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TITLE SHEET FOR JUDGMENTS IN SUITS

IN THE COURT OF XIII ADDL.CITY CIVIL COURT AT BENGALURU
(CCH.No.22)

Present: **Sri. ONKARAPPA.R, B.Sc., LL.B.**
XIII ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU

Dated this the **13th day of July, 2026**

O.S. No.25427/2008

PLAINTIFF:	Smt. Narayanamma Aged about 46 years W/o Late K.Gundu Rao R/at No.6, 1st Cross, Rathnamma layout, Manorayanapalya R.T. Naqgar, Bengaluru-560032 (By Sri.H.V.V.,Advocate)
	VS
DEFENDANTS:	1. SMT. A. SUGANDRAMMA Aged about 62 years, Wife of Late. A.N. Annaiah Reddy, Since deceased by her LR's 1(a). Smt. Chandrakantha Daughter of A. Sugandramma Aged about 58 years

Residing at No. 7/11, Maruthi Extension, Madivala, Bengaluru-560068

1(b). Smt. Pushpa
Daughter of A. Sugandramma
Aged about 55 years
Residing at No. 7/11, Maruthi Extension, Madivala, Bengaluru-560068

2. R. BHASKAR
Aged about 49 years, Son of Sri. Ramaswamy Reddy Residing at No. 4/3, Rathnamma Layout, Manorayanapalya, R.T. Nagar post, Bangalore-560032.

3. SRI. SATHYANARAYANA REDDY
Aged about 54 years, Son of Muniswamy Reddy, Since dead by his LR's

3(a). Smt. R. Chandra Kantha
Wife of Late. Sathyanarayana Reddy
Aged about 63 years

3(b). Mr. Vinay Sathya
Son of Late. Sathyanarayana Reddy

Aged about 42 years
3(c) Mrs. Sunitha Uday Reddy
Daughter of Late. Sathyanarayana Reddy
Aged about 38 years

All are residing at No. 74, Rathnamma Layout, Manorayanapalya, R.T. Nagar post, Bangalore-560032.

4. THE INDIAN BANK
Koramangala Branch, No. 512, 4th Cross, 6th Block, Koramangala, Bangalore-560095.
Represented by its Manager.

5. SRI. A. VENKATARAMANA
Major
Residing at No. 41, 12th Cross, 4th Main, C.P. Layout, Wilson Garden, Bagnalore-560030.

(D1(a) & (b) – DAN advocate
D2 – VSP advocate
D3(a) to (Counsel) – DAN
D4 – RB advocate
D5 – BNS, advocate)

Date of Institution of the suit	06.03.2008
Nature of the suit	Injunction Suit

Date of Commencement of recording of evidence	07.01.2016		
Date on which judgment was Pronounced	13.07.2026		
Total Duration	Year	Month	Day
	18	04	08

(**ONKARAPPA.R**)
XIII Addl. City Civil & Sessions Judge, Bengaluru.

: J U D G M E N T :

The plaintiff has filed the suit for permanent injunction and she sought for restrainment of the defendants, their agents or anybody claiming any right under or through them from interfering the possession of the plaintiff over the suit schedule property.

SCHEDULE

All that part and parcel of the residential property bearing Municipal No. 6, situated at 1st Cross, Rathnamma Layout, Manorayanapalya, Bangalore, now coming within the limits of B.M.P. Ward No. 96, (Hebbal), Bangalore, measuring East to West: 30 Feet and North to South: 45+44/2 feet, in all 1335 Sq. Ft. and bounded on:

EAST BY:	Property bearing Khaneshmuri No.5
WEST BY:	Property bearing Khaneshmuri No.7
NORTH BY:	Road and
SOUTH BY:	Private property

2. **Brief facts of the case as per plaint averments, are as under:-** the Plaintiff has purchased the site bearing No.6, situated at 1st Cross, Rathnamma Layout, Manorayanapalya, Bangalore, measuring East to West 30 Feet and North to South 45+44/2 Feet, in 1335 Sq.ft. from Smt. A. Sugandramma vide Sale deed dated 22-08-05, registered, before the Sub-registrar, Bangalore North Taluk. Since then the Plaintiff is in possession and enjoyment of the said property which is more fully described in the Schedule hereunder and hereinafter referred to as the "SCHEDULE PROPERTY". After so purchasing the said site, the Plaintiff got the katha of the Schedule property changed to her name and she is paying the taxes to Bangalore Mahanagara palike in her name and subsequently by

obtaining license for construction of the premises. The Plaintiff as per the approved plan has constructed five houses, out of which she is residing with her family in one house, situated in Ground Floor. The other four houses have been let out by the Plaintiff to separate tenants on monthly rental basis. A few weeks back a few people came near the Schedule Property and discussing about some purchase transaction. The Plaintiff on hearing their conversation enquired as to whom they are and they then narrated that they have come on behalf of Fifth Defendant, who has purchased the Schedule Property and the adjacent two properties also. The Plaintiff being shocked about the information told them that she is the owner of the Schedule Property and she has not sold the same to anyone else. The said people a request of the Plaintiff gave the address of the Fifth Defendant and suggested to her to obtain the details from him directly. Being shocked about the alleged ownership of the Fifth Defendant regarding the Schedule property, the Plaintiff approached the first Defendant from whom she has purchased the site, she took sometime to verify the information and then she would give the information. After few days, the first Defendant informed that the Second Defendant had obtained a decree of Specific Performance against the third Defendant in respect of the Schedule property and the adjacent two properties bearing No. 4 and 5 also. On further enquiry the Plaintiffs learnt that the third Defendant, who was the previous owner of the Schedule Property, had entered in to an Agreement of sale dated 20-04-90. By virtue of which, the possession of the Schedule property and the adjoining properties had also been given possession of on the same day, upon receipt of the entire sale consideration. The Plaintiff is further informed that by virtue of the said Agreement to Sell, the third Defendant had transferred all his right and interest in the properties including the Schedule property, except executing the sale deed, for which purpose certain compliances was required to be obtain by the Third Defendant. The first Defendant after giving the said information further informed the Plaintiff that the third Defendant after having so transferred his right, title and interest in the Schedule property is alleged to have pledged the site in the Schedule property and the adjoining properties bearing No. 4 and 5 and some other properties to the fourth Defendant, as surety to a loan transaction. The fourth Defendant alleging default in the loan transaction had taken steps under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act and had auctioned the Schedule property and the adjacent sites in favour of the fifth Defendant illegally. It is not in dispute that there was an Agreement to sell between the Second and third Defendant, where by the third Defendant had relinquished all his rights together with possession in favour of the second Defendant in respect of the site in the Schedule property and the adjoining properties. The alleged mortgaging of the site in the Schedule property and the other properties mentioned in sale agreement by the third Defendant in favour of the fourth Defendant is long after the third Defendant had executed sale agreement. As such the third Defendant had no right to create any encumbrance on the Schedule property subsequent to 20-04-90. Consequently, the fourth Defendant also does not get any right in respect of such alleged subsequent mortgage as well. Interestingly there is no such encumbrance recorded in respect of the Schedule property in the jurisdictional sub-registrar office during the relevant period. Under the above circumstances there appears to be collusion between Defendants 3 to 5 in putting the Schedule property for auction without the knowledge of the Plaintiff, who is very much residing in the Schedule property. At no point of time any body had come to the Schedule property and conducted any proceedings including auction proceedings, as has been said to have been done by the fourth Defendant. Though all these information was made available by first and Second Defendant, and when the Plaintiff insisted upon the first Defendant to set right this confusion and illegal transaction, she is only assuring to sort out the things and secure the title of the Plaintiff in respect of the Schedule property, but she has not taken any positive steps so far. In view of the apprehension of the Plaintiff that the first Defendant may not take expeditious steps to ensure that the title of the Plaintiff is in no way affected, she is constrained to file this suit to protect her title and interest. The Plaintiff is a bonafide purchaser of the site in the Schedule property for valuable consideration and she has invested huge amount in putting up five houses. In view of the improvements made in the said site, the Schedule property is worth more than Rs.1,00,00,000/-(Rupees One Crore only). The first Defendant informed the Plaintiff that on her verification the auction sale conducted by the fourth Defendant given in favour of the fifth Defendant in for paltry sum of about Rs.1,15,50,000/- (Rupees One Crore Fifteen Lakhs Fifty Thousand only) as against the value of all the properties would be about more than Four Crore and on this back ground the first Defendant stated that the auction sale has been conducted in collusion between Defendants 3 to 5 to defraud bonafide purchaser like the Plaintiff. She has gathered all these information recently, since the Plaintiff is not aware of any steps taken by her to get the auctioned process nullified and there by protect the title of the Plaintiff in respect of the site in the Schedule property conveyed by her, the Plaintiff is filing this suit. In view of the fact that the Schedule property itself is worth about Rs.1,00,00,000/-(Rupees One Crore only), the act of the fourth Defendant in allegedly auctioning the Schedule property and the adjoining properties for paltry sum of about Rs. 1,15,50,000/- (Rupees One Crore Fifteen Lakhs Fifty Thousand only) speaks volume off the collusion between the Defendants 3 to 5 to make unlawful gains to benefit themselves in the name of the fifth Defendant. No auction proceedings has ever taken place at the Schedule property, obviously the said Defendants could have created documents to show as if there had been an auction, which has never held. Under these circumstances the fifth Defendant does not get any right, title or interest over the Schedule property belonging to the Plaintiff which is said to be part of the alleged auction sale. As the Plaintiff has not been able to secure a copy of the auction sale proceedings and any further documents in that regard, she has not been able to produce documents in this regard as of now. Considering the above facts, it becomes crystal clear that the Plaintiff right, title and interest is in no way affected by the collusive acts of Defendants 3 to 5. As the fifth Defendant by virtue of such collusive acts between the said Defendants may forcibly try to disposes the Plaintiff and her four tenants from the Schedule property, this suit is being filed. The Plaintiff is having direct and subsisting right in the suit schedule property. The fifth Defendant by colluding with the other Defendants is making hectic attempts to detrimental to the interest of the Plaintiff. Under these circumstances, the Plaintiff has no other alternative remedy than to approach this court for her redressal. The fifth Defendant has once again came near the suit schedule property and told the Plaintiff that he along with his supporters would take the possession of the suit schedule property with force whatever may be the consequences. The fifth Defendant is a powerful person having men and material and also has the support of anti-social elements that certainly dispossess the plaintiff from the schedule property. The Plaintiff is a poor lady having no support to the onslaught of the Defendants. The Plaintiff is in possession of the schedule property exercising her lawful right which she has acquired through registered sale deed. The fifth Defendant has no right, title and interest of whatsoever in respect of the Schedule property to interfere with the possession of the Plaintiff. The suit is valued for the purpose of court fee and jurisdiction as per the separate valuation slip annexed to this plaint. The suit is properly valued and court fee paid, is sufficient. Hence, the plaintiff sought for decreed the suit.

3. In against the suit summons, 1st defendant have appeared through their choiced advocate. Defendant No.1 has chosen to filed his written statement. Wherein the written statement defendant No.1 denied all averments of plaint as false and concocted. Further, 1st Defendant contended, previously 2nd defendant was the lawful owner of the suit schedule properties and he had entered into an agreement to sale dated 20/04/1990 with 3rd defendant. In the said agreement to sale, the possession of the suit schedule property was delivered to 2nd defendant. Subsequently, when the 3rd defendant delayed in executing necessary sale deed in favour of 2nd defendant as per the agreement to sale, 2nd defendant got filed a suit in O. S. No. 16200/2003 against 3rd defendant for the specific performance of contract in Civil Court and obtained decreed the said suit and issued directions to the 3rd defendant to execute a registered sale deed in favour of 2nd defendant. In view of the about facts it is very clear that after due verification and gone through the contents of the judgment

and decree passed by the Civil Court, 1st defendant has purchased the suit schedule property from the 2nd defendant and he is bonafide purchaser. 1st defendant had no knowledge about the alleged mortgage executed in favour of the 4th defendant bank by 3rd defendant. There is no fault on part of the 1st defendant in selling the suit schedule property in favour of the 2nd defendant. 1st defendant acted in bonafide manner. Moreover, 3rd defendant himself stated in his written statement, he never mortgaged the suit schedule property in favour of 4th defendant and the 3rd defendant has also challenged the alleged mortgage before the High Court in Writ Petition No. 146/2006 and the said petition is pending for adjudication. Therefore, 4th and 5th defendant can not get clear and valid title over the suit schedule property. Both 1st and 2nd defendants are bonafide purchasers and there was no third party encumbrance at time of sale transaction. Therefore, 1st defendant had purchased by investing her hard earned money and acquired lawful right and possession in the suit schedule property. The above documents produced by the 1st defendant clearly go to show, 1st defendant is the bonafide purchaser and whatever the transaction with third persons or 4th defendant bank subsequently created by 3rd defendant are not binding either on 1st defendant or on 2nd defendant. 1st defendant does not dispute the averments made in Para 12 to 22 of the plaint and there is no fault on his part in executing the sale deed in favour of the plaintiff. 1st defendant has acted in good faith and has not suppressed anything to the plaintiff. Under the above facts and circumstances, 1st defendant prays to dismiss the suit as against the 1st defendant in the interest of justice and equity.

4. Defendant No.2 appeared through their counsel on virtue of the suit summons and he chosen to filed their written statement. Wherein the written statement defendant No.2 denied the averments of the plaint as false and concocted. Further, 2nd Defendant contended, it becomes crystal clear the Plaintiff right, title and interest is in no way affected by the collusive acts of Defendants 3 to 5. As the fifth Defendant by virtue of such collusive acts between the said Defendants may forcibly try to disposes the Plaintiff and her four tenants from the Schedule property, this suit is being filed. The same is not within the knowledge of this

defendant. This defendant occupied a portion of the schedule property as a Tenant under the third defendant in the year 1988, subsequent to this, this defendant entered into an Agreement of Sale dated 20.04.1990 in respect of three portions (3 sites) bearing No.4, 5 and 6, site formed in Sy. No. 43/1 of Manorayanapalya, Cholanayakanahalli Dhakle, Bangalore North Taluk, now Rathnamma Layout, Manorayanapalya, R.T. Nagar Post, Bangalore -560032 for valuable consideration of Rs.2.25,000/-and this defendant paid Rs.2,00,000/- under the agreement of sale dated 20.04.1990 and Rs.25,000/- was adjusted towards the lease amount which this defendant has paid to the third defendant at the time of occupying a portion of it. And further, the third defendant is also executed General Power of Attorney in respect of the above said three sites in favour of this defendants on 20.04.1990. Defendant NO.3, deliberately failed to execute the register Sale Deed in favour of this defendant as third defendant demanded for more money from this defendant as this defendant had already spent huge amount for renovation and construction and maintenance of the building in spite of the repeated request and demands by 'this defendant failed to execute the registered sale deed in respect of the above said three sites in favour of this defendants. With no other option this defendant filed a suit O.S. No. 16200/2003 against the third defendant before the 18th Additional City Civil Judge, Bangalore, Mayohall unit and the said suit came to be decreed in favour of this defendant on 23.02.2005 and the court directed the defendant No.3 to execute register Sale deed in favour of this defendant within three months from the date of Judgement and decree passed on 23.05.2005. Hence defendant No.2 prays to dismissal of the suit.

4. Defendant No.3 appeared through their counsel due to suit summons on him. Defendant No.3 chosen to filed his Written Statement. Wherein the written statement, he denied the entire averments of the plaint as false and concocted. Further, Defendant No.3 contended, no cause of action for the suit. The cause of action one stated at Para 19 of the plaint are all imaginary, concocted for the purpose of this suit. The averments made in Para 20 and 21 needs no comment. The court fee paid by the plaintiff for the relief claimed by her is wrong and the valuation of the

suit is not in accordance with law. Hence defendant No.3 prays to dismissal of the suit.

5. Defendant No.4 have appeared through their counsel at before the court on the basis of suit summons on him. Defendant No.4 have chosen to filed his Written Statement. Wherein the written statement they contended, the suit of the Plaintiff is totally misconceived, bereft of merits is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The suit came to be filed by the Plaintiff in collusion with the Defendant No 1, 2 and 3 with ulterior motives. The suit is bad for mis-joinder and non-joinder of necessary parties. The Defendant Bank No 4 has taken measures/steps/actions under the Securitisation & Reconstruction Of Financial Assets & Enforcement Of Security Interest Act, 2002 (hereinafter called the "Securitisation Act") through its Authorised Officer designated under the Securitisation Act and not through its Branch Manager. Hence, the description of the representative of Defendant No.4 is improper and in correct. As could be seen from the Plaint averments made at para 8,10,11,12,13,14 and 15 among others contained in the

Plaint, the Plaintiff has virtually questioned/challenged the actions/ steps/measures initiated and taken by the Authorised Officer of Defendant No.4 under the provisions of the Securitisation Act and the relief sought by the Plaintiff is for injunction against the defendants including the Defendant Bank. Therefore, the suit of the Plaintiff as against the Defendant No.4 is not maintainable in law by virtue of Section 34 of The Securitisation & Reconstruction Of Financial Assets & Enforcement Of Security Interest Act, 2002 read with Section 9 of the Code of Civil Procedure and on this ground also the suit is liable to be dismissed in limine. It is prayed that the Court be pleased to frame a preliminary issue with regard to the maintainability of the suit against the Defendant Bank and give its findings thereon at the first instance. Since Section 34 Of The Securitisation & Reconstruction Of Financial Assets & Enforcement Of Security Interest Act, 2002 read with Section 9 of the Code of Civil Procedure stipulates that no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under Securitisation Act to determine and that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under the Securitisation Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) with due respect to the Hon'ble Civil Court it is submitted that the Hon'ble Civil Court has no jurisdiction or powers to pass any order of injunction restraining the Defendant No. 4 from taking measures against the Schedule Property under the provisions of the Securitisation Act. On this ground alone the suit as against the Defendant No. 4 is liable to be dismissed. The measures taken by the Authorised Officer of Defendant No 4 Bank against the Suit Schedule property under the provisions of Securitization Act are perfectly in accordance with law, legal and sustainable in law and therefore the measures so taken by the Defendant Bank is not liable to be interfered with in the above suit especially since it is only the authority/Tribunal constituted under the Securitisation Act alone have jurisdiction to go in to the matter in respect of exercise of the powers by Authorised Officer of

Defendant No.4 under the Securitization Act. The Plaintiff has not exhausted the remedy available to her under the Provisions of the Securitisation Act and approached the Civil Court which do not have powers to deal with the allegations made by the Plaintiff against the Defendant No. 4 in the matter of exercise of powers under Securitisation Act. The plaint Schedule property and other properties have been mortgaged by the Defendant No. 3 in favour of Defendant No.4 Bank for the loans availed by the M/s. Mahalakshmi Industries and its proprietor from the Defendant No. 4 Bank and therefore the Pliant Schedule property is a "secured asset" within the definition of Section 2(zc) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 and the provisions of the Securitisation Act is/are applicable to the plaint Schedule property. It is submitted that since the Plaint Schedule property is mortgaged in favour of the Defendant Bank, being a Mortgagee, the Defendant Bank is a "Secured Creditor" within the definition of Section 2(zd) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002, in respect of the plaint Schedule Property and it has exercised the powers vested in it under provisions of the Securitization and Re-Construction of Financial Assets and Enforcement of Security Interest Act 2002 by adhering to the provisions contained in the said Act has/isproceed/proceeding against the plaint Schedule property. the proprietor of Mahalakshm Industries had obtained an OCC facility a sum of Rs.50,000/- from Defendant No.4 on 03.01.1991 agreeing to pay interest thereon at the rate of 14.5% p.a to be compounded quarterly. Defendant No.3 in the present suit had offered security for the said amount and executed an agreement of guarantee dated 25.04.1991 guaranteeing the payment of the said amount together with interest. Defendant No.3 had also executed memorandum of deposit of title deeds on 25.04.1991 referring to the deposit of title deeds made by him on 19.04.1991 and thereby had created equitable mortgage of plaint Schedule property in favour of the Defendant No.4 by deposit of original title deeds. Since, M/s. Mahalakshmi Industries had committed default in making repayment of the due, Defendant No.4 filed a suit for recovery on 07.08.1991 against M/s. Mahalakshmi

Industries along with other surety including the Defendant No 3 in Original Suit No.2884/1992 on the file of the City Civil Judge, Bangalore, which on constitution of the Debts Recovery Tribunal came to be transferred to Debts Recovery Tribunal and was numbered as OA No.663/1995. The Debts Recovery Tribunal after considering the documentary and oral evidence let in by the parties to the dispute, by its order dated 25th March 2003 in 0.A.663/1995 allowed the claims of the Defendant No 4 with costs and ordered issue of recovery certificate. Under the said order, the Tribunal directed the parties thereto, including the Defendant No.3 jointly and severally pay a sum of Rs.20,91,615/- with current and future interest at the rate of 23.5% per annum from the date of the suit till the date of realization and held that in the event of failure on the part of Defendant No.3 and others to pay the amount decreed, reserved the liberty to the Defendant Bank to proceed against the schedule properties therein which is inclusive of plaint Schedule Property belonging to the Defendant No.3. The Defendant No 3 had preferred an Appeal in RA-19/2005 on the file of the Debt Recovery Appellate Tribunal, Chennai against the order dated 25th March 2003 passed in 0.A.663/1995 and Hon'ble Appellate Tribunal after hearing passed an order dated 16th December 2005, dismissing the Appeal filed by the Defendant No.3 and thereby confirmed the order of the Debts Recovery Tribunal in so far as Defendant No.3 concerned. Both the Debt Recovery Tribunal, Bangalore and the Debt Recovery Appellate Tribunal, Chennai while rejected the defence of the Defendant No.3 have upheld the contentions of the Defendant Bank that the plaint Schedule property and other properties belonging to Defendant No.3 are mortgaged to the Defendant Bank and that the Defendant Bank is entitled to proceed against the plaint Schedule property and other properties in exercise of its powers as Mortgagee. Thus it is established that the plaint Schedule property is "secured asset" within the definition of Section 2(zc) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 and that the Defendant Bank is a "Secured Creditor" within the definition of Section 2(zd) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002, in respect of the plaint Schedule Property and that the provisions of the said Act is applicable to the plaint Schedule property and that the Defendant Bank is entitled to exercise the powers vested in it under provisions of the Securitization and Re-Construction of Financial Assets and Enforcement of Security Interest Act 2002 against the plaing schedule properties. Admittedly it is the case of the Plaintiff that she had purchased the plaint schedule property under a sale deed dated 22-8-2005 from Defendant No. 1. Defendant No. 1 had questioned/ challenged the actions / steps/measures initiated and taken by the Authorised Officer of Defendant No 4 under the provisions of the Securitisation Act in ASA 294/007 before the Debt Recovery Tribunal and sought the Tribunal to grant the following relief's: a) to direct the Respondent No.1 and 2 restraining from dispossess or taking possession of the schedule A and B properties of the appellant and to set aside if any alleged notice issued under Section 13(2) or 13(4) and Rule 8(1) of the Securitization and Re-Construction of Financial Assets and Enforcement of Security Interest Act 2002 and its Ordinance by directing the respondents not to proceed further for recovery of possession of the schedule A & B properties mentioned herein below belonging to the appellant and consequential relief/s. b) to grant the cost of the case. c) to grant such other relief/s as this Hon'ble Tribunal deems fit in the circumstance of the above case, in the interest of justice and equity. Debt Recovery Tribunal was pleased to dismiss the ASA 294/007 filed by the Defendant No. 1 and declined to grant the similar relief's sought for the Defendant No.1. The Defendant No. 1 has not approached the Appellate Authority/Tribunal constituted under the Securitisation Act under Section 18 of the Securitisation Act to challenge the Order passed by the Debt Recovery Tribunal in ASA. No.294/2007 and the said order has become final. Therefore the Plaintiff who claims absolute right, title and interest through Defendant No. 1 is not entitled to any relief in the above suit. As could be seen from the order dated 25th March 2003 passed in O.A.663/1995 the Defendant Bank has exercised its rights as Mortgagee and obtained a Judgment in its favour on 25th March 2003. Whereas, the Vendor (Defendant No. 2 in the suit) of vendor (Defendant No. 1) of the Plaintiff had acquired the alleged title in respect of the plaint schedule property only on 2-2005 under the sale deed obtained by him through court in pursuance of the judgment passed in O.S.No. 16200/2003 and sold the same to Defendant No. 1 under a sale deed dated 23-3-2005 and in turn the Defendant No. 1 had sold the Plait Schedule Property to the Plaintiff on 22-8-2005. Section 54 of the Transfer of Property Act, 1882 defines sale as follows:-"Contract for Sale: A contract for Sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest on or charge on such property." The Sale Deed obtained by the Vendor of the Vendor of the Plaintiff through Judgment dated 23-2-2005 in O.S.No.16200/2003 passed by the Civil Court, is a fraudulent transfer as defined under Section 53 of the Transfer of Property Act, 1882 subsequent to the mortgage in favour of the Bank and the Defendant Bank reserves its right to initiate appropriate legal proceedings. Without conceding its claims against the plaint Schedule property, it issubmitted that a careful reading of the Judgment dated 23-2-2005 in O.S.No.16200/2003 passed by the Civil Court clearly establishes that the Civil Court has given a specific finding that Vendor of the Vendor of the Plaintiff is not entitled to the relief of declaration that he is in lawful possession and enjoyment of the plaint Schedule property. It is submitted that the Civil Court had rejected the relief for declaration and decreed the suit only for specific performance of the alleged contract dated 20-4-1990 sought to be executed after 13 years from the date of alleged execution. It is submitted that much prior to the initiation of the suit in O.S.No.16200/2003 and much prior to Judgment dated 23-2-2005 in O.S.No.16200/2003 passed by the Civil Court, the plaint Schedule property and other properties were mortgaged in favour of the Defendant Bank by its owner the Defendant No 3 and the Defendant Bank had exercised its rights thereon and had obtained judgment in its favour. Thus, much prior to the Vendor of the Vendor of the Plaintiff acquiring alleged interest in the plaint Schedule property under the sale deeds pursuant to Judgment dated 23-2-2005 in O.S.No.16200/2003, the Defendant Bank has acquired interest and charge/interest has been created by the owner of the said properties in favour of the Defendant Bank. Therefore, in law, the subsequent alleged interest acquired by the Vendor of the Vendor of the Plaintiff is subject to the prior charge over the properties by the Defendant Bank. The law being that "Buyer should beware", if the Vendor of the vendor of the Plaintiff had purchased the plaint Schedule property subsequent to the order dated 25th March 2003 passed in O.A.663/1995, he and subsequent to him the Defendant No.1 and the Plaintiff are bound to discharge the liability due to the Defendant Bank to acquire perfect title to the plaint schedule property and they have benot done so in spite of being aware of the measures taken by the Defendant Bank. The Vendor of the Vendor of the Plaintiff and Plaintiff having not discharged the liability to acquire perfect title cannot at this belated stage after the Plaint schedule properties in accordance with law are sold in favour of the Defendant No. 5 and the Defendant No. 5 having acquired absolute right, title and interest in the Plaint Schedule Property, cannot contend that she is the lawful owner in possession and enjoyment of the plaint schedule property. It is denied that the Defendant No. 1

and 2 and the Plaintiff are bonafide buyers. In fact, the Defendants No.2,1, and Plaintiff totally lack bonafides so also the Defendant No.3. In view of provision of Section 54 of the Transfer of Property Act, 1882, the alleged agreement of sale dated 20-4-1990, the sale deed obtained by the Defendant No.2 through Court, sale deeds obtained by Defendant No. 1 from Defendant No. 2 and the sale deed obtained by the Plaintiff from the Defendant No. 1 respectively had not created any interest on or charge on pliant Schedule Property in favour of the respective purchaser under the respective sale deeds aforementioned. The Judgment dated 23-2-2005 in O.S.No.16200/2003 passed by the Civil Court is nullity since the plaint Schedule property and other properties being the "secured asset" within the definition of Section 2(zc) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 and that the Respondent Bank is a "Secured Creditor" within the definition of Section 2(zd) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002, in view of Section 34 of the Securitisation & Reconstruction of

Financial Assets & Enforcement of Security Interest Act 2002 the Civil Court had no jurisdiction to entertain, try, adjudicate the suit in O.S.No.16200/2003 which pertains to Schedule property which are the "secured asset". In view of Section 35 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 neither the Defendant No. 2, Defendant No. 1 nor the Plaintiff had or have prior or superior rights over the plaint Schedule property than the Defendant Bank on the basis of alleged instruments i.e. agreement of sale dated 20-4-1990, under the sale deeds pursuant to Judgment dated 23-2-2005 in O.S.No.16200/2003 or under any of the documents produced along with the Plaint. The Defendant Bank in exercise of its powers under Securitisation Act had taken symbolic possession of the plaint schedule properties and thereafter sold, transferred and conveyed the Plaint schedule property in favour of the Defendant No.5 and by virtue of Section13 (6) of the Securitisation Act, the Defendant No. 5 has derived absolute right, title and interest over the plaint schedule property and thus Defendant No. 5 is the absolute owner of the plaint schedule property. The documents evidencing the measures/steps taken by the Defendant Bank and sale of the plaint schedule properties in favour of the Defendant No.5. For the reasons stated supra and grounds urged herein above, the Plaintiff is not entitled to the relief sought in the Plaint. Defendant No 3 had dealt with the plaint schedule property on executing the guarantee deed dated 25.04.1991 and memorandum of deposit of title deeds on 25.04.1991 referring to the deposit of title deeds made by him on 19.04.1991 in favour of the Defendant Bank and the Defendant Bank has enforced its rights and powers under the said deed and the Defendant No 5 has become the lawful owner of plaint schedule property. Therefore, the relief of injunction sought by the Plaintiff is misconceived and do not survive for consideration. Hence the suit is liable to be dismissed.

6. Defendant No.5 also appeared through their choised counsel at before the court on virtue of the summons on him. Defendant No.5 chosen to filed his Written Statement. Where in the Written Statement Defendant No.5 denied the case of Plaintiff as false and concocted. Further Defendant No. 5 contended, it is false to say that the

Plaintiff is the absolute owner in peaceful possession and enjoyment of the Schedule Property as claimed by her. The Plaintiff is residing in the Schedule Property as alleged. The address of the Plaintiff as shown in the cause title is also incorrect. The Suit of the Plaintiff is a collusive suit that is filed by the Plaintiff in collusion with Defendant No.1 to 3. The suit is only an attempt to save the property which is sold by the Bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of security Interest Act. It is false to say, the Plaintiff had purchased the schedule site from the 1st Defendant on 22.8.2005 through Absolute Sale Deed as claimed. It is false that after purchasing the said site, katha has been registered in the name of Plaintiff and she is paying the taxes to Bangalore Mahanagara Palike and on obtaining licence the Plaintiff had constructed five houses and that out of that she is residing with her family in one house situated in Ground Floor as alleged. The Plaintiff is put to strict proof of the same. It is false to say that a few people went near the Schedule Property and were discussing about purchase transaction and on enquiry they told they have come on behalf of 5th Defendant as alleged. It is false that the Plaintiff approached 1st Defendant and 1st Defendant sought time to verify the information and intimate the same afterwards as alleged. It is false that the Second Defendant had obtained a decree of Specific Performance against the Third Defendant in respect of Schedule Property and that the Third Defendant who was the previous owner of Schedule Property had entered into an Agreement of sale with Second Defendant It is false that by virtue of the sale agreement dated 20.4.1990 the possession of Schedule Property was given on receipt of entire sale consideration. It is false that the Third Defendant had transferred all his right, title and interest in the properties including the Schedule Property except executing the Sale Deed for which purpose certain compliances was required to be obtained by Third defendant as alleged. It is false that the First defendant informed the Plaintiff that Third defendant after transferring his right, title and interest had pledged the Schedule Property to Fourth Defendant as surety to a loan transaction as alleged. However, it is true that the Fourth Defendant had taken steps under Securitization and

Reconstruction of Financial Assets and Enforcement of security Interest Act had auctioned the Schedule Property and the adjacent sites in favour of Fifth defendant since the loan was not repaid and after classifying the loan and the property as non-performing asset the necessary action was initiated under Securitization and Reconstruction of Financial Assets and Enforcement of security Interest Act. It is false to state that as per the Agreement of Sale the Third Defendant had relinquished all his rights with possession in favour of Second Defendant in respect of Schedule Property and adjoining properties as alleged. It is false that mortgaging of the site in the Schedule Property and other properties mentioned in the agreement of sale by the Third defendant in favour of the fourth Defendant is long after the Third Defendant had executed the Agreement of Sale, as alleged. It is false that the Third Defendant had no right to create any encumbrance on the Schedule Property subsequent to 20.4.1990. It is false to say that the Third Defendant had no right, title and interest to mortgage the property in favour of Fourth Defendant and the mortgage of the Schedule Site is a void document which is nullity in the eye of law as alleged. It s false that the Fourth Defendant does not derive any title over the suit Schedule Property through the said document as alleged. It is false to say that there is no encumbrance over the Schedule Property. It is false to state that taking advantage of void and fabricated document, the Defendants 3 o 5 in collusion have auctioned the property with out the knowledge of the Plaintiff. It is false to say that at no point of time any body came to the Schedule Property and conducted any proceedings including auction proceedings. It is false to say that the Plaintiff is the bonafide purchaser and invested huge amount in putting up constructions. It is false that in view of the improvements made in the said site, at present the market value of the Schedule Property is more than one Crore. It is false to state auction sale was done in collusion between the Defendants 3 to 5 to defraud the Plaintiff. It is false to say no auction proceedings took place at the Schedule Property and the Defendants have created documents to show the auction had been conducted. It is false to state that the Fifth Defendant has no right, title and interest over the Schedule Property which is said to be part of auction sale as alleged. It is false to allege that the Fifth Defendant by virtue of such collusive act between the defendants forcibly trying to dispossess the Plaintiff and her tenants from the Schedule Property. It is false, the Fifth Defendant is making hectic efforts to interfere with the possession of the Schedule Property from last one week. When the Plaintiff is not in possession there is no question of such interfering. It is false, on 1.3.2008 Fifth Defendant and some strangers went near the Schedule Property and attempted to occupy the same and with great difficulty the Plaintiff resisted with the help of neighbours as alleged. There is no cause of action to the Suit and the one mentioned in the Suit is false and baseless. The suit is not properly valued and court fee paid is insufficient. Hence the suit requires to be dismissed on this count alone. The relief claimed by the Plaintiff is for injunction and a bare suit for injunction is not maintainable under law. The property is already conveyed in favour of this Defendant and without seeking for declaration of title and cancellation of Mortgage and Sale Deed by paying the Court Fee the Suit would not be maintainable under Section 31 and 34 of Specific Relief

Act. Hence, the Suit shall fail on the count of maintainability itself. In this matter the case urged by the Plaintiff is already decided by the DRT which has got jurisdiction to decide the lis and therefore the Suit is not maintainable. One Mahalakshmi Industries had approached 4th Defendant for grant of loan and 3rd Defendant herein stood as guarantor. The said Mahalakshmi Industries and 3rd Defendant did not honour their commitments and did not repay the loan amount. Therefore the said account and the said property were treated as non-performing assets and the Bank has decided to enforce security interest created in favour of the Bank. Therefore proper notices were caused to Defendants No.3 and Mahalakshmi Industries under section 13(2) of the said Act. Since they did not comply with the demand with the said notice under Section 13(2) of the act, the Bank has proceeded further and the possession of the said property was taken by the Bank and the property was also offered for sale to the intending purchasers from general public. This Defendant having came to know about the availability of the property and had given a bid of Rs.1,15,50,000/-. Since the bid of this Defendant was highest, the Bank had accepted the bid and this Defendant had paid the entire amount and the sale certificate was also issued by the Bank dated 13.11.2007. At this juncture at the instance of Defendant No.1, who was unsuccessful before Hon'ble DRT has approached this Hon'ble Court with oblique motive by filing a Suit in O.S.No.27135/2007. But since the Defendant No.1 herein could not get any interim order in O.S.No.27135/2007, has set up the Plaintiff herein for filing the present Suit. Therefore, this Suit is a result of collusion between the Defendants 1 to 3 and hence it is clear that the Plaintiff has not approached this Court with clean hands. The entire exercise on the part of the Plaintiff is at the instance of the Defendants 1 to 3. In order to save the property which was mortgaged to the Bank and in order to complicate the issue 2nd and 3rd Defendant had fabricated a sale agreement dated 20.4.1990. What made the 2nd Defendant to file the Suit for specific performance of the Agreement after a period of 13 years is not forthcoming. It is very clear that the said Suit in O.S.No. 16200/2003 was a collusive decree obtained to defeat the rights of the secured debtor. Therefore the said decree is not binding on the

Defendant No.4 and consequentially not binding on this Defendant. How limitation period was saved for a period of 13 years to file the Suit for specific performance is not forthcoming and therefore it is clear that the said decree is a collusive decree obtained by playing fraud of Court and therefore the said Suit in O.S.No. 16200/2003 is not binding on this Defendant. Merely entering into agreement of sale in the year 1990 will not prevent the Defendant No.3 from entering into a mortgage Deed with the Bank in view of the fact that the said Agreement dated 20.4.1900 is not genuine. Even if it is genuine, the said agreement has no value after a period of 3 years. Therefore it is false to say that the mortgage deed entered into between the Bank and the 3rd Defendant is not valid. Even if the Plaintiff is a bonafide purchaser and she should have been careful to know the mortgages as on the date of obtaining Sale Deed from the Court of law. The property purchased by 2nd Defendant is subject to mortgage that was created in favour of Defendant Bank and therefore it cannot be alleged that the said mortgage is not binding on the Defendant No.2. The Court while passing the Judgment and decree in

O.S.No. 16200/2003 was kept in dark about the said mortgage and right of the said mortgage. Therefore the Court had no occasion to look into the encumbrances created and therefore the said decree was passed and hence the same is not binding on 4th Defendant and consequently no binding on this Defendant. Fraud was played by 3rd Defendant in collusion with Defendant No.2. Since Defendant No 1, 2 and 3 were not successful in their attempts now this Plaint is set up by them by executing a nominal, sham document of sale in order to complicate the issue. Therefore the Plaintiff has no right or entitled to any relief as claimed by her. The case of the Plaintiff is totally hit under Section 52 of the Transfer of Property Act. A suit was filed by the 2nd defendant on 20.9.2003 for relief of specific performance of Agreement of Sale which was executed in the year 1990. It is submitted that suit was filed on 20.9.2003 by which time mortgage was created. Further the Suit was filed after a lapse of 13 years and decree was obtained which clearly shows that the Defendant No.3 did not contest the matter and therefore it is clear that it is a collusive suit. Further the property is purchased during the pendency of the dispute between 3rd Defendant and the Bank. Therefore the transaction is hit under section 52 of the Transfer of Property Act. Therefore the Plaintiff acquired no right under the said sale deed which was executed during the pendency of the Suit. It is an exercise made by the defendant No. 1 to 3 through the Plaintiff. Therefore the suit requires to be dismissed.

7. On the basis of the above pleadings, my predecessor in office has framed the issues in below:-

1. **Whether the plaintiff proves that, she was in lawful possession and enjoyment of the suit schedule property, as on the date of suit?**
2. **Whether the plaintiff proves alleged interference?**
3. **Whether plaintiff is entitled for the relief of Permanent Injunction?**
4. **What order or decree?**

8. To prove the plaintiff's case, the plaintiff herself examined as P.W.1 and she got marked Ex.P1 to Ex.P35 documents. On the other hand, defendant No.5

A.Venkataramana examined himself as DW1 and he got marked Ex.D1 to Ex.D9 document.

9. Heard the argument on both the sides. Perused the records. Counsel for the plaintiff filed the written argument. Counsel for 5th defendant relied the citation; 1)ILR 2013 KAR 380 – S.Malleshwarrao Vs Bokka Venkateshwarra. 2) SLP (C) No.1989-1990/2024 – P.Elaiyappan Vs Natarajan and Others.

10. My findings on the above issues are as under:-

Issue No.1 : In the Negative

Issue No.2 : In the Negative

Issue No.3 : In the Negative

Issue No.4 : As per final order for the following:

:R E A S O N S:

11. **Issue No.1 to 3**:- Issue No.1 to 3 over lapped with each other on virtue of the similar facts and evidence. To avoid the repetition of facts and evidence in the judgment, issue No.1 to 3 have taken in together conjointly for the common discussion.

12. Before I advert with the factual aspect on the suit, that I make note of the present law which settled by the Hon'ble Supreme Court of India in its judgment reported in 2009(II) OLR (SC) 388 (Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs and others) which reads thus:-

> 13. ***Section 100- Suit of permanent injunction- Trial court decreed the suit holding plaintiffs in possession of suit property and the defendant had interfered with their possession- First appellate court held that the defendant was in possession of the suit property and the plaintiffs had not made out, even prima facie, either title or possession over the suit property- High Court allowed the second appeal and restored the judgment and decree of the trial court- Appeal before Apex Court- Discussing the facts, contention and provisions of law held,***

High Court exceed its jurisdiction under Section 100 CPC, firstly in re-examining questions of fact, secondly by giving into the questions which were not pleaded and which were not the subject matter of any issue, thirdly by formulating question of law which did not arise in the second appeal, and lastly by interfering with the well reasoned judgment of the first appellate court which held that the plaintiffs ought to have filed a suit for declaration- Judgment of High Court Set aside.

14. From the above judgment it is to be learnt, where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction. Further from the above judgment it also learnt, prayer for declaration will be necessary only if the denial of the title by the defendant or challenge to plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property or when some prima facie right of a third party over it, is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property.

15. Based on above mandate of law that I have taken the controversy for my discussion. On summarizing the controversy, as per the evidence of PW1,, the Plaintiff has purchased a site bearing No.6, situated at 1st Cross, Rathnamma Layout, Manorayanapalya, Bangalore, measuring East to West 30 Feet and North to South 45+44/2 Feet, in 1335 Sq.ft. from Smt. A. Sugandramma vide Sale deed dated 22-08-05, registered, before the Sub-registrar, Bangalore North Taluk. Since then the Plaintiff is in

possession and enjoyment of the said property which is more fully described in the Schedule hereunder and hereinafter referred to as the "SCHEDULE PROPERTY". After so purchasing the said site, the Plaintiff got the katha of the Schedule property changed to her name and she is paying the taxes to Bangalore Mahanagara palike in her name and subsequently by obtaining license for construction of the premises. The Plaintiff as per the approved plan has constructed five houses, out of which she is residing with her family in one house, situated in Ground Floor. The other four houses have been let out by the Plaintiff to separate tenants on monthly rental basis. A few weeks back a few people came near the Schedule Property and discussing about some purchase transaction. The Plaintiff on hearing their conversation enquired as to whom they are and they then narrated that they have come on behalf of Fifth Defendant, who has purchased the Schedule Property and the adjacent two properties also. The Plaintiff being shocked about the information told them that she is the owner of the Schedule Property and she has not sold the same to anyone else. The said people a request of the

Plaintiff gave the address of the Fifth Defendant and suggested to her to obtain the details from him directly. Being shocked about the alleged ownership of the Fifth Defendant regarding the Schedule property, the Plaintiff approached the first Defendant from whom she has purchased the site, she took sometime to verify the information and then she would give the information. After few days, the first Defendant informed that the Second Defendant had obtained a decree of Specific Performance against the third Defendant in respect of the Schedule property and the adjacent two properties bearing No. 4 and 5 also. On further enquiry the Plaintiffs learnt that the third Defendant, who was the previous owner of the Schedule Property, had entered in to an Agreement of sale dated 20-04-90. By virtue of which, the possession of the Schedule property and the adjoining properties had also been given possession of on the same day, upon receipt of the entire sale consideration. The Plaintiff is further informed that by virtue of the said Agreement to Sell, the third Defendant had transferred all his right and interest in the properties including the Schedule property, except executing the sale deed, for which purpose certain compliances was required to be obtain by the Third Defendant. The first Defendant after giving the said information further informed the Plaintiff that the third Defendant after having so transferred his right, title and interest in the Schedule property is alleged to have pledged the site in the Schedule property and the adjoining properties bearing No. 4 and 5 and some other properties to the fourth Defendant, as surety to a loan transaction. The fourth Defendant alleging default in the loan transaction had taken steps under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act and had auctioned the Schedule property and the adjacent sites in favour of the fifth Defendant illegally. It is not in dispute that there was an Agreement to sell (Annexure 'G') between the Second and third Defendant, where by the third Defendant had relinquished all his rights together with possession in favour of the second Defendant in respect of the site in the Schedule property and the adjoining properties. The alleged mortgaging of the site in the Schedule property and the other properties mentioned in Annexure G by the third

Defendant in favour of the fourth Defendant is long after the third Defendant had executed 'Annexure G'. As such the third Defendant had no right to create any encumbrance on the Schedule property subsequent to 20-04-90. Consequently, the fourth Defendant also does not get any right in respect of such alleged subsequent mortgage as well. Interestingly there is no such encumbrance recorded in respect of the Schedule property in the jurisdictional sub-registrar office during the relevant period. Under the above circumstances there appears to be collusion between Defendants 3 to 5 in putting the Schedule property for auction without the knowledge of the Plaintiff, who is very much residing in the Schedule property. At no point of time any body had come to the Schedule property and conducted any proceedings including auction proceedings, as has been said to have been done by the fourth Defendant. Though all these information was made available by the first and Second Defendant, and when the Plaintiff insisted upon the first Defendant to set right this confusion and illegal transaction, she is only assuring to sort out the things and secure the title of the Plaintiff in respect of the Schedule property, but she has not taken any positive steps so far. In view of the apprehension of the Plaintiff that the first Defendant may not take expeditious steps to ensure that the title of the Plaintiff is in no way affected, she is constrained to file this suit to protect her title and interest. The Plaintiff is a bonafide purchaser of the site in the Schedule property for valuable consideration and she has invested huge amount in putting up five houses. In view of the improvements made in the said site, the Schedule property is worth more than Rs.1,00,00,000/-(Rupees One Crore only). The first Defendant informed the Plaintiff that on her verification the auction sale conducted by the fourth Defendant given in favour of the fifth Defendant in for paltry sum of about Rs.1,15,50,000/- (Rupees One Crore Fifteen Lakhs Fifty Thousand only) as against the value of all the properties would be about more than Four Crore and on this back ground the first Defendant stated that the auction sale has been conducted in collusion between Defendants 3 to 5 to defraud bonafide purchaser like the Plaintiff. She has gathered all these information recently, since the Plaintiff is not aware of any steps taken by her to get the auctioned process nullified and there by protect the title of the Plaintiff in respect of the site in the Schedule property conveyed by her, the Plaintiff is filing this suit. In view of the fact that the Schedule property itself is worth about Rs. 1,00,00,000/-(Rupees One Crore only), the act of the fourth Defendant in allegedly auctioning the Schedule property and the adjoining properties for paltry sum of about Rs. 1,15,50,000/- (Rupees One Crore Fifteen Lakhs Fifty Thousand only) speaks volume off the collusion between the Defendants 3 to 5 to make unlawful gains to benefit themselves in the name of the fifth Defendant. No auction proceedings has ever taken place at the Schedule property, obviously the said Defendants could have created documents to show as if there had been an auction, which has never held. Under these circumstances the fifth Defendant does not get any right, title or interest over the Schedule property belonging to the Plaintiff which is said to be part of the alleged auction sale. As the Plaintiff has not been able to secure a copy of the auction sale proceedings and any further documents in that regard, she has not been able to produce documents in this regard as of now. 15.

Considering the above facts, it becomes crystal clear that the Plaintiff right, title and interest is in no way affected by the collusive acts of Defendants 3 to 5. As the fifth Defendant by virtue of such collusive acts between the said Defendants may forcibly try to disposes the Plaintiff and her four tenants from the Schedule property, this suit is being filed. The Plaintiff is having direct and subsisting right in the suit schedule property. The fifth Defendant by colluding with the other Defendants is making hectic attempts to detrimental to the interest of the Plaintiff. Under these circumstances, the Plaintiff has no other alternative remedy than to approach this court for her redressal. The fifth Defendant has once again came near the suit schedule property and told the Plaintiff that he along with his supporters would take the possession of the suit schedule property with force whatever may be the consequences. The fifth Defendant is a powerful person having men and material and also has the support of anti-social elements that certainly dispossess the plaintiff from the schedule property. The Plaintiff is a poor lady having no support to the onslaught of the Defendants. The Plaintiff is in possession of the schedule property exercising her lawful right which she has acquired through registered sale deed. The fifth Defendant has no right, title and interest of whatsoever in respect of the Schedule property to interfere with the possession of the Plaintiff. In support of her case, PW1 got marked Ex.P1 to Ex.P35 documents. Ex.P1 is the original sale deed. Ex.P2 is the Special notice, Ex.P3 is the endorsement issued by BBMP. Ex.P4 is Katha certificate. Ex.P5 is the Khata extract. Ex.P6 to Ex.P12 are the 7 tax paid receipts. Ex.P13 is the registered sale deed. Ex.P14 is the khata certificate. Ex.P15, Ex.P16 and Ex.P21 are the encumbrance certificates. Ex.P17 is the khata certificate. Ex.P18 is the sanction letter issued by Bescom. Ex.P19 and Ex.P20 are two letters issued by BWSSB. Ex.P22 is the tax invoice. Ex.P23 to Ex.P30 are 8 photographs. Ex.P31 is the CD. Ex.P32 to Ex.P35 are four electricity bills.

16. In its contrary it could also be seen from the deposition of DW1 and if summarized the case of Defendant No.5, according to Defendant No.5, they denied the averments of the plaint and also contended, it is false to say that the Plaintiff is the absolute owner in peaceful

possession and enjoyment of the Schedule Property as claimed by her. The Plaintiff is residing in the Schedule Property as alleged. The address of the Plaintiff as shown in the cause title is also incorrect. The Suit of the Plaintiff is a collusive suit that is filed by the Plaintiff in collusion with Defendant No.1 to 3. The suit is only an attempt to save the property which is sold by the Bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of security Interest Act. It is false to say, the Plaintiff had purchased the schedule site from the 1st Defendant on 22.8.2005 through Absolute Sale Deed as claimed. It is false that after purchasing the said site, katha has been registered in the name of Plaintiff and she is paying the taxes to Bangalore Mahanagara Palike and on obtaining licence the Plaintiff had constructed five houses and that out of that she is residing with her family in one house situated in Ground Floor as alleged. The Plaintiff is put to strict proof of the same. It is false to say that a few people went near the Schedule Property and were discussing about purchase transaction and on enquiry they told they have come on behalf of 5th Defendant as alleged. It is false that the Plaintiff approached 1st Defendant and 1st Defendant sought time to verify the information and intimate the same afterwards as alleged. It is false that the Second Defendant had obtained a decree of Specific Performance against the Third Defendant in respect of Schedule Property and that the Third Defendant who was the previous owner of Schedule Property had entered into an Agreement of sale with Second Defendant It is false that by virtue of the sale agreement dated 20.4.1990 the possession of Schedule Property was given on receipt of entire sale consideration. It is false that the Third Defendant had transferred all his right, title and interest in the properties including the Schedule Property except executing the Sale Deed for which purpose certain compliances was required to be obtained by Third defendant as alleged. It is false that the First defendant informed the Plaintiff that Third defendant after transferring his right, title and interest had pledged the Schedule Property to Fourth Defendant as surety to a loan transaction as alleged. However, it is true that the Fourth Defendant had taken steps under Securitization and Reconstruction of Financial Assets and Enforcement of security Interest Act had auctioned the Schedule Property and the adjacent sites in favour of Fifth defendant since the loan was not repaid and after classifying the loan and the property as non-performing asset the necessary action was initiated under Securitization and Reconstruction of Financial Assets and Enforcement of security Interest Act. It is false to state that as per the Agreement of Sale the Third Defendant had relinquished all his rights with possession in favour of Second Defendant in respect of Schedule Property and adjoining properties as alleged. It is false that mortgaging of the site in the Schedule Property and other properties mentioned in the agreement of sale by the Third defendant in favour of the fourth Defendant is long after the Third Defendant had executed the Agreement of Sale, as alleged. It is false that the Third Defendant had no right to create any encumbrance on the Schedule Property subsequent to 20.4.1990. It is false to say that the Third Defendant had no right, title and interest to mortgage the property in favour of Fourth Defendant and the mortgage of the Schedule Site is a void document which is nullity in the eye of law as alleged. It s false that the Fourth Defendant does not derive any title over the suit Schedule Property through the said document as alleged. It is false to say that there is no encumbrance over the Schedule Property. It is false to state that taking advantage of void and fabricated document, the Defendants 3 o 5 in collusion have auctioned the property with out the knowledge of the Plaintiff. It is false to say that at no point of time any body came to the Schedule Property and conducted any proceedings including auction proceedings. It is false to say that the Plaintiff is the bonafide purchaser and invested huge amount in putting up constructions. It is false that in view of the improvements made in the said site, at present the market value of the Schedule Property is more than one Crore. It is false to state auction sale was done in collusion between the Defendants 3 to 5 to defraud the Plaintiff. It is false to say no auction proceedings took place at the Schedule Property and the Defendants have created documents to show the auction had been conducted. It is false to state that the Fifth Defendant has no right, title and interest over the Schedule Property which is said to be part of auction sale as alleged. It is false to allege that the Fifth Defendant by virtue of such collusive act between the defendants forcibly trying to dispossess the Plaintiff and her tenants from the Schedule Property. It is false, the Fifth Defendant is making hectic efforts to interfere with the possession of the Schedule Property from last one week. When the Plaintiff is not in possession there is no question of such interfering. It is false, on 1.3.2008 Fifth Defendant and some strangers went near the Schedule Property and attempted to occupy the same and with great difficulty the Plaintiff resisted with the help of neighbours as alleged. There is no cause of action to the Suit and the one mentioned in the Suit is false and baseless. The suit is not properly valued and court fee paid is insufficient. Hence the suit requires to be dismissed on this count alone. The relief claimed by the Plaintiff is for injunction and a bare suit for injunction is not maintainable under law. The property is already conveyed in favour of this Defendant and without seeking for declaration of title and cancellation of Mortgage and Sale Deed by paying the Court Fee the Suit would not be maintainable under Section 31 and 34 of Specific Relief Act. Hence, the Suit shall fail on the count of maintainability itself. In this matter the case urged by the Plaintiff is already decided by the DRT which has got jurisdiction to decide the lis and therefore the Suit is not maintainable. One Mahalakshmi Industries had approached 4th Defendant for grant of loan and 3rd Defendant herein stood as guarantor. The said Mahalakshmi Industries and 3rd Defendant did not honour their commitments and did not repay the loan amount. Therefore the said account and the said property were treated as non-performing assets and the Bank has decided to enforce security interest created in favour of the Bank. Therefore proper notices were caused to Defendants No.3 and Mahalakshmi Industries under section 13(2) of the said Act. Since they did not comply with the demand with the said notice under Section 13(2) of the act, the Bank has proceeded further and the possession of the said property was taken by the Bank and the property was also offered for sale to the intending purchasers from general public. This Defendant having came to know about the availability of the property and had given a bid of Rs.1,15,50,000/-. Since the bid of this Defendant was highest, the Bank had accepted the bid and this Defendant had paid the entire amount and the sale certificate was also issued by the Bank dated 13.11.2007. At this juncture at the instance of Defendant No.1, who was unsuccessful before Hon'ble DRT has approached this Hon'ble Court with oblique motive by filing a Suit in O.S.No.27135/2007. But since the Defendant No.1 herein could not get any interim order in O.S.No.27135/2007, has set up the Plaintiff herein for filing the present Suit. Therefore, this Suit is a result of collusion between the Defendants 1 to 3 and hence it is clear that the Plaintiff has not approached this Court with clean hands. The entire exercise on the part of the Plaintiff is at the instance of the Defendants 1 to 3. In order to save the property which was mortgaged to the Bank and in order to complicate the issue 2nd and 3rd Defendant had fabricated a sale agreement dated 20.4.1990. What made the 2nd Defendant to file the Suit for specific performance of the Agreement after a period of 13 years is not forthcoming. It is very clear that the said Suit in O.S.No. 16200/2003 was a collusive decree obtained to defeat the rights of the secured debtor. Therefore the said decree is not binding on the Defendant No.4 and consequentially not binding on this

Defendant. How limitation period was saved for a period of 13 years to file the Suit for specific performance is not forthcoming and therefore it is clear that the said decree is a collusive decree obtained by playing fraud of Court and therefore the said Suit in O.S.No. 16200/2003 is not binding on this Defendant. Merely entering into agreement of sale in the year 1990 will not prevent the Defendant No.3 from entering into a mortgage Deed with the Bank in view of the fact that the said Agreement dated 20.4.1900 is not genuine. Even if it is genuine, the said agreement has no value after a period of 3 years. Therefore it is false to say that the mortgage deed entered into between the Bank and the 3rd Defendant is not valid. Even if the Plaintiff is a bonafide purchaser and she should have been careful to know the mortgages as on the date of obtaining Sale Deed from the Court of law. The property purchased by 2nd Defendant is subject to mortgage that was created in favour of Defendant Bank and therefore it cannot be alleged that the said mortgage is not binding on the Defendant No.2. The Court while passing the Judgment and decree in O.S.No. 16200/2003 was kept in dark about the said mortgage and right of the said mortgage. Therefore the Court had no occasion to look into the encumbrances created and therefore the said decree was passed and hence the same is not binding on 4th Defendant and consequently no binding on this Defendant. Fraud was played by 3rd Defendant in collusion with Defendant No.2. Since Defendant No 1, 2 and 3 were not successful in their attempts now this Plaint is set up by them by executing a nominal, sham document of sale in order to complicate the issue. Therefore the Plaintiff has no right or entitled to any relief as claimed by her. The case of the Plaintiff is totally hit under Section 52 of the Transfer of Property Act. A suit was filed by the 2nd defendant on 20.9.2003 for relief of specific performance of Agreement of Sale which was executed in the year 1990. It is submitted that suit was filed on 20.9.2003 by which time mortgage was created. Further the Suit was filed after a lapse of 13 years and decree was obtained which clearly shows that the Defendant No.3 did not contest the matter and therefore it is clear that it is a collusive suit. Further the property is purchased during the pendency of the dispute between 3rd Defendant and the Bank. Therefore the transaction is hit under section 52 of the Transfer of Property Act. Therefore the Plaintiff acquired no right under the said sale deed which was executed during the pendency of the Suit. It is an exercise made by the defendant No. 1 to 3 through the Plaintiff. In support of his case, DW1 got marked E.xD1 to Ex.D9. Ex.D1 is the certified copy of judgment dated 13.01.2020. Ex.D2 is the certified copy of judgment and decree in OS No.16200/2003. Ex.D3 is the office copy of legal notice. Ex.D4 is the certified copy of judgment. Ex.D5 is the certified copy of order of DRT in ASA 294/2007. Ex.D6 is the certified copy of order of Hon'ble High Court of Karnataka in WP No.146/2006. Ex.D7 is the bank statement from 1.10.2007 to 31.10.2007. Ex.D8 is the bank statement from 2.11.2007 to 30.11.2007. Ex.D9 is the certificate issued by CA.

17. If it assimilated the controversy from the pleadings and evidence, 3rd Defendant deceased Sathyanarayana Reddy was be the original owner of suit schedule property. As per the Plaintiff, suit schedule property was the vacant site and it was sold by Defendant

No.3 to 2nd Defendant under a sale agreement dated 20.04.1990 and in virtue of said sale agreement, 2nd Defendant R.Bhaskar got the exparte decree in against 3rd Defendant in OS.No.16200/2003 as per Ex.D2 judgment copy. Based on Ex.D2 judgment copy R.Bhaskar sold the vacant site to deceased A.Sugandramma under Ex.P13 sale deed. Further, deceased A.sugandramma in turn sold such a vacant site to the Plaintiff under Ex.P1 sale deed. Based on Ex.P1 sale deed the Plaintiff got khata as per Ex.P2, Ex.P3, Ex.P4, Ex.P5 and Ex.P17 revenue documents and the Plaintiff paid all revenue tax to such of the vacant site over a vacant site as per Ex.P6 to Ex.P12 tax paid receipts. Also case of the Plaintiff, the transaction of Ex.P1 sale deed, it reflected in Ex.P15, Ex.P16 and Ex.P21 encumbrance certificate and the Plaintiff being owner in possession of such of the vacant site the Plaintiff constructed a house after got valid license from the competent authority. Since the Plaintiff have the building in the vacant site and also such of the building it connected by electrical and water connection as per Ex.P18 to Ex.P20 documents and Ex.P23 to Ex.P32 photographs. Hence according to the Plaintiff, the

Plaintiff have been in the possession of suit schedule property as on the date of filing of the suit. In despite it came to the knowledge of Plaintiff a few week back to filing of the present suit, the Plaintiff know it some people came near the suit schedule property and discussing about some purchase transaction and it finally, the Plaintiff learnt title of the suit schedule property defected on virtue of pledging of the same site by Defendant No.3 at before Defendant No.4 and Defendant No.4 it initiated the SURFASI act and auctioned the suit schedule property and adjacent in favour of 5th Defendant illegally. Hence the cause of action to the present suit arose to the Plaintiff in against all the Defendants. On the contrary from the same case record both the pleadings of Plaintiff and Defendants it also evidence, Defendant No.3 deceased Sathyanarayana Reddy who was being owner of suit schedule property, he pledged suit schedule property and other properties at before 4th Defendant bank as security to the loan. Since, surety offered by 3rd Defendant to the loan raised at before 4th Defendant bank and on account co-extensive liability caused on 3rd Defendant deceased Sathyanarayan Reddy, 4th

Defendant initiate a SARFSI act proceedings 4th Defendant auctioned the suit schedule property at in the public and 5th Defendant being one of the highest bidder he purchased the suit schedule property. Hence Defendant No.5 claimed he be the absolute owner in possession of the suit schedule property. The present suit of the Plaintiff just for a simplicitor injunction. Further, in the present suit no such of the issue in related to the title of the property have been framed and available in the record for discussion. The Plaintiff claimed the title and possession over the suit schedule property from 3rd Defendant deceased Sathyanarayana Reddy as per Ex.D2 judgment and decree to R.Bhaskar, R.Bhaskar executed the Ex.P13 sale deed to Defendant No.1 deceased Sugandramma and in turn Sugandramma sold the property to the Plaintiff under Ex.P1 sale deed. In the contrary the same title of the same property have also devolved from the point of deceased Sathyarayana Reddy at through the Defendant No.4 bank under a SARFASI proceedings. With this background of observation one thing is evidence, both Defendants and Plaintiff claimed the title of the same property under a different flow of title from the point of original owner third Defendant Sathyanarayana Reddy. Since both Plaintiff and Defendant No.5 claimed the same property as per their flow of title from the point of Defendant No.3 deceased Sathyanarayana Reddy, the title of the very same property it covers more cloud on its face. Since, this court have no such of the authentication to discuss with respect to title of both the Plaintiff and Defendant No.5 to the same property under a suit for simplicitor injunction, this court have no other option to negate the claim of Plaintiff as per the judgment of Hon'ble Supreme Court make referred in the supra.

18. Further, if it taken up the same controversy to resolve as per pleadings and evidence placed by both the parties, Ex.D14 judgment copy passed in RFA No.1938/2012 by the Hon'ble High Court of Karnataka have also take its own evidentiary value for determination of the controversy. Accordingly, the relevant para No.22 and 23 of the judgment in Ex.D4 RFA No.1938/2012 by the Hon'ble High Court of Karnataka it extracted in the below;

22. Further the present suit is valued under Section 24(b) and 26(c) of the Karnataka Court Fees and Suit Valuation Act and even the framing of the suit made for **declaration and permanent injunction** having cumulative and negating effect of judgment and decree passed by the court in pursuance of the proceedings ended in favour of defendant No.2 (Bank).

23. The conduct and the sequence of events establish how and why the plaintiff has come to the court for the relief sought, the timing and the date of said agreement by the said Bhaskar filing a suit when there was no opposition, exparte decree in favour of Bhaskar and then sale deed in favour of the plaintiff in the context of date of the sale agreement being 20.04.1990, speak of volumes against the plaintiff and his malafide intentions. The suit apart from being not maintainable lacks grounds for reliefs sought. On going through the materials on hand, I find the very suit apart from violative of Section 34 of the Act, it does not appears to have been filed for good reasons.

19. If it go through the entire judgment of Hon'ble High Court of Karnataka preferred in RFA No.1938/2012 as per Ex.D4 document, wherein the judgment it could be seen the vendor of the Plaintiff, 1st Defendant by name deceased A.Sugandramma challenged the validity of judgment passed in OS No.27135/2007 by XXVIII Addl. City Civil Judge, Mayohall, Bengaluru. Important to note, though vendor of the Plaintiff A.Sugandramma had a RFA at before Hon'ble High Court of Karnataka in RFA No.1938/2012 as per Ex.D4 wherein the same RFA, it dismissed by the same by the Hon'ble High Court of Karnataka and upheld the judgment and decree in OS No.27135/2007. Not in dispute vendor of the Plaintiff, 1st Defendant A.Sugandramma had a suit for declaration and permanent injunction in against Defendant Nos.3 to 5 of this suit with respect to the suit schedule property. Also not in dispute the suit in OS No.27135/2007 disposed off in between, vendor of the Plaintiff, 1st Defendant A.Sugandramma and Defendant Nos.3 to 5 also others Defendant with respect to the suit schedule property of this suit. Further not in dispute, the controversy with respect to title and possession of the suit schedule property

have already been adjudicated in between Plaintiff's vendor, 1st Defendant and Defendant Nos.3 to 5 in OS No.27135/2007. Since the controversy in between the Plaintiff's vendor 1st Defendant deceased A.Sugandramma and Defendant Nos.3 to 5 of this suit, have already directly and substantially in an issue in OS No.27135/2007 and same it already decided by the court of jurisdiction including in the appeal jurisdiction, the same issue directly and substantially kept pending at before this court with respect to the same property, by the Plaintiff in against Defendant nos.3 to 5 with respect to the suit schedule property get shut down. As the suit of the Plaintiff barred by constructive resjudicata as per Ex.D4 judgment passed in RFA No.1938/2012, though Ex.P1 to Ex.P35 documents speaks something of the Plaintiff's case, such of the bar to the present suit not permitted to appreciated the evidentiary value of Ex.P1 to Ex.P35 documents. Accordingly, such of the evidentiary value of Ex.P1 to Ex.P35 document not come to the aid of plaintiff's case. So from the above observation, I answer issue Nos.1 to 3 in the **Negative**.

20. **Issue No.4:-** For the foregoing reasons, I proceed to pass the following;

: O R D E R :

Suit of the plaintiff, is dismissed.

Draw decree accordingly.

No order as to cost.

In view of disposal of the suit, pending interlocutory applications if any do not survive for consideration and they stands disposed off.

(Dictated directly to the Stenographer on computer typed by her, corrected and then signed by me and pronounced in the open Court on this the 13th day of July, 2026)

sd/-
[ONKARAPPA.R]
XIII ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU

:ANNEXURE:

WITNESSES EXAMINED FOR THE PLAINTIFFS:

PW.1 : Narayanamma

WITNESSES EXAMINED FOR THE DEFENDANT:

DW.1 : A Venkataramana

DOCUMENTS EXHIBITED FOR THE PLAINTIFF:

Ex.P1	Original Sale deed
Ex.P2	Special Notice
Ex.P3	Endorsement issued by BBMP
Ex.P4	Katha certificate
Ex.P5	Katha extract
Ex.P6 to 12	7 Tax paid receipt
Ex.P13	Registered sale deed
Ex.P14	Khata certificate
Ex.P15 & Ex.P16	Two encumbrance certificate
Ex.P.17	Khata Certificate
Ex.P.18	Sanction letter issued by BESCOM
Ex.P.19 & 20	2 Letters issued by BWSSB
Ex.P.21	Encumbrance Certificate
Ex.P.22	Tax Invoice
Ex.P.23 to 30	8 Photos
Ex.P.31	C.D.
Ex.P.32 to 35	4 Electricity Bills

DOCUMENTS EXHIBITED FOR THE DEFENDANT:-

Ex.D1	Certified copy of judgment dt.13.01.2020 in RFA 1938/2012
Ex.D2	Certified copy of judgment and decree in O.S.No. 16200/2003
Ex.D3	Office copy of legal notice to Indian Bank with original seal of Indian bank for having received the same.
Ex.D4	Certified copy of judgment dt.03.03.2020 in RFA 1938/2012
Ex.D5	Certified copy of orders of DRT in ASA 294/2007
Ex.D6	Certified copy of orders of Hon'ble High Court of Karnataka in WP 146/2006
Ex.D7	Bank statement from 1.10.2007 to 31.10.2007.
Ex.D8	Bank statement from 2.11.2007 to 30.11.2007.
Ex.D9	Certificate issued by CA.

sd/-
[ONKARAPPA.R]
XIII ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU