



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF APRIL, 2026
BEFORE
THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM
REGULAR FIRST APPEAL NO. 510 OF 2012 (DEC/INJ)

BETWEEN:

1. SMT D PHILOMINA
D/O LATE DORESWAMY REDDY
AGED ABOUT 61 YEARS

2. SHRI DEVARAJU
S/O LATE DORESWAMY REDDY
AGED ABOUT 59 YEARS

NOS.1 AND 2 ARE
RESIDING AT
NO.48, NANJEGOWDA STREET
SUSHEELA MAIN ROAD, DODDAMAVALLI
BANGALORE - 560 004.

3. SMT. HRUDYAMARY
D/O LATE ARULAPPA
AGED ABOUT 60 YEARS
R/AT DORESANYAPALYA
SCHOOL STREET, IIM (POST)
B G MAIN ROAD, BANGALORE - 560 076.



...APPELLANTS

(BY SRI. M VENKATAPPA MAINA TAI KHENY, ADVOCATE)

AND:

1. SRI. J. ANTHOJI RAO
S/O. LATE JACOB RAO



AGED ABOUT 88 YEARS
R/AT NO.1177, 60 FEET CROSS ROAD
OMBR LAYOUT,
NEAR ST.GEORGE MANAGEMENT COLLEGE,
BANASWADI
BANGALORE - 560 043.

2. SRI. J. MICHAL RAO
S/O LATE JACOB RAO
AGED ABOUT 74 YEARS
R/AT NO.307/7,
1ST MAIN ROAD
PILLANNA GARDEM, DEVARACHIKKANAHALLI
BANGALORE - 560 076.
3. SRI. J. RAJU JOSEPH
S/O JACOB RAJ
AGED ABOUT 68 YEARS
NO.B-1/5, DRDO COMPLEX
C.V.RAMAN NAGAR,
BANGALORE - 560 093.
4. SRI D M CHINNAPPA
S/O MARIYAPPA
AGED ABOUT 46 YEARS
NO.173, OPP RANKA APARTMENT
BANNERGHATTA ROAD
BANGALORE - 560 076.
5. SRI. M.ALBERT CHRISTI
S/O LATE GODWIN MARIYAPPA
AGED ABOUT 39 YEARS
R/AT DORASANIPALYA
IIM POST, BILEKAHALLI
DHAKALE, BANNERGHATT ROAD,
BANGALORE - 560 076.

...RESPONDENTS

(BY SRI. JEEVAN K, ADVOCATE FOR R5;
V/O DATED 27/01/17 - NOTICE TO R1-R4 IS D/W)



THIS RFA IS FILED UNDER SEC.96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 07.12.2011 PASSED IN O.S.4050/2008 ON THE FILE OF THE XXXVII-ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE, AND ETC.,

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the unsuccessful plaintiffs assailing the dismissal decree rendered by the trial Court in O.S.No.4050/2008.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. Facts leading to the case are as under:

Plaintiffs instituted a suit seeking declaration and consequential relief of injunction contending that suit schedule property originally belonged to one Palyada Chinnappa Reddy and upon his demise, devolved upon his legal heirs including the branch represented by the present plaintiffs. It is their specific case that defendant Nos.1 to 3



having no manner of right, title or interest executed an unregistered GPA in favour of defendant No.4, who in-turn executed a registered sale deed on 29.03.2005 in favour of defendant No.5. Plaintiffs contend that said transaction is void and not binding. Plaintiffs while seeking relief of declaration traced title through their ancestor Palyada Chinnappa Reddy. According to the plaintiffs, their ancestor Palyada Chinnappa Reddy converted to Christian and the church granted a site measuring 1 gunta in Sy.No.166/13. Upon his demise, the plaintiffs claim that they being the legal heirs have inherited the property. The plaintiff's assert that defendant Nos.1 to 4 are not claiming through the Church and are independently asserting title based on a partition deed. However, defendants have no document to substantiate that the Church had granted the present suit schedule property to defendant Nos.1 to 4 who in turn could have sold it to defendant No.5. Present suit is filed alleging that based on registered sale deed obtained by defendant No.5, tried to interfere with the



plaintiff's peaceful possession and therefore, the present suit seeking relief of declaration and injunction.

4. The defendant Nos.1 to 4, on receipt of summons, did not choose to contest the suit and accordingly were placed *ex parte*. Defendant No.5 appeared through counsel, filed written statement and stoutly denied the entire averments made in the plaint. Defendants asserted title based on registered sale deed executed by defendant No.4 and contented that his vendors were allotted the suit schedule property under family partition deed dated 13.06.1942. Defendant No.5 therefore asserted that plaintiffs are not the owners and therefore, suit is liable to be dismissed.

5. This Court has heard the learned counsel appearing for the parties at considerable length and has meticulously perused the pleadings, oral and documentary evidence placed on record, as well as the findings recorded by the Trial Court.



6. Learned counsel appearing for the plaintiffs, reiterating the grounds urged in the appeal memorandum, would vehemently contend that the very foundation of the defendants' claim, namely the sale deed dated 29.03.2005 executed in favour of defendant No.5, is fundamentally flawed and does not pertain to the suit schedule property bearing Sy.No.166/13 measuring 1 gunta. It is his specific contention that the dimensions reflected in the said sale deed, East-West 50 feet and North-South 25 feet, would cumulatively measure 1,250 sq.ft., which is wholly inconsistent with the extent of 1 gunta claimed by the plaintiffs. On this premise, he would submit that the property described in the impugned sale deed is a non-existent or at least a misdescribed property, thereby rendering the defendants' claim unsustainable.

7. Elaborating further, learned counsel would contend that the defendants have utterly failed to substantiate their root of title. He would submit that there is no credible material placed on record to demonstrate



that defendant Nos.1 to 3 had any lawful right, title or interest over the suit schedule property so as to include the same in the alleged family partition said to have been effected in the year 1942. In the absence of proof of such foundational title, the subsequent transactions, including the execution of the sale deed in favour of defendant No.5, are rendered legally untenable.

8. Learned counsel for the plaintiffs has also taken this Court through the oral evidence adduced by both the parties, with particular emphasis on the cross-examination of defendant No.5, who is examined as DW.1. Placing strong reliance on the admissions elicited therein, he would submit that the testimony of DW.1 itself demolishes the defence set up by the defendants. It is pointed out that DW.1 has admitted that the suit schedule property was not the subject matter of the mortgage deed relied upon by the defendants. Further, he has admitted that the name of his vendor is not reflected in the RTC extracts



pertaining to the suit property, thereby casting serious doubt on the claim of lawful ownership.

9. The learned counsel would further highlight that DW.1 has categorically admitted that the properties in question originally belonged to St. Mary's Emasculated Church, and that he is unaware as to how his vendor's family derived title over Survey Nos.166/12 and 166/13. The only explanation offered by DW.1 is that he was informed about a partition said to have taken place in the year 1942, under which the suit property allegedly fell to the share of his vendor's family. However, he has candidly admitted that he does not possess any documentary evidence to substantiate such partition or to demonstrate that the Church authorities had ever allotted the suit schedule property in favour of the said family.

10. A further significant admission, as pointed out by the learned counsel, is that the General Power of Attorney executed by defendant Nos.1 to 3 in favour of



defendant No.4 does not, in fact, pertain to the suit schedule property bearing Sy.No.166/13. According to the learned counsel, these admissions go to the root of the matter and clearly establish that the defendants have no semblance of title over the suit property.

11. Per contra, the learned counsel appearing for the defendants would stoutly oppose the appeal and support the judgment and decree passed by the Trial Court. It is his emphatic contention that the plaintiffs, having approached the Court seeking the relief of declaration and consequential injunction, are bound to succeed on the strength of their own title and not on the weakness of the defendants' case. He would submit that the plaintiffs have miserably failed to discharge the initial burden cast upon them by law, inasmuch as no cogent or reliable title documents are produced to substantiate their claim over the suit schedule property.



12. He would further contend that in the absence of proof of title on the part of the plaintiffs, the Trial Court was fully justified in declining the relief of declaration. Learned counsel would also submit that the Trial Court has not merely rested its findings on the failure of the plaintiffs, but has also duly appreciated the rebuttal evidence adduced by defendant No.5. According to him, the findings recorded by the Trial Court are based on a proper appreciation of both oral and documentary evidence and do not suffer from any perversity or illegality warranting interference by this Court in exercise of its appellate jurisdiction.

13. In the light of the rival submissions and having regard to the material on record, the following points would arise for consideration:

(i) Whether the plaintiffs have succeeded in establishing their lawful title over the suit schedule property bearing Sy.No.166/13 measuring 1 gunta?



(ii) Whether the finding of the trial Court that plaintiffs are not entitled to seek a declaration that sale deed dated 29.03.2005 executed by defendant No.4 in favour of defendant No.5 is not binding on the plaintiffs suffers from perversity?

(iii) Whether trial Court erred in discarding the plaintiffs' case ignoring the Doctrine of preponderance of probabilities?

(iv) Whether the finding of the trial Court that defendants have established a better title over the suit schedule property and plaintiffs are liable to be non-suited suffers from perversity?

Finding on Point Nos.(i) to (iv):

14. The plaintiffs to substantiate that suit schedule property was owned by St. Mary's Emasculated Church have placed reliance on Ex.P-5. Entry at Sl.No.13 in Ex. P-5 would be crucial. Therefore, it would be apposite for this Court to extract the relevant portion of Ex.P-5:



"13 ರೇಚೆ.ಯಮ್ಮ ಅಲಬಟ ಗೈರಾಮ 13 ಡಿಜೋ
ರೆಡ್ಡಿ ಅಕಾಶ್"

15. The fact that the suit property was originally owned by the church is not in dispute. It is elicited in cross-examination of DW.1 who has candidly admitted the fact that property was originally owned by Church. Therefore, it would be apposite for this Court to extract the relevant cross- examination of DW.1 on this aspect:

"It is with respect to Sy.No.165/6, Sy.No.165/14, Sy.No.154/18, 166/13. In the said survey settlement documents the name Raddy Tarakasi is appearing. I do not know as to who is that Raddy Tarakasi. It is true that, all the above said properties were belongs to St.Mary's Emasculated Church. It is false to say that, one Rechamma Alber has allotted the properties in favour of the converted Christian. It is true that, in Ex.D-4 the name of Rechamma and her allottees are appearing. There is mention in Ex.D1 regarding the meaning of Reddy Tarakasi."

(emphasis supplied)



16. DW.1 has further categorically admitted that he has not produced any documents to demonstrate that the Church Authority have allotted the suit schedule property to the family of Jacob i.e., to his vendors family. The relevant portion would be crucial and therefore the same is extracted, which reads as under:

"It is true that, the properties bearing Sy.No.154, 165, 166 and its sub numbers were the properties of church authority. It is true that, there is no evidence to show that, the church authority has allotted property No.166/13 to the family of Jacob."

(emphasis supplied)

17. He further categorically admits that except partition deed, he has no document to demonstrate that how his vendors acquired title over a church property. The same is extracted which reads as under:

"I do not know as to whether the church authority has allotted of sold that land to anybody or not. Except partition deed of 1942 there are no



other documents to show that, that land Sy
No.166/13 was the property of Jacob family."

(emphasis supplied)

18. Plaintiffs to discharge their initial burden have placed reliance on a true copy of a grant and to substantiate that this grant was acted upon, RTCs are produced demonstrating that name of their ancestor Palyada Chinnappa Reddy is reflected in the RTC. A few crucial admissions are also elicited in cross-examination of defendant No.5 who has admitted that his vendors' names were not reflected in RTC.

19. The identification of the property which is subject matter of the sale deed appears to be doubtful. While sale deed pertains to two survey numbers i.e., Sy.No.154/18 and Sy.No.166/13 and both these properties are given a common boundaries. However during the course of the trial, defendant No.5 has acknowledged that these two lands are separated by



Doasanipalya Village and he further candidly admits that the boundaries of Sy.No.154/18 and Sy.No.166/13 are not separately shown. He has further categorically admitted that common boundaries shown to both the properties is wrong. Therefore, this Court deems it fit to extract the relevant cross-examination in this regard, which is extracted as under:

"The property bearing Sy No.154/18 and Sy No.166/13 are measuring 1 gunta each. It is true that, in between the said lands land Sy No.151, 152, 155 and Doasanipalya Village are existing. It is true that, in Ex.D.1 the boundaries of Sy No.154/18 and 166/13 are not separately shown, though both the properties are shown in flower bracket. It is true that, boundaries stated in Ex.D.1 with respect to the above said properties is with respect to 2 guntas of both the land. The share of Abbaiah is existing towards the northern side of the above said properties. Sy No.166/12 is situated towards the northern side of land Sy No.166/13. It is true that, the common boundaries shown to both the properties is wrong. The mortgage deeds are the evidence to show that, after the death of Jakob Rao defendant No.1 to 3 are in possession of Jakob Rao."

(Emphasis supplied)



20. In order to discharge the initial burden cast upon them in a suit for declaration, the plaintiffs have placed reliance on a true copy of the grant said to have been made in favour of their predecessor-in-title. To demonstrate that the said grant was not merely a paper transaction but was in fact acted upon, the plaintiffs have produced revenue records, more particularly the RTC extracts, wherein the name of their ancestor, namely Palyada Chinnappa Reddy, is reflected as the person in possession and enjoyment of the land. These revenue entries, though not conclusive proof of title, do carry a presumptive value with regard to possession and enjoyment, and therefore assume significance in appreciating whether the plaintiffs have laid a foundational basis for their claim.

21. Apart from documentary evidence, the plaintiffs have also sought to fortify their case by relying on certain material admissions elicited in the course of cross-examination of defendant No.5, who has entered the



witness box as DW.1. A careful reading of the cross-examination extracted supra would indicate that DW.1 has fairly admitted that the names of his vendors are not reflected in the RTC extracts pertaining to the suit schedule property. This admission, in the considered opinion of this Court, assumes considerable evidentiary value, inasmuch as it casts a serious cloud on the claim of lawful possession and title set up by the defendants, particularly when their claim is founded on a chain of title which is not supported by contemporaneous revenue entries.

22. This Court also finds that the very identification and description of the property conveyed under the sale deed dated 29.03.2005, which forms the fulcrum of the defendants' claim, is shrouded in serious doubt. A perusal of the recitals of the sale deed would indicate that the property conveyed therein comprises two distinct survey numbers, namely Sy.No.154/18 and Sy.No.166/13. However, what is striking and prima facie anomalous is



that both these survey numbers are assigned a common set of boundaries in the schedule appended to the sale deed.

23. During the course of trial, this apparent inconsistency has been further accentuated by the categorical admissions made by DW.1. In his cross-examination extracted supra , defendant No.5 has candidly acknowledged that the lands bearing Sy.No.154/18 and Sy.No.166/13 are not contiguous, but are in fact separated by Doasanipalya Village. He has further admitted that the boundaries of the said two survey numbers are not separately delineated in the sale deed. More importantly, he has unequivocally admitted that the depiction of common boundaries for both the properties in the sale deed is erroneous.

24. These admissions, when read in conjunction with the recitals in the sale deed, create a serious ambiguity as to the identity of the property sought to be



conveyed. The inconsistency in boundaries, coupled with the admission that the two survey numbers are geographically distinct and separated by a village, strikes at the very root of the defendants' title. In a suit where declaration of title is sought and rival claims are projected, proper identification of the subject property assumes paramount importance. Any uncertainty or ambiguity in this regard would inevitably enure to the detriment of the party relying upon such defective description.

25. Having adverted to the documentary evidence placed on record and the material admissions elicited in the cross-examination of DW.1, this Court is of the considered view that the present *lis* cannot be adjudicated on the touchstone of absolute proof alone, but necessarily requires an evaluation on the anvil of preponderance of probabilities, which is the settled standard governing civil proceedings. It is trite that in a suit for declaration, while the initial burden squarely rests on the plaintiffs to establish a *prima facie* title, such burden does not extend



to proving title with mathematical precision. Once the plaintiffs place before the Court a probable version supported by some credible material, the evidentiary burden shifts upon the defendants to rebut the same by producing cogent and convincing evidence.

26. In the case on hand, what assumes paramount significance is the cumulative effect of the admissions elicited from DW.1, which have been extracted supra. A conjoint reading of these admissions would unmistakably indicate that the suit schedule property, along with other adjoining survey numbers, originally belonged to St. Mary's Emasculated Church. This foundational fact is no longer *res integra* between the parties, inasmuch as DW.1 has candidly admitted the same in unequivocal terms. Once the origin of title is traced to the Church, the burden squarely shifts on the defendants to demonstrate as to how their vendors' family derived title from the said original owner.



27. However, the evidence on record discloses a conspicuous absence of any such material. On the contrary, DW.1 has unequivocally admitted that he does not possess any document to evidence that the Church authorities had allotted or conveyed the suit schedule property bearing Sy.No.166/13 in favour of the family of Jacob, from whom the defendants claim title. He has further admitted that except for the alleged partition deed of the year 1942, there are no documents whatsoever to demonstrate that his vendors' family had acquired title over the suit property. These admissions strike at the very root of the defendants' claim, as a partition, by its very nature, can only effect a division of pre-existing rights and cannot confer title where none existed.

28. In juxtaposition, the plaintiffs have placed reliance on Ex.P-5, which is a material document indicating that the property in question formed part of the holdings of the Church, and more particularly, the entry at Sl.No.13 assumes significance in identifying the nature and



character of the land. When this document is read in conjunction with the RTC extracts produced at Ex.P-15, wherein the name of plaintiffs' ancestor, namely Palyada Chinnappa Reddy, is reflected, a plausible and coherent narrative emerges indicating that the property was granted in favour of the plaintiffs' predecessor and that such grant was acted upon.

29. Though it is well settled that revenue entries by themselves do not confer title, they nevertheless constitute relevant evidence of possession and enjoyment. In the present case, these entries gain added evidentiary weight in view of the admissions of DW.1 that his vendors' names are not reflected in the RTC records. Therefore, the plaintiffs have succeeded in placing before the Court a chain of circumstances which, though not conclusive, certainly tilts the balance in their favour on the scale of probabilities.



30. It is also pertinent to note that defendant Nos.1 to 4, who are the alleged predecessors-in-title, have not chosen to contest the proceedings. The entire defence is sought to be sustained by defendant No.5, who is admittedly a subsequent purchaser. In the absence of any independent evidence from the original vendors explaining the source of their title, the burden on defendant No.5 becomes all the more onerous. However, except producing a sale deed traceable to an alleged partition of the year 1942, no foundational document is forthcoming to establish that the vendors' family had any semblance of right over the property prior to such partition.

31. The law is fairly well settled that a partition deed, in the absence of proof of antecedent title, cannot be treated as a document of title. It merely evidences division of property among co-parceners or co-owners. Therefore, mere inclusion of a property in a partition deed does not ipso facto establish that the parties to the partition were the lawful owners of such property. In the



present case, when the very genesis of title is admitted to be the Church, and when there is a complete vacuum of evidence demonstrating transfer of title from the Church to the defendants' predecessors, the claim based on the partition deed becomes inherently fragile and untenable.

32. This Court is therefore confronted with two competing versions one set up by the plaintiffs, supported by a grant document, revenue entries, and fortified by admissions of the defendants' witness; and the other set up by the defendants, resting solely on a partition deed unaccompanied by any proof of antecedent title. In such a scenario, the Court is required to adopt the test of comparative probability. When the probabilities are weighed, the plaintiffs' version appears to be more natural, consistent, and in consonance with the documentary evidence on record.

33. The admissions of DW.1, particularly those acknowledging the Church's original ownership and the



absence of any document evidencing allotment in favour of his vendors, significantly erode the credibility of the defendants' case. Coupled with the serious discrepancies in the identification of the property under the sale deed, as already discussed, the defendants' claim does not inspire confidence.

34. In the peculiar facts and circumstances of the case, this Court is of the considered opinion that the plaintiffs have succeeded in discharging their initial burden by placing on record tangible material indicating that the suit schedule property was granted to their ancestor and that they have a better claim to title as compared to the defendants. The evidence adduced by the plaintiffs, though slender, is sufficient to establish a probable case, whereas the defendants have failed to rebut the same by producing cogent evidence of title.

35. Accordingly, applying the doctrine of preponderance of probabilities, this Court holds that the



plaintiffs' version deserves to be accepted. The findings recorded by the Trial Court, in overlooking these crucial admissions and material evidence, cannot be sustained. The finding of the trial Court that the defendants have better title and thereby non-suiting the plaintiffs suffers from perversity and is liable to be set aside.

Consequently, Point Nos.(i) to (iv) formulated above are answered in the ***Affirmative.***

CONCLUSIONS

36. Having given anxious consideration to the entire material on record, this Court finds that the judgment and decree passed by the Trial Court suffer from a fundamental misdirection in appreciation of both oral and documentary evidence. The Trial Court, while dismissing the suit, has proceeded on the premise that the plaintiffs have failed to establish their title in a conclusive manner. In doing so, the Trial Court has adopted a standard of proof which is alien to civil jurisprudence. It has lost sight



of the settled principle that in civil proceedings, the case of a party is to be tested on the touchstone of preponderance of probabilities and not on proof beyond reasonable doubt.

37. The Trial Court has also failed to properly appreciate the evidentiary value of Ex.P-5 and the RTC extracts produced by the plaintiffs. Though it is trite that revenue records are not documents of title, they do carry a presumptive value with regard to possession and continuity of enjoyment. When such entries are supported by a grant document and further corroborated by admissions elicited from the defendants' witness, they constitute a substantial piece of evidence to discharge the initial burden. The Trial Court, however, has brushed aside these documents without assigning cogent reasons and has failed to consider them in their proper perspective.

38. More importantly, the Trial Court has completely overlooked the material admissions elicited in the cross-examination of DW.1. As already discussed



supra, DW.1 has unequivocally admitted that the suit schedule property originally belonged to St. Mary's Emasculated Church and that he has no documentary evidence to demonstrate that the Church had ever allotted or conveyed the property in favour of his vendors' family. He has further admitted that except the partition deed of the year 1942, there are no documents evidencing his vendors' title. These admissions go to the root of the matter and substantially weaken the defence set up by the defendants. The failure of the Trial Court to take into consideration these vital admissions has vitiated its findings.

39. The Trial Court has also erred in placing implicit reliance on the sale deed dated 29.03.2005 without examining the inherent inconsistencies and defects in the description of the property. As discussed in detail hereinabove, the sale deed suffers from serious ambiguity in identifying the property, inasmuch as two distinct survey numbers are assigned common boundaries, and



the defendants' own witness has admitted that such depiction is erroneous. Proper identification of the property is a sine qua non in a suit for declaration, and any uncertainty in this regard renders the document unreliable. The Trial Court has failed to advert to these glaring discrepancies.

40. Further, the Trial Court has not examined the legal efficacy of the partition deed of the year 1942 relied upon by the defendants. It is well settled that a partition can only divide existing rights and cannot create title in respect of a property unless it is first established that the parties to the partition had lawful ownership over such property. In the present case, when the origin of title is admittedly traceable to the Church and when there is no material to show transfer of title from the Church to the defendants' predecessors, mere reliance on the partition deed is wholly insufficient. The Trial Court has failed to consider this crucial aspect.



41. On the contrary, the plaintiffs have succeeded in placing before the Court a probable and consistent case supported by documentary evidence and fortified by admissions of the defendants' witness. The cumulative effect of Ex.P-5, RTC entries, and the admissions in cross-examination clearly indicate that the plaintiffs' claim is more probable than that of the defendants. The Trial Court, instead of weighing the competing claims on the scale of probabilities, has erroneously rejected the plaintiffs' case on hyper-technical grounds.

42. In that view of the matter, this Court is of the considered opinion that the findings recorded by the Trial Court are not only contrary to the evidence on record, but are also vitiated by non-consideration of material evidence and misapplication of settled legal principles governing appreciation of evidence in civil cases. The impugned judgment and decree therefore suffer from perversity and illegality warranting interference by this Court in exercise of its appellate jurisdiction.



43. Accordingly, for the reasons stated supra, the judgment and decree passed by the Trial Court are liable to be set aside, and the suit filed by the plaintiffs deserves to be decreed.

44. In view of the findings recorded on Point Nos.(i) to (iv) and for the detailed reasons assigned while re-appreciating the entire evidence on record, this Court is of the considered opinion that the judgment and decree passed by the Trial Court dismissing the suit are wholly unsustainable in law and on facts. The Trial Court has failed to appreciate the material evidence in its proper perspective and has misdirected itself in applying an erroneous standard of proof. On the contrary, this Court, on an independent assessment of the pleadings and evidence, finds that the plaintiffs have succeeded in establishing a better and lawful title over the suit schedule property and have also demonstrated interference by the defendants. Therefore, the impugned judgment and decree call for interference and are liable to be set aside.



45. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

- (i) The Regular First Appeal is ***allowed***;
- (ii) The judgment and decree dated 07.12.2011 passed by the Trial Court in O.S.No.4050/2008 are hereby set aside;
- (iii) The suit filed by the plaintiffs is hereby decreed;
- (iv) It is hereby declared that the plaintiffs are the absolute owners of the suit schedule property bearing Sy.No.166/13 measuring 1 gunta, together with all rights, title and interest appurtenant thereto;
- (v) Consequently, the sale deed dated 29.03.2005 executed in favour of defendant No.5, insofar as it pertains to the suit schedule property, is declared as not binding on the rights of the plaintiffs;



(vi) The defendants, their agents, servants or any person claiming through or under them are hereby permanently restrained by way of injunction from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs;

(vii) In the facts and circumstances of the case, there shall be no order as to costs;

(viii) Draw decree accordingly.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 1 Sl No.: 83