

RESERVED ON : 15.04.2026

PRONOUNCED ON : 21.07.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

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

REGULAR FIRST APPEAL NO. 658 OF 2018 (DEC/INJ)

BETWEEN:

1. SRI K R NAGARAJ
S/O LATE SRI G RAMASWAMY
51 YEARS
RESIDING AT NO 305,
21ST A CROSS PRAGATHI LAYOUT,
DODDANEKKUNDI
BENGALURU - 560037

2. SRI R VENKATESH
S/O LATE G R RAMASWAMY
49 YEARS
RESIDING AT NO 305, 21ST A CROSS,
PRAGATHI LAYOUT,
DODDANEKKUNDI,
BENGALURU - 560037

...APPELLANTS

(BY SRI.G.KRISHNA MURTHY, SENIOR ADVOCATE FOR
SRI.RAMESH P KULKARNI.,ADVOCATE)

AND:

1. SRI N A BABU REDDY
S/O LATE N A APPANNA
61 YEARS
NO 81/81,
50 FEET ROAD,

NEAR GOVT SCHOOL
DODDANEKKUNDI
BENGALURU - 560037

2. SMT LAKSHMI MOHAN
W/O MR P D MOHAN
49 YEARS
NO 46, MARUTHI NILAYA,
RAMAIAH REDDY COLONY
B SECTOR BASAVANAGAR
BENGALURU - 560037
3. SMT N G NAGAVENI
W/O MR D N GOPALAKRISHNA REDDY
65 YEARS
NO 21,
2ND CROSS,
THIMMAREDDY COLONY JEEVABHIMANAGAR
BENGALURU - 560075

...RESPONDENTS

(BY SRI.S.P.SHANKAR, SENIOR ADVOCATE FOR
MS.MAMATHA G KULKARNI, ADVOCATE FOR R1 AND 2;
SRI.ARUN KUMAR K, SENIOR ADVOCATE FOR
MS.VYBHAVASHREE.S, ADVOCATE FOR R3)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 09.01.2018 PASSED IN
OS NO.8514/2013 ON THE FILE OF THE XIV ADDL. CITY CIVIL
JUDGE, BANGALORE, DISMISSING THE SUIT FOR
DECLARATION, POSSESSION AND PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,
JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

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

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

This RFA under Section 96 R/w Order 41 Rule 1 of CPC is filed by the plaintiffs, assailing the Judgment and Decree dated 19.01.2018, passed by the XVI Addl. City Civil & Sessions Judge, Bengaluru (CCH-28)¹ in O.S.No.8514/2013.

2. The Trial Court under the impugned Judgment and Decree, dismissed the suit filed by the plaintiffs/appellants for declaration, possession and injunction.

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

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

AS PER THE PLAINTIFFS:

4.1 The plaintiffs are brothers. Under a registered Partition Deed dated 28.03.2003 bearing document

¹ 'the Trial Court', for short

No.BNG(U)/K.R.P/20713/2002-03 stored in CD No.80 in the Office of the Sub-Registrar, Krishnarajapura, Bangalore (U) District, the plaintiffs got two items of property viz., Sy.No.206/3 measuring 3.75 Guntas and Sy.No.29/2 measuring 29 Guntas, both situated at Doddanekundi Village, K.R.Puram East, morefully stated in Schedule 'C' to the said document (which is marked as Ex.P.1). Now the said land has come under the jurisdiction of Bruhat Bengaluru Mahanagara Palike² and the land in Sy.No.29/2 in terms of sq.ft, comes to 31,581.667 sq.ft.

- 4.2 The dispute involved in this suit is in respect of land bearing Sy.No.29/2 measuring 29 Guntas. Subsequent to the registered Partition Deed supra, the plaintiffs got their name entered in the revenue records of BBMP. Thereafter, they have converted the land from agricultural to non-agricultural purposes vide order dated 17.09.2004 passed by the Deputy Commissioner.

² 'the BBMP', for short

- 4.3 Item No.1 i.e., Suit Schedule Item No.1 shown in the plaint is the entire property of Sy.No.29/2 measuring 29 Guntas. Item Nos.2 to 4 properties are, the properties which are encroached by the defendants to the extent stated in the schedule.
- 4.4 The plaintiffs, on the North-Eastern side and South-Eastern side of Item No.1 property, have constructed two sheds and let out them to one Anil Ahuja and Padmanabahan to run a Car and Bike Garage respectively.
- 4.5 Under the Partition Deed dated 28.03.2003, N.K.Lakshmaiah Reddy – maternal uncle of the plaintiffs (also father-in-law) has also got 01 Acre of land in Sy.No.29/2 on the western side of plaintiffs' land.
- 4.6 It appears from the record that one N.S.Krishna Reddy S/o.Sidda Reddy was also owner of land on the Western side of land in Sy.No.29/2 given to the share of N.K.Lakshmaiah Reddy, the maternal uncle

of the plaintiffs. The said N.K.Lakshmaiah Reddy, executed a General Power of Attorney³ along with his brother N.K.Pilla Reddy in favor of N.S.Krishna Reddy in respect of 01 Acre of land in Sy.No.29/2. The said N.S.Krishna Reddy, on the basis of the GPA, formed sites on the said land and said to have sold the same to various persons, including defendants 1 to 3 herein. Defendants 1 to 3 on the strength of said Sale Deeds, are trying to claim right over Item Nos.2 to 4 of the suit schedule property.

- 4.7 Defendants 1 to 3 instead of getting their sites properly identified, out of the portion fallen to the share of maternal uncle of the plaintiffs i.e., N.K.Lakshmaiah Reddy, who said to have sold the sites in their favor through his GPA holder, taking advantage of the fact that the land of plaintiffs is also bearing the very same survey number i.e., 29/2 on the Eastern side, illegally trespassed and occupied their land and started some construction on South-

³ Hereinafter referred to as, 'the GPA'

Western portion of Item No.1 i.e., Item Nos.2 to 4. When the plaintiffs enquired them regarding their right to squat on the property, defendants 1 to 3 revealed the fact that they have purchased the property from Krishna Reddy or their predecessors in title. It is at that point of time, the plaintiffs gained knowledge of the said Sale Deeds and collected the copies of the same and on verification, they noticed that under misconception, the defendants are occupying the suit schedule properties Item Nos.2 to 4 belonging to the plaintiffs. Though the defendants were apprised about the mistaken notion regarding identity of the property, they have declined the request of the plaintiffs but claimed right under the Sale Deeds said to have been executed by N.S.Krishna Reddy or their predecessors in title. This made the plaintiffs to file the suit in O.S.No.8514/2013 seeking following reliefs:

WHEREFORE, the plaintiffs pray that this Hon'ble Court be pleased to:

- i) declare that the Plaintiffs are the absolute owners of item No.2 to 4 of the suit schedule properties and further direct the Defendants to handover and deliver vacant possession of the same to the plaintiffs;*
- ii) grant an order of permanent injunction restraining the Defendants from putting up any construction on Item Nos.2 to 4 of the suit schedule properties;*
- iii) grant any other relief or reliefs as this Hon'ble Court deems fit to grant to the plaintiffs in the circumstances of the case.*

5. In response to the notice, the defendants appeared through their counsel and filed their separate written statement. Defendant No.1 adopted the written statement filed by defendant No.2, however added certain other facts in the written statement.

AS PER DEFENDANT NO.1:

5.1 Defendant No.1 contended that the registered Partition Deed between the plaintiffs and their maternal uncle Lakshmaiah Reddy on 28.03.2003 is a created document by the family members of the plaintiffs to defeat the Sale Deed made by their

ancestors in respect of the suit schedule property, earlier to alleged partition.

5.2 Defendant No.1 contended that he purchased property in Sy.No.29/2 along with many others through N.S.Krishna Reddy as stated in Paragraph No.4 of the plaintiff. He admitted the averments made in said paragraph to the extent of Sale Deeds in his favor as well as defendant No.2. He further admitted that Site No.29 and remaining portion of Site No.30 was sold in favor of one Chandra Reddy and he got the said properties exchanged with Chandra Reddy under Exchange Deed dated 17.11.2008. He also admits the fact that he owns land on Southern side of Sy.No.29/2 as true and correct.

5.3 He further contended that sites were formed in entire Sy.No.29/2 way back in the year 1992 as per the rough sketch appended to the written statement. He further contended that he purchased site from N.S.Krishna Reddy and got it exchanged with

Chandra Reddy as stated supra on the Southern Side to have access to his property namely Sy.No.29/6, which is on the Southern side of the site and using the property since then.

- 5.4 He further contended that the boundaries stated in the suit are not proper and correct. He admits the plaintiffs' version that on the Western side of his property, 01 Acre admittedly as per the Plaintiffs, given to the share of Lakshmaiah Reddy. He has made sites and sold the same and plaintiffs have failed to give details as to whose sites come on the Western side of his property if any, and sought to dismiss the suit.

AS PER DEFENDANT NO.2:

- 5.5 Defendant No.2 pleads ignorance regarding Partition Deed dated 28.03.2003 and the contents of the same. She also pleads ignorance regarding Conversion order passed by the Deputy Commissioner vide order dated 17.09.2004. Further,

pleads ignorance in respect of two sheds constructed by the plaintiffs on the North-Eastern side and South-Eastern side of Item No.1 of the property. She further pleads ignorance regarding allotment of 01 Acre of land to N.K.Lakshmaiah Reddy in the said Partition Deed.

- 5.6 Defendant No.2 admits that N.K.Lakshmaiah Reddy and N.K.Pilla Reddy were the original owners of the land bearing Sy.No.29/2 of Doddanekundi Village, in all measuring 01 Acre 29 Guntas. She further admits that the said persons supra, have formed residential sites and roads back in the year 1992; they executed a GPA in favor of one N.S.Krishna Reddy to sell the sites as pleaded in Paragraph No.4 of the plaint; said N.S.Krishna Reddy has executed Sale Deed in respect of Site No.31 and portion of Site No.3 under Sale Deeds dated 31.12.2003 in her favor. However, she has sated that other averments made in the same paragraph pertaining to Site Nos.29, 4, 5, 20 and 21 are not concerned with her. Further,

defendant No.2 denied the averments in the said paragraph that she has encroached on the portion of the property fallen to the share of the plaintiffs and contended that the plaintiffs have to identify their property first, instead of laying hands on the property sold by their ancestors to the defendant decades back.

5.7 Defendant No.2 contended that she is in possession of land measuring East to West 45 ft. and North to South 40 ft in Sy.No.29/2, having purchased the same from the ancestors of the plaintiffs with boundaries.

5.8 Defendant No.2 denies the averments made in Paragraph No.5 of the plaint as to enquiry by plaintiffs regarding right of defendant No.2 to construct a building on the suit schedule property. However, she admits that she did started construction on the property, but denies the claim of the plaintiffs on the land.

5.9 She further contended that there is no cause of action to the suit and the suit is barred by limitation. Defendant No.2 has specifically made certain averments in the written statement that, one N.K.Pilla Reddy and N.K.Lakshmaiah Reddy of Doddanekundi Village are the original owners of land bearing Sy.No.29/2 measuring 01 Acre 29 Guntas and they have formed residential sites in the entire Survey Number and also registered katha in the HAL Sanitary Board and thereafter, the said lands came under Mahadevapura Municipality and now come under the BBMP.

5.10 Defendant No.2 contended that several sites were formed in Sy.No.29/2 back in the year 1992 and after formation of sites, said Pilla Reddy and Lakshmaiah Reddy entered into an Agreement with one N.S.Krishna Reddy S/o.Sidda Reddy to an extent of 01 Acre by an Agreement dated 21.12.1992 agreeing to sell the entire extent of 01 Acre of land in the said survey number for a valuable

consideration of Rs.1,95,000/- and received the entire consideration amount and put said N.S.Krishna Reddy in possession of the land in the form of sites along with road, coupled with GPA and an affidavit executed on the same day. Thereafter, the said N.S.Krishna Reddy, sold sites periodically in respect of prospective purchasers under various Sale Deeds and under one such Sale Deed, she has purchased Site No.31 and portion of Site No.30 under a registered Sale Deed dated 31.12.2003.

5.11 Subsequent to purchase of the land, she has got transferred the katha in her name and regularly paying property tax and in possession & enjoyment of the same, exercising all acts of ownership. Her predecessors in title have purchased the property in 1992 and all the way, they were in possession and thereafter, she is in possession of the property subsequent to the Sale Deed dated supra, and she continued in possession of the property.

5.12 Defendant No.2 admits that she is working on the property to construct a building and started excavation work for foundations and pillars. She further submits that if the plaintiffs were to be really the members of the Joint Family consisting of their ancestors like Pilla Reddy and Lakshmaiah Reddy, in that an eventuality, the sale made by them earlier to the Partition of the year 2003 for their family necessities, the transactions are binding on the plaintiffs and now they cannot have a right to challenge the same after lapse of several years. As such, the suit itself is not maintainable.

5.13 Further, defendant No.2 has contended that Pilla Reddy and Lakshmaiah Reddy and their GPA holder are also necessary parties to the suit, however they were not made as parties, accordingly, the suit is liable to be dismissed for non-joinder of necessary parties. She also contended that the suit is not maintainable for not challenging the registered Sale

Deeds duly executed as stated in the plaint averments. With this, she sought to dismiss the suit.

AS PER DEFENDANT NO.3:

5.14 Defendant No.3 denies the plaint averments in its entirety, except the averments that property now come within the purview of the BBMP and in terms of sq.ft, the property measures 31,581.667 sq.ft. as true and correct and denied all other averments. She pleads lack of knowledge with respect to Partition Deed dated 28.03.2003 and the averments made therein. However, submitted that N.K.Lakshmaiah Reddy and N.K.Pilla Reddy were the original owners of the land bearing Sy.No.29/2 of Doddanekundi Village, K.R.Puram, erstwhile Bengaluru South Taluk, now East Taluk, in all measuring 01 Acre 29 Guntas and the said persons have formed a layout of residential sites and roads in the said lands way back in the year 1992 and sold them through their GPA holder N.S.Krishna Reddy.

5.15 Defendant No.3 further contended that N.S.Krishna Reddy sold Site No.31 and portion of Site No.30 under Sale Deeds dated 31.12.2003 and Site No.29 and a portion of Site No.30 to one Sri.Chandra Reddy under a Sale Deed dated 31.12.2003 and that, he in turn exchanged his property with defendant No.1 under Exchange Deed dated 17.11.2008.

5.16 Defendant No.3 admits certain averments in Paragraph No.3 of the plaint as true and correct, with respect to Site Nos.4, 5, 20 and 21 with Katha No.366/1 that plaintiffs' maternal aunt Smt.Kanthamma has sold the same to one Krishnamurthy under Sale Deed dated 25.11.1993 and he in turn sold the same to Sri.D.Kannan, who sold the same to defendant No.3 under a registered Sale Deed dated 16.02.2012. However, denied that the defendants instead of getting their sites properly identified out of the portion fallen to their maternal uncle Lakshmaiah Reddy having purchased the same from his GPA holder and taking advantage of the fact

that the plaintiffs' land also bears the same survey number, they have occupied Item No.1 of the suit schedule property under the wrong notion that the lands they purchased stated afore, are coming in their (plaintiffs') portion.

5.17 Further, defendant No.3 denied the allegations made in Paragraph Nos.4 and 5 of the plaint and taken a contention similarly to that of defendant Nos.1 and 2. Defendant No.3 in unequivocal terms admits the ownership of Pilla Reddy and Lakshmaiah Reddy in respect of Sy.No.29/2 measuring 01 Acre 29 Guntas and they forming sites on the land and executing GPA in favor of Krishna Reddy, who in turn sold the sites in their (defendant) favor.

5.18 Defendant No.3 further contended that D.Kannan, the predecessor in title, after purchase of the land in the year 2002, had constructed compound wall around the site and also constructed a building in the said land and obtained power connection from KEB and now for the last two years immediately prior to

filing of the suit, she has kept watchman in her property. She contended that the suit filed is on the imaginary rights. Further, she reiterated the contentions of defendant Nos.1 and 2, so far as ownership of Pilla Reddy and Lakshmaiah Reddy, formation of sites and sale of them through GPA holder and contended that said persons were not added to the suit as necessary parties, as their presence is required for the proper adjudication of the *lis*.

5.19 Defendant No.3 further contends that Sites bearing No.4, 5, 20 and 21 having HASB katha No.366/1 of Doddanekundi Village, K.R.Puram Hobli, Bangalore South Taluk, measuring 5040 sq.ft, was sold by Smt.Kanthamma W/o.N.K.Lakshmaiah Reddy, who is none other than the mother-in-law of the plaintiffs' in favor of one Sri.Krishna Murthy by way of Sale Deed dated 25.11.1993. The said Krishna Murthy under registered Sale Deed conveyed the said property in favor of D.Kannan in the year 2002 and this

defendant has purchased the property from D.Kannan.

5.20 In Paragraph No.19 of the Written Statement, defendant No.3 states that the children of Kaverappa, i.e., N.K.Pilla Reddy and N.K.Lakshmaiah Reddy, K.R.Nagaraj, R.Venkatesh (plaintiffs), grandsons of Kaverappa and N.K.Suresh have entered into a Registered Partnership Deed dated 28.03.2003 in respect of the Joint Family properties including Sy.No.29/2 of Doddanekundi Village, K.R.Puram Hobli, Bangalore East Taluk and in the said partition, 01 Acre on the Western side of the land in Sy.No.29/2 was allotted to N.K.Lakshmaiah Reddy and remaining 29 Guntas on the Eastern side was allotted to the plaintiffs.

5.21 It was specifically contended in Paragraph No.20 that, before entering into Partition Deed dated 28.03.2003, the plaintiffs and their family members have already sold away major portion of the sites in the said land as sites by forming roads. It was also

contended that subsequent to acquiring property by D.Kannan, this defendant approached the concerned authority and has got the katha transferred to her name by paying up to date taxes. Therefore, defendant No.3 got transferred the katha in her name and since then, she is in lawful possession and enjoyment of the property as sole and absolute owner thereof. With this, she sought to dismiss the suit.

6. Based on the above pleadings, the Trial Court framed following:

ISSUES

1. *Whether the plaintiffs prove that they are the owners of the suit schedule property by virtue of the partition deed dated 28.03.2003?*
2. *Whether the plaintiffs further prove that the defendants are in illegal occupation of the suit schedule property?*
3. *Whether the defendants 2 & 3 prove that they have become the owners of the suit schedule property by virtue of the sale deed executed by Sri.N.K.Lakshmana Reddy and N.K.Pillreddy in their favour?*

4. *Whether the 3rd defendant proves that the suit of the plaintiff is not maintainable as contended in para 13 of his written statement?*
5. *Whether the plaintiffs are entitled for the reliefs as sought for?*
6. *What order or decree?*

7. The plaintiffs, in order to prove their case, examined plaintiff No.1 as PW.1 and produced 13 documents, marked as Ex.P1 to P13. On behalf of defendants, defendant No.1 was examined as DW.1 and produced certain documents during the cross-examination of PW.1 and marked them as Ex.D1 to D6, thereafter defendant No.1 filed affidavit in lieu of examination in chief and produced documents marked them as Ex.D7 to D24, thereafter he filed additional affidavit evidence and produced two documents and marked them as Ex.D25 and D26; the GPA holder of defendant No.2 was examined as DW.2 and produced documents marked as Ex.D.27 to D40; a witness was examined as DW.3, however no documents were marked in his evidence; and the GPA holder of defendant No.3 was examined as DW.4 and

produced certain documents and marked them as Ex.D41 to D96 and closed their side. The Court Commissioner appointed by the Court on the request of plaintiffs was examined as CW.1 and produced 09 documents and marked them as Ex.C1 to C9.

8. The Trial Court upon consideration of the rival submissions, appreciating the evidence both oral and documentary, including the evidence of the Court Commissioner, answered the Issues framed as under:

Issue No.1 : In the Negative.

Issue No.2 : Accordingly.

Issue No.3 : In the Negative.

Issue No.4 : In the Negative.

Issue No.5 : In the Negative.

Issue No.6 : As per final order.

and proceeded to dismiss the suit of the plaintiffs on the point that the plaintiffs have not stated the name of the ancestor i.e., the original owner of the property through whom the parties in the Partition Deed of 2003, got the properties stated in the deed, to contend that the properties are the ancestral properties.

9. The Trial Court has extracted limited portion of the cross-examination of PW.1 and held that the PW.1 in his evidence has stated that he don't know the exact extent of encroached portion of Sy.No.29/2 measuring 29 Guntas. In that circumstances, the plaintiffs have failed to prove their case, so also failed to prove their right under Ex.P.1 Partition Deed and answered Issue Nos.1, 2 and 5 against them and proceeded to dismiss the suit.

10. So far as, Issue Nos.3 and 4 are concerned, the Trial Court answered the same against defendants 2 and 3 stating that they have failed to prove their ownership on the suit schedule property by virtue of Sale Deed executed by Lakshmaiah Reddy and Pilla Reddy in their favor and further they have failed to prove that the suit is not maintainable as stated in Paragraph No.13 of the Judgment and answered said Issues against defendants 2 and 3. In view of answering Issue Nos.1, 2 and 5 against the plaintiffs stated supra, the suit came to be dismissed. It is this Judgment and Decree passed by the Trial Court, is called in question in this appeal.

11. Heard, Sri.G.Krishna Murthy, learned Senior counsel assisted by Sri.Ramesh P.Kulkarni, learned counsel appearing for the plaintiffs, Sri.S.P.Shankar, learned Senior counsel assisted by Ms.Mamata G.Kulkarni, learned counsel appearing for defendants/ respondents 1 and 2 and Sri.Arun Kumar, learned Senior counsel assisted by Ms.Vybhavashree.S, learned counsel appearing for respondent No.3.

12. Sri.G.Krishna Murthy, learned Senior counsel with all vehemence submits that, the defendants have not denied the Partition Deed entered into between the family members of the plaintiffs. The defendants in unequivocal terms in their written statement admitted the ownership of Pilla Reddy and Lakshmaiah Reddy. Admittedly, Pilla Reddy and Lakshmaiah Reddy were parties to the Partition Deed under which, 01 Acre of land on the Western side of Sy.No.29/2 has been allotted in favor of Lakshamaiah Reddy and 29 Guntas on the Eastern side was allotted in favor of the plaintiffs. The Trial Court has failed to consider this aspect of the matter and in a misconceived and

erroneous way held that the plaintiffs have not specifically stated as to who is the original owner of the properties in the contents of Partition Deed of 2003.

12.1 Learned Senior counsel further submits that the plaintiffs have clearly stated in the suit schedule of the plaint, the extent of the property encroached by the defendants as Item Nos.2 to 4, however the Trial Court has failed to read the entire evidence and contentions of the plaintiffs with reference to the schedule stated in the pleadings, but given more weightage to a stray admission on the question that, the PW.1 is not aware of the exact extent of area encroached by the defendants.

12.2 Learned Senior counsel further submits that a perusal of the evidence and unequivocal admissions by the defendants that the plaintiffs have constructed two sheds and let out them to Anil Ahuja and Padmanabahan, so also admitted the ownership of Pilla Reddy and Lakshmaiah Reddy, who are none other than the maternal uncles of the plaintiffs, but

the Trial Court on a wrong notion, interpretation and wrong appreciation of the evidence, answered Issue Nos.1, 2 and 5 against the plaintiffs. The reasons on the said Issues, i.e., on the title of the plaintiffs, the Trial Court in less than 04 to 05 sentences has held that the plaintiffs have not proved their title over the property which they have got under the Partition Deed of 2003, as they have not produced any document to show, how the parties in the Partition Deed acquired the lands stated therein.

12.3 Learned Senior counsel also submits that, when all the defendants in unequivocal terms have admitted the fact that Pilla Reddy and Lakshmaiah Reddy were the original owners of the property bearing Sy.No.29/2. The Trial Court ought to have brushed aside the Partition Deed dated 28.03.2003, which the deed tracing title of plaintiffs property stated in schedule. The Trial Court having answered Issue Nos.3 & 4 against defendants 2 & 3 and by giving a finding that they have failed to prove their title over

the property, ought to have considered the same in respect of defendant No.1 also.

12.4 Learned Senior counsel further submits that the fact remains that defendant Nos.2 and 3 despite Issue Nos.3 & 4 having been answered against them, are not in appeal. Hence, the fact that the defendants have failed to prove their ownership by virtue of the Sale Deeds, has attained finality.

12.5 Further, Mr.Krishna Murthy, learned Senior counsel submits that once the Trial Court has said that the defendants have no title, ought to have decreed the suit of the plaintiffs, however on misreading of evidence both oral and documentary, proceeded to answer Issue Nos.1, 2 and 5 against the plaintiffs and dismissed the suit. As such, sought to answer Issue Nos.1, 2 and 5 in favor of the plaintiffs and to decree the suit filed by the plaintiffs and allow the appeal.

13. In contrast, Sri.S.P.Shankar, learned Senior counsel appearing for respondents 1 and 2 with all vehemence submits that the plaintiffs who have approached the Court seeking certain reliefs against the defendants, had to prove their case on their own grounds and strength and not on the weakness of the defendants. As rightly held by the Trial Court, the plaintiffs have not produced any supportive documents to the Partition Deed, under which they have claimed rights as to how they have acquired the properties stated in the said deed. In the absence of such documents, the Trial Court has properly observed that the plaintiffs have failed to prove their right in respect of the properties.

13.1 Learned Senior counsel further submits that admittedly, the plaintiffs are the nephews of Pilla Reddy, Lakshmaiah Reddy and Suresh, as the plaintiffs are the children of Smt.Ammayamma (sister of Pilla Reddy, Lakshmaiah Reddy and Suresh). The plaintiffs cannot claim any share as a coparcener in the property of mother.

13.2 Sri.S.P.Shankar, learned Senior counsel placed reliance on the decision of the Supreme Court in the case of ***VINEETA SHARMA VS. RAKESH SHARMA AND OTHERS***⁴, to contend that Obstructed and Unobstructed Heritage in Mithakshara Law is now settled. The property in which a person acquires an interest by birth is called unobstructed heritage, because the accrual of the right to it is not obstructed by the existence of the owner. Thus the property inherited by a Hindu from his father, father's father or father's father's father, but not from his maternal grandfather is unobstructed heritage as regards his own main issue i.e., his son, grandson and great grandson. Only the male issues acquire an interest in the property from the moment of their birth. The right to property arises from the mere fact of their birth in the family and they become coparceners with their paternal ancestor in such property immediately on their birth and in such cases, ancestral property is unobstructed heritage.

⁴ AIR 2020 SCC 3717

Property, the right to which accrues not by birth but on the death of the last owner without leaving a male issue, is called obstructed heritage. It is called obstructed, because the accrual of right to it is obstructed by the existence of the owner. Learned Senior counsel submits that the property which devolves on parents, brothers, nephews, uncles, etc, upon the death of last owner is obstructed heritage. These relations do not take away the vested interest in the property by birth and submits that the plaintiffs cannot claim their right as a coparcener in the property. As such, the right claimed by plaintiffs as family members in the properties of their mother is not sustainable in law. In that view of the matter, the Trial Court has properly considered the Issues on the basis of the documents both orally and documentary and answered Issue Nos.1, 2 and 5 against the plaintiffs, which does not call for any interference at the hands of this Court.

13.3 Further, learned Senior counsel submits that merely an issue which is answered against the defendants will not enure to the benefit of the plaintiffs to claim right over the property when they have failed on their legs to prove the case.

13.4 Sri.S.P.Shankar, learned Senior Counsel, further submitted that Ex.P1 contains a specific recital to the effect that certain portions of the properties inherited by the parties had already been sold, jointly or severally, to prospective purchasers with the consent of all the parties to the Partition Deed. It is further stipulated that such purchasers shall continue to enjoy their respective properties, and that all the parties to the Partition Deed had expressly consented to and acknowledged those prior alienations. In view of the aforesaid recital, it is contended that, the properties which had already been alienated prior to the execution of the Partition Deed stood excluded from the partition arrangement. Consequently, the plaintiffs cannot maintain any claim in respect of

those properties, and the suit, to that extent, is not maintainable. With this, learned Senior counsel sought to dismiss the appeal.

14. Sri.Arun Kumar, learned Senior counsel appearing for respondent No.3 argued in support of the Judgment of the Trial Court, in toe with Sri.S.P.Shankar, learned Senior counsel appearing for respondents 1 and 2 and sought to dismiss the appeal.

15. Upon hearing the rival submissions, we have perused the entire appeal memorandum and also the Trial Court record. The only point that would arise for our consideration is:

"Whether the Trial Court is right in holding that the plaintiffs have failed to prove Issue Nos.1, 2 and 5 and dismissing the suit?"

16. Since Issue No.3 framed casting burden on defendant Nos.2 and 3 to prove their title, answered in the Negative holding that they have failed to prove that they

became owner of the suit schedule property by virtue of the Sale Deed executed by Lakshmaiah Reddy and Pilla Reddy in their favor and the said Issue has not been challenged either by both defendants 2 and 3 or anyone of them, there remains nothing to dwell furthermore on the rights of defendants 2 and 3. As such, what remains in this appeal is to consider whether the plaintiffs have proved their case or not in accordance with the law in order to seek the decree as prayed for in the suit.

17. Before advertng to any of the pleadings and oral evidence of the parties, it is apt for us to dwell upon certain documents, which have got a direct bearing on the case.

- (1) **Ex.D.26**: General Power of Attorney executed by N.K.Pilla Reddy and N.K.Lakshmaiah Reddy both, sons of Kaverappa, in favor of N.S.Krishna Reddy S/o.Sidda Reddy on 25.12.1992. Under the GPA, both N.K.Pilla Reddy and N.K.Lakshmaiah Reddy, maintained that, the

GPA is given only with respect to 01 Acre of the property, out of 01 Acre 29 Guntas in Sy.No.29/2. In the said GPA, the boundaries is East by : Property of Lakshmaiah Reddy and 30 ft. road provided for N.S.Krishna Reddy; West by : Property of N.S.Krishna Reddy; North by : Property of N.C.Gurumurthy Reddy and N.K.Lakshmaiah Reddy and 30 ft. road provided for N.S.Krishna Reddy and South by : Property of S.Ramaiah Reddy and N.A.Babu Reddy. A specific stipulation is contained in the said GPA that, 'land to an extent of 01 Acre is given under the said GPA in favor of N.S.Krishna Reddy'. The Eastern boundary shows property of Lakshmaiah Reddy that 01 Acre of land of which GPA given in favor of N.S.Krishna Reddy in all probability to the Western side portion of Sy.No.29/2.

- (2) **Ex.D.50**: Sale Deed dated 25.11.1993 executed by Smt.Kanthamma W/o N.K.Lakshmaiah Reddy in favor of Sri.Krishna Murthy. As per the contents stated in the said Sale Deed, Kanthamma said to be the absolute owner of the property bearing House Site Nos.4, 5, 20 and 21, HASB katha No.366/1 situated at Doddanekundi Village, K.R.Puram, erstwhile Bengaluru South Taluk, sold the said properties in favor of one Krishna Murthy. However, nothing is stated regarding survey number in which the said sites were carved.
- (3) **Ex.D54**: Sale Deed dated 13.11.2002 executed by Krishna Murthy in favor of D.Kannan in respect of the very same property stated in Ex.D50. In the said sale deed also, there is nothing mentioned regarding Survey number.

- (4) **Ex.P4**: Sale Deed dated 31.12.2003 executed by N.K.Pilla Reddy and N.K.Lakshmaiah Reddy through their GPA holder N.S.Krishna Reddy in favor of Smt.Lakshmi Mohan - defendant No.2. The said Sale Deed was executed on the basis of GPA at Ex.D26, where under Site No.31 and portion of Site No.30 (old property No.29/2) Katha No.366/1 was conveyed in favor of defendant No.2.
- (5) **Ex.P5**: Sale Deed dated 16.02.2012 executed by D.Kannan in favor of Smt.N.G.Nagaveni - defendant No.3. D.Kannan traces his title through Sale Deed of the year 2002 and 1993, however in the schedule, the properties are to be stated as Site Nos.4, 5, 20 and 21 formed in Property No.29/2, Katha No.366/1, situated at Doddanekundi Village, K.R.Puram Hobli, Bangalore South Taluk, now Bengaluru East.

Strangely, property number which was not there in the sale deed of 1993 or 2002 came to be added.

- (6) **Ex.P6**: Exchange Deed dated 17.11.2008 exchanged between N.A.Babu Reddy and S.Chandra Reddy, wherein Babu Reddy - defendant No.1 is shown as absolute owner of site No.876, Property No.45/1, situated at Mahadevapura CMC Ward No.29, situated at Doddanekundi Village, K.R.Puram Hobli, Bengaluru East Taluk, earlier Bangalore South Taluk, measuring East to West 50 ft. and North to South 80 ft, in all measuring 4,000 Sq.ft, purchased under Registered Sale Deed dated 09.09.2004, having acquired the said property to his share along with other sites as per Joint Development Agreement registered on 09.09.2004 and Supplementary Agreement dated 24.07.2008 and Possession Letter dated 29.06.2004, and

he had exchanged the property with Chandra Reddy, in respect of property shown in Item No.2 of the suit schedule property, who said to have acquired property being Site No.29 and portion of Site No.30 in property bearing No.29/2, katha No.366/1, situated at Doddanekundi Village, K.R.Puram Hobli, Bengaluru East Taluk within Mahadevapura CMC limits, to an extent of East to West 45 feet and North to South 40 feet, in all measuring 1,800 Sq.ft. under registered Sale Deed dated 31.12.2003. The said Chandra Reddy purchased the property through the GPA holder N.S.Krishna Reddy. Defendant No.1 got exchanged his property stated supra with that of the property purchased by Chandra Reddy under the sale deed dated 31.12.2003.

18. Reverting to the facts of the case, all the defendants unequivocally admitted the ownership of

N.K.Pilla Reddy and N.K.Lakshmaiah Reddy with respect to Sy.No.29/2 measuring 01 Acre 29 Guntas. All the defendants in the pleadings as well as in the evidence and in cross-examination, admitted regarding the GPA executed by said persons in favor of N.S.Krishna Reddy.

19. A perusal of the GPA at Ex.D26 clearly shows that the power executed under the said GPA is only with respect of 01 Acre of land, that too on the Western portion of Sy.No.29/2, retaining balance 29 Guntas on the Eastern side, which is clearly stated in the schedule, wherein it is stated that towards 'East - land belonging to Lakshmaiah Reddy'. The plaintiffs herein are the children of Ammayamma who was none other than sister of Pilla Reddy, Lakshmaiah Reddy and Suresh. The intention of Pilla Reddy and Lakshmaiah Reddy was very much clear while executing the GPA way back in the year 1992, restricting it only in respect of Western portion of 01 Acre of land in Sy.No.29/2 and retaining 29 Guntas in the very same survey number. The said property which was retained has been allotted to the share of plaintiffs as

Legal Representatives of Ammayamma (their sister), as their sister Ammayamma (mother of the plaintiffs) was no more as on the date of execution of the Registered Partition Deed. The plaintiffs being the only legal heirs, were given the share of sister. In that view of the matter, the contention of learned Senior counsel Sri.S.P.Shankar, that the plaintiffs cannot become coparceners in respect of maternal property cannot be countenanced, inasmuch as they are not claiming the right as a coparcener, but they being the legal heirs of their mother were given the share under the partition deed of the year 2003. Hence, the contention of Sri.S.P.Shankar, learned Senior counsel on the succession does not have any legs to stand and accordingly, rejected.

20. The Trial Court has failed to consider the pleadings and admission of the defendants in unequivocal terms, inasmuch as the defendants in unison accepted the ownership of Pilla Reddy and Lakshmaiah Reddy. In that view of the matter, the finding of the Trial Court on Issue No.1 is erroneous. It is nobody's case that the property is

not the property belonging to the ancestors or belonging to the family of Pilla Reddy and Lakshmaiah Reddy. The plaintiffs were given share in the property as legal heirs of their mother, in the partition of the family of their mother under the Partition Deed of the year 2003 given by N.K.Lakshmaiah Reddy and N.K.Pilla Reddy, who were admittedly the absolute owners of land in Sy.No.29/2 measuring 01 Acre 29 Guntas. In that view of the matter, the Trial Court has failed to consider the evidence in proper perspective. We therefore, hold that the finding of the Trial Court on Issue No.1 is perverse. Accordingly, we hold that the plaintiffs have proved their title to the property, tracing under the Partition Deed dated 28.03.2003, answering Issue No.1 in favor of the plaintiffs.

21. A perusal of the entire evidence and a conjoint reading of all the documents stated supra, clearly gives a picture that, there is indeed interference and encroachment of the property by the defendants. The GPA holder of defendant No.3 in unequivocal terms admitted all

the suggestions put by the plaintiffs as true and correct in respect of the property, giving a complete go-bye to the examination in chief. The Trial Court in these circumstances, rightly stated that defendants 2 and 3 have failed to prove their ownership by virtue of Sale Deed under which they claim their right.

22. So far as defendant No.1 is concerned, he is said to have come in picture to the property in Item No.2 under Exchange Deed of the year 2008, in lieu of the exchange of his property with property of one Chandra Reddy. The said Chandra Reddy purchased the property on 31.12.2003 under Registered Sale Deed executed by N.S.Krishna Reddy as GPA holder of N.K.Pilla Reddy and N.K.Lakshmaiah Reddy. Even if there is Sale Deed by N.S.Krishna Reddy, it should have been in 01 Acre of land in the Western portion of Sy.N.29/2. In view of admission by the defendants in pleadings, evidence, both examination in chief and cross-examination that Pilla Reddy and Lakshmaiah Reddy were the owners of land bearing Sy.No.29/2 and they executed the GPA in favor of

N.S.Krishna Reddy in respect of 01 Acre of Western side of Sy.No.29/2, what had been conveyed by N.S.Krishna Reddy in favor of defendant No.1 must be construed in all probabilities in 01 Acre in Western side of Sy.No.29/2 and not in the Eastern portion retained by Lakshmaiah Reddy. The property which is retained by Lakshmaiah Reddy i.e., 29 Guntas had been given under the Registered Partition Deed of the year 2003 in favor of the plaintiffs, towards the share of their mother in the family partition.

23. Even if the contentions of Sri.S.P.Shankar, learned Senior counsel insofar as stipulation in the Partition Deed saving earlier transactions that 'certain portion of the properties have been jointly and severally sold to prospective purchasers with consent of all the parties therein and the prospective purchasers can enjoy the same, for which the parties to the Partition Deed have fully consented', is accepted as it is, defendant No.1 cannot claim any right in the property fallen to the share of the plaintiffs, inasmuch as the property which he has got under Exchange Deed has been purchased from

Chandra Reddy under Registered Sale Deed dated 31.12.2003 executed by N.S.Krishna Reddy exercising power under the GPA in the year 1992 wherein he was given power only to deal with Western portion of property bearing Sy.No.29/2 measuring 01 Acre. The Sale Deed came to be executed in favor of defendant No.1 on 31.12.2003. The Partition Deed between the plaintiffs and his maternal uncles was executed on 28.03.2003 i.e., much prior to the Sale Deed. In that view of the matter, the averments as contended by Sri.S.P.Shankar, learned Senior counsel, cannot be stretched even otherwise, besides the fact that the Sale Deed must be construed as executed in portion of 01 Acre of land on the Western side. In that view of the matter, we are of the considered opinion that defendant No.1 is not entitled to claim any right under the said Sale Deed on the property i.e., Item No.2 of the suit schedule.

24. So far as finding of the Trial Court that the PW1 has admitted in his cross-examination that he did not know the exact extent of encroachment of property by the

defendants cannot be countenanced, for the reason that all along the plaintiffs in their pleadings have clearly stated the extent of encroachment, so also by way of evidence and in the cross-examinations of the defendants wherein, they have admitted that the defendants have undertaken construction on the said property. In that view of the matter, the Trial Court has completely failed to analyze the evidence in true letter and spirit before giving its finding on Issue No.2, the reason being the evidence must be read as a whole instead of picking some admission, which the Trial Court has over weighed.

25. It is trite law that the right of a party cannot be considered to have been defeated on the basis of alleged admission, the implication of the submission made by him must be clear and conclusive and there should not be any doubt or ambiguity about the alleged admission. In the case on hand, in the teeth of documents which we have already referred supra and the admissions of the defendants that they are in possession of the property and carrying on the construction, the Trial Court failed to

consider this aspect of the matter and swayed on a stray admission that, "the plaintiffs cannot say the exact extent of encroachment", inasmuch as the said encroachment was clearly stated in the schedule to the plaint and even admitted by the defendants that they are in possession of Item Nos.2 to 4 property, but stating on the basis of Sale Deeds supra.

26. The reliance placed on the Judgment by the Trial Court while answering Issue No.2 again misreading of the Judgment, even on the principles, as the facts contained under the said Judgment are otherwise than the facts in the case on hand. In that view of the matter, we are of the considered opinion that the Trial Court has completely misread the entire pleadings and evidence, both oral and documentary.

27. Adding to the findings of the Trial Court on Issue No.3, though defendant No.3 states that her predecessor in title had purchased the property way back in the year 1993 under Ex.D50 i.e., registered Sale Deed dated 25.11.1993 executed by Smt.Kanthamma in favor of

Krishna Murthy stating that she is the absolute owner of the property i.e., sites bearing No.4, 5, 20 and 21 in HASB katha No.366/1 and said Krishna Murthy conveyed the property to D.Kannan - the immediate vendor of defendant No.3 in the year 2002 i.e., under the registered Sale Deed dated 13.11.2002 as per Ex.D54. Defendant No.3 purchased the said property under registered Sale Deed dated 16.02.2012 executed by D.Kannan are concerned, nothing has been placed by defendant No.3 to show how Kanthamma had any right in the property to convey the same in favor of Krishna Murthy. The reason being, all the defendants in the unison admitted that Sri.N.K.Pilla Reddy and N.K.Lakshmaiah Reddy were the original owners of the property and not the Kanthamma. That apart, in both the earlier Sale Deeds i.e., 1993 and 2002, the survey number from which the sites were carved out was not shown. However, for the first time in 2012, the property number has been shown as 29/2.

28. It is no doubt that Kanthamma is wife of Lakshmaiah Reddy. However, it is not at all forthcoming in

the Sale Deed executed in the year 1993 by Kanthamma to show, how she had acquired title to the property. Except stating that she inherited the property from her ancestors. That apart, no documents were produced to show the sites even conveyed according to Kanthamma in favor of Krishna Murthy and said Krishna Murthy in favor of D.Kannan were carved on Sy.No.29/2. However, it is only in Sale Deed executed by D.Kannan in favor of Defendant No.3, the properties for the first time were shown to be carved out from property No.29/2. As such, defendant No.3 has failed to prove the contention as to the ownership of the property.

29. Although the Trial Court, based its reasons recorded in its judgment, on the violation of the applicable Rules, particularly Section 95 of the Karnataka Land Revenue Act, and consequently observed that the purchaser has no right over the property, however it failed to examine and determine whether the vendor had valid title and ownership to convey the property under the sale deed. The pleadings and evidence both oral and

documentary, falls short to the aid of defendant No.3 to prove her right, title and possession over the suit schedule property under the Sale Deed as there is no document to show how her predecessor in title i.e., Kanthamma had any right to convey the property. In that view of the matter, the sale deed is hit by doctrine of '**Nemo Dat Quod Non Habet**'. Defendant No.3 neither examined Krishna Murthy nor D.Kannan in order to substantiate her claim to show that the sites which she has purchased under the Sale Deed of the year 2012 from the Kannan, carved out of property No.29/2. On this account also, defendant No.3 has failed to prove her ownership and title over the property. Defendant No.1 too failed to prove his ownership on the property claimed under the sale deed relied by him.

30. Defendant No.2 who has constructed the five storied building as per the admission in the cross-examination of DW2, required to demolish the same and handover the vacant possession to the plaintiffs. Since the entire construction was done during the pendency of the

suit, which is admitted by DW.2 in the cross-examination, which reads as under:

"At present we are constructing five storied building over our property and at it is at the stage of plastering. We have not obtained plan for construction of five floors from BBMP."

31. It was the contention of the GPA holder of defendant No.2 who has been examined as DW.2 that the said defendant had constructed the building on the land purchased under the Sale Deed, but the same has been held against defendant No.2 in the Paragraph afore. As seen from the records, the plaintiffs approached the Court immediately they noticed the defendants encroach on the properties belonging to them and particularly, defendant No.2 started construction on the property. They have filed an application under Order XXXIX Rule 1 & 2 of CPC seeking temporary injunction against the defendants from raising any construction. The application came to be dismissed, opining that no *prima facie* case has been made out at that particular point of time. As against the said

order, an appeal came to be preferred before this Court, in MFA No.936/2014. The said appeal came to be disposed of on 17.02.2014, in terms of the following order:

J U D G M E N T

H.G.RAMESH, J. (Oral):

Learned counsel on both sides, after arguing the matter for some time, submit that the appeal may be disposed of by directing the respondents herein (defendants in the suit) not to alienate the plaint schedule item Nos.2, 3 & 4 properties till the disposal of the suit in O.S.No.8514/2013 and in the event of the appellants (plaintiffs) succeeding in the suit, the defendants shall not claim any equity in the matter. Accordingly, I make the following order:

The impugned interlocutory order remains undisturbed. However, the respondents shall not alienate the aforesaid properties till the disposal of the suit in O.S.No.8514/2013 and they shall not claim any equity in the event of the appellants succeeding in the suit. The trial court is directed to dispose of the suit expeditiously and in any event within nine months from the date of receipt of a copy of this order. This direction is given as learned counsel on both sides submitted that the parties will fully co-operate with the trial court for expeditious disposal of the suit. The appeal stands disposed of in the above terms. In view of disposal of the appeal, I.A.No.1/2014 filed for temporary

injunction does not survive for consideration; it stands disposed of accordingly.

Appeal disposed of.

32. This is even found in the daily order sheet maintained in the original suit dated 21.03.2014. In that view of the matter, it cannot be said that the plaintiffs have not taken any steps immediately after noticing the encroachment and the construction. The immediate action of the plaintiffs show that they have been diligently urging their remedies before the Trial Court. In that view of the matter, defendant No.2 has no option than to demolish the building, which she has constructed admittedly during the pendency of the suit, running the risk and hand over the vacant possession, as the construction itself is illegal and not sustainable in law. Our view gains strength with the maxim in law '***dura lex sed lex***', which means the law is harsh, but it is the law.

33. The admission of the defendants in unison that, they are occupying the suit schedule item No.2 to 4 properties and carrying on construction is more than

sufficient to hold that, Issue No.2 proved by the plaintiffs and in view of answer by the Trial Court on Issue No.3 against defendants 2 and 3 and our answer holding that defendant No.1 too failed to prove his ownership, proves that the defendants are in illegal occupation of suit schedule item Nos.2 to 4.

34. We having gone through the entire evidence placed before us, both oral and documentary, are of the opinion that the plaintiffs have proved both the issues on title as well as encroachment by the defendants in respect of Item Nos.2 to 4 properties and answer the point for consideration in the '**Negative**' and in favor of the plaintiffs holding that the Trial Court is not right in answering both Issue Nos.1 and 2 against the plaintiffs. In that view of the matter, the plaintiffs succeed in their case and accordingly, we pass the following:

ORDER

- (i) The appeal is ***allowed***.
- (ii) The Judgment and Decree dated 19.01.2018, passed by the XVI Addl. City Civil & Sessions

Judge, Bengaluru (CCH-28) in O.S.No.8514/2013, dismissing the suit is set-aside. The finding of the Trial Court on Issue Nos.1, 2 and 5 answered against the plaintiffs is set-aside and they are answered in favor of the plaintiffs. Accordingly, the suit filed by the plaintiffs is ***decreed***.

- (iii) Plaintiffs are declared as absolute owners of Item Nos.2 to 4 of the suit schedule properties.
- (iv) The defendants are directed to vacate and handover/deliver the vacant possession of Item Nos.2 to 4 of the suit schedule properties to the plaintiffs, within 3 months from today. Needless to state that the defendants to remove the construction made by them on Item Nos.2 to 4 at their cost.
- (v) The defendants, their men, agents, henchmen claiming under them are permanently restrained from interfering with

the plaintiffs' peaceful possession and enjoyment of the suit schedule properties.

(vi) If the defendants fail to vacate and handover/deliver the vacant possession of the properties after removing any construction on the said property at their cost, the plaintiffs are at a liberty to execute the decree through the process of law and take possession after demolishing the buildings/ structures in Item Nos.2 to 4 and recover the cost from the defendants.

(vii) Given the facts and circumstances of the case, no order as to costs.

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

36. This matter was reserved for Judgment on 15.04.2026, and the Judgment was ready for pronouncement on 17.07.2026. However, we have noticed that, defendant No.2 had constructed a five storied building on one of the items of the suit schedule property

during the pendency of the suit. In view of the dispute regarding identity of the property raised by the defendants, and as the plaintiffs contended that the building has been constructed on the property that fell to their share under the Partition Deed dated 28.03.2003, we considered it appropriate to hear the defendants further only on the limited extent of saving the building from demolition, despite their submission before this Court in MFA No.936/2014 filed against rejection of application for temporary injunction. Although the building was constructed without there being any order of conversion and plan, as observed by the Trial Court while answering Issue No.3, since a building has been constructed during the pendency of the suit, in order to afford an opportunity to the party/ owner of the building to protect the building or work out some equity, we listed the matter on 17.07.2026 for further hearing, instead of listing it for pronouncement of judgment, only to the limited extent of seeking clarification supra.

37. On 17.07.2026, Sri.S.P.Shankar, learned Senior counsel appearing for respondents 1 & 2/ defendants 1 & 2, firmly stated that their clients had not constructed any building on the property and that defendant No.1 had purchased the property only to secure access way to his other property.

38. Sri.G.Krishna Murthy, learned Senior counsel appearing for the appellants/ plaintiffs, submitted that having regard to the extent of the land, though the prevailing market value is nearly three times more than the value to be quoted by him, he submits that if a sum of Rs.1.75 Crores is paid in lieu of the land occupied by defendant No.2, the plaintiffs would be satisfied.

39. Having considered the said submissions, we have fixed the amount of the land to Rs.1.50 Crores to be paid by defendant No.2 (however it was mistakenly typed as defendant No.3 in the daily order sheet dated 17.07.2026), towards the value of the land to save the construction made thereon.

40. Learned counsel appearing for respondent No.2/ defendant No.2 submitted that, he would seek instructions from his client and requested that the matter be listed on 20.07.2026, only for the purpose of informing the Court whether defendant No.2 can make good the value fixed by the Court.

41. When the matter called on 20.07.2026, Sri.S.P.Shankar, learned Senior counsel appearing for respondents 1 & 2/ defendants 1 & 2, who had not raised any objection on 17.07.2026, requested that the matter be reheard, on the ground that it has been listed for further hearing, or else to recuse ourselves from pronouncing the Judgment, placing reliance on the order passed by the coordinate Bench of this Court in W.P.No.17588/2024 C/w. W.A.No.200260/2025 disposed of on 08.07.2026, wherein, in view of the amendment to Karnataka Civil Courts (Amendment) Act, 2023, an appeal arising from a Judgment and Decree passed by the City Civil Court is required to be heard by a Single Judge.

42. We are unable to accept the submission made by learned senior counsel Sri.S.P.Shankar, for the reason that, by the time the matter was listed for further hearing, the Judgment had already been prepared. However, having noticed the existence of a structure on the suit schedule property and with a view to afford the defendant an opportunity to save the structure from demolition, the matter was listed under the caption 'Further Hearing' only for that limited purpose. The matter was not listed for rehearing on the merits, as the arguments have already been concluded and the case had been reserved for judgment.

43. The suggestion made by this Court was not favorably considered by learned Senior counsel. As such, he insisted us to recuse ourselves from pronouncing the judgment, which we have already declined. After declining the request, lastly, we once again enquired learned Senior counsel as to whether his client is ready to make good the value fixed by us, as recorded in the daily order sheet, dated 17.07.2026. Learned Senior counsel reiterated the

very same submissions and lot more than that. We do not wish to record those submissions, as the same were made by learned Senior counsel in his capacity as an advocate for his client. In that view of the matter, we have listed this matter today for pronouncement of Judgment. In these circumstances, the proceedings transpired on 17.07.2026 and 20.07.2026 are brought on record, only to maintain transparency in the judicial proceedings.

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

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

TKN