

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND J.M.F.C., SHIKARIPURA.

PRESENT: SRI. SANDEESH T.L., B.COM., LL.B.
PRL. CIVIL JUDGE & JMFC,
SHIKARIPURA.

DATED THIS THE 3rd DAY OF JULY 2020

O.S.NO.10/2011 AND 11/2011

PARTIES IN O.S.NO.10/2011

Plaintiffs :

- 1) M.P. Sugandappa S/o M.G.
Palakshappa Gowda,
Aged about 55 years,
- 2) Kashivishwanath S/o M.G.
Palakshappa Gowda,
Aged about 45 years,

Both are Agriculturist,
R/o Salur village,
Shikaripura Taluk.

(By Sri. N.G. Parameshwarappa Adv.)

V/s

Defendants:

- 1) S. Jayadeva Shastry S/o
Mahabala Shastry,
Aged about 58 years,
R/o S.S. Road,
Shikaripura Town.
- 2) S. Niranjana Shastry S/o

Nagabhushan Shastry,
Aged about 46 years,
R/o Doddapete,
Shikaripura Town.

- 3) H.B. Palakshappa S/o
H.B. Veerappa,
Aged about 35 years,
R/o Doddapete,
Shikaripura Town.

(Sri. Shreepada Adv. for D1 & D2
& Sri. G.N. Shivaprakash for D3)

Date of Institution of Suit : 19-01-2011
Nature of Suit : Declaration and
Permanent Injunction
Date of recording of evidence : 04-07-2013
Date on which Judgment : 03-07-2020
was pronounced
Total Duration : Year/s Month/s Day/s
09 05 14

PARTIES IN O.S.NO.11/2011

- Plaintiffs :**
- 1) M.P. Sugandappa S/o M.G.
Palakshappa Gowda,
Aged about 55 years,
 - 2) Kashivishwanath S/o M.G.
Palakshappa Gowda,
Aged about 45 years,

Both are Agriculturist,
R/o Salur village,
Shikaripura Taluk.

(By Sri. N.G. Parameshwarappa Adv.)

V/s

- Defendants:**
- 1) S. Jayadeva Shastry S/o
Mahabala Shastry,
Aged about 58 years,
R/o S.S. Road,
Shikaripura Town.
 - 2) S. Niranjana Shastry S/o
Nagabhushan Shastry,
Aged about 46 years,
R/o Doddapete,
Shikaripura Town.
 - 3) B.G. Maltesh, (Bhandari)
S/o Giddappa Bhandari,
Aged about 29 years,
R/o Sankri Revennarakeri,
Shikaripura Town.

(Sri. Shreepada Adv. for D1 & D2
& Sri. G.N. Shivaprakash for D3)

Date of Institution of Suit : 19-01-2011
Nature of Suit : Declaration and
Permanent Injunction
Date of recording of evidence: 04-07-2013
Date on which Judgment : 03-07-2020
was pronounced

Total Duration : Year/s Month/s Day/s
09 05 14

(SANDEESH T.L.)
Prl. Civil Judge & JMFC.,
Shikaripura.

COMMON JUDGMENT

Pleadings in O.S.No.10/2011 and O.S.No.11/2011

The common plaintiffs by name M.P. Sugandappa and Kashivishwanath have filed suits against the defendants by name S. Jayadeva Shastry, S. Niranjana Shastry, H.B. Palakshappa and B.G. Maltesh respectively for the relief of Declaration and Permanent Injunction and also the suit schedule property in both the suits are also one and the same. It is to be noted that, both these suits are clubbed together as per the order dated 14-12-2012 passed in O.S.No.10/2011 to record common evidence in O.S.No.10/2011.

2. Plaintiff's case in brief is as follows:

PLAINT

The suit schedule property is a vacant site and situated at Salur Grama Panchayath and it measures to an extent of 325'X500 feet. Originally suit schedule property belongs to one Mahabala

Shastry who is none other than father of 1st defendant. During his lifetime, he entered into an agreement of sale on 15-02-1962 for a sale consideration of Rs.48,000/- and on the said date the said Mahabala Shastry received an advance amount of Rs.18,000/- in the presence of witnesses and executed an agreement of sale and delivered the possession of the suit schedule property to M. Palakshappa Gowda Patil @ Palakshappa Gowda S/o Gadlappa Gowda who is none other than the father of the plaintiffs. Further he agreed to pay the balance amount of Rs.30,000/- at the time of registration. But the said Mahabala Shastry postponed to execute the registered sale deed by saying one or the other reason and died leaving his sons and daughters as his legal heirs. The plaintiffs father contacted the legal heirs of the Mahabala Shastry to execute the registered sale deed but they are also postponed the same by giving an assurance that they will execute the registered sale deed after transferring katha into their names. The plaintiffs father died on 08-12-2004 by leaving behind the plaintiffs as his legal heirs. As per the said transactions, the katha of the property was standing in the name of Mahabala Shastry but the possession and enjoyment was with the plaintiffs father. On 27-05-1998 the Grama Panchayath Authorities passed a resolution and got mutated the katha in the name of plaintiffs father i.e., Palakshappa Gowda. After the death of plaintiffs father, the plaintiffs continued in

possession and enjoyment of the suit schedule property by paying kandayam to the Government. The plaintiffs are in an uninterrupted settled possession in the suit schedule property more than four decades. The plaintiffs are in long and continuous possession which is adverse to the interest of the true owner. The plaintiffs are growing commercial crops and also sowed maize crop in the suit schedule property.

3. Further, the defendants by colluding with the Panchayath Authorities behind the back of the plaintiffs got mutated the katha into their names by creating measurement to their convenient. Later, they created a nominal sale deed on 07-08-2010 in the name of 3rd defendant to defeat and defraud the possession and enjoyment of the plaintiffs over the suit schedule property. On 08-12-2010 the plaintiffs came to the knowledge of the same when the 3rd defendant came to the suit schedule property along with JCB machines and they tried to remove the ladies finger crop grown in the suit schedule property and also tried to destroy the maize crop stored in the suit schedule property. The plaintiffs resisted the illegal acts of the defendants with the help of village elders and neighbours. After that the plaintiffs enquired in the office of the Panchayath and obtained the documents. The sale deed executed by the defendant no.1 and 2 in favour of the 3rd defendant in both the suits is not binding on the rights of the

plaintiffs. Hence, this suit.

WRITTEN STATMENT

4. After service of summons in both the suits the defendant no.1 to 3 have appeared through their counsel and filed their written statement and denied the all the allegations except the existence of suit schedule property. They contended that the plaintiffs have not stated the specific valid reasons as to why the plaintiffs are silent for more than 49 years without enforcing the same in the manner known to law. The suit filed by the plaintiffs are hopelessly barred by limitation. The plaintiffs not produced any documents which was styled as agreement to sale dated 15-02-1962 to show that their father was put in possession of the suit schedule property in support of the said documents. The defendants admitted that the suit schedule property is a vacant site and is within the jurisdiction of Salur Grama Panchayath but denied the measurement of the suit schedule property as alleged in the plaint schedule. Further contended that long years in the past there existed rice-mill owned by the family of the defendant no.1 and 2 and subsequently it was stopped and time being the building had been collapsed. As per the contention of the plaintiffs when the agreement to sale was came into existence, the plaintiff no.1 as just born and plaintiff no.2 has not born at that time. Such being the case it is only a complected story knitted by the plaintiffs to harass

the defendants with the help of fake and fabricated documents name as agreement to sale. The plaintiffs have not brought all legal heirs of the Mahabala Shastry to this suit as such suit of the plaintiffs is bad for non-joinder of necessary parties.

5. Further contended that the Grama Panchayath had absolutely no jurisdiction to pass such a resolution on 27-05-1988 to mutate the katha in the name of the plaintiffs father Palakshappa Gowda. The alleged resolution suffers from exercise of excessive jurisdiction and not binding on the defendants. The defendant no.1 and 2 have legally sold the suit schedule property in favour of defendant no.3 in both the suits for a valuable consideration and put them in possession of the same. The plaintiffs have neither any title nor in possession of the suit schedule property. The suit is not properly valued and the value of the suit schedule property is more than Rs.6,40,000/- and the value of the property crosses pecuniary jurisdiction of this Court. Hence, the defendants prayed to dismiss the suit.

6. On the basis of the pleadings of the parties, this Court has framed the following:

ISSUES IN O.S.NO.10/2011

- 1) Whether the plaintiffs prove that one Mahabala Shastry agreed to sell the suit schedule property in favour of plaintiffs

father on 15-02-1962 for a valid consideration of Rs.48,000/- and executed the sale agreement on receiving the part consideration of Rs.18,000/- and also put the plaintiffs in possession of the same?

- 2) Whether plaintiffs prove that they are in continuous open and uninterrupted possession of the suit schedule property to the knowledge of defendants and public at large since from 15-02-1962 and thereby they perfected their title over the same on the sound principles of adverse possession?
- 3) Whether the plaintiffs prove that the sale deed executed by defendants no.1 and 2 in favour of defendant no.3 is nominal sale deed and liable to be declared as null and void as claimed in the plaint?
- 4) Whether the plaintiffs prove the measurement of the suit schedule property as claimed in the suit?
- 5) Whether the defendants prove that the suit is bad for non joinder of necessary parties?
- 6) Whether the defendant proves that this Court has no jurisdiction to try the suit as claimed in the written statement?
- 7) Whether the plaintiffs are entitled for the reliefs claimed in the suit?
- 8) What order or decree?

ADDL. ISSUE FRAMED ON 20-09-2013

- 1) Whether the plaintiffs prove that they are in possession of the suit schedule property as on the date of filing the suit?

ISSUES IN O.S.NO.11/2011

- 1) Whether the plaintiffs prove that one Mahabala Shastry agreed to sell the suit schedule property in favour of plaintiffs father on 15-02-1962 for a valid consideration of Rs.48,000/- and executed the sale agreement on receiving the part consideration of Rs.18,000/- and also put the plaintiffs in possession of the same?
- 2) Whether plaintiffs prove that they are in continuous open and uninterrupted possession of the suit schedule property to the knowledge of defendants and public at large since from 15-02-1962 and thereby they perfected their title over the same on the sound principles of adverse possession?
- 3) Whether the plaintiffs prove that the sale deed executed by defendants no.1 and 2 in favour of defendant no.3 is nominal sale deed and liable to be declared as null and void as claimed in the plaint?
- 4) Whether the plaintiffs prove the measurement of the suit schedule property as claimed in the suit?
- 5) Whether the defendants prove that the suit is bad for non joinder of necessary parties?

- 6) Whether the defendant proves that this Court has no jurisdiction to try the suit as claimed in the written statement?
- 7) Whether the plaintiffs are entitled for the reliefs claimed in the suit?
- 8) What order or decree?

ADDL. ISSUE FRAMED ON 20-09-2013

- 1) Whether the plaintiffs prove that they are in possession of the suit schedule property as on the date of filing the suit?

EVIDENCE

7. During trial in *O.S.No.10/2011* the plaintiff no.2 has examined himself as PW1 and got exhibited documents as per Ex.P1 to P10 and he got examined six witnesses on his behalf as PW2 to PW7. The defendant no.2 has examined himself as DW1 and the defendant no.3 examined as DW2 and got marked Ex.D1 to D4 and defendant no.3 in *O.S.No.11/2011* got examined himself as DW3 and he got marked documents as Ex.D5 to D8 and closed their evidence.

ARGUMENTS

8. Common argument was addressed by the learned counsels for both the parties and perused the evidence on record. The learned counsel for the defendant no.1 and 2 have filed their

written arguments.

FINDINGS

9. My answers to the **Issues** framed in both **O.S.No.10/2011 and O.S.No.11/2011** are as follows:

Issue No.1	:	In the Negative
Addl. Issue No.1	:	In the Negative
Issue No.2	:	In the Negative
Issue No.3	:	In the Negative
Issue No.4	:	In the Negative
Issue No.5	:	In the Negative
Issue No.6	:	In the Negative.
Issue No.7	:	In the Negative.
Issue No.8	:	As per final order for the following:

REASONS

Descriptions of the suit property in both O.S.No.10/2011 and O.S.No.11/2011:

The vacant site bearing now property No.170 measuring 325'X500 feet situated at Salur village in Shikaripura Taluk bounded by:

East : Eshwara Temple and Ujani Maheshwarappa

West : Palakhappa

North : Channel

South : Muslim Keri residential houses.

10. **Issue No.1 in both O.S.No.10/2011 and O.S.No.11/2011:** The plaintiffs have filed this suit against the defendants for the relief of declaration by way of adverse possession and permanent injunction with respect to the suit schedule property. The main contention of the plaintiffs is that the father of the defendant no.1 and 2 had executed an agreement to sale in favour of the plaintiffs father and put him into the possession of the property. The said facts is within the knowledge of defendant no.1 and 2. During the life time of the plaintiffs father, he had grown commercial crops in the suit schedule property and after his death, plaintiffs have been in possession of the suit schedule property. In order to prove their case, plaintiff no.2 has examined himself as PW1 and got marked Ex.P1 to P10. The main contention urged by the plaintiffs is that, the father of the defendant no.1 and 2 and their father had entered to an agreement to sale on 15-02-1962 for a valid sale consideration amount of Rs.48,000/- and executed the sale agreement by receiving the part sale consideration amount of Rs.18,000/- and put the plaintiffs father into the possession of the suit schedule property. But, in order to prove their case, the

plaintiffs have not produced any agreement to sale as alleged in the plaint. The plaint averments do not disclose a plea of part performance of the agreement by delivery of possession of the suit property, under the agreement, as required by *Section 53(A)* of the Transfer of Property Act, 1882, nor a relief for delivery of possession of the suit property. The defence in the written statement is one of denial of the agreement and that the defendants are in possession of the suit property. The incidence of stamp duty on the agreement of sale, under *Article 5* of the Karnataka Stamp Act, 1957 is not in dispute. From a plain reading of *Article 5(e)(i)* what is discernible is that when possession of property is delivered without executing a conveyance, attracts stamp duty as a conveyance No.20 on the market value of the property. *Section 2(d)* of the said Act defines a conveyance to include a conveyance on sale and every instrument by which property, whether movable or immovable is transferred. *Section 34* of the Act provides that an instrument chargeable with duty shall be admitted in evidence provided the instrument is duly stamped. Having regard to the afore stated provisions of the Statute, it is obvious that an unregistered agreement of sale with delivery of possession of immovable property, is deemed to be a conveyance attracting duty as conveyance No.20, on the market value of the said property. If the stamp duty is paid on the instrument, at the rate specified, the document shall be admitted

in evidence. It is only when the duty paid on the document is insufficient, that *Section 34* of the Act applies and the document is not admissible in evidence, unless the required rate of duty and penalty is paid. In the instant case, to prove the execution of the agreement to sale and put them into the possession, no document is produced by the plaintiff. Hence, I answer Issue No.1 in both the suits are answered in **Negative**.

11. **Issue No.2 and Additional Issue No.1 in both O.S.No.10/2011 and O.S.No.11/2011:** The case of the plaintiff is that originally suit schedule property belongs to one Mahabala Shastry who is none other than father of the 1st defendant. During his lifetime, he entered into an agreement of sale on 15-02-1962 for a sale consideration of Rs.48,000/- and on the said date the said Mahabala Shastry received an advance amount of Rs.18,000/- in the presence of witnesses and executed an agreement of sale and delivered the possession of the suit schedule property to M. Palakshappa Gowda Patil @ Palakshappa Gowda S/o Gadlappa Gowda who is none other than the father of the plaintiffs. Further he agreed to pay the balance amount of Rs.30,000/- at the time of registration. But the said Mahabala Shastry postponed to execute the registered sale deed by saying one or the other reason and died leaving his sons and daughters as his legal heirs. The plaintiffs

father contacted the legal heirs of the Mahabala Shastry to execute the registered sale deed but they are also postponed the same by giving an assurance that they will execute the registered sale deed after transferring katha into their names. The plaintiffs father died on 08-12-2004 by leaving behind the plaintiffs as his legal heirs. As per the said transactions, the katha of the property was standing in the name of Mahabala Shastry but the possession and enjoyment was with the plaintiffs father. On 27-05-1998 the Grama Panchayath Authorities passed a resolution and got mutated the katha in the name of plaintiffs father i.e., Palakshappa Gowda. After the death of plaintiffs father, the plaintiffs continued in possession and enjoyment of the suit schedule property by paying kandayam to the Government. The plaintiffs are in an uninterrupted settled possession in the suit schedule property more than four decades. The plaintiffs are in long and continuous possession which is adverse to the interest of the true owner. The plaintiffs are growing commercial crops and also sowed maize crop in the suit schedule property.

12. Further, the defendants by colluding with the Panchayath Authorities behind the back of the plaintiffs got mutated the katha into their names by creating measurement to their convenient. Later, they created a nominal sale deed on 07-08-2010 in the name of 3rd defendant to defeat and defraud the

possession and enjoyment of the plaintiffs over the suit schedule property. On 08-12-2010 the plaintiffs came to the knowledge of the same when the 3rd defendant came to the suit schedule property along with JCB machines and they tried to remove the ladies finger crop grown in the suit schedule property and also tried to destroy the maize crop stored in the suit schedule property. The plaintiffs resisted the illegal acts of the defendants with the help of village elders and neighbours. After that the plaintiffs enquired in the office of the Panchayath and obtained the documents. The sale deed executed by the defendant no.1 and 2 in favour of the 3rd defendant is not binding on the rights of the plaintiffs. As there was interference to their possession, the plaintiffs filed the suit for declaration that they are the absolute owner in possession of the property having perfected his title by adverse possession.

13. The defendants filed a detailed written statement denying the claim of the plaintiffs. the plaintiffs have not stated the specific valid reasons as to why the plaintiffs are silent for more than 49 years without enforcing the same in the manner known to law. The suit filed by the plaintiffs is hopelessly barred by limitation. The plaintiffs not produced any documents which was styled as agreement to sale dated 15-02-1962 to show that they were put in possession of the suit schedule property in support of the said documents. The defendants admitted that the suit

schedule property is a vacant site and is within the jurisdiction of Salur Grama Panchayath but denied the measurement of the suit schedule property. Further contended that long years in the past there existed rice-mill owned by the family of the defendant no.1 and 2 and subsequently it was stopped and time being the building had been collapsed. As per the contention of the plaintiffs when the agreement to sale was came into existence, the plaintiff no.1 as just born and plaintiff no.2 has not born at that time. Such being the case it is only a complected story knitted by the plaintiffs to harass the defendants with the help of fake and fabricated documents name as agreement to sale. The plaintiffs have not brought all legal heirs of the Mahabala Shastry to this suit as such suit of the plaintiffs is bad for non-joinder of necessary parties.

14. Further contended that the Grama Panchayath had absolutely no jurisdiction to pass such a resolution on 27-05-1988 to mutate the katha in the name of the plaintiffs father Palakshappa Gowda. The alleged resolution suffers from exercise of excessive jurisdiction and not binding on the defendants. The defendant no.1 and 2 have legally sold the suit schedule property in favour of defendant no.3 for a valuable consideration and put him in possession of the same. The plaintiffs have neither any title nor in possession of the suit schedule property. The suit is not properly valued and the value of the suit schedule property is more

than Rs.6,40,000/- and the value of the property crosses pecuniary jurisdiction of this Court. Therefore, the defendants sought for dismissal of the suit.

15. Before examining the plea and the evidence on record, it is necessary to know the law on the point. Possession is one of the few phenomena considered to be the most complex in the legal labyrinth and it becomes all the more abstruse when the term is prefixed by the epithet 'adverse' and nobody finds it simple to understand which is by nature adverse. The most outstanding feature of the complexity of the concept is that the claimant placing his foot on the plea of adverse possession claims his own title to a property to which the title of another is not disputed. The concept of adverse possession involves three elements, namely,

- (1) property, the subject of adverse possession;*
- (2) possession of that property by a person having
no right to its possession (Animus possidendi);
and*
- (3) the possession being adverse to the true owner.*

16. Adverse possession is a question of fact and in a claim of adverse possession, the title is not disputed; what is alleged is only its extinction. A plea of adverse possession being based on facts which have to be raised to that effect, is not necessarily a legal plea. The plea of adverse possession raises a mixed question

of law and fact. Where a person wants to base his title on it, he should specifically set up the plea. Unless the plea is raised, it cannot be entertained. A plea must be raised and it must be shown when possession became adverse, so that the starting point of limitation against the party affected can be found. The prayer clause may not be taken as a substitute for a plea. A person acquires title by way of adverse possession when he is in continuous, uninterrupted, hostile possession over a period of 12 years. In order to calculate 12 years period there should be a starting point. Therefore, the law mandates that the plaintiff who seeks a declaration that he has perfected his title by way of adverse possession should specifically plead the date from which his possession becomes adverse to that of the defendant. It is from that date if the plaintiff shows continuous, uninterrupted possession for a period of 12 years, then the right of the defendants to the property stands extinguished and the plaintiff would acquire title by way of adverse possession.

17. In so far as proof of adverse possession is concerned, it is a well-settled principle that a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*", that is, *peaceful, open and continuous*. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. Therefore, a person who

claims adverse possession should show:

- (a) *On what date he came into possession,*
- (b) *What was the nature of his possession,*
- (c) *Whether the factum of possession was known to the other party*
- (d) *How long his possession has continued, and*
- (e) *His possession was open and undisturbed.*

It is only on proof of all these ingredients the case of adverse possession is said to have been established. A person pleading adverse possession has no equities in his favour, since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

18. In support of his case the plaintiffs have examined in all six witnesses. The plaintiff no.2 was examined himself as PW1. He has produced the demand register extracts which are marked as Ex.P3 to P5 which shows that plaintiff's father by name Palakshappa Gowdru was in possession. In the Ex.P3 there is a recital that “ದಿನಾಂಕ:18/10/1995 ರಂದು ಸಭೆಯು 9 ರಲ್ಲಿ ತೆಗೆದುಕೊಂಡ ನಿರ್ಣಯದಂತೆ ಅನುಭವ ಪಾಲಾಕ್ಷಪ್ಪಗೌಡರು ಎಂದು ನಮೂದಿಸಿರುವುದನ್ನು ರದ್ದುಗೊಳಿಸಿದೆ”. Plaintiff no.2 has examined A.S. Panchaksharappa as PW2, Rudregowda as PW3, N.V. Prabhakar as PW4, Keshava C. as PW5, S.R.

Parameshwarappa as PW6 and Smt. Bagirathi Bai as PW7 and they are deposed about the sale of the schedule property by the defendant in favour of the plaintiff's father by way of agreement to sale and delivered the possession of the property and after his death, the plaintiffs are cultivating the said lands. When admittedly the value of the subject matter of sale was Rs.48,000/- and what is purchased is an immovable property, unless the sale is evidenced by a registered document, in the eye of law there is no sale. Plaintiff's father would not acquire any title by way of agreement to sale. Therefore, the entire oral evidence adduced in respect of agreement to sale has no value in the eye of law. It would not prove the case of agreement to sale pleaded by the plaintiff. That is precisely the reason why the plaintiffs bases their title on the plea of adverse possession.

19. On the contrary, the defendants have adduced evidence by examining themselves as DW1 to DW3 and producing 8 documents as Ex.D1 to D8. The documentary evidence produced by both sides taken as a whole and they disclose that the name of the plaintiffs father was entered in Column No.3 in the demand register extract as possessor. On coming to know of the same, the defendants have challenged those entries. Those entries have been set aside on 18-10-1995 by passing resolution. Therefore, in the light of these undisputed documentary evidence and oral evidence,

it is clear that the attempt made by the plaintiffs to get their name entered in the revenue records and to claim possession were all frustrated by the orders passed by the Panchayath Authorities. It is in this background and in the light of the oral and documentary evidence on record we have to find out whether the case set up by the plaintiff namely of adverse possession is established.

20. In the entire plaint it is not pleaded from what time the possession became adverse. On the contrary, the specific case pleaded by the plaintiffs is that their father purchased the suit schedule property from the defendants father on paying a part sale consideration of Rs. 48,000/- in the year 1968 and their father put into the possession as per the agreement to sale as a purchaser. The case pleaded is one of acquisition of title and he being put in lawful possession by the vendor. It is not reduced into writing and no sale deed was executed, much less registered and no documents were produced in support of the agreement to sale. Therefore, the case of sale and acquisition of title by such sale must necessarily fail. The revenue entries of 1968 even to this date stands in the name of the defendants and not the plaintiff. It shows, the so called sale was not given effect to and not acted upon. No revenue entry was made in favour of the plaintiffs on the basis of the said agreement to sale. Even in 1974-75 when for the first time the plaintiff's name was inserted in column No.3 of the

demand register extract, his name was entered as a person as possessor of the property under the defendant. Defendant's name was not removed. His name was not entered in the owners column by virtue of any sale or agreement to sale as contended by the plaintiff. Those entries were set aside in the proceedings as per the resolution by the Panchayath Authority. Therefore, even those entries cannot be taken into consideration to consider the possession of the plaintiff over the suit property.

21. The plaintiffs are claiming their adverse possession on the basis of agreement to sell. Possession on the basis of agreement to sell the adverse possession both are contradictory plea. While possession under agreement to sell is permissive possession, but for establishing adverse possession the plaintiff has to plea and prove his specific case. But, if the plaintiffs are claiming their possession mainly on the basis of agreement to sell, their possession cannot be an adverse possession. In support of this contention, I relied upon the case of *Achal Reddy Vs. Ramakrishna Reddiar* reported in **AIR 1990 SC 553**. In paragraph 8, the Apex Court held :

"The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an

essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties stipulating for a total divestiture of all the rights of the transferor in the property, and in case in which, there is a mere executory agreement of transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely against the transferor. Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse".

22. In Mohan Lal Vs. Mira Abdul Gaffar reported in **AIR 1996 SC 910** wherein the Apex Court in paragraph 4 has held :

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi nec clam nec precario. Since the appellant's claim is

founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant".

In view of the settled position of law by Apex Court, plaintiffs cannot be heard to contend that their possession was adverse when they say that they are in possession since the date of agreement and under the agreement. For adverse possession the party claiming adverse possession has to plead and prove his hostile act and adverse possession against true owner for statutory period. The Apex Court in *S.M. Karim Vs. Bibi Sakina* reported in **AIR 1964 SC 1255** held :

".....Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered, because each case must be determined upon the

allegations in the plaint in that case. It is sufficient to point out that in Bishun Dayal V. Kesho Prasad and Another, (A.T.R. 1940 P.C.202), the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea".

23. In the present case, pleadings of the plaintiffs that they are in possession since 1968 on the basis of agreement to sell. The plaintiffs have taken a plea that they are in possession since 1968 and on this basis, plaintiffs father and plaintiffs have acquired title. This plea is not in conformity with the law laid down by the Apex Court, in the circumstances, plaintiffs cannot acquire title by adverse possession. The position of law prior to 1963 under old Article 144 was that to claim adverse possession party claiming adverse possession had to plead that for last more than 12 years he is in possession, but under Article 65 of the Limitation Act, 1963 position is changed and person claiming adverse possession has to plead and prove that since when his possession became adverse to adversary and only since then he will acquire title by adverse possession.

24. If these materials are excluded, there is nothing on record to show that the plaintiffs was or is in possession of the property. If the plaintiffs claimed to be in possession as a purchaser firstly by their father, after his death they continued in

possession as a purchaser, it cannot be the starting point of adverse possession at all. It is well settled that the person who claims to be in possession of the schedule property pursuant to agreement of sale, under section 53 of Transfer of Property Act cannot claim adverse possession and wherefore, the question of plaintiff claiming adverse possession in the light of prayer for specific performance does not arise. The plaintiffs failed to produce the documents in support of their possession over the suit schedule property. As discussed above, the plaintiffs cannot claim adverse possession in the light of specific enforcement of contract and they further failed to prove their possession over the suit schedule property. Accordingly, I answer Issue No.2 and Additional Issue No.1 in both O.S.No.10/2011 and O.S.No.11/2011 in the ***Negative.***

25. **Issue No.3 in O.S.No.10/2011 and O.S.No.11/2011:**

As discussed above, the plaintiffs have failed to prove the possession over the suit schedule property as well as they failed to prove that the defendants father had executed an agreement to sale in favour of father of plaintiffs. The defendant no.1 and 2 sold their property in favour of the defendant no.3 in both the cases for valuable consideration. After getting the sale deed, the katha of the property was transferred into the name of defendant no.3 in both th cases as per Ex.D6 and D7 and the defendant no.3 in

O.S.No.10/2011 has paid the tax to the property which he was purchased. Except the pleadings, the plaintiffs have not produced any oral or documentary evidence to prove that the sale deeds executed in favour of defendant no.3 in both the suits by his vendors i.e., defendant no.1 and 2 is null and void and the said sale deed is nominal one. Hence, I answer this issue in the ***Negative.***

26. **Issue No.4 in O.S.No.10/2011 and O.S.No. 11/2011:**

The plaintiffs have filed the suit in respect of the site property measuring to an extent of 325'X500 feet situated at Salur village, Shikaripura Taluk. The plaintiffs took a stand that the defendants behind the back of the plaintiffs, managed the officials and created a document and measurement and mutated the katha into their names. In support of their contention the plaintiffs themselves produced two sale deeds which were executed by the defendant no.1 and 2 in favour of the defendant no.3 in both the suits which were marked as Ex.P1 and P2 respectively. In the said sale deeds the measurement of the property is 30,058 square feet and 92,580 square feet. But the plaintiffs have not produced any single piece of documents which shows the measurement of the suit property. Except the sale deeds none of the documents does not shows the extent of the suit schedule property. The burden is upon the plaintiffs to prove the measurements of the property which they are

claiming the relief. But the plaintiffs failed to produce the documentary evidence in respect of the measurement of the suit schedule property. Hence, I answer this issue in the **Negative**.

27. **Issue No.5 in O.S.No.10/2011 and O.S.No.11/2011:**

It is the specific case of the defendants that Mahabala Shastry died leaving behind his sons and daughters. To substantiate the same DW1 has not produced any oral and documentary evidence. He could have produced the Voters ID, Ration Card, Birth Certificates etc., pertaining to the children of Mahabala Shastry. In the absence of those documentary evidence, mere oral evidence does not substantiate the contention of defendants. Hence, I answer this issue in the **Negative**.

28. **Issue No.6 in O.S.No.10/2011 and O.S.No.11/2011:**

The defendants pleaded a specific contention that this Court does not have jurisdiction to try the suit. On the said fact, my predecessor treated the said issue as a preliminary issue and after hearing both the sides, my predecessor hold that this Court has jurisdiction to try the suit. Hence, I answer this issue in the **Negative**.

29. **Issue No.7 in O.S.No.10/2011 and O.S.No.11/2011:**

Since the plaintiffs failed to prove the alleged agreement to sale

executed in their favour by the father of the defendant no.1 and 2 and further failed to prove the adverse possession in respect of the suit schedule property, they are not entitled any relieves sought in this suit. Accordingly, I answer this issue in the **Negative**.

30. **Issue No.8 in O.S.No.10/2011 and O.S.No.11/2011:**

In view of my above discussion, I proceed to pass the following:

COMMON ORDER

Suit of the plaintiffs in
O.S.No.10/2011 is hereby dismissed
with costs.

Suit of the plaintiff in
O.S.No.11/2011 is hereby dismissed
with costs.

Draw decree accordingly.

Office to keep the copy of this
Judgment and Decree in
O.S.No.10/2011.

(Directly dictated to the stenographer on computer, typed by her, corrected by me and then pronounced in the Open Court on 3rd July 2020)

(SANDEESH T.L.)
Prl. Civil Judge & JMFC.,
Shikaripura.

ANNEXURE**I. List of witnesses examined on behalf of plaintiff:**

- PW1 : Kashi Vishwanatha S/o M. Palakshappa Gowda.
PW2 : A.S. Panchaksharappa S/o Shivappa.
PW3 : Rudragowda S/o Hanumantha Gowda.
PW4 : N.V. Prabhakar S/o Veerappa Shetter.
PW5 : Keshava C.
PW6 : S.R. Parameshwarappa.
PW7 : Baghirathi Bai W/o Champalal.

II. List of documents exhibited on behalf of plaintiff/s:

- Ex.P1 & P2 : Certified copies of Sale Deed.
Ex.P3 to P6 : Demand Register Extracts.
Ex.P7 : Resolution.
Ex.P8 : Genealogical Tree.
Ex.P9 : Death Certificate.
Ex.P10 : Photograph.
Ex.P10(a) : Compact Disk.

III. List of witnesses examined on behalf of defendant/s:

- DW1 : S. Niranjana Shastry S/o Nagabhushana Shastry.
DW2 : H.B. Palakshappa S/o H.B. Beerappa.
DW3 : B.G. Maltesh S/o Giddappa Bhandari.

IV. List of documents exhibited on behalf of defendant/s:

- Ex.D1& D2 : Tax Assessment Registers.

Ex.D3 : Tax Paid Receipt.
Ex.D4 & D5 : Original Sale Deed.
Ex.D6 & D7 : Demand Register Extracts.
Ex.D8 : Tax Paid Receipt.

(SANDEESH T.L.)
Prl. Civil Judge & JMFC.,
Shikaripura.

03-07-2020

Plff. by Sri. N.G.P. Adv.

D1 & D2 by Sri. S.P.D. Adv.

D3 by Sri. G.N.S. Adv.

For Judgment

Perused the records.

It is seen that on 22-06-2018 one witness by name Keshava C. has examined as PW5 and he himself filed another affidavit on 06-07-2018 and later, he has fully cross-examined. My predecessor by oversight treated him as PW6 instead of PW5. Therefore, to avoid future confusion and for the sake of convenience, the evidence of PW5 and PW6 is to be treated as PW5 for all future reference.

(Judgment pronounced in the open Court.
vide separate Judgment)

COMMON ORDER

Suit of the plaintiffs in O.S.No.10/2011
is hereby dismissed with costs.

Suit of the plaintiff in O.S.No.11/2011
is hereby dismissed with costs.

Draw decree accordingly.

Office to keep the copy of this
Judgment and Decree in O.S.No.10/2011.

(SANDEESH T.L.)
Prl. Civil Judge & JMFC.,
Shikaripura.