

IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL.

PRESENT:

Sri SIDDANAGOUDA PATIL T.,

B.A., LL.M.,

Prl. Civil Judge & JMFC., Mudhol.

Dated this the 20th day of April - 2023

FDP No.3/1998

Plaintiff/s:

1. Wallisab Naikwadi and others

- Vs -

Defendant/s:

1. Jaitunabi Buddebar and others

I.A.No.32

Applicant/s:

1. Venkanna S/o. Sangappa Garasangi,
Age: 74 years, Occ: Agriculture,
R/o. Mantur, Tq: Mudhol, now at Mudhol.

-V/s-

Opponent/s:

1. Wallisab S/o. Saidusab Naikwadi,
Age: Major, Occ: Agriculture,
since deceased by his Irs
- 1(a) Smt.Allinabi @ Aminabi W/o. Hasansaheb Attar,
Age: Major, Occ: Household works,
R/o. Mudhol, Tq: Mudhol,
Dist: Bagalkote and others.

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Applicant/s by Sri ASY Advocate

Opponent/s by IHA Advocate

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Order on I.A.No.32 filed U/s.51 of Transfer of Property Act

This application is filed by the applicant seeking to direct the plaintiff either to have the value of the improvements paid and secured to him or and in the alternative to direct the plaintiff to sell her interest in the said land in his favour at the

then market value thereof irrespective of the value of such improvement and by considering the value involved in the sale deeds.

2. In the affidavit annexed to the application, the 4th defendant/respondent stated that, defendant along with his brother Dundesh S/o. Sangappa Garasangi purchased 10 acres 12 guntas of land in R.S.No.387/1 of Mantur village from Satish Malaghan and Shivalingappa Malaghan under a registered sale deeds dated 22.07.1992. Subsequently in a family partition effected on 25.07.2000 between family members of defendant No.4 the entire R.S.No.387/1 was allotted to him and accordingly he has been in exclusive possession and enjoyment of the said land. It is further stated that, previously the said land was jointly in the name of deceased Saidusab S/o. Imamsab Naikwadi, Akbar S/o. Imamsab Naikwadi and Smt.Rameejabi W/o. Akbarsab Naikwadi. The said land was earlier purchased by said Satish and Shivalingappa under the registered sale deed dated 13.12.1988. The present defendant and his brother Dundesh purchased said land under two registered sale deeds. At the time of purchase of said land it was saline and alkaline land due to passing of canal water it was useless for cultivation. Out of the total extent of land, 01 acre land was kharab land and 03 acres of land was full of bellary jaali and entire land was infected with hariyali grass.

3. It is further contended that, to convert the said land into irrigated cultivable land the defendant had removed shrubs including Bellary jaali and also hariyali grass by employing earth movers and by using manual labour. Then the defendant in order to weed out salinity and alkalinity had to treat the soil with external rich soil nutrients and also huge quantity of loam by purchasing it from outsiders and it has took about 6-8 years to make the land cultivable. The defendant was not using the canal water fully and it was impossible for him to get the land irrigated through natural course of canal due to impairment in the levels of land and canal. Thus compelling him to drill around eight bore wells in the said land as he could not get sufficient water to irrigate the entire land from 3-4 bore wells. Further it is contended that, since the bunds of land were all pure earthen bunds that too in a very shabby condition, he was forced to dig trenches along with boundaries of entire land for constructing sturdy and strong bunds with murrum and stones. Subsequently, he laid out a network of pipeline throughout his land for easy flow of water. Since the land became irrigated land it is required for him to construct a farmhouse and he constructed the same. He has to install KEB transformer by fixing poles across his land. Besides the canal that passes through the said land has divided the land into three even and odd pieces thus making it very difficult to reach from one piece of land to another and he has constructed small

bridges across the canal. The defendant after making improvements, he has planted 39 coconut trees. He has developed the land by investing huge funds from his family and from various financial institutions and from private persons.

Thereafter he consulted one Shivayogi S/o. Revanasiddappa Byakod of Belagali who is running agriculture consultancy i.e., Sneha Krishi and he visited the land and took stock of all field details and prepared report containing estimate of costs as on today. Consequently, he incurred expenditure more than Rs.2 crores towards improvement of land. Hence, on these grounds prays to allow the application.

4. The plaintiff filed objections to the above application by denying the case of the 4th defendant and she stated in the application that, the application is neither tenable in law or on facts. The 4th defendant has suppressed the real and material facts and he is not entitle for any amount from the plaintiff. It is further contended that, the father of plaintiff by name Wallisab Naikwadi had filed suit in O.S.No.18/1970 against his brother i.e., Imamsab and sister Lalbi in respect of land bearing R.S.No.387 measuring 19 acres which was subdivided as R.S.No.387/1 and R.S.No.387/2. One Basappa Hanamant Katageri i.e., respondent No.3 illegally purchased 09 acres out of said land on 24.05.1973 from said Imamsab. The defendant No.3(A), Bibi Ayesha,

defendant No.3(B) Akbarsab and defendant No.3(B)(1) Ramezabi illegally sold the remaining portion measuring 10 acres 12 guntas to Satish and Shivalingappa Malghan on 13.12.1988. The defendant No.4 along with his brother claimed to have purchased 10 acres 12 guntas under two registered sale deeds dated 22.07.1992 from Malaghan brothers. The said sale transactions took place during the pendency of the matter before the Courts and therefore the said sale deeds are hit by doctrine of lis-pendence. It is denied that, the 4th defendant is bonafide purchaser of the land. Further contended that the Hon'ble Court had rejected his contention on the ground that sale is hit by doctrine of lis-pendence and it is held that, he being the alienees' alienee has no right to claim equity. The 4th defendant is trying to misinterpret the order passed by the Hon'ble High Court to contend that he is entitled to value of improvements. The Hon'ble High Court has clearly stated that the 4th defendant can claim equity if his case falls within four corners of Sec.51 of Transfer of Property Act, 1882.

5. It is further contended that, 4th defendant has purchased the properties during pendency of litigation from alienee and to seeking benefit of Sec.51 of the Transfer of Property Act, 1882 the person making improvement must have been evicted from the property. He claims that he is in possession of the suit schedule property said to have been purchased by him.

Therefore he cannot seek the benefit of Sec.51 of the Transfer of Property Act, 1882. The Government has constructed Ghataprabha Left Bank Canal about 50 years back and it passes through the land R.S.No.387 and there is a perennial source of water for the said land and making of irrigated land does not arise. It is further contended that the suit land is fertile land and it has got irrigation facility for the last 45-50 years. The 4th defendant has not effected any improvement as alleged by him. The assessment produced by him is not correct. He being transferee with notice of litigation is not entitled to any amount by way of improvement. He having enjoyed the property for all these years has to pay mesne profits to the plaintiff. Therefore, he has set up false case and sought money from the plaintiff. This application is filed only to harass the plaintiff and to make wrongful gain for himself and cause wrongful loss to the plaintiff. On these grounds, prays to dismiss the application with costs.

PREVIOUS ORDERS ON THIS APPLICATION

The present application filed by the defendant No.4/respondent as I.A.No.32 on 11.06.2012 and this Court was rejected the same and disposed on 06.08.2016. Thereafter, the respondent No.4 feeling aggrieved challenged the order of this Court on I.A.No.32 by filing Writ Petition bearing No.106921/2016 before the Hon'ble High Court of Karnataka. The Hon'ble High Court set aside the order passed by this Court on I.A.No.32 and

remanded the matter to reconsider the application of the defendant No.4 by giving directions to this Court at point No.14.19 in orders of the Writ Petition to give findings on several aspects. Hence, respectfully keeping in mind the said directions of the Hon'ble High Court of Karnataka and on the pleadings the following points that arise for my consideration;

:POINTS:

- 1. Whether the applicant/defendant No.4 proves he has carried out improvements on the subject matter land without the knowledge of pending lis?**
- 2. Whether the 4th defendant/respondent proves that he is entitle for the improvements carried out on the land from the date of purchase to date of impleading application filed by him i.e., from the period 22.07.1992 to 14.02.2005 as per Sec.51 of Transfer of Property Act, 1882?**
- 3. Whether the 4th defendant further proves that he is entitle for the expenditure incurred by him on the subject matter land of rupees more than 02 crores?**
- 4. Whether it is required to take assistance of the Court Commissioner to assess the value of the improvement between the said period?**
- 5. What order?**

6. To prove his contention, the defendant No.4 examined himself as DW.4 and got marked Ex.D.14 to Ex.D.44 documents and also examined four witnesses as D.W.5 to D.W.8. The plaintiff No.1(a) examined herself as P.W.1 and no documents marked.

7. Heard the arguments of both sides, perused the relevant pleadings, documents and written arguments on record. During the course of arguments the learned counsel for plaintiff relied the following decisions;

- 1) (1995) 6 S.C.C 150 between K.Adivi Naidu and others v/s Duruvasulu Naidu and others
- 2) 1994 (2) Civil LJ 632 between Salma Beevi v/s Nasimudeen and others
- 3) W.P.No.101055/2017 (GM-CPC) of Hon'ble High Court of Karnataka in a case between Annappa S/o. Adivappa Handigund v/s Suresh S/o. Narayan Deshpande and others

8. On careful perusal of records My findings to the above points are;

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Negative

Point No.4: In the Affirmative

Point No.5: As per final order for the following;

: R E A S O N S :

9. **Point No.1 and 2:-** These points inter-connected with each other, hence these points are taken together for consideration, in order to avoid repetition of facts.

The case of the defendant No.4 is that the subject matter of the application i.e., 10 acres 12 guntas of land in Sy.No.387/1 of Mantur village was purchased by Satish Malaghan and Shivalingappa Malaghan from its previous owners Saidusab S/o. Imamsab Naikwadi, Akbar S/o. Imamsab Naikwadi, Smt.Rameejabi W/o. Akbarsab Naikwadi on 13.12.1988 by way of registered sale deed. Inturn by said Malaghan brothers, the applicant and his brother Dundesh S/o. Sangappa Garasangi had purchased the said property by way of registered two sale deeds on 22.07.1992. Thereafter, the said property was allotted to the share of the applicant in their family partition which was effected on 25.07.2000. The applicant and his family members have been in possession and enjoyment over the said land and after the partition he has been in possession and enjoyment.

10. When the said land was purchased by him the land was useless since canal water passing through and the land was a saline and alkaline land. About 3 acres of land was full of Bellary jali and entire land infected with hariyali grass. With intention to convert the land into irrigated cultivable land he has been invested huge amount of money to remove Bellary jali and grass by employing earth movers and using manual labour. He treated the soil with external rich soil nutrients and purchased huge quantity of loam. The entire exercise took about 8 years to make the land cultivable. Further to obtain the water source he drilled

about 8 borewells to get sufficient water. The bunds of the land were all pure earthen bunds which is in shabby condition. Therefore, he forced to dig trenches along the boundaries of his entire land for constructing strong bunds with marrum and stones. Thereafter, he has laid down a network of pipeline through his land for using flow of water. Since the land converted into irrigated land he constructed a farmhouse. In order to get supply of electricity he had installed the transformer and has paid for the same in favour of KEB. In order to utilize the entire land effectively he constructed his small bridges across the canal to connect the different pieces of his land. He had planted 39 coconut trees and other trees yielding horticulture crops. Now all such trees are fruit yeilding. In order to convert the land into irrigated he had invested huge funds of his family and also borrowing various financial institutions. Consequently he consulted an agricultural graduate Sri Shivayogi and he visited the land took the field details and he had prepared a report containing the estimate of the cost as on today about more than Rs.2 crores.

11. On the other hand, the plaintiff denying the case of the applicant that he has made improvements and denied the entitlement of improvements carried out by him. Further the case of the plaintiff is that one Basappa Hanamant Katageri i.e., respondent No.3 illegally purchased 09 acres out of said land on 24.05.1973 from said Imamsab. The defendant No.3(A), Bibi

Ayesha, defendant No.3(B) Akbarsab and defendant No.3(B)(1) Ramezabi illegally sold the remaining portion measuring 10 acres 12 guntas to Satish and Shivalingappa Malghan on 13.12.1988. The defendant No.4 along with his brother claimed to have purchased 10 acres 12 guntas of land under two registered sale deeds dated 22.07.1992 from Malaghan brothers. The said sale transactions took place during pendency of the matter before the Courts and therefore the said sale deeds are hit by doctrine of lis-pendence. It is denied that, the 4th defendant is bonafide purchaser of the land. Further contended that the Hon'ble Court had rejected his contention on the ground that sale is hit by doctrine of lis-pendence and it is held that, he being the alienees' alienee has no right to claim equity. The 4th defendant is trying to misinterpret the order passed by the Hon'ble High Court to contend that he is entitled to value of improvements. The Hon'ble High Court has clearly stated that the 4th defendant can claim equity if his case falls within four corners of Sec.51 of Transfer of Property Act, 1882.

12. To claim the improvements made on the land U/s.51 of Transfer of Property Act the person claiming must have evicted from the property but the applicant claims he is in possession of the property. Therefore, he is not entitle to claim the benefit of Sec.51. Further she contended that, Government had constructed canal before 50 years and which passes through the suit land.

Therefore making it as irrigated land does not arise. The suit property is fertile land and it has got irrigation facility from last 45-50 years. The applicant has not effected any improvement and assessment produced by him is not correct. The applicant being the transferee with notice of the litigation is not at all entitle for the benefits claimed by him. In order to avoid payment of measne profit to the plaintiff he set up false pleas and filed the application which is not at all maintainable either in facts or in law.

13. Before appreciating the evidence on record it is required to appreciate the contentions raised by the plaintiff that, the application cannot be sustained under Sec 51 of T.P Act since it is filed before evicting the 4th defendant/applicant from the suit land. The 4th defendant being alienees of alinee has no right to claim equity.

The learned counsel for plaintiff vehemently argued that the benefits of Sec.51 of the T.P.Act can be claimed by the person in possession only after he has been evicted or after handing over the possession. The 4th defendant claims that he is in possession. Therefore, application is not sustainable. In order to answer the above contention Sec.51 of Transfer of Property Act reiterated as follows;

51. Improvement made by bonafide holders under defective titles;

When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

I have carefully gone through the said provision by careful reading I am of the opinion that it is not compulsion or mandate that the application has to be filed only after dispossessing the person.

Hence, the provision allows the person who is in wrongful title can claim the benefits at the time of the eviction or after the eviction. Further it is noticed that, the parties have filed several writ petitions before the Hon'ble High Court of Karnataka wherein the plaintiff has not been taken such plea. Therefore, in my opinion the application filed before eviction from the property is maintainable.

The counsel for plaintiff vehemently argued that the 4th defendant has purchased the suit matter property during the pendency of the litigation. The 4th defendant's vendor has purchased the property from the parties to the suit i.e., 3rd defendant legal heirs and thereafter they have sold out the property in favour of 4th defendant and his brother. Therefore, they are being alienees ainee they cannot claim the equity and relied upon the decision of S.C reported in **(1995) (6) S.C.C 150 in between K.Adivi Naidu and others v/s Duruvasulu Naidu and others** wherein the Hon'ble Supreme Court has held at para No.5 that,

“it is settled law that alienees of the alienees have no right to equities”.

In the present case the Hon'ble Courts have already decided that the applicant/defendant No.4 has no right in the property and he cannot be allotted the property purchased by him. Therefore, as per the above decision the purchaser of the property who purchased the property when lis is pending, he cannot claim the title. But in this case the applicant claiming the benefits of improvements carried out by him on the wrongful title. Therefore the principles of Sec.52 is exception for Sec.51. Hence, in my opinion the above principle laid down by the Hon'ble Supreme Court is not applicable to the facts and circumstances of the case, since the applicant claiming the benefits of

improvements U/s.51 of T.P.Act and not the property. Therefore, the contention of the plaintiff on the said aspect that the defendant No.4 cannot claim equity is not applicable to the present application.

Further the Hon'ble High Court in writ petition filed by the applicant/defendant No.4 challenging the order passed on the present I.A.No.32 at para No.14.4 has observed that Sec.51 is equally applicable to a property which has been purchased during the pendency of a suit i.e., purchase lis-pendence inasmuch as such purchase could be under a defective title.

14. Therefore, now it is required to appreciate evidence on record whether the applicant entitle for the benefits of improvements under the four corners of Sec.51 of T.P.Act and further he is entitle for the amount claimed by him.

It is an admitted fact by perusal of entire record on hand that the defendant No.4 is in possession of the disputed property. It is also further admitted fact that, in the year 1988 as per Ex.D.22 the Malaghan brothers have purchased the disputed property of 10 acres 12 guntas of land in Sy.No.387/1 of Mantur village inturn the defendant No.4 and his brother have purchased the said property by way of separate sale deeds from the Malaghan brothers.

In order to prove and establish his case the defendant No.4 himself examined as DW.4 and reiterated the facts stated in the application in his affidavit in lieu of examination in chief and he also examined four witnesses in support of his case and also produced the documents which came to be marked Ex.D.4 to Ex.D.44.

The defendant No.4 in order to prove and establish his case that he has purchased the property in the year 1992 and thereafter himself and his family members have been in possession over the suit land 10 acres 12 guntas in Sy.No.387/1 of Mantur village and they have improved the land and spent the money, he has examined DW.5 to DW.8.

The DW.6 to DW.8 by supporting the case of the defendant No.4 they have stated in the affidavit filed by them in the course of examination in chief that they knows the parties to the case and the defendant No.4 and his family members. They have been in possession and enjoyment over the 10 acres 12 guntas of land in Sy.No.387/1. At the time of purchase the said land was in the condition that it could not be cultivated and it was 'ತಗ್ಗು ದಿನ್ನೆ ಸವಳು ಜವಳಿನಿಂದ ಕೂಡಿದ್ದು ಜಾಲಿ ಹಚ್ಚಿಕೊಂಡು ಯಾವುದೇ ಬೆಳೆ ಬಾರದ ಪರಿಸ್ಥಿತಿಯಲ್ಲಿರುತ್ತದೆ'. Further they stated that, the 4th defendant by investing huge money made the land as cultivable land and digged borewells and installed the pipelines and pumpset. After

the land become fertile sapped 39 coconut trees and other trees. They have seen the said development from the beginning since they are also having landed properties nearest to the said land. The one Byakod of Mahalingpur recently by obtaining full details of improvement has made spot inspection.

15. On the other hand, the plaintiff examined herself as PW.1 files her affidavit in lieu of her examination in chief and reiterated the facts stated in the objections to the application.

16. I have carefully gone through the entire evidence on record by perusal of cross examination of DW.4 dated 03.10.2007 the plaintiff put forth several questions in order to extract whether the DW.4 had the knowledge about the pending lis. At page No.7 of cross examination of DW.4 on 03.10.2007 he deposed by denying that he had the knowledge about the pending lis, the said portion of cross examination reiterated as follows;

“ನಾಯಕವಾಡಿ ಮನೆತನದ ಬಗ್ಗೆ ನನಗೂ ಮತ್ತು ನನಗೆ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟ ಮಲಘಾಣ ಇವರಿಗೂ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. 1970 ರಿಂದ ಇಮಾಮಸಾಬ ಮತ್ತು ವಲ್ಲಿಸಾಬ ಇವರಿಗೆ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನ್ಯಾಯವಿದ್ದ ಬಗ್ಗೆ ನನಗೂ ಮತ್ತು ಮಲಘಾಣ ಇವರಿಗೂ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. ವಲ್ಲಿಸಾಬ, ಇಮಾಮಸಾಬನ ಮಕ್ಕಳಾದ ಸೈದುಸಾಬ ಮತ್ತು ಅಕ್ಬರಸಾಬನ ಮೇಲೆ ವಾಟ್ಸಿ ದಾವೆ ಮಾಡಿದ ವಿಚಾರ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. 1970 ರಲ್ಲಿ ದಾವೆಯು ಜಮಖಂಡಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಬಾಗಲಕೋಟೆಯಿಂದ ವರ್ಗಾವಣೆಯಾಗಿ ಬಂದ ದಾವೆಗೆ ಅ.ದಾ.ನಂ.58/79 ಅಂತ ನಂಬರ ಇದ್ದ ಬಗ್ಗೆ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. ಅದೇ ದಾವೆ ಜಮಖಂಡಿ ನ್ಯಾಯಾಲಯದಿಂದ ಮುಧೋಳ ನ್ಯಾಯಾಲಯಕ್ಕೆ

ವರ್ಗಾವಣೆಯಾಗಿ ಬಂದು ಅದು 149:89 ಅಂತ ನಂಬರ ಇತ್ತು ಅಂತ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. ಆ ವಾಟ್ಸಿ ದಾವೆ ಮುಧೋಳ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ವಜಾ ಆಯಿತು ನಂತರ ಅದರ ಮೇಲೆ ಜಮಖಂಡಿ ಹಿತ್ತೇ.ಯಲ್ಲಿ ಆರ್.ಎ.ನಂ.3/1990 ಅಂತ ದಾಖಲಾಗಿತ್ತು ಅನ್ನುವ ವಿಚಾರ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. ಮತ್ತು ಅಪೀಲದಲ್ಲಿ ವಲ್ಲಿಸಾಬ ಇವರಿಗೆ ಪಾಲು ಇದೆ ಅಂತ ಡಿಕ್ರಿ ಆಯಿತು ಎಂಬ ವಿಚಾರ ಗೊತ್ತಿದೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಜಮಖಂಡಿ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ವಿರುದ್ಧ ಸೈದುಸಾಬ ನಾಯಕವಾಡಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಆರ್.ಎಸ್.ಎ ನಂ: 58/98 ಅಂತ ದಾಖಲಿಸಿದ ವಿಚಾರ ಗೊತ್ತಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ 1992 ರಲ್ಲಿ ನಾನು ಕ್ರಯಕ್ಕೆ ಹಿಡಿದಾಗ ವಾಟ್ಸಿ ದಾವೆ ಚಾಲ್ತಿಯಲ್ಲಿತ್ತು ಅಂದರೆ ಗೊತ್ತಿಲ್ಲ ಎಲ್ಲ ದಾವೆಗಳು ಚಾಲ್ತಿ ಇದ್ದ ವಿಚಾರ ನನಗೆ ಗೊತ್ತಿದ್ದರೂ ಗೊತ್ತಿಲ್ಲ ಅಂತ ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಅಂದರೆ ಸರಿಯಲ್ಲ”

I have also carefully gone through the entire cross examination of DW.4 no where he admitted that he had the knowledge about the pending lis during the time of purchase or thereafter till he come on record. Nothing has been elicited from the mouth of DW.4 which is helpful to the case of the plaintiff with regard to the knowledge pending lis.

17. Further during the course of cross examination of PW.1 she has categorically admitted that, after purchase of the disputed property by the defendant No.4 she used to visit the said land once in two years and she has been doing pooja there and the said portion reiterated as follows;

‘ಗರಸಂಗಿ ರವರು ದಾವಾ ಜಮೀನನ್ನು ಖರೀದಿ ಮಾಡಿದ ಮೇಲೆ ನಾನು ಜಮೀನನ್ನು ವರ್ಷಕ್ಕೆ ಎರಡು ಸಲ ಹೋಗಿ ಊಟ ಮಾಡಿ ಪೂಜೆ ಮಾಡಿ ಬರುತ್ತೇನೆ. ಗರಸಂಗಿರವರು ಖರೀದಿ ಮಾಡಿದ ನಂತರ 6 ಬೋರವೆಲ್ ಗಳನ್ನು ಹಾಕಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಎಷ್ಟು ಹಾಕಿರುತ್ತಾರೋ ಗೊತ್ತಿಲ್ಲ ಒಂದು ಬೋರನ್ನು

ನೋಡಿರುತ್ತೇನೆ. ಗರಸಂಗಿಯವರು ದಾವಾ ಜಮೀನಿನಲ್ಲಿ ಇರಲಿಕ್ಕೆ ಅಂತಾ ಒಂದು ಪತ್ರಾಸ ಶೆಡ್ಡು ಹಾಕಿರುತ್ತಾರೆ ಎಂದರೆ ನಿಜ.'

Therefore it is very much clear that, the PW.1 had the knowledge about the said purchase of suit land and possession of the defendant No.4 from the beginning. Further in order to prove the possession of defendant No.4 he has produced and marked Ex.D.22 to Ex.D.24 i.e., in the year 1988 as per Ex.D.22 the Malaghan brothers have purchased the disputed property of 10 acres 12 guntas of land in Sy.No.387/1 of Mantur village inturn the defendant No.4 and his brother have purchased the said property by way of separate sale deeds from the Malaghan brothers Ex.D.23 and Ex.D.24.

18. Ex.D.14 is the RTC of R.S.No.387/1 for the year 2003-04 and name of defendant No.4 came to be entered as per partition as per Khata No.690, Ex.D.15 is the certified copy of ME No.4296, it appears that the Malaghan family have purchased the property R.S.No.387 measuring 10 acres 12 guntas on 13.12.1988, Ex.D.16 is the certified copy of ME No.5068, it appears that the Dundesh Sangappa Garasangi purchased the property towards western portion of R.S.No.387 measuring 5 acres 6 guntas on 22.07.1992 for consideration amount of Rs.82,500/-, Ex.D.17 is the certified copy of ME No.7005, it shows that the in the family partition of defendant No.4 family the suit land fell to the share of 4th defendant. Ex.D.18 is the RTC of R.S.No.387/1 for

the year 1989-90 to 1997-98 the name of Satish and Shivalingappa Malaghan have been deleted and name of Dundesh and Venkappa S/o. Sangappa Garasangi have been entered as owners in possession of the said land and Ex.D.19 is the RTC of R.S.No.387/1 for the year 1998-99, 1999-00 and name of Dundesh S/o. Sangappa Garasangi has been deleted and name of Venkappa S/o. Sangappa Garasangi entered in the owners and in possession column.

19. Therefore, the defendant No.4 categorically proved that he has been in possession from the year 1992 over the suit land property and the above discussed revenue documents shows that soon after the purchase of suit land by the Malaghan brothers from the defendant No.3 legal heirs the revenue documents changed in his name and thereafter the defendant No.4 and his brother's name is entered on the strength of Ex.D.23 and Ex.D.24 sale deeds. Hence, the said revenue documents have also not challenged till today and the plaintiff even though she is having the knowledge about the defendant No.4 has purchased the suit land and he has been in possession, she has not taken any steps to bring the defendant No.4 on record and not obtained any orders against him. Therefore, the evidence on record shows that the defendant No.4 is in possession of the property without the knowledge of the pending lis on the impression that he is the owner on the strength of Ex.D.23, and Ex.D.24 sale deeds.

Therefore, I am of the opinion that the defendant No.4 has been in possession of suit land on the strength of sale deeds i.e., Ex.D.23 and Ex.D.24 executed by Malaghan brothers without the knowledge of the pending lis till he files application U/o.1 Rule 10 of CPC as I.A.No.6.

20. The learned counsel for plaintiffs relied another judgment reported in **1994 (2) Civil LJ 632 between Salma Beevi v/s Nasimudeen and others** wherein the Hon'ble Supreme Court has held at para No.8 and 9 that,

8. For the application of Sec.51 it should certainly be established that the transferee has made improvements on the property believing in good faith that he is absolutely entitled to it. The essential prerequisite is that the transferee should have made improvements in the property believing in good faith that he was absolutely entitled to do so. Good faith can be attributed if a thing is done honestly irrespective of any negligence or not. But in a case where there is omission to make enquiry and if that is not explained, lack of bona fides can certainly be discerned. It would not be good faith if a person avoids in the document led him to believe it. In *A.C.Ghose v. Attarmani Dassce*, XIII Calcutta Weekly Notes 931, Calcutta High Court held:
"A belief in a good faith under Section 51 of the Transfer of Property Act means not only acting honestly and fairly but includes due enquiry. So, where a person consciously avoids making an enquiry, though he may be said to have a belief on the matter, it would not be a belief in good faith".
9. At the time of Ext.B-8 itself first defendant was fully aware of the fact that the property belonged to the

minor. As he did not make any enquiry as to whether the de facto guardian was competent to assign the property it can never be held that this is a case where he acted in good faith. As good faith is an essential requirement to invoke the benefit of Section 51 of the Transfer of Property Act and as the first defendant could not establish it when he obtained Ext.B-8 assignment, he cannot invoke the section to his benefit.

21. I have respectfully gone through the above principle laid down by the Hon'ble Supreme Court wherein the purchaser had purchased the property without examining or enquiring he has purchased the minors property since the said aspect can be noticed on the previous sale deed itself. But in this case, the defendant No.4 and his brother purchased the property during the pendency of the suit by Malaghan brothers in the year 1992 previously same was purchased by the Malaghan brothers from the parties to the lis i.e., defendant No.3 legal heirs. I have carefully gone through the Ex.D.22 to Ex.D.24 there is no recital about the pending litigation. Moreover, by perusal of entire record including evidence there is no proof about the vendor's of defendant No.4 or himself had the knowledge of pending lis. Therefore, the above principle is not applicable to the present facts and circumstances of the case, since the defendant No.4 and his family members have been in possession with the impression that they have bonafide owners on the strength of Ex.D.23 and Ex.D.24 sale deeds.

Further the plaintiff relied upon the judgment of **Hon'ble High Court of Karnataka in W.P.No.101055/2017 (GM-CPC) in a case between Annappa S/o. Adivappa Handigund v/s Suresh S/o. Narayan Deshpande and others**, at para No.14 by relying upon the decision of the Punjab and Haryana High Court in the case of Balwinderjit Kaur v. Financial Commissioner (appeals), Punjab reported in AIR 1987 Punjab and Haryana 189, the Hon'ble High Court of Karnataka at para No.14 has held that,

“the purchaser had sought the similar relief regarding the improvements made by him in the property and it was held that, he is not entitled to claim such right. The case on hand is squarely covered by the aforesaid judgments. Thus the challenge to rejected of the IA No.18 does not sustain”.

The principle laid down by the Hon'ble High Court of Karnataka by relying on the decision state at para No.10,

- “57. In the case of Balwinderjit Kaur v. Financial Commissioner (appeals), Punjab reported in AIR 1987 Punjab and Haryana 189, it is held as under;
- “3... By now it is well laid down that in the case of a transfer which is hit by the doctrine of lis pendens under S.52 of the Transfer of Property Act the question of good faith which is essential to be established before an equitable relief can be granted in favour of a subsequent vendee under section 41 or S.51 of the Transfer of Property Act is totally irrelevant (see Shanu Ram v. Basheshar Nath (1966) 63 Pun LR (D) 44): In the face of this settled legal position, the plea raised on behalf of respondents 5 to 10 that they were

bonafide purchasers without notice from Paramjit Singh and Jagjit Singh was obviously of no consequence. Respondents 5 to 10 having purchased the property from these two vendors during the pendency of the civil litigation against them are bound by the decree passed against them, i.e., the vendors and, in view of that, no question of title remained to be settled between the parties, i.e., the petitioner and the subsequent vendees.”

I have respectfully gone through the above principle laid down by the Hon'ble High Court of Punjab and Haryana wherein the decision based on Sec.52 of the T.P.Act. In the said judgment Sec.51 of T.P.Act is not in question. Moreover, the nature, facts and circumstances of the said case and nature, facts and circumstances of the case in hand is entirely different. Therefore, the above decision is not applicable to the facts and circumstances of this case. Further the Hon'ble High Court of Karnataka in writ petition filed by the applicant/defendant No.4 challenging the order passed on the present I.A.No.32 at para No.14.4 has observed that,

‘Sec.51 is equally applicable to a property which has been purchased during the pendency of a suit i.e., purchase lis-pendence inasmuch as such purchase could be under a diffective title’.

22. During the course of cross examination of P.W.1 she has categorically admitted that, she has seen one borewell in the

schedule landed property. Further she admitted the defendant No.4 has constructed the tin shed in the schedule land. I have carefully gone through the Ex.D.22 sale deed wherein there is recital that, 'ಜಮೀನು ಜವಳು ಸವಳು ಹತ್ತಿದ ಸುಮಾರು ನೆಲ ಅದೆ. ಕರಿಕೆ ಕಣಗಳು ಹತ್ತಿದ ಮತ್ತೆ ಸದರಿ ಜಮೀನದಲ್ಲಿ ಕೆನಾಲ ಹಾದಿದೆ'. By perusal of Ex.D.23 and Ex.D.24 there is recital that part of the land is irrigated land and part of the land is dry land.

The relevant portion of cross examination of DW.4 and DW.6 to DW.8 with regard to development extracted as below;

During the course of cross examination of DW.4, he has stated in his affidavit that to develop the property he has incurred Rs.5 lakhs and on the said lands he obtained loan for Rs.6-7 lakhs. Further he deposed that if the application is given to the revenue authorities then the authorities will enter the property is alkaline and saline land. Further he deposed that his 2nd brother Mallappa had sapped 39 coconut trees before 10 years. Further he deposed that, 'ಸದರಿ 200 ಟ್ರಿಪ್ ಮಣ್ಣನ್ನು ನಾನು ಪಕ್ಕದ ಹೊಲದಲ್ಲಿ ತೆಗ್ಗು ತೆಗೆದು ಹಾಗೂ ಸಮೀಪದ 2 ಕಿಮೀ ಅಂತರದಲ್ಲಿರುವ ಹಳ್ಳದಿಂದ ಮಣ್ಣನ್ನು ತಂದು ಜಮೀನನ್ನು ಸಮವಾಗಿ ಮಾಡಿರುತ್ತೇನೆ. ಹೀಗೆ ತಂದಿದ್ದೇನೆಂದು ನಾನು ನನ್ನ ಅರ್ಜಿಯಲ್ಲಿ ನಮೂದು ಮಾಡಿಲ್ಲ ಎಂದರೆ ನಿಜ. ಹಳ್ಳದಿಂದ ತಂದ ಮಣ್ಣನ್ನು ನಾವು ಉಚಿತವಾಗಿ ತಂದಿರುತ್ತೇವೆ. ಇನ್ನೊಬ್ಬರ ಜಮೀನಿನಲ್ಲಿ ತಂದಿರುವ ಮಣ್ಣನ್ನು ನಾನು ಹಣದ ರೂಪದಲ್ಲಿ ತಂದಿರುತ್ತೇವೆ. ಆಗ ಒಂದು ಟ್ರಿಪಿಗೆ ರೂ.500/- ಖರ್ಚು ಮಾಡಿರುತ್ತೇನೆ'. At page No.10 in the first paragraph of his cross examination he stated that, 'ಕಾಲಂ ನಂ.3 ರಲ್ಲಿ

ನಮೂದಿಸಿದ ಜಮೀನದ ಫಲವತ್ತತೆ ಹೆಚ್ಚಿಸಲು 200 ಟ್ರಿಪ ಮಣ್ಣು ತಂದು ಹಾಕಿ ರೂ.44 ಲಕ್ಷ ಖರ್ಚು ಮಾಡಿದ ಬಗ್ಗೆ ದಾಖಲೆ ಇಲ್ಲ ಎಂದರೆ ನಿಜ. ಸದರಿ 200 ಟ್ರಿಪ ಮಣ್ಣನ್ನು ನನ್ನ ಪಕ್ಕದ ಹೊಲದಲ್ಲಿ ತೆಗ್ಗು ತೆಗೆದು ಹಾಗೂ ಸಮೀಪದ 2 ಕಿಮಿ ಅಂತರದಲ್ಲಿರುವ ಹಳ್ಳದಿಂದ ಮಣ್ಣನ್ನು ತಂದು ಜಮೀನನ್ನು ಸಮನಾಗಿ ಮಾಡಿರುತ್ತೇನೆ. ಹಳ್ಳದಿಂದ ತಂದ ಮಣ್ಣನ್ನು ಉಚಿತವಾಗಿ ತಂದಿರುತ್ತೇನೆ. ಇನ್ನೊಬ್ಬರ ಜಮೀನಿನಿಂದ ಮಣ್ಣನ್ನು ಹಣದ ರೂಪದಲ್ಲಿ ತಂದಿರುತ್ತೇನೆ. ಈ ಮಣ್ಣನ್ನು 1992 ರಲ್ಲಿ ತಂದಿರುತ್ತೇನೆ.'

At page No.11 at paragraph No.2 he deposed that, 'ಕಾಲಂ ನಂ.9 ರಲ್ಲಿಯ ಪೈಪಲೈನಗಳನ್ನು ಎಲ್ಲಿಂದ ತಂದಿರುತ್ತೇವೆ ಎಂದು ಹೇಳಲು ಬರುವುದಿಲ್ಲ ಈಗಾಗಲೇ 20 ವರ್ಷ ಆಗಿರುತ್ತದೆ'. Further he deposed that, 'ದಾವಾ ಆಸ್ತಿಯು ನಾನು ಖರೀದಿ ಮಾಡುವ ಮುಂಚೆ ನೀರಾವರಿ ಜಮೀನಾಗಿದ್ದು ಅಂದರೆ ಸರಿ ಆದರೆ ಪೂರ್ತಿ ಅಲ್ಲ'.

During the course of cross examination of DW.6 he stated that, 'ಸದರಿ ಗರಸಂಗಿಯವರು ದಾವಾ ಜಮೀನಿನಲ್ಲಿ ಬೋಲ ಹಾಕಿದ ನಂತರ ಕ್ಲಬ್ಬು ಬೆಳೆದಿರುತ್ತಾರೆ. ಈಗ ಬೋಲ ಹಾಕಿ ಸುಮಾರು 15 ವರ್ಷ ಆಗಿರುತ್ತದೆ. ಅದನ್ನು ದಾವಾ ಜಮೀನಿನಲ್ಲಿ ಹಾಕಿರುತ್ತಾರೆ. ದಾವಾ ಜಮೀನನ್ನು ಗರಸಂಗಿಯವರು ಖರೀದಿ ಮಾಡುವಾಗ ರಸ್ತೆ, ನೀರು ಮತ್ತು ಸೌಲಭ್ಯಗಳು ಇದ್ದ ಕಾರಣ ಖರೀದಿ ಮಾಡಿರುತ್ತಾರೆಂದರೆ ಸಾಕ್ಷಿಯು ಅವರು ಖರೀದಿ ಮಾಡಿದ ನಂತರ ಈ ಎಲ್ಲಾ ಸೌಲಭ್ಯಗಳನ್ನು ಮಾಡಿರುತ್ತಾರೆಂದು ನುಡಿಯುತ್ತಾರೆ. ದಾವಾ ಜಮೀನು ಸವಳು ಜಮೀನು ಆಗಿರುತ್ತದೆ ಅಂದರೆ ಸಾಕ್ಷಿಯು ಮೊದಲೇ ಇತ್ತು ಆದರೆ ಈಗ ಇರುವುದಿಲ್ಲ. ಸದರಿ ಗರಸಂಗಿಯವರು ಪೂರ್ತಿ ಜಮೀನನ್ನು ಖರೀದಿ ಮಾಡುವ ಜಮೀನು ಸವಳು ಜವಳು ಆಗಿತ್ತು.

ಮಣ್ಣು ಎಲ್ಲಿಂದ ಹಾಗೂ ಎಷ್ಟು ತಂದಿರುತ್ತಾರೆ ಗೊತ್ತಿಲ್ಲ, ತಂದು ಸುರಿಯುವುದನ್ನು ನಾನು ನೋಡಿರುತ್ತೇನೆ'.

During the course of cross examination of DW.7 he stated that, 'ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಬೋಲ ಇದ್ದು 17 ವರ್ಷದಿಂದ ಇದೆ. ಗರಸಂಗಿಯವರು

ಖರೀದಿ ಮಾಡಿದ ಜಮೀನು ಒಟ್ಟು 9 ಎಕರೆಯವರೆಗೆ ತಗ್ಗು ದಿನ್ನಿ ಇತ್ತು ಅದನ್ನು ಸಮ ನಂತರ ಮಾಡಿರುತ್ತಾರೆ. ದಾವಾ ಜಮೀನು ಗರಸಂಗಿಯವರು ತೆಗೆದುಕೊಂಡಾಗ ಸವಳು ಜವಳು ಮತ್ತು ದಿನ್ನಿ ಇರಲಿಲ್ಲ ಎಲ್ಲ ಸಮವಾಗಿತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ'.

During the course of cross examination of DW.8 he stated that, 'ದಾವಾ ಜಮೀನಿಗೆ ನನ್ನ ಜಮೀನು ಹೊಂದಿರುವುದಿಲ್ಲ. ಸದರಿ ಕೇಸಿನಲ್ಲಿ ಸಾಕ್ಷಿ ನುಡಿಯಲು ಗರಸಂಗಿಯವರು ಹೇಳಿರುತ್ತಾರೆ ಮತ್ತು ಅಲ್ಲಿ ಸಮೀಪ ಇದ್ದ ಕಾರಣ ಅದರಲ್ಲಿ ಇಂಪ್ರೂವಮೆಂಟ್ ಆದ ಬಗ್ಗೆ ನೋಡಿರುತ್ತೇನೆ ಆದ್ದರಿಂದ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಿದ್ದೇನೆ. ದಾವಾ ಜಮೀನು ಯಾವ ಕಾಲಕ್ಕೂ ಸವಳು ಜವಳು ಆಗಿರುವುದಿಲ್ಲ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ಗರಸಂಗಿಯವರು ಖರೀದಿ ಮಾಡುವಾಗ ಒಂದು ಕಣದ ಅಳತೆ ಬಿಟ್ಟು ಉಳಿದಂತೆ ಜಮೀನು ಸವಳು ಜಮೀನು ಇತ್ತು. ಒಂದು ಕಣ ಎಂದರೆ 2-3 ಗುಂಟೆ ಆಗುತ್ತದೆ. ಸುಮಾರು 7-8 ಎಕರೆ ಜಾಲಿ ಕಂಟೆ ಬೆಳೆದಿತ್ತು.

ಸವಳು ಜವಳು ಜಮೀನನ್ನು ಸರಿಪಡಿಸಲು ಸಾಂಗ್ಲಿ ಇಂದ ಪೈಪು ತರಿಸಿ ತೆಂಗಿನ ಚಿಪ್ಪು ಕಟ್ಟಿಗೆಗಳನ್ನು ಉಸುಕು ಗರಿ ಉಪಯೋಗಿಸಿ ಸರಿಪಡಿಸಿರುತ್ತಾರೆ.

ಸವಳು ಜವಳು ಜಮೀನನ್ನು ತೆಗೆಯಲು ಮಣ್ಣನ್ನು ಬುದ್ಧಿ ಹಳ್ಳದಿಂದ ತಂದಿರುತ್ತಾರೆ'.

23. Therefore, by careful scrutiny of cross examination of PW.1 and DW.4, DW.6 to DW.8 and the recitals in certified copy of Ex.D.22 to Ex.D.24 it is very much clear that the part of the land is dry land and part irrigated. Further the oral evidence on record shows that soon after the purchase of the suit land the defendant No.4 have improved the said land without the knowledge of the pending lis between plaintiff and other defendants. Therefore, the 4th defendant/applicant is entitle for the improvement carried out

by him from the date of purchase till he come on record. Under the facts and circumstances and on the basis of above discussions, I answer point No.1 and 2 in the Affirmative.

24. **Point Nos.3 and 4:** These points inter-connected with each other, hence these points are taken together for consideration, in order to avoid repetition of facts.

The 4th defendant claims more than Rs.2 crores for the said improvements made by him and he examined DW.5 who is claimed to be the Agriculture Consultant through him the 4th defendant obtained Ex.D.27 i.e., detailed estimate for land development work. The DW.5 supporting the case of the defendant No.4 filed his affidavit in lieu of his examination in chief and in the affidavit he stated that, the 4th defendant consulted him to visit his land R.S.No.387/1 situated at Mantur village to estimate the work done by him for the improvement of the land as per the present market value. He visited the said land. Further he stated that after taking all the work done by him for the improvement of his land he made personal investigation regarding the items stated by the 4th defendant. After collecting all the details he had prepared a detailed statement of estimation as to the expenses incurred as per present market value. The said statement of estimation includes the measurement of the work done by him as explained by the defendant No.4. Thereafter, he

issued the said statement of estimation in favour of 4th defendant.

During the course of cross examination of DW.5 at page No.5 relevant portion in para No.1 and 2 extracted as below;

'ಅರ್ಜಿದಾರರು ಅಂದರೆ ಗರಸಂಗಿ ರವರು ವಿವರ ಪಟ್ಟಿಯನ್ನು ಅಂದರೆ ನಿಡಿ-27 ನ್ನು ಹೀಗೆ ಬರೆದುಕೊಂಡು ಎಂದರೆ ಹೇಳಿದರೆ ನಾನು ಬರೆದುಕೊಟ್ಟಿರುತ್ತೇನೆ. ಸಾಕ್ಷಿಯು ನಾನು ಅದರಲ್ಲಿ ನಮೂದು ಮಾಡಿರುವ ವೆಚ್ಚಗಳು ಇಂದಿನ ಮಾರುಕಟ್ಟೆಯ ಬೆಲೆಯ ವಿವರಗಳನ್ನು ನಮೂದು ಮಾಡಿರುತ್ತೇನೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನಿಪಿ-27 ನ್ನು ವಿವರ ಪಟ್ಟಿ ಕೊಡುವ ಪೂರ್ವದಲ್ಲಿ ನಾನು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲನೆ ಮಾಡಿರುವುದಿಲ್ಲ. ನಾನು ಯಾವುದೇ ಸಾಕ್ಷಿದಾರರ ಹೇಳಿಕೆಗಳನ್ನು ಪಡೆದಿರುವುದಿಲ್ಲ. ನಿಪಿ-27 ವಿವರ ಪಟ್ಟಿಯನ್ನು ತಯಾರು ಮಾಡುವ ಪೂರ್ವದಲ್ಲಿ ನಾನು ಸದರಿ ಜಮೀನಿಗೆ ಭೆಟ್ಟಿ ಕೊಟ್ಟಿರುವುದಿಲ್ಲ. ಆದರೆ ಸಾಕ್ಷಿಯು ಸದರಿ ಜಮೀನನ್ನು ನಾನು ಪರಿಶೀಲನೆ ಮಾಡಿ, ಅದರ ಆಧಾರದ ಮೇಲೆ ನಾನು ವಿವರ ಪಟ್ಟಿಯನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.'

'ನಿಡಿ-27 ರಲ್ಲಿ ವಿವರಿಸಿದ ಎಲ್ಲ ಕೆಲಸಗಳ ವಿವರವನ್ನು ಅರ್ಜಿದಾರರು ನನಗೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಅದರ ಆಧಾರದ ಮೇಲೆ ನಾನು ಇಂದಿನ ಮಾರುಕಟ್ಟೆಯ ಬೆಲೆಯ ವೆಚ್ಚವನ್ನು ನಮೂದು ಮಾಡಿರುತ್ತೇನೆ.

ನಿಡಿ-27 ರಲ್ಲಿ ನಾನು ಖರ್ಚು ವೆಚ್ಚಗಳನ್ನು ಅಂದಾಜು ಮೇಲೆ ಬರೆದಿರುತ್ತೇನೆ ಎಂದರೆ ನಿಜ. ನಾನು ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ ಯಾವುದೇ ಅಳತೆಯನ್ನು ಮಾಡಿರುವುದಿಲ್ಲ.'

25. By perusal of above admissions made by the DW.5 the counsel for plaintiff rightly submitted that the Ex.D.27 detailed estimate for land development works issued by DW.5 cannot be considered since it is issued as per the direction given by the defendant No.4 applicant and the costs incurred by the DW.4 mentioned by the DW.5 is approximate value. Further I have carefully gone through the entire cross examination of DW.5 by

considering his statements for the questions put by learned counsel for plaintiff looking into any angle the Ex.D.27 issued by DW.5 cannot be accepted since it is having several defects.

26. In addition to that, I have carefully gone through the entire cross examination of DW.4 at page No.3 to 13 wherein it is explicit that DW.4 has made considerable development in and upon the schedule property. However further careful perusal of Ex.D.27 i.e., report given by DW.5 regarding the cost incurred by the defendant No.4 in process of development of suit schedule property in comparison with his cross examination of DW.4 cannot be accepted the Ex.D.27 in view of the fact that a series of questions put by the learned counsel for plaintiff with regard to estimation of costs shown in Ex.D.27 from Sl.No.1 to 15 the DW.4 has not properly answered and it is clearly admitted that he valued most of the costs incurred approximately. Hence under the facts and circumstances of the case the Ex.D.27 cannot be relied upon and the amount claimed by the defendant No.4 on the basis of Ex.D.27 cannot be considered. Therefore, Ex.D.44 the detailed estimate for land development works, issued by V.S.Garasagi, the Asst. Agriculture Officer cannot be considered.

Moreover the estimate report given by the DW.5 is not supported by cogent documents and further unable to justify the said estimate. In addition DW.4 given vague answers which prove that the assessment is in contradiction to the report Ex.D.27.

27. There is no doubt that defendant No.4 proved and established that he has been in possession from the year 1992 and taken up the improvement work on the said field by spending his money on the impression that he is the owner on the strength of Ex.D.25 and Ex.D.24 sale deeds. Therefore, it is just and proper to assess the cost incurred by the defendant No.4 in the process of development on 10 acres 12 guntas of land in Sy.No.387/1 of Mantur village, a Court Commissioner who is having special skills on the field of agriculture needs to be appointed in the interest of both the parties. It is also required to assess or find the cost incurred by him for the said development. On the basis of above discussions and facts and circumstances of the case I answer point No.3 in the Negative and point No.4 in the Affirmative.

28. **Point No.5:-** In view of the above discussions to the point No.1 to 4, I proceed to pass the following;

: O R D E R :

The application filed by the defendant No.4/applicant U/s.51 of Transfer of Property Act, 1882 is hereby partly allowed. No order as to costs.

The applicant/defendant No.4 is entitled for the cost incurred by him for the improvement made in the suit land from the

date of purchase i.e., 22.07.1992 to till he come on record dated 14.02.2005 for the present value.

Further the claim of the 4th defendant more than Rs.2 crores for the improvement carried out by him is hereby rejected.

The Assistant Director of Agriculture, Mudhol is hereby appointed as Court Commissioner to assess the cost incurred for improvement made by defendant No.4 on the suit land between the period 22.07.1992 to 14.02.2005 and to state its present value.

Both parties are hereby directed to file memo of instructions and documents if any.

The defendant No.4 is directed to deposit commissioner fee of Rs.3,000/-.

Office is directed to issue commission warrant along with copy of orders on I.A.No.32.

(Dictated to the stenographer directly on computer, typed by him, corrected and then pronounced by me in the open court 20th day of April 2023)

(SIDDANAGOUDA PATIL T.)
Pr. Civil Judge & JMFC., Mudhol.

ANNEXURE

List Of Witnesses Examined By 4th Defendant/Respondent/s:

D.W-4	:-	Venkappa Sangappa Garasangi
D.W-5	:-	Shivayogi Revanasiddappa Byakod
D.W-6	:-	Sidramappa Sidagond
D.W-7	:-	Ashok Metagudda
D.W-8	:-	Govind Mallappa Naik

List Of Documents Marked On Behalf Of 4th Defendants/Respondent/s:

Ex.D-14	:-	R.R. of R.S.No.387/1
Ex.D-15 & 16	:-	M.E.No.4296 & 5068
Ex.D-17	:-	M.E.No.7005
Ex.D-18	:-	R/R of R.S.No.387/1
Ex.D-19	:-	R/R of R.S.No.387/1
Ex.D-20	:-	Receipt of Godavari Sugar Mill
Ex.D-21	:-	Tax paid receipt
Ex.D-22	:-	C/c of Sale deed
Ex.D-23 & 24	:-	C/c of Sale deed dated 22.07.2022
Ex.D-25	:-	Electricity Bill
Ex.D-26	:-	C/c of Chief examination in O.S.No.62/10 before Senior Civil Judge Mudhol
Ex.D-27	:-	Detail list of land development
Ex.D-28	:-	Certificate issued by R.R.Konaraddi Engineer and Contractor
Ex.D-29	:-	Certificate issued by Nagappa Lokappa Teli
Ex.D-30	:-	Letter issued by Parashuram Hanchate
Ex.D-31	:-	Quotation estimate of Maruti Borewells
Ex.D-32 to 34	:-	Quotation of Sree Laxmi Traders
Ex.D-35	:-	Letter issued by Sadappa Kumbar
Ex.D-36	:-	Quotation of electricals
Ex.D-37	:-	Farm house estimate report
Ex.D-38	:-	Map of farm house
Ex.D-39	:-	Estimate of cross drain work

- Ex.D-40 :- Plain Structure of cross drain work
Ex.D-41 :- Yeild certification issued by A.H.O
Ex.D-42 :- Life value account of coconut trees
Ex.D-43 :- Letter issued by Siddaramappa Ullagaddi
Ex.D-44 :- Detailed estimate for land development

List Of Witnesses Examined By Plaintiff/Petitioner:

- PW1 :- Allinabi Urf Ameenabi Hasanabi Attar

List Of Documents Marked On Behalf Of Plaintiff/Petitioner

- :- -NIL-

(SIDDANAGOUDA PATIL T.)
Prl. Civil Judge & JMFC., Mudhol.