



HC-KAR

- 1 -

NC: 2026:KHC:21181
RSA No. 863 of 2009

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 17TH DAY OF APRIL, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V HOSMANI
REGULAR SECOND APPEAL NO. 863 OF 2009 (INJ-)

BETWEEN:

V. JAYAMMA
W/O. RAMACHANDRA
AGED ABOUT 52 YEARS
R/AT PINDINAGARA VILLAGE
YELDUR HOBLI
SRINIVASPUR TALUK
KOLAR DISTRICT-572338.

...APPELLANT

(BY SRI GA SRIKANTE GOWDA, ADVOCATE)

AND:

- 1 . GULAB JAN
W/O. LATE ABDUL JABBAR
AGED ABOUT 58 YEARS
- 2 . ALEEMULLA
S/O. LATE ABDUL JABBAR
AGED ABOUT 38 YEARS
- 3 . NOORULLA
S/O. LATE ABDUL JABBAR
AGED ABOUT 38 YEARS
- 4 . NASRULLA
S/O. LATE ABDUL JABBAR
AGED ABOUT 26 YEARS
- 5 . AFZAL PASHA
S/O. LATE ABDUL JABBAR
AGED ABOUT 27 YEARS





RESPONDENTS NO.1 TO 5 ARE
R/AT ELAHEE MANZIL
OPP. TO H.P. PLAZA
RAHAMATH NAGAR
CHIKKABALLAPUR ROAD
KOLAR TOWN-572338.

- 6 . VENKATAPPA
S/O. GURAPPA
AGED ABOUT 65 YEARS
R/AT PINDINAGARA VILLAGE
YELDUR HOBLI
SRINIVASAPUR TALUK
KOLAR DISTRICT.
- 7 . G. MANJUNATHA
S/O. LATE GIREGOWDA
AGED ABOUT 49 YEARS
R/AT PINDINAGARA VILLAGE
YELDUR HOBLI
SRINIVASAPUR TALUK
KOLAR DISTRICT-572338.

...RESPONDENTS

(BY SRI V. VINOD REDDY, ADVOCATE FOR R7;
NOTICE TO R1 TO R5 - SERVED AND UNREPRESENTED;
SRI SAMPATH A., ADVOCATE FOR R6)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGEMENT AND DECREE DATED 25.04.2009
PASSED IN R.A.NO.170/2008 ON THE FILE OF THE I
ADDITIONAL CIVIL JUDGE (SR. DN.) AND CJM, KOLAR,
ALLOWING THE APPEAL AND SETING ASIDE THE JUDGEMENT
AND DECREE DATED 19.06.2008 PASSED IN O.S.NO.109/2005
ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JR. DN.) AND
JMFC, SRINIVASAPUR.



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.03.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THROUGH VC FROM DHARWAD BENCH, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging judgment and decree dated 25.04.2009 passed by I Addl. Civil Judge (Sr.Dn.), Kolar, in RA no.170/2008 and judgment and decree dated 19.06.2008 passed by Principal Civil Judge (Jr.Dn.), Srinivaspur, in OS no.109/2025, this appeal is filed.

2. Sri GA Srikante Gowda, learned counsel for appellant submitted appellant was defendant no.2 in OS no.109/2005 for decree of permanent injunction and for declaring judgment and decree passed in OS no.135/2004 as not binding on him etc. Said suit was filed by **G. Manjunatha** – plaintiff against **Abdul Jabbar** - defendant no.1, **V. Jayamma** - defendant no.2 and **Venkatappa** – defendant no.3.

3. In plaint, it was stated plaintiff's father – Giregowda got 2 Acres 24 guntas of land in Sy.no.67/3, situated at



Pindiganagara village, Srinivaspur Taluk ('**suit property**' for short) from Chikkamuniswamy S/o Sonnappa and his name entered in revenue records. That prior to his death Chikkamuniswamy had executed agreement of sale in favour of Giregowda on 15.08.1966 by receiving entire agreed sale consideration of Rs.150/- and delivered possession. And after death of plaintiff's father, plaintiff continued in possession, wherein they had planted Eucalyptus. It was stated that defendant no.1, owner of Sy.no.67/1 measuring 1 Acre 28 guntas situated at Pindiganagara sold it to defendant no.2 under registered Sale Deed dated 19.09.1992, who in turn sold it to defendant no.3 under registered Sale Deed on 06.03.2004. But said sale-deeds were with incorrect boundaries and description of property. Though defendant no.2 was not concerned with property of Chikkamuniswamy, she filed OS no.135/2004 against defendant no.1 for declaration of title and for correction of Sy.no.67/1 measuring 1 Acre 28 guntas as Sy.no.67/3 measuring 2 Acres 24 guntas in sale deed. Said suit ended in collusive compromise, with intention of grabbing suit property from plaintiff. Therefore said decree was not binding on plaintiff. And though defendant no.2 was not in possession,



she tried to interfere with plaintiff's possession on 09.06.2005, which led to filing of present suit.

4. Defendants no.2 and 3 appeared and filed separate written statements denying plaintiff's averments. Defendant no.2 stated under registered Sale Deed dated 19.09.1992, she purchased two lands from defendant no.1. There was no dispute with regard to Sy.no.43/3 measuring 1 Acre 08 guntas. Insofar as other land, in sale deed defendant no.1 wrongly mentioned it as Sy.no.67/1 measuring 1 Acre 28 guntas instead of Sy.no.67/3 measuring 2 Acres 24 guntas. She realized same in 2003 when surveyor visited spot. She claimed, boundaries mentioned in her sale deed corresponded to Sy.no.67/3, revenue records of which were in her name and not Sy.no.67/1 which belonged to defendant no.3. And when she informed defendant no.1 of mistake, he advised her to execute sale deed in favour of defendant no.3 mentioning same particulars. When defendant no.1 failed to execute rectification deed, on ill advice of plaintiff, she filed OS no.135/2004 for declaration and rectification of sale deed. Said suit ended in compromise, as per which, she was absolute owner in possession of suit



property and revenue entries were in her name. She stated, neither plaintiff nor defendant no.1 or defendant no.3 had any manner of right, title or interest or possession of suit property. Hence, plaintiff's suit was liable for dismissal.

5. In his written statement, defendant no.3 stated, he purchased Sy.no.67/1 measuring 1 Acre 28 guntas from defendant no.2 under registered Sale Deed dated 06.03.2004 and was in lawful possession and enjoyment and his name entered in revenue records. He had resisted plaintiff attempt to interfere with his possession on 02.08.2005. He also stated, as on date of suit, defendant no.2 was in possession of Sy.no.67/3, situated towards southern side of his property. And further that plaintiff was in possession of Sy.no.67/2, but never in possession of Sy.no.67/1 or Sy.no.67/3. Hence, suit was without cause of action and liable for dismissal. He also sought counter-claim for declaration of his title over Sy.no.67/1 measuring 1 Acre and 28 guntas and for permanent injunction restraining plaintiff etc. from interfering with his possession over said property.



6. Based on pleadings, trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves that he is in possession of suit schedule property on the basis of sale agreement dated 15.08.66 and as on the date of suit?*
- 2) *Whether the plaintiff proves that 1st and 2nd defendants have colluded together and obtained decree in OS no.135/2004?*
- 3) *Whether the plaintiff proves that 1st defendant has no right to sell the suit schedule property in favour of 2nd defendant?*
- 4) *Whether the plaintiff proves that 2nd defendant has no saleable interest to sell the suit schedule property in favour of defendant no.3?*
- 5) *Whether the plaintiff proves the alleged interference?*
- 6) *Whether the plaintiff is entitled for the relief as claimed in the plaint?*
- 7) *What order or decree?*

7. In trial, plaintiff examined himself and three others as PWs.1 to 4 and got marked Exs.P1 to P11. In rebuttal, defendant no.2 examined herself as DW.1 and got marked Exs.D1 to D16.



8. On consideration, trial Court answered issues no.1, 5 and 6 in negative, issues no.2 to 4 as not surviving for consideration and issue no.7 by dismissing suit with costs. Aggrieved, plaintiff preferred RA no.170/2008 on various grounds. Based on same, first appellate Court framed following:

POINTS

- 1) *Whether this appellant/plaintiff proves that he is in possession and enjoyment of the suit schedule property?*
- 2) *Whether the judgment and decree passed by the trial Court under appeal is perverse, capricious and arbitrary and it calls for any interference by this Court?*
- 3) *What order?*

9. And answering points no.1 and 2 in affirmative and point no.3, it allowed appeal, set-aside judgment and decree of trial Court and decreed plaintiff's suit permanently restraining defendants from interfering with plaintiff's possession and enjoyment of suit property and holding judgment and decree passed in OS no.135/2004 as not binding on plaintiff. Consequently, counter claim of defendant no.3 was dismissed with cost. Aggrieved thereby, only defendant no.2 is in appeal.



10. It was submitted, judgment and decree of first appellate Court was contrary to law and evidence on record. It erred in granting injunction, though purchase of property by defendant no.2 under registered Sale Deed 19.09.1992 with same boundary description as suit property and not Sy.no.67/1, was undisputed. It was submitted, boundary description prevailed over Survey number and extent. It was submitted, Iyyanna was owner of land measuring 1 Acre 28 guntas in Sy.no.67/1 and under Ex.D15 - Gift Deed dated 17.05.1948, Iyyanna gifted said property to Nanjappa and Venkatappa mentioning boundaries as:

East: Changappa's land;
West: Mustafa's land;
North: Patel Narayana Gowda's land;
South: Doddamunishamy's land.

11. It was submitted, Patel Narayana Gowda, father of Giregowda and grandfather of plaintiff, was owner of 0.35 guntas of land in Sy.no.67/2. Chikkamuniswamy was owner of land measuring 2 Acres 24 guntas in Sy.no.67/3. Under Sale Deed dated 07.06.1951, Chikkamuniswamy sold said property in favour of Abdul Azeez. But by erroneously mentioning 1 Acre



28 guntas in Sy.no.67/1 instead of 2 Acres 24 guntas in Sy.no.67/3, in sale deed. Thereafter, defendant no.2 purchased property from Abdul Jabbar S/o Abdul Azeez under registered Sale Deed dated 19.09.1992, wherein error in survey number and extent continued, but boundary description remained consistent and identical to suit property. It was submitted, comparison of boundaries in Sale Deeds dated 07.06.1951 and 19.09.1992 was as follows:

SCHEDULE IN SALE DEEDS		PLAINT SCHEDULE
East by:	Ireppa	Uppukunte Changappa (Ireppa's father)
West by:	Gire Gowda	Another property of plaintiff (Gire Gowda is father of plaintiff)
North by:	Pichagundla Venkatappa	Property of Iyyanna (Venkatappa - foster son of Iyyanna got it under gift deed dated 17.05.1948)
South by:	Gire Gowda	Another property of plaintiff (Gire Gowda) (Note: Gire Gowda is son of Narayanag Gowda @ Patel Narayana Gowda)

12. Thus, property described under sale deeds and property described in suit property were one and same.

13. It was submitted, plaintiff claims to be son of Giregowda who was only holder of agreement of sale dated 15.08.1966, allegedly executed by Chikkamuniswamy in respect of Sy.no.67/3. It was submitted, plaintiff claim that



Chikkamuniswamy was original owner of Sy.no.67/3 and that defendants no.1 and 2 played fraud in obtaining compromise decree in OS no.135/2004 and attempted to interfere with plaintiff's possession over suit property. It was submitted, defendant no.1 filed written statement denying right, title and possession of plaintiff and specifically denied execution of Ex.P1 - alleged agreement of sale dated 15.08.1966. And in her written statement, defendant no.2 claimed, she purchased suit property under Ex.D6 - registered sale deed dated 19.09.1992 and was absolute owner in possession thereof. Defendants contended, though there were errors in survey number and extent of demised land in sale deeds, boundary description consistently referred to suit property.

14. And said error was rectified under Ex.D1 - decree in OS no.135/2004 and Ex.D7 - revenue entries made in name of defendant no.2. Thus, plaintiff had no right, title or interest over suit property and had attempted to take undue advantage of clerical error in description of property in sale deed, and filed frivolous suit based on alleged Agreement of sale dated 15.08.1966 (Ex.P-1) in order to lay claim over property



belonging to defendant no.2. In view of above, suit for bare injunction was not maintainable in law, particularly when title over suit property was seriously disputed.

15. It was submitted, trial Court dismissed suit mainly on ground that plaintiff's father who allegedly obtained agreement in year 1966, made no effort to obtain registered sale deed as well as on ground that plaintiff failed to establish his possession over suit property, on date of filing of suit. It also relied on assertion by defendant no.3, owner of Sy.no.67/1 in his written statement that defendant no.2 was in possession of Sy.no.67/3 and holding if plaintiff was in possession of suit property, he would have produced other supporting documents and not rely only on Exs.P1 and P2. It was submitted, revenue records produced by defendants, on contrary, showed name of defendant no.2 entry in revenue records in respect of suit property as on date of suit. Thus, even if defendants pleaded mistake in mentioning correct survey number and extent, trial Court applied correct proposition of law that plaintiff must succeed on strength of his own case and not on weakness of defendant's case and dismissed suit. And reversal of said



findings by first appellate Court was defective and prayed for allowing appeal on following substantial question of law:

"When trial Court dismissed plaintiff's suit on appreciation of evidence on record, whether first appellate Court was justified in reversing it without assigning consistent and cogent reasons and thereby committed illegality?"

16. It was submitted, Ex.P1 was un-registered deed, held by trial Court to be concocted. And as per recitals, it was sale deed and therefore, compulsorily registered as per Section 17 (1) (b) of Registration Act. Being unregistered, it was inadmissible in evidence. Further, being insufficiently stamped Ex.P1 was also hit by Article 34 of Stamp Act and therefore, could not be relied even for collateral purposes. It was submitted, Hon'ble Supreme Court in case of **Avinash Kumar Chauhan v. Vijay Krishna Mishra**, reported in **AIR 2009 SC 1489**, held:

"7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for



collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

17. It was further submitted, plaintiff pursued suit for bare injunction, even when defendant no.2 in para-1 of her written statement raised ground about its maintainability. In later paras, defendant no.2 specifically denied plaintiff's title over suit property and in para-15, claimed title over suit property on basis of purchased from defendant no.1. In view of above, suit for bare injunction would not be maintainable as held by Hon'ble Supreme Court in case of **Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs & Ors.**, reported in **AIR 2008 SC 2033:**

"11.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."



18. And by this Court in case of **Smt.Nirmala v. Sri**

Naveen Chhaggar, reported in **AIR 2007 Kar 40** holding:

"34. ... which had been filed initially for declaration and consequential injunction, wherein the first defendant had denied title of the plaintiff, the suit fails unless the prayer for declaration is also made good. The suit in law is not maintainable, as unless declaration is made in favour of the plaintiff, the continued possession of the plaintiff particularly in the light of denial by the first defendant cannot be recognized in law, more so when the first defendant has also claimed to herself title in the property and had denied the title of the plaintiff. In fact, when the plaintiff filed a memo for deletion of the prayer for declaration subsequent to the trial court framing issues on this aspect ie. issue no.1, the plaintiffs suit should have been dismissed then and there."

19. Further, defendant no.2 had raised objection at time of marking of Agreement of Sale as Ex.P1. Trial Court recorded objections and though marking was subject to objections, it failed to adjudicate on admissibility. Therefore, Ex.P1 had no evidentiary value. Besides, no documents produced by plaintiff to establish his possession over suit property as on date of suit. Therefore, suit was rightly dismissed by trial Court.



20. Without considering admissibility of Ex.P1 and without noting whether un-registered and under-stamped deed would be admissible in evidence, in view of bar under Section 17 (1) (b) read with Section 49 of Registration Act and Section 34 of Stamp Act, first appellate Court erroneously reversed judgment and decree of trial Court. Main reason assigned was that Ex.P1 was 30 years old document and entitled for presumption in law. Further, Hon'ble Supreme Court in **Namdeo Gajre v. Narayan Bapuji Dhotra**, reported in **2004 (8) SCC 614**, held:

"13. The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs 100 can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. It is not disputed before us that the suit land sought to be conveyed is of the value of more than Rs 100. Therefore, unless there was a registered document of sale in favour of Pishorrilal (the proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhotra (original plaintiff) and remain in his ownership. This point was examined in



detail by this Court in State of U.P. v. District Judge [(1997) 1 SCC 496] and it was held thus: (SCC pp. 499-500, para 7)

"7. Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of Section 53-A of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an agreement to sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered sale deed. It is not in dispute that the lands sought to be covered were having value of more than Rs 100. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement-holders, the title of the lands would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect. However, strong reliance was placed by learned counsel for Respondent 3 on Section 53-A of the Transfer of Property Act. We fail to appreciate how that section can at all be relevant against the third party like the appellant State. That section provides for a shield



of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell these lands to the transferee if the proposed transferee satisfies other conditions of Section 53-A. That protection is available as a shield only against the transferor, the proposed vendor, and would disentitle him from disturbing the possession of the proposed transferees who are put in possession pursuant to such an agreement. But that has nothing to do with the ownership of the proposed transferor who remains full owner of the said lands till they are legally conveyed by sale deed to the proposed transferees. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party like the appellant State when it seeks to enforce the provisions of the Act against the tenure-holder, proposed transferor of these lands.”

(emphasis supplied)

There was no agreement between the appellant and the respondent in connection with the suit land. The doctrine of part-performance could have been availed of by Pishorrilal against his proposed vendor subject, of course, to the fulfillment of the conditions mentioned above. It could not be availed of by the appellant against the respondent with whom he has no privity of contract. The appellant has been put in



possession of the suit land on the basis of an agreement of sale not by the respondent but by Pishorrilal, therefore, the privity of contract is between Pishorrilal and the appellant and not between the appellant and the respondent. The doctrine of part-performance as contemplated in Section 53-A can be availed of by the proposed transferee against his transferor or any person claiming under him and not against a third person with whom he does not have a privity of contract."

21. Consequently, there no enforceable right vested in favour of agreement of sale holder. Even in case of **Rohtash Singh v. Sanwal Ram**, reported in **2018 SCC OnLine P&H 7606**, it was held:

"**33.** The plaintiff has not taken any step in furtherance of this writing as it was taken as document of sale of plot. In plaint and evidence, this writing was presenting and referred as document of sale of plot. It is also recited in the writing that plot has been sold to plaintiff. Even Courts below have referred to this as document of sale. The transaction of immovable property worth more than Rs. 100/- can be made by a registered document. This finds support from the observations of Hon'ble Apex Court in case of *Guman Singh v. Manga Singh (D) by LRs²* (2016) 3 RCR (Civil) 592, wherein, it has been observed as follows:



"From the facts narrated above, it becomes manifest that the purported sale deed dated 02.05.1966 was never registered and remained an unregistered document. Even as per the appellants, consideration for the suit land was Rs. 9000/-, i.e., more than Rs. 100. The transaction pertains to immovable property. Such a sale deed was compulsorily registrable under Section 17 of the Indian Registration Act. The consequence of non-registration are provided in Section 49 thereof. Such document cannot be led into evidence and no rights indicated in the said document can be pressed and claimed. The document can be seen only for collateral purposes. In the instant case, on the basis of the said document, the appellants are claiming ownership which cannot be countenanced. Thus, the appellants cannot claim that they had become owners of the suit land on the basis of document dated 02.05.1966. Insofar as rights claimed on the basis of Section 53 A of the Act are concerned, that deals with only part-performance. It has been held by this Court in 'Ranchhoddas Chhaganlal v. Devaji Supdu Dorik'[(1977) 3 SCC 584] that the plea of Section 53 A of the Act can be taken only in defence.....".

22. In light of above submissions, learned counsel sought for answering substantial question of law in favour of defendant



no.2, allow appeal and restore judgment and decree passed by trial Court.

23. On other hand, Sri V. Vinod Reddy, learned counsel for plaintiff opposed appeal. It was submitted, OS no.109/2005 was instituted by plaintiff for permanent injunction and for declaration that judgment and decree dated 08.10.2004 passed in OS no.135/2004 was not binding on plaintiff. It was submitted, suit property was land bearing Sy.no.67/3 measuring 2 Acres 24 guntas consisting of eucalyptus plantation, situated at Pindinagara village, Yeldur Hobli, Srinivasapura Taluk, bounded on:

East: Property of Uppakunta Chikka Changappa.

West: Another property of plaintiff.

North: Property of Iyanna.

South: Another property of plaintiff.

24. It was submitted, plaintiff's case was that he acquired possession of suit property from his father Giregowda who died about 9 years prior to suit. Plaintiff further stated that his father acquired possession of suit property from its previous owner Chikkamuniswamy s/o Sonnappa with consent who was resident of Pindiganagara village in year 1964-65. And



considering his possession, his name was entered in RTC for years 1964 to 1970 as per Ex.P2. And that Chikkamuniswamy had executed an agreement for sale in favour of plaintiff's father Giregowda on 15.08.1966 as per Ex.P1. That Chikkamuniswamy and his two brothers i.e. Byrappa and Muniswamy died unmarried and issueless.

25. Plaintiff further stated that said Chikkamuniswamy executed registered sale deed dated 07.06.1951 as per Ex.P3 selling Sy.no.67/1 measuring 1 Acre 28 guntas in favour of Abdul Azeez, with boundaries:

East By: Chenga Gowda,
West By: Narayana Gowda,
North By: Annappa,
South By: Patil Narayanagowda.

26. Subsequently, his son - defendant no.1 - Abdul Jabbar S/o Abdul Azeez and owner of Sy.no.67/1 measuring 1 Acre 28 guntas and another land bearing Sy.no.43/3 measuring 1 Acre 8 guntas of Pindinagara village to defendant no.2 - Jayamma under registered sale deed dated 19.09.1992 as per Ex.D6, with following boundaries:



East By: Erappa,
West by: Giregowda (Father of Plaintiff)
North by: Pichaguntala Venkatappa and
South by: Property of Giregowda (Father of plaintiff).

27. Thereafter, defendant no.2 sold Sy.no.67/1 measuring 1 Acre 28 guntas to defendant no.3 - Venkatappa under registered sale deed dated 06.03.2004 as per Ex.P5 by changing boundaries as:

East by: Uppakunte Erappa,
West by: Parvathamma,
North by: G. Manjunath and
South by: Remaining extent of Jayamma.

28. Thus, it was evident that by cleverly changing boundaries defendant no.2, sold Sy.no.67/1 measuring 1 Acre 28 guntas. After sale, defendant no.2 wanted to rectify sale deed executed by her vendor Abdul Jabbar in respect of Sy.no.67/1 measuring 1 Acre and 28 guntas and filed OS no.135/2004 on 30.08.2004. Rectification sought was to change survey number of land sold from Sy.no.67/1 measuring 1 Acre 28 guntas to Sy.no.67/3 measuring 2 Acres 24 guntas. It was settled law that after sale of property, Jayamma had no right to rectify sale deed, especially so when Sy.no.67/3



belonged to plaintiff. When based on collusive compromise decree, defendants tried to interfere with plaintiff's possession over suit property, present suit was filed for permanent injunction and to hold decree passed in OS no.135/2004 as not binding on plaintiff. Trial Court erroneously dismissed suit, but in appeal, first appellate Court, decreed suit. And against divergent findings, this appeal was filed.

29. It was submitted, in order to establish possession over suit property, plaintiff relied on Exs.P1 and P2. It was submitted, Ex.P4 - sale deed executed by defendant no.1 in favour of defendant no.2 clearly refers to property of Giregowda on southern side. Even Exs.D11 to D14 and Ex.D16 show suit property was in plaintiff's vendor name, establishing plaintiff's possession over suit property.

30. It was submitted, first appellate Court framed proper points for consideration and observed Ex.P1 indicated sale of suit property in favour of plaintiff's father and Ex.P2 - RTC entries for years 1964-1970 bearing name of plaintiff's father gave rise to presumption about possession. Further, Ex.P1 being a 30 year old document and produced from proper



custody was presumed to be genuine and even though Ex.P1 was unregistered and marked subject to objection, plaintiff was required to pay only stamp duty and penalty. It also noted that deposition of PWs.2 to 4 supported plaintiff. Thus judgment and decree passed by first appellate Court was on basis of material on record and well reasoned.

31. In support of his submission that it was not necessary for person claiming injunction to prove title over suit property and it would suffice if he proves his lawful possession and there was attempt to same by person without title, learned counsel relied on decision in case of **Rame Gowda (Dead) By LRs. v. M. Varadappa Naidu (Dead) By LRs. and Anr.**, reported in **(2004) 1 SCC 769**, wherein it is held:

"11. In the present case the trial court has found the plaintiff as having failed in proving his title. Nevertheless, he has been found to be in settled possession of the property. Even the defendant failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The trial court, therefore, left the question of title open and proceeded to determine the suit on the basis of possession, protecting the established possession and restraining the attempted interference



therewith. The trial court and the High Court have rightly decided the suit. It is still open to the defendant-appellant to file a suit based on his title against the plaintiff-respondent and evict the latter on the former establishing his better right to possess the property.

12. The learned counsel for the appellant relied on the Division Bench decision in *Dasnam Naga Sanyasi v. Allahabad Development Authority* [AIR 1995 All 418] and a Single Judge decision in *Kallappa Rama Londa v. Shivappa Nagappa Aparaj* [AIR 1995 Kant 238] **to submit that in the absence of declaration of title having been sought for, the suit filed by the plaintiff-respondent was not maintainable and should have been dismissed solely on this ground. We cannot agree.** *Dasnam Naga Sanyasi* case [AIR 1995 All 418] relates to the stage of grant of temporary injunction wherein, in the facts and circumstances of that case, the Division Bench of the High Court upheld the decision of the court below declining the discretionary relief of ad interim injunction to the plaintiff on the ground that failure to claim declaration of title in the facts of that case spoke against the conduct of the plaintiff and was considered to be "unusual". In *Kallappa Rama Londa* case [AIR 1995 Kant 238] the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title and on dealing with several decided cases the learned Judge has



agreed with the proposition that where the suit for declaration of title and injunction is filed, and the title is not clear, the question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law. In Fakirbhai Bhagwandas v. Maganlal Haribhai [AIR 1951 Bom 380 : 53 Bom LR 163] a Division Bench spoke through Bhagwati, J. (as his Lordship then was) and held that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. We respectfully agree with the view so taken. The High Court has kept the question of title open. Each of the two contending parties would be at liberty to plead all relevant facts directed towards establishing their titles, as respectively claimed, and proving the same in duly constituted legal proceedings. By way of abundant caution, we clarify that the impugned judgment shall not be taken to have decided the question of title to the suit property for or against any of the contending parties."

(emphasis supplied)



32. For same proposition, he relied on decision in case of **Ramji Rai and Anr. v. Jagdish Mallah (Dead) Through LRs. and Anr.**, reported in **(2007) 14 SCC 200**, wherein it is held:

*"10. On the finding of facts, we do not wish to interfere. There is no reason to reverse the concurring findings. However, suffice it to state that the lower appellate court should have dismissed the suit filed by the appellants only on the ground that the appellants had failed to prove that they were in possession of the disputed lands. **Under Section 38 of the Specific Relief Act, 1963 an injunction restraining disturbance of possession will not be granted in favour of the plaintiff who is not found to be in possession. In the case of a permanent injunction based on protection of possessory title in which the plaintiff alleges that he is in possession, and that his possession is being threatened by the defendant, the plaintiff is entitled to sue for mere injunction without adding a prayer for declaration of his rights. (See Mulla's Indian Contract and Specific Relief Acts, 12th Edn., p. 2815)"***

(emphasis supplied)

33. On admissibility of Ex.P1, learned Counsel relied on decision of Hon'ble Supreme Court in case of **R.V.E.**



**Venkatachala Gounder v. Arulmigu Viswesaraswami and
V.P. Temple and Anr.,** reported in **(2003) 8 SCC 752**

holding:

*"20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. **In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in***



evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. ***Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and***



timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

(emphasis supplied)

34. Sri Sampath A, learned counsel for defendant no.3 supported appellant.

35. Heard learned counsel, perused impugned judgment and decree and records.

36. This appeal is by defendant no.2 being aggrieved by divergent finding of first appellate Court in suit for permanent injunction and declaration. As rightly observed by both Courts, suit herein was for bare injunction to restrain defendants from interfering with plaintiff's peaceful possession over suit property was main and contentious relief and other prayer was for declaring decree in OS no.135/2004 as not binding on plaintiff.

37. It would also not be in dispute that in suit for permanent injunction, plaintiff would require to establish his lawful possession over suit property, illegal interference by



defendants and irreparable loss and injury being caused to plaintiff in case injunction is refused.

38. On behalf of plaintiff, suit claim is based on alleged execution of Ex.P1 – Agreement of sale by Chikkamuniswamy earlier owner of suit property on 15.08.1966 by accepting entire sale consideration and delivery of possession to plaintiff's father. Plaintiff also relies upon RTC of year 1964 to 1970 marked as Ex.P2, to corroborate Ex.P1 as well as to establish his possession over suit property.

39. Challenge by defendant no.2 – appellant is on three specific grounds. *Firstly*, relying on **Avinash Kumar's** case (supra), it is contended, when trial Court had opined Ex.P1 was concocted and even as per recitals was in nature of sale deed and being unregistered and improperly stamped was hit by Section 49 of Registration Act as well as Section 34 of Stamp Act, it cannot even be looked into for collateral purposes. *Secondly*, referring to decision in **Anathula Sudhakar** and **Smt.Nirmala's** cases (supra), and contention about maintainability of suit raised in written statement based on denial of plaintiff's title and defendant no.2 setting up rival title



based on Ex.D6 – sale deed, it is contended suit for bare injunction without declaration of title would not be maintainable. And *thirdly*, relying upon **Namdev Gajre** and **Rohtash Singh**'s cases (supra), it is contended as per Ex.P1, plaintiff at best could claim to be holder of an agreement of sale which would not create any interest in immovable property and therefore suit for injunction would not be maintainable.

40. On other hand, appeal is opposed by plaintiff on ground that suit property i.e. Sy.no.67/3 measuring 2 Acres 24 guntas with definite boundaries acquired by plaintiff's father from admitted original owner Chikkamuniswamy who executed Ex.P1 – agreement of sale on 15.08.1966 by receiving entire sale consideration and delivered possession. It is stated that on death of original owner and his brothers issueless and unmarried, plaintiff's father and thereafter plaintiff continued in possession. And though Ex.P1 was unregistered, fact that name of plaintiff's father was entered in revenue records in cultivator's Column from 1964-65 onwards as per Ex.P2, duly corroborated plaintiff's claim under Ex.P1. Thus, observation by



trial Court that Ex.P1 was created for purposes of suit was without basis or detailed reasoning and presumptuous.

41. It is also contended that on other hand, claim of defendants over suit property was on basis of sale deeds, with different survey numbers and extents and Ex.P7 being collusive decree obtained behind back of plaintiff as well as without admitted original owner Chikkamuniswamy being made a party. Therefore, plaintiff's possession over suit property stood established by Exs.P1 and P2 as well as by Ex.P4 – sale deed referring to property of plaintiff's father as its southern boundary. It was submitted, first appellate Court rightly applied law that Ex.P1 being a 30 year old document and produced from proper custody attracted presumption about its genuinity. Relying on **Ramegouda** and **Ramji Rai's** cases (supra), it is contended in a suit for bare injunction plaintiff was not required to establish title and it would suffice if he establishes possession and interference by person without title over it. Relying on **Venkatachal Gounder's** case (supra), it is contended question regarding admissibility would stand waived



on marking of a document. Therefore, no substantial question of law would arise for consideration.

42. Thus, there is no dispute about fact that plaintiff's suit for permanent injunction against defendants herein in respect of suit property is based on Ex.P1 – which is an unregistered Agreement of sale dated 15.08.1966. While, defendants' claim right over suit property on basis of registered sale deed executed by same original owner as in case of plaintiff, but based on further assertion that there was mistake in mentioning correct survey number and extent in said sale deed, which percolated into subsequent alienations and corrected under compromise decree. There is also a counter claim by defendant no.3, but for permanent injunction against plaintiff. Neither of parties have sought declaration of their respective title over suit property.

43. As rightly, contended, in a suit for permanent injunction, it would not be necessary for trial Court to decide on title. And it would be necessary only in case of clear and specific claim of ownership over suit property by defendants such as those based on registered deeds.



44. In instant case, though claim of defendants is specific and based on registered deeds, said deeds even according to defendants were with error in mentioning survey numbers and extents. Though they claim that boundary description would be same as suit property herein and as such prevail over erroneous survey numbers and extent, same need not detain this Court on said contentious claim, since defendants have not made any counter-claim for declaration of title nor weakness of defendants' case can benefit plaintiff.

45. Pivotal fact herein is about claim of plaintiff being based on an unregistered and improperly stamped agreement of sale, noted by trial Court to be in nature of sale deed, as per recitals. There cannot be dispute about principle of law that an unregistered and/or under-stamped agreement of sale cannot be looked into as evidence under Section 49 of Registration Act as well as under Section 34 of Karnataka Stamp Act.

46. While passing impugned judgment, trial Court took note of rival contentions and observed plaintiff's suit was for permanent injunction and in view of prayer no.2, it would not be necessary for it to decide on validity of decree in OS



no.135/2004 and it would suffice to examine whether it binds plaintiff. It noted oral and documentary evidence of plaintiff. It noted consistency between pleadings, oral evidence and documentary evidence and nothing material being elicited by defendants. It also noted absence of cross examination of PW.4, son of scribe of Ex.P1 – Agreement of sale, who identified his father’s signature on it. It also noted rival oral and documentary evidence. It noted that in her cross-examination, defendant no.2 as DW.1 admitted lands bearing Sy.nos.67/1, 67/2 and 67/3 were separate and distinct property. It noted claim of plaintiff pivoted on Ex.P1 – Agreement of sale and Ex.P2 – RTC from 1964-65 to 1969-70. It noted that plaintiff could not sustain claim of being in lawful possession based only on Ex.P1 alone and suspected it to be concocted for purposes of suit. It noted that in cultivator’s Column in Ex.P2, name of plaintiff’s father as well as Pichuguntla Venkatappa was mentioned and there was no explanation about Pichuguntla Venkatappa. Based on same, it concluded, father of plaintiff was not in exclusive possession of suit property. It also drew adverse inference against plaintiff’s father for not making any efforts to have sale deed registered. It opined, in case original



owner and his brothers passed away without legal heirs, property would eschew to Government would also go against plaintiff.

47. It noted failure on part of plaintiff to establish his possession over suit property as on date of suit. It also noted there was no reason to disbelieve written statement of defendant no.3 stating Sy.no.67/3 was in possession of defendant no.2 and Sy.no.67/2 was in possession of plaintiff. It observed, plaintiff had not disputed such assertion by defendant no.3 would be part of evidence that plaintiff was not in possession of suit property and except Exs.P1 and P2 no other documents were produced by plaintiff during filing of suit. It noted Ex.D2 - MR no.3/2004-05 was certified on 19.10.2004 in favour of defendant no.2. And suit was filed 10 months thereafter. Therefore, plaintiff failed to prove his possession over suit property and there would be no question of interference by defendants.

48. While considering points no.1 and 2, first appellate Court observed it was incumbent on plaintiff to establish his lawful possession over suit property. It noted plaintiff reiterated



plaint averments, examined three other witnesses and got marked Exs.P1 to P11. On perusal of Ex.P1, it observed it was unregistered sale agreement executed by Chikkamuniswamy, accepting entire sale consideration and handing over possession to plaintiff's father. And from recitals, Ex.P1 was in fact a sale deed. However, by observing that even in such case, as it was an ancient document and as it was marked, there would be no scope for defendants objecting against same and plaintiff would only require to pay stamp duty/penalty.

49. It also noted Ex.P2 – RTC from 1964 to 1970 showed name of Chikkamuniswamy in Column no.9 and name of plaintiff's father in Column no.12 (2) in respect of suit property. And held, Exs.P1 and P2 established plaintiff's possession over suit property and defendants not concerned with it. It noted since plaintiff's possession over suit property was without interference for more than four decades, plaintiff was entitled for protection. It noted, though defendant no.2 to have purchased suit property from defendant no.1 under Ex.D6 - registered sale deed, he claimed, there was error in mentioning correct survey number and extent, which percolated into



subsequent alienations, and error was got rectified by Ex.P7 - compromise decree and mutation of revenue records in pursuance of same. It noted Ex.D11 – RTC of year 2002-03 in respect of Sy.no.67/3 showed entry of name of defendant no.1 in Column no.9 as **successor** (Pouti Waras), which would be impossible and indicated manipulation of revenue records and also noting Ex.D13 issued by Taluka Surveyor showed Chikkamuniswamy's possession of 2 Acres 24 guntas in Sy.no.67/3 and OS no.135/2004 for rectification of sale deed was behind back of plaintiff, it held same to be not binding.

50. Insofar issues no.2, 3 and 4 answered by trial Court as not surviving for consideration, it held same to be contrary to Order XIV Rule 2 of CPC vitiating judgment and decree of trial Court. Based on same, it set-aside judgment and decree of trial Court. And for failure by defendant no.3 to enter witness-box, it junked counter claim of defendant no.3.

51. Thus, neither of Courts answered issues no.2, 3 and 4 and committed error. But, same will not give rise to any substantial question of law, as indisputably plaintiff herein is



claiming to protect his possession over suit property under agreement of sale.

52. On question, whether an agreement of sale would vest any right, Hon'ble Supreme Court in case of **RBANMS Educational Institution v. B. Gunashekar**, reported in **2025 SCC OnLine SC 793**, held:

"15.1. Undoubtedly, a sale deed, which amounts to conveyance, has to be a registered document, as mandated under Section 17 of the Registration Act, 1908. On the other hand, an agreement for sale, which also requires to be registered, does not amount to a conveyance as it is merely a contractual document, by which one party, namely the vendor, agrees or assures or promises to convey the property described in the schedule of such agreement to the other party, namely the purchaser, upon the latter performing his part of the obligation under the agreement fully and in time. Section 54 of the Transfer of Property Act, 1882 explicitly lays down that a contract for sale will not confer any right or interest. Section 53-A of the Transfer of Property Act, 1882 offers protection only to a proposed transferee who has part performed his part of the promise and has been put into possession, against the actions of transferor, acting against the interest of the transferee. For the proposed transferee to seek any protection against the transferor, he must have either



performed his part of obligation in full or in part. The applicability of Section 53-A of the Transfer of Property Act, 1882 is subject to certain conditions viz., (a) the agreement must be in writing with the owner of the property or in other words, the transferor must be either the owner or his authorised representative, (b) the transferee must have been put into possession or must have acted in furtherance of the agreement and made some developments, (c) the protection under Section 53-A is not an exemption to Section 52 of the Transfer of Property Act, 1882 or in other words, a transferee, put into possession with the knowledge of a pending lis, is not entitled to any protection, (d) the transferee must be in possession when the lis is initiated against his transferor and must be willing to perform the remaining part of his obligation, (e) the transferee must be entitled to seek specific performance or in other words, must not be barred by any of the provisions of the Specific Relief Act, 1963 from seeking such performance. The protection under Section 53-A is not available against a third party who may have an adversarial claim against the vendor. Therefore, unless and until the sale deed is executed, the purchaser is not vested with any right, title or interest in the property except to the limited extent of seeking specific performance from his vendor. An agreement for sale does not confer any right to the purchaser to file a suit against a third party who is either the owner or in possession, or who claims to be the owner and to be in



possession. In such cases, the vendor will have to approach the court and not the proposed transferee.

15.2. In the present case, juxtaposing the above legal principles to the facts of the case, we find that the respondents' claim suffers from multiple fatal defects that go to the root of the case, which are as follows:

15.2.1. First, there is no privity between the respondents and the appellant. The agreement to sell, is not between the parties to the suit. According to Section 7 of the Transfer of Property Act, 1882, only the owner, or any person authorised by him, can transfer the property. We have already held that an agreement to sell does not confer any right on the proposed purchaser under the agreement. Therefore, as a natural corollary, any right, until the sale deed is executed, will vest only with the owner, or in other words, the vendor to take necessary action to protect his interest in the property. According to the respondents, the property belongs to the vendors and according to the appellant, the property vests in them. Since the respondents are not divested any right by virtue of the agreement, they cannot sustain the suit as they would not have any locus. Consequently, they also cannot seek any declaration in respect of the title of the vendors. But when the title is under a cloud, it is necessary that a declaration be sought as laid down by this Court in the judgment in Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and others. Therefore, the suit at the instance of the respondents/plaintiffs is



not maintainable and only the vendors could have approached the court for a relief of declaration. In the present case, strangely, the vendors are not arrayed as parties to even support any semblance of right sought by the respondents/plaintiffs, which we found not to be in existence. Further, the respondents/plaintiffs claim to have paid the entire consideration of Rs.75,00,000/- in cash, despite the introduction of Section 269ST to the Income Tax Act in 2017 and the corresponding amendment to Section 271 DA. As held by us, the agreement can only create rights against the proposed vendors and not against third parties like the appellant herein. As the agreement to sell does not create any transferable interest or title in the property in favour of the respondents/ plaintiffs, as per Section 54 of the Transfer of Property Act, 1882, we hold that the attempt of the plaintiffs to disclose the cause of action through clever drafting, based solely on an agreement to sell, must fail, as such disclosure cannot be restricted to mere statement of facts but must disclose a legal right to sue.

15.2.2. Secondly, and perhaps more fundamentally, as we have seen and held above, the respondents have no legal right that can be enforced against the appellant as their claim is impliedly barred by virtue of Section 54 of the Transfer of Property Act, 1882. Their remedy, if any, lies against their proposed vendors. The plaint averments remain silent regarding the



execution of a registered sale deed in favour of the respondents, which alone can confer a valid right on them to file a suit against the appellant as held by us earlier. Another, remedy available to them is to institute a suit against the vendors for specific performance. This principle was clearly established in K. Basavarajappa (supra), wherein this Court held that an agreement holder lacks locus standi to maintain actions against third parties. The relevant paragraph of the said judgment is extracted below:

"8. ... By mere agreement to sell the appellant got no interest in the property put to auction to enable him to apply for setting aside such auction under Rule 60 and especially when his transaction was hit by Rule 16(1) read with Rules 51 and 48. Consequently he could not be said to be having any legal interest to entitle him to move such an application. Consequently no fault could be found with the decision of the Division Bench of the High Court rejecting the entitlement of the appellant to move such an application."

... ..

15.2.4. Further, the respondents are not in possession of the property. Whereas, the appellant's possession since 1905 is admitted in the plaint itself. In such circumstances, where the plaintiffs are not in possession and the defendant is in settled possession for over a century, a suit for bare injunction by a proposed transferee is clearly not maintainable. Section 41 (j) of the Specific Relief Act, 1963 prohibits grant of injunction when the plaintiff has no personal



*interest in the matter. **In the present case, the respondents, being mere agreement holders, have no personal interest in the suit schedule property that can be enforced against third parties. The "personal interest" is to be understood in the context of a legally enforceable right, as when there is a bar in law, the mere existence of an interest in the outcome cannot give a right to sue.** As held by us above, no declaratory relief has been sought as contemplated under Section 34 of the Specific Relief Act, 1963. This principle was clearly established in Jharkhand State Housing Board (supra), in which, this Court emphasized that where title is in dispute, a mere suit for injunction is not maintainable. The relevant portion of the said judgment is reproduced hereunder:-*

"11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

(emphasis supplied)

53. In fact, on very issue of maintainability of suit for permanent injunction on basis of an unregistered agreement of



sale of Hon'ble Supreme Court in case of **Balram Singh v.**

Kelo Devi, reported in **(2024) 12 SCC 723**, held:

"6. At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent injunction only, which was claimed on the basis of the agreement to sell dated 23-3-1996. However, it is required to be noted that the agreement to sell dated 23-3-1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence.

7. Having been conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simpliciter for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance.

8. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counterclaim for getting back the possession which



*was allowed by the learned trial court. **The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.***

(emphasis supplied)

54. Consequentially, it has to be held, suit by plaintiff herein as holder of an agreement of sale seeking declaratory relief which were subject matter of issues no.2 to 4, as also suit for bare injunction based on mere agreement of sale, against defendants who according to plaintiff were third parties seeking to interfere with his possession, but according to defendants, they were purchasers of suit property from original owner, would be in either case in view of ratio in **B. Gunashekar** and **Balram's** cases (supra), not maintainable.

55. In view of above, substantial question of law framed is answered in negative. Consequently, following:



ORDER

- i) Appeal is ***allowed***;
- ii) Judgment and decree dated 25.04.2009 passed by I Addl. Civil Judge (Sr.Dn.), Kolar, in RA no.170/2008 is ***set-aside***;
- iii) Judgment and decree dated 19.06.2008 passed by Civil Judge (Jr.Dn.), Srinivaspur, in OS no.109/2005 is ***restored***.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD
List No.: 19 Sl No.: 1