



**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 : 15/2017:

DATED: 1st day of July 2026

APPELLANTS :- 1. Siddanagouda S/o Amaregouda
Age 78 years Occu: Agri.
R/o Balaganur Tq: Sindhanur
Dist.Raichur

(By Sri.BG., Advocate)

-V/s-

RESPONDENTS:-1. Ishwaramma W/o Amaregouda
age: 90 yrs Occu: Household.
Since dead by her LRs herein plft.
and deft.No. 2 to 6.

2. Basanagouda s/o Amaregouda
Since dead by his LRs herein

2(a). Smt.Gouramma w/o Basanagouda
age:65 years, Occ. House hold.

2(b). Annapurna w/o Bharatareddy
age:40 years, Occ. House hold

2(c). Amaregouda s/o Bharatareddy
age:17 years, minor

2(d). Veeranagouda s/o Bharatareddy
age: 15 years, minor



Respondent No. 2 and 2 (d) represented by their
natural guardian / mother resp.No. 2 (b)

3. Smt. Ambamma W/o late Pampanagouda
Age: 55yrs, household
4. Amaregouda S/o. Pampanagouda
age: 32 yrs occ: Agri.
5. Shekaragoud S/o Pampanagouda
age: 30 yrs occ: Agri.
6. Rajugouda S/o Pampanagouda
age: 26 yrs occ: Agri
7. Kudlappa S/o Mallappa
age: 50 yrs, agri
8. Duragappa S/o Gyanappa
age: 40 yrs agri.
9. Gudusab S/o Nabisab
Since dead by his LRs
- 9(a). Gudamma w/o Gudusab
age: 50 yrs, Occu. House hold.
- 9(b). Basha s/o Gudusab
age: 30 yrs, Occu.cooli
10. Hussainamma W/o Maheboobsab
age: 60 yrs,household
11. Hanumantha S/o Hanumantha
age: 40 yrs agri.



12. Mounesh S/o Basanian Kandgal
age: 35 yrs labour
13. Duragamma W/o Anjeneyya
age: 30 yrs household
14. Basavaraj S/o Laxmayya
age: 30 yrs
15. Venkatesh S/o Laxmayya
age: 35 yrs
16. Kalappa S/o Veerabhadrapa
since dead by his LRs.
- 16(a). Shantamma w/o Kalappa
aged about 35 years Occ. House hold
- 16(b). Renukamma w/o Kalappa
aged about 30 years Occ. House hold
17. Driver Venkappa S/o Chatrapa
since dead by his LRs,
- 17(a). Hulgammma w/o Yankappa
aged about 30years r/o Balaganur
- 17(b). Hanumamma w/o Yankappa
aged about 20years r/ o Balaganur
18. Hulgappa S/o Mudukappa
age: 30 years
19. Duragamma W/o Obelappa
age: 30 yrs



20. Madarsab S/o Imamsab
age: 45 yrs
21. Hulagappa Utakanur S/o Duragappa
Bajantri age:25 yrs coolie
22. Somanna S/o Duragappa Kilarhatti
age: 35 yrs coolie
23. Manayya S/o Duragappa Kilarhatti
age: 36 yrs cooli
24. Gaddemma W/o Hulagappa Bajantri
age: 35 yrs coolie
25. Sangappa S/o Duragappa Bhajantri
age: 40 yrs coolie
26. Dyamma W/o Yallappa Bhajantri
age: 45 years coolie
27. Maski Hanumantha S/o Hanumantha
Bhajantri since dead by hie LRs
- 27 (a). Durgamma w/o Obaleppa
age: 40 yrs coolie
- 27(b). Nagappa w/o Hanumanta
age, 22 Occ. Cooli
- 27(c). Hanumanta s/o Hanumanta
age 20 Occ. Cooli
28. Mangamma W/o Nagappa Bhajantri
age: 30 yrs coolie



29. Hanumantha S/o 1 Hanumantha
Bhajantri age: 30 yrs coolie
30. Durgamma W/o Hanumantha
Bhajantri age: 35 yrs coolie
31. Basappa S/o Durgappa Bhajantri
age: 30 yrs coolie
32. Basamma W/o Ramappa Maski
Bhajantri age: 35 yrs coolie
33. Lakshamma W/o Sugappa Kandgal
since dead by her LRs 33(a).
Channappa s/o Sugappa
age:20 years coolie
34. Renukamma W/o Sharanappa Bhovi
age: 30 years coolie (Died by LRS)
- 34(a) Mounesh S/o Sharanappa Bhovi
age:25 years Occ: Business
R/o Balaganur Village Tq: Maski.
35. Timmanna S/o Hanumantha Bhajantri
age: 42 yrs coolie
36. Shivappa S/o Hulagappa Harijan
age: 35 yrs coolie
37. Arjunappa S/o Pamayya Harijan
age: 45 yrs coolie
38. Hanumantha S/o Yankappa Vaddar
Since dead by his LRs



38(a). Huligemma w/o Hanumanta
age: 25 yrs coolie

39. Karadi Basamma W/o not known
age:35 yrs coolie

40. Chinnur Yamanamma W/o Durgappa
age: yrs coolie.

All R/o Balaganur village Tq: Sindhanur

(Proposed petitioner (a to g) by: Sri.GVJ advocate)

(R1 dead by Lrs on record)

(R2(a,b), R3 to 6, 11, 16, 17(e), 30, 36, 37, 34(a) absent)

R7, 9, 12, 16(a), 17(a), 18 to 21, 23 to 27(a), 28, 29, 35, 33, 39

by: Sri.VAP advocate)

Date of Institution of Appeal : 23.10.2017

Nature of Appeal : Appeal against the
Judgment and decree
dated 31.08.2017
in O.S.No. 20/2006
passed by the I Addl. Civil
Judge, Sindhanur.

Date on which the Judgment
was pronounced : 01.07.2026

Total duration : year/ s month/s Day/s
08 08 08

: J U D G M E N T :

This appeal filed by the appellant/plaintiff being
aggrieved by the Judgment and decree dated 31.08.2017



in O.S.No.20/2006 passed by the I Addl. Civil Judge, Sindhanur in dismissing the suit filed for partition and separate possession.

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:-

The suit land bearing sy No. 288/5 measuring 2-00 acre situated within the limits of Balaganur village Tq: Sindhanur is the ancestral un-divided Hindu joint family property. The property standing in the name of father of this plaintiff late Amaregouda S/o Siddanagouda, who died about 13 years back. This plaintiff and deft. No. 1 to 6 succeeded to the property as class I legal heirs. The suit lands non agri., land there is a residential hut and a godown. The godown was previously used as Jinning factory. After closing



the Jinning factory it is used for cinema theater and after now it is being used as godown. The suit property is abutting to the Balaganur- Pothanal road towards souther side. , the deft. No. 1 is the mother of the plaintiff Deft. No.2 is the brother and deft. No. 3 is the wife of the brother of the plaintiff late Pampanagouda and 4 to 6 are the sons of late Pampanagouda. 7 to 20 are the agril labourers and they are in permissive possession over the suit property to an extent of 19" x 15" each abutting to the Pothanal-Balaganur road. The suit property is succeeded by the plaintiff and defendant No. 1 to 6 as legal heirs. The deft No.1 is residing in the house situated in the suit property and the godown is used by plaintiff and deft jointly for keeping agril produce and implements and using the remaining portion to tieing cattles and agricultural use. The defendant No. 7 to 20 are the agril labourers they are erected a but in the suit land to an extern of 15 x 20 each with the



permission with a condition that, they will vacate the same whenever demanded by the plaintiff's family. All the def. No. 7 to 20 are put up but and they are residing therein. The plaintiff intending to construct the Maligi towards norther side of the suit property abutting to Pothanal- Balaganur rond, for that the plaintiff intend to get has share separately and demanded the defendant No 1 to effect the partition on 1-2-2006, but the defendant No.I postpone to effect the partition by other protext. Lastly on 15-2-2066 the plaintiff demanded to effect partition in the presence of elders the defendant No.1 flatly refused to effect the partition. Hence, constrained to file the suit.

4. After issuance of summons, the defendant No.1 to 40 have appeared through their counsels. The defendant No.7 has filed written statement. Some of the defendants and defendant No.29 have filed



written statement. The defendant No.21 to 28, 30 to 40 are adopted the written statements.

5. The defendant No.7 in his written statement submitted that the plaintiff has denied all the facts stated in the suit, since the plaintiff has not made Amaregowda's father Siddana Gowda as a party in the said suit, the suit lacks the necessary parties, and without filing a declaratory suit in the said suit, this suit will not be valid. Defendant Nos. 7 to 20 have built huts measuring 15 X 20 feet for the last 20 years and have been living there with their families, and this matter is known to the plaintiff. The reason is that the said defendants are the owners of the land and are the legal owners. Moreover, the said defendants have built the huts in the Gavathana area of the Panchayat with the permission of the Panchayat. And the huts have been given numbers as mutation registers in the Panchayat. Before filing this suit, the plaintiff in that



suit, Bharat Reddy, the general head of the Eswaramma village, and the other defendants, had filed a genuine suit No. 144/1996, which was dismissed and then an appeal was filed against it, which was filed in the Hon'ble Senior Civil Court, Raichur, which is dismissed because these two orders are final and conclusive. The plaintiff and defendants No. 1 to 6 have conspired and filed this false suit to encroach on the valuable land owned by the defendants, and the said genuine suit No. 144/1996, has filed this suit on false pretext. The reason is that the said suit is to be dismissed with costs.

6. The defendant No.29 in his written statement submitted that the plaintiff has denied all the facts stated in the suit and the said defendants No. 7 to 4) have been the owners and direct possessors and users of 15 X 20 feet huts in the suit property for about 28-30 years and there has been no interference or dispute



by any person or the plaintiff. The said matter is known to the plaintiffs. The said Panchayat Office has given the site title deed to the defendants, therefore they are also necessary parties to this suit. The plaintiffs are not the owners and possessors of the said suit property, therefore the question of obtaining permission to erect a hut does not arise. Moreover, the said defendant's 15 X 20 feet hut does not belong to the plaintiff's household and the plaintiff's request to vacate the suit property is false. Therefore, the said suit is to be dismissed with costs.

7. On the basis of contentions urged by the respective parties to the suit, following issues have been framed.

I S S U E S

1. Whether the defendant No.7 is proves that the defendant No.7 to 20 have perfected their title to an area measuring 15x20 each, in such property by the principle of adverse



possession?

2. Whether the defendant No.7 further proves that this suit is bad for non joinder of necessary parties?
3. Whether the defendant No.7 further proves that this valuation made and court fee paid, is improper and insufficient?
4. Whether the defendant No.7 further proves that this court has no pecuniary jurisdiction to try and entertain this suit?
5. Whether the plaintiff is entitled to a relief as sought for in the plaint?
6. What order or decree?

ADDITIONAL ISSUES

- 1) Whether the defendant No.21 to 40 are proves that the suit of the plaintiff is not maintainable for non joinder of necessary party?
- 2) Whether the defendant No.21 to 40 are proves that themselves and other defendants as alleged in para No.5 of their written statement are the owners and possessors of the suit property?
- 3) Whether the plaintiff suit is hit by principle of res-judicata?



8. The plaintiff in support of her case, got herself examined as PW 1 and examined witnesses as PW-2 to 5 got marked documents Ex.P.1. On the other hand defendant No.7 himself examined as D.W.1 and examined witnesses as DW-2 and 3 and got marked as Ex.D.1 to 22.

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

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

10. Being aggrieved by dismissed the suit the appellant/plaintiff has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) That, the learned trial judge while rejecting the relief of partition lost sight to fact that



in the earlier suit the title was held in favour of mother of the plaintiff and that she has claimed the suit land through her late husband i.e., father of this plaintiff/appellant. The learned trial judge held the issue of partition against the appellant on the ground that his mother in the earlier suit contended that suit land had fallen to her share. As stated above this statement is in no way binds the plaintiff. Since the defendant's No. 1 to 6 failed to file written statement the learned trial judge erroneously found that they are in collusion with the plaintiff. In view of these reasons without prejudice to the finding of the trial judge on additional Issue No. 3 (Resjudicata) plaintiff's relief claiming the share in the property ought to have been granted. It is pertinent to note that the court commissioner after measuring the suit land has submitted his report that only on certain portion of suit land the defendants have thatched their huts and the remaining major portion of the suit land is still vacant and under the ownership and possession of plaintiffs family. In view of these reasons the impugned judgment and decree dismissing the suit for partition is not tenable and is liable to be reversed.

- 2) That, regarding the relief of recovery of possession the report of court commissioner is clear as to the extent of suit land upon which each of the defendants have thatched their huts. Learned trial judge has rightly answered issue No.1 in the negative holding defendants have failed to prove



that they have perfected their alleged title over portion of suit land by adverse possession. When admittedly the title of the suit land was held in mother of the plaintiff, the defendants have no right to continue in possession in absence of proof perfecting their title by adverse possession and therefore the learned trial judge ought to have granted the relief of recovery of possession in favour of plaintiff/appellant.

- 3) That, the learned trial judge in para No. 29 of judgment as assigned the reasoning that the plaintiff has not sought any relief against the defendants No. 21 to 40 and therefore the relief against those defendants was not considered. This reasoning of the trial judge is opposed to the facts of the case. In fact plaintiff had filed L.A. No. XIII for making amendment to relief clause in pursuance of impleading defendant No. 21 to 40. The learned trial judge on 09-2015 illegally held that in view of order on L.A. No. XVI, 04-I.A. No. XIII does not survive for consideration. As stated above LA. NO. XIII was for including the relief against defendants No. 21 to 40. The learned trial judge without considering the said application in the judgment made a point against plaintiff that he has not sought any relief against defendant No.21 to 40. On this ground also the impugned judgment and decree are vitiated and are liable to be set aside.



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

12. 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 appellant/plaintiff prove that the impugned judgment and decree dated, 31.08.2017 passed in O.S. No.20/2006 by the trial court in dismissing the suit, is contrary to law, facts, evidence and probabilities of the case and as such, it is liable to be interfered with?

2. What order?

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

POINT NO.1 :- In the Negative

POINT NO.2 :- As per final the final order

:: R E A S O N S ::

14. **POINT No.1 :-** 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 alleged permissive possession of the defendants No.7 to 40 over the the suit property . Vague statements in the plaint by the plaintiff that he has permitted the defendants to remain in possession without any pleadings with partiular date, month year and coupled with its concrete evidence cannot be accepted. The plaintiff must prove at the first instance that they had been dispossessed prior to three years from the date of filing of the suit.

15. Thus in the considered opinion of this court the alleged permissive possession subsequent putting up of shed by the the defendants No.7 to 40 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 the suit schedule B property by the defendants prior to filing of the suit is not established.



16. The best persons who speak about the dispossession the plaintiffs by the defendant from the suit property would be the neighbors suit property. No attempt is made by the plaintiff to examine the neighbors of the the suit property so as to ascertain the fact of dispossession of the plaintiff by the the defendants No.7 to 40 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 their 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.

17. What is important to note that not even the date on which she had been dispossessed is not stated in the plaint pleadings. No date of alleged permissive possession of the defendant is not made clear by the plaintiff. Therefore, the contention of the plaintiffs that he had been



dispossessed from suit properties by the the defendants No.7 to 40 is not established. The plaintiff ought to have pleaded specific date on which she had been dispossessed if she had been really dispossessed by the defendants. The plaintiff ought to have pleaded specific month on which she had been dispossessed. The plaintiff does not state in his plaint on which date she had been dispossessed. The plaintiff does not state in his plaint on which month she had been dispossessed. The plaintiff does not state in his plaint at least the year on which she had been dispossessed. Only a vague averment has been made to the effect that plaintiff had been dispossessed from the the suit schedule Such vague that that plaintiff had been dispossessed from the the suit schedule B property three years prior to filing of the suit without specifying the exact date, month of dispossession cannot be accepted.

18. A perusal of the commissioner report it is clear that the defendants No.7 to 40 have put their sheds over the



suit properties long back. Besides it, putting of sheds over the suit properties would not be made overnight. Prudent demands that if sheds are put up by the the defendants No.7 to 40 it would take at least 15-20 days . For the purpose of putting of house at least 7-8 laborers would be engaged for at least 20 days. 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 construction by the defendants over the at suit schedule properties immediately after the defendants started the alleged construction work. Thus there is no material produced by the defendants of alleged dispossession, the alleged construction of house over suit schedule property by the defendants. 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.



19. Therefore self serving statements of the plaintiffs that they had had been dispossessed from the the suit property 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 defendants, 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 plaintiff that he had been dispossessed from the suit properties by the defendants is not established . If the plaintiff does not state in the application or in the pleadings as to when he 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



20. Apart from, the present suit is a second round litigation. As per Judgment and decree in OS No.144/1996 dated-31-10-2003 passed by the Principal Civil Judge court at Sindhanoor marked at exhibit D-20 and exhibit D-21, Judgment and decree of regular appeal in RA No.32-2005 passed by the Hon'ble Fast Track Court-3 and Additional District and Sessions Judge Court at Raichur marked at exhibit D-22 and Judgment in RSA No.2037/2007 dated 19-01-2009 passed by the the Hon'ble High Court of Karnataka at Kalaburgi (then CIRCUIT BENCH at Gulbarga) marked at exhibit D-14, all filed against defendant NO.7 to the defendant No.14 it is held that the the deceased defendant No.1 herein Eshwaramma is not the owner and possessor of the the suit property. When the deceased defendant No.1 herein Eshwaramma failed in her attempts in a suit for possession in the legal battle referred to above, her son the plaintiff has filed the present



suit changing the relief as suits for partition and separate possession.

21. It is made clear by this court that the rights of the plaintiff are already decided in as per per Judgment and decree in OS No.144/1996 dated-31-10-2003 passed by the Principal Civil Judge court at Sindhanoor marked at exhibit D-20 and exhibit D-21, Judgment and decree of regular appeal in RA No.32-2005 passed by the Hon'ble Fast Track Court-3 and Additional District and Sessions Judge Court at Raichur marked at exhibit D-22 and Judgment in RSA No.2037/2007 dated 19-01-2009 passed by the the Hon'ble High Court of Karnataka at Kalaburgi (then CIRCUIT BENCH at Gulbarga) marked at exhibit D-14 all filed against defendant NO.7 to the defendant No.14.

22. What it important to note that the the plaintiff is none other the son of the deceased defendant No.1 herein Eshwaramma. As per own pleadings of the plaintiff,



himself and the the deceased defendant No.1 herein Eshwaramma were in joint possession over the the suit property. The address of the plaintiff and the the deceased defendant No.1 herein Eshwaramma is one and the same. Thus the plaintiff and the the deceased defendant No.1 herein Eshwaramma were residing in the same house. But the plaintiff did not plead nor led evidence about Judgment and decree in OS No.144/1996 dated-31-10-2003 passed by the Principal Civil Judge court at Sindhanoor marked at exhibit D-20 and exhibit D-21, Judgment and decree of regular appeal in RA No.32-2005 passed by the Hon'ble Fast Track Court-3 and Additional District and Sessions Judge Court at Raichur marked at exhibit D-22 and Judgment in RSA No.2037/2007 dated 19-01-2009 passed by the the Hon'ble High Court of Karnataka at Kalaburgi (then CIRCUIT BENCH at Gulbarga) marked at exhibit D-14. Thus the plaintiff is guilty of suppression of the facts



23. A plaintiff who suppresses the pendency of an earlier suit (or any material fact) while filing a subsequent suit is not entitled to discretionary or equitable relief. Suppression of material facts amounts to lack of bona fides, abuse of process of court, and fraud on the court. Such a suit is liable to be dismissed.

24. A litigant who approaches the court must come with clean hands. Suppression of material facts amounts to fraud, and a person guilty of fraud is not entitled to any relief. . As discussed above, the plaintiff suppressed the material facts of filing of original suit in OS No.347-2011 on the file of the Principal Civil Judge at Sindhanoor disposed of on 31-07-2012. . The plaintiff who suppresses material facts is not entitled for any relief. Thus the plaintiff is not at all entitled for any reliefs In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in 2019 SCC ONLINE KAR 3090 =[ILR 2019 Kar 4739] =[(2019) 4 KCCR



3891] = [(2019) 6 Kant LJ 403 between M/s Durga Projects and Infrastructure Pvt. Ltd., Bengaluru v. Sri.S.Rajagopala Reddy and others the para No.6 and para No.7 read as under.

C.R.P. No. 168/2019

Decided on July 5, 2019

6. If the plaint is subjected to scrutiny, it appears that the plaintiffs have founded the reliefs mainly contending that the GPA dated 23.01.2002 was the only document executed by them and their father in favour of defendants 1 & 2. They say that they had to join in execution of the GPA with their father on the insistence by the defendants 1 & 2. The argument of petitioners Counsel is that the plaintiffs have deliberately suppressed two important transactions namely execution of an agreement of sale and an



affidavit, which were contemporaneous transactions. The petitioners Counsel has produced these documents. In the background of well established principle that only plaintiff must be seen for deciding an application under Order 7 Rule 11 CPC, a question, whether these two transactions can be considered? would obviously arise. As has been pleaded by the plaintiffs, if GPA was the only document that came into existence as 23.01.2002, definitely, the plaintiffs case that they are entitled to $\frac{1}{3}$ rd share in the suit property becomes an issue to be decided after recording evidence, if not they must fail at the threshold. Now if para 10 of the plaint is meaningfully read, what the plaintiffs have stated is that GPA is an independent



transaction and no consideration was paid for execution of the said GPA. That means they do not want to state anything about agreement of sale and the affidavit. The plaint appears to have been drafted cleverly suppressing the material facts. This Court, in a situation like this, has already taken a view in the case of R. Satishkumar Singh v. Sri. Ram Singh¹, that suppression of facts by the plaintiff may be a ground for rejection of plaint. The High Court of Patna in the case of Bhagirathprasad Singh @ Bachcha Babu v. Ram Narayan Rai @ Ram Narayan Singh², has held as below:

“9. I find no force in the submission raised on behalf of the plaintiffs - opposite parties. No doubt, as per the provisions



of Order VII Rule 11 of the Code of Civil Procedure, for the purposes of determining the question of rejection of plaint on the other grounds mentioned therein, it is the plaint that has to be looked into, but the question is that if the plaintiffs have deliberately suppressed the material facts, the disclosure of which is required bylaw to be made in terms of Order VI Rule 2 of the Code of Civil Procedure, whether it was open for the court concerned to proceed with the trial and decide the suit after framing issues. The order dated 20.11.2006 was challenged by the plaintiffs-judgment debtors themselves before this Court and the civil revision was dismissed by a reasoned order dated 1.5.2008. Thus, this fact was well known to the plaintiffs and they were duty



bound in law to disclose the same which they have not done. Order VI Rule 2(1) of the Code of Civil Procedure clearly stipulates that the pleadings should contain the material facts. It has been observed by the Apex Court in Sopan Sukhdeo Sable v. Assistant Charity Commissioner, (2004) 3 SCC 137 that omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. Order VII Rule 11 of the Code of Civil Procedure lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself irrespective of his right to contest the same on merits. The real object of Order VII Rule 11 of the Code of Civil Procedure is to keep out of courts irresponsible law



suits and in case Court is prima facie persuaded of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code of Civil Procedure can be exercised”.

(emphasis supplied)

7. Therefore, in this case it is apparent that material facts are suppressed and the cause of action that the plaintiffs have claimed can be said to be illusory and there by Order VII Rule 11(a) of CPC can be invoked.

The ratio laid down by of the Hon'ble High Court of Karnataka reported in 2019 SCC ONLINE KAR 3090 = [ILR 2019 Kar 4739] = [(2019) 4 KCCR 3891] = [(2019) 6 Kant LJ 403] in between M/s Durga Projects



and Infrastructure Pvt. Ltd., Bengaluru vs .
Sri.S.Rajagopala Reddy and others is that material facts are suppressed and the cause of action that the plaintiffs have claimed can be said to be illusory and there by Order VII Rule 11(a) of CPC can be invoked.

25. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in (2010) 14 SCC 38 =[2010 SCC ONLINE SC 1254] in between Ramjas foundation and another VS union of india and others the para No.20 to para No.21 to para No.26 and para No.30 read as under. .

Civil Appeal No. 6662 of 2004[†],
decided on November 9, 2010

21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief



is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums.

The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

22. In *Dalglish v. Jarvie*⁵, Mac & G at p. 238, Lord Langdale and Rolfe, B. observed: (ER p. 89)

“It is the duty of a party asking for an injunction to bring under the notice of the court all facts material to the determination of



his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.”

23. In *Castelli v. Cook*⁶, Hare at p. 94, Wigram, V.C. stated the rule in the following words: (ER p. 38)

“... a plaintiff applying ex parte comes ... under a contract with the court that he will state the whole case fully and fairly to the court. If he fails to do that, and the court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the court will not decide on the merits, and that, as he has broken faith with the court, the injunction must go.”



24. In *Republic of Peru v. Dreyfus Bros. & Co.*⁷, LT at p. 803, Kay, J. held as under:

“I have always maintained, and I think it most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith in the Court when ex parte applications are made.”

25. The same rule was restated by Scrutton, L.J. in *R. v. Kensington Income Tax Commr.*⁸ The facts of that case were that in April 1916, the General Commissioners for the purposes of the Income Tax Acts for



the district of Kensington made an additional assessment upon the applicant for the year ending 5-4-1913, in respect of profits arising from foreign possessions. On 16-5-1916 the applicant obtained a rule nisi directed to the Commissioners calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon the assessment upon the ground that the applicant was not a subject of the King nor resident within the United Kingdom and had not been in the United Kingdom, except for temporary purposes, nor with any view or intent of establishing her residence therein, nor for a period equal to six months in any one year. In the affidavit on which the rule was obtained the applicant stated that she was a French subject and resident in France and was not and had not been a subject of the United



Kingdom nor a resident in the United Kingdom; that during the year ending 5-4-1913, she was in the United Kingdom for temporary purposes on visits for sixty-eight days; that she spent about twenty of these days in London at her brother's house, 213, King's Road, Chelsea, generally in company with other guests of her brother; that she was also in the United Kingdom during the year ending 5-4-1914, for temporary purposes on visits, and spent part of the time at 213, King's Road aforesaid; and that since the month of November 1914, she had not been in the United Kingdom.

26. From the affidavits filed on behalf of the Commissioners and of the surveyor of taxes, who showed cause against the rule nisi, and from the affidavit of the applicant in reply in Kensington case⁸, it appeared that in February 1909, a leasehold house,



213, King's Road, Chelsea, had been taken in the name of the applicant's brother. The purchase money for the lease of the house and the furniture amounted to 4000 l, and this was paid by the applicant out of her own money. The accounts of household expenses were paid by the brother and subsequently adjusted between him and the applicant. The Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Divisional Court observed that the Court, for its own protection is entitled to say “we refuse this writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us”.



30. In our view, the appellants are not entitled to any relief because despite strong indictment by this Court in Ramjas Foundation v. Union of India³, they deliberately refrained from mentioning details of the cases instituted by them in respect of the land situated at Sadhora Khurd and rejection of their claim for exemption under Clause (d) of the Notification dated 13-11-1959 by the High Court and this Court.

The ratio laid down by the the Hon'ble Supreme Court of India reported in the Hon'ble Supreme Court of India reported in (2010) 14 SCC 38 =[2010 SCC ONLINE SC 1254] IN BETWEEN ramjas foundation and another VS union of India and others is that a party who suppressed the material facts is not entitled for any relief.

26. One who comes to the court, must come with clean hands. A person who approaches with un-clean hands and



suppressing facts not entitled for any relief In this regard it is beneficial to refer to the decision of the Hon 'ble Supreme Court of India reported in 1994 AIR SC 853 = [1994 SCC (1) 1] in between S.P. Changalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs the para No.4 to para No.6 read as under.

Civil Appeal No. 994 of 1972.

Dated-27.10.1993.

4. The High Court reversed the findings of the trial Court on the following reasonings :-

"Let us assume for the purpose of argument that this document, Exhibit B-15, was of the latter category and the plaintiff, the benamidar, had completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Exhibit B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is



that a plaintiff who had no title (at the time when the suit was filed) to the properties has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations



made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified



registration copy of Exhibit B- 15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence."

The High Court further held as under :-

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest re publica est finis litium ' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set



aside on the ground of fraud, in a subsequent litigation. "

Finally, the High Court held a under :-

"The principle of his decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when he filed the suit for partition, he had subsisting interest in the property though he had already executed Exhibit B-15. Even so that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting Interest in the property."

5 . The High Court, in our view, fell into patent error. The short question before the High Court was whether in



the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find



the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15)



in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain



advantage on the other side than
he would be guilty of playing fraud
on the Court as well as on the
opposite party.

The ratio (underline emphasized by me) laid down by the Hon 'ble Supreme Court of India reported in 1994 AIR SC 853 = [1994 SCC (1) 1] in between S.P. Changalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs is that a person who approaches with un-clean hands and suppressing facts not entitled for any relief. In view of laid down by the the Hon'ble High Court of Karnataka and also the the Hon'ble Supreme Court of India the present suit is not maintainable for suppression of facts.

27. 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.

28. 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 the plaintiff the exact date when she is dispossessed. In the present case, there is no pleading by the the plaintiff the exact date when she she came to know about her dispossession. In the present case, there is no pleading by the 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 = [AIR ONLINE 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 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.

29. 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 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 plaintiffs that they 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 who is none other than his own mother the the deceased defendant No.1 herein Eshwaramma. . Thus the present suit is barred by law of limitation. The plaintiff is not entitled for either relief of partition and separate possession and possession.

30. The present suit is filed by modifying the relief as against the relief sought for in in OS No.144/1996 dated-



31-10-2003 passed by the Principal Civil Judge court at Sindhanoor marked at exhibit D-20 and exhibit D-21, in RA No.32-2005 passed by the Hon'ble Fast Track Court-3 and Additional District and Sessions Judge Court at Raichur marked at exhibit D-22 and in RSA No.2037/2007 dated 19-01-2009 passed by the the Hon'ble High Court of Karnataka at Kalaburgi (then CIRCUIT BENCH at Gulbarga) marked at exhibit D-14. said previous suits and appeals were of relief of possession and the present suit is filed by converting the relief of partition and separate possession .

31. As discussed above the rights and title in respect of the the suit property is already decided in Judgment and decree in OS No.144/1996 dated-31-10-2003 passed by the Principal Civil Judge court at Sindhanoor marked at exhibit D-20 and exhibit D-21, Judgment and decree of regular appeal in RA No.32-2005 passed by the Hon'ble Fast Track Court-3 and Additional District and Sessions Judge Court at



Raichur marked at exhibit D-22, and Judgment in RSA No.2037/2007 dated 19-01-2009 passed by the the Hon'ble High Court of Karnataka at Kalaburgi (then CIRCUIT BENCH at Gulbarga) marked at exhibit D-14. The present suit is nothing but a second round of litigation after the litigation referred to above. The trial court has rightly passed the judgment and decree by appreciating all the facts and held that the plaintiff is not entitled for any reliefs. Hence Point No.1 is answered in Negative

32. **POINT NO.2:-** In view of my findings on the above points, the appeal filed by the appellant/plaintiff is liable to be dismissed. Accordingly, I proceed to pass the following order.

:: ORDER ::

The appeal filed by the appellant/plaintiff dismissed.

Judgment and decree passed by the I Addl. Civil Judge and JMFC at Sindhanoor in OS No.20/2006 dated 31.08.2017 is confirmed.



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 1st day of July 2026)

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