



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC., AT
GOWRIBIDANUR**

Dated this 07th day of April 2026

:: PRESENT ::

**SMT. PUSHPA D.
B.COM., L.L.B.,**

**Addl. Civil Judge and JMFC.,
Gowribidanur**

ORIGINAL SUIT NO.78/2003 C/W ORIGINAL SUIT NO.59/2009

IN OS No.78/2003

PLAINTIFF :

Sri. R.Hanumantha Reddy
S/o. Late Ramappa,
Aged about 38 years,
R/at. Melina Kurubarahalli Village,
Kasaba Hobli,
Gowribidanuru Taluk,
Chikkaballapur District.

(Represented by Sri. N.V., Advocate)

V/s

DEFENDANTS : 1.

Sri. K.H.Somashekhara Reddy
Rep. by his LRs

- a)** Smt. Shobha S Reddy
W/o. Late K.H. Somashekara Reddy,
Aged about 75 years,
R/at. Apart No.75615,
Park side retirement homes,
Brigade Arcade, Budigere Road,
Devanahalli,
Bengaluru Rural-562110.



- b)** Smt. Sowmya S Reddy
D/o. Late K.H. Somashekara Reddy,
W/o. Shivakumar Shamanna,
Aged about 54 years,
R/at. No.48 Roshanara,
2nd Cross, Syndicate Bank Colony,
Arekre, Bannerughatta Road,
Bengaluru-560076.
- c)** Sri. Dr. Sandeep Reddy
S/o. Late K.H. Somashekara Reddy,
Aged about 48 years,
R/at. Apart No.75615,
Park side retirement homes,
Brigade Arcade, Budigere Road,
Devanahalli,
Bengaluru Rural-562110.

(Represented by Sri. G.N.R., Advocate)

IN OS No.59/2009

PLAINTIFFS : 1. Sri. K.H.Somasekhara Reddy

Dead Rep. by his LRs

- a)** Smt. Shobha S Reddy
W/o. Late K.H. Somashekara Reddy,
Aged about 75 years,
R/at. Apart No.75615,
Park side retirement homes,
Brigade Arcade, Budigere Road,
Devanahalli,
Bengaluru Rural-562110.



- b)** Smt. Sowmya S Reddy
D/o. Late K.H. Somashekara Reddy,
W/o. Shivakumar Shamanna,
Aged about 54 years,
R/at. No.48 Roshanara,
2nd Cross, Syndicate Bank Colony,
Arekre, Bannerughatta Road,
Bengaluru-560076.
- c)** Sri. Dr. Sandeep Reddy
S/o. Late K.H. Somashekara Reddy,
Aged about 48 years,
R/at. Apart No.75615,
Park side retirement homes,
Brigade Arcade, Budigere Road,
Devanahalli,
Bengaluru Rural-562110.

(Represented by Sri. G.N.R., Advocate)

V/s

DEFENDANTS :

Sri. R.Hanumantha Reddy
S/o. Late Rama Reddy,
Aged about 43 years,
R/at. Melina Kurubarahalli Village,
Kasaba Hobli,
Gowribidanuru Taluk,
Chikkaballapur District.

(Represented by Sri. N.V., Advocate)

Date of institution of the suit : OS No.78/2003 – 26.03.2003
OS No.59/2009 – 27.02.2009



Nature of the suit

IN OS NO.78/2003 : Declaration and permanent injunction
IN OS NO.59/2009 : Declaration and permanent injunction

Date of the commencement of
Recording of the evidence : OS No.78/2003 – 16.10.2012
OS No.59/2009 – 06.08.2012

Date of which the judgment
was Pronounced : 07/04/2026

Total Duration : OS No.78/2003
Year/s Month/s Day/s
23 00 12
OS No.59/2009
Year/s Month/s Day/s
17 01 11

Sd/-
(PUSHPA D.)
ADDL. CIVIL JUDGE AND JMFC,
GOWRIBIDANUR.

:: J U D G M E N T ::

This is a suit filed by the plaintiff against the defendants in OS No.78/2003 seeking for the relief of declaration and permanent injunction and in OS No.59/2009 filed by the plaintiff against the defendant seeking for the relief of declaration by way of adverse possession and permanent injunction.



2. The sum and substance of the plaintiff's case are as follows:

In O.S. No.78/2003, the suit has been filed by the plaintiff against the defendant seeking the relief of declaration of title and permanent injunction in respect of the suit schedule property. In O.S. No.59/2009, the suit has been filed by the plaintiff against the defendant contending that he has perfected his title over the suit schedule property by way of adverse possession, and consequently seeking the relief of perpetual injunction.

3. Originally, the plaintiff instituted O.S. No.78/2003 against the defendant before this Court seeking appropriate reliefs. Subsequently, the defendant instituted O.S. No.59/2009 before the Court of the Principal Civil Judge & JMFC, Gowribidanur. Thereafter, the said suit was transferred to this Court, and both the suits were clubbed together. Common evidence was recorded in O.S. No.78/2003. Upon consideration, this Court dismissed the suit in O.S. No.78/2003 and decreed the suit in O.S. No.59/2009. Aggrieved by the said common



judgment and decrees, the plaintiff in O.S. No.78/2003 preferred Regular Appeals before the Court of the Senior Civil Judge, challenging both the judgments and decrees. The learned Senior Civil Judge, by a common judgment, allowed both the appeals and remanded the matters to this Court for fresh disposal. Thereafter, the plaintiff in O.S. No.59/2009 challenged the correctness of the said remand judgment and decree by filing RSA No.585/2017 before the Hon'ble High Court of Karnataka. Similarly, the defendant in O.S. No.78/2003 preferred MSA No.22/2017 before the Hon'ble High Court of Karnataka challenging the same. The Hon'ble High Court of Karnataka, by its oral judgment in MSA No.22/2017 c/w RSA No.585/2017 dated 23.09.2024 set aside the judgments and decrees passed earlier and remanded the matter to this Court for fresh disposal in accordance with law.

4. The averments of the plaint and written statement in OS No.78/2003 in brief are as follows:

5. The suit schedule property is the ancestral property of the plaintiff, and the same has been in possession and



enjoyment of his family for more than 40 years. During his lifetime, the plaintiff's father was in possession of the suit schedule property, and after his demise, the plaintiff has continued in possession and enjoyment of the same. The plaintiff has been paying taxes in respect of the suit schedule property and claims to be the absolute owner thereof. It is further contended that the defendant is a stranger to the suit schedule property and has no right, title, or interest over the same. Despite the same, the defendant has been attempting to interfere with the peaceful possession of the plaintiff and has made efforts to dispossess him. It is stated that the defendant attempted to forcibly harvest the mango crop standing on the suit schedule property, which was raised by the plaintiff. Hence, the plaintiff was constrained to file the present suit.

6. The defendant entered appearance and filed his written statement contending that the lands bearing Sy. Nos. 61/4 or 63/5 originally belonged to one Chinnappa, S/o Dodda Hanumantharayappa. It is further stated that one Chinnanna, S/o Gangappa, a resident of Chigatagere Village, was in



possession and enjoyment of the suit schedule property, including the land in Sy. No.63/5 of Hirebidanuru Village along with other adjacent lands situated in Kurubarahalli Village. The defendant states that the land in Sy. No.63/5, which also includes the land in Sy. No.61/4 within its boundaries, was alienated by the said Chinnanna in favour of the defendant under a registered sale deed dated 25.08.1996. The said sale deed also includes other lands situated in Kurubarahalli and Hirebidanuru Villages. Since the date of purchase, the defendant has been in possession and enjoyment of the entire extent of land within the boundaries described in the sale deed. It is further stated that the boundaries mentioned in the sale deed cover a total extent of 1 acre 16 guntas, which includes 20 guntas in Sy. No.63/5 and 36 guntas in Sy. No.61/4. From the date of purchase, the defendant has been in peaceful possession and has raised eucalyptus trees over the entire extent. It is also stated that mango saplings were planted in the year 1991, which have now grown into fruit-bearing trees over the said land. The defendant further states that as early as in the year



1949, the entire land within the said boundaries measuring 1 acre 16 guntas was the subject matter of a mortgage executed by one Lakshmana Reddy, S/o Chinnappa, in favour of Moopurigari Gangappa, S/o Adeppa of Chigatagere. In the said mortgage deed, though only Sy. No.63/5 was mentioned without specifying Sy. No.61/4 or the exact extent, the boundaries described therein encompass the entire extent of 1 acre 16 guntas, including the disputed land. It is stated that the vendor of the defendant, namely Chinnanna, was in possession of the entire land within the said boundaries and, thereafter, the defendant has continued in possession and enjoyment of the same with all rights. The defendant states that due to inadvertent errors in mentioning the survey number and extent in the documents, reliance must be placed on the boundaries, which prevail over survey numbers and extent. The defendant asserts that he is in actual and physical possession of the entire extent of 1 acre 16 guntas comprising Sy. Nos. 61/4 and 63/5 of Hirebidanuru Village. It is further stated that the RTC produced by the plaintiff is a created document and does not



reflect any crop in the suit land. On the contrary, the defendant has developed a mango grove over the entire land, which is reflected in the revenue records, though the survey number is shown as Sy. No.63/5. The defendant clarifies that merely because the revenue records mention Sy. No.63/5, it should not be construed that he is falsely claiming land in Sy. No.61/4, as the boundaries clearly include the entire extent. It is further stated that one Chikkappaiah had purchased land in Sy.No.61/3 of Hirebidanuru Village under a sale deed dated 16.12.1986, wherein the western boundary is described as the land belonging to the defendant, though neither party to the present suit was a party to the said transaction. The defendant also states that he dug a borewell in the year 1992 on the southern side of the land and laid underground pipelines through Sy. No.63/3 to irrigate the mango grove in the suit land. Another borewell was drilled in Sy. No.96 belonging to the defendant, and water pipelines were laid through neighbouring lands, with an outlet at the north-eastern corner of the suit land



for irrigation purposes. On these grounds, the defendant prays for dismissal of the suit filed by the plaintiff.

7. **The plaintiff in O.S. No.59/2009 has reiterated the averments made in his written statement filed in O.S. No.78/2003, hence, the same are adopted and need not be repeated for the sake of brevity. Likewise, the defendant in O.S. No.59/2009 has reiterated the averments made in his plaint in O.S. No.78/2003, and the same are adopted herein and need not be repeated.**

8. **On the basis of the pleadings and written statement filed in both the suits, this court framed the following Issues:**

ISSUES IN OS NO.78/2003

1. *Whether the plaintiff proves that he is the absolute owner in possession and enjoyment of the suit schedule property?*
2. *Whether the plaintiff proves the alleged interference of the defendant over the suit schedule property?*



3. *Whether the defendant proves that he is in possession and enjoyment of the suit schedule property by virtue of sale deed dated 25.08.1966?*
4. *Whether the plaintiff is entitled for the relief as sought for?*
5. *What order or decree?*

ADDITIONAL ISSUE:

1. *Whether the defendant proves that he perfected his title by way of adverse possession?*

ISSUES IN OS NO.59/2009

1. *Whether the plaintiff proves that the plaintiff is in possession and enjoyment of 1 acre 19 gunas of land in Sy.No.61/4 and 63/5 which he had acquired by way of registered sale deed dated 25.08.1966?*
2. *Whether the plaintiff further proves that the defendant on 15.02.2009 caused interference*



into the plaintiff's possession by erecting stone pillars on the Northern Side of Sy.No.63/5?

3. Whether the defendant proves the contents of para no.7 of his written statement?

4. Whether the plaintiff is entitled for the relief of declaration of his right in respect of the suit schedule property?

5. Whether the plaintiff is entitled for the relief of perpetual injunction?

6. What order or decree?

9. The Plaintiff has examined before the Court as PW1 and got marked **Exs.P1 to Ex.P14**. One Sri.K.A.Sreerama Reddy, has examined before the Court as PW2. One Ganga Reddy who has examined as PW3. The Defendant has examined before the Court as DW1 and got marked **Exs.D1 to Ex.D52**. One Sri.Appireddy has examined before the court as DW2. One Sri.Anjinappa has examined before the court as DW3. One Sri.Ganga Reddy has examined before the court as DW4.



10. Heard the arguments of the Learned Counsels appearing for the parties at length and perused the entire materials on record.

11. The findings of this Court on the above said Issues are as under:

My findings on ISSUES IN OS NO.78/2003

ISSUE No.1 : In the **Affirmative**

ISSUE No.2 : In the **Affirmative**

ISSUE No.3 : In the **Negative**

ISSUE No.4 : In the **Affirmative**

ISSUE No.5 : As per **final order**

ADDITIONAL ISSUE No.1: In the **Negative**

My findings on ISSUES IN OS NO.59/2009

ISSUE No.1 : In the **Negative**

ISSUE No.2 : In the **Negative**

ISSUE No.3 : In the **Affirmative**

ISSUE No.4 : In the **Negative**

ISSUE No.5 : In the **Negative**

ISSUE No.6 : As per **final order for the following:**



:: R E A S O N S ::

12. Issue Nos.1, 3 and Additional Issue No.1 in OS No.78/2003 and Issue Nos.1 and 3 in OS No.59/2009 :-

Since all these issues inter-connected and hence taken up together for consideration, in order to avoid repetition of facts.

13. The plaintiff in O.S. No.78/2003 and the defendant in O.S. No.59/2009 shall hereinafter be referred to as the 'Plaintiff' for the sake of clarity. Likewise, the defendant in O.S. No.78/2003 and the plaintiff in O.S. No.59/2009 shall hereinafter be referred to as the 'Defendant' for the sake of brevity.

14. During the pendency of the proceedings, the defendant was reported to be dead and his legal representatives were brought on record.

15. It is the case of the plaintiff that he is the absolute owner of the suit schedule property bearing Sy. No.61/4, measuring 36 guntas, situated at Hirebidanuru Village, Kasaba Hobli, Gowribidanur Taluk. The plaintiff contends that the said property is his ancestral property and that he is in lawful



possession and enjoyment of the same. Per contra, the defendant contends that he is the owner of the suit schedule property by virtue of a registered sale deed dated 25.08.1966. The defendant further claims to have perfected his right, title, and interest over the suit schedule property by way of adverse possession.

16. As per Section 101 and 103 of the Indian Evidence Act, the burden of proof lies on the Plaintiff to establish that the property is ancestral as such he is the owner of the suit schedule property. The Plaintiff has examined before the Court as PW1, who has filed affidavit evidence in lieu of his examination-in-chief, wherein he has deposed in consonance with the plaint averments. PW1 in support of his oral evidence has got marked Ex.P1 to Ex.P14.

17. Ex.P1 and Ex.P2 are the computerised RTC in respect of Sy.No.63/5 and Sy.No.63/4. Ex.P3 is the original Patta Book stands in the name of plaintiff for the year 1992-93 in respect of sy.no.61/4. Ex.P4 is the tax paid receipt. Ex.P5 to P7 are the hand written RTCs for the year 1980 to 1993 stands



in the name of the Chinnappa S/o.Dodda Hanumantharayappa and subsequently inherited to the plaintiff in respect of Sy.No.61/4 through IHR. Ex.P8 and 9 are the hand written and computerised RTCs for the year 1993 to 2002 in respect of Sy.No.61/4 stands in the name of the plaintiff through IHR. Ex.P10 is the tax paid receipt. Ex.P11 is the registered sale deed dated 10.05.2002 executed by Anjinappa and his sons in favour of K.H.Krishna Reddy. Ex.P12 is the Encumbrance Certificate for the year 01.04.1978 to 13.03.1991 in respect of Sy.No.63/5. Ex.P13 is the certified copy of the sale deed dated 09.04.1964 executed by Chinnappa S/o.Dodda Hanumantharayappa in favour of Chinnappa So.Gangappa in respect of Sy.No.63/5. Ex.P14 is the certified copy of the regsiteed sale deed dated 04.04.1927 executed by Siddamma and his sons in favour of Chinnappa S/o.Dodda Hanumantharayappa.

18. On the other hand, the Defendant in order to substantiate his defence has examined before the Court as DW1, who has filed affidavit evidence in lieu of his examination-



in-chief, wherein he has deposed in consonance with written statement averments. DW1 in support of his oral evidence has got marked Ex.D1 to Ex.D52. Ex.D1 is the rough hand sketch. Ex.D2 is the Record of Rights. Ex.D3 is the certified copy of the mortgage deed dated 10.10.1949 executed by Lakshmana Reddy to Gangappa. Ex.D4 is the Encumbrance Certificate for the year 01.04.1949 to 31.03.1950 in respect of Sy.No.63/5. Ex.D5 is the Mutation Register in respect of Sy.No.61/4. Ex.D6 is the Hissa Tippan. Ex.D7 to D10 are the Sketches. Ex.D11 is the certified copy of registered sale deed dated 25.08.1966 executed by Nanjamma in favour of Nanjareddy. Ex.D12 is the certified copy of registered sale deed dated 15.12.1965 executed by Sanjeevamma wife of Chinnappa in favour of Nanja Reddy. Ex.D13 is the certified copy of registered sale deed dated 15.10.1953 executed by Nanjamma in favour of K.B.Hanumanthareddy and sons. Ex.D14 Hissa Tippan in respect of Sy.No.61. Ex.D15 is Hissa Tippan. Ex.D16 is the hand written RTC for the year 1988 to 1991 stands in the name of defendant in respect of Sy.No.63/5. Ex.D17 is the hand



written RTC for the year 1988 to 1991 stands in the name of defendant in respect of Sy.No.63/5. Ex.D18 is the certified copy of the registered sale deed dated 09.04.1964 executed by Ramappa and his sons in favour of Chinnappa S/o Dodda Gangappa. Ex.D19 is the Index of Land in respect of Sy.o.63/5. Ex.D20 is the Record of Rights. Ex.D21 is the RTC for the year 2008-2009 stands in the name of defendant in respect of Sy.NO.63/5. Ex.D22 is the RTC for the year 2004-2005 stands in the name of plaintiff in respect of Sy.No.61/2. Ex.D23 is the RTC for the year 2004-2005 stands in the name of Gang Reddy in respect of Sy.No.61/3. Ex.D24 is the certified copy of the registered mortgage deed dated 10.10.1949 executed by Lakshman Reddy in favour of Gangappa. Ex.D25 is the certified copy of the registered sale deed dated 16.12.1986 executed by Nanjareddy in favour of Chikkappaiaha. Ex.D26 is the complaint dated 17.02.2009. Ex.D27 is the certified copy of the registered sale deed dated 10.05.2002 executed by Anjinappa in favour of Krishna Reddy. Ex.D28 is the certified copy of the mortgage deed dated 13.07.2006. Ex.D29 to D33 are the



affidavits of witnesses in OS No.78/2003. Ex.D34 is the certified copy of the order passed in OS No.78/2003. Ex.D35 is the certified copy of the registered sale deed dated 25.08.1966 executed by Chinnappa in favour of defendant. Ex.D36 is the copy of the rough sketch. Ex.D37 is the rough sketch. Ex.D38 is the Mutation Register. Ex.D39 is the RTC in respect of Sy.No.62/5 stand in the name of defendant through sale deed. Ex.D40 is the original registered sale deed dated 25.08.1966 executed by Chinnappa in favour of defendant. Ex.D41 and D42 are the Index of Lands. Ex.D43 is the Records of Rights. Ex.D44 and D51 are the sketches. Ex.D52 is the online Photographs.

19. The learned counsel for the plaintiff vehemently argued that the plaintiff has produced a certified copy of the sale deed dated 04.04.1927, under which his grandfather had purchased the property bearing Sy.No.61, and therefore, the plaintiff claims absolute ownership over the same. It is further argued that there are material inconsistencies in the written statement filed by the defendant, the defendant has stated that the entire land comprised in Sy.No.61/4 or Sy.No.63/5



originally belonged to Chinnappa S/o Dodda Hanumantharayappa. The defendant has failed to produce any documentary evidence to establish that Sy.No.61/4 belongs to him. The learned counsel also pointed out that Sy.No.61/4 measures 36 guntas, whereas Sy.No.63/5 measures 20 guntas, yet the defendant has contended that both survey numbers are one and the same. Further, it is contended that if the defendant sets up a plea of adverse possession, he must necessarily admit the title of the plaintiff. However, in the present case, the defendant has not admitted the ownership of the plaintiff and therefore, the plea of adverse possession is untenable. It is also argued that the defendant's contention that Sy.No.61/4 was omitted from the sale deed dated 25.08.1966 due to oversight, is without any basis. On considering all these grounds, he prays to decree the suit in OS No.78/2003 and dismiss the suit in OS No.59/2009.

20. *Per contra*, the learned counsel for the defendant vehemently argued that there are no materials on record to establish that the suit schedule property is ancestral property



of the plaintiff. It is argued that although the plaintiff has asserted that he has been in possession of the property for more than 40 years, no documentary evidence has been produced in support of such possession. The learned counsel further submitted that the plaintiff has claimed that Chinnappa is his grandfather; however, no documents have been placed on record to substantiate the said relationship. Further argued that as per the registered sale deed dated 25.08.1966, Sy.No.63/5 includes Sy.No.61/4, which was purchased by him. In support of this contention, the defendant has relied upon RTC extracts to show cultivation and possession over the said lands. The learned counsel also emphasized that the boundaries mentioned in the mortgage deed dated 10.10.1949 are identical, and contended that, in law, boundaries prevail over survey numbers. Further, it is argued that in the registered sale deed dated 16.12.1986, the western boundary is described as the defendant's land, which indicates his ownership over Sy.No.61/4. It is also submitted that the defendant has drilled a borewell in the said property in the year 1992, thereby



evidencing possession and enjoyment. The learned counsel additionally contended that Sy.No.63/5 and Sy.No.61/4 were treated as a single parcel and merged at the time of purchase under the sale deed dated 25.08.1966. On these grounds, the defendant prays for dismissal of the suit in OS No.78/2003 and decree the suit in OS No.59/2009.

21. In reply, the learned counsel for the plaintiff argued that, in order to establish his title, the plaintiff has produced the registered sale deed dated 04.04.1927. It is further argued that the defendant has nowhere, in the written statement, specifically denied the relationship between the plaintiff and Ramappa, and has not taken any plea that the plaintiff is not the son of Ramappa. In the absence of such a specific denial, the said fact does not fall for adjudication, particularly when no issue has been framed by this Court with regard to the relationship between the plaintiff and Ramappa. The learned counsel also emphasized that the defendant has not produced any registered document to substantiate his ownership in respect of Sy.No.61/4.



22. During the course of arguments, the learned counsel for the defendant filed a memo along with citations; Thiru John and another Vs. Returning Officer and others; Union of India and another Vs. Deoki Nandan Aggarwal and (2025) 1 SCC (Civ) 640.

23. The defendant has relied upon certain legal principles in support of his case. Firstly, it is contended that admissions made in documents *ante litem motam* carry significant evidentiary value, and the burden of proof shifts upon the maker of such admissions to establish that they are erroneous. Secondly, it is argued that where the language of a statutory provision is plain and unambiguous, it is not the duty of the Court to enlarge the scope of the legislation or to interpret it beyond the clear intention of the legislature. Thirdly, it is submitted that evidence recorded at the original stage of the proceedings shall, subject to all just exceptions, be treated as evidence during the trial after remand. This Court exercises caution in applying the aforesaid principles to the facts and circumstances of the present case.



24. In light of the arguments canvassed by the Learned Counsels for the parties, let us discuss the concept of adverse possessions:

“Adverse possession is a method, rooted in common law, of obtaining title to land through use. The common law rules for adverse possession have been codified under both Federal and State statutes. A typical statute allows a person to obtain title to land from the actual owner simply by using the land. The use must be open for all to see. An example of openly using land for the purposes of adverse possession would be if your neighbor built a fence on your land with the intention of taking the property, paid your property taxes, and though you knew about it you did nothing. If this continued for a period of time set by State Law, your neighbor may be able to claim this property as his/her own. The theory is that by not disputing your neighbor’s use of your property through a lawsuit, you, as the actual owner have abandoned your rights to the property. Gaining title to land through adverse possession requires strict compliance with the law, and can have dramatic impact upon land ownership rights.



The plea of adverse possession is mixed question of law and fact. It is well settled law that before a party can succeed in establishing title on the basis of adverse possession, a plea to that effect must be specifically raised. It is observed by Hon'ble Apex court that, "It would be imperative that one who claims possession must give all such details as enumerated hereunder.

Further, for better understanding the following points are to be considered to establish by adverse possession by the defendants.

- i). The person to admit the title of the real owner.*
- ii). His possession must be adequate in continuity, in publicity and in extent that it is averse to the owner.*
- iii). He must have claim the title to the immovable property himself openly.*
- iv). He must have made attempt to enter his name to record of rights.*
- v). He must have paid the tax of the property to government as owner.*



- vi). The possession must be actual, visible, hostile and continued during the period of 12 years.*
- vi). Animus possedendi is necessary, as his intention of adverse possession must be within notice and knowledge of the real owner.*
- vii). Adverse possession it is necessary for the person to admit the title of real owner and to establish is open and hostile possession without any interruption that a party has been in adverse possession of 12 years, it should be definitely alleged how and when adverse possession commenced.*

25. The concept of adverse possession contemplates a hostile possession i.e. the possession which is expressly or impliedly in denial of the title of the true owner to the knowledge of the true owner and claiming the title as an owner in himself by the person claiming to be in adverse possession. In other words such hostile possession shall not be secret and person in adverse possession must not acknowledge the title of the true owner but has to deny the title of the true owner. The adverse possession must be capable of being known by the parties interested in the



*property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action. This shows that the possession must be **nec vi nec clam nec precario** i.e. In continuity, in publicity and in extent. This shows that permissive possession is not hostile possession. So also mere long possession even for 100 years is not adverse possession.*

26. *The rationale for adverse possession rests broadly on the consideration that title to land should not long be in doubt, the society will benefit from some one making use of land the owner leaves idle and that that person who come to regard the occupant as owner may be protected. The maxim that law and equality does not help those who sleep over their rights is invoked in support of prescription of title by adverse possession. In other words, the original title holder who neglected to enforce his right over the land cannot be permitted to re-enter the land after a long passage of time. A situation lasting for a long period creates certain expectations and it would be unjust to disappoint those who trust on them”.*



27. In the background of understanding of the concept of adverse possession, let us discuss the oral and documentary evidence on record.

28. In order to substantiate his claim of ownership over the suit schedule property, the plaintiff has produced Ex.P3, the Patta Book pertaining to Sy.No.61/4 measuring 36 guntas, which stands in his name for the year 1992–1993. Further, the plaintiff has relied upon Ex.P5 to Ex.P9, being RTC extracts for the periods 1980–1993, 1993–1998, and 2001–2002, in respect of the suit schedule property. A perusal of these records reveals that the entries initially stood in the name of Chinnappa S/o Dodda Hanumantharayappa and subsequently in the name of the plaintiff, with the plaintiff's name appearing in Column No.10 as "IHR." The plaintiff has also produced Ex.P4, the tax paid receipt, evidencing payment of land revenue for the year 1992. The plaintiff has also produced an Encumbrance Certificate for the period from 01.04.1978 to 13.03.1999, which discloses that there are no encumbrances in respect of



Sy.No.63/5 during the said period. Further, Ex.P12 is the certified copy of the registered sale deed dated 09.04.1964 executed by Chinnappa S/o Dodda Hanumantharayappa in favour of Chinnappa S/o Dodda Gangappa in respect of Sy.No.63/5. Ex.P14 is the certified copy of the registered sale deed dated 04.04.1927 executed by Siddamma and her sons in favour of Chinnappa S/o Dodda Hanumantharayappa, whereby lands bearing Sy.No.63 measuring 4 acres 10 guntas and re-survey No.61 measuring 3 acres 37 guntas were conveyed. It is further recited in Ex.P14 that, out of the said properties, a 1/3rd share was allotted, including re-survey No.63 (dry land) measuring 4 acres 10 guntas, re-survey No.61 (dry land) measuring 3 acre 37 guntas and re-survey 60 (dry land) 3 acres 5 guntas and that the vendor was entitled to a 1/3rd share in each of the said lands.

29. It is undisputed fact that Sy.No.63/5 was purchased by the defendant and that the defendant is in possession of the same. However, the disputed fact in the present case pertains to whether Sy.No.61/4 belongs to the plaintiff or the defendant. In



order to establish his case, the defendant has relied upon Ex.D3. In the said document, it is specifically recited that a mortgage deed dated 10.10.1949 was executed by Lakshmana Reddy S/o Chinnappa in favour of Gangappa in respect of re-survey No.18/5 measuring 31 guntas. The boundaries of the said property are described as: East – land of Dodda Shivanna; West – land of Hallora Nanjundappa; North – land of Nanja Reddy; and South – land of Nagaiah and the joint khata land of Anjanappa. It is further stated that, re-survey No.95/2 (wet land) measuring 10 guntas, and re-survey No.63/5 consisting of 7 guntas of wet land and 13 guntas of dry land were also included. The boundaries of these lands are separately described in the document. Altogether, three items of properties were mortgaged with possession in favour of Gangappa. The specific case of the defendant is that the said mortgage was executed with possession in favour of Gangappa; thereafter, Chinnappa who is the Son of Gangappa, was in possession and subsequently, Chinnappa sold the properties to the defendant under a registered sale deed dated 25.08.1966. According to the



defendant, the said sale deed includes not only Sy.No.63/5 but also Sy.No.61/4.

Let us discuss the concept of Mortgage under Transfer of Property Act, 1882 -

“Mortgage means transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, and existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability”.

Once a mortgage always a mortgage

This doctrine was first laid down in Howsrd Vs Harries(23 ER 288) and it was later on supplemented by the words “and nothing but a mortgage” by Lord Davey in Noakes Vs Rice 1902 AC 24 and therefore always redeemable. Refer AIR 1958 SC 770. If a contrary provision is made, it is invalid. The mortgagee cannot reserve to himself any collateral advantage outside the mortgage agreement. Any stipulation which prevents a mortgagor from getting back the property mortgaged is void. In this regard, the decision reported in AIR 2000 SC 1935 Shivdev Singh v. Sucha Singh.

30. Now, coming to the document marked as Ex.D3, a careful perusal of the same reveals a clear recital that



Lakshmana Reddy had mortgaged the property in favour of Gangappa in respect of the survey numbers 18/5, 95/2 and 63/5. The document specifically recites that the mortgage was executed with possession in favour of Gangappa. As per Section 58 of the Transfer of Property Act, well-settled principle is “once a mortgage, always a mortgage,” unless the mortgage is lawfully redeemed or foreclosed. In the present case, there is no material placed on record to show that Lakshmana Reddy or his legal representatives have redeemed the mortgage. Equally, there is no evidence to show that Gangappa or his legal representatives have initiated any proceedings for foreclosure of the mortgage. Thus, the mortgage appears to have subsisted without being lawfully terminated. However, the case of the defendant is that Gangappa, in spite of the subsisting mortgage, he was in possession, thereafter his LRs Gangappa was in possession and Chinnappa S/o Gangappa, sold the property to the defendant under a registered sale deed dated 25.08.1966. This creates a serious doubt as to the validity of the title conveyed, as it is not clear whether Gangappa had absolute right or title to alienate



the mortgaged property so as to pass a valid title to his vendee. Consequently, the very competence of the defendant's vendor to convey valid title is put in question. Moreover, on perusal of Ex.D3, there are no specific recitals stating that, in the event of failure by the mortgagor to redeem the property, the mortgagee would be entitled to take possession, no such stipulation is found in the document. Further, the defendant relied upon the document is Ex.D40, the original sale deed dated 25.08.1966 executed by Chinnappa S/o Gangappa in his favour. On perusal of the recitals therein, it is seen that the properties conveyed include re-survey No.63/5 measuring 20 guntas (comprising 7 guntas wet and 13 guntas dry land) and re-survey No.95/2 measuring 10 guntas, with specified boundaries. The document reflects conveyance of two items of properties, aggregating to an extent of 1 acre 10 guntas. Though the defendant claims that the said extent also includes Sy.No.61/4 measuring 36 guntas, the burden squarely lies upon him to establish that Sy.No.61/4 forms part of the property conveyed under Ex.D40. However, a plain reading of Ex.D40 does not disclose any specific reference



to Sy.No.61/4. Further, the evidence of PW1 assumes significance in this regard. In his cross-examination, PW1 has admitted that his grandfather had adopted Lakshmana Reddy, though he expressed ignorance as to the timing of such adoption. He has also admitted that there was a division of properties between his father and Lakshmana Reddy, and that re-survey No.61 was divided into four shares. However, he has denied the suggestion that the property in Sy.No.61/4 was mortgaged by Lakshmana Reddy in favour of Gangappa in the year 1949. PW1 has further admitted that Sy.Nos.61/2 and 61/4 belong to him and that Sy.No.61/3 lies in between for access purposes. He has also stated that he has put up fencing in Sy.Nos.61, 61/4, and 62. Though suggestions were made to him regarding the alleged mortgage, subsequent sale by Chinnappa to Defendant, and further conveyance to the defendant, he has denied knowledge of such transactions. He has also deposed that his grandfather had gifted certain ancestral properties to Lakshmana Reddy, but expressed ignorance as to the specific properties so gifted. In view of the



above, the oral and documentary evidence placed on record by the defendant does not satisfactorily establish that Sy.No.61/4 was part of the mortgaged property or that it was subsequently conveyed under Ex.D40. Consequently, a serious cloud is cast over the defendant's claim of title in respect of Sy.No.61/4.

31. Further, in his cross-examination, PW1 has admitted that he has effected mutation of the property standing in the name of his grandfather, as his father had already died. He has also admitted that there are about 12 to 13 mango trees standing on the suit schedule property. It is elicited in his cross-examination that a partition had taken place between Lakshmana Reddy and Ramappa, pursuant to which certain properties had fallen to the share of Lakshmana Reddy. However, the defendant has not produced any documentary evidence to establish the extent or particulars of the properties that fell to the share of Lakshmana Reddy, nor has he demonstrated that the properties allegedly allotted to Lakshmana Reddy were the very properties said to have been mortgaged in favour of Gangappa. On the contrary, PW1 has



specifically denied the suggestion that Sy.No.61/4 or any portion thereof was mortgaged by Lakshmana Reddy in favour of Gangappa. Though the learned counsel for the defendant has put suggestions to the effect that the properties gifted by the plaintiff's grandfather were subsequently mortgaged by Lakshmana Reddy, no documentary evidence, such as a gift deed or any supporting record, has been produced before the Court to substantiate the same. It is well settled that mere suggestions made in cross-examination, in the absence of supporting documentary evidence, do not constitute proof.

32. During the course of cross-examination, DW1 has made certain admissions. He has admitted that there is no mention of Sy.No.61/4 in Ex.D40. He has further admitted that neither the plaintiff nor any of his family members are parties to Ex.D40. He has also deposed that, since 1980, the revenue records stand in the name of the plaintiff and his grandfather; however, he has attempted to explain the same by stating that incorrect entries were made in the said records. A suggestion was put to him with regard to the inclusion of Sy.No.61/4 in



Ex.D24; however, he has admitted that there is no specific mention of Sy.No.61/4 therein and has only stated that it may be included within the schedule. Further, he has admitted that in Ex.D27, the sale deed executed by Anjinappa in favour of Krishna Reddy, the western boundary is described as his land. However, he has volunteered that the said land pertains to Sy.No.63/4. He has further volunteered that Sy.No.63/5 and Sy.No.61/4 are intermingled with each other. Though he has stated that he has produced documents in respect of Sy.No.61/4, the same does not satisfactorily establish his title over the said survey number, particularly in light of the absence of specific recitals in the primary title deed, Ex.D40.

33. Learned counsel for the plaintiff has also cross-examined DW2. In his evidence, DW2 has deposed that, when questioned as to the basis on which Sy.No.61 belongs to the defendant, he stated that he had merely learnt that the property belongs to the defendant. Though he has stated that he has seen the sale deed of the year 1966, he has admitted that he



does not know whether the relevant survey number is mentioned in the said document.

34. Further, DW3 has been cross-examined, wherein he has deposed that he does not know the survey number of the property. He has also stated that he is unaware of the boundaries and has admitted that he does not know the survey number or boundaries of the defendant's property.

35. Similarly, DW4, in his cross-examination, has deposed that there exists a civil dispute between him and the plaintiff's brother. He has further admitted that he does not know how many podis exist in Sy.No.61 and is also unaware as to whether Sy.No.61 was divided into four podis.

36. The defendant has relied upon Ex.D12, the certified copy of the sale deed dated 15.12.1965 executed by Ramappa and Chinnappa's wife Sanjeevamma in favour of Nanjareddy in respect of re-survey No.97/2 measuring 17 guntas, with boundaries described as: East – Your land; West-Dodda Pappanna's land; South – K.B.Hanumanthareddy's land ; and North – Gangaiah's land and sy.no.54/3 measuring 22 guntas



and sy.no.54/2 measuring 18 guntas of land. Upon perusal of this document, it is seen that the property purchased by Nanjareddy from Ramappa and Chinnappa's wife Sanjeevamma pertains to Sy.No.97/2, 54/2 and 54/3 and not to Sy.No.61/4. This document would not help the defendant to prove this case, hence, no further discussion on this document is required.

37. Furthermore, the defendant has relied upon Ex.D13, the certified copy of the sale deed dated 15.10.1953 executed by Nanjamma in favour of K.B. Hanumanthareddy and his sons in respect of re-survey No.63/2 measuring 1 acre 6 guntas, with boundaries described as: East – Peer Sabi's land; West – your land and my land; North – Venkataravanappa's land; and South – my land. Upon perusal of this document, it is evident that the property purchased by K.B. Hanumanthareddy pertains to Sy.No.63/2 and not to Sy.No.61/4. Hence, no further discussion on this document is required.

38. In addition to above, defendant also relied upon certified copy of sale deed dated 09.04.1964 which was marked as Ex.D18 executed by Ramappa and Lakshmana Reddy in



favour of Chinnappa S/o.Gangappa with respect to sy.no.18/5 measuring 31 guntas, sy.no.95/2 measuring 10 guntas. Upon perusal of these documents, it does not pertain to sy.no.61/4 and hence no further discussion required on this document.

39. During the course of cross-examination of PW1, the learned counsel for the defendant confronted certain documents to the plaintiff, which he admitted. Ex.D2, the Record of Rights, reflects the name of the plaintiff's father in respect of Sy.No.61/4 measuring 0.36 guntas through IHR. Ex.D3 is the certified copy of the Mutation Register pertaining to the year 1983–1984, wherein Sy.No.61/4 stands in the name of the plaintiff. Upon perusal of Ex.D14, the sketch relating to Sy.No.61, it is observed that four podis are indicated, and there is a recital referring to the preliminary re-survey in the name of Chinnappa S/o Dodda Hanumantharayappa.

40. The evidence on record, particularly the admissions elicited during the cross-examination of PW1, assumes significance. The plaintiff has admitted Ex.D2, the Record of Rights, which reflects the name of his father in respect of



Sy.No.61/4 measuring 0.36 guntas through IHR. Further, Ex.D5, the certified copy of the Mutation Register for the year 1983–1984, discloses that Sy.No.61/4 stands in the name of the plaintiff. These entries, being revenue records, carry presumptive value with regard to possession and enjoyment of the property. Moreover, Ex.D14, the sketch pertaining to Sy.No.61, indicates the existence of four podis, and makes reference to the preliminary re-survey in the name of Chinnappa S/o Dodda Hanumantharayappa. This shows corroboration to the fact of entries in the revenue records.

41. The plaintiff has produced Ex.P14, the certified copy of the sale deed dated 04.04.1927. This document, having come into existence at a time when there was no dispute, carries considerable evidentiary value. It discloses that Siddamma and her sons conveyed larger extents of land in favour of Chinnappa S/o Dodda Hanumantharayappa, including Sy.No.63 measuring 4 acres 10 guntas and re-survey No.61 measuring 3 acres 37 guntas and re-survey no.60 measuring 3 acres 5 guntas. Thus, Ex.P14 forms the root of title insofar as Chinnappa is



concerned. However, a careful reading of Ex.P14 reveals that the vendors therein possessed only an undivided 1/3rd share in the properties conveyed. Therefore, the conveyance under Ex.P14 does not pertain to the entire extent of the lands, but only to the extent of the vendors' undivided 1/3rd share.

Calculation of 1/3rd Share:

- Sy.No.61: 3 acres 37 guntas = 157 guntas $\rightarrow$ 1/3rd = $52\frac{1}{3}$ guntas
- Re-survey No.60: 3 acres 5 guntas = 125 guntas $\rightarrow$ 1/3rd = $41\frac{2}{3}$ guntas
- Re-survey No.54: 1 acre 20 guntas = 60 guntas $\rightarrow$ 1/3rd = 20 guntas

Total: $52\frac{1}{3} + 41\frac{2}{3} + 20 = 114$ guntas = 2 acres 34 guntas

42. Thus, though Ex.P14 recites larger extents of lands, the vendors having only an undivided 1/3rd share could convey only to that limited extent. Accordingly, the effective extent conveyed in favour of Chinnappa would be 2 acres 34 guntas in aggregate, and not the entire extent mentioned in the document. This aspect assumes significance while determining the actual title and extent of ownership flowing from Ex.P14. In



support of this, the plaintiff has relied upon Ex.P5 to Ex.P9, RTC extracts for the years 1980 to 2002, which stand in the name of his grandfather and thereafter in his name. The same is further corroborated by Ex.P3, the Patta Book for the year 1992–1993, and Ex.P4, the tax paid receipt, all relating to Sy.No.61/4. Significantly, these revenue entries also find support from the defendant's own documents. During the course of cross-examination, PW1 has admitted Ex.D5, the Mutation Register pertaining to the year 1983–1984, and Ex.D2, the Record of Rights, both of which stand in the name of the plaintiff in respect of Sy.No.61/4. This lends further corroboration to the plaintiff's claim of possession over the suit property and also demonstrates the continuous flow of title from the date of purchase up to the date of filing of the suit. Upon perusal of the documents produced by the defendant, it is evident that he has not challenged the revenue records standing in the name of the plaintiff. Hence, such entries have attained finality and carry presumptive value in favour of the plaintiff.



43. With the above observations, upon careful consideration of the oral and documentary evidence placed on record, it is evident that the plaintiff has relied upon certified copy of the sale deed dated 04.04.1927, revenue records such as RTC extracts, mutation entries, and tax paid receipts, which consistently stand in his name and that of his predecessor-in-title. The said documents, coupled with the evidence of PW1 to PW3, establish not only the continuity of entries but also the possession of the plaintiff over the suit schedule property. The evidence of PW2 and PW3 further corroborates the plaintiff's case, particularly with regard to the existence of mango trees and long-standing possession and the plaintiff has discharged his burden to show that the property is ancestral property and he is continue possession over the same. .

44. The learned counsel for the defendant contended that the plaintiff has failed to produce any document to establish that he is the son of Ramappa and the grandson of Chinnappa, and consequently, that he has acquired the suit schedule property. However, a perusal of the plaint, affidavit,



and documents produced by the plaintiff, particularly Exs.P3 to P10, Ex.P14, and Ex.D5 recitals contain that plaintiff is the son of Ramappa and Grandson of Chinnappa. Further, during cross-examination, the plaintiff has clearly admitted that his father's name is Ramappa and his grandfather's name is Chinnappa. To rebut this, the defendant has not produced any oral or documentary evidence. Mere denial or taking a plea, without adducing cogent evidence, is insufficient to substantiate the defence put forth by the defendant.

45. On the other hand, the defendant has sought to establish his title through Ex.D3 (mortgage deed) and Ex.D40 (sale deed dated 25.08.1966). A careful scrutiny of Ex.D3 reveals that it is only a mortgage with possession, and there is no material placed on record to show that the said mortgage was either redeemed or foreclosed in accordance with law. In the absence of such proof, the subsequent transfer of the mortgaged property by the mortgagee casts serious doubt on the validity of the title claimed by the defendant. The defendant further contended, by placing reliance on Ex.D40, that along



with Sy.No.63/5, Sy.No.61/4 is also included, and sought to draw support from the boundaries mentioned therein. However, on a close perusal of Ex.D40, there is no specific recital indicating that Sy.No.61/4 forms part of the property conveyed.

46. It is further contended that in the registered sale deed dated 16.12.1986 marked as Ex.D25, the western boundary is described as the defendant's land, and on that basis, the defendant alleged his ownership over Sy.No.61/4. However, on a careful perusal of Ex.D25, it is evident that the property has been conveyed by Nanjareddy to Chikkappaiah, and the mere recital of the western boundary as the defendant's land cannot, by itself, lead to the conclusion that the said property pertains to Sy.No.61/4. Further, during the course of cross-examination, the defendant has not made any effort to elicit that the property described in Ex.D25 corresponds to Sy.No.61/4. No independent witness has also been examined to substantiate the said contention. In the absence of such cogent evidence, the reliance placed on Ex.D25 does not help the case of the defendant.



47. The defendants have produced other sale deeds and marked as exhibits have also been examined, but none of them disclose any specific reference either to the boundaries of the defendant's property or to Sy.No.61/4, as alleged. It is also pertinent to note that Ex.D40, which is the principal document relied upon by the defendant, refers to properties in Sy.No.63/5 and Sy.No.95/2 measuring 1 acre 16 guntas, and does not contain any mention of Sy.No.61/4. Moreover, the alienation under Ex.D40 appears to have been made in respect of property which was the subject matter of the mortgage under Ex.D3. In the absence of evidence showing redemption or foreclosure of the said mortgage, such alienation cannot be accepted as valid in law. Further, during the course of cross-examination, the defendant has not elicited anything how title over the property devolved upon Lakshmana Reddy, nor has he established whether the mortgage executed under Ex.D3 was ever redeemed or foreclosed by Chinnappa S/o Gangappa. In the absence of such cogent oral or documentary evidence, the claim of the defendant over Sy.No.61/4 remains unsubstantiated.



48. Furthermore, the admissions elicited in the cross-examination of DW1 clearly weaken the defendant's case, particularly his admission regarding the absence of reference to Sy.No.61/4 in Ex.D40 and the existence of revenue records in the name of the plaintiff. The evidence of DW2 to DW4 is also of little assistance to the defendant, as their testimony is hearsay in nature and they have expressed ignorance regarding crucial aspects such as survey numbers, boundaries, and extent of the property. Their evidence does not inspire confidence nor does it substantiate the defendant's claim of title. It is a settled principle of law that the burden of proving title lies upon the party who asserts it. In the present case, the defendant has failed to discharge the said burden by producing cogent and convincing evidence. Mere suggestions in cross-examination, in the absence of supporting documentary evidence, do not constitute proof. In view of the aforesaid oral and documentary evidence, this Court holds that the preponderance of probabilities clearly lies in favour of the plaintiff, both in respect



of title and possession over the suit schedule property bearing Sy.No.61/4.

49. Another important aspect is that the defendant has taken up the plea that he has perfected his title by way of adverse possession. It is pertinent to note here that the person who has taken defence for adverse possession then heavy burden lies on the person who takes such shelter of adverse possession. Mere taking defence cannot be consider without supporting the oral and documentary evidence. A person who seeks the relief of adverse possession. A person who seeks the relief of adverse possession have to come to the court with clean hands as to stands on his own strength and should not depend upon the weakness in the case or the defence put forth by opposite party. The first and foremost requirement of the person who seeks reliefs should be in possession of the property of enjoying the right which must be legal one and not illegal. The defendants have must be placed specific pleadings and evidence to prove the same. On perusal of the evidence of DW1,



he has stated in his cross examination, the relevant portion is extracted hereunder:

"ಪ್ರಶ್ನೆ : ನೀವು ದಾವಾ ಸ್ವತ್ತಿನ ಕುರಿತು ವಾದಿಯವರ ಕುಟುಂಬದವರು ಬರೆದುಕೊಟ್ಟ ಪತ್ರಗಳು ಮೂಲಕವಾಗಲಿ ಅಥವಾ ಪ್ರತಿಕೂಲ ಸ್ವಾಧೀನದ ಮುಖಾಂತರವಾಗಲಿ ಹಕ್ಕನ್ನು ಕೇಳುತ್ತಿದ್ದೀರಾ?

ಉತ್ತರ : ವಾದಿಯ ಮೇಲೆ ನನ್ನ ದಾಖಲೆಗಳ ಮುಖಾಂತರ ನಾನು ನನ್ನ ಹಕ್ಕನ್ನು ಕೇಳುತ್ತಿದ್ದೇನೆ ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ. ಸಾಕ್ಷಿಯು ಮುಂದುವರಿದು, ಆದರೆ ಬೇರೆಯವರ ಮೇಲೆ ಪ್ರತಿಕೂಲ ಸ್ವಾಧೀನದ ಮೂಲಕ ಕೇಳುತ್ತಿದ್ದೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.

ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು 61:4 ಉಡಾಪ್ಪೆ ಹಿಸ್ಸೆ ಆಗಿರುತ್ತದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿಡಿ.6 ಮತ್ತು 14 ರಲ್ಲಿ ನಿಮ್ಮ ಅಥವಾ ನಿಮ್ಮ ವಂಶಸ್ಥರು ಇದೆಯಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಸದರಿ ದಾಖಲೆಯಲ್ಲಿ ಇಲ್ಲದೇ ಇದ್ದರೂ ಸಹಾ ನಾನು ಖರೀದಿಸಿದ ದಾಖಲೆಗಳನ್ವಯ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಿಸಿ ದಾಖಲೆಗಳು ಆಗಿರುತ್ತವೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನ್ನ ಸ್ವತ್ತಿನ ಕುರಿತು ಪ್ರತಿಕೂಲ ಸ್ವಾಧೀನವನ್ನು ನಾನು ವಾದಿಯ ವಿರುದ್ಧ ಕೇಳಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾನು ಸಾಕ್ಷಾಧಾರದ ಆಧಾರದ ಮೇರೆಗೆ ನಾನು ಸ್ವಾಧೀನವನ್ನು ಕೇಳಿರುತ್ತೇನೆ. ಆದರೆ ಬೇರೆಯವರ ಮೇಲೆ ಸ್ವಾಧೀನವನ್ನು ಕೇಳಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಈ ದಾವೆಯಲ್ಲಿ ಯಾರ ವಿರುದ್ಧ ಪ್ರತಿಕೂಲ ಸ್ವಾಧೀನವನ್ನು ಕೇಳಿರುತ್ತೀರಿ? ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾನು ವಾದಿ ಅಲ್ಲದೆ ಎಲ್ಲರ ವಿರುದ್ಧ ಹಕ್ಕಿನ ಘೋಷಣೆಗಾಗಿ ಕೇಳಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ದಾವಾ ಸ್ವತ್ತಿನ ಬಗ್ಗೆ ವಾದಿಯು ಮಾಲೀಕತ್ವವನ್ನು ಒಪ್ಪುತ್ತಿರೋ ಇಲ್ಲವೋ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಪ್ರಶ್ನೆಯೇ ಉದ್ಭವಾಗುವುದಿಲ್ಲ, ಅವರು ತೃತೀಯ ವ್ಯಕ್ತಿಯಾಗಿರುತ್ತಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ".



50. On a reading of the above evidence, it is clear that a person who sets up a plea of adverse possession must necessarily admit the true ownership of the plaintiff and establish that he has been in continuous, uninterrupted possession of the property for a period of 12 years, to the knowledge of the true owner, as stated supra. However, on a careful appreciation of the evidence of DW1 and the documentary evidence on record, it is evident that the defendant has nowhere admitted the ownership of the plaintiff over the suit schedule property. Further, he has not stated that he has been in continuous possession for a period of 12 years to the knowledge of the plaintiff. Therefore, it is clear that the defendant lacks proper pleadings, much less cogent evidence, to substantiate the plea of adverse possession.

51. Therefore from the evidence and documents produced by the plaintiff it can be gathered that the plaintiff from the date of 04.04.1927 till today he is in possession over the suit schedule property and he proved his title over the suit schedule property. On the contrary the defendants have not



proved the contents of adverse possession. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. Therefore in light of above said discussion the defendants here not prove the adverse possession without any interruption. **Hence, this court answers Issue No.1 in the Affirmative and Issue No.3 in the Negative and Additional Issue No.1 in the Negative in OS No.78/2003 and Issue No.1 in the Negative and Issue No.3 in the Affirmative in OS No.59/2009.**

52. **ISSUE No.2 in OS No.78/2003 and Issue No.2 in OS No.59/2009** :- The plaintiff contends that there has been interference by the defendant with his possession of the suit schedule property. In order to substantiate this, during the course of cross-examination, PW1 has stated that he had fenced the suit property by engaging coolies. PW1 has further deposed on oath that the defendant is interfering with his peaceful possession and enjoyment of the suit schedule property. Learned counsel for the defendant has also cross-examined PW2. In his evidence, PW2 has deposed that he has verified the



RTC extracts and mutation register and, based on the same, has stated that the suit schedule property stands in the name of the plaintiff. He has further deposed that the mutation entries are also standing in the name of the plaintiff. He has admitted that the suit schedule property is the ancestral property of the plaintiff. Further, PW3 has also been cross-examined, wherein he has deposed that he has been seeing the mango trees standing on the suit schedule property for the past 20 years, thereby lending support to the plaintiff's case regarding possession. On the other hand, the defendant has filed a written statement and has seriously contested the suit by denying the alleged interference and contending that they are in possession of the property, claiming an extent of 1 acre 19 guntas and he dug borewell. However, the defendant has failed to produce any cogent documentary evidence to substantiate his claim of ownership or possession over the said property. The material on record clearly reveals that the plaintiff has established his possession over the suit schedule property through certified copy of the sale deed, RTC extracts and other revenue records.



Further, in his cross-examination, the plaintiff has stated that he had lodged a police complaint when the defendant interfered with his possession, which supports his version of interference and moreover defendant only admits that he dug borewell in the year 1992, this itself shows the alleged interference without possession. In view of the above facts and circumstances, this Court is of the considered opinion that the plaintiff has successfully proved both his possession over the suit schedule property and the interference caused by the defendant. **With these observations, Issue No.2 in OS No.78/2003 in the Affirmative and Issue No.2 in OS No.59/2009 in the Negative.**

53. **Issue No.4 in OS No.78/2003 and Issue No.4 and 5 in OS No.59/2009** :- The plaintiff has established his ownership over the suit schedule property and also interference of the defendants. Therefore, the plaintiff is entitled for the relief of declaration and equitable relief of permanent injunction, as sought for. **With these observations, this Court**



answers Issue No.4 in OS No.78/2003 in the Affirmative and Issue No.4 and 5 in OS No.59/2009 in the Negative.

54. **Issue No.5 in OS No.78/2003 and Issue No.6 in OS No.59/2009** :- In view of the findings on above issues, this Court proceed to pass the following:

ORDER

The Suit of the plaintiff in OS No.78/2003 is hereby decreed with costs.

The Suit of the plaintiff in OS No.59/2009 is hereby dismissed with costs.

The plaintiff in OS No.78/2003 is hereby declared as the absolute owner in respect of suit schedule property bearing Sy.No.61/4 measuring 0.36 Guntas.

It is further ordered that defendant or anybody claiming through them are hereby restrained from interfering with the peaceful possession of the plaintiff's suit schedule property.

Keep the original judgment in OS No.78/2003 and copy of the same in OS No.59/2009.



Draw decree accordingly.

(Typed by me on my own computer, corrected and then signed by me on this day
i.e., 07th April, 2026)

Sd/-

(PUSHPA D.)
ADDL. CIVIL JUDGE & JMFC.,
GOWRIBIDANUR

ANNEXURE IN O.S. No.78/2003 C/W IN O.S. No.59/2009

List of witnesses examined on behalf of plaintiff:

P.W-1 : Sri. Hanumanthreddy
P.W-2 : Sri. K.A.Sriramareddy
P.W-3 : Sri. Gangareddy

List of witnesses examined on behalf of defendant:

D.W-1 : Sri. K.H.Somashekara Reddy
D.W-2 : Sri. Appireddy
D.W-3 : Sri. Anjinappa
D.W-4 : Sri. Gangareddy

List of documents exhibited on behalf of plaintiff:

Exs.P1 & 2 : Certified copies of RTCs
Ex.P3 : Patta Book
Ex.P4 : Tax paid receipt
Exs.P5 to 9 : Certified copies of RTCs
Ex.P10 : Revenue receipt
Ex.P11 : Registered copy of the sale deed dated
10.05.2002



- Ex.P12 : Encumbrance Certificate
- Ex.P13 : Registered copy of the ale deed dated 09.04.1964
- Ex.P14 : Registered copy of the sale deed dated 04.04.1927

List of documents exhibited on behalf of defendant:

- Ex.D1 : Rough Sketch
- Ex.D2 : Record of Rights
- Ex.D3 : Certified copy of Registered Mortgage deed dated 10.10.1949
- Ex.D4 : Encumbrance Certificate
- Ex.D5 : Mutation register
- Ex.D6 : Hissa Tippani
- Ex.D7 to D10 : Sketch
- Ex.D11 : Certified copy of registered sale deed dated 05.07.1985.
- Ex.D12 : Certified copy of registered sale deed dated 15.12.1965.
- Ex.D13 : Certified copy of registered sale deed dated 15.10.1953.
- Ex.D14 & 15 : Hissa Tippani
- Exs.D16 & 17 : RTCs
- Ex.D18 : Certified copy of registered sale deed dated 09.04.1964.
- Ex.D19 : Index of land of Sy. No.63/5
- Ex.D20 : Record of Rights of Sy. No.61/4



Exs.D21 to 23 : RTCs

Ex.D24 : Certified copy of Mortgage deed dated 10.10.1949.

Ex.D25 : Certified copy of registered sale deed dated 16.12.1986.

Ex.D26 : Complaint copy dated 17.02.2009

Ex.D27 : Certified copy of registered sale deed dated 10.05.2002.

Ex.D28 : Certified copy of registered Mortgage deed dated 13.07.2006.

Exs.D29 to 33 : Affidavits of Witnesses in OS No.73/2003.

Ex.D34 : Certified copy of the order in OS No.78/2003.

Ex.D35 : Certified copy of registered sale deed dated 25.08.1966.

Ex.D36 & 37 : Rough Sketch

Ex.D38 : Copy of Mutation

Ex.D39 : RTC

Ex.D40 : Registered sale deed dated 25.08.1966.

Ex.D41 : Index of land

Ex.D42 : Index of land

Ex.D43 : Record of Rights

Ex.D44 to 51 : Rough Sketch

Ex.D52 : Online Photograph

Sd/-

(PUSHPA D.)
ADDL. CIVIL JUDGE & JMFC.,
GOWRIBIDANUR