



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., SHIGGOAN SITTING AT SAVANUR**

Present: Sri. Sunil S. Talawar
B.A.LLB..., (Spl.)
Senior Civil Judge & J.M.F.C.,
Shiggaon Sitting At Savanur

DATED THIS THE 19th DAY OF APRIL 2025

R.A.NO 13 OF 2022

Appellants: Sri Ninganagouda
S/o Veeranagouda Patil,
Age: 58 Years, Occ: Agriculture,
R/o Karadagi, Tq: Savanur,
Dist: Haveri.

(By Sri.N.S.Patil., Advocate)

V/s

Respondents: Sri Veerabhadragouda S/o
Fakkirgouda Patil,
Age: 62 Years, Occ: Agriculture,
R/o Karadagi, Tq: Savanur,
Dist: Haveri.

(By Sri.V.R..Patil., Advocate)

Date of filing of petition: 11.10.2022

Nature of appeal : Challenging Judgment
and Decree passed in
O.S.212/2014 dated
05.08.2022 by the
Learned Civil Judge &
JMFC., Savanur.

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Date on which the
Order was Pronounced : 19.04.2025

Total Duration : Yr/s Month/s Day/s
02 06 08

(Sunil S. Talawar)
Senior Civil Judge and J.M.F.C.,
Shiggaon Sitting at Savanur.

JUDGMENT

This appeal is preferred by the appellant /plaintiff under Order XLI Rule 1 R/w Sec.151 of Code Of Civil Procedure challenging the Judgment and Decree passed in O.S.No.212/2014 dated 05.08.2022 on the file of Civil Judge, and JMFC Savanur.

2) The appellant was plaintiff and the respondent was the defendant in the suit filed before Trial Court which is one for the relief of mandatory injunction and recovery of possession. For the sake of brevity and convenience, the parties are hereinafter referred to by their rankings before the trial court.

3) **The plaintiff case in O.S.212/2014 :-** The suit property as described in the plaint is V.P.C.No.187 towards Eastern portion situated at ward No.3, within the limits of Karadagi Gram Panchayat in Karadagi village of Savanur taluka. The suit property is more

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fully shown in the hand sketch map. In the plaint it is stated that, the plaintiff is an absolute owner and in actual lawful possession and enjoyment of V.P.C.No.187 of Karadagi village. The said property is inherited by plaintiff from his ancestor. The said property is consisting of old fell down house and back yard, the fell down house is situated towards Northern side and backyard is situated towards Southern side. The plaintiff is enjoying the suit property since his ancestor collecting haystack, cattle dung, agricultural equipment etc. The name of the plaintiff is appearing in the panchayat records as owner and possessor of the said property. The defendant is an adjoining owner of plaintiff suit property. The defendant property is situated on Northern and Eastern side of this plaintiff's property V.P.C.No.187. The defendant has no right, title or interest in the property of plaintiff i.e., VPC No.187 of Karadagi village, but the defendant without having any right, encroached upon the plaintiff's property illegally as shown in hand sketch map to the extent of 2 feet in North-South direction towards Eastern portion of plaintiff property and constructed the suit A – B wall without obtaining the proper permission from concerned gram panchayat since 4 to 5 days back. Now already half portion of wall has been constructed and fixed a window by encroaching upon it which is highly illegal and which will affect lawful

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enjoyment of this plaintiff. The defendant being high handed person in the locality with full well constructed suit wall which is within the area of this plaintiff with wicked idea and with bad intention to engulf the property of plaintiff. The defendant by taking undue advantage of simpleton nature of plaintiff. Hence alleged constructed suit wall is liable to demolish through the process of law as defendant is not in a possession of the same. It is further stated in the plaint that, after confirming the encroachment made by defendant the plaintiff requested the defendant on 18.08.2014 to stop the construction remove the suit A – B wall but defendant refused the same. The matter finally went before the elders of society but defendant did not heed even request of elders. Therefore, plaintiffs are constrained to file suit against defendants.

4) Defendants stand in O.S.No.212/2014:-

After institution of the suit, summons has been issued to the defendant, reported as served. Defendants appeared through his advocate and filed his written statement by denying entire plaint statement of facts. It is specifically contended by the defendant that, alleged suit A-B wall existed and remaining portion existed towards Southern side in VPC No.135 new No.185 and 186 but plaintiff called as VPC No.187 is not correct. The said suit A-B wall was existed in VPC No.135 new No.185 and 186, which was absolutely owned and

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possessed by the defendant. The father of the defendant had purchased various properties from its previous owner Parappagouda S/o Hiregouda Patil and his sons and mother including the agriculture lands, house and backyard properties covered in the registered sale deed dated 23.05.1958. The suit property was open site i.e., backyard was part and parcel of the property bearing VPC No.135 new No.185 and 186 measuring East-West 20 feet North-South 64 feet. As per the said registered document there was common pathway towards Southern side of the said property which starting of West to East measuring about 5 feet which touches the back door of the defendant house and plaintiff house. Further contended in the written statement that, VPC No.187 does not existed in the vicinity or adjoining to the defendant's property. The defendant being the owner and possessor of the suit property with valid permission constructed the house. The suit property is part and parcel of 135 and new No.185 and 186. Therefore the suit of the plaintiff is not maintainable without seeking declaration of title. The defendant has also furnished hand sketch map with written statement. The plaintiff has falsely claiming the ownership of the property shown in the hand sketch map of the plaintiff by letters LMNO which in fact was absolute property of the defendant existed in V.P.C No

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135 old number, new number 185 and 186. Hence, prayed to dismiss the suit with cost.

5) Evidence recorded before Trial Court :-

The plaintiff before trial court has stepped into witness box, and examined himself as P.W.1. He has got marked Ex.P.1 to 3 documents. Witness by name Sri Gangayya S/o Veerayya Poojar was examined as P.W.2 and later than plaintiff closed his side of evidence. Defendant has stepped into witness box and examined as D.W.1 and got marked Ex.D.1 to D.6 documents.

6) Issues framed by Trial Court:- On the basis of the pleadings on record, the Trial Court has framed the following issues for its consideration:

- 1. Whether the plaintiff proves that he is the lawful owner of the suit property?**
- 2. Whether the plaintiff further proves that he is in peaceful possession and enjoyment of the suit property as on the date of filing this suit?**
- 3. Whether the plaintiff proves that the defendant has illegally constructed the wall in the suit property without having**



any right over the suit property?

4. Whether the plaintiff proves that the cause of action to file this suit?

5. Whether the defendant proves that the averments made in the written statement?

6. Whether the plaintiff is entitled for the relief as sought for?

7. For what Order or decree?

7) **Opinion of Trial Court:-** After hearing arguments of the advocate for plaintiff and defendant, by appreciating evidence on record the trial court has formulated its findings on framed issues that the plaintiff has failed to prove his lawful possession and enjoyment of the suit property, the defendant was encroached suit property and constructed wall hence need to remove obstruction and to recover possession of suit property from defendant. Therefore, trial court dismissed the suit with cost.

8) Being aggrieved by the said Judgment and Decree, the plaintiffs being the appellants have filed the present appeal on the following:



GROUND OF APPEAL

1. That the judgment & decree passed by civil judge & JMFC Savanur in O.S.No.212/2014 dated: 05-08-2022, in respect of suit property is illegal, capricious, perverse, one sided, which is against the facts & circumstances of case & same is not legally tenable either in facts or in law. Hence same is liable to be set aside in ends of justice.
2. That the court below has ought to have decreed the suit, but dismissed the same by looking the case of appellant -plaintiff in wrong angle. Hence court below has come to the wrong conclusion without giving proper & genuine reasons, and same is one sided.
3. That the lower court has believed unacceptable documentary & oral evidence adduced & produced by respondent on record, but court below has measurably failed to appreciate the documentary & oral evidence adduced &



produced by appellant - plaintiff on record, even if respondent has not produced any believable documentary evidence.

4. The court below has not framed proper issues as per defense set up by appellant-plaintiff in the suit, because issues were not framed according to the nature of suit & on pleadings of the parties. Because put the burden upon the plaintiffs, even without defense of the plaintiffs in their plaint, same are answered in Negatively. Hence trial court came to wrong conclusion by framing wrong issues. On this count judgment and decree is liable to set aside.
5. That the lower court was not understood the contents of plaint of appellant -plaintiff and has failed to appreciate the oral evidence of plaintiff ie P W-1 & 2 on record, come to the wrong conclusion.
6. That the D W -1 who is defendant has clearly admitted in his cross examination on pages No. 8 that, "The VPC No. 187



is situated on southern side of VPC No.186 and the both VPC No.185 and 186 are purchased by his father and V PC No. 185 old number is 131 and its measurement is E-W-30 feet and N S-40 feet shown in sale deed and also admitted by D W-1 that, the VPC No.185 and 186 are adjoining with each other in north-south direction. And D W -1 has also admitted that, on page No.9 of his cross examination that, there is old wall is situated towards southern side of V PC No.186 and same is back yard wall and also the said wall was existed since date of purchased by his father. This glaring admission given by D W -1 clear crystal that, the VPC No.186 of defendant is ended by said wall, but not up to the common passage as shown in the sale deed. The end mark of the VPC No. 186 is proved by way admission given D W -1 in his cross examination. This oral evidence and admissions of very D W -1 are not properly verified by the trial court, come to the wrong conclusion, which



amounts miscarriage of justice.

7. That the trial court has given finding on issue No. 1 to 3 and answered in Negative, in wrong angle and not understood the actual facts and circumstances happened in this case, by relying the Judgments of apex court relied by defendant's counsel even which are not applicable present case on hand. But come to conclusion that, the plaintiff ought to have sought for declaration of title over suit property and for ancillary relief. Which is contrary to the facts of the case. This observation is without any base, and trial court has totally failed understood the case of the respective parties, come to the wrong conclusion and not properly appreciate the evidence on record.
8. That, the principle is that, as per Judgment of Hon'ble High court of Karanataka relied by plaintiff counsel reported in ILR 1999 Kar Page No.4336 and Civil LJ 2003(1) Madras High court, wherein observed



that, "when the document ie in the sale deed, the specific measurement is shown, the principle of boundaries are prevails over the measurement is not applicable but when the specific extent shown in the sale deed the extent or measurement is prevails over the boundaries" But in this trail court has not considered principles observed in said judgment of apex courts and hence measurably failed to appreciate the pleadings of the parties and contents of Ex.D-6 ie sale deed of defendant and evidence on record.

9. The trail court has given finding on issues No. 1 to 3 and 5 commonly discussed, without giving separate finding on all issues even if they are not interlinked with each others which amounts to miscarriage of justice. Further the issue No.5 is concerned, the heavy burden is upon the defendant to prove the total contents of WS filed by defendant. But defendant has not discharged his burden properly and hence trial



court has answered the issue No.5 is in negative, which is clear that, the defendant has not established his defense by producing the believable documentary evidence to show exact measurement of his property up to the 5 feet common passage as shown in the hand sketch map of defendant-respondent. On this count the trial court ought to have decreed the suit of plaintiff, come to the wrong conclusion.

10. That, the trial court has come to the conclusion that, the suit of the plaintiff is not maintainable unless sought for declaration of title over the suit property by looking the case of plaintiff in wrong angle with regards to the principle of boundaries prevails over measurement even if specific measurement has been shown in the sale deed ie Ex.D-6 in this case. There is no warrant for applying the rule blindly. Hence the trial court has measurably failed to appreciate the pleadings of the parties and main document ie



Ex.D-6 and oral evidence on record.

11. Further the trial court has not whispered any ward with regards to acceptance or rejection of court commissioner report, even if this appellants has filed serious objections to the court commissioner report as it is on sided and court commissioner has not properly measured the property c defendant as per Ex.D-6 and but shown the excess measurement in his report. But trail court was rejected the objection filed to the CR report on 06-03-2015 without recording the oral evidence and cross examination of court commissioner, which amounts to miscarriage of justice and followed procedure of law. But on 31-05-2022 the appellant counsel had cross examined the court commissioner and he admitted many irregularities committed by him while discharging commissioner work and he measured only VPC No. 185 not measured VPC No. 186 which is serious disputed property between



parties clear that, he has not done his job properly and but trail court has not fixed hearing on commissioner report and decide the acceptance or rejection of court commissioner report after the oral evidence of court commissioner and marking the documents as C-1 to 4, passed the Judgment hurriedly without given any opinion with regards to report of court commissioner and not given any opinion with regards to said report while passing judgment and absolutely not followed procedure of law with regards to acceptance or rejection of court commissioner report, which amounts to miscarriage of justice.

12. The trail court has not properly observed commissioner report and there is contrary view of the commissioner in his report and in his oral evidence which create doubtful with regards to report. Further the commissioner has not measured the property as per Ex.d-6 ie Sale deed of defendant. Hence it is just



and necessary to re-direct the court commissioner to re measure the properties of plaintiff and defendant as per Ex.D-6, so as come out the actual truth of matter. This aspect cannot be considered by trial court. Hence it is just and necessary to re-direct the court commissioner to re measure the properties of parties and suit property and submit his report by remanding the case for said purpose.

13. The trial court has not followed the existed law ie S.101 to104 of Indian evidence Act. As per said provisions of person who set up the particular defense it is his burden to prove those assertion or things. This aspect of law cannot be applied by trial court, come to the wrong conclusion.
14. The trial court has dismissed the suit only on the ground that, the suit for mandatory injunction is not maintainable unless sought for declaration of title, even if the defendant ie D W-1 himself has given glaring admission with regards situation of of



plaintiff's property ie VPC No. 187 and admitted that, the VPC No. 187 belongs to the plaintiff and further admitted that, defendant has no right over the same in page No 8 and 10 of his deposition. But the trial court believed the defense of very defendant without any worth materials. Therefore judgment is fully one sided and contrary to the facts of the case on hand and existed law Therefore interference of this Hon'ble court is highly required at this juncture.

15. The trial court has not given any finding on issues No.5 without giving separate finding on all issues even if they are not interlinked with each others, which amounts to miscarriage of justice.
16. That, the para No. 16 of the judgment, the trial court has wrongly observed about glaring admission given by D W-1 with regards to situation of V PC No.187 towards southern side of VPC No.186 and also admitted the measurement of both old No.131 and 135 in north south length is 104



feet. And he admitted the plaintiff is owner of V PC No. 187. These admission given by D W-1 is contrary to defense set up by him in his W S. Hence the defendant wants to suppressed material facts. Even all these glaring admission by defendant, the trial court without scrutinize the available important material on records, the trial court looking the case of plaintiff in wrong angle without proper perusal.

17. The trial court has not looked in to the oral evidence or cross examination of DW-1 (Defendant), but only observed by the oral evidence of PW-1 without any proper appreciation of oral evidence on record. Hence judgment and decree passed by trial court is fully one sided without looked in to the documents and oral evidence of parties in proper angle, which amounts to miscarriage of justice.
18. The issues framed by court below are separate and distinct, but not given any



finding on all issues separately even if they are not interlinked with each others. On this grounds also judgment and decree passed is without verification of evidence on record.

19. The trial court has measurably failed understood the case of the plaintiff and circumstances of the case. The reasoning given by trial court are purely unlawful without applying its mind.
20. The trial court has not properly verified the hand sketch map of plaintiff. About accepted the hand sketch map of defendant even if he shown the wrong things by suppressing the material facts and in the said map the defendant shown the property No. 187 of plaintiff. This aspect not be considered by trial court. Looking the case of plaintiff is in wrong angle. Judgment is passed totally one sided and on assumption base
21. That, at this stage, if required in the ends of



justice permitted the plaintiffs -appellants to necessary amendments in the plaint so as to meet justice.

22. It is much necessary to redirect the court commissioner to re-measure the suit property and properties of plaintiff and defendant by rejecting the court commissioner report.
23. That the case of defendants is believed by trial court without any cogent oral and documentary evidence, because defendant has not ದಿನಾಂಕ 08.02.2025 ಹಾಗೂ 09.02.2025 ರಂದು ಇರುವ ಸಾರ್ವತ್ರಿಕ ರಜೆಯನ್ನು ಉಪಯೋಗಿಸಲು produced any of the supporting documents to prove his defense on his behalf, and not prove the issue No.5 framed by this Hon'ble court. Hence trial court has measurably failed to appreciate the evidence on record.
24. That, the council for the plaintiffs -appellants relied upon the judgments and different citation of Hon'ble apex court. But trial court has not considered or



relied the said citations while passing the judgment. Hence judgment is fully one sided which amounts to miscarriage of justice.

On these grounds, the appellant has prayed to set aside the judgment and decree passed by the Trial Court.

9) After registration of the appeal, notice on appeal has been issued to the respondent, reported as served. Respondent appeared through his advocate. The Trial Court records are secured. Heard the arguments of learned counsel for appellant and respondent. The learned advocate for plaintiff has relied upon the decisions as a part of his arguments.

1. *ILR 1999 Kar 4336 Smt. N
Savitramma and Others Vs. Dr.
B.N. Sheshadri*
2. *2003 (1) Civil LJ 655 Madras
High Court – Basheer Unnissa
Begum and another Vs. T.
Sundaram (deceased) and
Others*



3. *Madras High Court Dina Malar
Publication Vs. The
Tiruchirapalli*

10) Perused the entire records of trial court.

11) The following points arose for my
consideration:

1. **Whether the trial court was properly justified in holding that the plaintiff has failed to prove that plaintiff is not lawful owner of suit property and he is not in peaceful possession and the defendant has not illegally constructed the wall in the suit property?**
2. **Whether the Judgment and Decree of the trial court require interference by this court?**
3. **What order?**

12) My answers to the above points are as here
under:

Point No.1 :	In the Negative
Point No.2 :	In the Affirmative
Point No.3 :	As per final Order, for the following :



REASONS

13) **Points No.1 and 2:** This is an appeal arising out of the judgment and decree passed in O.S.No.212/2014 dated 15.08.2022 passed by the learned Civil Judge Savanur. This is a peculiar suit filed by the plaintiff against defendant seeking the relief of mandatory injunction and recovery of possession in respect of suit property A-B Wall situated in V.P.C No 187 of Karadagi village. The defendant has specifically contended that, the said suit A-B portion exist towards southern side in V.P.C No 135 new No 185 and 186 but not in the plaintiffs V.P.C No 185. Therefore, there is no dispute before trial court about existence of suit A-B Wall, but disputed fact before trial court was who is in law possession of said suit wall and whether the defendant was made encroachment and constructed suit wall which need to remove and handover possession of the same to the plaintiff. Upon perusal of pleadings this was real lis between the parties.

14) Before trial court the plaintiff has stepped into witness box and examined as P.W.1 by reiterating entire statement of facts. The plaintiff has relied upon documentary evidence as to show the existence of his suit property. Ex P 1 on 2 are the certified copy of tax paid register of V.P.C No 187 for the year 1983-84 and 2014-15 wherein the name of plaintiff name is

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appearing as owner. Ex.P 3 is the certified copy of resolution which disclose after attaining age of majority the plaintiff name got entered in the property extract V.P.C No 187. Upon perusal of all these documents though these documents specifying the ownership of plaintiff over the V.P.C No 187 but they do not specify the measurement. The plaintiff before trail court has not given specific measurement of V.P.C No 187 in his plaint. But here the defendant has given admission during course of cross examination that, the plaintiff is owner of V.P.C No 187. Though the Ex.P 1 to 3 are not the title deeds in respect of V.P.C No 187 but since his ownership over the said property is not in dispute they are reliable documents as to consider ownership of plaintiff. Therefore there is no doubt on it and here the measurement of V.P.C No 187 and appearance of the A-B wall in V.P.C No 187 is a material dispute which could be need to assertion in the present matter.

15) The defendant as to over come the pleadings and evidence adduced thereon, before trail court has also stepped into witness box and examined as D.W 1. It is stated by the defendant No 1 that, the suit property was open site backyard of V.P.C No 135 new No 185 and 186 mensuration East-West 20 feet and North -South 64 feet and as per Sale deed there was common pathway towards southern side of the

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suit property measuring about 5 feet which touches the back door of defendant house and plaintiff house. It is also stated by the defendant that, the defendant being owner and possessor of the property has constructed the house with permission. Therefore, without seeking declaration suit of the plaintiff is not maintainable. As to substantiate all his oral evidence the defendant has placed Ex. D 6 and it appears that the boundaries shown in the hand sketch map of defendant are one and same as because the defendant has pleaded in accordance with sale deed. Whether the said sale deed is a conclusive proof and the defendant has constructed wall in his property that to within his given boundary is a material question that need to be answered here.

16) In this regard I would like to discuss the oral testimony of evidence of P.W1, the court commissioner evidence, and document Ex. D 6 as because the trial court has not appreciated it in a proper manner. The defendant has extensively cross examined the P.W 1 in order to illicit his contentions which is based upon the report of Advocate court commissioner. The relevant evidence of plaintiff reads thus; ಈ ದಾವೆಯಲ್ಲಿ, ದಾವಾ ಆಸ್ತಿಯ ವಸ್ತು ಸ್ಥಿತಿಯನ್ನು ಉಭಯ ವಕೀಲರ ಮೇಮೊ ಆಫ್ ಇನ್‌ಸೈಕ್ಟ್ ಮೂಲಕ ನೇಮಕ ಮಾಡಿದ್ದರು ಎಂದರೆ ಸರಿ. ಆ ಪ್ರಕಾರ ನೇಮಕಗೊಂಡ ವಕೀಲರು ದಿನಾಂಕ 20.12.2014 ರಂದು ನನಗೆ ನೋಟೀಸನ್ನು



ನೀಡಿದ್ದರು ಎಂದರೆ ಸರಿ. ನೋಟೀಸಿನ ಪ್ರಕಾರ ದಿನಾಂಕ 21-12-2014 ರಂದು ನೇಮಕಗೊಂಡ ವಕೀಲರು ದಾವಾ ಆಸ್ತಿಯ ಸ್ಥಾನಿಕ ಪರಿಶೀಲನೆ ಮಾಡಲು ಬಂದಿದ್ದರು ಎಂದರೆ ಸರಿ. ದಾವೆಯನ್ನು ಸಲ್ಲಿಸುವ ಕಾಲಕ್ಕೆ ಹಾತನಕಾಶೆಯನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಹಾತನಕಾಶೆಯಲ್ಲಿ ಸಾಮೂಹಿಕ ದಾರಿಯನ್ನು ತೋರಿಸಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ನನಗೆ ಅಡ್ಡಾಡಲು ದಾರಿ ಇರುತ್ತದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. Here, upon perusal of above said evidence the defendant wanted to place his card that to make corroboration to Ex.D 6 with the commissioner report submitted by the Advocate. The said Advocate Sri C.S Mandennavar has been examined as C.W 1. The trial court records reveals that, the court commissioner report was accepted. It appears on perusal of trial court records that the C.W 1 has visited the suit property and conducted the investigation and filed his report. The report is marked as Ex. C 3. The C.W 1 referred the LMNO is measuring 20 and half feet East-West and 22 and half feet North-South. The hand sketch map of plaintiff LMNO wherein new wall A-B wall is new wall constructed. But the court commissioner has submitted he is not able to specify who is the owner of said LMNO property. The court commissioner has submitted hand sketch map which is marked as EX.C 4. The plaintiff has cross examined the C.W.1 and he has given evidence which is reproduced here above. The evidence of court commissioner C.W.1 read thus; ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ಆಸ್ತಿ ನಂ 131 ಮತ್ತು 135 ಅಂತಾ ಹಳೆ ನಂಬರು ಅಂತಾ ತೋರಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿ

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ನಂ.131 ಮತ್ತು 135 ಎರಡು ಆಸ್ತಿಗಳಿಗೆ ಬೇರೆ ಬೇರೆ ಅಳತೆಗಳನ್ನು ಸದರಿ ಅಳತೆ ನಕಾಶೆಯಲ್ಲಿ ತೋರಿಸಿಲ್ಲ ಎಂದರೆ ಖರೀದಿ ಪತ್ರದ ಪ್ರಕಾರ ಅಳತೆಗಳ ತೋರಿಸಿದ್ದೇನೆ. ನಾನು ಖರೀದಿ ಪತ್ರವನ್ನು ಸರಿಯಾಗಿ ಪರಿಶೀಲಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ ಖರೀದಿ ಪತ್ರದ ಪ್ರಕಾರ ಆಸ್ತಿ ನಂ.131 ಪೂರ್ವ-ಪಶ್ಚಿಮ 30 ಪುಟ, ಉತ್ತರ-ದಕ್ಷಿಣ 40 -ಪುಟ ಇರುತ್ತದೆ ಅಂತಾ ವರದಿಯಲ್ಲಿ ತೋರಿಸಿಲ್ಲ ಎಂದರೆ ಸ್ಥಳದಲ್ಲಿಯ ಸ್ಥಿತಿಗತಿಯ ಪ್ರಕಾರ ನಾನು ಅಳತೆ ಮಾಡಿದಾಗ ಕಂಡು ಬಂದ ಅಳತೆಯನ್ನು ವರದಿಯಲ್ಲಿ ಮತ್ತು ನಕಾಶೆಯಲ್ಲಿ ತೋರಿಸಿದ್ದೇನೆ. and ನಿಸಿ-4 ರಲ್ಲಿ ತೋರಿಸಿರುವ ಎ.ಬಿ ಗೋಡೆಯು ಈ ಪ್ರಕಾರಣದ ವ್ಯಾಜ್ಯದ ಗೋಡೆಯಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಗೋಡೆ 9 ಇಂಚು ಅಗಲ, 2 1/2 ಪುಟ ಉದ್ದ ಇರುತ್ತದೆ. ಸದರಿ ದಾವಾ ಗೋಡೆ ಒಂದು ಕಡೆ 16 1/2 ಪುಟ ಅಗಲ, ಇನ್ನೊಂದು ಕಡೆ 22 1/2 ಪುಟ ಉದ್ದ ಇರುತ್ತದೆ. ಪ್ರತಿವಾದಿ, ವಾದಿಯ ಆಸ್ತಿಯಲ್ಲಿ 2 1/2 ಪುಟ ಒತ್ತುವರಿ ಮಾಡಿ ಗೋಡೆ ಕಟ್ಟಿದ್ದು ಕಂಡು ಬಂದಿದ್ದರೂ ಸಹ ನಾನು ವರದಿಯಲ್ಲಿ ತೋರಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸುಳ್ಳು ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. Therefore, upon perusal of the evidence of court commissioner he has not acted upon the sale deed of defendant other then to specified the LMNO property and the A-B wall whether it comes under plaintiff property or the defendant property. Therefore the evidence of C.W.1 cannot be acceptable for the simple reason that he ought to have specify the A-B wall which is in existence as admitted by the defendant as well as the plaintiff.

17) Now I would like to discuss oral testimony of evidence of defendant as the trail court much relied on it in order to make conclusion the identification of suit property and its possession. The defendant has

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also stepped into witness box and he has given evidence as per his sale deed Ex.D.1. The plaintiff has tested the evidence of D.W.1 wherein he has categorically admitted that the Ex.D.6 pertains to property No.185. It is admitted by the defendant that there is new construction of A-B wall by him. In this regard the defendant has placed material facts that while he was constructing the same obtained permission from competent authority. In this regard before trial court the defendant has relied upon Ex.D.3 which is house allotment and construction order copy issued by gram panchayath Karadagi. It appears on perusal of the Ex.D.3 that it relates to construction of house but however it does not bear the construction map in relation to the Ex.D.3 document. Unless the defendant place document in relation to the A-B wall which is newly constructed by him the Ex.D.3 document alone is not helpful to the defendant. This view mine is supported by oral evidence recorded by trial court and the evidence of D.W.1 reads thus; ನಿಡಿ-6 ರ ಪ್ರಕಾರ ನನ್ನ ತಂದೆ ಎರಡೂ ಆಸ್ತಿಗಳನ್ನು ಖರೀದಿ ಹಿಡಿದಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಅವುಗಳ ಸಂಖ್ಯೆಗಳು 131, 135 ಇರುತ್ತವೆ. ಆ ಎರಡೂ ಆಸ್ತಿಗಳು ಒಂದಕ್ಕೊಂದು ಹೊಂದಿಕೊಂಡಿವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. 131 ಆಸ್ತಿ ಸರಕಾರಿ ರಸ್ತೆಗೆ ಹೊಂದಿಕೊಂಡು ಉತ್ತರ ದಿಕ್ಕಿನಲ್ಲಿದೆ ಅದು 1 ನೇ ಟಾಕಿನಲ್ಲಿದೆ. ಪ್ರತಿವಾದ ಪತ್ರದೊಂದಿಗೆ ಹಾಜರ ಪಡಿಸಿರುವ ಹಾತ್ ನಕಾಶೆಯಲ್ಲಿ 1 ನೇ ಟಾಕ ಎಂದು ತೋರಿಸಿದ ಆಸ್ತಿ 131 ಇರುತ್ತದೆ. ಹಾತ್ ನಕಾಶೆಯಲ್ಲಿ 1 ನೇ ಟಾಕಿನ ಪಕ್ಕದಲ್ಲಿ ಹಂಚಿನ ಮನೆ ಎಂದು ಬರೆದಿರುವ ಆಸ್ತಿ ನಂ.135 ಇರುತ್ತದೆ. ಆಸ್ತಿ ನಂ.131 ಮತ್ತು 135 ಎರಡೂ

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ಒಂದಕ್ಕೊಂದು ಹೊಂದಿಕೊಂಡಿವೆ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿ ನಂ.131 ಉತ್ತರಕ್ಕೆ. 135 ದಕ್ಷಿಣಕ್ಕೆ ಇದೆ ಎಂದರೆ ಸರಿ. ನಿಡಿ-6 ರ ಪ್ರಕಾರ ಆಸ್ತಿ ನಂ.135 ಪೂರ್ವ ಪಶ್ಚಿಮ 20 ಅಡಿ, ಉತ್ತರ-ದಕ್ಷಿಣ 64 ಅಡಿ ಇದೆ ಎಂದರೆ ಸರಿ. ಎರಡೂ ಆಸ್ತಿಗಳು ಸೇರಿ ಉತ್ತರ ದಕ್ಷಿಣವಾಗಿ 104 ಪುಟ್ ಇರುತ್ತದೆ. ಆಸ್ತಿ ನಂ. 131 ಕ್ಕೆ ಹೊಸ ನಂಬರ 185 ಕೊಟ್ಟಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. 131 ಮತ್ತು 135 ಎರಡೂ ಸೇರಿ 185 ನಂಬರ ಕೊಟ್ಟಿದ್ದಾರೆ. ಆಸ್ತಿ ನಂ.186, ಆಸ್ತಿ ನಂ.185ರ ಪೂರ್ವ ದಿಕ್ಕಿಗೆ ಬರುತ್ತದೆ. and ಆಸ್ತಿ ನಂ.185 ಮತ್ತು 186 ನನ್ನ ತಂದೆ ಖರೀದಿ ಹಿಡಿದಂತಹ ಆಸ್ತಿಗಳು ಎಂದರೆ ಸರಿ, ಆಸ್ತಿ ನಂ.185 ರ ಹಳೆದ ನಂ. 131 ಇತ್ತು ಎಂದರೆ ಸರಿ, ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ಸದರಿ ಆಸ್ತಿಯ ಅಳತೆ ಪೂ-ಪ 30 ಅಡಿ, ಉ-ದ 40 ಅಡಿ ಎಂದು ತೋರಿಸಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿ ನಂ. 185 ಮತ್ತು 186 ಉತ್ತರ ದಕ್ಷಿಣವಾಗಿ ಎರಡೂ ಹೊಂದಿಕೊಂಡಿವೆ ಎಂದರೆ ಸರಿ. ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ತೋರಿಸಿದ ಆಸ್ತಿ ನಂ.135 ಈಗ ಹೊಸ ನಂಬರ 185 ಇದೆ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿ ನಂ.185 ಉತ್ತರದ ಕಡೆಗೆ ಮತ್ತು 186 ದಕ್ಷಿಣದ ಕಡೆಗೆ ಇದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ತೋರಿಸಿರುವ ಆಸ್ತಿ ನಂ.131 ರ ಹೊಸ ನಂಬರ 185 ಇರುತ್ತದೆ. ಆಸ್ತಿ ನಂ.186 ನನ್ನ ತಂದೆಯ ಸ್ವಂತ ಆಸ್ತಿ. ಅದು ಅವರಿಗೆ ಹಿರಿಯರಿಂದ ಬಂದಿತ್ತು. ಆಸ್ತಿ ನಂ.185 ರ ಅಳತೆ ನಿಖರವಾಗಿ ಹೇಳು ಬರುವುದಿಲ್ಲ. ಆಸ್ತಿ ನಂ. 185 ಮತ್ತು 186 ರ ಅಳತೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಿಡಿ-6 ರಲ್ಲಿ ತೋರಿಸಿದ ಆಸ್ತಿ ನಮ್ಮ ಮನೆಯ ಉತ್ತರ ದಿಕ್ಕಿನ ರಸ್ತೆಗೆ ಹೊಂದಿಕೊಂಡು ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಈ ಆಸ್ತಿಯಲ್ಲಿ ಒಂದು ಬಾವಿ ಇದೆ ಎಂದರೆ ಸರಿ. ನಿಡಿ-6 ರಲ್ಲಿ ಅಳತೆಯನ್ನು ಪೂ-ಪ 30 ಅಡಿ, ಉ-ದ 40 ಅಡಿ ಎಂದು ವಿವರಿಸಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿ ನಂ. 186 ರ ದಕ್ಷಿಣಕ್ಕೆ ಒಂದು ಹಳೆ ಗೋಡೆ ಇದೆ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿ ಹಿತ್ತಲು ಗೋಡೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ಗೋಡೆ ಪೂ-ಪವಾಗಿ 20 ಅಡಿ ಇದೆ ಎಂದು ಕೇಳಿದ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿಯು ಅದಕ್ಕಿಂತ ಹೆಚ್ಚಿಗೆ ಇದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಎಷ್ಟು ಪುಟ ಇದೆ ಎಂದು ನಾನು ಅಳತೆ ಮಾಡಿಲ್ಲ. ಆಸ್ತಿ ನಂ. 131 ಮತ್ತು 135 ರ ಉ-ದ ಅಳತೆ ಹಿತ್ತಲ ಗೋಡೆಯವರೆಗೂ ಅಂದರೆ ಕಚ್ಚಾ ನಕಾಶೆಯಲ್ಲಿ ಎಲ್ ಎಮ್ ಎಂದು ತೋರಿಸಿದ ಜಾಗೆಯತನಕ 104 ಅಡಿ ಇದೆ ಎಂದು ಕೇಳಿದ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿಯು ಸಾಮಾಹಿಕ ದಾರಿಯವರೆಗೂ 104 ಅಡಿ ಇದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನ್ನ ತಂದೆ ಖರೀದಿ ಹಿಡಿದಾಗಿನಿಂದ ಸದರಿ ಗೋಡೆ ಇದೆ ಎಂದರೆ ಸರಿ. On perusal of the



above said evidence the defendant is admitting that towards Eastern side of A-B wall there is no mention about the door in the hand sketch map and the LMNO portion shown by plaintiff in his hand sketch map is old dilapidated house. Since the defendant is admitting that the LMNO property belongs to the plaintiff then the A-B wall which is shown in the hand sketch map very well appears in the LMNO portion. Because in relation to both properties of plaintiff and defendant has admitted that both properties adjacent to each other and measurement of properties in the manner stated by the defendant. The very relevant portion of evidence need to be extracted here as to get clear admission of the old dilapidated house in LMNO portion which is plaintiff property. The evidence of D.W.1 reads thus ಪ್ರತಿವಾದ ಪತ್ರದೊಂದಿಗೆ ಹಾಜರುಪಡಿಸಿದ ಹಾತನಕಾಶೆಯನ್ನು ತಯಾರಿಸಲು ನಾನೇ ಮಾಹಿತಿಕೊಟ್ಟಿದ್ದೇನೆ. ನಾನು ಹಾಜರುಪಡಿಸಿದ ಹಾತನಕಾಶೆಯಲ್ಲಿ ಎ.ಬಿ. ಎಂದು ತೋರಿಸಿರುವ ಗೋಡೆಯ ಪಶ್ಚಿಮ ದಿಕ್ಕಿನ ಕಡೆ ಬಾಗಿಲು ಇದೆ ಎಂದು ಹಾತನಕಾಶೆಯಲ್ಲಿ ವಿವರಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಅಲ್ಲಿ ಬಾಗಿಲು ಇರದೆ ಇದ್ದುದರಿಂದ ನಾನು ಹಾತನಕಾಶೆಯಲ್ಲಿ ತೋರಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ವಾದಿ ಹಾತನಕಾಶೆಯಲ್ಲಿ ಎಲ್.ಎಮ್.ಎನ್.ಓ ಎಂದು ತೋರಿಸಿರುವ ಜಾಗೆಯಲ್ಲಿ ಹಳೆಯ ಮನೆಯಿತ್ತು ಎಂದರೆ ಸರಿ.

18) Upon perusal of the evidence recorded in the matter before trial court it clearly appears that the LMNO portion belongs to the plaintiff. As already discussed there is no dispute in relation to fact that the

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A-B wall was newly constructed by the defendant. Upon perusal of the evidence on record the defendant has clearly admitted LMNO portion of plaintiff property. Therefore while dealing with the matter the trial court has only considered the Ex.D.6 sale deed of defendant rather than the admission of defendant in the matter. On the other hand the trial court while dealing with matter has come into wrong considered opinion that the A-B wall situates within the boundaries of defendant property but has clearly ignored the hand sketch map produced by the plaintiff which is proved by plaintiff from the mouth of defendant. Since the existence of A-B wall in the LMNO portion of plaintiff is proved by the plaintiff then no need to seek declaration in the matter. If at all the defendant claims that he has got right to construct A-B wall then he ought to have produced the construction permission by obtaining it from competent authority. Any sort of construction without having valid permission from competent authority if it was constructed within the defendant property also became illegal and here the plaintiff is claiming encroachment of his property by the defendant while erecting the A-B wall. It is admitted fact that the said LMNO portion is dilapidated house and A-B wall within the LMNO portion then defendant has got no right to construct the same. The trial court while dealing with matter by relying upon the decision



of our own High Court has dealt the matter in relation to declaration of title and the revenue records not document of title but here the property of plaintiff has been acquired by him with a relevant panchayat document and there is no dispute of ownership hence there is no impediment to hold that the plaintiff is and was possession of VPC No.187 which is consisting of old fell down house and backyard. The plaintiff has proved that the A-B wall was constructed from MN portion at about 2 feet area. Hence the defendant need to remove all the obstructions by way of mandatory injunction and to hand over vacate possession of the same to the plaintiff. Therefore the trial court has made an error while dealing with the matter and the trial court ought to have decreed the suit with cost. Hence the trial court has not justified by its appropriate reasonings in holding that the plaintiff is not in peaceful possession and enjoyment of the suit property and defendant has legally constructed the wall in the suit property. Therefore for all these reasons the trial court judgment is in need of interference by this court.

19) Therefore, by considering all these aspects I answer Point No.1 is in the **Negative** and Point No.2 is in the **Affirmative**.



20) **POINT No.3:** In view of the above said reasons and findings on the Point No.1 and 2, I proceed to pass the following :

ORDER

I.A.No.I filed under 5 of Limitation Act is hereby allowed.

The Appeal filed by the Appellant / Plaintiff Under Order XLI Rule 1 R/w Sec. 151 Of Code Of Civil Procedure is hereby allowed with cost.

Resultantly, the Judgment and Decree passed in O.S.212/2014 dated 05.08.2022 by the Learned Civil Judge & J.M.F.C., Shiggaon, is hereby set aside.

The suit of the plaintiff is hereby decreed throughout cost.

The defendant is hereby directed by way of mandatory injunction to remove the suit A-B wall and window fixed thereon with his own cost and hand over vacate possession of the same to



the plaintiff within 3 months from this order.

In case, failure to comply the above said order by the defendant the plaintiff is set at liberty to proceed against the defendant and suit property by appointing Court Commissioner or through special bailiff. Office to draw decree accordingly.

Transmit the lower court records along with the copy of this Judgment & decree to the trial court, forthwith.

(Directly dictated to Stenographer on Computer, typed by her, corrected by me then taken print out from computer and pronounced by me in the Open-Court this the 19th day of April 2025)

(SUNIL S. TALAWAR)

Senior Civil Judge & J.M.F.C.,
Shiggaon Sitting At Savanur.

