



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.1011 OF 2026 (PAR/INJ)

BETWEEN:

1. SMT LAKSHMAMMA
W/O LATE RAJAPPA
AGED ABOUT 79 YEARS
2. SRI. VENUGOPAL
S/O LATE RAJAPPA
AGED ABOUT 50 YEARS

ALL ARE R/O MUTHNOOR VILLAGE
GULLAHALLI POST, BUDIKOTE HOBLI
BANGARPET TALUK
KOLAR DISTRICT - 563147.

...APPELLANTS

(BY SRI. RAGHAVA T., ADVOCATE)

AND:

1. SRI M C NARAYANAPPA
S/O LATE CHINNAIAH
AGED ABOUT 57 YEARS.
2. SRI. KRISHNAPPA
S/O LATE JAMAN CHINNAPPA
@CHIKKA MUNISWAMY NAYAKA
AGED ABOUT 60 YEARS
3. SRI. SRINIVAS
S/O KRISHNAPPA
AGED ABOUT 38 YEARS

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DHANALAKSHMI
MURTHY
Location: HIGH
COURT OF
KARNATAKA



ALL ARE R/O MUTHNOOR VILLAGE
GULLAHALLI POST, BUDIKOTE HOBLI
BANGARPET TALUK
KOLAR DISTRICT - 563147.

...RESPONDENTS

(BY SRI.SHIVANANDA R, ADVOCATE FOR
SRI. P NATARAJU, ADVOCATE FOR C/R1)

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED: 3.03.2026
PASSED IN RA NO.186/2024 ON THE FILE OF I ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC, KGF, ITINERARY AT
BANGARPET., DISMISSING THE APPEAL AND CONFIRMING THE
JUDGMENT AND DECREE DATED 30.04.2014 PASSED IN OS
NO.50/2009 ON THE FILE OF PRL. CIVIL JUDGE AND JMFC,
BANGARPET.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri T.Raghava, learned counsel for the
appellant and Sri Shivananda R. for Sri P.Natraju for the
respondents.

2. Defendant Nos. 2 and 3 in O.S.No.50/2009 have
challenged the decree passed in O.S.No.50/2009,



confirmed in R.A.No.186/2024, in the present second appeal.

3. Facts of the case are as under:

A suit in O.S.No.50/2009 came to be filed by the plaintiff for a prayer of permanent injunction and declaration and subsequently with a prayer for declaration.

4. In the plaint, it is contented that, the land bearing Sy.No.78/2, measuring 2 acres 20 guntas, including 37 guntas of karab land situated at Muthnoor Village, Budhikote Hobli, Bangarpet Taluk, morefully described in the Schedule herein and hereinafter referred to as suit property was belonging to Rajappa. Father of the plaintiff purchased the suit property under a registered sale deed dated 22.02.1968 from Rajappa. Father of the plaintiff being illiterate, did not get the revenue entry mutated in time, and only in the year 2001, revenue entries were mutated in the name of the father of the plaintiff, though sale deed was executed on 22.02.1968. Plaintiff's father



died leaving behind plaintiff as his only heir and thereafter he applied for change of khata into his name, which was pending before the revenue authorities.

5. Plaintiff further contended that, he himself and his father were in possession of the suit property from the date of purchase and when there was an attempt to dispossess the plaintiff and his father in the month of August 2005, a suit in OS No.136/2005 was filed, which came to be dismissed after contest, and therefore, an appeal was filed by the plaintiff in R.A.No.72/2007.

6. Since there was a denial to the title, plaintiff filed a suit for declaration and permanent injunction. Pursuant to the suit summons, defendant Nos. 1 to 3 appeared through their counsel and third defendant filed written statement, which was adopted by defendant Nos. 1 and 2.

7. In the written statement, the plaint averments were denied in toto. It is further contended that suit is bad for non-joinder of necessary parties as Chikkamuniswamy



Nayak @ Chinnappa and his sons are also alive and they are also necessary parties to the suit.

8. It is further contended that father of the first defendant was in possession and enjoyment of the land in Sy.No.16/19 to the extent of 8 acres 1 gunta and after his death, there was a mutation entry and Sy.No. 16/19 which was changed into 78.

9. It is further contention of the defendants that they are in possession and enjoyment of the suit property and by producing the false and fabricated documents, the suit is filed.

10. Based on the rival contentions, the learned Trial Judge has raised necessary issues and after recording the evidence of the parties, noted that DW1 was not even born when the suit transaction took place and non mention of the vendor of the first defendant, decreed the suit of the plaintiff.



11. Being aggrieved by the same, it is these appellants, who filed the appeal against the plaintiff as well as the defendant Nos.4 and 5, as first defendant Rajappa was no more.

12. Learned Judge in the I Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, dismissed the appeal, holding in paragraph Nos. 24 to 28 as under:

24. In support of the above claim, the defendants No.2 and 3 have led their evidence in this appeal by getting examined the defendant No.3 as P.W.1 who has filed his affidavit in lieu of examination-in-chief thereby reiterating the said reason which according to him caused the delay. However, the reason given by the defendants No.2 and 3 for causing of the delay is not acceptable because, ignorance of law is not an excuse. The defendants No.2 and 3 must know their right and opportunity of preferring appeal against the impugned judgment and decree and they cannot claim that they were not advised by their counsel to prefer appeal. The contention taken by the defendants No.2 and 3 in filing the application cannot be a ground to condone the delay caused in filing this appeal. Apart from this, the counsel



for the plaintiff has cross-examined P.W.1 and in the cross-examination, P.W.1 has given the following clear admissions:

ನಾನು ಅಸಲು ದಾವೆ ನಂ. 50/2009 ರಲ್ಲಿ ಶ್ರೀ ವಿ ಎಸ್ ವೇಣುಗೋಪಾಲ್ ರವರನ್ನು ನೇಮಕ ಮಾಡಿ ಅವರ ಮೂಲಕ ವಾದ ಪತ್ರಕ್ಕೆ ತಕರಾರು ಸಲ್ಲಿಸಿದ್ದೆ ಎಂದರೆ ಸರಿ, ಸದರಿ ದಾವೆಯಲ್ಲಿ ನಾನು ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿ ನನ್ನ ಸಾಕ್ಷ್ಯವನ್ನೂ ಸಹ ನುಡಿದಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ದಾವೆಯು ಡಿಕ್ರಿ ಆದ ನಂತರ ನಾನು ನನ್ನ ಅಣ್ಣ ತಮ್ಮಂದಿರ ವಿರುದ್ಧ ವಿಭಾಗ ಕೋರಿ ಹಿರಿಯ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯ, ಕೆ.ಜಿ.ಎಫ್. ರಲ್ಲಿ ಅಸಲು ದಾವೆ ನಂ.10/2016 ವನ್ನು ದಾಖಲಿಸಿದ್ದೆ ಮತ್ತು ಅದರಲ್ಲಿ ಎದುರುದಾರರಾದ ನಾರಾಯಣಪ್ಪರವರನ್ನು 17ನೇ ಪ್ರತಿವಾದಿಯನ್ನಾಗಿ ಮಾಡಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಅಸಲು ದಾವೆ ನಂ. 10/2016 ರಲ್ಲಿ ನಾನು ಸಾಕ್ಷ್ಯ ಸಹ ನುಡಿದಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ನಂತರ ನಾನು ಅಸಲು ದಾವೆ ನಂ. 10/2016 ವನ್ನು ದಿನಾಂಕ:16.03.2018 ರಂದು ಹಿಂಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ, ಸದರಿ ಅಸಲು ದಾವೆ ನಂ.10/2016 ಕ್ಕೆ ನಾನು ಎಲ್ಲಾ ವಿಚಾರಣೆ ದಿನಾಂಕಗಳಿಗೆ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರಾಗುತ್ತಿದ್ದೆ ಎಂದರೆ ಸರಿ.

2. ಈ ಅಪೀಲು ದಾಖಲಿಸಲು ವಿಳಂಬ ಆಗಿದ್ದಕ್ಕೆ ನಾನು ಕಾರಣಗಳನ್ನು ನಾನು ನನ್ನ ಅರ್ಜಿಯಲ್ಲಿ ಹೇಳಿರುತ್ತೇನೆ. ನನ್ನ ಹೆಂಡತಿ ಮರಣ ಹೊಂದಿದ್ದಕೆಕೆ ಅಪೀಲು ದಾಖಲಿಸಲು ವಿಳಂಬ ಆಗಿರುತ್ತದೆ ಎಂದು ನಾನು ಹೇಳಿರುತ್ತೇನೆ. ನನ್ನ ಹೆಂಡತಿ ಯಾವಾಗ ಮರಣ ಹೊಂದಿರುತ್ತಾರೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. 1ನೇ ಎದುರುದಾರರು ಈ ದಾವೆ ದಾಖಲಿಸುವುದಕ್ಕೂ ಮುಂಚೆ ನಮ್ಮ ವಿರುದ್ಧ ಶಾಶ್ವತ ನಿರ್ಬಂಧಕಾಜ್ಜೆ ಕೋರಿ ಬಂಗಾಪೇಟೆ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಅಸಲು ದಾವೆ ನಂ.136/2005ವನ್ನು ದಾಖಲಿಸಿದ್ದರು ಎಂದರೆ ಸರಿ. ಸದರಿ ದಾವೆಯು 1ನೇ ಎದುರುದಾರರ ವಿರುದ್ಧ ಆದೇಶವಾಗಿ ನಂತರ ಅವರು ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಿ ತಮ್ಮ ಪರ ಡಿಕ್ರಿ ಮಾಡಿಕೊಂಡಿದ್ದು ನಂತರ ನಾನು 349 ದಿನಗಳ ವಿಳಂಬ ಮಾಡಿ ಮಾನ್ಯ ಕರ್ನಾಟಕ ಉಚ್ಚ



ನ್ಯಾಯಾಲಯದಲ್ಲಿ 2ನೇ ಮೇಲ್ಮನವಿ ಅಂದರೆ ಆರ್.ಎಸ್.ಎ. ನಂ.811/2011 ಸಲ್ಲಿಸಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಆರ್ ಎಸ್.ಎ. ನಂ.811/2011 ನಲ್ಲಿ ನಾನು ನನ್ನ ಹೆಂಡತಿಯು ದಿನಾಂಕ 11.11.2010 ರಂದು ಮರಣ ಹೊಂದಿದ್ದಕ್ಕೆ ನನಗೆ 2ನೇ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಲು ವಿಳಂಬ ಆಗಿರುತ್ತದೆ ಎಂದು ಹೇಳಿದ್ದೆ ಎಂದರೆ ಸರಿ. ನಾನು ನೀಡಿದ್ದ ಸದರಿ ಕಾರಣ ಸಮಂಜಸವಾಗಿರುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿ ಮಾನ್ಯ ಕರ್ನಾಟಕ ಉಚ್ಚನ್ಯಾಯಾಲಯವು ನನ್ನ ಅಪೀಲನ್ನು ದಿನಾಂಕ: 08.02.2012 ರಂದು ವಜಾ ಮಾಡಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ”.

25. From the above answers of P.W.1, it is very much clear that the defendants No.2 and 3 had complete knowledge of passing of the impugned judgment and decree by the trial court when the same was passed but they have claimed that they did not have knowledge of preferring appeal. However, as already observed above, the same cannot be a ground for condonation of the delay. Though in the above answers, P.W.1 has further claimed that since his wife had expired, he could not prefer this appeal in time, this claim is also not acceptable because, the said ground is not stated in the application. Moreover, no documents are produced by the defendants No.2 and 3 in support of the said contention. Further, similar ground was taken by the defendant No.3 while preferring R.S.A.No.811/2011 as stated by him in the above answers and hence, the said ground is also not believable and acceptable.

26. Thus, from the above discussion, it is clear that the ground stated by the defendants No.2 and 3 in the application filed for condonation of delay is not The



counsel for the convincing and acceptable. Defendants No.2 and 3 argued at length orally as well as in the written arguments on merits of the case and contended that since the defendants No.2 and 3 have a good case on merits, the delay can be condoned by this court. The counsel also relied upon several rulings in support of his arguments. However, to counter this argument, the counsel for the plaintiff relied upon a decision of the Hon'ble Apex Court rendered 08.04.2024 in SLP (Civil) No.31248/2018 in the case of Pathapati Subba Reddy (Died) By Lrs. & Others Vs. The Special Deputy Collector (LA) wherein, the Hon'ble Apex Court has laid down the following guidelines in para No.26 of the decision:

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that :

- (i) Law of limitation is based upon policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas, Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat*



the substantial law of limitation contained in Section 3 of the Limitation Act;

- (v) Courts are empowered to discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."*

27. Thus, the above decision is clearly applicable to the facts of the present case and as such, in view of he same, the arguments of the counsel for the defendants No.2 and 3 touching the merits of the case do not hold water and the same cannot be considered by this court though there are lengthy appeal memo and written arguments touching the merits of the case. The counsel for the defendants No.2 and 3 also relied upon several



rulings in support of his arguments but none of the same are helpful for defendants inasmuch as, it has been held in all these rulings that if 'sufficient cause' is shown, the delay in filing the appeal can be condoned. However, in this case, the defendants No.2 and 3 have not at all showed any 'sufficient cause'. Further, point (v) of the above referred decision perfectly applies to this case since there is inordinate delay, negligence and want of due diligence on the part of the defendants No.2 and 3 in this case because, they knew about the passing of the impugned judgment and decree in this case but they acted negligently by not preferring appeal in time.

28. In this case, the plaintiff has also led rebuttal evidence but it is not necessary to consider the same because, the burden to show sufficient cause for the delay is upon the defendants No.2 and 3 and not upon the plaintiff. The defendants No.2 and 3 are under obligation to prove the reasons for which, the delay is occurred but they have not proved the same and therefore, the plaintiff need not rebut their evidence. Therefore, for all these and above reasons, I am of the considered opinion that the defendants No.2 and 3 have not made out grounds for condonation of delay caused in filing this appeal and accordingly, I answer point No.1 in the NEGATIVE."



13. Being further aggrieved by the same, defendants Nos. 2 and 3 have preferred the present second appeal on the following grounds and substantial questions of law:

- *The impugned decrees are arbitrary, capricious, and contrary to the facts on record and settled principles of law, and are therefore liable to be set aside.*
- *The appellants do not dispute the execution of the registered sale deed dated 22.06.1968 executed in favour of the plaintiff's father, Chinnaiah.*
- *The appellants admit the lawful extent conveyed under the said sale deed measuring 53½ Ares.*
- *The dispute in the present case is confined only to the alleged excess extent of approximately 11 Guntas, which has been wrongly included in the revenue records pursuant to Mutation Register No. 32/2000-01.*
- *The Courts below failed to appreciate that mutation entries cannot confer or enlarge title nor can they alter the extent conveyed under a registered sale deed.*
- *The registered sale deed specifically mentions the extent as "53 ½ 2 Acres", which corresponds approximately to 1 Acre 12/13 Guntas and not 1 Acre 23 Guntas.*
- *The inclusion of excess extent of 11 Guntas in the revenue records is only due to clerical and conversion errors committed during mutation proceedings.*



- *The appellants are poor agricultural labourers dependent upon the remaining land for their livelihood and survival.*
- *If the impugned judgment is allowed to stand, it would result in deprivation of land not conveyed under the registered sale deed.*
- *The Courts below failed to distinguish between the lawful extent conveyed under the registered document and the excess extent reflected due to erroneous revenue entries.*
- *Revenue entries are only fiscal in nature and do not confer or extinguish title, nor do they override the recitals in a registered conveyance deed.*
- *The appellants approached the competent authorities immediately upon discovery of the discrepancy through the educated grandson, Gajendra Nayaka, and therefore there is no wilful negligence or mala fides.*
- *The First Appellate Court adopted a hyper-technical approach while considering limitation and failed to appreciate the serious consequences affecting the livelihood of the appellants.*
- *The impugned order has resulted in grave miscarriage of justice by denying the appellants an opportunity to contest the alleged excess extent beyond the sale deed.*
- *The Courts below ought to have appreciated that substantial justice must prevail over technicalities,*



particularly where the dispute relates only to alleged excess extent not covered under the conveyance.

- *The judgment and decree in O.S. No. 50/2009 was passed on 30.08.2014. The appellants, due to illiteracy and lack of knowledge, did not prefer an appeal before the First Appellate Court within time. Subsequently, they approached the revenue authorities by filing appeals in R.A. No. 669/2023 before the Assistant Commissioner and R.A.P. No. 212/2024 before the Deputy Commissioner, Kolar District. In the said proceedings, the revenue authorities categorically held that 53½ Ares corresponds to 1 Acre 12/13 Guntas and not 1 Acre 23 Guntas. After gaining knowledge of these findings, the appellants preferred the present Regular Appeal in R.A. No. 186/2024 before the First Appellate Court. However, the First Appellate Court dismissed the appeal solely on the ground of limitation without considering the merits of the case.*
- *The appellant No. 2 had filed applications under the Right to Information Act, 2005 before the Deputy Director of Land Records, Kolar; Assistant Director of Land Records, Kolar; and the Tahsildar, Bangarpet, seeking clarification regarding the meaning of "53½ Ares" mentioned in Ex. P1 sale deed dated 22.02.1968. The authorities clarified that 53½ Ares corresponds to approximately 1 Acre 12/13 Guntas. These documents were sought to be produced under Order XLI Rule 27 CPC. However, the First Appellate Court failed to consider the same and dismissed the appeal without adjudicating the application on merits.*



- *In Smriti Madan Kansagra v. Perry Kansagra, (2023) 20 SCC 517, the Hon'ble Supreme Court has held that fraud vitiates all judicial acts and that a decree obtained by fraud is a nullity. It is further held that discovery of material fraud or mistake may justify reopening of proceedings in appropriate cases.*
- *The revenue appeal against mutation proceedings was dismissed by the Assistant Commissioner mainly on the ground that a civil court decree exists. However, the Deputy Commissioner granted liberty to the appellants to challenge the decree before the competent civil court.*
- *The Courts below failed to appreciate that inclusion of 37 Guntas of Kharab land in the plaintiff's alleged possession is impermissible in law. The First Appellate Court erred in rejecting the application under Order XLI Rule 27 CPC despite the additional documents being necessary for proper adjudication. The Appellate Court further failed to exercise jurisdiction under Section 5 of the Limitation Act in a judicious manner and rejected the application mechanically. The Hon'ble Supreme Court in Urban Improvement Trust v. Bheru Lal (2024) has held that in appropriate cases involving illegality, delay may be condoned in the interest of justice.*
- *In Ajaya Kumar Pani v. State of Orissa (AIR Online 2023 Ori 14), it has been held that in cases involving fraud or illegality, delay may be condoned and procedural objections should not defeat substantial justice.*



- *Courts have consistently held that "sufficient cause" under Section 5 of the Limitation Act must receive a liberal construction to advance substantial justice, and that technicalities should not defeat meritorious claims.*
- *Any error in the decree relating to extent is a material and fundamental error, and non-correction of such error would result in miscarriage of justice.*
- *Official records issued by the Deputy Director of Land Records, Assistant Director of Land Records, and the Tahsildar, Bangarpet, clearly establish the correct conversion of 53½ Acres, and the same ought to have been considered by the Courts below.*
- *An incorrect description of property extent in the decree is a jurisdictional error, and even after lapse of time, such error can be corrected when established by public records.*
- *The Courts below failed to properly consider the decisions of the Hon'ble Supreme Court and this Hon'ble Court though cited and relied upon, thereby rendering the impugned judgment unsustainable.*
- *The impugned decrees are arbitrary, capricious, and contrary to law and are liable to be set aside.*
- *The impugned decree is based on conjectures and surmises and is therefore unsustainable in law.*
- *The appellants have not filed any other suit, appeal, or proceedings on the same cause of action, and there are no parallel proceedings pending before any Court.*



SUBSTANTIAL QUESTION OF LAW

1. *Whether the First Appellate Court was justified in rejecting the application filed under Section 5 of the Limitation Act, 1963, despite the appellants having established bona fide and sufficient cause for the delay?*
2. *Whether the Courts below failed to adopt the liberal principles governing condonation of delay, particularly in cases involving substantial rights over immovable property?*
3. *Whether the discovery of a material error in the interpretation of the extent mentioned in a registered sale deed constitutes "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963?*
4. *Whether a bona fide mistake of counsel and lack of proper legal advice can constitute sufficient cause for condonation of delay?*
5. *Whether the First Appellate Court erred in law in refusing to consider material evidence demonstrating that "53½ Ares" is not equivalent to 1 Acre 23 Guntas?*
6. *Whether dismissal of the appeal on technical grounds of limitation, without adjudicating the substantial dispute relating to title and extent of the property, has resulted in a miscarriage of justice?*



7. Whether the First Appellate Court failed to exercise the jurisdiction vested in it by law while considering the application for condonation of delay?

8. Whether the Courts below committed a substantial error of law in granting a decree over land including 37 Guntas of B-Kharab land, which was not the subject matter of the registered sale deed dated 22.06.1968?

9. Whether the impugned judgments are vitiated by failure to consider the findings recorded in O.S. No. 136/2005, wherein serious doubts were raised regarding the extent of land conveyed under the sale deed?

10. Whether O.S. No. 50/2009, filed during the pendency of R.A. No. 74/2007 and concerning the same property and cause of action, was maintainable in law?

11. Whether the First Appellate Court in R.A. No. 186/2024 erred in dismissing the appeal solely on the ground of limitation without examining the legality and correctness of the Trial Court's decree, despite having powers under Order XLI Rules 24 and 33 of the Code of Civil Procedure, 1908?

12. Whether the delay in filing the appeal ought to have been condoned when the case involves allegations of illegal enlargement of land extent, erroneous revenue entries, and miscarriage of justice?



13. Whether the failure of the First Appellate Court to exercise its jurisdiction as the final fact-finding Court vitiates the impugned judgment and order?

14. Whether a decree granting land in excess of the extent conveyed under a registered sale deed amounts to a jurisdictional error liable to be interfered with in a Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908?

15. Whether judgments permitting enlargement of land holdings based solely on incorrect revenue entries are perverse and liable to be set aside?

16. Whether non-consideration of material evidence, including the registered sale deed and official clarifications regarding the conversion of "53½ Ares," renders the findings of the Courts below unsustainable in law?

17. Whether a judgment founded upon an admitted arithmetical and legal error in determining the extent of the property can be sustained in law?

18. Whether mutation entries and phodi proceedings can enlarge the extent of property beyond what is conveyed under a registered sale deed?

19. Whether the Courts below committed an error of law in disregarding the official clarification issued by



the Deputy Director of Land Records regarding the conversion of 53½ Ares into 1 Acre 12/13 Guntas?

20. Whether revenue records can prevail over the recitals and extent mentioned in a registered sale deed for determining title and extent of property?

21. Whether rejection of the application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908, without considering the relevance and necessity of the additional evidence, amounts to failure to exercise jurisdiction?

22. Whether the First Appellate Court was justified in rejecting the application under Section 5 of the Limitation Act when the discrepancy in the extent of land was discovered only after obtaining information under the Right to Information Act from the land records authorities?

23. Whether a litigant should be made to suffer for a bona fide mistake of counsel and a misunderstanding regarding the conversion of land measurements?

24. Whether the findings recorded by the Courts below are perverse on account of non-consideration of material documentary evidence relating to the actual extent of land conveyed under the sale deed?



25. Whether the decree passed in O.S. No. 50/2009 is sustainable in law when an earlier suit, namely O.S. No. 136/2005, involving substantially the same parties and property, had already been dismissed?

726. Whether Courts can recognize or decree title and possession over land beyond the extent conveyed under a registered sale deed, and whether such a decree is liable to be set aside as perverse under Section 100 of the Cod of Civil Procedure, 1908?"

14. Sri Raghava T., learned counsel for the appellant, reiterating the grounds urged in the appeal memorandum would contend with vehemence that the measurements shown in the sale deed do not tally with the extent of land, which the plaintiffs are claiming and khata has been transferred in the name of the father of the plaintiff in excess to the land that has been sold under the registered sale deed and therefore, the plaintiffs are in enjoyment of 11 guntas of land more than what has been sold and the said aspect of the matter is not noticed by both the courts, resulting in miscarriage of justice and thus sought for



admitting the appeal on the aforesaid substantial questions of law.

15. Per contra, learned counsel for the respondent supports the impugned judgments.

16. Having heard the arguments of both sides, this Court perused the material on record meticulously.

17. On such perusal of the material on record, it is noticed that, there is no dispute that the father of the plaintiff purchased the property from the first defendant.

18. The original sale deed is marked before the court. It is also contended by the plaintiff that, father of the plaintiff did not get the khata transferred for long time and later on the khata transfer proceedings have taken place.

19. Subsequent to death of the father of the plaintiff, when plaintiff applied for change of khata to his name, in the revenue records, the same was objected by the defendants and there was also an interference with the



suit property, when father of the plaintiff died, which necessitated the filing of suit in O.S. No.136/2005.

20. Further, since there was a challenge as to the title of the plaintiff, plaintiff was required to file the present suit for declaration and injunction.

23. Conveniently, Rajappa was not examined in this case and it is the third defendant, who filed the written statement, which was adopted by defendant Nos. 1 and 2.

24. In the cross examination of DW1 it has been specifically elicited that, when the sale transaction took place between first defendant and the father of the plaintiff, DW1 was not even born. Therefore, he would not be aware of what has been sold and what are the contents of the sale deed.

25. Further, it is noticed that, if there is an encroachment or plaintiffs were in possession of the property, other than what has been sold, it is always open for the defendants to seek necessary relief.



26. In the absence of any such counter claim made by the defendants and when the plaintiff has claimed the suit property by virtue of the sale deed, granting declaratory relief and consequential relief by the trial Court, confirmed by the I Appellate Court, needs no interference, having regard to scope of Section 100 CPC.

27. Accordingly, following:

ORDER

(i) Admission declined.

(ii) Appeal dismissed.

**Sd/-
(V SRISHANANDA)
JUDGE**

CM
LIST NO.: 1 SL NO.: 83