HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 735 OF 2011 (DEC/INJ)

BETWEEN:

1. SMT. H B RATHNAMMA
   W/O LAKSHMANSWAMY
   AGED ABOUT 62 YEARS
   R/AT POYNY POULTRY FARM
   AREHALLI, UTTARAHALLI HOBLI
   BANGALORE SOUTH TALUK
   BANGALORE 560061.

2. SMT. L POORNIMA
   D/O LAKSHMANSWAMY
   AGED ABOUT 41 YEARS
   RESIDING AT NO 206
   A BLOCK, MANTRI ELEGANCE
   N S PALYA, BANNERGATTA ROAD
   BANGALORE - 76.

...APPELLANTS

(BY SRI. SURESH LOKRE, SENIOR COUNSEL FOR
SRI. RAGHU PRASAD, ADVOCATE)

AND:

1. D RAMACHANDRA
   S/O DASE GOWDA
   AGED ABOUT 54 YEARS

2. SMT. SUSHEELA
   D/O DASE GOWDA
   AGED ABOUT 63 YEARS

   BOTH ARE AT SRINIVASA FARM
   AREHALLI VILLAGE

UTTARAHALLI HOBLI
BANGALORE SOUTH TALUK
BANGALORE-560 061.

…RESPONDENTS

(BY SRI. THONTADHARYA R K, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 07.03.2011 PASSED IN O.S.2105/2008 ON THE FILE OF THE 17TH ADDL. CITY CIVIL JUDGE (CCH-16), BANGALORE CITY, DECREEING THE SUIT FOR THE DECLARATION AND PERMANENT INJUNCTION AND ETC.,

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the defendants directed against the judgment and decree dated 07.03.2011 passed in O.S.No.2105/2008, whereby plaintiffs are declared to be the absolute owners and in possession of the suit schedule property. Consequently, the defendants by way of perpetual injunction are restrained from interfering with plaintiffs' peaceful possession.

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:

The plaintiffs have instituted the present suit seeking a declaration that they are the absolute owners of the suit schedule property bearing Sy.No.20/13 measuring 4 guntas. In the plaint, the plaintiffs have specifically pleaded that defendant No.1 – Rathnamma had originally acquired title over two distinct agricultural properties under separate registered sale deeds. It is their categorical assertion that defendant No.1 purchased agricultural land bearing Sy.No.20/2D measuring 37 guntas under a registered sale deed dated 22.06.1978 bearing Document No.3599 and also purchased the suit schedule property bearing Sy.No.20/13 measuring 4 guntas under a registered sale deed dated 19.11.1977 bearing Document No.3600. The plaintiffs, therefore, have unequivocally acknowledged the lawful title of defendant No.1 over both the aforesaid properties prior to their purchase.

4. It is the specific case of the plaintiffs that defendant No.1, having acquired title to both the above

said properties, subsequently conveyed the same in favour of the plaintiffs under a registered sale deed dated 22.06.1978 (Ex.P-1), whereby the land bearing Sy.No.20/13 measuring 4 guntas and Sy.No.20/2D measuring 37 guntas, in all measuring 1 acre 1 gunta, were sold. According to the plaintiffs, notwithstanding such absolute conveyance under Ex.P-1, defendant No.1 later began asserting right, title and interest over the suit schedule property and, in furtherance of such assertion, executed a registered gift deed dated 29.06.2006 in favour of her daughter purporting to convey the very same suit schedule property. Aggrieved by the subsequent assertion of title and execution of the gift deed, the plaintiffs have instituted the present suit seeking declaration of their title and consequential relief of permanent injunction.

5. Per contra, defendant No.1 entered appearance and filed a detailed written statement contesting the suit. While stoutly denying the plaint averments in toto, she

specifically contended that she had sold only land bearing Sy.No.20/2D measuring 37 guntas, inclusive of 2 guntas kharab, and not the suit schedule property bearing Sy.No.20/13 measuring 4 guntas. It is her specific defence that at the time of execution of the sale deed, she noticed that Sy.No.20/13 had been incorporated in the schedule without her consent and, therefore, she refused to execute the document unless the said survey number was deleted. According to her, it was only after striking off Sy.No.20/13 in the schedule that she signed the sale deed. The defendants further asserted that the transaction pertained exclusively to Sy.No.20/2D measuring 37 guntas and that the plaintiffs themselves acted upon the said sale deed by securing mutation of their names only in respect of Sy.No.20/2D. It is contended that though the sale deed is of the year 1978, the plaintiffs never sought mutation of their names in respect of Sy.No.20/13 since the said property was never conveyed. The defendants maintain that they have been in exclusive possession of the suit schedule property; that defendant No.1 retained absolute title thereto; and that, being the lawful owner, she validly executed a registered gift deed dated 29.06.2006 in favour of her daughter/defendant No.2. On these grounds, dismissal of the suit was sought.

6. In view of the rival pleadings, the Trial Court framed appropriate issues and permitted the parties to adduce oral and documentary evidence. Upon appreciation of the evidence on record, the Trial Court answered Issue Nos.1 to 4 in the affirmative and decreed the suit, declaring the plaintiffs as absolute owners of the suit schedule property. While answering Issue No.1, the Trial Court recorded a specific finding that the registered sale deed at Ex.P-1 encompassed not only Sy.No.20/2D but also the suit schedule property bearing Sy.No.20/13. On the said reasoning, the suit came to be decreed.

7. Assailing the said judgment and decree, the learned Senior Counsel appearing for the defendants,

reiterating the grounds urged in the appeal memorandum, vehemently contended that a bare perusal of the schedule to Ex.P-1 would clearly demonstrate that the sale deed executed by defendant No.1 is confined to Sy.No.20/2D measuring 37 guntas and does not include Sy.No.20/13. He would submit that Sy.No.20/13 measuring 4 guntas, which forms the subject matter of the present suit, is expressly struck off in the schedule and, therefore, the finding recorded on Issue No.1 is perverse and liable to be interfered with. He further invited the attention of the Court to the discrepancy between the schedule described in the plaint and that found in the sale deed and contended that the non-tallying of the schedules renders the suit itself not maintainable. Serious objection was also raised on the ground that the plaintiffs, having initially sought to challenge the gift deed executed in favour of defendant No.2 and having subsequently withdrawn the said relief, cannot maintain the present suit in its existing form. Strong reliance was placed on Ex.P-2, the encumbrance certificate, to contend that the said document reflects only the sale of Sy.No.20/2D measuring 37 guntas and does not disclose any transaction in respect of Sy.No.20/13. According to him, this constitutes a vital piece of evidence militating against the plaintiffs' claim.

8. Per contra, the learned counsel appearing for the plaintiffs supported the judgment of the Trial Court. He would submit that not only Sy.No.20/13 but even Sy.No.20/2D is found struck off in the schedule to Ex.P-1. However, the initials of defendant No.1 are clearly affixed alongside the struck off portions, thereby indicating conscious execution. He emphasized that notwithstanding the striking off of survey numbers, the total extent conveyed is shown as 1 acre 1 gunta, which corresponds to the combined extent of Sy.No.20/2D and Sy.No.20/13. In answer to the contention regarding boundary discrepancies, he relied upon the sketch annexed to the plaint and the oral testimony of the plaintiffs in chief-examination wherein it was specifically stated that the

sketch forms part and parcel of the plaint. He pointed out that the boundaries depicted in the sketch tally with those recited in the sale deed and that the defendants neither disputed the sketch in the written statement nor effectively challenged it during trial.

9. The learned counsel further placed reliance on Ex.P-75, being the sale deed under which defendant No.1 had originally acquired the suit schedule property, to demonstrate that the boundaries therein correspond with those mentioned in Ex.P-1. He also referred to Ex.P-3, a subsequent sale deed executed by defendant No.1 in respect of Sy.Nos.20/11 and 20/12, wherein the southern boundary is described as the property of the plaintiff, which is an indication, according to him, that Sy.No.20/13 stood conveyed to the plaintiffs. Countering the reliance placed by the defendants on Ex.P-2 (encumbrance certificate), he submitted that though the survey number may not be expressly reflected therein, the total extent shown is 1 acre 1 gunta, whereas Sy.No.20/2D alone

measures only 37 guntas. Thus, the encumbrance certificate, properly construed, does not support the defendants' case.

10. With regard to the contention that the plaintiffs did not secure mutation in respect of the suit schedule property, learned counsel submitted that the same stands satisfactorily explained on record. He pointed out that even the name of defendant No.1 was not reflected in the revenue records pertaining to Sy.No.20/13 and that the property continued to stand in the name of the original owner, Papaiah. It was argued that since acquisition proceedings were pending in respect of the property, defendant No.1 herself could not secure mutation in her name, and consequently, the plaintiffs, who trace title through her, had no occasion to effect mutation. He further contended that only after the acquisition proceedings were dropped, defendant No.1, in the year 2006, got her name mutated and immediately thereafter

executed the gift deed in favour of her daughter with an oblique motive to defeat the plaintiffs' rights.

11. In support of his submissions, learned counsel placed reliance on the judgment rendered by the coordinate Bench of this Court in ***Smt. Javaramma (Dead) by LRs. vs. Sri. Shivashetty***[1], to contend that when recitals in a registered document, boundaries, extent and surrounding circumstances clearly establish intention to convey, minor discrepancies or alterations in the schedule would not defeat the substantive rights flowing from the document.

12. This Court has heard the learned Senior Counsel appearing for the defendants and the learned counsel appearing for the plaintiffs at considerable length. The judgments relied upon by both sides have also been carefully perused. Being an appeal under Section 96 of the CPC, this Court, as the final fact-finding authority, has

[1] RSA.No.2504 of 2011

independently re-appreciated the entire oral and documentary evidence on record, with particular reference to the recitals contained in Ex.P-1, the registered sale deed in question.

13. On such independent reassessment, and having bestowed anxious consideration to the rival submissions, the following points arise for determination in this appeal:

> *(i) Whether the Trial Court was justified in holding that the registered sale deed at Ex.P-1 conveyed both Sy.No.20/2D measuring 37 guntas and the suit schedule property bearing Sy.No.20/13 measuring 4 guntas in favour of the plaintiffs?*
>
> *(ii) Whether the striking off of the survey numbers in the schedule appended to the sale deed overrides the clear and unequivocal recitals contained in the body of the document?*
>
> *(iii) Whether the judgment and decree passed by the Trial Court suffer from perversity, illegality, or misappreciation of evidence warranting interference by this Court?*

(iv) Whether the additional evidence now sought to be produced by defendant Nos.1 and 2 is required for effective adjudication of the lis between the parties at the appellate stage under Section 96 of CPC?

(v) What Order?

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

14. The foundation of the plaintiffs' claim rests upon a registered sale deed executed by defendant No.1. It is their categorical assertion that under the said registered instrument, defendant No.1 conveyed both the properties, namely Sy.No.20/2D measuring 37 guntas and Sy.No.20/13 measuring 4 guntas, and that possession of the entire extent was delivered pursuant to the transaction. The defendants do not dispute execution of the sale deed. They fairly admit that Sy.No.20/2D measuring 37 guntas was sold thereunder. However, they seriously dispute that Sy.No.20/13 measuring 4 guntas

formed part of the conveyance. The principal defence set up is that in the schedule appended to the sale deed, the survey number relating to the suit schedule property is struck off and, therefore, it was never the intention of defendant No.1 to alienate Sy.No.20/13.

15. In view of the rival contentions, the entire controversy hinges upon the proper construction of the recitals contained in the registered sale deed. When the dispute relates to the extent and identity of the property conveyed under a written instrument, the Court is duty-bound to carefully and meticulously examine the recitals in the body of the document, the schedule appended thereto, and the surrounding circumstances. It thus becomes necessary to extract and scrutinize the relevant recitals in the sale deed at Ex.P-1, which read as under:

> "ಈ ದಿವಸ ನನ್ನ ದರದು ನಿಮಿತ್ತವಾಗಿ ಅಂದರೆ ಗೃಹಕೃತ್ಯಕ್ಕಾಗಿಯೂ ಮತ್ತು ಇತರೆ ನನ್ನ ಸ್ವಂತ ವ್ಯವಹಾರಗಳಿಗಾಗಿಯು ಹಣ ಬೇಕಾದ್ದರಿಂದ ನಾನು ಸ್ವಯಾರ್ಜಿತವಾಗಿ ತಾರೀಖು 20-11-1977ರಲ್ಲಿ ಬುಕ್ಕು ನಂಬರು 1 ವಾಲಯಂ 1271 ಪೇಜು 138 ರಿಂದ 140 ರವರೆಗೆ 3599, ಮತ್ತು

ತಾರೀಖು 19-11-79 ರಲ್ಲಿ ಬಕ್ಕು (sic.) ನಂಬರು 1 ವಾಲಯಂ 1268 ಪುಟ 235 ರಿಂದ 2-36 ರ ಹಾಗೂ 3600 ನೇ ನಂಬ್ರಾಗಿರುವ ಕ್ರಯ ಪತ್ರದ ಮೂಲಕ ಕ್ರಯಕ್ಕೆ ಪಡೆದು ತಹಲ್ ನನ್ನ ಸ್ವಾಧೀನಾನುಭವರಲ್ಲಿದ್ದ ನಾನೇ ಕಂದಾಯ ವಗ್ಯೆರೆಗಳನ್ನು ಕಟ್ಟಿಕೊಂಡು ಖಾತೆ ನನ್ನ ಹೆಸರಿನಲ್ಲಿದ್ದ ನನ್ನ ಹಕ್ಕುದಾರಿಗೆ ಒಳಪಟ್ಟು. ಈ ಕೆಳಗೆ ಕಾಣುವ ಪೆಡ್ಯೂಲ್ ಜಮೀನನ್ನು ಈ ದಿನ ನಿಮಗೆ ಗೌರ್ನಮೆಂಟು 10000/- ಹತ್ತು ಸಾವಿರ ರುಪಾಯಿಗಳಿಗೆ ಶುದ್ಧ ಕ್ರಯ ಮಾಡಿಕೊಟ್ಟ ಕ್ರಯದ ಮೊಬಲಗು ಪೂರಾ ಹತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳನ್ನು ಈ ಕೆಳಗೆ ಕಾಣುವ ಸಾಕ್ಷಿಗಳ ಮೊಕ್ತ ನಗದು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ."

(Emphasis Supplied)

16. This Court also deems it apposite to extract the schedule. The same is as under:

"ಬೆಂಗಳೂರು ಸೌತ್ ತಾಲ್ಲೂಕು ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ ಅರೆಹಳ್ಳಿ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ 20/2 ಹಳೆ ನಂಬರಾದ್ದು ಹಾಲಿ ಹೊಸ ನಂಬರಾಗಿರವ 20/2ಡಿ ಇಪ್ಪತ್ತು ಸಬ್ ಎರಡು ಡಿ ಎಂದು ಇರುವ ಸರ್ವೆ ನಂಬರು ಪೈಕಿ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ ಮತ್ತು ತಾರೀಖು 19-11-77 ರಲ್ಲಿ ಬಕ್ಕು (sic.) ನಂಬರು 1 ವಾಲಿಯಂ 1268 ಪೇಜು 235 ರಿಂದ 236 ರಲ್ಲಿ 3600 ನೇ ನಂಬರು ಕ್ರಯಪತ್ರದ ಮೂಲಕವಾಗಿ ಬಂದಿರುವ 0-4 ನಾಲ್ಕು ಗುಂಟೆ ಸಬ್ 0-37 ಮೂವತ್ತೇಳು ಗುಂಟೆ ಗುಂಟೆ ಈ ಎರಡು ಐಂಗಳು (sic.) ಒಂದು ಬಾಗದಲ್ಲಿರುವ ಒಂದೇ ಚಕ್ಕುಬಂದಿ:-

ಪೂರ್ವಕ್ಕೆ : ಕೆ. ರಾಮರಾಜು ಮತ್ತು ವಗ್ಯೆರೆಯವರ ಜಮೀನು

ಪಶ್ಚಿಮಕ್ಕೆ : 20/2 ನ ಪೈಕಿ ಅಲ್ಲ ನನ್ನ ನಂಬರು ನನ್ನ ಸ್ವಂತ ಜಮೀನು

ಉತ್ತರಕ್ಕೆ : ರಾಮಯ ಮತ್ತು ಮಾರಕ್ಕನ ಜಮೀನು

ದಕ್ಷಿಣಕ್ಕೆ : ತೋಟಿ ಇನಾಂತಿ ಜಮೀನು

ಈ ಮಧ್ಯೆ ಇರುವ ಎರಡು ನಂಬರು ಸೇರಿ 1-1 ಒಂದು ಎಕರೆ ಒಂದು ಗುಂಟೆ ಜಮೀನು ಈ ಕ್ರಯಕ್ಕೆ ಒಳಪಟ್ಟಿರುತ್ತೆ. ಮತ್ತು ಸದರಿ ಸ್ವತ್ತಿನ ಹಿಂದಿನ ದಾಖಲೆಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ.

(Emphasis Supplied)

17. On reading the recitals in Ex.P-1 which is a registered document, the above extracted portion clearly reflects that defendant No.1 has sold two items. There is a clear reference of two registered documents with their corresponding registration numbers obtained by defendant No.1 under two separate sale deeds. The suit property was purchased by defendant No.1 under registered sale deed dated 22.06.1978 under Registration Document No.3600. The said registered document number is referred to in the body of the sale deed. Moreover, the body of the sale deed contains a clear recital that both survey numbers were agreed to be sold and conveyed.

18. A careful reading of the recitals in Ex.P-1 clearly discloses that the survey numbers are specifically described along with their respective extents and even the

corresponding earlier registered document numbers under which defendant No.1 had acquired title. The instrument is not loosely drafted; on the contrary, it contains detailed particulars of title, identity of property, and extent.

19. It is a well-settled rule governing interpretation of documents that the intention of the parties must be gathered from the document as a whole and not by placing undue emphasis on isolated words or stray alterations. The Court must read the instrument in its entirety, harmoniously construing the body of the document and the schedule appended thereto, so as to give effect to the true intention reflected from the cumulative reading. A fragmentary or compartmentalized approach is impermissible when construing a registered conveyance affecting immovable property.

20. When the body of the sale deed at Ex.P-1 is meticulously read from the original records, particularly the recitals extracted supra, there remains no manner of

doubt or ambiguity that the vendor intended to convey both survey numbers. The recitals unmistakably refer to two distinct items of property and trace the vendor's title to each of them. The language employed in the operative portion indicates conveyance of the entire extent owned by defendant No.1 in the said survey numbers.

21. Significantly, the document mentions the total extent conveyed as 1 acre 1 gunta. This recital assumes great evidentiary value. It is an admitted position on record that Sy.No.20/2D measures 37 guntas and Sy.No.20/13 measures 4 guntas. The combined extent of these two survey numbers precisely aggregates to 1 acre 1 gunta. If, as contended by the defendants, only Sy.No.20/2D was intended to be sold, then the recital of total extent as 1 acre 1 gunta would be wholly inexplicable and contrary to the factual measurements. The mention of such total extent is not accidental; it corresponds exactly to the cumulative area of both survey numbers and thus reinforces the plaintiffs' case.

22. Further, on a reading of the schedule appended to the sale deed, including the highlighted portions extracted supra, there is a clear reference to two items of property. The structure and tenor of the schedule, when read in conjunction with the operative recitals, indicate that the conveyance pertained to both properties. The internal consistency between the recitals, the description of title, and the aggregate extent leaves little room for accepting the defendants' contention that Sy.No.20/13 was excluded from the transaction.

23. Therefore, when the document is construed as a whole, giving due weight to the recitals in the body, the description of title, the total extent conveyed, and the schedule, the inescapable conclusion is that both Sy.No.20/2D and Sy.No.20/13 formed part of the subject matter of Ex.P-1.

24. The defendants seek to take undue advantage of the fact that in the scheduled portion, the survey

number pertaining to suit schedule property is struck off. This objection is selectively raised. On closer examination of the schedule, both the survey numbers are struck off and defendant No.1 has tendered her initials at the struck-off portion. If both the survey numbers are struck-off and only extents are indicated and the concluding portion of the schedule also indicates that both the items are agreed to be sold, there is absolutely no ambiguity. Insofar as striking off the survey number is concerned, the other property survey number is also struck off and only extent is indicated. The schedule is only a descriptive appendix to the operative portion of the conveyance. If the operative clause and the recitals clearly identify the property, a clerical irregularity in the Schedule cannot defeat the substantive transfer. Further, if the extent is specifically mentioned as 1 acre 1 gunta and that extent can be achieved only by including both the survey numbers, the contention of the defendant No.1 becomes inherently untenable.

25. The conduct of defendant No.1 is also relevant. Having admitted the execution and sale of Sy.No.20/2D, the defendants cannot selectively deny the remaining portion when the extent matches the total. The recitals are explicit.

26. Even on closer examination of Ex.P-75, which is a sale deed obtained by defendant No.1 pertaining to the suit schedule property, the said sale deed is registered under Document No.3600. Therefore, there is a clear reference to this document number wherein defendant No.1 resolved to sell the suit schedule property along with Sy.No.20/2D. Therefore, this Court is of the view that the defendants cannot selectively be permitted to take advantage of striking off survey number pertaining to the suit schedule property.

27. The next crucial aspect which has a direct bearing on the core controversy relates to the admissions elicited in the cross-examination of defendant No.1, who

has been examined as DW.1. When the dispute centres around the true scope of a registered conveyance, any admission made by the executant herself assumes great evidentiary significance. In the present case, defendant No.1 is not a stranger to the transaction; she is the executant of Ex.P-1. Therefore, her statements in the witness box, particularly those made during cross-examination, are of considerable probative value in ascertaining whether the sale deed pertained to one survey number or two.

28. It is a settled principle that admissions, if clear and unequivocal, constitute the best evidence against the maker, unless satisfactorily explained. An admission made in cross-examination, especially by a party to the document, carries substantial weight and can decisively tilt the balance where documentary interpretation is in issue. In the case on hand, several material admissions have been elicited from DW.1 touching upon the extent of land

sold, the total area conveyed, and the identity of the properties.

29. In order to appreciate the evidentiary impact of such admissions and to ascertain whether the sale deed in fact pertained to two survey numbers, this Court deems it appropriate to extract the relevant portion of the cross-examination of DW.1, which reads as under:

> " ನನ್ನ ಸ್ವತ್ತಿನ ಪೂರ್ವಕ್ಕೆ ರಾಮಚಂದ್ರ ಇವರ ಸ್ವತ್ತು ಇದ್ದು ಅವರು ಸ್ವಾಧೀನದಲ್ಲಿ ಇದ್ದಾರೆ. ನನ್ನ ಸ್ವತ್ತಿನ ಮತ್ತು ವಾದಿಗಳ ಸ್ವತ್ತಿನ ಮಧ್ಯ ತಂತಿ ಬೇಲಿ ಹಾಕಿ ಗುರ್ತಿಸಲಾಗಿದೆ. ಬೆಲಿಯ ಪಕ್ಕಕ್ಕೆ ಮರಗಳು ಇವೆ ಎನುನವುದು ನಿಜವಲ್ಲ, ಬೇಲಿ ಯಾವ ಇಸವಿಯಲ್ಲಿ ಹಾಕಿದ್ದೇನೆ ನೆನಪಿಲ್ಲ ಸರ್ವೆ ನಂ.20/13ರ ಚೆಕ್ ಬಂದಿ ಹೇಳಲು ಆಗುವುದಿಲ್ಲ ಸರ್ವೆ ನಂ.20/2ಡಿ ರಾಮಚಂದ್ರ ಇವರಿಗೆ ನಾನೇ ಮಾರಾಟ ಮಾಡಿದೆ ಎನ್ನುವುದು ನಿಜ. ನಾನು 1977ನೇ ಇಸವಿಯಲ್ಲಿ ಅದನ್ನು ಖರೀದಿಸಿದ್ದೆ. ಅದೇ ದಿನ 20/13ನ್ನು ಕ್ರಯಕ್ಕೆ ತೆಗೆದುಕೊಂಡೆ ಎನ್ನುವುದು ಗೊತ್ತಿಲ್ಲ ಸರ್ವೆ ನಂ.20/13 ಹಾಗೂ ಸರ್ವೆ ನಂ.20/2ಡಿ ಒಟ್ಟಿಗೆ ಸಾಗುವಳಿ ಮಾಡಲಾಗುತ್ತಿತ್ತು ಎನ್ನುವುದು ನಿಜವಲ್ಲ. 1978ನೇ ಇಸವಿಯಲ್ಲಿ ಮಾರಾಟ ಮಾಡಿದ ಜಮೀನಿಜ (sic.) ವಿಸ್ತೀರ್ಣ ನನಗೆ ಹೇಳಲು ಆಗುವುದಿಲ್ಲ. ನಾನು 1978ನೇ ಕ್ರಯ ಪತ್ರ (ನಿಪಿ1)ದಲ್ಲಿ ಸರ್ವೆ ನಂ.20/13 ಹಾಗೂ 20/2ಡಿ ರಲ್ಲಿರುವ ಎರಡೂ ಸ್ವತ್ತುಗಳನ್ನು ಮಾರಾಟ ಮಾಡಿದ್ದೇನಬೆ ಎನ್ನುವುದು ನಿಜವಲ್ಲ ಎರಡೂ ಮಾರಾಟ ಮಾಡಿದ್ದರಿಂದ ಸ್ವತ್ತಿನ ವಿಸ್ತೀರ್ಣ 1 ಎಕರೆ 1 ಗುಂಟೆ ಬರೆದಿದ್ದೇನೆ ಎನ್ನುವುದು ನಿಜವಲ್ಲ ಕ್ರಯ ಪ್ತರದಲ್ಲಿ (sic.) ಬರೆದಂತೆ ಗಡಿಗಳು ಎರಡೂ ಆಸ್ತಿಗಳಿಗೆ ಸೇರಿ

ಬರೆಯಲಾಗಿದೆ ಎನ್ನುವುದು ನಿಜವಲ್ಲ, ನಾನು ಕ್ರಯಕ್ಕೆ ತೆಗೆದುಕೊಂಡ ಮೂಲ ಕ್ರಯ ಪತ್ರ ನನ್ನ ಬಳಿ ಇದೆ."

30. On reading the above extracted portion, the defendant No.1 has clearly and in unequivocal terms has admitted that the properties purchased by plaintiffs is fenced and there is a clear demarcation of the properties retained by defendant No.1 and the one sold. This crucial admission also demonstrates that the plaintiffs are in possession pursuant to the sale deed obtained by the plaintiffs.

31. The sketch furnished along with the plaint also needs to be adverted to. Though learned Senior Counsel submitted that the sketch is not marked and therefore, it cannot be looked into, this Court is of the view that the contention of the learned Senior Counsel is completely misplaced. The sketch furnished along with the plaint has to be treated as part and parcel of the plaint and therefore, question of marking the sketch annexed with

the plaint does not arise for consideration. In his chief-examination, plaintiff, to avoid controversy, did made an attempt to get the sketch marked. However, the learned Judge, while recording evidence, opined that the sketch cannot be marked as it is part and parcel of the plaint.

32. On closer examination of the sketch, the topography of the properties is clearly indicated. It also demonstrates that the suit property and Sy.No.20/2D are located vertically and north south. Towards the eastern side of the defendant's property, there is a clear fencing demarcating Sy.No.20/2D measuring 37 guntas and Sy.No.20/13. Sy.No.20/13 is to the north of Sy.No.20/2D which was purchased by plaintiffs under a single sale deed. These two survey numbers are clearly demarcated by a fence and this is candidly admitted by defendant No.1 in her cross-examination.

33. The contention urged by the defendants that the encumbrance certificate reflects conveyance only in

respect of Sy.No.20/2D and, therefore, excludes Sy.No.20/13 cannot be accepted. A careful perusal of the encumbrance certificate reveals that though only Sy.No.20/2D is expressly mentioned, the total extent shown therein is 1 acre 1 gunta. This aspect assumes significance. Admittedly, Sy.No.20/2D measures only 37 guntas. The extent of 1 acre 1 gunta can be arrived at only if Sy.No.20/13 measuring 4 guntas is also taken into account. Thus, the omission appears to be one relating to description of survey number in the encumbrance extract, and not an exclusion of extent. An encumbrance certificate is merely a reflection of entries made in the registration records and cannot override the substantive recitals contained in a registered conveyance. When the total extent mentioned in the encumbrance corresponds exactly to the cumulative extent of both survey numbers, the argument that only one survey number was conveyed loses force.

34. Equally untenable is the contention that if the plaintiffs had purchased two items under Ex.P-1, they ought to have secured mutation of their names in respect of Sy.No.20/13 immediately after the sale deed of 1978. Though it is true that the plaintiffs did not get their names mutated in the revenue records pertaining to the suit schedule property for several years, the said circumstance, by itself, is not conclusive of title. Revenue entries are primarily maintained for fiscal purposes and do not confer or extinguish title.

35. In the present case, the plaintiffs have effectively countered this contention by referring to the additional documents produced in the appeal, which disclose that the suit schedule property was subjected to acquisition proceedings and that such proceedings were ultimately dropped only in the year 2006. The materials placed on record indicate that even the name of defendant No.1 herself was not reflected in the revenue records and that the property continued to stand in the name of the

original owner, Papaiah, until the acquisition proceedings were dropped. Therefore, the non-reflection of the plaintiffs' names in the revenue records cannot be construed as indicative of absence of title.

36. On the contrary, the sequence of events assumes importance. It appears that immediately after the acquisition proceedings were dropped in 2006, defendant No.1 got her name mutated in respect of the suit schedule property and, without delay, executed a registered gift deed in favour of her daughter. This conduct, when examined in the backdrop of the prior registered sale deed of 1978 conveying 1 acre 1 gunta, creates a strong inference that defendant No.1 sought to take advantage of the ambiguity arising from the striking off of survey numbers in the schedule and the absence of revenue mutation in favour of the plaintiffs. Such conduct does not inspire confidence and appears to be an attempt to assert title contrary to the earlier conveyance for valuable consideration.

37. The recitals contained in Ex.P-1 clearly indicate conveyance of both immovable properties. Defendant No.1, being the executant of the registered instrument, is bound by the terms and recitals therein. Any attempt to set up a case contrary to the express recitals in the document is impermissible. In view of Section 92 of the Indian Evidence Act, 1872 once the terms of a contract or disposition of property have been reduced to writing and proved by production of the document, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding to, or subtracting from its terms, except in cases falling within recognized exceptions, which are neither pleaded nor established in the present case.

38. Therefore, any amount of pleadings, oral assertions, or collateral documentary evidence sought to be relied upon by the defendants, which run contrary to the clear recitals in the registered sale deed at Ex.P-1, are

legally inadmissible and cannot be permitted to dilute or override the express terms of the conveyance.

39. In the light of these significant details, this Court is of the view that trial Court has meticulously considered the recitals in the registered sale deed. It has rightly appreciated the arithmetic correlation between the extent and survey numbers. The defence is rightly rejected by the trial Court. There is no rebuttal evidence indicating that suit property was not part of the conveyance.

40. On overall appreciation of evidence by this Court independently, this Court is more than satisfied that the defence appears to be an attempt to exploit a clear anomaly in the schedule to defeat a substantive conveyance evidenced by a registered document. Since there is no perversity or misapplication of law by the trial Court, the point No.(i) formulated above is answered in

the ***Affirmative*** and point Nos.(ii) and (iii) are answered in the ***Negative***.

<u>Finding on Point No.(iv):</u>

41. The defendants have filed an application seeking to produce additional evidence at the appellate stage. On a closer scrutiny of the documents now sought to be introduced, it is evident that they pertain to certain acquisition proceedings and revenue records. The said documents are neither foundational to the pleadings nor decisive of the real controversy involved in the present appeal.

42. The core dispute between the parties revolves around the interpretation of the registered sale deed at Ex.P-1. The core question is whether defendant No.1, while executing Ex.P-1, conveyed two items of property namely Sy.No.20/2D measuring 37 guntas and Sy.No.20/13 measuring 4 guntas or only one survey number. While answering Point Nos.1 to 3, this Court has

exhaustively examined the recitals contained in Ex.P-1, the schedule appended thereto, the admissions elicited in evidence, and the surrounding circumstances. Upon such comprehensive re-appreciation, this Court has already recorded a categorical finding that defendant No.1, under a valid registered conveyance for valuable consideration, conveyed both items including the present suit schedule property.

43. In that view of the matter, the additional documents now sought to be produced do not assist this Court in determining the real issue in controversy. They relate to acquisition proceedings and revenue entries, which, at best, are collateral in nature. The adjudication of the present appeal does not hinge upon those proceedings, but rather upon the construction of Ex.P-1. When the dispute is one of interpretation of a registered instrument, and when the document itself has been fully examined along with the evidence on record, production of

revenue extracts or acquisition papers would not alter the legal position.

44. Further, the defendants have not demonstrated that the requirements of Order XLI Rule 27 of the Code of Civil Procedure, 1908 are satisfied. There is no satisfactory explanation as to why these documents could not have been produced before the Trial Court. Nor is it shown that the appellate Court requires these documents to pronounce judgment effectively. It is well settled that additional evidence cannot be permitted to fill up lacunae or to patch up weaknesses in a case already concluded at trial.

45. Even otherwise, this Court is of the considered view that the proposed additional evidence has no direct relevance to the determinative issue in the appeal. In the absence of pleadings forming the foundational basis for such documents, and in the absence of necessity for

effective adjudication, the application does not merit consideration.

46. Accordingly, Point No.(iv) is answered in the ***Negative*** and the application seeking production of additional evidence stands rejected.

Finding on Point No.(v):

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

ORDER

Appeal is devoid of merits and accordingly, stands ***dismissed***.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 1 Sl No.: 10