



Presented on	21-03-2025
Registered on	21-03-2025
Decided on	06-07-2026
Duration	01 Year, 03 Months 16 Days.

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
AFZALPUR.

Present: Shri. Vinayak Mayannavar,
B.A., LL.B.,
Senior Civil Judge & J.M.F.C., Afzalpur.

Dated this the 6th Day of July – 2026.

R.A.No-08/2025

Appellant /

Plaintiff :-

Jakkappa S/o Malakari Pujari,
Age : 60 years, Occ : Agriculture,
R/o : Afzalpur,
Tq : Afzalpur, Dist : Kalaburagi.

[By Shri. M.A.J. Advocate]



-Vs -

Respondents/
Defendants :-

- 1] Lachappa
S/o Siddramappa Jamadar,
Age : 46 years, Occ : Agriculture,
R/o : Afzalpur,
Tq : Afzalpur, Dist : Kalaburagi.

- 2] Revappa
S/o Saibanna,
Age : Major, Occ : Agriculture,
R/o : Afzalpur,
Tq : Afzalpur, Dist : Kalaburagi.

[R-1 and 2 by Shri S.K.P. Advocate]



J U D G M E N T

The appellant/plaintiff has preferred this appeal against the judgment and decree passed in OS No-49/2015 on 18-12-2024 by the Hon'ble Civil Judge & JMFC Court Afzalpur.

2. The appellant is the plaintiff in the trial court. The respondents are the defendants in the trial court. The parties are herein after referred as per their status before the trial court for the sake of convenience.

3. It is case of the plaintiff that, the plaintiff is the owner and in possession of the suit property measuring 2 acre of land situated towards northern side in survey No-196/3 totally measuring 6 acre of land situated at Afzalpur. The plaintiff has purchased the suit property on 07-08-2007 from



one Appanna S/o Baburao Soudatti. The suit property is consisting of the following boundaries:

East : Afzalpur to Dudani Road.
West : Cart way to Madabala Tanda.
North : Land of the Nagappa Hire Kurubar.
South : Remaining Land in survey No-196/3.

4. It is further case of the plaintiff that, one Jagadevappa S/o Saibanna Jamadar i.e., brother of the defendant No-2 was the owner of the survey No-196/Aa measuring 22 acre 4 gunta of land. The vendor of the plaintiff i.e., Appanna S/o Baburao Soudatti has purchased 11 acre 2 gunta of land from the said Jagadevappa on 20-05-1998. The Appanna has sold the suit property measuring 2 acre of land to the plaintiff on 07-08-2007.



5. It is further case of the plaintiff that, the defendant No-1 and 2 by colluding each other have created a false sale deed for 4 acre 18 gunta of land in survey number 196 in the year 2014. After the year 1970 the PWD department has made a road from Afzalpur to Dudani in survey No-196 and 197 lands. The suit property and the other part of survey No-197 are situated adjacent to the said road. A bund is existing towards the road from long time. Towards east of the suit property the national highway is situated. Towards west of the suit property cart way is situated. The town Municipality Afzalpur has widened the cart way by 30 feet and made a Tar road. After the Tar road on both the side there is a open land to the extent of 20 feet and Neelagiri Trees are situated towards east of the cart way. Thereafter, the land of the plaintiff starts and it extends up to the national highway from Shiradi to Devalaganagapur situated towards east.



6. It is further case of the plaintiff that, the defendant No-1 has purchased the government road taking advantage of non deduction of road in the RTC of survey No-196 and survey No-197 lands. The defendants are claiming 1 acre 21 gunta of land situated towards west of the government road. The defendants in collusion with the revenue authorities behind the back of the PWD authorities have created illegal documents and trying to interfere with the possession of the plaintiff over the suit property. The defendants have created Hissa No-12 towards west of the government road. The plaintiff has filed application to the Tahashildar on 21-05-2015 reporting that, the defendant No-1 has purchased the survey No-196/12 land which is a government road running from Afzalpur to Dudani. The Tahashildar after conducting the survey has found 2 acre 27 gunta of land is the government road. Only 1 acre 21 gunta of land remained out of 4 acre 18 gunta of land in survey No-196/12 after



deduction of the said road. The sketch map and Panchanama made on 17-07-2015 with regard to survey No-196/12 showing 1 acre 21 gunta of land for the defendant No-1 is false and baseless. The sale deed of the defendant No-1 is ordered to be cancelled by the revenue authorities.

7. It is further case of the plaintiff that, the portion of suit property is acquired by the state national highway authority. The said acquired land is part and parcel of the suit property. In the first week of April 2015 the plaintiff has asked the defendants for not to put the boundary stone and not to cause interference. The defendants have tried to encroach over the suit property. The plaintiff is the owner and in possession of the suit property. The sale deed executed in favour of the defendant No-1 on 21-11-2014 is null and void and not binding on the plaintiff. The land acquired for road by the state national highway authority is part and parcel of the



suit property. The plaintiff is entitled for the relief of permanent injunction against the defendants. On the said material grounds the plaintiff by filing a suit for the relief of declaration of ownership and permanent injunction has prayed for passing a decree in his favour. The plaintiff appears to be filed suit for the relief of bare injunction earlier. The plaintiff by way of amendment included the prayer of declaration of his ownership.

8. The defendant No-1 has only filed his written statement by denying the case of the plaintiff. It is case of the defendant No-1 that, the description of the suit property given by the plaintiff is not correct and not proper. The plaintiff has shown the wrong boundaries by colluding with his vendor. The boundaries shown in the sale deed of the plaintiff and to the suit property are not correct. The plaintiff and his vendor have shown the wrong boundaries in the sale deed in order to



grab the adjacent land. The survey No-196 was totally measuring 33 acres and consisting of 12 Hissas. The plaintiff has created the sale deeds of same land with different boundaries. The acquisition of land in survey No-196/12 for national highway is belonging to the defendant No-1. After the deduction of 2 acre 37 gunta of land for the road the defendant No-1 is in possession of 1 acre 21 gunta of land. The suit of the plaintiff is barred by law of limitation. On the said material grounds the defendant No-1 has prayed for dismissal of the suit of the plaintiff.

9. On the basis of the pleadings of the parties the Hon'ble trial Court has framed the following issues for its consideration.

ISSUES



- 1] Whether the plaintiff proves that, he is the absolute owner and in possession of the suit property ?
- 2] Whether the plaintiff proves that, the boundaries of the suit property mentioned in plaint are correct and proper one ?
- 3] Whether the plaintiff proves that, the sale deed dated 21-11-2014 made between the defendant No-1 and 2 is not binding on the plaintiff ?
- 4] Whether the plaintiff proves that, the land acquired by the National Highway Authority is part and parcel of the suit property ?



5] Whether the plaintiff proves the alleged interference by the defendants over the suit property ?

6] Whether the suit of the plaintiff is barred by law of limitation ?

7] Whether the plaintiff is entitled for the relief claimed in the plaint ?

8] What order or decree ?

10. The plaintiff in order to prove his case got examined himself as PW-1. The plaintiff got marked in all 30 documents as per Ex.P-1 to P-30.



11. The defendant No-1 in order to prove his case got examined himself as DW-1. The defendant No-1 got marked in all 17 documents as per Ex.D-1 to 17.

12. The Hon'ble trial court has answered the issue No-1 to 7 in the negative and dismissed the suit of the plaintiff.

13. The plaintiff being aggrieved by the said judgment and decree has preferred this appeal.

14. In pursuance of the notice of the appeal the defendants have appeared through their advocate and objected the present appeal by supporting the judgment and decree of the trial court. The defendants have prayed for dismissal of the present appeal.

15. The plaintiff has preferred this appeal on the following:



GROUNDS

- 1] The judgment and decree of the trial court is illegal arbitrary and against the materials on record.
- 2] The registered sale deed of the plaintiff is not challenged by anybody. The plaintiff has proved his ownership and possession over the suit property through the sale deed. The trial court has not considered the said aspect.
- 3] The defendants have not denied the ownership of the plaintiff to the suit property and they have also not denied the registered sale deed of the plaintiff.
- 4] Unless the sale deed of the plaintiff is set aside by the court the boundaries shown in the sale deed



are required to be taken as correct. The trial court observed that, the suit property is not in existence cannot be accepted one.

- 5] The admission of issuance of notice as per Ex.P-5 does not amount to nullity of the sale deed of the plaintiff. Without challenge of the sale deed of the plaintiff the sale deed cannot be disbelieved.
- 6] The plaintiff has filed a memo not pressing his prayer regarding the declaration that the land acquired by the National Highway Authority is part and parcel of the suit property. The trial court without considering the memo has answered issue No-1, 2 and 4 in the negative and the matter is required to be remanded back to consider the memo of the plaintiff.



- 7] The defendant No-1 is trying to cause interference in the suit property of the plaintiff by crossing the Afzalpur to Dudani road. Hence the plaintiff has challenged the sale deed of the defendant No-1. The defendant No-1 has not produced the sale deed and proved his rights over the portion of the suit property.
- 8] The decision relied by the trial court in the case of Smt. Smriti Debarma V/s Sri. Prabharanjan Debarma 2003 online SC-9 is not applicable to the present case. The said case was with respect to decree of possession.
- 9] The plaintiff has filed application under order 26 rule 9 of CPC for appointment of the court commissioner contending that, the boundaries of survey No-196/12 and survey No-196/2 and



survey No-196/3 are not separately disclosed in Ex.D-11 map. The revenue authorities not implemented the sale deeds and given separate boundaries as per survey No-196/2 and survey No-196/3 lands. Hence the trial court disputed the boundaries of the suit property.

10] The defendant No-1 admitted the boundaries of the suit property towards East and West. Hence the question of disputing the boundaries of the suit property towards North and South by the trial court suo moto is not correct.

11] The observations of the trial court in para No-32 at page No-26 shows that, the plaintiff and the defendants are not the neighbouring land holders and the dispute is the existence of Afzalpur to



Dudani road and existence of the suit property
and survey No-196/12 land.

16. On the above said material grounds the plaintiff has
prayed to set aside the judgment and decree of the trial court.

17. Heard the arguments. Considered the written
arguments filed by the learned advocate for the plaintiff.

18. On perusal of the entire materials on record the
following points arise for my consideration:

POINTS

- 1] Whether the trial court is right in holding
that, the plaintiff has failed to prove the
description of the suit property as correct
and proper ?



- 2] Whether the trial court is right in holding that, the plaintiff has failed to prove his ownership and possession over the suit property ?
- 3] Whether the trial court is right in holding that, the plaintiff has failed to prove the interference of the defendants over the suit property ?
- 4] Whether the trial court is right in holding that, the plaintiff has failed to prove that, the land acquired by the national highway authority is part and parcel of the suit property ?
- 5] Whether the trial court is right in holding that, the plaintiff has failed to prove that,



the sale deed dated 21-11-2014 is null and void and not binding on the plaintiff ?

- 6] Whether the trial court is right in dismissing the suit of the plaintiff ?
- 7] Whether the judgment and decree of the trial court calls for interference from this court ?
- 8] Whether the plaintiff has made out grounds for allowing the IA No-2 and 3 ?
- 9] Whether the plaintiff is entitled for the relief claimed by him in the suit ?
- 10] What order or decree ?



19. My answers to the above points are as under:

Point No-1 : In the affirmative.

Point No-2 : In the affirmative.

Point No-3 : In the affirmative.

Point No-4 : In the affirmative.

Point No-5 : In the affirmative.

Point No-6 : In the affirmative.

Point No-7 : In the negative.

Point No-8 : In the negative.

Point No-9 : In the negative.

Point No-10 : As per the final order,
for the following

REASONS



20. POINT No. 1 to 9 :- These points are interlinked together. Hence in order to avoid repetition they all are taken together for common discussions and consideration.

21. On perusal of the materials on record it appears that, the plaintiff has produced the documents to prove his case. The Ex.P-30 is the certified copy of sale deed dated 07-08-2007. From the said document it appears that, the plaintiff has purchased the 2 acre of land situated in the middle portion from North to South in survey No-196/3 totally measuring 6 acre of land situated at Afzalpur from one Appanna S/o Baburao Soudatti. The plaintiff in the suit has claimed that the suit property is situated towards northern side in survey number 196/3 land. The boundaries of the said sale deed are as under :

East : Afzalpur to Dudani road.

West : Madabala Cart way.



North : Land of Nagappa S/o Kareppa Hire Kurubar
purchased in survey No-196/3.

South : The remaining land of the owner i.e,
Appanna S/o Baburao Soudatti.

22. The Ex.P-30 sale deed shows that, the 11-E map is attached to the said sale deed. The plaintiff has not produced the said 11-E map in the present suit. The plaintiff has only produced the sale deed and not produced the 11-E map attached to it. The said sale deed shows that, it was executed on 07-08-2007. The said sale deed was ordered to be registered on 31-08-2007 on production of the survey map. The plaintiff has not produced the original sale deed of the suit property in this case.

23. The Ex.P-4 is the original sale deed dated 07-08-2007. From the said document it appears that, the plaintiff has



purchased survey No-196/2 measuring 2 acre of land from one Sunil S/o Suryakant Soudatti. The boundaries of the said sale deed are as under:

East : Afzalpur to Dudani road.
West : Madabala Cart way.
North : Land of Chandrayya S/o Balayya Guttedar.
South : The Land of Appanna Baburao Soudatti.

24. The Ex.P-4 sale deed shows that, the 11-E map is attached to the said sale deed. The plaintiff has not produced the said 11-E map in the present suit. The plaintiff has only produced the sale deed and not produced the 11-E map attached to it. The said sale deed shows that, the sale deed was executed on 07-08-2007. The sale deed was ordered to be registered on 31-08-2007 on production of the survey map.



25. The Ex.D-14 is the certified copy of the plaint. From the said document it appears that, the plaintiff has filed suit bearing OS No-47/2015 against the defendants with respect to survey No-196/2 measuring 2 acre of land. The plaintiff has shown the following boundaries in the said suit for the said land.

East : Afzalpur To Dudani road.
West : Madabala Cartway.
North : Land of Appanna Baburao Soudatti
South : Land of Chandrayya S/o Balayya Guttedar.

26. The Ex.P-5 to 11 are the certified copies of report of the Tahasildar to the Assistant Commissioner along with the Panchanama and survey map and the form No-10 documents. From the said documents it appears that, the Tahasildar Afzalpur on survey of survey No-196 land has found that, the



survey No-196/12 measuring 4 acre 18 gunta of land is consisting of 2 acre 37 gunta of land of road running from Afzalpur to Dudani. The 1 acre 21 gunta of land is only available for cultivation in the said land to the defendant no-1. He has also reported that, the form No-10 issued for 4 acre 18 gunta of land without showing the road in the same has lead to the execution of sale deed by the defendant No-2 in favour of the defendant No-1 for 4 acre 18 gunta of land bearing survey No-196/12.

27. The said documents further shows that, the 1 acre 21 gunta of land only available for cultivation to the defendant No-1 in survey No-196/12. The 2 acre 37 gunta of land in survey No-196/12 is consisting of the Afzalpur to Dudani road.



28. The said documents further show that, the survey No-196/3 land does not extend up to the said Afzalpur to Dudani Road as claimed by the plaintiff. The said documents show that, in between the survey No-196/3 land and the Afzalpur to Dudani road the part of the survey No-196/12 land is situated. The survey No-196/3 and the survey No-196/12 are adjoining to each other. The road has passed in the middle of the survey number 196/12 land.

29. The Ex.P-1 is the RTC of survey No-196/12 of the year 2014-2015. From the said document it appears that, as per the sale deed of the year 2014 the name of the defendant No-1 is appearing for 4 acre 18 gunta of land.

30. The Ex.P-2 to 4 are the survey map and form No-10 documents of the year 2013-2014. From the said documents it appears that, the survey No-196 is consisting of 12 Hissas. The survey No-196/2 is measuring 2 acre of land belonging to



the Sunil. The survey No-196/3 is measuring 6 acre of land belonging to the one Appanna S/o Baburao. The survey No-196/12 is measuring 4 acre 18 gunta of land belonging to Revappa S/o Saibanna.

31. The Ex.P-12 is the RTC of survey No-196/3 measuring 6 acre of land of the year 2014-2015. The name of the plaintiff is shown for 2 acre of land in the said land. The name of one Nagappa is shown for 2 acre of land and the name of the Nagappa is also shown for another 2 acre of land.

32. The Ex.P-13 and P-14 are the survey map and form No-10 of the year 2000-2001. From the said documents it appears that, the survey No-196/2 was shown as 2 acre of land belonging to the Sunil. The survey No-196/3 was shown as 6 acre of land belonging to the Appanna S/o Baburao.



33. The Ex.P-15 is the certified copy of sale deed dated 21-04-2014. From the said document it appears that, the defendant No-2 has sold survey No-196/12 measuring 4 acre 18 gunta of land to the defendant No-1 on 21-04-2014.

34. The Ex.P-24 is the certified copy of sale deed of the year 1995-1996. From the said document it appears that, in survey No-196 measuring 11 acre 2 gunta of land the 2 acre 30 gunta of land was purchased by one Anil S/o Banudas. In the said sale deed for the boundaries of the said purchased land towards East the government road is shown.

35. The Ex.P-25 is the certified copy of sale deed dated 04-08-2017. From the said document it appears that, the Vidhyaniketan Education Trust has purchased 1 acre 22 gunta of land in survey No-196/9. In the said sale deed towards west of the said land Afzalpur to Balurgi road and survey No-196/6 land was shown.



36. The Ex.P-26 is the certified copy of the sale deed dated 05-10-2012. From the said document it appears that, the Ashwini W/o Lachappa Jamadar has purchased 2 acre of land in survey No-196/1 from one Revappa S/o Saibanna. In the said sale deed towards East and West road are shown.

37. The Ex.P-27 is the certified copy of sale deed dated 28-10-2005. From the said document it appears that, one Kashibai W/o Sahadev Jamadar has purchased the 2 acre 16 gunta of land in survey No-196/1/5 from Chandrakant S/o Gurunath Myaleshi. In the said sale deed towards West and North Government road are shown.

38. The Ex.P-28 is the certified copy of sale deed dated 03-09-2014. From the said document it appears that, one Gangadhar S/o Mallikarjun Srigiri purchased 1 acre 22 gunta of land in survey No-196/9 from Shakeera Banu W/o Abdul



Latif Patel. In the said sale deed towards West Government road is shown.

39. The Ex.P-29 is the certified copy of sale deed dated 01-06-2006. From the said document it appears that, the Devika W/o Sharanappa Shetty has purchased 3 acre 2 gunta of land in survey No-196/1-A from one Jagadevappa S/o Saibanna. In the said sale deed towards west the Government road is shown.

40. The plaintiff/PW-1 in his evidence has deposed that, he is the owner of 2 acre of the suit land. The suit property is abutting to the Afzalpur to Dudani road towards Eastern side. The suit property is abutting to cart way of Madabala Tanda towards Western side. After 1970 the PWD department has made the road from Afzalpur to Dudani in survey No-196 and survey No-197 lands. The town municipality Afzalpur has widened the cart way by 30 feet and made a Tar road. After



the Tar road on both the side there is a open land to the extent of 20 feet and Neelagiri trees are situated towards East of the cart way. Thereafter, the land of the plaintiff will start and it extends up to the Afzalpur to Dudani road.

41. The PW-1 further deposed that, the defendant No-1 has purchased survey No-196/12 measuring 4 acre 18 gunta of land including the government road measuring 2 acre 27 gunta of land. The survey authorities have shown 1 acre 21 gunta of land to the defendant No-1 in between the land of the plaintiff and the Afzalpur to Dudani road without any base. The defendant No-1 is interfering with the possession of the plaintiff over the suit property. The State National Highway Authority has acquired the land for widening the Afzalpur to Dudani road. The said road is part and parcel of the suit property.



42. The PW-1 has deposed that, the suit property is measuring 2 acre of land in survey No-196/2. The suit property is consisting of the following boundaries.

North : Land of Appanna Baburao Soudatti.

South : Land of Chandrayya Balayya Guttedar.

The survey number and the boundaries stated by the Pw-1 are appears to be contrary to the plaint suit schedule property and the sale deed of the plaintiff with respect to the suit property.

43. The PW-1 in his cross examination has deposed that, Towards Northern side of the suit property the land of Akshay Guttedar is situated. Towards Southern side of the suit property the Nagappa Pujari land is situated. The land of the defendant No-1 is not abutting to his land.



44. The Ex.D-1 is the certified copy of notice. From the said document it appears that, the Tahasildar Afzalpur has issued notice to the plaintiff and one Anil S/o Appanna Duddanagi for appearing before him in connection with creation of the sale deed after the death of Sunil S/o Suryakant.

45. The Ex.D-2 to D-7 are the RTC and mutation extract of the year 1978 to 1998. From the said documents it appears that, the survey No-196/Aa land measuring 22 acre 4 gunta was standing in the name of one Saibanna S/o Revappa in the year 1978.

46. The name of the Jagadevappa S/o Sayabanna was mutated for 11 acre 2 gunta of land and the name of Revappa S/o Sayabanna was mutated for 11 acre 2 gunta land in the year 1984.



47. The name of one Sunil S/o Suryakant was mutated for 2 acre of land reporting the purchase of the said land from Jagadevappa in the year 1988.

48. The name of Appanna S/o Baburao Soudatti was mutated for 6 acre of land in the RTC of the year 1998.

49. The Ex.D-8 to D-10 are the survey map and form No-10 and Aakar bund document of survey No-196/12 made in the year 2013-2014. From the said documents it appears that, the survey No-196/12 land is measuring 4 acre 18 gunta of land.

50. The Ex.D-11 to 13 are the survey map and form No-10 and Aakar bund documents of the year 2013-2014. From the said documents it appears that, the survey No-196 is consisting of 12 Hissas. The survey No-196/2 is measuring 2 acre of land belonging to the Sunil. The survey No-196/3 is



measuring 6 acre of land belonging to the one Appanna S/o Baburao. The survey No-196/12 is measuring 4 acre 18 gunta of land belonging to the Revappa S/o Saibanna.

51. On perusal of the materials on record it appears that, the plaintiff is claiming that, the suit property is abutting to the Afzalpur to Dudani road. The plaintiff claimed that, the Afzalpur to Dudani road is situated towards the Eastern side of the suit property. The plaintiff has also come up with a case that, towards Western side of the suit property the cart way of Madabala is situated. The said cart way is widened by 30 feet and there is a open land to the extent of 20 feet after the said Tar road of Madabala. The plaintiff has also come up with a case that, the national highway authority has acquired the land for the road and the said land is part and parcel of the suit property.



52. On perusal of the case of the plaintiff and materials on record it appears that, the plaintiff has purchased 2 acre of suit land. The plaintiff appears to be claiming his 2 acre of land after widening the cart way situated towards Western side by claiming his land towards Eastern side. The sale deed of the plaintiff shows that, the property purchased by the plaintiff is abutting to the Afzalpur to Dudani road. The defendant No-1 has specifically denied the said boundary. The sale deed produced by the plaintiff shows that, the sale deed was made on 07-08-2007 and the same is attached with the 11-E map. Even though the sale deed was made on 07-08-2007 the sub registrar has endorsed the registration of document on 31-08-2007 after production of the map of the property purchased by the plaintiff. The plaintiff has not produced the said 11-E map to show the identification of the property purchased by him.



53. The plaintiff appears to be claiming his property towards Eastern side only based on the boundary shown in the sale deed without producing the 11-E map. The plaintiff is also claiming widening of road towards Western side and existence of 20 feet vacant land consisting of trees towards Western side. The plaintiff claims that, the suit property start after the widened road and 20 feet vacant land in the Western side. The plaintiff has also claimed that, towards Eastern side the suit property is acquired by the National Highway Authority. On considering the case of the plaintiff it appears that, the plaintiff has not produced any materials to show that, the part of the suit property is acquired for the eastern side road. The plaintiff has not produced any materials to support the boundaries of the suit property shown in the sale deed.

54. The survey document produced by the plaintiff as per Ex.P-9 show that, the Afzalpur to Dudani road is situated in



the middle of survey No-196/12. The survey No-196/3 is situated abutting to the survey No-196/12 land. In between the Afzalpur to Dudani road and survey No-196/3 the part of survey No-196/12 land is exist. The plaintiff only has produced the said documents. The plaintiff has also admitted the conducting of survey in his presence.

55. The identification of the suit property is must for granting the discretionary relief of declaration and injunction. The plaintiff in one breath claiming that, towards western side road of his land is widened and thereafter, his land starts. The plaintiff in another breath is claiming that, towards Eastern side the National Highway Authority has acquired the land for the road. The said land is part of the suit property. The plaintiff has not produced the 11-E sketch or survey documents to show the situation of the suit property abutting to the Afzalpur to Dudani road. The materials on record in the



form of survey records show that, the land of the plaintiff is not abutting to the Afzalpur to Dudani road and in between the land of the plaintiff and the Afzalpur to Dudani road the part of survey No-196/12 land exists. The road is passed in the middle of survey number 196/12 land.

56. The defendant No-1/DW-1 has deposed in support of his case by denying the description and boundaries of the suit property. The DW-1 has deposed that, the road is made in the survey No-196/12 land belonging to the defendant No-1. The 2 acre 27 gunta of land has gone for the road. The remaining 1 acre 21 gunta of land is in possession of the defendant No-1. The defendant No-1 has denied the boundaries of the suit property shown in the sale deed of the plaintiff.

57. The DW-1 in his cross examination has deposed that, the land situated towards the East of the road was sold before purchasing the land by him. The road was made after 1954.



The road was not shown in the RTC. No any compensation was given for the road. The National Highway Authority has made 4 line road. No any compensation is given for the same. The road is widened about 5 to 6 years back. In the sale deed of his wife the East and West side road is shown to the property. The plaintiff by showing Anil as the Sunil has created sale deed for 2 acre of land.

58. On perusal of the materials on record it appears that, the plaintiff has produced the documents to show that, he has purchased 2 acre of land in survey No-196/3. The plaintiff has contended that, the suit property is abutting to the Afzalpur to Dudani road. The plaintiff has not produced any materials to show that, the suit property is abutting to the Afzalpur to Dudani road. The documents produced by the plaintiff himself in the form of survey records shows that, in between the Afzalpur to Dudani road and the land of the



plaintiff the portion of survey No-196/12 land is situated belonging to the defendant No-1. The defendant No-1 has specifically denied the Eastern side boundary of the suit property and the sale deed of the plaintiff. The materials on record in the form of survey records are against the case of the plaintiff and against the sale deed of the plaintiff. The plaintiff has not produced any materials to believe that, the boundary shown towards Eastern side of the land of the plaintiff is true and correct. The evidence of the Pw-1 and the pleadings of the plaintiff in the other suit are creating the doubt in the case of the plaintiff. The plaintiff's pleadings before the court and evidence are not in consonance with each other regarding the description of the suit property.

59. Hence considering the materials on record I am of the opinion that, the plaintiff has failed to prove the description of the suit property. The trial court on considering the materials



on record has rightly held that, the plaintiff has failed to prove the description of the suit property. Hence I answered point No-1 in the affirmative.

60. The relief of declaration of ownership and injunction are the discretionary reliefs. In order to get the discretionary reliefs the plaintiff must come to the court with clean hands. The plaintiff even though produced the documents to show the purchase of 2 acre of land the plaintiff has not proved the exact location and identification of the said land as claimed by him.

61. The plaintiff has produced the materials to show that, he has purchased the 2 acre of land. The plaintiff has failed to prove the description of the suit property towards Eastern side. Hence on considering the materials on record it cannot be said that, the suit property is extended to Afzalpur to Dudani road. The boundary shown in the sale deed by the



vendor and vendee not bind the adjoining land owner. The survey records only bind the adjoining land owner. The survey records prevail over the boundaries shown in the sale deed.

62. The survey records available on record are in favour of the defendant no-1 and against the case of the plaintiff. The vendor and vendee for easy identification of the suit property may show the road situated in the adjoining land as the boundary. But the said boundary shown will not bind the owner of the land in whose land the said road is situated and in whose land is in existence after the said road as per the survey records. Hence in view of the plaintiff not proving the Eastern boundary of the suit property the plaintiff is not entitled for the relief of declaration of his ownership and possession over the suit property. Everybody interested to occupy the land abutting to the road. The plaintiff in the present case is claiming existence of cart way in the western



side to the suit property. The plaintiff is claiming widening of the said cart way by 30 feet and existence of the 20 feet land after the said cart way. The plaintiff claims now his land after the said 30 feet cart way and 20 feet land abutting to cart way towards the national highway. The sale deed of the plaintiff shows that the land of the plaintiff is abutting to the cart way. Now the claim of the plaintiff appears to be to leave the land towards western side and to claim land towards eastern side abutting to the highway. The said conduct of the plaintiff creates a doubt in the case of the plaintiff.

63. The plaintiff who has come to the court must prove his case. The plaintiff who is claiming his rights under a sale deed must prove the description of the property purchased by him. A non challenge of the sale deed by the other parties will not automatically validate the sale of the plaintiff before the court. The decree is not automatic in favour of the plaintiff by



non challenge of the sale deed. Weakness of the defendant or defect in the sale deed of the defendant is not a ground to decree the suit of the plaintiff. In the present case the defendant no-1 has challenged the sale deed of the plaintiff by specifically denying the boundaries of the sale deed of the plaintiff. Hence the plaintiff carry heavy burden to prove his case. The plaintiff in one breath claimed that the eastern side land acquired by the highway authority is part and parcel of the suit property. The plaintiff claimed the declaration to that effect with specific pleading by way of amendment. In another breath the plaintiff has come up with a case that he has not pressed the said prayer by filing a memo. By a mere memo the plaintiff cannot take away his pleadings. The plaintiff cannot become hot and cold at a same time. Hence the arguments of the learned advocate for the plaintiff regarding non challenge of the sale deed and filing of memo are not acceptable one. On considering the materials on record I am



of the opinion that the plaintiff has not made out grounds for remanding of the matter. The pleading of the plaintiff and the survey records produced by the plaintiff are clearly showing that the case of the plaintiff regarding eastern boundary is without any base and on mere recital in the sale deed of the plaintiff. The description of the property purchased has got a bearing on the ownership and possession over the property purchased.

64. In order to declare the ownership and possession of the plaintiff to the suit property the plaintiff must come to the court with clean hand. The plaintiff has not proved that, the boundary shown in the sale deed towards Eastern side is true and correct. Hence due to non proving of the correct identification of the suit property. The plaintiff is not entitled for the relief of declaration of his ownership to the suit property. In the absence of clear identification of the suit



property it is difficult to hold that, the plaintiff is in possession of the suit property. Hence I am of the opinion that, the plaintiff has failed to prove the ownership and possession over the suit property as claimed by him. The trial court after considering the materials on record has rightly disbelieved the case of the plaintiff regarding ownership and possession of the plaintiff to the suit property and identification of the suit property. Hence I answered point No-2 in the affirmative.

65. The plaintiff has failed to prove the identification of the suit property as claimed by him. Hence the plaintiff is not entitled for the relief of declaration of ownership in the present suit. Hence in view of not proving the identification of the suit property the plaintiff cannot be said to be in possession of the suit property as claimed by him. Hence question of interference by the defendants will not arise. The



trial court on considering the materials on record has rightly held that, the plaintiff has failed to prove the interference of the defendants. Hence I answered point No-3 in the affirmative.

66. The plaintiff has come up with a case that, the owner and in possession of the suit property measuring 2 acre of land. The plaintiff by way of amendment has come with a case that, the land acquired by the National Highway Authority is part and parcel of the suit property. The plaintiff has not produced any materials to show acquisition of the suit land by the National Highway Authority. The materials on record show that, the road is situated in the land of the defendant No-1. The materials also show that, the defendant No-1 has got land in between the land of the plaintiff and the Afzalpur to Dudani road. Hence considering the materials on record it cannot be said that, the plaintiff has proved the acquisition of



land by the National Highway Authority and the same is part of the suit property. The trial court by considering the materials on record has rightly disbelieved the said case of the plaintiff. Hence I answered point No-4 in the affirmative.

67. The plaintiff has come up with a case that, the sale deed executed by the defendant No-2 in favour of the defendant No-1 on 21-11-2014 is null and void and not binding on the plaintiff. The plaintiff has contended that, the defendant No-1 has purchased the land including the Government road. The plaintiff has not produced any materials to show his rights over the property purchased by the defendant No-1. The materials on record show that, the defendant No-1 has purchased 4 acre 18 gunta of land bearing survey No-196/12. The survey records shows that, in the said 4 acre 18 gunta of land the Afzalpur to Dudani road is situated in 2 acre 37



gunta of land. The 1 acre 21 gunta of land is only remained for the cultivation of the defendant No-1.

68. The materials on record show that, the revenue authorities have reported about wrong preparation of form No-10 for survey No-10 without deducting the land in which government road is situated. The defendant No-1 has come up with a case that, no any compensation is paid to the road. The plaintiff has not shown his rights in the survey No-196/12 measuring 4 acre 18 gunta of the land. The defendant No-1 is not claiming any rights in the property purchased by the plaintiff. The defendant No-1 has only disputed the Eastern boundary shown by the plaintiff in the sale deed. The survey records produced are against the case of the plaintiff regarding the Eastern boundary. The plaintiff has not produced any materials to show that, the Eastern boundary shown in his sale deed is true and correct. Hence



considering the dispute between the parties I am of the opinion that, the plaintiff has no any right in the survey No-196/12 land. Hence the plaintiff is not entitled for the relief of declaration of sale deed of the defendant No-1 as null and void and not binding on the plaintiff. The trial court by considering the materials on record has rightly held that, the plaintiff is not entitled for the relief of declaration of sale deed null and void and not binding. Hence I answered point No-5 in affirmative.

69. On considering the materials on record it appears that, the plaintiff has failed to prove the Eastern boundary of the suit property. The plaintiff has failed to prove the description of the suit property. The plaintiff is not entitled for the relief of declaration and injunction as prayed by the plaintiff in view of not proving his case. Hence on considering the materials on record I am of the opinion that, the plaintiff is not entitled for



the relief claimed by him in the suit. The trial court by considering the materials on record has rightly dismissed the suit of the plaintiff. Hence I answered point no-6 in the affirmative.

70. On considering the materials on record I am of the opinion that plaintiff has not made out any grounds to interfere in the judgment and decree of the trial court. Hence I answered point no-7 in the negative.

71. The plaintiff has filed IA No-2 under order 39 rule 1 and 2 of CPC restraining the defendants from interfering in the suit property. The defendants have filed objections to the said application. The plaintiff has failed to prove the identification of the suit property as claimed by him. The suit of the plaintiff was dismissed before the trial court. The plaintiff has filed the present application in the present appeal. On considering the materials on record I am of the opinion that, the plaintiff has



failed to prove his ownership and possession over the suit property and identification of the suit property as claimed by him. Hence the IA No-2 filed by the plaintiff is required to be rejected.

72. The plaintiff has filed IA No-3 under section 54 R/w order 26 rule 9 of CPC in the present appeal. The plaintiff has contended that, the appointment of Tahasildar Afzalpur as a court commissioner for conducting the survey of the suit property and for demarcating the suit property as per the sale deed is necessary.

73. The plaintiff has contended that, the sale deed of the plaintiff is not challenged by anybody. The DW-1 has admitted in his cross examination that, the land of the plaintiff is situated by the side of Afzalpur to Dudani road. In the old map the land of the plaintiff is not shown. The trial court doubted the existence of the land of the plaintiff. Hence



the court commissioner is required to be appointed to ascertain the situation of land of the plaintiff as per the sale deed and the same is required to be demarcated. On the said material grounds the plaintiff has prayed for allowing the present application.

74. The defendants have filed their objections by denying the grounds of the application. The defendants have contended that, the evidence cannot be created in the appellate stage. The plaintiff has failed to prove the identification of the suit property. The plaintiff has filed the present application in order to cause loss to the defendants. The plaintiff has already produced the survey map of survey No-196 land. The said document contain the survey No-196/3 and survey No-196/12 boundaries.

75. On perusal of the materials on record it appears that the plaintiff has not produced the materials to show that the



suit property extends up to Afzalpur to Dudani road towards eastern side. The plaintiff has not produced the 11- E Map of his property which was shown in the sale deed. The plaintiff has not produced any materials to believe the eastern boundary of the suit property shown in the sale deed of the plaintiff. On careful perusal of the pleadings and claim of the plaintiff it appears that the plaintiff intended to claim the land situated abutting to the Afzalpur to Dudani road by leaving land which is widened by the road towards western side.

76. The plaintiff is claiming his rights based on the boundaries shown in his sale deed against the neighbouring land owner. The survey records produced by the plaintiff are clearly showing that the suit property is not abutting to the Afzalpur to Dudani Road. The materials on record showing that the said road has passed in the middle of the survey number 196/12 land belonging to the defendants. The sale



deed boundary of the plaintiff will not prevail over the survey records. The plaintiff only has produced the survey records showing the separate hissas for the survey number 196/12 and 196/2 and 196/3 lands.

77. The court commissioner can be appointed under order 26 rule 9 of CPC only when the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute. The plaintiff prayed for appointing the Tahashildar Afzalpur for conducting the survey of the suit property and for demarcating the suit property as per the sale deed of the plaintiff. The said prayer is not for the elucidating the matter in dispute but for assisting the plaintiff to demarcate the suit property of the plaintiff as per his sale deed. The plaintiff can get the survey of his land on his own. The plaintiff appears to be kept quit from the year 2007 till date without getting survey of his land and wants the court to



do the said thing. The plaintiff cannot use the said provision as a tool for supporting his claim under sale deed which is against the survey records. The survey records already produced by the plaintiff himself clearly shown picture regarding the dispute between the parties. On considering the conduct of the plaintiff by leaving land towards western side and claiming land towards eastern side and by considering the grounds of the application and on considering the materials on record I am of the opinion that the plaintiff has not made out grounds for allowing the present application. Hence on considering the materials on record I am of the opinion that the plaintiff has not made out grounds for allowing the I.A.No-2 and 3. Hence I answered point no-7 in the negative.

78. On considering the materials on record I am of the opinion that the plaintiff has failed to prove his case. The trial



court has rightly dismissed the suit of the plaintiff. The plaintiff has not made out any grounds to interfere in the judgment of the trial court. Hence I am of the opinion that the plaintiff is not entitled for the reliefs claimed by him in the suit and in the present appeal. Hence I answered point no-8 in the negative.

79. POINT NO- 9: In view of my answer to point No-1 to 8 I proceed to pass the following:

ORDER

The appeal filed by the Plaintiff / Appellant is hereby dismissed.

The I.A. No-2 and 3 filed by the plaintiff/ appellant are hereby rejected.



The judgment and decree of the trial court in O.S.No-49/2015 dated 18-12-2024 is hereby confirmed.

In the facts and circumstances of the case there is no any order as to costs.

Office is hereby directed to draw decree accordingly.

Office is hereby directed to send back the trial court records along with the copy of this judgment forthwith to the trial court.

[Vinayak Mayannavar]
Senior Civil Judge & JMFC,
Afzalpur.



[Judgment pronounced in the Open Court vide separate sheets]

ORDER

The appeal filed by the Plaintiff / Appellant
is hereby dismissed.

The I.A. No-2 and 3 filed by the
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[Vinayak Mayannavar]
Senior Civil Judge & JMFC,
Afzalpur.