

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

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

REGULAR FIRST APPEAL NO.1160 OF 2007

BETWEEN:

- 1 . SRI KUSHAL CHAND
S/O UTTAM CHAND
AGED ABOUT 45 YEARS
UTTAM JEWELLERS No.2390,
10TH MAIN, E BLOCK,
II STAGE, RAJAJINAGAR,
BANGALORE -560 010.
- 2 . SRI UTTAM CHAND
S/O CHAMPALAL
AGED ABOUT 46 YEARS,
UTTAM JEWELLERS,
No. 2390, 10TH MN,
E BLOCK, II STAGE,
RAJAJINAGAR,
BANGALORE5- 560 010.
- 3 . SRI RADHAKRISHNA NAIR
S/O GOVIND KUTTY
AGED ABOUT 56 YEARS,
SITE NO.40, S. NO.39,
7TH CROSS, PRASHANTHA NAGAR
PIPELINE, 'T' DASARAHALLI
BANGALORE- 560 057.

... APPELLANTS

(BY SRI. R.B. SADIVAPPA A/W
SMT. B.R. HARINI., ADVOCATES)

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

AND:

SRI. H.R. NAGENDRA GUPTHA
S/O H J RAMASWAMY SHETTY
AGED ABOUT 59 YEARS
R/O No. 252, 13TH MAIN
GOKULA EXTENSION,
FIRST STAGE, FIRST PHASE,
BANGALORE -560 054.

... RESPONDENT

(BY SRI.J.IMAYAN, ADVOCATE FOR C/R)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 22.02.2007 PASSED IN OS.NO.2360/1997 ON THE FILE OF THE III ADDL. CITY CIVIL JUDGE, BANGALORE CITY DECREERING THE SUIT FOR DELCARATION AND INJUNCTION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED ON 29.08.2026 FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

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

1. This Regular First Appeal is by the defendants being aggrieved by the judgment and decree dated 22.02.2007 passed in O.S.No.2360/1997 on the file of III Additional City Civil Judge, Bangalore City (hereinafter referred to as `trial Court') in and by which the trial Court has decreed the suit

to the plaintiff, holding plaintiff being the absolute owner of the suit schedule property entitled for vacant possession of the schedule property from the defendants and has directed the defendants to hand over the vacant possession of the schedule property by removing all constructions within six months from the date of the order.

2. Brief facts of the case are:

2.1 That the plaintiff purchased vacant site bearing No.40 forming part of land bearing Sy.No.55 measuring East to West 50 feet or 15.24 meters, North to South 30 feet or 9.14 meters situated at Yeshwanthapura Hobli, Bangalore North Taluk, Mallasandra Village, bounded on East by: Road, West by: Site No.35, North by: Site No.41 and South by: Site No.39 (hereinafter referred to as 'Schedule Property') in terms of deed of sale dated 13.02.1980 from one Smt.Sunita B. Rani, Wife of B.A.Rane. That his name was entered in the revenue records and he has been paying the property tax.

2.2 That defendant No.1 is the son of defendant No.2. Defendant No.3 is a mortgagee under defendant No.1.

2.3 That the plaintiff was carrying on business and had remained in Tamil Nadu between December 1994 to December 1996 and when he returned to Bengaluru during December 1996 he visited the schedule property and found construction thereon consisting of asbestos sheet roofed residential premises and enclosed by a compound wall on all four sides with number written thereon as Site No.39. On enquiry, he learnt that it was defendant No.1 who had put up such construction. Plaintiff caused issue of legal notice through his counsel on 11.12.1996. A reply dated 16.12.1996 was issued by the defendant No.1 claiming that his father-defendant No.2 had purchased the said property. As such, plaintiff issued another legal notice to his father- defendant No.2, who avoided receiving the same. Since defendant No.3 occupied the property as a mortgagee under defendant No.1, a legal notice was issued to defendant No.3. Hence, the suit seeking declaration of his title and for mandatory injunction against the defendants, directing them to remove the illegal construction and to pay mense profit from December 1996 to February 1997.

3. Defendant No.2 filed the written statement denying the plaint averments. It is contended that the purchase of the suit schedule property by the plaintiff is not within his knowledge. Defendant No.1 being his son and defendant No.3 being the mortgagee under defendant No.1 is admitted. Issuance of notice by the plaintiff and reply has been admitted. It is however contended that defendant No.2 has put up construction on the site bearing No.39, Khatha No.55 situated in Mallasandra Village, which measures East-West 51 feet, North-South 30 feet, which he purchased in terms of deed of sale dated 08.05.1992 from one Boraiah, son of Cheluvaiah. As such, the defendant has been the lawful owner in possession of the said site.
4. That defendant No.2 has constructed three and a half square asbestos sheet roofed house by altering the existing asbestos sheet roofed house. The construction of the house is on his site No.39 and not on site No.40 of the plaintiff. Thus, defendant No.2 being absolute owner is in exclusive possession and enjoyment of his site. Hence sought for dismissal of the suit.
5. Trial Court framed following issues:

"1. Does plaintiff prove his title to the suit property?"

2. Does he prove that defendant No.1 and 2 have put up illegal construction on the suit property?

3. Is he entitled to relief of declaration of title, possession and mandatory injunction as sought?

4. Is he entitled to mense profit as prayed?

5. What order/ decree?"

6. Plaintiff has examined himself as PW1 and has marked 16 documents as Exhibits P1 to P16. Defendant No.1 has examined himself as DW1. Boregowda, owner of Site No.38 has been examined as DW2. One Somashekar, who facilitated in defendant No.2 purchasing Site No.39 has been examined as DW3. 28 documents have been marked on behalf of the defendants as Exhibits D1 to D28.

7. On appreciation of evidence, the trial Court has answered Issue Nos.1 to 3 in the affirmative, Issue No.4 partly in the affirmative and has consequently passed the judgment and decree as noted above.

8. Sri.R.B.Sadashivappa, learned counsel for the defendants/appellants herein submitted:

8.1 That the trial Court failed to appreciate the evidence and the deposition of the witnesses and has erroneously come to the conclusion of defendants/appellants having

encroached upon the schedule property and putting up the construction thereon merely on the premise of defendants not having produced documents for obtaining the permission from the concerned authorities for such construction.

8.2 That the plaintiff who is claiming right, title, interest and possession over Site No.40 is required to discharge his burden identifying the existence of the said site and its title over the same.

8.3 That the defendant No.2 having purchased the site No.39 in terms of deed of sale dated 08.05.1992 has been in possession and enjoyment of the same. Revenue records are mutated in his name. He has been paying the property tax. Thus, the right, title and possession of defendant No.2 over site No.39 is established by documentary evidence. Plaintiff has not denied the title of the defendants.

8.4 That on the northern side of the Site No.40 claimed by the plaintiff is Site No.41 belonging to his brother Satyanarayana Gupta and the plaintiff in his deposition has deliberately pleaded ignorance about the said site belonging to his brother. It is not made clear by the

plaintiff whether it is defendants who have encroached upon his site or his brother Satyanarayana Gupta who is on the northern side of his site. Plaintiff has thus suppressed the material facts and therefore not entitled for relief of declaration and possession.

8.5 The plaintiff who claimed to have purchased Site No.40 in terms of deed of sale dated 13.02.1980 has not produced any document to prove his possession. He claims to have visited Site No.40 only during 1996. As such, the plaintiff himself has admitted of he not being in possession of the site until 1996.

8.6 Discrepancies if any in the documents of the defendants cannot enure to the benefit of plaintiff who is required to prove his case on his own. Plaintiff cannot take weakness of the defendants if any. He relies upon the judgment of the Apex Court in the case of ***Smriti Debarama Vs Prabha Ranjan Debarama and others*** reported in ***2023 19 SCC 782*** in support of this submission.

8.7 Adverting to two separate commissioners' reports dated 08.01.2026 and 20.06.2026 he submitted that the reports of the commissioner have clearly indicated non

existence of Site No.40 being claimed by the plaintiff which shall be read in favour of the defendants.

Hence seeks for allowing of the appeal and dismissal of the suit.

9. Sri.J.Imayan, learned counsel appearing for the plaintiff/ respondent herein on the other hand submitted:

9.1 That plaintiff having purchased the Site No.40 in terms of deed of sale dated 13.02.1980 is not in dispute.

9.2 The plaintiff has produced documents in the nature of tax paid receipts for proof of his possession. That the defendant No.2 had purchased Site No.39, 12 years after purchase of Site No.40 by the plaintiff. Taking advantage of absence of the plaintiff, defendant has put up the construction encroaching upon the site No.40 of the plaintiff which is situated on the northern side of Site No.39 being claimed by the defendant.

9.3The defendant has not furnished any evidence regarding he obtaining permission for putting up the construction which aspect of the matter has been taken note of by the trial Court and has rightly come to conclusion of directing

the defendants to hand over the vacant possession of the schedule property which is in their illegal occupation.

9.4 That the two commissioners who were appointed by this Court have not taken into consideration the memo of instructions and they have only reported that site No.40 being non-existent without appreciating the fact that the defendants who claim to be owners of Site No.39 situated on the southern side of the site No.40 of the plaintiff, have indeed encroached upon the site of the plaintiff. The appreciation of evidence and the conclusion reached by the trial Court does not suffer from any infirmity.

Hence seeks for dismissal of the appeal.

10. Heard and perused the records.

11. There is no dispute of plaintiff having purchased site bearing No.40 being the subject matter of the suit in terms of deed of sale dated 13.02.1980. There is also no dispute of defendant No.2 having purchased Site No.39 in terms of deed of sale dated 08.05.1992. Thus title of the plaintiff in respect of Site No.40 so also the title of defendant No.2 in respect of Site No.39 is not in dispute.

Therefore the points that would arise for consideration are:

"(a) Whether the plaintiff has proved that the defendants have encroached upon and are in possession of his site bearing No.40 described in the schedule to the plaint?

(b) Whether the defendants prove that they are in possession of their site No.39 as claimed by them?

(c) Whether the trial Court is justified in directing the defendants to vacate and hand over the vacant possession of the suit schedule property to the plaintiff?".

12. The trial Court in its judgment while answering issue No.2 has held that defendants 1 and 2 have put up illegal construction as they failed to produce any documents with regard to construction put up by them on Site No.39. Admission of defendants during the cross examination regarding they having put up construction without sanction plan and authorization from the Municipality has been read by the trial Court against the defendants to conclude that such construction has been done on Site No.40 being claimed by the plaintiff. It is based on the said conclusion, the trial Court has directed the defendants to deliver the vacant possession of the schedule property.

13. Since the points raised above require identification and location of properties namely site No.40 and site No.39 being claimed by the plaintiff and defendants respectively, appropriate to refer to the description of the properties as given in the documents of title relied upon by the plaintiff and defendants as per Ex.P1, D2, D3, D4 and D28 respectively with reference to layout plan at Ex.P9.

14.Both the plaintiff and defendants have relied upon layout sketch produced at Ex.P9 in terms of which residential plots were formed in the land bearing Sy.No.55. Said layout plan indicate existence of site No.40 with site No.39 being situated on its southern side and site No.41 being situated on its northern side.

15. Exhibit P1 is the deed of sale dated 13.02.1980 under which plaintiff purchased site No.40 description of which is as under:

"ಕ್ರಯದ ಸ್ವತ್ತಿನ ವಿವರಗಳು:

*ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು, ಯಶವಂತಪುರದ ಹೋಬಳಿ, ಮಲ್ಲಸಂದ್ರ ಗ್ರಾಮದ
ಸರ್ವೆ 55ನೇ ನಂಬರು ಕನ್‌ವರ್ಷನ್ ಆಗಿರುವ ಜಮೀನಿನಲ್ಲಿ ವಿಂಗಡಿಸಿರುವ
ಸೈಟುಗಳ ಪೈಕಿ 40ನೇ ನಂಬರು ಸೈಟಿಗೆ ಚೆಕ್ಕುಬಂದಿ- ಪೂರ್ವಕ್ಕೆ ರಸ್ತೆ, ಪಶ್ಚಿಮಕ್ಕೆ
:35ನೇ ನಂಬರು ಸೈಟು, ಉತ್ತರಕ್ಕೆ 41ನೇ ನಂಬರು ಸೈಟು, ದಕ್ಷಿಣಕ್ಕೆ : 39ನೇ
ನಂಬರು ಸೈಟು ಈ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ವಪಶ್ಚಿಮ : 50-0 (ಐವತ್ತು) ಅಡಿಗಳು*

15.24 ಮೀಟರ್‌ಗಳು, ಉತ್ತರದಕ್ಷಿಣ : 30-0 (ಮೂವತ್ತು) ಅಡಿಗಳು, 9-14 ಮೀಟರ್‌ಗಳು, ಒಟ್ಟು:139 44 ಚದರ ಮೀಟರ್ ಅಳತೆಯ ಖಾಲಿ ಸೈಟು ಈ ಕ್ರಯಕ್ಕೆ ಸೇರಿರುತ್ತೆ. ಇದು ಸರ್ವಿಸ್ ಇನಾಂತ್ರಿ ಜಮೀನ್ ಆಗಿರುವುದಿಲ್ಲ ಇದರ ಮಾರುಕಟ್ಟೆ ಬೆಲೆ ಮೂರು ಸಾವಿರ ರೂಪಾಯಿಗಳು ಸರಿಯಾಗಿರುತ್ತದೆ".

16. Defendant No.2 claimed to have purchased site No.39 as per deed of sale dated 08.05.1992 at Ex.D4 from his vendor-Sri.Boraiah, S/o Cheluvaiah. Description of which is as under:

ಷೆಡ್ಯೂಲು ವಿವರ

ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು, ಯಶವಂತಪುರ ಹೋಬಳಿ, ಮಲ್ಲಸಂದ್ರ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಖಾತಾ ನಂಬರು 55 ಕೈ ಸೇರಿದ 39 ಮೂವತ್ತೊಂಬತ್ತನೇ ನಂಬರು ಮನೆ ಸ್ವತ್ತಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ - 25 ಅಡಿ ಅಗಲದ ರಸ್ತೆ

ಪಶ್ಚಿಮಕ್ಕೆ - 36 ನೇ ನಂಬರು ಸ್ವತ್ತು

ಉತ್ತರಕ್ಕೆ - 40 ನೇ ನಂಬರು ಸ್ವತ್ತು

ದಕ್ಷಿಣಕ್ಕೆ - ವಿ. ಬಾಲಸುಬ್ರಹ್ಮಣ್ಯಂರವರ 38ನೇ ನಂ. ಸ್ವತ್ತು

ಈ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ವ ಪಶ್ಚಿಮ 51 ಐವತ್ತೊಂದು ಅಡಿಗಳು ಹಾಗೂ ಉತ್ತರ ದಕ್ಷಿಣ 30 ಮೂವತ್ತು ಅಡಿಗಳು ಅಳತೆಯ ಸೈಟು ಹಾಗೂ ಇದರಲ್ಲಿರುವ ಒಂದು ಚದರ ಶೀಟಿನ ಮನೆ ಇದ್ದು ಈ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಸೇರಿದೆ. ಇದರ ಇಂದಿನ ಮಾರುಕಟ್ಟೆ, ಬೆಲೆ 36,000-00 ರೂಪಾಯಿಗಳಿಗೆ ಸರಿ ಇರುತ್ತೆ".

17. It is necessary also to note the deed of sale dated 23.09.1981 in terms of which vendor of defendant No.2 purchased site No.39 which is produced at Ex.D3 in terms of which the description of Site No.39 is given as under:

"ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು ಯಶವಂತಪುರದ ಹೋಬಳಿ: ಮಲ್ಲಸಂದ್ರ ಗ್ರಾಮದ ಸರ್ವೆ 55 (ಐವತ್ತೈದು)ನೇ ಪೈಕಿ ಈ ದಿನ ನಿಮಗೆ ಕ್ರಯ ಮಾಡಿರುವ 39 (ಮೂವತ್ತೊಂಭತ್ತು) ನೇ ನಂಬರು ಸೈಟಿಗೆ ಚಕ್ಕುಬಂದಿ :- ಪೂರ್ವಕ್ಕೆ 25 ಅಡಿ ರಸ್ತೆ, ಪಶ್ಚಿಮಕ್ಕೆ 36ನೇ ನಂಬರು ಸೈಟು, ಉತ್ತರಕ್ಕೆ 40ನೇ ನಂಬರು ಸೈಟು,

ದಕ್ಷಿಣಕ್ಕೆ ಈ ದಿನ ಅಲಾಯಿದಾ ಕ್ರಯಪತ್ರದ ಮೂಲಕ ಶ್ರೀ ವಿ. ಬಾಲಸುಬ್ರಮಣ್ಯಂರವರಿಂದ ನೀವು ಕ್ರಯಕ್ಕೆ ಪಡೆಯುವ 38ನೇ ನಂಬರು ಸೈಟು. ಈ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ವ-ಪಶ್ಚಿಮ ಉತ್ತರಕ್ಕೆ ಕಡೆ 51-0 (ಐವತ್ತೊಂದು) ಅಡಿ, ದಕ್ಷಿಣಕ್ಕೆ ಕಡೆ 51-0 (ಐವತ್ತೊಂದು) ಅಡಿ ಉತ್ತರ-ದಕ್ಷಿಣ ಪೂರ್ವದ ಕಡೆ 20-00 (ಇಪ್ಪತ್ತು) ಅಡಿ, ಪಶ್ಚಿಮದ ಕಡೆ 28 (ಇಪ್ಪತ್ತೆಂಟು) ಅಡಿ ಅಳತೆಯಲ್ಲಿರುವ ಅಂದರೆ 15.54 X 7.32 ಮೀಟರು ಅಳತೆ ಇರುವ ಸೈಟು ಈ ಕ್ರಯಕ್ಕೆ ಸೇರಿರುತ್ತೆ. ಈ ಸೈಟಿನ ಮಾರ್ಕೆಟ್ ಬೆಲೆ 4,000-00 ರೂಪಾಯಿಗಳು ಮಾತ್ರ."

18.Thus there is considerable difference in the measurement of site No.39 as mentioned in Ex.D3 and in the deed of sale at Ex.D4. In Ex.D3 the vendor of the defendant No.2 had purchased site No.39 which measures East to West 51 feet and North to South on the East 20 feet and on the West 28 feet. Whereas in the deed of sale at Ex.D4 the measurement is given as East to West 51 feet North to South 30 feet.

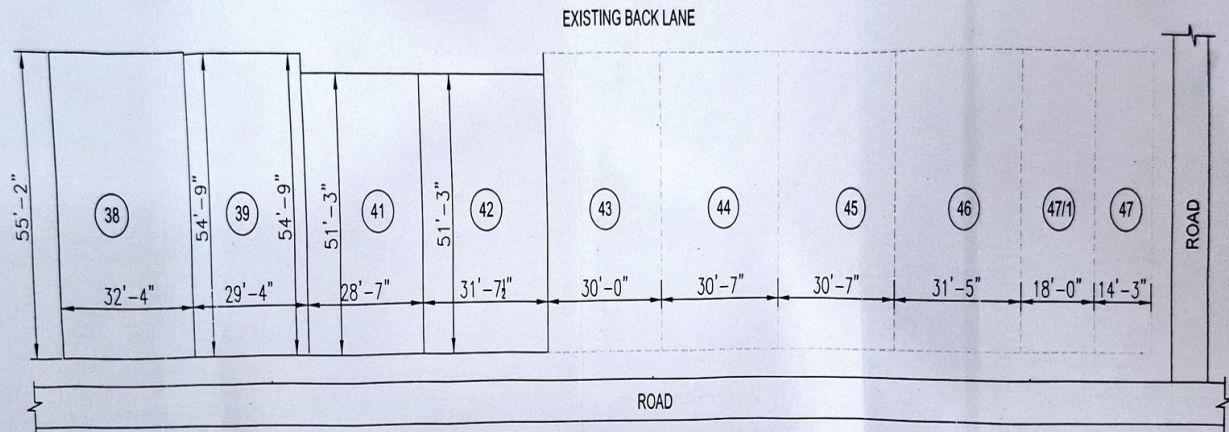
19.Ex.D2 is the sale deed under which vendor's vendor of the defendant No.2 purchased site No.39, the description given therein tallies with the description given in Ex.D3.

20.Also appropriate to refer to the deed of sale dated 23.09.1981 at Ex.D28 in terms of which vendor of the defendant No.2 namely Sri.Boraiah S/o Cheluvaiah has purchased site No.38 which is situated on the southern side of site No.39 boundaries of which are as under:

"ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು ಯಶವಂತಪುರದ ಹೋಬಳಿ: ಮಲ್ಲಸಂದ್ರ
ಗ್ರಾಮದ ಸರ್ವೆ 55 (ಐವತ್ತೈದು)ರ ಪೈಕಿ ಈ ದಿನ ನಿಮಗೆ ಕ್ರಯ ಮಾಡಿರುವ
38 (ಮೂವತ್ತೆಂಟು) ನೇ ನಂಬರು ಸೈಟ್ ಚಕ್ಕುಬಂದಿ :- ಪೂರ್ವಕ್ಕೆ ರಸ್ತೆ.
ಪಶ್ಚಿಮಕ್ಕೆ 37ನೇ ನಂಬರು ಸೈಟ್, ನೇ ನಂಬರು ಪೂರ್ವಕ್ಕೆ : ರಸ್ತೆ ಪಶ್ಚಿಮಕ್ಕೆ : 37ನೇ
ನಂಬರು ಸೈಟ್, ಉತ್ತರಕ್ಕೆ : ಈ ದಿನ ನೀವು ಅಲಾಯಿದಾ ಕ್ರಯ ಪತ್ರದ ಮೂಲಕ ಶ್ರೀ
ಪಿ ವೆಂಕಟೇಶ್‌ರವರಿಂದ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಪಡೆದಿರುವ 39ನೇ ನಂಬರು ಸೈಟ್, ದಕ್ಷಿಣಕ್ಕೆ:
30 ಅಡಿ ರಸ್ತೆ ಈ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ವಪಶ್ಚಿಮ:50 ಅಡಿ ಉತ್ತರ ದಕ್ಷಿಣ
30(ಮೂವತ್ತು) ಅಡಿ ಅಥವಾ 15.24 X9.14 ಮೀಟರು ಅಳತೆಯಿರುವ 38ನೇ
ನಂಬರು ಸೈಟ್ ಕ್ರಯ ಪತ್ರಕ್ಕೆ ಸೇರಿರುತ್ತೆ".

21. From the aforesaid deeds of sale at Exs.D3 and D4 read with Ex.D28 it becomes clear Boraiah was the common owner of both site Nos.38 and 39. And in terms of Ex.D4 he has sold site No.39 in favour of defendant No.2.

22. This Court by order dated 20.11.2025 had allowed the application filed by the appellants under Order 26 Rule 9 CPC for appointment of Court Commissioner. Accordingly, one Sri.Chandraiah, Advocate was appointed as court commissioner. Said court commissioner submitted his report on 08.01.2026 along with sketch and photographs. The sketch produced by the commissioner along with his report is as under:

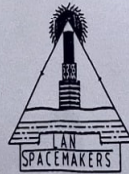
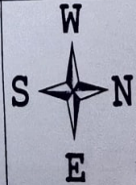


LAYOUT PLAN

Signature:-

10/12/2023

PROJECT TITLE:
LAYOUT PLAN MEASUREMENT IN SURVEY
NO -55 MALLASANDRA VILLAGE T DASARA
HALLI BANGALORE 560 057



LAN SPACEMAKERS
GSTIN: 29AAJFL1862E1Z8
ARUN KUMAR.M.R (MANAGING PARTNER)
Architectural Plans, Vastu, Interior Designers, Landscaping,
Consultancy Services.
#12, First Floor, "Shree Balaji" 1st Cross,
1st Main, Vaishnavi Layout
Vidyaranyapura, Bangalore-97
CELL : 9448124609

PURPOSE :
LAYOUT PLAN

DRAWING TITLE :
LAYOUT PLAN

FILE NAME : PROJECTS / LAYOUT PLAN	
MEASURED BY : ARUN KUMAR.M.R	DATE : 09.12.2023
DRAWN : HARSHI	SCALE : NTS
APPROVED : ARUN KUMAR.M.R	SHEET : A4 - 1 OF 1
DRAWING NO : LAN LAYOUT ADLA - 01	

LAN SPACEMAKERS

#12, First Floor, "Shree Balaji", 1st Cross,
1st Main, Vaishnavi Layout,
Vidyaranyapura, Bengaluru-560097.

23. The aforesaid sketch gives actual measurements of each of the sites bearing Nos.38 to 47 and site No.40 is shown to be missing. Since the aforesaid report was by an advocate court commissioner, at the request of the learned counsel for the parties this Court by order dated 21.04.2026 again appointed Assistant Director of Land Records, Bangalore-North Taluk as court commissioner to conduct survey and to submit the report with reference to the document at Ex.P9-layout plan and the deeds of sale Exhibits P1, D3, D4 and D28 as well as the revenue records. In furtherance, the commissioner has submitted a report. In the report, the commissioner has given the description and dimension of the Site Nos.38, 39, 40 and 41 with reference to Ex.P9 layout plan, and deeds of sale in Exhibits P1, D3, D4, and D28. He has also given actual status and measurement of sites as found on ground. In that site No.40 is stated to be missing. The survey sketch with the description of measurements of the sites is as under:

ಗ್ರಾಮ: ಮಲ್ಲಸಂದ್ರ

ಹೋಬಳಿ: ಯಶವಂತಪುರ

ತಾಲ್ಲೂಕು: ಬೆಂಗಳೂರು ಉತ್ತರ

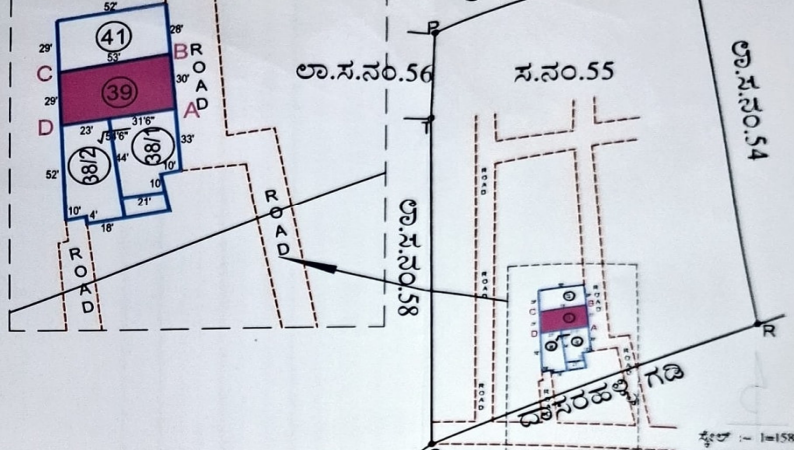
ಘನ ಉಚ್ಚನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ: RFA NO/1160/2007

ರ.ಸ.ನಂ 55 ರಲ್ಲಿ ಸ್ಥಳದಂತೆ ಇರುವ ನಿವೇಶನ ಸಂಖ್ಯೆ 38,39,41 ರ ಬಾಬು ನಕ್ಷೆ

ಎದುರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಲೇಔಟ್ ಪ್ಲಾನ್ (EX-P-9)



ಸ್ಥಳೀಕರಣ ಇರುವುದಿಲ್ಲ.



- ಮಾನ್ಯ ಘನ ಉಚ್ಚನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ RFA NO/1160/2007 ರ ಆದೇಶದ ಮೇರೆಗೆ ಅಳತೆ ಮಾಡಲು ಆದೇಶಿಸಿದಂತೆ, ಅಳತೆ ದಿನಾಂಕ ನಿಗದಿ ಮಾಡಿ, ಅಳತೆ ಮಾಡಿ ನಕ್ಷೆ ತಯಾರಿಸಿದೆ.
- ಮಾನ್ಯ ಘನ ಉಚ್ಚನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ಅತೀಲುದಾರರು ಮತ್ತು ಎದುರುದಾರರು ಹಾಗೂ ಬಾಬು ನಿವೇಶನದಾರರಿಗೆ ಸೋಲೇಸಾ ನೀಡಲು ಆದೇಶಿಸಿದಂತೆ, ಮುಂಚಿತವಾಗಿ ದಿನಾಂಕ ನಿಗದಿ ಮಾಡಿ, ಸದರಿ ದಿನಾಂಕ ಅಂದರೆ 20/05/2026 ರಂದು ಸ್ಥಳಕ್ಕೆ ಹಾಜರಾಗಿ ETS ಉಪಕರಣದ ಸಹಾಯದಿಂದ ಅತೀಲುದಾರರು, ಎದುರುದಾರರು ಹಾಗೂ ಬಾಬುದಾರರ ಸಮಕ್ಷಮ ಅಳತೆ ಮಾಡಿದೆ. ಸದರಿ ಪ್ರದೇಶವು ಅಧಿವೃದ್ಧಿ ಹೊಂದಿದ್ದು, ಮನೆಗಳು ನಿರ್ಮಾಣವಾಗಿರುತ್ತದೆ.
- ಸರ್ವೆ ದಾಖಲೆಗಳ ಆಧಾರದ ಮೇಲೆ ಸರ್ವೆ ನಂಬರ ಗಡಿ ನಿಗದಿಪಡಿಸಿದ (POST) ಹಾಗೂ ಅಳತೆ ಸಮಯದಲ್ಲಿ ಎದುರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಲೇಔಟ್ ಪ್ಲಾನ್ ಆಧಾರದ ಮೇಲೆ ಪ್ರತಿತ ನಿವೇಶನಗಳನ್ನು ಆಳತೆಯಿಂದ ಗುರುತಿಸಿದೆ. ಎದುರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಲೇಔಟ್ ಪ್ಲಾನ್ ಸಂಬಂಧಪಟ್ಟ ಯಾವುದೇ ಪ್ರಾಧಿಕಾರದಿಂದ ಅನುಮೋದನೆ ಆಗಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ.
- ಈ ಚಿತ್ರೆಯಿಂದ ಗುರುತಿಸಿರುವ ಪ್ರತಿತ ಪ್ರದೇಶವು, ಸ್ಥಳದಂತೆ ಅಳತೆ ಮಾಡಿದಾಗ, ಸದರಿ ದಾವಾ ಸ್ವತ್ತು ಪೂರ್ವ-ಪಶ್ಚಿಮ=53ಅಡಿ, 54-6ಅಡಿ ಮತ್ತು ಉತ್ತರ-ದಕ್ಷಿಣ=30ಅಡಿ, 29ಅಡಿ ಒಟ್ಟು = 1582 ಚ.ಅಡಿ ಇದ್ದು, ಸದರಿ ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ 303 ಚ.ಅಡಿ ಕಟ್ಟಡ ಮತ್ತು 1279 ಚ.ಅಡಿ ಸೋಲಾಲ್ ಇಂಡಸ್ಟ್ರಿಯಲ್ ಯುನಿಟ್ ಇರುತ್ತದೆ. ಹಾಗೂ ಸ್ಥಳದಲ್ಲಿ ನಿವೇಶನ ಸಂಖ್ಯೆ 39 ಎಂದು ನಮೂದಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ ಹಾಗೂ ಸದರಿ ಸ್ಥಳದಲ್ಲಿ ಅತೀಲುದಾರರು ಅನುಭವದಲ್ಲಿ ಇರುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ. ಲೇಔಟ್ ಪ್ಲಾನಿನಂತೆ ನಿವೇಶನ ಸಂಖ್ಯೆ 40 ಸ್ಥಳದಲ್ಲಿ ಇರುವುದಿಲ್ಲ.
- ಎದುರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಲೇಔಟ್ ಪ್ಲಾನಿನಂತೆ ಸ್ಥಳವನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ, ಪ್ರತಿತ ನಿವೇಶನ ಸಂಖ್ಯೆಗಳಾದ 39 ಮತ್ತು 40 ಸ್ಥಳದಲ್ಲಿ ಇರುವುದಕ್ಕೂ ಹಾಗೂ ಎದುರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಲೇಔಟ್ ಪ್ಲಾನಿಗೂ ವ್ಯತ್ಯಾಸವಿದ್ದು, ಒಂದಕ್ಕೊಂದು ತಾಳೆ ಇರುವುದಿಲ್ಲ. ಅದರಂತೆಯೇ ಲೇಔಟ್ ಪ್ಲಾನಿನಂತೆ ಹಾಗೂ ಕ್ರಯ ಪತ್ರದಂತೆ ಮತ್ತು ಅನುಭವದಂತೆ ಚಿಕ್ಕಬಂದಿಯನ್ನು ಈ ಕೆಳಕಂಡಂತೆ ದಾಖಲಿಸಿದೆ.

EX-P-9 (ಲೇಔಟ್ ಪ್ಲಾನ್ ಪ್ರಕಾರ)	
ನಿವೇಶನ ಸಂಖ್ಯೆ 39 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 30ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 40
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 38
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 36

EX-D-2, EX-D-3 (ಕ್ರಯ ಪತ್ರದಂತೆ)	
ನಿವೇಶನ ಸಂಖ್ಯೆ 39 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = ಚಿಕ್ಕಬಂದಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 40
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 38
ಪೂರ್ವ	25 ಅಡಿ ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 36

ನಿವೇಶನ ಸಂಖ್ಯೆ 39 ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ(ಸ್ಥಳದಂತೆ) [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = ಚಿಕ್ಕಬಂದಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 41
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 38
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 35

EX-P-9 (ಲೇಔಟ್ ಪ್ಲಾನ್ ಪ್ರಕಾರ)	
ನಿವೇಶನ ಸಂಖ್ಯೆ 40 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ [50ಅಡಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 30ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 41
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 39
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 35

EX-P-1 (ಕ್ರಯ ಪತ್ರದಂತೆ)	
ನಿವೇಶನ ಸಂಖ್ಯೆ 40 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ [50ಅಡಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 30ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 41
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 39
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 35

- ನಿವೇಶನ ಸಂಖ್ಯೆ 38 ಮತ್ತು 41 ರ ಹಕ್ಕುದಾರರು ಅಳತೆ ದಿನದಂದು ಸಲ್ಲಿಸಿದ ಕ್ರಯ ಪತ್ರದ ನಕಲು ಪ್ರತಿಗಳಲ್ಲಿರುವ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ ಈ ಕೆಳಕಂಡಂತೆ ದಾಖಲಿಸಿದೆ. ಲೇಔಟ್ ಪ್ಲಾನ್ ಪ್ರಕಾರ ನಿವೇಶನ ಸಂಖ್ಯೆ 38 ನಿಂದ ಅಳತೆ ಮಾಡಿರುವಂತೆ ಅದರ ಮುಂದುವರಿದ ಭಾಗವಾದ ಪ್ರತಿತ ಪ್ರದೇಶವು ನಿವೇಶನ ಸಂಖ್ಯೆ 39 ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಆದರೆ ಲೇಔಟ್ ಪ್ಲಾನಿನ ಆಳತೆಯಂತೆ ನಿವೇಶನ ಸಂಖ್ಯೆ 38 ರ ಅಳತೆಗಳು ತಾಳೆ ಇರುವುದಿಲ್ಲ.

EX-P-9 (ಲೇಔಟ್ ಪ್ಲಾನ್ ಪ್ರಕಾರ)	
ನಿವೇಶನ ಸಂಖ್ಯೆ 38 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 23ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 39
ದಕ್ಷಿಣ	ರಸ್ತೆ
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 37

ನಿವೇಶನ ಸಂಖ್ಯೆ 38 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ(ಕ್ರಯ ಪತ್ರದಂತೆ) [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 23ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 39
ದಕ್ಷಿಣ	30 ಅಡಿ ರಸ್ತೆ
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 37

ನಿವೇಶನ ಸಂಖ್ಯೆ 38 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ(ಸ್ಥಳದಂತೆ) [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = ಚಿಕ್ಕಬಂದಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 39
ದಕ್ಷಿಣ	ಪೂರ್ವ ಮತ್ತು ನಿವೇಶನ ಸಂಖ್ಯೆ 21.16
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 37

EX-P-9 (ಲೇಔಟ್ ಪ್ಲಾನ್ ಪ್ರಕಾರ)	
ನಿವೇಶನ ಸಂಖ್ಯೆ 41 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 30ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 42
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 40
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 34

ನಿವೇಶನ ಸಂಖ್ಯೆ 41 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ(ಕ್ರಯ ಪತ್ರದಂತೆ) [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = 30ಅಡಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 42
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 40
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 34

ನಿವೇಶನ ಸಂಖ್ಯೆ 41 ರ ಅಳತೆ ಮತ್ತು ಚಿಕ್ಕಬಂದಿ(ಸ್ಥಳದಂತೆ) [ಚಿಕ್ಕಬಂದಿ(ಪೂರ್ವ-ಪಶ್ಚಿಮ) = ಚಿಕ್ಕಬಂದಿ(ಉತ್ತರ-ದಕ್ಷಿಣ)]	
ಉತ್ತರ	ನಿವೇಶನ ಸಂಖ್ಯೆ 42
ದಕ್ಷಿಣ	ನಿವೇಶನ ಸಂಖ್ಯೆ 39
ಪೂರ್ವ	ರಸ್ತೆ
ಪಶ್ಚಿಮ	ನಿವೇಶನ ಸಂಖ್ಯೆ 34

ಅತೀಲುದಾರರ ಉಪಸ್ಥಿತಿಯಲ್ಲಿ
ಸರ್ಕಾರಿ ಭೂಮಾಪಕರು
ಭೂ.ದಾ.ಸ.ನಿ. ಕಛೇರಿ
ಬೆಂಗಳೂರು ಉತ್ತರ

24. There is no dispute between the plaintiff and the defendants that sites being claimed by them were formed on the land bearing Sy.No.55 of Mallasandra Village in terms of a layout plan at Ex.P9. Thus there is consensus between the plaintiff and the defendants with regard to layout having been formed in terms of Ex.P9. Therefore Ex.P9 has to be taken as a base document to identify the existence and location of the sites.
25. As per Ex.P9, the lane in which Site No.39 claimed by the defendant and Site No.40 being claimed by the plaintiff consists of sites commencing from South towards North with Nos.38 upto 47. In the first court Commissioner report, as extracted hereinabove, the Commissioner has given the measurements of all the sites namely site Nos.38 upto 47. Perusal of the said report do not indicate encroachment from the northern side of the site No.40. However there appears to be about 4 to 5 feet of variation in all sites put together.
26. Sketch furnished by the second court commissioner namely Assistant Director of Land Records provides specific description of the sites as shown in layout plan

at Ex.P9 and description provided in the deeds of sale at Ex.P1, D3, D4 as well as the actual measurement and existence of sites on ground. In that Site No.38 which belongs to Boraiah, who is examined as DW2, he having purchased in terms of Ex.D28 is situated on the southern end of the lane beyond which there appears to be 30 feet road. Measurement of the said Site No.38 as given in layout plan at Ex.P9 is East to West $51+55/2$ North to South 23 feet. In the deed of sale at Ex.D28 as already noted above measurement is shown as East to West 50 feet and North to South 30 Feet. On ground, the actual measurement of site No.38 is East to West $54.6+46/2$ and North to South $33+52/2$. In other words on the North to South instead of 23 feet DW2 seemed to be in possession of 42.5 feet, that is, 19.5 feet more than the measurement shown as per the layout plan and 12.5 feet more than the measurement shown in the deed of sale at Ex.D28.

27. Defendant No.2 who claimed to have purchased site No.39 in terms of Ex.D4, measurement of which given thereunder is East to West 51 feet and North to South 30 feet. In the layout plan at Ex.P9 measurement of the

said site is given as East to West $50+51/2$ and North to South 30 feet. In the document at Ex.D3 under which vendor of the defendant No.2 purchased the said site the measurement is given as East to West 51 feet, North to South on the east 20 feet and on the west 28 feet that is $51 \times 20 + 28/2$. Similar is the measurement shown in Ex.D2. However, on ground, the actual measurement of site No.39 found by the second commissioner is East to West $53+54.6/2$ and North to South $30+29/2$.

28. In other words, vendor of defendant No.2 (and even vendor's vendor) had right only to an extent of North to South $20+28/2$ but he has conveyed the said site measurement showing as North to South 30 feet. Thus, defendant No.2 is in possession of about 30 feet North to South instead of 24 feet.

29. This leads to an inference that Boraiah-DW2 being in possession of excess area on the North to South that is about 19.5 feet (as per Ex.P9) or 12.5 feet (as per Ex.D28). The said excess area falls into the site No.39 being claimed by the defendant No.2. Resulting in defendant No.2 who is already in excess possession of

about 6 feet more than his entitlement, in turn correspondingly occupying portion of site No.40 belonging to the plaintiff.

30. Since deeds of sale are registered documents conveying right, title and interest in immovable properties, the Court deems it appropriate to take the extent occupied by defendant No.2 to be at 18.5 feet North to South and 50 feet East to West forming southern part of site No.40 i.e., suit schedule property belonging to the plaintiff.

31. This is the only conclusion that can be arrived at based on the second commissioner report which is in consonance with the documents of title produced by the parties. Defendants have not disputed the said report of the second commissioner.

32. However, a submission is sought to be made by the learned counsel for the appellants that DW2 who is the owner of Site No.38 though seem to be in possession of site measuring more than what is mentioned in his sale deed, he has occupied the road which is on the southern side of his site. There is neither any pleading nor material evidence placed on record in this regard. Therefore it has to be inferred that on the southern side of Site No.38

there exists road as mentioned in the layout plan and the measurement has to be taken into consideration only from the edge of the said site No.38 which indicate that DW2 has occupied the area more than what he is entitled to under the deed of sale at Ex.D28 which invariably falls into and overlaps the site No.39 belonging to defendant No.2. Defendant No.2 therefore has occupied southern portion of site No.40 of plaintiff which is on to the northern side of his site No.39.

32. There is yet another aspect of the matter which this Court has noticed is Boraiah was the owner of both site Nos.38 and 39 having purchased the same in terms of Ex.D28 and Ex.D3 respectively on the very same day that is 23.09.1981. It is the same Boraiah who has sold site No.39 in terms of Ex.D4 in favour of defendant No.2. In the aforesaid documents name of the father of Boraiah is shown as Cheluvaiah. However in his affidavit filed in lieu of his examination-in-chief as DW2 his father's name is shown as "Boregowda" for the reason best known to him.

33. Therefore the possibility of DW2 Boraiah being owner of site No.38 occupying portion forming part of site No.39, eventually defendant No.2 occupying portion of site

No.40 more than his entitlement becomes even more acceptable and credible.

34. The submission made by the learned counsel for the appellants regarding probability of owner of Site No.41 namely Sathyanarana Gupta, brother of plaintiff having encroached upon also cannot be countenanced inasmuch as the report of the first court commissioner as extracted herein above, indicate that on ground, Site No.41 measures North to South 28.7 feet. The measurement of the other sites namely 42, 43, 44, 45, 46, 47, would indicate total minor variation of about 4 to 5 feet. Therefore only conclusion on the basis of the aforesaid factual aspect as to the matter could be drawn is that defendant No.2 occupying substantial portion of site No.40 belonging to the plaintiff.

35. Further though the defendant No.2 claimed to have been purchased site No.39 with the building thereon and being in possession ever since the date of purchase that is 1992, necessary to note document at Ex.D9 dated 06.01.1994 issued by the Tahsildar, indicating no objection in favour of defendant No.2 to obtain electricity

connection to the house constructed on site bearing Khata No.55/39. The said document indicate he having put up construction in the year 1994. The electricity connection seemed to have been taken only on and after 1994. In other words the claim of the defendant No.2 of earlier existence of the building with the electricity connection cannot be countenanced. Plaintiff claimed to have been in Tamil Nadu between 1994 and 1996 and he had visited the spot in 1996 and found the construction over his site by the defendant No.2. The document at Ex.D9 noted above indicate defendant No.2 constructing the building in the year 1994 and obtaining the electricity connection thereof.

36. For the aforesaid reasons and analysis this Court is of considered view that the defendants have encroached upon an extent of about 18.5 feet on the North to South and 50 feet East to West forming southern part of Site No.40 subject matter of the suit which belonged to the plaintiff and judgment and decree passed by the trial Court requires to be modified to that extent.

37. Points are answered accordingly.

38. Accordingly, following:

ORDER

- (i) Appeal ***partly allowed***.
- (ii) Judgment and decree dated 22.02.2007 passed in O.S.No.2360/1997 on the file of III Additional City Civil Judge, Bangalore, is modified.
- (iii) Defendants shall deliver portion measuring an extent of 18.5 feet North to South, 50 feet East to West in their possession forming part of site No.40 subject matter of suit, to the plaintiff.
- (iv) Rest of the Judgment and decree of trial Court remains unaltered.

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

SBN