

KAUK020027952025



R.A./33/2025

IN THE COURT OF
PRL. SNR. CIVIL JUDGE AND CJM COURT, KARWAR AT
KARWAR,UTTARA KANNADA

Present: Smt. Kavita S. Undodi,
B.A.LL.B.(Spl)
Prl. Senior Civil Judge and CJM,
Karwar.

R.A. 33 / 2025

DATED THIS THE 16th DAY OF MARCH 2026

APPELLANT :

Sri. Ajit S/o Ram Pokle,
Age: 60 years, Occ: Business,
R/o: Near Maruti Temple, Vartyawada,
Chittakula, Sadashivgad, Karwar.

(Defendant in trial court)
(By Sri.C.D.N./V.G.A.- Advocates)

//Versus//

RESPONDENT :

Sri. U.F.M. Sri. Rajadhiraj,
S/o Brahmesh Wagh,
Age: 74 years, Occ: Business,
R/o: at & post Beach view, Ground floor,
Dr. N.A. Purandare Marg, Chowpathy,
Mumbai-400007.

(Plaintiff in trial court)
(Respondent by Sri. K.R.D. Advocate)

3. The nutshell of the pleadings of the plaint is as under:

The suit schedule property originally owned and possessed by grandmother of plaintiff by name Durgabai W/o Digambar Sohani. The suit land bearing Sy.No.950/2A measuring 0.4.4 of Chittakula village was standing in the name of grandmother of plaintiff till 2002 in the revenue records. His grandmother expired on 16-09-1984 for the purpose of avocation the family of the plaintiff settled at Mumbai since more than 50 years. The plaintiff and his other family members were born and brought up at Mumbai and doing business and they occasionally used to visit their native place at Sadashivgad.

4. Further averred in the plaint that the grandmother of plaintiff died leaving behind her two daughters by name Smt. Nayanatara and Smt. Sadbuddi. Smt. Sadbuddi is mother of plaintiff and Smt. Sadbuddi died 10-04-2005 leaving behind her plaintiff and 4 other children. One of brother of plaintiff by name Dyanaraj expired on 07-05-2013, the plaintiff is manager of the undivided joint family and joint family properties devolved from his grandmother and representing his joint family of late Durgabai. The mother of plaintiff also owned land bearing Sy.No.788 /4 measuring 0.8.8 of Chittakula village. Though the grandmother of plaintiff died on 16-09-1984 and mother of plaintiff died on 10-04-2005 due to rush of work the plaintiff has not taken any steps to get the names of legal heirs entered in the record of rights till 09-04-2013.

5. Further averred in the plaint that the plaintiff came to Chittakula village on 09-04-2013 for getting change of katha standing in the name of his grandmother and his mother and at that time it is noticed that the land standing in the name of his grandmother was transferred in the name of defendant as per bogus and fraudulent deed of sale deed through the village accountant Chittakula and village accountant directed him to obtain certified copy of sale deed. The plaintiff has obtained mutation entry and on the basis of said mutation entry he obtained certified copy of registered sale deed from the office of Sub-Registrar Karwar on 17-05-2013 and came to know that though his grandmother died on 16-09-1984 the defendant has managed and manipulated the bogus sale deed alleged to have executed and registered by the grandmother of plaintiff on 08-05-2002 i.e. 18 years from the date of death of late Durgabai without knowledge of the plaintiff and other family members.

6. Further averred in the plaint that the plaintiff and his family members have not aware of the fraud and fabrication of document made by the defendant to dupe the valuable property of the plaintiff by taking undue advantage of absence of plaintiff and his family members till 09-04-2013. The plaintiff was not in position to come to Karwar again and again and he had given his General Power of Attorney to his relative by name Govind Sarvottam Wagh who has filed complaint on 30-10-2013 before the JMFC Court Karwar against the defendant and court has referred the matter to the

PSI Chittakula for investigation and same is pending for investigation. The plaintiff has obtained certified copy of sale deed on 17-05-2013 and noticed that the defendant has got up and created forged, fraudulent and fabricated bogus document or sale deed to dupe the valuable property of plaintiff. Therefore the alleged sale deed is illegal, ab-initio void and NON EST in the eye of law and not binding on the plaintiff and his family members and who have succeeded the property. The alleged sale deed is bogus and no right, title, interest or possession to transfer infavour of defendant in the eye of law. As such mere entry in records does not create any title, interest or possession on the basis of fabricated document. The defendant with malafide intention played blatent fraud not only on plaintiff, but also on Sub-Registrar Karwar. On the basis of the bogus sale deed dated 08-05-2002, the defendant has committed criminal trespass and got unauthorized entry in the suit land and constructed building by taking undue advantage of absence of plaintiff. When the plaintiff called upon the defendant to set right the things by vacating the building and handing over the possession of the land after obtaining the sale deed copy, the defendant has directed the plaintiff to approach the court, if plaintiff is interested to do so, hence this suit for declaration and consequential relief of possession and injunction along with relief of rectification of entry in the revenue records.

7. The cause of the action to file the suit arose on 09-04-2013, when the plaintiff first time came to know about the entry of name of defendant on the basis of fraudulent and bogus sale deed dated 08-05-2002.

8. In pursuance of the suit summons, the defendant appeared through his counsel. The defendant has filed written statement denying the averments of the plaint and stated that the defendant has followed the legal procedure while purchasing the suit land and accordingly the defendant was put into the actual possession by Govind Sarvottam Wagh on behalf of Durgabai in the year 1991 itself and he has put up compound wall and put up horticultural plants which were now fruit yielding and also excavated a well after obtaining permission from the Gram Panchayat Chittakula and constructed residential building and paying tax to the Grama Panchayat. The defendant has taken electricity connection now with oblique motive after 24 years the plaintiff on instigation by Lalsab Nadaf has managed to file this frivolous suit by taking help of Govind Sarvottam Wagh who has also turn hostile for yielding to money power of Lalsab Nadaf.

9. Further averred in the written statement that the defendant in the year 1991 was in search of land to construct residential house at Sadashivgad, hence he approached Lalsab Nadaf who was running a small phova mill and grocery shop. The defendant used to purchase grocery items from the said Lalsab Nadaf and he shown his intention to purchase small land to construct

a house as defendant and his mother were residing in rented house at Mudageri. The Lalsab told that the Phova Mill in which he is running business belongs to Govind Sarvottam Wagh and he manages the property of one Brahmin Community, who have migrated to Mumbai. The defendant along with Lalsab Nadaf, Krishna Bala Kurdekar of Sadashivgad and Bhikku Gopal Shetty of Khargo village approached Govind Sarvottam Wagh at his residence and at that time Lalsab Nadaf introduced the defendant to Govind Wagh and on discussion the Govind Wagh informed that the opposite to the land purchased by Lalsab Nadaf there is a land belongs to Durgabai Sohani who is residing at Mumbai. Further Govind Wagh fully assured to the defendant that Smt. Durgabai will execute the sale deed for consideration amount of Rs.60,000/-. Further Govind Wagh informed to the defendant to pay a sum of Rs.10,000/- towards part payment and rest of Rs.50,000/- has to be paid at the time of final sale deed. Accordingly in the month of January 1991 the defendant has paid Rs.10,000/- in cash to Govind Wagh in the presence of Lalsab Nadaf, Krishna Bala Kurdekar and Bhikku Gopal Shetty and put the defendant in possession of Sy.No.250/2A measuring 0.4.4.

10. Further averred in the written statement that the defendant has obtained permission from Gram Panchayat Chittakula to construct small house and he has constructed compound wall and planted horticultural saplings and also constructed residential house which is known to the general public of Chittakula and also Govind Wagh. The defendant through Lalsab

Nadaf went and requested Govind Wagh to execute sale deed in his favour as promised by him, but the Govind Wagh went on telling that the owner of the land will come to Karwar from Mumbai and this went on for many years and further when the defendant started putting pressure on Govind Wagh to execute final sale deed introduced M.G. Medekar to the defendant during the first week of May 2002 and gave all instructions to prepare draft sale deed in respect of Sy.No.950/2A measuring 0.4.4 and accordingly sale deed was drafted and Govind Wagh to told the defendant and Shri.Medekar to get the sale deed registered on 08-02-2002. On which date Shri. Govind Wagh introduced aged lady as Durgabai Sohani and also another person Anil Sohani of Mumbai and also aged person by name S.S.Nayak, accordingly as per agreement, the defendant in the presence of Lalsab Nadaf, Bhikku Gopal Shetty paid sum of Rs.50,000/- in cash to Govind Wagh which was handed over to the aged lady who was introduced as Durgabai Sohani. The seller executed the sale deed and thereafter the two witnesses i.e. Anil Sohani and S.S.Nayak put their signature as witnesses and M.G. Medekar has put his signature as scribe. The defendant is innocent purchaser and since 1991 he invested huge amount and developed the land by constructing compound wall putting up horticultural saplings which are fruit yielding, well and residential building, since then the defendant is in actual possession and enjoyment of the said property till now.

11. Further averred in the written statement that about two years back Lalsab Nadaf has extended his Phova business by putting up heavy machineries which manufacture in heavy quantity. The residential house of the defendant is situated exactly opposite to the phova Manufacturing Industry of Lalsab Nadaf and in between the house of defendant and the industry of Lalsab Nadaf the Sadashivgad-Londa road is situated and this being the fact, the black ash from the Industry of Lalsab from chimney. Due to this ash spreading in the rooms of the house of defendant and also affecting the health of the defendant and his family members. Therefore the defendant has given representation to Pollution Control Board, Panchayat, Deputy Commissioner and local public and the said Lalsab Nadaf taking this as a prestigious issue started harassing the defendant by sending gundas to the house of defendant. The Lalsab Nadaf gave threat to the defendant. The Lalsab Nadaf approached the Govind Wagh and influenced him and he has obtained GPA and managed to file criminal case. There is no cause of action to file the suit and prayed to dismiss the suit by imposing exemplary costs of Rs.25,000/-.

12. On the basis of the above pleadings the trial court has framed the following issues and additional issue;

ISSUES

- 1. Whether the plaintiff prove that the registered sale deed dated 08-05-2000**

executed in favour of the defendant is null and void and not binding on the plaintiff?

- 2. Whether the plaintiff further prove that, the sale deed alleged to be executed by deceased Durgabai W/o Digambar Sohani who died on 16-09-1984 is created by fraud, forgery, fabrication and subsequent transaction also void and non binding on the family?**
- 3. Whether the plaintiff further prove that, he is absolute owner of the suit schedule property and he is entitled to direct the defendant to hand over the vacant possession of the suit schedule property after demolishing all kind of building, structure at the cost of defendant to the plaintiff?**
- 4. Whether the plaintiff is entitled for the relief claimed?**
- 5. What order or decree?**

13. To prove the case of the plaintiff, the GPA holder of plaintiff got examined as PW-1 and got marked Ex.P-1 to Ex.P-16. On the other hand the defendant got examined as DW-1 and got marked Ex.D-1 to Ex.D-25.

14. The trial court after considering the oral and documentary evidence available on record and after hearing the arguments, has partly decreed the suit of the plaintiff as per judgment dated 30-08-2025. Being aggrieved by the same, the defendant has preferred this appeal on the following;

:: GROUNDS ::

- 1. Originally suit is filed by plaintiff against defendant before Hon'ble Addl. Civil Judge, Karwar in O.S. No.214/2013. The trial court has partly decreed the suit filed by plaintiff. Against the judgment and decree passed by trial court the defendant is preferred this appeal before this court. The defendant in original suit is referred as appellant for the purpose of this appeal and original plaintiff is referred as respondent.**
- 2. That the learned judge has wrongly passed the judgment and decree that the appellant is hereby directed to hand over the possession of suit schedule property to the respondent within 3 months from the date of this judgment. Failure on which, the respondent is entitled recover the possession of suit schedule property with due process of law. This aspect of the judgment and decree is contrary to law and true facts of the case and challenged in this appeal.**
- 3. Similarly the sale deed dated 08-05-2002 registered as document No.189/2002-03 of book No.1 before the Senior Sub Registrar, Karwar is not binding on the family of respondent is also not correct.**
- 4. The appellant is got executed sale deed in his favour through general power of attorney executed by original owner of suit schedule property. The respondent has produced Ex.P-5 i.e., death certificate of Smt. Durgabai**

Digambar Sohani who executed the GPA to sale suit schedule property. To prove said death certificate the respondent has not examined competent person who issued the death certificate. When appellant has disputed this fact it is the duty of the respondent to prove said document beyond reasonable doubts. This aspect is not considered by trial court while passing the judgment.

- 5. The respondent has not even examined any person to prove that executants of GPA is expired before the date of execution of sale deed. The person who is authorized to execute sale deed is approached appellant to complete the process of sale deed to dispose of the suit schedule property as per terms of General Power of Attorney. The respondent and their family members are not published any public notice saying that the executants of GPA was expired and hence no one should enter with any transaction in respect to suit schedule property with GPA holder. As per the documents available on the date of execution of sale deed it is presumed that the GPA given by Smt. Durgabai Digambar Sohani in force legally. As the respondent and their legal heirs has not taken any preventive steps to bring the information about the death of executants of GPA .**
- 6. The arguments advanced and the rulings cited have not been considered by the court below.**
- 7. The trial court not properly applied the provisions of law to the facts of the case involved and has wrongly ordered for that the case of respondent may be considered. Though there is preliminary decree passed.**

15. After appeal was registered, the notice issued to the respondent, the respondent appeared through his counsel. The trial court records received.

16. In the cross objection/cross appeal the respondent has challenged the judgment and decree in respect of refusal of relief of declaration sale deed dated 08-05-2002 is null and void and refusal of relief of declaring the subsequent loan transaction also being void and illegal and not binding on the family of the plaintiff and also refusal of relief of mandatory injunction directing the Deputy Commissioner Uttara Kannada and also revenue officers enter in the name of the plaintiff in record of rights, on the following:

GROUNDS

1. The impugned judgment and decree refusing to grant the reliefs stated above at Sl. No.1 to 3 is quite contrary to law, illegal, perverse and capricious and findings given by trial court refusing the said reliefs is deserves to be set aside by granting the relief in this appeal in favour of the respondent/ plaintiff.

2. Once the trial court come to the conclusion and decided that plaintiff has proved the issue No.1 to the effect that the Registered sale deed dated 08-05-2002 got executed by defendant/appellant is outcome of impersonation and also outcome of blatant fraud then there is no option for trial court other than to grant the relief declaring the sale deed as null and void as

claimed by the plaintiff. The trial court failed to note that as per the settled position of law by Hon'ble Supreme Court in Case No. Civil Appeal 14803/2024 disposed on 20-12-2024 between Mallavva Vs. Kalasammannvar Kallamma once the plaintiff proves the title over the suit property when the suit is for possession based on title unless the Defendant proves adverse possession plaintiff cannot be non suited and it cannot be hold that suit is barred by law of limitation. In this case Defendant has never pleaded plea of adverse possession in his written statement or anywhere. The Hon'ble Apex Court also held that under such circumstances Article 65 of the Limitation Act is applicable and not Article 58 as the Article 58 is the residuary provision for seeking declaration and it should be read along with Article 65 only. Hon'ble Supreme Court has confirmed the judgment and decree passed in the said matter granting decree for declaration and possession and the fact in this said case and in this case are almost similar in nature and also confirmed the judgment and decree passed by Hon'ble High Court of Karnataka dated 13-6-2019 passed in RSA/100071/2019.

3. Further the trial court gone on wrong notion that the entries on revenue records create cause of action to file the suit. The trial court failed to note that entries in revenue records are

not document of title and those are meant for collecting land revenue to the government. If the base of title itself is void and illegal entry in revenue records loses its presumption provided in law. In this case admittedly owner of the suit property is one Smt. Durgabai Sohane and plaintiff is the successor in interest and the court has already held that plaintiff has proved the title over the suit property based on the material evidence of records. As per the order passed in RSA/200372/2018 dated 26-2-2019 between Ishwar Vs. Kallappa by Hon'ble High Court of Karnataka, Kalburgi Bench, the law is settled as under -

"Mere existence of adverse entry in the Revenue Records would not give rise to cause of action. But only when the right asserted is infringed or there is threat to infringe the right the cause of action arises. In the case on hand the Plaintiff has categorically stated that the cause of action only arose in the year 2013. To rebut the same the Defendant has not lead any cogent evidence. In the absence of any evidence in support of the defence of limitation by the Defendant the trial court rightly held issue No.5 which is with regard to limitation negatively.

Para No.19, The First Appellate Court also dealt with the issue of Limitation and rightly held at Paragraph No.30 which reads as follows

Paragraph 30. Therefore it is clear that the threat of the right of Plaintiff is on 1-7-14 which is stated by him and is not on the date of Mutation Entry. It is stated that he came to know the entry in the year 2014 only when the Defendant asserted his title over the suit property. Therefore the suit is filed within time in the view of fact that adverse entry in favour of the Defendant is in the Record of Rights does not amount to deny title in the absence of right of adverse possession claimed by the Defendant. Therefore the contention was raised by the Appellant that the suit is barred by limitation is also not sustained under law."

In view of the above settled position of law it is crystal clear that the trial court totally gone on wrong notion of law and held that entries in the revenue record give cause of action and wrongly held that declaratory relief to declare the sale deed as null and void cannot be granted. Trial court failed to note that the suit of the Plaintiff and the relief for declaration to declare the sale deed null and void is based on the ground of fraud and impersonation and Sec. 17 of the Limitation Act is applicable to the facts of the case. As per Sec. 17 of the Limitation Act the cause of action to file suit arises for the plaintiff when the fraud or forgery committed by the defendant comes the knowledge of the plaintiff.

In this case unless the certified Copy of the sale deed is obtained it is not possible to the plaintiff to guess the alleged forgery and fraud and impersonation committed by defendant while getting the registration of impugned sale deed and thus only after obtaining certified copy plaintiff/respondent got the knowledge of impersonation made by defendant to get the suit property transferred in his name by way of sale deed when the original owner Smt. Durgabai Sohane has expired on 16-9-1984 and the sale deed Registered on 8-5-2002. Hence the declaratory relief claimed by the plaintiff/respondent from the date of obtaining certified copy of the sale deed being within three years is well within time and, as such, the trial court finding that the said relief is barred by limitation is per-se illegal, perverse and capricious and deserves to be rejected and the relief claimed by plaintiff declaring that the Sale Deed null and void be allowed in decreed with cost.

4. So far the relief claimed by plaintiff/respondent concerned to declaring the loan transaction is void and not binding on the plaintiff/respondent is concerned trial court has committed miscarriage of justice stating that there is no pleadings etc... In fact the loan taken by defendant is clearly recorded in the other

rights column of the R of R of suit land from the concerned Bank, by further playing fraud on the Bank. Once the title of the plaintiff is proved and it is proved that defendant has not acquired any title over the suit property, it goes without saying that whatever loan transaction made by appellant/defendant with any Bankers is automatically by implication of law deemed as void and that relief is to be granted by virtue of law by the trial court. Unfortunately trial court failed to note this important aspect of the case and wrongly held that no declaratory relief concerned to loan transaction to declare the same as void and not binding on the plaintiff and thus committed serious injustice to the plaintiff. It is therefore prayed that the said Order refusing to grant declaratory relief to declare that the loan transaction done by defendant/appellant as null and void be set aside and the said relief may be allowed and decreed by this Hon'ble Court by allowing this cross objection.

5. The trial court has also failed to follow the settled position of law by Division Bench of Hon'ble High Court of Karnataka, reported in 1985(2) KLJ 483 relevant page 496 para 27 even though cited by the plaintiff/appellant before trial court wherein it is clearly held that as per the Decree the Civil Court has got the jurisdiction to direct the Revenue Authorities to change or

rectify the entries as per Sec. 135(2) R/w Sec. 132 of Land Revenue Act and further it is to be noted that as per Sec. 43 of Karnataka Court Fee and Suit Valuation Act, for rectification of entries Court Fee is required to be paid by the plaintiff when the said relief is claimed. Unfortunately without considering the above said citation referred on the side of plaintiff the trial court wrongly and illegally refused to grant the relief to pass Order to enter the name in R of R by deleting the name of defendant by issuing direction to the concerned Revenue Authorities it is therefore prayed that this Hon'ble Court may be pleased to set aside the Order and findings given by Trial Court refusing to grant relief to send the Decree to Deputy Commissioner Uttara Kannada Karwar for rectifying the entries as prayed in the Plaint and grant the said relief by allowing this Cross Appeal.

17. Heard the arguments of learned counsel for the appellant and the learned counsel for respondent.

18. The points arises for my consideration are as under;

- 1. Whether the findings of the trial court on various issues are in accordance with law and facts?**
- 2. Whether the judgment and decree under appeal is opposed to the law, facts capricious**

and thereby warranting interference by this court?

3. What Order or Decree?

19. My findings to the above referred points are as under;

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

**Point No.3 : Is as per final order
for the following;**

REASONS

20. Point No.1 and 2 :- These two points are interrelated to each other, to avoid repetition of facts these two points taken for common discussion.

It is specific case of plaintiff is that the suit schedule property originally belongs to grandmother of plaintiff and the same was standing in her name till 2002. The grandmother of plaintiff died on 16-09-1984, the plaintiff and his family members were residing at Mumbai for their avocations since more than 50 years. However the plaintiff and his family members occasionally and every year visit to Sadashivgad Karwar. Smt. Durgabai died leaving two daughters by name Sadbuddi who is mother of plaintiff and Nayanatara. The mother of plaintiff died on 10-04-2005 leaving behind plaintiff and 4 other children. The mother of plaintiff also owned land bearing Sy.No.788/4 measuring 0.8.0 of Chittakula village. Though the grandmother

of plaintiff and mother of plaintiff died, but due to rush of work the plaintiff has not got transferred the properties in their name till 09-04-2013. The plaintiff came to Karwar on 09-04-2013 for getting change of katha which were standing in the name of his grandmother and his mother and came to know that the property which was standing in the name of his grandmother was transferred in the name of defendant on the basis of fabricated, forged and fraudulent deed of sale and obtained certified copy of sale deed on 17-05-2013 and came to know that though his grandmother expired on 16-09-1984, but the defendant has managed to get registered the sale deed i.e. after 18 years of death of his grandmother and without knowledge of the plaintiff and other family members. The plaintiff and his family members were not aware about the said fabricated sale deed. The defendant has created the sale deed only with view to dupe the valuable property by taking undue advantage that plaintiff and his family members are residing in Mumbai. The alleged sale deed is Ab-anitio void, and NON NEST in the eye of law. The defendant has committed criminal trespass and unauthorized entry in the suit land and constructed the building.

21. The GPA holder of the plaintiff has filed evidence on affidavit and reiterated the averments of the plaint. In the cross examination PW-1 stated that his father has filed suit as a GPA holder and his father died on 03-08-2018 and after filing of the suit his father has not attended the court on single date of hearing. Further in cross examination he has stated that when

he was at tender age i.e. in the year 1981-1982 he saw the plaintiff at the first time and whenever the plaintiff came to his village he used to reside in their house for 5 to 8 days. Further PW-1 stated that the plaintiff came to his house in the year 1982 and thereafter plaintiff came to his house in the year 2000 and since 1982 to 2000 the plaintiff has not come to his house and only in the year 2013 the plaintiff came to his house. If the cross examination of PW-1 is taken into consideration it shows that the plaintiff has not visited the house of GPA since 1982 to 2000 and thereafter till 2013, hence it falsify that the plaintiff used to visit the Sadashivgad occasionally and every year.

22. In the cross examination PW-1 stated that he know that where exactly Sy.No.750/2A and Sy.No.788 are situated and also he stated that Sy.No.750/2A is situated 2 Kms away from his house and the said house is adjacent to the main road. Further PW-1 stated that the defendant has constructed the said house, but he do not know when the defendant has constructed the said house. If the cross examination of PW-1 is taken into consideration it shows that he is having knowledge about Sy.No.750/2A which is situated about 2 KMs away from his house and defendant has constructed the house which is adjacent to the main road. In present case the suit schedule property is Sy.No.950/2A and it is not the case of plaintiff that the defendant has constructed house in Sy.No.750/2A. Further PW-1 clearly stated that he do not know when the defendant has constructed the said house. Even in the pleadings the plaintiff has not stated when the

defendant has constructed the house, but only stated that on the basis of the sale deed the defendant has trespassed into the suit schedule property and constructed the building in the suit schedule property. Neither the plaintiff nor the present GPA holder of the plaintiff has disclosed when the defendant has constructed the house nor they disclosed the measurement of the building constructed by the defendant.

23. In the cross examination PW-1, the defendant has made suggestion that " ಈ ದಾವಾ ಆಸ್ತಿಯ ಬಗ್ಗೆ ನಿಮಗೆ ಕಳೆದ ಐವತ್ತು ವರ್ಷಗಳಿಂದ ಮಾಹಿತಿ ಇದೆ ಎಂದು ಕೇಳಿದ್ದಕ್ಕೆ ಸಾಕ್ಷಿಯು ನಮ್ಮ ತಂದೆಯವರು ಈ ದಾವೆಯನ್ನು ಹಾಕಿರುತ್ತಾರೆ ಅವರು ತೀರಿಕೊಂಡ ನಂತರ ನಾನು ಮುಂದುವರಿಸುತ್ತಿದ್ದೇನೆ." if this piece of evidence is taken into consideration it shows that the PW-1 nowhere stated that he is having knowledge about the suit schedule property, but he stated that his father has filed suit and after his death he continued with the suit. On the other hand the recitals of Ex.P-10 is that "I am unable to come down to manage, supervise look after and develop the said landed property. Hence I had appointed my relative Shri Govind Sarvottam Wagh, as my lawful attorney to do acts, deeds and things, by executing General Power of Attorney dated 28-10-2013. As my General Power of Attorney holder Shri Govind Sarvottam Wagh, is not fit to attain this court due to his old age ailments now I am appointment of his son Shri Mangesh Govind Wagh as my lawful attorney to do following acts and deeds and attain before the Civil Judge Court Karwar in O.S.No.214/2013 for giving evidence and signing all documents depositions

etc.” If the recitals of Ex.P-10 is taken into consideration it shows that during the life time of earlier GPA i.e. Govind Wagh Ex.P-10 came to be executed, but PW-1 stated that after death of his father he continued with the case. Ex.P-10 executed on 28-04-2015, therefore there is variation in the evidence of PW-1 and Ex.P-10. The PW-1 denied that the defendant got executed sale deed through Durgabai Suhani and Anil Suhani has put signature as a witness and also denied that sale deed was registered as per the law.

24. It is specific case of the plaintiff is that Smt. Durgabai died on 16-09-1984 and the defendant got executed sale deed fraudulently after 18 years of death of Smt. Durgabai. Though in the cross examination of PW-1, the defendant has made suggestion that the Durgabai has executed sale deed in the presence of Anil Suhani and S.S. Naik, but the defendant has nowhere made suggestion that the Durgabai was alive and she came to the Sub-Registrar Office and executed the sale deed. The plaintiff has produced Ex.P-5 death certificate of Smt. Durgabai W/o Digambar Sohani issued by Municipal Corporation of Grater Mumbai. The defendant has not produced any document to show that Smt. Durgabai was alive at the time of execution of sale deed. Even on perusal of the order sheet and deposition of PW-1 it shows that the defendant has not objected to mark the death certificate of Smt. Durgabai Sohani. On perusal of the Ex.P-5 it shows that the date of registration of death of Durgabai Sohani is mentioned as 25-09-1984 i.e. after 10 days of death of Smt. Durgabai. The factum of death of Smt.

Durgabai Sohani entered in the registers maintained by the Municipal Corporation of Greater Mumbai. Therefore death certificate is admissible in evidence as contemplated under section 17(2) of Registration of Births and Deaths Act. The said document is maintained by the public office and there is presumption under section 119(e) of Bharatiya Sakshya Adhiniyam 2023.

25. Though the defendant has taken contention that Smt. Durgabai Sohani has executed the document, but he has not produced any document nor examined any witnesses to substantiate his contention. In the written statement he has taken contention that the date of death of Smt. Durgabi is not within his knowledge. The defendant has not specifically denied the date of death of Durgabai nor he has produced documents to show that as on the date of the sale deed Durgabai was alive. Even he has not taken proper steps to prove his contention in respect of sale deed. There is no evidence on record to prove that Smt. Durgabai has executed sale deed on 08-05-2002. On perusal of the Ex.P-5 and oral evidence on record it is opinion of the court that the plaintiff has proved factum of death of Smt. Durgabai Digambar Sohani on 16-09-1984.

26. Ex.P-3 is certified copy of sale deed dated 08-05-2002, Ex.D-6 is original sale deed are one and the same documents and came to be executed on 08-05-2002, but on perusal of the Ex.P-5 it is clear that Smt. Durgabai Sohani died on 16-09-1984, hence the Ex.D-6 is fabricated

document after 18 years of death of Smt. Durgabai Sohani. Hence sale deed dated 08-05-2002 is NON EST and non existing in the eye of law.

27. In the pleadings the plaintiff has stated that the grandmother of plaintiff Durgabai died on 16-09-1984 leaving behind her two daughters by name Nayanatara daughter of Digambar Sohani and Sadbuddi daughter of Digambar Sohani as a legal heirs and he is son of Sadbuddi and his mother expired on 10-04-2005 leaving behind him and other 4 children and one of his brother Dyanaraj died on 07-05-2013. The plaintiff is undivided family manager and the property is devolved from his grandmother and he is representing the joint family of Durgabai and as such he is looking after all family affairs and day to day transactions relating to the property matters.

28. In the pleadings the plaintiff has stated that the plaintiff is undivided family manager of the family and joint family properties devolved from his grandmother and representing his joint family of late Durgabai as such in all family affairs and day to day transactions relating to properties and other matters. On perusal of the pleadings it shows that the deceased Durgabai had two daughters by name Sadbuddi and Nayanatara. The plaintiff is son of Smt. Sadbuddi, but he has not disclosed about the Smt. Nayanatara. Though the plaintiff stated that he is manager of the family but not stated about the family of the Nayanatara nor there is explanation how he became the joint family member of family of Nayanatar. Further there is no averments that

Nayanatara or his family members have authorized him to file suit. The trial court in para No.38 of judgment held that "the plaintiff is the son of Smt. Sadbuddhi W/o Brahmesh Wagh who is daughter of deceased Smt.Durgabai W/o Digambar Sohani. Perusal of Ex.D-3 it reveals that Smt. Durgabai W/o Digambar Sohani died leaving behind Smt.Sadbuddhi W/o Brahmesh Wagh and Smt.Nayantara W/o Vaikunt Gandbhir as her only legal heirs. Documents available on records got exhibited on behalf of the plaintiff goes to show that plaintiff is the son of Smt. Sadbuddhi W/o Brahmesh Wagh and hence, he is entitled to file the present suit and to seek the relief sought in the plaint as there is no bar to file the suit for the declaration and recovery of possession of the land in question by one of the co-owner of the suit land on behalf of his family against the third party." But the plaintiff has not specifically pleaded he is representing the branch of Nayanatara also, but filed suit stating that he is the manager of the joint family.

29. The plaintiff has produced Ex.P-11 i.e. M.R. Extract, on perusal of the same it shows that on 06-06-1997 application has been moved to mutate the names of Smt. Sadbuddi and Smt. Nayanatara on the basis of inheritance as a joint holders of the Sy.No.543/15, Sy.No.788/4, Sy.No.788/1 and Sy.No.543/12 and there is no mention of Sy.No.950/2A, though the plaintiff has produced M.R.extract stating that after death of his grandmother the name of his mother and his aunt mutated in revenue records. But the

plaintiff has not disclosed why he has not taken steps to mutate suit schedule property in his name.

30. In the pleadings the plaintiff has stated that though his grandmother Durgabai expired on 16-09-1984 and mother of plaintiff Smt.Sadbuddi expired on 10-04-2005, but due to rush of work, the plaintiff has not taken any steps to get the names of legal heirs entered in the revenue records to the Sy.No.788/4 to the extent of 0.8.0 and to the suit schedule property. On perusal of the Ex.P-11 the names of mother of plaintiff and Nayatara mutated in revenue records on 24-09-1997. Therefore it falsify the contention taken by the plaintiff in the pleadings. Sy.No.543/15, Sy.No.788/4, Sy.No.788/1 and Sy.No.743/12 are appearing in Ex.P-11, but he has not disclosed other properties appearing in Ex.P-11 except Sy.No.788/4. Therefore it creates doubt about the Sy.No.950/2A i.e. suit schedule property of his grandmother.

31. Ex.P-15 is certified copy of village form No.6, it shows that Smt. Durgabai Sohani has purchased house situated in Sy.No.788/4. But though the some other properties are appearing in Ex.P-15, but those properties are not appearing in Ex.P-11. If the other properties were also under the ownership of Smt. Durgabai, after death of Smt. Durgabai said properties would have mentioned in Ex.P-11. After death of Durgabai Sohani, the name of mother of plaintiff and Nayanatara mutated to the Sy.No.543/15,

Sy.No.788/4, Sy.No.788/1, Sy.No.543/12, but not mutated Sy.No.950/2A and other properties appearing in Ex.P-15.

32. Ex.P-6 is RTC extract pertaining to Sy.No.950/2A, the name of Sohani Durgabai W/o Digambar is appearing in column No.9 and 12 of RTC for the year 1991-1992 to 2001-2002. On perusal of Ex.P-6 it clear that the suit schedule property was standing in the name of Smt.Durgabai Sohani, though the plaintiff has produced Ex.P-11, but the Sy.No.950/2A not mutated in the name of his mother or his aunt. The plaintiff is not stated the reasons why they have not got mutated Sy.No.950/2A in the name of his mother and aunt and after death of his mother in the name of legal heirs of his mother and his aunt Nayanatara. Though as per Ex.P-11 some of the properties were mutated in the name of mother of plaintiff and his aunt Nayanatara in the year 1997, but suit schedule property not mutated in the name of LRs of Smt. Durgabai. Though the plaintiff has stated that till 2013 due to rush of work he has not got mutated the properties standing in the name of his grandmother and mother, but Ex.P-11 falsify the contention taken by the plaintiff. Further the plaintiff has stated that he used to visit the native place occasionally, but not stated since 1984 till 2013 he has not visited his native place.

33. The plaintiff has filed suit for declaration and mandatory injunction and though he has stated that his grandmother had another daughter by

name Nayanatara, but he has not disclosed anything about the Smt. Nayanatara and his family members and nowhere he has stated that he is filing this suit on behalf of branch of his mother and also on behalf of branch of Nayanatara.

34. The plaintiff has sought declaration in respect of sale deed dated 08-05-2002 and also sought for mandatory injunction to remove the building situated in the suit schedule property and also for recovery of possession and permanent injunction. Though it is held that the sale deed is ab-initio and not in existence in eye of law, but the plaintiff is claiming that they have succeeded the suit schedule property on the basis of inheritance, but he has not filed suit for declaration of his title over the suit schedule property. When the plaintiff is claiming that he is legal heir of Smt. Durgabai Sohani, therefore he has to prove the same. The plaintiff has not produced surviving member certificate issued by the competent authority nor he has produced any documents to show that he is grandson of Smt. Durgabai. Though the defendant has not seriously disputed the relationship of plaintiff with Smt. Durgabai, but the plaintiff has approached the court stating that he is grandson of deceased Durgabai, he has to prove the same by producing the documents and he has to seek the relief of declaration of title.

35. In the judgment the trial court has made an observation that "as per the inheritance which is evident from Ex.P-11 and other documents as

discussed supra. On perusal of Ex.P-12 it reveals that after demise of Smt. Sadbuddi Wagh who is one of the daughter of deceased Smt. Durgabai Sohani, the legal heirs of deceased Sadbuddi have succeeded the property of their mother by virtue of right of inheritance." Though the trial court has made an observation that the daughters of Durgabai have succeeded the properties, but as per Ex.P-11 there is no mention of suit schedule property i.e. Sy.No.950/2A and Ex.P-12 is pertaining to Sy.No.788/4. Though the plaintiff has produced Ex.P-6 RTC extract and Ex.P-15 M.R. extract, but the revenue documents are not title deeds. The revenue records i.e. Jama Bandi, Mutation entries or fiscal administrative documents used for tax collection, not legal proof of ownership. They do not create, extinguish or confer title to immovable property. While they can indicate possession, they are not title deeds and cannot substitutes for sale deeds. The revenue records are maintained primarily fiscal purposes such as recording the persons responsible for paying land revenue. The revenue records are admissible as evidence of possession, but cannot establish title, therefore for legal ownership one must rely on registered documents. When the plaintiff is claiming his ownership over the suit schedule property stating that he inherited the property from his grandmother he would have produced the documents to show that he is legal heir of the Smt. Durgabai and succeeded.

36. The defendant is relying upon the registered sale deed even it is forged / fabricated document it creates a cloud over the title, since the

defendant has got registered document, therefore the suit for mere possession is insufficient. The plaintiff has to seek declaration of title over the suit schedule property as a legal heir of deceased Smt. Durgabai. The plaintiff is claiming as a legal heir of Durgabai, therefore he has to assert his title as a legal heir of the deceased, but the plaintiff without seeking his declaration over the suit schedule property as a legal heir of deceased filed suit for possession, mandatory injunction and for permanent injunction.

37. The learned counsel for the respondent relied upon citation reported in **AIR 2000 Supreme Court page 1099 it is held that – Possession taken under void documents- Suit to recover possession simpliciter- Can be filed- There is no need to seek declaration about in validity of documents – Even if relief of declaration is sought along with recovery of possession –Suit would be governed by Article 65 and not Article 58.**

In that suit the original plaintiff has filed suit for declaration and possession filed against the State of Maharashtra and others. The suit was filed on 22-08-1976 seeking a declaration that order dated 26-05-1976 by which the right of pre-emption was exercised by the defendants and after death of plaintiff his representatives continued the suit. But in present case the plaintiff has filed suit for declaration in respect of sale deed dated 08-05-2002 and for mandatory injunction and permanent injunction on the basis of inheritance. In that suit the plaintiff himself was owner of the suit schedule

property. But in present case the plaintiff is claiming his right as a legal heir of Smt. Durgabai, therefore the plaintiff has to seek declaration of title over the suit schedule property as a legal heir of Durgabai.

38. The learned counsel for the respondent relied upon decision in **Mallavva Vs Kalasammannvara Kallamma (Since dead)**- In that suit the plaintiffs have filed IA under Order 6 Rule 17 of CPC in the appeal and it is held that the 1st appellate court exercise the power under Order 6 Rule 17 of C.P.C. as it is a continuation of proceedings and allowed the application and legal heirs of plaintiff got inserted prayer of possession and it is held that suit is not barred by limitation. But in present case the plaintiff is claiming his right over the suit schedule property as a legal heir of Durgabai Sonahi, therefore he has to file suit for declaration of title for suit schedule property and for possession. As per the pleadings the defendant has constructed the house in the suit schedule property, but plaintiff nor PW-1 have stated that when the defendant has constructed the house in the suit schedule property. Though the plaintiff is residing at Mumbai, but PW-1 is residing in the same village, therefore it shows that he had knowledge about the construction of the house by the defendant. But not filed the suit for declaration of title over the suit schedule property when the plaintiff has approached the court seeking mandatory injunction, he has to seek declaration of title over the suit schedule property.

39. In the judgment para No.45 the trial court while answering issue No.4 made an observation that Ex.P-6 sale deed was registered on 08-05-2002. It is not in dispute that the said sale deed is registered one. It is no doubt true that it is evident that the sale deed is an outcome of impersonation as alleged and the same has been already discussed above. Merely because the said sale deed is held to be impersonated and the same is not binding on the plaintiff, it cannot be said that the plaintiff was not aware of the execution and registration of the said sale deed. Since the said deed is registered documents, the plaintiff must have constructive notice of the said transaction in view of section 3 of the Transfer of Property Act. The said sale deed came into being in respect of suit schedule property, it is not possible to say that the plaintiff is not at all aware of the execution and registration of sale deed. There is no satisfactory evidence on the part of the plaintiff to say that he was not aware of the sale deed. Further in para No. 47 of the judgment the trial court has held that apart from the above on facts, it is to be noted that as could be seen from entire materials on record, it is clear that the defendant has constructed the house in the suit schedule property prior to the year 2002. Therefore it shows that the defendant has constructed the house prior to 2002. But trial court has decreed the suit of the plaintiff in respect of possession stating that the plaintiff has filed suit within 12 years from the date of sale deed, but though the trial court in the judgment held that the defendant has constructed the house prior to 2002.

40. There is no pleadings that when the defendant has constructed the house, what is the measurement of the house constructed in the suit schedule property. The pleadings in the plaint are vague one. The trial court has decreed the suit in part and directed the defendant to handover the possession of the suit schedule property to the plaintiff within 3 months from the date of this judgment. Failure on which, the plaintiff is entitled to recover the possession of the suit schedule property with due process of law. The trial court has not granted relief sought by the plaintiff in respect of demolition of all kind of buildings, structures, trees etc. at his own costs while handing over the suit schedule property to the plaintiff. The plaintiff not got appointed the court commissioner to prove the existence of building, measurement of the building, existence of compound wall and trees in the suit schedule property. There is no pleadings or material evidence to prove the exact measurement of building, compound wall and standing trees in the suit schedule property. When the plaintiff sought for demolition of above structure and standing trees he has plead and prove the extent of measurement of building, compound and standing trees in the property, without specific pleadings granting mandatory injunction does not arise and without any observation the trial court has granted relief of possession, hence the judgment and decree of the trial court is not proper.

41. The plaintiff has sought the declaration the sale deed dated 08-05-2002 got up and registered in the name of defendant in the office of Senior

Sub-Registrar Office Karwar transferring the right, title, interest and possession of the suit schedule property of the deceased Durgabai W/o Digambar Sohani who has expired on 16-04-1984 is NON EST, non existing in the eye of law, ab-initio, void, illegal and not at all binding on the family of the plaintiff. Though the trial court has held that the defendant has committed fraud in creation of sale deed and the transactions made under the sale deed not binding on the plaintiff in his family members, but while answering issue No.4 the trial court held that the suit of the plaintiff is barred by limitation. The trial court decreed the suit for recovery of possession which is inconsistency with each other. Though the plaintiff has not sought for declaration of title over the suit schedule property, but without such relief the trial court has granted relief of recovery of possession and permanent injunction against defendant which is not correct.

42. When the plaintiff is seeking mandatory injunction and permanent injunction he has to seek declaration over the suit schedule property without declaration of title over the suit schedule property, the suit for possession, permanent injunction is not maintainable. But without considering the same the trial court wrongly party decreed the suit, hence same is liable to be set aside.

43. The respondent has filed cross objection/ cross appeal stating that the trial court comes to conclusion and decided that plaintiff has proved the issue

No.1 to the effect that the registered sale deed dated 08-05-2002 got executed by defendant / appellant is outcome of impersonation and also outcome of blatant fraud then there is no option for trial court other than to grant the relief declaring the sale deed as null void as claimed by the plaintiff and trial court has failed to note that as per the settled position of law. Once the plaintiff proves the title over the suit schedule property when the suit is for possession based on title unless the defendant proves adverse possession plaintiff cannot be non suited and it cannot be hold that suit is barred by limitation and further the trial court gone on wrong notion that the entries on revenue records create cause of action to file the suit. The trial court failed to note that entries in revenue records are not document of title and those are meant for collecting land revenue to the government. If the base of title itself is void and illegal entry in revenue records loses its presumptions provided in law. The respondent has filed this cross appeal through General Power of Attorney, but on perusal of the cause title of the cross objection it has been presented by the Govind S/o Sarvottam Wagh, Age: 86 years, Occ: Business, not by the Mangesh S/o Govind Wagh. In the cross examination PW-1 himself admitted that his father died in the year 2018, but the respondent / plaintiff filed cross appeal through the dead person which is not maintainable.

44. Though in the cross appeal the respondent has stated that the trial court once come to conclusion and decided that plaintiff has proved the issue

No.1 that the registered sale deed dated 08-05-2002 got executed by the defendant/ appellant is out come of impersonation and also outcome of blatant fraud then there is no option for trial court other than to grant the relief declaring the sale deed as null and void. But in the pleadings the plaintiff nowhere stated that when the defendant has constructed the house and the exact measurement of the house constructed by the defendant in the suit schedule property. As per the pleadings, on 09-04-2013 the plaintiff came to Chittakula Sadashivgad in Karwar Taluk for getting the change of katha standing in the name of his grandmother and his mother and at that time he came to know that the land which was standing in the name of his grandmother was transferred in the name of defendant on the basis of fraudulent sale deed. There is no dispute that the sale deed came to be executed on 08-05-2002 and which was registered. It is evident that the sale deed is outcome of impersonation and null and void. But it cannot be say that the plaintiff was not aware of the execution and registration of sale deed. The plaintiff not specifically pleaded and proved that he was unaware of the said sale deed. The plaintiff must have knowledge regarding the sale deed. Further the earlier GPA who has filed the suit or the subsequent GPA who had given evidence before the court are the residence of Sadashivgad and they would have knowledge about the sale deed and also the construction of the house by the defendant in the suit schedule property.

Therefore it shows that the plaintiff is aware of the sale deed and construction of the building by the defendant in the suit schedule property.

45. In the pleadings plaintiff has stated that he came to Karwar on 09-04-2013 and there is no pleadings that he has not visited Sadashivgad since 2002 to 2013, but on the contrary the plaintiff has stated that he used to visit the Sadashivgad occasionally. Therefore it shows that the plaintiff also having knowledge about the sale deed got registered by the defendant. But the plaintiff nor the earlier GPA who has alleged to have looking after the suit schedule property on behalf of plaintiff and the PW-1 in cross examination admitted that the plaintiff used to visit Sadashivgad and used to stay in the house of PW-1 and so also in the pleadings the plaintiff has stated that occasionally he used to come to his native place. Hence on perusal of the evidence on record it shows that the plaintiff is having knowledge about the sale deed and construction made by the defendant in the suit schedule property.

46. The defendant has produced two tax paid receipts pertaining to House No.716/A, but the plaintiff has not disputed the revenue receipts nor elicited anything from the mouth of PW-1. The said receipts pertaining to the year 1996-1997 and 1992-1993 respectively. Therefore on perusal of the oral and documentary evidence on record it shows that though the sale deed came to be executed on 08-05-2002 and defendant has constructed the building in

the suit schedule property, but the plaintiff has not filed the suit for declaration within three years from the date of sale deed nor he has filed suit for recovery of possession immediately when the defendant started construction. The trial court in its judgment observed that the defendant has constructed the building prior to 2002. Further the plaintiff has not disclosed when the defendant has constructed the house. Therefore considering the material evidence on record the trial court rightly come to the conclusion that the declaration sought by the plaintiff in respect of sale deed is barred by limitation.

47. Further the respondent has challenged the findings given by the trial court in respect of relief that issue direction to Deputy Commissioner Uttara Kannada and other Revenue Officers to enter the name of plaintiff in the record of rights pertaining to suit schedule property. This court is not having jurisdiction to issue direction to the revenue authorities to enter the names of the parties and trial court has rightly given findings that civil courts have no jurisdiction to issue any direction to carry out revenue entries in the RTC and section 61 of Karnataka Land Revenue Act does not permits the Civil Court to pass an order directing the Tahasildar in respect of any correction in the Record of Rights maintained by the revenue authorities.

48. The plaintiff has sought relief that to declare that the subsequent loan transaction also being void and not binding on the plaintiff. But the plaintiff

has not specifically pleaded about the subsequent transaction, nor produced the documents to substantiate his contention, hence without any material evidence on record the plaintiff is not entitled for the said relief. Furthermore the suit of plaintiff without declaration of the title is not maintainable.

49. Further as observed above that the plaintiff has filed this suit without seeking declaration of title over the suit schedule property, hence suit is not maintainable. Further the cross appeal is filed by the respondent through the GPA who is no more, hence without verifying the cause title the cross appeal has been filed, hence looking to any angle the cross appeal filed by the respondent is not maintainable, hence deserves to be dismissed. Hence the judgment and decree passed by the trial court is not correct, hence, it is opinion of the court that the judgment and decree of the trial court is erroneous, capricious and not in accordance with law, as such interference of this court is necessary, accordingly **Point No.1 answered in Affirmative and Point No.2 answered in Affirmative.**

50. Point No.3 :- In view of the above discussion, I proceed to pass the following;

: O R D E R :

**The appeal filed by the appellant /
defendant is hereby allowed.**

The suit filed by the plaintiff is hereby dismissed.

The cross appeal filed by the respondent is hereby dismissed.

Draw Decree Accordingly.

Office is directed to return the TCR along with copy of this judgment forthwith.

(Dictated to Stenographer directly on lap-top and typed by her, script corrected, signed and then pronounced in the open court by me on this the **16th day of March 2026**).