

IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE

AT HAVERI

PRESENT: SRI.K.C.SADANANDSWAMY, B.Com. LL.M.
I Addl. District & Sessions Judge,
Haveri.

DATED THIS 28TH DAY OF NOVEMBER 2018.

REGULAR APPEAL No.32/2007

APPELLANT:

- 1) Basavanneppa S/o Shivalingappa Karudi,
Age: 68 years, Occ: Rtd. Post Master,
R/o Kalammana Gudi Oni, Hangal,
Tq: Hangal.
[Since dead, by his Lrs]
- 1(a) Smt.Parvatevva W/o Basavanneppa Karudi,
Age: 70 years, Occ: Household work,
R/o Hangal, Kalammana Gudi Oni, Hangal,
Tq: Hangal, Dist:Haveri.
- 1(b) Nagaraj S/o Basavanneppa Karudi,
Age: 57 years, Occ: Employee,
R/o Davanagere, KTJ Nagar Police Station,
Davanagere, Tq: Dist: Davanagere.
- 1(c) Bhojaraj S/o Basavanneppa Karudi,
Age: 45 years, Occ: Business,
R/o Hangal Pan Bazar, Hangal, Tq: Hangal,
Dt: Haveri.

1(d) Smt.Shailaja W/o Ashokkumar Hullur
Age: 37 years, Occ: Household work,
R/o Bangalore,
C/o Ashok kumar Hullur,
H.No.182. NHIG A-2 Block, 5th phase,
Yalahanka New Town, Bangalore.

1(e) Kum.Tejaswini S/o Mahalingappa Halavalli
Age: 25 years, Occ: Household work,
R/o M.S. Halavalli, Ankadakhana, Bankapur
Tq: Savanur, Dt: Haveri.

(By Sri.S.H.Bheemakkanavar, Advocate)

-Vs-

RESPONDENTS:

- 1) Channabasavaraj A/F Rudrappa Bannur,
Age: 42 years, Occ: Private Service,
R/o Hangal, now at Mumbai,
represented by his G.P.A. Holder
Manohar S/o Basappa Bannur
Age: 37 years, R/o Kalammadevi Gudi Oni,
Hangal, Tq: Hangal.
- 2) Smt.Banavva W/o Virupaxappa Kelagar,
Age: 56 years, Occ: Household work,
R/o Ranebennur, Kurubageri Oni,
Tq: Ranebennur, Dt: Haveri.

*(Resp.No.1 By Sri.K.G.Savadatti, Sri.S.S.Jabin,
Advocates)*

(Resp.No.2 by Sri.C.H.Gudagur, Advocate)

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Tq: Ranebennur, Dt: Haveri.

*(Resp No.1 by Sri.K.G.Savadatti, Advocate)**(Resp. No.2 by Sri.C.H.Gudagur, Advocate)*

Date and nature of the appeals/ : Common Judgment and Decree
order appealed against : passed in O.S.No.16/2003 and
O.S.No.19/2005 by the Sr.Civil
Judge, Hangal, Dtd. 31.07.2007.

Date of institution of the appeals : 05.09.2007

Date of Judgment : 28.11.2018

Duration of the appeal : Year/s Month/s Day/s
11 02 23

R.A.No.131/2018

APPELLANT: Basavanneppa S. Karudi
R/o Hangal.
v/s

RESPONDENT: Channavasavaraj A/f Rudrappa Bannur
R/o Hangal and another.

CROSS OBJECTION

CROSS OBJECTOR : Channabasaraj A/F Rudrappa Bannur
R/o Hangal.
V/s.

RESPONDENT: Basavanneppa S/o Shivalingappa Karudi
R/o Hangal.

Date and nature of the cross : Issue No.8 in O.S.No.16/2003
appeal appealed against : passed by the Sr.Civil Judge,
Hangal, Dtd. 31.07.2007.

Date of filing of cross appeal : 22.10.2007

Date of registration of cross-appeal: 22.10.2018

Date of Judgment :28.11.2018

Duration of the appeal : Year/s Month/s Day/s
11 01 06

(K.C.SADANANDSWAMY)
I ADDL. DISTRICT AND SESSIONS JUDGE,
HAVERI.

COMMON JUDGMENT

1) **R.A.No.32/2007:** The original 2nd defendant / appellant has filed this regular appeal U/s.96 r/w Order 41 Rule 1 and 2 of CPC, aggrieved by common judgment passed in O.S.No.16/2003 dtd.31.07.2007 by learned Civil Judge (Sr.Dn), Hangal on various grounds.

2) The parties are referred as per their ranks before trial Court for sake of convenience.

3) **THE FACTS LEADING TO PRESENT APPEAL ARE AS UNDER:**

The plaintiff had filed suit O.S.No.16/2003 against this appellant and another for declaration of ownership and possession. The sale deed executed by 1st defendant to 2nd defendant dtd.30.04.2001 is not binding on right of the plaintiff and damages of ₹500/- p.m.

The genealogy of Fakkirappa Bannur is described in para 3 of plaint, which reads as under;

4) Fakkirappa Bannur (first man) has got 5 daughters. Out of 5 daughters, 2nd daughter Gangamma was given in marriage to one Rudrappa Bannur. The husband of Gangamma by name Rudrappa

died, when Gangamma was minor. She had no issues. Gangamma has got municipal properties No.570, 570A, 571, 571A, 599 and 87. On 23.5.1935, Gangamma has purchased suit property. Gangamma has taken son of her younger sister Adivemma in adoption by consent of genetic parents of him on 24.11.1966. The ceremonies of adoption has taken place. On 10.05.1976, Gangamma died. After her death, the plaintiff became owner of her properties as successor. The defendants have no manner of right, title and interest over it. The name of plaintiff's adoptive mother Gangamma was entered in municipal records on 23.05.1935. 1st defendant is a daughter of sister of Gangamma. After some period from date of adoption, the name of Basappa Shivappa Bannur is entered in the municipal records without knowledge and information to original owner Gangamma. In the year 1977, 1st defendant has got her name entered in municipal records in collusion with officials by creating records. 2Nd defendant was a post master of Hangal, in the year 1978. He was residing in said property on monthly rent of ₹100/-. In the year 1986. The name

of 2nd defendant is entered in municipal records falsely and plaintiff came to know that 2nd defendant has purchased property from 1st defendant with help of false sale deed. Notice dtd.01.12.1986 was issued to 2nd defendant. The plaintiff has filed application for entering his name in municipal records in the year 1987. The resolution No.24 dtd.19.03.1987 has been passed. 1st defendant has again got changed her name in the municipal records at instigation of 2nd defendant and entered her name on 20.05.1987. The plaintiff has filed application before Director, Bangalore and passed a resolution No.26 dtd.06.02.1991 and got entered his name. 2nd defendant has paying rent to plaintiff ₹350/-. 2nd defendant has staying in suit property as a tenant with consent of plaintiff. The plaintiff has informed to 2nd defendant to pay all arrears of rent, otherwise, vacate from suit property. In the year 1991, 1st defendant has again got entered her name in collusion with Chief Officer, Municipal office, Guttal without informing to plaintiff. Defendants No.1 and 2 have created one sale deed dtd.30.11.2001 for ₹50,000/- in collusion

with 2nd defendant with an intention to cause loss to plaintiff. The defendants have no manner of right, title and interest over suit property. The cause of action arose for the suit. It is prayed that suit is to be decreed.

- 5) Defendants No.1 and 2 have appeared before trial Court through their counsel. 2Nd defendant has filed written statement contending that suit is not tenable under law. The averments made in para 2 to 10 of the plaint are specifically denied as false and incorrect. 2Nd defendant is owner of suit property based on sale deed dtd.30.04.2001. It is specifically urged in page 9 of written statement that original prepositor (first man) Fakkirappa Bennur has purchased some of properties in the name of Gangamma (minor widow). The said sale deed is not pertaining to suit property. She was depending on her father Fakkirappa. 1St defendant was given in marriage, who is daughter of Fakkirappa. She was also staying in the house of Fakkirappa. Suit property and other properties and land Sy.No.39/1 of Dolleshwar village are self acquired properties of Fakkirappa. The suit property was not

used by any legal heirs of Fakkirappa. 2Nd defendant was a tenant under 1st defendant in the year 1975-76. The plaintiff is not in possession and enjoyment of suit property. 2Nd defendant has purchased suit property under registered sale deed for ₹50,000/- on 30.4.2001 from 1st defendant. 2Nd defendant has become owner and in possession of suit property from date of sale deed. 2Nd defendant is paying monthly rent of 1st defendant through money order. There is no cause of action for suit. It is prayed that suit is to be dismissed with costs.

- 6) 1st defendant has adopted written statement filed by 2nd defendant as her own.
- 7) The trial Court has framed issues No.1 to 9 in O.S. No.16/2003 based on above pleadings and materials.

ISSUES

1. Whether plaintiff proves that he is absolute owner of suit property?
2. Whether plaintiff proves that he is adopted son of Gangamma?
3. Whether defendant No.2 proves that suit property was fallen to share of mother of defendant No.1 in the family partition as

alleged?

4. Whether plaintiff proves that defendant No.2 was tenant under him as alleged?
5. Whether plaintiff further proves that suit property is self acquired property of Gangamma?
6. Whether plaintiff proves that sale deed dtd.30.04.2001 executed by defendant No.1 in favour of defendant No.2 is illegal and not binding on plaintiff?
7. Whether plaintiff is entitle for possession of suit property from defendant No.2?
8. Whether plaintiff is entitle for arrears of rent as prayed for?
9. What order or decree?

8) **R.A.No.33/2007:** The appeal in R.A.No.33/2007 is filed by original plaintiff U/s.96 r/w Order 41 rule 1 and 2 of CPC aggrieved by common judgment passed in O.S.No.19/2005 dtd.31.07.2007 by learned Sr. Civil Judge, Hangal on various grounds.

9) **THE FACTS LEADING TO PRESENT APPEAL ARE AS UNDER:**

The plaintiff Basavanneppa Kerudi had filed suit O.S.No.19/2005 against Channabasavaraj Bannur and Banavva Kelagar for relief of

declaration of ownership and consequential relief of permanent injunction and alternative relief of return of sale price and damages amounting to ₹75,000/-. It is averred in the plaint that suit property was owned and possessed by defendant No.2 for last 30-35 years. It was fallen to share of mother of 2nd defendant in the family partition. The suit property was in exclusive possession and enjoyment of mother of 2nd defendant and afterwards 2nd defendant. The plaintiff has serving as post master in postal department. The plaintiff has entered into oral agreement on lease with mother of 2nd defendant after verifying records due to ownership. He has been paying monthly rent of ₹50/- regularly as a tenant under mother 2nd defendant. Later, it was enhanced to ₹100/- p.m. and it was up to ₹300/- p.m. The plaintiff has been paying rent to 2nd defendant by way of money order. 1st defendant is not having any right, title and interest, possession over suit property. 1st defendant has filed suit against plaintiff and 2nd defendant in O.S.No.16/2003 for declaration, possession and damages. The plaintiff is not tenant under 1st defendant. He has

not agreed to pay rent to 1st defendant or his father. 1st defendant has not taken any steps against 2nd defendant for possession of suit property. 2nd defendant has sold suit properties to plaintiff on 30.04.2001 under registered sale deed. 1st defendant is fully aware that plaintiff is paying regularly monthly rent to 2nd defendant and her mother for the last 26-27 years. 1st defendant is falsely claiming declaration, possession and damages in suit O.S.No.16/2003. 1st defendant is not entitled any relief in said suit. The cause of action arose for suit. It is prayed that suit is to be decreed with costs.

10) 1st defendant has appeared before trial Court through his counsel and filed written statement contending that suit is not tenable under law. The contents of para 2, 5 to 15, 17 and 18 of plaint are denied as false. The plaintiff has no right, title over property by virtue of alleged sale deed dtd.30.04.2001. There is no cause of action for the suit. It is prayed that suit is to be dismissed with costs.

11) Defendant No.2 has appeared before trial Court through her

counsel and filed written statement contending that the description of suit property and boundaries are true and correct.

It is true that suit property is owned and possessed by mother of 2nd defendant since 30-35 years. It is also admitted as true that suit property has fallen to the share of mother of 2nd defendant.

This defendant has admitted para 3 to 13 as true and correct. It is specifically contended that 1st defendant is not entitled to any declaration as sought in O.S.No.16/2003. 1st defendant is neither owner nor in possession of suit property. He has not adopted son of deceased Rudrappa nor property is vested in him as falsely claimed. It is true that 1st defendant is interfering with possession and enjoyment of suit property by plaintiff without having any right.

- 12) On the above pleadings and material, issues No.1 to 7 have been framed by trial Court in O.S.No.19/2005.

ISSUES

1. Whether plaintiff proves that defendant No.2 was the owner in possession of suit property as it was fallen to the share

of her mother in family partition?

2. Whether plaintiff further proves that he was lessee under defendant No.2 earlier?

3. Whether plaintiff further proves that he purchased suit property from defendant No.2 for ₹50,000/-on 30.04.2001 under registered sale deed?

4. Whether plaintiff further proves that he improved the suit property by spending huge amount?

5. Whether plaintiff is entitle for declaration and injunction as prayed for?

6. Whether defendant No.1 is entitle for compensatory costs?

7. What order or decree?

13) The suit O.S.No.16/2003 and O.S.No.19/2005 are between same parties in respect of same property. Both suits are clubbed together. Common evidence is recorded. The plaintiff in O.S.No.19/2005 / 2nd defendant in O.S.No.16/2003 is examined as PW-1 and one witness is examined as PW-2 and got marked Ex.P.1 to Ex.P.13. PA holder of 1st defendant Channabasappa Bannur by name Manohar Bannur is examined as DW-1 and two witnesses are examined as DW-2 and DW-3 and got marked

Ex.D.1 to Ex.D.26.

- 14) The trial Court has heard arguments on both sides of both suits.

Common judgment is delivered. The trial Court has dismissed suit O.S.No.19/2005 and decreed the suit in O.S.No.16/2003.

- 15) The original second defendant in O.S.No.16/2003 has challenged said common judgment through this regular appeal No.32/2007 on following grounds.

- a. The judgment of trial Court is contrary to law and facts.
- b. The Court below has wrongly answered issues against this appellant, findings and conclusion arrived by Court below is contrary to oral and documentary evidence.
- c. The Court below has not appreciated and considered evidence led by parties in proper and correct manner.
- d. The findings, reasoning, observation made by Court below on issues is not proper and correct.
- e. The court below ought to have considered the provisions of Sec.3 and Article 65 of limitation act.
- e. The judgment of trial Court in O.S.No.16/2003 is liable to be

set aside by allowing this appeal and pray for dismissal of suit O.S.No.16/2003.

16) The original plaintiff in O.S.No.19/2005 has challenged said common judgment through this regular appeal No.33/2007 on following grounds.

- a. The judgment of trial Court is contrary to law and facts.
- b. The Court below has wrongly answered issues against this appellant, findings and conclusion arrived by Court below as contrary to oral and documentary evidence.
- c. The Court below has not appreciated and considered evidence led by parties in proper and correct manner.
- d. The findings, reasoning, observation made by Court below on issues is not proper and correct.
- e. The judgment of trial Court in O.S.No.19/2005 is liable to be set aside by allowing this appeal and pray for decree in suit O.S.No.19/2005.

17) **R.A.No.131/2018:** The respondents/plaintiffs in O.S.No.16/2003 have appeared before this Court after receipt of

appeal memo and filed cross-objections U/o.41 rule 22 of CPC.

Cross-objector has challenged findings on issue No.8 in O.S.No.16/2203 and not allowing the cost of the suit in common judgment passed in O.S.No.16/2003 and O.S.No.19/2005 on following grounds.

- a. The Court below is wrong in answering issue No.8 in negative.
- b. The Court below has not at all considered and observed pleadings of the parties and damages claimed being trespasser of suit property.
- c. The Court below has not examined evidence of DW-1 for arrears of damages amount of ₹6,300/-.
- d. The Court below has not at all assigned proper reasons while answering issue No.8 in O.S.No.16/2003.

It is prayed that this cross-appeal is to be allowed and findings given by Court below on issue No.8 in O.S.No.16/2003 has to be set aside and pray for grant of decree in respect of damages.

18) Lower court records in both suits are secured.

19) This Court has heard arguments of both sides and perused records carefully.

20) **POINTS OF ARGUMENTS CANVASSED BY LEARNED**

COUNSEL FOR APPELLANT: It is specifically argued by learned counsel for appellant that plaintiff Basavanneppa Kerudi in O.S.No.19/2005 has filed suit against defendants for declaration of ownership and consequential relief of permanent injunction and refund of sale price amount and damages of ₹75,000/-. The suit property is owned and in possession of 2nd defendant since last 30 years. It was fallen to the share of mother of 2nd defendant in family partition. The plaintiff has entered into oral agreement of lease with mother of 2nd defendant on a monthly rent of ₹50/- initially. It was renewed and hiked from ₹50/- to ₹100/- and ₹300/- lastly. The plaintiff has been paying rent regularly to 2nd defendant by way of money order. 1st defendant is not having any right, title and interest over suit property. The plaintiff has purchased suit property under registered sale deed from 2nd defendant on 30.04.2001. 1st defendant has filed suit

O.S.No.16/2003 against this plaintiff for ownership, possession and other reliefs. 1st defendant is fully aware about transaction between plaintiff and 2nd defendant. Trial Court has not appreciated, oral and documentary evidence produced by parties in proper and correct manner known to law. Trial Court has wrongly decreed the suit in O.S.No.16/2003 and wrongly dismissed suit O.S.No.19/2005. Court below has not considered provisions of Sec.3, 27 and Article 65 of Limitation Act. The suit for possession based on title in O.S.No.16/2003 has to be filed within 12 years from date of dispossession. Learned counsel for appellant has drawn my attention to oral and documentary evidence produced in support of his contention. It is prayed that both appeals are to be allowed. Common judgment and decree passed in O.S.No.16/2003 and O.S.No.19/2005 are to be set aside and pray for decree of suit O.S.No.19/2005 and pray for dismissal of suit O.S.No.16/2003.

- 21) **POINTS OF ARGUMENTS CANVASSED BY LEARNED COUNSEL FOR RESPONDENTS:** It is specifically argued by

learned counsel for respondents that second defendant -Banavva has no title to sell to suit property to first defendant. Original owner Gangavva has adopted this plaintiff under registered adoption deed. She has purchased suit property under registered sale deed. The defendants have got changed their names in Municipal records in collusion with concerned officials. The plaintiff has succeeded to suit property, being adopted son of him. Second defendant is in permissive possession of suit since long period. He has not better title to suit property. Court below has properly answered issues in O.S.No.16/2003 and O.S.NO.19/2005. Court below has not considered pleadings and evidence in respect of damages claimed by the plaintiff. Learned counsel for respondents has drawn my attention to oral and documentary evidence produced in support of his contention. It is prayed that both appeals are to be dismissed. Common judgment and decree passed in O.S.No.16/2003 and O.S.No.19/2005 are to be confirmed and pray for decree in respect of damages by allowing cross-appeal in R.A No.138/2018.

22) **CASES RELIED BY APPELLANT:**

1. ILR 1996 KAR 1340 (Alla Baksh vs Mohd. Hussain)
2. AIR 2006 SUPREME COURT 1786 (Jagat Ram v. Varinder Prakash) = ILR 2006 KAR 2291
3. AIR 1990 SUPREME COURT 717 (Bhavnagar Municipality vs Union of India and another)
4. AIR 2004 SUPREME COURT 1893 (Vasantiben prahladji Nayak and others vs Somnath Muljibhai Nayak and others)
5. 1978 (2) Kar L.J. 391 (Sri Devendra Keerthi Bhattarka P. Swamigalu vs. Jejanna H.)
6. ILR 2001 KAR 5270 (Azeez Khan vs Anwar Pasha Alias Khasim Khan and others)
7. AIR 2003 SUPREME COURT 1905 (Bondr Singh and others vs Nihal Singh and others)
8. AIR 2005 PUNJAB AND HARYANA 222 (Bhupinder Nath (D) by LR and another, vs. Surasti (D) by Lrs)
9. ILR 1996 KAR 1639 (The Special Land Acquisition Officer, UKP, Bagalkot vs Malakajayya Mallayya)

10. AIR 1965 Supreme Court 1553 (Gurbinder Singh and another vs Lal Singh and another)

23) The points arise for my consideration for disposal of R.A.No.32/2007 are as under:

1. Whether respondent/original plaintiff Channabasavaraj proves that he is adopted son of Gangamma?
2. Whether plaintiff Channabasavaraj proves in R.A.No.32/2017 that he is absolute owner of suit property?
3. Whether defendant Basavanneppa Kerudi / appellant proves that suit property had fallen to share of mother of Banavva in family partition ?
4. Whether plaintiff Channabasavaraj proves that second defendant is a tenant under him?
5. Whether plaintiff Channabasavaraj Bannur proves that sale deed dtd.30.4.2001 executed by 1st defendant in favour of 2nd defendant is illegal and not binding on the plaintiff?
6. Whether suit is barred by limitation?
7. Whether impugned judgment challenged under this appeal is perverse, capricious and liable for interference by this Court?

8. What order?

24) The points arise for my consideration for disposal of R.A.No.33/2007 are as under:

1. Whether plaintiff/ appellant-Basavennappa Kerudi proves that suit property had fallen to share of mother of Banavva in family partition ?
2. Whether plaintiff Basavanneppa Kerudi proves that he was a tenant under defendant No.2 earlier ?
3. Whether plaintiff proves that he has purchased the suit property from defendant No.2 for ₹50,000/- under registered sale deed dtd.30.04.2001 ?
4. Whether plaintiff further proves that he has improved suit property by spending amount?
5. Whether impugned judgment challenged under this appeal is perverse, capricious and liable for interference by this Court?
6. What order?

25) The points arise for my consideration for disposal of R.A.No.131/2018 are as under:

1. Whether cross-objector has made out valid grounds to

condone delay in filing appeal?

2. Whether cross-objector proves that he is entitled for damages as claimed in issue No.8, considering the evidence on record ?
3. What order ?

26) My answer to above points in R.A.No.32/2007 is as under:

1. In Affirmative.
2. In Affirmative.
3. In Negative.
4. In Negative.
5. In Affirmative
6. In Affirmative.
7. In partly affirmative and partly negative.
8. As per final order for following reasons:

27) My answer to the above points in R.A.No.33/2007 is as under:

1. In Negative.
2. In Affirmative.
3. In Affirmative.
4. In Negative.
5. In partly affirmative and partly negative.
6. As per final order for following reasons:

28) My answer to above points in R.A.No.131/2018 is as under:

1. In affirmative
2. In Negative.
3. As per final order for following reasons:

REASONS

29) **POINT NO.1 IN R.A.NO.131/2018:** The cross-objector has

filed I.A.No.II U/s.5 of Limitation Act U/s.41 Rule 3(a) of r/w sec.151 of CPC. It is mentioned in the affidavit of cross-objector that I had taken my child aged 4 $\frac{1}{2}$ years to K.L.E. Hospital, Belgaum. I was required to attend said Hospital. I could not contact my learned counsel on 11th of this month. He has requested his counsel to file cross-objections on 12th of this month. Delay in filing this cross-appeal is bonafide reason. It is prayed that delay may be condoned.

30) The respondents have not filed any objections to above application. The objections to this delay application by other side is taken as not filed. R.A.No.32/2007 was filed on 05.09.2007. This cross-appeal is filed on 22.10.2007. Mr.K.G.S. appeared

before this Court on 13.09.2007. The cross-appeal is to be filed within 30 days from the date of service of appeal memo in R.A.No.32/2007. Therefore, there is a delay in filing this cross-appeal. Grounds urged in the application I.A.No.II are fully satisfied for reasons stated therein. The delay in filing cross-appeal is condoned. Cross-objector has proved this point. I have constrained to answer this point No.1 in affirmative.

31) **POINTS NO.1 TO 3 IN R.A.NO.32/2007 AND POINT**

NO.1 IN R.A.NO.33/2007: There is delay in filing in appeal No.33/2007. I.A.I is allowed as per order sheet dated 13-09-2007. Delay in filing appeal is condoned. Trial court has clubbed suit O.No.19/2005 and O.S.No.16/2003. Common evidence is recorded. Common judgment has been delivered. Therefore, these appeals are arising out of common judgment. Hence, these appeals are heard together. Common judgment is delivered by this court along with cross-appeal by consent of both parties.

32) The plaintiff Basavanneppa Kerudi is examined as PW-1 in O.S.No.19/2005 and defendant in O.S.No.16/2003 by way of

examination-in-chief through affidavit as provided under law. He has produced Ex.P.1 to Ex.P.13 documents. PW-1 is admitted and stated in cross-examination made by learned counsel for defendant before trial Court that "ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟ ದಾಖಲೆ ನೋಡಿದ್ದೇನೆ. 74ರ ಮೊದಲಿನ ದಾಖಲೆಗಳನ್ನು ನೋಡಿದೆ. ಚನ್ನಬಸವನಿಗೆ ಆಸ್ತಿ ಹೇಗೆ ಬಂತೋ ಗೊತ್ತಿಲ್ಲ. ಯಾರಾರ ನಡುವೆ ಹಾಗೂ ಯಾವ ಆಸ್ತಿ ಬಗ್ಗೆ ಆಯಿತು ಅನುವುದು ಗೊತ್ತಿಲ್ಲ. ಗಂಗವ್ವ ಖರೀದಿ ಮಾಡುವಾಗ ಫಕ್ರೇರಪ್ಪ ಜೀವಂತ ಇದ್ದ ಅನುವುದು ಗೊತ್ತಿಲ್ಲ. ವಾದಿಯು 1987ರಲ್ಲಿ ನನಗೆ ನೋಟೀಸು ಕೊಟ್ಟಿದ್ದ. ಈ ಆಸ್ತಿ ಫಕ್ರೇರಪ್ಪ ಯಾವಾಗ ಮತ್ತು ಯಾರಿಂದ ತಗೊಂಡ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಚನ್ನಬಸವ್ವ ಮತ್ತು ಯಾರ ನಡುವೆ ಹಿನ್ನೆಯಾಯಿತು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಗಂಗವ್ವ 1935 ರಲ್ಲಿ ಈ ಆಸ್ತಿ ಖರೀದಿ ಮಾಡಿದ್ದಳೋ ಹೇಗೋ ಗೊತ್ತಿಲ್ಲ. ಆತ 1966ರಲ್ಲಿ ಗಂಗವ್ವನಿಗೆ ದತ್ತಕ ಆಗಿದ್ದಾನೋ ಹೇಗೆ ಗೊತ್ತಿಲ್ಲ. ನನಗೆ ಹೊರಗೆ ಹಾಕಲು ಯಾರೂ ಪ್ರಯತ್ನ ಮಾಡಿಲ್ಲ. "

- 33) One witness Andaneppa Ballary is examined as PW-2 on behalf of plaintiff in O.S.No.19/2005, who has supported the case of plaintiff by way of examination-in-chief through affidavit. PW-2 is admitted and stated in the cross-examination made by learned counsel for defendant before trial Court that "ಗಂಗವ್ವನಿಗೆ ಒಟ್ಟು 4

ಜನ ಅಕ್ಕತಂಗಿಯರು. ಅವರು ವಾಟ್ಸಿ ಎಷ್ಟನೇ ಇಸವಿಯಲ್ಲಿ ಮಾಡಿದ್ದಾರೆ
ಎನ್ನುವುದು ನೆನಪಿಲ್ಲ. ಯಾವ ಯಾವ ಆಸ್ತಿಗಳು ಯಾರಾರಿಗೆ ಬಂದವೋ ನೆನಪಿಲ್ಲ.
ಜಮೀನುಗಳ ಬಗ್ಗೆ ಕೂಡ ವಾಟ್ಸಿಯಾಗಿಲ್ಲ. ಯಾವ ಯಾವ ಜಮೀನುಗಳು
ಯಾರಾರಿಗೆ ಬಂದವು ಅಂತ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ವಾಟ್ಸಿ ಬರವಣಿಗೆಯಲ್ಲಿ
ಆಯಿತೋ ಹೇಗೋ ನೆನಪಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿ ಮತ್ತು ಜಮೀನುಗಳು
ಕೆಲವೊಂದುಗಳು ಗಂಗಮ್ಮನ ಖರೀದಿ ಆಸ್ತಿಗಳು ಇರಬಹುದು."

- 34) The power of attorney holder of Channabasavaraj Bannur by name Manohar Bannur is examined as DW-1-defendant in O.S.No.19/2005 and the plaintiff in O.S.No.16/2003 by way of examination-in-chief through affidavit as provided under law. He has produced Ex.D.1 to Ex.D.21 documents. DW-1 is admitted and stated in cross-examination made by learned counsel for plaintiff before trial Court that "ಗಂಗಮ್ಮ ಫಕ್ರೇರಪ್ಪನ ಮಗಳು. ಆ ಆಸ್ತಿಯನ್ನು
ನಾನು ಖರೀದಿ ಮಾಡಿದ್ದೆ. ಆ ಆಸ್ತಿಯನ್ನು ಆತ ಚನ್ನಬಸಮ್ಮನಿಂದ ಖರೀದಿ ಮಾಡಿದ್ದ.
ಚನ್ನಬಸಮ್ಮನೆಂದರೆ 2ನೇ ಪ್ರತಿವಾದಿಯ ತಾಯಿ. ಅದು ಚನ್ನಬಸಮ್ಮನಿಗೆ ಹೇಗೆ
ಬಂತೋ ಗೊತ್ತಿಲ್ಲ. 6-7-1977ರಲ್ಲಿ ಮುನಿಸಿಪಾಲಿಟಿಯವರು ಮಾಡಿದ
ರರಾವಣು ನಾವು ಚಾಲೇಂಜ್ ಮಾಡಿಲ್ಲ. 74-75 ರಿಂದಲೇ ವಾದಿ
ದಾವಾದಾಸ್ತಿಯಲ್ಲಿ ಭಾಡಿಗೆದಾರ ಅಂತಾ ಇದ್ದಾ. 74-75 ರಲ್ಲಿ ಭಾಡಿಗೆ ವ್ಯವಹಾರ

ಆಗಿದೆ. ಗಂಗಮ್ಮ ಜೀವಂತ ಇದ್ದಾಗ ಆತ ಮನೆಗೆ ಬಾಡಿಗೆಗೆ ಬಂದಿದ್ದಾನೆ. ಸರ್ವೆ ನಂ.39/1 ಸದಕ್ಕೆ ನನ್ನ ವೈಯುಕ್ತಿಕ ಹೆಸರಿನಲ್ಲಿದೆ. ನಾನು ಚನ್ನಬಸಯ್ಯ ಹಿರೇಮಠರಿಂದ ಖರೀದಿಗೆ ತೆಗೆದುಕೊಂಡೆ. ಚನ್ನಬಸಯ್ಯ 2ನೇ ಪ್ರತಿವಾದಿ ತಾಯಿಯಾದ ಚನ್ನಬಸವಳಿಂದ ಖರೀದಿ ಮಾಡಿದ್ದ. "

- 35) One Ashok Damodar is examined on behalf of defendants in O.S.No.19/2005 and one witness for plaintiff in O.S.No.16/2003 as DW-2 by way of chief-examination through affidavit as provided under law. He has supported case of defendants. DW-2 is admitted and stated in cross-examination made by learned counsel for plaintiff before trial Court that "ಆ ಜಾಗೆ ಸೀರಿ ಗಂಗಮ್ಮನದು. ಹಿರಿಯರು ಅವರದೇ ಅಂತಾ ಹೇಳುತ್ತಿದ್ದರು. ಆದ್ದರಿಂದ ಗೊತ್ತು. ನನಗೆ ವೈಯುಕ್ತಿಕ ಗೊತ್ತಿಲ್ಲ. 2001 ರಿಂದ ಆ ಮನೆಯ ಬಗ್ಗೆ ಏನೇನು ವ್ಯವಹಾರ ಆಗಿವೆ ಎಂಬ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. "

- 36) One Vittal Damodar is also examined on behalf of defendants in O.S.No.19/2005 and O.S.No.16/2003 by way of chief-examination affidavit as DW-3. He has supported case of defendants. DW-3 is admitted and stated in cross-examination made by learned counsel for plaintiff before trial Court that

"ಮಗುವನ್ನು ಅಡಿವೆಕ್ಕ ಮತ್ತು ಆಕೆಯ ಗಂಡ ಕೂಡಿ ಗಂಗೆಮುನಿಗೆ ಕೊಟ್ಟರು. ಆಕೆ ಮಗುವಿನ ಸರವನ್ನು ತೆಗೆದು ಮಗುವಿನ ಕೊರಳಿಗೆ ಹಾಕಿದಳು. ಪೊಟೋ ದಲ್ಲಿ ಇದ್ದ ಗಣ್ಯರು ಯಾರೂ ಜೀವಂತ ಇಲ್ಲ. ಪೊಟೋ ತೆಗೆದಾಗ 10.30 ರಿಂದ 11.00 ಆಗಿರಬಹುದು. "

- 37) The Court below has treated O.S.NO.19/2005 as main suit and O.S.NO.16/2003 earlier suit is clubbed in it and decided the suit commonly by delivering common judgment by considering evidence of parties.
- 38) All 3 appeals are arising out of common judgment passed in O.S.No.16/2003 and O.S.No.19/2005 based on their respective pleadings, evidence produced by parties. Therefore, these appeals are commonly taken for final adjudication by consent of both parties to avoid repetition of facts.
- 39) It is specific case of plaintiff in O.S.NO.16/2003 and in evidence by Manohar Bannur that he is owner of suit property and sale deed dtd.30.4.2001 executed by 1st defendant in favour of 2nd defendant be declared as null and void and not binding on right of plaintiff.

40) It is specifically averred in the plaint and in evidence of Manohar Bannur in O.S. No.16/2003 that he is adopted son of Gangamma, who is daughter of Fakkirappa. Fakkirappa Bannur has got 5 daughters by name 1) Basamma, 2) Gangamma, 3) Shankramma, 4) Savitramma and 5) Channabasamma. Gangavva had no issues. Her husband Rudrappa died, when she was minor. She had acquired some properties including suit properties. She has purchased suit property under registered sale deed on 23.5.1935. Gangava had taken her sister's daughter's son i.e. Channabasavva's daughter Adivemma's son Channabasavaraj in adoption as per registered adoption deed dtd.24.11.1966 as per custom prevailing in their community. The plaintiff Channabasavaraj Bannur is adopted son of Gangamma.

41) It is specific case in suit filed by Basavanneppa Kerudi in O.S.NO.19/2005 against defendants for declaration of ownership, permanent injunction and return of consideration amount and repair amount. It is specific case of plaintiff in plaint in O.S.No.19/2005 and as well as in evidence that Basavanneppa

Kerudi is in possession and enjoyment of suit property as tenant since long period. He has purchased same from defendant No.2 on 30.04.2001 for ₹50,000/- under registered sale deed, whose name is entered in munciple records. Banavva is daughter of Channabasamma. The suit property was allotted to family partition to share of Channabasamma. Her name is entered in municipal records. After her death, the name of Banavva is entered in the suit property. The plaintiff Basavanneppa Kerudi has to establish and prove that suit property was belonging to Fakkirappa. After his death, all her 5 daughters have partitioned the same. The suit property was allotted to the share of Channabasamma. After death of Channabasamma, the name of defendant No.2 is entered in municipal records. He has purchased the same.

- 42) Unfortunately, the plaintiff Basavanneppa Kerudi has not produced partition deed between Banavva and her sisters to prove alleged allotment of suit property to her share. There is a reference in Ex.P.6, resolution passed by municipality on 20.05.1987 that there was a partition in the year 1977. Vatny

Patra was produced before municipality. The name of Basavva had entered on basis of Vatny Patra.

- 43) It is pertinent to note here that the plaintiff Basavanneppa Kerudi has pleaded that there was a partition between Channabasavva, Savitravva, Shankramma, Gangavva and Basamma, who are daughters of Channabasavva. It is made it very clear as per Ex.P.6 that there was a partition between Banavva and her sisters and not between Channabasavva and her sisters. There is a material variation in pleading and proof on side of plaintiff Basavanneppa Kerudi in O.S.No.19/2005. He has not explained with satisfactory proof that how Channabasavva had acquired property. More particularly, Basavanneppa Kerudi has not produced partition deed nor examined the Banavva. On the contrary, PW-2 has given clear cut admission that there was a partition between Channabasavva and her sisters. The evidence of PW-1, PW-2 in O.S.NO.19/2005 clearly made it clear that there was a partition between Gangavva and her sisters. PW-2 does not know who has written partition deed and what

properties are allotted to sisters.

- 44) The names of different persons are entered in municipal records by considering Ex.P.9. The name of Basappa Bannur is entered. Subsequently, the name of Channabasavva is appeared in municipality. The name of Banavva Kelagar is appeared. The name of Gangavva Bannur is appeared in municipal records for period 1964-65. After deleting her name, the name of Basappa is appeared in municipal records for period 1968-69. Basappa Bannur is a natural father of Banavva. The name of Basappa is deleted in municipal records as per Ex.D.4 and Ex.D.5.
- 45) It is pertinent to note here that there is no consistency in entries recorded in the office of municipal authority in respect of suit property. The particular person name is entered for purpose of collection of taxes. But, it does not create or acquire any right in respect of property. The municipal authority has passed an order that the parties shall approach civil Court to get their rights declared.
- 46) Gangavva has purchased suit property on 18.05.1935 from one

Tarakeshwar Society under registered sale deed produced in this case, which is marked as Ex.D.6. Fakkirappa Bannur has died on 26.01.1919 as per Ex.D.22, true copy of birth and death register extract. When Fakkirappa died in the year 26.01.1919, the question of property purchased by him does not arise at all, because of simple reason that Gangavva has purchased the same under registered sale deed as per Ex.D.6. Death of Fakkrappa has taken place prior to purchase by Gangavva. It has got presumptive value in the eye of law.

- 47) There are no good records produced by plaintiff Basavanneppa Kerudi in O.S.NO.19/2005 against the documents produced by plaintiff in O.S.NO.16/2003 contrary to it. Under such circumstances, the Court below has rightly appreciated and held that suit property is purchased by Gangamma, who is an owner of it.
- 48) The plaintiff in O.S.NO.16/2003 has filed certified copy of registered adoption deed as per Ex.D.15 dtd.24.11.1966. The contents of document clearly disclosed that Channabasavaraj

has given in adoption to Gangamma as per rituals performed in presence of parents and elders of both family. DW-3 Vittal R. Damdar has clearly stated that he was present at time of adoption ceremony conducted. Photos is also taken at Ex.D.26. The contents of Ex.D.15 and in support of evidence of DW-1, DW-3 and Ex.D.26, it is clearly established and proved that Channabasavaraj Bannur has given in adoption to Gangamma by his genitic parents. The performance of ceremonies mentioned in adoption deed has been stated by DW-3 Vittal Damodar in his evidence.

- 49) Boy was aged about 4 years. Gangamma was aged lady. By looking into registered adoption deed and evidence of DW-3 and others, it is established and proved valid adoption. Gangamma has taken Channabasavaraj in adoption. I have got reasons to believe oral and documentary evidence produced by the plaintiff. Trial Court has properly and correctly observed and held that suit property is purchased by Gangavva under registered sale deed and plaintiff Channabasavaraj is given in adoption to Gangamma. The findings

and reasoning given by Court below on these issues in its lower Court judgment is proper and correct. There are no valid reasons to differ by this court on this count.

- 50) The plaintiff Basavanneppa Kerudi has failed to establish and prove that Banavva has got valid title to execute sale deed in his favour on 30.04.2001. There was no partition deed produced on his side to prove actual ownership of Banavva in respect of suit property. On the contrary, the plaintiff Channabasavaraj has proved that he is adoptive son of Gangamma, who has valid title in respect of suit property based on the sale deed dtd.18.05.1935 as per Ex.D.6. Therefore, this Court is also accepted reasons and finding given by Court below on this point also. Therefore, the original plaintiff in O.S.NO.19/2005 has failed to prove his ownership over suit property. He has failed to prove that suit property was allotted to Banavva under family partition as discussed in above paras. On the contrary, the plaintiff Channabasavaraj has proved that he adopted son of Gangamma and he is absolute owner of suit property. points No.1

and 2 in R.A.NO.32/2007. The appellant Basavanneppa Kerudi has failed to prove that suit property was allotted to Banavva under family partition. The suit property purchased by him from Banavva is valid. Banavva had no valid title in respect of suit property. He is not absolute owner suit property. The respondents in R.A.No.32/2007 has proved points No.1 to 3. The appellant in R.A No.33/2007 has failed to prove point No.1. I have constrained to answer points No.1 and 2 in R.A.NO.32/2007 in affirmative and point No.3 in R.A.NO.32/2007 and point No.1 in R.A.NO.33/2007 in negative.

51) **POINT NO.4 IN R.A.NO.32/2007 AND POINT NO.2 IN**

R.A.NO.33/2007: It is specific case of plaintiff in O.S.No.19/2005 that he is a tenant under Banavva for a period of 20-25 years. He has been regularly paying rent to her. He has been paying rent of ₹50/- and thereafter ₹100/- and thereafter ₹150/- to ₹300/-. The plaintiff is tenant under him. The plaintiff Basavanneppa Kerudi has produced 10 rent receipts at Ex.P.2, which goes to show that he has been paying rent to

Channavva and thereafter to Banavva based on the entries made in municipal records. Actually Channabasavva has leased/ permitted the plaintiff to occupy the house.

- 52) The plaintiff in O.S.No.16/2003 has failed to produce records to show that defendant No.2 Basavanneppa Kerudi was a tenant under him. There are absolutely no material proof produced by him. The resolution passed in municipal records, deletion of name of Basappa and entering the name of Banavva, which clearly established that the plaintiff Basavanneppa Kerudi has been paying rent to Channabasavva and Banavva. Therefore, the plaintiff in O.S.NO.16/2003 has failed to prove that defendant No.2 is a tenant under him. There was no privity of contract between Channabasavarj and Basavennappa Kerudi for lease in respect of suit property. There are no proof in this regard. On the contrary, the plaintiff in O.S.NO.19/2005 has proved that he is a tenant under defendant No.2. The Court below has rightly answered based on evidence on record on issue No.2 in O.S.NO.19/2005 and issue No.4 in O.S.NO.16/2003. This Court

is not finding any fault in respect of observation, findings given by Court below. Therefore, this Court is also accepting the said reasonings and findings. Hence, the plaintiff in O.S.NO.19/2005 has proved that he was a tenant under defendant No.2. The plaintiff in O.S.No.16/2003 Channabasavaraj has failed to prove that 2nd defendant is tenant under him. I have constrained to answer point No.2 in R.A.NO.33/2007 in affirmative. I have constrained to answer point No.4 in R.A.No.32/2007 in negative.

- 53) **POINT NO.4 IN R.A.NO.33/2007:** The plaintiff in O.S.No.19/2005 has specifically pleaded in plaint and in his evidence that he has purchased suit property from Banavva under registered sale deed on 30-04-2001. He has produced sale deed also. But, Banavva had no valid title to execute sale deed in favour of him. The plaintiff Basavanneppa Kerudi has not acquired valid title under registered sale deed dated 30-04-2001 from Banavva. He has further averred that he has improved suit property by spending huge amount towards repairs and others. It is not disputed fact that suit property is an old

house with some backyard portion. The plaintiff has orally stated in his evidence that he has improved suit property by spending amount. He has not produced single record and document to show that he has got repaired suit property by spending amount. The plaintiff has not produced construction permission for carrying out repair work of suit property from concerned authority. There are no material evidence produced by the plaintiff Basavanneppa Kerudi. The Court below has rightly answered in O.S.NO.19/2005 on issue No.4 and other issues. This Court is also accepting said reasons. The appellant has failed to prove this point No.4 in R.A. No.33/2007. Hence, I have constrained to answer point No.4 in R.A.NO.33/2007 in negative.

- 54) **POINT NO.5 IN R.A.NO.32/2007:** It is also observed and held in above points, while answering points No.1 to 3 in both appeals that the suit property is purchased by Gangamma on 18.5.1935 under registered sale deed. It is self-acquired property of her. The plaintiff in O.S.NO.19/2005 has failed to

produce partition deed and other relevant records to show that it was fallen to the share of Channabasavaraj or Banavva under family partition. The sale deed executed by defendant No.2 Banavva in favour of Basavanneppa Kerudi dtd.30.04.2001 is not binding on right of plaintiff Channabasavaraju. Banavva has executed sale deed in favour of Basavanneppa Kerudi on 30.04.2001, who had no legal right or title in respect of suit property. Under such circumstances, such a sale deed is illegal and it is not binding on legal right of Channabasavaraj. The Court below has properly and correctly answered said point in issue No.6 in lower Court judgment. This Court is rightly accepting said reasoning and findings given by Court below. The plaintiff Channabasavaraj has proved that sale deed dtd.30.04.2001 executed by Banavva in favour of 2nd defendant is illegal. It is not binding on his right. He has proved said point. I have constrained to answer point No.5 in R.A.NO.32/2007 in affirmative.

55) **POINT NO.6 IN R.A.NO.32/2007:** It is specifically urged

ground in this appeal and canvassed by learned counsel for appellant that suit for possession based on title is within period of 12 years from date of dispossession. The plaintiff is fully aware that he was out of possession in the year 1986, as per his plaint averments. The suit is filed after lapse of more than 12 years for possession is certainly barred by limitation. The point of limitation can be urged at appellate stage also, which is a pure question of law. It is prayed that the suit in O.S.NO.16/2003 has to be dismissed on point of limitation.

- 56) It is specifically argued by learned counsel for respondents that defendants are in permissive possession of suit property by paying rents. The plaintiff has demanded for vacation of suit property recently before filing suit by issuing legal notice. The suit filed, from date of issuance of notice and refused to vacate from suit property, is within period of limitation. Therefore, there is no point of limitation ground urged in the trial Court. Hence, this point cannot be urged first time at first appellate Court.

57) I have carefully gone through points canvassed by both learned counsels appearing for parties. Admittedly, there was no issue framed by Court below on point of limitation, while deciding suit O.S.NO.16/2003 on merits. There is no specific point of limitation urged in trial Court by defendants / appellants. The point of limitation is a pure question of law. It can be urged at any stage including first appellate Court for purpose of decision. I have certainly accepted contention of learned counsel for appellant in respect of consideration of point of limitation before this Court without framing an issue before trial Court first time. There is no bar under law to urge said ground before this court.

58) The plaintiff in O.S.NO.16/2003 has filed suit against defendant for declaration and possession. The claim of plaintiff for declaration is based on title. Article 65 of Limitation Act is certainly and rightly applicable for seeking relief of possession within period of 12 years. It is specifically mentioned in para 6, 7 of the plaint in O.S.NO.16/2003 that name of 1st defendant is entered in the panchayat records in year 1970, 1977 and 1978. 2nd

defendant has been paying rent of ₹100/-. The name of 2nd defendant has got entered in municipal records in the year 1986. The plaintiff has got issued legal notice on 01.12.1986 against 2nd defendant not to make any transaction in respect of suit property. The 2nd defendant has been paying rent of ₹200/- and thereafter it was hiked to ₹350/-. These averments made in the plaint by the plaintiff clearly establish and proved that 2nd defendant is in possession of suit property since from 1978 and legal notice dtd.01.12.1986. 2Nd defendant has also produced the copies of money order sent to 1st defendant and others in respect of rent amount. The suit in O.S.NO.16/2003 had filed on 20.08.2003. This suit is filed after lapse of 25 years from 1978, 17 years from date of legal notice dtd.01.12.1986, which is certainly and definitely barred by limitation for seeking relief of possession based on title. The appellant in R.A.NO.32/2007 has certainly established and proved that suit in O.S.No.16/2003 is certainly barred by limitation as discussed in above paras.

59) I have gone through decisions cited by learned counsel for

appellant reported in 1) ILR 1996 KAR 1340 (Alla Baksh vs Mohd. Hussain), 2) AIR 2006 SC 1786 (Jagat Ram v. Varinder Prakash), 3) AIR 1990 SC 717 (Bhavnagar Municipality v. Union of India and another), 4) AIR 2004 SC 1893 (Vasantiben Prahladji Nayak and others v. Somnath Muljibhai Nayak and others), 5) 1978 (2) KLJ 391 (Sri Devendra Keerthi Bhattarka P Swamigalu v. Jejanna H.), 6) ILR 2001 KAR 5270 (Azeez Khan vs Anwar Pasha alias Khasim Khan and others), 7) AIR 2003 SC 1905 (Bondar Singh and others vs. Nihal Singh and others), 8) ILR 1996 KAR 1639 (The Special land Acquisition Officer, UKP, Bagalkot vs Malakajayya Mallayya), 9) AIR 1965 SC 1553 (Gurubinder Singh and another vs Lal Singh and another), 10) AIR 2005 P & H 222 (Bhupinder Nath (D) by LR and another vs. Surasti (D) by Lrs). I do agreed principles of law laid down in said decisions, in respect of cause of action to file suit for possession, within period of 12 years from date of dispossession and here is no need to seek defendant plea of adverse possession also and It is duty of Court to reject suit, if it is filed after period of limitation as contemplated U/s.3 of Limitation Act. The principles of law laid down in said decisions are

rightly applicable to case in hand and for contention of learned counsel for appellant. The appellant in R.A.NO.32/2007 has proved point No.6. I have constrained to answer point No.6 in affirmative.

- 60) **POINT NO.3 IN R.A.NO.33/2007:** The plaintiff in O.S.NO.19/2005 has pleaded that he has purchased the suit property from 2nd defendant under sale deed dtd.30.04.2001. The said fact is admitted by 2nd defendant in written statement. The admission given in pleadings of 2nd defendant has got higher value than admission given in evidence in the eye of law. The plaintiff in O.S.NO.19/2005 has also sought alternative relief of return of sale price amount of ₹50,000/- and renovation expenses of ₹25,000/-. It is pertinent to note here that his sale deed is not valid in eye of law against Channabasavaraj. His sale deed is valid against Banavva for recovery of sale price amount as discussed in above paras. He has paid Court fee on said ₹75,000/-. There is no prof on side of plaintiff in O.S.NO.19/2005 for spending amount of ₹25,000/- except oral evidence of witnesses. There are no documents produced by him. He has not obtained construction

permission also. Under such circumstances, the plaintiff in O.S.NO.19/2005 is partly entitled alternative relief of sale consideration amount of ₹50,000/- from 2nd defendant Banavva Kelagar. In view of discussion made in above paras, Alternatively, the plaintiff is entitled for sale consideration amount of ₹50,000/-. The Court below has not at all considered this point while answering issues in the trial Court judgment. Therefore, trial Court has wrongly answered this point against plaintiff in O.S.NO.19/2005. The palintiff-Basavanneppa Kerudi is definitely entitled for refund of sale consideration amount from seller 2nd defendant. Therefore, the plaintiff in R.A.No.33/2007 has proved point No.3. The same is answered in affirmative.

- 61) **POINT NO.2 IN R.A.NO.131/2018:** The respondent has filed cross-objections U/o 41 rule 22 in respect of challenging findings on issue No.8. He has pleaded in plaint that the 2nd defendant is liable to pay rent amount of ₹350/-. He has also sought for unauthorised occupation of ₹500/- p.m. from 2nd defendant. The Court below while answering issue No.8 in

O.S.NO.16/2003 has observed that the plaintiff Channabasavaraj has not deposed in his evidence about arrears of rent. The documents produced by plaintiff in money order receipt disclosed the payment of rent by Basavanneppa Kerudi to Banavva Kelagar. There is no legal proof produced by this cross-objector in O.S.No.16/2003. The plaintiff in O.S.No.16/2003 has failed to prove this point by producing any material evidence. There was no contract between plaintiff-Basavanneppa Kerudi and Channabasavaraj for lease agreement. The Court below has properly answered issue No.8. This Court is not finding fault either legally or factually in answering issue No.8 against this cross-objector. Therefore, this Court is of opinion that cross-objector has failed to prove material evidence to answer this point. I have constrained to answer point No.2 in R.A.NO.131/2018 in negative.

62) **POINT NO.7 IN R.A.NO.32/2007 AND POINT NO.5 IN**

R.A.NO.33/2007: Both points are interconnected each other. I have taken up together for common discussion to avoid repetition

of facts. It is also discussed in above paras in detail that the plaintiff in O.S.No.16/2003 has established and proved that he is adopted son of Gangamma. He is absolute owner of suit property. It is also discussed in above paras in detail that plaintiff in O.S.No.19/2005 / R.A.No.33/2007 has failed to establish that suit property was allotted to share of mother of 1st defendant in family partition and he has purchased suit property from 2nd defendant under registered sale deed. It is further discussed in above paras that 2nd defendant had no title to execute sale deed in favour of plaintiff Basavanneppa Kerudi. The sale deed dtd.30.04.2001 is not valid in eye of law to claim right over suit property against Channabasavaraj. But, it is valid against Banavva Kelageri for recovery of sale consideration amount. But, the plaintiff Basavanneppa Kerudi has established that he is entitled for refund of sale price amount of ₹50,000/- as admitted by 2nd defendant. This Court has already given finding and reasoning while answering point No.5 period of limitation that suit in O.S.NO.16/2003 based on title for possession is barred by

limitation. The Court below ought to have answered this point of limitation without framing issue. There is no reasoning and finding given by Court below on this point. Hence, common judgment of trial Court in O.S.No.19/2005 as well as O.S.No.16/2003 are not proper and correct. It has not assessed and appreciated evidence on record in proper and correct manner known to law. The cross-objection filed by respondent/ plaintiff in O.S.NO.16/2003 has failed to prove his case as discussed in above paras in detail. The appeal in R.A.NO.131/2018 has to be dismissed. Both appeals in R.A.No.32/2007 and R.A.No.33/2007 have to be allowed and common judgment of trial Court have to be set aside. In result, I have constrained to answer point No.7 in R.A.NO.32/2007 and point No.5 in R.A.No.33/2007 in partly affirmative and partly negative.

63) POINT NO.8 IN R.A.NO.32/2007, POINT NO.6 IN R.A.NO.33/2007 AND POINT NO.3 IN R.A.NO.131/2018:

In result, I pass following:

ORDER

The R.A.NO.32/2007 and R.A.NO.33/2007 filed by appellants U/s.96 r/w Order 41 Rule 1 and 2 of CPC are hereby allowed partly against respondents.

It is declared that plaintiff in O.S.No.16/2003 is absolute owner of suit property. But, suit in O.S.NO.16/2003 for possession is dismissed on point limitation.

The suit in O.S.NO.19/2005 is hereby partly allowed in respect of alternative relief. 2Nd defendant in O.S.NO.19/2005 Smt.Banavva W/o Virupakshappa Kelagar is liable to pay sale consideration amount of ₹50,000/- to the plaintiff. The other findings given by Court below in O.S.NO.19/2005 in respect of declaration and others is un-disturbed by this Court.

I.A. filed under Sec.5 of limitation act is allowed in R.A.NO.131/2018. Delay in filing cross-appeal is hereby condoned.

The cross-appeal filed by respondent/ plaintiff in R.A.NO.131/2018 is hereby dismissed against respondents/ defendants.

Under circumstances of case, parties shall bear their own costs.

Original judgment shall be kept in R.A.NO.32/2007.

True copies of judgment shall be kept in R.A.No.33/2007
and R.A.No.131/2018.

Send lower Court records alongwith copy of this
judgment forthwith.

*(Dictated to Judgment Writer, transcribed and typed by her,
corrected by me and then pronounced in open Court on this 28th day
of November 2018.)*

(K.C.SADANANDSWAMY)
I ADDL. DISTRICT AND SESSIONS JUDGE,
HAVERI.

* vsp.

Common judgment pronounced in the open Court, vide separate order:

ORDER

The R.A.NO.32/2007 and R.A.NO.33/2007 filed by appellants U/s.96 r/w Order 41 Rule 1 and 2 of CPC are hereby allowed partly against respondents.

It is declared that plaintiff in O.S.No.16/2003 is absolute owner of suit property. But, suit in O.S.NO.16/2003 for possession is dismissed on point limitation.

The suit in O.S.NO.19/2005 is hereby partly allowed in respect of alternative relief. 2Nd defendant in O.S.NO.19/2005 Smt.Banavva W/o Virupakshappa Kelagar is liable to pay sale consideration amount of ₹50,000/- to the plaintiff. The other findings given by Court below in O.S.NO.19/2005 in respect of declaration and others is un-disturbed by this Court.

I.A. filed under Sec.5 of limitation act is allowed in R.A.NO.131/2018. Delay in filing cross-appeal is hereby condoned.

The cross-appeal filed by respondent/ plaintiff in R.A.NO.131/2018 is hereby dismissed against respondents/ defendants.

Under circumstances of case, parties shall bear their own costs.

Original judgment shall be kept in R.A.NO.32/2007. True copies of judgment shall be kept in R.A.No.33/2007 and R.A.No.131/2018.

Send lower Court records alongwith copy of this judgment forthwith.

**I ADDL. DISTRICT AND SESSIONS JUDGE,
HAVERI.**