

**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE
(JUNIOR DIVISION):: NELLORE.**

Present:- **Sri P.Bharadwaja,**
I Addl. Civil Judge (Junior Division), Nellore.

Friday, this the 7th (Seventh) day of March, 2025

OS No.1006 / 2021

Between:

1. Pasam Anil Kumar Reddy, S/o.Srihari Reddy, Hindu, aged 44 years, native of Vidavaluru village and Mandal, SPS Nellore District. Resident of Flat No.205, Venkateswara Nilayam Apartment, 8th Cross Road, Ramji Nagar, Nellore Corporation, SPS Nellore District, A.P.
2. Gandhavalla Sailaja, W/o.Dasaradha Ramaiah, Hindu, aged 69 years, resident of Door No.20/1-99, Ramireddy Bunglow, Raja Street, Mulapet, Nellore Corporation, SPS Nellore District, A.P.
3. Tenali Ramakrishna, S/o.Venkatarathnam, Hindu, aged 41 years, resident of Door No.25-3-56, Ramalayam Street, near S.P. Bunglow, Nellore Corporation, SPS Nellore District, A.P.
4. Gandhavalla Gangadharam, S/o.Chokkalingam, Hindu, aged 72 years, Allipuram Village, Nellore Rural Mandal, SPS Nellore District, A.P.

..... Plaintiffs

And

Leburu Sreedhar Reddy, S/o.Veera Reddy, Hindu, aged 55 years, resident of Door No.16-7-125, Karnala Mitta, Nellore Corporation, SPS Nellore District, A.P.

..... Defendant

This suit coming on 12.02.2025 for final hearing before me in presence of Sri Akula Venkateswarlu, Advocate for Plaintiffs and Sri N.Sreenivasulu Reddy, Advocate for Defendant and the matter having stood over for consideration till to-day, this Court delivered the following :-

J U D G M E N T

1. The plaintiffs 1 to 4 file the present suit against the defendant seeking the relief of permanent injunction restraining the defendant, his men and agents from interfering with their peaceful possession and enjoyment over the suit schedule property and for other allied reliefs.

2. **The brief averments in the plaint are that:**

The suit schedule property is a vacant site situated in an extent of Ac.0.50 cents in survey number 1944 of Nellore Bit-1, Mahatma Gandhi Interior, SPSR Nellore District. Originally, one Thikkavarapu Patabhi Ramireddy s/o. Ramireddy, was the owner of the suit schedule property and he sold away the property to one Thota Mastanaiah on 25.09.1976 under a registered sale deed bearing document number 2676/1976. The said Thota Mastanaiah has five female children by names Buduru Padmavati, Guggila Sujata, Madanapalli Usha, Nagiseti Kameswari and Thalari Vijayalakshmi. Mastanayya executed a registered settlement deed in the name of his five daughters on 06.10.2005 vide registered settlement deed bearing document number 13370/2005. Subsequently, the five daughters of Mastanaiah

except Buduru Padmavati sold away their four-fifth share of the property in an extent of 242 akanams to the Plaintiffs on 07.02.2011 under registered sale deed bearing document number 1457/2011 and the other daughter by name Buduru Padmavati sold her one-fifth share in an extent of 60.5 akanams to one Pasupuleti Venkateswarlu through a registered sale agreement come General Power of Attorney on 07.06.2018 bearing document number 6308/2018. The said Pasupuleti Venkateswarlu sold the one-fifth share of Buduru Padmavati to one Nellore Venkateswarlu on 14.12.2018 under registered sale deed bearing document number 12995/2018 . The plaintiffs are in possession of the suit schedule property from the date of their purchase of the same and they developed the property. The defendant has nothing to do with the suit schedule property and taking advantage of the fact that the plaintiffs are away from the suit schedule property, the defendant and his men are trying to interfere with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property. On 22-09-2021, when the plaintiffs visited the suit schedule property, the defendant and his men and agents, along with some unruly elements, made an attempt to occupy the suit schedule property and the plaintiffs restrained them with heavy difficulty. The plaintiffs are not in a position to resist the high-handed activities of the defendant and hence, they filed the present suit seeking the relief of permanent injunction. The prima facie case and the balance of convenience are in favor of the plaintiffs and

they will suffer irreparable loss if the permanent injunction is not granted in their favor. Hence the suit.

3. The defendant appeared before the court after receiving suit summons and he filed his written statement opposing the suit claim. The brief averments in the written statement filed by the defendant are :

All the material allegations made in the plaint are false and all the material allegations are specifically denied. The present suit is not maintainable as it is a fraudulent and vexatious suit. It is true that Thota Mastanaiah purchased an extent of Ac.0.50 cents of land from one Thikkavarappu Pattabhirami Reddy on 25.09.1976 under registered sale deed bearing document number 2676/1976. However, the said Thota Mastanaiah sold the Ac.0.50 cents of land to one Bingimalla Eswaramma under registered sale deed dated 20.06.1980 with a condition that the said Eswaramma has to execute a registered reconveyance deed in favour of Thota Mastanaiah if he repays the entire sale consideration of Rs. 15,500/- on or before 19.06.1981. The said Thota Mastanaiah failed to repay the consideration amount as agreed and hence, the sale deed dated 20.06.1980 stands confirmed and Eswaramma became absolute owner of the suit schedule property. The plaintiffs suppressed about the execution of sale deed dated 20.06.1980 intentionally. After 19.06.1981, Eswaramma became the absolute owner of the entire extent of Ac.0.50 cents of land and

she continued to be in possession of the same and she executed an agreement of sale dated 02.07.2003 in favor of the defendant after receiving sale consideration amount of Rs.1,00,000/- Subsequently, Eswaramma and defendant herein came to know that Thota Mastanaiah executed a registered cancellation deed dated 07.07.2003 by cancelling the sale deed dated 20.06.1980 without the consent of Eswaramma by falsely alleging that he repaid the total consideration of a Rs.15,500/- to Eswaramma through one Karamsetty Venkataramaiah on 19.06.1985. Aggrieved by the same, Eswaramma and defendant filed a suit in OS.No.779/2003 on the file of this court and during the pendency of the suit, Thota Mastanaiah died intestate and the five daughters of Thota Mastanaiah were added as defendants 3 to 7 in the suit. One Kosuru Dhanalakshmi who is the sister of Thota Mastanaiah is also added as second defendant and she alone contested the suit and the daughters of Thota Mastanaiah remained ex parte. The suit is decreed after due trial cancelling the registered cancellation deed dated 07.07.2003. The sister of Thota Mastanaiah preferred an appeal in AS No. 163/2012 on the file of Hon'ble IV Additional District Court, Nellore and the appeal was dismissed on merits on 25.07.2017 confirming the decree. There was no further appeal against the said decree and judgment and hence the same became final. The plaintiffs filed the present suit by suppressing the above mentioned facts. Eswaramma executed a registered sale deed dated 04.01.2013 in favour of the defendant after the decree and

judgment in OS No. 779/2003 and delivered possession to the defendant. The defendant is in possession and enjoyment of the entire extent of Ac.0.50 cents of land from the date of registered sale deed. Thota Mastanaiah stealthily executed a registered settlement deed dated 06.10.2005 bearing document number 13370/2005 in the name of his five daughters during the pendency of OS number 779/2003 and the said document is hit by the doctrine of lis pendency and it is null and void. The allegations in the plaint that the Plaintiffs purchased the suit schedule property from the four daughters of Thota Mastanaiah except one Buduru Padmavathi and that the said Buduru Padmavathi sold her one-fifth share in Ac.0.50 cents of land to one Pasupuleti Venkateswarlu and that the said Pasupuleti Venkateswarlu later sold the property to one Nellore Venkateswarlu under regular registered sale deed are all false. All the documents were created in collusion with each other with a view to cause harm to the defendant herein . The defendant purchased the entire extent of Ac.0.50 cents of land and erected a barbed fencing wire around the said land. Subsequently, he sold away the southern portion of 112.5 Ankanams out of Ac.0.50 cents of land equivalent to 302.5 Ankanams to one Pappu Lakshmi Narayana, Pappu Subhashini and Pappu Sai Krishna under registered possessory agreement of sale come GPA on 07.06.2021 bearing document number 5808/2021 for a consideration of rupees Rs.1,48,50,000/- and delivered possession to them on the same day . He also sold away the

northern portion of 190 akanams to one Murarisetty Venkata Subba Rao and Podamekala Varalakshmi Under registered possessory agreement of sale come GPA dated 07.06.2021 bearing document number 5801/2021 for consideration of Rs. 2,50,80,000/- and delivered possession to them on the same day. The purchasers are in possession and enjoyment of the suit schedule property since then. The defendant is not in possession of the suit schedule property since 07.06.2021 and he never visited the suit schedule property after the date of documents. The plaintiffs filed the present suit by suppressing the original facts and wrongly included the defendant as defendant in the suit. There is no cause of action to file the present suit and the same is liable to be dismissed.

4. Basing on the original pleadings, the following issues were settled for trial.

1. ***Whether the plaintiffs are in peaceful possession and enjoyment of the suit schedule property?***
2. ***Whether the defendant invades or threaten to invade the plaintiffs' right or enjoyment over the schedule property?***
3. ***Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for?***
4. ***To what relief ?***

5. During trial, on behalf of the Plaintiffs, 1st plaintiff examined himself as Pw.1 and got marked Exs.A1 to A6 documents. Ex.A1 is the certified copy of registered sale deed, dated 25.09.1976 bearing document No.2676/1976 executed in favour of Thota Masthanaiah. Ex.A2 is the certified copy of registered settlement deed dated 06.10.2005 executed by Masthanaiah in favour of B.Padmavathi and others bearing documents No.13370/2005. Ex.A3 is the certified copy of registered sale deed dated 07.02.2011 bearing document No.1475/2011 executed by G.Sujatha and others in favour of P.Anil Kumar Reddy and others. Ex.A4 is the certified copy of registered general power of attorney cum agreement of sale dated 07.06.2018 bearing document No.6308/2018. Ex.A5 is the certified copy of sale deed dated 14.12.2018 bearing document No.12995/2018 in the name of Nellore Venakteswarlu. Ex.A6 is the certified copy of the encumbrance certificate dated 07.03.2024. They also examined a third party to the suit as Pw.2.

6. On the other hand, the defendant examined himself as Dw.1 and got marked Ex.B1 to B6 documents. Ex.B1 is the certified copy of Decree in O.S.No.779/2003 dated 03.10.2012 on the file of this Court. Ex.B2 is the certified copy of Judgment in O.S.No.779/2003 dated 03.10.2012 on the file of this Court. Ex.B3 is the certified copy of Decree in A.S. No.163/2012 dated 25.07.2017 on the file of Hon'ble IV Addl. District Court, Nellore. Ex.B4 is the certified copy of Judgment in A.S.No.163/2012

dated 25.07.2017 on the file of Hon'ble IV Addl. District Court, Nellore. Ex.B5 is the certified copy of registered possessory sale agreement cum GPA dated 07.06.2021 executed by defendant in favour of M.Venkata Subba Rao and another bearing document No.5801/2021. Ex.B6 is the certified copy of registered possessory sale agreement cum GPA dated 07.06.2021 executed by defendant in favour of P.Lakshmi Narayana and others bearing document No.5802/2021. `

7. Heard the arguments for learned counsel for plaintiff and learned counsel for defendant. Perused the record.

Issues No.1 to 3 :

8. It is the case of the plaintiffs that they are the absolute owners of the suit schedule property having purchased the same under Ex.A3 registered sale deed and that they are in possession and enjoyment of the suit schedule property and that defendant is trying to interfere with their peaceful possession and enjoyment of the suit schedule property without having any manner of right. It is their further case that their vendors got the property by virtue of Ex.A2 registered settlement deed executed by their father and that the father of their vendors in turn got the property under Ex. A1 registered sale deed. On the other hand, while the defendant is admitting Ex.A1 sale deed, it is his specific case that Thota Mastanaiah who purchased the property under Ex.A1 executed a conditional sale deed

in favour of one B. Eswaramma and that the sale became absolute and that the said Eswaramma initially executed an agreement of sale in his favour in relation to the suit schedule property and some other extent of the property and that he filed a suit in OS.No.779/2003 along with the said Eswaramma against Thota Mastanaiah and later, the vendors of the plaintiffs were added as legal heirs after the death of Thota Mastanaiah and that the suit is decreed in his favor . It is his further case that Eswaramma executed a regular registered sale deed in his favor after the decree of the suit and that he was in possession and enjoyment of the suit schedule property and some other property and that he executed Exs.B5 and B6 registered possessory sale agreements come GPA in favor of third parties and delivered possession to them . It is his case that he is no way concerned with the suit schedule property from the date of Exs.B5 and B6 and that the plaintiffs filed a false suit against him. In view of the defense taken by the defendant, the burden is on the plaintiffs to show that they are in possession and enjoyment of the suit schedule property and that there is a threat to their possession from the hands of the defendant. As it is an admitted fact that the suit schedule property is a vacant site, the principle of law that possession follows title shall be followed in this case and the question of title should be incidentally looked into. In order to prove their case, the first plaintiff filed his chief examination affidavit in lieu of his chief examination and reiterated the plaint averments. He also examined a third party who is a

relative of the other purchaser of the remaining portion of Ac.0.50 cents and he also deposed on the same lines as that of PW1 and corroborated his evidence in all material particulars.

9. The defendant got PWs 1 and 2 cross-examined. During his cross-examination, PW 1 admitted that the suit schedule property originally belonged to one Thikkavarpu Pattabhirami Reddy and that the said Pattabhirami Reddy sold the suit schedule property under Ex.A1 to Thota Mastanaiah. He however denied the suggestion that Thota Mastanaiah conditionally sold the suit schedule property to one B. Eswaramma on 20.06.1980 with a condition that Eswaramma shall execute reconveyance deed with his own expenses if he repays Rs.15,500/- by 19.06.1981 and that the sale will become final if the amount is not paid by that date. He also denied the suggestion that Thota Mastanaiah failed to repay the amount and that the sale dated 20.06.1980 became final and that the plaintiffs filed the present suit by suppressing about the sale transaction. He also denied the suggestion that Eswaramma executed an agreement of sale in favour of the defendant on 02.07.2003 and that Eswaramma and defendant filed OS No. 779/2003 on the file of this court against Thota Mastanaiah for canceling the sale deed dated 20.06.1980 unilaterally. He also denied the suggestion that OS.No.779/2003 was decreed in favor of the defendant and Eswaramma and that Thota Mastanaiah executed Ex.A2 settlement deed in favor of his daughters during the pendency of OS.No.779/2003. He also

denied the suggestion that the sister of Thota Mastanaiah by name Dhanalakshmi filed an appeal in AS no. 163/ 2012 against the judgment and decree OS no. 779/2003 and that the appeal is also dismissed. He also denied the suggestion that permanent injunction is granted in favor of defendant and Eswaramma in OS No.779/2003. and that Eswaramma executed a registered sale deed in favour of the defendant on 04.01.2013 and delivered possession to him. He however admitted that one B Padmavati who is one of the daughter of Thota Mastanaiah executed a registered agreement of sale cum GPA to one Pasupuleti Venkateswarlu for an extent of 60.5 Ankanams. He however denied the suggestion that no possession was delivered to the said Pasupuleti Venkateswarlu under the agreement of sale. He also denied the suggestion that his evidence about the purchase of that property by one Nellore Venkateswarlu from the said Pasupuleti Venkateswarlu is false. He also denied the suggestion that the defendant is in possession and enjoyment of the total extent of Ac.0.50 cents of land after purchasing the same from Eswaramma and that he sold away the property to third parties under Exs.B5 and B6 registered possessory sale agreements cum GPA dated 07.06.2021. He also denied the suggestion that the defendant never visited the suit schedule property after executing Exs.B5 and B6 documents and that the present suit is filed by suppressing material facts. He however admitted that Nellore

Venkateswarlu also filed a suit against the same defendant in OS.No 998/2021 on the file of III AJCJ Court, Nellore.

10. P.W.2 stated in his cross-examination that the entire extent of Ac.0.50 cents of land was originally owned by Thikkavarupu Pattabhirami Reddy and that the same is purchased by Thota Masthanaiah on 25.09.1976. He however stated that he does not know whether Thota Masthanaiah sold the property to one B.Eswaramma on 20.06.1980 with a condition that she shall reconvey the property on payment of the amount of Rs.15,500/- on or before 19.06.1981 and whether the sale became absolute in favour of Eswaramma as Thota Masthanaiah failed to pay the amount or not. He however denied the suggestion that himself and plaintiffs have knowledge about the execution of the said sale deed and that the present suit is filed by suppressing the said fact. He also denied the suggestion that Eswaramma executed agreement of sale in favor of defendant on 02.07.2003 in relation to the Ac.0.50 cents of land. He stated that he does not know whether Thota Masthanaiah executed registered cancellation deed unilaterally on 07.07.2003 and whether Eswaramma and defendant filed a suit in OS.No.779/2003 against said Thota Masthanaiah. He stated that he does not know about the defense taken by Thota Masthanaiah in the said suit. He denied the suggestion that the daughters of Thota Masthanaiah remained ex.parte in OS.No.779/2003 and that the suit and later the appeal preferred against it were decreed in favor of the defendant herein and

against the vendors of the plaintiffs. He also denied the suggestion that Thota Masthanaiah executed a settlement deed in favour of his daughters without having any manner of right. He also denied the suggestion that the agreement of sale cum GPA executed by B. Padmavati in favour of Pasupuleti Venkateswarlu and subsequent execution of registered sale deed by Pasupuleti Venkateswarlu in favour of Nellore Venkateswarlu are not valid. He also denied the suggestion that the possession is not delivered to Nellore Venkateswarlu at any point of time and that the suit schedule property was also not delivered to plaintiffs at any point of time. He also denied the suggestion that the defendant laid fencing wire around the suit schedule property after purchasing the same from Eswaramma and that he sold the property under Exs.B5 and B6 documents to third parties and delivered possession and that he is no way concerned with the property . He also denied the suggestion that he is deposing false on behalf of the plaintiffs as he is the son-in-law of Nellore Venkateswarlu who purchased the property from Buduru Padmavathi.

11. On the other hand, the defendant filed his chief examination affidavit as DW1 and reiterated the written statement averments. During his cross-examination, he stated that he settled at Nellore about 30 years ago and that he is doing business and also maintaining a petrol bunk. He stated that B. Eswaramma is no more and that he got acquaintance with her during her lifetime through one real estate broker by name Venkateswarlu. He

stated that he made enquiry about the suit schedule property by talking with Eswaramma and admitted that originally one Thota Masthanaiah is the original owner of the suit schedule property. He admitted that he did not see the original document of Thota Masthanaiah at the time of making inquiry and admitted that the original document of Thota Masthanaiah is not with Eswaramma. He also admitted that the original document of Thota Masthanaiah is not in his possession and also not with the persons to whom he executed Exs. B6 and B6 documents. He however added that the original is not with Thota Masthanaiah also. He further admitted that the original document dated 20.06.1980 referred by him in his chief affidavit is not either in his possession or in the possession of his successors. He admitted that the document dated 20.06.1980 is a conditional sale and not a regular registered sale deed. He admitted that he does not have personal knowledge about Ex.A1 transaction and also the conditional sale transaction dated 20.06.1980. He admitted that even as per his case, Thota Masthanaiah agreed to repay an amount of Rs.15.500/- to Eswaramma within one year i.e by 19.06.1981. He stated that he does not have personal knowledge whether Thota Masthanaiah paid the amount to Eswaramma or not. He further admitted that in case of non-payment, the original of document dated 20.06.1980 should have been in the possession of Eswaramma. He stated that he does not know whether Eswaramma issued any notice to Thota Masthanaiah after completion of one year by

demanding the amount from him or not. He however stated that Eswaramma told him that she gave the original document to a mediator who is her maternal uncle by name Karamsetti Venkataramaiah as Mastanaiah promised to return the amount and that Thota Masthanaiah did not pay the amount. He admitted that he did not file the original agreement dated 02.07.2003 in this case. He stated that he enquired with Eswaramma about the original sale date dated 20.06.1980 at the time of agreement of sale and that is Eswaramma did not produce the document . He admitted that he did not issue any notice to Venkataramaiah demanding him to return the sale deed in his possession. He denied the suggestion that Thota Masthanaiah paid amount to Eswaramma through K Venkataramaiah and received back the original sale date dated 20.06.1980 and that Eswaramma did not cancel the sale deed in spite of several demands made by Thota Masthanaiah and postponed the same and hence, Thota Masthanaiah executed cancellation date dated 07.07.2003. He stated that he never met Thota Masthanaiah and did not make any enquiries regarding Thota Masthanaiah through third parties, but admitted that he filed OS no.779/2003 along with Eswaramma. He stated that he does not know whether Thota Masthanaiah is alive or not by the date of filing of OS No. 779/2003, but added that he has shown the daughters of Thota Masthanaiah as parties as they also got right over the property. He further stated that he also has shown the sister of Thota Masthanaiah by name Dhanalakshmi as second defendant in that suit as

they came to know that Venkataramaiah gave original documents to husband of Dhanalakshmi by name Govindayya. He admitted that the original sale date dated 20.06.1980 is marked as Ex. B4 in OS No. 779/2003 through defendants therein and that receipt dated 19.06.1981 is marked as Ex.B7 in the said suit through defendants. He stated that he has knowledge about marking of Ex.B4 and Ex.B7 in that suit and that he did not question Eswaramma about those documents even after they were marked in OS.No.779/2003 . He admitted that neither him nor Eswaramma sought relief of declaration against Thota Masthanaiah or his legal heirs stating that Thota Masthanaiah did not pay the amount within one year and that Eswaramma became absolute owner of the suit schedule property. He stated that he does not know whether the defendants in OS.No.779/2003 preferred a second appeal before Hon'ble High Court in SA No.620/2019 and whether the same is pending or not . He however added that he did not receive any notices in that case. He admitted about pendency of OS.No. 998/2021 on the file of III AJCJ Court, Nellore . He admitted that he did not file any original documents or counterclaim in the present case. He admitted that he received total consideration as per the recitals in Ex. B5 and B6 and it is also mentioned in the document that he delivered possession of the property also. He however admitted that he did not execute registered sale deed as per the wishes of his purchasers. He stated that the present case is not pending as on the date of Exs.B5 and B6. He stated that he does not

know whether the daughters of Thota Masthanaiah filed a suit against Eswaramma and Kosuru Dhanalakshmi in OS.No.974/2010 on the file of this court or not.

12. During his further cross-examination, he admitted that his entire case is based on agreement of sale dated 02.07.2003 executed by Eswaramma in his name and he admitted that he did not file the said agreement in the present case. He admitted that the suit schedule property is a vacant site by the date of Ex.A1 and also by the date of conditional sale dated 20.06. 1980 and also by the date of filing of OS.No.779/2003. He admitted that he did not file any document before the court to show that he either made fencing or constructed a compound wall around the suit schedule property. He admitted that it will incur around Rs.10,00,000/- to Rs.15,00,000/- to construct a compound wall around 300 ankanams of land. He admitted that there are no receipts with him to show that he made construction of a compound wall. He denied the suggestion that there is no such construction as stated by him. He stated that he purchased 300 ankanams of land under agreement of sale for Rs. 3,25,000/- and that he paid an advance amount of Rs.1,00,000. He however admitted that it is mentioned in his chief affidavit that Eswaramma sold the land to him for Rs.1,00,000/- and that there is no mention about the sale consideration amount of Rs 3,25,000/- in his chief affidavit. He denied the suggestion that the doctrine of lis pendense referred by him will be applicable even to him

as SA.No.622/2019 filed by the defendants in OS.No.779/2003 is still pending before Hon'ble High Court. He stated that he is no way concerned with the suit schedule property now as he has executed Exs.B5 and B6 . He stated that he informed the purchasers under Exs.B5 and B6 about the pendency of the present case and that he did not advise them to implead themselves in the suit . He denied the suggestion that Exs.B5 and B6 are nominal and collusive documents and that the suit schedule property is in the possession of plaintiffs and that he is trying to interfere with their possession and enjoyment over the suit schedule property. He denied the other suggestions given to him on the lines of plaint averments.

13. A perusal of the pleadings and evidence lead by both sides goes to show that there is no dispute between both sides on the aspect that Thota Masthanaiah purchased an extent of Ac.0.50 cents of land under Ex.A1 sale deed. It is also not in dispute that Thota Masthanaiah executed a conditional sale deed dated 20.06.1980 in favour of B. Eswaramma and that he cancelled that sale deed in the year 2003. It is also an admitted fact that the defendant herein and Eswaramma filed OS.No.779/2003 seeking cancellation of that cancellation deed executed by Thota Masthanaiah and it is also admitted that the suit is decreed and appeal preferred against that judgment is also dismissed. Hence, the cancellation deed executed by Thota Masthanaiah canceling conditional sale deed dated 20.06.1980 is not in operation now. While the defendant herein is claiming his right over the

suit schedule property through Eswaramma who is the vendee under registered conditional sale deed dated 20.06.1980, the Plaintiffs are claiming their right over the suit schedule property through the children of Thota Masthanaiah. As stated earlier, even though, the present suit is filed only seeking the relief of Permanent injunction, as the suit schedule property is a vacant site and as both sides failed to file any document in proof of their possession over the suit schedule property, this court has to incidentally look into the title over the suit schedule property because it is settled law that in case of a vacant site, possession follows title. The Plaintiffs have based their title on Ex.A3 sale deed executed by four out of five daughters of Thota Masthanaiah who are claiming the property under Ex.A2 settlement deed. Even though, the defendant took a plea that Ex.A2 is hit by the rule of lis pendence, it is clear that OS.No.779/2003 during the pendency of which Ex.A2 settlement deed was executed was filed seeking cancellation of cancellation deed executed by Thota Masthanaiah. The right of Thota Masthanaiah to cancel the document is the subject matter of the suit in OS.No.779/2003 and the previous transactions relating to the suit schedule property was incidentally looked into in that suit. However, it is pertinent to mention here that Eswaramma who filed OS.No.779/2003 did not seek for declaration of her title over the suit schedule property and only sought for cancellation of registered sale deed by Thota Masthanaiah. Hence, the decree of the suit only goes to show that Thota Masthanaiah has no right to

cancel the sale deed, but the decree is in no way shall be construed that the title of Eswaramma over the suit schedule property is confirmed by the court. Hence, in the present suit, this court is empowered to look into the respective titles of Plaintiffs and defendant without being bound by the findings of the court in OS.No.779/2003 for the limited purpose of determining the possession.

14. The execution of Ex.A2 settlement deed by Thota Masthanaiah in favour of his five daughters, execution of Ex.A3 sale deed by four out of five daughters in favour of Plaintiffs and the execution of Ex.A4 agreement of sale cum general power of attorney and subsequent execution of Ex.A5 sale deed by the fifth daughter of Thota Masthanaiah in favour of a third party is admitted by both sides. Similarly, the execution of conditional sale deed in favour of Eswaramma by Thota Masthanaiah and subsequent execution of sale deed by Eswaramma in favour of defendant and execution of Exs.B5 and B6 registered possessory sale agreements cum GPA by defendant in favour of third parties is also not disputed. The only thing to be considered by this court is whether the title over the suit schedule property got transferred to Eswaramma under registered sale deed dated 20.06.1980 or not. If the answer to the question is in affirmative, then the defendant gets title over the property through Eswaramma and the Plaintiffs who obtained sale deed through legal heirs of Thota Masthanaiah cannot claim any right of possession as their vendors themselves will have no right over

the property. On the other hand, if it is established that the title is not transferred to Eswaramma under sale deed dated 20.06.1980, then the rights of vendors of the Plaintiffs under Ex.A2 remains established and the Plaintiffs get right to seek protection of their possession by virtue of their title. Unfortunately, the original or certified copy of sale deed dated 20.06.1980 is not filed before the court by either side. However, by considering the pleadings of the defendant and the discussion made in Ex.B2 judgment in OS.No.779/2003, it becomes clear that the sale deed dated 20.06.1980 is a conditional sale deed. The terms and conditions of the sale deed dated 20.06.1980 is referred in paragraph No.27 of Ex.B2. It is mentioned that as per Ex.B4, the sale deed is executed by Thota Masthanaiah in favour of Eswaramma on receiving consideration of Rs.15,500/- and possession is also delivered and Eswaramma is entitled to pay all taxes and to enjoy the property. If Thota Masthanaiah repaid the amount by 19.06.1981, Eswaramma has to execute registered sale deed in favour of Thota Masthanaiah. If Thota Masthanaiah fails to pay the amount within the stipulated period, Eswaramma becomes absolute owner of the property. The above terms and conditions admittedly incorporated in the sale deed dated 20.06.1980 clearly shows that even though, the document is titled as sale deed, it is in fact a mortgage by conditional sale within the definition of section 58 (c) of Transfer of Property Act. Hence, the mortgagor has right under section 60 of Transfer of Property Act to redeem the

mortgage by paying or tendering to pay the amount due by him. More importantly, in case of non payment of the mortgage debt by the mortgagor, the option available to the mortgagee is to file a suit for foreclosure of the mortgage under section 67 of Transfer of Property Act and the mortgagee gets right over the property only after the determination of that suit. The limitation period to redeem mortgage and to recover possession of immovable property mortgaged is thirty years from when the right to redeem accrues under article 61(a) of schedule of Limitation Act and the limitation period for foreclosure by a mortgagee is thirty years from the date the mortgage amount becomes due. In OS.No.779/2003, the court has discussed the law on the aspect and even referred to a judgment of Hon'ble Supreme Court of India in Mushir Mohammed Khan(dead) by Lrs, vs Smt. Sajeda Bano and others reported in AIR 2000 SC 1085. Pargaprah No.11 of the judgment of Hon'ble Supreme court referred in the judgment is reproduced as under :

The court further considered the distinction between “ Mortgage by conditional sale” and a “ sale with a condition of repurchase” and observed as under :

“ The definition of a mortgage by conditional sale postulates the creation by transfer of a relation of mortgagor and the mortgage, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the

price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the specified period. What distinguishes the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt.....”

15. After referring the ratio of the above mentioned judgment and after recording the contents of the sale deed dated 20.06.1980 wherein it is clearly mentioned that the sale deed is being executed after receiving consideration of Rs.15,500/- and that the property shall be reconveyed on payment of that amount of Rs.15,500/- within one year, the court gave a finding in the suit that the document is not a mortgage deed. In the humble opinion of this court, the finding arrived by the court in OS.No.779/2003 is not correct as the recitals clearly establishes the nature of document as mortgage by conditional sale within the definition of section 58 (c) of Transfer of Property Act. The decision of the court in OS.No.779/2003 is neither binding on this court nor can operate as res judicata as the subject matter of the dispute is different in the two suits. No inconsistency is also created by different interpretation of the nature of document dated 20.06.1980 as the subject matter of the suit in OS.No.779/2003 is relating to the right of Thota Masthanaiah to cancel the registered sale deed and the subject matter of present suit is the possession of the parties herein. Hence, this court is of considered opinion that document dated 20.06.1980 is a mortgage by conditional sale and if really the amount is not repaid,

Eswaramma ought to have filed a suit to foreclose the mortgage and only then she could have become the true owner of the suit schedule property.

16. The other aspect to be considered is in spite of the nature of document, there is a recital in sale deed dated 20.06.1980 that possession is delivered to Eswaramma. However, it is pertinent to mention here that Thota Masthanaiah took a plea in OS.No.779/2003 that he repaid the amount to Eswaramma through one Venkataramaiah and that he received back the documents. In fact, the Ex.A1 herein is marked as Ex.B3 and original document dated 20.06.1980 executed by Thota Masthanaiah in favour of Eswaramma is marked as Ex.B4 on behalf of the defendants in OS.No.779/2003. If really, Thota Masthanaiah did not repay the amount, there is no possibility of receiving back the original documents by him from Eswaramma. The said questions were put to DW.1 herein and he admitted that the original documents were not in the custody of Eswaramma by the date of execution of agreement of sale in his favour. Thota Masthanaiah also took a plea in his written statement in OS.No.779/2003 that Andhra Bank, Nellore filed a suit in OS.No.87/1983 against him wherein Ex.A1 is marked as Ex.A13 and that he was permitted by Hon'ble High Court to take return of the document in AS.No.170/1994. All these circumstances goes to show that the original of Ex.A1 and the original of sale deed dated 20.06.1980 are in the possession of Thota Masthanaiah by the year 1983 itself. Hence, it shall be presumed that he has discharged the debt taken

from Eswaramma and took back the original documents from her. For the reasons best known to them, neither Thota Masthanaiah nor Eswaramma took steps for cancellation of sale deed dated 20.06.1980. Be it as that may, in view of the aforesaid finding that the document dated 20.06.1980 is a mortgage by conditional sale deed and not a regular sale deed and in view of material available which shows that the original documents were returned to Thota Masthanaiah even prior to 1983, this court has to presume that the possession is also delivered back to Thota Masthanaiah. As neither party failed to file any document to establish their possession over the property and as no document can be expected considering the nature of the property and the probability of the right of title being vested with Thota Masthanaiah and his successors is more than with defendant as successor in title of Eswaramma, this court is of considered opinion that the title rests with Plaintiffs for the limited purpose of determining as to who are in possession of the suit schedule property. The finding of this court can in no way be considered as final determination of right of title of either side over the suit schedule property as the same is not an issue in the present suit.

17. Even if the aforesaid discussion is set aside for a moment, it is the assertion of the Plaintiffs that they are in possession of the suit schedule property under Ex.A3 sale deed. On the other hand, the defendant took a specific plea that he sold the property to others under Exs.B5 and B6 documents and delivered possession to them. He stated in his cross-

examination that his vendees (albeit under an agreement of sale cum GPA) are aware of the suit proceedings. However, they did not made any attempt to implead themselves in the suit. Even though, he is technically having title over the suit schedule property as per his claim, it is the specific assertion of the defendant that he is no way concerned with the property. Hence, no harm will be caused to the defendant if injunction is granted against him. On the other hand, as the Plaintiffs are claiming possession under Ex.A3 sale deed, they will suffer irreparable loss if injunction is not granted and they are dispossessed as being apprehended by them. Hence, the balance of convenience is in favour of the Plaintiff to get injunction. As the relief of injunction is only a personal relief and as the observations in the suit cannot be considered as findings on the aspect of title of either side, both parties or the persons claiming through them are at liberty to pursue their other remedies by way of filing of separate suits. Basing on the material available on record, this court is of considered opinion that the Possession of Plaintiffs over suit schedule property is established and the circumstances proved warrants the protection of the possession by way of injunction. Hence, this court is inclined to grant permanent injunction as prayed for by the Plaintiffs. Accordingly, issues 1 to 3 are answered in favour of the Plaintiffs and against the defendant.

Issue No. 4 :

18. In the result, the suit is decreed with costs by granting permanent injunction restraining the defendant, his men and agents from ever interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

Prepared, corrected and pronounced by me in open Court on this the 07th day of March, 2025.

**Sd/- P.Bharadwaja,
I Addl. Civil Judge (Junior Division),
Nellore.**

Appendix of Evidence**Witnesses Examined for****Plaintiffs:**

Pw.1: P.Anil Kumar Reddy

Pw.2: A.Venkata Rao

Defendant:

Dw.1: L.Sridhar Reddy

Documents Marked for**Plaintiffs:**

Ex.A1: Certified copy of registered sale deed, dated 25.09.1976 bearing document No.2676/1976 executed in favour of Thota Masthanaiah.

Ex.A2: Certified copy of registered settlement deed dated 06.10.2005 executed by Masthanaiah in favour of B.Padmavathi and others bearing documents No.13370/2005.

Ex.A3: Certified copy of registered sale deed dated 07.02.2011 bearing document No.1475/2011 executed by G.Sujatha and others in favour of P.Anil Kumar Reddy and others.

Ex.A4: Certified copy of registered general power of attorney cum agreement of sale dated 07.06.2018 bearing document No.6308/2018.

Ex.A5: Certified copy of sale deed dated 14.12.2018 bearing document No.12995/2018 in the name of Nellore Venakteswarlu.

Ex.A6: Certified copy of the encumbrance certificate dated 07.03.2024.

Defendant:

Ex.B1: Certified copy of Decree in O.S.No.779/2003 dated 03.10.2012 on the file of this Court.

Ex.B2: Certified copy of Judgment in O.S.No.779/2003 dated 03.10.2012 on the file of this Court.

Ex.B3: Certified copy of Decree in A.S. No.163/2012 dated 25.07.2017 on the file of Hon'ble IV Addl. District Court, Nellore.

Ex.B4: Certified copy of Judgment in A.S.No.163/2012 dated 25.07.2017 on the file of Hon'ble IV Addl. District Court, Nellore.

Ex.B5: Certified copy of registered possessory sale agreement cum GPA dated 07.06.2021 executed by defendant in favour of M.Venkata Subba Rao and another bearing document No.5801/2021.

Ex.B6: Certified copy of registered possessory sale agreement cum GPA dated 07.06.2021 executed by defendant in favour of P.Lakshmi Narayana and others bearing document No.5802/2021.

**Sd/- P.Bharadwaja,
I Addl. Civil Judge (Junior Division),
Nellore.**