



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 29TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 5608 OF 2009 (DEC/INJ)

BETWEEN:

1. BHIMAPPA LAXMAPPA KURI
SINCE DECEASED BY LRS.,
- 1A. SMT. GANGAWWA
W/O. BHIMAPPA KURI,
AGE: 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI.
- 1B. SRI. MAHADEVAPPA BHIMAPPA KURI,
AGE: 51 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI.
- 1C. SRI, YALLAPPA BHIMAPPA KURI,
AGE: 49 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI.
- 1D. SRI. BASURAJ S/O. BHIMAPPA KURI,
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI.
- 1E. SRI. ISWAR S/O. BHIMAPPA KURI,
AGE: 35 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI.

YASHAVANT
NARAYANKAR

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2. HANAMANT LAXMAPPA KURI
SINCE DECEASED LRS.,
(THE APPELLANT NO.1 (A) TO 1(E) AND APPELLANT
NO.3 ARE LEGAL HEIRS AS PER COURT ORDER
DATED 26.06.2025)
 3. MAHADEVAPPA LAXMAPPA KURI
AGE: 53 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI.
- ...APPELLANTS
- (BY SRI. H.M. DHARIGOND, ADVOCATE)

AND:

1. MAHADEVAPPA GADIGEPPA CHILAMUR
SINCE DECEASED BY LRS.,
- 1A. SRI. FAKIRAPPA MAHADEVAPPA CHILMUR,
SINCE DECEASED BY HIS LRS.,
- 1A(1). SMT. PARVATI 1ST W/O. FAKKIRAPPA CHILMAR,
AGE: 58 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1A(2). SMT. MANJULA 2ND W/O. FAKKIRAPPA CHILMAR,
AGE: 48 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1A(3). SRI. GANESH
S/O. FAKKIRAPPA CHILMAR,
AGE: 35 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1A(4). SMT. LAXMI D/O. FAKKIRAPPA CHILMAR,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.



- 1A(5). SMT. SARASWATI
D/O. FAKKIRAPPA CHILMAR,
AGE: 38 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1A(6). SMT. MAYAMMA D/O. FAKKIRAPPA CHILMAR,
AGE: 19 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1B. SRI. DEVAPPA MAHADEVAPPA CHILMUR,
AGE: 58 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1C. SMT. RENAWWA W/O. MARUTI CHILMUR,
AGE: 48 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1D. SRI. ARJUN MAHADEVAPPA CHILMUR,
AGE: 54 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1E. SMT. SHOBHA W/O. KRISHNA CHILMUR,
AGE: 40 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1F. SRI. THAMMANAGOUDA MAHADEVAPPA CHILMUR,
AGE: 48 YEARS, OCC. AGRICULTURE,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.
- 1G. SRI. BHIMANAGOUDA MAHADEVAPPA CHILMUR,
SINCE DECEASED BY HIS LRS.,
- 1G(I). SMT. RATNAVVA W/O. BHIMANAGOUDA CHILMAR,



AGE: 46 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.

1G(II). SRI. KIRAN S/O. BHIMANAGOUDA CHILMAR,
AGE: 28 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.

1G(III). SRI. PRAVEEN S/O. BHIMANAGOUDA CHILMAR,
AGE: 26 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.

1G(IV). SMT. MANJAVVA D/O. BHIMANAGOUDA CHILMAR,
AGE: 24 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. SAUNDATTI,
DIST. BELAGAVI-591117.

...RESPONDENTS

(BY SRI. M.M. KHANNUR, ADVOCATE FOR R1(A) TO R1(F);
R1(G)(I), R1(G)(II), R1(G)(III)-NOTICE SERVED;
R1(G)(IV), R1(A)(II), R1(A)(III), R1(A)(IV), R1(A)(V),
R1(A)(VI)-HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING
TO RSA FILED U/S. 100 OF CIVIL PROCEDURE CODE, 1908
PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE
JUDGEMENT & DECREE DTD. 07/10/2009 PASSED IN R.A.NO.
7/2007 PASSED BY THE COURT OF THE ADDL. CIVIL JUDGE
(SR.DN.) SAUNDATTI, WHEREBY REVERSING THE JUDGMENT
AND DECREE PASSED IN O.S.NO. 60/1998 DTD. 11.01.2007 ON
THE FILE OF THE CIVIL JUDGE (JR.DN.) SAUNDATTI, IN THE
INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON
08.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT
THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Being aggrieved by the dismissal of O.S.No.60/1998 by the learned Civil Judge (Jr.Dn.) and J.M.F.C., Saundatti, the defendants had filed R.A.No.7/2007 before the Additional Civil Judge (Sr. Dn.) and J.M.F.C., Saundatti which came to be allowed by the judgement and decree dated 07.10.2009 and therefore, the defendants are before this Court in Second Appeal.

2. The factual matrix of the case that is relevant for the purpose of this appeal may be summarised as bellow:

- a) It was contented by the plaintiff that he was given in adoption to one Gadigeppa when he was a minor and Mayavva was adoptive mother. After death of the Gadigeppa, the plaintiff and his mother were looking after the properties and thereafter, the plaintiff purchased block No.217 measuring, 7 acres, 4 guntas in the year 1966. The other property block No.218, measuring 5 acres, 8



guntas was granted by the Land Tribunal under the Karnataka Land Reforms Act, 1961.

- b) Block No.217 and 218 measuring 7 acres 5 guntas and 5 acres 8 guntas respectively situated at Hirur village of Saundatti Taluka were acquired by the plaintiff, one by way of purchase in the year 1964 from the income of the adoptive family and the other by the grant through the Land Tribunal. The defendants are the genitive brothers of the plaintiff.
- c) It is the case of the plaintiff that the genitive father of the plaintiff i.e., Laxman had obtained the signature of the plaintiff on a white paper in the year 1978 and subsequently, converted it in to a Varadi and on the basis of the same, got the properties changed in his name and in the names of the other sons i.e., defendant Nos.1 and 2 vide M.E No.1219 and 1220 without the knowledge of the plaintiff. At no point of time, the plaintiff had



relinquished his rights over the suit schedule property in favour of the defendants.

- d) After coming to know the said mutation entries, the plaintiff approached Assistant Commissioner, Bailhongal in an appeal and it was dismissed with a direction to approach the Civil Court. In 1998 when the defendants attempted to dispossess the plaintiff from the suit property, plaintiff was constrained to file the instant suit. Therefore, the plaintiff sought declaration of his ownership and consequential relief of injunction.

3. Pursuant to the summons, the defendants appeared and filed their written statement. While the defendants admitted the relationship between the parties, they denied that block No.217 was purchased by the plaintiff and it was in his exclusive possession. However they admitted that block No.218 was granted by the Land Tribunal. They contended that they are in lawful possession and enjoyment of the suit land as owners since time immemorial and it was Laxman Kuri who had actually paid sale consideration amount for the purchase of Block No.217 and



the occupancy price in respect of Block No.218. It is contended that in the year 1978, there was a mutual understanding and a family arrangement, in which suit schedule properties were transferred to the defendants. It was the genitive father of plaintiff who had paid the premium towards the granted land and as such the plaintiff had relinquished his rights under the mutation entries on 08.06.1978. They also contended that they had perfected their right and title over the suit schedule property byway of adverse possession.

4. On the basis of the above pleadings, the trial Court framed following issues:

- "1. Whether the plaintiff proves that the suit property bearing block No.217 measuring 7 acres 4Gs was purchased by him in the year 1964 out of the income derived from the adoptive family properties?*
- 2. Whether plaintiff proves that he was tenant under one Sadashiv Bali in respect of suit property bearing block No.218 measuring 5 acres 8Gs, and accordingly occupancy right was granted in his favour and he became its absolute owner?*
- 3. Whether the plaintiff proves that he never relinquished any right, title or interest over the suit properties in favour of his genitive father and the defendants?*



4. *Whether the plaintiff proves his possession over the suit property as, on the date of the suit?*
5. *Whether the suit is barred by limitation?*
6. *Whether the suit is not properly va lued and court see para is not proper?*
7. *Whether the defts prove that in the family arrangements effected in the year 1978 between their father and plff. the suit lands were transferred to them? In the alternative, defendants prove that they have perfected title over the suit properties by way of adverse possession?*
8. *Whether the plaintiff is entitled to the relief of declaration as claimed in the suit?*
9. *Whether the plaintiff is entitled to the relief of injunction as claimed in the suit?*
10. *Whether the plaintiff is entitled to the relief of mandatory injunction as claimed in the suit?*
11. *What order or decree?"*

5. After the trial, the Trial Court dismissed the said suit by answering the issues framed in favour of the defendants.

6. Being aggrieved, the plaintiff approached the First Appellate Court, which framed the following points for its consideration:



1. *Whether the plaintiff proves that suit schedule properties are his self acquired properties?*
2. *Whether the defendants prove that they acquired title in the suit schedule property by virtue of alleged family arrangement in the year 1978?*
3. *Whether the Court below was justified in dismissing the suit even after answering issue No.1 to 3 in favour of the plaintiff?*
4. *Whether the judgment of the Court below calls for any interference by this Court?*
5. *What order?*

7. By answering the point Nos.1 and 4 in the **Affirmative** and point Nos.2 and 3 in the **Negative**, it allowed the appeal and decreed the suit. It also directed the defendants to handover the possession of suit schedule property to plaintiff.

8. Being aggrieved, the defendants are in appeal before this Court.

9. While admitting this appeal, this Court has framed following substantial question of law on 22.04.2014.



1) Whether the first appellate Court has committed a serious error in upturning the well considered judgment contrary to the material evidence placed on record and thus judgment of the first appellate Court has become perverse and illegal?

10. During pendency of this appeal, respondent No.1(a) died and his legal heirs are brought on record.

11. Similarly, appellant No.1 died and his legal heirs were brought on record and appellant No.2 also died whose legal heirs were already on record.

12. The learned counsel appearing for the appellants submits that the First Appellate Court erred in holding that the provisions of Section 34 of Specific Relief Act, 1963 are not applicable. He submits that the First Appellate Court has failed to appreciate the oral and the documentary evidence adduced by the parties. He submits that the approach of the First Appellate Court to the case on hand is erroneous and it has resulted in miscarriage of justice. He submits that if the plaintiffs had been in possession, then the suit for mere declaration would not be maintainable and the legal corollary would be that if the plaintiff



is not in possession, the suit for mere declaration would not be maintainable. Therefore, he submits that the First Appellate Court without looking into the legal status and without application of mind has reversed the finding of the Trial Court and as such the impugned judgment is unsustainable in law. In support of his contention, he relies upon the judgment of the Hon'ble Apex Court in the case of ***Vasantha (dead) Thr.LR vs. Rajalakshmi @ Rajam (dead) Thr.Lrs.***¹. He also relies on the judgment of this Court in the case of ***Somayya Belchada vs. Santhosh and others***². Basing his contentions on these two judgments, it is submitted that the First Appellate Court erred in reversing the judgment of the Trial Court, which had rightly dismissed the suit of the plaintiff.

13. *Per contra*, learned counsel appearing for the respondents would submit that the plaintiff had prayed for consequential relief of injunction. He submits that it is not the case of the plaintiff that he had prayed for the declaration alone. Secondly, he points out that the plaintiff had filed an application under Order VI Rule 17 of CPC for amendment of the plaint while

¹ (2024) 5 SCC 282

² 2025 SCC OnLine KAR 1124



the trial was in progress as it was disclosed that the defendants are in possession of the property. Such application for amendment was dismissed by the Trial Court and later the same was questioned by the appellant before this Court in WP No. 40181/2002 which also came to be dismissed by order dated 04.06.2003. Therefore, the plaintiff had made his effort to pray for an appropriate relief but the same was rejected at the instance of the appellant. It is further contented that had the application for amendment of the plaint was allowed, the provisions of Section 34 of the Specific Relief Act would not have been applicable. In support of his contention, he places reliance on the judgment of the Apex Court in the case of ***Gian Kaur vs. Raghubir Singh³, Venkataraja and others vs. Vidyane Doureradjaperumal (D) Thr.Lrs. and others⁴, Corporation of the City of Bangalore vs. M. Papaiah and another⁵*** and lastly the judgment in the case of ***Akkamma and others vs. Vemavathi and others⁶***. He further argued that in law, the possession follows title as held by the Apex Court in the case of

³ (2011) 4 SCC 567

⁴ (2014) 14 SCC 502

⁵ 1989 3 SCC 612

⁶ (2021) 18 SCC 371



L.N. Ashwathama and another vs. P. Prakash⁷ and Shivaji T. Sonavale vs. Parvathibai B. Pawar⁸ rendered by this Court.

14. It is an admitted fact that the plaintiff was given in adoption during his childhood to Chilamur family and thereafter, he had acquired the suit schedule properties independently while he was in adopted family. The fact that the plaintiff had purchased one of the suit schedule properties in the year 1966 (though it was wrongly pleaded in the plaint that it was purchased in 1964) and another property was granted to him by the Land Tribunal as he established that he was the tenant, the error in the plaint that the property was purchased in the year 1964 was sought to be rectified by way of an amendment and the said application was dismissed. In the said application itself, the plaintiff had sought for amendment of the prayer column of the plaint by incorporating an alternative prayer that if he is found to be not in possession of the property, he may be granted the relief of possession. The perusal of the records would reveal that the application (I.A.No.VII) filed by the plaintiff was

⁷ (2009) 13 SCC 229

⁸ 2007 SCC OnLine KAR 113



dismissed by order dated 26.09.2002. The Trial Court had held that the trial had already begun and therefore, the application would not be maintainable. The records also revealed that the plaintiff had approached this Court in writ petition No.40181/2002 and it was also dismissed by this Court. It is relevant to note that while dismissing the writ petition, this Court had observed that in exercise of writ jurisdiction and particularly under Article 226 of the Constitution of India, Court will not interfere with such an order until and unless the order has resulted in a gross miscarriage of justice or one with errors appearing on the face of record.

15. These facts are not in dispute between the parties, which are as borne out from the records.

16. It is pertinent to note that the First Appellate Court has observed that when the plaintiff was given in adoption during his childhood and he had acquired the property in the adopted family, the question of a family settlement between the adoptive family of the plaintiff and his genitive family would not arise. Therefore, it was held that the transfer of the property by way of mutation entry in favour of the defendants does not transfer the



title. It also observed that at no point of time, the plaintiff had relinquished his rights over the suit schedule property in favour of the defendants under any of the modes known to law. It is worth to note that, when the plaintiff was not at all the member of his genitive family, the grant being in his adoptive name, such purchase by plaintiff or grant in favour of the plaintiff would not in any way enure to the benefit of the genitive family. This observation cannot be interfered with as the adoption is an admitted fact. It is also settled position of law that mutation entry of a property in revenue record does not create or extinguish title nor it has any presumptive value on title. In this regard, the First Appellate Court has placed reliance on a catena of decisions which has got approval of the Hon'ble Apex Court in several decisions.

17. The next aspect to be considered by this Court is whether the provisions of Section 34 of the Specific Relief Act create any bar in maintainability of the suit. The provisions of Section 34 of the Act read as below:

"34. Discretion of court as to declaration of status or right. — Any person entitled to any legal character,



or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

18. It is pertinent to note that the proviso to Section 34 says that, when such a declaration alone is sought and the plaintiff being able to seek further relief than a mere declaration of title, no Court shall make such a declaration. The judgment of the Hon'ble Apex Court in the case of **Vasantha (dead) Thr.LR vs. Rajalakshmi @ Rajam (dead) Thr.Lrs.** referred (*supra*), while considering issue No.2, notices various decisions in this regard and comes to the conclusion as below:

"33. *Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of the suit property and therefore it was incumbent upon him to seek the relief which follows. Plaintiff himself has*



stated that defendant no. 1 was in possession of the subject property and had sought to transfer possession of the same to defendant no.2, thereby establishing that he himself was not in possession of the subject property. We are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life-estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit, even at the second appellate stage."

19. It is worth to note while coming to such conclusion, it refers to the judgment in the case of ***Akkamma and others vs. Vemavathi and others*** referred (*supra*). It is pertinent to note that it was a case wherein the plaintiff was aware that the appellant therein was in possession of the suit property and therefore, it was observed that it was incumbent upon the plaintiff to seek the relief which follows the declaration. It is not known, whether any consequential relief of injunction was prayed or not.

20. The second judgment relied by the learned counsel for the appellant in the case of ***Somayya Belchada vs.***



Santhosh and others (*supra*) was rendered by a co-ordinate bench of this Court wherein it referred to the judgment of ***Vasantha (dead) Thr.LR vs. Rajalakshmi @ Rajam (dead) Thr.Lrs.*** referred (*supra*) and then came to the conclusion that when the Hon'ble Apex Court is clear that when the plaintiffs are not in possession of the property, they cannot seek for the relief of declaration. Without seeking the relief of possession, a suit for declaration simpliciter is not maintainable.

21. The judgment of the Hon'ble Apex Court in the case of ***Gian Kaur vs. Raghubir Singh*** (*Supra*), it was noticed that apart from making a prayer for declaration, there is also a consequential prayer for decree of permanent injunction and in such case, the proviso to Section 34 is inapplicable. The judgment of the Hon'ble Apex Court in the case of ***Akkamma and others vs. Vemavathi and others*** referred (*supra*) also had an occasion to deal with the matter when the prayer of injunction was sought along with the declaration of title, but it was found that the plaintiff was not in possession and therefore, it came to the conclusion that a decree for declaration could be granted in favour of the plaintiff. It is relevant to note the



observations of this Court as stated in paragraph 15 and 16 of the Judgment which reads as below:

"15. We agree with that part of the decision of the High Court in which it has been held that possession of the suit property was not established by the plaintiffs and hence injunctive relief could not be granted. As we have already recorded, we are also in agreement with the High Court's reasoning for rejecting the plea for amendment. But we do not agree fully with the entire reasoning of the High Court for dismissal of the appeal as spelt out in the said judgment. The bar contained in proviso to Section 34 of the 1963 Act, in our opinion, could not be applied in the case of the plaintiffs as consequential relief for injunction from interference with the suit-land was claimed. The prohibition contained in the proviso to Section 34 would operate only if the sole relief is for declaration without any consequential relief. In the plaint of the 1987 suit, relief for injunction was asked for. Such dual relief would protect the suit from being dismissed on maintainability ground. It is a fact that the plaintiff ought to have had asked for recovery of possession, given the factual background of this case, but the plaint as it was originally framed reflected that the



original plaintiff was in possession of the suit land. Such plea rightly failed before the Trial Court and the First Appellate Court.

16. *The prohibition or bar contained in proviso to Section 34 of the 1963 Act determines the maintainability of a suit and that issue has to be tested on the basis the plaint is framed. If the plaint contains claims for declaratory relief as also consequential relief in the form of injunction that would insulate a suit from an attack on maintainability on the sole ground of bar mandated in the proviso to the aforesaid section. If on evidence the plaintiff fails on consequential relief, the suit may be dismissed on merit so far as plea for consequential relief is concerned but not on maintainability question invoking the proviso to Section 34 of the 1963 Act. If the plaintiff otherwise succeeds in getting the declaratory relief, such relief could be granted. On this count, we do not accept the ratio of the Karnataka High Court judgment in the case of **Sri Aralappa** (supra) to be good law. In that decision, it has been held:-*

"31. Even if the plaintiff comes to Court asserting that he is in possession and that if it is found after trial that he was not in possession on the date of the suit, even then, the suit for declaration and permanent injunction



is liable to be dismissed as not maintainable, as no decree for permanent injunction can be granted if the plaintiff is not in possession on the date of the suit. In such circumstances, it is necessary for the plaintiff to amend the plaint before the judgment and seek relief of possession. Therefore, a suit for declaration of title and permanent injunction, by the plaintiff who is not in possession on the date of the suit, when he is able to seek further relief of recovery of possession also, omits to do so, the Court shall not make any such declaration and the suit is liable to be dismissed as not maintainable”.

(emphasis supplied)

22. From perusal of the above judgments, it is clear that the proviso to Section 34 of the Specific Relief Act will apply only when a declaration of title simpliciter is sought. When such declaration alone is sought, despite the plaintiff proving his title, the suit cannot be decreed if the consequential relief is not sought for. If a consequential relief of injunction had been sought but during the trial it came to light that the plaintiff was not in possession of the property, then without an amendment being brought to the plaint seeking the relief of possession, the relief of



declaration and possession cannot be granted. However, there being a consequential relief of injunction having been sought in the plaint, it would insulate the plaintiff from being non-suited and He would be entitled for the relief of declaration only. This position of law as observed by the Hon'ble Apex Court in the case of ***Akkamma and others vs. Vemavathi and others*** referred (*supra*) would aptly be applicable to the case on hand.

23. A perusal of the records as noted supra would show that the plaintiff had made his effort to seek consequential relief of possession. Such an effort was thwarted by the defendants and with some reservation, this Court had upheld the rejection of such interim application for amendment of the plaint.

24. The First Appellate Court in the impugned judgment while deciding point No.3, observes that the suit was filed for declaration and consequential relief of injunction. But since the defendants disputed the possession over the suit property during the course of trial, the plaintiff's application having been filed ,came to be rejected and therefore, if there was no rejection of the application under Order VI Rule 17 Of CPC, it would have enured for the benefit of the plaintiff. It also notes the



observation made by this Court in the order made in WP No.40181/2002. It observes that to prevent the multiplicity of the proceedings, the plaintiff is entitled for the relief. It also notices that in one of the judgments of this Court, it was observed that in a suit for declaration and injunction, filed against alleging encroachment, the Court granted a decree for possession and it was held that the Courts have power to grant such relief notwithstanding absence of pleadings. It is settled proposition of law that the relief can be moulded, if the plaintiff was unjustifiably denied of his right in claiming such relief. In the case on hand, the plaintiff has made his effort to incorporate the prayer for the relief of possession and such prayer was rejected. Therefore, by way of moulding the relief, definitely the First Appellate Court has held that the plaintiff is entitled for the possession. In that view of the matter, The position of law having clarified by the judgment of the Hon'ble Apex Court in the case of ***Akkamma and others vs. Vemavathi and others*** referred (*supra*), which is applicable to the case on hand on all its fours, this Court finds no merit in this appeal. Consequently, the substantial question of law raised by this Court is answered in ***negative***. In the result, the following order is passed:



ORDER

- (i) The appeal is **dismissed** with costs.
- (ii) In view of the disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

**SD/-
(C M JOSHI)
JUDGE**

SSP
Ct:pa
List No.: 1 Sl No.: 66