



**IN THE COURT OF II ADDL.SENIOR CIVIL JUDGE AND JMFC AT
RAICHUR.**

Present: Smt. Swetha Singh
M.A. LL.M.
II Addl. Sr. Civil Judge and JMFC, Raichur.

Dated this the 28th day of June-2023

O.S. No. 86/2019

Plaintiff:-

Sri Santhosh Kumar Dixit
S/o Aryamuni Dixit, Age:42yrs,
Occ: Insurance Advisor,
R/o H.No.13-7-324, Yeramarus
Dand, Raichur, Tq & Dist: Raichur

(By Shri SKP, Advocate)

Vs

Defendants:-1.

Narasimhalu S/o Mallappa,
Age:41yrs, Occ: Private Teacher,
R/o Yeramarus Dand, Tq and Dist:
Raichur.

2. The Commissioner,
City Municipal Council, Raichur.

(D.1 By Sri GNR, Adv)

(D.2 By Sri CAR Adv)

Date of institution of suit	07.06.2019
Nature of the suit	Suit for declaration of injunction
Date of commencement of the recording of evidence.	16-08-2021



Date on which the judgment was pronounced.	28-06-2023
Total duration	Year/s : Month/s : day/s
	04 00 21

JUDGMENT

This is a suit for declaration and injunction.

2. Brief facts of case of the plaintiffs:-

It is the case of the plaintiff that, the plaintiff is the absolute owner and possessor of the house property along with the open space bearing Mpl. No. 13-7-324, and 13-7-325. The house property is having a separate Mpl. No. 13-7-324 which measures 402 sq fts. The open space having a Mpl. No. 13-7-325 measures 9120 Sq fts. both are situated at Yaramarus Dand within the limits of CMC Raichr. The subject matter of the suit is in respect of the open space wherein the compound is constructed and the said property is now objected by the defendants. Accordingly the open space bearing Mpl. No. 13-7-325 is schedule property.

3. The above suit property along with the house property was originally purchased by the great grand father of the plaintiff by name Ram Swarup Dixit from its previous owners long back. The great



grandfather had earlier purchased the land to the extent of 10,347.22 Square yards, in the year 1329 Fasli, which is in Urdu. Since the date of purchase the great grand father of the plaintiff was the owner and possessor of the said property. After his death his son i.e. the grand father of the plaintiff by name Ramlal Dixit had succeeded the property. He has two sons by name Aryamuni Dixit and Arya Mitra Dixit. After the death of Ramlal Dixit, the total property was mutated in the name of Arya Muni Dixit being the elder of the family. After such settlement the above property along with house property was allotted in favour of Arya Muni Dixit. Remaining property was allotted in favour of Arya Mitra Dixit. As per such family settlement, the name of Arya Muni Dixit was entered in the municipal records as owner and possessor of the said property. Afterwards Arya Muni Dixit being the absolute owner in turn gifted the said property in favour of plaintiff Santosh Kumar, through a registered Gift deed bearing Doc No. 3153/2013-14 dated 18-7-2013 on the file of Sub-Registrar Raichur. After such Gift deed plaintiff got mutated his name in the concerned Municipal records, as per order of the CMC Raichur dated 10-2-2014. There was a rectification deed for the said registered gift deed in



respect of the plinth area of the property. The said rectification deed was duly registered under Doc No 5629/2013-14 dated 11-10-2013. The plaintiff also got entered his name in the municipal records as could be seen from the Khata extract issued by CMC Raichur for the period 1-4-1998 to 31-3-2015-16. The Khata extract in Namune-3 for the period 2016-17 was also issued by the CMC Raichur. The plaintiff use to pay taxes of the property for the period 2018-19. Considering the above documents the plaintiff is the absolute owner of the suit property along with the house property explained above.

4. The defendant No.1 is no way concerned to the said property, but he is residing illegally by the side of the suit schedule property. The defendant No.1 is residing un authorisedly and illegally in the property of the plaintiffs uncle by name Arya Mitra Dixit. He had filed a suit before the I Addl.Civil Judge Court at Raichur, bearing OS No. 5/2016, which is pending for consideration. However the defendant No.1 has no authority whatsoever to interfere in the peaceful possession and ownership of the plaintiff over the suit property. The defendant No.1 and his family members by one or the other means giving trouble and use to give applications to the Dist. Authority , as



well as to the defendant No.2 stating that plaintiff is residing illegally etc., The Dist. Authority had made it clear that there is no illegality or unauthorized occupation by the plaintiff in respect of the suit property.

5. The plaintiff had earlier applied before the CMC Raichur i.e. defendant No.2 for issue of construction permission of the compound wall to the suit property. The defendant No.2 has given construction permission on 8-7-2014 and the construction map was duly approved. In view of such permission, the plaintiff had already constructed the compound wall to the suit property. But the gate for the said compound wall was not fixed due to inconvenience and other financial problems. The approved map by the CMC Raichur will clearly shows the approval of the gate towards Northern side and towards Western side to the compound. However in order to avoid ingress and egress of the cattels and other persons the plaintiff has temporarily put a tin sheets to the approved gates to both sides. The plaintiff is now intending to erect a gate for both sides. Accordingly he has got prepared the steel gates from the welders. The plaintiff with the help of Messian and their coolie workers intending to put a



pakka steel gate to the said open space meant for putting the gates towards North and Western side of the compound. But the defendant No.1 without having any authority whatsoever had objected for such erection of the gates. He had asked the coolies to stop the work. The plaintiff came to know of the illegal act of the defendant No.1 and asked the defendant No.1 not to interfere in his construction activities of putting the gates. But the defendant No.1 with support of his henchmen took quarrel on the spot on 29-05-2019. however the neighbouring persons pacified the matter and the defendant No.1 had clearly told that in case there is any further construction activity he will destroy the same and asked the plaintiff not to put any gates. The defendant No.1 threatened to the plaintiff with the help of gunda elements not to put any gates to the compound.

6. The defendant No.1 along with his family members approached the defendant No.2 and filed a complaint regarding the erection of the gate by the plaintiff. The defendant No.2 with the support of the local councilor came to the spot and objected for putting a gate as per the approved plan. The act of the defendant No.2 is totally uncalled and they themselves approved the plan for construction of the compound



and for putting the gate. But the defendant No.2 without any authority on 01.06.2019 came to the spot and asked the plaintiff not to put any gate for the compound. The defendant No.2 had made harassment and interfering in the process of putting the gate by the plaintiff with the help of defendant No.1 and local councilor. The defendant No.2 has no authority to object for the same as they themselves approved the plan annexed to the construction permission. Both the defendant No.1 and 2 are went upon to harass the plaintiff and put him monetary loss in putting the gate for the suit property. The defendants are went upon to stop the work of the plaintiff at any costs.

7. The plaintiff being the absolute owner of the suit schedule property has got every right, interest and title over the same and he has to protect his right by illegal interference of the defendants. The defendants with mala fide intention, having money and muscle power are making unnecessary hurdles and harassing the plaintiff in his construction activity of the gate. Looking into the act of the defendant No.1 and 2 the plaintiff had no other remedy to approach this court in order to safe guard his right and interest over the suit property and to



restrain the defendants in interfering with his peaceful possession and in his construction activities. Hence, this suit.

8. The cause of action arose on 29.05.2019 when the plaintiff started erecting the gate towards Northern side and Western side of the compound, at that time the defendant No.1 along with his henchmen came to the spot and took quarrel with the plaintiff in stopping the erection of the gate. The recent cause of action arose on 01.06.2019 when the defendant No.2 along with the defendant No.1 came to the spot and asked the plaintiff to stop the construction work of putting the gate.

9. On service of suit summons, the defendants have appeared before this Court through their learned counsel. From the available records, the defendants No.1 and 2 have separate filed their written statement.

10. Defendant No.1 filed written statement as under;

It is contended that suit filed by the plaintiff is false, frivolous and vexatious, the plaintiff has not approached the court with clean hands and he has suppressed the true and real facts.



11. The alleged suit lands is situated in SY.No.254/1-A-1 totally measuring 11 acres, situated at Yeganur village, Tq ; Raichur , said land is called as Contonment Dandu. This land belongs to Government. In the ROR in possession column it is mentioned that, Contonment Parampok land Director of Administrative Tranining Instituion Mysore. So, the plaintiff intentionally not mentioned the survey number which and where the suit land is situated. How the plaintiff has acquired the property is not within the knowledge of this defendant, hence there is a cloud on the title of the property of plaintiff.

12. The defendant No.1 specifically denied about the ownership and possession of the plaintiff in respect of suit property. The contents of para No.4 of the plaint is admitted that the defendant No.1 also residing in the same locality which the plot was allotted by Municipality to the defendant No.1. It is further admitted that OS No.5/2016 which is pending before the III Adl.Civil Judge, Raichur pertaining to the same suit property, the same is posted for evidence of plaintiff. Wherein the defendant no.1 is a party as defendant No.2.



It is further contended that, as per their pleadings the plaintiff has stated that he has got construction permission on 08.07.2014. As per the Municipal Rules after obtaining the permission the construction should be completed within one year, it goes to shows that since the year 2014 the plaintiff has kept mum for the last five years and the said fact has been suppressed by the plaintiff.

13. The plaintiff is not the owner of property, the suit property is public road, the same is using by the locality persons, it appears from the records that the plaintiff has encroached the public road and constructing the compound wall, if the compound wall is constructed it will cause inconvenience to this defendant as well as public in general of that locality. In this regard the defendant No.1 has filed an application before the CMC Raichur and Deputy Commissioner Raichur regarding encroachment of Public road by the plaintiff. In this regard the Deputy Commissioner directed the concerned authorities to inspect the spot including the suit land and given report to him, if any illegal construction is going that should be stopped. It goes to shows that the plaintiff to save his skin might have filed this false suit to cause harassment not only to defendant No.1 but also general



public and public authorities. This ground itself is sufficient to dismiss the suit of the plaintiff thresh-hold.

There is no cause of action accrued to the plaintiff to filed this suit, and the suit is barred by law of limitation. The court fee paid on the plaint is insufficient and the suit is not properly valued. Among all these grounds prays for dismissal.

14. Defendant No.2 filed written statement as under;

That the very suit filed by the plaintiff for the alleged relief of declaration and injunction as against the defendant No.2/CMC Richur is not maintainable in the law or on the alleged facts and grounds. The plaintiff has suppressed the material reality before the court and hoisted the present suit without cause of action. The relief claimed by the plaintiff cannot be granted. Hence, the suit of the plaintiff is not maintainable. The plaintiff do not have any locus standee to file the present suit against the defendant No.2/Municipality. All the allegations made in the suit plaint are absolutely false and denied by the defendant No.2/CMC.



15. The contents of para No.2 of the plaint in respect of alleged absolute, ownership and possession of the house property along with open space bearing Mun No.13-7-324 and 13-7-325 situated at Yermarus Dand with alleged measuring 9120 Sq,fts may be put strict proof of the same with ownership, title deeds, link documents etc. by the plaintiff. The plaintiff has not produced the authenticated ownership documents in the suit to prove and established his lawful ownership and possession in on an over the suit schedule property. Consequently, since the plaintiff miserably failed to established his title on the basis of the lawful and authenticated documents. Therefore, the plaintiff is not entitled to declaration relief consequently permanent injunction decree cannot be granted. The burden casted and rest on the plaintiff to prove the lawful ownership and possession with cogent documents. Therefore, the suit of the plaintiff is not maintainable.

16. The allegation that the Great grandfather Ram Swaroop Dixist from its previous owners long back during the year 1329 fasli purchased the suit land to the extent 10,347.22 Sq.Yards situated at Yermarus Dand later on demise of his forefather the land succeeded



to plaintiffs father - Arya Muni Dixit and Arya Mitra Dixit etc., transferred to their name and further in the family settlement among brothers etc are denied. The plaintiff has not produced any title deeds to establish the lawful ownership and possession of suit property by authenticated documents. Hence, the suit is fit to be dismissed.

17. The further allegations of the plaintiff that Arya Muni Dixit gifted the said property in favour of plaintiff Santhosh Kumar Dixit through Registered Gift deed No.3153/2013-14 dated 18.07.2013 are also denied. Mere granting of the mutation and possessing tax paid receipts, Khata Extract does not confer title as laid down by the rule of law. Hence suit of the plaintiff is not maintainable.

18. The defendant No.1 /Narasimhalu and his father Mallappa submitted complaints to the defendant No.2/CMC Raichur complaining that the plaintiff has illegally constructed tin fencing compound wall all along encroaching public way, consequently the defendant No.1 through office order dtd 03.06.2019 directed Sharanabasava Ithli Junior Engineer CMC Raichur to proceed the action by inspection and remove the encroachment. The Junior Engineer of CMC Raichur complied the order of the defendant No.1



and inspected the spot Yeramarus Dand near Yegnur limits Sy.No.254 and by due process of law removed the unauthorized erection to the tinshed fencing compound made by the plaintiff and submitted the report on dated 11.06.2019 intimated to the Deputy Commissioner, Tahasildar etc., about the compliance. As such the CMC Raichur by following the due process of law had removed the encroachment made by the plaintiff on the public way. The plaintiff has suppressed this material read fact before this court and hoisted false suit against the defendant No.2. Hence, the suit of the plaintiff is not maintainable.

19. The Defendant No.2 by due process of law through by office order dtd 03.06.2019 directed to the Junior Engineer of compliance of removal of encroachment of erection of tinshed fencing compound made by the plaintiff on the suit property and in turn the JE complied the direction of the defendant No.2 reported on 11.06.2019, in pursuance to the completion of the due process the defendant No.2 through letter dated 12.06.2019 intimated the compliance of removal of the encroachment by the CMC office to the complainant/Mallappa S/o Narasappa. As such the suit of the plaintiff is barred by law since



the compliance is made by the Municipality in accordance with law and by the due process. Hence, the suit of the plaintiff is not maintainable. The CMC is not party to the another suit proceedings in OS No.05/2016. Hence, the suit is not maintainable. The plaintiff has suppressed the reality before the court and therefore not entitled to any relief from the court.

20. The contents of para No.5 of the plaint are partly admitted only the extent of construction permission granted by the defendant No.2/CMC Raichur on dated 08.07.2014. The construction permission granted by the Municipality is valid only for a period of 1 year . The plaintiff has not obtained fresh permission from CMC to proceed and make construction of the tinshed compound. Further under pretext and conditions incorporated in the construction permission granted by the Municipality;

Clause No.10: ಈ ಪರವಾನಿಗೆ 1(ಒಂದು ವರ್ಷದ) ವರೆಗೆ

ಜಾರಿಯಲ್ಲಿರುತ್ತದೆ. ನಂತರ ಹೊಸದಾಗಿ ಕಟ್ಟಡ ಪರವಾನಿಗೆ

ಪಡೆಯುವ ವಿನಃ ಕಟ್ಟಡವನ್ನು ಪ್ರಾರಂಭಿಸಲು ಬರುವುದಿಲ್ಲ"

Clause No.22:- "ಮನೆಯ ಅಕ್ಕಪಕ್ಕದವರು ಆಕ್ಷೇಪಣೆ

ಬಂದಲ್ಲಿ ತಾವೆ ಅದನ್ನು ಸರಿಪಡಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದು"



Since, the defendant No.1 and his father made complaint to the Municipality regarding the encroachment by erection of tinshed compound etc., the CMC Raichur followed the due process and removed the tinshed compound and complied due process. Hence, the suit of plaintiff is not maintainable.

When the law is made motion by the defendant No.1 and his father Mallappa it is bounden duty on the part of the defendant No.2/CMC to proceed the action. As such the action initiated complied by due process in accordance with the provisions contained under the Karnataka Municipalities Act 1964. Hence, the suit of the plaintiff is not maintainable.

21. The total burden is casted on the plaintiff to prove his lawful ownership, possession, title, interest on the alleged suit schedule property by authenticated and cogent document without the documents plaintiff cannot be assumed and presumed the lawful owner of the suit property. Hence, suit is not maintainable and the relief sought cannot be granted. Any suppression of material reality the plaintiff suit itself is barred by law and there is no locus standee to continue the suit.



22. The plaintiff has not issued the statutory notice to the defendant No.2/CMC Raichur regarding filing of the suit as contemplated under the provisions of Karnataka Municipalities Act 1964 Section 284 for the relief of declaration. Without issuance of the notice declaration suit is not maintainable, notice is mandatory. Hence suit is not maintainable.

23. There is no cause of action arisen to the plaintiff on 29.05.2019 for filing the present suit against the defendant No.2. Hence, the suit of the plaintiff for no cause of action fit to be rejected. That from considering all the corners of law the suit of the plaintiff is not maintainable and the same be dismiss and rejected.

24. That, on the basis of pleadings of both the parties, the learned predecessor of this court has framed the following issues.

1. Whether the plaintiff proves that, he is the absolute owner of the suit property?
2. Whether the suit is barred by limitation?
3. Whether the Court fee paid is true and correct?
4. Whether the plaintiff proves the alleged interference by the defendant No.1 and 2?



5. Whether the plaintiff is entitled for the reliefs claimed?

6. What order or decree?

25. In order to substantiate their case, the plaintiff has adduced evidence of plaintiff No.1 as PW.1 and got marked Ex-P.1 to Ex.P.18 and another witness as PW.2 and closed his side evidence. On the other hand defendant has adduced evidence of defendant No.2 as DW.1 and got marked Ex.D.1 to 16 and another witness as DW.2.

26. I have heard the arguments and perused the materials placed on record. That, the answer to the aforesaid issues are as under:

Issue No. 1 :- In the Affirmative.

Issue No. 2:- In the Negative.

Issue No. 3:- In the Affirmative.

Issue No. 4:- In the Affirmative.

Issue No. 5:- In the Affirmative.

Issue No. 6 :- As per the final order for the following:-

REASONS

27. **Issue No.1:** - It is the specific case of plaintiff that, he is absolute owner and possessor of suit property along with space bearing Municipal



No.13-7-324 and 13-7-325, both are situated at Yermarus Dand within limits of CMC Raichur. Open space bearing Municipal No.13-7-325 is the suit property and same was originally purchased by great grand father of plaintiff by name Ram Swarup Dixit from its previous owner long back. Great grand father had earlier purchased land to the extent of 10,347.12 square yards in the year 1329 Fasli which is in Urdu language. For that, plaintiff has produced original registered deed which is in Urdu language.

28. In order to prove this case, plaintiff himself examined as PW-1 and reiterated plaint averments in lieu of his examination-in-chief. He produced documents marked at Ex.P-1 to 18. In support of his case, plaintiff has examined Assistant Executive Engineer Sharanabasava as PW-2. Ex.P-1 is the certified copy of Gift Deed dated 18.7.2013 which has been gifted by father of plaintiff in favour of plaintiff under registered Gift Deed bearing document No.3-1-53/2013-14 dated 18.7.2023 on the file of Sub-Registrar Raichur. Ex.P-2 is mutation extract issued by the CMC Raichur with respect to property bearing Municipal No.13-7-323 and 13-7-325 of Yermarus Dand which is in the name of plaintiff. Ex.P-3 is the property extract of suit property for having paid land tax and building tax from April 1998 to April 2015-16 paid by the plaintiff. Ex.P-4 is the Form No.3 with



respect of suit property which is standing in the name of plaintiff. Ex.P-5 is Bank challen for having paid property tax of suit property by the plaintiff. Ex.P-6 is the SAS form for having paid municipal tax with respect to suit property standing in the name of plaintiff. Ex.P-7 is Bank challen for having paid property tax of suit property by the plaintiff. Ex.P-8 is the SAS form for having paid municipal tax with respect to Municipal No.13-7-324 standing in the name of plaintiff. Ex.P-9 is the permission issued by the CMC Raichur to construct compound wall in suit property in the name of plaintiff. Ex.P-10 is the approved plan of suit property. Ex.P-11 is the notice issued by the Tahsildar Raichur to the plaintiff. Ex.P-12 is the certified copy of letter issued by CMC Raichur to ADC Raichur. Ex.P-13 is the letter issued by the CMC Raichur to DC Raichur. Ex.P-14 is the paper publication of Sanjevani news paper dated 29.4.2019. Ex.P-14(a) is the part of paper publication for removal of compound wall at Ward No.33. Ex.P-15 is the order passed by ADC Raichur dated 29.5.2019. Ex.P-16 is the certified copy of unregistered Sale Deed which is Urdu language in O.S. No.18/1984. Ex.P-16(a) is its translation copy. Ex.P-16(b) is the certified copy of approved plan annexed with Ex.P-16. Ex.P-17 is office



order of CMC Raichur dated 3.3.2020. Ex.P-18 is another office order of CMC Raichur dated 2.3.2020.

29. In support of his case, the counsel for plaintiff relied on decision of **Hon'ble High Court of Karnataka in WP No.1922/1989 (J.Bhawarilal Vs Corporation of the City of Bangalore and others)**

"In that view of the matter, the Court directed the petitioner to produce a sketch of the entire land and where he proposes to build the compound for perusal of the Court, which he has since done. On a perusal of the sketch, the accurate of which is not disputed by the respondent corporation, no part of the proposed compound abuts any road in the sense of bordering the road or running along the road. In that view of the matter, a compound having regard to its meaning in its special context in English language must be construed to exclude construction of a wall which is intended to act as a fence around a house or a factory or even vacant space which it encloses. Therefore, the proposed compound not being a building, clearly does not require a license or previous permission in writing in terms of section 299. If that is the correct position in law, the question of the corporation granting or not granting permission for whatever reason does not arise. The petitioner is free to build a compound which is not a building even without permission, if he chose to do so. If any body obstructs him to do so, he may in the pending suit obtain such injunction as may be necessary as the land is said to be disputed and it is not a matter for this court to issue a mandamus having regard to the meaning of the word ' building' in section 299, which is not what the petitioner has sought to build".



2012(4) KCCR 3489 (M/s Silver Springs, Bangaore Vs M/s Canara Housing Development Co., Bangalore and others)

“A. Evidence Act, 1872 Civil trial Oral evidence. Documentary evidence. Appreciation Oral evidence cannot out weigh the documentary evidence”.

30. Since it is suit for declaration, plaintiffs ought to have prove his title, furthermore the flow of title. For that, plaintiff has produced original unregistered Sale Deed at Ex.P-16 which is produced in O.S. No.18/1984 which is in Urdu language. On perusal of its translated copy at Ex.P-16(a), it is sale deed dated 20th Isfandar 1329 Fasli wherein Ram Swaroop Dixit S/o Mohan Lal Dixit Sahu has purchased suit property comprising towards east 2,000 square yards + towards North and West 8,347.22 square yards and total comprising 10,347.22 square yards for sale consideration of Rs.100 from Gokarsa S/ Nagoji, Lachma S/o Narsoji and Nagendra S/o Nagoji. It is noted that on the date of purchase, possession of said property has been delivered to Ram Swroop Dixit. Said Ram Swaroop Dixit is the great grand father of plaintiff and he purchased the same from its previous owners Gokarsa S/o Nagoji and two others for valuable consideration. From the date of purchase i.e. 20th Isfandar 1329 Fasli, he was in possession of suit property as an absolute owner and enjoying the same without any obstruction from anybody.



31. As per pleadings of plaintiff, after death of propositus Ram Swaroop Dixit, grand father of plaintiff by name Ram Lal Dixit succeeded the property. He had two sons by name Arya Muni Dixit and Arya Mitra Dixit. After death of Ram Lal Dixit, total property was mutated in the name of Arya Muni Dixit being elder of family. Afterwards there was a family settlement between two brothers. As per said settlement, said property was allotted in favour of Arya Muni Dixit. For that plaintiff has produced property extracts for having paid tax at Ex.P-2 which reveals name of Arya Muni Dixit. Thereafter it got mutated in the name of plaintiff on the strength of Gift Deed dated 18.7.2013. For that plaintiff has produced Ex.P-1 certified copy of Gift deed dated 18.7.2013 which is not disputed by the family of plaintiff. Hence, as per Gift deed with aforesaid flow of title, plaintiff has become absolute owner of suit property. Thereafter gift deed was rectified on 11.10.2013 which was also registered in the office of Sub Registrar Raichur through document No.5629/2013-14. After execution of Gift Deed, name of plaintiff got entered in the municipal records as could be seen from khata extracts issued by the CMC Raichur for the period from 1.4.1998 to 31.3.2015-16 as per Ex.P-3. Further CMC Raichur also issued khata extract in Form No.3 for the period of 2016-17 as per Ex.P-4.



Plaintiff has also paid taxes of suit property for the period of 2018-19 as could be seen from Ex.P-5 to 8. Further Ex.P-9 which is permission for construction issued by the CMC Raichur in the name of plaintiff also reveals that plaintiff is the owner of suit property. Hence, from the above documents, plaintiff made is case clear that he is the absolute owner in possession of suit property as on the date of suit.

32. Defendants No.1 and 2 both in their written statement separately contended that, plaintiff is not owner of suit property and both of them have specifically denied the situation of suit property as the same is situated in land Sy. No.254/1-A-1 totally measuring 11 acres situated at Yegnur village which is called as cantonment Dand. Further they contended that suit land belongs to government. In possession column of ROR it is mentioned that Cantonment Parampok Land Director of Administrative Training Institute Mysore.

33. In support of their contention, defendant No.1 has examined himself as DW-1 and reiterated the written statement contentions. In support of his oral evidence, defendant No.1 has produced documents marked at Ex.D-1 to 16. E.D-1 is the RTC extract of Sy. No.254 measuring 3 acres 24 guntas which is standing in the different names i.e., departments of



government. Ex.D-2 to 4 are the RTC extracts of Sy. No.254/1-A-1 measuring 11 acres standing in the names of Cantonment Parampok Land Director of Administrative Training Institute Mysore and different departments of government. Ex.D-5 is the RTC extract of Sy. No.254/3/A-2 measuring 15 acres 37 guntas standing in the name of Mohini Infra Pvt. Ltd., Raichur. Ex.D-6 is the ROR of Sy. No.254/4 measuring 1 acre 20 guntas standing in the name of Mohini Infra Pvt. Ltd., Raichur. Ex.D-7 is the letter issued by the Tahsildar Raichur to DC Raichur dated 18.10.2016. Ex.D-8 is the order of ADC Raichur dated 3.6.2022. Ex.D-9 is the letter of CMC Raichur to defendant No.1 dated 12.6.2019. Ex.D-10 is the letter issued by AEE Sharanabasava Itli to CMC Raichur dated 11.6.2019. Ex.D-11 is the information given by CMC Raichur under RTI Act dated 28.6.2019. Ex.P-12 is the RTC extract of Sy. No.224/1/A-1 measuring 11 acres for the year 2020-21 standing in the name of Cantonment Parampok Land Director of Administrative Training Institute Mysore. Ex.D-13 is the mutation extract No.366/2020-21 for having mutated names of different departments of government in respect of Sy. No.254. Ex.D-14 to 16 are the certified copies of plaint, decree and deposition of PW-1 in O.S. No.18/1984.



34. At this stage, the counsel for defendant No.1 relied on decision the Hon'ble Supreme Court in **Civil appeal No.7550-7553 of 2021 (Arising out of SLP(C) No.(S) 26374-26377 of 2013 (Shri K.Jayaram and others Vs Bangalore Development Authority and others)**

"Land Acquisition Act-1894 Section 18 Acquisition of Land Compensation Suppression of material facts. Parties have to disclose the details of all legal proceedings and litigation either past or present concerning any part of the subject matter of dispute which is within their knowledge. In case according to the parties to the dispute, no legal proceedings or court litigation was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the Judgment of the Civil Court, the appellants have to be non-suited on the ground of suppression of material facts. They have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief".

35. In support of his oral and documentary evidence, defendant No.1 has examined one Yallappa as DW-2 who deposed cogent to the evidence of DW.1.

36. On perusal of oral and documentary evidence placed by the defendants' side, defendants have not produced any title deed of Sy.



No.254 in order to show that suit property is situated in Sy No.234. On perusal of Record of Rights of Sy. No.254 at Ex.D-1 to 6 and 12 in respect of Sy. No.254, it is nowhere mentioned about number of suit property. It is pertinent to note that suit property is house property and open space which bears Municipal number and not survey number. Further documents produced by the defendants at Ex.D-1 to 6 and 12 are RTC extracts. As per provisions of law, RTCs are documents showing possession of persons whose names are appearing in RTC extracts and those documents have got presumptive value with respect to possession but not the title. Those are not title deeds in order to show that suit property is part of Sy. No.254. On the other hand, plaintiff has produced title deed from the great grand father of plaintiff who purchased same from its original owner for valuable consideration.

37. On consideration of Ex.P-16 sale deed, valuable consideration of Rs.100 paid and same was written on stamp paper worth Rs.100.

For that counsel for plaintiff relied on

Registration Act, 1908

*129. Sale of property-Value of property more than Rs.100.
Section 54 of the Transfer of Property Act deals with sale of tangible immovable property. The said sale, if value of the property is more*



than Rs.100/- has to be effected by a registered instrument. Where there is sale by registered instrument, there is a prima facie transfer of title to the vendee mere non-payment of the price does not prevent passing of the ownership of the purchased property from the vendor to the purchaser and vendor's only remedy is to sue for recovery of the unpaid consideration. If any (See Dulana Dei Alias Dolena Vs Balaram Sahu and two others, AIR 1993 Orissa 59) In other words, where the property is sold under registered deed, the purchaser, acquires title even if consideration is not paid.

38. Further learned counsel for the plaintiff has relied upon

Unregistered sale deed:- As agreement to sell, therefore the suit for specific performance of contract on the basis of unregistered sale deed is also maintainable.

In the instant case, the petitioner was not debarred from proving said document on record and use the same for collateral transaction.

In the instant case, it was found that the factum of delivery of possession had been embodied in recital of unregistered sale deed, therefore, in order to ascertain possession of plaintiff vendee, this document can be read in evidence for all practical purpose and since the plaintiff vendee had obtained possession by virtue of said document and he was also in possession of suit property for nearly about six years



therefore, plaintiff was held entitled for a decree of restoration of possession of suit property.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

39. Furthermore, document at Ex.P-16 bears dated 20th Isfandar 1329 Fasli and it is more than 30 years old document and it has got presumptive value as per provisions of the Indian Evidence Act. Hence, title of plaintiff is clearly proved by the plaintiff and same is not rebutted by the defendants. Accordingly it can be safely held that, the plaintiff is the absolute owner of suit property and in possession thereof since from the date of purchase by his ancestors. Hence, Issue No.1 is answered in the affirmative.

40. **Issue No.4:-** Plaintiff pleaded that defendant No.1 is nowhere concerned to suit property who is illegally residing by the side of suit property causing interference to his peaceful possession and enjoyment over suit property by giving troubles and uses to give applications to the District Administrative authority as well as defendant No.2 stating that plaintiff is residing illegally etc. Earlier plaintiff applied before the CMC



Raichur for issuance of construction permission of compound wall to suit property. Accordingly defendant No.2 had given construction permission on 8.7.2014 and construction map was duly approved. After obtaining construction permission, plaintiff had already constructed compound wall to the suit property in the year 2015 itself, but gate for said compound wall was not fixed due to inconvenience and other financial constraints. But plaintiff in order to avoid ingress and egress and other business has temporarily put up a tin shed at both sides. Now plaintiff is intending to erect a gate for both sides for which defendant No.1 without having any authority had objected for said erection and asked police to stop work and used to pick up quarrel on the spot on 29.5.2019. Defendant No.1 along with family members approached defendant No.2 and filed a complaint regarding erection of gate by the plaintiff. Defendant No.2 with support of legal counsel came to spot and objected for putting gate as per approved plan. Here counsel for plaintiff urged that act of defendant No.2 is totally uncalled as they themselves approved plan for construction of compound wall as per Ex.P-9 which was issued on 8.7.2020 in favour of plaintiff with respect to construction of compound wall in suit property. Plaintiff has produced Ex.P-9 permission issued by the CMC Raichur in his favour for



construction of compound wall on the suit property. Thereafter an obstruction by the defendant No.1, defendant No.2 used to dismantle compound wall by their office orders and letters.

41. Before dismantling compound wall, DC Raichur ordered that compound wall is constructed in a property of plaintiff for that plaintiff has produced evidence of PW-2 i.e. AEE Sharanabasava Itli who deposed on 21.9.2021 that he visited spot for verification and he found tin shed situated to the dead line of suit property. Further said Sharanabasava issued a letter to CMC Raichur stating that plaintiff has not encroached public road accordingly CMC Raichur had issued letter to ADC Raichur stating that plaintiff has not encroached any public road by their compound wall. On perusal of map towards eastern side, there was a gate in their open space which is to be erected now. Thereafter ADC Raichur by his endorsement dated 29.5.2019 closed complaint stating that plaintiff has constructed compound wall in his property and not in the public road. Again as per Ex.D-8 on the very next day i.e. 3.6.2019 ADC Raichur issued letter calling for report as to whether compound is constructed in property of plaintiff or in public road, against which plaintiff has preferred appeal in Writ Petition No.223621-622/2020 (LB-RBS) and No.223680-



681/2020 Hon'ble High Court of Karnataka, Kalaburagi Bench has issued stay in respect of order of ADC Raichur dated 3.6.2019.

42. At this juncture it is relevant to consider the letter conversation of the concerned authorities in order to know the actual factual aspects of the case on hand. Those are as follows:

Ex.P12 is the letter dated:03-10-2017 issued by CMC Raichur to Additional DC Raichur, wherein the plaintiff has not encroached any road for his construction of compound wall. The relevant lines are reproduced has follows:

“ ಮೇಲ್ಕಾಣಿಸಿದ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಯಚೂರು ತಾಲೂಕಿನ ಏಗನೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.254 ರಲ್ಲಿ ವಾಸವಿರುವ ಯರಮರಸ್ ದಂಡ್ ಗ್ರಾಮದಲ್ಲಿನ ಮ,ನಂ.13-7-236 ಮತ್ತು 344 ಮತ್ತು 13-7-324 ಮತ್ತು 325 ಜಮೀನಿನ ಮಾಲೀಕರಾದ ಶ್ರೀ ಆರ್ಯಮಿತ್ರ ದೀಕ್ಷಿತ್ ಹಾಗೂ ಸಂತೋಷ ಕುಮಾರ ದೀಕ್ಷಿತ್ ರವರು ತಮ್ಮ ಜಾಗದಲ್ಲಿ ಉತ್ತರಕ್ಕೆ ಸಂಪೂರ್ಣ, ದಕ್ಷಿಣಕ್ಕೆ ಭಾಗಶಃ ಪೂರ್ವಕ್ಕೆ ಭಾಗಶಃ ಮತ್ತು ಪಶ್ಚಿಮಕ್ಕೆ -ಭಾಗಶಃ ಕಾಂಪೌಂಡ್ ಗೋಡೆಯನ್ನು ನಿರ್ಮಿಸಿರುತ್ತಾರೆ ಮತ್ತು ಸದರಿ ನಿರ್ಮಿಸಿರುವ ಕಾಂಪೌಂಡ್ ಗೋಡೆಯು ಯಾವುದೇ ರಸ್ತೆಯನ್ನು ಅತಿಕ್ರಮಿಸಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲವೆಂದು ಕಿರಿಯ ಮತ್ತು ಸಹಾಯಕ ಅಭಿಯಂತರರು ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ”.

Ex.P13 is the letter dated:03-09-2018 issued by CMC Raichur to DC Raichur, wherein the plaintiff has not encroached any road and



constructed his compound wall at these property. The relevant lines are reproduced has follows:

“ಪ್ರಯುಕ್ತ ಉಲ್ಲೇಖ (2) ರ ತಮ್ಮ ನಿರ್ದೇಶನದ ಮೇರೆಗೆ ಉಲ್ಲೇಖ (3) ಮತ್ತು (4) ರಂತೆ ಕಿರಿಯ ಅಭಿಯಂತರರು ಹಾಗೂ ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು ವರದಿ ಪಡೆದು ಹಾಗೂ ಉಲ್ಲೇಖ (5) ರಂತೆ ಈ ಕಾರ್ಯಾಲಯದ ಕಾನೂನು ಸಲಹೆಗಾರರ ವರದಿಯನ್ನು ಪಡೆದು, ಸದರಿ ಅರ್ಜಿದಾರರಾದ ಆರ್ಯಮಿತ್ರ ದೀಕ್ಷಿತ್ ಹಾಗೂ ಸಂತೋಷ ಕುಮಾರ ದೀಕ್ಷಿತ್ ರವರು ತಮ್ಮ ಸ್ವಂತ ಆಸ್ತಿಯಾದ ಮನೆ ಸಂ.13-7-236 ಮತ್ತು 344 ಮತ್ತು 13-7-324 ಮತ್ತು 325 ಇವುಗಳು ಅರ್ಜಿದಾರರ ಸ್ವಂತ ಆಸ್ತಿಗಳಾಗಿರುತ್ತದೆ ಮತ್ತು ಅವರ ಪಿತ್ತಾರ್ಜಿತ ಆಸ್ತಿಗಳಿದ್ದು, ಅವರ ಕಬ್ಬಾ ಮತ್ತು ವಹಿವಾಟಿನಲ್ಲಿದ್ದು, ಸದರಿ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದ ಎಲ್ಲಾ ಹಕ್ಕುಗಳನ್ನು ಹೊಂದಿರುತ್ತಾರೆ. ಕಾನೂನು ಸಲಹೆಗಾರರು ವರದಿಯನ್ನು ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಅದರಂತೆಯೇ ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಿದ್ದು, ಸದರಿ ಅರ್ಜಿದಾರರು ಯಾವುದೇ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯನ್ನು ಅತಿಕ್ರಮಿಸದೇ ತಮ್ಮ ಸ್ವಂತ ಜಾಗದಲ್ಲಿಯೇ ಕಾಂಪೌಂಡ್ ಗೋಡೆಯನ್ನು ನಿರ್ಮಿಸಿರುತ್ತಾರೆಂದು ಕಂಡುಬಂದಿರುತ್ತದೆಂದು ತಮ್ಮ ದಯಾಪರ ಮಾಹಿತಿಗಾಗಿ ಸಲ್ಲಿಸಲಾಗಿದೆ.

Ex.P14 is the paper publication report Sanjevani newspaper with respect to demolishing the compound wall and the headline of the newspaper at Ex.P14 (a) is as follows:

‘ವಾರ್ಡ್ ನಂ.33 ಅತಿಕ್ರಮಣ ಕಾಂಪೌಂಡ್ ತೆರವಿಗೆ ಸೂಚನೆ’



Ex.P15 is the endorsement dated:29-05-2019 issued by Additional DC Raichur and accordingly closed the complaint. The relevant lines are reproduced has follows:

‘ಅದರಂತೆ, ಮೇಲ್ಕಾಣಿಸಿದ ಎಲ್ಲಾ ವರದಿಗಳನ್ನು ಪಡೆದು ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಿದ್ದು, ಸಹಾಯ ಆಯುಕ್ತರು, ರಾಯಚೂರು, ತಹಶೀಲ್ದಾರ ರಾಯಚೂರು ಮತ್ತು ಪೌರಾಯುಕ್ತರು, ರಾಯಚೂರು ರವರು ಸಲ್ಲಿಸಿರುವ ವರದಿಯನ್ನಾಧರಿಸಿ, ರಾಯಚೂರು ತಾಲೂಕಿನ ಏಗನೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.254 ರಲ್ಲಿ ವಾಸವಿರುವ ಯರವರಸು ದಂಡ್ ಗ್ರಾಮದಲ್ಲಿನ ಮ.ನಂ.13-7-236 ಮತ್ತು 344 ಮತ್ತು 13-7-324 ಮತ್ತು 325 ಜಮೀನಿನ ಮಾಲೀಕರಾದ ಶ್ರೀ ಆರ್ಯಮಿತ್ರ ದೀಕ್ಷಿತ್ ಹಾಗೂ ಸಂತೋಷಕುಮಾರ ದೀಕ್ಷಿತ್ ರವರ ಸ್ವಂತ ಆಸ್ತಿಗಳಾಗಿದ್ದು, ತಮ್ಮ ಸ್ವಂತ ಜಾಗದಲ್ಲಿಯೇ ಕಾಂಪೌಂಡ್ ಗೋಡೆಯನ್ನು ನಿರ್ಮಿಸಿರುತ್ತಾರೆಂದು ತಿಳಿದುಬಂದಿರುವುದರಿಂದ ಹಾಗೂ ಯರವರಸು ದಂಡ್ ಗ್ರಾಮವು ಹಳೆಯ ಜನವಸತಿ ಪ್ರದೇಶವಾಗಿರುವುದರಿಂದ ತಾವು ಸಲ್ಲಿಸಿರುವ ದೂರನ್ನು ಇದೆ ಹಂತದಲ್ಲಿ ಮುಕ್ತಾಯಗೊಳಿಸಲಾಗಿದೆ ಎಂದು ಈ ಮೂಲಕ ತಿಳಿಸಲಾಗಿದೆ.’

Ex.P11 is the intimation letter dated:17-09-2019 wherein Thasildar Raichur clearly stated that Sy.No:254 is not Yaramarus Dund. The relevant lines are reproduced has follows:

‘ಉಲ್ಲೇಖಿತ 2 ರ ಮೂಲಕ ಕಂದಾಯ ನಿರೀಕ್ಷಕರು, ರಾಯಚೂರು ಇವರು ಏಗನೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.254/1 ಅ-1 ವಿಸ್ತೀರ್ಣ 11-00 ಎಕರೆ ಸದರಿ ಜಮೀನು ಯರವರಸು ದಂಡ್



ಗ್ರಾಮಕ್ಕೆ ಸಂಬಂಧಿಸಿದ್ದು ಆಗಿರುವುದಿಲ್ಲವೆಂದು ಪಹಣಿ ದಾಖಲೆ ಹಾಗೂ ಗ್ರಾಮ ನಕಾಶೆಯ ಪ್ರಕಾರ ತಿಳಿದು ಬಂದಿರುತ್ತದೆ ಎಂದು ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಪ್ರಯುಕ್ತ ರಾಯಚೂರು ತಾಲ್ಲೂಕಿನ ಏಗನೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 254/1 ಅ-1 ವಿಸ್ತೀರ್ಣ 11-00 ಎಕರೆ ಜಮೀನು ಇದರಲ್ಲಿ ಕಂಟೋನಮೆಂಟ್ ಪರಂಪರಾಕ ಕ್ಷೇತ್ರ 7-00 ಎಕರೆ ಹಾಗೂ ಮಹಾ ನಿರ್ದೇಶಕರು, ಆಡಳಿತ ತರಬೇತಿ ಸಂಸ್ಥೆಗೆ 4-00 ಎಕರೆ ಸಂಬಂಧಿಸಿದ್ದು ಇರುತ್ತದೆ. ಪಹಣಿಯಲ್ಲಿ ಯರವರಸು ದಂಡ್ ಗ್ರಾಮದ ಬಗ್ಗೆ ಎಲ್ಲಿಯೂ ಉಲ್ಲೇಖಿಸಿರುವುದಿಲ್ಲವೆಂದು ಈ ತಿಳುವಳಿಕೆ ಪತ್ರದ ಮೂಲಕ ತಿಳಿಯಪಡಿಸಿದೆ.'

Ex.D.8 is the letter dated:03-06-2019 issued by Additional D.C.Raichur wherein Additional DC Raichur has again taken up the matter again. The relevant lines are reproduced has follows:

ಪ್ರಯುಕ್ತರು ರಾಯಚೂರು ತಾಲ್ಲೂಕಿನ ಯರವರಸು ದಂಡ್ ಗ್ರಾಮ ಏಗನೂರು ಸೀಮಾಂತರದ ಸರ್ವೆ ನಂ.254 ರಲ್ಲಿ ಮ.ನಂ.13-7-325 ಮತ್ತು 344 ಮತ್ತು 13-7-324 ಮತ್ತು 325 ಜಮೀನಿಗೆ ಜಂಟಿಯಾಗಿ ಸ್ಥಾನಿಕ ತನಿಖೆ ಕೈಗೊಂಡು ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ವಾಸವಾಗಿರುವ ಶ್ರೀ ಆರ್ಯಮಿತ್ರ ದೀಕ್ಷಿತ್ ಹಾಗೂ ಸಂತೋಷಕುಮಾರ ದೀಕ್ಷಿತ್ ರವರು ಕಟ್ಟಿಕೊಂಡಿರುವ ಕಾಂಪೌಂಡ್ ಗೋಡೆಯು ಸರ್ಕಾರಿ ಜಾಗದಲ್ಲಿ ಕಟ್ಟಿಕೊಂಡಿದ್ದಾರೆಯೇ ಅಥವಾ ತಮ್ಮ ಸ್ವಂತ ಜಾಗದಲ್ಲಿ ಕಟ್ಟಿ ಕೊಂಡಿದ್ದಾರೆಯೇ ಎಂಬ ಬಗ್ಗೆ ಸಂಬಂಧಿಸಿದ ಕಂದಾಯ ದಾಖಲೆಗಳೊಂದಿಗೆ ನಿಖರವಾದ ವರದಿಯನ್ನು ನೀಡುವಂತೆ ಸೂಚಿಸಿದೆ.

ಈಗಾಗಲೇ ದಿ:29-05-2019 ರಂದು ಈ ಕಛೇರಿಯಿಂದ ಹೊರಡಿಸಿದ ಹಿಂಬರಹವನ್ನು ಸೂಕ್ತ ತನಿಖೆ ಮುಗಿಯುವವರೆಗೂ ರದ್ದುಪಡಿಸಲಾಗಿದೆ.



Against Ex.D8 the plaintiff preferred before appeal hon'ble High court of Karnataka in W.P.No:223621-622 and 223680-681 of 2020 wherein hon'ble High Court held has follows:

ORDER

Learned Additional Government Advocate is directed to take notice for respondent Nos.1, 2,4 and 5. Issue emergent notice to respondent Nos.3 and 6.

The case of the petitioners is that they have constructed residential house and compound wall in property bearing Municipal No.13-7-324 and 13-7-325. The case of the petitioners is that they are absolute owners of petition premises. At the instance of respondent No.6 a complaint came to be filed and accordingly respondent No.1 directed Tahsildar and commissioner. City Mucipal Council to hold sopt inspection and submit a report.

As per the reports of Tahsildar and City Municipal Council, the petitioners have constructed a residential house in the plots owned by them.

Relying on these reports, respondent No.1 issued an endorsement as per Annexure-F stating that residential house is constructed without encroaching the Government land and accordingly, respondent No.1 proceeded to close the proceedings. Immediately after one week respondent No.1 has reviewed his order and passed impugned endorsement vide Annexure-H. As per impugned endorsement vide Annexure-H. Respondent No.1 again directed the authorities to carry spot inspection. Prima facie it appears that this impugned notice is issued at



the instance of respondent No.6. Hence, respondent No.1 having passed the order as per Annexure-G has within a week reviewed his order as per impugned endorsement as per Annexure-H. Which needs to be examined by this Court.

Hence, execution and operation of order dated:03-06-2019 passed by respondent No.1 as per Annexure-H is stayed until further orders.

Even after stay order of Hon'ble High Court of Karnataka, the AEE CMC Raichur has written letter dated:11-06-2019 at Ex.D10 to CMC Raichur after executing the order dated:03-06-2019 and submitted his report. The relevant lines are reproduced has follows:

‘ಅದರಂತೆ ದಿ:04-06-2019 ರಂದು ಮಾನ್ಯ ಪೌರಾಯುಕ್ತರ ಆದೇಶದಂತೆ ರಾಯಚೂರು ನಗರದ ಯರಮರಸ್ ದಂಡ್ ಗ್ರಾಮದ ಏಗನೂರು ಸರ್ವೇ ನಂ.254 ರಲ್ಲಿ ಮ.ನಂ.13-7-326, 13-7-304 ಮತ್ತು 325 ರಲ್ಲಿ ಶ್ರೀ ಆರ್ಯಮಿತ್ರ ದೀಕ್ಷಿತ್ ಹಾಗೂ ಸಂತೋಷಕುಮಾರ ದೀಕ್ಷಿತ್ ರವರು ಅನಧಿಕೃತವಾಗಿ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯ ಮೇಲೆ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಇಲ್ಲದೆ ಟೆನ್ ಶೆಡ್ ಕಾಂಪೌಂಡ್ ನಿರ್ಮಿಸಿದ್ದು ಸದರಿ ಅನಧಿಕೃತವಾಗಿ ನಿರ್ಮಿಸಿದ್ದು ಇದನ್ನು ನಿಯಮಾನುಸಾರವಾಗಿ ತೆರವುಗೊಳಿಸಿ ಭಾಯಾ ಚಿತ್ರದೊಂದಿಗೆ ತಮ್ಮ ಆದೇಶನ್ವಯ ಪಾಲನಾ ವರದಿ ತಮ್ಮ ಮಾಹಿತಿಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.

Ex.D9 is the letter dated:12-06-2019 issued by C.M.C.Raichur with respect to submitting the report of AEE CMC Raichur. The relevant lines are reproduced has follows:

ಮೇಲ್ಕಂಡ ವಿಷಯ ಹಾಗೂ ಉಲ್ಲೇಖಗಳನ್ವಯ ಈ ಮೂಲಕ ತಮಗೆ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ ರಾಯಚೂರು ತಾಲ್ಲೂಕಿನ ಯರಮರಸ್ ದಂಡ್ ಗ್ರಾಮದ ಏಗನೂರು ಸೀಮಾಂತರದ ಸರ್ವೇ ನಂ.254 ರಲ್ಲಿ ಮ.ನಂ.13-7-326, 13-7-324 ಮತ್ತು 325 ರಲ್ಲಿ ಶ್ರೀ ಆರ್ಯಮಿತ್ರ ದೀಕ್ಷಿತ್ ಹಾಗೂ ಸಂತೋಷಕುಮಾರ ದೀಕ್ಷಿತ್ ರವರು ಅನಧಿಕೃತವಾಗಿ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಇಲ್ಲದೆ ಟೆನ್ ಫೆನ್ನಿಂಗ್ ಕಾಂಪೌಂಡ್ ನಿರ್ಮಿಸಿರುತ್ತಾರೆ. ಕಾರಣ ಟೆನ್ ಮತ್ತು ಕಾಂಪೌಂಡ್ ಗೋಡೆ ತೆರವುಗೊಳಿಸುವಂತೆ ಉಲ್ಲೇಖ (4) ರ ಮೂಲಕ ತಾವು ದೂರು ನೀಡಿದ್ದಂತೆ



ಉಲ್ಲೇಖ (1) ಹಾಗೂ (3) ರ ಮಾನ್ಯರ ಆದೇಶದಂತೆ ಉಲ್ಲೇಖ (5) ರನ್ವಯ ಈ ಕಾರ್ಯಾಲಯದ ಕಿರಿಯ ಅಭಿಯಂತರರನ್ನು ಸ್ಥಳಕ್ಕೆ ಭೇಟಿ ನೀಡಿ ನಿಯಮಾನುಸಾರ ಪರಿಶೀಲಿಸಿ ಅನಧಿಕೃತ ಕಟ್ಟಡ ಇದ್ದಲ್ಲಿ ತೆರವುಗೊಳಿಸಿ ವರದಿ ನೀಡಲು ಈ ಕಾರ್ಯಾಲಯದಿಂದ ಕಛೇರಿ ಆದೇಶ ಹೊರಡಿಸಿ ಆದೇಶಿಸಲಾಗಿರುತ್ತದೆ.

ಅದರಂತೆ ಈ ಕಾರ್ಯಾಲಯದ ಕಿರಿಯ ಅಭಿಯಂತರರು ನೀಡಿದ ವರದಿಯನ್ನು ಈ ಪತ್ರದ ಜೊತೆಗೆ ಲಗತ್ತಿಸಿ ತಮ್ಮ ಮಾಹಿತಿಗಾಗಿ ನೀಡಿದೆ.

43. From the above letter conversations of ADC Raichur to CMC Raichur, CMC Raichur to ADC Raichur, ADC Raichur to DC Raichur and order of DC Raichur clearly reveal that defendants No.1 and 2 are interfering with peaceful possession and enjoyment of plaintiff over the suit property. Plaintiff has clearly proved his title and possession over the suit property and his peaceful possession with title has to be protected. Contention of defendant No.2 with respect to O.S. No.18/1984 is not come to the help of defendants as it was filed against KEB for restraining them from erecting electric poles over suit property which is no way concerned to the present case. Hence, plaintiff has proved issue No.4 successfully. Accordingly Issue No.4 is answered in the **affirmative**.

44. **Issue No.2:** - Defendant No.1 in his written statement at para-12 has contended that there is no cause of action accrued to the plaintiff to file suit and suit is barred by law of limitation. Mere denial by defendant No.1



in his pleadings will not suffice to say that suit of plaintiff is barred by limitation. Further letter conversations of defendant No.2 is itself made the case clear with respect to limitation, as cloud is created on the title of plaintiff and hence he sought for declaratory relief for his title. Hence, mere pleading is not sufficient and accordingly it is to be held that suit is well within limitation. Accordingly, this issue is answered in the **negative**.

45. **Issue No.3:-** Plaintiff at para-11 of plaint pleaded that market value of suit property for jurisdiction as well as payment of court fee is at Rs.10,000/-. Suit is for the relief of declaration and court fee is paid one half of market value i.e. on Rs.5,00,000/- which comes to Rs.33,375/- as per Sec.24(b) of KCF & SV Act. Since plaintiff has filed suit for declaration of his title, he has paid total on market value which comes to Rs.33,375/- and consequently he sought for permanent injunction. Hence, court fee paid is proper and sufficient. Mere bare denial in the written statement by the defendants No.1 & 2 that, court fee paid on the plaint is insufficient and suit is not properly valued does not holds any water. Accordingly, issue No.3 is answered in the **affirmative**.

46. **Issue No.5:-** In view of my discussions and findings given on the above issues, this court is of the view that, plaintiff has certainly proved



his absolute title and possession over the suit property since from his great grand father and accordingly he has certainly proved his case and hence he is entitled for the reliefs as claimed. Accordingly, this issue is answered in the **affirmative**.

47. **Issue No.6:-** For the reasons stated and discussions made herein above, this court proceed to pass the following:

ORDER

Suit of the plaintiff is hereby decreed with costs.

It is hereby declared that plaintiff is absolute owner of suit schedule property.

Consequently, defendants No.1 and 2, their men, agents, servants, legal heirs etc. are hereby restrained from interfering with peaceful possession and enjoyment of plaintiff over the suit property by way of permanent injunction.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed and typed by him, corrected by me and then pronounced in the open court on this the 28th day of June 2023)

(Smt.Swetha Singh)
II Addl. Sr C.Judge and JMFC,
Raichur.



ANNEXURE

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:-

PW 1 : Santhosh Kumar Dixit
 PW2 : Ashappa.

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:-

Exs.P-1 : Gift deed
 Ex.P.2 : Income Tax register
 Ex.P.3 : Assessment Extract
 Ex.P.4 : SAS form
 Ex.P.5 : Income Pay receipt
 Ex.P.6 : Self Assessment
 Ex.P.7 : Income Pay receipt
 Ex.P.8 : Construction of Income Self Assessment
 Ex.P.9 : Building permission
 Ex.P.10 : Approved plan
 Ex.P.11 : Letter of understanding
 Ex.P.12 : CMC Raichur given letter
 Ex.P.13 : Letter,
 Ex.P.14 : News paper
 Ex.P.14(A) : Article
 Ex.P.15 : Order
 Ex.P.16 : Letter
 Ex.P.16(A) : Translation of letter of Ex.P.16
 Ex.P.16(b) : Certified copy of plan
 Ex.P.17 & 18: Orders

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:-

DW-1 : Narasimhalu
 DW-2 : Yallappa

**LIST OF DOCUMENTS MARKED FOR THE DEFENDANTS:-**

Ex.D.1 to 6	:	RTCs
Ex.D.7	:	Tahasildar issued letter
Ex.D.8	:	Assistant DC issuer letter
Ex.D.9	:	CMC issue letter
Ex.D.10	:	Report
Ex.D.11	:	Letter dtd 28.06.2019
Ex.D.12	:	RTC
Ex.D.13	:	Certified copy of MR No.66/2020-21
Ex.D.14	:	Certified copy of plaint in OS No.18/1984
Ex.D.15	:	Certified copy of Decree in OS No.18/1984
Ex.D.16	:	Certified copy of Witness Ram Lal Dikshitha in OS No.18/1984

(Smt.Swetha Singh)
II Addl. Senior Civil Judge and JMFC,
Raichur.

KARC020014592019

