are not pertaining to the suit schedule property because the suit schedule property is bearing Sy. No. 163 and 164 measuring 18 guntas and 1 acre 14 guntas respectively. Now they have changed into katha Nos. 1564, 1566 and 1565. It is the case of the defendants that the suit schedule



property is acquired by the government and transferred in favour of 1st defendant i.e. City Municipal Council, Kolar. On the basis of pleadings of 1st defendant, the trial court has framed issue no. 4 as under.

"Whether the defendants prove that the suit properties are acquired by the Government for public purpose of through the acquisition proceedings and that they are handed over to the 1st defendant for providing house sites for public and the sites for public offices?"

25. The 1st defendant has taken specific contention that the suit schedule property was acquired by the government as per notification date 19-1-1973. Except the notification, the 1 defendant has not produced any document in respect of acquisition of suit schedule property because there is every chance for the 1 defendant to produce notification issued by the government about acquisition of suit schedule property. Only on the basis of above said notification, the 1st defendant is intending to prove title over the suit schedule property. Moreover the word which is forthcoming in the partition deed marked at Ex. P2 ie. "ಸಹಾ ಬಿಟ್ಟು", the appellant's counsel has contended that the above said properties ie. Sy. No. 163 and 164 are not the properties of plaintiff's family. Even if the contention which has been urged by the appellant's counsel is taken into consideration, what is the necessity to mention Sy No. 163 and 164 in the partition deed by the plaintiffs in the year 1908. So the plaintiffs have produced documents to prove that the suit schedule property is the ancestral property of their family. Moreover the defendant



no. 1 has produced voluminous documents but the said documents are forthcoming after 1973. Even in the present case on hand the appointment of commissioner is not necessary because there is no dispute in between plaintiffs and defendant no. 1 about the boundaries of the properties. Moreover it is an admitted fact that there are buildings in existence over the suit schedule property from the evidence of DW-1. Even there is no dispute regarding measurement of the suit schedule property Under such circumstances, the appointment of commissioner in the present case on hand will not serve any purpose for deciding the subject matter of the suit. Even the learned counsel for the appellant has produced documents i.e. notification which is already produced by him before the trial court and deposition of plaintiff in OS 43/1978. It is well established principle of law that the oral evidence cannot override the contents of document. Even the documents which are produced by the appellant's counsel is not helpful in deciding the subject matter of the suit. However the plaintiffs have succeeded in proving that the suit schedule properties are the ancestral properties of their family by producing documents which are more than 30 years old and they have got presumptive value unless they are rebutted. The appellant has not produced any rebuttable evidence to rebut the presumption which is in favour of plaintiffs. So on the basis of partition deed in the year 1908 and sale deeds in the year 10-12-1919 and 18-10-1957, the plaintiffs succeeded to prove the subject matter of suit. Hence the finding of trial court is reasonable



an judicious one. In view of above reasons, I answer point no.1 as affirmative and point no.2 as negative and proceed to pass the following:

ORDER

The appeal filed by the defendant no.1/appellant is hereby dismissed by confirming the judgment and decree passed in OS.No.5/2004 dated: 04-10-2008 on the file of III Addl. Civil Judge (Sr. Dn), Kolar.

Parties should bear their own costs.

Draw decree accordingly.”

12. As can be seen from the reasoning and findings recorded in the impugned judgment and decree, the First Appellate Court having referred to I.A.Nos.2 and 3 as well as the objections filed by respondent Nos.1 to 4 coupled with the fact that both parties had made submissions not only on merits but also on the said applications and the appellant – 1st defendant had also filed written arguments / submissions in this regard, the First Appellate Court clearly misdirected itself in not considering or passing any orders or disposing of the said applications – I.A.Nos.2 and 3 filed by the appellant – 1st defendant which is clearly a patent and procedural illegality and infirmity apparent on the face of the



record, which would vitiate the impugned judgment and decree passed by the First Appellate Court. In this context, it would also be necessary to state that the said applications filed by the appellant – 1st defendant were necessary and essential for the purpose of disposal of the appeal as can be seen from the said applications and objections, which are hereby extracted as hereunder:

“IA No.2:

***“UNDER ORDER 26 RULE 9 READ WITH SEC.151
OF THE C.P.C THE APPELLANT ABOVE NAMED BEGS
TO SUBMIT AS FOLLOWS:***

That for the reasons mentioned in the accompanying Affidavit of the appellant, this Hon'ble Court may be pleased to appoint a Court Commissioner, preferably Assistant Director of Land Records to make local investigation of the suit schedule property to find out whether there are Houses constructed in the suit schedule property or not and also to find out whether how many persons are in possession and enjoyment of the Plaint Schedule Property by constructing houses and also the area in which the Water Tanks and water supplying pipes are existing in the Plaint Schedule and also existing other salient features etc., to decide the case more effectively and to resolve the real controversy between the parties by allowing this application in the ends of Justice and Equity or else, the appellant would be put to irreparable injury, injustice and hardship.”



AFFIDAVIT to IA No. 2

"AFFIDAVIT

I, Ramadas, the Commissioner, C.M.C, Kolar, the Appellant in the above case do hereby solemnly state or oath and affirm as follows:

1. I Swear that I am the Appellant in the above case and I am well conversant with the facts of the above suit and the Complaint, Written Statement, Depositions and also Judgement and Decree Passed in O.S.43/1978 and also documents produced before the Trial Court and also Appeal Memorandum may kindly be read as part and parcel of this Affidavit.

2. I Swear that the Complaint Schedule Property originally belongs to Government and the the suit schedule properties was abetting to Keelukote Tank formerly and the same was transferred by the Government to form Keelukote Lay-out in order to meet the needs of the public at large of Kolar City by providing House sites and also sites for public offices as per the Government Order No.RD 100 LGK 72, Bangalore dated 10th January 1973 itself. The suit schedule property is part and parcel of the transferred land and the said property is also finds a place in the approved Keelukote lay-out plan. The said fact also clearly discussed in Judgement and Decree passed in O.S.43/1978 which is marked as Ex-D31 before the Trial Court.



3. I Swear that the said suit filed by the Respondents/Plaintiffs in O.S.43/1978 on the file of the then Munsiff, Kolar for the relief of Permanent Injunction against the Appellant herein also against one V.R.Venkateshaiah and on contest the said suit filed by the Plaintiffs/Respondents has been dismissed and held that the Plaintiffs/Respondents are not in possession and enjoyment of the Plaint Schedule Properties per contra the Defendant/Appellant is in possession and enjoyment of the Plaint Schedule Properties in their own right, title, interest and enjoyment Against the said Judgement and Decree the Plaintiffs/Respondents herein also filed an Appeal before the Hon'ble Prl. Civil Judge (S.D), Kolar in R.A.1/1998 and on contest the said Appeal was also dismissed. Against the said Judgement and Decree, the Plaintiffs herein also preferred a R.S.A. No.288/1992 on the file of Hon'ble High Court of Karnataka at Bangalore and on contest the said Appeal was allowed on 17-10-1997 holding that the lower Court Ought to have rejected the Plaint for not complying issue of statutory Notice as contemplated Under Sec.234 of the Karnataka Municipalities Act to the Defendants/Appellant before instituting the said suit and permitted the Plaintiff if aggrieved to file very same suit after issuing a statutory notice to the Defendant. But after lapse of Two years, the Plaintiffs/Respondents have chosen to file the suit on the file of Prl. Civil Judge (Junior Division), Kolar a in O.S.335/1999 for the relief of Permanent Injunction by taking contradictory stand to the one which was taken in the earlier proceedings and also



the Respondents/Plaintiffs filed another suit against this Respondent/Defendant and also against one V.Chandra Shekar, V.Muniraju and one Syed Abdul Basheer for the relief of Permanent Injunction alleging that they are constructing houses unauthorisedly in portion of the suit schedule property and also the Respondent/Defendant No. I also encouraging them etc., and the said suit was also dismissed as ground less since, the said persons are constructed the houses after obtaining the necessary license and approved the plan having purchased the sites in an auction sale. The said fact clearly discloses that according to the Plaintiffs/Respondents themselves the said persons are in possession and enjoyment of the Plaint Schedule Property. As such the appointment of Court Commissioner is very necessary to demarcate the said Possession and enjoyment of various persons by constructing houses in the Plaint Schedule Property.

4. I Swear that the Plaintiffs/Respondents filed the suit before the Trial Court for the relief of Declaration of Title and Permanent ca Injunction against the Appellant herein and the Respondents No.5, 6 and 7 only and the Appellant/Defendant No.1 taken definite contention that the Appellant Municipality is in possession and enjoyment of the Plaint Schedule Property in its own right, title, interest since, long back when the Government allowed and constructed Water Tanks and later on the Government handed over the Plaint Schedule Properties to the Appellant after acquisition proceedings after a lay-out plan was prepared and approved by the Government



comprising the suit Schedule Property and also it is the definite contention of the Appellant that the Appellant auctioned the Plaint Schedule Properties and other properties after formation of the Lay-out and many persons are in possession and enjoyment of the Plaint Schedule Property. Further on bare perusal of the Plaint Schedule clearly discloses that there are existing Water Tanks in the suit Schedule property in order to supply water to the Public at large of Kolar City and in how much area the said water tanks are constructed is also silent as such the appoint of Court Commissioner is very necessary to demarket the existing salient features in the Plaint Schedule Properties.

5. I Swear that on perusal of the Order Sheet of the Trial Court mite discloses that the Trail Court has not given an opportunity to put forth the grievance of the Appellant and also the Trial Court simply rejected all the necessary application filed by the Appellant. Which causing great hardship and inconvenience to the Appellant in turn public at large of Kolar City and hurriedly passed the Judgement and Decree under Appeal as such the appoint of Court Commissioner is just and necessary to decide the real controversy between the parties in the above Appeal with respect to the Plaint Schedule Properties and the report of the Court Commissioner may kindly be taken as Addl. Evidence. Otherwise, myself and the public at large of Kolar City will be put to irreparable loss, injury and great hardship which cannot be compensated by any other



means. On the other hand no prejudice will be caused to the Respondents.

6. I Swear that it is just and necessary to appoint a Court Commissioner to find out the above facts, preferably Assistant Director of Land Records may kindly be appointed for the above said local inspection to meet the ends of Justice.

Wherefore, I pray that this Hon'ble Court may be pleased to allow the application as prayed for in the ends of Justice and Equity.

I do Swear in the name of God that this is my name and signature and contents of this my Affidavit are true and correct."

Objections to IA No.2:

"The respondents 1 to 4 beg to file the following objections to the application filed by the appellant Under Or. 26 Rule 9 R/wSec. 151 of C.P.C.

1. The application filed by the appellant is not maintainable both on law and on facts. The Commissioner of the appellant's counsel has sworn to all false facts in his Affidavit.

2. Though there is no necessity to appoint Commissioner, the appellant with an intention to harass these respondents have come up with this untenable application.



3. *The allegations sworn to in para 2 of the Affidavit that the plaint schedule property originally belongs to Government and the same was transferred by the Government with to the appellant Municipality vide the alleged Govt. No. to form Keelukote Layout are all false and hereby denied. In the trial court the said fact was discussed in length and given a finding that the said property was not the Govt. land and the said Govt. has no authorities to transfer the schedule property to the appellant Municipality.*

4. *Regarding the proceedings held in O.S.No.43/1978 R.A.1/1998, 0.5.335/1999 as stated in para 3 of the Affidavit are hereby admitted. But it is false to alleged that according to plaintiffs these respondents themselves admitted that some persons are in possession & enjoyment of the property, the said allegations are motivated.*

5. *Regarding the Water tank mentioned in para 4 of the Affidavit that these respondents themselves admitted that two water tanks are existence and with the permission of the father of Respondents 1 to 4 the appellant Municipality have constructed the said water tanks. Such being the case there is no necessity to appoint commissioner to ascertain the above said facts. Further allegations in the same para that the appellant has auctioned the plaint schedule property after formation of Layout and many persons are in possession and enjoyment of the schedule property are all false and hereby*



denied. The appeal is pending between Municipality and these Respondents as such question of ascertaining the alleged fact of construction of the building in the suit premises does not arise. and there is no necessity for appointment of Court Commissioner when in the lower court has clear finding was given regarding Title and possession of these respondents, the documents produced by both sides are sufficient to deliver just verdicts regarding title and possession of the parties. Such being the case the question of ascertaining the possession of the particular person does not arise.

6. With an intention to drag on the proceedings and also to cause hardship and hindrance to these respondents the appellant has come up with this untenable application which is devoid of merits.

WHEREFORE, the Respondents 1 to 4 pray that this Hon'ble court be pleased to dismiss the application filed by the appellant in the ends of justice and equity."

IA No.3:

"UNDER ORDER 41 RULE 27 READ WITH SEC.151 OF THE CODE OF CIVIL PROCEDURE. THE APPELLANT IN THE ABOVE CASE BEGS TO SUBMIT AS FOLLOWS:

That for the reasons mentioned in the accompanying Affidavit of the Appellant this Hon'ble Court may be pleased to permit the Appellant to produce the below mentioned documents as Addl. Evidence as the said



documents are material documents to put forth the grievance of the Appellant and allow this application in the ends of Justice and Equity

LIST WITH DOCUMENTS

- 1. Certified Copy of the Proceedings of the Govt. of Mysore, Order No. RD 100 LGK 72.Bangalore dated 10th January 1973.*
- 2. Certified Copy of the Proceedings of the Govt. of Karnataka for confirmation of two sites infavour of the auction purchasers.*
- 3. Certified Copy of the Survey Map.*
- 4 Certified Copies of the Assessment Register Extract for the year 1970-71,1980-81*
- 5 Certified Copies of the Judgement and Decree passed in RA 14/1997 on the file of Prl. Civil Judge (Senior Division). Kolar. dated 10-7-2000.*
- 6. Certified Copies Property Register Extract*
- 7. Deposition of the Respondent No. 1/Plaintiff No.1 in O.S.43/1978.*
- 8 Deposition of the Witness Examined on behalf of the Defendant by name V.Chandra Shekar in O.S.43/1978.*
- 9 Certified Copies of the RTC. Extracts, for the year 1965 to 1975*
- 10. Lay Out Plan (Blue Print), approved by the Director, Town Planning Department.*



Affidavit to IA No. 3:

"AFFIDAVIT

I, G. Rama Das, the Commissioner, the C.M.C, Kolar, the Appellant in the above case do hereby solemnly state on oath and affirm as follows:

1. I Swear that the C.M.C, Kolar is the Appellant in the above case and I am well conversant with the fact of the above Appeal.

2. I Swear that that the Appeal Memorandum, application and the accompanying Affidavit and also the documents now producing by me may kindly be read as part and parcel of this Affidavit.

3. I Swear that during pendency of the suit before the Trial Court, the documents now I am producing could not able to produce due to unavoidable circumstances and also beyond the control of the authorities of the Appellant Municipality and some documents have been mis-placed and after through search same have been traced and now produced before this Hon'ble Court to consider the said documents as Addl. Evidence and the non-production of the said documents before the Trial Court was purely bonafide but not intentional one. The said documents now I am producing are the material documents to show that the Plaint Schedule Property originally belongs to Government and subsequently, the said land has been transferred by the Government to the C.M.C, Kolar through an Order No.RD 100 LGK 72, Bangalore dated 10th January 1973



itself. The Property under dispute belongs to the Appellant inturn Public at large of Kolar City and the Appellant/Defendant Municipality is in possession and enjoyment of the Plaint Schedule Property in its own right, title, interest and possession and also the auction purchasers are in possession and enjoyment of the Plaint 'Schedule property.

4. I Swear that the Plaintiff/Respondents No. 1 to 4 filed various suits against various persons before the Hon'ble Courts with respect to the same schedule Property and the Appellant Municipality filed the documents in various courts and the Appellant/Defendant No.1 also filed an Application before the Trial Court for issue of subpoena Summons by calling the entire records in O.S.43/1978 but the Trial Court without hearing the matter simply dismissed the same without giving cogent reasons hurriedly and which result in mis-carriage of Justice and recently after through search i go the documents now I producing and said documents are to be considered as Addl. Evidence. Otherwise, myself and the public at large of Kolar City. Since, the property under dispute belongs to the Public at large of Kolar City. The Documents produced by me are material documents to prove my case and also to show that the Originally the Plaint Schedule Property belongs to Govt. and also subsequently transferred to C.M.C, Kolar and also auction purchasers are in possession and enjoyment of the said property and also there are existing huge over head water tanks.



5. I Swear that if the application filed by me is not allowed and the documents produced by me are not considered as Addl. Evidence, myself and the public at large of Kolar City will be put to great hardship. On the other hand no prejudice will be caused to the Respondents. Since, I have got good case on merits.

Wherefore, I pray that this Hon'ble Court may be pleased to allow my application as prayed for in the ends of Justice and Equity.

I do Swear in the name of God that this is my name and signature and contents of this Affidavit are true and correct.

Objection to IA No.3:

"The Respondents beg to file the following objections to the I.A. filed by the appellant Under Or. 41 Rule 27 of C.P.C.

1. The application filed by the appellant is not maintainable both on law and on facts, the Chief Officer of the appellant Municipal Council has sworn to all false facts in his Affidavit.

2. The allegations sworn to by the appellant in para 3 of the Affidavit that during the pendency of the suit before the trial court the document now the appellant is producing could not be able to produce due to unavoidable circumstances, and also beyond control of the authorities of the appellant Municipality and that the documents have been misplaced after thorough search same has been



traced are all false and hereby denied. Further allegations in the same para that the said documents are material documents to show that that the suit schedule property originally belong to Government and subsequently the said land has transferred to C.M.C. and the defendant-Municipality is in possession and enjoyment of the plaint schedule property and also auction purchasers are all false and hereby denied.

3. The allegations stated in para 4 of the Affidavit that the trial court without hearing the matter simply dismissed the I.A. filed by the appellants to issue summons by calling the entire records in O.S.No.43/1978 which resulted in mis carriage of justice and recently after thorough search the appellant got documents and that the property in dispute belongs to the public at large of Kolar City are all false and hereby denied.

4. The allegations stated in para 5 of the Affidavit are also hereby denied as there are no any compelling reasons made out by the appellant to consider his application and no hardship will be caused to him if the application is not allowed.

5. The Respondents submit that all the documents referred to in the list are no way concerned to the suit schedule property, inspite infact the appellant has referred to about the said documents and also he has produced some documents among them in the trial court in respect of the documents which are related to O.S.No.43/1978 it is for the appellant to obtain the Certified copies and produced



the same. If the said documents are really is in need for the appellant and further he has not challenged the orders of the dismissal of the application which was filed to summon the documents held in O.S.43/1978.

6. As seen from contents of the affidavit sworn to by the appellant clearly established the fact that he is very much aware about the existence of the documents which are now sought to call for the said documents and also to produce some of the documents. Moreover the said documents are no way helpful to either of the parties. The ambit and scope of in invoking Section 41 Rule 27 of CPC is very much limited to consider the application positively as the case file clearly disclosed that the appellant is not entitled for any of the reliefs sought for.

7. With an intention to harass the Respondent the appellant has come up with a frivolous application.

WHEREFORE, the respondent prays that this Hon'ble court be pleased to dismiss the I.A. filed by the appellant with exemplary costs in the ends of justice and equity."

13. So also, the written arguments submitted by the appellant dated 21.07.2010 in R.A.No.266/2008 is as hereunder:

"WRITTEN ARGUMENTS FILED ON BEHALF OF THE APPELLANT

1. The Appellant most humbly submit that the Appellant preferred the above Appeal against the



Respondents against the Judgment and Decree Passed by the Hon'ble Civil Judge (Senior Division), Kolar in O.S.5/2004 dated 4-10-2008 and the Appeal Memorandum may kindly be read as part and parcel of this Written Arguments.

2. *The Appellant most humbly submit that the Appellant also filed an application Under Order 26 Rule 9 Read with Sec. 151 of the C.P.C. for appointment of Commissioner and also an application Under Order 41 Rule 27 of the Code of Civil Procedure along with Documents to consider the said documents as Additional Evidence and the said applications and the documents produced by the Appellant may kindly be read as part and parcel of this Written Arguments.*

3. *The Appellant most humbly submit that the Plaint, Written Statement and also the Deposition of the parties and also the Documents produced by the Appellant/Defendant No.1 may kindly be read as part and parcel of this Written Arguments.*

4. *The Appellant humbly submit that the Plaintiffs are the Respondents No.1 to 4 and the Defendant No.1 is the Appellant and Defendants No.2,3 and 4 are the Respondents No.5 to 7 before this Hon'ble Court.*

5. *The Appellant most humbly submit that the Plaintiffs/Respondents No.1 to 4 filed the suit on the file of Hon'ble Civil Judge (Senior Division), Kolar in O.S.5/2004 for the relief of Declaration of Title and Permanent*



Injunction against the Defendant No.1/Appellant and also Defendants No.2 to 4/Respondents No.5 to 7 with respect to the property situated at Kolar Kasaba, Kolar City bearing Survey No.163, measuring an extent of 18 Guntas and Survey No.164, measuring an extent of 1-14 Acres and now assessment and Katha No.1564,1566 and 1565 (behind Sharada Talkies, 2nd Division, Kolar Town) the said property called as Thusi Muddaiah Thopu, bounded on East: Bangalore-Madras Road, West: Darga Inamthi, North: Keelukote Tank, now it is Keelukote Extension and South: Varadappa Mutt.(excluding the over head Water Tanks) and the case of the Plaintiffs/Respondents No.1 to 4 that the suit schedule property originally belong to the ancestors of the Plaintiff and that one Naranaiah had 1/4th Share and the Grand Father of the Plaintiffs one Rangaiah Setty had half share, and one Thumsi Muddaiah had 1/4th share in the suit property and they are in Joint Family enjoying the Joint Family Properties as absolute owners and in the year 1908 there was a Partition and there is mention in respect of the suit properties in it. It is contended that subsequent to the Partition of the Joint Family Properties the sons of Tumsi Narayanaiah, son of Tumsi Krishnaiah sold 1/4th share of the suit schedule properties infavour of the Tumsi Rangaiah son Sampangi Ramaiah and that Thumsi Rangaiah is the grand father of the Plaintiffs No.2 to 5, through a Registered Sale Deed dated 10-12-1919. Further it is contended that Thumsi Muddaiah's Branch had 1/2 share in the suit properties and Two sons of Thumsi Krishnaiah that is, Thumsi Muddappa



and Thumsi Narayanaiah had 1/4 share each. Further contended that the remaining 1/4th share of Thumsi Muddappa was sold by his sons T.M.Ramaiah Setty and T.M. Radhakrishnaiah Setty infavour of father of the plaintiffs No.2 to 5 under a Registered Sale Deed dated 18-10-1957 and delivered possession of the property. Further contended that Thumsi Sampangi Ramaiah being the eldest son of Rangaiah and Manager of the family was left with the ownership of entire properties by other family members. Further contended that after his death, his son and grand son, namely T.Rangaiah and T.R. Sampangi Ramaiah Guptha have succeeded to the estate of the T.R.Sampangi Ramaiah including the suit properties. Further it is contended that since long time, the suit properties have lost the characteristic of Agricultural lands and in the year 1960, the suit properties came under the Jurisdiction of the Municipal Authorities and they are entered in Municipal Records and the name of Thumsi Muddaiah is mentioned in the Revenue Records as Thumsi Muddaianavara Mantapa, Nagara Katte, Ashwatha Katte Etc., and the Defendant No.1 has accepted the assessment from the Plaintiffs and it is contended that in the year 1970, the father of the Plaintiffs No.2 to 5 leased out a partition of the suit schedule property consisting of building to Ananda Marga Pracharaka Sangha to run an educational institution under a Registered Lease Deed dated 3-4-1971 and it is within the boundaries given to the suit schedule properties and it is also contended that at the request of the elders of the Kolar Town and also on



humanitarian consideration the Plaintiffs permitted the Defendant No.1 Municipality to construct over head tank in the suit schedule property and thus the Municipality constructed the Tanks and further contended that the Defendants have no manner of right title, interest or possession whatsoever over the suit property except over a portion wherein the over head water tank is constructed but the Defendant No.1 tried to manipulate the documents by inserting its name in Municipal Documents and further the Defendant No.1 Municipality is trying to interfere with the possession and enjoyment of the plaintiffs over the suit schedule property etc.. Further the contention of the Plaintiffs that after the death of Sampangi Ramaiah Guptha, the Plaintiffs have succeeded to his estate and are absolute owners of the suit schedule property and further contended that they filed a suit in O.S.43/1978 before the Munsiff, Kolar and the said suit was dismissed for not issuing statutory notice to the defendants and they preferred an appeal R.A.3/1988 against the said Judgment and Decree and same came to be dismissed and again they preferred R.S.A 282/1992 and it came to be allowed with a direction to return of the Plaint to file a fresh suit after compliance of statutory obligation and after complying the same the Plaintiffs filed a fresh suit against the first defendant for permanent injunction. It is further contended that there are buildings, Tamarind Trees, nagara Kallu, Mantapa and School Building in the suit properties and the Plaintiffs are realizing the usufructs of the Tamarind Trees and during the life time of T.R.Sampangi Ramaiah Guptha



and Plaintiffs ancestors some religious functions were held in the suit property but subsequent to 1981 the first defendants office illegally manipulated the records as if the first defendant is the owner of the suit properties without notice to the plaintiffs with an intention to knock off the Plaintiffs property and further alleged that taking advantage of the illegal manipulated entries the first defendant and the staff of the first Defendant tried to interfere with the said possession and enjoyment of the suit properties and further alleged that the Plaintiffs strongly resisted their act and to protect their owner ship and possession the Plaintiffs got issued statutory notice as required under the Karnataka municipalities act etc.,

6. *Appellant most humbly submit that the Defendant No. 1/Appellant appeared before the Trial Court and filed the Written Statement and through the said Written Statement, Defendant no. 1 denied the Plaint allegations except the fact of filing of suits, appeals, etc. before many Courts and also contented that the documents produced by the Plaintiffs are all created and concocted just to file the frivolous suit and just to grab the valuable public property belongs to the Defendants at Para 12 and also raised, most important point that the Suit is not properly valued and the Court Fee paid on the Plaint is insufficient, since the Plaintiffs or their ancestors never in possession and enjoyment of the Plaint Schedule Properties and the Plaint Schedule Properties situated in the heart of the Kolar City near K.S.R.T.C. Bus Station and the value of the property exceeds more than Rupees One*



Crore and the Plaintiffs have to pay the Court Fee on Market Value and the Plaintiffs not paid the Court Fee on market value and on this ground alone the suit of the Plaintiffs is liable to be dismissed at Para 16 and 22 of the Written Statement and further contended that the acquisition of the property by the Defendant No.1 Municipality that the suit Schedule property Originally belongs to the Government and the suit schedule property was abetting to the Keelukote Tank formerly and the same transferred by the Government to form Keelukote Lay-out in order to meet the needs of public at large of Kolar city by providing House Sites and also Sites for Public Offices asper the Government Order No.RD 100 LGK 72, Bangalore dated 10th January 1973 itself and the suit schedule property is part and parce of the transferred land and the said property also finds a place in the approved Keelukote Lay-out Plan at Para 17 of the Written Statement.

Further the Defendant No.1 also contended that the Plaintiffs filed a suit in O.S.43/1978 on the file of the then Munsiff, Kolar, against the Defendant No.1 also against one V.R.Venkateshah for the relief of Permanent Injunction along with the similar documents produced in this suit and the said documents produced by the Plaintiffs have been disbelieved by the Hon'ble Court and also the Hon'ble Court held that the said documents do not pertain to the suit schedule properties and also the particulars of the said documents do not tally etc.,. Hence, the Plaintiffs deliberately avoided to filing the said documents and the



Plaintiffs have chosen to produced the created and concocted documents of recent periods and that too created subsequent to High Court Proceedings at Para 18 of the Written Statement and further contention of the Defendant No. 1 that in the present suit the Plaintiffs have taken the contention that the ancestors of the Plaintiffs permitted the defendants to put up Water Tanks are absolutely false since, the said Plea was taken first time in the present suit. Because, in the suit filed by the Plaintiffs in O.S.43/1978 have taken the contention that the Plaintiffs were in exclusive possession and enjoyment of the Plaint schedule properties and also taken the contention that the defendants denying their right, title interest and the Plaintiffs never whispered a word that long back prior to the said suit and in the said suit there was no mention of either the existence of the water tanks or the alleged permission accorded as now stated in the present suit. The said pleading was not taken in the Chief Examination of the P.W.1 that is, T.S.Ranaga Raju who filed the said suit as manager of the Joint Hindu Undivided family and it is only during Cross-Examination the said Ranga Raju and his witnesses admitted the existence of the Two huge Over Head Water Tanks that were built by the P.W.D Authorities for the benefit of the People of Kolar City and also they admitted that huge water Pipe lines imbedded all over the suit schedule property to supply water to the entire Kolar Town. When such being the state of affairs, the Plaintiffs have chosen to pleaded that their ancestors accorded the permission etc., falsely and with malafide intention just to



suit their convenience and further admission of the said fact that clearly goes to show that the Defendant Municipality had constructed the huge water tanks prior to the year 1966 itself and thereby the Defendant No.1 Municipality is peaceful possession and enjoyment of the Plaint Schedule Properties and on this ground the suit of the Plaintiffs is liable to be dismissed in limine at para 19 of the Written Statement. Further the Defendant also taken contention that the Plaintiffs filed many suits after the Judgment passed by the Hon'ble High Court of Karnataka against the Defendant No. 1 and also against various persons before filing of this suit and also taken contention that the suit suffers for mis-joinder of unnecessary parties and non-joinder of necessary parties in the present suit and the suit suffers for misjoinder of unnecessary parties and non joinder of necessary parties and on the said ground alone the suit of the Plaintiffs is liable to be dismissed in limine at para 20 of the Written Statement and also taken contention that the Defendants are the true owners of the Plaint Schedule Property and they are in possession and enjoyment of the plaint schedule properties and no injunction can be granted against the true owner and on this ground alone the suit of the Plaintiffs is liable to be dismissed at Para 21 of the Written Statement and also on other grounds the Defendants have sought for dismissal of the suit.

7. The Appellant most humbly submit that based on the pleading the following Issues were framed by the Trial Court:



1. Whether the Plaintiffs prove that the suit properties their ancestral joint family properties and that they are the absolute owners of it having succeeded to it through the deceased T.R.Sampangi Ramaih Guptha?

2. Whether the Plaintiffs further prove that they are in possession of the suit properties as on the date of this suit?

3. Whether the Plaintiffs further prove the alleged interference by the 1st Defendant?

4. Whether the defendants prove that the suit properties are acquired by the Government for public purpose through the acquisition proceedings and that they are handed over to the 1st Defendant for providing house sites for public and the sites for public offices?

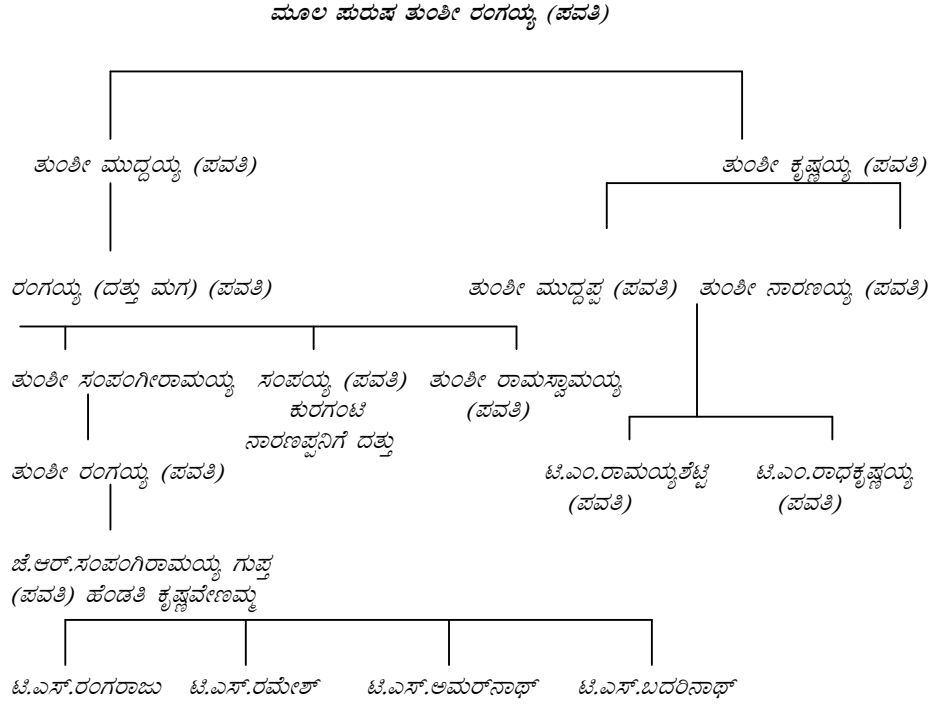
5. Whether the suit properties are properly valued and the correct Court-Fee paid?

6. Whether the suit is bad for non-joinder of necessary parties?

7. What Decree or Order?

8. The Appellant most humbly submit that the Trial Court not scrutinized the documents produced by the Plaintiffs and Defendants in proper manner which resulted in mis-carriage of Justice and passed the impugned Judgment and Decree under Appeal.

9. The Appellant submit that the Plaintiffs/Respondents No.1 to 4 produced the Documents which are marked as Ex-P1 to P 30. Among the said documents Ex-P1 is Genealogical Tree of the family of the Plaintiffs prepared themselves and the said document discloses as follows:



Further the Plaintiffs produced Ex-P2 which is said to be the Partition Deed executed in the year 1908. On going through the recitals of the said document clearly discloses that a Partition took place between the brothers Thumsi Sampangi Ramaiah, Sampaiiah and Thumsi Ramaswamaiah, all are sons of one Rangaiah and the wordings written in the said document reads as follows:

"೧೯೦೮ನೇ ಇಸವಿ ಫೆಬ್ರವರಿ ತಾರೀಖು ಇಪ್ಪತ್ತೊಂಬತ್ತರಲ್ಲಿ (29) ಕೋಲಾರದಲ್ಲಿರುವ ವೈಶ್ಯಕುಲ ತುಂಶೀ ರಂಗಯ್ಯನವರ ಕುಮಾರ ಸಂಪಂಗೀರಾಮಯ್ಯ, ಕುರಗಂಟೆ ನಾರಣಪ್ಪನವರ ಮಗ ಸಂಪಯ್ಯ, ಮೂರನೇ ತುಂಶೀ ರಂಗಯ್ಯನವರ ಕುಮಾರ ರಾಮಸ್ವಾಮಯ್ಯ ಸಹಾ ಆದ ನಾವು ಮೂರು ಜನರೂ ಬರೆದುಕೊಂಡ ಪಾರ್ಟಿಷನ್ ಡೀಡು ನಮ್ಮ ಹಿರಿಯರಾದ ನಾರಣಪ್ಪ ರಂಗಯ್ಯ ಸಹೋದರರು ಆಪೈಕಿ ರಂಗಯ್ಯನು ತುಂಶೀ ಮುದ್ದಯ್ಯನಿಗೆ ದತ್ತು ನಾರಣಪ್ಪನಿಗೆ ಸಂತಾನವಿಲ್ಲದೆ ಸಂಪಯ್ಯನನ್ನು ದತ್ತುಮಾಡಿಕೊಂಡು ನಾರಣಪ್ಪ



HC-KAR

NC: 2026:KHC:25415
RSA No. 28 of 2011

ರಂಗಯ್ಯನು ಸಹಾ ಏಕ ಗೃಹ ಕೃತ್ಯದಲ್ಲಿ ಯಿದ್ದು ಮೃತಪಟ್ಟಿರುತ್ತಾರೆ. ಆಗ್ಗೆ ಸಂಪಯ್ಯ ರಾಮಸ್ವಾಮಯ್ಯ ಬಾಲ್ಯ ವಯಸ್ಕರಾಗಿದ್ದುದರಿಂದ ಸಂಪಂಗಿರಾಮಯ್ಯನ ಮನೆಯಲ್ಲಿ ಯಾಜಮಾನನಾಗಿದ್ದುಕೊಂಡು ಒಂಬೈನೂರ ಆರನೇ ಇಸವಿಯವರೆಗೆ (1906) ಏಕಗೃಹಕೃತ್ಯದಲ್ಲಿದ್ದು ವ್ಯಾಪಾರ ಮಾಡಿಕೊಂಡು ಇದ್ದವು ಒಂಬೈನೂರ ಆರನೇ ಇಸವಿ ಜೂನ್ ಬಬಾತುರಲ್ಲೂ ನಮ್ಮನಮಗೆ ಸರಿ ಬೀಳದೆ ಕಲಹಗಳುಂಟಾಗಿ ನಮ್ಮ ಅಂಗಡಿ ಲೆಕ್ಕಗಳು ವಗೈರೆ ವಿಶಿಷ್ಟವು ಜುಡೀಷಿಯಿಂದಾ ದೊಡ್ಡ ಮನುಷ್ಯರುಗಳು ಮುಖಾಂತರ ನಮ್ಮ ಮೂರು ಜನಗಳ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದ ಬೆಳ್ಳಿ ಬಂಗಾರ, ರತ್ನಪುಡಿ ಮೊದಲಾದ ಆಭರಣಗಳನ್ನೆಲ್ಲ ಹಂಚಿಕೊಂಡಿದ್ದ ಜಾತ ನಿಂತ ಸ್ವತ್ತುಗಳು ಅನಿವಾರ್ಯದಿಂದ ಭಾಗವಾಗದೆ ಇರುವುದನ್ನು ಇದರಲ್ಲಿ ಜಂಟಿ ಇರುವ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ಕಂಡಂತೆ ಹದಿನೇಳು ಸಾವಿರದ ಹದಿನೈದು ರೂಪಾಯಿನ ಆಸ್ತಿಯನ್ನು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ. ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ಕಂಡಂತೆ ಅವರವರ ಭಾಗಕ್ಕೆ ಬರತಕ್ಕ ಆಸ್ತಿಯು, ಸಾಲಗಳು ಅವರವರೇ ಈ ದಿನ ಲಾಗಾಯ್ತು ವಹಿಸಿರುತ್ತೇವೆ. ಒಂದನೇ ಸಂಪಂಗಿರಾಮಯ್ಯ ನಮಗೆ ಯಜಮಾನನಾಗಿ ತಮ್ಮ ತಂದೆ ಮೃತಪಟ್ಟ ಲಾಗಾಯ್ತು ಆರ್ಜನ್ ಮಾಡಿದ ಸ್ವತ್ತುಗಳು ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತುಗಳು ಸಹಾ ಈ ದಿನ ವಿಭಾಗದ ಸ್ವತ್ತುಗಳಲ್ಲಿ ಸೇರಿರುತ್ತೆ ಆತನು ನಮ್ಮ ಕುಟುಂಬದ ನಾಲ್ಕು ಸಾವಿರದ ಆರುನೂರ ಐವತ್ತು ರೂಪಾಯಿನ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ವಿವರಿಸಿರುವ ಸಾಲಗಳನ್ನು ಆತನೇ ವಹಿಸಿರುವುದರಿಂದ ಆತನಿಗೆ ನಮ್ಮ ಕುಟುಂಬದ ಆಸ್ತಿಯಲ್ಲಿ ಐದು ಸಾವಿರದ ಇಪ್ಪತ್ತು ರೂಪಾಯಿ ಆಸ್ತಿ ಹೊಂದಿರುತ್ತೆ ಎರಡನೇ ಸಂಪಯ್ಯನಿಗೆ ಒಂದು, ಮೂರನೇಯವರಾದ ನಾವುಗಳು ಕೊಡಬೇಕಾದ ನೂರ ಅರವತ್ತು ಐದು ರೂಪಾಯಿಗಳು ದಖಲ್ ಆರುನೂರ ಐವತ್ತೈದು ರೂಪಾಯಿಗಳ ಬೆಲೆಯುಳ್ಳ ಸ್ವತ್ತುಗಳು ವಹಿಸಿರುತ್ತೆ. ಮೂರನೇ ರಾಮಸ್ವಾಮಯ್ಯನಿಗೆ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ಕಂಡ ಪ್ರಕಾರ ತರಬೇಕಾದ ಎಂಟುನೂರ ಮೂವತ್ತು ರೂಪಾಯಿ ಸಾಲವನ್ನು ಒಂದು ಸಾವಿರದ ಮುನ್ನೂರ ಮೂವತ್ತು ರೂಪಾಯಿನ ಬೆಲೆಯುಳ್ಳ ಆಸ್ತಿಯನ್ನು ವಹಿಸಬೇಕು. ಈ ರೀತಿ ಅಂದರೆ ಕೋಲಾರ ತಾಲ್ಲೂಕು ಕಸಬಾ ಗ್ರಾಮಕ್ಕೆ ಸರ್ವೆ 163/0-18 ಖುಷ್ತಿ ಸರ್ವೆ 164ರ ಖುಷ್ತಿ 1-14 ಗುಂಟೆ ಜುಮ್ಲಾ 1.32 ಗುಂಟೆ ಜಮೀನು ಸಹಾ ಬಿಟ್ಟು



ಮೂರು ಭಾಗಗಳಾಗಿ ನಮಗೆ ಆಸ್ತಿಯಲ್ಲಿ ದೇಣಿಗೆಯನ್ನು ಸಹಾ ಹಂಚಿಕೊಂಡಿರುತ್ತೇವೆ."

The said recital in the said document clearly discloses that the said property bearing Survey No. 163 and 164 of Kolar Kasaba not belongs to the family of the Plaintiffs ancestors and the said property purely belongs to the Govt. That apart the boundaries of the said Survey Numbers do not finds a place in the said Partition Deed and also to whom the said property belongs. If the said properties belongs to their ancestors, there must be recital how the said property has been acquired by the Thumsi family.

But the impugned Judgment and Decree passed by the Trial Court while answering to the Issues no.1 to 4 at page 8, that "the suit properties originally belonged to the Joint family of their ancestors consisting of three brothers: Thumsi Sampangiramaiah, Thumsi Sampaiiah and Thumsi Ramaswamaiah and that they partitioned all these joint family properties including the suit properties through a Written Partition Deed dated 29-02-1908 and at this staged it is relevant to note that the Plaintiffs have produced a genealogical tree at Ex-P1, after second Plaintiff is examined as P.W.1 has deposed in accordance with his Plaint averments and the genealogical tree is not disputed by the defendants in their Written Statement or in their Written Statement or in the cross-examination moreover, the Defendants have no locus standi to dispute it as they are strangers to Thumsi Family and on perusal of the Ex-



P1 reveals that Thumsi Sampangiramaiah and Thumsi Ramaswamy to whom the suit properties is said belongs originally, are the sons of one Rangaiah and according to the genealogical tree the said Rangaiah is the son of Muddaiah, who in turn is the son of propositus Thumsi Rangaiah, who had another son Tumsi Krishnaiah etc.," The Trial Court not looked into the recitals avered in the Ex-P2 as stated above and blindly comes to the conclusion that asper the Ex-P2 the Plaint Schedule property belongs to the ancestors of the Plaintiff and also the ancestors Partitioned the Plaint Schedule Property. Further at para 18 of the Written Statement the Defendant No.1 taken the contention that "Plaintiffs deliberately avoided to filing the said documents and the Plaintiffs have chosen to produced the created and concocted documents of recent periods and that too created subsequent to the High Court Proceedings". Because, on perusal of the Judgment and Decree passed in O.S.43/1978 marked on behalf of the Defendant as Ex-D 31, the said Ex-P1 and P2 do not finds a place and first in the present suit filed the same. In spite of it the Trial Court without scrutinized the documents carefully and on mere assumptions and presumptions passed impugned Judgment and Decree under Appeal and same is liable to be set aside on this ground alone. Further conclusion of the Trial Court that after the Partition the sons of Thumsi Narayanaiah who was the son of Thumsi Krishnaiah sold their 1/4th share of the suit properties to Thumsi Rangaiah Son of Thumsi Sampangiramaiah and the said Thumsi Rangaiah is none other than the grand



father of the Plaintiffs No.2 to 5 and in other words, it is their contention that two sons of propositus Thumsi Rangaiah had half share each in the suit properties, therefore his son Thumsi Rangaiah had half share each in the suit schedule properties, therefore his son Thumsi Muddaiah got half share and other son Thumsi Krishnaiah got half share and in that half share of the Thumsi Krishnaiah his son Thumsi Narayanaiah had half share that is, his sons sold half share to the grand father of the Plaintiffs and in other words, 1/4th share in the suit properties fallen to the branch of Thumsi Narayanaiah was sold to the grand father of Plaintiffs 2 to 5 and since the other son of the propositus Thumsi Rangaiah had only one son Rangaiah though already had half share in the suit properties and further it is contended that the sale by the branch of Thumsi Narayanaiah was through a Registered Sale Deed dated 10-12-1919 and the rest 1/4th share in the suit properties belonging to other son of Thumsi Krishnaiah that is, Thumsi Muddaiah was again sold by his sons Thumsi Ramaiah Setty and Thumsi Radhakrshnaiah Setty to the grand father of the Plaintiffs 2 to 5 that is, T.R.Sampangi Ramaiah Guptha vide sale deed dated 18-10-1957 and as none of the family members of Thumsi family have raised any objection or got themselves impleaded in the present suit, it means that the branch of grandfather of the Plaintiffs 2 to 5 had half share and grand father of the Plaintiffs 2 to 5 had purchased the other half share in the suit properties through the sale deed dated 10-12-1919 and 18-10-1957 and in this respect the Plaintiffs



have produced the certified copy of the Partition Deed dated 29-02-1908 at Ex-P2 and Certified Copies of sale deeds dated 10-12-1919 and 18-10-1957 at Ex-P3 and Ex-P4 etc., The Trial Court not looked into the said Exhibits P1 to 3 since, the said copies produced by the Plaintiffs are not legible and not readable also. On perusal of the Registered Sale Deed Ex-P3, the relevant portion reads as follows:

"೧೯೧೯ನೇ ಇಸವಿ ಡಿಸೆಂಬರ್ ತಾರೀಖು ಹತ್ತರಲ್ಲೂ ಕೋಲಾರದಲ್ಲಿರುವ ತುಂರಿ ಸಂಪಂಗಿರಾಮಯ್ಯನವರ ಮಗ ಇಪ್ಪತ್ತೇಳು ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ವರ್ತಕ ಕಸಬು ರಂಗಯ್ಯನವರಿಗೆ, ಹಾಲೀ ಶ್ರೀನಿವಾಸ ಕಸಬಾದಲ್ಲಿರುವ ವೈಶ್ಯರ ಕೋಲಾರದ ತುಂಶೀ ಕೃಷ್ಣಯ್ಯನವರ ಮಗ ಸುಮಾರು ಮೂವತ್ತೈದು ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ವರ್ತಕ ಕಸಬು ನಾರಣಯ್ಯ ಬರೆಸಿಕೊಟ್ಟ ಕ್ರಯಪತ್ರ, ಕೋಲಾರ ಕಸಬಾ ಹಳೇ ಸಂತಬೀದಿ ಬಳಿಯಿರುವ ತುಂಶೀ ಮುದ್ದಯ್ಯನವರ ತೋಪು ಅಂತ ಹೆಸರುಳ್ಳ ತೋಪಿಗೆ .

ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ-ಬೆಂಗಳೂರಿಗೆ ಹೋಗುವ ರಸ್ತೆ

ಪಶ್ಚಿಮಕ್ಕೆ - ದೊಂಡುರಾಯರ ತೋಪು

ಉತ್ತರಕ್ಕೆ - ಕೀಲುಕೋಟೆ ಕೆರೆ

ದಕ್ಷಿಣಕ್ಕೆ - ದಾರಿ

ಮತ್ತು ಛಾಯಮ್ಮನವರ ಮರ ಸಹಾ ಈ ಮಧ್ಯದ ತೋಪಿನಲ್ಲಿ ಹುಂಗ, ಹುಣಿಸೆ, ಒಳ್ಳೆ ಬೇವು, ಗೋಣಿ ಅಶ್ವತ್ಥ ಈ ಜಾತಿ ಮರಗಳು ಮತ್ತು ಕಲ್ಲು ಕಟ್ಟಡದ ಬಾವಿ, ಗಾರಮಂಟಪ, ಕಲ್ಲು ಮಂಟಪ ಸಹಾ ಈ ಬಾಬತ್ತು ತೋಪಿನಲ್ಲಿ ನಿಮ್ಮ ಅರ್ಧ ಹಕ್ಕು ಜಾತಾ ಬಾಕಿ ಅರ್ಧ ಹಕ್ಕಿನಲ್ಲಿ ನನ್ನ ಅಣ್ಣ ಮುದ್ದಣ್ಣನವರ ಅರ್ಧ ವಿಶಿಷ್ಟ ಹಕ್ಕುವಿನಹಾ ನನ್ನ ಬಾಬತ್ತು ನನ್ನ ಸ್ವಾಧೀನಾನುಭವದ ಅರ್ಧ ಹಕ್ಕು ಅಂದರೆ ಒಟ್ಟು ತೋಪಿನಲ್ಲಿ ನಾಲ್ಕರಲ್ಲಿ ಒಂದು ವಿಶಿಷ್ಟ ಹಕ್ಕನ್ನು ಈ ದಿನ



ನಾನು ನನ್ನ ಕುಟುಂಬ ಪೋಷಣೆ ಬಗ್ಗೆ ನಿಮಗೆ ಗೌರವೆಂಟ್ ಮೂವತ್ತು
ರೂಪಾಯಿಗಳಿಗೆ ಶುದ್ಧಕ್ರಯಮಾಡಿ ಸ್ವತ್ತು ನಿಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ
ಬಿಟ್ಟುಕೊಟ್ಟಿರುತ್ತೇನೆ."

In the document Ex - P4, produced by the plaintiffs discloses that the said document executed by one T.M.Radha krishnaiah setty and T.M.Ramaiah Setty both are sons of Thumsi Muddaiah infavour of T.R.Sampangirma Guptha S/o Thusi Rangaiah Setty of Kolar and the date mentioned in the said document as 18-10-1957 and on perusal of the recitals of the said document discloses that there is no Survey Number or extent mentioned.

In the said sale deeds the ancestors of the Plaintiffs purposely not mentioned the extent and Survey Numbers in which they sold asper the said Sale Deeds. The said fact has not considered by the Trial Court and if the ancestors of the Plaintiffs knew the Survey Numbers which they are owning and possessing, they might have mentioned the said Survey Numbers and Extent in the alleged sale Deeds. Since, the Property bearing 163 and 164 of Kolar Kasaba belongs to Govt. As such they have not chosen to mention the said Survey Numbers and Extent in the Ex-P3 and P4 respectively and the Plaintiffs have not produced a piece of paper to show that the boundaries mentioned in the said Ex-P3 and P4 pertains to the Survey No.163 and 164 and further the Plaintiffs have not produced any Title Deed to show that Survey No.163 and 164 of Kolar Kasaba owned by the ancestors of the Plaintiff including the



Thumsi Muddaiah. Further the Plaintiffs have not proved that the boundaries given to the suit schedule property tallies with the boundaries given in the Ex-P3 and 4. The said act of the ancestors of the Plaintiffs clearly goes to show that the suit schedule Property not belongs to the ancestors of the Plaintiffs at any point of time and the same was belongs to Government and called as Thopu. In spite of the said fact, the Trial Court blindly passed the Judgment and Decree under Appeal without looked into the recitals of the Ex-P3 and P4 on mere assumptions and Presumptions. On this ground alone the Judgment and Decree passed by the Trial Court is liable to be set aside. Further the Plaintiffs have not produced a piece of Paper to show that if the said Partition Deed was acted upon, the Title Deed, Revenue entries must be standing in the name of either Rangaiah or in the name of Thumsi Muddaiah or Thumsi Rangaiah, the Original Propositus as mentioned in the alleged Genealogical Tree, Thumsi Ramaiah, Sampayah or Thumsi Ramaswamaiah, all are sons of one according to the alleged Genealogical Tree Ex-P1. But the Plaintiffs produced a piece of paper to show that Origin or Basis that how they deriv Survey No.163 and 164 of Kolar Kasaba or the basis for which the boundaries mentioned in the alleged Sale Deeds Ex-P3 and P4. Further if the alleged Sale deeds that is, Ex-P2 to P4 were acted upon, after the year 10-12-1919, the Mutation and R.T.C. must be standing in the name of Rangaiah S/o Thumsi Sampangi Ramaiah and after the execution of the alleged Registered Sale Deed dated 18-10-1957 by the T.M.Radha Krishnaiah



Setty and T.M.Ramaiah Setty infavour of the T.R.Sampangi Ramaiah Guptha, the Mutation and other Revenue entries must be in the name of T.S.Sampangi Ramaiah Guptha to show their right, title, or possession over the Plaint Schedule Properties. But the Plaintiffs have not produced any such documents before this Hon'ble Court on the date of filing this Suit or before the then Munsiff, Kolar in O.S.43/1978. The said fact clearly discloses that the Plaintiffs have failed to establish the title to the suit property and also identity of the suit schedule property and also possession as on the date of the suit by them before the Trial Court or in O.S.43/1978. the Plaintiffs have no semblance of right over the property earlier belongs to Government and now belongs to the Defendant No.1. Inspite of the said lacunas, the Trial Court passed the impugned Judgment and Decree under Appeal and same is liable to be set aside in limine.

10. The Appellant most humbly submit that the trial Court failed to considered the fact whether the suit filed by the Plaintiffs is in continuation of the earlier Suit as stated above bearing No.O.S.43/1978 or a fresh suit before the Trial Court, the Trial Court must looked into the earlier proceedings, documents and also admissions of the parties in proper and prospective manner since, the said suit also tried before the Hon'ble Civil Court only and not before any quasi Judicial Courts. Because, the earlier suit filed by the Plaintiffs for the relief of permanent Injunction with respect to the Property situated at behind Sharada Talkies, Kolar Town, bearing No.1564,1566,2nd Division called as



Thumsi Muddaiah Thopu, East: Madras - Bangalore Road, West: Darga Inam, North: Keelukote Tank and South: Varadappa Mutta including Mantap, Building etc., in O.S. 43/1978. On the date of filing of the said suit itself, the Plaintiffs have not furnished the definite extent or rough extent of the suit property and the actual extent of the Property in possession and in the said suit itself, the Plaintiffs have failed to establish the identity of the suit property.

Further the Plaintiffs filed the suit before the Trial Court in O.S.5/2004 by mentioning the Plaint Schedule as Land situated at Kolar Kasaba, Kolar City, bearing Survey No.163, measuring 0-18 Guntas and Survey No.164, measuring 1-14 Acres and now assessment and Katha No. 1564,1566 and 1565 (behind Sharada Talkies, 2nd Division, Kolar Town), the said property known as Thumsi Muddaiah Thopu, bounded on the East-Bangalore-Madras Road, West: Darga Inamthi, North: Keelukote Tank, now it is Keelukote Extension and South: Varadappa Mutta (excluding the Water Tanks). The said Plaint Schedule clearly discloses that the Plaintiffs have not furnished the definite extent or rough extent of the suit property and the actual extent of the property in which the Plaintiffs are in possession and enjoyment of the Property. As such the Plaintiffs have no manner of right, title, interest or possession over the said property and also they have not produced a piece of paper to show that the Plaintiffs are in exclusive possession of the Plaint Schedule Property by virtue of the alleged documents Ex-P2 to P4. Further the



Plaintiffs have not produced any Revenue records to show that after surveying of the lands and assigning the survey number to the property comprised under Ex-P 2 to P4, the Plaintiffs ancestors, the said Naranaiah, Thumsi Muddaiah and Rangaiah Setty were exclusively enjoying the said property by paying Kandayam to the Revenue Authorities. Per contra, the Revenue documents produced by the Defendant No.1 clearly discloses that the Property bearing Survey No.163 and 164 as Thopu and in the column, the nature of right, it is mentioned as Sarakari. Earlier proceedings that is in O.S.43/1978, the Plaintiffs have not chosen to given the approximate or rough extent of the suit Schedule Properties on the date of the said suit and also he has not chosen to given the approximate or rough extent of the suit schedule Properties in which the Plaintiffs are in exclusive possession and enjoyment, clearly goes to show that as on the date of the suit filed by the Plaintiffs in O.S.43/1978 or in O.S.5/2004 itself they are not in possession and enjoyment of the Plaint Schedule Properties. Inspite of it the Trial Court passed the impugned Judgment and Decree and Appeal and same is liable to be set aside.

11. *Further contention of the Trial Court while answering the Issue No.1 to 4, further held that Ex-P2 to P4 show that the suit properties belongs to the Thumsi Family right from the year 1908 and earlier to that presumption will have to be drawn in favour of the Plaintiffs and if the Government transferred the suit properties to the first defendant, then for the transfer to be a valid transfer,*



the first defendant has to prove that the suit properties were subsequently acquired from the ancestors of the Plaintiff in order to transfer to the 1st Defendant and however the Defendant neither in the pleading nor in their deposition contends that there is any such acquisition etc.. The findings given as stated above by the Trial Court is totally wrong since, the suit schedule properties never belongs to the ancestors of the Plaintiffs and the contention of the Defendant is that the earlier the Plaintiff schedule properties belongs to the Govt. and subsequently, the said properties have been transferred to the Defendant No.1 Municipality by the Govt. as contention taken by the Defendant No.1 in the Written Statement at Para 17. Further the Plaintiffs have not chosen to made the Government as party in any of the proceedings, either in the present suit or in the earlier suit O.S.43/1978 to question the validity of the transfer made by the Government in favour of the Defendant No.1 if the Plaintiffs have got semblance of right over the Plaintiff Schedule properties.

When such being the state of affairs, the question of acquisition from the ancestors Plaintiffs does not arise at all and for the simple reason that the Government was the absolute owner of the Plaintiff Schedule Properties as such, the Plaintiff Schedule Properties have been transferred to the Defendant No. 1. Inspite of the said fact, on mere presumptions and assumptions the trial Court comes to the wrong conclusion and passed the impugned Judgment and Decree under Appeal and same is liable to be set aside.



Further contention of the Trial Court to the Issue No.1 to 4 at page 11 of the Judgment that, apart from Ex-P2 to P4, have also produced notices said to be issued by the First Defendant itself at Ex-P6 and P7 and the said notices are issued to Thumsi Rangaiah, the propositus of the Plaintiffs and further Ex-P6 dated 5-1-1937 and Ex-P7 is dated 28-9-1928 and the first defendant has denied that these Notices are issued by them and they contend that they are concocted by the Plaintiffs, further held at page 12 of the Judgment that however, these notice, if concocted then nothing prevented the defendants from taking legal action against the Plaintiffs for having concocted the said documents, but no such action has been taken and it is also seen that through Ex-P6 and P7 the propositus of the Plaintiffs asked to do certain things. For the Plaintiffs to concoct Ex-P6 and P7]further the Ex-P7 is in a printed form they must have had the forms at their availability and it is seen that the defendant is not contending that even the forms are concocted by the Plaintiffs and since these two notices are Old, if they are really concocted, then nothing prevented the defendants from taking action against the Plaintiffs or their ancestors right from the year 1928 and it is also seen that the original of these two notices are produced in O.S.43/1978 that is, suit originally filed by the Plaintiffs against defendants. In other words, even presuming that the defendants were not aware of these exhibits earlier in 1928 or 1937 as they are produced originally in O.S.43/1978 itself, nothing itself prevented the defendants from taking action against the Plaintiffs for



concoction of these documents after 1978 after these documents came into light before the Court, further held that, bare suggestion of concoction does not suffice and it is a serious allegation of concoction, specific plea with details of concoction, date of concoction etc., has to be taken in the pleadings itself that is in the Written Statement as per the provisions of Civil Procedure Code. Further held that inspite of these documents being produced in O.S.43/1978 and the present suit being filed in the year 2004 and the written statement filed by the defendants on 28-6-2004, it is seen that in the Written statement also there is no such pleading regarding concoction etc.. The said conclusion arrived by the Trial Court with respect to Ex-P6 and P7 are totally wrong and shows the childish nature of the Trial Court. Because, on mere assumptions and presumptions, the trial court comes to the said conclusion, because, there is no clear mention of the dates as discussed by the Trial Court and the dates are not legible and the said Ex-P6 is said to be the notice but the date is not visible, said to have been issued by the Municipality to one Thumsi Rangaiah Setty about the property situated at near Hale Santhe Beedhi, Kolar to remove the weeds grown up in the property. The said notice Ex-P6 does not bear the seal of the Town Municipality or any other authority to show that it was issued by the Chief Officer. There is no any evidence on record to show that the signatory of the said notice was an official of the Municipality as described therein and merely on the basis of the said notice it cannot be presumed that it



was issued on behalf of the Municipality and the said document is an authenticated one. Further the Ex-P7 is the notice date is not clear which is in printed form consisting of signature of the President in rubber stamp, and that too a facsimile signature and wherein it is mentioned that the said notice has been issued to one Rangaiah Setty s/o Vemagal Sampangiramaiah in respect of the property existing at Doddapet Street, near hale santhe Pete Beedhi, stating that in the said property belonging to him, the mantap has not been white washed and on account of well in the said property, it has become room for breeding mosquitoes and therefore, he has called upon to remove such nuisance and to white wash to the Mantap and in the said document it does not mentioned the extent of the property or that the boundaries to the said property to connect the same with the suit schedule property and at most it may refer to mantap existing in the property near Hale Santhe Beedhi and it does not bear any Survey Number or Municipal Katha Number and Ex-P7 cannot be pressed into service to hold that the property referred therein refers to the entire suit property and to presume that the municipality has recognized the owner ship of the said Rangaiah setty or others and the Plaintiffs have not chosen to examine the issuing person either in O.S.43/1978 or in O.S.5/2004 and nothing has been elicited in the evidence of D.W.1 or in the evidence that the said Notice has been issued by the Defendant No.1 Municipality and the said documents holds no water to prove the contention of Plaintiffs. Further from the year



1978, the matter with respect to Plaint Schedule property agitating before various Courts and also went up to Hon'ble High Court of Karnataka and till to-day the case is pending with respect to the Plaint Schedule Property. Inview of the said fact, the legal action to be taken against the persons who said to be concocted as alleged and presumed by the Trial Court do not arise at all. Inspite of it the Trial Court on mere presumptions and assumptions believed the said Ex-P6 and P7 and passed the impugned Judgement and Decree Under Appeal and same is liable to be set aside.

12. The Appellant most humbly submit that the discussion of the Trial Court at Page 13 of the Judgment to the effect that, it is to be held that Ex-P6 and P7 are proved by the Plaintiffs and since these are issued by the Defendants themselves to the ancestors of the Plaintiffs and it is not denied that these pertain to the suit properties, it means that by issuing such notices the defendants themselves right from 1928 (Ex-P7) admit the owner ship of the Plaintiffs family over the suit properties and though the defendants contended that in the Partition deed, which is the first document wherein the Plaintiffs family owner ship over the suit properties is mentioned, it does not mention the suit survey number, it is seen that at page 3 of the Ex-P2 Survey Numbers 163 and 164 measuring 18 Guntas and 1-04 guntas is specifically mentioned and in the sale deeds even though the survey numbers are not mentioned, the boundaries are mentioned and these boundaries are nothing but the boundaries to the suit properties and as stated earlier, these documents have



been produced by the Plaintiffs and a presumption has arisen in favour of the Plaintiffs and such presumption was rebutted by the Defendants, but the defendants have not rebutted that presumption to disprove it and they could have summoned the family members of the persons who allegedly executed Ex-P3 and P4 to prove that they have not executed it, but that has not been done by the defendants and once the Plaintiffs have proved the ownership of the Thumsi family over the suit properties, they have discharged their burden and it was for the defendants to rebut that contention through oral evidence as well as documentary evidence and but except for the mere denial of the case of the Plaintiffs there is no documentary evidence or evidence of proper witnesses to rebut it from the defendants's side and more over in spite of not mentioning the survey numbers in Ex-P3 and P4 as per VII Rule 3 of the C.P.C. a property is identifiable by boundaries it is sufficient and the numbers need not be mentioned along with the boundaries mandatorily and further at Page 14 thus even though the defendants contend that from the beginning, the suit properties belong to the Government as they themselves have issued Ex-P6 and P7, it means that they admit the ownership of Thumsi family over the suit properties prior to 1973 and further Plaintiffs have also produced the assessment Register Extracts at Ex-P8 to P11 and these are for the period 1961-62, 1970-71, 1988-89 and 1980-81 respectively and again the defendants have not contended that these are created by the Plaintiffs and for the same reasons as assigned in



the case of Ex/p6 and p7 such contention has been proved by the Defendants and in these documents again the names of Thumsi family members are shown as owners and therefore even upto the year 1988-89 as per Ex-P10 the defendants are admitting the owner ship of the Plaintiff's family over the suit properties. The said contention of the trial Court once again on mere presumptions and assumptions and also shows that the Trial Court not looked into the documents produced by the Plaintiffs and marked as Exhibits. As stated in the earlier paras, the document Ex-P2 at page No.3, only Survey Numbers are mentioned without boundaries and as per the recitals of the said document," properties have not been partitioned among the sons of Thumsi Ranga... [cut off]. The said fact has not been looked into by the Trial Court. Further there is no mention in the said Exhibit that the said property belongs to Joint Family Property of Thumsi Family and also sons of Rangaiah had half share in the said property and other branch of the Thumsi Family had half share etc., When the said property has not been Partitioned, the said document holds no water. Further Ex-P3 and P4 are the Registered Sale Deeds, do not contain the Survey Numbers and Extent and the said documents are subsequent documents that is of the year 1919 and 1957 and if really partition took place asper Ex-P2 no body prevented them to mention the survey numbers and extents and admittedly the ancestors of the Plaintiffs or the Plaintiffs never paid Land Revenue to the Government or Tax to the Defendant No.1 Municipality, because, the



Survey No.163 And 164 of Kolar Kasaba Originally belongs to Govt. and transferred land by the Government in favour of the Defendant No.1 Municipality and the burden of proving the said documents lies on the Plaintiffs but not on the Defendants as alleged in the Judgment. Further Ex-P8 to Ex-P10 are the Assessment Records of the Municipality, where the Property description is mentioned as Thumsi Muddaiah navavara Mantapa, Nagarakatte, etc., and also "Nagara sabhe" but, the names of either Rangaiah or Sampangiramaguptha's names or after death of the said persons, the legal heirs of the said persons do not finds a place in any of those documents. If the said sale deeds acted upon, definitely the names of the said persons finds a place and the trial court do not consider this basic thing in the Judgment and best reasons known to the trial court passed the impugned Judgment and Decree hurriedly. Further the said properties belongs to the Defendant No.1 as such, the tax has been exempted. The said entries of the year 1961-62, 1970-71, 1980-81 and 1988-89. But the said entries have not been challenged by Plaintiffs till today. Further it is well founded that properties within the Municipality will be subject to the assessment once in Five Years or even earlier to it and at every time re assessment, separate assessment numbers will be given to the properties. If the Plaintiffs or their ancestors were in possession of the suit properties as alleged by them in the Plaint as Owners, the properties would have definitely assessed to the Municipal Tax and there would have been sufficient documentary evidence before the Municipality for



having collected tax from such persons. As admitted by the Plaintiffs themselves, the suit property has not been assessed to tax at any point of time. The said strong circumstances shows that the Plaintiffs or his ancestors were not in possession and enjoyment of the suit property and there is no any documentary evidence on record to show that even when the suit property was a revenue land, the alleged persons had paid any tax or Kandayam to the suit property to show that they were exercising their rights over the suit property. To that effect they have not produced a piece of paper. The said fact has not been considered by the Trial Court and passed the impugned Judgment and Decree and same is liable to be set aside.

13. The Appellant most humbly submit that at page 14 para 11 of the Judgment that, infact the Defendants are contending that all the documents produced by the Plaintiffs are concocted and it is to be seen that the Plaintiffs have also produced certified Copies of the Pysal Patrike at Ex-P12, Index of Land at Ex-P13, another Physal Pathrike at Exs-P14 and Record of Right at Ex-P15 and these again show the name of the family members of Thumsi and these are pertaining to the suit properties itself and when these are the Revenue documents and not the documents pertaining to the defendants, hence without summoning the Revenue authorities, the defendants cannot contend that these documents are concocted. Admittedly is not even a Complaint lodged by the Defendants with the Revenue authorities in respect of these documents if they were really



concocted and if the Original records pertaining to Ex-P12 to Ex-P15 in order to prove that these are the documents concocted and not the exact copies of the original records. The contention of the trial Court in the said para once again shows that the Trial Court not looked into the said documents in proper and prospective manner and on perusal of the Order Sheet of the Trial Court clearly shows that how much hurry in passing the Judgment, because, all the necessary applications filed by the Defendant that is, an application Under Order 13 Rule 10 of the C.P.C. by calling entire records in O.S.43/1978 on the file of the then Munsiff, Kolar and also an application by summoning the Sub-Registrar, Kolar, Under Order 16 Rule 6 of the Code of Civil Procedure and also oral requests have been rejected by the Trial Court without giving any reasons and the Order Sheet itself the Order has been passed at the spot itself and no opportunity was given to the Defendant either Challenge the said Orders or to get the documents. The said act of the Trial Court resulted in mis-carriage of Justice and the Judgment and Decree of the Trial Court is liable to be set aside. Further according to the Trial Court Ex-P12 is Physal Pathrike but no where such word written in the said document, Ex-P15 according to the trial court Record of Right produced by the Plaintiff do not finds a place in O.S.43/1978 and on perusal of the said document, the said document obtained on 20-2-1985 by one Muniyappa and Ex-P14 said to be obtained on 19-2-1999 and the evidence of the Plaintiff commenced on 9-1-1986 and the existence of the said documents do not finds a



place either in the pleadings of the said suit or in the deposition of the P.W.'s. If really the Plaintiffs might have obtained the said document in the year 1985 itself no body prevented him to produce in the said case and got marked. First time in this suit he surprisingly discloses that the said documents are created and concocted one and the said document produced by the Plaintiffs themselves and the burden of proving the said document must be on them and he must prove the contents by summoning the Revenue Officials but not by the Defendants. Further Ex-P14 is the Record of Rights produced by the Plaintiffs clearly discloses there is material alteration in the said document and when the Defendant confronted the document with that of material alteration he simply denied it and further the said document also obtained by one Muniyappa in the year 1975 and in the said document name of one Thumsi Muddaiah S/o Krishnaiah finds a place (On perusal of the alleged Genealogical Tree discloses that he belongs to 2nd branch and according to the Plaintiffs earlier to the alleged Sale Deed dated 10-12-1919, the property belongs to the Joint family as per the recitals of the said sale deed, 1/2 share must be in the name of Thumsi Muddaiah S/o Rangaiah or Rangaiah S/o Thumsi Muddaiah. But names of any of the said members do not finds a place.). The said document also created one because the name of Thumsi Muddaiah S/o Rangaiah or the name of Thumsi Krishnaiah S/o Rangaiah do not finds a place if really belongs to their family.



When the Defendants disputed the said documents, the burden of proving the said documents on the Plaintiffs by calling the Revenue authorities but not by the Defendants. The said simple thing has not been considered by the trial Court and discussed in their own fashion and passed the impugned Judgment under Appeal.

14. The Appellant submit that the contention of the trial court at page 14 and 15 at para 12 that, the Plaintiffs have contended that they have been paying the taxes in respect of suit properties and in fact the defendants themselves collected these taxes from them there by admitting their ownership over the suit property and they have produced the copies of the tax paid receipts at Ex-P6 to P19, etc.

The Trial Court once again failed to scrutinize the documents produced by Plaintiffs and the Ex-P6 to P19 do not disclose that for which property tax has been paid by the Plaintiffs and for which property the tax has been collected. Because, the property under dispute are not revenue assessed lands and tax assessment lands for the simple reason that earlier the property belongs to the government and subsequently belongs to the Defendant No.1 Municipality and if at all the Plaintiffs ancestors or the Plaintiffs are in exclusively enjoying the said property by paying Kandayam to the Revenue authorities, they might have produced the Kandayam paid receipts to the Govt. with respect to Survey No.163 and 164 of Kolar Kasaba or tax-paid receipts to Katha Number as and Assessment



Numbers. But the documents produced by the Plaintiffs not all discloses the said fact and the said documents are also created and concocted just to suit their convenience and the discussion of the Trial Court is wrong, opposed to Law, and facts of the case and on this ground alone the Judgment of the Trial Court is liable to be set aside.

15. *The Appellant most humbly submit that the at para 13 at Page 13 discussed with respect to existence of the Water Tanks and also Ex-P20 granting of sanction of Public Tap etc.. The reasons given by the trial court are against to Law and facts and probabilities of the case. It is pertinent to note that the Plaintiffs filed a suit on the file of the then Munsiff, Kolar for the relief of Permanent Injunction with respect to the Property situated at behind Sharada Talkies, Kolar Town, bearing No.1564,1566,2nd Division called as Thumsi Muddaiah Thopu, East: Madras - Bangalore Road, West : Darga Inam, North: Keelukote Tank and South: Varadappa Mutta including Mantap, Building etc., in O.S.43/1978 and in the said suit he has not chosen to shown the existence of the Water Tanks but during the Course of Cross-Examination he admitted the fact that there are existing Two big Water Supply Over Head Tanks in the suit property and also admitted that prior to filing of the suit about 20 years back, the said tanks were constructed and also admitted the fact of existing Over Head Tanks. According to the Plaintiffs, the father of the Plaintiffs has accorded the permission to put up the said water tanks in the property and the said say is only hear say evidence and there is no any documentary evidence*



on record to show that such permission has been granted by the Plaintiffs father and Ex-P20 speaks only about connection given to the public tap in order to use public at large from the Water Tanks situated in the Plaint Schedule Property and the said document has been believed on mere assumptions and presumption and passed the impugned Judgment under Appeal, though the defendant denied the same. Further at page 14 and 15 of the Judgment, the contention of the Trial Court that how ever when the defendants themselves admit that the Ananda Marga Pracharaka Sangha had filed the suit against the second Plaintiff also, it means that since the Ananda Marga Pracharaka Sanga was in possession of a partition of the suit properties because of a lease as per Ex-P25 it had filed the suit against the present first Defendant as well as second Plaintiff and in the cross-examination of the P.W-1 this Ex-P25 is not denied and it is seen that Ex-P25 the said agreement marked on 27-9-2008 through P.W.1 and in the cross examination of the P.W-1 Ex-p25 is not specifically denied, though it is suggested that it is created by him. If it was created him again nothing prevented the defendants from summoning the lessee in Ex-P25 to disprove it and by the defendants own act of admitting that the Ananda Marga Pracharaka Sanga filed the said suit against the Present second Plaintiff they are indirectly admitting Ex-P25 and no doubt it is questioned to P.W.1 at Page 16 of his cross-examination as to from which proceedings he obtained the certified copy of the same and in which proceedings he had produced the Original of the



same, but the P.W.1 has deposed that he cannot say as there are 3 to 4 proceedings and on perusal of the Ex-P25 shows that it is in fact produced in O.S.43/1978 and if Ex-P25 was created such a contention ought to have been taken for the first time in O.S.43/1978 and as that is not done, the defendants are estopped from taking again proves that the Trial Court has no legal knowledge and also not looked into the documents carefully and also not looked into the Judgment and Decree in O.S.43/1978 and also best reasons known to the trial comes to such conclusion hurriedly which resulted in mis-carriage of Justice and passed the impugned Judgment under Appeal. On perusal of the Judgment and Decree passed in O.S.43/1978, the document Lease Deed Marked as Ex-P3 on behalf of the Plaintiffs. On perusal of the entire Judgment, the Plaintiff has not chosen to examine the Lessees on the date of the suit in the year 1978 itself discloses that the Lessees were not in possession and enjoyment of the said property. Further in the present suit the said Document is Marked as Ex-P25 and the bounden duty of the Plaintiffs to examine the alleged lessees on his behalf and to that effect he also cited said to be one of the Lessees as one of the Witness but the reasons best known to him he has not chosen to examine the said witness on his behalf. But Trial Court draw the adverse inference to that effect but chosen to taken the suggestion of the Defendant negatively for the reasons best known to the Trial Court. Per contra at the same time in O.S.43/1978 also, the Plaintiff has not chosen to examine the said



lessees as witness and the said fact clearly reveals at Page 22 of the Judgment Passed in O.S.43/1978. The said fact clearly discloses that the Trial Court not looked into the documents in proper and prospective manner and passed the impugned Judgment Under Appeal. To Show the fact that the suit and the Appeal preferred by the Ananda Marga Pracharaka Sanga against the Defendant No.1 and Plaintiff No.2 has been dismissed, the Appellant has produced the Judgment and Decree passed in R.A.14/1997 on the file of Prl. Civil Judge (Senior Division), Kolar, as a document No.5 through an Application Under Order 41 Rule 27 of the Code of Civil Procedure to consider the said document as Addl. Evidence and the Appellant requests this Hon'ble Court to looked into findings given by the Hon'ble Court in the said Judgment and Decree.

16. I Swear that during pendency of the suit before the Trial Court, the documents now I am producing could not able to produce due to unavoidable circumstances and also beyond my control and some documents have been mis-placed and after through search same have been traced and produced before this Hon'ble Court as Addl. Evidence and the non-production of the said documents before the Trial Court was purely bonafide but not intentional one. The said documents now I am producing are the material documents to show that the Plaint Schedule Property originally belongs to Government and subsequently, the said land has been transferred by the Government to the C.M.C, Kolar through an Order



No.RD 100 LGK 72, Bangalore dated 10th January 1973 itself. The Property under dispute belongs to the Public at large of Kolar City and the Appellant/Defendant Municipality is in possession and enjoyment of the Plaintiff Schedule Property in its own right, title, interest and possession and also the auction purchasers are in possession and enjoyment of the Plaintiff Schedule property.

17. I Swear that the Plaintiff/Respondents No.1 to 4 filed various suits against [various] persons before the Hon'ble Courts with respect to the same schedule [property] and the Appellant Municipality filed the documents in various courts. [The] Appellant/Defendant No.1 also filed an Application before the Trial Court [for] issue of subpoena Summons by calling the entire records in O.S.43/1978 but [the] Trial Court without hearing the matter simply dismissed the same without giving cogent reasons hurriedly and which resulted in mis-carriage of Justice and recently after through search I get the documents now I producing and said documents are to be considered as Addl. Evidence. Otherwise, myself and the public at large of Kolar City. Since, the property under dispute belongs to the Public at large of Kolar City. The Documents produced by me are material documents to prove my case and also to show that the Originally the Plaintiff Schedule Property belongs to Govt. and also subsequently transferred to C.M.C, Kolar and also auction purchasers are in possession and enjoyment of the said property and also there are existing huge over head water tanks.



18. *The Appellant most humbly submit that the suit schedule property originally belongs to the Government and the suit schedule property was abetting to Keelukote Tank formerly and the same has been Transferred by the Government to form Keelukote Lay-out in order to meet the needs of public at Large of Kolar City by providing House Sites and also sites for Public Offices as per the Government Order in No.RD 100 LGK 72, Bangalore dated 10th January 1973 itself in favour of the Appellant. The suit schedule property is Part and parcel of the transferred land and the said property is also finds a place in the approved Keelukote Lay-Out Plan. The said fact also clearly discussed in Judgement and Decree passed in O.S.43/1978 which is marked as Ex-D31 before the Trial Court. Further the Government has not only transferred Survey Number 163 and 164 but also transferred other Survey Numbers through the Notification bearing No.RD 100 LGK 72 dated 10-1-1973 and the said fact discloses there are no private properties transferred but all the properties belongs to the Govt.*

Further if the government wanted to acquire the properties for public purpose from the private persons there should be acquisition proceedings and compensation is to be paid to owners of the acquired lands but in case of govt. lands it is not necessary and the properties under dispute earlier belongs to the Government and after transfer by the Government for public purpose to the Defendant No.1, the Defendant No.1 became the absolute owner of the property along with the auction purchasers. Further if the private



person wants to form a lay-out, he has to convert said land for non-agriculture purpose from the competent authorities and the approved plan is to be approved by the Town planning authorities and other local bodies and thereafter the converted lands comes under the Jurisdiction of the Town Municipality and separate assessment should be fixed for the said property by the Municipality. In this case if the properties under dispute belongs to the Plaintiffs, they might have to be followed the above said procedure and if the said procedure done by the Plaintiffs definitely their names finds a place in the Registers maintained by the Defendant No.1. But to that effect there is no evidence and this fact, though knew by the Trial Court, for the best reasons known to the trial Court passed the impugned Judgment and Decree under Appeal and same is liable to be set aside. Other wise, the Appellant and the public at large of Kolar City will be put to irreparable loss, injury and great hardship, which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Plaintiffs/Respondents.

19. Further the Appellant most humbly submit that the contention of the Trial Court [at] page 19, para 15 of the Judgment discussed with respect to Ex-P24, said to [be] an agreement of some Nataka Mandali etc.,

Once again the discussion of trial Court clearly discloses that the trial court has no legal knowledge and also on mere assumptions and presumptions passed the impugned Judgment under Appeal for the reasons best



known to the trial Court. Because, according to the trial court, the alleged document dated 18-9-1976 and if at all the said document is genuine one, no body has prevented the Plaintiffs to produce the said document in O.S.43/1978, and examine the said Anjanarao as witness on their behalf. In the pleadings also the plaintiff not whispered a word about the existence of the said document. But surprisingly first time in the present suit said document produced and the Trial Court given a presumptory value to the said document and believed the version of the Plaintiff's witness, though many things have been elicited through the said witness in the cross-examination with respect to concoction of the said document. Such contention of the Trial Court opposed to Law, facts, and probabilities of the case and which resulted in mis carriage of Justice and the version of the trial Court is to be set aside.

20. The Appellant most humbly submit that the discussion at page 20 in para 16 of the Trial Court are opposed to Law facts and probabilities of the case and the conclusion arrived by the trial court are opposed to Law, facts and probabilities of the case and the Judgment and Decree under appeal is to be set aside.

21. The Appellant most humbly submit that the discussion at page 20, 21 and 22 in para 17 of the Judgment and decree passed by the Trial Court clearly discloses that the Trial Court has no legal knowledge in scrutinizing the documents produced by the Defendants in proper and prospective manner and also hurriedly passed



the impugned Judgment under appeal without applying the mind judiciously. Because, the Defendant has produced 31 documents which were marked as Ex-D1 to D31. The documents produced by the Defendants clearly discloses that the Plaintiffs have no semblance of right over the Plaint Schedule Property per contra, the Plaint schedule property originally belongs to govt. and inturn transferred to the Defendant No.1 Municipality for the purpose of formation of Keelukote Layout in order to meet the needs of the public at large of Kolar City by providing House sites and also sites for public offices as per the Government Order in No.R.D 100 LGK 72, Bangalore dated 10th January 1973 itself and to that effect the Defendant No.1 produced the Xerox Copy of the said Notification and for production of the original, the Defendant No.1 filed an application for subpoena summons Under Order 13 Rule 10 of the C.P.C. by calling the entire records in O.S.43/1978 as all the records were produced in the said suit. But the trial court without giving the cogent reasons on the same day itself passed the Order in Order sheet by simply dismissing the application filed by the Defendant No.1 hurriedly for the reasons best known to trial court. But in the Judgment and Decree passed in O.S.43/1978 which is marked as Ex-D31 on behalf of the Defendant clearly discloses the fact that production of the Original Gazette Notification of the said Order and also other Documents. Inspite of it the Trial Court passed the impugned Judgment Under Appeal. Now through an application Under Order 41 Rule 27 of the C.P.C, as a document No.1 and 2 produced



the certified copies of the said proceedings produced as Addl. Evidence and same may kindly be considered as Addl. Evidence. Further the Defendant produced Certified copy of the Survey Map, Certified Copies of the Assessment Register Extracts for the year 1970-71, 1980-81 and also Certified copies of R.T.C. Extracts for the year 1965 to 1975 for kind perusal of this Hon'ble Court to show that the government was earlier owner of the Plaint Schedule Property and after transfer of the land through the said proceedings as stated above, Defendant No.1 is the absolute owner in possession and enjoyment of the Plaint Schedule Properties. Otherwise, the Appellant will be put to great hardship. Further the discussion of the trial court that there is no any notification under sec.4 or 6 of the Land Acquisition Act nor any Award by the Land Acquisition Officer etc., clearly discloses that the Trial Court has no legal knowledge. Since, the Plaint Schedule Properties and other properties transferred through the said proceedings belongs to the Govt. and no acquisition is necessary. Further the trial court do not know the basic principle that if the property belongs to the private persons only comes under the perview of acquisition proceedings and also Award has to be passed by paying the compensation. In this case, the Plaint schedule property belongs to the Govt. and no such acquisition proceedings took place and as such transferred the same through the Notification. Inview of the said fact, the question of alienation, conversion, with the approval of the Deputy Commissioner etc., do not arise at all as discussed by the



trial court. Further an important point to note that on the date of filing of the suit the Plaintiffs are aware of the said transfer to the Defendant No.1 Municipality and the Plaintiffs have not chosen to implead the Government that is, Chief Secretary as necessary party by complying the Mandatory Notice Under Sec. 80 of the Code of Civil Procedure. Further the Plaintiffs have chosen to made Defendants No.2 to 4 as parties to the suit and admittedly they are Government Officials and no notice has been issued Under Sec.80 of the C.P.C. before instituting the above suit against the Government Officials. On this ground alone the suit of the Plaintiffs ought to have been dismissed and the Judgement and Decree of the Trial Court is liable to be set aside. Further discussion of the trial court that the Defendants have not contended the possession as adverse possession etc., Once again the trial Court failed to consider the legal aspect in this regard. When the Defendants have contended that they are the absolute owners by virtue of the transfer of the Government land in its favour, the question of adverse possession do not arise at all. Per contra, prior to the year 1978 itself that is, prior to the filing of the suit O.S.43/1978 itself, the Defendant No.1 is the absolute owner in possession and enjoyment of the Plaint Schedule Property by constructing the huge over head tanks and the said fact admitted by the Plaintiffs themselves. When such being the state of affairs, the Plaintiffs have to plead adverse possession by confirming the Government and inturn Defendant No.1 as true Owners. But the Plaintiffs have not



taken such plea in the present suit. As such the conclusions arrived by the Trial Court are wrong and there is no legal sanctity to such findings given by the Trial Court. The trial court failed to consider the fact that the Defendants have produced the approved Plan and the said plan has been approved by the Town planning authority and also the auction was held by the Defendant No.1 and the auction purchasers are in possession and enjoyment of the Plaintiff Schedule Property as admitted by the Plaintiff in the Cross-Examination portion in O.S.43/1978 itself. Further the appellant most humbly submit that the suit filed by the Plaintiffs are not in the representative capacity or public interest litigation suit and no paper publication was issued and the public at large do not know with respect to the suit pending before the Court of Law and also they are not the parties to the suit as such the said allottees did not appear in the said suit and that apart the Appellant/Defendant No.1 has taken the contention that the Plaintiffs filed many suits against persons including this Defendant No.1 before instituting the suit O.S.5/2004 and he must disclose the fact with respect to the suits filed by the Plaintiffs and they have to produce the Plaintiff Copies and the Plaintiffs themselves admitted the fact of filing of many suits before the Courts and bounden duty of the Plaintiffs to disclose the said fact in pleadings and also produce the copies of the same in the said suit and filing of the said suits by the Plaintiffs are also admitted by them. Instead of drawing adverse inference against the Plaintiffs for not producing the said documents in the said suit, for the best reasons known to



the trial Court, the burden of producing the said documents on the Defendants and the said discussion of the trial court is opposed to Law, fact and probabilities of the Case and resulted in the mis-carriage of Justice.

22. *The Appellant most humbly submit that the discussion of the Trial Court at page 22 in para 18 of the Judgment to the effect that they have produced certain documents like assessment extracts at Ex-D2 to D16 and in these documents it is seen that they pertaining to the year 1978-79 (Ex-D5) onwards till 1999-2000 and no doubt in this the owners name is shown as Municipality, however the original of these assessment extracts that is, the assessment Register is not produced by the defendants to show that the properties mentioned in these documents are nothing but suit survey No.163,64 and no connecting documents are produced by the defendants and as stated earlier when the revenue department itself has admitted through the documents discussed above, that the suit properties belong to the Thumsi family and it also not disputed by the defendants that Katha numbers of the suit properties are 1564 to 1566 and it is seen that these numbers are not mentioned in Ex-D2 to D16 and hence, it cannot be held that E-D2 to D16 pertain to the suit properties, presuming that they pertaining to the suit properties, it is to be seen that these documents are maintained by the first defendant themselves and are written by first defendant themselves in other words, first defendant has access to these registers and can made entries to their will and wish and when the defendants have*



not been able to prove the title of the first defendant itself over the suit properties, even merely because they themselves entered their names in Ex-D2 to D16 it does not confer title of them over the suit schedule properties and again these documents are subsequent to 1978-79 that is, after filing of O.S.43/1978 and it gives room for a doubt that for the purpose of O.S.43/1978 filed by the Plaintiff in respect of these suit properties against the defendants they might have prepared these documents and under such circumstances, the defendants were required to prove that the entries made by them in those documents are on the basis of valid title and as it is not done mere production of these documents do not prove their possession over the suit properties and it is to be seen that the defendants contend that they have formed lay out in the suit properties and have auctioned it to the allottees and allottees constructed the houses after obtaining the plan approved and license from the first defendant, then the occupiers column in Ex-D2 to D16 the names of those allottees ought to have found a place if the contention of the defendants were true and but astonishingly it is the name of the first defendant which is finding place in these documents and not the names of allottees and this means that no lay out has been formed no sites have been allotted to any body and therefore the defendant blowing hot and cold at the same time once contending that the suit properties are in their possession and again contending that the allottees are in possession



of the same by constructing the house and neither of the stands are proved by them.

Once again the Trial Court discussed the documents of the Defendant No.1 are created by themselves etc., on mere assumptions and presumptions and the best reasons known to the trial Court and the trial court not taken [into account any thing in mind that the Defendant No.1 is Municipality and the officials of the municipality have no vested interest to written any thing in the register on their own whims and fancies and the Municipality is maintaining the properties as shown in Ex-D2 to D 16 but also all the properties which will comes under the Jurisdiction] of the Municipality and the contention of the trial court in that regard shows childish nature of the trial court and also the trial court has no legal knowledge ,because, the Plaint schedule property consists of Tamarind trees, Huge Over[head] Tanks etc., and the Over head tanks and number of distribution pipe lines imbedded through the said tanks have been occupied by considerable area over the said property and to show the fact lay-out has been formed, the Appellant referred the Judgment and Decree passed in O.S.43/1978 but, the trial Court even not looked into the said Judgment and Decree and admissions of the Parties of the suit in the deposition. The appellant through an application filed the Lay-Out Plan approved by the Town Planning Department as document No.10 (The said document was also produced in O.S.43/1978) and also proceedings of Govt. of Karnataka as document No.2 discloses that Town Municipal Council, Kolar confirmation



of sites in Keelukote Lay-out held on 25-4-1979 with respect to Two sites bearing No.47 and 48 infavour of M.Anwar S/o Mohammed Ghouse and Syed Basheer, S/o Syed Usman for kind perusal of this Hon'ble Court and same may kindly be considered as Addl. Evidence otherwise, the Appellant and public at large of Kolar City will be put to great hardship. Further against these Two persons Plaintiff filed a suit on the file of Munsiff, Kolar in O.S.168/1985 against this Defendant No.1 and also against one V.R.Venkateshaiah [V.Venkateshaiah], V.Chandra Shekar, V.Muniraju unauthorisdely in a portion of the Plaint Schedule Property and the Defendant encouraging them etc., and the said suit was also dismissed as groundless, clearly discloses that the above said persons are also in possession of the portion of the Plaint Schedule properties. The said fact also admitted by the P.W.1 in the cross examination at pages 10 and 11 of the deposition that he has filed as many 8 to 10 suits with respect to the Plaint Schedule Properties and he admits about that he has pleaded in the Plaint with respect to some suits only and also admits that after disposal of the R.S.A before the Hon'ble High Court of Karnataka at Bangalore, before instituting this suit he has filed about 4 suits with respect to the Plaint Schedule Property and also admits that he filed suit against V.Chandra Shekar, V.Muniraju, Syed Abdul Basheer and the present Defendant No.1 and also he admits the fact he filed the suit with the allegation that the said persons by encroaching the Plaint Schedule property constructing houses but he shown



ignorance with respect to the result of the suit, though the Plaintiff is a B.Com., Graduated and not a lay man and he himself filed the said suit before the Hon'ble Court and bounden duty of the P.W.1 to know the result of the suit he filed before the Hon'ble Court. Further suggestion has been put to the P.W.1 to the effect that the above said persons are constructing houses after obtaining the said sites in an auction sale and by taking necessary license etc., from the competent authorities and by considering the said aspect, the said suit was filed by you is dismissed. To that question, the P.W.1 not denied the suggestion of the Defendant No.1 but once again shows his ignorance and he is not aware of the Judgment of the said suit. Further at page 11 of the Cross-Examination portion of the P.W.1, it has suggested to the P.W.1 that the above said persons are in possession and enjoyment of the Plaint Schedule property, he denied the said suggestion and further put a suggestion to the P.W.1 he admitted the fact that the said Chandra Shekar and Basheer have constructed the houses in the Plaint Schedule property in the deposition of O.S.43/1978. But he denied said suggestion, though he admitted said fact clearly in the Cross-Examination portion in O.S.43/1978 at page 19 [and] further in the cross-examination portion of the D.W.2 who is the above said [V.]Chandra shekar, the Plaintiff suggested to the said witness that the house constructed by the said Chandra Shekar belongs to the Plaintiffs and without the knowledge you purchased same etc.,. Further during the course of cross-examination, the P.W.1 admitted the fact that the



Cinema Site is also situated in Survey No.163 and 164 belongs to one V.Venkateshaiah, who is the Defendant No.2 in O.S.43/1978 and he purchased the said site in an auction sale from the Defendant No.1 and also admitted the fact at para 12 of the Cross-Examination portion of the P.W.1 that The said fact clearly discloses that the said persons are in possession and enjoyment of the Plaint Schedule Property and the deposition of the parties in O.S.43/1978 though produced, the trial Court not looked in to the said documents. (For the said reason, the Appellant has produced the Certified Copies of the Deposition of the P.W.1 and D.W.2 in O.S.43/1978 for kind perusal of this Hon'ble Court to show that the above persons are in possession and enjoyment of the portion of the Plaint Schedule Property and also the Plaintiffs have not chosen to implead them as necessary parties in the present suit, through an application for Addl. Evidence and the Appellant pray that this Hon'ble Court may kindly peruse the said documents and may kindly be considered as Addl. Evidence. Otherwise, the Appellant and the public at large of Kolar City will be put to irreparable loss, injury and great hardship, which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Plaintiffs). Further he admits with respect to filing of the suit by the Ananda Marga Pracharaka Sanga against the P.W.1 and the Defendant No.1, but pleading ignorance with respect to the result of the said suit. The Defendant No.1 also filed Xerox Copies of the said Judgement and Decree passed in R.A.14/1997, but the trial court even not



looked into the documents produced by the Defendant No.1 and passed the impugned Judgement and Decree under Appeal. (For the said reason, the Appellant filed the Certified Copies of the Judgement and Decree passed in R.A.14/1997 before this Hon'ble Court through an application for considering the said document as Addl. Evidence and the Appellant requests this Hon'ble Court to peruse the said Judgement and may kindly be considered as Addl. Evidence otherwise, the Appellant and the Public at large will be put great hardship) but in the Complaint no where the Plaintiff has chosen to show the fact of filing of the suit by the Ananda Marga Pracharaka Sanga, against this Defendant and also against the Plaintiff No.2 that is P.W.1 in the above suit or the result of the said suit (the said Ananda Marga Pracharaka Sanga alleged to be Lessee under the father of the plaintiffs as per the Complaint averments) in the Complaint, the Plaintiffs failed to disclose the said fact and an adverse inference has to be drawn by the Trial Court in this regard but the reasons best known to trial court shown soft corner in all respect towards the Plaintiffs and the Judgement of the trial Court clearly discloses that the trial court has not scrutinised the pleadings, documents and deposition of the parties in proper and prospective manner and the said aspect shows that the Judgement and Decree passed by the Trial Court illegal, perverse, capricious and against the Principles of Natural Justice.

Further it is submitted that so many sites formed that is about 350 sites as per the Lay-out Plan produced by the



Defendants and the Plaintiffs have not chosen to called for the Assessment Register maintained by the Defendant No.1 to that effect. Instead of drawing adverse inference in that regard, the best reasons known to the trial court discussed at the whims and fancies without scrutinised the documents produced by the Defendant No.1 and further the said documents clearly discloses that the said properties belongs to the Defendant No.1 as such the name of Defendant Municipality finds a place as such, the tax is exempted. If the property belongs to private persons, the private persons must pay tax to the Defendant No.1 Municipality and the said documents clearly disclose that the Plaintiffs nor his ancestors never paid tax to the Defendant No.1 Municipality or to the government from the year 1908 to till today. Without considering the said aspect the trial court passed the impugned Judgment and Decree under Appeal and same is liable to be set aside.

Further he admits the fact during the course of Cross-examination at page 12 of the Cross-examination portion of P.W.1 clearly admits the fact that Survey No.163,164,167,169,170 belongs to Kolar Kasaba and Survey No.7 and 130 belongs to Keelukote and the extent of the said properties about 64 acres and 7 guntas and further he has been suggested that the said properties have been given to the Defendant No.1 Municipality by the Government for the purpose of formation of sites and commercial complex to the people of Kolar city and he denied the said suggestion but the P.W.1 voluntarily saying that Survey No.130 only be given. Further suggested that



the said Order passed on 10-1-1973 and for the said question the answer given by the P.W.1 that the Order was passed to Survey No.170 but in the said Order Survey No.163 and 164 are inserted and further suggested that whether you challenged the said Order? .For the said question the answer given by the P.W.1 that the said Order was with respect to Survey No.170 only as such I am not challenged like that and further suggested that whether you have produced any document to show that the said order was passed for only Survey No.170? For the said question he answered that he has not produced any document. Further the P.W.1 has been suggested that earlier to the Lay-out formed by the Defendant No.1, the property auctioned were bearing Survey Numbers, but the P.W.1 denied the said suggestion and further he admits the formation of Lay-out by the Defendant No.1 but according to him Survey No.163 and 164 are not included. Further he admits that in all the above said survey numbers Houses, stadium etc., are constructed. Further in the cross-examination pleads ignorance with respect to Notification of the Government. The said admissions of the Plaintiffs that is, P.W.1 himself clearly discloses that on the date of filing of the suit he is aware of the proceedings took place between Government and the Defendant No.1 and also he aware of the Notification of the Government of Karnataka and also the construction of houses by the auction purchasers in the Lay-out and also in the Plaint Schedule Property.



23. The Appellant most humbly submit that the discussion of the Trial Court at page 23 in para 19 of the Judgement once again shows that the trial Court has not scrutinised the deposition of the parties in proper and prospective manner and hurriedly passed the Judgement for the best reasons known to the Trial Court only. The discussion of the Trial Court in that para to the effect "that the Defendants own document Ex-D1 shows that the suit properties are mentioned therein that is , Survey No.163 and 164 measuring 18 guntas and 1-4 guntas respectively and they stand in the name of Thumsi Muddaiah that is, the ancestor of Plaintiffs and it is shown as ancestral property of Thumsi Muddaiah and it is seen that Ex-D31 is issued on 18-3-1975 and when according to the defendants they were granted the suit properties by the Government on 10-1-1973 then there is no explanation as why subsequent to that date on 18-3-1975 name of ancestor of Plaintiffs family is shown in the record of rights Ex-D1 and this again negates the contention of the Defendant".

The said document Ex-D1 produced by the Plaintiff himself and marked as [Ex-]P15 on behalf of the Plaintiff and during the course of Cross-Examination [of] the P.W.1 the Appellant suggested to the P.W1 that the documents produced by him are created and concocted documents and not pertaining to the suit schedule Property and the Appellant suggested with respect to the said document that in the said document Ex-P15 the Survey Numbers have been manipulated and he admits the said document that he himself produced the same and at that time only the said



document is marked as Ex-D1 only. But the Trial Court without looking into the deposition comes to the wrong conclusion that the said document produced by the Defendant etc.,. On this ground alone, the Judgment and Decree passed by the Trail Court is liable to be set aside.

24. The Appellant most humbly submit that the discussion of the Trial Court at page 24 in para 20 of the Judgment to the effect that the Defendants have also produced certain R.T.C., at Ex-D20 to 29 and these are only the copies and in it the period for which it pertains to is not mentioned and therefore it cannot be held that these documents prove their possession or owner ship etc.,

Further the discussion of the Trial Court shows that the judgment and Decree passed by the trial court, perverse, capricious, arbitrary and against to the principles of natural Justice. The documents produced by the Defendants are Certified Copies of the R.T.C. Extracts issued by the Competent authority and the said documents pertains to Property bearing 163 and 164 of Kolar Kasaba and the said documents clearly discloses that the Government was the owner of the said properties and in column No.10 of the said R.T.C., discloses the name of the Owner as Sarakari and also existence of Water Tanks in the said survey Numbers. Further the Documents marked on behalf of the Defendants No.1 that is, D.27 to 29 are Certified Copies of Records of Right issued by the Competent Authority and the said document do not disclose the names of the ancestors of the Plaintiffs or the



names of the Plaintiffs. The said documents clearly discloses that the Plaint Schedule Property never belongs to the ancestors of the Plaintiffs and they never in possession and enjoyment of the said property. Per contra, the contention taken by the Defendant that the documents produced by the Plaintiffs are all created and concocted just to file the frivolous suit before the Trial Court and they are fabricated documents. In spite of it the trial court passed the impugned Judgment and Decree under Appeal and same is liable to be set aside. Further to prove the contention of the Defendant No.1, through an application filed the R.T.C. Extracts and same may kindly be considered as Addl. Evidence. Other wise, the Defendants/Appellant and the public at large of Kolar City will be put to irreparable loss, injury and great hardship which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Plaintiffs/Respondents No.1 to 4.

Further contention of the Trial Court in the said para, that the Defendants have not chosen to examine the persons who issued the said documents etc.,

The above said contention of the Trial Court once again discloses that the trial court prejudiced and the trial court has no legal knowledge. Because, the documents produced by the Defendant No.1 are the certified copies and there is no necessity examine the person who issued the same. Per contra , the Plaintiffs also produced many copies and the trial court not chosen to direct the Plaintiffs



to examine the persons who issued the same. The said fact clearly discloses that the Judgment and Decree passed by the Trial Court is illegal, perverse, [arbitrary] and also against to the principles of natural justice. On this ground alone the Judgment and Decree passed by the Trial Court is liable to be set aside. Otherwise, the Appellant and the public at large will be put to irreparable loss, [injury] and great hardship. Otherwise, the faith on courts would be lost.

25. *Further the Appellant most humbly submit that the discussion of the Trial Court at page 25 in para 21 to the effect that the Defendants have not produced certain documents etc.,*

Further the discussion of the trial Court is wrong and the Defendants produced many documents available on the date of commencing the evidence in O.S.5/2004 including the Xerox copies and the said copies clearly discloses that the Government has transferred the lands to the Defendant No.1 for the purpose of formation of Keelukote Lay-out and almost all the documents were produced in O.S.43/1978 and that apart the Plaintiffs have chosen to filed many suits before filing of the suit O.S.5/2004 against this Defendant, with respect to the plaint schedule property and the defendant requested the trial Court that, the Plaintiffs filed many suits against the Defendants and the documents are produced in the said suits and to obtain the same time may be granted. But the Trial Court refused to grant the time and after refusal of the



time, the Defendant No.1 filed an application Under Order 13 Rule 10 of the C.P.C. by calling the entire records in O.S.43/1978 on the file of the then Munsiff, Kolar, which is the first suit filed by the Plaintiffs against the defendant as stated in the above paras, but, the trial court instead of allowing the said application, hurriedly dismissed the same without giving any cogent reasons for the reasons best known to the trial Court. After through search, the Defendants traced the documents and also obtained certified copies and produced before this Hon'ble Court to consider the said documents as Addl. Evidence through an application and the all the documents are necessary documents to put-forth grievance of the Defendant No.1 as such the said documents are to be considered as Addl. Evidence. Otherwise, the Appellant and the public at large will be put to irreparable loss, injury and great hardship which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Plaintiffs.

26. *The Appellant most humbly submit that the conclusions arrived by the Trial Court at page 25 in para 22 of the Judgment are illegal , perverse, capricious, arbitrary and against to the Natural Justice and also hurriedly passed the Judgment and Decree under Appeal without scrutinized the documents produced by the parties in proper and prospective manner and also on mere assumptions and presumptions. Because, the trial court failed to understand the fact that the person who approaches the Hon'ble Court must be fair and also failed to consider the fact that as on the date of the filing of suit,*



the Plaintiffs have not produced a piece of paper to show that they are in possession and enjoyment of the Plaint Schedule Property. Per contra the Defendant No.1 proved that earlier the properties belonged to the Government and subsequently transferred to the Defendant No.1 and after transfer, the Defendant No.1 is the absolute owner in possession and enjoyment of the Plaint Schedule Properties. The conclusions arrived by the trial court clearly discloses that the Trial Court has no legal knowledge and also hurriedly Decreed the suit of the Plaintiffs instead of dismissing the suit of the Plaintiffs.

27. The Appellant most humbly submit that the conclusions arrived by the Trial Court at page No. 26 and 27 in para No.'s 23 and 24 on Issue No.6 with regard to the contention taken by the Defendant No.1 that suit is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties.

Further the Trial Court grossly erred in discussing the said issue in proper and prospective manner and also not looking into the documents and admission of the P.W.1 during the course of Cross-Examination and resulted in mis carriage of Justice. Further the suit filed by the Plaintiffs for the relief of Declaration of Title and Permanent Injunction against the Defendant No.1 and other Defendants. The contention of the Trial Court in the same para to the effect that the Defendants have also not summoned those alleged allottees as their witnesses to corroborate their contentions even otherwise nothing prevented those



alleged allottees from making an application and getting themselves impleaded in the suit and they have not do so etc., The Trial Court failed to considered fact that the said suit filed by the Plaintiffs is not filed under the representative capacity and the public at large including the allottees are not aware of the proceedings initiated by the Plaintiffs against the Defendants and no paper publication is issued to that effect. Further the trial court ignored the fact the admitted facts need not be proved and the Plaintiffs themselves admitted during the course of cross-examination in O.S.43/1978 and also in the present suit and to that effect, the Defendant No.1 also took the said contention in the Written statement also. If considered the said fact by the trial court, the said issue must by in Affirmative and adverse inference is to be drawn against the Plaintiffs. As such the conclusions arrived by the Trial Court is wrong in giving findings and same is to be set aside in limine.

28. Further the Appellant submit that the, conclusions arrived by the trial court while discussing the Issue No.5 at page 27 in Para 25 the Judgment are illegal, perverse, capricious, arbitrary and against to the Principles of natural Justice. The conclusions arrived by the Trial Court clearly discloses that the Trial Court is very hurry in passing the Judgment and the trial court not properly scrutinized the documents produced and marked in proper and prospective manner that is, Ex-D 19 and D-17 and the said documents are Certified Copies of the Valuation Register Extracts for the year 2004 and 2008 issued by the



Sub-Registrar, Kolar Taluk, Kolar. The said documents clearly discloses the fact of valuation of the properties which are situated at Madras-Bangalore Road, Kolar City.

The conclusions arrived by the Trial Court with respect to the said Issue No.5 to the effect that it is the case of the defendants that the suit properties are not valued correctly and correct Court fee is not paid and the defendants specifically contended that the suit properties are worth more than Rs. 1-00 crore and therefore the court fee paid by the Plaintiffs insufficient and on that ground the suit has to be dismissed. In this respect D.W.1 at para 3 of the affidavit by way of chief examination has deposed similarly and she has produced the copy of the endorsement said to be issued by the sub-registrar, Kolar at Ex-d17 and it pertains to valuation of the year 2008-2009 and as the suit is filed in the year 2004 and as the Plaintiffs contend that is is nothing but O.S.43/1978 re-instituted (which question will be discussed little while later), it is clear that Ex/d17 does not help the defendant and the defendants have also produced another endorsement said to be given by the Sub-Registrar, Kolar at Ex-D19 and it is stated in this that it pertains to Valuation of the properties at M.B. Road Kolar for the year 2004-2005 . But in order to prove that Ex-D19 infact correct, the Sub-Registrar has not been examined. No doubt the defendants had made an application Under Order 16 Rule 6 and 7 read with sec.151 of the C.P.C. for summoning the sub-registrar and that application has been dismissed by this Court. But it does not mean that thereby the defendants have failed to prove



that the suit properties are worth more than what is valued by the Plaintiffs. If really the Valuation mentioned in Ex-D19 is correct, nothing prevented the defendants from producing the guidance value book or summoning the valuation book from the sub-Registrar, but the same has not been done. No doubt in the application the first defendant had also sought for issuing summons to the the sub-registrar, but the same has been done. No doubt in the applicatio[n] the first defendant had also sought for issuing summons to the Sub-Registrar for producing the Valuation Register and the application was rejected, but that in itself does not help the defendants because the guidance value book is a public document and is available to any body and the defendants could have obtained the copy of the same and produced it before the Court and they have not done so. The defendants could have also examined the owners of the properties neighbouring the suit properties to substantiate the said contention and against the same has not been done by the defendants.

The Conclusions arrived by the trial court regarding the said issue once again shows the childish nature of the trial court and also the trial court not properly scrutinised the documents in proper and prospective manner for the best reasons known to the trial court. Further it is admitted fact that to prove the contention of the Defendant No.1 withrespect to valuation of the suit made by the Plaintiffs is not proper and the court fee paid on the plaint is insufficient, the Defendant No.1 at the first instance has filed an application under order 16 Rule 6 and 7 Read with



Sec. 151 of the C.P.C. and through the said application, the Defendant No.1 called the Sub-Registrar, Kolar Taluk, Kolar for cause production of the Valuation Register of the Year 2004 and also given evidence with respect to the properties situated at M.B.Road, Kolar and admittedly, the suit schedule properties are situated in the said area. But the Trial Court hurriedly dismissed the application and not given any reasons for dismissal of the said application. Thereafter only, the Defendant No.1 produced the certified copies of the guidance value register extract from the Sub-Registrar, Kolar Taluk, Kolar and produced before the Trial Court. The said Ex-D17 and D19 are clearly discloses the market value of the properties of that particular area which includes the Plaint Schedule Properties. But the trial Court for the reasons best known without scrutinizing the said documents passed the impugned Judgment and Decree under Appeal. Admittedly, the suit filed by the Plaintiffs for the relief of Declaration of Title and Permanent Injunction and the Plaint Schedule Property consists of more than 80 Thousand Square Feets and the suit is valued by the Plaintiffs at Rs.100000=00 and Court Fee of Rs. 620-00 only (Kindly Refer Valuation Slip filed by the Plaintiffs before the Trial Court.)paid on the plaint. For the said Valuation Slip filed by the Plaintiff has no basis . Admittedly, the Plaintiffs are not in possession and enjoyment of the suit schedule properties and the they are utter strangers to the Plaint Schedule Property and the Plaint Schedule Property is situated in heart of the Kolar City . Instead of paying the Court Fee on market value, the



Plaintiffs have chosen to valued the property at Rs.100000=00 only. Asper the guidance value Register Extract produced by the Defendant No.1 discloses that Market value of the property at M.B.Road, Kolar ,behind Sharada Talkies for Residential Rs.500=00 per Square Feet and Rs.1500=00 Per Square Feet for commercial. The said document clearly discloses that the value of the Plaint schedule Property worth more than Rs.One Crore . Instead of directing the Plaintiffs to pay the Court Fee on market value, for the best reasons known to the trial court discussed the said issue as Negative, instead of Affirmative. The said conclusion arrived by the Trial Court clearly discloses that the Trial Court was very hurry in passing the Judgment . On this ground alone the Judgment and Decree Under Appeal is liable to be set aside. Otherwise, the Appellant and the Public at large of the Kolar City will be put to irreparable loss, injury and great hardship and the very faith on Courts would be lost.

29. The Appellant most humbly submit that the conclusions arrived by the Trial Court in the Judgment at page 28,29,30,31 ,32 and 33 in paras 26 and 27 are illegal perverse, capricious, arbitrary and against to the Principles of Natural Justice. Because at one breadth the say of the trial court is , the Plaintiffs filed the suit before this Hon'ble Court is fresh one and the said suit is not continuation of the earlier suit filed by the Plaintiffs before the then Munsiff , Kolar in O.S.43/1978 and at the same time the contention of the trial court the present suit is nothing but continuation of O.S.43/1978 and the trial court blowing hot and cold at a



time. If the present suit is continuation of the earlier suit, the Trial Court must consider the facts, circumstances, admissions of the parties and the conclusions arrived in O.S.43/1978 . The present suit filed by the Plaintiffs before the Trial Court is Declaration of Title and Permanent Injunction and at the same time, the earlier suit for bare Permanent Injunction. The Trial Court while discussion in the said paras comes to the conclusion that the Defendant No.1 had not taken the contention with respect to the Valuation in the earlier suit O.S.43/1978 etc., But the Trial Court not looked in to the Judgment passed by the Hon'ble Court in O.S.43/1978. On perusal of the Judgment at page 6 clearly discloses the fact that contention of the Defendant No.1 with respect to valuation. That apart, the said suit is for bare Permanent Injunction and the present suit filed by the Plaintiffs for the relief of Declaration of Title and Permanent Injunction and the bounden duty of the Plaintiffs pay the Court Fee on Market Value. But they have not chosen to pay the Court Fee on market value and at their whims and fancies paid the Court Fee without any basis. To that effect, the documents produced and evidence adduced by the Defendants not taken into consideration . If the said documents produced by the Defendant No.1 might have taken into consideration , definitely, the Trial court has to consider the Issue as Affirmative instead of Negative and the Order passed by the Trial Court is opposed to Law, facts, probabilities of the case and the Trial Court not under stand the nature of the suit filed by the Plaintiffs and the trial court also failed to considered the fact that the



Plaintiffs have not chosen to produce a piece of paper to show that on the date of filing of the suit the Plaintiffs are in possession and enjoyment of the Plaint Schedule Properties. Per contra the Defendants have produced all the documents to show that the Defendants are the absolute owners in possession and enjoyment of the Plaint Schedule Property. Further the Plaint Schedule Properties are not individual private properties and the Plaint Schedule Properties belongs to the Public at large of Kolar City. Further the Trial Court failed to considered the fact that the Defendants No.2 to 4 are Government Officers and before instituting the said suit Mandatory Provision Under Sec.80 of the C.P.C. has not been Complied. Further admittedly, the Plaint Schedule Properties are transferred lands from the Government and the Plaintiffs have not chosen to made the Government of Karnataka as necessary party in the present suit. Further the Trial Court failed to considered the fact that though the Plaintiffs have not established their exclusive possession as on the date of the suit, for the best reasons known to trial Court] hurriedly passed the Judgment and Decree Under Appeal. The Trial Court also hurriedly dismissed all the necessary applications filed by the Defendant Municipality without giving an opportunity hurriedly for the best reasons known to the trial court. The Trial Court has no patience in scrutinizing the documents produced by the Plaintiffs and Defendants in proper and prospective manner and the entire discussions and conclusions arrived by the Trial Court clearly discloses that is one sided and against to the



Principles of Natural Justice and the for the reasons best known to the Trial Court prejudiced against the Defendant No.1 and which resulted in mis-carriage of Justice. Further the Trial Court failed to considered the fact that the Property under dispute is Public property and belongs to the Public at large of Kolar City. Further the Trial Court has no legal knowledge in scrutinizing the documents in proper and prospective manner . The Appellant also filed an application Under Order 26 Rule 9 of the C.P.C for appointment of Commissioner to demarcate the existing features available at the spot in the suit schedule properties and also an application Under Order 41 Rule 27 of the C.P.C. along with the documents to consider the said documents as Addl. Evidence and the said documents produced by the Appellant are material documents to put forth grievance of the Appellant. If the said applications filed by the Appellant is not allowed, they will be put to irreparable loss, injury and great hardship. By considering all the above said facts and circumstance, the Judgment and Decree passed by the Trial Court is liable to be setaside and at the same time, the suit of the Plaintiffs is liable to be dismissed.

30. *The Appellant / Defendant No.1 most humbly submit that in the present suit that is, suit under Appeal, the Plaintiffs/Respondents have taken the contention that the Ancestors of the plaintiffs/Respondents permitted the defendants/Appellant to put up water tanks are absolutely false since the Said plea was taken first Time in the said suit. Because ,in the suit filed by the Plaintiffs in O.S*



43/1978 have taken the contention that the Plaintiffs/Respondents were in exclusive possession and enjoyment of the plaint schedule properties and also taken the contention that the defendants/Appellant unnecessarily interfering with their possession and enjoyment by denying their right, title, interest and the plaintiffs never whispered the word about the existence of the Municipal Water Tanks that were built long back prior to the said suit and in the said suit there was no mention of either the existence of the water tanks or the alleged permission accorded as now stated in the present suit. The said pleading was not taken even in the Chief Examination of the P.W.1 that is, T.S.Ranga Raju, who filed the said suit as a Manager of the Joint Hindu Undivided Family and it is only during Cross-Examination by the Counsel of the Defendant No.1, the said T.S. Ranga Raju and other witnesses who were examined have admitted the existence of the Two Huge Over Head Tanks that were built by the P.W.D. Authorities for the benefit of Kolar Town and also they admitted during the course of the Cross-Examination that huge water distribution pipes are imbedded all over the Suit schedule property to supply water to the entire Kolar Town. When such being the state of affairs, the Plaintiffs/ Respondents have chosen to pleaded that their ancestors accorded the permission etc., falsely and with Malafide intention just to suit their convenience . In spite of it the Trial Court failed to under stand the case on hand passed the impugned Judgment and Decree under Appeal and no Opportunity was given to the Appellant/Defendant No.1 to



put forth the grievance and in the Plaint filed by the Plaintiffs at the Plaint Schedule Column discloses that the "Excluding the Over head Water Tanks" and there is no specific measurement that in how much area Water Tanks are existing and also the Pipe Lines which are imbedded in the Plaint Schedule. To demarcate the said fact also, the appointment of Court Commissioner is necessary. Otherwise, the Appellant and the public at large of the Kolar City will be put to irreparable loss, injury and great hardship since, the Plaintiff/Respondents No.1 to 4 are powerful persons in the locality and by taking undue advantage of the impugned Judgment and Decree passed by the Trial Court, they will damage the Pipe Line which were imbedded in all over the Plaint Schedule Property and in that circumstances , the Public at large of Kolar City will be put to great hardship. Further it is submitted that the admission of the said Fact that is, the Defendant No.1/Appellant Municipality had constructed the huge water tanks prior to the year 1966 itself clearly discloses that the Defendants/Appellant is in peaceful possession and enjoyment of the Plaint schedule Properties and on this ground alone the application filed by the appellant Under Order 26 Rule 9 of the C.P.C. ought to be allowed.

31. *The Appellant / Defendant No.1 most humbly submit that the said suit filed by the Plaintiffs in O.S.43/1978 on the file of Prl. Munsiff, Kolar for the relief of Permanent Injunction against the Defendant No.1 herein and also against One V.R.Venkateshaiah and on contest the said suit filed by the Plaintiffs herein has been*



dismissed and Held that the Plaintiffs/Respondents No.1 to 4 are not in possession and enjoyment of the plaint schedule properties per contra the Appellant/Defendant No.1 Municipality is in possession and enjoyment of the Plaint schedule properties in their own Right, title, interest. Against the said Judgment and Decree the Plaintiffs/Respondents herein also filed an Appeal Before this Hon'ble Court in R.A 1/1998 and on contest the said Appeal was also dismissed . Against the Said Judgment and Decree, the Plaintiffs herein also preferred a R.S.A No.288/1992 on the file of Hon'ble High Court of Karnataka at Bangalore and on contest the said Appeal was allowed on 17.10.1997 Holding that the lower court ought to have rejected the plaint for not complying issue of Statutory Notice as Contemplated Under Sec.284 of the Karnataka Municipalities Act to the Defendants and permitted the Plaintiffs/Respondents if aggrieved to file the very same suit after issuing a statutory notice to the Defendant/Appellant. But after Lapse of Two years the Plaintiffs/Respondents have chosen to file the suit on the file of Prl. Civil Judge(Junior Division), Kolar in O.S.335/1999 for the relief of Permanent Injunction by taking contradictory stand , which was taken in the earlier proceedings and subsequently the said suit also dismissed. The Appellant /Defendant No.1 further submit that the Plaintiffs/Respondents also filed another suit in O.S.168/1985 on the file of Prl. Munsiff, Kolar Against this Defendant and also against one V.Chandra Shekar, V.Muniraju and one Syed Abdul Basheer For the relief of



Permanent Injunction alleging that they are constructing houses unauthorisedly in a portion of the suit schedule property and also Defendants encouraging them etc., and said suit was also dismissed As ground less since they are constructed the houses after obtaining the necessary licence and approved Plan having purchased the sites in an auction sale from the Defendant No.1/Appellant . Against the said dismissal the Plaintiffs filed a Miscellaneous Petition in Mis.No.2/1994 which was also dismissed on 12.6. 1996. The above said suits filed after filing of the suit O.S.43/1978. Further the Defendants/Appellant submit that the Plaintiffs/Respondents having Suffered Decree in O.S.43/1978 as well as in R.A.1/1988 on the file of this Hon'ble Court ,instigated one Ananda Marga Pracharaka Sangha to file a suit in O.S.331/1992 for the relief of Permanent Injunction Against the Defendants and in the said suit the Respondent No.1/Plaintiff No.2 T.S.Rangaraju in the present suit [was a] defendant ,alleging that they are running a school in the suit premises . O[n contest] the said suit was Also dismissed holding that the said Ananda Marga Pracharaka Sangha is not in possession and Enjoyment of the Plaint Schedule property as claimed by them and further held that the Appellant/ Defendant No.1 Municipality is in possession and enjoyment of the suit property in its own right, title and interest as Owner. Further Appellant/ Defendant submit that the plaintiffs/Respondents also filed a suit on the file of Prl.Civil Judge(J.D),Kolar in O.S 113/2003 against one Syed sabjan Sab



,R.Venkatachalapathy, R.V.Ravindranath, Hafeez Khan, Dr.S.V.Murthy, G.Ramaraju with respect to Survey No.165 and 164 and also the Plaintiffs filed a suit on the file of Civil Judge(Junior Division),Kolar in O.S.138/2003 with respect to the Plaint schedule property of the present suit against one S.Chand Basha, Ibrathulla Khan, Syed Inayathulla, Syed Munavar,Syed Idayathulla, Amaldar Sab and Basheer Unissa for the relief of Permanent Injunction and the Plaintiffs also filed another suit against Secretary, District Wakf Board and another in O.S.86/2002 on the file of Addl.Civil Judge(J.D), Kolar for the reliefs of Permanent Injunction with respect to the present suit's Plaint Schedule property. When such being the state of affairs, the Plaintiffs/Respondents suppressed the material facts and circumstances and the Plaintiffs/Appellant bound to disclose all the above said material facts. In spite of it the Plaintiffs/Respondents purposely suppressed the said material facts and avoided and not impleaded the said persons as necessary parties in the present Suit before the Trial Court to that effect the Appellants/Defendant No.1 also taken contention before the Trial Court that the suit suffers for mis-joinder of unnecessary parties and non-joinder of necessary parties. But the Trial Court instead of considering the contention, the trial Court given flimsy reasons that the Defendants/Appellant ought to have examine the said persons on the side of the Defendants/Appellant. The said contention taken by the Trial Court is opposed to Law, fact and probabilities of the case and also against to the Principles of Natural Justice.



The above said facts and circumstances clearly discloses that according to the Plaintiffs/Respondents themselves the above said persons are in possession and enjoyment of the portion of the Plaint Schedule Property by constructing houses and to demarcate the same the appointment of Commissioner is just and necessary . Otherwise, the Appellant and the Public at large of Kolar City will be put to irreparable loss, injury and great hardship which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Respondents/Plaintiffs.

32. The Appellant most humbly submit that on perusal of the Order Sheet in O.S.5/2004 of the Trial Court clearly discloses that hurriedly passed the Judgment and Decree and the Trial Court has not given an opportunity to put forth the grievance of the Appellant and also the trial Court simply rejected all the necessary applications filed by the Appellant . The said fact also resulted in miscarriage of Justice and which causing great hardship and inconvenience to the Appellant and also public at large of Kolar City since, the Plaint Schedule Property belongs to the Public at large of Kolar City and the Appellant and also various persons are in possession and enjoyment of the said property and also there are existing huge Water Tanks in order to supply the Water to the entire Kolar City and also huge pipe lines which were imbedded all over the Plaint Schedule Property. By taking undue advantage of the impugned Judgment and Decree, the Plaintiffs/Respondents are making hectic attempts to damage the said huge Water Tanks and also the Pipe Line



in order to supply water through the said Water Tanks and to demarcate the said existing Water Tanks and the Water Pipes the appointment of Court Commissioner is just and necessary. Otherwise, the Appellant and the public at large of Kolar City will be put to great hardship.

33. *The Appellant/Defendant No.1 most humbly submit that the Plaintiffs/Respondents who have no manner of right ,title, interest or possession over the Plaint Schedule properties , inspite of it the Plaintiffs/Respondents are made false claim over the Plaint schedule property belongs to the Appellant/ Defendant on the basis of the created and concocted documents just to harass this Appellant/ Defendant with an malafide intention just to grab the valuable property. The Trial Court failed to understand the pleadings, documents, depositions of the parties in proper and prospective manner and passed the impugned Judgment Under Appeal and Trial Court has not given any Opportunity to put forth grievance and hurriedly passed the Judgment for the best reasons known. As such the Judgment and Decree Under Appeal is liable to be set aside.*

34. *The Defendants/Appellant submit that the Appellant/ defendant No.1 Municipality is in possession and enjoyment of the Plaint schedule property in its own right, title, interest since long back when the Government allowed and the water tanks were constructed and later on the Government handed over the Plaint Schedule property to the Defendant No.1 Municipality after acquisition*



proceedings after a lay out plan was prepared and approved by the government comprising the suit schedule property. The Appellant/ Defendants submit that the Appellant/ Defendant No.1 is the absolute owner in possession and enjoyment of the Plaint Schedule property and the Appellant/ Defendant no.1 got every right, title, interest over the Plaint Schedule Property . In spite of it the Trial Court hurriedly passed the impugned Judgment and Decree under Appeal as such the appointment of Court Commissioner is just and necessary to decide the real controversy between the parties and the report of the Court Commissioner may kindly be taken as Addl. Evidence. Otherwise, the Appellant and the Public at large of Kolar City will be put to irreparable loss, injury and great hardship which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Plaintiffs/Respondents.

35. *The Appellant most humbly submit that it is just and necessary that this Hon'ble Court may please to interfere with the Trial Courts Judgment and Decree by considering all the above said facts and circumstances and also by considering the applications filed by the Appellant before this Hon'ble Court , set aside the Judgment and Decree passed by the Trial Court and consequently the suit of the Plaintiff liable to be dismissed . Other wise, the Appellant and the public at large of Kolar City will be put to great hardship.*



36. *If the Appeal preferred by the Appellant/defendants is not allowed, the Appellant and the public at large of Kolar City will be put to irreparable loss, injury and great hardship which cannot be compensated by any other means. On the other hand no prejudice will be caused to the Plaintiffs/Respondents.*

37. *That all other allegations and submission of the Respondents/Plaintiffs are contrary too and inconsistent with this written Arguments are here by specifically denied as false.*

Wherefore, the Appellant/Defendant No.1 pray that this is a fit case in which this Hon'ble court may be pleased to allow the Appeal preferred by the Appellants in the ends of Justice and Equity."

13. In the case of **Sathish Chand Surana Vs. Raj Kumar Meshram – 2021 SCC OnLine SC 3446**, the Apex Court held as under:

"8. It is well-settled that, ordinarily, the Appellate Court should not travel beyond the record of the lower court. Section 107 of the CPC carves out an exception to this general rule, enabling the Appellate Court to take additional evidence subject to the conditions prescribed in Order 41 Rule 27 of the CPC. Thus, grant or refusal of the opportunity for production of additional evidence at the appellate stage is within the discretion of the appellate court. Dismissal of the main appeal without deciding the



application for additional evidence would result in miscarriage of justice. The First Appellate court, being the last court of facts and evidence, should permit the production of additional evidence where the explanation furnished by the party is satisfactory and the documents in question are vital to establish the case.

9. It is also necessary to observe here that the application for permission to file additional evidence should contain the list of documents giving full particulars thereof and copies sought to be filed as additional evidence should be served on the other side. However, the High Court cannot completely ignore the application filed by the appellant and pronounce the judgment. If the appellant makes out a case for allowing the application, the material produced along with the application has to be considered at the time of final disposal of the appeal in accordance with law."

14. The aforesaid facts and circumstances clearly establish that the First Appellate Court committed a grave and serious error of law and patent procedural illegality / infirmity in not disposing of or passing any orders on the said I.A.Nos.2 and 3 while passing the impugned judgment and decree and the said omission on the part of the First Appellate Court in not passing any orders or disposing of the said I.A.Nos.2 and 3 clearly vitiates the impugned judgment and decree passed by the First Appellate Court, which



deserves to be set aside and the matter be remitted back to the First Appellate Court for reconsideration afresh in accordance with law.

15. It is also relevant to state that even in the present appeal before this Court, the appellant had filed I.A.No.1/2024 dated 16.07.2024 under Order 41 Rule 27 CPC seeking permission to produce additional evidence / documents and the said application – I.A.No.1/2024 also deserves to be allowed and the said application also deserves to be transmitted / remitted back to the First Appellate Court for consideration along with I.A.Nos.2 and 3 and in accordance with law.

16. Under these circumstances, additional substantial question of law stands answered in favour of the appellant by holding that the First Appellate Court committed an error in not disposing of nor passing any orders on the applications – I.A.Nos.2 and 3 filed by the appellant under Order 26 Rule 9 and Order 41 Rule 27 CPC, respectively in R.A.No.266/2008 while passing the impugned judgment and decree, which deserves to be set aside and the matter remitted back to the First Appellate Court for



reconsideration afresh, in accordance with law within a stipulated time frame.

17. Though several other contentions have been urged by both sides in support of their respective claims including contentions on merits, having regard to the fact that I have come to the conclusion that the impugned judgment and decree passed by the First Appellate Court deserves to be set aside and the matter remitted back to the First Appellate Court for reconsideration afresh along with I.A.Nos.2 and 3 filed before the First Appellate Court and to consider I.A.No.1/2024 filed before this Court, I do not wish to express any opinion on the merits / demerits of the rival contentions including the aforesaid applications and all rival contentions on all aspects of the matter are hereby kept open to be decided by the First Appellate Court and no opinion is expressed on the merits / demerits of the rival contentions.

18. On 16.03.2026, this Court heard both sides and reserved the matter for judgment and passed the following interim order as hereunder:

"Heard both sides.

Reserved for judgment.



Written submissions to be filed within a period of four weeks.

In the meanwhile, both parties are directed to maintain status quo as on today, in all respects, in relation to the suit schedule property, until further orders.”

19. In view of the aforesaid facts and circumstances, I pass the following:

ORDER

- (i) Appeal is hereby allowed.
- (ii) The impugned judgment and decree dated 27.09.2010 passed by the First Appellate Court in R.A.No.266/2008 is hereby set aside.
- (iii) The matter is remitted back to the First Appellate Court for reconsideration afresh in accordance with law.
- (iv) The First Appellate Court is directed to consider and pass appropriate orders on the applications – I.A.Nos.2 and 3 filed by the appellant under Order 26 Rule 9 and Order 41 Rule 27 CPC respectively before the First Appellate Court in R.A.No.266/2008 and also dispose of the said appeal in accordance with law as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this order.



(v) I.A.No.1/2024 filed by the appellant in the present appeal is also hereby allowed and the documents produced by the appellant along with the application are hereby received on record.

(vi) The Registry of this Court is directed to transmit / transfer the said I.A.No.1/2024 along with accompanying documents filed in the present appeal to the First Appellate Court for consideration in accordance with law.

(vii) The First Appellate Court shall reconsider the appeal in R.A.No.266/2008 on merits afresh and also pass appropriate orders on I.A.Nos.2 and 3 filed in the said appeal before the First Appellate Court and shall also consider the documents produced along with I.A.No.1/2024 by the appellant and dispose of the appeal in accordance with law.

(viii) The appellant and respondents are directed to appear before the First Appellate Court on **20.07.2026** without awaiting further notice from the First Appellate Court.

(ix) All rival contentions on all aspects of the matter including the appeal in R.A.No.266/2008, I.A.Nos.2 and 3 filed in the said appeal and the documents produced by the appellant along with I.A.No.1/2024 filed in the present appeal are kept open



and no opinion is expressed on the merits / demerits of the rival contentions.

(x) In view of the interim order dated 16.03.2026 passed by this Court in the present appeal, all parties are directed to maintain *status-quo* as on today in all respects in relation to the suit schedule immovable properties till disposal of the appeal in R.A.No.266/2008 by the First Appellate Court.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV/SRL