R

IN THE HIGH COURT OF KARNATAKA
AT BENGALURU

DATED THIS THE 11TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

R.S.A.No.743/2011 (INJ.)

BETWEEN:

1. CHENNAIAH @ DODDACHENNAIAH
SINCE DECEASED BY HIS LRS.

1(A) GANGAIAH S/O. CHENNAIAH @ DODDACHENNAIAH

1(B) SMT.PARVATHAMMA W/O.SHIVANNA

1(C) SMT.GOWRAMMA W/O. GANGAPPA

1(D) SMT. SHIVAMMA W/O. JAGADISHAPPA

1(E) SMT. SUSHEELAMMA W/O.SOMASHEKARAIAH

2. NINGAIAH S/O. LATE CHIKKACHENNAIAH
AGED ABOUT 51 YEARS

...APPELLANTS

(BY SRI SAMPATHI A., ADVOCATE FOR A1 (A TO E)
(BY SRI B.S. SUDHINDRA, ADVOCATE FOR A2)

AND

BYLAPPA,
SINCE DEAD BY LRS.

1) SMT. NARASAMMA W/O. BYLAPPA

2) NANJAPPA S/O. LATE BYLAPPA
AGED ABOUT 67 YEARS

2(A) SMT. BASAMMA
W/O LATE NANJAPPA
AGED ABOUT 75 YEARS

2(B) N. CHANDRASHEKARAIAH
S/O LATE NANJAPPA
AGED ABOUT 56 YEARS

2(C) YESHAVANTHAKUMAR

2(D) SMT. LALITHAMMA

2(E) SMT. GIRIJAMMA

2(F) SMT. MANGALAMMA W/O REVANAPPA

3) NANJUNDAIAH S/O LATE BYLAPPA
AGED ABOUT 62 YEARS

4) MALLAMMA W/O SIDDAPPA
AGED ABOUT 47 YEARS

5) M.B SHIVASHANKARAIAH
S/O LATE BYLAPPA
AGED ABOUT 42 YEARS

6) VASAVI HOUSING CO-OPERATIVE SOCIETY LTD
OFFICE AT #108, "SRICHAKRA" EAST PARK ROAD,
MALLESHWARAM,
BANGALORE-560003
REPRESENTED BY ITS SECRETARY
MISS N.UMA D/O. LATE G.NARAYANA RAJU

…RESPONDENTS

(BY SHRI SIDDAMALLAPPA. P.M., ADV. FOR R2(A-C) & R3-R5,
R2 & R3 ARE TREATED AS LRs OF DECEASED R1 V/O. 26/8/2019,
SHRI G.S. KANNUR, SR. ADV. FOR SHRI P. ANAND, ADV. FOR R6)

THIS APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE DATED 07.02.2011 PASSED IN R.A.NO.132/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., NELAMANGALA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.04.2003 PASSED IN O.S.NO.54/1989 ON THE FILE OF THE CIVIL JUDGE (JR. DN) & JMFC., NELAMANGALA.

THIS APPEAL COMING ON FOR ORDERS ON 23.02.2022 AND THE SAME HAVING BEEN HEARD AND RESERVED FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This second appeal arises out of a suit for injunction which had been instituted by the appellants against Bylappa. Both the Trial Court as well as the Appellate Court have refused to grant the said decree of injunction and hence the plaintiffs have presented this second appeal.

2. During the hearing of this appeal, the 2nd plaintiff sought to withdraw the suit in so far as he was concerned and as desired by him, the suit of the 2nd plaintiff was dismissed.

3. For the purposes of clarity, in this judgment, the parties are referred to by their names instead of their rankings.

4. It was the case of the plaintiffs i.e., Chennaiah @ Doddachennaiah and Ningaiah that the suit property (an agricultural land measuring 3 acres 25 guntas bearing Sy.No.108 situate at Mathadahalli village, Dasanapura Hobli, Nelamangala Taluk) belonged to one Arasaiah who had gifted it to his sister Kalamma i.e., the mother of the 1st plaintiff, under a registered gift deed dated 15.09.1921. It was their

case that during the lifetime of Kalamma, she had enjoyed possession of the suit property along with her husband Muddaiah and after the death of Kalamma, the revenue entries were changed in favour of the 1st plaintiff, Channaiah @ Doddachannaiah in 1935.

5. It was stated that Kalamma had two sons, Channaiah @ Doddachannaiah (1st plaintiff) and Chikkachannaiah (father of the 2nd plaintiff). It was stated that on the death of Chikkachannaiah, the 2nd plaintiff had succeeded to his share and hence, he was also a co-owner of the suit property. It was contended that the record of rights and the Pahani right from the year 1968 up to 1989 stood in the name of the Chennaiah @ Doddachennaiah and Ningaiah, thus, establishing that they were in lawful possession. It was stated that they had paid the land revenue to the Government and the said documents proved that they were in lawful possession. It was stated that Bylappa was trying to interfere with their peaceful possession over the land bearing Sy.No.108 measuring 3 acres 25 guntas and hence, they were constrained to institute the suit.

6. Bylappa, the sole original defendant, entered appearance and denied the averments of the plaint. He did not however dispute the relationship of the Chennaiah @ Doddachennaiah and Ningaiah. He, however, set forth the specific plea that one Hanumantaiah had in all three children, i.e., two sons, Arasappa and Obalaiah and one daughter Kalamma. He stated that he was the son of Arasappa and his father's brother i.e., the second son of Hanumanthaiah, viz., Obalaiah, had no issues and Arasappa was given to bad habits and he had driven away his wife, his son (Bylappa) and his brother Obalaiah from the house and had knocked away all the properties. It was stated that Arasappa started living with his sister Kalamma and also along with his concubine Nagamma.

7. It was categorically stated that Obalaiah had purchased the suit property from one Revanna under a registered sale deed dated 01.09.1912 and on the death of Obalaiah, his brother Arasappa had gifted the property to his sister Kalamma.

8. It was also stated that plaintiff No.1 had mortgaged the property in favour of Bylappa on 29.09.1936 under a registered mortgage deed and Bylappa was paying the taxes regularly every year and had documents to establish that the property was in his possession.

9. It was stated that the father of plaintiff No.2, Chikkachannaiah had instituted proceedings under the Debt Relief Act and in those proceedings plaintiff No.1 had filed an affidavit before the Taluka Magistrate stating that Bylappa was the owner in possession of the suit property and that he had no subsisting interest in it and it was also stated therein that at the instigation of some persons, Chikkachannaiah, the father of plaintiff No.2, had initiated the proceedings under the Debt Relief Act. It was finally contended that there was no cause of action for the suit and the suit was liable to dismissed.

10. The Trial Court on consideration of the evidence adduced before it, proceeded to conclude that Chennaiah @ Doddachennaiah and Ningaiah had failed to establish the title of Arasappa in order to validate the gift that he had made in

favour of Kalamma. The Trial Court stated that though a registered gift deed had been executed by Arasappa in favour of Kalamma, the recitals of the gift deed itself had stated that the property was standing in the name of Obalaiah who had purchased the property under a sale deed dated 17.09.1906, and it had also been stated that the Khata was standing in the name of Arasappa and that Chennaiah @ Doddachennaiah and Ningaiah had failed to establish as to how Arasappa acquired title so as to gift the property to Kalamma and therefore, the gift could not be believed.

11. It also took the view that in the gift it had not been stated as to how and where the donee had accepted the gift and as to when he had taken possession in accordance with the terms of the gift. It, thus, concluded that the essential requirements of the gift, as prescribed in the law, had not been established.

12. The Trial Court also observed that there was a discrepancy in the name of the 1st plaintiff in the RTCs, inasmuch as in the Owner's column, it had been entered as

Channaiah son of Muddaiah, whereas in the cultivators' column, it had been shown as Doddachannaiah and this discrepancy in the names, had not been explained. The Trial Court thus concluded that the RTCs could not be relied upon to come to the conclusion that Chennaiah @ Doddachennaiah and Ningaiah were in possession. The Trial Court refused to accept the oral evidence and concluded that in the absence of any documentary evidence, the oral evidence would not be of much consequence. The Trial Court took the view that the documents produced by Bylappa proved that he was in possession and it accordingly, proceeded to dismiss the suit.

13. Chennaiah @ Doddachennaiah and Ningaiah, being aggrieved, preferred an appeal.

14. In the appeal, the Appellate Court took the view that it was required to examine whether the name of Chennaiah @ Doddachennaiah and Ningaiah had been wrongfully entered in the revenue records. It, thereafter, went on to observe that the revenue documents produced did not disclose on what basis the name of plaintiff No.1 had been entered in the revenue records. It also took note of the

statement filed before the Tahasildar, by the father of the 2nd plaintiff vide Ex.D.7 and also the affidavit filed by the 1st plaintiff vide Ex.D.8, to come to the conclusion that it was Bylappa who was in possession of the suit property.

15. The Appellate Court came to the conclusion that Chennaiah @ Doddachennaiah and Ningaiah were trying to take advantage of the revenue records standing in their names for two years and had instituted the suit and they had not offered any explanation as to how the name of the 1st plaintiff came to be entered into RTC. The Appellate Court also took the view the entry of Chennaiah @ Doddachennaiah and Ningaiah in the revenue records were rebuttable in nature and since there was no explanation by Chennaiah @ Doddachennaiah and Ningaiah as to how the name of the 1st plaintiff had been entered in the revenue records, the mere occurrence of the name in the revenue records would not entitle them for a decree of injunction. The Appellate Court accordingly confirmed the decree of the Trial Court and dismissed the appeal.

16. It is as against these concurring judgments, the present second appeal has been preferred.

17. This second appeal was admitted to consider the following substantial questions of law:

a) *Whether the trial Court has grossly erred in recording the finding as regards to the competency to execute Gift Deed by Arasaiah, which is beyond the scope and enquiry of the suit for injunction?*

b) *Whether the cause of action of the plaintiffs as regards the relief of injunction would continue subsequent to the death of Bylappa the original defendant and also in the light of the sale to defendant No.6?*

c) *Whether the Courts below have committed any error in not taking note of Ex.P.24?*

Regarding the 1st substantial question of law:

18. Before considering the rival contentions, it would be profitable to refer to the exposition of law rendered by the Apex Court (which is relied upon by both sides) in the case of ***ANATHULA SUDHAKAR VS P. BUCHI REDDY*** reported in ***[2008 (4) SCC 594]***. In the said decision, the Hon'ble

Supreme Court has laid down the following principles in relation to a suit for injunction:

> *"11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.*
>
> *11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*
>
> *11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the reiief of possession.*
>
> *11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in*

possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

19. The Hon'ble Supreme Court in the said decision has thereafter summarised the legal position regarding a suit for prohibitory injunction, in relation to the immoveable property and the same reads as follows:

"21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for

consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title

and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

20. Thus, as per the above ratio where a plaintiff is in lawful or peaceful possession of the property and his possession is threatened, a suit for injunction simpliciter would lie. It is also clarified by the Apex Court that a prayer for declaration would be necessary only if there is a cloud cast on the title of the plaintiff. The Supreme Court has also further stated in paragraph 14, regarding the raising of a cloud in respect of a person's title, as follows:

14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a

> *suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.*

21. Thus, merely because Bylappa denied Chennaiah @ Doddachennaiah and Ningaiah's title, that by itself would not amount to raising a cloud over the title of Chennaiah @ Doddachennaiah and Ningaiah and it would not be necessary for Chennaiah @ Doddachennaiah and Ningaiah to file a suit for declaration and a suit for injunction simpliciter may be sufficient. The Supreme Court has also stated that the Court should use its discretion carefully to identify the cases in which it would inquire into title and the cases where it would refer the plaintiff to seek the comprehensive declaratory suit. Thus, each case would have to be judged on its own facts to

determine whether the parties are to be relegated to the remedy of filing a declaratory suit.

22. Since, a strong argument is advanced on behalf of the respondents that they had raised a serious cloud on the title of Chennaiah @ Doddachennaiah and Ningaiah and the suit could not have been entertained, at the very outset, it will have to be determined as to whether in the present case a serious cloud was indeed raised over the title of Chennaiah @ Doddachennaiah and Ningaiah.

23. The case of Chennaiah @ Doddachennaiah and Ningaiah's case, as stated above, was that the suit property belonged to Kalamma (the mother of Chennaiah and the grand-mother of the Ningaiah) who had acquired title by virtue of the registered gift deed dated 15.09.2021, executed in her favour by her brother Arasappa (father of the defendant, Bylappa). It was their further case that on the death of Kalamma, her husband Muddaiah and her two sons i.e., the 1st plaintiff and the father of the 2nd plaintiff, had succeeded to the property and on the death of Muddaiah, Kalamma's husband, the 1st plaintiff and the father of the 2nd

plaintiff had succeeded to the said property. Thus, primarily, it would have to be seen whether Kalamma had title over the suit property and whether this title of hers was clear and free of doubt.

24. Admittedly, Bylappa is the son of Arasappa. It was the case of Chennaiah @ Doddachennaiah and Ningaiah that Arasappa, the father of Bylappa had gifted the suit property to Kalamma in 1921 under a registered gift deed. In his written statement, Bylappa, at paragraph 9 of his written statement[1] had clearly admitted the following facts:

- Hanumanthaiah had two sons and one daughter, namely Arasappa, Obaliah and Kalamma.

[1] The true facts are as follows:

One Hanumanthaiah, had three issues – two sons and one daughter. Arasappa, was the eldest son and Obalaiah happended to be the second son. One Kalamma was the daughter. The defendant, is the son of Arasappa referred to above. Obalaiah has no issues. Arasppa was given to bad habits, he was not looking after his family. He drove away his wife, the defendant and Obalaiah, from the house and knocked away all the properties, and started living with his sister, Kalamma, along with his concubine one Nagamma. Thereafter, the defendant, his mother, Nanjamma and Obalaiah, started living with Chikkarasappa, the brother of Nanjanna and father-in-law of the defendant. Thereafter, Obalaiah purchased the suit schedule property from Revanna, under the registered sale deed dated 1.9.1912, and thereafter the said Obalaiah died and Arasappa gifted the property to his sister Smt. Kalamma. Further the I defendant mortgaged the said property in favour of the defendant dated 29-9-36, the same is registered in the Sub-Register Nelamangala, and the Certified copy of the same is produced herewith. Again, the defendant produced herewith the certified copy of the preliminary record.

- Obalaiah, his father's brother, had purchased the suit property under a sale deed dated 01.09.1912 and that the said Obalaiah had no issues.

- After Obalaiah's death, Obalaiah's brother Arasappa i.e., Bylappa's father, had gifted the property to his sister Kalamma under a registered gift deed.

25. From this admitted plea of Bylappa in his written statement, it is clear that the suit property had been initially acquired by Obalaiah and on Obalaiah's death, since he had no issues, the suit property devolved onto his brother Arasappa by survivorship.

26. Further, since it is also the admitted plea of Bylappa that Arasappa, his father, had gifted the property to his sister Kalamma under a registered gift deed, fundamentally, the acquisition of title by Kalamma was not in dispute at all.

27. As the acquisition of title by both Arasappa and his subsequent gift to Kalamma was not in dispute, it cannot also be in dispute that on the death of Kalamma, her sons

i.e., the 1st plaintiff and Chikkachannaiah (the father of the 2nd plaintiff) had inherited the suit property.

28. In other words, by the very case put forth by Bylappa himself, it was clear that there was no cloud cast on the title of Kalamma (the 1st plaintiff's mother and 2nd plaintiff's grandmother) and consequently also on the title of Chennaiah @ Doddachennaiah and Ningaiah. In this view of the matter, the suit instituted by Chennaiah @ Doddachennaiah and Ningaiah for injunction simpliciter would be perfectly maintainable.

29. Yet another factor that stands out from the defence of Bylappa is that though he admitted that his father, Arasappa had gifted the suit property to Kalamma way back in 1921 i.e., more than a century ago he had admittedly not challenged the gift deed and as a consequence, he would be bound by the gift that his father had made in favour of his aunt Kalamma.

30. In the light of the fact that Bylappa admitted the execution of the gift deed by his father Arasappa in favour of Kalamma (the mother of the 1st plaintiff and grandmother of

the 2nd plaintiff), the finding of both the Courts that Arasappa had no competence to execute the gift is wholly unsustainable and is beyond the scope of enquiry in a suit for injunction. In fact, since the execution of the gift deed was admitted by Bylappa, both the Courts, in a suit for injunction, have grossly erred in examining a claim on the validity of the gift and recording a finding regarding the competence of the donor-Arasappa to execute the gift deed.

31. One another fact that is to be noticed is that the title of Chennaiah @ Doddachennaiah and Ningaiah was not really in dispute at all and was in fact admitted by Bylappa, which becomes clear from the following facts.

32. Bylappa, in his defence, had stated that Channaiah (plaintiff No.1) had mortgaged the suit property in his favour under the registered mortgage deed dated 29.09.1936 and this established his title.

33. Though it was the specific and admitted plea of Bylappa that Channaiah (plaintiff No.1) had mortgaged the suit property in his favour, he however, did not produce and get the said mortgage deed marked. Chennaiah @

Doddachennaiah and Ningaiah, however, produced the registered mortgage deed dated 29.09.1936 and the same has been marked as Ex.P.24. In this mortgage deed, it has been stated as follows:

> *ಸರ್ ವೆಂದು ಸಾವಿರದ ವಂಭೈ ನೂರು ಮೂವತ್ತಾನೇ ಇಸ್ವಿ ಶಭ್ಬಂಬರು ತಾರೀಕೂ ಇಪ್ಪತ್ತೆಂಟರಲ್ಲು ಇದೇ ನೆಲಮಂಗಲ ತಾಲ್ಲು ದಾಸನಪುರದ ಸಂಮ್ಮತು ಮತ್ತೆಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿರುವ ಶಿವಾಚಾರುಲಾಳಗೊಂಡರ ದೊಡ್ಡ ರಸಯ್ಯನ ಮಗ ಬೈಲಪ್ಪನವರಿಗೆ ಡಿಟೋ ಮತ್ತಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿರುವ ಶಿವಾಚಾರ ದಲಾಳ ಗೊಂಡೆರ ಮುದ್ದೆಯ್ಯನ ಮಗ ಚನ್ನಯ್ಯ ಬರ್ದಿ ಕೊಟ್ಟಿ ಅಧಾರ ಪತ್ರಯೇನಂದರೆ ಮತ್ತಳ್ಳಿ ಹೋಬಳಯ್ಯನ ಸಾಲ ತೀರಿಸುವುದಕ್ಕಾಗಿಯೂ ಮತ್ತು ನನ್ನ ಕುಟುಂಬ ಪೋಷಣೆಗಾಗಿಯೂ ಸಹ ಈ ದಿವ್ಸ ನಿಮ್ಮಲ್ಲಿ ನಗದು ಸಾಲವಾಗಿ ತೆಗೆದುಕೊಂಡಿರುವುದು ಗೌರ್ನಮೆಂಟು ರೂಪಾಯಿಗಳೂ (125/–) ವೆಂದು ನೂರು ಇಪ್ಪತ್ತು ಅಯಿದು ರೂಪಾಯಿಗಳನ್ನು ಸಾಕ್ಷಿಗಳ ಮುಕ್ತಾ ಸಾಕಲ್ಯವಾಗಿ ತೆಗೆದುಕ್ಕೊಂಡಿರುತ್ತೆನೆ. ಈ ವೊಬಲಗ್ಗೆ ಬಡ್ಡಿ ಈ ಲಾಗಾಯು ತಿಂಗಳು ವಂದಕ್ಕೆ ಶೇಕಡವೆಂದಕ್ಕೆ ವಂದು ರೂಪಾಯಿ ನಾಲ್ಕಾನೆ ಮೆರಿಗೆ ಬಡ್ಡಿ ಶೇರಿಸಿ ಅಸಲು ಬಡ್ಡಿ ಸಹಾ ಈ ಲಾಗಾಯ್ತು ವಂದು ವರ್ಷಕ್ಕೆ ಸರಿಯಾಗಿ ಬೇಬಾಕಿ ಸಂದಾಯಮಾಡಿ ಈ ಪತ್ರ ನಿಂಮ್ಮ ಸಲಿಕೆ ಷರಾಯನಿಸಿ ವಾಪಸು ಪಡೆಯುತ್ತೇನೆವೆಂದು ವೆಂದು ವೇಳೆ ವಾಯಿದೆಯಲ್ಲಿ ಬಡ್ಡಿ ಕೊಟ್ಟಿ ಅಸಲು ನಿಲ್ಲಿಸಿಕ್ಕೊಂಡರೆ ಮುಂದೆ ನಡೆದಷ್ಟು ದಿವ್ಸಕ್ಕೂ ಎದಸ್ತೂರು ಬಡ್ಡಿ ಕೊಡುತ್ತಾ ಬರುತ್ತೇನೆ ಅಸಲಿಗಾಗಲೀ ಬಡ್ಡಿಗಾಗಲೀ ಯೇನು ವಸೂಲು ಕೊಟ್ಟಾಗ್ಯೂ ಈ ಪತ್ರಕ್ಕೆ ಸಲಿಕೆ ಬರೆಸುತ್ತೇನೆ ಶಿವಾಯಿಯಿತರ ದಾಖಲೆ ಮಂಜೂರಿಲ್ಲಾ ಅಸಲುಬಡ್ಡಿಗೆ ಸಹಾ ಆಧಾರ ಮಾಡಿರುವದು ಅರಸಯ್ಯನಾದ ನನ್ನ ತಾಯಿ ಕಾಳಮ್ಮನಿಗೆ ದಾನವಾಗಿ ಬಂದು ನನ್ನ ಸ್ವಾಧಿ ನಾನು ಭವದಲ್ಲಿರುವ ವಡಿಟೋ ಮತ್ತೆಳ್ಳಿ ಗ್ರಾಮದ ಬಳಿ ರೀಸರ್ವೆ ವಂದು ನೂರು ಯಂಟನೇ ನಂಬರು ಕುಷ್ಕೆ ಆರು ಏಕರೆ ಇಪ್ಪತ್ತೆಂಟು ಗುಂಟೆಗೆ ತರಿ ಇಪ್ಪತ್ತ ಗುಂಟೆಗೆ ಸಹ ಆಕಾರ ಹನ್ನೊಂದು ರೂಪಾಯಿವುಳ್ಳ ಜಮೀನಿನಲ್ಲಿ ಪಶ್ಚಿಮದ ಕಂಡೆರೇ ವೆಂಮ್ಮೆನಿಂದ ಹೋಬಳಯ್ಯನಿಗೆ ಕ್ರಯವಾಗಿರು ಅರ್ದ ಭಾಗದ ಜಮೀನು ಚಾತಾ ಪೂರ್ವ ಭಾಗದ ಕಡೆ ನಮ್ಮ ಬಾಬತ್ತು ಅರ್ದ ಭಾಗದ ಜಮೀನಿಗೆ ಚಕ್ಕು ಬಂದಿ ಪೂರ್ವಕ್ಕೆ ಗುರುಮೂರ್ತ ಪಂಡಿತರ ಮತ್ತು ನರಸ ಇವರ ಜಖಾನು ಪಶ್ಚಿಮಕ್ಕೆ ಹೋಬಳಯ್ಯನ ಹೊಲ ವುತ್ತರಕ್ಕೆ ಶಾಂತಪ್ಪನವರ ಗಡ್ಡೆ ದಕ್ಷಿಣಕ್ಕೆ ಕಾರಳ್ಳಿ ಹನುಮನ ಬಗೆ ಹೊಲ ಈ*

*ಮಧ್ಯ ಇರುವ ಮೂರು ಎಕರೆ ಹದಿನಾಲ್ಕು ಗುಂಟೆ ಕುಷ್ಕಿ ಮತ್ತು ಹತ್ತು ಗುಂಟೆ ತರಿ ಜಮೀನು ಸಹ ಆಧಾರ ಮಾಡಿಕೊಟ್ಟಿರುತ್ತೆನೆ ಈ ಸ್ವತ್ತನ್ನು ಸಾಎರದ ವಂಬೈನೂರು ಮೂವತ್ತು ಮೂರನೇ ಇಸ್ವಿ ಅಗಷ್ಟು ತಾರೀಕು ಯಂಟರಲ್ಲು ಮತ್ತಳ್ಳಿ ಹೋಬಳಯ್ಯನವರಿಗೆ ನನ್ನ ತಂದೆ ವಗೈರೆರು ಆಧಾರ ಮಾಡಿ ಕೊಟ್ಟಿದ್ದು ಹಣ ಸಂದಾ ರದ್ದಾದ ರಜಿಷ್ಟರ್ ಆದಾರ ಪತ್ರವನ್ನು ದಾಖಲೆ ಬಗ್ಗೆ ನಿಮ್ಮಲ್ಲಿ ಕೊಡುತ್ತೆನೆ ನಿಂಮ್ಮ ಅಸಲು ಬಡ್ಡಿ ಸಹ ವಾಯಿದೆಯಲ್ಲಿ ನಿಮಗೆ ಪಾವತೀ ಮಾಡದೇ ಹೋದರೆ ಈ ಆಧಾರ ಸ್ವತ್ತಿನಿಂದ ವ ನನ್ನ ಖುದ್ದು ಜವಾಬ್ದಾರಿಯಿಂದಲೂ ನಿಮ್ಮ ಮೊಬಲಗು ವಿಲೆ ಮಾಡಿಕೊಳ್ಳಲು ನಮ್ಮಗಳ ತಕರಾರ್ಯಯೇನು ಇರುವದಿಲ್ಲವೆಂದು ನನ್ನ ಕುದ್ದು ರಾಜಿಯಿಂದಾ ವೊಪ್ಪಿ ಬರ್ಸಿ ಕೊಟ್ಟ ಆಧಾರ ಪತ್ರ ಸಹಿ : ಹೆ.ಗು) ಈ ಎಡಗೈ ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರ್ತಿನ ರುಜು ಮುತ್ತಳ್ಳಿ ಚನ್ನಯ್ಯ ಹಾಕಿದ್ದಕ್ಕೆ ಬಿಕ್ಕಲು ಬರಹ **C** ಸಾಕ್ಷಿಗಳು **D** 1 ಟೈಲರ್ ಸೈಯದ್ ರಸೂಲ್ ಸಾಕ್ಷಿ **E** 2 ಮತ್ತು ಹಳ್ಳಿ ಈಶ್ವರಪ್ಪನವರ ಮಕ್ಕಳು ದೊಡ್ಡ ಬಸವಯ್ಯ ಸಾಕ್ಷಿ **F** ಬಿಕ್ಕಲಂದೇವಾಂಗದ ಬಿ. ಗಂಗಪ್ಪ ನೆಲಮಂಗಲ (**g**) ಅಸಲಿನಲ್ಲಿ (**a**) ಟೋಪ (**b**) **to (g)** ಖಾಲಿ ನಕಲಿನಲ್ಲಿ ಚತ್ತು ವಗೈರೆಯಿಲ್ಲ.*

B.Y.M.S.R True copy G.Y Mallappa Sub Registrar

*ತಯಾರಾದ ಕಾಫಂಯಲ್ಲಿ :- **V** ತಪ್ಪುಗಳು ಮಾತ್ರ **I IV V** ಕಾಟುಗಳು **II** 'ನು' **III** 'ರು' ತಿದ್ದಿರುತ್ತೆ.*

ಬರೆದವರು
ಓದಿದವರು:ಸಹಿ/-
ತಾಳೆ ಮಾಡಿದವರು: ಸಹಿ/-

ಸಹಿ/- ಮತ್ತು ಸೀಲ್
ಸಬ್-ರಜಿಸ್ಟ್ರಾರ್
ನೆಲಮಂಗಲ

34. The recitals of the mortgage deed clearly state that in order to raise a loan of Rs.125/-, Chennaiah @ Doddachennaiah was mortgaging the suit property by depositing the title deeds with Bylappa and these recitals which are not disputed by Bylappa, by themselves establish

that Chennaiah @ Doddachennaiah, undoubtedly had title over the suit property. Further, since a registered mortgage by deposit of title deeds was executed by Channaiah in favour of Bylappa, it would be rather obvious that possession remained with Chennaiah @ Doddachennaiah and only the title deeds were handed over to the Bylappa.

35. In fact, in the mortgage deed it is also stated that the suit property had been gifted by Arasaiah in favour of Kalamma the mother of Chennaiah @ Doddachennaiah. As stated above, since this registered mortgage deed dated 29.9.1936 was specificaliy pleaded and accepted by Bylappa in his written statement, it cannot be in doubt that both title and possession of Chennaiah @ Doddachennaiah and Ningaiah over the suit property was admitted by Bylappa at an undisputed point of time.

36. Bylappa also produced Ex.D.7, a statement purported to have been given by the 2nd plaintiff in which it is stated as follows:

ನಂಜಪ ಎಂಬವರು ದಿನಾಂಕ : 2.11.82 ರಂದು ಚನ್ನ ಚನ್ನಯ್ಯ ಎಂಬುವರು ಅರ್ಜಿ ಕೊಟ್ಟು ತಹಶೀಲ್ದಾರ ರವರ ಆದೇಶದ ಮೇರೆಗೆ ತಯಾರಿಸಿದ ನಕಲು ಕಾಫಿ

ನೆಲಮಂಗಲ ತಾಲ್ಲೂಕು, ತಹಶೀಲ್ದಾರ ರವರ ಜನಾಬಿಗೆ

ಡಿಟೋ ತಾಲೂಕು ದಾಸನಪೂರ ಹೋಬಳಿ ಮುತ್ತನಹಳ್ಳಿ ಗ್ರಾಮದ ವಾಸಿ ಮುದ್ದಯ್ಯನವರ ಮಗ ಚಿಕ್ಕ ಚನ್ನಯ್ಯನಾದ ನಾನು ಬರೆದುಕೊಂಡ ಅರ್ಜಿ
ಸ್ವಾಮಿ,

ನನ್ನ ಬಾಬ್ತು ಮತ್ತೆನಹಳ್ಳಿ (ಮತ್ತನಹಳ್ಳಿ) ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ ನಂಬರ್ 108/4 ರಲ್ಲಿ 3.25 ಕುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನು ಇದ್ದು ಸದರಿ ಜಮೀನು ನಮ್ಮ ಪಿರ್ತಾರ್ಜಿತವಾಗಿ ಬಂದಿರುತ್ತೆ. ತಮ್ಮ ತಂದೆ ಮುದ್ದಪ್ಪ ಪವತಿಯಾಗಿದ್ದು ಇವರಿಗೆ ಇಬ್ಬರೂ ಗಂಡು ಮಕ್ಕಳೂ ಇರುತ್ತಾರೆ. ಇವರಲ್ಲಿ ನಾನು ಕಿರಿಯವನಾಗಿದ್ದೇನೆ. ಸದರಿ ಮೇಲ್ಕಂಡ ಜಮೀನನ್ನು ವಿಭಾಗದ ಪ್ರಕಾರ ಅರ್ಧ ಹಿಸ್ಸೆಯಾಗಿ ನಾನು ಸುಮಾರು 30 ವರ್ಷಗಳಿಂದ ಅನುಭವಿಸಿಕೊಂಡು ಬಂದಿದ್ದೇನೆ 1981–82 ರವರೆಗೆ ಪಹಣಿಯು ಸಹಾ ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಇರುತ್ತದೆ ಮತ್ತೆ ಕಂದಾಯ ವಗೈರೆ ನಾನೇ ಪಾವತಿ ಮಾಡುತ್ತಾ ಬಂದಿರುತ್ತೇನೆ.

ನಮ್ಮ ಗ್ರಾಮದ ವಾಸಿ ಬೈಲಪ್ಪ ಬಿನ್ ದೊಡ್ಡರಸಪ್ಪ ಎಂಬುವವರು ಸುಮಾರು ಎರಡು ವರ್ಷಗಳಿಂದ ಜಮೀನನ್ನು ನಾನು ಉಳುಮೆ ಮಾಡಕೂಡದೆಂದು ಒತ್ತಾಯ ಮಾಡುತ್ತಾ ಇದ್ದು ಈ ವರ್ಷ ಕಡ್ಡಾಯವಾಗಿ ಜಮೀನನ್ನು ಉಳುಮೆ ಮಾಡಬಾರದಾಗಿ ನನಗೆ ಅಡಚಣೆ ಮಾಡಿರುತ್ತಾರೆ. ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಅವರು ಹುರಳಿ ಮತ್ತು ಜೋಳವನ್ನು ಬಿತ್ತನೆ ಮಾಡಿರುತ್ತಾರೆ. ನನ್ನ ಹೆಸರಿಗೆ ಸದರಿ ಜಮೀನು ಆಧಾರವಾಗಿರುತ್ತದೆ ನಾನು ಬಿಡುವುದಿಲ್ಲವೆಂದು ಹೇಳಿರುತ್ತಾರೆ.

ನನಗೆ ಸದರಿ ಜಮೀನು ವಿನಃ ಬೇರೆ ಎಲ್ಲಿಯೂ ಯಾವ ವಿಧವಾದ ಜಮೀನು ಇರುವುದಿಲ್ಲ ಮತ್ತು ಬೇರೆ ವರಮಾನವು ಇರುವುದಿಲ್ಲ ನನ್ನ ಕುಟುಂಬದಲ್ಲಿ ಒಟ್ಟು ಆರು ಜನರಿದ್ದು ಜೀವನ ನಡೆಸುವುದು ತುಂಬಾ ಕಷ್ಟಕರವಾಗಿರುತ್ತದೆ ನಾನು ಅಂಗವಿಕಲನಾಗಿರುತ್ತೇನೆ. ಆದ್ದರಿಂದ ತಮ್ಮಲ್ಲಿ ಕೇಳಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ತಾನೇ ಖರೀದಿ ಅಜಮಾಯಿಸಿ ಮಾಡಿ ನಮ್ಮ ಜಮೀನನ್ನು ನನಗೆ ಬಿಟ್ಟುಕೊಟ್ಟು ಜೀವನೋಪಾಯಕ್ಕೆ ಮಾರ್ಗ ಮಾಡಿಸಿಕೊಡುಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ವಿನಂತಿಪೂರ್ವಕವಾಗಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ ಸ್ವಾಮಿ.

ಇಂತಿ ತಮ್ಮ ವಿಧೇಯ,
ಸಹಿ/–
L.T mark
Chikkachannaiah

"ನಕಲು"
ಸಹಿ/– ಮತ್ತು ದಿನಾಂಕ
ತಹಶೀಲ್ದಾರ್
ನೆಲಮಂಗಲ ತಾಲ್ಲೂಕು

37. A reading of this statement indicates that it was the complaint of the 2nd plaintiff that Bylappa was trying to obstruct the possession of the 2nd plaintiff on the ground that the land had been mortgaged to him. This document produced by Bylappa himself, clearly establishes that Bylappa was obstructing the possession of the 2nd plaintiff on the ground that the property had been mortgaged to him, which basically reflects the plea raised by Bylappa in his written statement.

38. Bylappa also produced an affidavit stated to have been filed by the 1st plaintiff in a proceeding initiated by the 2nd plaintiff against Bylappa under the Debt Relief Act, in which it had been admitted by the 1st plaintiff that Bylappa was the owner of the suit property and was in possession. The affidavit, which is produced as Ex. D.8, reads as follows:

Affidavit

I, Channaiah s/o Muddaiah, aged about 60 years, residing Mathahalli, Dasanpura Hobli, Nelamangala taluk, Bangalore district, do hereby solemnly affirm and state on oath as follows:-

1. I submit that the Sy.No.108/4, of Mathahalli village measuring to the extent of 3 acres 25 guntas of dry land has been under cultivation possession and enjoyment of Bylappa the respondent named above. The respondent Bylappa is my maternal uncle. Myself and my brothers Chikkachannaiah were living together till 1963. In the year 1962 by separated and they have partitioned our Hindu Joint family properties and they have been living separately. The lands referred to above were never Mortgaged to the respondents. They were sold to the respondent. The petition to discharge debt was not filed by me. The petitioner named above who is my brother was setup by some people who are enimically disposed towards the respondent.

2. In view of the above the question of discharge of the debt does not arise.

3. I submit that I have no objection for the petition being dismissed as not maintainable."

39. As could be seen from the said affidavit, the 1st plaintiff has stated that the property was sold to Bylappa. However, Bylappa himself did not set up a plea that he had purchased the property. The fact that the affidavit states that Chennaiah @ Doddachennaiah and Ningaiah had sold the suit property to Bylappa presupposes that Chennaiah @ Doddachennaiah and Ningaiah did possess title over the suit

property. If Bylappa accepts the contents of the affidavit in which it has been stated he had purchased it, it would have been incumbent upon him to produce the registered instrument under which he acquired title from Chennaiah @ Doddachennaiah and Ningaiah. However, neither such a plea been raised nor any registered document produced to establish the title of Bylappa.

40. Bylappa in his written statement did not, either directly or indirectly, state that the suit property had been bequeathed to Bylappa by Obalaiah. However, during his deposition, he produced an unregistered Will dated 14.08.1918 (Ex.D.6) said to have been executed by Obalaiah. However, Bylapp made absolutely no attempt to prove the execution of the Will by examining the attesting witnesses and if they were unavailable, by summoning those persons who were aware of the signatures of the attestors. Since, Bylappa did not plead in his written statement that the suit property had been bequeathed to him, the production of this Will of the year 1918, which had not seen the light of the day till the trial in the suit had commenced, would really be of no consequence.

41. In the light of the above discussions, it will have to be held that the Trial Court had grossly erred in recording a finding that Arasaiah had no competence to execute the gift and the same was beyond the scope and enquiry in a suit for injunction. The 1st substantial question of law is therefore held in favour of Chennaiah @ Doddachennaiah and Ningaiah/appellants.

42. Bylappa also stated that he was paying taxes regularly every year and the tax paid receipts indicated his possession. The Trial Court and the Appellate Court have gone on to determine that Bylappa had proved that he was in possession of the suit property only on the basis of revenue records such as RTCs and tax paid receipts.

43. To prove possession, both Chennaiah @ Doddachennaiah and Ningaiah and Bylappa produced revenue records.

44. Bylappa produced four pahanis for the years 1964-65, 1965-66, 1965-66 and 1966-67 (Ex. D.1 to Ex. D.4) and one RTC (Ex. D.5). In the pahanis, Ex. D.1 to D.4, the *Hiduvalidara* (holder) is shown as Channaiah son of Muddaiah,

who is none other than the 1st plaintiff. In these pahanis, the name of Bylappa is found in the *Paludara* (Sharer) or *Korudara* column. Thus, these four pahanis produced by Bylappa itself reflect the name of the 1st plaintiff as the owner.

45. Bylappa produced a single RTC, which was for the period 1983-84 to 1987-88. Even in this RTC, the name of Channaiah son of Muddaiah has been entered in the owner's column and only in the cultivator's column, the name of Bylappa i.e., defendant No.1 has been found. The 1st plaintiff is admittedly the son of Muddaiah and he has been described in the plaint as Channaiah @ Doddachinnaiah. Assuming that the RTC produced by Bylappa was genuine, the very said RTC acknowledges that the 1st plaintiff is the owner of the suit property. Thus, even as per the pahanis and the RTC i.e., the revenue records produced by Bylappa himself, the owner of the suit property is shown to be the 1st plaintiff.

46. In order to show that Bylappa was in possession, reliance was placed on the entry in the cultivator's column. It must be stated here that the basis on which the name of

Bylappa was entered in the cultivator's column is not forthcoming. This issue assumes importance because Chennaiah @ Doddachennaiah and Ningaiah also produced RTCs in respect of this very period in which, in the owner's column, the name shown is Channaiah son of Muddaiah and in the cultivator's column it has been shown as Doddachinnaiah. In other words, the single RTC produced by Bylappa varies with the RTCs produced by Chennaiah @ Doddachennaiah and Ningaiah when it comes to the cultivator's column.

47. In fact, to disbelieve the RTCs which contained the name of the 1st plaintiff, the Appellate Court reasoned that the basis for entering his name in the RTCs was not forthcoming. However, for the RTC produced by Bylappa, the same yardstick was not applied by the Appellate Court. Bylappa has admittedly not produced any document to establish as to on what basis his name was entered in the cultivator's column and yet he relied upon the very same RTC, in which the name of the 1st plaintiff is shown to be the owner, as proof of his possession. As stated above, Bylappa claimed that he was the owner of the suit property and yet the very revenue documents produced by him indicated that the 1st plaintiff was

the owner of the suit property. This glaring contradiction in the RTCs cast a serious doubt on the veracity of the RTC produced by Bylappa.

48. It may also be relevant to state here that Chennaiah @ Doddachennaiah and Ningaiah produced an extract of the Preliminary Register (Ex.P.2) [which was also produced by Bylappa and was marked as (Ex. D-10)] in which the name of the 1st plaintiff's father Muddaiah's name and the name of the 1st plaintiff had been entered as owners. The said preliminary register also records gift deed executed in favour of Kalamma in 1921 and also the mortgage deed dated 28.09.1936 executed by the 1st plaintiff in favour of Bylappa. These entries in the Preliminary register confirm the flow of title to Kalamma and also to her husband and her son.

49. Chennaiah @ Doddachennaiah and Ningaiah also produced three RTCs for the period 1983-84 to 87-88, 1988-89 to 90-91 and 1988-89 to 92-93 as (Ex.P.3 to Ex.P.5) and in all these RTCs, the name of Channaiah is recorded in the owner's column and in the cultivator's column, the name of Doddachinnaiah is recorded. In addition to the RTCs,

Chennaiah @ Doddachennaiah and Ningaiah also produced Patta Books Ex.P.7 and Ex.P.8 in which it is recorded that Chennaiah @ Doddachennaiah had remitted the taxes for the period of 1973-4 to 1990-91 and they also produced tax paid receipts (Ex.P.9 to Ex.P.23) for the years 1989-90 up to 2000-2001. In all these documents, the name of the 1st plaintiff was shown as the Khatedar who was paying the taxes. These revenue records i.e, the Pahanis, the RTCs and the Patta Books which corroborate with each other clearly indicate that the revenue records support the fact that Chennaiah @ Doddachennaiah and Ningaiah were in possession not only as on the date of the suit but also for a considerably long period of time prior to the filing of the suit.

50. The Appellate Court though held that Chennaiah @ Doddachennaiah and Ningaiah had produced the revenue records indicating their possession right from the year 1965 to 1988-89, i.e., till the filing of the suit, it has nevertheless proceeded to ignore these documents on the ground that the basis on which the revenue records had been entered was not forthcoming from the revenue records. The Appellate Court has failed to notice that revenue records in which the name of

Chennaiah @ Doddachennaiah and Ningaiah stood for more than 20 years was admitted by Bylappa in his written statement wherein he stated that he had challenged the entries before the Tahsildar. This assertion of Bylappa establishes the entry of the 1st plaintiff's name were found in the revenue records for a considerably long period of time, which leads to the inference that Chennaiah @ Doddachennaiah and Ningaiah were in possession of the suit property.

51. Bylappa also stated that a letter had been issued by the Officer on Special Duty for the Supply of Fuel, Bangalore city, under Rule 75-A of the Defence of India Rules, addressed to him, as per Ex D-9, stating that the suit property was being requisitioned and in it, it had been clearly stated that he was in possession and this also established his right over the property. A perusal of this document indicates that the survey number of the land itself is not mentioned and therefore, this document cannot in any way establish the possession of Bylappa over the suit property.

52. It is therefore clear that though there were revenue records which clearly indicated the possession of Chennaiah @ Doddachennaiah and Ningaiah, both the Courts have chosen to ignore the same by misreading them completely and arriving at a completely erroneous conclusion. In conclusion, since the title of Chennaiah @ Doddachennaiah and Ningaiah was not in doubt and the documents produced by them clearly indicated their possession for a considerably long period of time, both the Courts were not justified in dismissing the suit and the same are therefore required to be set aside and as a consequence, the established possession of Chennaiah @ Doddachennaiah and Ningaiah would have to be protected by a decree of injunction.

Regarding the second substantial question of law:

53. It is not in dispute that during the pendency of the suit itself, both the 1st plaintiff and Bylappa died and their legal representative were brought on record and these legal representatives prosecuted not only the suit but also the appeal which arose out of the dismissal of the suit and also this second appeal. The argument that is sought to be

advanced in this second appeal is that the suit being one for injunction, on the death of the 1st plaintiff, the suit could not continue and similarly on the death of Bylappa, the suit had to abate.

54. The moot question that therefore arises for consideration in this second appeal is whether the right to sue survives in a suit instituted for injunction simpliciter?

55. An injunction, as stated under the Specific Relief Act, is a preventive relief granted at the discretion of the Court. An injunction, which is granted up to a limited time or until further orders of the court, is called a temporary injunction, while an injunction granted by a decree at the hearing of the suit and upon merits of the suit, is called a perpetual injunction. A decree of perpetual injunction perpetually enjoins a defendant from the assertion of his right or from the commission of an act which is contrary to the rights of the plaintiff. There is absolutely nothing indicated in provision of Part III or Part IV of the Specific Relief, which even remotely indicates that an injunction is a right which is personal to the plaintiff.

56. A personal right is a right that can be enjoyed only by an individual on his own and it is a right that cannot survive his life. Such kinds of personal rights are relatable only to a limited category of suits, such as a suit for defamation, suit for damages for the personal injuries suffered, a suit for bankruptcy, a suit for dissolution of marriage, etc.,

57. The Hon'ble Apex Court in the case of ***PURAN SINGH AND OTHERS VS. STATE OF PUNJAB AND OTHERS*** reported in ***(1996) 2 SCC 205*** has stated as follows:

> *"4. A personal action dies with the death of the person on the maxim "action personalis moritur cum persona". But this operates only in a limited class of actions ex delicto, such as action for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the granting of the relief would be nugatory. (Girja Nandini v. Bijendra Narain, 1967 (1) SCR 93). But there are other cases where the right to sue survives in spite of the death of the person against whom the proceeding had been initiated and such right continues to exist against the legal representative of the deceased who was a party*

to the proceeding. Order 22 of the Code deals with this aspect of the matter. Rule 1 of Order 22 says that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. That is why whenever a party to a suit dies, the first question which is to be decided is as to whether the right to sue survives or not. If the right is held to be a personal right which is extinguished with the death of the person concerned and does not devolve on the legal representatives or successors, then it is an end of the suit. Such suit, therefore, cannot be continued. But if the right to sue survives against the legal representative of the original defendant, then procedures have been prescribed in Order 22 to bring the legal representative on record within the time prescribed. In view of Rule 4 of Order 22 where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant dies and the right to sue survives, the Court, on an application being made in that behalf, shall cause the legal representatives of the deceased defendant to be made a party and shall proceed with the suit. If within the time prescribed by Article 120 of the Limitation Act, 1963 no application is made under sub-rule (1) of Rule 4, the suit shall abate as against the deceased defendant. This Rule is based not only on the sound principle that a suit cannot proceed against a dead person, but also on the principle of natural justice that if the original defendant is dead, then no decree can be passed against him so as to bind his legal

> *representative without affording an opportunity to them to contest the claim of the plaintiff. Rule 9 of Order 22 of the Code prescribes the procedure for setting aside abatement.*

Thus, it is only in certain specified suits that the prayers made in the plaint does not and cannot survive beyond the life of the parties and it is only in those limited kinds of cases that a suit would abate on the death of either the plaintiff or defendant.

58. The right to enjoy possession of an immovable property is not a right that can be enjoyed only by one person and it is not a right that cannot survive beyond the life of that person. The right to enjoy property is a transferable right and thus is not limited to any one person. On the death of a person, the right to enjoy possession of that property can and does survive to his legal representative.

59. A legal representative is defined under Section 2 (11) of the CPC and the same reads as under:

> *"legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate*

> *of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.*

60. As could be seen from the said definition, a person who intermeddles with the estate of the deceased is also considered a legal representative. Thus, a person in whose favour the rights of a property devolve by operation of law or by way of a testament would be a legal representative since he acquires a right to intermeddle with the estate of the deceased. Thus, it is clear that in a suit relating to the grant of a perpetual injunction in respect of an immovable property, the right to sue is not personal to the plaintiff but survives to his legal representative and the suit for injunction would not therefore abate.

61. In fact, the prayer of Chennaiah @ Doddachennaiah and Ningaiah in the suit was as follows:

> *"WHEREFORE, it is prayed that this Hon'ble Court be pleased to grant permanent injunction, restraining the defendant, his agents, fellowmen or any one claiming on his behalf from interfering with the peaceful possession and enjoyment of the suit schedule*

property of the plaintiffs and also not to remove the jack fruit free and not to cut in the suit schedule lands and to issue such other relief and this Hon'ble Court deems fit to grant in the circumstances of the case, in the interests of justice and equity."

62. It is thus clear from the prayer of Chennaiah @ Doddachennaiah and Ningaiah itself that they had not only sought for a decree of injunction against Bylappa but also against anyone claiming through Bylappa. Thus, on the death of Bylappa, since the right of Bylappa does survive to his legal representatives, the suit would not abate and would have to continue against anyone claiming under Bylappa as his legal representative.

63. If it is to be held that in a suit for injunction, whenever a plaintiff or a defendant dies, the suit would abate, it would be virtually creating a never ending cycle of litigation, which obviously would result in an absurd situation where a party to suit is to be perennially litigating in courts.

64. In this regard, a reference must be made to Section 306 of the Indian Succession Act, which reads as follows:

> ***"306. Demands and rights of action of or against deceased survive to and against executor or administrator.*** *—*
>
> *All demands whatsoever, and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, 1860 (45 of 1860) or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory".*

65. A reading of this section makes it abundantly clear that except for causes of actions relating to

a. defamation, assault or other personal injuries not causing the death of the person and

b. except in the cases where upon the death of the party, the party cannot enjoy it or granting it would be nugatory,

all other causes of action survive the deceased. In a suit for injunction in relation to an immovable property, obviously, the

legal representative of the deceased would enjoy the relief that the original party (plaintiff or defendant) would have been entitled to by virtue of the succession or inheritance in their favour and thus the suit would not abate and would have to be continued by bringing the legal representatives of the deceased on record.

66. It is not in dispute that during the pendency of this appeal, Bylappa has alienated the suit property to a Society and the Society in turn claims to have obtained approvals to form a layout and thereafter allotted sites to its members. The Society has been impleaded as the 6th respondent and an application is also filed by the members of the said Society seeking to implead themselves as additional respondents. Documents are also sought to be produced to evidence the sale transaction and the approvals.

67. In respect of these alienations, it is needless to state that they are hit by the doctrine of lis pendens and neither the Society nor its members can escape the consequences of a decree being suffered by their vendor. This position is made explicitly clear by the Hon'ble Apex Court in

more than one decision. It would however be suffice to quote just one decision rendered by the Hon'ble Apex Court in the case of ***RAJ KUMAR VS SARDARI LAL AND OTHERS*** reported in (2004) 2 SCC 601, in which it has been stated as follows:

> "5. *The doctrine of lis pendens expressed in the maxim 'ut lite pendente nihil innovetur' (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act 1882. A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendente lite is treated in the eye of law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the Court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22 Rule 10 of the CPC. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 of the CPC confers a discretion on the Court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. Though not brought on record*

the lis pendens transferee remains bound by the decree."

68. In the light of the ratio laid down in this decision, the Society or its members would be bound by the decree passed against their vendor and they would consequently be also debarred from interfering with the possession of the 1st plaintiff and his legal heirs.

69. In the result, the second substantial question of law is also held in favour of Chennaiah @ Doddachennaiah and Ningaiah by holding that the relief of injunction would continue subsequent to the death of Bylappa, the original defendant and also the sale by his legal heirs in favour of the 6th defendant.

Regarding the 3rd substantial question of law:

70. As already discussed above, Ex.P.24, the mortgage deed, which is admitted by the original defendant, Bylappa, in his written statement, itself indicates that the suit property belonged to Chennaiah @ Doddachennaiah and Ningaiah and they were mortgaging the said property to secure a sum of Rs.125/- that they were borrowing from the

original defendant. Both the Courts have committed a serious error in not even noticing this document Ex.P.24, though Chennaiah @ Doddachennaiah and Ningaiah produced it and the original defendant also pleaded about the mortgage.

71. As already held above, the contents of this mortgage deed, establish that Bylappa was directly admitting the title of Chennaiah @ Doddachennaiah and Ningaiah and the complete disregard of this document by both the Courts have vitiated the judgments rendered by them.

72. Thus, the 3rd question of law is also answered in favour of Chennaiah @ Doddachennaiah and Ningaiah/appellants.

73. In view of all the three substantial questions of law being held in favour of Chennaiah @ Doddachennaiah and Ningaiah, the judgments of both the courts are required to be set aside and they are accordingly set aside.

74. Further, since it has been established that Chennaiah @ Doddachennaiah and Ningaiah were in lawful possession of the suit property, the suit of Chennaiah @

Doddachennaiah is decreed as prayed for. It is also hereby made clear that this decree would be binding not only on the legal representatives of the deceased original defendant (i.e., respondents 1 to 5 in this appeal) but also on the 6th respondent-Society and its members.

75. The second appeal is accordingly allowed and the suit of the Chennaiah @ Doddachennaiah, the 1st plaintiff is decreed as prayed for.

Sd/-
JUDGE

Jm/-