



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C. N.R.PURA**

Present: Sri. Raghunatha Gowda K.T., B.Com., L.L.B,
Senior Civil Judge & J.M.F.C. N.R.Pura

Dated this the 20th day of July, 2026

REGULAR APPEAL No.8/2026

Appellant/s: Sri. S.A. Khasim Khan,
S/o. Late. Sri. S.K. Ahammed Khan,
Aged about 63 years,
R/o. Behind T.B. Road, Ward No.2,
N.R. Pura Town and Post,
N.R. Pura Taluk.

(By: Sri. G.M.V., Advocate)

V/s

Respondent/s: Sri. S. Fayaz,
S/o. Late. Abdul Sattar Sab,
Aged about 45 years,
R/o. Hebbe Road, Ward No.3,
N.R.Pura Town and Post,
N.R. Pura Taluk.

(Respondent Represented by Sri. H.A.S., Advocate)

Date of Institution of : 27.03.2026
the appeal

Appeal against : Appeal against the Judgment
and decree passed by Civil
Judge and J.M.F.C., N.R.Pura



in O.S. No.17/2021.dated
28.01.2026

Date of Judgment : 20.07.2026

Duration of the Appeal : Year/s Month/s Day/s
00 03 23

(Raghunatha Gowda K.T.)
Senior Civil Judge and J.M.F.C,
N.R.Pura.

J U D G M E N T

This appeal filed by the Appellant / plaintiff under Order XLI Rule 1 R/w. Section 151 of C.P.C. challenging the judgment and decree passed in O.S. No.17/2021, dated 28.01.2026, on the file of learned Civil Judge and J.M.F.C. at N.R.Pura.

2. The parties are referred as per the trial court ranking for the sake of convenience. Appellant is the plaintiff and respondent is the defendant before the trial court.

3. The plaintiff filed the suit against the defendant for a relief of declaration of ownership, eviction and Possession of the suit property.



4. Brief facts of the plaintiff case before the trial court as under:

a) It is the case of the plaintiff that plaintiff is absolute owner of 26 guntas of dry land in Sy. No.118/2 of Hiluvalli Village and he purchase the same under the registered sale deed dated 17.01.2020 from his previous owner. Further plaintiff contended that on the basis of the sale deed the katha was changed in his name accordingly he was in possession over the 'A' schedule property. Further he contended that except himself nobody is having any manner of right, title or interest over the suit property.

b) Further the plaintiff contended that on verification of the spot and while measuring the schedule property he came to notice that the defendant and some other persons have illegally constructed the building in the suit property. Further he contended that when he measured the suit property and came to notice that defendant has illegally constructed the building area to extent of 30 x 20 feet which is described of 'B' schedule property. Further he contended that in 'B' schedule property defendant created some forged document colluding with Town Panchayath, N.R.Pura.



c) Further plaintiff contended that he approached the defendant and asked to vacate the encroached portion of 'B' schedule property and handed over the same, but the defendant has refused. Further he contended that on 11.02.2020 he issued a legal notice to the defendant, on receipt of the said notice defendant issued a reply notice he has falsely filed a suit against the plaintiff in O.S. No...../2020, which is pending before the Court. Further he contended that he is absolute owner of 'A' and 'B' schedule property, the 'B' schedule property is actually belongs to himself, but the defendant unauthorized possession of the 'B' schedule property, so that reason he filed the suit for relief of declaration of ownership, eviction from the defendant in the 'B' schedule property and handed over the possession. Hence he constrain to file the suit.

5. In response to the summons, defendant appear through his counsel and filed written statement.

6. The contents of written statement filed by the of defendant before the trial court as under:

a). In the written statement defendant has denied the entire contents of plaint averments. Further he specifically



contended that originally the Sy. No.118 of Hiluvalli Village to extent of 1 acre 26 guntas was Inam Land of Tudipete, Hanumantha Devaru, Vahivatudar of Sri. Gunda Jois, in the year 1950 the father of the defendant by name Abdul Sathar Sab @ Abdul Rajak Sab was in an unauthorized possession and enjoyment of 4 guntas of land and constructed a thatched house measuring 30 x 85 feet in the said property. Further he contended that the said property belongs to Tudipete Hanumantha Devaru and started to resided therein, knowing the above said fact to the vahivatudar of Tudipete Hanumantha Devaru came to the spot and asked the defendant's father to vacate the said property.

b) Further defendant contended that thereafter since there was no any shelter to his father by name Abdul Sathar Sab @ Abdul Rajak Sab to refuse to vacate the same, so that reason the said vahivatudar of Temple was advised to the father of the defendant to continue the possession of the said property and keep cleanness. Further he contended that the temple vahivatudars were frequently visiting the suit schedule property and they well aware of the fact that the father of the defendant and some



other persons, who are also illegally constructed the house and residing their itself. Further defendant pleaded that the Town Panchayath, N.R.Pura after confirming the illegal possession of the property by the said Abdul Sathar Sab @ Abdul Rajak Sab has entered the katha of the schedule property to his name in assessment register Sl. No.52, Door No.30 and 32, in assessment register No.254 in the year 1962-63.

c) Further defendant pleaded that his father was in continuous possession and enjoyment of the said property up to his death, after his death the khata has been mutated in the name of his wife Smt, Bee Bee Jan, after death of his mother his and his brothers name jointly and was in continuous possession and enjoyment of the said property without anybody interruption and he is residing in the said property along with his family members. Further he contended that since from 1950 his father, thereafter himself was in peaceful possession and enjoyment of the said property the plaintiff has intentionally given the false description of 'B' schedule property and there is no existence of 'A' schedule property as stated by the plaintiff.



d) Further the defendant contended that One Sri. Chennappa was the tenant of the above said Tudipete Hanuantha Devaru Temple and he was cultivating the some portion of land in Sy. No.118 of Hiluvalli Village, after death of Sri. Chennappa, his son Sri. Fakeerappa had filed the application before the Land Tribunal, N.R. Pura praying for grant of the cultivated land by leaving the illegal construction made by the 40 members. Further the defendant pleaded that the Vahivatudar of said Temple also admitted the illegal construction and possession. Even though the Land Tribunal, N.R. Pura has granted the entire area of 1 acre 26 guntas of land in Sy. No.118 of Hiluvalli Village in favour of Fakeerappa, which is against the Land Reforms Act.

e) Further the defendant pleaded that the Land Tribunal order dated 23.04.1988 is void and ab-initio, he has challenge the order of the Land Tribunal before the Karnataka Appellate Tribunal in Appeal No.40/2021, which is pending for adjudication. Further he contended that One Krishnappa has filed a suit in O.S. No.37/2001 against the Nagappa and others, in the said suit he has falsely claimed for the relief of partition including 1 acre 26 guntas in Sy.



No.118 of Hiluvalli Village by misrepresenting and suppressing the real fact that even though there was an order passed by the Land Tribunal, N.R.Pura, they are not in actual possession of the entire extent, but the said suit was ended into compromise, in the said compromise petition the defendant No.2 in the said suit is one Manju, S/o. Kadappa was got 26 guntas as per compromise decree. Further he contended that the compromise decree passed by this Court in O.S. No.37/2001 is not in accordance with law and the said fact came to notice that after attending this suit only.

f) Further the defendant pleaded that the compromise decree itself is void and against to law, the said Manju has no manner of right over the said 26 guntas of land. Hence the sale deed executed by Manju in favour of plaintiff in this suit is void and against to law. Apart from that prior to sale the seller himself was not in possession and enjoyment of the alleged sold property. Hence the question of handing over the possession of the sold property does not arise. Hence the alleged sale deed also itself is not valid and against to the law.



g) Further defendant pleaded that in the year 2015 the seller by name Manju and others alleged to be stated that they have joint owners and given application before the Tahsildar, N.R.Pura for the eviction of persons, who are in an unauthorized construction and possession of land in Sy. No.118 of Hiluvalli Village. Further he contended that on the basis of the said application as per order of the Tahsildar, N.R.Pura in CR. No.46/2015-16 the Revenue Authorities along with the Surveyor have visited the spot and prepared the sketch and mahazar in which they have clearly stated the extent of Temple occupied and also the details of the persons including the defendant, who are in unauthorized construction and possession of the property and they have clearly shown that only 16 guntas of land out of total extent of 1 acre 26 guntas is vacant wet land available, the plaintiff suppressing the material fact and filed this suit with false claim. Hence he prays to dismiss the suit of the plaintiff with cost.

7. Based on the above pleadings the trial court framed following issues.

ISSUES

1. Whether the plaintiff proves that the



defendant has encroached the 'B' schedule property and constructed the building in the same?

2. Whether the plaintiff is entitled to possession of 'B' schedule property from the defendant?
3. Whether the suit is barred by law of limitation?
4. Whether the plaintiff is entitled to the relief as prayed for?
5. Whether the suit is not maintainable without seeking relief of declaration?
6. What order or decree?

ADDITIONAL ISSUES

1. Whether the plaintiff proves that he is the absolute owner of the 'A' schedule property by virtue of the registered sale deed dated 17.01.2020?

8. In order to prove the case, plaintiff examined himself as PW1 and got marked 10 documents as Ex. P1 to P10 and one witness examined as PW2 and close his side. Per contra the defendant examined himself as DW1 and 24 documents were marked as Ex. D1 to D24 and close his side. The Court Commissioners are examined as CW1 and CW2 and 9 documents were marked as Ex. C1 to C9.



9. After the trial court hearing arguments and answered the Issue No.1 to 4 and Addl. Issue No.1 in the negative and dismissed the suit of the plaintiff. Being aggrieved by the said judgment and decree, plaintiff / appellant preferred an appeal on the following grounds;

- 1) Impugned judgment and decree of the Lower Court is not sustainable either law or facts, hence liable to set aside.
- 2) Lower Court has not properly appreciated the pleadings evidence and documents of the parties that are placed on record and thereby arrived at wrong conclusion in the case.
- 3) Approach of Lower Court is deciding issues are against to the settled principles of law.
- 4) The Lower Court has failed to note admitted facts in the defendant evidence and with respect to the knowledge of the case to the defendant.
- 5) The Lower Court wrongly interrupted the evidence of the plaintiff and also to the defendant, hence come to the wrong conclusion and dismiss the suit.
- 6) The plaintiff is not pleaded after the purchase of the property the defendants have encroached the property of the plaintiff but clearly stated after the measurement of the property the plaintiff came to



the knowledge of the defendants are in possession of the suit schedule property and further defendants is also admitted after filing of the suit they came to the knowledge of that they are in the property of the temple, hence the court conclusion with respect to they are residing in the suit schedule property since in the long time and the plaintiff has not got the title is totally incorrect, hence judgment is to be set aside.

7) The appellant begs to submit that, this Court has no jurisdiction that land tribunal as committed error in the passing judgment, hence the lower court conclusion that the plaintiff is not proved the title is totally wrong and over ride on the judgment of the land tribunal, further the defendants are not the tenants of the temple, hence there is no question of granting the property of defendant in any way, hence judgment is to be set aside.

8) The court is not observed, there was no application of the defendants or grandfathers approached the land tribunal for the grant of the house. Further as per the Land Reforms Act only the agriculture labour that is tenants of the landlord can file the application for the confirmation of the house site and on the property, the court is wrongly come to the conclusion that, the appeal before the Karnataka appellant



authority is pending for the adjudication of the tenancy matter and the court is not verified there was no application is filed before the land tribunal and there is no documents as they are in the possession of the property and further in the evidence the defendant have stated that they have given an application before the Tahsildar under Akrama sakrama scheme as the property of the Government land and the same is rejected by the Tahsildar.

9) Further the court is not appreciated the any evidence of the plaintiff side and straight away taken one side contention and preponderance of possibility is not verified and the court is given the judgment like in a criminal case benefits of doubt goes to defendant. Hence dismiss the suit against law, and the court is not verified the equitable relief hence the judgment is to be set aside.

10) The court is not appreciated any person residing in the land without to his knowledge that property belongs to whom and also not in the knowledge of the owner, and it will not give any effect to the defendant possession except encroacher, this principles of law is clearly stated the possessory title over the property from the date of knowledge to the owner, hence the appreciation of the lower court is incorrect and is liable to dismiss.



Hence, on all these grounds he prays to allow the appeal and to set aside the impugned judgment and decree passed by the trial court and decree the suit of the plaintiff.

10. In response to notice, respondent appear through his counsel.

11. The trial court records have been secured.

12. Submission of Appellant counsel:

(1) Appellant counsel argued that the trial court without properly appreciating the evidence and the sale deed cannot be considered to dismiss the suit is against the law.

(2) Further he argued that the defendant and other persons are encroached the suit schedule property by constructing a house without any manner of right, title or interest over the suit property and the defendant has not sought adverse possession over the suit property.

(3) Further he argued that the plaintiff issued a legal notice as contemplated under Section 106 of Transfer of Property Act to the defendant to evict the suit schedule property by handed over the possession.



(4) Further he argued that the Civil Court has no jurisdiction to say that the Land Tribunal order is illegal or void and the Civil Court cannot be set aside the order passed by the Land Tribunal.

(5) Further he argued that the plaintiff has establish his title by producing the cogent document, but the Trial Court has not properly appreciated the fact and comes to wrong conclusion.

(6) Further he argued the defendant given application for grant of property under Akrama Sakrama same was rejected and the Commissioner report submitted by the Commissioner is one sided.

Hence he prays to allow the appeal to set aside the judgment and decree passed by the trial court and to decree the suit of plaintiff.

13. **Submission of Respondent counsel :**

(1) The respondent counsel argued that the plaintiff never pleaded in the plaint that when the plaintiff was dispossessed from the suit property. Further he argued that the plaintiff never filed objection to the commissioner report.



(2) Further he argued that the land bearing Sy. No.118/2 to extent of 1 acre 26 guntas belongs to Tudipete Hanumantha Devaru same was maintained by Gunda Jois as Vayivatudara.

(3) Further he argued that the Fakeerappa given application to the Land Tribunal and he has specifically stated that in Sy. No.118 the 40 houses are constructed, so that reason he exclude the house property to grant remaining property, but the Land Tribunal has granted 1 acre 26 guntas is ultra virus.

(4) Further he argued that the suit schedule property originally belongs to Inam Land and the Land Reforms Act came into force on 01.01.1973, before that since from 1962-63 the property standing in the name of defendant and the father of the plaintiff is also unauthorized possession over the said property.

(5) Further he argued that the vendor of the plaintiff has no absolute right to execute the sale deed in favour of plaintiff and the plaintiff failure to prove the flow of title over the suit schedule property.



(6) Further he argued that the trial court answer the issue No.3 in the Negative and the said findings given by the Trial Court is perverse, because since from 80 to 90 years the house properties are situated and in a recovery of possession the limitation is 12 years as per Article 65, but the Trial Court cannot consider the said aspect.

(7) Further he argued that in Ex. D18 in the Record of Rights it is clear mentioned the house properties is in existence and the Tahsildar has no power to evict the unauthorized occupant under karnataka Land Reforms Act.

(8) Further he argued that in the Commissioner Report and sketch as per Ex. C3 it is clearly mentioned that the properties mentioned in O.S. No.14/2021 and O.S. 19/2021 of the properties are not situated in Sy. No.118/2 of Hiluvalli Village.

(9) Further he argued that since from 1988 to 2015 no one claim the suit schedule property and thereafter the vendor of the plaintiff and his brother are colluded with each other enter into compromise and on the basis of the compromise decree the vendor of the plaintiff filed a



requisition to the Tahsildar to evict the unauthorized occupant / defendant in the suit property is against law.

Hence he prays to dismiss the appeal.

14. On careful perusal of the materials on record.

15. The following points arise for my consideration;

- 1) Whether the plaintiff proves that he is absolute owner of the suit schedule property?
- 2) Whether plaintiff further proves that the defendant has encroached 'B' schedule property and constructed the building?
- 3) Whether plaintiff further proves that he is entitle possession of the 'B' schedule property from the defendant?
- 4) Whether trial court has committed an error in dismissing the suit of the plaintiff?
- 5) Whether the Judgment and decree passed by the trial court is perverse, capricious and it requires interference by this Court?
- 6) What order?



16. My answer to the above points are as under:

Point No.1 to 5 : In the Negative.

Point No.6 : As per the final order
for the following:

REASONS

17. **Point No.1 to 5**: These points are taken up together for common discussion in order to avoid repetition of facts and these points are interlinked with each other.

18. The main contention of the plaintiff that he is absolute owner of the suit schedule property and he purchase the same through registered sale deed dated 17.01.2020, after purchase the property he got measured the property at that time he noticed that the defendant has encroached the suit property and constructed a building the said encroached portion shown as 'B' schedule property. Thereafter he issued a notice to the defendant to vacate and handed over the possession of the suit property, but the defendant failure to hand over the possession. In order to prove the same, plaintiff examined himself as PW1 and he has reiterate the contents of plaint averments in his examination in chief and 10 documents were marked as



Ex. P1 to P10. Ex. P1 is the certified copy of the sale deed dated 17.01.2020, Ex. P2 is the certified copy of the plaint in O.S. No.37/2001, Ex. P3 is the certified copy of the written statement in O.S. No.37/2001, Ex. P4 is the certified copy of the order sheet in O.S. No.37/2001, Ex. P5 is the certified copy of the compromise petition in O.S. No.37/2001, Ex. P6 is the certified copy of the decree in O.S. No.37/2001, Ex. P7 is the certified copy of the compromise petition in O.S. No.37/2001, Ex. P8 is the office copy of the legal notice dated 11.02.2020 and Ex. P9 is the postal acknowledgment and Ex. P10 is the certified copy of the order passed by the Assistant Commissioner dated 22.08.2024. In order to prove the case, plaintiff examined one witness as PW2. The learned counsel for defendant cross-examine the said witnesses.

19. Per contra the main defence of the defendant that since from 80 to 90 years he is residing in the said property by constructing a house, the plaintiff has no absolute right, title or interest over the suit property and the vendor of the plaintiff has no absolute right to execute the sale deed in respect of suit property. In order to prove the defence, defendant examined himself as DW1, he has



reiterate the contents of written statement in his evidence affidavit and 24 documents were marked as Ex. D1 to D24. Ex. D1 is the certified copy of the katha, Ex. D2 is the certified copy of the voter list, Ex. D3 is the certified copy of the order of the Land Tribunal, N.R.Pura dated 24.03.1988, Ex. D4 is the certified copy of the statement, Ex. D5 is the certified copy of the sketch, Ex. D6 is the certified copy of the order of the Tahsildar, N.R.Pura, Ex. D7 is the Record of Rights, Ex. D8 is the certified copy of the sale deed, Ex. D9 to D13 are the assessment register extracts, Ex. D14 is the tax paid receipt, Ex. D15 is the self assessment form, Ex. D16 is the certified copy of the photo, Ex. D17 is the requisition, Ex. D18 is the certified copy of the R.T.C. in Sy. No.118, Ex. D19 is the certified copy of the order passed by Deputy Commissioner dated 05.09.2017, Ex. D20 is the certified copy of the survey notice, Ex. D21 is the certified copy of the requisition / report of survey. Ex. D22 is the certified copy of the sketch in Sy. No.118, Ex. D23 is the certified copy of the mahazar and Ex. D24 is the certified copy of the order of the Assistant Commissioner. The learned counsel for plaintiff cross-examine the said witness.



20. Further the Court Commissioner examined as CW1 and CW2 and 9 documents were marked as Ex. C1 to C9. Ex. C1 is the notice and postal receipt, Ex. C2 is the mahazar, Ex. C3 is the sketch, Ex. C4 is the requisition, Ex. C5 is the reply to the memo of instruction filed by the plaintiff counsel, Ex. C6 is the reply to the memo of instruction filed by the defendant counsel, Ex. C7 is the mahazar, Ex. C8 is the sketch and Ex. C9 is the memo of instruction filed by the defendant counsel.

21. On careful perusal of the entire records there is no dispute that the land bearing Sy. No.118 of Hiluvalli Village One Sri. Chennappa was the tenant of the above said Tudipete Hanumanatha Devaru Temple and he was cultivating some portion of land in Sy. No.118 of Hiluvalli Village, after of death of Chennappa his son Fakeerappa had filed an application before the Land Tribunal, N.R.Pura praying for grant of the cultivated land by leaving the illegal constructions made by 40 members. Further it is admitted fact that the Vayivatudar of Tudipete Hanumanatha Devaru also admitted the illegal construction and possession. Further it is admitted fact that the Land Tribunal, N.R. Pura has granted entire 1 acre 26 guntas of



Hiluvalli Village in favour of Fakeerappa in Sy.No.118 vide order dated 23.04.1988 as per Ex. D3.

22. Further it is admitted fact that the present defendant and other defendants in other suits have challenged the order passed by the Land Tribunal, N.R.Pura before the Karnataka Appellate Tribunal, at Bengaluru in appeal No.40/2021 and same is pending for consideration. Further it is admitted fact that as per Ex. P1 on 17.01.2020 the plaintiff purchase the 'A' schedule property from his previous owners. Further it is admitted fact that as per Ex. P2 One Krishnappa, S/o. Late Medara Chennappa filed a suit against the previous vendor of plaintiff and other persons for relief of partition and separate possession, as per Ex. P5 the parties are entered into compromise and filed a compromise petition and as per Ex. P6 the compromise decree was drawn. Further in the said compromise decree the suit schedule property was fallen to the share of Manju, who is a previous owner of plaintiff.

23. Further it is admitted fact that before the order passed by the Land Tribunal, N.R.Pura in favour of Fakeerappa the 40 persons have constructed the house



residing in the same since from 1961-62 as per Ex. D1. Further during the course of cross-examination of PW1, he has also admitted that the Fakeerappa, who is also unauthorized construction over in Sy. No.118 of Hiluvalli Village. Further it is admitted fact the suit land was Inam Land, after the Karnataka Land Reforms Act is in force the suit property i.e., in Sy. No.118 to extent of 1 acre 26 guntas was granted by the Land Tribunal in favour of Fakeerappa.

24. Further on careful perusal of as per Ex. P8 plaintiff issued a legal notice to the defendant to vacate and handed over the possession of the suit property. Admittedly there is no dispute with regard to the plaintiff has complied under Section 106 of Transfer of Property Act for issuance of notice to seeking recovery of possession. Further on perusal of the entire cross-examination PW1, during the course of cross-examination he admitted that his brother was residing the house property belongs to defendant in O.S. No.21/2021 towards eastern side. Further PW-1 admitted that if the buyer to purchase the property he shall verify the documents then only he enter into sale transaction. Admittedly at the time of purchasing the



property the plaintiff did not verify the flow of title to the vendor, because as per Ex. D4 one Fakeerappa given a statement before the Land Tribunal same was extracted as under; “ನಾನು ಹಿಳುವಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.118 ರಲ್ಲಿ 1-26 ಗುಂಟೆ ಜಮೀನಿಗೆ ನಮೂನೆ-7 ರಲ್ಲಿ ಅರ್ಜಿ ಕೊಟ್ಟಿರುವುದು ಸರಿಯಷ್ಟೆ. ನಾನು ಸುಮಾರು ವರ್ಷಗಳಿಂದಲೂ ಸಾಗುವಳಿ ಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತೇನೆ, ಈ ಜಾಗದಲ್ಲಿ ಸುಮಾರು 40 ಮನೆಗಳನ್ನು ಕಟ್ಟಿಕೊಂಡು ಬೇರೆಯವರು ವಾಸವಾಗಿರುತ್ತಾರೆ, ಆದುದರಿಂದ ನನಗೆ ಅಳತೆ ಮಾಡಿ ಉಳಿದಿರುತ್ತಕ್ಕಂತಹ ಜಮೀನನ್ನು ನನ್ನ ಹೆಸರಿಗೆ ಅಧಿಭೋಗದ ಆದೇಶ ಮಾಡಿಸಿಕೊಡಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ”. As per the own statement of the original grantee stated before the Land Tribunal that the several persons are constructed the house to exclude the said house to grant the remaining property.

25. On perusal of Ex. D3 the order passed by the Land Tribunal dated 24.03.1988 at para No.3 it clearly mentioned that one Sri. Gunda Jois, who is the Vayivatudara of Anjaneyaswamy Temple, given his statement that since from many years the 40 houses were illegally constructed same was given by One Babanna. Further in the order at para No.2 the Land Tribunal observe the statement given by the Fakeerappa, but the Land Tribunal has granted for occupancy right to the Fakeerappa to extent of 1 acre 26 guntas in Sy. No.118 of



Hiluvalli Village without excluding the house properties situated in the property.

26. Further in a general a Land Tribunal cannot grant more land than an applicant originally requested and the order passed by the Land Tribunal is beyond jurisdiction or ultra virus because the grantee itself seeking lessor extent to exclude the houses, but the Land Tribunal did not consider the statement of the grantee passed the order is ultra virus by prima facie itself. However the Civil Court has no jurisdiction to decide the validity of the order passed by the Land Tribunal and the appeal lies before the Karnataka Appellate Tribunal. In the present case the defendant and other persons are challenging the order passed by the Land Tribunal before the Karnataka Appellate Tribunal at Bengaluru at Appeal No.40/2021 and subject to the outcome of the result of the appeal the plaintiff succeeded the title over the property or not.

27. Further on perusal of the entire cross-examination of PW1, he has not deny the suggestion that the Fakeerappa was not in possession to entire extent of 1 acre 26 guntas in Hiluvalli Village. Further during the course of cross-examination he admitted the statement



given by the Fakeerappa before the Land Tribunal and said document confronted to PW-1 same was marked as Ex. D4. Further the contention of the plaintiff counsel that as per order of the Land Tribunal the Tahsildar N.R.Pura removal of unauthorized occupant of the suit property and take back possession. On perusal of the entire records since from 1988 to till today the plaintiff has not produce any document to show that for removal of unauthorized occupant or to evict the unauthorized construction and to take possession of the property.

28. Further as per Ex. D17 the Fakeerappa and the vendor of the plaintiff filed a requisition to the Tahsildar, N.R.Pura, on perusal of the recital of the said requisition they are stated that to extent of 1 acre 26 guntas was granted by way of occupancy right in favour of Fakeerappa, in the said property there are illegal construction of house and the said persons are not vacate the property, so that reason they filed requisition for handed over possession of the property. On perusal of Ex. D17 on 24.11.2015 the vendor of the plaintiff filed a requisition to the Tahsildar but till today no documents to show that for removal of unauthorized occupant in the suit property. Further as per



Ex. D18 the Record of Rights in Sy. No.118 in the year 1986-87 and column No.13 it is clearly mentioned that the house properties are situated and in the said document the owner name mentioned as Tudipete Hanumantha Devaru.

29. Further as per Ex. D23 the statement given to the Government in the said statement also in Sy. No.118 of Hiluvalli Village the existence of house property and as per Ex. D22 the surveyor prepare the sketch to shown that who are in possession and enjoyment of house properties and vacant site in Sy. No.118. The above said documents clearly establish that before granting the property in Sy. No.118 to extent of 1 acre 26 guntas in favour of original grantee by name Fakeerappa the 40 peoples are constructed the house property and since from 1950 to till today they are in possession and constructed the house in the said property.

30. Further on perusal of entire cross-examination of PW1, during the course of cross-examination he admitted that as per sale deed he has not taken possession of the property, further the witness voluntarily deposed before the court that to file this suit. On perusal of entire plaint averments the plaintiff pleaded in para No.2 that after



purchase the suit property he is put in possession of the property, thereafter while he was measure the property at that time he came to notice that the defendant is illegally constructed a building property belongs to himself. But on appreciation of entire evidence of PW1, it clearly discloses that on the basis of the sale deed plaintiff has not taken possession of the property from his vendor. Further PW1 admitted that since from 1961-62 his father, defendant and their ancestors names were mentioned in the assessment register.

31. On perusal of entire materials available on record it is made clear that the defendant and other persons were in possession and enjoyment of the same by constructing a building the said fact well within the knowledge of the plaintiff but plaintiff has purchase the suit property without taken possession of the same this fact clearly establish the evidence of PW1. Further as already stated in the forgoing paragraphs of this judgment that the suit property i.e., Sy. No.118 of Hiluvalli village is Inam Land, the original grantee by name Fakeerappa had filed an application to exclude the house properties situated in the said land to grant the occupancy right to remaining



property only, but the Land Tribunal has granted 1 acre 26 guntas to the Fakeerappa, but the Tahsildar has not vacate the unauthorized occupant in the said property to handed over possession in favour of original grantee and till today the possession with the hands of defendant and other persons.

32. Further plaintiff examined his previous vendor as PW2. On careful perusal of the cross-examination he deposed that at the time of selling the suit property he was growing paddy crops on 17.01.2020, but the evidence of PW1 discloses that defendant and his ancestors are constructed a building and residing the same in the said property. Further PW2 admitted in his cross-examination that at the time of selling the 26 guntas of the property in favour of plaintiff the defendant and other persons were constructed a house this fact well within the knowledge to the plaintiff and the seller but plaintiff purchase the same.

33. Further appreciation of the evidence of PW2, he deposed that originally 26 guntas of land belongs to Tudipetere Hanumantha Devaru and he do not know what are the transaction took place between his grand-father Chennappa. Further he admitted that before the selling the



property to the plaintiff, he has not conduct the survey. Further he do not know that when the defendant and other persons were constructed a house in the suit property. Further when the vendor was not identified the property and boundaries he has sold the property in favour of plaintiff.

34. On perusal of the cross-examination of DW1, the learned counsel for plaintiff suggested that in Ex. D1 the house property belongs to Abdul Sattar Sab is situated in the Government land. Further the contention of the learned counsel for plaintiff that defendant has not sought adverse possession over the suit property. Admittedly the defendant has not sought any relief of adverse possession against the plaintiff and the entire evidence of DW1, it clearly establish that on the basis of the assurance of Gunda Jois the defendant and other persons were constructed a house and their possession is only a permissive possession.

35. Further on careful perusal of the entire cross-examination of DW1, the learned counsel for plaintiff suggested the DW1 that on the assurance of Gunda Jois they are in possession. The said fact clearly discloses that



the defendant and other persons were in possession and enjoyment of the same. Further DW1 admitted that under Akrama Sakrama scheme they have filed an application for grant of the property the said applications were rejected by Tahsildar, N.R. Pura. Further the burden lies on the plaintiff to establish his case on own strength and not weakness of the defence of the defendant.

36. The main contention of the plaintiff that the defendant has encroached the 'B' schedule property by constructing a house. With regard to proving the said fact this Court appointed the Court Commissioner as CW1 and CW2 and after conducting the Commissioner work they are submit the report. Both counsels are not cross-examine the CW1 and CW2. On perusal of Ex. C3 the sketch prepared by the the Taluk Surveyor, N.R.Pura it discloses that in Sy. No.118/2 to extent of 26 guntas it mentioned **Block No. A to I**, it is mentioned that the house property and vacant space. In **Block No.J and K** the portion shown in the sketch belongs to Sy. No.118/1.

37. Further in the sketch at Ex. C8 it is clearly mentioned that at Sl. No.3 in Sy. No.118/2 to extent of 26 guntas there are constructions of house building and



possession of the same and there is no identification for growing the paddy crops in Sy. No.118/2 to extent of 26 guntas. Further as per Ex. C9 it discloses that the house property situated in Sy. No.118/2 is more than 80 to 90 years. This fact discloses that as on date of filing the suit there was a constructed house existed in the suit property and the plaintiff is well aware of the said fact while purchasing the same.

38. Further on perusal of the judgment of the trial court at para No.19 to 21 trial court has clearly observed that the property belongs to whom and the order passed by the Land Tribunal. Further as per the plaint averments the plaintiff pleaded that he has purchase the vacant agricultural land. On perusal of the evidence of PW1 and PW2 clearly discloses that when the vendor of the plaintiff enter into sale at that time the house properties were existed. Further as per order of the Land Tribunal directed the Tahsildar to vacate the illegal occupant of the said property, till today the plaintiff nor his previous vendor have not produce any documents to show that they have taken back possession of the illegal occupants in the suit property.



39. Further when the defendant and other persons have challenging the order passed by the Land Tribunal dated 24.03.1988 before the Karnataka Appellate Tribunal and the said appeal was pending the plaintiff filed the suit. Further plaintiff has failure to prove the flow of title to acquire the property and the appeal pending before the Karnataka Appellate Tribunal under those circumstances the plaintiff filed the suit and moreover the Land Tribunal was granted excess of land what was the claimed by the grantee is ultra virus and the said order was challenged by defendant and other persons before the Appellate Authority, when the grant made by the Land Tribunal the Civil Court has no jurisdiction to decide the validity of the Land Tribunal order.

40. Further when a plaintiff failure to prove his title and the title of the vendor of the plaintiff is cloud, the vendor cannot executed or transfer better title to plaintiff. At this juncture the Latin verb i.e., “**nemo dot quod non habet**” is a fundamental legal maxim translating to “**No one can give what they do not have**”. It means that a person cannot transfer a better ownership title to goods or property than what they legally possess, if someone sells



you an item they do not own. You do not gain legal ownership, even if you paid for it in good faith. As per above legal maxim it clearly held that the person cannot transfer the better title, ownership that if he had not possessed the same. The legal maxim is aptly applicable to the present facts of this case because the vendor of the plaintiff has not hold better ownership, he cannot transfer a better ownership in favour of plaintiff and plaintiff has failure to prove the flow of title over the suit property. Admittedly as per Ex. P6 the compromise decree was obtained in O.S. No.37/2001 the plaintiff and defendants in that suit are knowledge about that the defendant and other persons were in possession of the suit property, but without impleading them and in the absence of defendant they are enter into compromise and the compromise decree is not bind upon the defendant.

41. Further during the course of argument the learned counsel for respondent argued that the suit for recovery of possession the period of limitation is 12 years as per Article 65 of Limitation Act, but the trial Court has not given proper findings in respect of issue No.3 and given findings in the Negative is contrary to the Article 58, 64



and 65 of Limitation Act. The contention of the respondent counsel cannot be accepted because in the present case the plaintiff claiming recovery of possession of 'B' schedule property on the basis of the sale deed dated 17.01.2020 and filed the suit in the year 2021 and when the plaintiff got measured the suit property he came to know that the defendant and other persons have illegally constructed the building in the suit property, so that reason the limitation will start for recovery of possession from date of sale deed nor from date of knowledge. The Trial Court properly consider the said fact and given valid reasons to issue No-3 in the Negative and there is no necessity for interference with findings given by the trial court on issue No.3.

42. Further on perusal of the record plaintiff seeking relief of recovery of possession of 'B' schedule property, as per plaint averments the plaintiff pleaded that a residential house is in existence in the 'B' schedule property and defendant is residing the same. Further plaintiff pleaded that as on date of the sale deed he was in put in possession and enjoyment of the same, but in the plaint he has not stated that when plaintiff was dispossessed from the suit schedule property. Further it is not case of the plaintiff



that defendant and other persons were in permissive possession over the suit property and they are agreed to handed over the possession of the suit property.

43. Further it is not case of the plaintiff that on the basis of the sale deed plaintiff was taken symbolical possession over the suit property, when the plaintiff specifically pleaded the taken possession, the plaintiff must establish / pleaded that when he was dispossessed by the defendant over the suit property. Further as already stated that the defendant, his ancestors were residing in a 'B' schedule property from a long period and it is not disputed that the suit property was part and parcel of the Inamathi land granted in favour of Thudipete Anjaneya Temple and it was taken care by one Gunda Jois.

44. Further on perusal of the entire records and the findings given by the Trial Court that on the basis of the permission of the Gunda Jois the ancestors of the defendants have constructed the house and reside therein the said property mentioned in the 'B' schedule property. Further it is made clear that the defendant has not encroached the suit property after the plaintiff purchase the property from its vendor. Further plaintiff is well aware



of all these facts that since from 1950 to till today defendant and other persons were constructed a house and residing the same, but plaintiff without verifying the document has purchase the property and plaintiff has not follow the principle of buyer beware that before entering into sale transaction plaintiff has not verify the flow of title to his previous vendor.

45. Further in page No.21 of the Judgment the trial court refer the relevant provision of law under the Karnataka Certain Inams Abolition Act 1977 with came into effect on 05.06.1978 and the Trial Court extracted the Provision under Section 6 and 7 of the said Act. On the aforesaid the provision of the Act it is discloses that any building or dwelling house is constructed in an Inamthi land would vest with such persons who has constructed and resided therein as on the appointed date. Further the issue related to grant and re-grant of Inam land and these issues are decided by the Land Tribunal. Further in the present case has already stated the defendant and other persons are challenging the Land Tribunal Order before the Karnataka Appellate Tribunal same was pending for consideration.



46. Further on perusal of the entire record and re-appreciation of the evidence and on meticulous documents produce by the both the parties, the plaintiff and his previous vendor have failure to prove the flow of title over the suit property and the plaintiff has no where pleading in the plaint that when he was taken possession of the suit property and when the defendant was dispossessed the plaintiff from the suit schedule property. Further there is no pleading with regard to the defendant was in permissive possession over the suit property. Further when the vendor of the plaintiff failure to prove the better title or interest over the suit property he cannot transfer the better title in favour of the plaintiff. Hence the Trial Court consider all the aspect in prospective manner and dismiss the suit of the plaintiff and there is no illegality or perverse to interfere with the findings given by the Trial Court. Hence, for the above said reasons I answer to **point No.1 to 5 in the Negative.**

47. **Point No.6:-** In view of the reasons discussed above this court proceeds to pass the following:



ORDER

The regular appeal filed by the appellant / plaintiff under Order XLI Rule 1 R/w. Section 151 of C.P.C. is hereby dismissed with cost.

Consequently the Judgment and Decree passed in O.S. No.17/2021, dated 28.01.2026 by the learned Civil Judge and J.M.F.C. N.R.Pura is hereby confirmed.

Draw decree accordingly.

Office is directed to sent back the entire records of the Trial Court along with copy of the Judgment.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 20th day of July, 2026)

(Raghunatha Gowda K.T.)
Senior Civil Judge and J.M.F.C.,
N.R.Pura.