



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

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DATED THIS THE 10TH DAY OF MARCH, 2026

BEFORE

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

REGULAR SECOND APPEAL NO.200178 OF 2023 (DEC)

BETWEEN:

JAYANNA
S/O LATE ANANDAPPA @ DODDA ANANDAPPA
@ ANANTHUDU
AGED ABOUT 79 YEARS
OCCUPATION: BUSINESS
R/AT GOLMARKET AREA
RAICHUR - 584 101.

...APPELLANT

(BY SRI. JIDAGE KAILASH C., ADVOCATE)

AND:

- 1 . SMT. LUSAMMA
W/O SANNA ANANDAPPA
AGED ABOUT 74 YEARS
OCCUPATION:HOMEMAKER
- 2 . RAJAPPA
S/O SANNA ANANDAPPA
AGED ABOUT 49 YEARS
OCCUPATION :POLICE CONSTABLE
- 3 . A JAYAPPA
S/O SANNA ANANDAPPA
AGED ABOUT 34 YEARS
OCCUPATION

ALL RESIDENT OF ASHAPUR VILLAGE
TALUK AND DISTRICT RAICHUR-584 104.





- 4 . VIJAYAKUMAR
S/O LATE ANANDAPPA
@ DODDA ANANDAPPA @ ANANTHUDU
AGED ABOUT 64 YEARS
OCCUPATION: RAILWAY EMPLOYEE
R/AT RAICHUR-584 101.
- 5 . VINODKUMAR
S/O SHANTAPPA
AGED ABOUT 30 YEARS
OCCUPATION WORKING IN
RANGAMANDIR, RAICHUR
R/AT HOUSE NO.96, ASHAPUR VILLAGE
POST NELHAL, VIA KALMAL, RAICHUR-584 104.
- 6 . MOSAPPA
S/O DHANRAJ
AGED ABOUT 28 YEARS
OCCUPATION PRIVATE SERVICE
R/AT HOUSE NO.99, ASHAPUR VILLAGE
POST NELHAL, VIA KALMAL, RAICHUR-584 104.

...RESPONDENTS

(BY SRI. AMEET KUMAR DESHPANDE SENIOR COUNSEL FOR
SRI. GANESH V. DESHPANDE, ADVOCATE FOR R1 TO R3;
SRI. SYED JAVEED UL HAQ., ADVOCATE FOR R4;
ORDER DATED 27.07.2023 R-5 AND R-6 ARE DELETED)

THIS RSA IS FILED U/S. 100 R/W O.42 RULE 1 OF CPC
AGAINST THE JUDGMENT AND DECREE DATED 28.02.2023
PASSED IN R.A. NO.76/2019 ON THE FILE OF THE II ADDL.
DISTRICT AND SESSIONS JUDGE AT RAICHUR, DISMISSING
THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE
DATED 17.09.2019 AND 27.09.2019 PASSED IN O.S.
NO.263/2005 ON THE FILE OF THE II ADDL. SENIOR CIVIL
JUDGE AND JMFC AT RAICHUR.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 15.12.2025, COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT
DELIVERED THE FOLLOWING:



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

CAV JUDGMENT

This regular second appeal is by defendant No.1 in O.S.No.263/2005, aggrieved by the judgment and decree dated 17.09.2019, passed therein on the file of II Additional Senior Civil Judge and JMFC, Raichur, (hereinafter referred to as 'trial Court' for short) which is confirmed by the Judgment and Decree dated 28.02.2023 passed in R.A.No.76/2019 on the file of II Additional District and Sessions Judge, Raichur (hereinafter referred to as 'appellate Court').

2. The above suit in O.S.No.263/2005 is filed by plaintiffs namely Smt.Lusamma and her sons- Sri. Rajappa and Sri.A.Jayappa, contending *inter alia*

2.1 That one Sri.Hanumaiah had three sons namely Anandappa, Ananthadu and Devadas. Anandappa is the husband and father of the plaintiffs respectively.



Ananthudu is the father of defendant Nos.1 and 2, and Devadas is defendant No.3.

2.2 Anandappa was in possession and cultivation of inam land bearing Sy.No.1358 measuring 13 acres 12 guntas and land in Sy.No.1366 measuring 5 acres 4 guntas both situated within the limits of Raichur Arlibenchi as a tenant under the Inamdar namely Raghavendrachari. The said lands are referred to as suit schedule properties.

2.3 That on the commencement of Hyderabad Inam Abolition Act, 1955, said Anandappa being the tenant of suit schedule properties filed an application for grant of occupancy rights in terms of the provisions of said Act. The competent authority granted the occupancy rights by order dated 02.01.1962 passed under Section 10 of the said Hyderabad Inam Abolition Act, 1955. Thus, he was in possession and enjoyment of the suit schedule properties prior to and subsequent to the grant without any interference from anyone whomsoever.



2.4 That Smt.Easteramma, wife of Ananthudu and mother of defendants 1 and 2- had filed a suit for permanent injunction during her lifetime against Anandappa and Devadas in O.S.No.138/1995 on the file of Additional Civil Judge (Junior Division), Raichur. Said Smt.Easteramma died during the pendency of the said suit. Defendants 1 and 2 were brought on record as her legal representatives.

2.5 Anandappa had also filed a suit for permanent injunction against said Smt.Easteramma and Devadas in O.S.No.170/1996 on the file of Additional Civil Judge (Junior Division), Raichur.

2.6 By a common judgment and decree dated 30.06.2005, suit in O.S.No.138/1995 filed by Smt.Easteramma was decreed while suit in O.S.No.170/1996 filed by Anandappa was dismissed. That on the strength of the said decree of permanent injunction passed in O.S.No.138/1995, defendants 1 and 2



dispossessed the plaintiffs from suit schedule properties on 13.08.2005.

2.7 That the said common judgment and decree dated 30.06.2005 was erroneous as it had given finding that the name of the father of defendants 1 and 2 was Dodda Anandappa, instead of Ananthudu. That the said Ananthudu had not cultivated the suit schedule properties at any point of time as he was in railway service. Plaintiffs being the wife and children of Anandappa, the grantee of land are the owners, entitled to remain in possession of suit schedule properties.

2.8 Alternatively it is pleaded that in the event of the Court coming to the conclusion that the suit schedule properties are joint family properties of the parties to the suit, plaintiffs in the alternate seeks for relief of partition of their share in the suit schedule properties.

Contending as above sought for following relief:

(a) a decree is and be passed declaring the plaintiffs as owners of the suit lands bearing



Sy.No.1358 measuring 13 acres 12 guntas and Sy.No.1366 measuring 5 acres 4 guntas L.R.9.49 both situated in the limits of Raichur(Arlibenchi) and the plaintiffs are to be put in possession of the suit lands by evicting the defendants 1 and 2.

3. Written statement was filed by defendant No.1 contending:

3.1 That the name of husband of the plaintiff No.1 and name of the father of plaintiffs 2 and 3 respectively is wrongfully and willfully described by the plaintiffs as "Anandappa" instead of "Sanna Anandappa". So also they have wrongly described the name of the father of defendants 1 and 2 only as "Ananthudu" though he was also called and identified as "Anandappa" @ "Dodda Anandappa".

3.2 Filing of the suits in O.S.No.138/1995 and O.S.No.170/1996 as stated in the plaint and passing of common Judgment and decree dated 30.06.2005 is admitted. Defendant No.3-Devadas was one of the defendants in the said suits in O.S.No.138/1995 and O.S.No.170/1996. Since he supported the case of plaintiffs



therein he has been deliberately impleaded as defendant No.3 in the present suit as well.

3.3 That plaintiffs not having preferred any appeal against the said common judgment and decree dated 30.06.2005 passed in the aforesaid suits, the same has become final and binding. The issue regarding title, ownership and possession of suit schedule properties raised in the present suit was thus directly and substantially the same in the said former suits and hence the present suit was barred by *constructive resjudicata*.

3.4 The suit was also barred in view of provisions of Order II Rule 2 of CPC. Plaintiffs not having claimed relief of declaration in the earlier suit in O.S.No.170/1996 were precluded from instituting the further proceedings. Relief of declaration is also barred by limitation.

3.5 It is further contended that the plaintiffs have falsely described the name of the husband of plaintiff No.1 as well as the father of plaintiffs 2 and 3 as "Anandappa"



to confuse and also to claim the suit schedule properties. In fact Anandappa also known as Dodda Anandappa also known as Ananthudu was the name of father of defendants 1 and 2 who was the absolute owner in possession of the suit schedule properties and his name was also reflected in the record of rights. The name of the husband of plaintiff No.1 and father of plaintiffs 2 and 3 was factually "Sanna Anandappa". Plaintiffs have therefore with malafide intention wrongly shown his name as "Anandappa".

3.6 That after service of summons in O.S.No.138/1995, husband of the plaintiff No.1 as well as father of plaintiffs 2 and 3 appeared and identified himself as "Sanna Anandappa". However subsequently said person changed his version by describing himself as "Anandappa" so as to claim the suit schedule properties standing in the name of Anandappa i.e., father of defendants 1 and 2. Material pleadings and other documents in O.S.138/1995



and O.S.No.170/1996 are relevant for proper and fair adjudication of the suit.

3.7 Father of defendants 1 and 2 was the eldest among the three sons of Hanumaiah and therefore he was called as Anandappa also as Dodda Anandappa and Ananthudu. He was the tenant in respect of the suit schedule properties under Inamdar by name Raghavendracharya. The Special Deputy Commissioner, Gulbarga Division had granted tenancy in his name and he paid the premium and also revenue in respect of suit schedule properties. His name was accordingly mutated in the record of rights.

3.8 Father of plaintiffs 2 and 3, although his name was "Sanna Anandappa" filed the suit in O.S.No.170/1996 under the wrong name of "Anandappa". The allegation of defendants 1 and 2 dispossessing the plaintiffs on 13.08.2005 on the basis of decree of permanent injunction passed in O.S.No.138/1995 is false. Infact, after the



demise of their father defendants 1 and 2, are now the owners in possession of the suit schedule properties.

4. Defendant No.2 filed his separate written statement reiterating and supplementing the averments made in the written statement filed by defendant No.1.

5. Necessary to note that defendant No.3-Devadas, the third son of Hanumaiah had filed a suit in O.S.No.13/2007 for partition and separate possession of the suit schedule properties contending that he and his two deceased brothers were cultivating the suit schedule properties. The grant of occupancy rights in favour of Dodda Anandappa was on the consent given by all of them. After the grant, the suit schedule properties were jointly cultivated by them to the extent of their shares. That there was a partition entered into between the three brothers in the year 1990 each being entitled for 1/3rd share in the suit properties. Hence, sought for partition.



Written statement has been filed in the said suit by the defendants therein denying the claim made by defendant No.3.

6. Based on the above pleadings, trial Court framed following issues in O.S.No.263/2005:

"(i) Whether the plaintiffs prove that, they are the owners of the suit properties?

(ii) Whether the plaintiffs are get to possess the suit properties?

(iii) Whether the plaintiffs prove that, there is cause of action for the suit?

(iv) Whether the suit is barred by res-judicata?

(v) Whether the plaintiffs are entitled to get decree?

(vi) What order or decree?

Additional issue:

1. Whether the defendant No.1 and 2 prove that, their father's name is Ananthadu and not Anandappa?"

And in O.S.No.13/2007:

"1. Whether the plaintiff prove that he has got share in the suit schedule properties. If so, what his share?

2. Whether the plaintiff prove that the suit schedule properties granted in favour of father of defendant No.5 for and on behalf of the joint family?

3. Whether the suit is barred by resjudicata?"



7. Plaintiff No.2 examined himself as PW-1 and one witness Neetiraj as PW2 and produced 27 documents marked as Exhibits P1 to P27. Defendant examined himself as defendant No.1 and two witnesses N.Anand as PW2 and Devadas-defendant No.3 as PW3 and produced 62 documents marked as Exhibits D1 to D62.

8. On appreciation of oral and documentary evidence, trial Court answered issues in O.S.No.263/2005 i.e., issue Nos.1 to 3, 5 in the affirmative and additional issue in the negative and issue No.4 as decided by the Principal District and Sessions Judge, Raichur in R.A.No.126/2009 and 127/2009 dated 27.01.2014 and answered issues in O.S.No.13/2007 i.e., issue Nos.1 and 2 in the negative and issue No.3 as decided by the Principal District and Sessions Judge, Raichur in R.A.No.126/2009 and 127/2009 dated 27.01.2014. Consequently, by its judgment and decree dated 17.09.2019 trial Court decreed the suit in O.S.No.263/2005 and dismissed the suit in O.S.No.13/2007.



9. Being aggrieved by the Judgment and decree dated 17.09.2019 passed in O.S.No.263/2005 defendants 1 and 2 preferred R.A.No.76/2019. The first appellate Court by its judgment and decree dated 28.02.2023 dismissed the regular appeal confirming the Judgment and decree passed by the trial Court in O.S.No.263/2005.

10. Being aggrieved by the Judgment and decree dated 28.02.2023 in R.A.No.76/2019, defendant No.1 in O.S.No.263/2005 has preferred this second appeal.

11. This Court admitted the appeal for consideration of the following substantial questions of law:

"(i) Whether the conclusions arrived at by the trial Court and First appellate Court are contrary to the oral and documentary evidence placed on record and as such perverse?

(ii) Whether the suit is barred by constructive res judicata in view of the Judgment and decree in O.S.No.138/1995 and 170/1996?

(iii) Whether the suit is barred under Order II Rule 2 of C.P.C?"



SUBMISSIONS:

12. Learned counsel for defendants/appellants submitted that the trial Court erred in readjudicating the issue regarding the confusion of names which was tried and determined in the earlier round of suits in O.S.138/1995 and O.S.No.170/1996 as such the present suit is barred by limitation. That neither the issues have been framed properly nor proper reasonings are given by the trial Court to the issues framed. That the trial Court has answered the issue relating to resjudicata as decided by Prl. District and Sessions Judge, Raichur in R.A.No.126/2009 and 127/2009 which is erroneous. That the trial Court and first appellate Court have not adverted to the issue of limitation and provisions of Order II Rule 2 CPC. That the documentary evidence in the nature of orders passed in the previous revenue proceedings and the writ proceedings indicate that Sanna Anandappa was the younger brother of Anandappa @ Dodda Anandappa which proceedings have attained finality and the trial Court



without adverting to said material evidence has granted relief in favour of the plaintiffs contrary to the reasons and conclusions arrived at in the earlier proceedings which has attained finality. Hence, seeks for allowing of the appeal.

13. Learned counsel for respondents 1 to 3 justifying the Judgment and decree passed by the trial Court submitted that in the earlier proceedings there was no issue which was substantially similar to the one involved in the present case, therefore the findings in the earlier proceedings cannot operate as resjudicata. That the finding and conclusion arrived at by first appellate Court declaring the plaintiffs to be absolute owners of suit schedule properties is based on oral and documentary evidence. That the concurrent finding of facts by the trial Court and first appellate Court cannot be interfered with under Section 100 CPC. In any event, he submitted that in the event of this Court coming to the conclusion of suit properties being joint family properties, alternate relief of



partition and separate possession be granted as pleaded and sought for at paragraph 11 of the plaint.

14. Heard and perused the records.

Re: Substantial Question of law No.1:

15. It appears that earlier by a common judgment and decree dated 18.11.2009, the aforesaid suits in O.S.No.263/2005 and O.S.No.13/2007 came to be dismissed by the trial Court on the preliminary issue of *resjudicata*, holding that dispute raised in the suits was directly and substantially the same in the earlier suits in O.S.No.138/1995 and O.S.No.170/1996. As against which regular appeals in R.A.No.126/2009 and R.A.No.127/2009 came to be filed before the Principal District and Sessions Judge at Raichur.

16. In the said appeals the Principal District and Sessions Judge at Raichur, relying upon the judgment of the Apex Court in the case of ***Sulochana Amma Vs Narayanan Nair*** reported in ***AIR 1994 SC 152***,



Aanimuthu Thevar (dead) by Lrs. Vs Alagammal and others reported in ***AIR 2005 SCW 3516***, adverted to the issue of *resjudicata* and has held that where the complicated question of fact and law relating to title exists, the Court shall direct the parties to file comprehensive suit for declaration instead of deciding the matter in their suit for bare injunction. It has further observed that it is necessary to consider whether or not in the previous suits, title was directly and substantially in issue. If the only issue involved in the previous suit was regarding lawful possession and the same was decided in the previous suits, the question of *resjudicata* would not arise in the subsequent suits. On this premise, the first appellate Court has come to the conclusion that since in the earlier judgment and decree dated 30.06.2005 passed in O.S.No.138/1995 and O.S.No.170/1996 there was no issue with regard to the title, the finding arrived at by the trial Court in dismissing the present suits on the issue of *resjudicata* was erroneous and accordingly by order dated



27.01.2014 allowed the said appeals, set aside the common judgment and decree and remanded the matter for fresh disposal by recording findings on all other issues.

17. It is upon such remand, the suits were taken for fresh consideration. It is under these circumstances, the trial Court and the first appellate court have re-adjudicated the entire matter including the issue with regard to the so called confusion of names of Dodda Anandappa and Sanna Anandappa. However the trial Court and the first appellate Court have not adverted to Issue No.4 and Issue No.3 framed in the said suits regarding whether the suits were barred by *resjudicata*. The trial Court and the first appellate Court have found that the said issues have already been decided by the first appellate Court in R.A.No.126/2009 and R.A.No.127/2009 by order dated 27.01.2014, as such have not adverted to the same.

18. In the process of re-adjudicating the matter, the trial Court and the first appellate Court have completely



reversed the findings and conclusions that were arrived at in the earlier Judgment and decree passed in the suits in O.S.No.138/1995 and O.S.No.170/1996.

19. In the judgment and decree dated 30.06.2005 passed in O.S.No.138/1995 and O.S.No.170/1996, the trial Court at paragraphs 15 to 21 has come to the definite conclusion that Dodda Anandappa and Sanna Anandappa are two different persons and the suit schedule properties was indeed granted in favour of Dodda Anandappa and the trial Court also come to the conclusion of Dodda Anandappa and his legal heirs being in possession of the property granted the decree of permanent injunction restraining Lusamma and Rajappa and Jayappa, the legal heirs of Sanna Anandappa from interfering with the same.

20. Contrary to the above findings and conclusion trial Court and the first appellate Court in the present suit in O.S.No.263/2005 has again taken up the issue with regard to the confusion between the names of 'Dodda



Anandappa' and 'Sanna Anandappa' and have come to a conclusion that Anandappa is the name actually belonging to the husband and father respectively of the plaintiffs. That the name of father of defendants was Ananthudu. And there were no names as 'Dodda Anandappa' and 'Sanna Anandappa' ever existed. That the suit schedule properties was indeed granted in the name of Anandappa, the husband and father respectively of the plaintiffs. Accordingly accepted their case and decreed the suit as sought for. This reasoning has been accepted by the first appellate Court and has concurred with the same which has resulted in the present appeal.

21. Learned counsel for the defendant No.1/appellant vehemently submitted that the conclusion arrived at by the trial Court concurred and confirmed by the first appellate Court in the impugned Judgment and decree are not in consonance with the documentary and oral evidence.



22. It is settled position of law that an appeal under Section 100 CPC can be entertained by the High Court only on substantial question of law. However, if the findings of the subordinate Courts on facts are contrary to the evidence available on record, such findings would amount to perversity and can be set aside by the High Court in appeal under Section 100 CPC. Apex Court in the case of ***Bondar Singh and others Vs Nihal Singh and others*** reported (2003) 4 SCC 161 at paragraph 4 has held as under:

"4. Before we proceed further it is necessary to notice a preliminary argument raised by the learned counsel for the appellants. It was contended that the question of possession is a question of fact and the High Court while exercising power under Section 100 of the Code of Civil Procedure, had no jurisdiction to upset the findings on this question recorded by the lower appellate Court. An appeal under Section 100 C.P.C. can be entertained by the High Court only on a substantial question of law. There can be no quarrel with this legal proposition. The scope of powers of High Court under Section 100 C.P.C is a matter of settled law. The learned counsel for the appellant cited several judgments in support of his contention. We do not consider it necessary to discuss these decisions because so far as the question of powers of High Courts under Section 100 C.P.C. is concerned, it needs no discussion. If the findings of the subordinate courts



on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under Section 100 C.P.C. A High Court cannot shut its eyes to perverse findings of the courts below. In the present case the findings of fact arrived at by the lower appellate court were contrary to evidence on record and, therefore, perverse and the High Court was fully justified in setting aside the same resulting in the appeal being allowed and suit being decreed."

23. This Court in the light of there being two completely contradictory findings given by the trial Court i.e., findings in O.S.No.138/1995 and O.S.No.170/1996 and in the present suits in O.S.No.263/2005 and O.S.No.13/2007, on the issue regarding confusion in the names of "Anandappa", "Dodda Anandappa" and "Sanna Anandappa", is constrained to reappraise the oral and documentary evidence led in by the parties. While in the earlier suits in O.S.No.138/1995 and O.S.No.170/1996, the trial Courts have held "Anandappa" was known as "Dodda Anandappa" who was the husband and father of plaintiffs in O.S.No.138/1995 (father of defendants 1 and 2 in the present suit) and he was grantee of the suit land.



In the subsequent suit the trial Court and first appellate Court have held that there is no person called either as "Dodda Anandappa" or "Sanna Anandappa". It is only Anandappa, the husband and father of the plaintiffs who was also grantee and owner of the land.

24. The substantial questions of law No.1 is therefore required to be addressed by reappreciating the oral and documentary evidence placed on record.

25. The undisputed document-Exhibit P6 which is also marked as Ex.D23 is the order dated 02.01.1962 passed by the Special Deputy Commissioner for Inam Abolition, Arlibenchi, Gulbarga Division under Section 10 of the Hyderabad Inam Abolition Act, 1955. Perusal of which would indicate that one Sri.Anandappa, S/o Hanumayya of Arlibenchi had applied for registration of occupancy rights of Khairathi dry inam in respect of suit schedule properties being land bearing Sy.No.1358 measuring 13 acres 12 guntas and Sy.No.1366 measuring 5 acres 4 guntas both situated at Arlibenchi Taluk, Raichur, claiming to be



tenant/purchaser of the said lands. The suit properties originally belonged to one Inamdar Raghavendrachari, son of Venkappachari. The Special Tahsildar Inam Abolition, Raichur after conducting detailed enquiry in terms of the provisions of Section 8(1) of the said Act, 1955 has recommended for registration of occupancy rights on said Anandappa as non-protected tenant. The said document also indicate that Inamdar had given his consent in favour of the applicant-Anandappa and had stated that he had received a sum of Rs.4,000/- prior to the date of vesting. As such the Special Deputy Commissioner conferred the occupancy rights in the name of said Anandappa.

26. Ex.P16 which is also marked Ex.D24 is the endorsement dated 02.08.1962 issued by the Special Deputy Commissioner Inam Abolition, Gulbarga Division, confirming occupancy rights in the name of said Anandappa S/o Hanumayya.

27. Exhibit-D21 is a statement on oath made by Raghavendrachari, son of Venkatappachari, confirming



receipt of Rs.4,000/- from Anandappa towards the sale consideration of his inam lands under Khairathi grant in respect of suit schedule properties.

28. Exhibit D22 is a statement on oath made by Anandappa son of Hanumayya shown as Christian doing agriculture occupation, having paid Rs.4,000/- towards the sale consideration to said Inamdar.

29. Exhibit D28 is the copy of extract of the pahani pertaining to the aforesaid lands. Column No. 16 of the said document indicate name of Anandappa S/o Hanumayya having purchased the said land.

30. Exhibit D29 to D35 are the RTC Extract for the years 1964 to 1994-95 in respect of land in Sy.No.1358 measuring 13 acres 12 guntas in which name of Anandappa is shown.

31. Similar is documents Exhibits D36 to D43 pertaining to land in Sy.No.1366 in which name of



Anandappa son of Hanumayya is shown to have purchased the land.

32. The aforesaid documents indicate grant of occupancy right in the name of Anandappa son of Hanumayya. Thus, till the year 1994 there appears to have been no dispute with regard to the said aspect of the matter.

33. Exhibit D55 is the order dated 23.02.1991 passed by the Executive Shirasthedar, Office of Tahsildar, Raichur in RRT No.90-91:260. The said document indicate the applicant therein being one "Sanna Anandappa" and objectors being 'Anandappa', S/o Hanumayya and Jayanna, S/o Anandappa. Perusal of the said document indicate that 'Sanna Anandappa' had filed objections for mutating the name of 'Dodda Anandappa' in respect of suit schedule properties. It is contended that suit schedule properties belonged to 'Anandappa', 'Sanna Anandappa' and 'Devadas'. All three being sons of Hanumayya and they having jointly purchased the same and the



khatha/patta having been made in the name of 'Dodda Anandappa' for the sake of convenience. Taking into consideration the said contention raised by 'Sanna Anandappa', the Executive Shirasthedar has passed the order in exercise of power under Section 129(4) of the Land Revenue Act and Rules 43 and 67 of the Land Revenue Rules, directing registration of the khatha in respect of land bearing Sy.No.1358 measuring 13 acres 12 guntas in the names of (1) Dodda Anandappa to an extent of 4 acres 17 guntas (2) Sanna Anandappa to an extent of 4 acres 17 guntas and (3) Devadas to an extent of 4 acres 18 guntas. And as regards land in Sy.No.1366, measuring 5 acres 04 guntas he directed the same to be registered jointly in the name of the said three persons to prevent violation of provisions of the Fragmentation Act.

34. As against the aforesaid order at Exhibit D55, Anandappa had preferred an appeal before the Assistant Commissioner, Raichur. By order dated 23.03.1993 produced at Ex.D46, the appeal was allowed by the



Assistant Commissioner in exercise of power under Section 136(2) of the Land Revenue Act, 1964 and set aside the order passed by the Executive Shirasthedar dated 23.02.1991 and had directed the respondents namely Sanna Anandappa and Devadas therein to establish their rights before the Civil Court.

35. As against the aforesaid order, Sanna Anandappa had approached this Court by filing a writ petition in W.P.No.18352/1993. The said writ petition came to be dismissed by order dated 06.07.1993 as per Exhibit D47, wherein this Court accepting the reason assigned by the Assistant Commissioner directing the parties to approach the Civil Court, found the writ petition did not merit consideration. Accordingly dismissed the writ petition.

36. Thereafter, it appears, Dodda Anandappa's wife Smt.Easteramma and her two sons had filed a suit in O.S.No.138/1995 against Sanna Anandappa and Devadas, seeking relief of injunction. Similarly, Sanna Anandappa



also had filed a suit in O.S.No.170/1996 before the Additional Civil Judge, Junior Division, Raichur. By a common judgment and decree dated 30.06.2005 produced at Ex.P3, suit filed by Easteramma and her sons Jayanna and Vijaykumar came to be decreed while the suit filed by Sanna Anandappa in O.S.No.170/1996 came to be dismissed.

37. Necessary to note that though in the suit in O.S.No.170/1996 name of the plaintiff is shown as Anandappa who is admittedly the husband and father respectively of plaintiffs in the present suit. In O.S.No.138/1995, he had filed his vakalath as per Exhibit D51, describing himself as Sanna Anandappa and has affixed his signature in Kannada as Sanna Anandappa. His brother Devadas had also engaged the very same advocate and he has also joined execution of very same vakalath -Ex.D51.

38. An application in IA No.III under Section 151 of CPC was also filed by Sanna Anandappa and Devadas



produced Exhibit D52 describing himself as Sanna Anandappa. Affidavit accompanying said application also signed by the said person on 26.06.1995. The said application was filed seeking permission to file vakalathnama in which he has described himself as Sanna Anandappa. Third defendant has also filed an affidavit in the said suit in O.S.No.138/1995.

39. It appears said Sanna Anandappa has passed away on 08.01.2000 thereupon his wife Lusamma and sons Rajappa and Jayappa have made an application under Order XXII Rule 2 to Rule 4 read with Section 151 CPC in M.A.No.4/1998. The said application along with affidavit filed therein is produced at Exhibit D56. The said affidavit is sworn to by Rajappa. At paragraph 2, he has described his father's name as Sanna Anandappa.

40. Till these documents there appears to be no dispute with regard to names and identity of Anandappa, Sanna Anandappa and Devadas, all the sons of Hanumayya.



41. It appears dispute with regard to the identity and confusion in the names of Anandappa and Sanna Anandappa became serious after the demise of Sanna Anandappa.

42. Though the said suit in O.S.No.138/1995 filed by Easteramma was one for bare injunction, since the legal heirs of Sanna Anandappa had disputed the very identity of names of Sanna Anandappa and Anandappa, the trial Court therein in its Judgment dated 30.06.2005 passed in O.S.No.138/1995 connected with O.S.No.170/1996, the issue raised by the defendants with regard to the so-called confusion of names of Dodda Anandappa and Sanna Anandappa has been adverted to in detail with reference to the very vakalath and applications filed by Sanna Anandappa and his children. As could be seen from the contents of paragraphs 15 to 21 of the said judgment, the trial Court after appreciating the evidence placed on record has come to the conclusion that Dodda Anandappa and Sanna Anandappa are two different persons. That



Anandappa was also known as Dodda Anandappa and Ananthudu. Further referring to the oral and documentary evidence led in by the plaintiffs therein, the trial Court therein has come to the conclusion that the suit schedule properties were indeed granted in the name of Anandappa as he had paid a sum of Rs.4,000/- to the original inamdar. It has thus come to the conclusion of Dodda Anandappa being in possession of the suit schedule properties thereby granted the relief of permanent injunction in favour of his wife Easteramma since deceased by his legal representatives Jayanna, the appellant herein and his brother Vijaykumar, as sought for. The suit filed by Sanna Anandappa later represented by his wife and children came to be dismissed. This judgment and decree has attained finality.

43. In the present suit in O.S.No.263/2005 which is now filed by Lusamma, Rajappa and Jayappa, the wife and sons of Sanna Anandappa, seeking comprehensive relief of declaration and possession alleging that they were



dispossessed by Jayanna and Vijaykumar, sons of Ananthudu on the strength of Judgment and decree dated 30.06.2005 passed in O.S.No.138/1995, they are yet again disputing and reagitating the confusion in the names of Anandappa, Dodda Anandappa @ Ananthudu.

44. As already noted and analyzed, Ex.P6 also marked as Ex.D23 revealing that the suit schedule properties was granted in the name of Anandappa, S/o Hanumayya. His name has been consistently reflected in the revenue records produced at Ex.D29 to D35 in respect of the suit schedule properties.

45. Ex.D55 is the order by the Executive Shirasthedar at the instance of Sanna Anandappa who objected for registration of khatha of suit schedule properties exclusively in the name of Dodda Anandappa. Jayanna, appellant herein is also arrayed as respondent No.2 while Dodda Anandappa has been arrayed as respondent No.1 in the said proceedings. The Executive



Shirasthedar accepting the objections raised by Sanna Anandappa by order dated 23.02.1991 directed registration of khatha jointly in the name of Dodda Anandappa, Sanna Anandappa and Devadas. This order has been challenged by Dodda Anandappa by filing appeal before the Assistant Commissioner which was allowed by order dated 23.03.1993 as per Ex.D46. Sanna Anandappa assailed the said order by filing writ petition in W.P.No.18352/1993 which was dismissed by order dated 06.07.1993 as per Ex.D47.

46. The trial Court though at page No.20 of its Judgment (end of paragraph 17) has though taken note of these exhibits has not discussed anything whatsoever. Similarly the first appellate Court has also not discussed/adverted to the said documents.

47. Had the first appellate Court and trial Court appreciated the said documentary evidence placed on



record perhaps the conclusion arrived at by them would have been otherwise.

48. As regards documents produced by the defendants at Ex.D51, D52, D53, D54, D56, being the vakalath, applications and affidavits filed by Sanna Anandappa in suit in O.S.No.138/1995 describing himself as Sanna Anandappa, the trial Court at paragraph 20 of its Judgment has merely glossed over the same and has made a cryptic observation that the said documents being part of suit in O.S.No.138/1995 filed by mother of Vijaykumar and Jayanna will not come to their aid. Similar is the observation by the first appellate Court.

49. Documents at Exhibits P6, D23 and D28-D43 are the documents evidencing grant of suit schedule properties in the name of Anandappa, s/o Hanamayya. The said Anandappa is also known as Dodda Anandappa which is evident by the proceedings at Exhibits D55, D46 and D47.



50. The trial Court and first appellate Court have essentially lost sight of the fact that the documents at Exhibits D55, D46 and D47 being the revenue proceedings established unequivocal admission on the part of Sanna Anandappa, the husband and father of the plaintiffs respectively that the suit schedule properties were indeed granted in the name of Dodda Anandappa, the father of appellant/defendants.

51. This fact of grant is also supported by the pleadings and evidence of Devadas the defendant No.3 in the suit who is the youngest brother of Dodda Anandappa and Sanna Anandappa who is also seeking for 1/3rd share in the suit schedule properties.

52. The aforesaid documents read along with documents Ex.D51 to D56 would unequivocally establish that the name of husband and father of the plaintiffs was indeed Sanna Anandappa and not Anandappa as sought to



be contended and erroneously accepted by the trial Court and first appellate Court.

53. Necessary at this juncture to note that the very admission of PW1 during his cross-examination, wherein PW1 has admitted as under:

"ನನ್ನ ತಾತನ ಹೆಸರು ಹನುಮಯ್ಯ ಅವರಿಗೆ ನಾಲ್ಕು ಜನ ಗಂಡ ಮಕ್ಕಳಿದ್ದು ಅವರು ಎಂದರೆ ಅನಂತಡು, ಚೆನ್ನಣ್ಣ, ಆನಂದಪ್ಪ ಮತ್ತು ದೇವದಾಸ, ಅನಂತಡುಗೆ ಆನಂದಪ್ಪ ಮತ್ತು ದೊಡ್ಡ ಆನಂದಪ್ಪ ಅಂತಾ ಕರೆಯುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಂದೆ ಹೆಸರು ಸಾಯಿಬಣ್ಣವಿದ್ದು ಅವರಿಗೆ ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಕರೆಯುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಂದೆ ದಿ.8-1-2000ರಂದು ತೀರಿಕೊಂಡಿರುತ್ತಾರೆ. ದೊಡ್ಡ ಆನಂದಪ್ಪ ಮತ್ತು ಚೆನ್ನಣ್ಣ ಯವಾಗ ತೀರಿಕೊಂಡಿದ್ದಾರೆ ಎಂದು ನೆನಪಿಲ್ಲ. ಸಿವಿಲ್ ಜಡ್ಜ್, ರಾಯಚೂರು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಪ್ರತಿವಾದಿಯರು ಓಎಸ್ ನಂ: 138/1995 ಮಾಡಿದ್ದರು ನಾವು ಓಎಸ್ ನಂ: 170/1996 ಮಾಡಿದ್ದೆವು. ಸದರಿ ಎರಡು ದಾವೆಗಳು ಪ್ರಸ್ತುತ ದಾವಾ ಆಸ್ತಿ ಮೇಲೆ ಮಾಡಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಸದರಿ ಎರಡು ದಾವೆಗಳನ್ನು ಶಾಶ್ವತ ನಿರ್ಬಂಧ ಖಾತೆ ಕುರಿತು ಸಲ್ಲಿಸಿದ್ದು ಅವುಗಳಲ್ಲಿ ಓಎಸ್ ನಂ:138/1995 ಡಿಕ್ರಿ ಆಯಿತು ಓಎಸ್ ನಂ:170/1996 ಡಿಸಮಿಸ್ ಆಯಿತು ಎಂದರೆ ಸರಿ. ದಾವಾ ಆಸ್ತಿಗಳು ಮೂಲ ಇನಾಮ ಜಮೀನುಗಳು ಎಂದರೆ ಸರಿ. ಸದರಿ ಇನಾಮ ಖಾರೀಜ ಆಗಿ ಸದರಿ ದಾವಾ ಆಸ್ತಿಗಳು ದೊಡ್ಡ ಆನಂದಪ್ಪ ಅಲಿಯಾಸ್ ಆನಂದಪ್ಪನ ಹೆಸರಿಗೆ ಗ್ರಾಂಟ ಆದವು ಎಂದರೆ ಸರಿಯಲ್ಲ..... ಓಎಸ್ ನಂ:138/1995ನೇದ್ದರ ನಿಕೆ-41 ರಲ್ಲಿ ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಹೇಳಿ ನಮುದಿನಿ ಎಂ.ಎ. ನಂ.4/1998 ಹಾಕಿದ್ದೇವೆ ಎಂದರೆ ವಕೀಲರು ತಪ್ಪು ಬರೆದಿರಬಹುದು ಆದರೆ ಸದರಿ ಅಪೀಲು ನಾನು ಹಾಕಿದ್ದು ಓಎಸ್ ನಂ.138/1995ನೇದ್ದರ ನಿಕೆ 37 ಮತ್ತು ನಿಕೆ 38 ರಲ್ಲಿ ನಮ್ಮ



ತಂದೆ ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಹೇಳಿಯೆ ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಸಹಿಯನ್ನು ಅದರಲ್ಲಿ ನಿಜಿ 38(ಎ) ಗುರುತಿಸಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ಓಎಸ್ ನಂ: 138/1995ನೇದ್ದರ ವಕಾಲತ್ತ (ನಿಜಿ 36) ರಲ್ಲಿ ನಮ್ಮ ತಂದೆ ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಹೇಳಿಯೆ ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಸಹಿಯನ್ನು ಅದರಲ್ಲಿ ನಿಜಿ 36(ಬಿ) ಅಂತಾ ಗುರುತಿಸಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ತಹಸೀಲ್ದಾರವರ ಆದೇಶದ ವಿರುದ್ಧ ಪ್ರತಿವಾದಿಯರು ಎ.ಸಿ. ರವರ ಮುಂದೆ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಿದ್ದರು. ಅಲ್ಲಿ ತಹಸೀಲ್ದಾರವರ ಆದೇಶದವನು ವಜಾಗೊಳಿಸಿ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹೋಗಿ ಎಂದು ಆದೇಶಿಸಿದ್ದರು.

ಸದರಿ ಎ.ಸಿ. ರವರ ಆದೇಶದ ಪ್ರಕಾರ ಸದರಿ ಪಹಣಿ ಪತ್ರಿಕೆಗಳಲ್ಲಿ ಹೆಸರು ಆನಂದಪ್ಪ ಅಲಿಯಾಸ್ ದೊಡ್ಡ ಆನಂದಪ್ಪ ಅಂತಾ ದಾಖಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ಆದೇಶದ ವಿರುದ್ಧ ನಾವು ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಕ್ಕೆ ರಿಟ ಸಲ್ಲಿಸಿದ್ದೆವು ಎಂದರೆ ಅವರೇ ಸಲ್ಲಿಸಿದ್ದರು ಅನ್ನುತ್ತಾರೆ. ಓಎಸ್ ನಂ: 138/1995ನೇದ್ದರ ನಿಜಿ 32 ರಲ್ಲಿ ನಮ್ಮ ತಂದೆ ರಿಟ ಸಲ್ಲಿಸಿದ್ದರು ಅದರಲ್ಲಿಯೂ ಕೂಡ ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಹೇಳಿ ನಮೂದಿಸಿ ರಿಟ ಹಾಕಿದ್ದರು ಎಂದರೆ ಸರಿ. ಸದರಿ ರಿಟನಲ್ಲಿ ಎದುರುದಾರರ ಹೆಸರು ದೊಡ್ಡ ಆನಂದಪ್ಪ ಅಂತಾ ನಮೂದಿಸಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ಓಎಸ್ ನಂ: 138/1995ನೇದ್ದರ ನಿಜಿ-34 ರಲ್ಲಿ ನಮ್ಮ ತಂದೆ ಹೆಸರು ಸಣ್ಣ ಆನಂದಪ್ಪ ತಂದೆ ಹನುಮಯ್ಯ ಅಂತಾ ತೋರಿಸಿದ್ದಾರೆ ಎಂದರೆ ಅದು ತಪ್ಪು ತೋರಿಸಿದ್ದಾರೆ ಅಂತಾ ಹೇಳುತ್ತಾರೆ. ಓಎಸ್ ನಂ: 138/1995ನೇದ್ದರ ನಿಜಿ 33 ರಲ್ಲಿ ಪ್ರಸತಿವಾದಿಯ ತಂದೆ ಹೆಸರು ಆನಂದಪ್ಪ ಮತ್ತು ದೊಡ್ಡ ಆನಂದಪ್ಪ ಅಂತಾ ತೋರಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಅದರ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಎ.ಸಿ. ರವರ ಆದೇಶದ ಪ್ರಕಾರ ಓಎಸ್ ನಂ: 138/1995ನೇದ್ದರ ನಿಜಿ 31 ರಲ್ಲಿ ನಮ್ಮ ತಂದೆ ಹೆಸರು ಸಣ್ಣ ಆನಂದಪ್ಪ ತಂದೆ ಹನುಮಯ್ಯ ಅಂತಾ ತೋರಿಸಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ.

Deposition recorded on 29.07.2016

ನಮ್ಮ ತಂದೆಯ ಹೆಸರು ಯವಾಗಲು ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಇದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಎಂ.ಎ.ನಂ: 4/1998ರಲ್ಲಿ ನಾನು ಸಲ್ಲಿಸಿದ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ



ನನ್ನ ತಂದೆ ಹೆಸರು ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ಇದೆ ಎಂದರೆ ಹೌದು ಅದು ತಪ್ಪಾಗಿದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಸರ್ವೆ ನಂ:52 ಯವಾಗ ಖರೀದಿಸಿದ್ದಾರೆ ಎಂದು ಗೊತ್ತಿಲ್ಲ. ಅದನ್ನು ನಮ್ಮ ತಂದೆ ಮತ್ತು ದೊಡ್ಡಪ್ಪ ಖರೀದಿಸಿದ್ದಾರೆ ಅದರಲ್ಲಿ ಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ನಮೂದು ಇದೆ ಎಂದರೆ ಅದು ತಪ್ಪಾಗಿ ನಮೂದಾಗಿರುತ್ತದೆ. ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪಹಣಿ ಪತ್ರಿಕೆಗಳಲ್ಲಿಯೂ ಕೂಡಸಣ್ಣ ಆನಂದಪ್ಪ ಅಂತಾ ನಮೂದು ಇದೆ ಎಂದರೆ ಅದು ತಪ್ಪಾಗಿ ನಮೂದಾಗಿರುತ್ತದೆ. ನಮ್ಮದು ಇನ್ನೊಂದು ಜಮೀನುವಿದ್ದು ಅದರ ಸರ್ವೆ ನಂಬರ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಅದರ ಸರ್ವೆ ನಂ:51 ಎಂದರೆ ಸರಿ. ಅದರ ಪಹಣಿ ಪತ್ರಿಕೆಯಲ್ಲಿ ಆನಂದಪ್ಪ, ಕುರುಬರ ಸಾಬಣ್ಣ, ದೇವದಾಸ ಮತ್ತು ನರಸಮ್ಮಾ ಇವರು ಜಂಟಿ ಮಾಲೀಕರು ಅಂತಾ ನಮೂದಾಗಿದೆ ಎಂದರೆ ಸರಿ ಆದರೆ ಅದು ಸಣ್ಣ ಆನಂದಪ್ಪನಿಗೆ ಸಂಬಂಧಿಸಿದ್ದಲ್ಲ. ನನ್ನ ತಂದೆಗೆ ಸಣ್ಣ ಆನಂದಪ್ಪ, ಸಾಬಣ್ಣ, ವಾಯಣ್ಣ ಆಂತೂ ಕರೆಯುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ.

54. Thus from the above deposition of PW1 it is clear that he has admitted that name of his father shown and described as "Sanna Anandappa" in the suits in O.S.No.138/1995 and O.S.No.170/1996 as well as in the writ petition, though he has tried to give evasive answer.

55. The other evidence produced by the defendants are with regard to Dodda Anandappa having two daughters by name Hemalatha and Saroja which is confirmed by evidence of PW2. Ex.D11 is the SSLC certificate belonging to Hemalatha wherein her father's



name is shown as Anandappa. Ex.D14 is the transfer certificate of A.Vijaya who is defendant No.2. Ex.D15 is the order providing appointment of A.Vijaya on compassionate ground wherein his father's name is shown as Anandappa @ Ananthudu. Ex.D18, D19 and D20 are the notices issued by the Special Tahsildar Inam Abolition under Hyderabad Inams Abolition Act addressed to Anandappa. Ex.D57 is the Railway Defence Savings Provident Fund Declaration submitted by Anandappa showing his wife Easteramma, who is the original plaintiff in O.S.No.138/1995.

56. From the records it also appears both the trial Court and the first appellate Court were persuaded to hold that there existed no person called as Dodda Anandappa, inasmuch as Anandappa who is also known as Ananthudu was rendering services in Railway department as such he could not have cultivated the suit schedule properties being agricultural lands. This appears to have swayed in



the mind of the first appellate Court as found at paragraph No.40 of its Judgment.

57. The aforesaid finding cannot be sustained for the reasons that even the husband and father of the plaintiffs, who according to the defendants was Sanna Anandappa and according to plaintiffs was Anandappa was also a railway employee. Therefore if Dodda Anandappa could not have been considered as cultivating the suit schedule properties being a railway employee, same analogy should apply to husband and father of plaintiffs as he was also a railway employee. This is also emanating from evidence of PW2 and the evidence led in by the defendant No.3-Devadas who is the brother of Dodda Anandappa and Sanna Anandappa.

58. Thus from the aforesaid deposition and material evidence placed on record, it becomes clear that Dodda Anandappa and Sanna Anandappa are two different and distinct persons and the reasoning and conclusion arrived



at by the trial Court and the first appellate Court is therefore cannot be sustained as the same suffers from non appreciation of oral and documentary evidence and is thus led to perverse finding and conclusion.

Substantial question of law No.1 is answered accordingly.

Re: Substantial question of law No.2:

59. The question that arises is "whether the trial Court on remand by the first appellate Court could have re-adjudicated the matter giving completely contrary reasoning setting at naught the earlier judgment and decree passed in O.S.No.138/1995 and O.S.No.170/1996 by Court of competent jurisdiction.

60. Section 11 of CPC dealing with *resjudicata* reads as under:

11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between



the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be



deemed to claim under the persons so litigating
. 1

[Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as resjudicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

61. The Apex Court in the case of ***Sulochana Amma v. Narayanan Nair*** reported in ***AIR 1994 SC 152***, dealing with applicability of *resjudicata* on the issues that were concluded in a injunction suit has held "a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in the suit between the parties. When the same issue is put in issue in a lateral suit based on the title between the same



parties or their privies in the subsequent suit, the decree in the injunction suit equally operates as a *resjudicata*."

62. In the case of ***Sajjadanashin Syed MD.B.E.EDR.(d) by Lrs Vs Musa Dadabhai Ummer and others*** reported in **(2000) 3 SCC 350** the Apex Court has provided distinction between the matters directly in issue and matters collaterally and incidentally in issue wherein at paragraphs 15, 16 and 20 has held as under:

15. *Difficulty in this area of law has been felt in various jurisdictions and therefore some tests have been evolved. Halsbury says (Vol. 16, para 1538) (4th Edn.) that while the general principle is clear,*

"difficulty arises in the application of the rule, in determining in each case what was the point decided and what was the matter incidentally cognizable, and the opinion of Judges seems to have undergone some fluctuations".

(emphasis supplied)

16. *Spencer Bower and Turner on The Doctrine of Res Judicata (2nd Edn., 1969, p. 181) refer to the English and Australian experience and quote Dixon, J. of the Australian High Court in Blair v. Curran [(1939) 62 CLR 464, 553 (Aus HC)] CLR at p. 553 to say:*

"The difficulty in the actual application of these conceptions is to distinguish the matters



fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment."

The authors say that in order to understand this essential distinction, one has always to inquire with unrelenting severity — is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only, i.e. not more than part of the reasoning supporting the conclusion". It is well settled, say the above authors, "that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision".

20. To put it briefly, if in an earlier suit for injunction, there is an incidental finding on the title, the same will not be binding in a later suit or proceedings where title is directly in question. Unless it is established that it was necessary in the earlier suit to decide the question of title for granting or refusing the injunction and that the relief for injunction was found or based on the finding of title."



63. Thus, if an issue was necessary to be decided for adjudicating on principal issue and was decided, it would have to be treated as "directly and substantially" in issue.

64. In the former suits, the issue with regard to confusion of names of "Anandappa" known as "Dodda Anandappa" also known as "Ananthudu" as well as "Sanna Anandappa" has been adverted to and concluded which was necessary and a principal issue even for grant of permanent injunction wherein issue regarding title was incidentally addressed.

65. In the Judgment and order dated 27.01.2014 passed in R.A.No.126/2009 and R.A.No.127/2009, it is seen that while remanding the matter the first appellate Court is persuaded by the fact that in the earlier suit for bare injunction, the Court could not have granted the injunction and ought to have referred the parties to seek remedy by way of comprehensive suit for declaration of



title instead of deciding the issue on the title in a suit for mere injunction. The Court has further observed that the same goes to show that even if there was an issue regarding the title in a suit for injunction it cannot be decided in such a suit. This observation and conclusion has been arrived at by the first appellate Court on the earlier round of appeals referring to the judgment of the Apex Court in the case of ***Anathula Sudhakar Vs Buchi Reddy(dead) by LRs and others*** reported in **(2008) 4 SCC 594**.

66. One of the contentions urged is that in the earlier suit there was no issue framed with regard to the identity or the claim of Sanna Anandappa and Dodda Anandappa. Relevant at this juncture to refer to Judgment of the Apex Court in the case of ***Rajkishore Baral Vs Commissioner of Endowment and others*** reported in **2005 SAR Civil 2008**, wherein it is held that non framing of an issue would not be a bar for the Courts to adjudicate the matter particularly when the parties have gone ahead



and pleaded and led evidence and the same has been concurred conclusively by a Court of competent jurisdiction.

67. Thus, the trial Court and the first appellate Court, in the facts and circumstances of the case ought not to have re-adverted to the issue particularly with regard to the identity of "Dodda Anandappa" and "Sanna Anandappa" when in the earlier round of litigation based on the material placed by the parties and admitted by them the Court had come to the conclusion of "Dodda Anandappa" and "Sanna Anandappa" being different and distinct persons.

Substantial Question of law No.2 is answered accordingly.

Re: Substantial Question of Law No.3:

68. Order II Rule 2 CPC reads as under:

2. Suit to include the whole claim— (1) Every suit shall include the whole of the claim which the



plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

69. Since provision of Order II, Rule 2 bars remedy, therefore must be strictly construed (Gurinderpal Vs. Jagmittar Singh (2004) 11 SCC 219). Necessary to note that, upon the appeal filed by Dodda Anandappa before the Assistant Commissioner against the order dated 23.02.1991 of Executive Shirasthedar (Ex-D55) by order dated 23.03.1993 (Ex-D46), Assistant Commissioner had directed Sanna Annadappa and Devadas to have their rights established before the Civil Court. This order is confirmed by this Court by its order dated 06.07.1993 (Ex-D47) passed in WP. No.18352/1993 filed by Sanna



Anandappa. No action was taken by Sanna Anandappa thereafter.

70. Suit is O.S.No.138/1995 was filed for bare injunction by the wife and sons of Dodda Anandappa. Suit in O.S.No.170/1996 was filed subsequently by Sanna Anandappa himself though showing him to be Anandappa. Since, in the previously instituted suit exclusive claim over the suit schedule properties were made by the plaintiffs, the subsequent suit for injunction without seeking any leave of the Court for further relief had been filed by Anandappa. Therefore, present suit for declaration of title without seeking leave in the earlier suit could not have been filed more particularly when there was already an order as per Ex.D46 and D47 requiring him to establish his right before the Civil Court.

Substantial question of law No.3 is answered accordingly.



Moulding of relief:

71. While answering substantial question of law No.1 this Court has held the Judgment and decree passed by the trial Court and the First Appellate Court suffers from perversity. Having said that what is necessary to note is that in the proceedings before the Executive Shirasthedar initiated by Sanna Anandappa, he himself has claimed that the lands in question was joint family properties of the children of Hanumayya each being entitled for equal share therein.

72. As noted above initially Executive Shirasthedar in his order passed in the proceedings as per Ex-D55 had indeed divided suit schedule properties in favour of Anandappa, Sanna Anandappa and Devdas into three portions each being entitled for 4 acres 17 guntas in Sy.No.1358 and land in Sy.No.1366 was made jointly in the names of said three persons. This order was challenged by Dodda Anadappa which was allowed as per



Ex-D46. Sanna Anandappa had unsuccessfully filed writ petition in WP.No.18352/1993 which was dismissed. Clearly even according to Sanna Anandappa he was entitled only to $\frac{1}{3}^{rd}$ share in the suit schedule properties.

73. In the plaint in O.S.N0.263/2005 at paragraph No.11 the plaintiffs had themselves claimed that if the Court comes to the conclusion that the suit schedule properties was joint family properties, they be granted equal share in the suit schedule properties.

74. Also necessary to note that Hanumayya was an agriculturist who was the father of Anandappa, Sanna Anandappa and Devadas. Sanna Anandappa and Devadas in their proceedings have contended that they also contributed for the purpose of payment of sale consideration. Records also emanate both Dodda Anandappa and Sanna Anandappa were working in the Railway department. Since the family is an agricultural



family and Hanumayya was also an agriculturist, it is not clear whether Dodda Anandappa was in exclusive control, possession and cultivation of suit schedule properties in his own name or the grant and the payment of a sum of Rs.4,000/- was made by himself or on behalf of the family.

75. In the fitness of things, and in the light of the relationship between the parties, this Court deems it appropriate that the relief as sought for by the parties be moulded.

76. The Apex Court in the case of **J.Ganapatha and others Vs N.Selvarajalou Chetty Trust Rep. by its Trustees and others** reported in **2025 SCC online 633** at paragraph 20 has held as under:

"20. The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims



that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion. When moulding the relief, the court considers the issues and circumstances established during the full-fledged trial, looks at shortening the litigation, and then in its perspective, renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course."

77. From the pleadings, deposition and the documentary evidence of the parties, it becomes clear that the suit schedule properties were granted in the name of Anandappa son of Hanumayya, who was also known and referred to as Dodda Anandappa. Documentary evidence which emerged at an undisputed point in time, at the instance of husband and father of the plaintiffs, namely Sanna Anandappa, in the nature of objections filed for registration of khatha exclusively in the name of Dodda Anandappa and seeking partition of the property as seen at Exhibit D55, indicate that the parties were clear that the



said property was granted for and on behalf of the family consisting of three sons of Hanumayya. Paragraph 11 of the plaint filed by the plaintiffs would further fortify this true and original position of the case though subsequent to demise of Sanna Anandappa, the case has taken a different course of action. This view of this Court is also fortified by the very partition suit filed by Devadas, which was though dismissed and not appealed against. In the fitness of things and in the interest of justice based on the material evidence placed on record, this Court is of the view that the judgment and decree passed by the trial Court is required to be modified, holding that each branch of Anandappa also known as Dodda Anandappa, Sanna Anandappa and Devadas will be entitled to $\frac{1}{3}^{\text{rd}}$ share in the suit schedule properties.

78. It is noticed from the cause title of the appeal that Devadas, the third son of Hanumayya is stated to have passed away in the year 2019 leaving behind his two sons by name Shanthappa and Dhanraj who also stated to



have passed away. Their legal representatives namely Vinod Kumar, S/o Shanthappa and Mosappa, S/o Dhanraj though had been arrayed as respondents 5 and 6 by order dated 27.07.2023 upon the submission made by learned counsel for appellants, they have been deleted from the array of parties. In the light of this Court inclining to mould the relief by partitioning the suit schedule properties among the three branches of Hanumayya's sons namely Anandappa, also known as Dodda Anandappa, Sanna Anandappa and Devadas the earlier order dated 27.07.2023 is recalled and names Vinod Kumar and Mosappa have been restored as respondents 5 and 6.

79. Also to note that daughters of Dodda Anandappa namely Hemalatha and Saroja have not been made parties. Since the suit is pending from the year 2005 parties shall furnish the details of legal heirs of respective branches in Final Decree proceedings who will be entitled for their share out of 1/3rd share allotted to each of the branches.



80. Accordingly following:

ORDER

(a) Appeal is ***partly allowed.***

(b) The judgment and decree dated 17.09.2019 passed in O.S.No.263/2005 declaring the plaintiffs to be the exclusive owners of the suit schedule properties is set aside.

(c) Suit in O.S.No.263/2005 is partly decreed. The relief is moulded by partitioning the suit schedule properties into three equal shares. $1/3^{\text{rd}}$ share to the branch of Sanna Anandappa, $1/3^{\text{rd}}$ share to the branch of Dodda Anandappa and $1/3^{\text{rd}}$ share to the branch of Devadas, all being the children/grandchildren of Hanumayya.

Draw decree Accordingly.

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