

KAKL010022612023



TITLE SHEET FOR JUDGMENT IN APPEAL

Form No.11
(Civil)
Title Sheet for
Judgment in
Appeal (R.P.39)

**IN THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE,
FTSC - I (POCSO) AT KOLAR**

PRESENT

SRI. PRASAD .K.B,
B.A.(Law) LL.B., PGDPM & IR
Additional District & Sessions Judge, FTSC-I (POCSO), Kolar.

DATED THIS THE 8th DAY OF JUNE 2026

Regular Appeal No.123/2022

APPELLANT/S :

Sri. K.V. Shivanna,
S/o Late Venkateshappa, 40 yrs.,
R/at Kanganallur Village,
Bethamangala Hobli,
Bangarpet Taluk.

(Reptd. by *Sri. Ramakrishna .C*
Advocate)

V/s.

RESPONDENT/S:

1. Papanna,
S/o Chokkappa, 70 yrs.,
2. Sridhara,
S/o Papanna, 34 yrs.,
3. Sunil,
S/o Papanna, 32 yrs.,

Respondents No.1 to 3 are
R/o Neelakantapura Village,
Huthur Hobli, Kolar Taluk.

(Reptd. by *Sri. T. Venkatareddy*
Advocate)

Date and nature of the decree or order	27.07.2022, O.S No.600/2012 Permanent Injunction		
Date of institution of appeal	14.09.2022		
Date on which the Judgment/order was pronounced	08.06.2026		
Total duration	<u>Year/s</u> 03	<u>Month/s</u> 08	<u>Day/s</u> 25

(PRASAD.K.B)

Addl. District & Sessions Judge,
FTSC-I (POCSO), Kolar.

J U D G M E N T

THIS appeal challenges the impugned judgment and decree dated 27.07.2022 in OS No.600/2012 on the file of Prl. Civil Judge and JMFC at Kolar, by which the suit filed by the plaintiff / appellant herein claiming injunction against the alleged interference into his possession and enjoyment over the land in question is dismissed with cost.

2. THE parties have been referred to as that of their rank before the trial court for the convenience and brevity.

3. BEFORE embarking upon the necessary discussion on the factual matrix of the case, an identification of contesting parties to the suit in the manner indicated here below would be necessary that the appellant is the plaintiff and the respondents are the defendants before the trial court.

4. THE plaintiff claimed following reliefs;

A) FOR Permanent Injunction restraining the defendants either personally or through their agents, servants, henchmen or anybody acting and working under their direction or in any other manner on their behalf from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property or in any other manner.

b) FOR costs and such other relief / reliefs as this Hon'ble Court deems fit to granted in the circumstances of the case in the ends of justice and equity.

FACTUAL MATRIX :

5. SHORN of verbosity, necessitous facts required to be adumbrated to decide the appeal are that, the plaintiff acquired the immovable property in RS No.73/1 (old No.45) to an extent of 3 acres, morefully described in the schedule of the plaint, (hereinafter referred to as "suit property" for brevity), in terms of sale deed dated 07.10.2006 from A. Ramu and others. Since then he is in possession

and enjoyment of the suit property as an absolute owner. A family property which situated towards western side adjacent to the suit property, upon which none has any right, title or interest, much less possession. The defendants being the strangers to the suit property have interfered his enjoyment without any right, title or interest. Having no efficacious remedy brought the suit before the trial court claiming relief stated *supra*.

CONTENTIONS:

6. THE defendants appeared through counsel and resisted the suit *inter-alia* contending that, the government is of the suit property is incorrect. The boundaries shown in the plaint is relating to an extent of 7 acres which comprises the suit property which is only a portion. The property in RS No.45 is a government Gomala land consisting of a vast extent. Of which, an extent of 3 acres is granted to the erstwhile owner A. Ramu with specific boundaries. The said property was subjected to survey settlement and accordingly, renumbered as RS No.73/1. The defendant No.1 granted with an extent of 3 acres prior to

the grant in favour of A. Ramu, in terms of the order/grant in LND SR No.96/1979-80 dated 10.02.1979. Since then he is in possession and enjoyment of the said property as an absolute owner. He mortgaged the same in favour of Corporation Bank a long ago. The plaintiff has no right, title or interest and possession over the property of the defendants. He laid fencing with stone pillars surrounding his property. The claim of the plaintiff is meritless and unsustainable and therefore, the claim of the plaintiff being frivolous and meritless sought to dismiss the suit with cost.

7. THE Trial Court having regard to the materials placed on record framed the following;

ISSUES

1. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit within the boundaries and extent mentioned in the plaint schedule?

2. Whether the plaintiff further proves that the alleged obstruction or interference caused and causing by the defendants?
3. Whether the plaintiff is entitled for the relief of permanent injunction as sought for?
4. What order or decree?

8. HAVING regard to the evidence placed on record both oral and documentary, the trial court dismissed the suit on the ground that, the plaintiff failed to prove his possession and enjoyment within the boundaries and extent as claimed as on the date of the suit as well as the alleged interference caused over the suit property in question.

GROUND OF CHALLENGE :

9. THE plaintiff being aggrieved and unsatisfied, assailed the said impugned judgment and decree on the ground that, it is opposed to law, facts and circumstances of the case and materials placed on record. The trial court failed to appreciate the respective pleadings of

the parties with reference to the evidence produced both oral and documentary. The documentary evidence produced on record as per Ex.P1 to P17 along with oral evidence prove his possession and enjoyment over the land in question which has been brushed aside by the trial court without proper findings and reasoning. The inferences drawn, presumption raised, conclusions arrived at and appreciation of oral and documentary evidence not in accordance with law and as such, judgment and decree are unsustainable under law. Hence, sought to allow the appeal by decreeing the suit.

10. THE respondents appeared through counsel and supported the impugned judgment and decree that, the same is passed by the learned trial court in accordance with law by appreciating the respective pleadings of the parties and materials on record. Therefore, the appeal being meritless, no grounds are made out to set aside the impugned judgment and decree and as such, sought to dismiss the appeal with cost.

11. THE trial court records and proceedings secured and perused.

12. THE appellant, in terms of IA-II, under Order 41 Rule 27 read with Section 151 of CPC sought for production of additional evidence by producing documents. In terms of IA-IV under Order 16 Rule 6 read with Section 151 of CPC sought to summon the proceedings in LND SR 96/1979-80 in respect of RS No.45 pertaining to an extent of 3 acres from the concerned authority. That apart, the appellant, in terms of IA-III under Order 6 Rule 17 read with Section 151 of CPC sought to amend the boundaries pertaining to the suit property towards its southern side as Gomala land instead of Bangarpet Gadi and road.

13. THE respondents resisted IA-II *inter-alia* contending that, the documents sought to be produced in terms of the application are on record as per Ex.P13, which evidences that the suit property is subjected to survey settlement and the concerned authority prepared sketch after survey. Ex.P13 indicates a Gomala land is situated

towards southern side while eastern side also shown as government Gomala land, which is proved by the defendants before the trial court with cogent evidence. Thus, no grounds are made out to produce additional evidence in appeal.

14. IA-III is resisted, *inter-alia* contending that, the grant order/certificate is on record as per Ex.P13 evidences the boundaries and extent. Ex.P15 is the survey sketch prepared after survey evidences that government Gomala land is situated on eastern and southern side of the suit property. According to the plaintiff, the boundary on the southern side is Bangarpet Gadi and road as well as road which is contrary to Ex.P13, P15 and P17. The grant is not in dispute. Therefore, summoning the very same document from the authority does not arise.

15. IA-IV is resisted by the respondents / defendants *inter-alia* contending that, the land in question is granted to the erstwhile owner A. Ramu in terms of grant. To prove the said fact ample evidence is on

record both oral and documentary. The suit is dismissed after contest. The grant is not in dispute. The boundaries as shown in the grant as per Ex.P13 is part of record. Therefore, the amendment sought for in any way enable the court to decide the controversies between the parties on merits. Hence, sought to dismiss all the above applications with cost.

16. HEARD the arguments. Perused the materials on record.

SUBMISSIONS OF THE APPELLANT :

17. THE learned counsel for appellant would argue that, an injunction simplicitor is sought by the plaintiff against the alleged interference of the defendants into his possession and enjoyment of the property in question within specific boundaries. The plaintiff claims to have acquired the property to an extent of 3 acres in RS No.45 (new RS No.73/1 after survey re-settlement) in terms of the sale deed executed in his favour by the erstwhile owner A. Ramu and his wife Gangamma on 07.10.2006. The defendants are also claiming the

title over the property prior to the grant made in favour of said A. Ramu, in terms of the grant order dated 10.02.1979 to an extent of 3 acres also comprises in erstwhile RS No.45 which originally a Gomala land consisting of a vast extent. The defendants have not disputed the title of the plaintiff based on Ex.P1 ever since 2006.

18. ACCORDING to the plaintiff, after acquiring the property the revenue records are mutated into his name and since then he is in possession and enjoyment of the suit property as an absolute owner. A family property is situated adjacent to the said property towards western side. The defendants are strangers to the suit property upon which none of them has any right, title or interest. There are documents such as the original sale deed, survey settlement records, mutation, RTCs, grant order and sketch produced on record as per Ex.P1 to P23 which evidence the possession and enjoyment of the suit property in question by the plaintiff as on the date of the suit, in addition to the oral evidence placed through PW1 and PW2.

19. THE only ground under which the plaintiff was non suited in terms of the impugned judgment and decree holding that Ex.P13 the grant certificate issued in favour of the erstwhile owner A. Ramu evidences different boundaries. The claim of the plaintiff is not accepted in terms of the findings recorded as per para No.28 to 33 of the impugned judgment which indicate that when Ex.P13 is compared to the boundaries shown in the plaint schedule, they are not identical in nature. Ex.P13 evidences that Jayamangala village boundary is shown towards the east. The properties of Nagarajappa and the plaintiff are shown towards the western side. According to Ex.P13, a Gomala land is shown towards west and the properties of Bovi Subbakka is shown towards northern side. Therefore, when the plaintiff failed to provide the description so as to identify the property in question in terms of Order 7 Rule 3 of CPC the claim is unsustainable.

20. THE learned counsel would also submit that there are three applications filed as per IA-II to IV by virtue of which the proceedings

in LND SR 96/1979-80 in respect of RS No.45 pertaining to an extent of 3 acres is sought from the concerned authority. Under IA-II the plaintiff sought for production of additional evidence through documents which are the grant certificate, endorsement given by the Tahasildar, the sketch prepared by revenue authorities after survey re-settlement and also the application given by the appellant. Furthermore, in terms of IA-III the plaintiff sought to amend the boundaries pertaining to the suit property towards its southern side as Gomala land instead of Bangarpet Gadi and road. In the event these applications are allowed which would enable this court to adjudicate the dispute in entirety and that would evidence the actual possession and enjoyment of the suit property in question by the plaintiff within specific boundaries since the defendants have not disputed the title of the plaintiff acquired through Ex.P1.

SUBMISSIONS OF THE RESPONDENTS :

21. THE learned counsel for the respondent would argue that, the plaintiff acquired the property to an extent of 3 acres from A.

Ramu is not in dispute. His vendor A. Ramu acquired 3 acres in terms of the grant is also not in dispute. According to the defendants, the description and boundaries within which the plaintiff claims his possession and enjoyment is in dispute. The boundaries shown by the plaintiff in the plaint is relating to an entire extent of 7 acres which comprises the suit property as a portion. The property in RS No.45 is a vast Gomala land, out of which 3 acres is granted to erstwhile owner A. Ramu with specific boundaries. The said property was subjected to survey re-settlement and accordingly, re-numbered as RS No.73/1. The defendant No.1 is granted with an extent of 3 acres prior to the grant in favour of A. Ramu in the year 1979 and since then they are in possession and enjoyment of their property after fencing it with stone pillars surrounding their property. the documents produced and relied by the plaintiff in Ex.P13 and P15 shows different boundaries than the one shown in plaint schedule as well as in Ex.P1. Under IA-III the plaintiff sought to include the government land within his possession. So far as IA-IV is concerned, the plaintiff sought to summon the document from the concerned authorities regarding grant proceeding,

but however, Ex.P13 is on record which would suffice to appreciate the case. The counsel would also argue that, the land of the defendants is not subjected to survey and re-settlement. Likewise, the properties in the southern side also not sub-divided and under such circumstances the relief cannot be granted.

22. THE points that arise for consideration before this court are;

1. WHETHER the trial court is justified in dismissing the suit of the plaintiff holding that the plaintiff failed to prove his possession and enjoyment within the boundaries and extent as well as the alleged interference caused?
2. IF so, whether the impugned Judgment and Decree of the trial court is to be interfered with?
3. WHETHER the appellant has made out grounds to produce additional evidence as sought for on IA-II?

4. WHETHER the appellant has made out grounds to summon the proceedings in LND SR 96/1979-80 in respect of RS No.45 pertaining to an extent of 3 acres from the concerned authority as sought for on IA-IV?
5. WHETHER the appellant has made out grounds to amend the plaint in respect of the boundaries of the suit schedule as sought for on IA-III, which would enable this court to decide the dispute in controversy between the parties?
6. WHAT Order or Decree?

23. THE answer to the above Points are as below;

- | | | |
|------------|---|--|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Negative |
| Point No.3 | : | In the Negative |
| Point No.4 | : | In the Negative |
| Point No.5 | : | In the Negative |
| Point No.6 | : | AS per final order below
for the following; |

REASONS**Re. POINT No.1:**

24. WHAT transpires from the materials on record that, the claim for injunction is placed in respect of the suit property in question to an extent of 3 acres within the specific boundaries claimed by the plaintiff said to have been acquired by him through erstwhile owner A. Ramu and his wife Gangamma in terms of sale deed dated 07.10.2006 (Ex.P1). According to him, being the absolute owner, is in possession and enjoyment of the property in question within the boundaries as claimed. He is raising seasonal crops in the said property. According to him, the defendants said to have created the documents and interfered into his possession and enjoyment illegally which warranted him to bring the suit before the trial court claiming relief stated *supra*.

25. THEREFORE, the entire claim of the plaintiff is based on the sale deed under which A. Ramu and his wife conveyed in his

favour. The said property was granted in favour of A. Ramu in terms of Ex.P13 on 25.06.1998, subject to survey settlement. The sketch and such other survey settlement records were prepared by the concerned authority as per grant in terms of Ex.P15 to P17. Those documents produced in evidence are not in dispute. The revenue records are mutated based on the said grant which are in evidence as per Ex.P2 to P23. The list of beneficiaries of original RS No.45 are also on record as per Ex.P16. Undoubtedly, RS No.45 has vast extent which was subjected to survey settlement and grant in favour of several beneficiaries as denoted in Ex.P16. The survey settlement followed by mutation with reference to the extent of land granted in favour of each beneficiaries is not disputed fact. Under Ex.P16 the erstwhile owner of the plaintiff allotted with RS No.73 after survey settlement. Ex.P15 and P17 are the corresponding documents evidencing survey effected in respect of RS No.45.

26. IT is argued that, thus, when the description and boundaries of the suit properties claims to have been in possession of

the plaintiff having been proved in accordance with mandate of law, the decree passed refusing to grant perpetual injunction in favour of the plaintiff is erroneous under law. The evidentiary value of the documents produced as per Ex.P1 to P23 have been brushed aside without any sound reasoning which rendered the decree is highly capricious and therefore, the suit is liable to be decreed.

27. THE learned counsel for the respondents/defendants, *ex-adverso*, with all vehemence at his command argued that, the suit is filed by furnishing wrong boundaries and extent. According to the defendant No.1, he also granted with a strip of land to the southern side of the suit property to an extent of 3 acres prior to the grant in favour of A. Ramu in terms of the order / grant in LND. SR 96/1979-80 dated 10.02.1979 since then he is in possession and enjoyment of the said property as absolute owner. He laid fencing with stone pillars surrounding his property which were destroyed by the plaintiff.

28. IT is further argued that, the claim being for injunction simplicitor the possession and enjoyment within the boundaries and extent as on the date of the suit to be proved with cogent evidence. The extent and boundaries are denied. Thus, the impugned judgment and decree is *per-se* legal and do not call for any interference by this court. Thus, the appeal being without any merits and substance, be dismissed and the impugned judgment/decreed be upheld.

29. WHAT transpires from the materials on record, it is apparent that the suit is brought by the plaintiff on his assertion of the possession and enjoyment over the suit property. According to him, he acquired the suit property in terms of sale deed dated as per Ex.P1. He has been paying the tax in accordance with the assessment as well as the demand made by the concerned authority. Things stood thus, the defendants being the stranger, unconcerned with the suit properties abruptly interfered into the possession and enjoyment.

30. SECTION 36 of The Specific Relief Act provides for preventive relief. The said Section postulates as to how preventive relief can be granted. It reads thus,

36. Preventive relief how granted.— *Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.*

31. THUS, in terms of the said Section the preventive relief by injunction either temporary or perpetual be granted at the discretion of the court. Section 38 of the said Act provides for the circumstances when perpetual injunction be granted. It reads thus,

Section 38. Perpetual injunction when granted. - *(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.*

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

(underlining by me)

32. THUS, as per Section 38(3) of above Section provides that, the perpetual injunction be granted when the defendant invades or threatens to invade the plaintiff's right to or enjoyment of the property. In the light of the said Section it is to be appreciated that, the suit is brought by the plaintiff for injunction simplicitor.

33. AS stated *supra*, according to the defendants the suit is filed by furnishing wrong boundaries and extent. Such being the contentions it is for the plaintiff to prove the possession and enjoyment within the boundaries and extent as on the date of the suit.

34. ORDER 7 Rule 3 of CPC provides that,

3. Where the subject-matter of the suit is immovable property. - Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

THE scheme of above provision of law provides that since the subject matter of the suit is immovable property it must contain the description and boundaries.

35. IF the dispute is with regard to the identity of the property the plaintiff must establish the identity of those properties upon which the relief is claimed and any amount of evidence without pleadings has no value. Furthermore, where the title of the party is in dispute the suit for permanent injunction is not maintainable. (**Smt. Siriyala and Others V/s B.N Ramesh** – ILR 2010 KAR 2996).

36. SINCE the perpetual injunction is claimed, it is profitable to refer to the decision of Hon'ble Supreme Court in a case **Anathullah Sudhakar V/s P. Buchi Reddy (D) by LR's and Others** (2008) 4 SCC 594) it is held that, while deciding the case with regard to injunctions, summarized the principles governing thereto. It is profitable to extract para 21 of the judgment as under:

21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simplicitor.

(b) As a suit for injunction simplicitor is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely

because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

37. THUS, it is held in the aforesaid decision that the question of title also to be gone into incidentally.

38. THE plaintiff in the course of evidence placed oral account by examining him as PW1. In addition to his evidence he placed the evidence of PW2 A. Ramu the erstwhile owner. He produced documents such as the sale deed as per Ex.P1, mutation, RTCs, revenue settlement records as per Ex.P3 to P22 and the endorsement as per Ex.P23. Denying the claim and to support the contentions of the written statement the defendants produced the evidence of defendant No.1 by examining him as DW1. Documentary evidence such as the grant certificate, RTC, E.C and discharge of mortgage as per Ex.D1 to D5 are produced on record.

39. AS stated *supra*, the entire claim of possession and enjoyment including title is placed by the plaintiff based on the sale deed standing in his name. Voluminous documents are produced and relied by the plaintiff to prove his possession.

40. AS states *supra*, the evidence of plaintiff and his vendor are placed on record. The survey settlement records and the sale deed under which the plaintiff acquired the suit property is on record. All that he claims that, PW2 transferred the property to an extent of 3 acres in favour of the plaintiff on 07.10.2006 under Ex.P1 with specific boundaries. It is comprising in and bounded east by ; Jayamangala village boundary, west by ; the property of Nagarajappa and Shivanna, north by ; the property of Bovi Subbakka and south by ; Bangarpet boundary and road. Throughout in his claim he contended so. PW2 also reiterates his similar evidence. Ex.P13 is the vital document under which PW2 acquired the property to an extent of 3 acres, comprising in and bounded east by ; village boundary, west by ; Gomala land, north by ; block No.10 and south by ; Gomala. Formerly the said property

was comprising in RS No.45 under block No.11. Ex.P15 and P17 are the sketch prepared after survey settlement, evidence the boundaries and block number corresponding to Ex.P13. However, Ex.P1 refers to a different boundary which is inclusive of entire extent under RS No.45 until the boundary to the southern side which is contrary to Ex.P13 to P17. There is wrong description shown in Ex.P1 while transferring the property in favour of the plaintiff.

41. IT is very relevant to refer to what is claimed by the plaintiff throughout in his cross-examination he claims the similar boundaries that he is in possession and enjoyment of 3 acres of land until the village boundary to the southern side, which is undoubtedly, inclusive of the property of the defendants to an extent of 3 acres granted to him prior to the grant in favour of the defendant No.1. He denies that, the property of the defendant No.1 is situated to the southern side. Relevant admissions could be found in page No.7 of his cross-examination. So far as the identification and description of the property claimed by the plaintiff within his possession and enjoyment,

his admission is very relevant as excerpted. It reads thus, “ಪೋಡಿಯಾದ ನಂತರ ಪೂರ್ವ ಮತ್ತು ದಕ್ಷಿಣ ದಿಕ್ಕಿಗೆ ಸರ್ಕಾರಿ ಗೋಮಾಳವಿದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ದಕ್ಷಿಣಕ್ಕೆ ಬಂಗಾರಪೇಟೆ ಗಡಿ ಇದೆ ಎನ್ನುತ್ತಾರೆ. ದಕ್ಷಿಣಕ್ಕೆ ಇರುವ ಸುಮಾರು 3 ಎಕರೆ ಸರ್ಕಾರಿ ಗೋಮಾಳ ಜಮೀನು 1ನೇ ಪ್ರತಿವಾದಿಗೆ 1979 ರಲ್ಲಿ ಮಂಜೂರಾಗಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿಯು ದಕ್ಷಿಣಕ್ಕೆ ಜಮೀನೇ ಇಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಪ್ರತಿವಾದಿಗೆ ಸಂಬಂಧಿಸಿದ 3 ಎಕರೆ ಜಮೀನನ್ನು ಸೇರಿಸಿಕೊಂಡು ನಿಪಿ-1 ರಲ್ಲಿ ದಕ್ಷಿಣಕ್ಕೆ ಬಂಗಾರಪೇಟೆ ಗಡಿ ಎಂದು ತಪ್ಪು ಚಕ್ಕುಬಂದಿ ನಮೂದಿಸಿರುತ್ತೀರಿ ಎಂದರೆ ಸರಿಯಲ್ಲ.” This evidence clearly indicates that, there is no property to the southern side of his property which is contrary to Ex.P13, P15 to P17.

42. DW1 is extensively cross-examined. He also produced the grant certificate as per Ex.D4 under which he is granted with an extent of 3 acres in RS No.45 comprising in and bounded east by ; the remaining property in RS No.45, west by ; property of Manappa and Venkatesh, north by ; government property and south by ; the property of Sanjeeva and Narayanappa. Thus, it appears that there was a property to the northern side which was a government property in the year 1979 which appears to have been granted in favour of PW2

- A. Ramu subsequently. This document is not in dispute. After survey settlement the property of A. Ramu came under block No.11. Thus, as could be seen from Ex.D4 there is a property after the property of the plaintiff towards southern side which is claimed otherwise by the plaintiff throughout in his case. Thus, the description and boundary shown by the plaintiff in his plaint averments is inclusive of and relating to an extent of 7 acres which comprises the suit property which is a only a portion. The contentions of the defendants that the said property subjected to survey re-settlement and accordingly, renumbered as RS No.73/1 and the same is evidenced through Ex.P16. It is under block No.11 as per Ex.P17 as per survey settlement. Thus, the property conveyed in favour of the plaintiff is comes within block No.11, however, the wrong description and identification is shown by the plaintiff while seeking for the relief contending that he is in possession of the property till the boundary contrary to his own documents. Thus, the proper description, the boundaries and the identity of the property within his lawful possession and enjoyment is not proved. The issue is would specific

effect to prove the fact of his lawful possession and enjoyment of the suit property within the extent and boundaries to which the plaintiff failed.

43. SUCH being the case, the description and identity are not proved by the plaintiff through cogent evidence. Thus, the findings recorded by the trial court that the identity and description not proved to claim the possession and enjoyment as on the date of the suit is in accordance with the materials placed on record.

44. THEREFORE, the conclusion arrived at and the findings recorded by the learned trial court is in accordance with the facts and circumstances and evidence placed on record. Thus, the impugned judgment and decree do not call for any interference by this court and as such, the point under consideration is answered in **AFFIRMATIVE**.

45. **POINTS No.3 TO 5:** THESE points are taken together for common consideration in order to appreciate the evidence placed on record both oral and documentary to avoid repetition of findings.

46. UNDER Order 41 Rule 27 of CPC the plaintiff sought for production of additional evidence which are the copies of grant certificate, sketch prepared after survey settlement, the application given for documents and also endorsement issued to that effect. It is relevant to note that, all these documents sought to be produced are the part of evidence before the trial court. The endorsement indicates that, the proceedings are not available. Ex.P23 produced on record before the trial court also indicates to that effect. They are not required for any substantial cause. Therefore, since all these documents being the part of record the circumstances shown for production of additional evidence as provided under Rule 27 of Order 41 of CPC having not been met, no grounds are made out to consider the said application.

47. THE appellant in terms of IA-IV sought to summon the proceedings in LND SR 96-1979-80 in respect of RS No.45 pertaining to an extent of 3 acres from the concerned authority. The appellant made an attempt to apply for the said document in the year 2018 which is disposed off vide endorsement dated 08.05.2018 to the effect that the said proceedings not available. Ex.P23 also evidences the said fact that those proceedings are not available. This fact is not disputed throughout in the trial. Therefore, the competent authority having been issued with the endorsement regarding non availability of the documents intended, the issue of summons calling for the proceedings would be a futile exercise. Hence, no grounds are made out in the application.

48. IN **Pirgonda Hongonda Patil V/s Kalgonda Shidgonda Patil and Others** which still holds the field, it was held that all amendments ought to be allowed which satisfy two conditions ; (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between

the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally corrected, but the amendment would cause him an injury which could not be compensated in costs.

49. Under IA-III the appellant sought to amend the boundaries pertaining to the suit property towards its southern side as Gomala land instead of Bangarpet Gadi and road. This appears to be contrary to his pleadings, Ex.P1 and the oral evidence placed on record. There is extensive cross-examination on this aspect each other. The excerpted portion of his admission as above clearly indicates that the plaintiff is harping upon the specific boundaries that there is Bangarpet Gadi/boundary and road to the southern side and no other properties. However, by virtue of the proposed amendment he is intending to prove otherwise contrary to his pleadings, the said proposed amendment would take away the defense of the defendants. Moreover it is the very case of the defendants that the defendant No.1 is granted with 3 acres of land toward southern side prior to the grant

in favour of A. Ramu. Therefore, the very case pleaded and placed by the plaintiff would be destroyed under the proposed amendment. Moreover, the proposed amendment will not enable this court to adjudicate the controversy between the parties in entirety. The plaintiff is approbating and reprobating the facts. Hence, the application deserves to be dismissed. Therefore, no grounds are made out to allow the applications, accordingly, the point No.3 to 5 answered in **NEGATIVE**.

50. **POINT No.2:** AS the impugned Judgment and Decree do not warrant any interference by this court, the appeal fails and hence, the point under consideration is answered in **NEGATIVE**.

51. **POINT No.6:** IN view of praefatus reasons and in the result, the following;

ORDER

THE appeal filed by the appellant is hereby dismissed.

THE impugned Judgment and Decree be and is hereby confirmed.

THE IA-II filed by the appellant under Order 41 Rule 27 read with Section 151 of CPC hereby dismissed.

THE IA-III filed by the appellant under Order 6 Rule 17 read with Section 151 of CPC hereby dismissed.

THE IA-IV filed by the appellant under Order 16 Rule 6 read with Section 151 of CPC hereby dismissed.

THE parties to bear own costs incurred.

THE pending application/s if any, stand disposed off.

DECREE shall follow accordingly.

TRANSMIT entire Trial Court records and proceedings to the concerned court along with the copy of this Judgment forthwith.

(Typed to my dictation by the Stenographer on computer, corrected, revised, signed by me and then pronounced in the open Court on this the **8th day of June 2026**).

(PRASAD .K.B)

Addl. District & Sessions Judge,
FTSC-I (POCSO), Kolar.

Nvs/*