



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 1265 OF 2016 (DEC/INJ)

C/W

REGULAR SECOND APPEAL NO. 1264 OF 2016

IN RSA No. 1265/2016

BETWEEN:

1. GANGAMMA
W/O HANUMATHARAYAPPA
AGED ABOUT 55 YEARS.
2. LATHA
D/O HANUMATHARAYAPPA
AGED ABOUT 36 YEARS
3. MANJUNATHA
S/O HANUMATHARAYAPPA
AGED ABOUT 31 YEARS

ALL ARE R/O SHETTYHALLI PALYA
(CHENNIGAYYANAPALYA)
WARD NO.32
TUMKUR CITY - 572101.

...APPELLANTS

(BY SRI. VIJAYAKUMAR S.C., ADVOCATE)



NC: 2026:KHC:17865
RSA No. 1265 of 2016
C/W RSA No. 1264 of 2016

AND:

1. PUTTAREVAMMA
W/O LATE HANUMANTHARAPPA
SINCE DECEASED REP. BY LRS.
RESPONDENTS NO. 2, 3, 5, AND 6.
 2. S.H. NAGARAJU
S/O LATE HANUMANTHARAPPA
AGED ABOUT 48 YEARS
 3. SAROJAMMA
W/O S.H. NAGARAJ
AGED ABOUT 45 YEARS
 4. SOWMYA
D/O S.H. NAGARAJU
SINCE DECEASED REP. BY LRS.
 - 4(a). YASHSWINI
D/O SOWMYA
AGED ABOUT 15 YEARS
 - 4(b). VARUN
S/O SOWMYA
AGED ABOUT 12 YEARS
- RESPONDENTS NO.4(a) AND 4(b)
ARE MINORS, REPRESENTED BY
THEIR GUARDIAN RESPONDENT NO.2
S.H. NAGARAJU, S/O LATE HANUMANTHRAPPA
AGED ABOUT 48 YEARS
R/AT SHETTYHALLI
TUMKUR TALUK & DISTRICT - 572 101.
5. MANU
S/O S.H. NAGARAJU
AGED ABOUT 22 YEARS
 6. PALLAVI
D/O S.H. NAGARAJU



AGED ABOUT 20 YEARS
ALL ARE R/AT SHETTYHALLI
TUMKUR TALUK & DISTRICT - 572 101.

7. GANGANARASIAH
S/O LATE NANJUNDAIAH
SINCE DECEASED REP. BY LRS.

7(a). HANUMANTHARAYAPPA
S/O LATE GANGANARASIAH
AGED : MAJOR

7(b). NARASIMHAMURTHY
S/O LATE GANGANARASIAH
AGED : MAJOR

7(c). SAROJAMMA
D/O LATE GANGANARASIAH
AGED : MAJOR

7(d). MAHANTESH
S/O LATE GANGANARASIAH
AGED : MAJOR

7(e). BHAGYAMMA
W/O LATE GANGANARASIAH
AGED : MAJOR

RESPONDENTS NO.7(a) TO 7(e)
ARE R/AT VAMAJENAHALLI VILLAGE
KOLALA POST & HOBLI - 572 140
KORATAGERE TALUK
TUMKUR DISTRICT.

8. SMT. G.L. LALITHADEVI
D/O G.C. LAKSHMINARAYANA SWAMY
AGED ABOUT 38 YEARS
APPAGONDANAHALLI
MANNE POST
THYAMAGOUNDLU HOBLI,



NC: 2026:KHC:17865
RSA No. 1265 of 2016
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NELAMANGALA TALUK,
BANGALORE RURAL DISTRICT.

...RESPONDENTS

(BY SRI. RAVISHANKAR S., ADVOCATE FOR R2 TO R8;
R2 TO R6 ARE LRS OF R1 V/O DATED 30.07.2025.
R4(a) AND R4(b) ARE MINORS REPRESENTED BY R2.)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF CODE OF CIVIL PROCEDURE, AGAINST THE
JUDGMENT AND DECREE DATED 29.04.2016 PASSED IN R.A.
NO.25/2016 ON THE FILE OF THE II ADDL. SENIOR CIVIL
JUDGE AND JMFC., TUMAKURU, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
15.12.2015 PASSED IN O.S. NO.987/2008 ON THE FILE OF THE
III ADDL. CIVIL JUDGE AND JMFC., TUMAKURU.

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1. GANGAMMA
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AGED ABOUT 55 YEARS.
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AGED ABOUT 36 YEARS



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NELAMANGALA TALUK,
BANGALORE RURAL DISTRICT.

...RESPONDENTS

(BY SRI. RAVISHANKAR S., ADVOCATE FOR R2 TO R8;
R2 TO R6 ARE TREATED AS LRS. OF DECEASED R1)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF CODE OF CIVIL PROCEDURE, AGAINST THE
JUDGMENT AND DECREE DATED 29.04.2016 PASSED IN R.A.
NO.14/2016 ON THE FILE OF THE II ADDL. SENIOR CIVIL
JUDGE AND JMFC., TUMAKURU, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
15.12.2015 PASSED IN O.S. NO.987/2008 ON THE FILE OF
THE III ADDL. CIVIL JUDGE AND JMFC., TUMAKURU.



THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

1. These Regular Second Appeals are preferred by the plaintiffs in O.S.No.987/2008, assailing the Judgment and Decree dated 29.04.2016 in R.A.No.14/2016 & R.A.No.25/2016 on the file of the II Additional Senior Civil Judge and JMFC, Tumakuru, allowing the appeal in R.A.No.14/2016 and dismissing the appeal in R.A.No.25/2016, and as such, setting aside the Judgment and Decree dated 15.12.2015 in O.S.No.987/2008 on the file of the III Additional Civil Judge and JMFC, Tumakuru, decreeing the suit in part.

2. For the sake of convenience, the parties are referred with reference to their rank before the Trial Court.

3. It is the case of the plaintiffs that the land bearing Survey No.276/1, measuring 1 acre 8 guntas of Shettyhalli Village, Kasaba Hobli, Tumakuru Taluk, belongs to Hanumantharayappa, son of Chikka Hanumanthaiah (father of



defendant No.2 and husband of defendant No.1). It is stated that, Hanumantharayappa died on 17.05.2006 leaving behind the defendant Nos.1 to 6 as his legal heirs. It is further averred in the plaint that, Hanumantharayappa had executed a deed of usufructuary mortgage dated 27.01.1967 in favour of Hariyamma (mother of the plaintiff No.1), in respect of land bearing Survey No.276/1, totally measuring 3 acres 25 guntas. It is also stated in the plaint that, the father of defendant No.2 had executed registered Sale Deed dated 17.11.1970 in favour of the mother of the plaintiff No.1 i.e., Hariyamma, for valuable consideration. Therefore, it is the case of the plaintiffs that, the plaintiffs are in possession and enjoyment of the suit schedule property, having acquired the same as per the registered Sale Deed dated 17.11.1970. It is also stated that, the father of the defendant No.2 filed Form No.7 claiming occupancy rights in respect of the Schedule A property as a tenant and the said application in Form No.7 was rejected by the Land Tribunal and being aggrieved by the same, the father of defendant No.2 has preferred LRA No.24/1987 before the Appellate Authority which came to be allowed by the Appellate Authority. Thereafter the plaintiff No.1 preferred LRRP No.4085/1989 before this Court



which came to be allowed on 06.03.2003. Therefore, it is the contention of the plaintiffs that, the plaintiffs are the owners in possession of the suit schedule property. It is also stated in the plaint that, the father of defendant No.2 has filed O.S.No.160/2006 against the plaintiffs seeking relief of permanent injunction which came to be dismissed and therefore, the plaintiffs have sought for relief of declaration with consequential relief of injunction against the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule properties in O.S.No.987/2008. It is also stated in the plaint that, the defendant Nos.1 to 6 have sold the suit schedule 'B' and 'C' property by way of two Sale Deeds dated 02.11.2006, in favour of defendant No.7 and defendant No.8 and the same is not binding on the plaintiffs.

4. After service of notice, the defendants entered appearance and filed detailed written statement, denying the averments made in the plaint. It is the specific case of the defendants that the suit itself is not maintainable as the plaintiffs have not sought for positive relief of declaration, and therefore sought for dismissal of the suit on the ground that the



nature of declaration sought for by the petitioner is in the negative, which cannot be granted in the suit. It is also stated by the defendants by denying the registered mortgage deed dated 27.01.1967 and Sale Deed dated 17.11.1970 and as such denied the possession of the plaintiffs over the suit schedule properties. It is the specific case of the defendants that the suit schedule properties are the joint family properties of Chikka Hanumanthaiah - grandfather of defendant No.2 and he died during 1975 leaving behind the father of the defendant No.2 and one Ganganna, and as such the defendants sought for dismissal of the suit.

5. Based on the pleadings on record, the Trial Court has formulated the issues and the additional issues for its consideration. In order to establish their case, the plaintiffs have examined two witnesses as P.W.1 and P.W.2 and got marked 10 documents as Exhibits P1 to P10. On the other hand, the defendants have examined two witnesses as D.W.1 and D.W.2 and got marked 72 documents as Exhibits D1 to D72. The Trial Court after considering the material record, by its Judgment and Decree dated 15.12.2015 decreed the suit in



part and held that, Sale Deed dated 02.11.2006 executed by the defendants No.1 to 6 in favour of defendant No.7 and 8 in respect of the suit schedule B & C property as illegal and same are not binding on the plaintiffs. However, the relief of permanent injunction claimed by the plaintiffs came to be dismissed. Feeling aggrieved by the Judgment and Decree passed by the Trial Court, the plaintiffs have preferred R.A.No.25/2016 and the defendants have preferred R.A.No.14/2016 before the First Appellate Court. The appeals were clubbed together, heard and disposed of by the First Appellate Court, by common Judgment and Decree dated 29.04.2016, allowing the R.A.No.14/2016 and dismissing the R.A.No.25/2016. Consequently the Judgment and Decree dated 15.12.2015 in O.S.No.987/2008 came to be dismissed. Feeling aggrieved by the same, the plaintiffs have preferred these Regular Second Appeals.

6. This Court, vide order dated 25.03.2021, has formulated the following substantial questions of law:

"1). Whether the First Appellate Court committed an error in interfering with the judgment and decree of



the trial Court on the ground that the plaintiff had sought negative declaration of annulling the sale deeds executed by defendant Nos.1 to 6 in favour of defendant Nos.7 and 8, unmindful of the fact that the title of the plaintiff was not in dispute at all?

2) Whether the trial Court committed an error in refusing to grant the relief of perpetual injunction while holding that the sale deeds executed by defendant Nos.1 to 6 in favour of defendant Nos.7 and 8 were illegal and not binding on the plaintiffs?

3) Whether the First Appellate Court was right in holding that the proceedings initiated under the Land Reforms Act did not bind the Civil Court?"

7. I have heard Sri. Vijayakumar S.C., learned counsel appearing for the appellants and Sri. Ravishankar S., learned counsel appearing for the respondents.

8. Sri. Vijayakumar S.C., learned counsel appearing for the appellants, contended that the father of the defendant No.2 had executed usufructuary mortgage in favour of the mother of



the first plaintiff, i.e., Hariyamma, on 27.01.1967 and thereafter absolute registered Sale Deed was executed in favour of the mother of the first plaintiff on 17.11.1970 and therefore the plaintiffs are the owners in possession of the suit schedule property. It is also argued by the learned counsel appearing for the appellants, that the father of defendant No.2 had filed Form No.7 before the Land Tribunal which came to be rejected and thereafter, the father of defendant No.2 had preferred appeal in LRA No.24/1987 which came to be allowed. Thereafter the plaintiff No.1 had preferred LRRP No.4085/1989 which came to be allowed on 06.03.2003 and same would fortify the contention of the plaintiffs as to the ownership in respect of the suit schedule properties and therefore sought for interference of this court.

9. It is also contended by the learned counsel appearing for the appellants, that the finding recorded by the Trial Court refusing to grant the relief of injunction despite the fact that the plaintiffs are in possession of the schedule property is incorrect and accordingly, sought for interference of this Court. Finally it is argued that, as per Exhibit D7, the mutation extract



in MR No.36/1989-90 in respect of the land in question is in the name of the Ganganna, who is the brother of the deceased Hanumantharayappa, and as per Exhibit D22 and Exhibit D23, the land in question stands in the joint names of Hanumantharayappa and Gangappa, and therefore, it is argued that, both the Courts below have committed an error in refusing to grant the relief of injunction and accordingly, sought for interference of this Court.

10. In order to buttress his arguments, Sri. Vijayakumar S.C., learned counsel appearing for the appellants, places reliance on the Judgment of the Hon'ble Supreme Court in the case of **STATE OF MADHYA PRADESH Vs. USHADEVI** reported in **(2015) 8 SCC 672** and in the case of **EUREKA BUILDERS AND OTHERS Vs. GULABCHAND, (D) BY LRS AND OTHERS** reported in **(2018) 8 SCC 67** and contended that, both the Courts below ought to have granted the relief of declaration based on the Order passed by this court in LRRP No.4085/1989. Learned counsel for the appellants has also relied upon the Judgment of the Division Bench of this Court in the case of **SRI. U. VIJAYA KUMAR AND ANOTHER Vs.**



SMT. MALINI V. RAO reported in **ILR 2016 KAR 2670** and contended that, both the Courts below have erred in arriving at a conclusion without considering the averments made in the plaint in whole as to granting relief of declaration and therefore, sought for interference of this Court.

11. Per contra, Sri. Ravishankar S. learned counsel appearing for the respondents, invited the attention of the Court to Section 42 and 43 of the Indian Evidence Act and argued that, the Order passed by this Court in LRRP No.4085/1989 cannot be considered as a relevant document for conferring the relief of declaration in favour of the plaintiffs. It is further argued by the learned counsel appearing for the respondents by inviting the attention of the Court to Section 34 of the Specific Relief Act, 1963, as to seeking declaratory Decree from the competent Court and argued by referring to the prayer made in the plaint, that the plaintiffs have sought for negative relief against the defendants, which itself is not maintainable. Learned counsel referred to the deposition of P.W.1 and submitted that, P.W.1 admits in the cross-examination that the defendant Nos.7 and 8 are in possession of the suit schedule



property and therefore, submitted that the suit for declaration without seeking relief of possession is not maintainable and accordingly, the suit itself is liable to be dismissed. In order to buttress his arguments, learned counsel appearing for the respondents referred to the Judgment of the Hon'ble Supreme Court in the case of **N.V. SRINIVAS MURTHY AND OTHERS Vs. MARIYAMMA (DEAD) BY PROPOSED LRS. AND OTHERS** reported in **(2005) 5 SCC 548** and argued that the plaintiffs' claim for declaration is based on a registered Sale Deed, however, the same has been executed pursuant to the deed of a usufructuary mortgage which is a loan transaction and not a valid sale and therefore, sought for dismissal of the suit.

12. Learned counsel appearing for the respondents places reliance on the Judgment of the Division Bench of this Court in the case of **M/S KOLTE PATIL DEVELOPERS LTD Vs. NTI HOUSING CO-OPERATIVE SOCIETY AND OTHERS** reported in **(2015) 2 KLJ 373** and by referring to paragraph 45, it is argued that, the plaintiff ought not to have sought for the positive declaration as to the suit schedule property is



concerned and therefore argued that the prayer made in the
plaint itself cannot be granted by the competent Civil Court. It
is also argued by the counsel appearing for the respondents by
relying on the Judgment of the Hon'ble Supreme Court in the
case of **VENKATARAJU AND OTHERS Vs. VIDYANE**
DOUREJADJAPERUMAL (D) BY LRS AND OTHERS reported
in **(2014) 14 SCC 502** and argued that, the declaration sought
for by the plaintiffs was not in the nature of a declaratory relief.
However, the plaintiffs have sought for the declaration that the
two Sale Deeds made in favour of defendant Nos.7 and 8 by
defendant Nos.1 to 6 is not binding on the plaintiffs and the
and accordingly sought for the dismissal of the appeals.

13. In the light of the submissions made by the learned
counsel appearing for the parties, on careful examination of the
records would indicate that, originally the land in question
belonged to one Hanumantharayappa, son of Chikka
Hanumanthaiah(father of the defendant No.2 and husband of
the defendant No.1). The said Hanumantharayappa died on
17.05.2006 leaving behind the defendant Nos. 1 to 6 as his
legal heirs. It is also to be noted that the father of the



defendant No.2 - Hanumantharayappa had executed the deed of usufructuary mortgage dated 27.01.1967 in favour of the mother of the plaintiff No.1 - Hariyamma, in respect of the land bearing Survey No. 276/1, measuring 3 acres 24 guntas. It is to be noted that, out of it, the mortgage was made in favour of the mother of the plaintiff to an extent of 1 acre 8 guntas, which is described as the Schedule A property in the plaint. It is also stated that, the father of defendant No.2 had executed the registered Sale Deed dated 17.11.1970 in favour of the mother of the plaintiff No.1 for valuable consideration. These two registered Sale Deeds have been held as nominal deeds by the defendants in their written statement. It is also to be noted that, the father of defendant No.2 had filed Form No.7 before a competent Land Tribunal seeking occupancy right in respect of the subject matter of the land, which came to be rejected and thereafter the father of defendant No.2 had preferred LRA No.24/1987 before the First Appellate Court which came to be allowed and being aggrieved by the same, the plaintiff No.1 had preferred LRRP No.4085/1989 before this Court, which came to be allowed on 06.03.2003 within (Ex.P3). Thereafter, the schedule property has been sold by defendant



Nos.1 to 6 in favour of defendant No.7 and 8 as per the registered Sale Deeds at Exhibits P4 and P5 respectively. In the backdrop of these aspects, the prayer made in the plaint reads as under:

"WHEREFORE, The plaintiffs pray that this Hon'ble court be pleased to pass judgment and decree declaring that the two sale deeds dated 2-11-2006 executed by the defendants 1 to 6 & in favour of defendant No.7 and 8 respect of suit schedule "B" and "C" property as illegal and not binding on the plaintiffs and declare that defendant 1 to 6 have no valid title over the suit schedule "A" property and grant, consequential relief of injunction restraining the defendants and their agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties and grant such other relief as this Hon'ble court deems fit under the circumstances of the case in the interest of justice."

14. On careful consideration of the prayer made in the suit, the plaintiffs have sought for a decree of declaration to quash the two registered Sale Deeds dated 02.11.2006 said to have been executed by defendant Nos.1 to 6 in favour of defendant



Nos.7 and 8 in respect of the 'B and C' schedule properties are concerned and have stated that those two Sale Deeds are not binding on the plaintiffs and the defendant Nos. 1 to 6 have no title in respect of suit schedule A property, inter alia sought for relief of injunction restraining the defendants from interfering with the suit scheduled property. In this aspect, it is relevant to follow the declaration of law by a Division Bench of this Court in the case of **M/S. KOLTE PATIL DEVELOPERS LTD** (supra), para 45.reads as under:

"45. If the plaintiffs right in respect of vacant site is emphatically denied by the defendants, the remedy available to the plaintiff is only to seek the comprehensive relief of positive declaration with the consequential relief of permanent injunction, if it is of the firm opinion that it is in possession of the same or for possession if the adversary' is in possession of the same. Principles to this effect have been clearly laid down by the Hon'ble Apex Court in the case of Anathula Sudhakar v. Buchireddy [(2008) 4 SCC 594 : AIR 2008 SC 2033] . Plaintiff has not adopted this approach. On the other hand the plaintiff has very intelligently made an attempt to seek the negative relief of declaration in lieu of positive declaration of



having acquired absolute title. As already discussed at length, plaintiff has not acquired any title on the basis of a compromise entered into in a suit filed for permanent injunction by the 1st defendant earlier, more particularly, in not attempting to enforce the alleged right acquired on the basis of compromise. Even on this count also the present suit is not at all maintainable in law or on facts."

(underlined by me)

15. It is also relevant to follow the declaration of law by the Hon'ble Supreme Court in the case of **VENKATARAJU** (supra), wherein, paragraph Nos.13 to 18 read as under:

"13. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

14. Ramaraja claiming himself to be the reversioner, had filed a suit against the purchaser Vedavalliammalle, which was decided in 1965, and the issue of nature of title, with respect to whether the interest of Thayanayagy Ammalle was merely usufructuary or absolute, was considered. The court had then come to the conclusion vide judgment and decree dated 29-11-1965, that the same was premature, as the suit could not have been filed during



the lifetime of Thayanayagy Ammalle. In the suit OS No. 58 of 1982, undoubtedly, the contesting respondents had also been shown as the residents of the suit property, and relief had been claimed only for declaration that the plaintiff was the legal heir of the deceased Kannussamy Row, the great grandson of Venkatachala Naicker, having title to the suit property, and further, for declaration that the sale deed dated 16-7-1959 was null and void.

15. In Para 4 of the written statement, it has been mentioned that the respondent-defendants were living in the suit property along with Defendants 3 to 9, their tenants. In view of the pleadings taken by the parties, a large number of issues were framed by the trial court, including whether the plaintiff was the legal heir of the deceased Kannussamy Row; whether the sale deed dated 16-7-1959 was null and void; and whether the plaintiff was entitled for the declaration, as prayed for.

16. The trial court held, that Thayanayagy Ammalle had not acquired absolute right and that the plaintiff therein was thus, the reversioner. The sale deed dated 16-7-1959 was void. However, as the property was in the possession of the respondent-defendants, and consequential relief of delivery of possession was not asked for, the suit was not maintainable.



17. Being aggrieved, the parties filed Cross-Appeal Suit Nos. 198/83, 21/88 and 43/88. All the aforesaid appeal suits were disposed by a common judgment of the first appellate court, and the said court held, that Vedavalliammalle was not residing in the suit property as she was residing somewhere, and had rented the house to three different tenants, with a total strength of about 26 members. Therefore, Defendant 1 was not in possession of the suit property even as early as 1969, and therefore, Defendant 10 also did not have possession of the suit property. In view of the fact that the tenants could have been evicted subsequently by the appellant-plaintiff, resorting to the provisions of the 1980 Act, which had been extended up to 31-3-1990, the suit was maintainable, and the trial court ought not to have dismissed the said suit on the ground that the appellant-plaintiff had not sought consequential relief of recovery of possession.

18. The High Court having considered various points involved therein held, that as per Article 2265 of the French Civil Code, 1908, a person who had acquired an immovable property in good faith, and under an instrument which was on the face of it capable of conferring a title, would perfect his title by prescription to the land in ten years, in the district of the Court of Appeal, when the owner lives in the same district as



that in which the land lies, and in twenty years if the true owner lives outside such district. Admittedly, the first defendant Vedavalliammalle had purchased the suit property from the absolute owner Thayanayagy Ammalle, as per sale deed dated 16-7-1959. Thus, she had become the rightful owner, said sale deed being not null and void."

16. In the case of **ARALAPPA VS. JAGANNATH AND OTHERS** reported in **ILR 2007 KAR 339**, this Court had an occasion to consider the scope and ambit of Section 34 of the specific relief Act. The relevant paragraph Nos.29 to 31 therein, are extracted herein below:

" 29. In the light of the aforesaid judgment and the statutory provisions referred supra, it is clear that, the object of the section is to perpetuate and strengthen testimony regarding title and protect it from adverse attacks and to prevent future litigation by removing existing cause of controversy. The policy of the legislature is not only to secure to a wronged party possession of the property taken away from him but also to see that he is allowed to enjoy that property peacefully. The proviso to the said Section shows the care that has been taken by the legislature to avoid multiplicity of suits and to



prevent a person getting the declaration of right in one suit and immediately after the remedy already available in the other. This is clear from the proviso of the Section. The proviso lays down that no Court shall make such declaration where the plaintiff being able to seek further relief than mere declaration of title omits to do so. The object of this proviso is to avoid multiplicity of the suits. Where the plaintiff is entitled to some consequential relief, directly flowing from the right or title of which he seeks declaration in the suit, he must seek declaration in the first instance and a consequential relief in the same suit and not by two separate suits. This provision is mandatory and enjoins the Court not to pass a declaratory decree where the plaintiff omits to seek further relief to which he is entitled to, as a natural consequence of the declaration. That is where the judicial discretion counts. It would be a case of proper exercise of judicial discretion, to refuse to grant a declaration sought for, even if the plaintiff establishes his title but he is not in possession, on the date of the suit and do not seek the relief of possession.

30. *In a suit for declaration of ownership and permanent injunction, not only the plaintiff has to prove his title to the property, but also his possession over the property on the date of the suit.*



When the plaintiff is not in possession of the property on the date of the suit, relief of permanent injunction is not an appropriate consequential relief. The appropriate relief consequential to declaration of ownership would be recovery of possession of the property. When the plaintiff is out of possession of the property and does not seek relief for possession, a mere suit for declaration is not maintainable. The reason is not far to seek. It is well settled that no Court would grant any relief which is not useful, or futile and not effective. If title of the plaintiff is to be declared and he is not in possession and possession is with the defendant or some other person, the plaintiff would be having title of the property and the person in possession would be having possessory title to the property. It would lead to anomalous situation and create confusion in the public, which is to be avoided.

31. *Even if the plaintiff comes to Court asserting that he is in possession and that if it is found after trial that he was not in possession on the date of the suit, even then, the suit for declaration and permanent injunction is liable to be dismissed as not maintainable, as no decree for permanent injunction can be granted if the plaintiff is not in possession on the date of the suit. In such circumstances, it is necessary for the plaintiff to amend the plaint before*



the judgment and seek relief of possession. Therefore, a suit for declaration of title and permanent injunction, by the plaintiff who is not in possession on the date of the suit, when he is able to seek further relief of recovery of possession also, omits to do so, the Court shall not make any such declaration and the suit is liable to be dismissed as not maintainable."

(underlined by me)

17. The Hon'ble Supreme Court in the case of **ANATHULA SUDHAKAR Vs. P. BUCHIREDDY (D) BY LRS AND OTHERS** reported in **AIR 2008 SC 2033**, at paragraph 21 of its Judgment, has held as follows:

"21. In Vanagiri [From the Final Judgment and Order dated 18-1-1999 of the High Court of Judicature of Andhra Pradesh at Hyderabad in SA No. 29 of 1992] the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not



necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma [AIR 1965 Mad 355] that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when an issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title."



18. In the aforementioned Judgment, the Hon'ble Supreme Court has, in detail laid down the law as to seeking relief of declaration with possession or in the absence of the possession, in a suit claiming the declaratory relief. It is also to be noted that the Hon'ble Supreme Court in the aforementioned Judgment had an occasion to deal with the suit for injunction simpliciter as well as the suit for injunction based on title. It is also to be noted from the evidence of P.W.1, wherein the P.W.1 in her cross-examination has deposed as follows:

"ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ ಈಗ ರಾಗಿ ಬೆಳೆ ಇದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ
ಪ್ರತಿವಾದಿ 7 ಮತ್ತು 8 ರವರು ರಾಗಿ ಬೆಳೆಯುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ."

(underlined by me)

19. The aforementioned admission made by P.W.1 makes it clear that the defendant Nos.7 and 8 are in possession of the suit scheduled property and the plaintiffs are not in possession of the suit scheduled property. In that view of the matter, it is well settled principle in law that the suit for declaration without claiming possession is not maintainable if the plaintiff is out of



possession as laid down by the Hon'ble Supreme Court in the case of **UNION OF INDIA Vs. IBRAHIM UDDIN AND ANOTHER** reported in **(2012) 8 SCC 148** and in the case of **VASANTHA (D) BY LRS Vs. RAJALAKSHMI (D) BY LRS** reported in **(2024) 5 SCC 282**, wherein it is held that, the suit for declaration of title without seeking recovery of possession is not maintainable when the plaintiff is not in possession of the scheduled property. It is well settled principle in law that in a suit for declaration, it is the duty of the plaintiff to prove valid title based on a document as to the relief claimed in the plaint. The said aspect of the matter was considered by this Court in the case of **HULLAPPA Vs. STATE OF KARNATAKA AND OTHERS** reported in **ILR 2012 KAR 4958**, wherein it is stated that, the grant of declaration without there being any document of title and declaration granted on the basis of revenue documents, cannot be accepted.

20. It is also to be noted from the judgment of the Supreme Court in the case of **IBRAHIM UDDIN** (supra), wherein it is held that, the admission of the witness in the deposition, as per Section 17 of the Evidence Act, is substantive evidence and



though not conclusive, can be decisive. On careful consideration of the deposition of P.W.1, makes it clear that, P.W.1 in unambiguous words deposed that, the defendant Nos.7 and 8 are in possession of the suit schedule property. In that view of the matter, taking into consideration the finding recorded by the Trial Court, particularly on the issue No.4, no interference is called for in the impugned Judgment and Decree passed by the Trial Court. It is also to be noted from the finding recorded by the Trial Court, wherein the Trial Court has refused to grant relief of injunction on the ground that the plaintiffs was out of possession of the suit schedule property and the plaintiffs have not produced the relevant revenue records to establish their possession in respect of the suit schedule property. At this stage, it is relevant to consider the finding recorded by the First Appellate Court, particularly as to the paragraph Nos.45 to 51, makes it clear that, the plaintiffs have not proved as to the handing over of the possession despite the fact that the execution of the mortgage deed and the Sale Deed dated 17.11.1970 by the Hanumantharayappa in favour of the Hariyamma. In that view of the matter, after re-appreciating the material on record, I am of the view that, the finding



recorded by the First Appellate Court is just and proper which does not require any interference by this Court.

21. It is also relevant to cite the Judgment of the Hon'ble Supreme Court in the case of **C. DODDANARAYANA REDDY (D) BY LRS AND OTHERS VS. C JAYARAMA REDDY (D) BY LRS AND OTHERS** reported in **(2020) 4 SCC 659**, wherein at paragraphs 25 and 26 reads as under:

"25. The question as to whether a substantial question of law arises, has been a subject-matter of interpretation by this Court. In the judgment in Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan [Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan, (1999) 6 SCC 343] , it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under : (SCC pp. 347-48, paras 12-15)

"12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below



HC-KAR

NC: 2026:KHC:17865
RSA No. 1265 of 2016
C/W RSA No. 1264 of 2016

without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

13. *In Ramanuja Naidu v. V. Kanniah Naidu [Ramanuja Naidu v. V. Kanniah Naidu, (1996) 3 SCC 392] , this Court held : (SCC p. 393)*

'It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of the Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.'

14. *In Navaneethammal v. ArjunaChetty [Navaneethammal v. Arjuna Chetty, (1996) 6 SCC 166] this Court held : (SCC p. 166)*

'Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappraise the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a reappraisal of the same evidence, that should not have been done by the High Court as it cannot



be said that the view taken by the first appellate court was based on no material.'

15. And again in *Taliparamba Education Society v. Moothedath Mallisseri Illath M.N.* [*Taliparamba Education Society v. Moothedath Mallisseri Illath M.N.*, (1997) 4 SCC 484], this Court held : (SCC p. 486, para 5)

'5. ... The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact, which is impermissible.'"

26. In a judgment in *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar* [*Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, (1999) 3 SCC 722], this Court held that from a given set of circumstances if two inferences are possible then the one drawn by the lower appellate court is binding on the High Court. In the said case, the first appellate court set aside the judgment of the trial court. It was held that the High Court can interfere if the conclusion drawn by the lower court was erroneous being contrary to mandatory provisions of law applicable or if it is a settled position on the basis of a pronouncement made by the court or based upon inadmissible evidence or arrived at without evidence. This Court held as under : (SCC p. 725, para 5)



"5. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."



22. Following the declaration of law made by this Court and the Judgments of the Hon'ble Supreme Court referred to above, I am of the view that, the Judgments referred to by the appellants cannot be made applicable to the facts on record as the P.W.1 herself has deposed that, the defendant No.7 and defendant No.8 are in possession of the suit schedule property. It is also to be noted that, as the plaintiffs are out of possession of the suit schedule property, ought to have sought for a positive relief of declaration as to the suit schedule property as the weakness of the defendants cannot be taken into consideration to prove the title over the property in question. In this regard, it is relevant to cite the Judgment of the Hon'ble Supreme Court in the case of **RATNAGIRI NAGAR PARISHAD Vs. GANGARAM NARAYAN AMBEKAR AND OTHERS** reported in **(2020) 7 SCC 275**, wherein it is held that, in a suit for declaration, the relief of declaration has to be granted based on the relevance of the title and the deeds produced by the plaintiff and same cannot be granted by looking into the oral and documentary evidence adduced by the defendants. In that view of the matter, as the First Appellate Court, after re-appreciating the material on record in the right perspective, has



NC: 2026:KHC:17865
RSA No. 1265 of 2016
C/W RSA No. 1264 of 2016

rightly dismissed the suit of the plaintiffs and therefore, the substantial questions of law framed above favours the defendants, and accordingly the Regular Second Appeals are dismissed.

SD/-
(E.S.INDIRESH)
JUDGE

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List No.: 1 Sl No.: 31