IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 1666 OF 2020 (INJ)

BETWEEN:

1. SMT. AROGYAMMA
   W/O LATE Y JOSEPH
   AGED ABOUT 81 YEARS,

2. MR LAWRENCE
   S/O LATE Y JOSEPH
   AGED ABOUT 57 YEARS,

3. MR ANTHONY SWAMY @ KANNIGA
   S/O LATE Y JOSEPH
   AGED ABOUT 53 YEARS,

4. MR DANIAL
   S/O LATE Y JOSEPH
   AGED ABOUT 49 YEARS,

5. MR JAMES
   S/O LATE Y JOSEPH
   AGED ABOUT 45 YEARS,

   ALL ARE RESIDING AT
   MARIYANNA PALYA
   ARABIC COLLEGE POST
   K.R PURAM, HOBLI
   BENGALURU-560 045
   NOW RESIDING AT HA FARM
   POST, MARIYANNA PALYA
   K.R. PURAM, HOBLI
   BENGALURU-560 024

...APPELLANTS

(BY SRI. K.S CHANDRAHASA, ADVOCATE FOR A1, A3 & A5,
SRI. SANATH KUMAR SHETTY, ADVOCATE FOR A2)

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

AND:

1. SRI FRANCIES
   S/O LATE DODDA ANTHONY B
   AGED ABOUT 61 YEARS,

2. SRI BORTHALAM
   S/O LATE DODDA ANTHONY B
   AGED ABOUT 55 YEARS,

3. SRI A ARALAPPA
   S/O LATE CHIKKA ANTHONY B
   AGED ABOUT 65 YEARS,

4. SRI A FRANCIS
   S/O LATE CHIKKA ANTHONY B
   AGED ABOUT 62 YEARS,

5. SRI A CHOURI RAJ
   SINCE DECEASED REP BY LR'S

A. MRS. SAGAYA MARY
   W/O LATE A CHOURI RAJ
   AGED ABOUT 58 YEARS

B. ANTHONY ASHA C
   D/O LATE A CHOURI RAJ
   AGED ABOUT 30 YEARS,

C. PRABHU SAGAR C
   S/O LATE A CHOURI RAJ
   AGED ABOUT 35 YEARS,

D. ROOPA KALA C
   D/O LATE A CHOURI RAJ
   AGED ABOUT 25 YEARS,

6. SRI ANTHONY RAJ
   S/O LATE AMRUTHRAJ
   AGED ABOUT 46 YEARS,

   ALL ARE RESIDING AT NO.27
   MARIYANA PALYA,

ARABIC COLLEGE POST
K.R PURAM HOBLI
BENGALURU-560 045

…RESPONDENTS

(BY SRI. VIJAYA KUMAR K, ADVOCATE FOR R1, R2, R3 & R4, R5(A-D) & R6)

THIS RFA IS FILED UNDER ORDER XLI RULE 1 READ WITH SECTION 96 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 06.07.2020 PASSED IN OS.No.1345/2002 ON THE FILE OF THE XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, DECREEING THE SUIT FOR PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 15.10.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

This Regular First Appeal is filed by the appellants-defendants challenging the judgment and decree dated 06.07.2020 passed by the XXXIX Addl City Civil and Sessions Judge, CCH-40, Bengaluru (for short, "the Trial Court"), whereby the Trial Court decreed the suit of plaintiffs for permanent injunction against the defendants.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The

appellants are the defendants and respondents are the plaintiffs.

3. The abridged facts of the case as borne out of pleadings are that plaintiffs are the co-owners in possession and enjoyment of the property bearing Sy. No. 23, situated at Dasarahalli Village, Mariyana Palya, K.R. Puram, Bengaluru South Taluk, Bengaluru, measuring 18 guntas. According to the plaintiffs, their ancestors, late Dodda Anthonappa and late Chikka Anthonappa, acquired the said property from one Anthonamma under a registered sale deed dated 08.12.1951. Subsequent to the purchase, their ancestors applied for khatha and bifurcation of the property. Upon such bifurcation, the property was assigned a new survey number, namely, Sy. No. 23/8. However, only 15 guntas of land came to be entered in the revenue records. The plaintiffs contend that their ancestors were duly recorded and recognised as khathedars and occupants of the property bearing Sy. No. 23/8, measuring 15 guntas, situated at Dasarahalli Village, K.R. Puram Hobli, Bengaluru South Taluk, Bengaluru, which is hereinafter referred to as "the suit schedule property".

4. It is the further case of the plaintiffs that plaintiffs Nos. 1 and 2 are the sons of late Dodda Anthonappa, while plaintiffs Nos. 3 to 5 are the sons of late Chikka Anthonappa. Plaintiff No. 6 is the son of Amrutharju, who is stated to be one of the sons of late Dodda Anthonappa. Apart from the plaintiffs, late Dodda Anthonappa had two other sons, namely, Amruth Raju and Bastin. The plaintiffs further contend that Amruth Raju died leaving behind his wife and children. According to the plaintiffs, they have succeeded to the estate of late Dodda Anthonappa and late Chikka Anthonappa as their surviving successors and legal heirs, including in respect of the suit schedule property.

5. The plaintiffs contend that they have constructed five houses on the suit schedule property and have been residing therein for several decades. After the demise of late Dodda Anthonappa and late Chikka Anthonappa, the khatha of the suit schedule property was transferred to the names of the plaintiffs and one Rosemary. The plaintiffs state that they have constructed the aforesaid houses and are residing in the respective houses constructed by them.

6. It is further contended that one Y. Joseph, the father of the defendants and the owner of an adjacent property, with an intention to cause damage and encroach upon the suit schedule property, began interfering with the plaintiffs' peaceful possession and attempted to construct a compound wall by encroaching upon the suit schedule property. Aggrieved by the alleged interference, the plaintiffs instituted a suit in O.S. No. 2456/1993 before the Additional City Civil and Sessions Judge, Bengaluru City, seeking the relief of permanent injunction against the said Joseph. During the pendency of the said suit, Joseph died, whereupon the suit was dismissed as abated.

7. The plaintiffs further contend that late Joseph, the father of the defendants, had earlier filed proceedings in LRF No. 4960/1975–76 before the Land Reforms Tribunal, claiming rights over the suit schedule property, and that the said claim was rejected. According to the plaintiffs, the rejection of the said claim supports their contention that neither the defendants nor their father had any right or lawful possession over the suit schedule property.

8. The plaintiffs further contend that, on 23.02.2002, the defendants, claiming to be the children of late Joseph, began assembling materials with the intention of constructing a wall by encroaching upon the suit schedule property. Upon noticing the same, the plaintiffs immediately obstructed the alleged illegal activities of the defendants and questioned their authority to undertake such construction. The defendants allegedly asserted that, as the earlier suit had dismissed, they were entitled to construct the wall at the disputed place. Having no other alternative, the plaintiffs approached the jurisdictional Police, namely, the K.G. Halli Police Station, and lodged a complaint. According to the plaintiffs, although the police assured them of protection, they advised the plaintiffs to approach the competent Civil Court for appropriate relief, as the dispute was civil in nature. Hence, the plaintiffs have instituted the present suit in O.S. No. 1345/2002, seeking appropriate reliefs against the defendants.

9. Upon service of summons, the defendants appeared before the Court, and defendant No. 2 filed his written statement contesting the suit. The defendants have contended that the suit is barred by the principle of *res judicata* and that the cause of action alleged by the plaintiffs has nothing to do

with the defendants. It is their further contention that the suit, being one for the relief of bare injunction, is not maintainable. The defendants have specifically denied the right, title, interest and possession claimed by the plaintiffs over the suit schedule property. They have further contended that the property allegedly purchased by the plaintiffs under the registered sale deed dated 08.12.1951, bearing Sy. No. 23 and measuring 18 guntas, situated at Dasarahalli Village, has no connection whatsoever with the property claimed by the defendants, bearing Sy. No. 23/8 and measuring 15 guntas.

10. The defendants have further contended that the land bearing Sy. No. 23/8, measuring 1 acre 9 guntas, originally belonged to one Mariyappa, son of Chowrappa. According to the defendants, the said Mariyappa sold an extent of 34 guntas out of the total extent of 1 acre 9 guntas in favour of his sister, Smt. Susamma, under a sale deed dated 06.10.1931, marked as Ex. D-2, while retaining the remaining extent of 15 guntas in Sy. No. 23/8. It is their further case that, upon the demise of Mariyappa, the aforesaid remaining extent of 15 guntas also devolved upon Smt. Susamma. The defendants have stated that, pursuant to the *phodi* proceedings, the extent of 34 guntas conveyed in favour of

Smt. Susamma was assigned a separate survey number, namely, Sy. No. 23/8A.

11. The defendants have further contended that the remaining extent of 15 guntas in Sy. No. 23/8, which had been retained by Mariyappa, is situated on the northern side of the extent of 34 guntas conveyed in favour of Smt. Susamma. They have categorically denied the claim of the plaintiffs that they have any right or are in possession of the property described in the plaint schedule. The defendants have also challenged the entries made in the revenue records in favour of the plaintiffs, contending that such entries are illegal and have no legal sanctity.

12. It is the specific defense of the defendants that, if the plaintiffs have any property in the vicinity, the same is situated on the northern side of the land bearing Sy. No. 23/8, measuring 15 guntas, and that the plaintiffs, taking advantage of the existing circumstances, are attempting to encroach upon the property belonging to the defendants. The defendants have asserted that they are in actual possession and enjoyment of the land bearing Sy. No. 23/8, measuring 15 guntas, situated

at Dasarahalli Village. On these grounds, the defendants have sought for dismissal of the suit.

13. The Trial Court on the basis of pleadings have framed the following issues:

i. *Whether, the Plaintiffs prove that they are in lawful possession and enjoyment of the plaint schedule property as on the date of suit?*

ii. *Whether, the Plaintiffs prove that the Defendants are interfering with the peaceful possession and enjoyment of the Plaintiffs over the plaint schedule property as alleged?*

iii. *Whether, the Plaintiffs are entitled for the relief of permanent injunction as sought?*

iv. *What order or decree?*

14. Upon conclusion of the trial, the Trial Court, by its Judgment dated 20.03.2010, dismissed the suit. Aggrieved by the said Judgment and Decree of dismissal, the plaintiffs preferred an appeal before this Court in R.F.A. No. 573/2010. This Court, by its Judgment and Decree, allowed the appeal and remanded the matter to the Trial Court for fresh consideration,

with a direction to afford an opportunity to both parties to adduce evidence.

15. Pursuant to the order of remand, the Trial Court recorded fresh evidence of the parties. Plaintiff No. 2 was examined as P.W.1 on behalf of the plaintiffs, and through his testimony, the plaintiffs got marked 89 documents as Exs. P-1 to P-89. On behalf of the defendants, defendant No. 2 was examined as D.W.1, and another witness was examined as D.W.2. The defendants also got marked 28 documents as Exs. D-1 to D-28. Upon completion of the recording of evidence, the Trial Court heard the arguments advanced by both parties and, by the Judgment and Decree impugned in the present appeal, decreed the suit in favour of the plaintiffs.

16. The Defendants on being aggrieved by the Judgment and Decree of the Trial Court have preferred this Appeal.

17. Heard the learned counsel Sri. K.S. Chandrahas for appellant Nos.1, 3 and 5, learned counsel Sri. Sanath Kumar Shetty for appellant No.2 and learned counsel Sri. Vijaykumar K. for the respondents.

18. The learned counsel for the appellants/defendants contended that the suit, being one for bare injunction, could not be decreed without establishing the identity of the suit schedule property and the plaintiffs' lawful possession thereof. It was submitted that the plaintiffs trace their title to the registered sale deed dated 08.12.1951, marked as Ex. P-14, under which their predecessors-in-interest, Dodda Anthony and Chikka Anthony, allegedly acquired 18 guntas in Sy. No. 23 of Dasarahalli Village. Though the plaintiffs contend that the property was subsequently bifurcated and assigned Sy. No. 23/8, measuring 15 guntas, the defendants have specifically disputed the said claim and asserted that the property covered under Ex. P-14 is distinct from the suit schedule property.

19. The learned counsel further submitted that Mariyappa, son of Chowrappa, acquired 26 guntas under the registered partition deed dated 14.08.1910, marked as Ex. P-66, and subsequently purchased an additional extent of 23 guntas under Ex. D-25. Together with the other extent attributed to him, he held 1 acre 9 guntas in Sy. No. 23, which was assigned Sy. No. 23/8 upon *phodi* proceedings in 1930, as evidenced by Exs. D-27 and D-28. Mariyappa thereafter conveyed 34 guntas in favour of his sister, Smt. Susamma,

under the sale deed dated 06.10.1931, marked as Ex. D-2. The conveyed portion was subsequently assigned Sy. No. 23/8A, while the remaining extent of 15 guntas continued to bear Sy. No. 23/8. According to the defendants, upon the demise of Mariyappa, the remaining extent devolved upon Susamma, and the defendants, being her grandchildren, succeeded to the said property.

20. The learned counsel argued that the plaintiffs' own documents do not establish title to the suit schedule property. Under Ex. P-66, Andralappa was allotted 23 guntas in Sy. No. 23. The plaintiffs' evidence indicates that an extent of 11½ guntas was subsequently conveyed under Exs. P-67 to P-69. However, the plaintiffs have failed to explain how their predecessors-in-interest acquired the remaining extent necessary to support their claim over 18 guntas. Though the plaintiffs rely upon the proceedings in O.S. No.596/1942 and O.S. No.390/1950-51, they have not produced sufficient material to establish the precise extent and identity of the property in respect of which rights were acquired in those proceedings. Further, Ex. P-14 refers to a two-thirds share in 18 guntas, which does not, by itself, establish title to the entire extent claimed.

21. It was further contended that Exs. D-27 and D-28 establish that Sy. No.23/8 had been assigned to Mariyappa's land in 1930, much before the execution of Ex. P-14. Therefore, the plaintiffs' assertion that the property purchased under Ex. P-14 was subsequently re-designated as Sy. No.23/8 is inconsistent with the documentary evidence. It was also pointed out that the boundaries recited in Ex. P-66 do not correspond with those mentioned in the plaint schedule. The learned counsel also relied upon the Gazette Notification marked as Ex. P-65, relating to the acquisition of 34 guntas belonging to Susamma under Sy. Nos. 23/8 and 23/8A, contending that the notification supports the defendants' case regarding the identity and location of the property. It was submitted that the plaintiffs have failed to establish their title, the identity of the suit schedule property, and their lawful possession thereof as on the date of the suit. Referring to the observations made by this Court while remanding the matter, the learned counsel argued that, in the absence of cogent evidence establishing the identity and possession of the property, the plaintiffs were not entitled to a decree of permanent injunction and that the impugned Judgment and Decree of the Trial Court were liable to be set aside.

22. He further contended that if the defendant raises a substantial dispute regarding title, the plaintiff ought to have sought declaration by amending the plaint or institute a comprehensive suit for declaration and injunction. He disputed the plaintiffs' contention that paragraph No. 7 of the written statement contains an admission of their ownership over Sy. No. 23/8, arguing that the defendants have consistently denied their title. It was further contended that an admission must be clear and unambiguous to be binding and that the presumption arising from revenue entries is rebuttable and cannot, by itself, establish title to the property. With these submissions, he prays to allow the appeal by setting aside the impugned judgment and decree.

23. To buttress his argument, he relied on the following judgments:

1. ***Ambika Prasad Thakur and Otehrs vs Ram Ekbal Rai and Others*** reported in **AIR 1966 SC 605**
2. ***M/s. Sodhi Transport Co. and another vs State of U.P and another*** reported in **AIR 1986 SC 1099**

3. ***Anathula Sudhakar Reddy vs P. Buchi Reddy and Others*** reported in **(2008) 4 SCC 594**

24. *Per contra,* the learned counsel for the plaintiffs/respondents, supporting the impugned Judgment and Decree, contended that the Trial Court has rightly decreed the suit upon proper appreciation of the evidence on record. He submitted that, under the partition deed dated 14.08.1910, marked as Ex. P-66, an extent of 23 guntas in Sy. No. 23 was allotted to Andralappa, who subsequently conveyed 11½ guntas to Urabagilu Chowrappa under Ex. P-67. Thereafter, Urabagilu Chowrappa's sons conveyed the said extent to Joojappa under Ex. P-68, who, in turn, sold it to Dodda Anthony and Chikka Anthony under the registered sale deed dated 26.05.1950, marked as Ex.P-69.

25. The learned counsel further submitted that Anthoniyamma instituted O.S. No. 390/1950-51 against Dodda Anthony, Chikka Anthony and others, which culminated in a compromise dated 08.12.1951, marked as Ex. P-73. Pursuant thereto, she conveyed her alleged 2/3 share in 18 guntas of Sy. No. 23 to Dodda Anthony and Chikka Anthony under the

registered sale deed dated 08.12.1951, marked as Ex. P-14. The plaintiffs claim through the said predecessors-in-interest and contend that they have continued in possession of the suit schedule property.

26. To establish possession, the plaintiffs relied upon the RTC extracts (Exs. P-1 to P-8), tax-paid receipts (Exs. P-9 to P-12, P-37 to P-39 and P-79), identity documents (Exs. P-13 and P-15 to P-26), house-related documents (Exs. P-40 to P-46) and electricity bills (Exs. P-47 to P-63). The learned counsel submitted that these documents establish that the plaintiffs and their family members have constructed houses and have been residing on the suit schedule property for several decades.

27. The learned counsel further relied upon the orders marked as Exs.P-83 and P-84, whereby the appeal preferred by the defendants before the Assistant Commissioner and the subsequent revision petition before the Deputy Commissioner challenging the relevant revenue entries were dismissed. He contended that these orders, together with the revenue records, support the plaintiffs' claim of possession. He also submitted that the defendants had acknowledged in paragraph

No. 7 of their written statement that the plaintiffs' property lies to the north of Sy. No. 23/8.

28. Regarding the identity of the property, the learned counsel relied upon the joint survey records marked as Exs. P-30 to P-32, particularly the sketch and mahazar at Ex. P-31, which bears the signature of D.W.2. He contended that the survey records establishes the identification and boundaries of the property in the plaintiffs' possession. He further relied upon the compromise decree in O.S. No. 390/1950-51, marked as Ex.P-74, to contend that the boundary descriptions establish that the plaintiffs' property lies to the north of the property claimed by the defendants.

29. The learned counsel also relied upon the Land Tribunal's order dated 16.10.1981 in LRF No. 4960/1975-76, marked as Ex. P-80, rejecting the occupancy rights application filed by the defendants' father, and the subsequent appellate proceedings. He contended that the plaintiffs had established their lawful possession and that the defendants had failed to demonstrate any enforceable right warranting interference with such possession. Placing reliance upon ***Rame Gowda (Dead) by LRs. v. M. Varadappa Naidu and Others***, reported in

(2004) 1 SCC 769, he submitted that settled possession is entitled to protection against unlawful interference and that a suit for permanent injunction was maintainable. Accordingly, he sought dismissal of the appeal and confirmation of the impugned Judgment and Decree.

30. Learned counsel further relied on the following judgments:

1. ***Prataprai N. Kothari vs John Braganza*** reported in ***1999 (4) SCC 403***
2. ***Puran Singh and Others vs State of Punjab*** reported in ***(1975) 4 SCC 518***
3. ***Balkrishna Dattatraya Galande vs Balakrishna Rambharose Gupta and another*** reported in ***(2020) 19 SCC 119***
4. ***M/s Eureka Builders vs Gulabchand and others*** *reported in* ***(2018) 8 SCC 67***
5. ***Prem Singh and others vs Birbal and Others*** *reported in* ***(2006) 5 SCC 353***

31. Having heard the learned counsel for the parties, the points arising for our consideration is:

> *"i. Whether the defendants proved that there is some apparent defect in the title of the plaintiffs in respect of the suit schedule*

property, as such bare injunction suit is not maintainable?

ii. Whether the plaintiffs prove that they are in lawful possession and enjoyment of the suit schedule property and the defendants are interfering with their lawful possession?

iii. Whether the impugned judgment and decree suffers from any perversity or illegality, which call for interference?"

32. In order to answer the point No.1 it is relevant to trace the title of the plaintiffs in respect of the suit schedule property as claimed by them as under:

Sl. No	**Date**	**Person / Party**	**Nature of Transaction / Event**	**Extent**	**Document / Exhibit**
1	14.08.1910	Mariyappa S/o. Chowrappa, Andralappa @ Aralappa and Appanna	Partition of ancestral properties under Panchayath Parikath. In Sy. No. 23, 23 Guntas fell to the share of Mariyappa and 23 Guntas fell to the share of Andralappa @ Aralappa.	23 Guntas each	Ex.P66
2	05.05.1915	Andralappa @ Aralappa → Uragabalu Chowrappa S/o. Joneshappa	Registered Sale Deed in respect of portion of land falling to the share of Andralappa @ Aralappa.	11½ Guntas	Ex.P67
3	After 05.05.1915	Uragabalu Chowrappa	Purchaser remained in possession and enjoyment of 11½ Guntas.	11½ Guntas	—

4	Prior to 23.03.1948	Uragabalu Chowrappa → Thomasappa & Jonesappa	Uragabalu Chowrappa died leaving behind his sons Thomasappa and Jonesappa as successors.	11½ Guntas	—
5	23.03.1948	Thomasappa & Jonesappa → Jojappa S/o. Chowrappa	Sale of the entire extent purchased by their father.	11½ Guntas	Ex.P68 – Sale Deed, Doc. No. 4714/47-48
6	26.05.1950	Jojappa → Chikkaanthony & Doddaanthony	Sale of the 11½ Guntas.	11½ Guntas	Ex.P69
7	08.12.1951	Smt. Anthoniyamma → Chikkaanthony & Doddaanthony	Pursuant to compromise in O.S. No. 390/50-51, Anthoniyamma agreed to sell her 2/3rd share out of 18 Guntas.	2/3rd share in 18 Guntas	Ex.P73 – Compromise
8	08.12.1951 / registered 10.12.1951	Smt. Anthoniyamma → Chikkaanthony & Doddaanthony	Sale Deed executed pursuant to the compromise.	2/3rd share in 18 Guntas	Ex.P14, Doc. No. 5667/51-52
9	After 1951	Chikkaanthony & Doddaanthony	Possession of the property; subsequently, after their demise, possession continued with their successors.	Suit schedule property	Ex.P40–P46 and other documents
10	Present	Plaintiffs / their predecessors	Plaintiffs claim continuous possession and enjoyment of the suit schedule property through their predecessors, including the property on which their houses are situated.	Suit schedule property	Ex.P1–P13, P15–P26, P37–P46, P79

33. The above transactions and the documents marked before the Trial Court are not seriously disputed by the defendants. However, the primary contention of the defendants is that the parent document of the plaintiffs is the partition deed of the year 1910 (Ex.P66), under which the plaintiffs' predecessor in interest, Andralappa, acquired only 23 guntas of land in Sy.No.23. Out of the said extent, he sold only 11 and 1/2 guntas to the predecessors in interest of the plaintiffs; as such, it is not known how the plaintiffs acquired the remaining extent of 7 and 1/2 guntas in Sy.No.23. On careful perusal of Ex.P27, the depicts that Sy.No.23 measured 4 acres 18 guntas and was phoded in the year 1930, and that the land belonging to Mariyappa measuring 1 acre 9 guntas was reassigned as Sy.No.23/8. After the sale of 34 guntas in Sy.No.23/8 in the year 1931, further phoding was effected, and the land sold to Susamma measuring 34 guntas upon phoding the land was reassigned as Sy.No.23/8A, while the remaining continued to bear the designation Sy.No.23/8. As such, the defendants' contention that the land purchased by their predecessors in interest as per Ex.P14 in 1951 was reassigned as Sy.No.23/8 upon phoding cannot be sustained in light of documents Ex.P27 and Ex.P28 of the years 1930 and 1931.

34. Additionally the document produced by the defendants at Ex.D2, i.e., the sale deed dated 06.10.1931 executed by Mariyappa in favor of his sister Susamma, depicts 34 guntas in Sy.No.23. In the said sale deed, there is no recital or reference regarding the source of title to Mariyappa. When Mariyappa had rights to an extent of only 23 guntas in Sy.No.23 as per the Ex.P66 partition deed, the question of Mariyappa executing a sale deed in respect of 34 guntas in favor of Susamma does not arise. Furthermore, regarding Ex.D3 (the Record of Rights), it is clear from its contents that the entries were made at the instance of DW.1, and it is further mentioned that the issuing authority is not responsible regarding the names entered in the Record of Rights and other revenue documents.

35. Ex.D4 and Ex.D10 are the RTC extracts in respect of Sy.No.23/8A measuring an extent of 34 guntas, whereas Ex.D5, Ex.D8, and Ex.D9 are the RTCs for the years 1974–1979, 1977–1980, and 1979–1984 in respect of Sy.No.23/8A measuring an extent of 15 guntas. These exhibits pertain to two different portions of land in Sy.No.23/8A, but the defendants have failed to explain how the extent of land differs across the RTCs. Likewise, Ex.D12 and Ex.D13 are the RTC

extracts in respect of survey number 23/8A to an extent of 34 guntas, but the letter '8A' was handwritten in Kannada. Ex.D14 is the RTC in respect of Sy.No.23/8B measuring 34 guntas for the years 1976–1979, Ex.D16 is the RTC for the years 1977–1980 in respect of Sy.No.23/8B measuring 34 guntas, and Ex.D15 is the RTC in respect of Sy.No.23/8A for the years 1976–1979 to an extent of 15 guntas. As can be seen from the above-said RTCs, it is clear that the claim made by the defendants shifts: at one breath, their claim is in respect of Sy.No.23/8A, and in another breath, it is over Sy.No.23/8B. However, the measurements do not tally with each other, and the defendants have failed to explain the same.

36. Whereas, Ex.D17 and Ex.P36 (one and the same) i.e. IHC NO.1/1990-91, standing in the name of the plaintiffs and the said documents are much earlier to filing of the suit and the same prove that the plaintiffs are in possession of the suit schedule property as on the date of filing of the suit. The Ex.D18 and D19 are the tax paid receipts in respect of Sy.No.23/8 & 23/8A, but the defendants have failed to say as to how they are related to Sy.No.23/8. The Ex.D25 is the sale deed dated 20.03.1929 in respect of Sy. No.23, measuring to an extent of 23 guntas, the said land was purchased by one

Mariyappa son of Sowrappa from Yagappa. There is no recitals with regard to origin of title in the sale deed in Ex.D25. The defendants have not produced any document to show that how Mariyappa got 1 acre 9 guntas of land in Sy.No.23, even as per Ex.D2 and Ex.D25 the total extent of land is 1 acre 17 guntas (34 guntas and 23 guntas). In the absence of non production of documents in respect of alleged 1 acre 9 guntas of land in Sy.No.23 an adverse inference can be drawn in respect of Ex.D2. The Ex.D26 is the official memorandum issued from the Office of the Deputy Commissioner, Bengaluru, dated 30.01.2015 and the said document cannot be taken into consideration since Ex.D26 is subsequent to filing of the suit in respect of the alleged 34 guntas of land.

37. Apart from the documents discussed supra on careful scrutiny of the evidence of PW.1 and DW.1, the claim of the plaintiffs in respect of their clear title substantiates with the following suggestions to PW.1 by the defendants and admission of DW.1 in his cross examination. The relevant extracts of the suggestion are as below:

" ಅಸಲು ದಾವಾ ನಂ.390/1950 ನೆದರಲ್ಲಿ ಅಂಥೋಣಮ್ಮ ಸರ್ವೆ ನಂ.23ರ ಕ್ಷೇತ್ರ 18 ಗುಂಟೆ ಜಮೀನಿನಲ್ಲಿ 2/3 ಭಾಗವನ್ನು ಕೇಳಿದ್ದರು ಎಂದು

ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ, ನಿಪಿ-71 ರ ಷೆಡ್ಯೂಲ್ ನಲ್ಲಿ ಸರ್ವೆ ನಂ.23ರ ಕ್ಷೇತ್ರ 18 ಗುಂಟೆ ಜಮೀನು ಎಂದು ನಮೂದಿಸಲಾಗಿದೆ ಎನ್ನುವುದು ನಿಜ.

ನಿಪಿ-14 ಕ್ರಯಪತ್ರದ ಪೆಡ್ಯೂಲ್‌ನಲ್ಲಿಯೂ ಸಹ 2/3 ಹಿಪ್ಪೆ ಎಂದು ನಮೂದಿಸಲಾಗಿದೆ ಎನ್ನುವುದು ನಿಜ. ಖರೀದಿ ಪತ್ರಗಳನ್ವಯ ದೊಡ್ಡ ಅಂಥೋಣಿ ಮತ್ತು ಚಿಕ್ಕ ಅಂಥೋಣಿರವರು ಅಂಥೋಣಮ್ಮ ರವರಿಗೆ ಬಂದಂತಹ 2/3 ಹಿಸ್ಸೆಯನ್ನು ಮಾತ್ರ ಖರೀದಿಸಿರುತ್ತಾರೆ ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ,

ನಿಪಿ-73ರಲ್ಲಿ ನಮೂದಿಸಲಾದಂತಹ ರಾಜಿ ಪತ್ರದನ್ವಯ ಅಂಥೋಣಮ್ಮರವರಿಗೆ 7 ರಿಂದ 8 ಗುಂಟೆ ಜಮೀನು ಬಂದಿತ್ತು ಎನ್ನುವುದು ನಿಜ. ನಿಪಿ-9 ರಿಂದ 12 ಮತ್ತು 79 ಕಂದಾಯ ತುಂಬಿದ ರಶೀದಿಗಳು ಮತ್ತು ನಿಪಿ-47 ರಿಂದ ನಿಪಿ-63 ವಿದ್ಯುತ್ ಬಿಲ್ ಮತ್ತು ರಶೀದಿಗಳು, ನಿಪಿ-40 ರಿಂದ 45 ಫೋಟೋಗಳಲ್ಲಿ ಕಂಡು ಬರುವ ಮನೆಗಳಿಗೆ ಸಂಬಂಧಿಸಿದವುಗಳು ಎನ್ನುವುದು ನಿಜ.

Further on perusal of the cross examination of DW.1, he has categorically admitted as under:

"ಮರಿಯಪ್ಪನ ಪಾಳ್ಯದಲ್ಲಿ ಮರಿಯಣ್ಣ ಎಂಬ ವ್ಯಕ್ತಿಗೆ ಮೂರು ಜನ ಗಂಡು ಮಕ್ಕಳು ಇದ್ದರು ಎನ್ನುವುದು ನಿಜ, ಸದರಿಯವರು ಗಳನು ಅಂದರ ಅರಳಪ್ಪ, ಅಪ್ಪಣ್ಣ, ಚೌರಪ್ಪ ಎನ್ನುವುದು ನಿಜ. ಸದರಿ ಚೌರಪ್ಪ 1910 ರಲ್ಲಿ ಮರಣ ಹೊಂದಿದರು ಮತ್ತು ಅವರಿಗೆ

ಮರಿಯಪ್ಪ ಎಂದು ಒಬ್ಬ ಮಗನಿದ್ದನು ಎನ್ನುವುದು ನಿಜ. ಸದರಿ ಅಂದರಅರಳಪ್ಪ ಅಪ್ಪಣ್ಣ ಮತ್ತು ಮರಿಯಪ್ಪ ಸೇರಿಕೊಂಡು ದಿ:14.8.1910 ರಂದು ನಿಪಿ-6 ರಂತೆ ನೊಂದಾಯಿತ ಪಾಲು ವಿಭಾಗಪತ್ರವನ್ನು ಮಾಡಿಕೊಂಡಿದ್ದರು ಎನ್ನುವುದು ನಿಜ.

ವಾದಿಯರು ದೊಡ್ಡಅಂತೋನಿಯಮ ಚಿಕ್ಕಅಂತೋನಿ ಮತ್ತು ವಾರಸುದಾರರು ಮತ್ತು ವಾದಿಯರನ್ನು ಹೊರತು ಪಡೆಸಿ ಬೇರೆ ಯಾರು ವಾರಸುದಾರರು ಇರುವುದಿಲ್ಲ, ದಾವಾಸ್ವತ್ತಿನ ಸರ್ವೆ ನಂಬರ್ ಮತ್ತು ಅದರ ವಿವರಣೆಯ ಕುರಿತು ನನಗೆ ಮಾಹಿತಿ ಇರುವುದಿಲ್ಲ. ವಾದಪತ್ರದ ಶೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ನಮೂದಿಸಲಾದ ಚಿಕ್ಕುಬಂದಿ ಬಗ್ಗೆ ನನಗೆ ಮಾಹಿತಿ ಇರುತ್ತದೆ. ವಾದಪತ್ರದ ಶೆಡ್ಯೂಲ್ ನಲ್ಲಿ ನಮೂದಿಸಲಾದ ಪೂರ್ವ ಪಶ್ಚಿಮ ಮತ್ತು ಉತ್ತರದ ಚಕ್ಕುಬಂದಿ ಸರಿಯಾಗಿ ಇರುತ್ತದೆ ಅದರೆ ದಕ್ಷಿಣಕ್ಕೆ ಸೂಸಮ್ಮ ಮತ್ತು ಮರಿಯಪ್ಪ ರವರ ಸ್ವತ್ತು ಇರುತ್ತದೆ. ದಾವಾಸ್ವತ್ತಿನ ದಕ್ಷಿಣಕ್ಕೆ ಇರುವಂತಹ ಸ್ವತ್ತನ್ನು ಮರಿಯಪ್ಪನಿಂದ ಸೂಸಮ್ಮ ಖರೀದಿಸಿದ್ದು ಸೂಸಮ್ಮ ಮರಣ ಹೊಂದಿದ ನಂತರ ಸದರಿ ಸ್ವತ್ತು ನನ್ನ ತಂದೆಯಾದ ಜೋಸೆಫ್ ರವರಿಗೆ ಬಂದಿರುತ್ತದೆ. 2002 ರಲ್ಲಿ ಈ ಪ್ರಕರಣ ದಾಖಲಿಸುವ ಕಾಲಕ್ಕೆ ಸೂಸಮ್ಮ ಬದುಕಿರಲಿಲ್ಲ ನನ್ನ ತಂದೆಯಾದ ಬದುಕಿದ್ದರು ಎನ್ನುವುದು ನಿಜ. ಮರಣದ ನಂತರ ದಾವಾಸ್ವತ್ತಿನ ದಕ್ಷಿಣಕ್ಕೆ ಇರುವ ಸ್ವತ್ತು ಜೋಸೆಫ್ ರವರಿಗೆ ಬಂದಿದ್ದರಿಂದ ಸದರಿ ಸ್ವತ್ತು ಜೋಸೆಫ್ ರವರ ಸ್ವತ್ತು ಎಂದ ಕರೆಯುತ್ತಿದ್ದರು ಎನ್ನುವುದು

ನಿಜ. ವಾದಪತ್ರದ ಶೆಡ್ಯೂಲ್‌ನ ದಕ್ಷಿಣಕ್ಕೆ ಜೋಸೆಫ್ ರವರ ಸ್ವತ್ತು ಎಂದು ನಮೂದಿಸಲಾಗಿದ್ದು ಸದರಿ ಜೋಸೆಫ್ ನನ್ನ ತಂದೆ ಎನ್ನುವುದು ನಿಜ.

ದಾವಾಸ್ವತ್ತನ್ನು ನಾನು ಸುಮಾರು 50 ವರ್ಷಗಳಿಂದ ನೋಡುತ್ತಾ ಬಂದಿರುತ್ತೇನೆ. ದಾವಾಸ್ವತ್ತು ಮೂಲತಃ ಸರ್ವೆ ನಂ.23 ರ ಒಂದು ಭಾಗ ಎನ್ನುವುದು ನಿಜ, ಸದರಿ ಸರ್ವೆ ನಂ.23 ಪೋಡಿಯಾದ ನಂತರ 23/8 ಎಂದು ಆಗಿರುತ್ತದೆ ಎನ್ನುವುದು ನಿಜ. ಸರ್ವೆ ನಂ.23 ರ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 4 ಎಕರೆ. ಸದರಿ ಸರ್ವೆ ನಂ.23ನೇದ್ದು 1930ರಲ್ಲಿ ಪೋಡಿಯಾಗಿರುತ್ತದೆ. ನಿಪಿ-87 ದಿ:27.1.1930ರಲ್ಲಿ ಪೋಡಿಯಾದ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ದಾಖಲೆ ಎನ್ನುವುದು ನಿಜ. ಸರ್ವೆ ನಂ.23 ರಲ್ಲಿ ಒಟ್ಟು 8 ಭಾಗಗಳಾಗಿರುತ್ತವೆ.

ಸದರಿ ಅಂದರಅರಳಪ್ಪನಿಗೆ ಅಂತೋನಮ್ಮ ಎಂಬ ಮಗಳು ಇದ್ದಳು ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ, ಸದರಿ ಅಂದರಅರಳಪ್ಪ ಪಾಲು ವಿಭಾಗದನ್ವಯ ತನಗೆ ಸರ್ವೆ ನಂ.23 ರಲ್ಲಿ ಬಂದಂತಹ ಜಮೀನಿನಲ್ಲಿ 11 ವರೆ ಗುಂಟ ಜಮೀನನ್ನು 05.05.1915 ರಂದು ನಿಪಿ-67ರಂತೆ ಜೋನೊಸಪ್ಪನ ಮಗ ಚೌರಪ್ಪ ರವರಿಗೆ ಮಾರಾಟ ಮಾಡಿದ್ದರು ಎನ್ನುವುದು ನಿಜ. ನಿಪಿ-67ರಲ್ಲಿ ನಮೂದಿಸಲಾದ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಚಕ್ಕುಬಂದಿ ಇರುತ್ತದೆ ಎಂದು

ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ, ನಿಪಿ-67 ರಂತೆ ಖರೀದಿಸಿದ ಸ್ವತ್ತನ್ನು ಜೋನೊಸಪ್ಪನ ಮತ್ತು ತಮಸಪ್ಪ ರವರು ದಿ: 23.3.1948 ರಂದು ಜೂಜಪ್ಪ ರವರಿಗೆ ನಿಪಿ-68 ರಂತೆ ಮಾರಾಟ ಮಾಡಿದ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿಲ್ಲ, ನಿಪಿ-68 ರಂತೆ ಖರೀದಿಸಿದ ಸ್ವತ್ತನ್ನು ಜೂಜಪ್ಪ ದಿ: 26.5.1950 ರಂದು ಚಿಕ್ಕಅಂತೋನಿ ಮತ್ತು ದೊಡ್ಡಅಂತೋನಿ ರವರಿಗೆ ನಿಪಿ-69 ರಂತೆ ಮಾರಾಟ ಮಾಡಿದ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಿಪಿ-65 ರಿಂದ 87 ರ ವರೆಗಿನ ದಾಖಲೆಗಳನ್ನು ನಾನು ನೋಡಿರುವುದಿಲ್ಲ ಮತ್ತು ಅವುಗಳ ಬಗ್ಗೆ ವಕೀಲರ ಮೂಖಾತರ ಸಹ ತಿಳಿದುಕೊಂಡಿರುವುದಿಲ್ಲ. ಸದರಿ ಚಿಕ್ಕಅಂತೋನಿ ಮತ್ತು ದೊಡ್ಡಅಂತೋನಿ ನಿಪಿ-69 ರಂತೆ ಸ್ವತ್ತನ್ನು ಖರೀದಿಸಿದ್ದರು ಮತ್ತು ಸದರಿ ಸ್ವತ್ತಿನಲ್ಲಿ ಮಂಗಳೂರು ಹೆಂಚಿನ ಮನೆ ಮತ್ತು ಖಾಲಿ ಜಾಗ ಇತ್ತು ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ, ನಿಪಿ-69 ಖರೀದಿಪತ್ರಕ್ಕೆ ಜೋಸೆಫ್, ಅಂತೋನಪ್ಪ ಮತ್ತು ಯಾಗಪ್ಪ ರವರುಗಳು ಸಾಕ್ಷಿದಾರರಾಗಿ ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ ಎನ್ನುವುದು ನಿಜ.

ವಾದಿಯರ ತಂದೆ ಹೆಸರಿಗೆ ಅದಂತಹ ಮಟೇಷನನ್ನು ಪ್ರಶ್ನಿಸಿ ನಾನು ಮೇಲ್ಮನವಿ ನಂ.207-2008-09 ನೇದ್ದನ್ನು ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳ ಕಾರ್ಯಲಯದಲ್ಲಿ ದಾಖಲಿಸಿದ್ದೇನು ಎನ್ನುವುದು ನಿಜ. ಸದರಿ ಮೇಲ್ಮನವಿಯಲ್ಲಿ ನಿಪಿ—83 ಅದೇಶ ನೀನು ದಾಖಲಿಸಿದಂತಹ ಮೇಲ್ಮನವಿಯನ್ನು ತಿರಸ್ಕರಿಸಲಾಗಿದೆ ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿಯು ನಾನು ಮೇಲ್ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದೇನು

ಅದರೆ ಅದೇಶದ ಹೊರಡಿಸಿದ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಿಪಿ-83 ರಂತೆ ಹೊರಡಿಸಲಾದ ಅದೇಶವನ್ನು ಪ್ರಶ್ನಿಸಿ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಮುಂದೆ ರಿವಿಜನ್ ಪಿಟಿಷನ್ ನಂ. 193/2013-14 ನೇದ್ದನ್ನು ದಾಖಲಿಸಿರುತ್ತೇನೆ ಎನ್ನುವುದು 2. ರಿವಿಜನಾ ಪಿಟಿಷನ್ ನಂ. 193/2013-14 ನಮೂದಿಸಿದಂತೆ ಅದೇಶವಾಗಿರುತ್ತದೆ ಎನ್ನುವುದು ಹೊರಡಿಸಲಾದಂತಹ ಅದೇಶವನ್ನು ಪ್ರಶ್ನಿಸಿ ಮೇಲ್ಮನವಿಯನ್ನು ದಾಖಲಿಸಿರುವುದಿಲ್ಲ."

38. On perusal of the above documents and evidence of P.W-1 and D.W-1, it is unequivocally established that the plaintiffs are in possession of the suit schedule property. Further Ex.P80 and P81 are undisputed documents in which the father of the defendants had categorically admitted the ownership of the ancestors of the plaintiffs over the suit schedule property. Further, the plaintiffs in order to establish their title and lawful possession have produced the title deeds stated supra and the RTC extracts standing in their names. As such, they have independently proved their possession and flow of title. The DW.1 has admitted that, Mariyappa has acquired the property through partition deed – Ex.P66, admittedly in the partition deed 'C' schedule property was allotted to the share of said Mariyappa to the extent of 23 guntas, as such, the

question of Mariyappa executing sale deed in respect of 34 guntas to Soosamma does not arise as discussed supra.

39. The Hon'ble Apex Court in the judgment of ***ANANTHULA SUDHAKAR VS B. BUCHI REDDY*** reported in **2008 (4) SCC 594**, held that, a cloud is said to raise over a person's title when some apparent defect in his title to a property, or when some *prima facie* right of a third party over it, is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff have clear title supported by documents, if a trespass without any claim to title or an interloper without any apparent title, merely denies the plaintiff title it does not amounts to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient.

40. Collocating the above findings to the instant case, the flow of title of the plaintiffs in respect of the suit schedule property described in the chart supra and the discussion unequivocally establishes that, the plaintiffs have acquired the title originally under Ex.P66 dated 14.08.1910 and subsequently Ex.P67 to P69 and Ex.P73 and Ex.P14. Further,

on perusal of the testimony of PW.1, the suggestion of the defendants reveals that pursuant to the compromise in O.S No.390/1950-51 Anthoniyamma agreed to sell her 2/3rd share out of 18 guntas of land as per Ex.P73. Thus, on careful examination of the documents and evidence discussed supra in my considered view, the defendants failed to prove any apparent defect in the title of the plaintiffs in respect of the suit schedule property. Accordingly, I answer the point No.1 in favour of the plaintiffs.

41. As far as the point No.2 is concerned, apart from the admission in the oral evidence of DW.1, as per Ex.P30 to P32, a joint survey was conducted in respect of Sy.No.23/8 on 31.10.2007 and at the time of joint survey DW.2 was also present and he has signed the mahazar – Ex.P31 prepared by Taluk Surveyor. As could be seen from Ex.P30 and P31, the property is in possession of the plaintiffs and has been demarcated and identified by the competent revenue authorities and fixed the boundaries and prepared a sketch and mahazar. Admittedly the said documents are not challenged by the defendants. Additionally the plaintiffs produced Ex.P47 to P63, the electricity bills issued by the BESCOM and the said bills pertaining to the house of plaintiffs built over the suit

schedule property. A contention was raised by the learned counsel for the defendant that, there is no mentioning of the house in the suit schedule property, however, on perusal of the plaint it is categorically stated that, there exists a house in the suit schedule property. Further, the suggestion to PW.1 in the cross examination by the defendants reads that:

> ನಮ್ಮ ಜಮೀನಿನ ಪೂರ್ವಕ್ಕೆ ಮಿಕ್ಕೇಲಪ್ಪನ ಮಗ ಯಾಗಪ್ಪ ರವರಿಗೆ ಸೇರಿದ ಸ್ವತ್ತು ಇದೆ ಎನ್ನುವುದು ನಿಜ. ಮಿಕ್ಕೇಲಪ್ಪನ ಮಗ ಯಾಗಪ್ಪನ ಜಮೀನಿನ ದಕ್ಷಿಣಕ್ಕೆ ಮರಿಯಪ್ಪರವರ ಜಮೀನು ಇದೆ ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ತಮ್ಮ ಜಮೀನು ಇರುವುದಾಗಿ ನುಡಿದಿರುತ್ತಾರೆ. ಮಿಕ್ಕೇಲಪ್ಪನ ಮಗ ಯಾಗಪ್ಪನ ಜಮೀನಿನ ದಕ್ಷಿಣಕ್ಕೆ ಸಮನಾಗಿ ನಮ್ಮ ಜಮೀನಿನ ದಕ್ಷಿಣದ ಭಾಗ ಇರುತ್ತದೆ ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ,
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> ನಿಪಿ-2 ರಿಂದ 8 ಆರ್ ಟಿ ಸಿ ಗಳಲ್ಲಿ ದೊಡ್ಡ ಅಂಥೋಣಿ ಮತ್ತು ಚಿಕ್ಕ ಅಂಥೋಣಿ ರವರ ಹೆಸರುಗಳನ್ನು ಸರ್ವೆ ನಂ. 23 ನೆದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅಕ್ರಮವಾಗಿ ಸೇರಿಸಿರುತ್ತೇವೆ ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ, ನಿಪಿ-40 ರಿಂದ 45 ಫೋಟೋಗಳಲ್ಲಿ ಕಂಡು ಬರುವ ಮನೆಗಳು ಮತ್ತು ನಿಡಿ-23 ರಲ್ಲಿ ಕಂಡು ಬರುವ ಮನೆಗಳು ಅಂದರೆ ನಿಡಿ 23(ಎ) ಮತ್ತು (ಬಿ) ಯನ್ನು ಹೊರತು ಪಡಿಸಿ ಒಂದೇ ಆಗಿರುತ್ತವೆ ಎನ್ನುವುದು ನಿಜ. ನಿಪಿ-40 ರಿಂದ 45

ಫೋಟೋಗಳಲ್ಲಿ ಕಂಡು ಬರುವ ಮನೆಗಳನ್ನು ನಿಪಿ-14 ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ನಮೂದಿಸಲಾದ ಸ್ವತ್ತಿನಲ್ಲಿ ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿದೆ ಎನ್ನುವುದು ನಿಜ.

ನಿಪಿ-73ರಲ್ಲಿ ನಮೂದಿಸಲಾದಂತಹ ರಾಜಿ ಪತ್ರದನ್ವಯ ಅಂಥೋಣಮ್ಮರವರಿಗೆ 7 ರಿಂದ 8 ಗುಂಟೆ ಜಮೀನು ಬಂದಿತ್ತು ಎನ್ನುವುದು ನಿಜ. ನಿಪಿ-9 ರಿಂದ 12 ಮತ್ತು 79 ಕಂದಾಯ ತುಂಬಿದ ರಶೀದಿಗಳು ಮತ್ತು ನಿಪಿ-47 ರಿಂದ ನಿಪಿ-63 ವಿದ್ಯುತ್ ಬಿಲ್ ಮತ್ತು ರಶೀದಿಗಳು, ನಿಪಿ-40 ರಿಂದ 45 ಫೋಟೋಗಳಲ್ಲಿ ಕಂಡು ಬರುವ ಮನೆಗಳಿಗೆ ಸಂಬಂಧಿಸಿದವುಗಳು ಎನ್ನುವುದು ನಿಜ.

Further, the admission of DW.1 in his cross examination in that regard that,

"ಪ್ರಶ್ನೆ: ವಾದಿಯರು ದಾವಾಸ್ವತ್ತಿನಲ್ಲಿ ಮನೆ ಕಟ್ಟಿಸಿಕೊಂಡಿರುತ್ತಾರೆ?

ಉತ್ತರಃ 11 ವರೆ ಗುಂಟೆ ಜಮೀನಿನ 2/3 ಹಿಸ್ಸೆಯಲ್ಲಿ ಮನೆ ಕಟ್ಟಿಸಿಕೊಂಡಿರುತ್ತಾರೆ.

ವಾದಿಯರು 11 ವರೆ ಗುಂಟೆ ಜಮೀನಿನ 2/3 ಹಿಸ್ಸೆಯಲ್ಲಿ ಮನೆ ಕಟ್ಟಿಸಿಕೊಂಡಿರುತ್ತಾರೆ ಎನ್ನುವ ಕುರಿತು ಸರ್ವೆ ದಾಖಲೆಯನ್ನು ಹಾಜರು ಪಡೆಸಿರುವುದಿಲ್ಲ, ವಾದಿಯರ ಹಾಗೂ ನಮ್ಮ ಒಪ್ಪಿಗೆಯ ಮೇರೆಗೆ 2007 ರಲ್ಲಿ ದಾವಾಸ್ವತ್ತಿನ ಸರ್ವೆ ಮಾಡಿಸಲಾಗಿತ್ತು

ಎನ್ನುವುದು ನಿಜ. ನಿಪಿ-30 ಸದರಿ ಸರ್ವೆ ಮಾಡಿದಂತಹ ವರದಿ ಹಾಗೂ ನಕ್ಷೆ ಎನ್ನುವುದು ನಿಜ. ಸದರಿ ಸರ್ವೆ ವರಧಿಯೊಂದಿಗೆ ಹಾಜರು ಪಡೆಸಲಾದಂತಹ ಪಂಚನಾಮೆ ನಿಪಿ-31 ನೋಡುತ್ತಿದ್ದು ಅದರಲ್ಲಿ ನನ್ನ ಸಹಿ ಇರುತ್ತದೆ. ದಾವಾಸ್ವತ್ತು ಬಿಬಿಎಂಪಿ ವ್ಯಾಪ್ತಿಗೆ ಬಂದ ನಂತರ ವಾದಿಯರು ಬಿಬಿಎಂಪಿಗೆ ಕಂದಾಯ ತುಂಬುತ್ತಾ ಬಂದಿರುತ್ತಾರೆ ಎನ್ನುವುದು ನಿಜ, ಸಾಕ್ಷಿ ಮುಂದುವರೆದು 11 ವರೆ ಗುಂಟೆ ಜಮೀನಿನ 2/3 ಹಿಸ್ಸೆಯಲ್ಲಿ ಮನೆ ಕಟ್ಟಿಸಿಕೊಂಡಿರುತ್ತಾರೆ ಮತ್ತು ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕಂದಾಯ ತುಂಬಿರುತ್ತಾರೆ. ನಿಪಿ-79 ಸದರಿ ಕಂದಾಯ ತುಂಬಿದ ರಶೀದಿಗಳು ಎನ್ನುವುದು ನಿಜ. ನಿಪಿ-40 ರಿಂದ 45 ಫೊಟೋಗಳಲ್ಲಿ ಕಂಡುಬರುವ ಮನೆಗಳಲ್ಲಿ ವಾದಿಯರು ವಾಸವಾಗಿರುತ್ತಾರೆ ಎನ್ನುವುದು ನಿಜ. ಈಗ ವಾದಿಯರು ಕಟ್ಟಿಸಿಕೊಂಡಂತಹ ಮನೆಗಳಿಗೆ ನೀರು ಮತ್ತು ಚರಂಡಿ ವ್ಯವಸ್ಥೆ ಇದೆ ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ. ನಿಪಿ-40 ರಿಂದ 45 ಫೊಟೋಗಳಲ್ಲಿ ಕಂಡುಬರುವ ಮನೆಗಳಿಗೆ ಮರಿಯಪ್ಪನಪಾಳ್ಯ ಗ್ರಾಮಪಂಚಾಯಿತಿಯವರು ನೀರಿನ ಸಂಪರ್ಕವನ್ನು "ಒದಗಿಸಿರುವ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಕಳೆದ ತಿಂಗಳು ದಾವಾಸ್ವತ್ತಿನ ಹತ್ತಿರ ಹೋಗಿದ್ದೇವು. ನಿಪಿ-40 ರಿಂದ 45 ಫೊಟೋಗಳಲ್ಲಿ ಕಂಡುಬರುವ ಮನೆಗಳ ಹತ್ತಿರ ನಾನು ಹೋಗಿರುವುದಿಲ್ಲ. ನಿಪಿ-40 ರಿಂದ 45 ಫೊಟೋಗಳಲ್ಲಿ ಕಂಡುಬರುವ ಮನೆಗಳ ವಿಸ್ತೀರ್ಣ ನನಗೆ ಹೇಳಲು ಅಗುವುದಿಲ್ಲ. ನಿಪಿ-40 ರಿಂದ 45 ಫೊಟೋಗಳಲ್ಲಿ

ಕಂಡುಬರುವ ಮನೆಗಳಿಗೆ ಬೆಸ್ಕಾಂನವರು ವಿದ್ಯುತ್ ಸಂಪರ್ಕವನ್ನು ಒದಗಿಸಿರುತ್ತಾರೆ ಎನ್ನುವುದು ನಿಜ. ಸರ್ವೆ ನಂ.23/8 ನೇದ್ದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಇವತ್ತಿನ ವರೆಗೂ ವಾದಿಯ ಹೆಸರಿಗೆ ಪಹಣಿ ಬರುತ್ತದೆ ಎನ್ನುವುದು ನಿಜ."

42. Hence, by considering the evidence of both the parties, it clearly goes to show that, the plaintiffs are in possession of the suit schedule property. The Hon'ble Apex Court in the case of ***Ananthula Sudhakar*** supra, held that, in suit for permanent injunction to restrain the defendant from interfering in the plaintiff's lawful possession, the plaintiff will have to establish, as on the date of the suit, he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much establishing possession. The plaintiff may prove physical or lawful possession either of himself or by him through his family members or agents or lessees/licence. The question of title is not an issue in such a suit though it may arise incidentally or collaterally.

43. Further, the plaintiffs have also proved the interference of the defendants to lawful possession of the

plaintiff over the suit schedule property, and since, the defendants have denied the possession of the plaintiffs over the suit schedule property and also made an attempt to interfere with their possession in the suit schedule property.

44. For the foregoing discussion, I am of the view that, the plaintiffs have established their possession and interference by the defendants. Accordingly, I answer the second question of law in favour of the plaintiffs.

45. In view of my answers to point Nos.1 and 2 in favour the plaintiffs, I am of view that there is no perversity or illegality in the impugned judgment and decree passed by the Trial Court. Hence the same needs no interefence by this Court.

Being devoid of merits the appeal is ***dismissed***.

SD/-
(RAJESH RAI K)
JUDGE

PKS/V