HC-KAR

NC: 2026:KHC:62727
RSA No. 95 of 2008
C/W RSA No. 96 of 2008

CNR: KAHC010171352008

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 95 OF 2008 (DEC)
C/W
REGULAR SECOND APPEAL NO. 96 OF 2008 (DEC)

IN RSA No. 95/2008

BETWEEN:

H RAMAIAH,
SINCE DECEASED BY HIS LRS.

1. SMT. JAYAMMA,
W/O LATE H. RAMAIAH,
AGED ABOUT 70 YEARS.

2. HANUMANTHARAYAPPA,
S/O LATE H. RAMAIAH,
AGED ABOUT 53 YEARS.

3. SMT. SHANTHAMMA,
D/O LATE H. RAMAIAH,
AGED ABOUT 50 YEARS,
AKKUPETE (MELINA THOTA)
DEVANAHALLY, BANGALORE RURAL DIST.

4. KRISHNAMURTHY,
S/O LATE H. RAMAIAH,
AGED ABOUT 47 YEARS.

5. SRINIVASA,
S/O LATE H. RAMAIAH,
AGED ABOUT 44 YEARS.

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6. MURALIDHARA,
S/O LATE H. RAMAIAH,
AGED ABOUT 41 YEARS.

7. USHA,
D/O LATE H. RAMAIAH,
AGED ABOUT 35 YEARS.

ALL ARE R/AT KOTE BEEDI,
DEVANAHALLI TOWN,
BANGALORE RURAL DIST.

…APPELLANTS

(BY SRI H.N SHASHIDHARA, SENIOR COUNSEL FOR
SRI H.S SUHAS, ADVOCATE)

AND:

1. D.S. SURYANARAYANA RAO,
S/O D.R.SRINIVASAMURTHY,
AGED ABOUT 75 YEARS,
R/AT NO.443, 6TH CROSS,
7TH MAIN ROAD, J.P.NAGAR III PHASE,
BANGALORE-78.

2. G RAVI,
S/O GUNDU RAO,
AGED ABOUT 50 YEARS,
R/AT KOTE BEEDI,
NEAR VENUGOPALASWAMY TEMPLE,
DEVANAHALLI TOWN,
BANGALORE RURAL DISTRICT.

…RESPONDENTS

(BY R1 & R-2 ARE SERVED AND UNREPRESENTED;
SRI T. SESHAGIRI RAO, ADVOCATE FOR R-3 [NOC];
V/O DATED 15.06.2026, THERE IS NO REQUIREMENT TO

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BRING THE LR'S OF R1 & R2 ON RECORD, AS R3 IS ALREADY ON RECORD)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DATED 6.10.2007 PASSED IN R.A.NO.4/2001 ON THE FILE OF THE PRESIDING OFFICER, FTC-II, BANGALORE RURAL DIST., BANGALORE, DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED 29.11.2000 PASSED IN O.S.NO.436/89 ON THE FILE OF THE II ADDL. CIVIL JUDGE (SR.DN), BANGALORE RURAL DIST., BANGALORE.

IN RSA NO. 96/2008

BETWEEN:

H RAMAIAH,
SINCE DECEASED BY HIS LRS.

1. SMT. JAYAMMA,
   W/O LATE H.RAMAIAH,
   AGED ABOUT 70 YEARS.

2. HANUMANTHARAYAPPA,
   S/O LATE H.RAMAIAH,
   AGED ABOUT 53 YEARS.

3. SMT. SHANTHAMMA,
   W/O LATE H RAMAIAH,
   AGED ABOUT 50 YEARS,
   AKKUPETE (MELINA THOTA),
   DEVANAHALLY, BANGALORE RURAL.

4. KRISHNAMURTHY,
   S/O LATE H.RAMAIAH,
   AGED ABOUT 47 YEARS.

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S/O LATE H.RAMAIAH,
AGED ABOUT 44 YEARS.

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ALL ARE R/AT KOTE BEEDI,
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...APPELLANTS

(BY SRI H N SHASHIDHARA, SENIOR COUNSEL FOR

SRI H.S SUSHAS, ADVOCATE)

AND:

D S SURYANARAYANA RAO,
S/O D.R.SRINIVASAMURTHY,
AGED ABOUT 75 YEARS,
R/AT NO.443, 6TH CROSS,
7TH MAIN ROAD, J.P.NAGAR III PHASE,
BANGALORE 78.

...RESPONDENT

(BY SRI R1 - SERVED & UNREPRESENTED;

SRI T. SESHAGIRI RAO, ADVCOATE FOR R-2 [NOC])

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(SR.DN), BANGALORE RURAL DIST., BANGALORE.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

These two Regular Second Appeals arise out of a common judgment and decree rendered in O.S.Nos.436/1989 and 203/1992, which came to be affirmed by the First Appellate Court in R.A.Nos.4/2001 and 5/2001 respectively. Since both the suits were clubbed and disposed of by a common judgment, and the appeals arising therefrom were also considered together, these appeals are taken up for consideration together and are disposed of by this common judgment.

2. For the sake of convenience and to avoid any confusion in the narration of facts, the rank of the parties as assigned to them in O.S.No.436/1989 is adopted throughout this judgment.

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3. The plaintiff instituted O.S.No.436/1989 seeking the relief of declaration of title and permanent injunction in respect of a vacant site measuring 66 yards x 54 yards. The plaintiff traced his title to one Ramappa, who, according to the plaintiff, had acquired the property under a registered family partition deed dated 31.03.1904. Upon the demise of Ramappa, the property devolved upon his son D. Shankar Rao and, thereafter, upon his children, namely, D.S. Rajagopala Rao, D.S. Sathyanarayana Rao, Manjunath and Nagendra. The aforesaid persons, claiming to be the absolute owners of the property, conveyed the same in favour of the plaintiff under a registered sale deed dated 10.11.1975 for a sale consideration of Rs.12,000/-.

4. The plaintiff, on the strength of the aforesaid registered sale deed, asserted that he had acquired absolute title and was in lawful possession and enjoyment of the suit schedule property. He further contended that his name was duly entered in the municipal property

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records and that he had been regularly paying property taxes. Alleging that the defendants, who had succeeded to the property situated on the western side of the suit schedule property, were attempting to put up construction by encroaching upon the property purchased by him and had also sought sanction of a building plan with an intention to lay claim over his property, the plaintiff instituted the suit seeking declaration of title and consequential relief of permanent injunction.

5. The defendants entered appearance and filed their written statement, stoutly denying the plaint averments and disputing the plaintiff's claim of title and possession. Their principal defence was with regard to the identity, extent and measurements of the property claimed by the plaintiff. Referring to the sketch produced in support of their defence, the defendants contended that the property purchased by the plaintiff, though situated on the eastern side of their property, was abutting Bellary

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Road, which is a National Highway. According to them, in the course of road widening, the plaintiff had lost a substantial portion of the property facing the National Highway. They, therefore, disputed the extent claimed by the plaintiff under the sale deed dated 10.11.1975 and contended that the measurements incorporated in the plaint schedule did not represent the actual extent available to the plaintiff.

6. Defendant No.1 also instituted an independent suit in O.S.No.203/1992, asserting his own title and possession over the property in dispute and seeking a decree of permanent injunction against the plaintiff in the connected suit. Defendant No.1 claimed that the suit schedule property was ancestral property and that his father had been allotted the same in a family partition.

7. In the said suit, defendant No.1 reiterated his specific defence that the plaintiff had already lost a substantial portion of the property purchased by him,

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particularly the portion facing Bellary Road, on account of road widening. It was specifically contended that the plaintiff had lost nearly 15 feet in the East-West dimension. While acknowledging that the boundaries recited in the plaintiff's sale deed may correspond with the factual position on the ground, defendant No.1 contended that the vendors of the plaintiff had purported to convey the entire extent indicated in the sale deed, notwithstanding the reduction in the available extent consequent upon road widening. On this premise, defendant No.1 disputed the plaintiff's entitlement to seek declaration in respect of the entire extent claimed in the plaint schedule. He asserted that he was in actual physical possession of the property claimed in his suit and sought an injunction to protect his possession.

8. Since the rival claims in both the suits substantially overlapped and involved adjudication of competing claims of title, identity and possession in

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respect of the properties situated adjacent to each other, the Trial Court clubbed both the suits and proceeded to record common evidence in O.S.No.436/1989. On the basis of the pleadings, appropriate issues were framed and the parties were called upon to substantiate their respective claims by leading oral and documentary evidence.

9. The plaintiff adduced oral and documentary evidence in support of his claim of title and possession. The defendants also entered the witness box and produced documentary evidence, including the title documents relied upon by them, to substantiate their independent claim over the property.

10. Upon appreciation of the oral and documentary evidence, the Trial Court answered Issue Nos.1 and 2 in O.S.No.436/1989 in the negative. While answering Issue No.1 against the plaintiff, the Trial Court held that the plaintiff had failed to establish his title over the suit

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schedule property. Consequently, it also held that the plaintiff had failed to establish his lawful possession and dismissed the suit in O.S.No.436/1989.

11. On the other hand, while considering the issues framed in O.S.No.203/1992, the Trial Court answered Issue Nos.1 and 2 in the affirmative and accepted the claim of defendant No.1 regarding title and possession. The Trial Court was particularly influenced by the discrepancy in the measurements indicated in the plaintiff's sale deed and the actual extent available on the ground. It proceeded on the premise that the schedule incorporated by the plaintiff encompassed an extent which was not available to him, having regard to the road widening and the boundaries recited in the respective title documents. The Trial Court, therefore, concluded that it was the plaintiff who was attempting to interfere with the possession of defendant No.1 and, accordingly, decreed O.S.No.203/1992 in favour of defendant No.1.

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12. Aggrieved by the dismissal of his suit in O.S.No.436/1989 and the decree granted in favour of defendant No.1 in O.S.No.203/1992, the plaintiff preferred two independent appeals in R.A.Nos.4/2001 and 5/2001 respectively. The First Appellate Court, after issuing notice to the respondents and upon hearing the parties, undertook an independent re-appreciation of the oral and documentary evidence on record. However, concurring with the findings recorded by the Trial Court on the questions of title, identity and possession, the First Appellate Court proceeded to dismiss both the appeals, thereby affirming the common judgment and decree of the Trial Court.

It is against these concurrent findings recorded by the Courts below that the plaintiff has preferred the present Regular Second Appeals.

13. RSA No.95/2008 is directed against the judgment and decree dated 6.10.2007 rendered in

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R.A.No.4/2001, whereby the First Appellate Court affirmed the judgment and decree passed in O.S.No.436/1989 dismissing the plaintiff's suit for declaration and permanent injunction.

14. The connected appeal, RSA No.96/2008, is directed against the judgment and decree rendered in R.A.No.5/2001, whereby the First Appellate Court affirmed the judgment and decree passed in O.S.No.203/1992, decreeing the suit instituted by defendant No.1 for permanent injunction.

15. This Court, vide order dated 03.06.2008, has admitted both the second appeals on the following substantial questions of law:

In RSA 95/2008

1) Whether the Courts below failed to appreciate that there was no dispute over the purchase of the suit schedule property by the appellants father by way of

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registered sale deed from respondent No.1 and as such both the Courts below have wrongly declined to grant decree of declaration and permanent injunction insofar as appellants suit schedule property is concerned?

2) Whether the Courts below have failed to appreciate that the appellants father acquired the suit schedule property by way of registered sale deed and same has been evidenced by production of original sale deed?

3) Whether the Courts below were right in refusing to grant declaration and injunction insofar as the suit schedule property in O.S.No.436/89 is concerned when the respondents did not dispute the sale deed dated 10.11.1975?

In RSA 96/2008

1) Whether the Courts below were right in granting a decree in favour of the respondent No.1 when there was

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no dimension specifying in the release deed of 1966 in favour of the 1st respondent?

2) Whether the Courts below were right in refusing to grant decree of injunction in favour of the appellants in respect of their suit schedule properties in O.S.No.436/89 when the appellants have not sought any relief in respect of respondent No.1's property?

3) Whether the Courts below were right in granting decree in favour of respondent No.1 with even considering the case of respondent No.1 on merits and only on the ground that the appellants failed to prove their case?

16. Learned Senior Counsel appearing for the plaintiff, assailing the concurrent judgments and decrees passed by the Courts below, would contend that both the Courts have committed a serious error in dismissing the suit instituted by the plaintiff in O.S.No.436/1989. Taking this Court through the chain of title documents, learned Senior Counsel would submit that the plaintiff's claim is

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founded on a registered sale deed executed in his favour by persons who had derived title through Ramappa, who, in turn, had acquired the property under a registered family partition deed. He would contend that the plaintiff's title, having been traced to a registered instrument, could not have been rejected merely on account of certain discrepancies or ambiguity in the measurements indicated in the respective documents.

17. Learned Senior Counsel would further contend that both the Courts below have failed to advert to and properly appreciate the material documentary evidence bearing on the plaintiff's title. According to him, the findings recorded by the Trial Court, as affirmed by the First Appellate Court, on the questions of title and possession are vitiated by non-consideration of material evidence and, therefore, suffer from perversity. He would submit that this Court, having examined the title documents and the nature of the controversy involved,

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was justified in formulating the substantial questions of law at the time of admission. He would accordingly urge this Court to answer the substantial questions of law in favour of the plaintiff and grant the reliefs sought in the suit.

18. Learned Senior Counsel would further submit that the controversy essentially revolves around the actual extent of the property remaining with the plaintiff after the widening of Bellary Road. In that regard, he would seek reconsideration of the plaintiff's request for local inspection to ascertain the actual measurements and the extent of the property presently available. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Haryana Waqf Board v. Shanti Sarup and Others***[1]**,** he would contend that even at the stage of second appeal, this Court is not precluded from exercising its powers under Order XXVI Rule 10-A of the Code of Civil Procedure Code, 1908 (for

[1] (2008) 8 SCC 671

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short "the CPC") and directing an appropriate scientific investigation or local inspection to ascertain the actual extent of the property. He would submit that such an exercise has become necessary since a substantial portion of the plaintiff's property is stated to have been lost on account of the widening of the National Highway. According to him, without ascertaining the actual extent available on the ground, the Courts below could not have rejected the plaintiff's claim on the basis of discrepancies in measurements.

19. Per contra, Sri T. Sheshagiri Rao, learned counsel appearing for the respondents, while supporting the judgments and decrees passed by both the Courts below, would contend that the findings recorded therein are based on a proper appreciation of the oral and documentary evidence. He would particularly draw the attention of this Court to the admissions elicited from the plaintiff in the course of cross-examination. Referring to

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paragraph 12 of the cross-examination, he would submit that the plaintiff has unequivocally admitted that the extent of his property has been substantially reduced on account of road widening. He would further point out that the width of Bellary Road, which was comparatively narrower at the time of the plaintiff's purchase, has since been substantially increased. However, he would fairly submit that the exact width of the road as on the date of institution of the suit is not ascertainable from the available evidence.

20. Learned counsel would next draw the attention of this Court to what, according to him, is a fundamental inconsistency in the plaintiff's claim of title. Referring to the extent indicated in the registered sale deed marked as Ex.P1, he would contend that although the boundaries recited therein may broadly correspond with the existing physical features, the extent mentioned in the document, if accepted in its entirety, would result in the plaintiff

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claiming a much larger extent than what his vendors themselves had acquired under the registered family partition deed. He would, therefore, contend that the plaintiff cannot rely upon the boundaries in the sale deed while disregarding the limitations arising from the extent of title held by his predecessors-in-title.

21. He would further submit that the plaintiff has failed to establish the identity and continued existence of the property claimed by him, particularly after the widening of Bellary Road. In the absence of cogent evidence establishing the actual extent available to the plaintiff and its correlation with the property conveyed under the sale deed, the Courts below were justified in declining the relief of declaration and injunction. He would submit that the First Appellate Court, being the final fact-finding authority, has independently re-appreciated the evidence and rightly affirmed the findings recorded by the Trial Court. Consequently, the substantial questions of law

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framed in RSA No.95/2008 deserve to be answered against the plaintiff.

22. Learned counsel would also resist the request for appointment of a Commissioner at the stage of second appeal. In that regard, he would submit that a Commissioner had already been appointed at the instance of the plaintiff before the Trial Court. Though the Commissioner had undertaken the exercise of measuring the property, the plaintiff had allegedly raised objections and failed to extend necessary cooperation for conducting the local inspection. Nevertheless, the Commissioner proceeded with the commission work and submitted a report, which forms part of the record. He would emphasise that the plaintiff neither filed objections to the Commissioner's report nor chose to cross-examine the Commissioner. On the contrary, it was the defendant who subjected the Commissioner to cross-examination. In these circumstances, learned counsel would contend that

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the plaintiff cannot, at this belated stage, seek a fresh exercise of local inspection to overcome the deficiencies in the evidence already adduced.

23. Heard the learned Senior Counsel and the learned counsel appearing for the respective parties. Perused the judgments and decrees of the Courts below, the pleadings, the oral and documentary evidence and the material available on record.

FINDINGS ON THE SUBSTANTIAL QUESTIONS OF LAW FORMULATED IN RSA NO.95/2008

24. Before proceeding to examine the rival contentions and the substantial questions of law framed in this appeal, it would be appropriate to advert to the sketch furnished along with the written synopsis, which is sought to be relied upon by the parties to demonstrate the location, boundaries and relative measurements of the properties in dispute. The said sketch is extracted hereinbelow:

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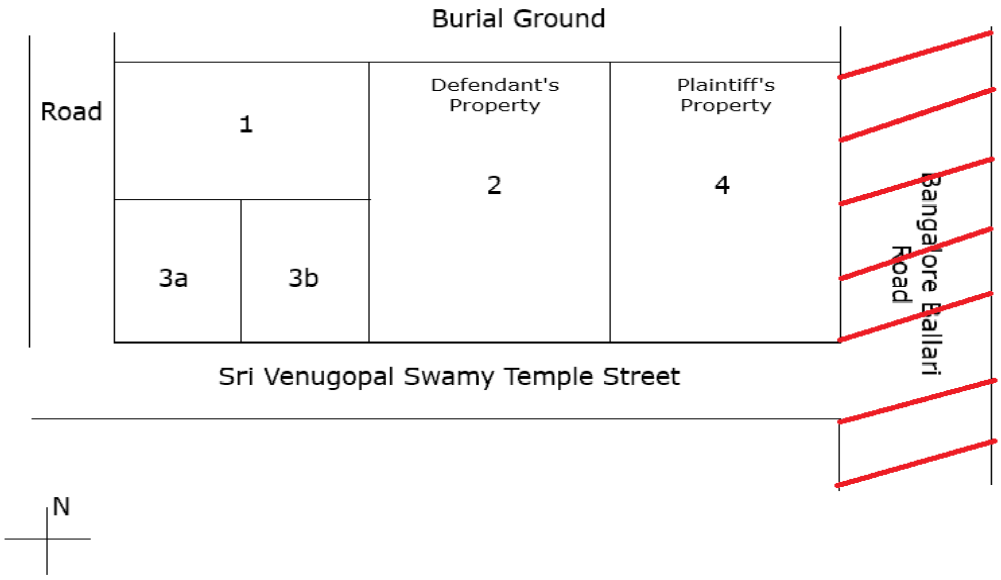

25. It is not in dispute that the suit schedule property originally belonged to one Shanbhog Appaji, who had two sons, namely, Ramappa and Ramachandrappa. It is also an admitted position that there was a family partition and, under the registered partition deed, both Ramappa and Ramachandrappa were allotted their respective legitimate shares in the family properties. It is equally not in dispute that the property claimed by defendant No.1 is situated immediately to the western side of the property claimed by the plaintiff. The controversy, however, arises on account of the subsequent road

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widening of Bellary-Bengaluru Road, which has admittedly resulted in utilisation of a portion of the property originally owned by the family. During the course of trial, the defendants, by subjecting the plaintiff to cross-examination, have succeeded in eliciting an important admission to the effect that, though the plaintiff had purchased a portion of the property abutting Bellary-Bengaluru Road, a portion thereof had subsequently been lost on account of road widening. Thus, the plaintiff was conscious of the fact that a portion of the property purchased by him had been utilised for road widening. Notwithstanding such admitted factual position, the plaintiff did not take steps to have the property surveyed so as to ascertain the exact extent of land remaining in his possession after the road widening.

26. It is significant to note that the defendants had consistently taken this specific defence in O.S.No.436/1989 and had reiterated the same in the

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independent suit instituted by defendant No.1 in O.S.No.203/1992. The defendants specifically asserted that the plaintiff had lost a substantial portion of the property abutting the National Highway and that the extent claimed by him in the plaint schedule did not correspond with the extent actually available on the ground. The defendants have, in fact, succeeded in eliciting this material admission from the plaintiff in the course of his cross-examination.

27. The boundaries indicated in the plaintiff's title deed and the pleadings in the connected suit acknowledge the existence of the defendants' property on the western side. However, the crucial question that arises for consideration is whether, in the peculiar facts and circumstances of the present case, the plaintiff could have maintained a comprehensive suit for declaration of title and consequential relief of permanent injunction without first ascertaining the actual extent of the property retained

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by him after a portion thereof was utilised for road widening.

28. This Court is of the view that where a plaintiff institutes a comprehensive suit seeking declaration of title coupled with consequential relief of permanent injunction, the burden rests squarely upon him to establish not only his title but also the identity of the property in respect of which such declaration is sought. Where the very extent and identity of the property are seriously disputed, particularly on account of a subsequent event such as road widening, the plaintiff cannot seek a declaration in respect of the entire extent originally acquired without establishing the extent that continues to remain identifiable and available to him.

29. In this context, the plaintiff cannot seek to overcome the deficiencies in his pleadings and evidence by invoking Order XXVI Rule 10-A of CPC. The controversy in the present case essentially concerns identification,

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measurement and demarcation of the property claimed by the plaintiff and not any scientific investigation contemplated under the said provision. It is, however, relevant to note that the Trial Court, at the instance of the plaintiff himself, entertained an application seeking appointment of a Court Commissioner and permitted local inspection. What is rather intriguing is that the plaintiff, at whose instance the Commissioner came to be appointed, seriously objected to the inspection when the Commissioner attempted to undertake the exercise of measurement. Notwithstanding such resistance, the Commissioner proceeded with the inspection and submitted a report before the Trial Court.

30. It is also relevant that the plaintiff did not file any objections to the Commissioner's report nor did he choose to cross-examine the Commissioner. On the contrary, it was the defendants who subjected the Commissioner to cross-examination. Though this Court

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does not consider it necessary to rest its conclusions on the contents of the Commissioner's report, the aforesaid circumstances are relevant in appreciating the conduct of the parties and the nature of the controversy that was before the Trial Court.

31. The question that nevertheless requires examination is whether the concurrent findings recorded by both the Courts below, while dismissing O.S.No.436/1989, suffer from any perversity or material irregularity warranting interference under Section 100 of CPC.

32. It is a settled principle that a litigant who approaches the Court seeking a comprehensive decree of declaration of title and consequential injunction must succeed on the strength of his own title and evidence. The plaintiff is required to establish his title as well as the identity and possession of the property as on the date of institution of the suit. The production of a registered sale

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deed, by itself, may establish the source of title, but where the extent and identity of the property conveyed under such instrument are seriously disputed, the plaintiff must place sufficient material before the Court to correlate the property described in the title document with the property actually available on the ground.

33. In the present case, the plaintiff has admitted that a portion of the property originally purchased by him was utilised by the local authorities for widening of the existing National Highway. It is not his case that he had undertaken any exercise to ascertain the precise extent so utilised or the extent that continued to remain in his possession. In such circumstances, the plaintiff could not have maintained a suit seeking declaration of title and consequential injunction in respect of the entire extent originally held by the family of the propositus, Shanbhog Appaji, without first establishing the actual extent that remained with him.

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34. It is precisely in this factual backdrop that both the Courts below have examined the discrepancy between the extent indicated in the plaintiff's sale deed and the extent actually available on the ground, particularly in the light of the admissions elicited from the plaintiff, who was examined as P.W.1. The Courts below have concurrently concluded that the plaintiff failed to establish the precise identity and extent of the property in respect of which he sought declaration and injunction.

35. This Court is unable to find any perversity in the aforesaid findings. Though this Court, while admitting the appeal, formulated substantial questions of law touching upon the plaintiff's claim of title on the strength of the registered sale deed, the mere production of title documents, in the peculiar facts and circumstances of the present case, would not automatically entitle the plaintiff to a decree of declaration in respect of an unidentified or unascertained extent of land. The plaintiff was required to

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establish the precise extent of land that continued to belong to him after the alleged utilisation of a portion thereof for road widening.

36. Had the plaintiff undertaken a proper survey and established the exact extent retained by him, and thereafter restricted his claim to such identifiable extent, the controversy regarding the identity and measurements of the property could have been examined on a more precise factual foundation. Instead, the plaintiff has chosen to assert a claim over the entire extent indicated in his sale deed, notwithstanding the admitted reduction in the available extent and the specific defence of the defendants that such claim overlaps with their property.

37. The conduct of the plaintiff in asserting a claim over an extent which, on his own admission, has undergone substantial reduction, particularly when the defendants' property is situated immediately to the western side, assumes significance. The Courts below have

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taken note of these circumstances and have declined to grant the relief of declaration and consequential injunction. This Court finds no infirmity in the approach adopted by the Courts below.

38. Accordingly, this Court is of the considered view that the findings recorded by both the Courts below do not suffer from perversity, non-consideration of material evidence or any error warranting interference in the present second appeal. The substantial questions of law No.(i) and (ii) formulated in RSA No.95/2008 are accordingly answered in the ***negative*** and substantial question of law No.(iii) is answered in the affirmative.

FINDINGS ON THE SUBSTANTIAL QUESTIONS OF LAW IN RSA NO.96/2008

39. The claim of defendant No.1 in O.S.No.203/1992 stands on an independent footing. Defendant No.1 belongs to the family of the original owner, Shanbhog Appaji, and traces his title through the registered family partition deed of the year 1904. His claim

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is founded on the allotment made in the family partition and the subsequent devolution of title. The Courts below, upon examining the registered partition deed, the pleadings and the documentary evidence, have accepted the claim of defendant No.1 over the property described in the schedule to O.S.No.203/1992.

40. It is relevant to note that the plaintiff, in O.S.No.436/1989, has himself acknowledged the existence of the defendants' property on the western side of the property claimed by him. The boundaries recited in the plaintiff's title document, when read along with the registered partition deed relied upon by defendant No.1, lend support to the latter's claim regarding the location and identity of his property.

41. The findings recorded by both the Courts below are not founded merely on the failure of the plaintiff to establish his own title. On the contrary, the Courts have independently examined the title documents relied upon

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by defendant No.1, particularly the registered family partition deed, and have considered the same in the context of the boundaries and the admissions emerging from the pleadings and evidence in O.S.No.436/1989.

42. The material discrepancy in the plaintiff's claim assumes significance even while examining the relief sought by defendant No.1. Though the plaintiff relies upon the boundaries recited in his sale deed, the extent claimed by him, when compared with the extent available to his predecessors-in-title under the registered partition deed, indicates that the plaintiff is asserting a claim beyond the extent that could have been conveyed to him by his vendors. Such an assertion, particularly when the property of defendant No.1 is situated immediately to the western side, has a direct bearing on the latter's apprehension of interference with his possession.

43. In these circumstances, the Courts below were justified in examining whether the plaintiff, by asserting a

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claim over the entire extent indicated in his sale deed, was attempting to extend his claim beyond the property actually conveyed to him and thereby interfering with the possession of defendant No.1. The findings recorded in this regard are supported by the registered title documents, the boundaries recited therein and the admissions elicited during the course of trial.

44. It is also necessary to bear in mind that the First Appellate Court, while affirming the decree passed in O.S.No.203/1992, has independently re-appreciated the oral and documentary evidence and concurred with the findings recorded by the Trial Court. The concurrent findings regarding the title and possession of defendant No.1 are supported by the material available on record and cannot be characterised as perverse or as findings based merely on the failure of the plaintiff to establish his own case.

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45. Consequently, this Court finds no ground to interfere with the decree passed in O.S.No.203/1992 and affirmed in R.A.No.5/2001. The substantial questions of law formulated in RSA No.96/2008 are accordingly answered in the ***affirmative*** and against the plaintiff/appellant.

46. For the foregoing reasons and in view of the answers recorded to the substantial questions of law, both the Regular Second Appeals fail and are liable to be dismissed. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The Appeals are ***dismissed***;

(ii) The judgments and decrees passed by the Courts below in O.S.Nos.436/1989 and 203/1992, as affirmed in R.A.Nos.4/2001 and 5/2001 respectively, stand confirmed.

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(iii) However, it is made clear that the concurrent findings recorded by the Courts below in O.S.No.436/1989 and the dismissal of RSA No.95/2008 shall not preclude the plaintiff from getting the property claimed by him duly surveyed and measured through the competent survey authorities, provided such exercise is undertaken without encroaching upon or laying any claim over the property belonging to defendant No.1, as described in the schedule to O.S.No.203/1992.

(iv) In the event the plaintiff, upon such survey, is able to ascertain the precise extent of land lawfully retained by him, he shall be at liberty to approach the competent municipal authorities seeking appropriate rectification of the municipal property records or issuance of a property extract reflecting the actual extent available to him. If any portion of the property has been utilised or acquired for road widening, the plaintiff shall also be at liberty to pursue such remedies as may be available to him in law before the competent authorities.

(v) It is made clear that the aforesaid liberty shall not be construed as conferring any right

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upon the plaintiff over the property decreed in favour of defendant No.1 in O.S.No.203/1992, nor shall it entitle the plaintiff to reopen the findings recorded in the present proceedings. All such remedies, if otherwise available, shall be worked out strictly in accordance with law excluding Defendant No.1's property.

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(SACHIN SHANKAR MAGADUM)
JUDGE

CA/ALB
List No.: 2 Sl No.: 1