



**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 : 42/2023:

DATED: 1st day of July 2026

- APPELLANTS :-
1. Khaja Hussain S/o Maheboob sab @ Maheboob Hussain sab Kagi aged 50 years, agri R/o Chaluvadi street near Durgamma temple, Gangavathi dist. Koppal
 2. Shabbeer S/o Maheboob sab @ Maheboob Hussain sab Kagi age 40 years near Masjid at Fort area Sindhanur

(Rank in court below deft No. 1 & 2)

(By Sri.A.G., Advocate)

-V/s-

- RESPONDENTS:-
1. Mabusen S/o late Nanne sab aged 65 years, agri R/o Roudakunda village tq. Sindhanur
 - 2 Khaja Hussain S/o late Nanne sab aged 62 years agri R/o Roudakunda village tq. Sindhanur

(Rank in court below plaintiffs)

- 3 Kamalibaba S/o late Jeelani sab age 42 years



- 4 Moulali S/o late Jeelani sab
age 32 years,
- 5 Ismail S/o late Jeelani sab
age 28 years,
- 6 Smt. Shameed bee W/o late Jeelani sab
age 46 All R/o Chaluvadi street near
Durgamma temple, Gangavathi
dist. Koppal
7. Smt. Khaseem bee W/o late Mastan sab
age 48 R/o Roudakunda village
tq. Sindhanur
8. Khaja bee W/o Mehaboob Hussain
age 75 household R/o Chaluvadi street
near Durgamma temple, Gangavathi
9. Iqbal S/o late Jeelani sab
age 19 agri R/o Chaluvadi street
near Durgamma temple, Gangavathi
10. Ameena W/o Alambasha (D/o late Jeelani
sab) age 25 agri and household
R/o Gomarsi tq. Sindhanur.
11. Haseena begum W/o Mahibood sab
(D/o late Mastan sab) age 35 agri and
household R./o Kanakagiri dist. Koppal.
12. Shafeena W/o Siraj Pasha (D/o late
Mastan sab) age 33 agri and
household R/o Tekkalakota tq. Sirguppa.



13. Shameed S/o late Mastan sab
age 28 agri R/o Roudakunda
tq. Sindhanur
14. Raja Hussain @ Budda S/o late Mastan sab
age 27 agri R/o Roudakunda tq. Sindhanur
15. Mahimooda begum W/o Ahamed
Pasha (D/o late Mastan sab agri and
household R/o Kanakagiri dist. Koppal.
16. Hameeda begum W/o Raja Hussain
(D/o Mahiboob Hussain sab Kagi)
age 52, agri and household
R/o Yardona tq. Karatagi dist. Koppal.
17. Jameela begum W/o Khaja Hussain
(D/o Mahiboob Hussain sab Kagi)
age 48 agri and household
R/o Kote area Sindhanur.

(Rank in court below deft No 3 to 17)

(R1, 2 by: Sri.CD advocate)
(R3 to 10, 13, 14 to 17 placed exparte)

Date of Institution of Appeal : 05.08.2023

Nature of Appeal : Appeal against the
Judgment and decree
dated 05.04.2023
in O.S.No. 335/2017
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
02 10 26

: J U D G M E N T :

This appeal filed by the appellants/defendant No.1 and 2 being aggrieved by the Judgment and decree dated 05.04.2023 in O.S.No.335/2017 passed by the I Addl. Civil Judge, Sindhanur in decreed the suit filed for declaration of ownership 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:-**

It is the specific case of the plaintiff that Khaja Hussain Kagi was the propositus of their family. He died long back leaving behind his 5 sons by their names Maheboob Sab, Hire Shameed Sab, Nannesab who is the father of plaintiffs, Maheboob Hussain Sab



who is father of defendant No.1 and 2 and Sanna Shameed Sab. After death of Khaja Hussain Kagi they divided his properties. Total extent of land bearing Sy.No.342 measuring 27 acres 21 guntas. In said land, 9 acre 7 guntas each were allotted to elder son Maheboob Sab, father of plaintiffs by name Nannesab and father of defendant No.1 and 2 by name Maheboob Hussain Sab. They got other lands also in said partition. As per said partition the revenue records were got mutated in their respective names. The record of rights are standing in the their respective names since long. The father of plaintiffs by name Nannesab sold out 5 acres 30 guntas out of 9 acres 7 guntas to one Simhadri Suryanarayana in the year 1967-68 and retained to an extend of land measuring 3 acres 17 guntas i.e., suit land. Similarly, the father of defendant No.1 and 2 by name Maheboob Hussain Sab sold out 7 acres to one Yogiraj Jogiraj in the year 1969-70 and retained 2 acres 7



guntas. Nannesab was in possession during his life time to an extent of 3 acres 7 guntas i.e., suit land. After his death, plaintiffs are continuing in possession of suit land. Said Nannesab died in the year 1991. The plaintiffs are his sole legal heirs. After death of Nannesab, the father of defendant No.1 and 2 by name Maheboob Hussain Sab illegally got mutated the suit land in his name on 23-09-1996 on the ground that late Nannesab during his life time allotted the suit land as his share. It was unnoticed to them. On 06-11-2011 the father of defendant No.1 and 2 tried to interfere in their possession over the suit land on the basis of said mutation. Then they came to know about the fraud played by Maheboob Hussain Sab kagi. They challenged the said mutation before Assistant Commissioner, Lingasugur. After enquiry Assistant Commissioner, Lingasugur set-aside the said mutation and directed to mutate their names in records of suit land. The defendants challenged the



same before the Deputy Commissioner, Raichur. On 15-07-2017 the defendants came to the suit land and tried to dispossess them by denying their title. Hence, they filed the present suit.

4. The defendants appeared through their counsel. Defendant No.1 filed his written statement by denying the claim of plaintiffs. He contended that the suit is barred by law of limitation and non-joinder of necessary parties. He contended that Sanna Shamid Sab has no male issues, but he has four daughters. Hence, father of plaintiffs by name Nannesab, Maheboob Hussain Sab and Sanna Shamid Sab were jointly cultivating the lands of Sanna Shamid Sab. Sanna Shamid Sab gave 11 acres 14 guntas to plaintiffs. Hence, Nannesab gave 3 acres 17 guntas i.e., suit property to Maheboob Hussain Sab on 15-07-1991 in the presence of all brothers and drafted the same in a document as partition deed. Since 1991 the



defendants have been in possession over the suit land. The mutation had been affected on 23-09-1996. The plaintiffs challenged same before the Assistant Commissioner, Lingasugur. The Assistant Commissioner, Lingasugur allowed their petition and got mutated the suit land in the names of plaintiffs. But defendants are continued in possession over the suit land. The plaintiffs challenged the said mutation after completion of 15 years 45 days. Hence, suit is barred by law of limitation. The plaintiff sought declaratory relief without seeking possession. Hence, suit is not maintainable. Hence, they prayed to dismiss the suit.

5. Based on the above pleadings and documents my learned predecessor-in-office framed the following issues;

I S S U E S

1. Whether the plaintiffs prove that they are joint owners of the suit



property?

2. Whether the plaintiffs prove that they are in possession over the suit property as on the date of the suit?
3. Whether the defendants prove that the suit is barred by limitation?
4. Whether the defendants prove that the suit is bad for non-joinder of necessary parties?
5. Whether the plaintiffs are entitled for the relief of declaration of title and consequential relief of injunction as sought for?
6. What order or decree?

6. In order to prove the case, the plaintiff No.1 examined himself as PW-1 and plaintiff No.2 examined himself as PW-3. They examined a witness by name Smt.Mahiboob Bee @ Mahimooda Begum wife of Basheer Sab as PW-2. These witnesses filed their chief examination by way of affidavits and documents were marked as Ex.P1 to 96. On the other hand, the defendant No.1 examined himself as DW-1. He examined a witness by name Rajahussain



Mudagal as DW-2. These witnesses filed their chief examination by way of affidavits. The documents were marked as Ex.D-1 to 66.

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

8. Being aggrieved by decreed the suit the appellants/defendant No.1 and 2 has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) That the impugned decree and judgment passed by the court below by in OS No. 335/2017 by decreeing the suit of the plaintiffs is quite false, baseless, erroneous and liable to be set aside.



- 2) That the Plaintiffs have totally suppressed entire material facts before the court below and concocted a false story and thereby succeeded an impugned decree and on this count also the impugned judgment and decree are liable to be interfered with.
- 3) That the court below has not at all applied its judicial mind upon the facts of the case relying on the documents filed by parties to the suit and thereby illegally proceeded to decree the suit and on this count also the impugned judgment and decree are liable to be set aside.
- 4) That when the late father of the plaintiffs during his life time sold his portion of 9 acre 7 gunta in land SyNo. 342 of Roudakunda village tq. Sindhanur in favor of aforesaid SANNEPPA S/O AYYAPPA under the registered sale deed No. 20/1963 on 15.02.1963, the late father of plaintiffs was no more the owner and possessor of said land. Since no mutation was sanctioned in the name of said purchaser Sanneppa and as such said land was continued in the name of late NANNE SAB. When the late father of appellants had purchased portion of suit land meg 3-17 acre from his vendor SANNEPPA in the year 1993, the rev authorities have sanctioned the Mutation of suit land in the name of late father of appellants by name MEHABOOB HUSSAIN sab through Mutation at serial No. 23 stated supra by rounding off name of late NANNE sab. That being so, the plaintiffs are neither the owners nor possessors of the suit land since



then and therefore they are not entitle to file and maintain their suit before court below which was came to be decreed by the court below wrongly and as such the impugned decree and judgment are liable to be set aside.

- 5) That the impugned decree and judgment of the court below is the out come of suppression of material facts by the plaintiff in their suit before court below and on this count also the impugned decree and judgment are liable to be set aside.
- 6) That any other ground or grounds would be urged at the time of argument with the permission of this Hon'ble court and with due notice to other side.

9. I have heard the arguments addressed by the learned counsels appearing for the appellants and respondents.

10. 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 appellants/defendant No.1 and 2 made out grounds to allow IA No.2 filed under Order 41 Rule 27 of CPC to place on record Addl. Evidence?



2. Whether the appellants/defendant No.1 and 2 prove that the impugned judgment and decree dated, 05.04.2023 passed in O.S. No.335/2017 by the trial court in decreeing the suit, is contrary to law, facts, evidence and probabilities of the case and as such, it is liable to be interfered with?

3. What order?

11. 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 :- As per final the final order

:: REASONS ::

12. **POINT No.1 :-** It is the specific case of the plaintiff that Khaja Hussain Kagi was the propositus of their family. He died long back leaving behind his 5 sons by their names Maheboob Sab, Hire Shameed Sab, Nannesab who is the father of plaintiffs, Maheboob Hussain Sab who is father of defendant No.1 and 2 and Sanna Shameed Sab. After death of Khaja Hussain Kagi they divided his properties. Total extent of land bearing Sy.No.342 measuring 27



acres 21 guntas. In said land, 9 acre 7 guntas each were allotted to elder son Maheboob Sab, father of plaintiffs by name Nannesab and father of defendant No.1 and 2 by name Maheboob Hussain Sab. They got other lands also in said partition. As per said partition the revenue records were got mutated in their respective names. The record of rights are standing in the their respective names since long. The father of plaintiffs by name Nannesab sold out 5 acres 30 guntas out of 9 acres 7 guntas to one Simhadri Suryanarayana in the year 1967-68 and retained to an extend of land measuring 3 acres 17 guntas i.e., suit land. Similarly, the father of defendant No.1 and 2 by name Maheboob Hussain Sab sold out 7 acres to one Yogiraj Jogiraj in the year 1969-70 and retained 2 acres 7 guntas. Nannesab was in possession during his life time to an extent of 3 acres 7 guntas i.e., suit land. After his death, plaintiffs are continuing in possession of suit land. Said Nannesab died in the year 1991. The plaintiffs are his sole legal heirs. After death of Nannesab, the father of



defendant No.1 and 2 by name Maheboob Hussain Sab illegally got mutated the suit land in his name on 23-09-1996 on the ground that late Nannesab during his life time allotted the suit land as his share. It was unnoticed to them. On 06-11-2011 the father of defendant No.1 and 2 tried to interfere in their possession over the suit land on the basis of said mutation. Then they came to know about the fraud played by Maheboob Hussain Sab kagi. They challenged the said mutation before Assistant Commissioner, Lingasugur. After enquiry Assistant Commissioner, Lingasugur set-aside the said mutation and directed to mutate their names in records of suit land. The defendants challenged the same before the Deputy Commissioner, Raichur. On 15-07-2017 the defendants came to the suit land and tried to dispossess them by denying their title. Hence, they filed the present suit.

13. It is the specific defence of the defendants that The suit is barred by law of limitation and non-joinder of



necessary parties. Sanna Shamid Sab has no male issues, but he has four daughters. Hence, father of plaintiffs by name Nannesab, Maheboob Hussain Sab and Sanna Shamid Sab were jointly cultivating the lands of Sanna Shamid Sab. Sanna Shamid Sab gave 11 acres 14 guntas to plaintiffs. Hence, Nannesab gave 3 acres 17 guntas i.e., suit property to Maheboob Hussain Sab on 15-07-1991 in the presence of all brothers and drafted the same in a document as partition deed. Since 1991 the defendants have been in possession over the suit land. The mutation had been affected on 23-09-1996. The plaintiffs challenged same before the Assistant Commissioner, Lingasugur. The Assistant Commissioner, Lingasugur allowed their petition and got mutated the suit land in the names of plaintiffs. But defendants are continued in possession over the suit land. The plaintiffs challenged the said mutation after completion of 15 years 45 days. Hence, suit is barred by law of limitation. The plaintiff sought declaratory relief without seeking possession. Hence, suit is not maintainable.



14. Counsel for plaintiffs cross examined the DW-1. In said cross examination DW-1 clearly admitted that his father and brothers of his father orally partitioned the family properties after death of his grand father. DW-1 clearly admitted that his father and brothers of his father were living separately. Further, DW-1 clearly admitted that in Sy.No.342 measuring 9 acres 7 guntas was allotted to father of plaintiffs by name Nannesab. DW-1 clearly admitted that out of said property, said Nannesab sold out 5 acres 30 guntas and retained 3 acres 17 guntas. Further DW-1 clearly admitted that 9 acres 7 guntas was allotted to his father also in Sy.No.342. His father sold out 7 acres in said property and retained 2 acres 17 guntas. The DW-1 further deposed that all brothers of his father gave suit property in the name of his father in partition. The said partition deed was in the possession of Sanna Shameed Sab.



15. The relevant portion of the cross-examination dated-27-10-2022 of DW-1 which reads as under.

ದಾವಾ ಜಮೀನು ವಿಭಾಗಿತ ಜಮೀನು ಆಗಿದ್ದು, ಅದು ಪಾಲು ವಿಭಾಗದಲ್ಲಿ ನನ್ನೆ ಸಾಬ್ ರವರ ಪಾಲಿಗೆ ಬಂದಿತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನೆ ಸಾಬ್ ರವರು ಸರ್ವೆ ನಂ.342 ರಲ್ಲಿ ತನಗೆ ಬಂದ ಜಮೀನಿನಲ್ಲಿ ಒಟ್ಟು 5 ಎಕರೆ 30 ಗುಂಟೆಯನ್ನು ಮಾರಾಟ ಮಾಡಿದ್ದರು ಎಂದರೆ ನಿಜ. ಸದರಿ 5 ಎಕರೆ 30 ಗುಂಟೆ ಜಮೀನನ್ನು ಮಾರಾಟ ಮಾಡಿದ ನಂತರ ನನ್ನೆ ಸಾಬ್ ರವರ ಬಳಿ ಇನ್ನೂ 3 ಎಕರೆ 17 ಗುಂಟೆ ಜಮೀನು ಉಳಿದಿತ್ತು ಎಂದರೆ ನಿಜ. ಹಿರೆ ಮಹಿಬೂಬ್ ಸಾಬ್ ರವರು ತನ್ನ ಪಾಲಿಗೆ ಬಂದ 9 ಎಕರೆ 7 ಗುಂಟೆ ಜಮೀನಿನಲ್ಲಿ 6 ಎಕರೆ ಜಮೀನನ್ನು ಮಾರಾಟ ಮಾಡಿದ್ದರು ಎಂದರೆ ನಿಜ. ಈಗ ಅವರ ಬಳಿ 3 ಎಕರೆ 07 ಗುಂಟೆ ಜಮೀನು ಉಳಿದಿದೆ ಎಂದರೆ ಇರಬಹುದು. ನನ್ನ ತಂದೆಯು ಸರ್ವೆ ನಂ.343 ರಲ್ಲಿ 07 ಎಕರೆ ಜಮೀನನ್ನು ಮಾರಾಟ ಮಾಡಿ 02 ಎಕರೆ 07 ಗುಂಟೆ ಜಮೀನನ್ನು ಉಳಿಸಿಕೊಂಡಿದ್ದರು.

16. A perusal of the above the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain it is clear that he has categorically admitted that in the suit land survey number measuring 09 acres 07 guntas was allotted to the father of the plaintiffs by name Nannesab Kagi . Out of it said the



father of the plaintiffs by name Nannesab Kagi has alienated 05 acres 30 guntas and he has retained the suit land. Further A perusal of the above the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain it is clear that 09 acres 07 guntas was allotted to his father the defendants by name Mahaboob Hussainsab Kagi. A perusal of the above the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain it is clear that his father Maheboob Sab sold 07 acres in the said property and retained 02 acres 17 guntas for himself.

17. The above the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain it is clear that he has admitted the entire case of the plaintiffs that the suit land survey number measuring 09 acres 07 guntas was allotted to the father of the plaintiffs by name Nannesab Kagi . Out of it said the father of the plaintiffs by name Nannesab Kagi has alienated 05 acres 30 guntas and he has retained the suit land. Further A perusal of the above the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain it is clear that 09 acres



07 guntas was allotted to his father the defendants by name Mahaboob Hussainsab Kagi.

18. These admissions show that suit land was allotted to father of plaintiffs. He continued in possession over the suit land. The DW-1 has not produced any partition deed to show that the suit land was allotted to his father. He contended that the said partition deed was in the possession of father of plaintiffs. But in his cross examination he contended that his father left the said partition deed in the possession of Sanna Shameed Sab. It shows that he has no confirm that in whose custody the partition deed was there. The family partition was affected before 1966. The defendants contended that in 1991 only the suit land was gave to his father in partition. But defendants failed to produce documents to show the said alleged partition. Further defendants contended that Sanna Shamid Sab gave 11 acres 14 guntas to plaintiffs. Hence, Nannesab gave suit



land to Maheboob Hussain Sab on 15-07-1991. But they failed establish the said fact.

19. The defendants have set-up their defense that there was a partition between the father of the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi during the year 1991 and in the said partition, the suit land was allotted to the father of the defendants by name Mahaboob Hussainsab Kagi accordingly the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3. The above referred cross-examination dated-27-10-2022 of DW-1-Khaja Hussain rather corroborated the case of the plaintiffs. The cross-examination dated-27-10-2022 of DW-1-Khaja Hussain clearly reflects the fact that that there was a partition between the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi and in the said partition 09 acres 07 acres was allotted and equal extent was



allotted to the plaintiffs by name deceased Nannesab Kagi long back.

20. It is settled principle of law that evidentiary admission in were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, Further such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. It is equally settled law that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted In a decision reported in AIR 1979 SC 861 = [1979 (4) SCC 790] in between Avadh Kishore Dass VS. Ram Gopal the Hon'ble Supreme Court of India held that that evidentiary admissions were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, the Hon'ble Supreme Court India held that such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. the Hon'ble Supreme Court also



observed that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted.

21. The evidentiary admissions were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, Further such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. It is equally settled law that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in AIR 1979 SC 861 =[1979 (4) SCC 790] in between Avadh Kishore Dass Vs. Ram Gopal the para No.23 reads as under.

Civil Appeal No. 1103 of 1969.

Dated-15.12.1978.



23. Further, what is more important, in cross-examination, the defendant was confronted with this declaration in the will. He unreservedly admitted that what was stated in the will, was correct. It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. Here, the defendant, far from explaining the admission or declaration made by the deceased Mahant, under whom he (defendant) claims, has affirmed it, that the entire property in suit is the absolute property of the God, Thakurji as a juristic person. It is, therefore, too late in the day for the defendant to wriggle out of the same. It cannot be



said that the defendant had inadvertently affirmed the correctness of the admission/declaration made in the aforesaid will by the deceased Mahant. It was a conscious admission. The defendant himself repeatedly admitted this position with regard to the ownership of the land being exclusively of the idol, Thakurji Maharaj, in the applications filed for receiving annuity under the provisions of the U. P. Zamindari, Abolition and Land Reforms Act, 1952, which was granted to the idol, in respect of the Trust property.

The ratio laid down by the Hon'ble Supreme Court of India reported in reported in AIR 1979 SC 861 = [1979 (4) SCC 790] in between Avadh Kishore Dass Vs. Ram Gopal is that evidentiary admissions were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, Further the Hon'ble the Supreme Court held that such admissions would raise an estoppel



shifting the burden of proof on to the person making the admissions. Further Hon'ble Supreme Court of India held that that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted.

22. This court is of the opinion that the admission is a piece of evidence and can be explained it to be wrong. It does not conclusively bind a party unless it amounts to an estoppel. Value of an admission has to be determined by keeping in view the circumstances in which it was made and to whom. An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. In this regard it is beneficial to refer to the Hon'ble three Judges Bench decision of the Hon'ble Supreme Court of India reported in AIR 1960 SC 100 in between Narayan Bhagwantrao Gosavi Balajiwale, appellants vs. Gopal Vinayak Gosavi the para No.11 reads as under.



Civil Appeal No. 261 of 1955,,
decided on 22/09/1959

11. In the present case, the burden of proof need not detain us for another reason. It has been proved that the appellants and his predecessors in the title which he claims, had admitted on numerous occasions that the public had a right to worship the deity, and that the properties were held as Devasthan inams. To the same effect are the records of the revenue authorities, where these grants have been described as Devasthan, except in a few cases, to which reference will be made subsequently. In view of all these admissions and the revenue records, it was necessary for the appellants to prove that the admissions were erroneous, and did not bind him. An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is



decisive of the matter, unless
successfully withdrawn or proved
erroneous. We shall now examine
these admissions in brief and the
extent to which they went and the
number of times they were repeated.

The ratio (underline emphasized by me) laid down in
the Hon'ble three Judges Bench decision of the Hon'ble
Supreme Court of India reported in AIR 1960 SC 100 in
between Narayan Bhagwantrao Gosavi Balajiwale,
appellants vs. Gopal Vinayak Gosavi in An admission is the
best evidence that an opposing party can rely upon, and
though not conclusive, is decisive of the matter, unless
successfully withdrawn or proved erroneous.

23. It is no doubt true that this court in deciding the
dispute should not place reliance on a stray sentence, but it
does not mean that a categorical admission made by the
parties during the cross-examination should not be
considered to test the veracity of the evidence of the



witnesses. If an admission in respect of a material fact is excluded from consideration on the ground that it is a stray admission contrary to his earlier statement in the evidence, this court is of the view that that the very object of cross-examination would stand defeated. Thus a categorical admission made by the party shall be relied upon by this court. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in ILR 1996 KAR 1853, =[1996 (2) KarLJ 726] in between Smt. S.V. Kunhima vs B.N. Viswanath the para NO.13 of the order of the Hon'ble High Court of Karnataka read as under.

House Rent Revision Petition. No. 1157 of 1995.

Dated-07.03.1996.

13]. It is contended by Sri S. Shekhar Shetty, the learned Counsel appearing for the revision petitioner-respondent that, the respondent has not removed the steel grill window and installed a Beeda shop in its place on the Southern side of the petition schedule



premises facing Subedar Chatram Road and on the other hand the said shop has been in existence right from 1966, the date on which the petition premises was taken on lease. Sri Shekhar Shetty, learned Counsel appearing for the revision petitioner/respondent has further contended that the petitioner has failed to establish the existence of bunk shop on the Northern side of the building which was surrendered to him but admitted the existence of a Beeda shop in the petition schedule premises and therefore the Beeda shop admitted by the petitioner is the Beeda shop on the Southern side of the premises as seen in the photograph. Sri Shekhar Shetty, learned Counsel appearing for the revision petitioner/respondent relying on the decision of this Court in SMT PARAMESHWARI BAI v. MUTHOJIRAO SCINDIA, , that stray sentences elicited in cross-



examination can hardly be construed as an admission, has contended that in order to decide whether, the respondent has put up any beeda shop on the Southern side of the petition premises, this Court should read and scrutinise the entire evidence of R.W.1 and placing reliance on a stray sentence in the evidence of RW-1 would be against the principle of appreciation of evidence. He has further contended that the petitioner has failed to produce the sanctioned plan which is a material piece of evidence and on account of non-production of the same, the learned Judge ought to have drawn an adverse inference against the petitioner in view of the judgment of the Supreme Court in DEVIDAS AND ORS. v. SHRISHAILAPPA AND ORS. 1961 AIR SC 1277 , . **It is no doubt true that the Courts in deciding the dispute should not place reliance on a stray**



sentence, but it does not mean that a categorical admission made by the parties during the cross-examination should not be considered to test the veracity of the evidence of the witnesses. If an admission in respect of a material fact is excluded from consideration on the ground that it is a stray admission contrary to his earlier statement in the evidence, I am of the considered view that the very object of cross-examination would stand defeated.

The ratio (underline emphasized by me) laid down by the Hon'ble High Court of Karnataka reported in ILR 1996 KAR 1853, =[1996 (2) KarLJ 726] in between Smt. S.V. Kunhima vs B.N. Viswanath is that admission made by a party in the cross-examination cannot be excluded.

24. In the present case also the admission made in the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain



that the father of the plaintiffs by name Nannesab Kagi has alienated the land allotted to his share to an extent of 05 acres 30 guntas and was in possession of remaining extent of suit land. This in view of law laid down in laid down by the Hon'ble High Court of Karnataka reported in ILR 1996 KAR 1853, =[1996 (2) KarLJ 726] in between Smt. S.V. Kunhima vs B.N. Viswanath is that admission made by a party in the cross-examination cannot be excluded the admission of the cross-examination dated-27-10-2022 of DW-1-Khaja Hussain cannot be excluded.

25. As discussed above, the defendants have set-up their defense that there was a partition between the father of the plaintiffs by name Nannesab Kagi and the defendants by name Mahaboob Hussainsab Kagi during the year 1991 and in the said partition, the suit land was allotted to the father of the defendants by name Mahaboob Hussainsab Kagi accordingly the mutation was also effected as per the



mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3.

26. As per Sec.133 of Karnataka Land Revenue Act, 1964 the revenue entries presumed to be true until contrary is proved or a new entry is lawfully substituted therefore. In the present case the defendants contended that as per partition the name of their father was mutated in the records of suit land. But they failed to prove the said partition. Ex.P-71 and Ex.D-3 i.e., mutation register extract clearly show that as on the date of passing said mutation, Nannesab was no more. It shows that after death of Nannesab the father of defendant No.1 and 2 got mutated the suit land in his name. The defendants failed to prove the partition. It shows that the entries made in record of rights in respect of suit land is also without based on proper documents. It shows that the said mutation was not lawfully substituted. When said mutation was not lawfully substituted, the presumption in respect of its entries will not be available to those record of



rights. When entries made in record of rights are not lawful, it can not be treated as possession of defendants over the suit land. Moreover, the defendants have not taken the defence of adverse possession in their written statement.

27. As discussed above, it is the defense of the defendants that there was a partition taken place between the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi during the year 1991 itself as per the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3. This partition was acted upon by effecting mutation by the revenue officials as per the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3.

28. Assuming that there was partition during the year 1991 itself between the father of the plaintiffs by name Nannesab Kagi and the defendants by name Mahaboob



Hussainsab Kagi, as to why the mutation as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3 was effected after death of the father of the plaintiffs by name Nannesab Kagi that too after five years and why not during his life-time. Assuming, that Assuming that there was partition during the year 1991 itself between the father of the plaintiffs by name Nannesab Kagi and the defendants by name Mahaboob Hussainsab Kagi, prudent demands that mutation is effected immedietly in the year of 1991 or 1992 itself. The defendants did not explain as to why they have taken long five years to effect mutation based on alleged partition during the year 1991.

29. Thus, doubt arises in the mind of this court about the said effecting of mutation as per the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3. Therefore, the trial court has rightly appreciated the fact that the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-



1996 marked at exhibit D-3 in respect of suit land after the death of the plaintiffs by name deceased Nannesab Kagi and it has been effected after five years from the date of alleged partition, thus it cannot be relied upon.

30. Apart from it, this court perused the record of rights record of rights in respect of suit land which includes khasara pahanis from the year 1955-1956 to 1962-1963 marked from exhibit P-3 to exhibit P-11 where in it is shown the names of the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi separately having suit land survey number 09 acres 07 guntas each leading to presume that there was a partition between them long back.

31. Apart from it, a perusal of the record of rights record of rights in respect of suit land which includes khasara pahanis from the year 1955-1956 to 1962-1963 marked from exhibit P-3 to exhibit P-11 it further goes to show that



names of all brothers of the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi shown having possession to an extent of 09 acres 07 guntas each exactly. Thus it can be presumed by this court that there was a partition held among the brothers of the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi long back and an extent of 09 guntas 07 guntas out of suit land survey number is allotted to said the plaintiffs by name deceased Nannesab Kagi.

32. Besides it, the trial court has rightly held that when plaintiffs challenged the mutation entries before the Assistant Commissioner, Lingasugur they filed application by praying to condone the delay of 15 years and 45 days. They challenged the said mutation entry after completion of 15 years. Hence, suit is barred by law of limitation. But the plaintiffs clearly contended that plaintiff No.2 was working as typist in Raichur and Koppal, he was not in station. The



plaintiff No.1 is uneducated person. He did not verify the record of rights of suit land till 2011. When defendants tried to interfere in their possession in 2011, then he verified the record of rights of suit land. Then he came to know about the change of record of rights. But he was possession over the suit schedule property, hence he challenged the said mutation by filing RRT appeal before Assistant Commissioner, Lingasugur. When he has no knowledge about the change of mutation entries, questioning the same does not arise. When he came to know about the said fact, he challenged same before Assistant Commissioner.

33. As discussed above in detail, Counsel for plaintiffs cross examined the DW-1. In said cross examination DW-1 clearly admitted that his father and brothers of his father orally partitioned the family properties after death of his grand father. His father and brothers of his father were living separately. Further, DW-1 clearly admitted that in Sy.No.342 measuring 9 acres 7 guntas was allotted to father of



plaintiffs by name Nannesab. Out of said property, said Nannesab sold out 5 acres 30 guntas and retained 3 acres 17 guntas. Further he admitted that 9 acres 7 guntas was allotted to his father also in Sy.No.342. His father sold out 7 acres in said property and retained 2 acres 17 guntas. The DW-1 further deposed that all brothers of his father gave suit property in the name of his father in partition. The said partition deed was in the possession of Sanna Shameed Sab.

34. The trial court has rightly appreciated all the disputed facts and rightly came to the conclusion that there was a partition held between the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi and in the said partition the suit land is allotted to the share of the said the plaintiffs by name deceased Nannesab Kagi and he has rightly alienated to an extent of 05 acres 30 guntas out of the suit land survey number in favour of one Simhadri Surya Narayana Rao.



35. As discussed above, it is the defence of the defendants in the written statement in the trial court that there was a partition taken place between the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi during the year 1991 itself as per the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3. This partition was acted upon by effecting mutation by the revenue officials as per the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3. Therefore, the plaintiffs are owners and possessors of suit land. Hence, point No.1 is answered in Negative.

36. **POINT NO.2:-** On the contrary, the defendant-appellants No.1 filed IA No.2 under Order 41 Rule 27 R/w Sec.151 of CPC, 1908 stating that the documents as shown there in are not filed by his counsel in the trial court. Further it is contended in IA No.2 under Order 41 Rule 27



R/w Sec.151 of CPC, 1908 the father of the plaintiffs by name Nannesab Kagi sold the entire extent of the 09 acres 07 guntas out of the suit land survey number in favour of one Sanneppa during the year 1963 itself. Further it is contended Said Sanneppa in turn sold the suit land in favour of the defendants by name Mahaboob Hussainsab Kagi through an un-registered sale deed in the same year. Further it is contended in IA No.2 under Order 41 Rule 27 R/w Sec.151 of CPC, 1908 that the defendants by name Mahaboob Hussainsab Kagi was in possession over the suit land on the basis of the un-registered sale deed.

37. This defense is totally contrary to one that is taken in the written statement of the defendants in the trial court. As discussed above, it is the defence of the defendants in the written statement in the trial court that there was a partition taken place between the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi during the year 1991 itself as



per the mutation was also effected as per the mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3.

38. On the contrary the defendant No.1 filed the present application under order under Order 41 Rule 27 saying that the father of the plaintiffs by name Nannesab Kagi sold the entire extent of the 09 acres 07 guntas out of the suit land survey number in favour of one Sanneppa during the year 1963 itself and said Sanneppa in turn sold the suit land in favour of the defendants by name Mahaboob Hussainsab Kagi through an un-registered sale deed in the same year. This totally contrary and in consistence defense of the defendant No.1 cannot be permitted to be taken by permitting the defendants by way of additional evidence.

39. The appellants-defendants – did not explain as to why they have failed to produce the additional evidence in the trial court. There is no explanation forthcoming in the present application as why they kept quite by retaining the



documents that are filed before this court by way of the additional evidence. It is not the case of the appellants-defendants that the documents of the additional evidence have come into existence after disposal of the suit under challenge. The alleged documents produced by way of the additional evidence have come into existence long back during the year of 1963 and 1993 respectively, but still the appellants-defendants did not produce the same before trial court. It appears that the present application is filed to fill lacunae in the defense of the appellants-defendants.

40. The provisions of Order 41 R. 27 of CPC 1908 are not designed to help the parties patch up weak points and make up for omissions made earlier and the jurisdiction of the appellate court is restricted to permitting such additional evidence as would enable it to pronounce judgment. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in (2001) 7 SCC 503



= [2001 SCC ONLINE SC 905] in between N. Kamalam Vs. Ayyasamy and another the para No.19 reads as under.

Civil Appeals Nos. 3164-66 of 1997

Dated-03-08-2001

19. Incidentally, the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal — it does not authorize any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way. This Court in Municipal Corpn. of Greater Bombay vs. Lala Pancham² has been candid enough to record that the requirement of the High Court must be limited to those cases where it found it necessary to obtain such



evidence for enabling it to pronounce judgment. In para 9 of the judgment, this Court observed: (AIR p. 1012)

“This provision does not entitle the High Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. The High Court does not say that there is any such lacuna in this case. On the other hand what it says is that certain documentary evidence on record supports ‘in a large measure’ the plaintiffs’ contention about fraud and mala fides. We shall deal with these documents presently but before that we must point out that the power



under clause (b) of sub-rule (1) of Rule 27 cannot be exercised for adding to the evidence already on record except upon one of the grounds specified in the provision.”

Further in *Pramod Kumari Bhatia v. Om Prakash Bhatia*⁸ this Court also in more or less an identical situation laid down that since an application to the High Court has been made very many years after the filing of the suit and also quite some years after the appeal had been filed before the High Court, question of interfering with the discretion exercised by the High Court in refusing to receive an additional evidence at that stage would not arise. The time-lag in the matter under consideration is also enormous and the additional evidence sought to be produced was as a matter of fact after a period of 10 years after the filing of the appeal. Presently, the suit was instituted in the year 1981 and the decree therein



was passed in 1983. The first appeal was filed before the High Court in April 1983 but the application for permission to adduce additional evidence came to be made only in August 1993. Needless to record that the courts shall have to be cautious and must always act with great circumspection in dealing with the claims for letting in additional evidence particularly, in the form of oral evidence at the appellate stage and that too, after a long lapse of time. In our view, a plain reading of Order 41 Rule 27 would depict that the rejection of the claim for production of additional evidence after a period of 10 years from the date of filing of the appeal, as noticed above, cannot be termed to be erroneous or an illegal exercise of discretion. The three limbs of Rule 27 do not stand attracted. The learned trial Judge while dealing with the matter has, as a matter of fact, very



strongly commented upon the lapse and failure on the part of the plaintiffs even to summon the attestors to the will and in our view contextually, the justice of the situation does not warrant any interference. The attempt, the High Court ascribed it to be a stage-managed affair in order to somehow defeat the claim of the respondents — and having had the privilege of perusal of record we lend our concurrence thereto and the finding of the High Court cannot be found fault with for rejecting the prayer of the appellants for additional evidence made in the belated application. In that view of the matter, the first issue is answered in the negative and thus against the plaintiffs, being the appellants herein.

The ratio [underline emphasized by me] laid down the Hon'ble Supreme Court of India reported in (2001) 7



SCC 503 =[2001 SCC ONLINE SC 905] in between N. Kamalam Vs. Ayyasamy and another is that the provisions of Order 41 R. 27 of CPC 1908 are not designed to help the parties patch up weak points and make up for omissions made earlier and the jurisdiction of the appellate court is restricted to permitting such additional evidence as would enable it to pronounce judgment.

41. An application under Order 41 Rule 27 Civil Procedure Code, 1908 is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and the evidence sought to be adduced have any bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test,



therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

42. Under the scheme of the Code of Civil Procedure, 1908 whether oral or documentary, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1) (d) read with Rule 27 of Order 41 of the of the Code of Civil Procedure, 1908 . Rule 27 of Order 41 of the of the Code of Civil Procedure, 1908 reads as under:

“27. Production of additional evidence in appellate court.—(1)

The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(a) The court from whose decree the appeal is preferred has refused to



admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the appellate court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

From the opening words of sub-rule (1) of Rule 27 of the Code of Civil Procedure, 1908 , quoted above, it is



clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the of the Code of Civil Procedure, 1908 to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Order 41 R. 27 of CPC 1908.

43. It is settled principle of law that the appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction. In order to place additional evidence on record of the appellate court it depends upon whether or not the appellate court requires



the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.

44. Therefore it is important to take into consideration that whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. The parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage by placing additional evidence on record. It is made clear by this court that the provisions of Order 41 Rule 27 of the CPC 1908 have not been incorporated in the of the said Act so as to patch up the weak points in the case and to fill up the omission in the court of appeal it does not authorize any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a



particular way. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in (2015) 17 SCC 713] =[2015 SCC ONLINE SC 1285] in between Andisamy Chettiar vs . Subburaj Chettiar the para No.12 read as under.

Civil Appeal No. 14055 of 2015
(Arising out of S.L.P. (C) No. 7798 of 2015).
D/d. 08.12.2015.

12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions



mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ext. A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

The ratio [underline emphasized by me] laid down by the Hon'ble Supreme Court of India reported in (2015) 17 SCC 713] =[2015 SCC ONLINE SC 1285] in between Andisamy Chettiar vs . Subburaj Chettiar is that the parties are not allowed to fill the lacunae at the appellate stage as it is against the spirit of the CPC 1908 to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Order 41 R. 27 of CPC 1908.



45. It is settled principle of law that though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC 1908, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC 1908. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule of CPC 1908 are found to exist.

46. It is made clear by this court that the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or the of fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the



appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further made clear by this court that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

47. In this regard it is beneficial to refer to an un-reported decision of the Hon'ble High Court of Karnataka in Regular Second Appeal No. 712 of 2012 (DEC/INJ), Dated-31.10.2023.between Devegowda vs Belwadi Grama Panchayathi Mysore Taluk, the para No.15 and para No.16 read as under.

Regular Second Appeal No. 712 of 2012 (DEC/INJ).
Dated-31.10.2023.

15. The plaintiff had filed an application for production of additional evidence. In support of the



application, one of legal representatives of the plaintiff has filed an affidavit contending that original plaintiff was prosecuting the case and after his death, the legal representatives came to know about the case and the learned counsel representing them, informed them to get other documents available in respect of the property. Therefore, they searched and found documents along with the latest tax paid receipts and the same was handed over to the counsel during 3rd week of July 2023. It is contended that said documents goes to the root of the case and it is further contended that defendant No.2 without valid ownership is interfering with the possession of the suit and prayed to allow the application.

17. Further, the appellants have filed this application with an intention to fill up the lacuna. The Hon'ble Apex Court in the case of N. Kamalam v.



Ayyasamy, reported in (2001) 7 SCC 503, held that the additional evidence cannot be produced to fill up the lacuna or gaps in evidence or to patch up the evidence in the appeal and said application filed by the appellants only with an intention to fill up the lacuna. Further, the appellants have not explained why the said documents are not produced before the trial Court. From the perusal of the application, I.A.No.1/2023 the appellants have not fulfilled the requirements of Order 41, Rule 27 of CPC. Hence, the application filed by the appellants for production of documents is to be rejected. Hence, *I do not find any* substantial question of law that arise for consideration in this appeal and any grounds to interfere with the impugned judgments.



The ratio [underline emphasized by me] laid down in the un-reported decision of the Hon'ble High Court of Karnataka in Regular Second Appeal No. 712 of 2012 (DEC/INJ), Dated-31.10.2023.between Devegowda vs Belwadi Grama Panchayathi Mysore Taluk is that additional evidence cannot be produced at the appellate stage to fill up lacunae in the case.

48. It is settled principles of law that the appellate court would not permit the additional evidence to be placed on record. It is settled principle of law that to allow the additional evidence to be place on record by the appellate court it is just and necessary for the party who wants to place additional evidence on record to plead as to why the proposed additional evidence is not placed on record before the Trial Court. It is settled principle of law that it is necessary to plead when the party could not furnish the same before the Trial Court, despite his best efforts. Further it is settled principle of law that to allow the additional



evidence to be placed on record by the appellate court it is just and necessary, before doing so it, it has to ascertain whether the material on record would be sufficient enough to form a just opinion on the disputed issues on record and if the available materials are sufficient on record, additional evidence need not be allowed. It is settled principle of law that that additional evidence would not be permitted to plug the loop holes in the case of a party. In this regard it is beneficial to refer to the un-reported decision of the Hon'ble High Court of Karnataka in R.F.A.No.1119 of 2006(DEC), Dated- 29.11.2022 N. Ramanjaneya (Since Deceased), in between Smt Munikallamma vs. Commissioner Bangalore Mahanagara Palike, the para No.62 and para No.63 read as under.

R.F.A.No.1119 of 2006(DEC).

Dated- 29.11.2022.

62. It is settled principles of law that the appellate court would not usually permit the additional evidence to be



placed on record._In order to allow the additional evidence on record, it is just and necessary for the party who wants to place additional evidence on record to plead as to why the proposed additional evidence is not placed on record before the Trial Court. So also it is necessary to plead when the party could not furnish the same before the Trial Court, despite his best efforts.

63. Yet another test that is required to be conducted by the appellate court before admitting the additional evidence on record is whether the material on record would be sufficient enough to form a just opinion on the disputed issues on record and if the available materials are sufficient on record, additional evidence need not be allowed. Likewise, it is settled principle of law that additional evidence would not be permitted to plug the loop



holes in the case of a party.

Applying the aforesaid principles to the case on record, admittedly, the alleged true copy of the resolution said to have been passed by the BDA in item No.475 was available much earlier to the disposal of the suit in the court below. The discussion made supra, especially, the admissions given by DW-2 in his cross examination clearly shows that there is no document available with BBMP to show that the suit property is the property that was handed over to the BBMP by the BDA after the approval of the lay out. Further, as discussed supra, third defendant could not have approached the BDA for approval of the Layout and BDA could not have entertained the application of the 3rd defendant in approving the Nandi View layout formed by the plaintiff. Even assuming that BDA has taken all such necessary steps for approval, as



discussed supra, the individual site owners could not have given up their rights for formation of a new Layout without a registered document and the action of BDA in approving the Layout is altogether different from Ex.P6 and D11 and modifying the layout plan as Ex.D1 is impermissible as held supra. Under such circumstances, the one page alleged true copy of the resolution in item No.475 without there being any further particulars as to date, file No. etc., would not advance the case of BBMP any further.

The ratio [underline emphasized by me] laid down in the un-reported decision of the Hon'ble High Court of Karnataka in R.F.A.No.1119 of 2006(DEC), Dated- 29.11.2022 in between N. Ramanjaneya (Since Deceased), Smt Munikallamma vs. Commissioner Bangalore Mahanagara Palike in order to allow the additional evidence to be place on record by the appellate court it is just and necessary for the party who wants to place additional



evidence on record to plead as to why the proposed additional evidence is not placed on record before the Trial Court. Further the Hon'ble High Court of Karnataka held that additional evidence would not be permitted to plug the loop holes in the case of a party.

49. As discussed above, the appellants-defendants did not explain as to why they have failed to produce the additional evidence in the trial court. There is no explanation in the present application as why they kept quite by retailing the documents that are filed before this court by way of the additional evidence. It is not the case of the appellants-defendants that the documents of the additional evidence have come into existence after disposal of the suit under challenge. The alleged documents produced by way of the additional evidence have come into existence long back during the year of 1963 and 1993 respectively, but still the appellants-defendants did not produce the same before trial court.



50. On the contrary the appellants-defendants have contended that they have handed over documents of the additional evidence to their counsel in the trial court. This argument and ground advanced by the appellants-defendants does not hold good. No counsel would keep documents along with him without producing the same before the trial court. This ground of the appellants-defendants that they have handed over documents of the additional evidence to their counsel who did not file in the trial court cannot be accepted.

51. As discussed above, it is the defence of the defendants in the written statement in the trial court that there was a partition taken place between the plaintiffs by name deceased Nannesab Kagi and the defendants by name deceased Mahaboob Hussainsab Kagi during the year 1991 itself as per the mutation was also effected as per the



mutation bearing MR No.23 dated-23-09-1996 marked at exhibit D-3.

52. On the contrary the defendant No.1 filed the present application under order under Order 41 Rule 27 saying that the father of the plaintiffs by name Nannesab Kagi sold the entire extent of the 09 acres 07 guntas out of the suit land survey number in favour of one Sanneppa during the year 1963 itself and said Sanneppa in turn sold the suit land in favour of the defendants by name Mahaboob Hussainsab Kagi through an un-registered sale deed in the same year. This totally contrary and in consistence defense of the defendant No.1 cannot be permitted to be taken by permitting the defendants by way of additional evidence.

53. In the considered opinion of this court, if at this stage if the defendants are permitted to take totally contrary and in consistence defense it may cause to prejudice to the plaintiffs-respondents. The documents by way of the



additional evidence are totally contradictory to the defense of the appellants-defendants taken in the trial court. Therefore, totally contrary and in consistence defense of the defendant No.1 cannot be permitted to be taken in the present appeal. In the considered opinion of this court, if at this stage if the defendants are permitted to take totally contrary and in consistence defense it may lead to change of nature of the defense of the appellants-defendants. In the considered opinion of this court, if at this stage if the defendants are permitted to take totally contrary and in consistence defense it may lead to second round of litigation among the parties as the documents produced by the appellants-defendants are against the defence of the appellants-defendants taken in the trial court. Hence point No.2 is answered in negative.

54. **POINT NO.2:-** In view of my findings on the above points, the appeal filed by the appellants/defendant No.1



and 2 are liable to be dismissed. Accordingly, I proceed to pass the following order.

:: O R D E R ::

The appeal filed by the appellants/defendant No.1 and 2 are dismissed.

Judgment and decree passed by the I Addl. Civil Judge and JMFC at Sindhanoor in OS No.335/2017 dated 05.04.2023 is confirmed.

IA No.2 filed under Order 41 Rule 27 R/w Sec.151 of CPC dated 28.07.2023 is also 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 1st day of July 2026)

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