

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.2077 OF 2010 (DEC/INJ)

BETWEEN:

1. SRI. HORAKERAPPA
S/O LATE SANARANGAPPA
AGED ABOUT 80 YEARS
R/AT PANJIGANAHALLI VILLAGE
KASABA HOBLI, SIRA TALUK
TUMAKURU DISTRICT-576001
BY HIS P.A. HOLDER
SRI H. DEVARAJ S/O HORAKERAPPA
...APPELLANT
(BY SRI. RAVI SHANKAR S., ADVOCATE)

AND:

1. SRI. THIMMAPPA
S/O LATE KAVALASIDDAPPA
DEAD BY HIS LEGAL HEIRS
- 1(a) SMT. SHANTHAMMA
AGED ABOUT 67 YEARS
- 1(b) SRI. MARUTHI
AGED ABOUT 45 YEARS
- 1(c) SRI. ASHWATHAPPA
AGED ABOUT 40 YEARS
- 1(d) SRI. VINAYAKUMAR
AGED ABOUT 38 YEARS
- 1(e) SRI. DHEENAPPA
AGED ABOUT 35 YEARS

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1(f) SRI. GURUSIDDAPPA
AGED ABOUT 34 YEARS

1(g) SRI. VINAYAKUMAR
AGED ABOUT 38 YEARS

APPLICANTS NO.1 IS WIFE, NO.2 TO 7 ARE
CHILDREN OF LATE THIMMANNA.

ALL ARE R/AT KADAJJANAPALYA VILLAGE
MANANGI POST, SIRA TALUK
TUMAKURU DISTRICT.

1(h) SMT. TULASAMMA
W/O CHOWDAPPA
D/O LATE THIMMANNA
R/AT KALIDASANAGARA
SIRA TOWN, TUMAKURU DISTRICT

2. SRI. SIDDAPPA
S/O GOVINDAPPA
AGED ABOUT 58 YEARS
R/AT KADAJJANAPALYA VILLAGE
KASABA HOBLI, SIRA TALUK
TUMAKURU DISTRICT-576001.

3. SRI. GOVINDAPPA
S/O GOVINDAPPA
AGED ABOUT 55 YEARS
R/AT KADAJJANAPALYA VILLAGE
KASABA HOBLI, SIRA TALUK
TUMAKURU DISTRICT-576001.

4. SRI. VENKATAPPA
S/O GOVINDAPPA
AGED ABOUT 52 YEARS
R/AT KADAJJANAPALYA VILLAGE
KASABA HOBLI, SIRA TALUK
TUMAKURU DISTRICT-576001.

...RESPONDENTS

(BY SRI. R.B. DESHPANDE, ADVOCATE R1(a to h);
VIDE ORDER DATED 05.11.2012,
NOTICE TO R1 TO R4 DISPENSED WITH)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 03.07.2010 PASSED IN R.A.NO.67/2007 ON THE FILE OF THE SENIOR CIVIL JUDGE, SIRA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 06.08.2007 PASSED IN O.S.NO.217/2000 ON THE FILE OF THE CIVIL JUDGE (JR.DN) AND JMFC, SIRA.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.07.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard learned counsel for the appellant and learned counsel for respondent No.1(a) to (h).

2. The factual matrix of case of the plaintiff while seeking the relief of declaration and injunction is that plaintiff is the owner of land bearing Sy.No.143 (old Sy.No.92/3) measuring 4 acres, 11 guntas situated at Managi Village, Kasaba Hobli, Sira Taluk and the same is morefully described as suit schedule property. It is contended that suit schedule property was granted in favour of the plaintiff in the year 1951 by the Assistant Commissioner, Madhugiri under its Order No.Dis.GD.10/51-52. After the said grant, the katha of the suit schedule property has been transferred in the name of the plaintiff under M.R.No.9/51-52. The suit schedule property was

phoded by the Authority in the year 1953 in the name of plaintiff to the extent of 4 acres 11 guntas and the revenue authorities have given separate survey number to the suit schedule property as '143', instead of '92/3'. The plaintiff has paid kandayam to the suit schedule property regularly from the date of grant and he has been in possession and enjoyment of the suit schedule property and the plaintiff has got absolute right, title and interest over the suit schedule property. It is contented that defendants are strangers to the suit schedule property and they have no right, title, interest in the said property. The defendants have not been in possession of the property at any point of time and trying to interfere with peaceful possession and enjoyment of the suit schedule property by the plaintiff. In the first week of August 2000, the defendants, illegally in a highhandedness manner, tried to knock off the suit schedule property. The cause of action for the suit also arose in the first week of August 2000, when they started interfering with peaceful possession. Hence, claimed the relief of declaration and permanent injunction.

3. The suit is resisted by defendant No.1 by filing the written statement and denied the averments made in the plaint. However, in paragraph No.8, took the specific defence

that he has been in possession of the suit schedule property since 40 years and perfected his title by way of adverse possession. Later, filed an application for amendment to insert paragraph No.8a, wherein the point of limitation is raised that Tahasildar, Sira Taluk in RRT Dis. 57/92-93 vide order dated 27.04.1993 directed to go before the Civil Court and when the right of the plaintiff was disputed from 1992, the plaintiff should have filed the suit within three years under Article 113 of the Limitation Act and the same was also allowed and paragraph No.8a was inserted.

4. The Trial Court, having taken note of the pleadings of the parties, since the defendant No.1 itself contested the matter and other defendants have not contested, framed the following issues and additional issue for consideration which reads as hereunder:

- "1. *Whether the plaintiff proves that he is the absolute owner of the suit schedule property?*
2. *Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property?*

3. *Whether the 1st defendant proves that he has perfected his title by way of adverse possession?*
4. *Whether the plaintiff proves the alleged interference by the defendants?*
5. *Whether the plaintiff is entitled for the relief of Declaration?*
6. *Whether the plaintiff is entitled for the relief of Permanent Injunction?*
7. *What Order or Decree?"*

Additional Issue:

- "1. Whether the defendants prove that suit is barred by limitation?".*

5. The plaintiff, in order to prove his case, examined his son as P.W.1 and also two other witnesses as P.W.2 and P.W.3 and got marked the documents Exs.P1 to P32. The defendants examined defendant No.1 as D.W.1 and also examined five witnesses as D.W.2 to D.W.6 and got marked the documents Exs.D1 to D37.

6. The Trial Court, having considered the evidence of witnesses, particularly the admission on the part of D.W.1 in

his cross-examination, categorically admitted that when the suit schedule property was granted in favour of the plaintiff in Sy.No.92, he was also granted the land in Sy.No.92. He admits that his property was re-numbered as Sy.No.141. When the suggestion was made that other grantee Eranna was assigned Sy.No.142, he admits that in Exs.D2 to D7, in column No.9 name of the plaintiff is shown. But, he claims that land was granted in his favour, though there was no such pleading, except adverse possession pleaded in paragraph No.8 of the written statement. The Trial Court also taken note with regard to limitation that there was no title dispute between the parties and only there was revenue entry in column No.12, wherein the name of defendant No.1 was entered, but column No.9 clearly discloses the name of the plaintiff. Hence, comes to the conclusion that there was no dispute with regard to the title and title is not disputed by defendant No.1, except claiming adverse possession and answered additional issue No.1 as 'negative' and granted the relief of declaration and permanent injunction in favour of the plaintiff.

7. Being aggrieved by the said judgment and decree of declaration, an appeal is filed by defendant No.1 before the First Appellate Court in R.A.No.67/2007 and other defendants

have not filed any appeal. The First Appellate Court reversed the judgment of Trial Court in coming to the conclusion that plaintiff has not proved title by producing the grant certificate and also comes to the conclusion that there was an entry in the record of rights for the period from 1972-1973 to 1981-1982 in column No.12, the name of the appellant was found. The First Appellate Court also comes to the conclusion that when the dispute started between the parties in the year 1992 and when the order was passed by the Tahasildar in the year 1993, the plaintiff ought to have filed the suit within three years from that date. Hence, reversed the judgment of Trial Court by considering the point framed for its consideration whether the appellant made out a ground that the judgment and decree of Trial Court is not in accordance with law, which needs interference. Being aggrieved by the judgment and decree of the First Appellate Court, the present second appeal is filed before this Court.

8. The main ground which has been urged before this Court in this second appeal by learned counsel for the appellant is that First Appellate Court committed a grave error in holding the suit is barred by limitation only on the basis of document Ex.D1 which is RRT order, wherein the Tahasildar directed the

parties to approach the Civil Court. But, the said order does not dispute the title of the appellant, as the corrections were sought only in column No.12(2) of RTC and column No.9 shows the name of the appellant, which is not disputed by defendant No.1 and the same is categorically admitted. The counsel would vehemently contend that when there is a clear admission on the part of defendant No.1, who has been examined as D.W.1 that suit schedule property has been granted in favour of plaintiff and he was also granted a land in very same survey number along with him, the First Appellate Court ought not to have come to the conclusion that grant order has not been produced, except the revenue documents and the very approach is erroneous. The counsel would vehemently contend that the First Appellate Court erred in not properly appreciating Ex.P31 in a proper perspective i.e., sale deed of the property situated on the northern side of the suit schedule property which was purchased by defendant No.1 from other grantee and all of them have got the property by way of grant in the very same proceedings. Hence, this Court, taking note of the grounds, admitted the second appeal and framed the following substantial questions of law, which reads as hereunder:

- 1) Whether the finding of the lower appellate Court that the suit is barred by limitation can be sustainable in law in the face of the evidence on record?
- 2) Whether the suit of the plaintiff could have been dismissed in its entirety though appeal was filed by only 1st defendant?

9. Learned counsel appearing for the appellant in his argument would vehemently contend that it is not in dispute that the original survey number of the suit schedule property is '92' and the same was granted in favour of the plaintiff, defendant No.1 and another person one Mr.Eranna. The counsel would vehemently contend that suit survey number is re-numbered as Sy.No.143 and in column No.12, when the name of defendant No.1 was found, a proceedings was initiated before the Tahasildar and the Tahasildar passed an order that parties have to approach the Civil Court in terms of Ex.D1 dated 27.04.1993. The suit was filed in 2000 and the same was decreed. The First Appellate Court reversed the judgment and decree of the Trial Court only on the ground that the same is barred by limitation. The First Appellate Court failed to take note that period of limitation is governed by Article 58 of the Limitation Act and not Article 113 of the Limitation Act.

10. Learned counsel appearing for the appellant, in support of his argument, relied upon the judgment of the Apex Court in **DAYA SINGH AND ANOTHER vs. GURDEV SINGH (DEAD) BY LRS. AND OTHERS** reported in **(2010) 2 SCC 194** with regard to whether mere adverse entry in revenue records gives rise to cause of action and the Apex Court held that right to sue accrues when there is a clear and unequivocal threat to infringe a right. The counsel also brought to notice of this Court discussion made in paragraph No.18, wherein the Apex Court reversed the finding of the High Court. The question of filing the suit before the right accrued to them by compromise could not arise until and unless infringement of that right was noticed by one of the parties. The High Court in the impugned judgment, in our view, had fallen in grave error in holding that the suit was barred by time and had ignored to appreciate that the rights of the appellants to have the revenue record accrued first arose in 1990 when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it correct. In our view, the High Court was not justified in holding that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Act.

11. The counsel also relied upon judgment of the High Court of Punjab and Haryana at Chandigarh in **AMAR SINGH AND OTHERS vs. KISHAN DEV (DEAD) THROUGH LRs.** in **R.S.A.NO.523/1986** dated **21.07.2016**, wherein also the Court relied upon the very same judgment of **Daya Singh's** case referred above and while answering question Nos.5 to 9 in paragraph No.17, similar argument was dealt with regard to Article 58 and Article 113 of the Limitation Act. The Courts below have dealt with this point in detail, as discussed in para 7 above and have committed no error of law while reaching the conclusion that the period of limitation raised in this case is governed by Article 113 and not by Article 58 of Limitation Act and referring the judgment of the Apex Court in **Daya Singh's** case, held that cause of action accrues when there is a clear and unequivocal threat to infringe a right on the basis of that adverse entry. The counsel also brought to notice of this Court paragraph No.18, wherein an observation is made that the entry in the revenue record was changed without any notice to the owner and was consequentially unauthorized.

12. The counsel also relied upon the judgment of Andhra Pradesh High Court in **SECRETARY TO GOVT. OF INDIA, MINISTRY OF DEFENCE, NEW DELHI AND**

ANOTHER vs. INDIRA DEVI AND OTHERS reported in ***AIR 2003 ANDHRA PRADESH 329*** and brought to notice of this Court that documentary evidence coupled with oral evidence clearly establishes plaintiff's title and possession over suit schedule property. Plaintiffs de hors the evidence produced by defendants were able to establish their case and finding by Trial Court is not based on evidence of defendants, held that decree not liable to be set aside on ground that plaintiffs tried to take advantage of weakness of defendants' case.

13. The counsel also relied upon the judgment of this Court in ***SRI MARANNA SINCE DEAD REPRESENTED BY HIS LRS. vs. THIPPERANGAPPA SINCE DEAD REPRESENTED BY HIS LRS.*** reported in ***2023 0 SUPREME (KAR) 658***. The main issue therein was ownership of the property, adverse possession and applicability of Limitation Act. The Court also considered the applicability of the limitation Act and brought to notice of this Court paragraph No.17, wherein it is observed that the defendant has not produced any documents to show that on what strength the name of his father was written in the RTC extract pertaining to the suit land and also observed that a mischief was committed by the revenue authorities and compelled the plaintiff to approach the

Court to establish the title and hence, granted the relief of decree of declaration and relied upon the judgment of the Apex Court reported in **(1991) 4 SCC 572**, wherein also in paragraph No.9 held that, all that a plaintiff needs to prove is that he has a better title than the defendant.

14. Learned counsel appearing for the appellant also filed an application under Order XLI Rule 27 read with Section 151 of CPC to produce documents, particularly the proceedings which had taken place before the granting authority i.e., certified copies of three applications dated 23.06.1951 submitted by the original plaintiff, defendant No.1 and Eranna for grant of land, memorandum of Darakasth proceedings dated 26.07.1973, certified copy of mahazar, certified copy of the grant order dated 05.10.1951, certified copies of survey reports dated 29.08.1953, certified copy of Marukam memo dated 30.06.1953, certified copy of survey sketches, Janwar senses reports, akar bandh and copy of RTC for the year 2001-02, in all, prayed to produce 8 documents. In the affidavit, it is stated that these documents are obtained subsequently on 31.01.2023 and 04.02.2023 from the Taluk Office, Sira and these documents are necessary.

15. Learned counsel for the respondents/defendants also filed statement of objections contending that these documents are produced before this Court belatedly after 23 years and no proper reasons are assigned for production of these documents. It is contended that the appeal was admitted on 06.09.2010 and suit was filed long back in 2000 and appeal was filed in 2007 and no such documents are produced either before the Trial Court or before the First Appellate Court and these documents cannot be entertained.

16. Learned counsel appearing for respondent/defendant No.1 in his argument would vehemently contend that when the application was filed, a detailed objection statement is filed opposing to entertain the said application. The counsel would vehemently contend that when the order was passed by the Tahasildar in RRT Dis. 57/92-93 on 27.04.1993, suit was filed in 2000 and the same is barred by limitation and the same is taken note of by the First Appellate Court. The counsel also would vehemently contend that Exs.D35 to D37-mahazar drawn by Tahasildar clearly disclose that defendant No.1 is in possession of the property. The counsel would vehemently contend that when the defendant No.1 denied the title in paragraph No.2 of the written

statement, but Trial Court observed that not denied the title. The First Appellate Court correctly assigned reasons while reversing the judgment and it does not require any interference and reasoned order has been passed by the First Appellate Court.

Substantial questions of law No.1 and 2:

17. Having considered the principles laid down in the judgments referred supra as well as submission of respective counsels and having perused the documentary evidence available on record, this Court has to consider the substantial questions of law whether the finding of the lower appellate Court that the suit is barred by limitation can be sustainable in law on the face of the evidence on record and whether the suit of the plaintiff could have been dismissed in its entirety, though appeal was filed by only defendant No.1.

18. Having taken note of substantial questions of law, it is not in dispute that suit is filed for the relief of declaration and permanent injunction claiming that suit schedule property was granted in favour of the plaintiff. It is also important to note that only defendant No.1 contested the suit. At the first instance, though in general denied the averments made in the

plaint, specific defence was set forth in paragraph No.8 of the written statement that he has perfected his title by way of adverse possession and he has been in possession from last 40 years. Later, amended the written statement inserting paragraph No.8a with regard to limitation is concerned and accordingly, additional issue was also raised. Having taken note of the pleadings, it is the case of the plaintiff that suit schedule property was allotted in favour of the plaintiff and the very same extent of land was granted in favour of defendant No.1 and another person one Mr. Eranna and the same is not in dispute. Though the defendant No.1 denies the same in his evidence and also pleadings, but categorical admission was given by D.W.1 and the same was taken note of by the Trial Court, wherein he categorically admits that when the suit schedule property was allotted in favour of the plaintiff to the extent of 4 acres in Sy.No.92, defendant No.1 was also allotted property in the very same survey number. He categorically admits that survey number was re-numbered as '141 in respect of the property which was allotted to him.

19. It is also the case of the plaintiff that when Sy.No.92/3 was allotted to him, re-number was given in respect of the suit schedule property as '143'. It is also

important to note that D.W.1 categorically admits that in Exs.D2 to D7-RTC, in column No.9, name of the plaintiff was shown. It is also not in dispute that in column No.12, his name was shown. Hence, the very plaintiff had approached the Tahasildar for correction of the same. It is also not in dispute that in terms of Ex.D1, Tahasildar passed an order on 27.04.1993 directing the parties to approach Civil Court. Having taken note of the said order, no doubt, direction was given to the parties to approach Civil Court, but, it is very clear that plaintiff has approached only with regard to entries made in column No.12 and there was no dispute with regard to the title is concerned. The D.W.1 categorically admits that suit schedule property was allotted in favour of the plaintiff and Sy.No.92 was allotted in his favour and no dispute with regard to the fact that said survey number was re-numbered. It is also important to note that property was also allotted in favour of one Mr.Eranna and the same was re-numbered as Sy.No.142. Though, he denies that he had not purchased the property, but document-Ex.P31 is produced before the Trial Court by the plaintiff to show that very defendant No.1 had purchased the property which was allotted in favour of one Mr. Eranna in the year 1998. In the said sale deed, the boundary of the plaintiff is

shown as one of the property of plaintiff. Hence, the Trial Court taken note that in the year 1998, the plaintiff was in possession of the property. But, suit was filed in 2000 within a period of 2 years and though, there was wrong entry in column No.12 of the revenue records, the same will not confer any title in favour of defendant No.1 and only contention is that he has perfected his title by way of adverse possession. Unless, he admits the title, question of claiming adverse possession also does not arise, since in the document of defendant No.1 in the year 1998 itself, boundary was shown as property of the plaintiff and the contention that he has been in possession from 40 years cannot be accepted and the same is taken note of by the Trial Court. But, the First Appellate Court committed an error in coming to the conclusion that plaintiff has not produced any document with regard to his title and no dispute with regard to the title is concerned, in view of the admission of D.W.1 in his cross-examination.

20. Though, learned counsel for respondent No.1(a) to (h) would contend that title was disputed in the written statement referring paragraph No.2 and the same is only a general denial of plaint averments and there is no specific denial. But, paragraph No.8 is very clear that he claims adverse

possession and not title and there is a clear admission on the part of D.W.1 that suit schedule property was allotted in favour of the plaintiff and along with the plaintiff, he was allotted property in the very same survey number and also one Mr. Eranna and he admits the grant in favour of the plaintiff, himself and Mr. Eranna and from Eranna, he has purchased the property. The First Appellate Court failed to take note of all these factors into consideration and only an observation is made that no title document is produced. When there is a clear admission on the part of defendant No.1, the question of proving the title does not arise as per Section 58 of the Evidence Act and the First Appellate Court committed an error and comes to the conclusion that the order of the Tahasildar was not challenged immediately and suit was filed in 2000. No doubt, there was an order as per Ex.D1 by the Tahasildar, the dispute is only in respect of entries made in the year 1992, that too, in particular, column No.12 and not in respect of the title of the plaintiff and even defendant No.1 also not disputed the title, except claiming that he is in adverse possession.

21. When such being the case, the First Appellate Court committed an error in coming to the conclusion that suit is barred by limitation and failed to take note of the fact that

there was no dispute with regard to the title. The Trial Court while answering and considering issues, in paragraph No.22 taken note that D.W.1 has specifically admitted the grant made by the concerned authority in favour of the plaintiff in respect of the suit schedule property and in the very same survey number, an extent of 4 acres was granted in favour of defendant No.1 and also one Mr. Eranna. The Trial Court also while answering additional issue No.1, discussed in detail with regard to the order passed by the Tahasildar. The very contention that suit is barred by limitation is also discussed and rightly comes to the conclusion that there is no dispute with regard to the title between the parties and even discussed Article 113 and Article 58 of the Limitation Act and suit is filed for the relief of declaration and the same is governed by Article 58 of the Limitation Act.

22. The judgments which have been referred by learned counsel appearing for the appellant is also very clear that mere adverse entry in the revenue records will not give rise to cause of action and right to sue accrues when there is a clear and unequivocal threat to infringe a right. But, no such threat to the title of the plaintiff and the defendant No.1 only claims possession and the Apex Court also in paragraph No.18, taken

note of the same and the judgment of Apex Court in **Dayasingh's** case is aptly applicable to the case on hand and even in **Amar Singh's** case also, the judgment of **Dayasingh's** case was taken note of and discussed about Article 58 as well as Article 113 of Limitation Act. This Court in the judgment referred supra in **Maranna's** case, in detail discussed the same and held that defendant has not produced any documents to show that on what strength the name of his father was written in the RTC extract pertaining to the suit land and also observed that a mischief was committed by the revenue authorities and compelled the plaintiff to approach the Court to establish the title and hence, granted the relief of decree of declaration.

23. In the case on hand, defendant No.1 not claims any title in respect of the suit schedule property and only claims adverse possession based on an entry, that too, a mischief done by the revenue authorities in showing name of defendant No.1 in column No.12 and no material on what basis, the defendant No.1 was put in possession and mere wrong entry in the revenue records will not take away the case of the plaintiff. The defendant No.1, except claiming that he is in possession, not produced any document or evidence to show that he has

been in possession and only an adverse entry is made in column No.12 and it is not his case that he is having title and an attempt is made while giving evidence before the Court that suit schedule property was granted in his favour and that is not the pleading in the written statement and no such material before the Court and title of the plaintiff is very clear and grant was made in favour of the plaintiff, defendant No.1 and another person one Mr. Eranna and Ex.P31 is also very clear that plaintiff is in possession of the property from the year 1998 from whom, he had purchased i.e., Mr. Eranna and suit was filed in 2000 within a period of limitation of 3 years and there is a clear admission on the part of defendant No.1 that plaintiff is in possession of the suit schedule property which is shown in his own document. All these factors were not considered by the First Appellate Court and the First Appellate Court failed to exercise the power under Order XLI Rule 31 of CPC and instead, considered order of the Tahasildar and the dispute is only with regard to entry in column No.12 and not in respect of title and ownership before the Tahasildar and even referring the parties to the Civil Court itself is erroneous when there was no dispute with regard to the title, ought to have considered the entry in Column No.12 of RTC. No doubt, Tahasildar cannot

decide the title and there is no such claim of title by defendant No.1 before the Revenue Court, the order passed by the Tahasildar will not take away the right of appellant/plaintiff and the First Appellate Court committed an error. Hence, it requires interference.

24. This Court would like to rely upon the judgment of the Apex Court in ***UNION OF INDIA AND OTHERS vs. WEST COAST PAPER MILLS LTD. AND ANOTHER*** reported in ***(2004) 2 SCC 747***, wherein discussion was made with regard to Article 58 and 113 of Limitation Act taking note of when "the right to sue first accrues" and when "the right to sue accrues" and a distinction was made in paragraph No.21 of the judgment that in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues". The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the

period of limitation would be differently computed depending upon the last day when the cause of action thereof arose.

25. This Court would like to rely upon the judgment of the Apex Court in ***SHAKTI BHOG FOOD INDUSTRIES LIMITED vs. CENTRAL BANK OF INDIA AND ANOTHER*** reported in ***(2020) 17 SCC 260***, wherein also discussion was made with regard to Articles 113 and 58 of Limitation and Section 22 of Residuary clause under Article 113 of Limitation Act and the Apex Court held that the same would be applicable when suit not covered by any specific article "when right to sue accrues". Article 113 distinguished from Article 58 which contains additional word "first" between words "sue" and "accrues" which is discussed in detail in paragraph No.17 and 18. The judgment of the Apex Court in ***UNION OF INDIA vs. WEST COAST PAPER MILLS LTD.*** is also discussed to examine the expression used in Article 58 in contradistinction to Article 113.

26. This Court also would like to rely upon recent judgment of the Apex Court in ***MALLAVVA AND ANOTHER vs. KALSAMMANAVARA KALAMMA (SINCE DEAD) BY LEGAL HEIRS AND OTHERS*** reported in ***2024 SCC ONLINE SC***

3846, wherein also discussed Article 58 of the Limitation Act in paragraph No.16 and so also Article 65 of the Limitation Act in paragraph No.17. In paragraph No.21, the Apex Court observed that Article 58 comes within the purview of Part-III of Limitation Act, 1963 and the same deals with suits relating to declarations. The Apex Court also discussed Article 113 in paragraph No.19 that it means, if no prescribed period of limitation is provided elsewhere in the Limitation Act, 1963, as per Article 113 of the said Act, a suit must be instituted within a period of 3 years when the right to sue accrues. Hence, it is clear that there is a distinction between Article 58 as well as Article 113 of Limitation Act. In the case on hand, this Court also comes to the conclusion that merely because the Tahasildar has passed an order, no right accrues to file a suit claiming title, since there is no dispute with regard to the title is concerned and only challenge is made with regard to entry made in Column No.12 of the RTC and in paragraph No.8 of the written statement, defendant No.1 has claimed adverse possession and in paragraph No.8a pleaded with regard to order passed by the Tahasildar. The plaint averments is clear that when interference for possession of plaintiff started, filed the suit. No infringement of right till then, except entry in the

Column No.12 of RTC. Though, defendant No.1 claims possession from long period, but his own document at Ex.P31 is clear that property is in possession of the plaintiff even in 1998 and suit is filed in 2000.

27. This Court also would like to rely upon the judgment of the Apex Court in **GOVERNMENT OF KERALA vs. JOSEPH** reported in **2023 SCC ONLINE SC 961**, wherein at paragraph No.35, it is held that mere possession over a property for a long period of time does not grant the right of adverse possession on its own. In the case on hand, only on the basis of an entry found in Column No.12 of RTC, the defendant No.1 claims adverse possession, but no any animus with regard to possession is concerned is pleaded and there must be some overt act on the part of the licensee to show that he is claiming adverse title as held in the judgment of the Apex Court in **GAYA PRASAD DIKSHIT vs. DR. NIRMAL CHANDER** reported in **(1984) 2 SCC 286** and there must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorized possession even for a period of more than 12 years is not enough. In the case on hand, how the defendant No.1 got into possession of the property is not made out in the written statement, except

relying upon entry found in Column No.12. This Court also pointed out that no dispute with regard to title and though, he claims that he was granted the said property, no material is placed on record as well as there is no pleading to that effect.

28. No doubt, an application is filed under Order XLI Rule 27 read with Section 151 of CPC and these documents are only the documents to show the process of grant and when there is no dispute with regard to the grant is concerned and D.W.1 has already admitted in his cross-examination that plaintiff was granted with suit schedule property and all these documents are not necessary and these documents have been produced only with regard to claim made by the plaintiff, defendant No.1 and one Mr. Eranna and process of grant was also made. Though, these documents pertain to the suit schedule property, land was also granted in favour of defendant No.1 as well as one Mr. Eranna and these documents are not necessary in view of clear and unequivocal admission on the part of defendant No.1 in his cross-examination with regard to title of the plaintiff. The defendant No.1 only claims adverse possession based only on a wrong entry made in column No.12 and not based on any animus possession and the same is not substantiated. Hence, the application filed for production of

documents is rejected and these documents are not necessary in view of already material available on record and also the admission on the part of defendant No.1. Therefore, I answer substantial questions of law No.1 and 2 accordingly.

29. In view of the discussion made above, I pass the following:

ORDER

- (i) The regular second appeal is ***allowed***.
- (ii) The impugned judgment and decree of the First Appellate Court passed in R.A.No.67/2007 dated 03.07.2010 is set aside.
- (iii) The judgment and decree of the Trial Court passed in O.S.No.217/2000 dated 06.08.2007 is restored confirming the declaration and injunction granted in favour of the appellant/plaintiff.
- (iv) The application filed under Order XLI Rule 27 read with Section 151 of CPC is ***dismissed*** in view of the discussion made above, as the same are not necessary to consider the germane issues involved between the parties.

**Sd/-
(H.P.SANDESH)
JUDGE**

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