



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT SINDHANUR**

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M.,
Senior Civil Judge & J.M.F.C.
SINDHANUR.

: REGULAR APPEAL No : 07/2025:

DATED: 2nd day of June 2026

APPELLANTS :- 1. Narayana S/o Bheemanna Killed
Age: 45 years, R/o. Sindhanur, Tq.
Sindhanur

(By Sri.VBR Advocate)

-V/s-

RESPONDENTS:-1. Smt. B. Waheedannisa Represented by her
Power of attorney holder Syed Fakruddin
Hussain, S/o Late Syed Abdul Khadar,
Age: 45 years, R/o Mohammedia colony,
Cowal Bazaar, Bellary.

(By: Sri.SHPQ Advocate)

Date of Institution of Appeal : 30.01.2025

Nature of Appeal : Appeal against the
Judgment and decree
dated 10.01.2025
in O.S.No. 353/2014
passed by the II Addl.. Civil
Judge, Sindhanur.

Date on which the Judgment
was pronounced

: 02.06.2026

Total duration

: year/ s month/s Day/s
01 04 03



: J U D G M E N T :

This appeal filed by the appellant/defendant being aggrieved by the Judgment and decree dated 10.01.2025 in O.S.No.353/2014 passed by the II Addl.. Civil Judge, Sindhanur in decreed the suit filed for declaration, possession and permanent injunction.

2. For the sake of convenience, the parties are referred in this Judgment as per their ranks before this court.

3. **The case of the plaintiffs, as set out in the plaint, is as below:-**

This suit has been filed by the plaintiff for relief of Declaration to declare that the plaintiff is absolute owner of the suit property, Possession to hand over the possession of 'B' schedule property meg. 15 X 20 sq.fts in total 300 sft. Wherein, a room has been constructed meg.11 X 16 feet and to restrain the defendant and his men, Agents, Subordinates and all such other persons claiming interest



through the defendant from attempting to trespass upon 'A' schedule property beg. its TS No. 24/ B its CMC No.1-1-2 meg. 30 guntas and CMC No.1-1-2/1 meg. 06 guntas totally meg. 36 guntas total 39060 sq.fts. The plaintiff submitted that, Plaintiff has filed the above suit on behalf of General Power of Attorney Holder who is none other than the Husband of the Plaintiff. The Plaintiff is the absolute owner of the suit schedule property NA Land in T.S. No. 24/B situated in Sindhanoor City. The Plaintiff has purchased the A property from one Brahmananda S/o. Sadananda Naik under Registered Sale Deed dtd. 7.3.2005. Since, they are in possession of the same. Prior to the possession of the plaintiff, the Vendor's mother Kundana w/M. Sadanand Mesh was in peaceful possession and enjoyment of the plaint schedule property. Adjoining the plaint schedule property on the eastern side there is the Raichur-Gangavathi Road. The Defendant is in no way concerned with the plaint schedule property. At the time of purchase of the property by the plaintiff, the suit property



is a vacant land and the said land was converted from agricultural to non-agricultural use by the concerned Department in proceedings No. NA/ALN/74/72/73 Dated 09-03-1973. The plaintiff and her family were residing at Gangavathi for a brief period and thereafter presently residing in Bellary. Occasionally, the plaintiff and her family members have been visiting and looking after the suit schedule. property. After shifting over to Bellary, the plaintiff could not regularly visit and over look the suit schedule property. Taking advantage of long absence of the plaintiff, the defendant herein without any rights whatsoever about 3 years back has illegally entered into the suit schedule property and has put up a small shed in about 11 feet x 16 feet and presently defendant is in possession of 15 feet x 20 feet, totally 300 feet. Recently, the plaintiff and her family members have visited the suit schedule property and had found that defendant was in possession of the suit, schedule property and upon enquiry the defendant insisted that he is in the possession of the



property belonging to the Government land Survey No. 768/1. Thereafter, the plaintiff made efforts through her Power of Attorney Holder to verify the status of the possession of the defendant whether it is in the suit schedule property or in the Government land as alleged by the defendant and to the surprise of the plaintiff it has come to the notice that there is no property in Survey No. 768/1 abutting to the suit schedule property and therefore it is clear that the defendant is in possession of the property belonging to the plaintiff. Therefore, the plaintiff demanded the defendant to vacate and handover vacant possession of the area admeasuring 15 feet x 20 feet which is inclusive of a small shed put up by the defendant which is more fully described in plaint 'B' schedule. After the plaintiff started to make efforts to take possession of the 'B' Schedule property from the possession of the defendant which is in his illegal Occupation, the defendant filed OS.No 281/2014 before this Hon'ble Court assist the Deputy Commissioner, Raichur and has falsely alleged in



the plaint that he is in possession of the Property assuring 55' x 90' situated in Survey No.768/1 towards the east of suit schedule property belonging to this plaint which is a utter falsehood and further has sought title over the property by way of adverse possession. The plaintiff has come to know the filing of suit O.S.No.281/2014 recently and immediately filed an application to implead herself as defendant no.2 in the said suit filed by the defendant herein and the said application is pending before this Hon'ble court. The Defendant herein under the guise of the suit filed by him is further attempting to encroach upon the adjoining property belonging to the plaintiff. Therefore the present suit is filed for possession of property which is in illegal occupation of the defendant. Hence, being no other way to plaintiff filed this suit for the relief of Permanent Injunction.

3. In pursuance of service of suit summons, defendant appeared through his counsel and filed written statement



denied the entire case of the plaintiff. The suit is hit by Res-judicata. It is contended by the defendant that the suit is non-joinder of proper parties like Samsuddin Sab, Sawmill Yatmarı, Bashusab Katagar R.K., Suppliers and the Government etc., on this ground alone suit to be dismissed with compensatory costs. Defendant is in actual physical possession of the property to the extent of 55 x 90 feet in land Sy.No.768/1 of Sindhanur. At the instance of the Asst. Commissioner, Lingasugur then, then Asst. Director of Land Records, Lingasugur, measured the land Sy.No. 768/1 and fixed the boundaries in the years 1992 and penalty was also imposed on the defendant. Defendant has paid the penalty to the Government of Karnataka, therefore this plaintiff has nor locus-standi. Therefore is no such Schedule A and B properties, it is imaginary one of the plaintiff. Whatever the plaintiff has urged in para No.5 of the plaint the same was sought by the vendors father Sadanand Nayak in O.S.No. 468/1992 by way of Amendment it came to be rejected on 28-09-1996. So it is hit by the res-



judicata. It was not challenged by him the for impleading as defendant No.2 she has to be proved the location of the property positively beyond the shadow of it along with its boundaries. The plaintiff was recently amended the plaint as per order of the Hon'ble court but nature of the suit was converted into declaration suit from previous claim. The plaintiff was liable to pay court fees for is claim i.e., A schedule property meg. 34204 sq feet's i.e., 36 guntas approximately. The value of schedule A property is ₹.19602000=00 and the value schedule property is ₹.15000=00 Totally ₹.19752000=00. The suit exceeds the pecuniary jurisdiction of this court. The suit is barred by limitation. Hence, prayed to dismiss the suit.

4. Upon the rival pleadings of the parties
my predecessor had framed the following –



ISSUES

1. Whether the plaintiff proves that, the defendant has encroached the suit schedule “B” property and put up an illegal construction on it ?

2. Whether the plaintiff proves that, she is in peaceful possession and enjoyment over suit “A” schedule property as on the date of suit ?

3. Whether the plaintiff proves that, the defendant is trying to encroach upon plaintiff “A” schedule property ?

4. Whether the defendant proves his adverse possession over the suit schedule property ?

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

6. What a order or decree?

ADDITIONAL ISSUES

1. Whether the plaintiff proves that, she is the absolute owner of “B” schedule



property ?

4. In support of his case, the plaintiff has filed his examination-in-chief in lieu of affidavit and got examined himself as P.W-1 and got marked thirty-three documents as Ex.P-1 to 33 and also got examined two independent witnesses by name Syed Gouse Pasha and Kalakappa got examined as P.W-2 and P.W-3 and closed their side evidence. In order to prove the defence of defendant, defendant has filed his examination-in-chief in lieu of affidavit and got examined as D.W-1 and got marked fifteen documents as per Ex.D-1 to Ex.D-15 and also got examined two independent witnesses by name Kanteppa and Dharmanna got examined as D.W-2 and D.W-3 and closed his side evidence.

5. In support of the case, the court commissioner has got examined himself as C.W-1 and got marked eight



documents as Ex.P-1 to 8., C.W-1 fully cross-examined by both the parties to the suit and closed his side evidence.

6. After hearing the arguments and considering the oral and documentary evidence let in before it, the learned trial Judge has decreed the suit of the plaintiff by giving following findings on the above issues:

Issue No.1:- In the Affirmative
Issue No. 2. : In the Affirmative
Issue No. 3. : In the Affirmative
Issue No. 4. : In the Negative.
Issue No. 5. : In the Affirmative
Addl. Issue No. 1 : In the Affirmative
Issue No. 6 :As per final order, for the following;

7. Being aggrieved by decreed the suit the appellant/defendant has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) The impugned decree and judgment dated 10.01.2025 in OS No.353/2014 passed by II Addl. Civil Judge (Jr Dvn) court at Sindhanur the decree and judgment of the court below is contrary of law and opposed to the evidence on record and the probabilities of the case.



- 2) The findings of the trial court on all issues are grossly illegal erroneous the reasons are also improper.
- 3) The appellant will put great hardship if decree and judgment of the lower court is continues. The respondent was illegally tried to tress pass in the schedule property.
- 4) The findings of the trial court on all issues are grossly illegal erroneous. The reasons are also improper.
- 5) The trial court was not appreciated the vital documents of appellant and respondent.

8. I have heard the arguments addressed by the learned counsels appearing for the appellant and respondents.

9. From the grounds made out in the appeal, materials placed before this court and the arguments addressed by both sides the following points would arise for my consideration.

1. Whether the plaintiff-respondent is the owner of the suit property?
2. Whether the plaintiff-respondent proves that he had been dispossessed by the appellant-defendant from the suit



property three years prior to institution of the suit in OS No.353/2014 on the file of II Addl.. Civil Judge & JMFC Court at Sindhanur?

3. Whether suit in OS No.353/2014 is barred under Sec.3(1) of Limitation Act, 1963?

4. What order?

10. My findings to the above points are as follows, as per the reasons discussed below: -

POINT NO.1 :- In the Negative

POINT NO.2 :- In the Negative

POINT NO.3 :- In the Affirmative

POINT NO.4 :- As per final the final order

:: R E A S O N S ::

11. **POINT No.1 :-** It is made clear by this court that the plaint is silent with regard to alleged date of trespass by the defendants over the suit property. The plaint is silent with regard to alleged dispossession of the plaintiff by the defendant from the suit property from the suit schedule B property. Vague statements in the plaint by the plaintiff that she had been dispossessed by the defendant from the suit schedule B property without any pleadings



with particular date, month year and coupled with its concrete evidence cannot be accepted. The plaintiff must prove at the first instance that she had been dispossessed by the defendant prior to three years from the date of filing of the suit.

12. Thus in the considered opinion of this court the alleged trespass, dispossession of the plaintiffs from the suit schedule property and subsequent putting up of shed by the defendants over the suit properties are all imaginary and created story only for the purpose of harassing the defendants. Therefore, her contention that he had been dispossessed from the suit schedule B property by the defendants prior to filing of the suit is not established.

13. The best persons who speak about the dispossession of the plaintiffs by the defendant from the suit property would be the neighbors of the suit property. No attempt is made by the plaintiff to examine the neighbors of the suit-house so as to ascertain the fact of dispossession of the plaintiff by the defendants from the suit properties. It was neighbors who rush to the spot



spontaneously to prevent any un-toward incident and to prevent plaintiff from being dispossessed. No attempt is made by the plaintiffs to secure the presence of neighbors of the suit properties to be examined by the plaintiff to prove the fact of her being dispossessed by the defendants from the suit property.

14. What is important to note that not even the date on which she had been dispossessed is not stated in the plaint pleadings. Therefore, the contention of the plaintiffs that she had been dispossessed from suit properties by the defendants is not established. The plaintiff ought to have pleaded in her plaint the specific date on which she had been dispossessed if she had been really dispossessed by the defendants. The plaintiff ought to have pleaded in her plaint the specific month on which she had been dispossessed. The plaintiff does not state in her plaint on which date she had been dispossessed. The plaintiff does not state in her plaint on which month she had been dispossessed. The plaintiff does not state in her plaint at least the year on which she had been dispossessed. Only a vague averment has been made in the



plaint to the effect that plaintiff had been dispossessed from the suit schedule B property three years prior to filing of the suit. Such vague pleading that that plaintiff had been dispossessed from the suit schedule B property three years prior to filing of the suit without specifying the exact date, month of dispossession cannot be accepted.

15. A perusal of the commissioner report marked at exhibit C-1 make it clear that the defendants No.4 to defendant No.7 have constructed permanent structures RCC building over the suit properties long back. Besides it, it is made clear by this court that construction of shop by the defendant over the suit property would not be made overnight. Prudent demands that if construction to be made by the defendant it would take at least 09-10 months. For the purpose of construction of a water service shop at least 7-8 laborers would be engaged for atleast three months.

16. This court failed to understand as to why the plaintiff did not file an application immediately under Order 39 Rule 1 and 2 of



CPC, 1908 in the trial court to prevent alleged putting up of shed of water service by the defendant over the at suit schedule properties immediately after the defendant started the alleged construction work of water service shop. Thus there is no material produced by the defendants of alleged dispossession, the alleged construction of shed of water service over suit schedule property by the defendant. Thus in the considered opinion of this court the alleged dispossession of the plaintiff and putting up of the temporary sheds by the defendants over suit schedule property are imaginary and created story for the purpose of this suit for showing imaginary cause of action.

17. Therefore self-serving statements of the plaintiffs that she had had been dispossessed from the shop without evidence or any corroborative documents cannot be accepted. AS discussed above, not even the date on which he had been dispossessed is stated in the plaint pleadings. In cases where the plaintiff allege dispossession by the defendant , the plaintiff must prove alleged act of dispossession with concrete evidence, with specific date of



dispossession and pleadings to this effect. Therefore contention of the plaintiffs that she had been dispossessed from the suit properties by the defendant is not established . If the plaintiff does not state in the application or in the pleadings as to when she was dispossessed from the property and only a vague averment if has been made to the effect that he was dispossessed from the suit property without specifying as to how and when the same was done such vague plea cannot be relied upon by this court.

18. A perusal of the registered sale deed dated-07-03-2005 marked at exhibit P-30 in respect of the suit property make it clear that towards western side one Katagar Dastadar sab owns his land. A perusal of the registered sale deed dated-07-03-2005 marked at exhibit P-30 in respect of the suit property make it clear that towards southern side LIC office is in existence. Thus the suit properties are surrounded by the one Katagar sab and LIC office on the date of execution of the registered sale deed dated-07-03-2005 marked at exhibit P-30 in respect of the suit property. But the plaintiff did not examine the adjacent property owners of the suit



properties to prove alleged dispossession by the defendant from the suit property.

19. The plaintiff did not explain as to why she did not examine Katagara Dastagir sab whose land is situated towards western side of the suit property as shown at registered sale deed dated-07-03-2005 marked at exhibit P-30 so as to prove her alleged dispossession from the suit schedule B property three years prior to filing of the suit. Further the plaintiff did not explain as to why she did not examine any of the official of the LIC office whose office is situated towards souther side of the suit property as shown at registered sale deed dated-07-03-2005 marked at exhibit P-30 so as to prove her alleged dispossession from the suit schedule B property three years prior to filing of the suit. Thus self serving statement of the plaintiff that she had been dispossessed from the suit property three years prior to filing of the suit without concrete evidence cannot be believed.



20. Prudent demands that when a person is being dispossessed, the plaintiff or her representatives shout, neighbours calling for help. Further prudent demands that when a person is being dispossessed, neighbors rush to the suit property and try to thwart attempt. Prudent demands that when a person is being dispossessed, the aggrieved party her relatives, friends rush to the jurisdictional police station for reporting trespass. Though police cannot intervene in civil matters but if criminal force is being used the police can certainly rush to the spot and thwart such attempts. Though police cannot intervene in civil matters but if it is a criminal trespass the police can certainly register an FIR for trespass. Though police complaint is not mandatory in civil dispute and police cannot register FIR, but at least at initial stage plaintiff would seek police assistance to protect his or her possession.

21. In the present case, the plaintiff at para No.4 and 7 of the plaint pleaded that she had been dispossessed by the defendant three years prior to filing of the suit and she kept quiet for a long three years permitting the defendant to enjoy her property. Such



imaginary pleadings at para No.4 and 7 of the plaintiff without corroborative circumstance cannot be believed. This conduct of the plaintiff is far way from truth. This conduct of the plaintiff that she had been dispossessed from the suit schedule B property prior to three years of the suit cannot be believed. Prior to the conduct of the plaintiff does not inspire the confidence of this court to grant reliefs. Can it be believed by this court that the plaintiff is dispossessed by the defendant and she kept quite for a three long years without approaching police or at least a suit seeking relief of possession. Though limitation is prescribed is 12 years under the Limitation Act, 1963, but the plaintiff after having lost possession, will not keep quite for a three long years saying that she is living at Ballary, thus unable to come to the spot. Ballary is just two hours journey from Sinhanoor pleadings of the plaint are imaginary. Thus the conduct of the plaintiff does not inspire the confidence of this court to arrive at a conclusion that she is dispossessed by the defendant three years prior to filing of the suit, and she kept quit, during these years.



22. Normal conduct of a party show that once trespasser tried to interfere into the plaintiff 's possession and tries to dispossess her from the suit property, she rushes to the court seeking protection , seeking an order of exparte temporary injunction. On the contrary, in the present case as per pleadings at para No.4 and para No.7 of the plaint, for three long years the plaintiff kept quite and did not take any action against the defendant. The explanation given by the plaintiff that she has been residing at Bellary thus she did not come to know about her alleged dispossession from the suit property cannot be relied. This imaginary story created by the defendant cannot be belied. Assuming that the plaintiff had been residing at Bellary, and the defendant tress passed into the suit property and constructed water service station over the suit property, the neighbours, relatives residing at Sindhanoor town would certainly inform her immediately over her mobile phone within house.

23. Now a days almost all including a poorest of poor uses mobile phone. Communication of dispossession to the plaintiff is



no issue for the plaintiff. The plaintiff could not wait for three long years to come to know that the defendant has dispossessed her from suit property. The plaintiff could not wait for three long years to come to know that the defendant has constructed water service station over the suit property. Neighbors , relatives, or friends, or any body well acquainted with the plaintiff would certainly inform about dispossession of the plaintiff from the suit property over her mobile phone. They would have informed through mobile phone to the plaintiff. Thus conduct of the plaintiff is not free from doubt. Thus imaginary story created by the plaintiff that three years prior to filing of the suit she had been dispossessed from the suit property without concrete evidence cannot be accepted.

24. Further , as discussed above, important witnesses in the neighborhood of the suit premises as shown in the registered sale deed dated 07-03-2005 marked at exhibit P-30 not examined and the plaintiff's conduct in not reporting her forcible dispossession by the defendant was suspicious and contrary to normal human behavior of a person so placed and unworthy of credence. The



plaintiff could have examined Kattagar Dastagir Sab and Alam Sab whose property is situated towards western side of the suit properties as shown at schedule of the registered sale deed dated 07-03-2005 marked at exhibit P-30 in respect of the suit properties . Further the plaintiff could have examined any of the officials of LIC whose property is situated towards southern side of the suit properties as shown at the registered sale deed dated 07-03-2005 marked at exhibit P-30. In this regard it is beneficial to refer to the decision of Hon'ble High Court of Rajasthan at JAIPUR BENCH reported IN 2013 SCC ONLINE RAJ 2893 in between Ram Narain (since deceased) through his LR. Versus Gheesa & Others the para No.13 reads as under.

S.B. Civil Second Appeal No. 328/1994

Dated 18-10-2013

13]. In my considered view, in the overall facts of the case, there is force in the submission of the counsel for the defendants that the substantial questions of law framed by this Court under its order dated 20.04.1998 are



not of the nature contemplated under Section 100 CPC. I am of the considered view that the questions framed by this court are fundamentally questions of fact and not of law what of substantial law. The purported substantial questions of law indicate that they relate to question of correctness of the conclusions of the lower appellate court on questions of fact on appreciation of the evidence on record by the first appellate court. Weightage given to evidence by the first appellate court cannot, in my considered opinion, be in any manner whatsoever construed as a question of law and yet that has been framed as one. Further the question as to whether the decision of the lower appellate court is vitiated being contrary to the normal course of human conduct and also for being perfunctory are too broadly stated to partake the character of substantial



question of law. A substantial question of law has to be specific to the case and a mere broad vacuous formulation does not satisfy the requirement. Perversity in the findings on the evidence on record indeed has been consistently accepted by the Apex Court and this Court to be a substantial question of law but that question has however not even been framed as substantial question of law in the instant case. Aside of the aforesaid, in my consideration the view taken by the first appellate court on the evidence of the case is a reasonable view. Nothing perverse can be found in the conclusions of the first appellate court that the plaintiff had been unable to discharge his burden of ownership based on title and possession flowing therefrom or otherwise. Further the first appellate court did not rightly rely in the purported application dated



25.051958 by Suwanath before the Gram Panchayat as the same was not even exhibited as a document and proved before the trial court as proof of the plaintiff's possession without possession of the plaintiff being established and proved on his evidence, in my considered opinion the presumption of continuity of possession as enunciated by the Hon'ble Supreme Court in the case of Nathoo Lal (Supra) cannot be of any avail to the plaintiff. Similarly the first appellate court cannot be held to have acted perversely or erred in arriving at a finding of fact based on broad probability that the plaintiff's case of his dispossession was not proved as evidence in respect thereof was inconsistent, important witnesses in the neighbourhood of the suit premises not examined and the plaintiff's conduct in not reporting his forcible dispossession by the



defendants was suspicious and
contrary to normal human
behaviour of a person so placed
and unworthy of credence

The first appellate court has detailed reasons of disagreement with the findings of the trial court in considering issues framed by it. Those reason of disagreement, detailed by the first appellate court, in my considered opinion, were germane.

In the facts of the case I therefore find no force in this second appeal and the same is accordingly dismissed.

The ratio (underline emphasized by me) laid down by the Hon'ble High Court of Rajasthan AT JAIPUR BENCH reported in 2013 SCC ONLINE RAJ 2893 in between Ram Narain (since deceased) through his LRs Vs Gheesa & Others is that that the plaintiff's case of his dispossession was not proved as important witnesses in the neighborhood of the suit premises not examined and the plaintiff's conduct in not reporting his forcible dispossession by the defendants was suspicious and contrary to



normal human behavior of a person so placed and unworthy of credence.

25. The facts of the case of the Hon'ble High Court of Rajasthan AT JAIPUR BENCH JAIPUR Reported in 2013 SCC ONLINE RAJ 2893 in between Ram Narain (since deceased) through his LR's. Vs Gheesa & Others and the present case similar to each other. In view of law laid down by the Hon'ble High Court of Rajasthan AT JAIPUR BENCH JAIPUR Reported in 2013 SCC ONLINE RAJ 2893 in between Ram Narain (since deceased) through his LR's. Vs Gheesa & Others the suit of the plaintiff is not maintainable.

26. In this regard it is beneficial to refer to the decision of Hon'ble High court of Karnataka at Banagaluru reported in 2017 SCC ONLINE KAR 3751 in between N. Venkatappa vs. Chikkapapamma, the para No.11 reads as under.

R.S.A. No. 1949 of 2013

C/W

R.S.A. No. 1948 of 2013.



Dated. 14.08.2017.

11. As already stated, the revenue records for the entire suit property were in the name of Munishamy, brother of Vasappa and after his death they were changed into the name of his first son Narayanappa and after the death of Narayanappa, they were changed into the name of the second son of Munishamy viz., Ramachandrappa. Though plaintiffs got the plaint amended and sought for the relief of possession of the suit properties alleging that they were dispossessed from the possession of the suit property by the defendants during the pendency of the suit, no police complaint was lodged and not even the date on which they were dispossessed is stated. Their contention that they were dispossessed from the suit property by the defendants during the pendency of suit is not



established. Defendants are in possession of the suit property for the last 37 years as evident from the revenue records. Considering this, the trial Court was justified in dismissing the suit of the plaintiffs holding that the plaintiffs have failed to prove their title to the suit property.

The ratio (underline emphasized by me) laid down by the un-reported decision of Hon'ble High court of Karnataka at Banagaluru reported in 2017 SCC ONLINE KAR 3751 in between N. Venkatappa vs. Chikkapapamma , is that if the plea of the plaintiff that she has been e dispossessed from the possession of the suit property by the defendants during the pendency of the suit, no police complaint was lodged and not even the date on which they were dispossessed is stated in the plaint as such contention that she had been dispossessed from the suit property by the defendants during the pendency of suit is not established.



27. Though in the present it is not the case of the plaintiff that, she is dispossessed by the defendant during the pendency of the suit, but observation made in the decision of the of Hon'ble High court of Karnataka at Banagaluru reported in 2017 SCC ONLINE KAR 3751 in between N. Venkatappa vs. Chikkapapamma, is that immediately after being dispossessed by the defendant the plaintiff ought to have filed police complain to show that plaintiff is dispossessed. . In view of law laid down in the reported decision of Hon'ble High court of Karnataka at Banagaluru reported in 2017 SCC ONLINE KAR 3751 in between N. Venkatappa vs. Chikkapapamma suit it is not the case of the plaintiff that she is dispossessed. As discussed above, though law does not mandate.

28. Besides it, the plaintiff examined PW-2 Syed Ghouse Pasha who deposed that he is a fruit vendor running his business in front of the suit property. On the contrary, a perusal of the photographs marked from exhibit D-3 and D-4 make it clear that the suit properties are not surrounded by the market nor it is a business area. On the contrary, a perusal of the photo-graphs marked from



exhibit D-3 and D-4 the suit properties are the surrounded by the bushes and trees. Fruit vending would be done at a place where there is a movement of general public. Thus his evidence cannot be believed.

29. On the contrary a perusal of the photo-graphs marked from exhibit D-3 and D-4 make it clear that the suit properties are surrounded by the trees and bushes. Thus the contention fo the P.W.-2 Syed Ghouse that he is selling fruits in front of the the suit properties thus he knows about the dispossession of the plaintiff from the suit properties by the defendant cannot be accepted.

30. Similarly, the plaintiff examined PW-3 Kalappa who deposed that he has a pan-beeda shop in front of the suit properties. On the contrary, a perusal of the photo-graphs marked from exhibit D-3 and D-4 make it clear that the suit properties are not surrounded by the market nor it is a business area. On the contrary, a perusal of the photo-graphs marked from exhibit D-3 and D-4 the suit properties are the surrounded by the bushes and



trees. Paan Beeda shop would be installed at a place where there is a movement of general public. Usually the pan-beeda shop would be put up at a busy market area. It would be installed adjacent to the road. It would be generally installed near hotels, near bar and restaurants, markets, at busy public area. It cannot be installed at a place where there is no movement of the general public. Thus his evidence cannot be believed.

31. On the contrary a perusal of the photo-graphs marked from exhibit D-3 and D-4 make it clear that the suit properties are surrounded by the trees and bushes. Thus the contention of the PW-3 Kalappa that he is selling fruits in front of the suit properties thus he knows about the dispossession of the plaintiff from the suit properties by the defendant cannot be accepted. It appears that this evidence only with an intention to suit the case of the plaintiff.

32. As discussed above, the plaintiff set-up her case and specifically pleaded that she had been dispossessed from the suit properties about three years back from the date of the filing of the



suit. Assuming that the this witness knows facts of the case, as to why he did not inform the plaintiff who stays at Ballary immediately. If really this witness has been running his business near the suit properties he could have immediately alerted the plaintiff about putting up temporary shed by the defendant over the suit properties. If really this witness has been running his business near the suit properties he could have immediately alerted the plaintiff who would have rush to the suit properties from Ballary to sindhanoor. If really this witness has been running his business near the suit properties he could have immediately alerted the plaintiff the plaintiff would not have waited for three years for filing of the present suit.

33. Thus evidence referred to above not reliable. The evidence of PW-2 Syed Gouse and PW-3 Kalakappa that that they have been running their business near the suit properties cannot be accepted. The evidence led by the plaintiff is imaginary. The circumstance and facts narrated by the plaintiff in her plaint are imaginary one. The circumstance and facts narrated by the plaintiff in her plaint



imaginary and far away from truth. This evidence does not inspire the confidence of this court to come to conclusion that the plaintiff is dispossessed from the suit properties. Thus looking from any angle the plaintiff failed to prove her title over the suit properties.

34. The trial court relied on court commissioner report to arrive at a conclusion that the plaintiff had been dispossessed from the suit properties by the defendant. It is made clear by this court that very foundation laid by the plaintiff is relief of possession. When the plaintiff herself admitted that she had been dispossessed by the defendant from the suit properties, and her very relief is of possession, how the report of the court commissioner would assist to prove the case of the plaintiff about her possession or dispossession. Thus the trial court erroneously held that report of the court commissioner would prove the dispossession of the plaintiff from the suit property. It is made clear by this court that possession of the defendant over the suit schedule B property is admitted by the both the parties. The crux of the matter is title of



the plaintiff over the suit property and her alleged dispossession by the defendant from the suit schedule B property. .

35. The trial court at its para No.19 of the judgment specifically observed saying that the Ex.P5 to 7 are the complaint given by the PW2 for restraining the defendant from illegally putup shed in the suit property measuring 15x20 feet by encroaching the land bearing Sy.No.CMC No.1-1-2/1 of Sindhanur village, wherein he contended that as per document issued by VC, Sindhanur it clearly shows the encroachment mentioned therein, even though it is brought to the knowledge of defendant, but also started continue possession of the suit property which belonging to the plaintiff.

36. This observation is in correct and far away from truth. As discussed above, the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-5, the representation dated-20-06-2014 given to the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-6 and the representation dated-10-06-2014 given to the AEE, GESCOM at Sindhanoor marked at



exhibit P-7 do not disclose exact date and month on which the plaintiff had been dispossessed. Vaguely the plaintiff has given the above representations by showing imaginory story without mentioning exact date and month and year of her dispossession from the suit property.

37. If really the plaintiff had been dispossessed by the defendant from the suit schedule “ B “ property what prevented the plaintiff to show at the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-5, the representation dated-20-06-2014 given to the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-6, the representation dated-10-06-2014 given to the AEE, GESCOM at Sindhanoor marked at exhibit P-7 exact date, month, year of dispossession from it. Thus vague such representation given just prior to filing of the suit so as to create a circumstance that she has been dispossessed from the suit schedule “ B “ property cannot be relied by this court.



38. If really the plaintiff was very much certain about her dispossession from the suit schedule “ B “ property, she could have specifically mentioned in the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-5, the representation dated-20-06-2014 given to the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-6 , the representation dated-10-06-2014 given to the AEE, GESCOM at Sindhanoor marked at exhibit P-7 she could have specified exact date, month, year of her dispossession by the defendant from the suit schedule “ B “ property. Such vague representations are brought on record only for the purpose of the bringing the suit within a period of limitation. These facts the trial court failed to notice and erroneously relied on the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-5, the representation dated-20-06-2014 given to the commissioner, city Municipal Council at Sindhanoor marked at exhibit P-6 and the representation dated-10-06-2014 given to the AEE, GESCOM at Sindhanoor marked at exhibit P-7.



39. Further, at para No.7 of the copy of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9, the defendant herein who was also defendant there in has specifically pleaded there in that the defendant has constructed water servicing station over the suit property. It is important to note that contents of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9 are not denied by the plaintiff nor her predecessor in title. Way back in 1993 itself, on 01-03-1993 the defendant has denied the right, title, and possession of the predecessor in title of the plaintiff. It is made clear by this court that way back in 1993 itself, on 01-03-1993 the defendant has denied the right, title, and possession of the vendor of the of the plaintiff. The plaintiff here in steps into the shoes of the plaintiff of OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-8. After a long gap 22 years from the date of filing of OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor filed by the predecessor in title again the plaintiff has filed the suit on the same



ground which cannot be considered. Hence point No.1 is answered in negative.

40. **POINT NO.2 AND 3 :-** Though the defendant did not plead with regard to suit being bared by limitation under the provisions of the Limitation Act, 1963, still the Court by virtue of Section 3 (1) of the Limitation Act, 1963 can consider the same. Section 3 (1) of The Limitation Act, 1963 mandates that that no suit or proceeding beyond the period prescribed shall be entertained by the court and dismissed at the threshold irrespective of the defendant pleading with regard to limitation.

41. Section 3 (1) of The Limitation Act, 1963 mandates that that no suit or proceeding beyond the period prescribed shall be entertained by the court and dismissed at the threshold irrespective of the defendant pleading with regard to limitation. Section 3 (1) The Limitation Act, 1963 reads as under:



Sec. 3(1). Subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not be been set-up as s defense

42. Thus Section 3 (1) of the Limitation Act, 1963, mandates that “ every suit instituted, appeal preferred, and application made, after the prescribed period shall be dismissed although limitation has not be been set-up as a defense. The mandate imposed a duty on the court to dismiss the suit filed beyond time. It is the duty of the Court to dismiss the suit instituted after the prescribed period of limitation irrespective of the fact limitation has not been setup as a defense. In this regard it is beneficial to refer to the decision of the Hon ble Suprme Court of India reported in 2008 AIR SCW 3241 =[AIR 2008 SC (Supp) 1931] Kamlesh Babu and Ors VS. Lajpat Rai Sharma and Ors the para No.17 of the Judgment reads as under.



Civil Appeal No.2815 of 2008
(arising out of SLP (C) No.10058 of 2006),,
decided on 16/04/2008

17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defense.

The Hon ble Suprme Court of India reported in 2008 AIR SCW 3241 =[AIR 2008 SC (Supp) 1931] Kamlesh Babu and Ors VS. Lajpat Rai Sharma and Ors is that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defense.

43. In this regard it is beneficial to refer to the Hon ble High Court of Karnataka reported in 2010 (3) AIR Kar R 721 =[ILR 2010 KAR 5587] = [(2011) 1 Kant LJ 49] =[(2010) 3 AIR Kant



R 721] =[(2010) 3 KCCR 2093] in between H. D. Hanumanthappa
VS. Mohammed Sab & Ors the para No.10 and 11 reads as under.

R.F.A 948 of 2002

decided on 22/06/2010

10. There is no merit in the above contentions. The defendants in their written statement have specifically contended that, the suit is barred by time. It has also been averred that, the claim of the plaintiff cannot be allowed in law as he slept over the matter for over 5 decades. It was averred that, the plaintiff nor his predecessors have ever set their feet in the suit land, since the date of sale deed dated 19-6-1940.

10.1 The learned Trial Judge has not taken notice of Section 3(1) of the Limitation Act, 1963 (for short, "the Act"), which reads as follows:

"Section 3. Bar of Limitation.--(1)
Subject to the provisions contained in



Sections 4 to 24 (inclusive), every
suit instituted, appeal preferred, and
application made after the prescribed
period shall be dismissed, although
limitation has not been: set up as a
defence".

10.2 It is well-settled that,
**Section 3(1) of the Act, casts a
duty upon the Court, to dismiss the
suit or appeal or an application, if
made after the prescribed period,
although, limitation, is not set up
as a defense.**

11. In the instant case, as already
noticed, such a defence has been set
up in the written statement. It is no
doubt true that, no distinct issue was
framed in that regard by the Trial
Court. In view of the specific defence
taken, it was the duty of the learned
Trial Judge to have raised a distinct
issue with regard to bar of limitation.
Issue relating to limitation is a
jurisdictional issue and goes to the
root of the matter. The mandate of



Section 3 of the Act is that, it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that, limitation has not been set up as a defence. If a suit is *ex facie* barred by law of limitation, a Court has no choice but to dismiss the same even if the defendant has not raised the plea of limitation. In the case of Manindra Land and Building Corporation Limited vs. Bhutnath Banerjee and Others, AIR 1964 Supreme Court 1336, it has been held that:

"Section 3 of the limitation enjoins a Court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I, irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the Court not to proceed with the application if it is made beyond the



period of limitation prescribed. The Court had no choice and if in construing the necessary provisions of the Limitation Act or in determining which provisions of the Limitation Act applies, the subordinate Court comes to an erroneous decision, it is open to the Court in revision to interfere with that conclusion as that conclusion led the Court to assume or not to assume, the jurisdiction to proceed with the determination of that matter".

The ratio laid down by the Hon'ble High Court of Karnataka reported in 2010 (3) AIR Kar R 721 =[ILR 2010 KAR 5587] = [(2011) 1 Kant LJ 49] =[(2010) 3 AIR Kant R 721] =[(2010) 3 KCCR 2093] in between H. D. Hanumanthappa VS. Mohammed Sab & Ors is that Section 3(1) of the Limitation Act, 1963 , casts a duty upon the Court, to dismiss the suit or appeal or an application, if made after the prescribed period, although, limitation, is not set up as a defense



44. Though the defendant did not plead with regard to suit being bared by limitation under the provisions of the Limitation Act, 1963, still the Court by virtue of Section 3 (1) of the Limitation Act, 1963 can consider the same. Section 3 (1) of The Limitation Act, 1963 mandates that that no suit or proceeding beyond the period prescribed shall be entertained by the court and dismissed at the threshold irrespective of the defendant pleading with regard to limitation. Thus by virtue of article 54 of the Limitation Act, 1963 coupled with Section 3 (1) of the Limitation Act, 1963, the suit of the plaintiff is barred by limitation hence the plaintiff is not entitled for relief of specific performance of contract.

45. When a suit is filed based on title, but claiming declaration of title to the suit property with consequential relief of possession, Article 65 of the Limitation Act, 1963 would apply and Article 58 of the Limitation Act, 1963 would have no application. Where the suit was filed not only for declaration but also for possession, the



prescribed period of Limitation is 12 years. where possession is sought based on title, main relief would be possession and declaration of title would be ancillary, therefore, the period of limitation would be 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act 1963.

46. It is made clear by this court that in a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff.



47. The defendant here in who was also defendant in OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor, has in his the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9 has specifically denied the title of the plaintiff. Further the defendant denied the title of the predecessor in title of the plaintiff here in the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9.

48. As discussed above, copy of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9, the defendant herein who was also defendant there in has specifically pleaded there in that the defendant has constructed water servicing station over the suit properties. Thus it is the contention of the defendant he has been in possession over the suit property ever since the date of filing of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9. It



is important to note that contents of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9 are not denied by the plaintiff nor her predecessor in title. Way back in 1993 itself, on 01-03-1993 the defendant has denied the right, title, and possession of the predecessor in title of the plaintiff by filing of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9 .

49. Way back in 1993 itself, on 01-03-1993 the defendant has denied the right, title, and possession of the vendor of the of the plaintiff over the suit property. The present suit should have been filed within 12 years, i.e on or before 02-03-2005 itself which the plaintiff did not do so. The period of limitation for declaration and possession over the suit property commenced from 01-03-1993 for the plaintiff when the defendant filed his the written statement in the OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor as he has asserted his title and possession over the suit property by setting up his defence specially



at para No.7 of it saying that he has been running his business of water servicing there in denying the title of the vendor of the plaintiff. Thus subsequent present suit does not save period of limitation as it is filed after 02-03-2005. The period of limitation for the plaintiff came to an end on 02-03-2005 itself. Subsequent execution of the registered sale deed dated-07-03-2005 marked at exhibit P-30 in respect of the suit property or executed during the period of limitation does not renew the period of of limitation. As discussed above way back in 1993 itself, on 01-03-1993 the defendant has denied the right, title, and possession of the predecessor in title of the plaintiff in respect of suit property by filing of the written statement dated-01-03-1993 in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit P-9, thus the period of limitation started from the date of filing of said the written statement in the previous suit.

50. It is made clear by this court that when the right to sue first accrues as per article 58 of the Limitation Act, 1963, subsequent accrual of the cause of action does not arrest running of time which



has started running from date of the first accrual. It is made clear by this court that the cause of action first accrues when right in respect of which declaration is sought is denied for first time and to knowledge of party seeking declaration and possession, the limitation starts to run when the right to sue first accrues. Where the defendant in a previous suit opposing grant of relief of declaration had filed written statement denying title of party seeking declaration, subsequent suit for declaration of title and possession after expiry of three years as per article 58 of the Limitation Act, 1963 and possession as per 65 of the Limitation Act, 1963, from date of filing of written statement dated 01.03.1993 in previous suit in OS No.468/1992 is barred by time. In other words if the defendant in the written statement of the previous suit denied the title of the plaintiff, the subsequent suit for declaration had to be filed within three years from that date and accrual of any subsequent cause of action cannot save the limitation In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported (2000) 6 KLJ 544 = [2000 SCC ONLINE KAR 348] = 2001 AIR KAR R 57 = [2001



AIHC 648] in between Ishwar Ganapati Kyasti and Others Vs Gurulingappa Bashettappa Kyasti and another the para No.3, para No.4, para No.8 read as under.

Civil Revision Petition No. 1189 of 1995

Decided on-06-2000

3. The defendant filed the written statement and alleged that the plaintiffs' suit for declaration is barred by time. The defendant alleged that in suit No. 155 of 1989 i.e., in the previous litigation between the same parties, the defendant/respondent had clearly denied the title of the plaintiffs over the suit land. He further took the plea of res judicata that the suit was barred by res judicata as well as by limitation from the date the plaintiffs' title was denied in the written statement filed in the suit.

4. The Trial Court on the basis of the material on record consisting of certified copy of the written



statement and also of paper-book of Regular Appeal No. 31 of 1991 in O.S. No. 155 of 1989 opined that the written statement in earlier Suit No. 155 of 1989 had been filed on 18-1-1990 for the first time when the defendant in unequivocal terms denied the plaintiff's title over the said land. It, as such, opined that as the decree for declaration of title which has been claimed in the present suit was sought by the plaintiff as principal relief and injunction being the ancillary. The Court opined that under Article 58 the phrase used is, "when the right to sue first occurs". So, it opined that the right to file suit first accrued on 18-1-1990 when written statement was filed by the defendant in O.S. No. 155 of 1989 and plaintiff's title in the land in suit was denied. The Trial Court, as such, opined that the Suit No. 263 of 1993 filed on 27-7-1993 was barred by limitation and



dismissed the suit. Feeling aggrieved from that order of the Trial Court dismissing the plaintiffs suit on the ground of bar of limitation, the plaintiff has come up in revision under Section 115 of the CPC before this Court.

8. Sri Rajashekar Seeri contended that Article 58 as per Limitation Act, 1963, uses the expression that period of three years in a suit for declaration is to be counted “from the date when the cause of action for the *first time* accrues”. He further contended when the defendant denied the title by filing the written statement in the suit No. 155 of 1989, the cause of action no doubt did accrue on that date. Any accrual of subsequent cause of action will not make the suit within time. Here, the suit has been primarily a suit for declaration of title. The injunction is only an ancillary relief. Article 58 provides that for suit to obtain any other



declaration, period of limitation prescribed is three years and the time from which the period begins to run is the date when the right to sue first accrues. No expression used in the enactment is to be taken to be superfluous. If we look to Article 113, the expression used is, “for those suits which are not covered by any Article, three years limitation is provided” and it is mentioned that “the time begins to run when the right to sue accrues”. It does not use the expression “first”. This distinction of the language clearly indicates the legislative intent with reference to suits covered by Article 58. That the period of three years is to be counted from the date when the right to sue first accrues. The certified copy of the written statement filed in O.S. No. 155 of 1989 appears to have been filed by the defendant by or before framing of issues. Therefore, there was no other evidence to be recorded



on that point. The written statement filed by the defendant were before the Court. It clearly reveals that the defendant unequivocally denied the plaintiffs title to the land in dispute. Therefore, when his title was denied and he wanted to file the suit for declaration, the suit had to be filed within three years from that date and accrual of any subsequent cause of action cannot save the limitation. If the earlier suit for injunction had been dismissed holding the plaintiff not to be in possession and the plaintiff if had filed the suit for possession, the position might have been different. But, here is a suit for declaration of title, as per relief No. 1 in the plaint. So, definitely this case is covered by Article 58 and suit had rightly been held to be barred by limitation. The learned Counsel contended that this issue should not have been tried as a preliminary issue and made reference to certain cases



namely, *B. Mohammed Ali v. D. Dawood Basha*¹, and to the case of *Shyam Sunder v. Hudibai*² and also to the decision in the case of *Major S.S. Khanna v. Brig. F.J. Dhillon*³, for the proposition that where an issue involve mixed question of fact and law, then it is not to be tried as the preliminary issue. No doubt, there cannot be any dispute so far as this proposition is concerned as bare proposition of law. The admitted position was that Suit No. 155 of 1989 had been filed. The admitted position is that the defendant in the suit had filed written statement. The admitted position is that the suit had been dismissed holding the plaintiff not to be in possession. The written statement was before the Court. No other evidence had to be recorded. The evidence prior to the issue framed have been filed. So, no evidence had to be recorded as to whether the defendant denied the



plaintiffs title. The documentary evidence is already there *i.e.*, written statement of earlier suit is already there. The Court had to decide this question as a question of law as to whether in those circumstances when the cause of action first accrued and the Court decided that cause of action first accrued on 18-1-1990 and so, suit was bad. Even if for a moment if it is taken that there is irregularity on the part of the Court in deciding the Issue No. 2 as a preliminary issue, but decision on that issue does not change the course and cannot be said to have caused material injustice to the revision petitioner. It is not in dispute that the defendant had filed written statement in the earlier suit. It is not in dispute that the plea was taken that title of the plaintiff was denied in that suit. So, even if there is some irregularity, which may be said to have been committed, in my opinion,



it is not of such a nature that any material prejudice or injustice has been done to the plaintiff (petitioner) by reason thereof.

The ratio [underline emphasized by me] laid down by the Hon'ble High Court of Karnataka reported (2000) 6 KLJ 544 = [2000 SCC ONLINE KAR 348] = 2001 AIR KAR R 57 = [2001 AIHC 648] in between Ishwar Ganapati Kyasti and Others Vs Gurulingappa Bashettappa Kyasti and another if the defendant in the written statement of the previous suit denied the title of the plaintiff, the subsequent suit suit for declaration had to be filed within three years from that date and accrual of any subsequent cause of action cannot save the limitation

51. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported AIR 2024 KAR 323 = [2024 SCC ONLINE KAR 13053] = [(2024) 4 AIR KAR R 466] in between Nam Estates Private Limited Vs Kulabandhu Ram Adarsh Sharma the para No.31 and para No. 34 read as under.



Civil Revision Petition No. 649 of 2023

Decided on 23-08-2024

31. The plaintiff's categorical admission in paragraph 10 of the plaint, coupled with the observations made by this Court, clearly establishes that the suit scheduled property in O.S. No. 2122/2006 and O.S. No. 101/2019 are indeed one and the same. The defendants had unequivocally denied the plaintiff's title as early as 2006 in O.S. No. 2122/2006.

34. Upon examination of the plaint in the instant case, it may be reasonably inferred that the purported cause of action is merely illusory and has been concocted solely to circumvent the provisions of Order VII Rule 11(d) CPC. The respondent-plaintiff admittedly, was aware as early as 2006 that the defendants had explicitly denied his title in O.S. No.



2122/2006. The limitation period for filing the suit arose when petitioner-defendant Nos.1 and 2 denied the respondent-plaintiff's title in O.S. No. 2122/2006. The plaintiff remained silent until 2019 and only filed the suit after the defendants had carried out substantial construction on the suit property, which the plaintiff himself admitted. The averments in the plaint do not raise any disputed questions of fact concerning the plea of limitation. Given that the defendants denied the plaintiff's title over 13 years ago, the suit for declaration should have been filed within three years of that denial. The delay of more than 13 years in filing the suit renders it barred by limitation under Article 58 of the Limitation Act.

The ratio [underline emphasized by me] laid down the Hon'ble High Court of Karnataka reported AIR 2024 KAR 323 = [2024 SCC ONLINE KAR 13053] = [(2024) 4 AIR KAR R 466] in



between Nam Estates Private Limited Vs Kulabandhu Ram Adarsh Sharma is that if the defendant in the written statement of the previous suit denied the title of the plaintiff, the subsequent suit suit for declaration had to be filed within three years from that date and accrual of any subsequent cause of action cannot save the limitation.

52. Commencement of limitation would be from the date of first questioning of title in previous suit in OS No.468/1992 on the file of Musif Court at Sindhanur. It is made clear by this court that the limitation starts from the date of first challenge to title in previous suit in OS No.468/1992 on the file of Musif Court at Sindhanur. Subsequent judicial pronouncements or subsequent suit do not extend the limitation period if the suit filed after three years from the initial challenge is barred by limitation. In this regard it is beneficial to refer to the un reported decision of the Hon'ble High Court of Karnataka Sri. S. N. Jagannath Rao v. Smt. T. Velliyamma in Regular First Appeal No. 358 of 2009 (DEC), dated-11.10.2023 the para No.31, No.33, para No.34 read as under.



Regular First Appeal No. 358 of 2009 (DEC),

Dated-11.10.2023

31. In the case on hand, since there was a challenge as to the title of the plaintiff by the defendants, by filing written statement on 04.08.1990, the plaintiff was bound to file a suit for declaration on or before 03.08.1993, but the suit came to be filed on 24.08.1996

33. Such an argument cannot be countenanced in law for more than one reason. Firstly, the law of limitation to file a suit for declaration is controlled by Article 58 of Limitation Act, 1963 and not by judicial pronouncement.

34. Secondly, the challenge as to the title has commenced on 04.08.1990 by filing written statement by the defendants.

The ratio [underline emphasized by me] laid down in the un-reported decision of the Hon'ble High Court of Karnataka Sri. S. N. Jagannath Rao v. Smt. T. Velliyamma in Regular First Appeal



No. 358 of 2009 (DEC), dated-11.10.2023 is that the limitation starts from the date of first challenge to title in previous suit and subsequent suit do not extend the limitation period if the suit for declaration is filed after three years from the initial challenge is barred by limitation.

53. It is important to note that the un-reported decision of the Hon'ble High Court of Karnataka in between Sri. S. N. Jagannath Rao v. Smt. T. Velliyamma in Regular First Appeal No. 358 of 2009 (DEC), dated-11.10.2023 has been confirmed by the Hon ble Supreme Court of India in a decision reported in 2026 SCC ONLINE SC 447 in Civil Appeal No. 3572 of 2026 (Arising out of Special Leave Petition (C) No. 2589/2024) Decided on 19-03-2026.

54. In this regard it is beneficial to refer a decision of the Hon'ble High Court of Madras (MADURAI BENCH) reported in 2024 SCC ONLINE MAD 9169 in between Sabura Bibi and Others Vs . Srinivasan and Others the para No.9 reads as under.



S.A. (MD). No. 99 of 2013
and
M.P.(MD) No. 1 of 2013
Decided on 28-11-20249.

9]. The plaintiffs had filed a suit in O.S.No.1199 of 1997 and obtained interim injunction and the defendants had filed written statement wherein the defendants herein had denied the title of the plaintiffs. In the meanwhile, the defendants had filed O.S.No.1453 of 1997 and obtained interim injunction and the same is pending as on the date of filing the written statement in the present suit in O.S.No.763 of 2002. After filing of written statement in the earlier suit in O.S.No. 1199 of 1997 the plaintiff came to know that the defendants are denying the title. Further the defendants had filed another suit in O.S.No.1453 of



1997 and in this suit also the defendants had denied the title of the plaintiffs. And also denied the title through various acts of the defendants. Thereafter the plaintiffs had filed the present suit in O.S.No.763 of 2002 on 10.07.2002 for declaration and recovery of possession. The period of limitation for immovable property and recovery of possession is twelve years. The fact of denial of title came to the plaintiffs knowledge after filing of written statement in O.S.No.1199 of 1997, then approximately the plaintiffs knowledge is from the year 1997 or 1998. The twelve years period available is until 2009 or 2010. The plaintiff had filed the suit in the year 2002, hence this Court is of the considered opinion that the suit is filed within the period of limitation. The 1st



substantial question of law is answered in favour of the plaintiffs/respondents and against the defendants/appellants

The ratio [underline emphasized by me] laid down by the Hon'ble High Court of Madras (MADURAI BENCH) reported in 2024 SCC ONLINE MAD 9169 in between Sabura Bibi and Others Vs Srinivasan and Others is that suit for declaration and possession would be 12 years from the date of denial of title by the defendant in the written statement filed in the previous suit.

55. Besides it, the Hon'ble Supreme Court of India in Khatri Hotels Pvt. Ltd. v. Union of India, reported in (2011) 9 SCC 126 held that successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. In view of law laid down by the the Hon ble Supreme Court of India in Khatri Hotels Pvt. Ltd. vs. Union of India, reported in (2011) 9 SCC 126 the present suit is not maintainable.



56. Though suit in the case of the Hon'ble High Court of Madras (MADURAI BENCH) in between Sabura Bibi and Others Vs . Srinivasan and Others was filed within 12 years from the date of denial of title in the previous suit, but in the present suit is filed after denial of title by the defendant of the the predecessor in title of the plaintiff by name Sadanand Vithal Nayak in the the written statement dated-01-03-1993 in OS No.468/1992 on the file of the Munsiff Court at Sindhanoor marked at exhibit P-9. Thus the period of limitation for the predecessor in title of the plaintiff started on 01-03-1993 itself as the present defendant has denied the title of the predecessor in title of the plaintiff over the suit property. Thus the registered sale deed dated-07-03-2005 marked at exhibit P-30 in respect of the suit property does not renew the period of limitation. The registered sale deed dated-07-03-2005 marked at exhibit P-30 in respect of the suit property does extend period of limitation after execution of the said deed as the defendant here in has denied the title in the pleadings by filing the written statement dated-



01-03-1993 in OS No.468/1992 on the file of the Munsiff Court at Sindhanoor marked at exhibit P-9. Thus it cannot be said that suit is within the period of limitation.

57. After 22 years from the date of institution of the OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor instituted by the predecessor in title of the plaintiff, the plaintiff has come with the present suit. The plaintiff of the OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor Sadanand Nayak was the husband of the original owner of the suit property Smt Kundana. It is made clear by this court that the plaintiff here in steps into the shoes of the plaintiff Sadanand Nayaka of OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor. The present plaintiff did not have any independent right title over the suit property than that of the plaintiff of OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor.



58. It is made clear by this court that the registered sale deed dated 07-03-2005 marked at exhibit P-30 executed after disposal of the OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor does not extend period of limitation of the suit. It is made clear by this court that the registered sale deed dated 07-03-2005 marked at exhibit P-30 executed after disposal of the OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor executed by the son of the original owner of the suit property, does not confer any right title possession over the suit property. Subsequent registered sale deed dated-07-03-2005 marked at exhibit P-30 executed by the son of the original owner of the suit property does not extend period of limitation of the suit. . It is made clear by this court that as per copy of the IA No.2 filed under order 6 Rule 17 of CPC 1908 filed in OS No.468/1992 on the file of Munsiff Court at Sindhanoor, marked at exhibit D-3, the suit for mandatory injunction was converted into suit for declaration and mandatory injunction where in the plaintiff there in the previous owner of the suit property has sought for relief of possession. Thus the plaintiff here in steps into



the shoes of the original owner of the suit property Sadananda Nayaka and his wife Smt. Kundana.

59. Under the Limitation Act, 1963, a suit for recovery of possession of immovable property must be filed within the prescribed period, ordinarily article 64 of the Limitation Act, 1963 when possession is based on prior possession and subsequent dispossession 12 years from dispossession, or Article 65 of the Limitation Act, 1963 when possession is based on title 12 years from the date when possession of the defendant becomes adverse. Therefore, the starting point of limitation is a material fact. It is made clear by this court that it is the duty of Plaintiff and it is mandatory requirement that the plaint must disclose the date or period when the defendant took possession, or facts showing when the possession became adverse, and that the suit is filed within the limitation period. In the absence of any whisper in the plaint regarding these material facts, the plaint becomes defective and vulnerable. If the plaint is completely silent on the date of dispossession, or the date from which adverse possession



commenced, or how limitation is saved, therefore, the Court is entitled to hold that: The suit is barred by limitation and is liable to be dismissed, even at the threshold. The settled rule that limitation is not a mere technicality but goes to the root of jurisdiction. Absence of material facts in the plaint relating to limitation is fatal courts cannot presume facts in favour of the plaintiff. In the absence of any pleading as to the date of possession or facts showing that the claim for possession is within limitation, the suit is ex facie barred by limitation and liable to be dismissed

60. In a suit for recovery of possession, defendant in his written statement denying title and ownership of plaintiff to suit property. In the present case, there is no pleading by the plaintiff the exact date when she is dispossessed. In the present case, there is no pleading by the plaintiff the exact date when she came to know about her dispossession. In the present case, there is no pleading by the plaintiff that her suit is within the period of limitation. The defendant himself claiming to be owner and possessor of the suit property and is in continuous possession over the suit property on



the basis of adverse possession . It is made clear by this court that in absence of any whisper in plaint as to date on which defendant took possession of suit property and in absence of any whisper to show that relief of decree for possession was within limitation, such suit is liable to be dismissed as barred by limitation. In the absence of any pleading as to the date of possession or facts showing that the claim for possession is within limitation, the suit is ex facie barred by limitation and liable to be dismissed. In this regard it is beneficial to refer to the decision of the Hon ble Supreme Court of Karnataka reported in AIR 2020 SC 4321 =[AIRONLINE 2020 SC 715] in between Nazir Mohamed Vs. J. Kamala the para No.55 read as under.

Civil Appeal No. 2843-2844 of 2010,,

Dated-27-08-2020

, 55. In the absence of any whisper in the plaint as to the date on which the Appellant-Defendant and/or his Predecessor-in- interest took possession of the suit property and in the absence of any



whisper to show that the relief of decree for possession was within limitation, the High Court could not have reversed the finding of the First Appellate Court, and allowed the Respondent-Plaintiff the relief of recovery of possession, more so when the Appellant-Defendant had pleaded that he had been in complete possession of the suit premises, as owner, with absolute rights, ever since 1966, when his father had executed a Deed of Release in his favor and/or in other words for over 28 years as on the date of institution of the suit.

The ratio laid down by the Hon'ble Supreme Court of Karnataka reported in AIR 2020 SC 4321 = [AIR ONLINE 2020 SC 715] in between Nazir Mohamed Vs. J. Kamala is that in absence of any whisper in plaint as to date on which defendant took possession of suit property and in absence of any whisper to show that relief of decree for possession was within limitation, such suit is liable to be dismissed as barred by limitation.



61. In view of the law laid down in the reported decision of Hon'ble High court of Karnataka at Banagaluru reported in 2017 SCC ONLINE KAR 3751 in between N. Venkatappa vs. Chikkapapamma and other Hon'ble High Courts and also in view of law laid down by the Hon ble Supreme Court of Karnataka reported in AIR 2020 SC 4321 =[AIROnLINE 2020 SC 715] in between Nazir Mohamed Vs. J. Kamala referred to above, the case set-up by the plaintiff that she had been dispossessed by the defendants from the suit properties without giving specific date on which they had been dispossessed vague statement of the plaintiff cannot be accepted. Thus the present plaintiff who steps into the shoes of his predecessor in – title of the plaintiff of the OS No.468/1992 disposal dated-21-08-1997 on the file of Munsiff Court at Sindhanoor. Besides it, photographs produced by the show that he has been in possession over the suit property prior to 1992 as per pleadings in OS No.468/1992 on the file of Munsif Court at Sindhanur marked at Ex.P8. Thus the present suit is



barred by law of limitation. Hence point No. 2 are answered in Negative and point No.3 answered in Affirmative.

62. **POINT NO.4:-** In view of my findings on the above points, the appeal filed by the appellant/defendant is liable to be allowed. Accordingly, I proceed to pass the following order.

:: O R D E R ::

The appeal filed by the appellant/defendant allowed.

Judgment and decree passed by the II Addl.. Civil Judge and JMFC at Sindhanoor in OS No.353/2014 dated 10.01.2025 is set aside.

The suit of the plaintiff in OS No.353/2014 dated 10.01.2025 on the file of II Addl.. Civil Judge and JMFC at Sindhanoor is dismissed.

Draw decree accordingly.

Sent back the entire file to the trial court along with copy of this Judgment, forthwith.

(Dictated to the stenographer directly on computer, typed by him, revised by me and after corrections pronounced in the open court on this the 2nd day of June 2026)

(Lakshmikanth J. Miskin)
Senior Civil Judge & JMFC.
SINDHANUR