

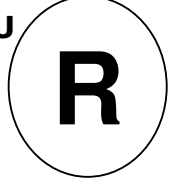
**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH



**REGULAR SECOND APPEAL NO.1394 OF 2023 (DEC/INJ)
C/W**

**REGULAR SECOND APPEAL NO.1404 OF 2023 (INJ)
REGULAR SECOND APPEAL NO.1405 OF 2023 (INJ)
REGULAR SECOND APPEAL NO.1406 OF 2023 (INJ)
REGULAR SECOND APPEAL NO.1410 OF 2023 (INJ)**

REGULAR SECOND APPEAL NO.1394/2023:

BETWEEN:

- 1 . SRI. N. NARAYANASWAMY,
S/O NARAYANAPPA,
AGED ABOUT 61 YEARS,
R/A DODDAMARALI,
NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103.
- 2 . SRI. N. VENKATESH
S/O NARAYANAPPA,
AGED ABOUT 54 YEARS,
R/A DODDAMARALI, NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103. ... APPELLANTS

(BY SRI. T. SESHAGIRI RAO, &
SRI. SUNIL S. RAO, ADVOCATES)

AND:

- 1 . SRI. KRISHNAPPA,
S/O SULALAPPA
AGED ABOUT 76 YEARS,
R/A KOLA AVANAHALLI VILLAGE
NANDI HOBLI, CHIKKABALLAPURA TALUK
CHIKKABALLAPURA DISTRICT-562103.



**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

SRI. RAMAIAH
SINCE DEAD BY HIS LRS

- 2 . SMT. RAMAKKA,
W/O LATE RAMAIAH,
AGED ABOUT 76 YEARS,
- 3 . SMT. CHANDRAMMA @ CHANDRAKALA
D/O LATE RAMAIAH,
AGED ABOUT 51 YEARS,
- 4 . SMT. SHYLAJA
D/O LATE RAMAIAH
AGED ABOUT 44 YERAS
- 5 . SRI. BYRE GOWDA
S/O LATE RAMAIAH
AGED ABOUT 42 YEARS

RESPONDENT NOS.2 TO 5 ARE
RESIDING AT DODDAMARALI VILLAGE
NANDI VILLAGE, CHIKKABALLAPURA TALUK.
CHIKKABALLAPURA DISTRICT-562103.

SMT. NARAYANAMA
DEAD BY HER LRS

- 6 . SRI. VENKATE GOWDA
S/O LATE CHIKKE GOWDA,
AND NARAYANAMMA,
AGED ABOUT 63 YEARS,
7. SRI. SHANKARAPPA
S/O LATE CHIKKE GOWDA
AND NARAYANAMMA,
AGED ABOUT 59 YEARS

RESPONDENTS 6 AND 7 ARE
R/AT BENDAGANAHALLI VILLAGE
HOSAKOTE TALUKU
BANGALORE RURAL DISTRICT-562129.

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

8 . SMT. PARVATAMMA
S/O LAGE CHIKKE GOWDA
AND NARAYANAMMA,
AGED ABOUT 54 YEARS
R/AT SAHUKARASHETTIHALLI VILLAGE
VEMAGAL HOBLI
KOLAR TALUKU-563101.

9 . SMT. SAROJAMMA
W/O MUNIYAPPA
D/O NARAYANAMMA
AGED ABOUT 51 YEARS
R/AT DODDABHYURU VILLAGE
VOKKALERI HOBLI, MALURU TALUK
KOLARA DISTRICT-563130.

10 . SRI. VIJAY KUMAR
GRANDSON OF NARAYANAPPA
S/O LATE KRISHNE GOWDA
AGED ABOUT 33 YEARS
R/AT BENDAGANAHALLI VILLAGE
HOSAKOTE TALUKU
BANGALORE RURAL DISTRICT-562135.

SMT. DODDA PILLAMMA
SINCE DEAD BY HER LRS

11 . SRI. MARE GOWDA,
S/O LATE DODDA PILLAMMA,
AGED ABOUT 61 YEARS,

12 . SMT. SUSHEELAMMA
D/O LATE DODDA PILLAMMA,
AGED ABOUT 60 YEARS,

SRI. NARASIMAHA GOWDA
DEAD BY LRS

13. SMT. SHANTHAMMA,
W/O LATE NARASIMHA GOWDA,
AGED ABOUT 56 YEARS,

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

14. SRI. SHYAM
S/O LATE NARASIMHA GOWDA,
AGED ABOUT 34 YERAS,

15 . SMT. NANDINI
D/O LATE NARASIMHA GOWDA,
AGED ABOUT 32 YEARS,

16 . SRI. SRINATH GOWDA
S/O LATE NARASIMHA GOWDA,
AGED ABOUT 30 YEARS,

RESPONDENT NOS.11 TO 16 ARE
RESIDING AT THAILAGERE VILLAGE,
KUNDANA HOBLI,
DEVANAHALLI TALUK-562110.

17 . SMT. LAKSHMAMMA
D/O LATE DODDA PILLAMMA,
AGED ABOUT 55 YEARS,

18 . SRI. RAVI
S/O LATE DODDA PILLAMMA,
AGED ABOUT 53 YEARS,

19 . SMT. RATHNAMMA
D/O LATE DODDA PILLAMMA,
AGED ABOUT 51 YEARS,

20 . SRI. KRISHNAIAH
S/O LATE DODDA PILLAMMA,
AGED ABOUT 50 YEARS,

21 . SMT. KAVERAMMA
D/O LATE DODDA PILLAMMA,
AGED ABOUT 47 YEARS,

22 . SRI. RAJANNA
S/O LATE DODDA PILLAMMA,
AGED ABOUT 45 YEARS,

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

RESPONDENTS NO.17 TO 22 ARE
RESIDING AT THAILAGERE VILLAGE,
KUNDANA HOBLI, DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT-562110.

SMT. CHIKKA PILLAMMA @ PILLAMMA
SINCE DEAD BY HER LRS

23 . SMT. SUVARNA
D/O LATE CHIKKA PILLAMMA @ PILLAMMA
W/O MANJUNATH
AGED ABOUT 51 YEARS,
R/AT CHOKKANAHALLI VILLAGE,
BENGALURU HOBLI, YELAHANKA TALUK,
BENGALURU RURAL DISTRICT-560064.

24 . SMT. CHANNAMMA
D/O LATE MALLIGE BYRAPPA,
AGED ABOUT 72 YEARS,
R/AT RAJAGATTA VILLAGE,
DODDABALLAPURA TALUK,
BENGALURU RURAL DISTRICT-561205. ...
RESPONDENTS

(BY SRI. K.N. NITISH, ADVOCATE FOR
SRI. K.V.NARASIMHAN, ADVOCATE FOR R1;
VIDE ORDER DATED 24.02.2025,
NOTICE TO R2 TO R8, R10 TO R17 &
R19 TO R23 IS HELD SUFFICIENT;
VIDE ORDER DATED 24.02.2025 LRS OF DECEASED
R9, R18, R24 CANNOT BE PERMITTED TO COME ON RECORD)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.06.2023
PASSED IN R.A.NO.9/2017 ON THE FILE OF THE III
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHIKKABALLAPURA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 17.12.2016
PASSED IN O.S.NO.416/2007 ON THE FILE OF THE
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
CHICKBALLAPURA.

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

REGULAR SECOND APPEAL NO.1404/2023:

BETWEEN:

- 1 . SRI. N. VENKATATESH
S/O NARAYANAPPA,
AGED ABOUT 54 YEARS,
R/A DODDAMARALI VILLAGE,
NANDI HOBLI, CHIKKABALLAPUR TALUK,
CHIKKABALLAPUR DISTRICT-562103. ... APPELLANT

(BY SRI. T. SESHAGIRI RAO, &
SRI. SUNIL S. RAO, ADVOCATES)

AND:

- 1 . SMT. CHANNAMMA
D/O LATE MALLIGE BYRAPPA,
AGED ABOUT 64 YEARS,
R/A DODDAMARALI VILLAGE, NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103.

NOW RESIDING AT RAJANUKUNTE VILLAGE,
DODDABALLAPURA TALUK-560064.
- 2 . SRI MUNIYAPPA S/O SULAPPA,
AGED ABOUT 71 YEARS,
R/A KOLAVANAHALLI VILLAGE,
NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103. ... RESPONDENTS

(BY SRI. K.N. NITISH, ADVOCATE FOR
SRI. K.V.NARASIMHAN, ADVOCATE FOR R2
VIDE ORDER DATED 24.02.2025,
BRINGING LRS OF DECEASED R1 IS DISPENSED WITH)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.06.2023
PASSED IN R.A.NO.06/2017 ON THE FILE OF THE III
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHIKKABALLAPURA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 17.12.2016
PASSED IN O.S.NO.12/2015 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC, CHIKKABALLAPURA.

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

REGULAR SECOND APPEAL NO.1405/2023:

BETWEEN:

- 1 . SRI. N. NARAYANASWAMY
S/O NARAYANAPPA
AGED ABOUT 61 YEARS
R/A DODDAMARALI VILLAGE
NANDI HOBLI
CHIKKABALLAPUR TALUK-562103
- 2 . SRI. N. VENKATESH
S/O NARAYANAPPA
AGED ABOUT 54 YEARS
R/A DODDAMARALI VILLAGE
NANDI HOBLI
CHIKKABALLAPUR TALUK-562103. ... APPELLANTS

(BY SRI. T. SESHAGIRI RAO,
& SRI. SUNIL S. RAO, ADVOCATES)

AND:

- 1 . SRI. KRISHNAPPA
S/O SULALAPPA
AGED ABOUT 76 YEARS,
R/A KOLAVANAHALLI VILLAGE,
NANDI HOBLIM
CHIKKAVALAPUR TALUK-562103. ... RESPONDENT

(BY SRI. K.N. NITISH, ADVOCATE FOR
SRI. K.V.NARASIMHAN, ADVOCATE FOR R2;
VIDE ORDER DATED 24.02.2025,
BRINGING LRS OF DECEASED R1 IS DISPENSED WITH)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.06.2023
PASSED IN R.A.NO.13/2017 ON THE FILE OF THE III
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHIKKABALLAPURA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 28.12.2016
PASSED IN O.S.NO.10/2015 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC, CHICKBALLAPUR.

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

REGULAR SECOND APPEAL NO.1406/2023:

BETWEEN:

- 1 . SRI. N. NARAYANASWAMY
S/O NARAYANAPPA,
AGED ABOUT 61 YEARS,
R/A DODDAMARALI VILLAGE,
NANDI HOBLI,
CHIKKABALLAPURA TALUK-562103. ... APPELLANT

(BY SRI. T. SESHAGIRI RAO &
SRI. SUNIL S. RAO, ADVOCATES)

AND:

- 1 . SRI MUNIYAPPA S/O SULALAPPA,
AGED ABOUT 71 YEARS,
R/A KOLAVANAHALLI VILLAGE,
NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103. ... RESPONDENT

(BY SRI. K.N. NITISH, ADVOCATE FOR
SRI. K.V.NARASIMHAN, ADVOCATE)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.06.2023
PASSED IN R.A.NO.8/2017 ON THE FILE OF THE III
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHIKKABALLAPURA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 28.12.2016
PASSED IN O.S.NO.11/2015 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC, CHICKBALLAPURA.

REGULAR SECOND APPEAL NO.1410/2023:

BETWEEN:

- 1 . SRI. N. NARAYANASWAMY
S/O NARAYANAPPA
AGED ABOUT 61 YEARS,
R/A DODDAMARALI VILLAGE

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103. ... APPELLANT

(BY SRI. T. SESHAGIRI RAO &
SRI. SUNIL S. RAO, ADVOCATES)

AND:

- 1 . SMT. CHANNAMMA
D/O LATE MALLIGE BYRAPPA
AGED ABOUT 64 YEARS
R/A DODDAMARALI VILLAGE
NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103.

NOW RESIDING AT
RAJANUKUNTE VILLAGE,
DODDABALLAPURA TALUK-560064.
- 2 . SRI MUNIYAPPA
S/O SULALAPPA
AGED ABOUT 71 YEARS
R/A KOLAVANAHALLI VILLAGE
NANDI HOBLI,
CHIKKABALLAPUR TALUK-562103. ...
RESPONDENTS

(BY SRI. K.N. NITISH, ADVOCATE FOR
SRI. K.V.NARASIMHAN, ADVOCATE FOR R2;
VIDE ORDER DATED 24.02.2025,
BRINGING LRS OF DECEASED R1 IS DISPENSED WITH)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.06.2023
PASSED IN R.A.NO.07/2017 ON THE FILE OF III ADDITIONAL
DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA
DISMISSING THE SUIT AND CONFIRMING THE JUDGEMENT
AND DECREE DATED 17.12.2016 PASSED IN O.S.NO.13/2015
ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE AND JMFC
AT CHIKKABALLAPURA.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.04.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

These appeals are filed challenging the common judgment and decree passed in O.S.Nos.416/2007, 11/2015, 12/2015 and 13/2015 in dismissing the suit of the appellants and also granting the decree in favour of the respondent and challenging the judgment and decree passed in O.S.No.10/2015 in decreeing the suit with cost and so also the dismissal of appeals in R.A.Nos.6/2017, 7/2017, 8/2017, 9/2017 and 13/2017 confirming the judgment and decree of Trial Court in all the suits and so also challenging the order passed in I.A.No.10 filed by the appellants under Order VI Rule 17 of CPC in the Regular Appeal.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the appellants/plaintiffs in their respective suits is that all the piece

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

and parcel of agricultural land bearing Sy.No.90, measuring 7 acres 15 guntas and land bearing Sy.No.91 measuring 3 acres 14 guntas situated at Kolavanahalli Village, Nandi Hobli, Chikkaballapur Taluk, have been described in the schedule in all the suits as suit schedule properties. It is contented that Sri Mallige Byrappa had purchased the suit schedule property in a public auction held by the revenue authority on 16.11.1944. The authority has issued a saguvali chit in his favour, thus the said property is his absolute property. It is contented that Sri Ramaiah, being the son of Sri Mallige Byrappa, during lifetime of his father - Mallige Byrappa has allegedly sold the suit schedule property in favour of Sri D Krishnappa i.e., the respondent herein by manipulating the RTC at column No.12/2 as he is the absolute owner of the suit schedule property on 04.10.1979 and the said document of sale deed is marked as Ex.D3. It is contented that Sri Mallige Byrappa has filed a suit in O.S.No.81/1980 on 19.04.1980 before the Munsiff, Chikkaballapura for declaration to declare that fraudulently sold the property and permanent injunction against Sri D Krishnappa and Sri Ramaiah. It is also the case of the appellants/plaintiffs that Sri Mallige Byrappa has executed a

registered Will in favour of his daughters on 20.06.1980 i.e., immediately after filing of the suit in O.S.No.81/1980. It is contented that during the pendency of the suit, Mallige Byrappa passed away on 30.04.1982 and in this regard, document is placed on record at Ex.P18 and the daughters of Mallige Byrappa came on record as legatees under the Will dated 20.06.1980 in O.S.No.81/1980 and they have been represented by an advocate Sri S R Suryanarayanarao in terms of Ex.P62. The very advocate Sri Suryanarayanarao has identified the special power of attorney executed by Sri D Krishnappa in favour of Sri Muniyappa to give evidence in O.S.No.81/1980 as per Ex.P72. That upon contest, the suit in O.S.No.81/1980 filed by Mallige Byrappa came to be dismissed on 18.12.1992 even though there was a fraud in all stages. Being aggrieved by the judgment and decree dated 18.12.1992 passed in O.S.No.81/1980, the legal heirs of Mallige Byrappa have filed an appeal before the First Appellate Court in R.A.No.6/1993 on 06.02.1993. The First Appellate Court having heard the matter, dismissed the appeal on 09.08.1994. Being aggrieved by the said dismissal of the appeal, the legal heirs of Mallige Byrappa have preferred a second appeal before this Court in

R.S.A.No.379/1996 and same also came to be dismissed on 26.02.2001. Then the legatees under the Will have sold the suit schedule property under two different sale deeds in favour of the appellants herein on 06.03.2006 as per Ex.P5 and P6. Respondent No.1 herein i.e., D Krishnappa has filed a suit in O.S.No.170/2006 before the Civil Judge, Chikkaballapura against the appellants herein for the relief of perpetual injunction and the appellants herein have also filed a suit in O.S.No.416/2007 for the relief of declaration and injunction and an order of temporary injunction was granted on 18.08.2007 in O.S.No.170/2006 and the same has been challenged in W.P.No.16029/2007 by the appellants herein. The learned Single Judge has dismissed the writ petition filed by the appellants on 16.11.2007 and the same has been challenged in the writ appeal No.2136/2007 and Division Bench of this Court disposed of the writ appeal on 28.12.2007 with the observation that disputes are pending between the parties pertaining to the same property since from 1980 and they are in second round of litigation and in view of the several contentions raised, the Trial Court was directed to dispose of the present suit within the specified time without being influenced by any of the

observations made by any of the Courts and shall dispose of the matters strictly in accordance with law.

4. The Trial Judge having considered other suits which have been pending in respect of the very same property, clubbed all the suits filed by the appellants and respondents and conducted a common trial. Heard the parties in respect of their respective cases. Even though plaintiffs/appellants have made an attempt to try to establish the fraud played by respondent No.1 in getting the sale deed from Sri Ramaiah during the lifetime of Mallige Byrappa, since there was an observations that no pleadings in the plaint presented by them with regard to the fraud is concerned in the suit, an application was filed before the First Appellate Court in order to insert the material facts on record regarding fraud. The First Appellate Court after hearing both the parties, without properly appreciating the case made out by the appellants and also in contravention with the directions issued by this Court in writ appeal, has mechanically dismissed the appeals filed by the appellants. Hence, separate second appeals are filed before this Court.

5. The main contention urged while framing the substantial questions of law that defendant No.1 – Krishnappa had acquired the title of the suit schedule property by virtue of a sale deed dated 04.10.1979 at Ex.D3 executed by defendant No.2 – Ramaiah who is neither the owner nor the authorized person who is competent to transfer property on his own, as required under Section 7 of the Transfer of Property Act, 1882 during the lifetime of Mallige Byrappa who is the owner of the suit schedule properties which is recorded in the revenue records at column No.9 of the RTC. When the vendor-Ramaiah had no title in respect of the suit schedule property, question of transferring the property does not arise. Both the courts have not justified in dismissing the suit filed by the appellants on the ground of res-judicata without considering the directions issued by the Division Bench of this Court in W.A.No.2317/2007 which is marked as Ex.P23. The counsel also contend that both the Courts are not justified in conferring the title on defendant No.1 – Krishnappa i.e., on the basis of void sale deed dated 04.10.1979 (Ex.D3) which was executed by a person who has no title to the property.

6. The counsel further contend that the First Appellate Court also not justified in rejecting the application filed by the appellants for amendment of the plaint to insert the necessary pleadings with regard to fraud when there was already a material evidence placed on record to prove such fraud of creation of document by manipulation. The courts below were not justified in recording the finding on the contentious issues that the judgment and decree passed in O.S.No.81/1980 is confirmed in R.A.No.6/1993 and R.A.No.379/1996 in coming to the conclusion that the same is legal and valid when particularly Ex.D3 sale deed is an void document on the basis of which the judgment is also void ab initio which could not have been held as it operates as res-judicata.

7. The counsel also would vehemently contend that judgment and decree can be set aside in view of the law laid down by the Constitution Bench in **AIR 1964 SC in Page 72**, which is a nullity in the eye of law as it is passed on the basis of a void sale deed at Ex.D3. The question before this Court is that whether both the Courts were justified in recording the finding on the relevant contentious issues based on the judgment and decree obtained by defendant No.1 by

misrepresenting material facts and playing fraud on the Courts in the earlier proceedings that Ramaiah is competent to execute the sale deed at Ex.D3. The very judgment obtained by the defendant – Krishnappa is nothing but nullity in the eye of law in view of the judgment in **KARAN SINGH VS. CHAMAN PASWAN** reported in **AIR 1954 SC 340**. The counsel referring this judgment would vehemently contend that the very approach of the Trial Court is erroneous.

8. The counsel appearing for the appellant in R.S.A.No.1404/2023 reiterates the very same ground and prays this Court to set aside the judgment and decree passed in R.A.No.6/2017 and so also the judgment and decree passed in O.S.No.12/2015 (old No.255/2012) and pass an appropriate order to decree the suit filed by the appellant herein. The counsel would vehemently contend that both the Trial Court and First Appellate Court have committed an error in dismissing the suit of the appellant/plaintiff in O.S.No.12/2015 and in confirming the same in R.A.No.6/2017 and erroneously come to the conclusion that the respondent is in possession of the property and fails to take note of the fact that the sale deed in

which the defendant-Krishnappa relies upon is a void document and question of possession does not arise.

9. The counsel in R.S.A.No.1405/2023 prays this Court to set aside the judgment and decree passed by the Trial Court in O.S.No.10/2015 in granting relief in favour of the respondent – Krishnappa and confirming the same by the First Appellate Court in R.A.No.13/2017 and pass an appropriate order to dismiss the suit filed by the respondent in respect of the suit schedule property and reiterated the grounds that no title will be conferred in favour of the respondent in terms of sale deed executed by Ramaiah who himself does not have any right over the property to execute the sale deed. The very approach of both the Trial Court and the First Appellate Court is erroneous and it requires interference of this Court.

10. The counsel for the appellant in R.S.A.No.1406/2023 prays this Court to set aside the judgment and decree passed in O.S.No.11/2015 (old No.230/2010) and also set aside the judgment and decree of the appellate court passed in R.A.No.8/2017 and pass an appropriate order to decree the suit filed by the appellant herein in respect of the

suit schedule property. The counsel also would vehemently contend that both the Courts have committed an error in coming to the conclusion that the suit suffers from res-judicata without framing an issue and said finding is erroneous.

11. The counsel appearing for the appellant in R.S.A.No.1410/2023 prays this Court to set aside the judgment and decree passed by the Trial Court in O.S.No.13/2015 (old No.258/2012) and set aside the judgment and decree passed in R.A. No.7/2017 and prays this Court to decree the suit filed by the appellant in respect of the suit schedule property and if any transfer is made by Ramaiah who is not having any title over the suit schedule property, the same will not confer any title. The very approach of the Trial Court and the First Appellate Court is erroneous and it requires interference of this Court.

12. The counsel for the appellants in his oral submission would vehemently contend that no dispute that property was purchased by Mallige Byrappa on 16.11.1944 and his son only sold the suit schedule property and not by the original owner - Mallige Byrappa, thus, the very sale deed in favour of the said Krishnappa in terms of Ex.D3 does not convey any title. The

counsel also would vehemently contend that before selling the property, the son manipulated the RTC in column No.12/2 inserting his name and played fraud on the original owner and same was questioned by the original owner during his lifetime filing a suit. The counsel also would vehemently contend that when the original owner come to know about the same filed the suit on 19.04.1980 and in the meanwhile, immediately, executed the Will in favour of his daughters on 20.06.1980 and died on 30.04.1982. No doubt, the suit was dismissed by the Trial Court and the same was confirmed by the First Appellate Court and also in the second appeal by this Court. The present appellants are the purchasers under the sale deeds in terms of Ex.P5 and P6 and sale was made on 06.03.2006. The counsel also would vehemently contend that the purchaser i.e., respondent –Krishnappa had purchased the property in the year 1979 and he had filed a suit in O.S.No.170/2006 and the same is only for injunction based on the sale deed at Ex.D3. The counsel would submit that the suit in O.S.No.416/2007 was filed for declaration and injunction. The Trial Court also while considering the suit comes to the conclusion that the son of the original owner created the document of RTC tampering the

same and even there is finding that there is no any hesitation to come to such conclusion that to insert the name of the Ramaiah in the RTC extract but granted the relief in favour of the respondent which ought to have granted the relief in favour of the appellants/plaintiffs and not in favour of the respondent. The counsel also would vehemently contend that there is no any explanation on the part of the respondent with regard to the manipulation of RTC and also not disclosed that how he had acquired the property. The counsel also would submit that this Court in writ appeal at Ex.P23 made it clear that the Trial Judge should not influence with any of the findings of earlier Courts. In spite of it, committed an error, thus, the very approach of the Trial Court and Appellate Court in dismissing the suits of the appellants and allowing the suit of the first respondent-Krishnappa is erroneous and the same is against the facts as well as law. Hence, there are substantive questions.

13. The counsel appearing for the appellants in support of his arguments relied upon the judgment reported in **(2023) 10 SCC 755** in the case of **YADIAH AND ANOTHER vs STATE OF TELANGANA AND OTHERS** and brought to notice of this court paragraphs 55 and 56. The counsel referring these

two paragraphs brought to notice of this Court that the Apex Court made an observation that the other aspect which needs our attention is whether the second SCN would be barred by the extended doctrine of constructive res judicata. The said doctrine has been formulated over the time by courts as a part of public policy to prevent abuse of process of courts and to bring penalty to the judicial pronouncements. The counsel also brought to notice of this Court the discussion made by the Apex Court in the judgment OF **STATE OF UP VS. NAWAB HUSSAIN** reported in **(1977) 2 SCC 807**, wherein paragraphs 3 and 4 of the said judgment also discussed in detail. The counsel also brought the notice of this Court paragraph 56 of the **YADIAH's** judgment wherein discussion was made that the doctrine of constructive res judicata will not be applicable in the present case for the simple reason that the issues raised in the second SCN were never adjudicated upon in the first place as explained above. The plea that the same should have been raised in the earlier proceedings, is irrelevant in the light of the liberty granted by the High Court in its order dated 21.04.2006, whereby the revenue authorities were expressly permitted to initiate fresh proceedings for violation of assignment conditions.

The Division Bench of the High Court is therefore right in holding that this liberty was not for future contraventions only and the second SCN would neither constitute an abuse of process of court nor will attract the doctrine of constructive res-judicata.

14. The counsel also relies upon the judgment of the Apex Court reported in **(2008) 16 SCC 228** in the case of **CANARA BANK VS N G SUBBARAYA SETTY AND ANOTHER** and brought to notice of this court paragraphs 5, 28, 29, 30, 31, 34.2.2 and 34.2.3. The counsel referring to this judgment brought to notice of this Court the discussion made in paragraph 5 with regard to the res-judicata, a doctrine of fundamental importance in our legal system, wherein it is said that, however, it is not a mere technical doctrine, but it is fundamental in our legal system that there be an end to all litigation, this being the public policy of Indian law. The observation of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the court takes place. However there are certain notable exceptions to the applications of the doctrine. **One well-known exception is that the doctrine cannot impart finality to an erroneous**

decision on the jurisdiction of a court. Likewise, an erroneous judgment on a question of law which sanctions something that is illegal, also cannot be allowed to operate as res judicata. The counsel also brought to notice on this Court paragraph 28 wherein also a discussion was made that the same is applicable holding that where there is an inherent lack of jurisdiction, which depends upon a wrong decision, the earlier wrong decision cannot be res judicata.

15. The counsel also brought a notice of this court paragraph 29 wherein also a discussion was made relaying upon the judgment of **MOHANLAL GOENKA VS BENOY KRISHNA MUKHERJEE** reported in **1953 SCR 377**, wherein it is held that even an erroneous decision on a question of law operates as res-judicata between parties and further in paragraphs 30 and 31 held that the Apex Court went into the doctrine of constructive res judicata and decided that the constitutionality of a provision of law stands on a different footing from other questions of law. As there is a presumption of constitutionality of all statutes, the "might and ought" rule of constructive res judicata cannot be applied. Instead what was

applied by this Court was that part of the decision in the case of **MATHURA PRASAD BAJOO JAISWAL vs DOSSIBAI N B JEEJEEBHOY** reported in **(1970) 1 SCC 613** which stated that when the law has, since the earlier decision in the appellant's writ petition, been altered by a competent authority, res judicata cannot apply. The Full Bench of the Punjab High Court was expressly overruled on the point that a "competent authority" can also be a court. Hence, a changed declaration of law would also fall within an earlier decision being altered by a competent authority. This Court, therefore, held that since this Court itself had altered the law when it declared the pari materia rule as unconstitutional, the doctrine of res judicata could not apply.

16. The counsel also brought the notice of this Court, paragraph 34, wherein held that the general rule is that all issues that arise directly and substantially in a former suit or proceeding between the same parties are resjudicata in a subsequent suit or proceeding between the same parties. **This would include issues of fact, mixed questions of fact and issues of law. In paragraph 34.2 held that general proposition of law, there are certain exceptions when it**

comes to issues of law. In paragraph 34.2.1 also discussed that when an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the court, an erroneous decision in the former suit or proceeding is not resjudicata in a subsequent suit or proceeding between the same parties, even where the issue raised in the second suit or proceeding is directly and substantially the same as that raised in the former suit or proceeding. This follows from a reading of Section 11 of the Code of Civil Procedure itself, for the court which decides the suit has to be a court competent to try such suit. Apart from that, an erroneous decision as to the jurisdiction of a court cannot clothe that court with jurisdiction where it has none. Obviously, a Civil Court cannot send a person to jail for an offence committed under the Penal Code. If it does so, such a judgment would not bind a Magistrate and/or Sessions Court in a subsequent proceeding between the same parties. Equally, a Civil Court cannot decide a suit between a landlord and a tenant arising out of the rights claimed under the Rent Act. So also an erroneous decision clothing the Civil Court with jurisdiction to embark upon a suit filed by a landlord

against a tenant in respect of rights claimed under the Bombay Rent Act, would, therefore, not operate as resjudicata in a subsequent suit filed before the Small Causes Court between the same parties in respect of the same matter directly and substantially in issue in the former suit. **The counsel also brought to notice of this Court paragraph 34.2.2 an issue of law which arises between the same parties in a subsequent suit or proceeding is not resjudicata if, by an erroneous decision given on a statutory prohibition in the former suit or proceeding, the statutory prohibition is not given effect to. This is despite the fact that matter in issue between the parties may be the same as that directly and substantially in issue in the previous suit of proceedings.** This is for the reason that in such cases, the rights of the parties are not the only matter for consideration (as is the case of an erroneous interpretation of a statute inter parties), as the public policy contained in the statutory prohibition cannot be set at naught. The counsel also brought to notice of this Court paragraph 34.3, wherein also another exception to this general rule follows from the matter in issue being an issue of law different from that in the previous suit or

proceeding. This can happen when the issue of law in the second suit or proceeding is based on different facts from the matter directly and substantially in issue in the first suit or proceeding. It is equally, where the law is altered by a competent authority since the earlier decision, the matter in issue in the subsequent suit or proceeding is not the same as in the previous suit or proceeding, because the law to be interpreted is different.

17. The counsel referring these two judgments would vehemently contend that though the earlier suit was decided and the same will not be a res judicata both in respect of the factual aspect as well as law, the same is not properly discussed. The counsel would vehemently contend that in the earlier suits and appeals, all the courts have committed an error in applying the law as the seller who is the son of Mallige Byrappa has no title to convey any title in favour of the purchaser. When the very said deed is void ab initio, question of conferring any right either by the court or by any such proceeding will not create any right. The statute is very clear that person who is having a title only can convey better title not by any other person. Hence, the very approach of Trial

Court and First Appellate Court is erroneous and it requires interference of this court.

18. Per contra, learned counsel for the respondent-purchaser in his arguments would vehemently contend that these appeals arises out of five suits and out of five suits, four suits are filed by the plaintiffs/appellants in O.S.No.416/2007 jointly and O.S.No.11/2015 is filed by first plaintiff against Muniyappa, who is the brother of the respondent and represented as Power of Attorney holder of Krishnappa, who is the purchaser. The second plaintiff also filed a suit in O.S.No.12/2015 against the purchaser Krishnappa, O.S.No.13/2015 is filed by the first plaintiff against Muniyappa from whom they have purchased the property i.e., the daughters of the original purchaser. The suit in O.S.No.10/2015 is filed by respondent No.1 (defendant No.1) against both the plaintiffs in O.S.No.416/2007 for the relief of bare injunction. The counsel would submit that except the suit in O.S.No.416/2007, the parties have filed the suit for the relief of bare injunction.

19. Learned counsel for the respondent-purchaser would also contend that the Trial Court, First Appellate Court and this Court have already given the correct finding and the conclusion is very clear that the son can convey the title, if it is a property of the joint family. The counsel would vehemently contend that the sale was made for the benefit of the family and property was conveyed by the son even though the same belongs to his father as he had purchased the same and definite finding is given by the Trial Court and First Appellate Court earlier while considering the similar issues involved between the parties. It is contended that even though the present suit is filed by the subsequent purchasers, the kept open the earlier proceedings which have been initiated by the father and the respective daughters from whom they have purchased the property.

20. The counsel would submit that in respect of first substantial question of law framed by this Court in R.S.A.No.1394/2023 invoking Section 7 of the Transfer of Property Act, 1882 with regard to the competence to transfer the property. The counsel would submit that in the earlier suit, it is adjudicated that it is a joint family property and the seller

Mr.Ramaiah, who is the son of original purchaser has been considered as kartha. The counsel would submit that the witness P.W.3 admits that Mr. Ramaiah was looking after the property and so also, the evidence of P.W.4 is very clear that tax is paid by son Mr. Ramaiah. The counsel would submit that in the earlier judgment as per Ex.D42, the Court has categorically held in detail that property belongs to the joint family and as a kartha, vendor of this respondent had sold the property. The counsel also would submit that Section 7 of Transfer of Property Act, 1882 is very clear with regard to persons having authority to dispose of the property. In this case, having authority as a kartha, the vendor of this respondent disposed of the property. Though, it is contended that the original purchaser had signed the document of sale deed in favour of the respondent and though it is not proved, but the Court in the earlier suit and also in the present suit made an observation that the original owner did not seriously contest the suit.

21. The counsel also would submit that in Column No.12 of the RTC from 1971 and 1972 onwards, name of the vendor of the respondent was shown and only in Column No.9,

name of the father was shown. Hence, it is clear that the vendor of the respondent was cultivating the property and he acted as a kartha of the family while selling the property in favour of the respondent. The counsel also would submit that RTC is changed based on the sale deed in the year 1980 in favour of the present respondent, who had purchased the property from the son of Mallige Byrappa. The counsel would submit that on 09.01.2006, the daughters of said Mallige Byrappa had got changed the revenue records through the Assistant Commissioner based on the Will allegedly executed by the Mallige Byrappa. The counsel would submit that within two months of getting transferred the revenue records in the name of the daughters, sold the property to these appellants on 06.03.2006 and this mischief was also taken note of by the Trial Court and the First Appellate Court in the earlier suit. The counsel would submit that an appeal was filed against the order of the Assistant Commissioner and the same was dismissed by the Deputy Commissioner. Hence, W.P.No.14549/2010 was filed and the same was allowed with cost of Rs.50,000/- and the earlier revenue records in the name of the respondent was restored. Against the said order passed in the writ petition,

State has also filed an appeal and the same was dismissed and the daughters have also filed a writ appeal and the same also came to be dismissed with an observation subject to the result of the suit in O.S.No.416/2007. The said observation cannot be taken into consideration, since, in the writ appeal, the Court has made an observation that the earlier finding of any of the Court shall not influence the Trial Court.

22. The counsel would submit that the respondent is a bonafide purchaser and in terms of Ex.D1, the second plaintiff had purchased the flat in Sy.No.88 and in the said sale deed, on the southern portion, it is shown as suit schedule property. On the north, it is mentioned as property belongs to Muniyappa, who is none other than the brother of the respondent-Krishnappa. The very Ex.D1 is clear that second plaintiff was having knowledge that the property of this respondent is adjacent property of second plaintiff which he had purchased. P.W.2 also in his evidence admitted that on the north, there exists property of Muniyappa. But, denies that his father's name is not known to him. The counsel would submit that the present appellants had purchased the property after disposal of earlier R.S.A. in the year 2001 and after lapse of

five years only he had purchased the property. The counsel would submit that daughters claim the property based on the Will and the same is not proved and only enquiry is held under Order 22 Rule 5 CPC to come on record in the earlier suit. The counsel also brought to notice of this Court observation made by the Trial Court in the earlier suit in paragraph No.18 in respect of Issue No.6 is concerned and the same goes against the purchasers i.e., the appellants. When such being the case, question of invoking Section 7 of the Transfer of Property Act, 1882 does not arise.

23. The counsel would submit that with regard to second substantial question of law framed by this Court in R.S.A.No.1394/2023 framing an issue with regard to res judicata, it is pleaded in the present suit that earlier suit is only for injunction not for declaration and the same is erroneous and specifically pleaded in the plaint that res judicata will not apply. But, a specific defence was taken in paragraph No.7 of the written statement that principles of res judicata is applicable. The counsel would submit that since in R.A. also not pleaded about res judicata, the burden is on the plaintiffs to seek for recasting the issue when the issue was not framed and now,

cannot contend that the issue was not framed with regard to res judicata. The counsel also brought to notice of this Court Section 11 of CPC that no Court shall determine the issues between the parties which are directly and substantially already decided. The counsel brought to notice of this Court Ex.P60-plaint in the earlier suit and nothing is pleaded with regard to fraud is concerned and cannot raise the same in second appeal and Trial Court not committed any error in rejecting the application filed under Order 6 Rule 17 of CPC for amendment. The counsel also would submit that when the matter was already decided and given the finding, res judicata applies. The counsel would submit that the very argument of learned counsel for the appellants that there are Exceptions to Section 11 of CPC and in support of his contention, he relies upon the judgment in **CANARA BANK's** case and the said judgment is not applicable to the case on hand and there was no statutory prohibition for sale of the property. The counsel would submit that when the earlier decision has reached its finality and the same is not challenged, it is very clear that res judicata applies.

24. The counsel in respect of third substantial question of law framed by this Court in R.S.A.No.1394/2023 would

vehemently contend that father had not pleaded fraud when the suit was filed challenging the sale deed and only in regular appeal, subsequent purchaser pleaded regarding fraud, that too, in the second round of litigation. The counsel would submit that even with regard to fraud also, limitation is three years. The counsel, in support of his argument, relied upon the judgment in **JAGANNADH vs. PERUMAL NAIDU** reported in **1969 (2) MLJ 558** and contend that fraud cannot be pleaded belatedly.

25. The counsel in his argument with regard to granting injunction and framing substantial question of law by this Court regarding injunction would submit that finding is given earlier that possession is with the respondent. The counsel would submit that an application is filed in terms of Ex.D46 for amendment seeking the relief of possession by the daughters praying the Court to add the prayer 9(a) and the same was dismissed by the First Appellate Court. The counsel also brought to notice of this Court paragraph No.22 of the earlier judgment passed in R.A. Ex.D44 and reasons are assigned for rejection and also held that sale deed executed in favour of the respondent is not set aside and hence, the question of

amendment does not arise. The counsel also would submit that now the appellants have not sought for any relief of possession before this Court. But, this Court has framed the substantial question of law with regard to dismissal of the suit filed by the appellants herein and even in the present R.S.A. also not raised the issue of possession and without possession, the contention that they purchased the property will not convey any right in favour of the appellants. The counsel brought to notice of this Court observation made by this Court in writ appeal and the same will not influence the findings of the Court. The counsel would submit that when the injunction was granted and confirmed, the same has been challenged by filing writ petition and the writ petition was dismissed and only in the appeal, an observation is made in respect of granting injunction and not in respect of finding given in the earlier suit and subsequent suit.

26. The counsel for the respondent-purchaser in support of his argument relies upon the judgment of the Apex Court in **NARENDRAKUMAR J. MODI vs. COMMISSIONER OF INCOME TAX, GUJARAT II, AHMEDABAD** reported in **(1976) 4 SCC 456** and brought to notice of this Court paragraph No.10, wherein an observation is made that it

appears that in these circumstances, he acted as the kartha with consent of all the other members. A junior member of the family could do so. The counsel also submits that the sale made in favour of the respondent is by the junior member of the family.

27. The counsel also relies upon the judgment of the Apex Court in **NOPANY INVESTMENTS (P) LTD. vs. SANTOKH SINGH (HUF)** reported in **(2008) 2 SCC 728** and brought to notice of this Court paragraph No.13, wherein it is held that considering the principles laid down in *Tribhovandas case and Sunil Kumar case* neither we find any infirmity nor do we find any reason to differ with the findings arrived at by the High Court in the impugned judgment. It is only in exceptional circumstances, as noted herein earlier, that a junior member can act as the kartha of the family. But we venture to mention here that the senior member of HUF, admittedly, has been staying permanently in the United Kingdom for a long time. It was held that if the kartha of HUF was away in a remote place and his return within a reasonable time was unlikely, a junior member could act as the kartha of the family.

28. The counsel also relies upon the judgment delivered by this Court in **SRI NAGENDRA RAO AND OTHERS vs. RAMJI RAO AND OTHERS** in **R.F.A.NO.1195/2004** dated **31.01.2020** and brought to notice of this Court paragraph Nos.12 to 14, wherein this Court made an observation that in a Hindu joint family, ordinarily the eldest male member acts as kartha. This is the general rule. But, there is no any restriction if the entire management of the family is placed in the hands of a junior member. A senior member may decline the karthaship; it may be due to many reasons and in such an event the junior member may take over the management of the property. It all depends upon circumstances. The counsel also brought to notice of this Court paragraph No.13, wherein it is held that defendant No.4 was not the eldest member. Plaintiff No.1 was the eldest son of Chikkamannoji Rao. It is not disputed by any of the parties that Chikkamannoji Rao was employed and was staying away from his home town. In paragraph No.14, it is held that it can be very well said that his first answer that Ramachandra Rao was managing the family after death of Chikkamannoji Rao is correct.

29. The counsel also relies upon the judgment of the Apex Court in **SWAMY ATMANANDA AND OTHERS vs. SRI RAMAKRISHNA TAPOVANAM AND OTHERS** reported in **(2005) 10 SCC 51** and brought to notice of this Court paragraph Nos.12, 13, 26 to 28, 39 and 40, wherein discussion was made with regard to application of res judicata, the contentions of respective counsels and submissions.

30. The counsel referring paragraph No.26 of the judgment would contend that once the matter which was the subject-matter of lis stood determined by a competent Court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment. So also in paragraph No.27, it is held that the principle of res judicata envisages that a judgment of a Court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another Court, wherein the said plea seeks to raise afresh the very point that was determined in the earlier judgment. In paragraph No.28, it is held that the doctrine of res judicata is conceived not only in larger public

interest which requires that all litigation must, sooner than later, come to an end but is also founded on equity. The counsel also brought to notice of this Court discussion made in paragraph Nos.39 and 40, if the parties went to the trial knowing fully well the real issues involved and the adduced evidence in such a case, without establishing prejudice, it would not be open to a party to raise the question of non-faming of particular issue and brought to notice of this Court paragraph Nos.41 and 42.

31. The counsel also relies upon the judgment of the Apex Court in **S. RAMACHANDRA RAO vs. S. NAGABHUSHANA RAO AND OTHERS** reported in **(2024) 17 SCC 361** and brought to notice of this Court paragraph Nos.26, 27, 29 to 33. The counsel brought to notice of this Court discussion made paragraph No.26, wherein it is observed that it is relevant to reiterate that Section 11 CPC is not the foundation of the doctrine of res judicata but is merely the statutory recognition thereof. In paragraph No.30, it is held that it is well settled, as laid down in several decisions, that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered

between the same parties by a Court of competent jurisdiction. The counsel also brought the notice of this Court paragraph Nos.32 and 33 that doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings.

32. The counsel for the respondent also relies upon the judgment of the Apex Court in **ASGAR AND OTHERS vs. MOHAN VARMA AND OTHERS** reported in **(2020) 16 SCC 230** and brought to notice of this Court paragraph No.37, wherein the Apex Court discussed with regard to constructive res judicata and so also the Explanation embodied as statutory principles of the law governing civil procedure. The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation enures to the benefit, unfortunately for the decree-holder, or those who seek to delay the fruits of a decree reaching those to whom the decree is meant. Constructive res judicata, in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. In deciding as to whether a matter might have been urged in the earlier proceedings, the Court will

have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy.

33. The counsel also relies upon the judgment in **JAGANNADH vs. PERUMAL NAIDU AND ORS.** reported in **(1969) 2 MLJ 558** decided on **18.04.1967** and brought to notice of this Court paragraph Nos.11, 15 and 20, wherein it is held that power of the Court to set aside a prior judgment on the ground of fraud is a discretionary one which would be exercised in favour of the applicant only if he is free from fraud or any turpitude or lack of diligence in protecting his own interest.

34. The counsel also relies upon the judgment delivered in **SRI T.R. NAVEEN KUMAR vs. SMT. LAKSHMAMMA AND OTHERS** in **R.S.A.NO.1/2021** decided on **19.12.2025**, wherein this Court made an observation that without seeking possession, there cannot be any suit for declaration relying upon the judgment of the Apex Court in the case of **VASANTHA (DEAD) THROUGH LEGAL REPRESENTATIVE vs. RAJALAKSHMI ALIAS RAJAM (DEAD) THROUGH LEGAL REPRESENTATIVES** reported in **(2024) 5 SCC 282**

and the very same principle is held in the judgment of the Apex Court. The counsel would submit that in paragraph No.11 of the judgment of the Apex Court, an issue was raised that whether the suit for declaration simpliciter was maintainable in view of Section 34 of the SRA, 1963. Hence, in the absence of any relief for possession, question of declaration simpliciter does not arise.

35. In reply to the argument of learned counsel for the respondent, learned counsel for the appellants would submit that under Section 7 of Transfer of Property Act, 1882, it is very clear that owner or authorized person can only sell the property. But, in the case on hand, no such sale was made by owner or the person authorized by the owner. Even, if the property is cultivated by the son as contented by learned counsel appearing for the respondent, he cannot sell the property. The counsel would submit that tax paid by the son is immaterial and payment of tax would not create any right in favour of the son. The counsel would submit that no recital in the sale deed Ex.D3 that he sold the property as kartha and only an averment is made that he sold the property for the benefit of his children. The counsel would submit that both the

Courts have taken note of fraud regarding tampering of RTC in paragraph No.37 of the judgment of the Trial Court. Hence, the First Appellate Court also not reversed the findings of the Trial Court and affirmed the same while confirming the judgment of the Trial Court.

36. The counsel would submit that fraud is evident on record that document of RTC was tampered and Sections 32 to 35 of Registration Act is very clear that Sub-registrar will not register the document, if the RTC not stands in the name of seller. In order to avoid Sections 32 to 35 of Registration Act, the son of Mallige Byrappa and respondent have tampered the RTC and created the document. If the same is not tampered inserting the name of son Ramaiah, the Sub-Registrar would not have registered the document. Hence, it is very clear that it is a clear case of fraud while selling the property by the son in favour of the respondent. The counsel would submit that the citations which have been relied upon by the counsel for the respondent are not applicable to the facts of the case, since the very execution of sale deed by the son, who is not having any authority or title itself is void. Hence, res judicata is not applicable and the same is discussed in the judgment of

CANARA BANK's case which he has relied upon. The counsel would submit that in paragraph No.3 of the plaint in O.S.No.81/1980 which is marked as Ex.P60, a categorical pleading was made that a fraudulent act was done by creating a document and in the original suit itself pleaded with regard to fraud and the very contention of learned counsel for the respondent that there was no such pleading in the original suit cannot be accepted.

37. The counsel would submit that the respondent has executed a Power of Attorney in favour of his brother Muniyappa as per Ex.P72. The counsel would submit that the advocate, who is appearing on behalf of the daughters of original owner himself attested the Special Power of Attorney on 18.01.1990. The counsel also would submit that even subsequently, the very same advocate Suryanarayana Rao, who attested Ex.P72, inspite of he appearing on behalf of the daughters in a subsequent suit had filed vakalath for respondent No.1 which is nothing but a fraud and conflict of interest and the same was brought to the notice of the Court and thereafter, he retired from the case, that itself is also one of the circumstances in committing fraud by the respondent

and won over the advocate, who appears on behalf of the daughters in the original suit and not properly conducted the case in the original suit in the first round of proceedings. The counsel also would submit that an application was filed in collusion without the knowledge of the appellants seeking the relief of possession and the same is at the behest of the respondent through an advocate, who was on record on behalf of the appellants. The counsel would submit that the very contention of the learned counsel for the respondent is that the appellants are in possession of the property cannot be accepted for the reason that the respondent has to point out delivery of possession by Mallige Byrappa in favour of his son and he never delivered possession in favour of his son Ramaiah and since the said Ramaiah was not in possession, the question of delivering possession by said Ramaiah in favour of the respondent does not arise.

38. The counsel would submit that the genesis of the katha in favour of the respondent is based on the void document of sale deed. The counsel also would submit that while filing the present suit also, in paragraph No.18, pleaded with regard to fraud. But, the Trial Court committed an error in

coming to the conclusion that the same is not sufficient. The counsel would submit that documents of Exs.P66, P67 and P68 are the evidence of P.Ws.1, 2 and 4, who have been examined in O.S.No.81/1980 with regard to proving of the Will which was executed by original owner Mallige Byrappa in favour of the daughters and property was bequeathed in favour of the daughters. The Trial Judge having conducted an enquiry comes to the conclusion that they are the legatees and permitted to come on record in the earlier suit and answered that Will was proved and the same is accepted by the Trial Court. The counsel would submit that in view of original owner having executed the Will, the respondent No.1 will not get any right based on the sale deed executed by a person, who is not having any title.

39. Hence, it is a fit case to reverse the findings of the Trial Court as well as the First Appellate Court and the sale deed was made by a person, who is not having any title and that too by a person, who committed fraud on the Court and the very approach of the Trial Court in the earlier proceedings is erroneous and the same will not disentitle the claim of the appellants, who are the owners of the property. The counsel

would submit that there is an error in the earlier proceedings and in the present proceedings with regard to the factual aspects and also question of law and this Court has rightly framed the substantial question of law invoking Section 7 of the Transfer of Property Act, 1882. The counsel also would submit that even if the application filed under Order 6 Rule 17 of CPC is allowed regarding fraud and when the materials are already available before the Court, that itself is sufficient and the Trial Court made an observation with regard to creation of document of RTC in paragraph No.37. When such finding is given, there is no need to once again remand the matter and the pleadings can be accepted with regard to the fraud is concerned.

40. In reply to this argument, learned counsel for the respondent would submit that though it is pleaded in paragraph No.18 with regard to fraud in the present suit and the same is not in consonance with Order 6 Rule 4 of CPC and even the grounds which have been urged regarding fraud are also not proved and the same is observed by the Trial Court. The counsel also would submit that even though learned counsel for the appellants brought to notice of this Court paragraph No.3 of the plaint that there was a pleading in the earlier suit regarding

fraud, the same is not in detail. The counsel would submit that even the Trial Court given the finding that the respondent is in possession of the property. When such finding is given regarding possession, there cannot be any reversal in the second appeal and fact finding has attained its finality.

41. Having heard learned counsel for the appellants and also learned counsel for the respondent in detail and also keeping in view of the grounds which have been urged and also the oral submission, this Court has to consider the substantial questions of law framed by this Court while admitting the second appeal which reads as hereunder:

"IN R.S.A.NO.1394/2023

The following substantial questions of law arise for consideration before this Court:-

- (1) *Whether the Courts below have committed an error in dismissing the suit in O.S.No.416/2007 without examining Section 7 of the Transfer of Property Act and whether son-Ramaiah had exclusive right to sell the property which belongs to his father which he*

derived the title in terms of the document dated 16.11.1944?

- (2) *Whether both the Courts have committed an error in not considering the material on record in not framing an issue with regard to the subsequent suit suffers from res-judicata, since earlier there were proceedings in O.S.No.81/1980 and giving the reason that subsequent suits suffers from res-judicata, in the absence of specific issue?*
- (3) *Whether the First Appellate Court committed an error in dismissing the application filed under Order 6, Rule 17 CPC filed by the appellants before the First Appellate Court to plead in detail the fraud played by the son in selling the property tampering the document of RTC before selling the property in favour of respondent No.1 as stated in the amendment?*

IN R.S.A.NO.1404/2023

The following substantial question of law arises for consideration before this Court:-

- (1) *Whether the Courts below committed an error in decreeing the suit of the respondent and confirming the same by the First Appellate Court based on the sale deed dated 04.10.1979 that the respondent No.1 is in possession of the property in granting the relief of permanent injunction?*

IN R.S.A.NOS.1405/2023, 1406/2023 & 1410/2023:

The following substantial questions of law arise for consideration before this Court:-

- (1) *Whether the Trial Court and the First Appellate Court committed an error in dismissing the suit filed by the appellants seeking the relief of permanent injunction and confirming the same in R.A. relying upon the document of Ex.D3 sale deed dated 04.10.1979?*
- (2) *What order?''.*

SUBSTANTIAL QUESTIONS OF LAW 1 TO 3 IN
R.S.A.No.1394/2023

42. Having considered the above substantial questions of law framed by this Court while admitting the second appeals and the submissions of respective parties which have been narrated supra and also the contentions of the respective counsel, first and foremost, the first limb of argument of learned counsel for the appellants with regard to first substantial question of law in R.S.A.No.1394/2023, this Court would like to extract Section 7 of Transfer of Property Act, 1882 (for short 'TP Act').

"7. Persons competent to transfer. - Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the being in force".

43. Having considered the provisions of Section 7 of TP Act and also the grounds which have been urged in respect of first substantial question of law framed by this Court, this Court has to analyze both oral and documentary evidence available on record in order to come to proper conclusion. The proviso of Section 7 of TP Act is very clear that every person competent to contract and entitled to transferable property or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally. In view of this provision, it is very clear that person must be competent to enter into a contract to transfer the property and also he was authorized to dispose of transferable property not his own or to be competent with authorization to such property either wholly or in part. Keeping in view of provision of Section 7 of TP Act as well as substantive questions of law, this Court has to consider the material available on record.

44. It is not in dispute that the property was purchased by the Mallige Byrappa in the year 1944. The respective parties claim that Mallige Byrappa had purchased the property and derived the title in terms of Ex.P12 and P13. Both counsels also

referred the documents of Ex.P12 and P13 with regard to the title of Mallige Byrappa and there is no dispute in this regard. Hence, it is clear that the Mallige Byrappa had purchased the property in the public auction conducted. Respondent No.1 claims title based on the sale deed executed by Ramaiah who is the son of Mallige Byrappa and the appellants/plaintiffs claim their title based on the sale deeds executed by the daughters of the Mallige Byrappa in terms of Ex.P5 and P6 dated 06.03.2006 based on the Will as legatees. The sale deed executed in favour of the first respondent by Ramaiah is of the year 1979 as per Ex.D3. It is not in dispute that Mallige Byrappa had a son and five daughters. It is the claim of the daughters of Mallige Byrappa that during the pendency of suit in O.S.No.81/1980 filed by the original owner i.e., Mallige Byrappa, a registered Will was executed in their favour in terms of Ex.P11 and also the present appellants/plaintiffs' claim the title based on the said Will as well as Ex.P5 and P6.

45. Having considered the material and record, it discloses that there is no dispute that the property originally belongs to the Mallige Byrappa. Now, the issue before the Court is whether Ramaiah had a competency to execute the sale deed

in terms of Ex.D3 and whether he was authorized to sell the property by the original purchaser - Mallige Byrappa. Admittedly, Mallige Byrappa who had purchased the property had not executed any authorization letter in favour of his son Ramaiah who is the vendor of respondent No.1 to execute the sale deed and also not given any consent. It is also to be noted that the court has to take note of the documentary evidence available on record i.e., Ex.D3. The documentary evidence excludes the oral evidence. Having perused Ex.D3, as rightly contented by the counsel appearing for the appellants that in the recitals of the document at Ex.D3, nowhere it is stated that he was authorized to sell the property and also not stated that he being the kartha of the family, has executed the sale deed. The recital of Ex.D3 discloses that he had sold the property on his behalf and also on behalf of his children and not on behalf of the joint family as contented by the counsel appearing for respondent No.1. The documentary evidence excludes the oral evidence and finding given by the Court in the earlier proceedings as well as in the present proceedings is not based on the documentary evidence available on record i.e., the document at Ex.D3 and the same is only based on oral

evidence. But this court has pointed out that documentary evidence prevails over the oral evidence.

46. It is important to note that this Court has taken note of Section 7 of TP Act with regard to the competency is concerned. It has to be noted that the vendor of the first respondent is not competent to sell the property and the same not belongs to him and the property exclusively belongs to the original purchaser i.e., Mallige Byrappa. It is not in dispute that father i.e., Mallige Byrappa was alive at the time of selling the property by his son Ramaiah in favour of respondent No.1. Even assuming that there was an existence of joint family, what made the vendor of respondent No.1 to exclude his father while selling the property and there is no explanation in this regard since there was no any written consent or authorization to sell the property. Even Trial Court comes to the conclusion that as on the date of execution of the sale deed in the year 1979 in favour of respondent No.1, both the son and father were living together, but what made the vendor/son to exclude his father while executing the sale deed, there is no explanation. Both the courts lost sight of this fact in the earlier proceedings as well as in the present proceedings. The finding

given by both the courts in the earlier proceedings and also in the subsequent proceedings is that Ramaiah was acting as a kartha who is a junior member of the family. The Trial Court while considering this aspect comes to the conclusion that there is a presumption that elder member of the family would be a kartha of the family. However, comes to the conclusion that this presumption cannot take away the case of junior member of the family become a kartha. In paragraph 34 of the judgment, the Trial Court comes to the conclusion that in the evidence of PW3 and PW4, they have admitted the said fact when they were examined. But the document at Ex.D3 was not taken note of by the Trial Court since there was no any recital to that effect in the said document and documentary evidence of Ex.D3 excludes the oral evidence of PW3 and PW4.

47. Though Trial Court comes to the conclusion that under the Hindu law, the presumption is that eldest male member shall be the kartha of the joint family, but the eldest male member may relinquish his right of managership in favour of a junior member. Though such observation is made, there is no documentary proof that eldest male member had relinquished his right of managership in favour of the junior

member. Even though an observation is made by the Trial Court that there is no direct evidence regarding relinquishment of managership by Mallige Byrappa in favour of Ramaiah, but considered the evidence of PW3 and PW4. But documentary evidence is very clear that there is no such recital in the document of sale deed at Ex.D3. But erroneously comes to the conclusion that Ramaiah was the manager of the joint family at the time of execution of sale deed, even though no such recital in the document at Ex.D3. Thus, the very approach of the Trial Court in both the proceedings is erroneous and there is error apparent on record while considering Ex.D3.

48. Even though in paragraph 35, the Trial Court taken note of the fact that there is no such recital in the document of Ex.D3 - sale deed and the same was executed in his individual capacity and not as a manager of the joint family, but erroneously comes to the conclusion that the recitals of the sale deed are not themselves the conclusive proof of the intention of the parties and this observation is erroneous and excluded the documentary evidence available on record and erroneously comes to the conclusion that the same was sold for legal and family necessity and the same is not on behalf of the joint

family and the recitals of the document Ex.D3 is very clear that on his behalf and also on behalf of his children, the property was sold and not on behalf of the joint family. The observation of the Trial Court that defendant No.2 in O.S.No.81/1980 being the kartha of the joint family had sold the property in favour of defendant No.1 i.e., respondent and the said observation is erroneous.

49. The other conclusion of the Trial Court that plaintiff has taken the contention that there was a partition between himself and his son in the year 1976. Whether there was a partition and property was allotted in favour of the father is immaterial when the property was purchased by the father himself in the year 1944. The fact is that, as on the date of sale deed, both father and son were living together. When such being the case, the Trial Court ought not to have comes to the conclusion with regard to the partition since there is no document produced with regard to the partition and the very approach of the Trial Court is erroneous in this regard as there was no partition.

50. This Court would like to rely upon judgment of the Apex Court reported in **(2022) 7 SCC 90** in the case of **UMADEVI NAMBIAR vs THAMARASSERI ROMAN CATHOLIC DOICESE** with regard to conveying of title in favour of anybody by the person who is not having any competency to transfer the property. In this judgment, the Apex Court discussed Sections 7, 8, 3, 54 and 41 of the TP Act with regard to the determination of purported sale by agent i.e., power of attorney holder. Whether binding on principal in the absence of an authority to sell. In the case on hand, first of all, there is no any documentary proof with regard to the consent as well as there is no any authorization. When such being the case, the court has to take note of principle of **“nemo dat quod non habet”** that is no one can confer a better title than what he himself has. The principle is very clear that if the vendors of the respondent themselves did not have any title, they have nothing to convey to the respondent. In the case on hand also there are similar circumstances that the vendor of the first respondent had no title at all and property was purchased by the father of the vendor in the year 1944 and no document of authorization or any consent by his father

and nothing is placed on record to prove the same. The Apex Court in detail discussed the same in paragraph 19 wherein it is held that it is a fundamental principle of the law of transfer of property that **“no one can confer a better title than what he himself has” (nemo dat quod non habet)**. Therefore, the vendors of the respondent could not have derived any valid title to the property. If the vendors of the respondent themselves did not have any title, they had nothing to convey to the respondent, except perhaps the litigation. This principle applies in the case on hand since the vendor of the respondent was not having any competency or authorization to sell the property except the litigation.

51. This Court also would like to rely upon the judgment of the Apex Court reported in **2024 SCC ONLINE SC 517** in the case of **KIZHAKKE VATTAKANDIYIL MADHAVAN (DEAD) THR. LRS. vs THIYYURKUNNATH MEETHAL JANAKI AND OTHERS** wherein the Apex Court made an observation that the creator of lease had no authority to create a lease and such a transaction by which she sought to lease out the subject property was not permissible in law and held that no right or title. It is also held that she would not derive title to

her deceased husband's property when she got married again to Neelakandan. The Apex Court also discussed in paragraphs 9 and 10 with regard to the rights of widow in deceased husband's property to cease on remarriage. **The Apex Court in paragraph 18 held that if a document seeking to convey immovable property *ex-facie* reveals that the conveyor does not have the title over the same, specific declaration that the document is invalid would not be necessary.** It is further held that in absence of proper title over the subject property, that lease deed even if she was its sole lessor would not have been legally valid or enforceable. **If right, title or interest in certain property is sought conveyed by a person by an instrument who herself does not possess any such form of entitlement and the subject being conveyed even with a subsisting deed of conveyance on such property, the grantee on her successors-in-interest will not have legal right to enforce the right the latter may have derived from such an instrument.** The ownership of the suit property could not be said to have devolved in any manner whatsoever to the original plaintiff, who was born within the wedlock of Chiruthey and

Neelakandan and hence set aside the decision of the High Court and decision of the First Appellate Court shall stand confirmed in this judgment. The principle laid down in this judgment is very clear that if the person not having any title to convey immovable property, if he conveys the same, that will not create any right.

52. It is also important to note that it is not the case of respondent No.1 that the original owner who had purchased the property had given the consent. But contend that the original purchaser has given the consent, but he was not a party to the sale deed, but son has executed the sale deed during the lifetime of his father and no documentary proof regarding consent and even also no documentary proof to show that he was acted as a member of the joint family that too during the lifetime of his father and if consent is given, he would have been consenting witness to the document of sale deed in favour of respondent No.1.

53. It is also important to note that father himself had filed a suit in O.S.No.81/1980 challenging the very sale made by his son without any authorization and grounds urged in the

suit itself that the sale deed is a collusive sale deed between his son and respondent No.1. Particularly in paragraph 3 of the plaint, it is pleaded that the said sale deed was fraudulently obtained and not binding on him and collusive. Hence, he sought for the relief of declaration and permanent injunction. Though it is contended by the appellants that it is a suit only for permanent injunction, having taken note of the contents of the plaint which is marked as Exhibit, it is clear that it is a suit for declaration and permanent injunction. The court has to take note of paragraph 3 of the plaint wherein specifically pleaded that it is a collusive and fraudulently obtained and also created the document by manipulating the RTC which was exhibited before the Trial Court as Ex.P24.

54. This Court also would like to point out paragraph No.37 of the judgment of the Trial Court. As the appellants' counsel contended before the Trial Court that there is a discrepancy in the RTC for the relevant period that is prior to selling the property by Ramaiah in favour of the respondent. The counsel also brought to the attention of the court particularly the document which is marked as Ex.P24 - RTC. The Trial court also made an observation that as rightly argued

by the learned counsel for the plaintiff that in column number 12, there is a manipulation of document that Mallige Byrappa's son has been inserted and it has been entered as Mallige Byrappanavara maga Ramaiah and also made an observation that it is seen that there are over-writings but, erroneously come to the conclusion that mere entries in revenue records would not convey any title to any of the parties, but fails to take note that before selling the property, the document - Ex.P24 was manipulated by the vendor of respondent. But comes to the conclusion that the dispute is as to whether the defendant No.2 has sold the properties as a kartha of the joint family and whether they were the joint family members as there was no such issue before the Court. The Trial Court comes to the conclusion that property was granted in an auction in the name of Mallige Byrappa, but held that said discrepancies in column number 12 of RTC would not be of any help to the plaintiffs and fails to take note of the fact that before selling the property by Ramaiah, got manipulated the document of Ex.P24 inserting his name along with his father name and erroneously comes to the conclusion that valid title has not been passed under Ex.D3 was not proved by the

plaintiff. The very approach of the Trial Court is erroneous since the Trial Court rightly comes to the conclusion that there was a discrepancies and manipulation of document of Ex.P24 and over writing. Hence, it is clear that before conveying the property in favour of the respondent, the very vendor of the respondent had indulged in manipulation of documents. It is nothing but a fraud on the father by the son himself when he was living along with the father at the time of executing the sale deed in the year 1979 i.e., document at Ex.D3 and excluded the father and no basis to change the name. The Trial Court comes to the conclusion that the Will was executed on 20.06.1980 in favour of the vendors of the plaintiff, but there had already been a transfer of title in favour of the defendant No.1/respondent in the year 1979. The said approach of the Trial Court is also erroneous for the reason that the person who sold the property was not having any competency or any authorization to sell the property and the same not conveys any title. The recitals of the document of Ex.D3 is also silent to say that he was authorized and also executing the sale deed as a kartha of the family. When there was no competency and authorization, question of

conveying the title in favour of respondent No.1/defendant No.1 does not arise.

55. It is also important to note that the Trial Court made an observation that on the date of the execution of the Will, Mallige Byrappa had no right, title or interest over the plaint schedule property. This observation is also erroneous since , the said Mallige Byrappa was not a party to the sale deed of the year 1979 i.e., Ex.D3. Merely because his son had sold the property without any authorization and competency, the Trial Court ought not to have come to the conclusion that Mallige Byrappa had no title or interest. But the fact is that he did not convey any title during his lifetime, only he had executed the registered Will on 20.06.1980 in favour of his daughters and the same was exhibited before the court and also proved in the earlier proceeding in O.S.No.81/1980 by examining the attesting witnesses and the same was observed by the Trial Court.

56. It is also not in dispute that when the original owner Mallige Byrappa passed away during pendency of the earlier suit, his daughters have filed an application before the

Trial Court to come on record as legatees under the registered Will dated 20.06.1980. It is also important to note that the Trial Court conducted an enquiry before bringing them on record under Order 22 Rule 5 of CPC. The Trial Court made an observation in paragraph 43 that it is not in dispute that O.S.No.81/1980 was filed by Mallige Byrappa with respect to the plaint schedule property against the defendant Nos.1 and 2 i.e., against the purchaser as well as his son and it is not in dispute that during the pendency of the suit, Mallige Byrappa died and vendors of the plaintiffs i.e., the daughters of Mallige Byrappa were impleaded as legal representatives on the basis of the Will executed by Mallige Byrappa on 20.06.1980 i.e., during the pendency of the said suit after holding an enquiry and Will was proved by examining attested witnesses. The Trial Court also taken note of the fact that the daughters have sold property in favour of the plaintiffs under the sale deed dated 06.03.2006 and comes to the conclusion with regard to the Will is concerned that the very execution of the Will was proved by the vendors of the appellants by examining attested witnesses of the Will in paragraph 52 regarding genuineness of the execution of the Will. It was also observed that the Will was

came into existence during the pendency of the said suit and also an observation was made that scope of such an enquiry would have been with respect to the proof of execution of Will as per Section 63 of the Indian Succession Act and Section 68 of the Evidence Act and also comes to the conclusion that vendors of the plaintiffs have come on record on the basis of Will as the legal representatives of Mallige Byrappa and proved the Will and even though the respondent disputed the Will, not led any evidence in this regard and genuineness of the document is proved and profinder of the Will have also proved the same by examining the attesting witnesses and held that Will was proved. Once the Trial Court comes to the conclusion that Will was proved, but erroneously held that fraud was not proved. The finding of the Trial Court with regard to proving of the Will has attained its finality since Will was not questioned in any forum. The Trial Court comes to the conclusion that Will was proved and permitted the daughters who are the legatees based on the Will to come on record since the same was proved in terms of Section 63 and 68 of the respective Acts. Hence, it is clear that Will was proved.

57. Now, the question before this Court is whether the title was conveyed in favour of the respondent under Ex.D3 and whether there was a title in favour of the present appellants based on the sale deeds at Ex.P5 and P6. When the Will was proved by examining the attesting witnesses and the said Will has attained its finality and also daughters have executed the sale deeds as legatees in favour of the present appellants, the finding of the Trial Court that title was already conveyed by the son is a question. This court already pointed out that person who was not having any title or competency or authorization, conveying the title in favour of others is defective. It is also important to note that before selling the property, the son had manipulated the RTC which is marked as Ex.P24. Thus, no document was existing in favour of son-Ramaiah to convey the title. Based on the manipulated document only, he had sold the property.

58. It is also important to note that in the original suit filed by the very owner of the property pleaded in the plaint in paragraph 3 that the sale deed was a collusive, fraudulent and created document and manipulated document of RTC clearly shows that there was a fraudulent transfer. The counsel

appearing for the respondent brought to notice of this court that there was no specific pleading with regard to the fraud is concerned. When the averment was made in the earlier suit as well as in the present suit regarding fraud, even though there was no detailed pleading, Appellate Court rejected the said application in coming to the conclusion that there was no pleading. When such observation is made on the application filed before the Appellate Court under Order VI Rule 4 of CPC, the same was rejected. But the fact is that even though there was no oral pleading in detail, but the documentary evidence available before the court is very clear that there was a manipulation of document of Ex.P24 - RTC prior to selling the property by the son Ramaiah in favour of respondent No.1. The Trial Court as well as the First Appellate Court have taken note the documentary evidence available on record since the oral evidence excludes when the documentary evidence is produced before the court. The document is very clear that there was a fraud in selling the property by the son excluding the father and behind the back of the father had sold the property indulging in creation of the document of Ex.P24. Though it is contended that prior to selling the property, document stands

in the name of the son but the same was based on manipulated document by the vendor of respondent No.1 and both the Courts fail to take note of the said fact. Though the Trial Court also made an observation in paragraph 37 to that effect, but carried away in coming to the conclusion that fraud has not been proved. When documentary evidence proves that fraud has been committed, the Trial Court ought not to have been ignored the same.

59. The other contention of the counsel appearing for the appellants that when father passed away, the legal heirs i.e., vendors of the appellants/plaintiffs have filed an application and engaged the counsel - Sri S. R. Suryanarayana Rao. The said counsel also committed fraud on the legal representatives of plaintiff in O.S.No.81/1980. The counsel brought to notice of this court that the power of attorney which was executed by defendant No.1 as per Ex.P72 was attested by S.R. Suryanarayana Rao but this S. R. Suryanarayana Rao was appearing for the legal representatives of the plaintiff in O.S.No.81/1980 and Ex.P72 is the S.P.A. executed by the present defendant No.1 in favour of DW1-Muniyappa with respect to the proceedings in O.S.No.81/1980 i.e., in favour of

his brother. The said power of attorney is dated 18.01.1990 and same was executed subsequent to appearing on behalf of the legal representatives of the plaintiff. The counsel also brought to notice of this court that the defendant in the said suit has been identified by one Advocate Sri N Srinivasa and the same was confirmed by the counsel S. R. Suryanarayana Rao who has signed the document at Ex.P72 as a notary and not as an advocate for defendant No.1. But, he identifies the defendant in the earlier proceedings. The Trial Court comes to the conclusion that even Ex.P72 cannot be considered as a ground to come to the conclusion that counsel S. R. Suryanarayana Rao has committed fraud on the legal representatives of the plaintiff in O.S.No.81/1980.

60. It has to be noted that when the counsel representing the legal representatives of the plaintiff in O.S.No.81/1980 and they are the parties to the suit, question of identifying the defendant by the very same counsel does not arise and the same is nothing but conflict of interest between the plaintiff and defendant. The counsel on record on behalf of the legal representatives would not have identified the defendant. To that effect also the appellants' counsel have

placed on record the memo for having identified the defendant by the very same counsel before the Trial Court. The counsel representing the legal representatives of the plaintiff, cannot identify and attest the document of Ex.P72 as a notary. This fact also not taken note of by the Trial Court, but comes to the other conclusion in paragraphs 54 and 55 that plaintiffs have failed to prove that there was non-disclosure of relevant material documents. When these documents were apparent on record showing that the counsel on record who has attested the document of the defendants and appeared on behalf of the legal representatives of the plaintiff, there is substance in the argument of counsel appearing for the appellants/plaintiffs that when there was a conflicting of interest between the parties, the counsel on record would not have identified and attested the documents of the defendants when he was appearing on behalf of the legal representatives of the plaintiff. These additional factors also support the case of the appellants/plaintiffs disclosing that there was a fraud by defendant Nos.1 and 2, who had executed the sale deed in favour of defendant No.1 in O.S.No.81/1980. These are the factors were not taken note of by the Trial Court and Appellate

Court in the earlier proceedings as well as in the present proceedings since the material discloses that there was a fraud and the same was substantiated by the documentary evidence. Even in the absence of clear pleadings in the suit and an application was filed under Order VII Rule 17 of CPC, before the Appellate Court, the very contention of the counsel appearing for the respondent that non-compliance of Order 6 Rule 4 of CPC, cannot be accepted since the material available on record substantiate the case of the plaintiffs/appellants with regard to the fraud is concerned. Thus, the First Appellate Court ought not to have dismissed the application filed under Order 6 Rule 17 of CPC when elaborate and detail fraudulent act was pleaded in the application itself and ought to have even set aside the said order as the material available on record i.e., documentary proof of Ex.P24 as well as other document Ex.P.72 clearly substantiate the fraud. Even remanding the matter also does not require since already pleadings are available and documentary evidence is also available on record and the same was considered by the Trial Court and Trial Court also comes to the conclusion in paragraph No.37 that there was a manipulation of document of Ex.P24. When that finding was

given and fraud has been established, no need for further consideration of the same, since the Trial Court comes to such a conclusion that there was discrepancies in Ex.P24 and insertion of vendor name on the document was proved and the fact regarding fraud was also proved not only by the defendant as well as by the counsel on record, who appeared on behalf of the plaintiff's legal representatives, who played dual role in identifying the defendant and attested Ex.P72 power of attorney as well as appeared in the proceedings before the Trial Court.

61. Now this Court would like to rely upon the judgments with regard to the fraud is concerned. This Court in detail discussed regarding the fraud played by the vendor of the respondent and also the counsel who represented the representatives of the original owner, taking note of the material on record in the original proceedings, which was initiated by the original owner in O.S.No.81/1980 and so also the manipulation of the RTC, which is marked as Ex.P.24. The vendor of the respondent indulged in inserting his name in the RTC along with his father name and there was no mutation to that effect and if it is supported by any mutation for insertion of

his name, then there would have been force in the contention of the counsel appearing for the respondent. It is apparent on record that Ex.P.24 is manipulated before executing the said deed in favour of the respondent by the son of the original owner and no such document of mutation entry is placed on record in both the proceedings to substantiate the same, but excluded the father while executing the sale deed, who was alive and residing along with him. This Court also found that there is no recital in the document of Ex.D.3 that he was the kartha and even nothing is stated that the property was allotted in his favour to execute the sale deed and hence, this Court comes to the conclusion that conveyor was not having any title to execute the sale deed. When such material is available before the Court, this Court has to take note of the fact that fraud and justice should not dwell together. When there is a fraud in executing the document, the same is not having legal sanctity.

62. Now this Court would like to rely upon the judgment of the Hon'ble Apex Court in the case of **VISHNU VARDHAN ALIAS VISHNU PRADHAN v. STATE OF UTTAR PRADESH AND OTHERS** reported in **2025 SCC Online SC 1501** with

regard to the principle that fraud and justice should not dwell together. **If any document is obtained by fraud, the same cannot be sustained, as fraud unravels everything. Fraud avoids all judicial acts, ecclesiastical or temporal. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior.**

63. In the case on hand, no doubt, both the Courts have not taken note of the factual aspects of the fraud committed by the vendor of the first respondent in the earlier proceedings as well as in the subsequent proceedings and the same is non-est.

64. The Apex Court also held that the principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must

come with clean hands. It is observed in the judgment that we are constrained to say that more often than not, process of the Court is being abused. From the multiple decisions of this Court on 'fraud', what follows is that fraud and justice never dwell together, the legislature never intends to guard fraud, the question of limitation to exercise power does not arise, if fraud is proved, and even finality of litigation cannot be pressed into service to absurd limits when a fraud is unraveled. Hence, the judgment relied upon by the learned counsel for the respondents will not come to the aid of the respondents.

65. A fraud was taken place in the case on hand prior to executing of document in the year 1979 by the son of the original owner and he had indulged in manipulating the document Ex.P.24 inserting his name prior to executing of the sale deed and the same is not supported by any document of mutation entry. The Trial Court comes to the conclusion in paragraph No.37 that there were discrepancies and alterations made in the document of Ex.P.24 to insert the name of the vendor of the first respondent. When such fraud is apparent on record in creation of document and manipulation of document, both the Courts failed to take note of the said fact in the earlier

proceedings and in the subsequent proceedings. It is very clear that limitation also does not arise when a fraud is unravelled.

66. The Hon'ble Apex Court in its judgment in the case of **UNITED INDIA INSURANCE CO. LTD. v. RAJENDRA SINGH** reported in **(2000) 3 SCC 581**, held that fraud unravels everything. In paragraph No.3 of the said judgment, it is held that "fraud and justice never dwell together" (fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything".

67. The Hon'ble Apex Court in its judgment in the case of **A.V. PAPAYYA SASTRY v. GOVT. OF A.P.** reported in **(2007) 4 SCC 221** in paragraph No.21 held that, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Fraud avoids all judicial acts, ecclesiastical or temporal. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a

nullity and non est in the eye of the law. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. In *Duchess of Kingstone*, Smith's Leading Cases, 13TH Edn, P.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the Court was "mistaken", it might be shown that it was "misled". Having considered the factual aspects in the case on hand, both in the earlier proceedings and subsequent proceedings, mistook the question of fact and question of law and when substantive question of law is involved, there is an essential distinction between mistake and trickery. Fraud and justice never dwell together; or fraud and deceit ought to benefit none.

68. In paragraph No.64 of the Apex Court's judgment in the case of **VISHNU VARDHAN** (supra), it is held that in light of the above discussion, we feel no hesitation to hold that given the deception involved, the impugned order and the decision of this Court dated 5th May, 2022 in **REDDY VEERANA** (supra) procured by Reddy are tainted by fraud and, thus, lack legal

sanctity and validity. In this judgment, the Apex Court in detail dealt with the issue of fraud referring the judgment in the case of **A.V.PAPAYYA SASTRY** (supra), particularly in paragraph No.107, wherein extracted paragraph No.39, that the above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. The Apex Court in the concluding portion of the judgment, in paragraph No.144, held that the impugned order of the High Court dated 28th October, 2021 passed in WP (Civil) 2272/2019 (**REDDY VEERANNA V. STATE OF UTTAR PRADESH**) stands set aside, since fraud has vitiated the entire proceedings and declared to be a nullity and stands recalled in exercise of our inherent powers. It is also discussed in detail that having regard to the magnitude of fraud which we have detected in course of consideration of these proceedings, we find it just and proper to request the Chief Justice of the High Court to preside over the Division Bench for finally deciding the writ petition as early as possible,

and subject to the convenience of the Bench, preferably by the year end.

69. Now this Court also would like to rely upon the judgment of the Hon'ble Apex Court in the case of **STATE OF UTTAR PRADESH AND OTHERS v. R.K. PANDEY AND OTHERS** passed in Civil Appeal No.10212/2014, decided on 09.01.2025, wherein referred to the judgment of the Apex Court in the case of **BILKIS YAKUB RASOOL v. UNION OF INDIA AND OTHERS**, wherein it is observed that fraud and justice never dwell together, and a litigant should not be able to benefit from a fraud practiced with an intention to secure him an illegal benefit. In the case on hand also, the vendor of the first respondent i.e., the son of the original owner, had indulged in manipulating the document of RTC with an intent to convey the property in favour of the respondent prior to execution of the said deed and executed the said deed in the year 1979, though he is not the owner of the property. Having considered the principles laid down in the judgment of the Apex Court and so also considering the material available on record, with regard to the issue of fraud is concerned, the same was pleaded in the earlier suit as well as in the subsequent suit.

Though it was not in detail in compliance with Order 6 Rule 4 of CPC as contended by the counsel for the respondent, but material available on record, particularly taking into note of document Ex.P.24 and other documents, it clearly discloses that the counsel who represented on behalf of the legal heirs of original owner also indulged in identifying the very defendant in the earlier proceedings in O.S.No.81/1980 and also attesting the document of notary when the conflict of interest was involved and those material itself is sufficient, if no detail fraud has been attributed and the documentary evidence substantiate the contention of the appellant/plaintiff with regard to the fraud has been played in manipulating the document and created the document excluding the original owner. There was no any competency to execute the sale deed and no document of consent was given by the original owner of the property and also no any authorization to execute the sale deed and both the Courts in the earlier proceedings and in the subsequent proceedings lost sight of the same and a factual error as well as an error on question of law could not come in the way of the case of the appellant.

70. This Court would like to rely upon the judgment of the Apex Court in the case of **RAM CHANDRA SINGH v. SAVITRI DEVI AND OTHERS** reported in **MANU/SC/0802/2003**, wherein in paragraph No.15 it is held that, commission of fraud on Court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together. In paragraph No.16 it is held that fraud is a conduct either by letter or words, which includes the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. In paragraph No.17 it is held that it is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. In paragraph No.18 it is held that a fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he know to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

71. In paragraph No.23 relied upon the judgment in the case of **LAZARUS ESTATE v. BERLY** reported in **(1956) 1 ALL ER 341**, wherein it is held that no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. In the case of **S.P. CHENGALYARAYA NAIDU v. JAGANNATH** reported in **AIR 1994 SC 853**, it is held that fraud avoids all judicial acts. In paragraph No.24, it is held that an act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would, render the transaction void ab initio. Fraud and deception are synonymous. In the case on hand also specific pleading was made in the earlier suit by the original owner that there was a collusion and also a conspiracy with his son and purchaser to deprive his rights in relation to a property and hence, if any transaction has taken place, same renders the transaction void ab initio.

72. In paragraph No.26 of the judgment in the case of **Ram Chandra Singh** (supra), it is held that although in a given case a deception may not amount to fraud, fraud is

anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. In paragraph No.27, referred to the judgment in the case of **SMT. SHRISHT DHAWAN v. SHAW BROTHERS** reported in **AIR 1992 SC 1555**, wherein it is held that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. In paragraph No.28 referred to the judgment in the case of **S.P.Chengalvaraya Naidu** (supra), wherein it is held that the principle of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.

73. The other contention of the counsel appearing for the respondent that there was a finality of litigation in the earlier round of litigation cannot be accepted. One who comes to the Court, must come with clean hands. A person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party. In the case on hand,

manipulated the document of RTC Ex.P.24 and based on that document executed the sale deed in favour of respondent No.1 and it is a clear case of practicing fraud against his own father by the son.

74. This Court also would like to rely upon judgment in the case of **BHAURAO DAGDU PARALKAR v. STATE OF MAHARASHTRA AND OTHERS** reported in **AIR 2005 SC 3330**, wherein in paragraph No.10 it is held that by "fraud" is meant an intention to deceive. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Fraud as is well known vitiates every solemn Act. Misrepresentation itself amounts to fraud. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated as saved by the application of any equitable doctrine including res judicata. In paragraph No.11 it is held that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. "Fraud" is defined as an intentional perversion of truth for the purpose of inducing another. Section 17 of the Indian Contract Act, 1872,

defines “fraud” as act committed by a party to a contract with intent to deceive another. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly. Hence, taken note of third substantial question of law and answered accordingly.

75. Now this Court has to take note of the second substantial question of law with regard to res judicata is concerned. The counsel appearing for the appellants relies upon the judgment of the Apex Court in the case of **CANARA BANK** (supra) and brought to the notice of this Court paragraph Nos.5, 28, 29, 30, 31, 34.2.2 and 34.2.3. In paragraph No.5 it is held that, res judicata is, thus, a doctrine of fundamental importance in our legal system. However, it is not a mere technical doctrine, but it is fundamental in our legal system that there be an end to all litigation, this being the public policy of Indian law. The obverse side of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the Court takes place. However, there are certain notable exceptions to the application of the doctrine. One well-known exception is that the doctrine cannot impart finality to an erroneous decision on the jurisdiction of a Court. Likewise, an

erroneous judgment on a question of law, which sanctions something that is illegal, also cannot be allowed to operate as res judicata. The counsel also brought to the notice of this Court paragraph No.28, wherein it is held that, where there is an inherent lack of jurisdiction, which depends upon a wrong decision, the earlier wrong decision cannot be res judicata. Having taken note of the principles laid down in the said judgment, it is very clear that there is an exception to applicability of res judicata. An erroneous judgment on a question of law was not considered in the earlier proceedings as well as in the subsequent proceedings that person was not having any competency and authorization to sell the property or something that is illegal and the same cannot be allowed to operate as res judicata.

76. The Hon'ble Apex Court in its judgment in the case of **MOHANLAL GOENKA** (supra), has held that even an erroneous decision on a question of law operates as res judicata between parties, and various other Supreme Court judgments also reiterates the same. The judgment in the case of **MATHURA PRASAD BAJOO** (supra) also is very clear that the Court itself had altered the law when it declared the pari

materia rule as unconstitutional, the doctrine of res judicata could not apply and also to take note of the mixed question of fact and issues of law. To this general proposition of law, there are certain exceptions when it comes to issues of law. In paragraph No.34.2.1 in the case of **CANARA BANK** (supra), it is held that where an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the Court, an erroneous decision in the former suit or proceeding is not res judicata in a subsequent suit or proceeding between the same parties, even where the issue raised in the second suit or proceeding is directly and substantially the same as that raised in the former suit or proceedings.

77. The very contention of the counsel appearing for the respondent is that res judicata applies in view of the earlier proceedings. There is no force in the said argument in view of the discussions made by the Apex Court in the judgments referred supra and there is a factual error in the earlier proceedings without considering the Ex.D3 and also error on question of law. The same is discussed in detail in paragraph No.34.2.2 that, an issue of law which arises between the same

parties in a subsequent suit or proceeding is not res judicata if, by an erroneous decision given on a statutory prohibition in the former suit or proceeding, the statutory prohibition is not given effect to. This is despite the fact that the matter in issue between the parties may be the same as that directly and substantially in issue in the previous suit or proceeding. In the case on hand also, the earlier decision was as against Section 7 of the TP Act and this Court in detail discussed extracting Section 7 of the TP Act that person was not having any competency or any authorization to sell the property and under the Hindu law it is presumed that the eldest male member of the Hindu joint family is the kartha. Though the Trial Court comes to the conclusion that the vendor of the respondent is the younger member, the younger member can sell the property is not supported by any material that he was acting as a kartha. The factual finding of the earlier proceedings and also the present proceedings are not based on any material evidence and documentary evidence and the same is against the documentary evidence i.e., Ex.D3-sale deed.

78. No doubt, the counsel appearing for respondent No.1 in his arguments would vehemently contend that the issue

between the parties has already attained its finality. The same cannot be reopened and the same cannot be accepted in view of the discussions made in the judgments referred supra. The learned counsel also relies upon the judgment of the Apex Court in the case of **NARENDRAKUMAR J. MODI** (supra) with regard to a sale was made by the junior member of the family and junior member was acting as a kartha, but he acted as kartha with consent of all the members. But, no material is placed on record and the same is not found in the document Ex.D.3. The learned counsel also relies upon the judgment in the case of **NOPANY INVESTMENTS PVT. LTD.** (supra), wherein it is held that it is only in exceptional circumstances, that a junior member can act as the kartha of the family and no such exception is found in the material. In this judgment, the Apex Court made an observation that the senior member of HUF, admittedly, has been staying permanently in the United Kingdom for a long time and he was away from the country and he was staying in a remote place and his return within a reasonable time was unlikely. The factual aspects of the present case on hand is not that of the said factual circumstances. In the case on hand, when the vendor of the

respondent was living along with his father, who is the senior member of the family, he indulged in creation of document without his consent or permission and any authority, and hence the said judgment is not applicable to the factual aspects of the case. The Trial Court found that both of them are living together and what made to exclude the father while executing the sale deed when he was residing along with him, no explanation.

79. The learned counsel for respondent No.1 also relies upon the judgment in the case of **SRI NAGENDRA RAO** (supra) and brought to the notice of this Court paragraph Nos.12 to 14, wherein an observation is made that in a Hindu joint family, ordinarily the eldest male member acts as kartha and presumption is also that eldest member of the family is the kartha and the same is a general rule. But an observation is made that a senior member may decline the karthaship; it may be due to many reasons and in such an event, the junior member may take over the management of the property. But no material is placed before the Court that the senior member i.e., the father, who is the owner of the property declined his karthaship. It all depends upon the circumstances. The fact is

that the original owner was living along with the vendor of the first respondent and there was no any division and also not given any permission or consent. When such being the case, it is trite law that the eldest male member of the family is the kartha and the very original owner himself having noticed the fraud played by his son, immediately initiated the proceedings by filing a suit.

80. The counsel also relies upon the judgment of the Apex Court in the case of **SWAMY ATMANANDA** (supra) and brought to the notice of this Court paragraph Nos.12, 13, 26 to 28, 39 and 40, wherein discussion was made with regard to application of res judicata. The Apex Court in the case of **RAMACHANDRA RAO** (supra), in detail dealt with Section 11 of CPC, wherein it is observed that it is relevant to reiterate that Section 11 of CPC is not the foundation of the doctrine of res judicata, but is merely the statutory recognition thereof. In paragraph No.30, it is held that it is well settled, as laid down in several decisions, that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction. No doubt, the judgment of the Apex

Court held that doctrine of res judicata is attracted. But in the case on hand, this Court in detail discussed the factual aspects and the finding of the earlier proceedings and when the fraud was committed and finality of litigation, the Court has to take note of fundamental policy of the law that there must be a finality to litigation. Multiplicity of litigation enures to the benefit, unfortunately for the decree-holder, or those who seek to delay the fruits of a decree reaching those to whom the decree is meant as observed in the judgment in the case of **ASGAR** (supra). The very conveyance is based on fraud, creating of document of Ex.P.24 and based on the said document, executed the sale deed, that too without the consent of eldest member of the family and also the original owner of the family, who had purchased the property. Excluding him executed the sale deed not being a kartha and no recitals in the sale deed Ex.D.3 that he was acting as a kartha. But in the earlier proceedings, both the Courts have committed an error in coming to the conclusion that already title was transferred, that too on account of fraud played by his son in creation of document and no limitation as discussed above with regard to the fraud is concerned and the same was

lost sight of by the Courts earlier that there was a fraud and fraud and justice should not dwell together.

81. The findings of the Trial Court, which was confirmed by the Appellate Court is against the material available on record. This Court already pointed out that the Trial Court comes to the conclusion that there was a fraud in paragraph No.37 that, there was a manipulation in inserting the name of the vendor of the plaintiff and based on that, sale deed was executed. But comes to an erroneous conclusion that discrepancies in column No.12 of RTC would not be of any help to the plaintiff to prove their contention that valid title has not been passed under Ex.D.3. The Trial Court comes to the conclusion that it has been entered as Mallige Byrappanavara maga Ramaiah and also comes to the conclusion that in column No.12, the same has been inserted and there are over writings. But wrongly observed that mere entries in revenue records would not convey any title and not the question of conveying any title making over writings and the same is a fraud in creation of document Ex.P.24 that makes the vendor to execute the sale deed. Though RTC not convey any title and based on the manipulated document, executed the sale deed Ex.D3. The

Trial Court also comes to an erroneous conclusion that already there was a sale in the year 1979 and the very sale is fraudulently made by creating the document. That does not convey any title. When such being the case, the observation made by the Trial Court that Will dated 30.06.1980 in favour of the vendor of the plaintiff will not help the plaintiffs, cannot be accepted and an erroneous observation is made that already transfer was made by the vendor of the respondent in the year 1979 and the same is defective title.

82. The other observation that on the date of execution of the Will, Malligee Byrappa had no right, title or interest over the plaint schedule property is also an erroneous observation for the fact that the vendor had indulged in committing the fraud in creation of document Ex.P.24 and based on the strength of the created document, title was conveyed by him though he was not having any authority to convey the same and the approach is very erroneous. The other observation is that the plaintiffs have not produced the original Will in this case and they have not chosen to examine any attesting witnesses as per Section 68 of the Evidence Act and not examined the attesting witnesses to the document Ex.P.11. But

the fact is that their deposition recorded in O.S.No.81/1980 have been produced and the same are marked. But made an observation that the plaintiffs having failed to prove that their vendor's father had any right, title or interest at the time when Will was executed or as on the date of his death, the vendors of the plaintiff cannot be said to have acquired any right or title. This observation is also erroneous, since the legatees under the Will have the right to execute the sale deed Exs.P.5 and 6. The very execution of the Will Ex.P.11 was proved and produced in the earlier proceedings and examined the attesting witnesses Narasimhachar and G.V. Subba Rao and the same is not disputed in the earlier proceedings and even the defendant not led any evidence in the earlier proceedings to dispute the same and the Trial Court comes to the conclusion that Will was proved in the earlier proceedings itself and also comes to the conclusion that based on the Will only, the vendors of the plaintiffs came on record and the said finding of Will was proved and has attained its finality.

83. An observation is made that the plaintiff did not challenge the sale deed dated 04.10.1979 and so also the legal representatives of Mallige Byrappa. That is not necessary when

the document was executed fraudulently by creating the document of Ex.P.24 and based on the strength of the created document when the sale deed was executed and person was not having any right to execute the sale deed, it does not require questioning any validity of the said document. It is also an observation by the Trial Court that they did not plead that there was a fraud and the same is against the material on record. In the plaint itself in the earlier suit in O.S.No.81/1980 and in the present suit, the same is pleaded and the finding that the judgment in R.S.A.379/1996 has not been challenged and it has attained its finality, cannot be accepted for the reason that this Court in elaborately comes to the conclusion that erroneous finding in the earlier proceedings and subsequent proceedings will not come in the way when the fraud has been committed and decree is obtained that too based on the fraudulent document. The plaintiffs have also contended before the Court that the question of limitation would not arise and fraudulently obtained the document as well as the decree and this Court in detail discussed under what circumstances the earlier decree was obtained and also found there was a collusion and document was created and based on the created

document, sale deed was executed. The counsel who represented the legal heirs of the original owner had indulged in identifying the defendant in the earlier proceedings and also attesting the document of Ex.P.72 as a notary having the knowledge about the same. The memo filed before the Trial Court is very clear that the very counsel identified the defendant in the said proceedings and acted as against the conflicting interests of the parties and the same is discussed in detail by this Court. Hence, I answer all the substantive questions of law in the affirmative that the vendor of the respondent was not having any title as envisaged under Section 7 of the TP Act and so also res judicata will not come to the aid of the respondent in view of the detailed discussions made supra and so also fraud, though it is not pleaded as per Order 6 Rule 4 of CPC, subsequently in the appeal made an effort to fulfill the same. But the Appellate Court committed an error in declining to allow the application. However, the order of the Appellate Court is also liable to be set aside with regard to rejection of application under Order 6 Rule 17 of CPC and this is the litigation of more than 45 years and the same is pleaded by both the counsels at the time of argument and no need to even

consider the same as the material available on record both oral and documentary evidence is clear that there was a fraud and created the document of Ex.P.24 and already finding was given by Trial Court in paragraph No.37 of the judgment. Based on the same, sale deed was executed in favour of the respondent by his vendor and the same is based on the fraudulent act and not only fraud was played by the vendor of the respondent, even during the course of the proceedings before the Trial Court in O.S.No.81/1980, the counsel who represented the legal representatives of Mallige Byrappa, instead of protecting the interests of the legal representatives of Mallige Byrappa, had indulged in attesting the document of Ex.P.72 as well as identified the defendant in the said proceedings and the same amounts to conflicting of interest in dual capacity.

84. Having considered the material on record, the Constitution Bench judgment of the Apex Court relied upon by learned counsel for the appellants reported in **AIR 1964 SC in Page 72** referred supra is aptly applicable to the case on hand, as very conveying of title under Ex.D3 is nullity in the eye of law, since this Court has come to the conclusion that vendor of the respondent No.1 misrepresented/manipulated the

document while selling the property and has also played fraud on the Court, since he was not competent to execute the said sale deed and manipulated the document Ex.P24 and so also, the judgment relied upon by counsel appearing for the appellants in **KARAN SINGH VS. CHAMAN PASWAN** reported in **AIR 1954 SC 340** referred supra is also applicable to the facts of the case on hand.

85. The counsel for the appellants also relied upon the judgment of the Apex Court in the case of **STATE OF UP VS. NAWAB HUSSAIN** reported in **(1977) 2 SCC 807** referred supra and considering the principles laid down in paragraph Nos.3 and 4 of the said judgment and so also paragraph No.56 of **YADIAH'S** judgment referred supra, it is clear that Doctrine of constructive res-judicata will not be applicable. The issue raised in the earlier proceedings was not properly adjudicated in respect of fraud as well as manipulation of document Ex.P24 i.e., creation of document before executing the sale deed inserting the name of vendor of the respondent, so also the principles laid down in the judgment of **CANARA BANK'S** case referred supra as well as detailed discussion of fraud at the instance of the vendor of respondent and the

counsel. Hence, I answer substantial question of law Nos.1 to 3 as 'affirmative'

86. Having answered substantial question of law Nos.1 to 3 framed in R.S.A.No.1394/2023 as 'affirmative', now the points that would arise for consideration of this Court are:

- (i) Whether this Court can invoke Section 8 of Hindu Succession Act?
- (ii) Whether the property also devolves upon son of the original owner, who is the vendor of respondent No.1?

87. When this Court has given definite finding that there was no title or right to the vendor of respondent No.1 and also the principles of res judicata not applies, there was fraud. This Court has also taken note of the order passed by the Trial Court in O.S.No.81/1980 that at the time of holding an enquiry, the Trial Court comes to the conclusion that original owner Mallige Byrappa had executed Will in favour of daughters in terms of Ex.P11 which is marked in the present proceedings and also in the original proceedings. The Trial Court, while

considering the Will comes to the conclusion that Will was proved by examining the attesting witnesses and respondent No.1 has not led any evidence disputing the same and the same has attained its finality that there was a Will executed by Mallige Byrappa in favour of the daughters and the same has been proved and the same is evident and got it clarified by getting the order on I.A. passed in O.S.No.81/1980. Hence, the question of invoking Section 8 of Hindu Succession Act also does not arise, since the original owner has executed a testamentary document in favour of the daughters, who are the vendors of the present appellants/plaintiffs and this Court also examined the same whether respondent No.1 gets any right and in view of the same, he does not get any right. Hence, this Court has to grant the relief of declaration in favour of the plaintiffs that there was conveyance in favour of the plaintiffs by the daughters of original owner based on the Will and judgment and decree of the Trial Court and the First Appellate Court requires to be set aside declaring the present plaintiffs as the owners.

**SUBSTANTIAL QUESTION OF LAW NO.1 IN
R.S.A.No.1404/2023 AND SUBSTANTIAL QUESTIONS OF
LAW 1 AND 2 IN R.S.A.Nos.1405/2023, 1406/2023 &
1410/2023**

88. Now this Court has to consider the substantial questions of law framed by this Court in R.S.A.Nos.1404/2023, 1405/2023, 1406/2023 and 1410/2023. These substantial questions of law are with regard to whether the Courts below committed an error in decreeing the suit of the respondent and confirming the same by the First Appellate Court based on the sale deed dated 04.10.1979 that the respondent No.1 is in possession of the property in granting the relief of permanent injunction in favour of the respondent No.1 and so also committed an error in dismissing the suit filed by the appellants seeking the relief of permanent injunction and confirming the same by the First Appellate Court relying upon the document of Ex.D3-sale deed dated 04.10.1979.

89. This Court in detail discussed with regard to passing of title under Ex.D3 and also passing of title in favour of the appellants herein as per Exs.P5 and P6 and comes to the

conclusion that conveyance of title in favour of respondent No.1 is a defective title as per Ex.D3 and comes to the conclusion that Will was proved by examining the attesting witnesses in compliance of Sections 63 of the Indian Succession Act and 68 of the Evidence Act and the same has attained its finality. The Trial Court also in O.S.No.81/1980 comes to the conclusion that Will was proved and the same is not disputed during the course of leading evidence as well as subsequent to the order passed by the Trial Court in O.S.No.81/1980 in coming to the conclusion that Will was proved.

90. It is also important to note that possession follows title and though there was sale deed in favour of respondent under Ex.D3-sale deed dated 04.10.1979, the same is a defective title and the same is not valid and *non est* in the eye of law. No doubt, the Courts have taken note of material available on record, the present appellants and respondent No.1 claim title based on their own document of sale deed and possession is claimed based on the documents and respondent No.1 claims possession based on the sale deed of the year 1979 and vendors of the plaintiffs claim title that they are in possession of the property consequent upon the Will and based

on those documents, respective parties have got changed the name and revenue documents exists in favour of the respective parties, as a result of the documents which have come into existence.

91. No doubt, respondent No.1 also sought an order of injunction and temporary injunction was granted, it was challenged in the writ petition and the same was dismissed. The matter was taken up before the Writ Appellate Court by filing Writ Appeal No.2317/2007, which is also marked as Ex.P23. The Writ Appellate Court also made an observation while disposing of the writ appeal that the sale would be subject to result of the suit in O.S.No.416/2007. Hence, it is clear that the sale is subject to the result of suit in O.S.No.416/2007. This Court having considered the material on record comes to the conclusion that suit in O.S.No.416/2007 is liable to be decreed by setting aside the order of the Trial Court and First Appellate Court.

92. It has to be noted that, it is trite law that possession follows title. In the case on hand, this Court comes to the conclusion that title has not flowed in favour of

respondent No.1 and the same is a defective title and title flows in favour of plaintiffs/appellants in these appeals. When such being the case, granting the relief of injunction in favour of the respondent No.1 in O.S.No.10/2015 and dismissing the suit of the plaintiffs for the relief of declaration and permanent injunction in O.S.Nos.416/2007, 11/2015, 12/2015 and 13/2015 requires to be set aside. So also, the judgment passed in R.A.Nos.6/2017, 7/2017, 8/2017, 9/2017 and 13/2017 requires to be set aside. The respondent No.1 claims possession based on the sale deed of the year 1979 and when the said sale deed is not recognized under law and the person, who conveyed the title was not having any competency or authorization to convey the title, question of possession by respondent No.1-purchaser under the sale deed Ex.D3 does not arise. Hence, the very approach of Trial Court as well as the First Appellate Court is erroneous. Accordingly, the substantial question of law No.(1) framed in R.S.A.No.1404/2023 is answered as 'affirmative' that Courts below committed an error in decreeing the suit of the respondent and confirming the same by the First Appellate Court based on the sale deed dated 04.10.1979 that the respondent No.1 is in possession of the

property. So also, this Court answers substantial question of law No.(1) framed in R.S.A.Nos.1405/2023, 1406/2023 and 1410/2023 as 'affirmative' that the Trial Court and the First Appellate Court committed an error in dismissing the suit filed by the appellants seeking the relief of permanent injunction and confirming the same in respective R.As. relying upon the document of Ex.D3-sale deed dated 04.10.1979 and the document of Ex.D3 does not convey either any title or possession.

93. In view of the detailed discussions made above, I pass the following:

ORDER

- (i) All the regular second appeals are allowed and judgment and decree passed in O.S.No.416/2007, 11/2015, 12/2015 and 13/2015 and so also, granting of decree in favour of respondent No.1 in O.S.No.10/2015 and consequent confirmation order passed in R.A.Nos.6/2017, 7/2017, 8/2017, 9/2017 and 13/2017 are set aside. Consequently, suit filed by respondent in O.S.No.10/2015 is dismissed and suits in O.S.Nos.416/2007,

**RSA No. 1394 of 2023
C/W RSA No. 1404 of 2023
RSA No. 1405 of 2023
AND 2 OTHERS**

11/2015, 12/2015 and 13/2015 filed by
plaintiffs/appellants are allowed.

(ii) The appellants/plaintiffs in O.S.No.416/2007
are declared as the owners of the suit
schedule property based on the documents
Exs.P5 and P6. So also, the appellants herein
are entitled for the relief of permanent
injunction as sought in all the suits in
O.S.Nos.11/2015, 12/2015 and 13/2015.

(iii) The parties to bear their own cost.

**Sd/-
(H.P.SANDESH)
JUDGE**

SN/ST/MD