



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

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

REGULAR FIRST APPEAL NO. 2452 OF 2007 (PAR)

BETWEEN:

SRI. A. SEBASTIAN
S/O LATE AROGYAPPA,
AGED ABOUT 64 YEARS,
R/AT NO.31, BLISS COTTAGE,
DODDABASAVANAPURA CHURCH STREET,
VIRGONAGAR POST,
BENGALURU - 560 049.

...APPELLANT

(BY SRI. M. AJAY KUMAR, ADVOCATE)

AND:

1. MARITHAYAMMA
W/O LATE AROGYAPPA
SINCE DECEASED, REP. BY LRS.
DEFENDANTS 2 to 9.
2. A. MARISWAMY
S/O O LATE AROGYAPPA
SINCE DECEASED. REP.BY LRS.
- 2(a). SMT. REGINA
W/O ANTHONY,
D/O A. MARISWAMY,
AGED ABOUT 50 YEARS,
C/O FATHIMA,
R/AT NEAR SEENAPPA FARM,
BEHIND STELLA SILK FACTORY,
NARAYANAPURA, ANEKAL,
BENGALURU - 562 106.





- 2(b). SMT. SAROJA @ JHERASA
W/O JACOB,
D/O A. MARISWAMY,
AGED ABOUT 46 YEARS,
R/AT NO.203, B-BLOCK,
MADIWALA POLICE QUARTES, D.R.C. POST,
BENGALURU - 560 029.
- 2(c). SMT. AGNES MARY @ CHELLI
D/O A. MARISWAMY
AGED ABOUT 40 YEARS,
R/AT NO.5, DODDABASAVANAPURA,
VIRGONAGAR POST,
BENGALURU - 560 049.
- 2(d). SMT. VERONICA
W/O ANTHONY,
D/O A. MARISWAMY,
AGED ABOUT 35 YEARS,
R/AT NO.260, R.H. COLONY,
AUDUGODI, HOSUR ROAD,
BENGALURU - 560 030,
- 2(e). SRI. BALARAJ
S/O A. MARISWAMY,
AGED ABOUT 30 YEARS,
R/AT NO.203, B-BLOCK,
MADIWALA POLICE QUARTERS, D.R.C. POST,
BENGALURU - 560 029.
- 3. PHILOMINAMMA
W/O PAPANNA
SINCE DECEASED, REP. BY LRS.
- 3(a). SMT. POULINE
W/O SRI. WILLIAM
AGED ABOUT 55 YEARS.
- 3(b). LOURD MARY
W/O BALARAJ,
AGED ABOUT 56 YEARS.



3(c). SMT. P. NAKSHATRA
W/O SRI. PIUS,
AGED ABOUT 56 YEARS.

3(d). SMT. P. MICHEL RANI
W/O LATE R. RAJANNA,
AGED ABOUT 62 YEARS.

RESPONDENTS 3(a) TO 3(d) ARE
R/AT SEEGEHALLI VILLAGE,
VIRGONAGAR POST,
BENGALURU - 560 049.

3(e). SRI. P. ABRAHAM
S/O LATE PAPANNA,
AGED ABOUT 43 YEARS,
R/AT DODDABASAVANAPURA VILLAGE,
VIRGONAGAR POST,
BENGALURU - 560 049.

4. RAJU
S/O LATE PAPANNA
SINCE DECEASED, REP. BY LRS.

4(a). SMT. BABY @ SUSAI MARY
W/O LATE RAJU,
AGED ABOUT 45 YEARS.

4(b). SRI. MARI SUSAI
S/O LATE RAJU,
AGED ABOUT 28 YEARS.

4(c). SRI. PRAKASH
S/O LATE RAJU,
AGED ABOUT 26 YEARS.

4(d). SRI. PRAVEEN
S/O LATE RAJU,
AGED ABOUT 25 YEARS.

RESPONDENTS 4(a) TO 4(d) ARE



R/AT NO.20, DODDABASAVANAPURA,
BASCO STREET,
VIRGONAGAR POST,
BENGALURU - 560 049.

5. SRI. ANTHONY RAJ
S/O LATE PAPANNA,
AGE: MAJOR,
R/AT DODDABASAVANAPURA,
KRISHNARAJAPURAM HOBLI,
BENGALURU.

6. A. CHINNAPPA
S/O LATE AROGYAPPA
SINCE DECEASED, REP. BY LRS.

6(a). SMT. JAYAMMA
W/O LATE A. CHINNAPPA,
AGED ABOUT 63 YEARS.

6(b). SRI. SAGAI RAJ
S/O LATE A. CHINNAPPA,
AGED ABOUT 48 YEARS.

6(c). SRI. MICHEL
S/O LATE A. CHINNAPPA
AGED ABOUT 46 YEARS.

RESPONDENTS 6(a) TO 6(c) ARE
R/AT NO.5/40, MUNIVEERAPPA LANE,
LINGARAJAPURAM,
BENGALURU - 560 084.

7. A. RAYAPPA
S/O LATE AROGYAPPA
SINCE DECEASED, REP. BY LRS.

7(a). RAJAMMA
W/O LATE RAYAPPA,
SINCE DECEASED, REP. BY LR.
RESPONDENTS 7(b)-SRI. SAGAYA RAJ AND



7(c)-SRI. MICHEL.

7(b). SRI. SAGAYA RAJ
S/O LATE RAYAPPA
AGED ABOUT 43 YEARS.

7(c). SRI. MICHEL
S/O LATE RAYAPPA,
AGED ABOUT 39 YEARS.

RESPONDENTS 7(b) AND 7(c) ARE
R/AT VARADARAJANAGAR,
BETTADAHALLI POST,
BENGALURU NORTH TALUK,
BENGALURU.

8. A. GABRIAL
S/O LATE AROGYAPPA,
SINCE DECEASED, REP. BY LRS.

8(a). SMT. LOURDU MARY
W/O LATE GABRIEL,
AGED ABOUT 60 YEARS,
R/AT NO.22, MARUTHI EXTENSION,
HENNUR CROSS, THOMAS TOWN POST,
BENGALURU - 560 084.

8(b). SMT. FATHIMA MARY
W/O ANTHONY RAJ,
AGED ABOUT 45 YEARS,
R/AT NEAR SEENAPPA FARM,
BEHIND STALLA SILK FACTORY,
NARAYANAPURA, ANEKAL,
BENGALURU - 562 106.

8(c). SMT. ANTHONY MARY @ JAYA
W/O CHOWRAPPA,
AGED ABOUT 44 YEARS,
C/O LEELAMMA NO.279,
VAPSANDRA, CHIKKABALLAPURA,
WARD NO.1, KOLAR - 56201.



- 8(d). SMT. JACINTHA MARY
D/O LATE GABRIEL,
AGED ABOUT 42 YEARS,
R/AT NO.22, MARUTHI EXTENSION,
HENNUR CROSS, THOMAS TOWN POST,
BENGALURU - 560 084.
- 8(e). SRI. BABU @ FRANK ANTHONY
S/O LATE GABRIEL,
AGED ABOUT 40 YEARS,
R/AT SETHA NILAYA,
KALAKOTTA MUNICIPAL COLONY,
OPP. SAMAJA KALYAN MANTAPA,
CHITRADURGA.
- 8(f). SRI. HARRY BERLINE
S/O LATE GABRIEL
AGED ABOUT 38 YEARS,
R/AT NO.5/40, MUNIVEERAPPA LANE,
LINGARAJAPURAM,
BENGALURU - 560 084.
9. ROSE MARY
W/O LATE LOURDAPPA
SINCE DECEASD, REP. BY LRS.
- 9(a). KANIK RAJ
S/O ROSE MARY,
AGE: MAJOR.
- 9(b). JOHN BOSCO
S/O ROSE MARY,
AGE: MAJOR.
- 9(c). LEENA BENEDICTA
D/O ROSE MARY,
AGE: MAJOR.
- 9(d). LIZA BENEDICTA
D/O ROSE MARY
AGE: MAJOR.



RESPONDENTS 9(a) TO 9(d) ARE
R/AT NO.13, DODDABASAVANAPURA,
VIRGONAGAR POST,
K.R. PURAM,
BENGALURU - 560 049.

10. SRI. NAGARAJ
S/O SRI. NAGAPPA
AGED ABOUT 57 YEARS,
R/AT 'MANJUNATHA NILAYA',
NO.69, GARUDACHAR PALYA,
MAHADEVAPURA POST,
BENGALURU - 560 048.

...RESPONDENTS

(BY SRI. V.B. SHIVAKUMAR, ADVOCATE FOR
R2(a) TO (e), R7(b) & (c) AND R8(b) TO (d);
SRI. V. LAKSHMAIAH, ADVOCATE FOR R3(a) & (e);
SRI. FAYAZ SAB B.G., ADVOCATE FOR R3(b), (c) & (d);
SRI. SHANMUKHAPPA, ADVOCATE FOR R4 (a) TO (c);
SRI. S.N. SAMEER, ADVOCATE FOR R5;
SRI. CHANDRASHEKAR L., ADVOCATE FOR R6(a);
SRI. PRUTHVI RAJ R., ADVOCATE FOR R9(a) TO (d);
SRI. T. SRINIVASAN, ADVOCATE FOR R10;
R1-DECEASED;
R4(d), R6(c), R8(a), (e) & (f) -SERVED AND UNREPRESENTED;
V/O DATED 29.06.2016, NOTICE TO R6(b) AND R7(a) IS
DISPENSED WITH.

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDED
XLI RULE 1 READ WITH SECTION 96 OF THE CODE OF CIVIL
PROCEDURE AGAINST THE JUDGMENT AND DECREE DATED
01.09.2007 PASSED IN ORIGINAL SUIT NO.627 OF 1989 ON
THE FILE OF THE XV ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, BENGALURU, PARTLY DECREERING THE SUIT FOR
PARTITION AND POSSESSION.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL



ORAL JUDGMENT

This appeal is by the plaintiff being aggrieved by the judgment and decree dated 01.09.2007 passed in Original Suit No.627 of 1989 on the file of the XV Additional City Civil and Sessions Judge, Bengaluru (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of the plaintiff seeking relief of partition and separate possession was decreed in-part.

2. The subject matter of the suit are two items of immovable properties, which are as under:

" 'A' SCHEDULE PROPERTY

House bearing No.31, K.No.10/10 situated at Basavanapura Village, Krishnarajapura Hobli, Bangalore South Taluk, measuring East to West 45 feet and North to South 105 feet and Bounded by East: Papanna's site, West: Road, North: By Cart Road, South: by Anthiaiah's house.

'B' SCHEDULE PROPERTY

Land situated at Kodigehalli Village, Krishnarajapura Hobli, Bangalore South Taluk bearing Sy.Nos.39/15 and 39/16 (adjacent survey numbers) measuring 2 acres each in all 4 acres and bounded by East: Ramaiah's land, West: Tom Tom Jojappa's land,



*North: Ramachandrappa's land and South: Kodigehalli
Chinnappa's land."*

3. The case of the plaintiff is that, one Arogyappa was the absolute owner in possession of the suit schedule properties, who passed away during the year-1976 leaving behind his Wife Marithayamma-defendant No.1 and his children namely A. Mariswamy-defendant No.2, Papanna-husband of the defendant No.3 and father of defendants 4 and 5, A. Chinnappa-defendant No.6 since deceased by legal representatives 6(a) to 6(d), A. Rayappa-defendant No.7 since deceased represented by 7(a) to (c), A. Gabriel-defendant No.8, Rose Mary-defendant No.9 and A. Sebastian-plaintiff. That the plaintiff was looking after of the 'B' Schedule property ever since the demise of his father Arogyappa. That the plaintiff also looked after his ailing father during his lifetime. That the said Arogyappa had given Power of Attorney in favour of the plaintiff during the year-1971 to look after the 'B' Schedule property. That during September-1988, there was a partition amongst the children of Arogyappa, in which the plaintiff had been given 'A' Schedule property as his exclusive share and he was required to clear the loan which was due and payable to



the PLD Bank, Bengaluru South Taluk. Accordingly, Khatha of the 'A' Schedule property was changed in the name of the plaintiff. The defendant No.1-Marithayamma, mother was living with the plaintiff. Defendants in addition, had agreed to give share to the plaintiff in 'B' Schedule property since, he had looked after the same for about eighteen years. Thus, the plaintiff is entitled for share in the 'B' Schedule property. That the defendant No.6 had obstructed the plaintiff from taking the Crop grown in the 'B' Schedule property, which constrained the plaintiff to lodge a Police complaint. That as there was a refusal for partition, he filed the instant suit seeking relief of partition and separate possession in respect of 'A' and 'B' Schedule properties as agreed by the descendants of Arogyappa earlier.

4. Except defendant No.6, all other descendants of Arogyappa being defendants 1, 2, 7 and 8 agreed for partition.

5. Defendant No.6 filed his separate written statement primarily contending that the measurement given by the plaintiff in respect of the 'B' Schedule property as 4 acres was incorrect. It is the contention of the defendant No.6 that the land in Sy.No.39, which is the 'B' Schedule property consists of



only 2 acres and stated that the plaintiff had included additional extent of 2 acres within the boundaries shown in the 'B' Schedule property. The defendant No.6 also contended that the said Arogyappa did not possess more than 2 acres of land in Sy.No.39. That Sy.No.39 is not sub-divided and no sub-survey number was assigned as Sy.Nos.39/15 and 39/16 as claimed by the plaintiff. The defendant No.6 owned and possessed 2 acres of land in Sy.No.39, which was his self-acquired property and the said 2 acres of land owned by the defendant No.6 is situated towards southern side of 2 acres of land owned and possessed by Arogyappa. The said 2 acres of land owned and possessed by the defendant No.6 is his exclusive property and the plaintiff is not entitled for any share in the said property and as such, the defendant No.6 sought for dismissal of the suit.

6. Defendant No.6 had also filed additional written statement, wherein it was contended that out of land in Sy.No.39 of Kodigehalli Village, 2 acres of land was granted in favour of Arogyappa; 2 acres of land in favour of Kyathappa, 2 acres of land in favour of Chinnappa of Kodigehalli Village and 2



acres of land in favour of Bachappa. The said 2 acres of land granted in favour of Arogyappa is situated towards Northern side and to its Southern side was the land granted to Kyathappa and towards Southern side of the land granted to Kyathappa was the land belonging to Chinnappa of Kodigehalli Village and towards Southern side of the land belonging to the Chinnappa of Kodigehalli Village was the land of Bachappa. The Northern boundary of 2 acres of land granted in favour of Arogyappa was the land of Ramachandrappa and Southern boundary was the land of Kyathappa. Originally the suit was filed by the plaintiff stating Northern boundary as the land of Ramachandrappa and Southern boundary as land of Chinnappa. The said Chinnappa is none other than the defendant No.6 in the suit. The said Chinnappa-defendant No.6 had purchased 2 acres of land from Kyathappa under the Sale Deed dated 12.12.1957. The Northern boundary of the land purchased by the Chinnappa from the Kyathappa is the land of Arogyappa and Southern boundary is of Chinnappa of Kodigehalli Village. That, originally, the plaintiff had not given the extent of land in 'B' schedule property. It is only after filing of the written statement by the defendants, the plaintiff had filed application



for amendment of plaint by incorporating extent as 4 acres of land and also amended the Southern boundary by incorporating the name as 'Kodigehalli Chinnappa'. Thus, thereby shifting the present boundary from the land of Chinnappa to Kodigehalli Chinnappa's land and included 2 acres of land, which was granted in favour of Kyathappa, which was subsequently purchased by the defendant No.6-Chinnappa and as such, contended that the plaintiff is not entitled for share in 4 acres of land as claimed since there is only an extent of 2 acres of land belonging to Arogyappa.

7. It is further contended that, 2 acres of land which was purchased by the defendant No.6-Chinnappa has been sold in favour of the respondent No.10-Nagaraj in terms of Sale Deed dated 15.06.1995 and the said Nagaraj has been in possession and enjoyment of the said 2 acres of land in Sy.No.39 of Kodigehalli Village. Thus the partition, if any, has to be only in respect of 'A' Schedule property and 2 acres of land in 'B' Schedule property.



8. Based on the pleadings on record, the trial Court framed the following issues and additional issues for its consideration:

ISSUES:

1. *What is the share of the plaintiff in the suit schedule properties?*
2. *Whether the defendants have agreed to give more share to the plaintiff?*
3. *Whether Sy.No.39 is the separate property of the 6th defendant?*
4. *To what relief if any, the parties are entitled to?*

ADDITIONAL ISSUES (Dated: 23.10.1999)

1. *Whether the plaintiff proves that plaint-B schedule property measures 4 acres?*
2. *Whether the suit is bad for non-joinder of necessary parties?*

ADDITIONAL ISSUE (Dated:04.03.2003)

1. *Whether plaintiff proves B-Schedule property measuring 4 acres is ancestral property and joint family property and is liable to be partationed?*

9. In order the establish their case, the plaintiff examined himself as PW1 and got marked 131 documents as Exhibits P1 to P137. On the other hand, Smt. Jayameri-wife of



the defendant No.6 was examined as DW1 and marked 24 documents as Exhibits D1 to D24.

10. On appreciation of evidence, the trial Court answered issue No.2 as partly affirmative; issue No.3 as affirmative; Additional issues Nos.1 and 2 dated 23.10.1999 as negative; and Additional issue dated 04.03.2003 as partly affirmative and consequently decreed the suit as under:

"ORDER

The suit of the plaintiff is decreed in part.

The plaintiff is entitled for $1/3 + 8/21$ share in suit schedule A property, while defendants No.3, 4 and 5 together get $2/21$ share and Legal representatives of defendant No.6 together get $2/21$ share and defendant No.9 gets $2/21$ share.

The plaintiff is entitled to get $4/21 + 1/21 = 5/21$ of share in two acres of land in suit schedule B property bearing Sy.No.39/15 and 39/16, Krishnarajapura Hobli, Bangalore South Taluk with its southern boundary as "formerly A. Chinnappa's land". Each of the defendants No.2, 6, 7, 8 and 9 gets $2/21 + 1/21 = 3/21$ and defendants No.3, 4 and 5 together get $1/21$ share in the said two acres of land.

The suit of the plaintiff with respect to other two acres of land in the said Sy.No.39/15 and Sy.No.39/16 is dismissed. No costs.

Draw preliminary decree accordingly."



11. Being aggrieved by the decree passed by the trial Court as shown above, the plaintiff is before this Court seeking intervention.

12. Learned counsel appearing for the appellant/plaintiff raises two primary grounds:

12.1 The first ground is that, there was partition during the year-1988, in terms of which, considering the services rendered by the plaintiff in taking care of his ailing father till his demise and thereafter, the defendant No.1-Mother, so also, taking care of 'B' schedule property, he was exclusively given 'A' Schedule property as his share and accordingly, his name was entered in the revenue records. Therefore, 'A' Schedule property, though was made subject matter of the suit could not have been partitioned allotting share in favour of other defendants. The second ground urged by the plaintiff is that, the trial Court, though had accepted the revenue records produced by the appellant/plaintiff, had however erroneously held and came to the conclusion that the 'B' Schedule property measures only 2 acres and not 4 acres, thereby, deprived the appellant/plaintiff his legitimate share in the entire extent of 4 acres of land.



12.2 Learned counsel appearing for the appellant/plaintiff refers to Exhibits P2 to P7, which are the RTC Extracts pertaining to Sy.No.39/15 measuring 2 acres and Sy.No.39/16 measuring 2 acres initially standing in the name of Arogyappa and thereafter, being mutated in the name of the plaintiff and defendants including the defendant No.6. Thus, the learned counsel argued that the trial Court ought not to have come to the conclusion that the 'B' Schedule property measures only 2 acres merely because the defendant No.6 had set-up the claim for 2 acres of land in terms of Exhibit D4-Sale Deed dated 12.12.1957. He also submits that the amendment to the schedule was only to give measurement and adding the word 'Kodigehalli', which did not in any manner whatsoever change either the nature of suit or description of the property.

12.3 He further submits that the defendant No.6 who had taken specific stand in the written statement of there existed no sub-division of Sy.No.39, had relied upon the Sale Deed dated 12.12.1957 produced at Ex.D4 and Mutation extract produced at Ex.D5, which specifically refers to Sy.No.39/14 even as on the date of the Sale Deed executed on 12.12.1957. Therefore, he submits that the trial Court erred in declining to accept the case of the plaintiff to an



extent of 4 acres merely because he did not produce grant certificate. Accordingly, he submits that the trial Court erred and improperly appreciated the evidence and granted inadequate relief to the plaintiff.

13. Per contra, learned counsel appearing for the respondent No.6(a) and learned counsel appearing for the respondent No.10 submit:

13.1 That the respondent No.10 herein was the purchaser of the land from the defendant No.6. Referring to the Ex-D4-Sale Deed dated 12.12.1957 and Ex-D5-Mutation Extract and description given therein, it is vehemently contended that, Arogyappa was the owner of 2 acres of land in Sy.No.39, which was situated towards Northern side of the land purchased by the defendant No.6-Chinnappa from the Kyathappa by virtue of Sale Deed dated 12.12.1957. That the Southern boundary given in the plaint showing as Chinnappa is none other than the defendant No.6-Chinnappa, who had purchased 2 acres of land in terms of Ex-D4-Sale Deed.

13.2 Referring to Survey sketch produced at Ex-D18 and the Survey Notice produced at Ex-P59, it is contended that the said two undisputed documents would indicate only 2 acres of land each in Sy.No.39



was granted in the names of the persons mentioned therein, which includes the names of Arogyappa and Kyathappa, the predecessor in title of the defendant No.6-Chinnappa and respondent No.10-Nagaraj respectively. That the plaintiff had specifically claimed that he had discharged the loan of the PLD Bank and even the Bank records refer to only 2 acres of land and not 4 acres. Thus, learned counsel submits that the trial Court, taking into consideration these aspects of the matter, at paragraphs 15 to 17 has elaborately discussed about the boundaries and the entitlement of the plaintiff, warranting no interference in this appeal.

14. Heard and perused the material on record.

15. Having heard the learned counsel appearing for the parties, the points that arise for consideration are as under:

- 1) *Whether the plaintiff has proved that 'A' Schedule property was exclusively allotted to him in the oral partition that was entered into during the year-1988 as claimed?*
- 2) *Whether the plaintiff has proved that Arogyappa was granted 4 acres of land in Sy.Nos.39/15 and 39/16?*
- 3) *Whether the defendant No.6 has proved that Arogyappa was granted only 2 acres of land which form part of the plaint 'B' Schedule property?*



16. There is no dispute of the fact that, Arogyappa was the owner of the suit 'A' and 'B' schedule properties. Though the plaintiff had claimed that there was a oral partition, in terms of which, in lieu of he taking care of ailing father and maintaining the 'B' Schedule property for eighteen years, the plaintiff was exclusively allotted 'A' Schedule property, the same is not supported by legally acceptable evidence. In other words, no witness has been examined in support of the same or placed any document except Ex-P1-Demand Register, wherein the name of the plaintiff purported to have been inserted in the revenue records. In the absence of any convincing evidence, the trial Court declined to accept the said claim of the plaintiff. This Court, do not find any error in the same and as such, the plaintiff has failed to prove that, 'A' Schedule property was exclusively allotted to him. Point No.1 is answered accordingly.

17. As regards 'B' Schedule property is concerned, the plaint as originally filed contained the following description:

'B' SCHEDULE PROPERTY:- Land situated at Kodigehalli Village, Krishnarajapura Hobli, Bangalore North Taluk bearing Nos.39/15 and 39/16 (adjacent survey numbers) bounded by East: Ramaiah's land, West: Tomtom



*Jojappa's land, North: Ramachandrappa's land and South:
Chinnappa's land."*

18. The said plaint was amended on 10.08.1993 to insert the extent of land as '*measuring 2 acres each in all 4 acres*' and the word '*Kodigehalli*' before Chinnappa's Land to show the name Chinnappa as '*Kodigehalli Chinnappa*'. The plaintiff has sought to justify his claim of Arogyappa having been granted 2 acres of land each in Sy.Nos.39/15 and 39/16 based on the RTC Extracts produced at Exs-P2 to P7, Exs- P60 to P63 and Exs-P70 to 74.

19. Perusal of Exs-P2 to P7 would indicate that the land in Sy.No.39/15 measuring 2 acres of Basavanapura Village is standing in the name of Arogyappa. Similarly the land in Survey No.39/16 measuring 2 acres of Basavanapura Village is also standing in the name of Arogyappa, which has continued till the year 1980-81 as seen in Exs-P2 to P5.

20. Ex-P6 is the RTC in respect of Sy.No.39/15 for the year 1986-87 onwards. Column No.9 of the Ex-P6 reflects the following names:

"



ಬಸವನಪುರದ ಆರೋಗ್ಯಪ್ಪ

- 1) A. ಮರಿಸ್ವಾಮಿ.
- 2) ಪಾಪಣ್ಣ
- 3) ಚಿನ್ನಪ್ಪ
- 4) ರಾಮಪ್ಪ
- 5) ಗೇಬ್ರಿಯಲ್
- 6) A. ಸಬಾಸ್ತಿಯನ್ "

21. On perusal of the Column No.9 at RTC produced at Ex-P6, the same would indicate that the name of Arogyappa is rounded off and names of A. Mariswamy, Papanna, Chinnappa, Ramappa, Gabriel and A. Sebastian are shown to have been mutated by virtue of IHC No.1/86-87. The extent of land shown therein is 2 acres.

22. Similar to the situation, in respect of Sy.No.39/16, Ex-P7 is the RTC for the year 1986-87 onwards. Column No.9 of the Ex-P7 reflects the following names:

"

ಮದರಸ ಆರೋಗ್ಯಪ್ಪ

- 1) A. ಮರಿಸ್ವಾಮಿ.
- 2) ಪಾಪಣ್ಣ
- 3) ಚಿನ್ನಪ್ಪ
- 4) ರಾಮಪ್ಪ
- 5) ಗೇಬ್ರಿಯಲ್
- 6) A. ಸಬಾಸ್ತಿಯನ್ "



23. On perusal of the Column No.9 at RTC produced at Ex-P7, the same would indicate that the name of Arogyappa is rounded off and names of A. Mariswamy, Papanna, Chinnappa, Ramappa, Gabrial and A. Sebastian are shown to jointly mutated by virtue of IHC No.1/86-87. The extent of land shown therein is 2 acres.

24. The aforesaid RTC extracts have not been disputed by the defendant No.6 during the trial. This clearly indicate that since from an undisputed point in time, the name of Arogyappa was reflected specifically in respect of land bearing Sy.No.39/15 measuring 2 acres and land bearing Sy.No.39/16 measuring 2 acres, which have been subsequently mutated by virtue of inheritance in the name of his sons including the defendant No.6 as noted above. The extent disclosed in the aforesaid documents is 2 acres each totalling 4 acres, which is what perhaps has been brought on record by an amendment to the plaint schedule property by the plaintiff subsequently.

25. As against this, claim of the plaintiff for 4 acres, the defendant No.6 had set up a claim of he having purchased 2 acres of land from Kyathappa. In the written statement and



additional written statement, the defendant No.6 has taken a specific stand that there was no sub-division of land in Sy.No.39 and it continued to be Sy.No.39. The claim of the plaintiff of existence of two Sy.Nos.39/15 and 39/16 is incorrect. This stand of the defendant No.6 cannot be countenanced in view of the fact that the very Sale Deed dated 12.12.1957 produced at Ex-D4 under which, the defendant No.6 claimed to have purchased 2 acres of land from one Kyathappa specifically referred to as Sy.No.39 Block 14.

26. In Ex-D5, which is a purported Mutation Extract of the year 1987-88, wherein the name of Chinnappa S/o Arogyappa is shown in respect of Sy.No.39/14. However, in Exs-D7, D8 and D9, which are the RTC Extracts for the year 1990-91 up to 1994, wherein, only Sy.No.39 is mentioned and neither sub-survey number nor block number is shown. In column No.9 of the said documents refers to Mutation Register bearing No.MR.11/87-88, which relates to Exhibit D5. Ex-D11 is another Mutation Register, which apparently came into existence upon the demise of defendant No.6-Chinnappa, who died on 12.06.1992, wherein, the survey number is mentioned



as 39 measuring 2 acres. Whereas, Ex-D5 refers to the Mutation bearing No.MR.1/1987-88, wherein, it is specifically referred to as Sy.No.39/14. There could not have been a reverse situation in that the Sale Deed dated 12.12.1957 produced at Ex-D4 and Mutation Register Extract produced at Ex-D5 of the year 1987-88 would contain sub-survey number and with the subsequent revenue records indicating only Sy.No.39 as sought to be made out.

27. The trial Court, in its discussion at paragraph 15 to 17 as noted above, had extensively dealt with this aspect of the matter. What appears from the reasoning is that the non production of grant certificate in respect of 2 acres of land by the plaintiff has swayed in the mind of the trial Court to reject his claim to an extent of 4 acres. If the trial Court, was not persuaded with regard to 2 acres of land being claimed by the plaintiff for non production of grant certificate in respect of 2 acres of land, the same ought to have been the situation even in respect of the remaining 2 acres of land being claimed by the plaintiff, as no grant certificate produced in that regard.



However, the trial Court had accepted the case of the plaintiff for 2 acres.

28. Similar would be the situation in respect of the defendant No.6. Ex-D4 is the Sale Deed purported to have executed by Kyathappa. Perusal of the said document would only indicate that except claim of Kyathappa being in possession of the land, there is no mention of any grant made in his favour either. Though, in the additional written statement, specific averments are made that in grant order made in favour of Kyathappa, boundaries are mentioned, however, no such grant order is produced by the defendant No.6.

29. Considering Exs- P2 to P6, Exs- P60 to P63 and Exs- 71 to 74 and read in comparison with the documents produced by the defendant No.6 particularly Exs D4 and D5, preponderance of probability would lean in favour of plaintiff. There is a specific reference to Sy.Nos.39/15 and 39/16 measuring 2 acres each distinctively in the name of Arogyappa and subsequently in the name of plaintiff as well as defendants



including the defendant No.6, which has neither been disputed nor distanced by the defendant No.6.

30. It may be the defendant No.6 had purchased the property in terms of Ex-D4-Sale Deed dated 12.12.1957, which itself refers to land as in Survey No.39 Block 14. Read in the light of Ex-D5-Mutation Register of the year 1987-88, it may have to be construed that the reference to Sy.No.39 Block 14 is Sy.No.39/14 and no other conclusion can be arrived at.

31. Non production of grant certificate by the plaintiff cannot take away the title of Arogyappa in respect of 2 acres of land. The relevant records continuously reflect his name and thereafter names of his children as noted above. The Co-ordinate Bench of this Court in the case of **SMT. JAYAMMA VENKATRAM AND ANOTHER vs. SMT. ASHRAF JAHAN BEGUM AND OTHERS** made in **Regular First Appeal No.170 of 2025 C/W. Regular First Appeal No.17 of 2005** decided on **21.05.2020**, at paragraph 22 held as under:

"22. The next question is, whether based on revenue documents, title of the plaintiffs can be declared? It is no doubt a settled position that revenue documents do not confer any title. But here is a case where the plaintiffs can produce no document other than



revenue records to prove their title. As has been observed already, the Government issued acquisition notification showing Kyalanoon Muniswamappa as the owner of S.No.6/1 which adds weightage to the presumptive value attachable to revenue entries. Therefore, I am of the opinion that whenever a person has been in possession of an immovable property, especially ancestral in character, for quite a long time, and revenue entries stand in the lineage of his family continuously without any challenge to it, or if challenged, the same being overruled or rejected; and being not in a position to produce any document conferring title other than revenue records, there is no impediment to declare title based on possession which is otherwise called possessory title. If this kind of interpretation is not give, the title over a property will remain in vacuum, which should not be allowed to happen. Thus looked, the possessory title of plaintiffs 1 and 2 can be declared. The trial court's findings are not at all acceptable; its approach appears to be perverse; it has just proceeded on identity of the property without evaluating the intricacies. Therefore point (1) is answered in the negative."

32. Thus the facts of the present case read in the light of the documents produced in the name of Arogyappa existing in the revenue records at an undisputed point in time, which entries stood and continued in the name of his legal representatives including the defendant No.6 without any challenge thereof, there cannot be any impediment as held by the Co-ordinate Bench in the case of **SMT. JAYAMMA VENKATRAM** (*supra*) to consider the same to be a title.



33. The trial Court, though referred to the judgment of Hon'ble Supreme Court in the case of **CORPORATION OF THE CITY OF BANGALORE vs. M. PAPAIH AND ANOTHER** (AIR 1989 SC 1809); and judgments of Co-ordinate Bench of this Court in the case **RAMAKRISHNAIAH vs. MADHAVAKRISHNAIAH** [1963 Mysore Law Journal (Supp) 71] and in the case of **HAZARATH ASRARUDDIN DURGA vs. HUSSEIN KHAN SAHEB AND ANOTHER** [1966(1) Mysore Law Journal 772] to observe that the revenue records cannot be considered as title documents, had lost its sight of this settled position of continuity of names of the owner and lineage of his family in the revenue records, is sufficient enough to accept the possessory title of the property and as such, the plaintiff has proved that the 'B' Schedule property consists of 4 acres i.e., 2 acres in Sy.No.39/15 and 2 acres in Sy.No.39/16.

34. Though, there appears to be a force in arguments advanced by learned counsel appearing for the respondent No.6(a) and learned counsel appearing for the respondent No.10 regarding the Southern boundary of the property be shown as Chinnappa, which has to be read as defendant No.6,



in the light of aforesaid documents, this Court is not persuaded to accept the said argument. Accordingly, the legal representatives of the defendant No.6 and respondent No.10 have failed to prove that their property measuring 2 acres in Sy.No.39/14 falls within the schedule mentioned in the 'B' Schedule property. Point Nos.2 and 3 are answered accordingly.

35. It is needless to mention that, if the defendant No.6 and now the respondent No.10 herein, who is the subsequent purchaser have any right over the property purchased by them under Ex-D4, which is Sy.No.39/14, they are at liberty to avail such remedy as may be available under law.

39. Points raised above are answered accordingly.

Accordingly, the following:

ORDER

- (i) Regular First Appeal is ***allowed in part.***
- (ii) Judgment and decree dated 01.09.2007 passed in Original Suit No.627/1989 on the



file of the XV Additional City Civil and Sessions Judge, Bengaluru is set aside.

- (iii) Suit in O.S.No.627/1989 is decreed in its entirety.
- (iv) The plaintiff is held entitled for 1/7th share and defendant No.2 is entitled for 1/7th share, defendant Nos.3 to 5 together are held entitled for 1/7th share, defendant No.6(a) to (d) together are held entitled for 1/7th share, defendant No.7(a) to (c) together are held entitled for 1/7th share, defendant No.8 is held entitled for 1/7th share and defendant No.9 is held entitled for 1/7th share in respect of A Schedule property and entire 4 acres of land in 'B' Schedule property.
- (v) Draw decree accordingly.

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

ARK
List No.: 1 Sl No.: 7