

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR JUSTICE M.G.S.KAMAL

REGULAR FIRST APPEAL NO.683 OF 2017 (DEC/INJ)

C/W

REGULAR FIRST APPEAL NO.729 OF 2018 (DEC/INJ)

IN R.F.A. NO. 683/2017

BETWEEN:

P THAMMAYANNA BY HIS LRS

- 1(a). SMT. MADAMMA,
W/O LATE THAMMAIANNA,
AGED ABOUT 79 YEARS,
RESIDING AT NO.24, 8TH CROSS,
JAKKASANDRA ROAD
MALLESHWARAM
BANGALORE - 560 003.
- 1(b) . SRI RAMACHANDRA
S/O LATE THAMMAIANNA
AGED ABOUT 48 YEARS,
RESIDING AT NO.24, 8TH CROSS,
JAKKASANDRA ROAD,
MALLESHWARAM,
BANGALORE - 560 003.
- 1(c) . SMT PRAMEELA
W/O B SRINIVASAN
D/O LATE THAMMAIANNA,
AGED ABOUT 44 YEARS,
RESIDING AT NO.64, "ELZA ENCLAVE"
CAUVERY NAGAR, VADDARAPALYA,
AGRA MAIN ROAD
BANGALORE - 560 043.

1(d) . KUMARI
D/O LATE THAMMAIANNA
AGED ABOUT 39 YEARS,
RESIDING AT NO.24, 8TH CROSS,
JAKKASNADRA ROAD,
MALLESHWARAM
BANGALORE - 560 003.

... APPELLANTS

(BY SRI. B. SRINIVAS., ADVOCATE)

AND:

- SRI RAMAREDDY
SINCE DEAD BY LRs
- 1 (a) SMT. PARVATHAMMA. B. AGED ABOUT 75 YEARS,
- 1(b) SRINIVAS REDDY. R AGED ABOUT 53 YEARS,
- 1(c) R. VENUGOPAL REDDY AGED ABOUT 52 YEARS,
- 1(d) HARISH KUMAR. R. AGED ABOUT 50 YEARS,
- 1(e) SMT. PADAMAVATHI REDDY AGED ABOUT 56 YEARS,
REPRESENTED BY HER GPA HOLDER.,
SRINIVAS REDDY.R. APPLICANT NO.1(b)

RESPONDENTS 1(a)
IS WIFE AND RESPONDENTS
1(b) to 1(e) ARE CHILDREN OF LATE
K. A. RAMAIAH REDDY AND
ALL ARE R/AT NO. 357,
3RD CROSS, CAMBRIDGE LAYOUT,
HAL 2ND STAGE, BANGALORE - 560 008.

- 2 . M/s.PADMANABHA BRICK WORKS
BY ITS MANAGING PARTNER,
SRI K. BALAKRISHNA REDDY,
HAVING ITS FACTORY AND OFFICE
AT KUNDALAHALLI VILLAGE
DODDANEKKUNDI POST,
BENGALURU - 560 037.

3 . M/s. KARNATAKA STATE FINANCIAL
CORPORATION
ASSET RE-CONSTRUCTION
DEPARTMENT NO.1,
THIMMAIAH ROAD
BANGALURU - 560 052
REPRESENTED BY ITS
GENERAL MANAGER.

... RESPONDENTS

(BY SRI. C.M. NAGABHUSHANA., ADVOCATE FOR LR'S OF
DECEASED R1(a TO e) AND R2 AND R3)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED
20.02.2017 PASSED IN O.S.NO.2501/1985 ON THE FILE OF
THE XL ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU,
DISMISSING THE SUIT FOR PERMANENT INJUNCTION AND
DECLARATION.

IN R.F.A. NO.729/2018

P THAMMAYANNA BY HIS LRS

1(a) SMT.MADAMMA B.,
W/O LATE P.THAMMAYANNA,
AGED ABOUT 79 YEARS,
R/AT NO.24, 8TH CROSS,
JAKKASANDRA,
MALLESHWARAM,
BANGALORE-560 003.

1(b) SRI.RAMACHANDRA
S/O LATE THAMMAYANNA,
AGED ABOUT 48 YEARS
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MALLESHWARAM,
BANGALORE-560 003.

1(c) SMT.PREMALEELA
W/O B.SRINIVASAN,

D/O LATE THAMMAYANNA,
AGED ABOUT 44 YEARS
R/AT NO.64, "ELZA ENCLAVE",
CAUVERY NAGAR, VADDARAPALYA,
AGRA MAIN ROAD,
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BY ITS MANAGING PARTNER,
SRI.K.BALAKRISHNA REDDY,
HAVING ITS FACTORY AND OFFICE,
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- 3 . M/s. KARNATAKA STATE FINANCIAL
CORPORATION,
ASSET RE-CONSTRUCTION,
DEPARTMENT NO.1,
THIMMAIAH ROAD,
BANGALURU-560 052
REPRESENTED BY ITS GENERAL MANAGER.

... RESPONDENTS

(BY SRI. C M NAGABUSHANA, ADVOCATE FOR C/R1)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., AGAINST ORDER DATED 03.04.2017 PASSED ON I.A.NO.XI IN EX.1715/2002 ON THE FILE OF THE XL ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, ALLOWING THE I.A.XI FILED UNDER SECTION 144 R/W SECTION 151 OF CPC.

THESE REGULAR FIRST APPEALS HAVING BEEN HEARD AND RESERVED ON 09.01.2026 FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE M.G.S.KAMAL

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE M.G.S.KAMAL)

These two appeals are by the plaintiff in O.S.No.2501/1985 aggrieved by the Judgment and decree dated 20.02.2017 passed therein on the file of XL Additional City Civil and Sessions Judge, CCH-41, Bengaluru (hereinafter referred to as `trial Court') by which the suit of the plaintiff for declaration and injunction has been dismissed.

2. Subject matter of the suit being property bearing vacant Site No.1 out of Sy.No.8 belonging to ex-Jodi Ranganathapura Village to the South of the main road leading to Malleshwaram 7th Division, Palace Guttahalli, Bangalore City, consisting of tiled roof shed put up by the plaintiff along with stone slabs bounded on the East by: HB Narasimhaiah's property, West by: Site No.2, North by: Main Road and South by: Road, measuring East to West 30 feet and North to South 45 feet.

3. The case of the plaintiff is that the suit schedule property originally belonged to one Muniveerappa. Plaintiff was inducted as a tenant into the suit schedule property in terms of

a lease agreement dated 05.02.1964 on a monthly rent of Rs.25/- which he was using to carry on his business in haystack. Thereafter an agreement of sale dated 22.11.1974 came to be entered into between the plaintiff and said Muniveerappa in respect of the suit schedule property. Subsequently a deed of sale dated 19.12.1974 was executed by said Muniveerappa in favour of the plaintiff. Ever since then plaintiff has been in possession and enjoyment of the suit property as owner thereof.

4. That one H. Narasamma and others had attempted to interfere in the plaintiff's peaceful possession and enjoyment of the suit property during the month of December 1974 constraining the plaintiff to file a suit in O.S.No.2487/1975 which is re-numbered as O.S.No.1089/1980. The plaintiff had filed application for entry of his name in the revenue records of Corporation of City of Bengaluru and for khatha in respect to the suit property.

5. That the defendant without having any manner of right or interest attempted to trespass into the suit property and to put up a foundation on 30.07.1985. Plaintiff not being able to

resist the illegal high handed acts of the defendant filed a suit for permanent injunction.

6. The plaintiff thereafter amended the plaint seeking relief of declaration and possession contending that the defendant based on certain title attempted to forcibly trespass into the property and put up construction.

7. That the defendant had obtained an injunction order in O.S.No.10639/1985 on 01.08.1985 and based on the said order successfully dispossessed the plaintiff and had inducted one R.N.Ramu elder son of defendant. That the defendant had put up the construction illegally over the suit property. That since plaintiff is the absolute owner of the suit property having purchased the same in terms of deed of sale dated 19.12.1974, defendant cannot have any right or claim over the suit property and if the said claim is false and without any basis, plaintiff having previously been dispossessed during the pendency of suit, thereafter by virtue of the orders passed by this Court possession has been lawfully delivered to the plaintiff and he continues to be in possession of the property. Hence, the suit.

8. Written statement is filed by the defendant denying the plaint averments. It is contended that one S.Krishnappa, an Advocate practicing in Bengaluru had filed a suit in O.S.No.21/1934-35, prior to coming into force of Inams Abolition Act, on the file of the District Judge, Bengaluru, for partition and possession of his share in the village of Jodi Ranganathapura. Amongst others Muniveerappa, through and under whom the plaintiff claiming his title over the suit property was the defendant No.133. By judgment dated 15.09.1958 passed in the said suit, it was held that said Muniveerappa, the alleged vendor of the plaintiff was not entitled to anything as he had not established right over the Jodi Village. Said Muniveerappa had challenged the said judgment by filing a regular appeal in R.A.No.137/1959 on the file of the High Court of Mysore which was dismissed. The matter was thereafter carried before the Supreme Court of India in SCALP No.1255/1965 which was also dismissed.

9. Subsequent to the aforesaid decisions by various Courts, the plaintiff has filed the present case on the basis of inadmissible and brought up documents without notice to the predecessor-in-title of the defendant.

10. The property described in the plaint was part of the land purchased by one late Krishnaswamy Pillai as early as 18.01.1935 which was subject matter of suit in O.S.No.21/1934-35. The said land was allotted to the exclusive share of Krishnaswamy Pillai who was defendant No.23 in the said suit. After his demise his legal representatives were in possession. The heirs of Krishnaswamy Pillai, who were in actual possession of the entire property, sold the same in favour of A Vadivelu in terms of deed of sale dated 12.06.1967. The property referred to therein is all the piece and parcel of vacant site bearing No.1 situated at 2nd Main, Rajamahall Guttahalli (Muneshwara block) Corporation Division No.7 Bengaluru City, measuring East to West 50 feet, North to South 70 feet, bounded on East by: property of Narasimaiah, West by: proposed road, North by: main road leading to Malleshwaram and South by: property of Kesavan.

11. The said A.Vadivelu in turn sold the same in terms of deed of sale dated 31.12.1970 to one Sri.Bhajanlal and delivered the possession of the property. The said Bajanlal sold the said property in favour of defendant No.1 in terms of deed of sale dated 26.12.1980. Said Bajanlal has thereafter delivered the actual vacant possession of the property to defendant No.1.

As there was a mistake in mentioning the corporation division number, a Rectification Deed was also executed on 02.11.1981. But the khatha in respect to the aforesaid property has been registered in the names of A.Vadivelu, Bhajanlal and thereafter in the name of the defendant No.1 based on the aforesaid deeds of sale. After purchasing the property defendants have put up construction of a building which is at the stage of casting of RCC roofing. The basis on which the plaintiff claiming his title is non existent and the finding of the Courts earlier with regard to Muniveerappa, the vendor of the plaintiff not having any right over the property has attained finality, as such plaintiff cannot derive any right over the suit property.

12. That defendants have filed a suit in O.S.No.10639/1985 on the file of learned VIII Additional City Civil Judge, Bengaluru, against the plaintiff and two others and has obtained an ad-interim order of temporary injunction. The suit is barred by limitation.

13. Additional written statement is filed by defendant No.1 pursuant to the amendment to the plaint, denying the claim of the plaintiff having been previously dispossessed during the pendency suit and by virtue of the interim order

passed by this Court, the possession having been lawfully delivered to the plaintiff and he continuing to be in possession and enjoyment of the suit property has been denied. That the property claimed by the plaintiff as described in the plaint is not identifiable as the site in Sy.No.8 of Ranganathapura Village has lost its agricultural character. That in terms of Order VII Rule 3 CPC, plaint shall specify number and boundary of the property as recorded in the records of BBMP. As such the suit is not maintainable.

14. The suit was originally filed for relief of permanent injunction. Defendant No.1 had filed his written statement on 18.11.1985 disputing and denying the title and possession of the plaintiff over the suit property as described in the plaint. Then an amendment application in I.A.No.4 to include relief of declaration of title came to be filed by the plaintiff on 10.07.1991. The cause of action for relief of declaration of title arose on the day when defendant No.1 filed written statement denying the title of the plaintiff i.e. on 18.11.1985, relief of declaration not having been sought within a period of three years from the date of accrual of cause of action, as such the suit is barred by limitation. Plaintiff is neither the owner nor in possession of the property as claimed.

15. Defendant No.3, KSFC being the financial institution has lent loan to the tenant in occupation of the building referred to above. That in view of the default committed by the said tenant in repaying the loan, KSFC-defendant No.3 has taken possession of the entire building during 1999. The entire building has been in possession of defendant No.3. That under the guise of exparte decree dated 23.03.2002 passed in this case plaintiff had illegally dispossessed defendant No.3 on 01.01.2003 without due process of law. That the said decree dated 23.03.2002 has been set aside by the High Court vide order dated 17.04.2003 passed in RFA No.317/2003. That execution proceedings in Ex.No.1715/2002 was initiated in which defendant No.3-KSFC has filed an application under Order XXI Rule 99 CPC as an objector requesting the Court to put the KSFC in possession of the suit property which was illegally taken by the plaintiff by virtue of exparte decree which was set aside by the High Court. Plaintiff as decree holder in the said execution case has filed a memo to enter full satisfaction of the decree which the Court did not accept the delivery of possession to the plaintiff and delivery of possession of the property to the plaintiff was not recorded. In the order dated 19.04.2003 passed in Ex.No.1715/2002, this Court has observed and directed for early disposal of application filed by

KSFC under Order XXI Rule 99 and CPC for re-delivery. Until then plaintiff has been restrained from alienating or letting the suit property to third parties. The said order is still in force. Hence sought for dismissal of the suit.

16. Defendant No.2 has filed memo adopting the written statement filed by defendant No.1.

17. Defendant No.3 has filed its written statement denying the case of the plaintiff. It is contended that defendant No.3 got impleaded itself as a party to the suit in order to save the property from the stranger, namely the plaintiff, which was in illegal occupation of the plaintiff. The said property was given as collateral security to defendant No.3 by defendant Nos.1 and 2. The said persons were due and payable a huge amount of money to defendant No.3. Defendant No.3 tried to implead itself as a party in the appeal filed by defendant Nos.1 and 2 before the High Court which by order dated 17.04.2003 set aside the exparte judgment and decree passed in the aforesaid O.S.No.2501/1985. The plaintiff has no manner of right over the property belonging to defendant No.3. Defendant No.3 had taken over the possession of the suit property as early as 15.04.1999 and defendant No.3 was dispossessed at the hands

of the plaintiff illegally without due process of law on 01.01.2003. The suit in O.S.No.2501/1985 as well as Execution petition in Ex.No.1715/2002 filed by the plaintiff did not include defendant No.3 as a party to the proceedings. Defendant No.3 had no knowledge whatsoever about the cases filed by the plaintiff. As such the judgment and decree passed on 23.03.2002 by trial Court do not bind the defendant No.3 in any manner whatsoever and the same is null and void as against defendant No.3.

18. The suit filed by the plaintiff is collusive, with oblique motive and intention to defraud and deceive the defendant No.3-Corporation. Defendant No.3 has filed an application as an objector under Order XXI Rule 99 CPC. Along with the said application, two other applications were also filed under Section 115 of CPC seeking recall of the order dated 22.11.2002 issuing delivery warrant with the police's help to break open the lock and an application for advancement of the case posted on 19.03.2003 to 01.01.2003. The Execution Court had posted the matter for objections and to hear on 04.01.2003. Plaintiff knowing fully well there is an obstruction caused by defendant No.3-Corporation without even informing the Court with regard to obstruction, connivingly thrown defendant No.3 out of the

suit property with the police help. Security guard who were guarding the said property were threatened. Plaintiff in order to defeat the ends of justice has committed an act of haste by throwing the defendant No.3-Corporation out of the said property and is residing illegally therein. Defendant No.3-Corporation has sanctioned a sum of Rs.80,00,000/- to the Partnership Firm called M/s.Karthik Impacts/Impex at the request of its partners. The schedule property has been given as collateral security to the defendant No.3-Corporation which is confirmed and agreed by defendants 1 and 2. Partners of M/s.Padmanabha Brick Works and its partners-defendants 1 and 2 and M/s.Kartik Impex have offered schedule property as a collateral security in favour of defendant No.3 for availing loan amount of Rs.80,00,000/- by executing necessary documents in the nature of creating equitable mortgage by deposit of title deeds. Since there was default in repayment of the installment, defendant No.3 initiated proceedings under Section 29 of the State Financial Corporations Act, 1951 by its order dated 15.04.1999. Defendant No.3 has taken over the properties as per Mahazar dated 15.04.1999. After taking possession of the properties, security personnel were deployed to guard the property. That the said M/s.Karthik Impex as well

as defendants 1 and 2 are due and liable to pay a sum of Rs.1,63,59,267/- as on 28.12.2002 along with future interest.

19. Things stood thus plaintiff is claiming right of ownership of the suit property. With an ulterior motive, the plaintiff has obtained possession of the property by misleading the Court. Plaintiff has no right or interest on the suit property. Hence sought for dismissal of the suit.

20. Trial Court framed following issues:

Issues dated 03.03.1986

1. Whether plaintiff proves that he was in lawful possession of the suit property on the date of the suit?
2. Whether plaintiff is entitled for permanent injunction prayed for?
3. Whether the suit is not maintainable as contended?
4. To what other reliefs, if any, plaintiff is entitled to?

Issues dated 16.12.1988

1. Whether plaintiff proves that, he is in lawful possession of the suit property?
2. Whether plaintiff is entitled to permanent injunction sought for?
3. To what reliefs and order the parties are entitled to?

Additional issues dated 11.12.2008

1. Whether the plaintiff proves his ownership over the suit property?

2. Whether the defendant No.3 got right of charge over the suit property?

Additional issues dated 03.11.2010

1. Whether defendants No.1 and 2 prove that they are the absolute owners and in possession of the suit property as alleged in Para-10 of their written statement?

2. Whether the defendants No.1 and 2 further prove that suit is barred by limitation as alleged in Para-15 of their written statement?

21. Plaintiff has examined himself as PW1 and three additional witnesses as PW2 to PW4 and exhibited 31 documents marked as Exhibit P1 to Exhibit P31. Defendant No.1 examined himself as DW1 and marked documents at Ex.D1 to D32. Defendant No.3-KSFC examined its Manager as DW2 and marked documents at Ex.D33 to Ex.52.

22. Trial Court on appreciation of evidence has answered Issue Nos.1 and 2 dated 03.03.1986 and Issue No. 1 and 2 dated 16.12.1988 in the negative. Issue No.3 dated 03.03.1986 has been held in the affirmative. Issue No.4 dated 03.03.1986 and issue No.3 dated 16.12.1988 and additional Issue No.1 dated 11.12.2008 is answered in the negative. Additional Issue No. 2 dated 11.12.2008 is answered in the affirmative. Additional Issue Nos.1 and 2 dated 03.11.2010 is

answered in the affirmative. Consequently, the trial Court has dismissed the suit.

23. Being aggrieved the plaintiff is before this Court in RFA No.683/2017.

24. RFA No.729/2018 is filed by the plaintiff being aggrieved by the order dated 03.04.2017 passed by the trial Court allowing the application in I.A.No.11 filed by defendant No.3-KSFC under Section 144, read with Section 151 of CPC. The plaintiff after obtaining the decree dated 23.03.2002 had initiated execution proceeding in Ex.No.1715/2002. The Executing Court had delivered possession of the schedule property on 01.01.2003 under delivery warrant. Defendant No.3 herein had filed the above application seeking restoration of possession which was allowed by the impugned order.

SUBMISSIONS:

25. Learned counsel for the appellants submitted:

25.1 That the trial Court failed to appreciate the pleadings and evidence led by the plaintiff in justification of his claim of ownership and possession over the suit property.

25.2 That the trial Court failed to appreciate Muniveerappa, vendor of plaintiff had retained 2 acres of land and the suit schedule property formed part of the said land.

25.3 That the plaintiff was inducted as a tenant and thereafter in terms of deed of sale dated 19.12.1974 he had acquired absolute right, title and interest.

25.4 That the trial Court has not appreciated the admission of the defendant of they not surveying the land prior to purchasing the same under deed of sale dated 26.12.1980.

25.5 That the trial Court erred in holding the suit is barred by limitation without any basis as the application for amendment was allowed unconditionally. As such, the prayer for declaration would relate back to the date of the suit. The order of amendment has not been challenged by the defendant.

25.6 That the plaintiff had produced additional documents namely the deeds of sale dated 25.07.1960, 29.01.1973, 06.04.1949 and 28.02.1957 marked at Ex.P26, 29 and 29(a) which demonstrate Muniveerappa, vendor of the plaintiff being owner of the land situated on the western as well as southern side of the suit schedule property exercising his ownership over the same. That since these documents were not produced earlier, the Judgment and decree passed in R.A.No.137/1959 cannot be solely relied upon to hold that Muniveerappa did not have any land left in his hand.

25.7 That the property being claimed by the plaintiff falls within the erstwhile Jodi Ranganathapura Village, whereas property claimed by defendants 1 and 2 was within the limits of Muneshwara Block which were different and distinct. The trial Court has failed to appreciate this aspect of the matter.

25.8 That the trial Court has also failed to take into consideration the contents of Ex.P1 rent note which indicate plaintiff being in possession of the property even prior to he purchasing the same.

25.9 That the trial Court ought to have taken into consideration the evidence of PW2, PW3 and PW4 who have spoken supporting the case of the plaintiff. Merely because they have not tendered themselves for cross examination after remand of the matter, trial Court ought not to have discarded their testimony. Thus, he submitted that the Judgment and decree passed by the trial Court suffers from perversity.

26. Learned counsel for respondent on the other hand submitted:

26.1 That Muniveerappa, the vendor of the plaintiff did not possess any right or interest over the suit property. The right or interest of said Muniveerappa for the suit property has been determined as far back as in terms of Exhibit D1- Judgment and decree passed in RA No.137/1959 by the Division Bench of this Court. The said appeal had been filed

by none other than Muniveerappa himself being aggrieved by the judgment and decree that had been passed in O.S.No.21/1934-35 in which said Muniveerappa was arrayed as defendant No.133. The Division Bench of this Court has held that Muniveerappa, the 133rd defendant had not established any right to any land in the village of Jodi Ranganathapura. The defendants have thus proved and established their case of their predecessor-in-title being the owners of the suit property and their vendors having purchased the same in terms of deeds of sale at Exhibit D2 and D3 and defendants purchasing the suit property from their vendor Bhajanlal on 26.12.1980 in terms of Exhibit D5. That admittedly defendants have put up construction of a commercial building consisting of four floors.

26.2 That the property being claimed by the plaintiff measures 30x45 feet. Whereas the property being claimed by the defendant measures 50x70 feet. The plaintiff taking undue advantage of the earlier order passed had illegally taken over the possession of the entire extent of the land. That the building existing on the subject property is to the entire extent of 50x70 feet. The plaintiff therefore cannot claim to be the owner of the land in excess of what he is claiming. That in any event the vendor of the plaintiff not having had any right could not have executed the deed of sale allegedly conveying the suit property in favour of the plaintiff. The trial Court has accordingly declined to accept the case of the plaintiff warranting no interference at the hands of this Court.

27. Heard and perused the records.

28. Points that arise for consideration are:

(i) Whether the plaintiff proves that he is the absolute owner in possession of the suit schedule property having purchased the same from his vendor Muniveerappa in terms of sale deed dated 19/27.12.1974 - Ex.P10?

(ii) Whether the defendants 1 and 2 prove that they are the absolute owners in possession of the suit schedule property having purchased the same in terms of deed of sale dated 26.12.1980 at Ex.D5?

(iii) Whether the trial Court is justified in dismissing the suit of the plaintiff?

(iv) Whether the trial Court is justified in allowing the application filed under Section 144 of CPC read with Section 151 CPC filed by the defendant No.3-KSFC?"

29. Plaintiff claims his right, title and possession of the suit property through and under one Muniveerappa. According to the plaintiff, he was inducted as a tenant by said Muniveerappa in terms of lease deed dated 05.02.1964 produced at Exhibit P1. He has also relied upon an agreement of sale dated 22/25.11.1974 produced at Exhibit-P11. Further he has relied upon a sale deed purportedly executed by said Muniveerappa on 19/27.12.1974 as per Exhibit-P10.

30. Admittedly plaintiff had made an application for registration of khatha in his name in the records of Corporation

of City of Bengaluru. However his request for registration of khatha has been declined by the Corporation of city of Bengaluru as per the endorsements seen at Exhibits P17 and P18. In terms of Exhibit P18 plaintiff was called upon to produce the documents justifying his claim over the suit property. This endorsement is dated 22.02.1975.

31. Plaintiff in his cross-examination has admitted that he has not seen the documents of title of his vendor Muniveerappa. He admits that parents of his vendor along with vendor Muniveerappa has sold 4 acres of land in Sy.No.8 of Jodi Ranganathapura in favour of the predecessor-in-title of the defendants. However, he claims that Muniveerappa, his vendor had retained land in excess of 4 acres sold under the said deed of sale. Plaintiff has admitted that he has not produced the documents of title as called for by the Corporation of City of Bengaluru in terms of Exhibit P18 till date and the khatha has not been made in his name in the records of the Bengaluru Mahanagara Palike.

32. He has pleaded ignorance with regard to a suit in O.S.No.21/1934-35. He has also pleaded ignorance about the judgment dated 15.09.1958 having been passed in the said suit

in which his vendor Muniveerappa had been arrayed as defendant No.133. He has also pleaded ignorance about said Muniveerappa having unsuccessfully challenged the said judgment in Regular Appeal No.137/1959 before the then High Court of Mysore. He has also pleaded ignorance about dismissal of the said appeal in R.A.No.137/1959 by this Court holding that his vendor Muniveerappa did not possess any portion of the land in Sy.No.8 of Jodi Ranganathapura Village. He has also pleaded ignorance about appeal filed by Muniveerappa before the Apex Court having been dismissed.

33. As against the above case of the plaintiff, defendants on the other hand claim that Muniveerappa did not have any right, title, interest over any portion of the property in Sy.No.8 of Jodi Ranganathapura Village, much less the suit schedule property. It is their case that in terms of the judgment and decree passed in O.S.No.21/1934-1935 in which, vendor of the plaintiff Muniveerappa was arrayed as defendant No.133, the District Court in its Judgment and decree dated 15.09.1958 had declined to consider the case of Muniveerappa being owner of any portion of land in Sy.No.8 of Jodi Ranganathapura Village. As against which, Muniveerappa had filed an appeal in R.A.No.137/1959 before the High Court of Mysore which was

dismissed. Exhibit D1 is the judgment and decree passed by the High Court of Mysore in R.A.No.137/1959 in terms of which, the Division Bench of this Court, after detailed appreciation of the contention of the parties, has found as under:

"For the reasons stated in detail above, we find no ground to disagree with the trial Judge's finding in paragraph 110 of his judgment, that the 133rd defendant has not established any right to any lands in the suit village of Ranganathapura."

34. Having held thus, dismissed the appeal. In the said proceedings defendant No.23 is the predecessor-in-title of the defendant. Defendants traced their title to Exhibit D2, a registered deed of sale dated 18.01.1935 executed by Muninanjappa and others in favour of Krishnaswamy Pillai. Exhibit D3 is the registered deed of sale dated 12.06.1967 executed by Smt.Kanamma and others, legal heirs of Krishnaswamy Pillai in favour of A Vadivelu. Perusal of Exhibit D3 indicate there is a reference to the judgment passed by the Division Bench of this Court upholding the right, title, interest of vendors predecessor-in-title of the defendant.

35. Exhibit D4 is the deed of sale dated 31.12.1970 executed by Vadivelu in favour of one Bhajanlal.

36. Exhibit D5 is the registered deed of sale dated 26.12.1980 executed by Bhajanlal in favour of certain M/s.Padmanabha Brick Works, a partnership firm consisting of defendants 1 and 2 as its partners.

37. Exhibit D6 is the registered Rectification Deed dated 02.11.1981 executed by said Bhajanlal in favour of M/s.Padmanabha Brick Works.

38. Exhibit D10 is the endorsement issued by the Corporation of City of Bangalore dated 04.09.1968. Perusal of which indicate, name of A.Vadivelu has been registered as the khathedar in respect of the property bearing Municipal No.1, Guttahalli Main Road, being claimed by the defendant.

39. Exhibit D11 is the receipt for having paid betterment charges by Bhajanlal in respect of the said property.

40. Exhibit D12 is the khatha acknowledgment dated 16.11.1981 issued by the Corporation City of Bangalore, confirming receipt of application on behalf of M/s.Padmanabha Brick Works for registration of khatha along with the documents enclosed therewith.

41. Exhibit D13 is the communication issued by the Corporation of City of Bangalore on 31.08.1982 calling upon M/s.Padmanabha Bricks Works to furnish documents of title as certain Dawood Khan and P.Thammayanna, the plaintiff herein having approached seeking transfer of khatha in respect to the same property in their favour.

42. Exhibit D17 is the tax paid receipt in the name of A.Vadivelu.

43. Exhibit D18 and D19 are the tax paid receipts in the name of B.Bhajanlal, Exhibit D20 to D29 is the tax paid receipt issued in the name of M/s.Padmanabha Bricks Works in respect of the premises No.1. Exhibit D30 is the certified copy of the order sheet in O.S.No.10639/1985, a suit which was filed by M/s.Padmanabha Bricks Works against the plaintiff herein and two others in which an interim order of injunction had been granted in favour of said M/s.Padmanabha Brick Works.

44. Exhibit D14 to D16 are the photographs showing and indicating existence of building.

45. Defendants 1 and 2 based on the aforesaid documents have claimed the right, title, interest over the suit property and being in possession of the same.

46. As regards possession the plaintiff in the cross examination has admitted that he learnt about the construction of the building on the suit property by defendants 1 and 2 years after filing of the suit. He has deposed that in the year 1985 defendants 1 and 2 had come to the suit schedule property and had removed the shed put up by him and the defendant had put up the construction over the suit property. He has pleaded ignorance as to whether the defendants had let out the building constructed by them over the suit property.

47. Thus from the aforesaid documentary and oral evidence produced by the plaintiff and defendants, it is clear that Muniveerappa through and under whom the plaintiff is claiming right, title, interest over the suit property had not retained any portion of the property in Sy.No.8 of Jodi Ranganathapura as claimed by the plaintiff. Plaintiff himself has also admitted in the deposition that Muniveerappa though had assured him that he would furnish him the documents which were required, had not furnished the same. He has also

pleaded ignorance of he having seen the documents of title of Muniveerappa, his vendor.

48. In the light of the judgment passed by the Division Bench of this Court in R.A.No.137/1959 which is admittedly confirmed by the Apex Court, Muniveerappa did not have any right, title, interest over any portion of the land in Sy.No.8. Since the schedule property according to the plaintiff formed part of Sy.No.8, Muniveerappa even if had executed the deed of sale as per Exhibit P10, could not have conveyed the title which he did not himself possess. Therefore as rightly taken note of by the trial Court the plaintiff cannot derive any right, title, interest over the suit property in terms of the document deed of sale at Exhibit P10.

49. The defendants on the other hand have traced their title to the property through one Krishnaswamy Pillai, who had admittedly purchased the property in Sy.No.8 of Jodi Ranganathapura Village in terms of deed of sale dated 18.01.1935 from one MuniNanjappa and others. Legal heirs of Krishnaswamy Pillai had sold property claimed by the defendants in favour of Vadivelu in terms of sale deed dated 12.06.1967 as per Exhibit D3 and Bhajanlal who had purchased

the suit property in terms of sale deed dated 31.12.1970 as per Exhibit D4. And the defendants had purchased the said property in terms of deed of sale dated 26.12.1980 as per Ex.D5. The defendants have also produced revenue documents in the nature of payment of betterment charges and the property tax indicating their possession and the possession of their vendors over the property being claimed by them. As already noted plaintiff himself has admitted that the defendants had put up construction of four storied building over the suit property.

50. Yet another aspect of the matter which requires to be seen is the plaintiff is claiming his right over the suit property which is described in the plaint measuring East to West 30 feet, North to South 45 feet. Whereas the defendants are claiming their right over the suit property to the extent of East to West 50 feet, North to South 70 feet. Plaintiff has also set up a plea of suit property being different from the property being claimed by the defendants. If that be so, the property which is delivered in Ex.No.1715/2002 pursuant to the decree dated 23.03.2002 is the one which admittedly belong to the defendants and over which defendants have admittedly put up four storied commercial building and the plaintiff has received

delivery of the said property without any demur. This takes away the very contention urged by the plaintiff with regard to identification of the property. If according to the plaintiff suit property claimed by him is different from the property claimed by the defendants, there is no question of he being delivered property belonging to the defendants with the construction existing thereon.

51. As regards the document at Ex.P27 which is the sale deed purportedly executed by Muniveerappa in respect of the properties allegedly situated around the suit schedule property, same is of no consequence as the plaintiff has to establish his right, title, interest and right, title, interest of his vendor on his own. The said documents in any event have come into existence subsequent to the Judgment and decree that has been passed in R.A.No.137/1959 which has attained finality on dismissal of the appeal filed by Muniveerappa before the Apex Court. That apart admittedly plaintiff has not produced the documents of title of Muniveerappa even when called up to be produced by the Corporation, City of Bangalore as far back as on 22.02.1975 as per Ex.P18. According to the plaintiff Muniveerappa himself did not furnish his title deeds. This evidence indicate that the plaintiff has failed to prove right,

title, interest if any of Muniverrappa by leading direct and cogent evidence. He, therefore cannot rely upon purported deed of sale at Ex.P27 which is of no consequence. As regards document at Ex.P30 which is a Release deed dated 06.04.1949 purportedly executed by MuniNanjappa in favour of his son Muniveerappa in respect of land in Sy.No.8 of Jodi Ranganathapura Village is concerned except producing the said document no material evidence is produced to justify that the suit property formed part of the said document. Perusal of the said document indicate that said poojari Muninanjappa had indeed sold property in Sy.No.8 in favour of Krishnaswamy Pillai. In the absence of plaintiff bringing on record the acceptable and cogent material evidence on record with regard to identity of the suit property referable to Ex.P30, no reliance can be placed on by the plaintiff on the said document.

52. In the light of the aforesaid documentary evidence, the defendants 1 and 2 have proved and established their right, title, interest and possession over the suit property.

53. It appears that originally the above suit was decreed on 23.03.2002 granting permanent injunction and for direction and delivery of possession in favour of the plaintiff. Based on

the said decree the plaintiff had initiated proceedings in Execution Case No.1715/2002. And the Executing Court had delivered the possession of the suit property in favour of the plaintiff on 01.01.2003. Defendant No.1 had filed a regular appeal in RFA No.317/2003 on 05.03.2003 against the judgment and decree dated 23.03.2002. This Court by order dated 17.04.2004 allowed the said regular first appeal in RFA No.317/2003 and remitted the matter to the trial Court. After the remand KSFC was impleaded as defendant No.3 in the said suit. In the meanwhile defendant No.3-KSFC had also filed an application seeking restoration of possession of suit property in Ex.No.1715/2002. After the remand parties led further evidence. The trial Court on examination of the material evidence produced by the parties, has dismissed the suit of the plaintiff by the impugned judgment and decree. It has also allowed the application filed by defendant No.3-KSFC in Ex.No.1715/2002 which is subject matter of the appeal in RFA No.729/2018. Since the plaintiff was put in possession of the suit property in terms of the decree dated 23.03.2002, in the light of the said decree having been reversed, the trial Court has rightly allowed the application filed by defendant No.3 for restoration of the suit property. No error therefore can be found

with the judgment and decree passed by the trial Court and the order passed in Ex.No.1715/2002.

54. Points raised are answered accordingly.

Accordingly appeals in RFA No.683/2017 and RFA No.729/2018 fail and are dismissed.

Judgment and decree dated 20.02.2017 passed in O.S.No.2501/1985 and the order dated 03.04.2017 passed in Ex.No.1715/2002 by the trial Court is confirmed.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

SBN