

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO.438 OF 2013 (DEC/INJ)

BETWEEN:

SMT. JAYALAKSHMAMMA
W/O SRI. JAYARAMA REDDY
AGED ABOUT 37 YEARS
RESIDING AT VITTA SANDHRA
BEGUR HOBLI
BENGALURU SOUTH TALUK

AND ALSO RESIDING AT
DEVARACHIKKANAHALLI
BILEKALLI POST
BEGUR HOBLI
BENGALURU SOUTH TALUK.

...APPELLANT

(BY SRI. G. BALAKRISHNA SHASTRY, ADVOCATE FOR
SRI. M. DEEPAK, ADVOCATE)

AND:

1. SRI RAMA REDDY
S/O LATE CHIKKABBAIAH
AGED :MAJOR
R/AT NANJAPPA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT - 560 105.
2. GURUVA REDDY
SINCE DECEASED REP. BY LRS.

- 2(a). SMT. YASHODHAMMA
W/O LATE GURUVA REDDY
AGED ABOUT 58 YEARS
R/AT NANJAPURA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT.
- 2(b). SMT. MANJULA
D/O LATE GURUVA REDDY
AGED ABOUT 30 YEARS
R/AT NANJAPURA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT.
- 2(c). SMT. CHAITHRA
D/O LATE GURUVA REDDY
AGED ABOUT 28 YEARS
R/AT NANJAPURA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT.
- 3. RAJA
SINCE DECEASED BY HIS LRS
- 3(a). KAVITHA
W/O LATE RAJA
SINCE DECEASED BY HER LRS
- 3(b). SRI. SANTHOSH
S/O LATE RAJA
AGED ABOUT 20 YEARS
RESIDING ALONGWITH
GRAND MOTHER
SMT. AMMAYAMMA
W/O VENKATESH REDDY
AGED : MAJOR

RESIDING AT NO. 8
20TH CROSS, SARAKKI ROAD
ANNAIAH REDDY LAYOUT
PUTTENAHALLI MAIN ROAD
J P NAGAR, 6TH PHASE
BENGALURU-560078.

- 3(c). SRI. SANDEEP
S/O LATE RAJA
AGED ABOUT 19 YEARS
RESIDING ALONGWITH
GRAND MOTHER SMT. AMMAYAMMA
W/O VENKATESH REDDY
AGED : MAJOR
RESIDING AT NO.8
20TH CROSS, SARAKKI ROAD
ANNAIAH REDDY LAYOUT
PUTTENAHALLI MAIN ROAD
J P NAGAR, 6TH PHASE
BENGALURU-560078.
SINCE THE RESPONDENTS 3 AND 3(a)
ARE DECEASED AND THEIR LRS.
AS RESPONDENTS.

4. JAGADISH
SINCE DECEASED REP. BY LRS.

- 4(a). SRI. SANDEEP
S/O LATE JAGADISH
AGED ABOUT 20 YEARS
R/AT NANJAPURA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT.

- 4(b). KUMARI MADHUSHREE
D/O LATE JAGADISH
AGED ABOUT 18 YEARS
R/AT NANJAPURA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT.

5. SRI. G. ANANDA
S/O SRI. GOPAL REDDY
AGED ABOUT 35 YEARS
RESIDING AT
NANJAPURA VILLAGE
HULIMANGALA POST
JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT-560 083.

...RESPONDENTS

(BY SMT. S. SUSHEELA, SENIOR ADVOCATE FOR
SRI. V. VISWANATH, ADVOCATE FOR R5;
R1 SERVED & UNREPRESENTED;
NOTICE TO R2 (a) TO (c) & R4 (a) & (b) HELD SUFFICIENT
V/O DATED 01.04.2026;
R3(a) DEAD;
R3(b), R3(c) ARE LRS OF R3(a))

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGMENT & DECREE DATED 31.01.2013 PASSED IN
R.A.NO.379/2012 ON THE FILE OF DISTRICT AND SESSIONS
JUDGE, AND PRESIDING OFFICER, FAST TRACK COURT,
ANEKAL, BANGALORE RURAL DISTRICT, ALLOWING THE
APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE
DATED 25.08.2012 PASSED IN OS.NO.330/2006 ON THE FILE
OF SENIOR CIVIL JUDGE & JMFC, ANEKAL.

THIS REGULAR SECOND APPEAL HAVING BEEN
RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT
THIS DAY, ***E.S. INDIRESH J.***, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV JUDGMENT

1. This appeal is preferred by defendant No.5 challenging the Judgment and Decree dated 31.01.2013 passed in R.A.No.379/2012, on the file of the Fast Track Court and District and Sessions Judge Court, Anekal, Bengaluru Rural District, allowing the appeal and setting aside the Judgment and Decree dated 25.08.2012 in O.S.No.330/2006 (old NO.416/2000) on the file of the Senior Civil Judge and JMFC, Anekal, dismissing the suit of the plaintiff.

2. For the sake of convenience, the parties in this appeal shall be referred to in terms of their status and ranking before the Trial Court.

3. The plaint averments are that, defendant Nos.1 and 2 are the brothers of one Gowramma. Plaintiff is the son of said Gowramma. It is further stated that, the grandfather of the plaintiff - Chikkabbaiah died on

27.01.1995. It is also stated that, mother of the plaintiff - Gowramma, predeceased her father. The grandfather of the plaintiff - Chikkabbaiah was taking care of the minor plaintiff. It is also stated that, the parents of the plaintiff were cultivating the suit schedule property during the life time of his grandfather - Chikkabbaiah and revenue records stand in the name of the plaintiff. It is the grievance of the plaintiff that, the plaintiff has verified the RTC extracts for the year 1999 and came to know that, the name of defendant No.5 was entered in column No.9 and on enquiry, the plaintiff came to know that the defendant Nos.1 to 4 have sold the suit schedule property in favour of the defendant No.5, who is wife of brother-in-law of defendant No.1, as per the registered Sale Deed dated_20.04.1995. It is also averred in the plaint that, one R. Jagadeesh has been shown as the General Power of Attorney holder of the plaintiff to execute the documents as to sale of suit schedule property. It is further contended by the plaintiff that, the grandfather of the plaintiff - Chikkabbaiah died leaving behind a registered Will dated

14.09.1990 bequeathing the suit schedule property in favour of the plaintiff and as such, the plaintiff has acquired the right and title in respect of the suit schedule property. It is also stated that the plaintiff attained the age of majority during 1996 and came to know about the fraud being committed by the defendants and as such, the plaintiff has filed O.S.No.416/2000 before the Trial Court seeking relief of declaration and permanent injunction against the defendants. Thereafter, the suit was re-numbered as O.S.No.330/2006 on the file of the Trial Court.

4. After service of summons, the defendants entered appearance, however, the defendant No.5 has contested the suit by filing the written statement denying the plaint averments. It is contended by the defendant No.5 that, the plaintiff has executed General Power of Attorney in favour of the defendant No.4 and attested the registered Sale Deed dated 20.04.1995 made in favour of defendant No.5 and therefore, contended that, the averments made in the plaint are false. It is also stated in the written

statement that the plaintiff was major as on the date of execution of the registered Sale Deed and as such, denied the execution of the Will dated 14.09.1990 said to have been executed by deceased Chikkabbaiah. Accordingly, defendant No.5 has sought for dismissal of the suit.

5. On the basis of the rival pleadings, the Trial Court has formulated issues for its consideration. In order to establish their case, plaintiff has examined four witnesses as P.W.1 to P.W.4 and got marked 27 documents as Exs.P1 to P27. On the other hand, defendants have examined two witnesses as D.W.1 and D.W.2 and produced 25 documents as Exs.D1 to D25.

6. The Trial Court, after considering the material on record, by its Judgment and Decree dated 25.08.2012, dismissed the suit of the plaintiff. Being aggrieved by the same, plaintiff has preferred Regular Appeal in R.A.No.379/2012 on the file of the First Appellate Court. The said appeal was resisted by the defendants. The First Appellate Court, after re-appreciating the facts on record, by its Judgment and Decree dated 31.01.2013, allowed

the appeal, consequently, set aside the Judgment and Decree passed by the Trial Court in O.S.No.330/2006.

7. Being aggrieved by the Judgment and Decree passed by the First Appellate Court, the appellant/defendant No.5 has preferred this Regular Second Appeal under Section 100 of CPC.

8. This Court, vide order dated 17.03.2014, has formulated the following substantial questions of law:

"1. Whether in the facts and circumstances of the case the Appellate Court was justified in holding that the plaintiff was a minor on the date of sale-deed dated 20.04.1995 i.e., Ex.D2 and GPA Ex.D1 based on exhibits P5, P16 and P18 without considering whether Exhibits P5, P16 and P18 are approved in accordance with law and ignoring the admission made by the plaintiff?"

2. Whether in the facts and circumstances of the case the Appellate Court was justified in holding that the defendants 1 to 4 have played fraud on the plaintiff while executing the sale-deed dated 20.04.1995 and it is null and void and cannot be validated by confirmation deed?"

3. Whether in the facts and circumstances of the case the suit for declaration was maintainable without seeking the relief of possession?"

4. Whether the suit was barred by limitation? Whether Article 65 or Article 59 of the Limitation Act applies to the facts and circumstances of this case?"

9. I have heard Sri. G. Balakrishna Shastry, learned counsel appearing on behalf of Sri. M Deepak, learned counsel for the appellant and Smt. Susheela S., learned Senior Counsel appearing on behalf of Sri V.Viswanath, learned counsel for the respondent No.5.

10. Sri. G. Balakrishna Shastry, learned counsel for the appellant submitted that the First Appellate Court has committed an error in interfering with the well reasoned Judgment and Decree passed by the Trial Court. It is argued by the learned counsel for the appellant that, the plaintiff has executed the General Power of Attorney on 07.04.1995 in favour of the respondent No.4 herein and further argued that, these documents were marked as Exs. D1, D2 and D22 and further the signature and thumb impression of the plaintiff was also marked and the same was admitted by the plaintiff. In addition to the same, the plaintiff has executed a registered confirmation deed on

26.05.1998 as per Ex.D25 and the said aspect of the matter was considered by the Trial Court so also the admission of P.W.1 as to the execution of the aforementioned documents and the said aspect of the matter was ignored by the First Appellate Court and therefore, sought for interference of this Court.

11. It is also argued by the learned counsel for the appellant, by referring to the aforementioned documents, particularly, Exs.D1, D2, D23 and D25 and submitted that, the plaintiff was aged about 19 years as on 06.04.1995 and further the plaintiff himself has disclosed his age as 22 years as on 26.05.1998 and the said aspect of the matter was ignored by the First Appellate Court. It is also argued by Sri. G. Balakrishna Shastry, learned counsel for the appellant that the plaintiff has received consideration in the registered Sale Deed and further additional amount of Rs.30,000/- by way of cash and therefore, submitted that the plaintiff was aware about the execution of the registered Sale Deed and therefore, contended that, the Trial Court after considering the material on record, rightly

dismissed the suit and same was erroneously interfered with by the First Appellate Court.

12. Nextly, it is contended by the learned counsel for the appellant that, the plaintiff has admitted the execution of Form-21 in respect of 'no objection' for change of khata and the said aspect of the matter was ignored by the First Appellate Court and therefore contended that, the First Appellate Court has wrongly taken the stray admission of D.W.1 at Ex.D16 that the date of birth of the plaintiff was on 15.07.1978, which is a duplicate transfer certificate and therefore, sought for dismissal of the suit. It is also argued by the learned counsel for the appellant that, the First Appellate Court has not properly re-appreciated the material on record and has passed the impugned Judgment and Decree which requires to be interfered with in this Appeal.

13. In order to buttress his arguments, learned counsel for the appellant referred to the Judgment of the Hon'ble Supreme Court in the case of **BIRAD MAL SINGHVI Vs. ANAND PUROHIT** reported in AIR 1988 SC 1796, in the

case of **P YUVAPRAKASH Vs. STATE, REPRESENTED BY INSPECTOR OF POLICE**, reported in **2023 LIVE LAW (SC) 538**, in the case of **RAJPAL SINGH Vs. SAROJ, (DECEASED) THROUGH LEGAL REPRESENTATIVES AND ANOTHER** reported in **(2022) 15 SCC 260**, in the case of **JUGRAJ SINGH AND ANOTHER Vs. JASWANT SINGH AND OTHERS** reported in **AIR 1971 SC 761**, in the case of **J YASHODA Vs. K SHOBHA RANI** reported in **2007 (5) SCC 730** and this Court in the case of **THIMMAKKU Vs. BANDLU RANGAPPA**, reported in **AIR 1977 KAR 115** and argued that, the declaration of law made by the Hon'ble Supreme Court in the above case has not been considered by the First Appellate Court as to the proof of execution of the power of attorney as well as considering the secondary evidence on record and therefore, sought for interference of this Court to set aside the Judgment and Decree passed by the First Appellate Court.

14. Per contra, Smt. S. Susheela, learned Senior Counsel appearing on behalf of Sri V.Viswanath, learned counsel for the respondent No.5, argued on two folds, firstly,

minority of the plaintiff during the execution of the registered Sale Deed and Power of Attorney, and secondly attributing fraud being committed by the defendants to deprive the suit schedule property to the plaintiff. Learned Senior Counsel appearing for the respondent No.5, referred to the written statement of defendant No.5, particularly, paragraph No.5 and submitted that, the defendant has not proved the alleged General Power of Attorney and the sale deed referred to above and further the written statement was amended subsequently to incorporate paragraph No.17A to the written statement by amendment application dated 21.08.2009. It is further submitted that, the defendant No.5 has changed the version depending on the situation to knock off the property illegally and therefore, sought for dismissal of the appeal.

15. Nextly it is contended by the learned Senior Counsel appearing for the respondent No.5 by referring to the evidence of P.W.1 and argued that the plaintiff has disputed the signature on alleged documents referred to

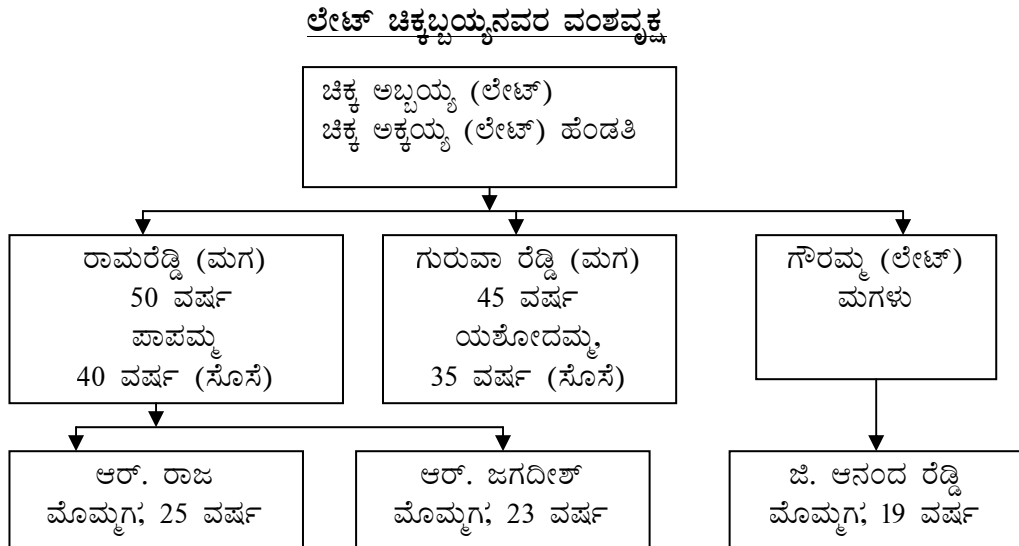
above and in this regard, learned Senior Counsel referred to Ex.P17 wherein the death certificate of Chikkaakkayamma w/o Chikkabbaiah was on 05.04.1995 however, she also has been made as a signatory to the document which would indicate the fraud said to have been committed by defendant and as such sought for dismissal of the appeal.

16. Smt. S. Susheela, learned Senior Counsel appearing for the respondent refers to the document at Ex.P1 where the age of the plaintiff was shown as 19 years and also the school record as to taking the date of birth of the plaintiff as 15.07.1978 and therefore, contended that, the defendants have not only committed a fraud but also projected the case on surmises that the plaintiff had attained majority and same is contrary to law. In this regard, learned Senior Counsel appearing for the respondent refers to the Judgment of the Hon'ble Supreme Court in the case of **VIDHYADHAR Vs. MANIKRAO AND ANOTHER** reported in **1999 (3) SCC 573** and contended that, as the contesting defendant has not entered the

witness box to prove her case and in such circumstances, the case set up by her cannot be accepted. Learned Senior Counsel has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **RANGAMMAL Vs. KUPPUSWAMI AND ANOTHER**, reported in **AIR 2011 SC 2344**, in the case of **SUBHRA MUKHERJEE AND OTHERS Vs. BHARAT COKING COAL LIMITED AND OTHERS** reported in **MANU/SC/3328/2000** and in the case of **RAJPAL SINGH VS. SAROJ, (DECEASED) THROUGH LEGAL REPRESENTATIVES AND ANOTHER** reported in **(2022) 15 SCC 260**, and in the case of **RATTAN SINGH AND OTHERS Vs. NIRMAL GILL AND OTHERS**, reported in **MANU/SC/0860/2020** and contended that, the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. It is also argued that, the burden of proof lies on the defendant as to prove the majority age of the plaintiff as on the date of execution of the aforementioned registered documents and when a person is bound to prove the existence of any fact and such burden of proof lies on that person alone and as the defendants have failed to prove the burden

shifted on them as to execution of the aforementioned documents, and therefore, sought for dismissal of the appeal.

17. In the light of the submissions made by the learned counsel appearing for the parties, I have carefully considered the finding recorded by both the courts below and perused the original records. In order to understand the relationship between the parties, it is relevant to extract the genealogical tree of the parties which is as below:



18. Perusal of the genealogical tree (Ex.D25) would indicate that, the original propositus Chikkabbaiah had three children, namely, Ramareddy (Defendant No.1), Guruva Reddy (Defendant No.2) and Smt. Gowramma (mother of the plaintiff). Defendant Nos.3 and 4 are the children of defendant No.1. It is the case of the plaintiff that, suit schedule properties are the ancestral properties of Chikkabbaiah and the plaintiff is having right over the schedule properties. It is also contended in the plaint that, mother of the plaintiff - Gowramma died leaving behind the plaintiff and his father - Gopala Reddy predeceased his mother. Chikkabbaiah died on 27.01.1995. It is also the case of the plaintiff that the said Chikkabbaiah died leaving behind a registered Sale Deed dated 14.09.1990 (Ex.P2) bequeathing the suit schedule property in favour of the plaintiff. It is the grievance of the plaintiff that, the defendants 1 to 4 have colluded with each other and sold the suit schedule property in favour of the defendant No.5 as per the registered Sale Deed dated 20.04.1995. The plaintiff urges that as on the date of

registered Sale Deed dated 20.04.1995, the plaintiff was minor and his consent has been taken fraudulently and as such, sought for relief of declaration with consequential relief of permanent injunction.

19. In order to prove the minority, the plaintiff has produced Ex.P16 - Transfer Certificate issued by Sri. Nityananda Swamy School, Jigani, wherein the date of birth was shown as 15.07.1978. The date of birth mentioned in Ex.P5-driving licence is 15.07.1978. In this regard, perusal of the record particularly the registered Sale Deed dated 20.04.1995(Ex.D2), wherein the plaintiff has signed the aforesaid sale deed as a witness. Though the plaintiff has produced two driving licences issued on same date, namely at Ex.P5, wherein the father of the plaintiff was shown as Gopala Reddy and in the driving licence as per Ex.P18, name of father of the plaintiff was shown as Gopala Krishna. Though the driving licence is not a sole material to consider the age of the plaintiff, and on careful consideration of the Transfer Certificate produced as Ex.P16, wherein it is shown as 'duplicate' and the

original Transfer Certificate is not produced and the contents of the same have not been proved by examining the school authorities.

20. It is pertinent to mention here that, at the time of filing the suit, the age of the plaintiff was shown as 21 years. The suit was filed on 10.07.2000. During the course of evidence on 01.01.2003, while filing affidavit evidence, age of the plaintiff was shown as 24 years. While marking the document, on 01.07.2004, the plaintiff has stated that he was aged about 21 years. In the further chief examination dated 04.10.2010, the plaintiff stated that he was aged about 33 years. It is also to be noted that in W.P.No.39984/2011, disposed of on 12.03.2012, filed by the plaintiff assailing the order dated 12.07.2011, it is stated that the plaintiff was aged about 21 years. In these discrepancy of age mentioned in different documents on various occasions before the Trial Court as well as before this Court in writ petition, none of these dates mentioned would tally with the age of the plaintiff as per the Transfer Certificate as 15.07.1978. There is no consistency in

providing documentary proof as to the age of the plaintiff and in that view of the matter, the finding recorded by the Trial Court on issue No.3 is just and proper and no interference is called for in respect of the finding recorded by the Trial Court. The aforementioned aspect has not been noticed by the First Appellate Court and therefore, the finding recorded by the First Appellate Court at paragraph No.7 of the impugned Judgment and Decree requires to be set aside. Even otherwise, the finding recorded by the First Appellate Court reveals that the First Appellate Court has not properly re-appreciated the material on record in consonance with the documents produced by the parties and therefore, the finding recorded by the First Appellate Court solely based on Ex.P16 is contrary to law and the re-appreciation as to the said aspect has to be interfered with in this Appeal.

21. It is to be noted that, even for the sake of argument, if the minority of the plaintiff has to be considered, under such circumstances, the plaintiff ought to have challenged the sale transaction made in favour of defendant No.5 by

defendant Nos.1 to 4, within the tentative period, on attaining majority. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of **K.S. SHIVAPPA Vs. K. NEELAMMA** reported in **2025 SCC OnLine SC 2149**. For the discussion made above, as there is no acceptable document to decide the age of the plaintiff, I am of the view that, the plaintiff failed to prove the suit where the relief is sought for declaration as to the suit schedule property. Though the learned Senior Counsel appearing for the respondent argued that the defendants have failed to prove the burden of proof, however, it is well established principle in law that, in a suit for declaratory relief, it is the duty of the plaintiff to prove the case based on cogent documents and weakness of the defendant cannot be a factor for decreeing the suit of the plaintiff and therefore, the Judgment referred to by the learned Senior Counsel in **RANGAMMAL** (supra) and **SUBHRA MUKHERJEE** (supra) are not applicable to the case of the plaintiff. It is also to be noted that the Hon'ble

Supreme Court in the case of RAJPAL SINGH (supra) at paragraph No.14 held as follows:

"14. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the sale deed dated 19-4-1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be substantive therefore the same was clearly barred by limitation. Hence, the learned trial court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned first appellate court was justified and right in setting aside the judgment and decree passed by the learned trial court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the first appellate court dismissing the suit and consequently restoring the judgment and decree passed by the trial court."

22. Perusal of the aforementioned judgment of the Hon'ble Supreme Court would indicate that the limitation

period required to be considered with respect to the substantial relief of cancellation of sale deed would be three years from the date of knowledge. In the present case, the plaintiff is a witness to the Exs.D21, D23 and D25 and in the evidence, the plaintiff admits his signature on the aforementioned documents and same would indicate that the suit is even otherwise, belated and requires to be dismissed. The aforementioned aspect has not been properly re-appreciated by the First Appellate Court in a manner known to law as required under Order XLI Rule 31 of CPC. Therefore, I am of the view that, the First Appellate Court has committed an error in interfering with the well reasoned Judgment and Decree passed by the Trial Court.

23. It is also pertinent to mention here that, the registered Sale Deed is executed in favour of defendant No.5 on 20.04.1995 (Ex.D2) and third party right has been created thirty years ago and therefore, the contentions raised by the learned Senior Counsel appearing for the respondent cannot be accepted. It is

also forthcoming from the mutation proceedings in M.R.No.5/1998-99 (Ex.D17), that the plaintiff has accorded permission for change of revenue records in the name of defendant No.5 and therefore, as the plaintiff has executed General Power of Attorney in favour of defendant No.4 and witness to the execution of the registered Sale Deed (Ex.D2) and as such, the plaintiff is not entitled for relief of declaration and has filed the suit in collusion with defendant Nos.1 to 4 to knock off the property from defendant No.5 and therefore, I am of the view that, the impugned Judgment and Decree passed by the First Appellate Court suffers from infirmity and as such, requires interference of this Court under Section 100 of CPC. The substantial questions of law framed above, favour the defendant No.5 as the First Appellate Court has not re-appreciated the material on record as re-appreciated the same in terms of the Judgment of the Hon'ble Supreme Court in the case of **SANTOSH HAZARI Vs. PURUSHOTTAM TIWARI (DECEASED) BY L.RS.,**

reported in **(2001) 3 SCC 179**, and therefore, I pass the following:

ORDER

(i) The Regular Second Appeal is allowed.

(ii) The Judgment and Decree dated 31.01.2013 in R.A.No.379/2012 on the file of the Fast Track Court and District and Sessions Judge Court, Anekal, Bengaluru Rural District is hereby set aside.

(iii) The Judgment and Decree dated 25.08.2012 in O.S.No.330/2006 (old O.S.NO.416/2000) on the file of the Senior Civil Judge, Anekal, dismissing the suit of the plaintiff is hereby confirmed.

(iv) Suit in O.S.No.330/2006 on the file of the Senior Civil Judge, Anekal, is accordingly, dismissed.

**Sd/-
(E.S.INDIRESH)
JUDGE**

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