



IN THE HIGH COURT OF KARNATAKA



KALABURAGI BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

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

REGULAR SECOND APPEAL NO.887 OF 2008 (DEC)

C/W

REGULAR SECOND APPEAL NO.200429 OF 2014

IN RSA No.887/2008

BETWEEN:

1. CHANDERAKANT S/O RAJARAM PATIL,
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.
2. SURYAKANT S/O RAJARAM PATIL,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O. VILLAGTE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.

...APPELLANTS

(BY SRI. DEEPAK V. BARAD, ADVOCATE)

AND:

1. GYANOBA S/O MAHADBA MANKARE,
SINCE DECD BY HIS LRS,
- 1A) SMT. GANGUBAI W/O. GYANOBA MANKARE,
AGED: 56 YEARS, OCC: HOUSEHOLD,
R/O. CHANDANHALLI,
TQ.HUMNABAD, DIST. BIDAR-585401.





- 1B) BALIRAM S/O GYANOBA,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O. CHANDANHALLI,
TQ.HUMNABAD, DIST. BIDAR-585401.
- 1C) VALMIK S/O GYANOBA,
AGE: 31 YEARS, OCC: AGRICULTURE,
R/O. CHANDANHALLI,
TQ.HUMNABAD, DIST. BIDAR-585401.
- 1D) SHANTABAI W/O NAGANNA,
AGE: 28 YEARS, OCC: HOUSEHOLD WORK,
R/O. KALWADI, TQ. BHALKI,
DIST. BIDAR-585401.
- 1E) CHITRABAI W/O SHARNAPPA,
AGE: 25 YEARS, OCC: HOUSEHOLD WORK,
R/O. VILLAGE MUSTARI,
TQ. HUMNABAD, DIST. BIDAR-585401.
- 1F) SRAWAN S/O MAHADBA MANKARE,
AGE: 58 YEARS, OCC: AGRICULTURE,
R/O. CHANDANHALLI, TQ. HUMNABAD,
DIST. BIDAR-585401.

...RESPONDENTS

(BY SRI. SACHIN M. MAHAJAN, ADVOCATE FOR R1(B), R1(C),
R1(F) AND R1(E)
V/O DTD. 7.1.2016 R1(B AND C) ARE TREATED AS
LRS OF R1(A);
V/O DTD. 29.02.2024 NOTICE TO R1(D) IS HELD SUFFICIENT)



IN RSA NO.200429/2014

BETWEEN:

1. CHANDRAKANTH S/O. RAJARAM PATIL,
AGE ABOUT 55 YEARS, OCC: AGRI,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR.
2. SURYAKANTH S/O. RAJARAM PATIL,
AGE ABOUT 51 YEARS, OCC : AGRI,
R/O. VILLAGE CHANDANHALLI,
TQ: HUMNABAD, DIST. BIDAR.

...APPELLANTS

(BY SRI. DEEPAK V. BARAD, ADVOCATE)

AND:

1. GANGABAI W/O. GYANBA MANKARI,
AGE: 81 YEARS, OCC: AGRI,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.
2. BALI RAM S/O. GYANBA MANKARI,
AGE: 58 YEARS, OCC : AGRI,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.
- 2A) RUKMINIBAI W/O BALIRAM,
AGE: ABOUT 60 YEARS, OCC: HOUSEHOLD,
R/O. CHANDANHALLI, TQ. HUMNABAD,
DIST. BIDAR.
- 2B) HARIDAS S/O BALIRAM,
AGE: ABOUT 35 YEARS, OCC: AGRICULTURE,
R/O VILLAGE CHANDHANHALLI,
TQ.HUMNABAD, DIST. BIDAR.



- 2C) SHEELA W/O PANDARI,
AGE: 30 YEARS, OCC: HOUSEHOLD,
- 2D) SHIVABAI W/O TANAJI,
AGE: 40 YEARS, OCC: HOUSEHOLD,
R/O LECTURE COLONY, GUNJ COLONY,
OPP: BAKKA HOUSE, BHALKI.
- 2E) URMILA W/O NARASAPPA,
AGE: 36 YEARS, OCC: HOUSEHOLD,
R/O AT SANGOLGI, TQ AND DIST. BIDAR.
3. VALMIK S/O. GYANBA MANKARI,
AGE: 51 YEARS, OCC : AGRI,
R/O. VILLAGE CHANDANHALLI,
TQ.: HUMNABAD, DIST. BIDAR-585401.
4. SHANTABAI W/O NAGANNA,
AGE: 48 YEARS OCC: AGRI,
R/O. VILLAGE KALYANRAO WADI,
NEAR CHINCHOLI- K,
TQ. HUMNABAD, DIST. BIDAR-585401.
5. CHITRA BAI W/O MALLAPPA CHINCHOLI,
AGE: 45 YEARS, OCC: AGRI,
R/O. VILLAGE MUSTARI,
TQ. HUMNAVAD, DIST. BIDAR-585401.
6. SRAWAN S/O. MAHADA MANKARI,
SINCE DECEASED BY HIS LRS,
- I. SHARNAMMA W/O. SRAWAN MANKARI,
AGE: 86 YEARS, OCC: HOUSEHOLD,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.
- II. MAHADEV S/O SRAWAN MANKARI,
AGE ABOUT 64 YEARS, OCC : AGRI.,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.



- III. JANKABAI W/O VEERAPPAP JAMADAR,
AGE: 61 YEARS, OCC: HOUSEHOLD,
R/O. HALLIKHED (B), TQ. HUMNABAD,
DIST. BIDAR-585401.
- IV. DASHRATH S/O SRAWAN MANKARI,
AGE: 51 YEARS, OCC: AGRI,
R/O VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.
- V. ZHARNAMMA W/O SURESH MAJKURI,
AGE:48 YEARS, OCC: HOUSEHOLD,
R/O. HULSOOR, TQ. BASAVAKALYAN,
DIST. BIDAR-585401.
- VI. SANJEEV S/O SRAWAN MANKARI,
AGE: 46 YEARS, OCC: AGRI,
R/O. VILLAGE CHANDANHALLI
TQ. HUMNABAD,
DIST. BIDAR-585401.
- VII VITHAL BAI W/O RAJAPPA,
AGE: 44 YEARS, OCC: HOUSEHOLD,
R/O. CHALKAPUR, TQ. BHALKI,
DIST. BIDAR-585401.
- VIII) RAJU S/O. SRAWAN MANKARI,
AGE: 42 YEARS, OCC : AGRI.,
R/O. VILLAGE CHANDANHALLI,
TQ. HUMNABAD, DIST. BIDAR-585401.
7. ISHWAR S/O. GUNDAPPA KALE,
AGE: 91 YEARS, OCC : NIL,
R/O. CHANDANHALLI, TQ. HUMNABAD,
NOW AT KHAYAD HULSOOR,
TQ. AURAD (B),
DIST. BIDAR-585401.



8. BHAV RAO S/O. VITHOBA KALE,
AGE: 48 YEARS, OCC : AGRI,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT JOLDABKA,
TQ. BHALKI,
DIST. BIDAR-585401.
9. RAO SAHEB S/O.VITHOBA KALE,
AGE: 46 YEARS, OCC : AGRI,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT JOLDABKA,
TQ. BHALKI DIST. BIDAR-585401.
10. BABU RAO S/O. VITHOBA KALE,
AGE: 44 YEARS, OCC : AGRI,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT JOLDABKA
TQ. BHALKI DIST. BIDAR-585401.
11. PRAKASH S/O. GOVIND KALE,
AGE: 51 YEARS, OCC: AGRI,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT KUSHNOOR,
TQ. AURAD (B),
DIST. BIDAR-585401.
12. RAGHU S/O GOVIND KALE,
AGE: 45 YEARS, OCC : AGRI,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT KUSHNOOR,
TQ. AURAD (B). DIST. BIDAR-585401.
13. SURESH S/O. GOVIND KALE,
AGE 43 YEARS, OCC: AGRI,
R/O. CHANDANHALLI,



TQ. HUMNABAD,
NOW RESIDING AT KUSHNOOR,
TQ. AURAD (B), DIST. BIDAR-585401.

14. RAJA S/O. GOVIND KALE,
AGE: 41 YEARS, OCC : AGRI,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT KUSHNOOR,
TQ. AURAD (B),
DIST. BIDAR-585401.
15. BAI D/O. GOVIND KALE,
AGE: 34 YEARS, OCC: HOUSEHOLD,
R/O. CHANDANHALLI,
TQ. HUMNABAD,
NOW RESIDING AT KUSHNOOR,
TQ. AURAD (B), DIST. BIDAR-585401.
16. AMBU BAI W/O GOVIND KALE,
AGE: 86 YEARS, OCC :HOUSEHOLD,
R/O. CHANDANHALLI,
TQ.HUMNABAD,
NOW RESIDING AT KUSHNOOR,
TQ, AURAD(B), DIST. BIDAR-585401

...RESPONDENTS

(BY SRI SACHIN M. MAHAJAN, ADVOCATE FOR R2 TO R5
AND R6(I) TO R6(VIII)
V/O DTD. 8.1.16 R2 AND R3 ARE TREATED AS LRS OF
DECEASED R1;
V/O DTD. 25.3.21 PASSED IN RSA887/08 NOTICE TO
R11 TO R16 IS HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF THE CPC,
PRAYING TO ALLOW THE ABOVE REGULAR SECOND APPEAL
AND SET ASIDE THE THE JUDGMENT AND DECREE DATED
21.08.2014 PASSED BY THE SENIOR CIVIL JUDGE AT
HUMNABAD IN R.A. NO. 15/2012 & THE JUDGMENT AND
DECREE DATED 18.04.2012 PASSED BY THE PRL. CIVIL
JUDGE AT HUMNABAD IN O.S. NO. 175/1998 AND
CONSEQUENTLY BE PLEASED TO DISMISS THE SUIT OF THE
PLAINTIFF.



THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.10.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENTS' THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

RSA.No.887/2008 is filed by the plaintiff in O.S.No.51/1989, on the file of Principal Civil Judge (Jr. Dn) Humnabad (hereinafter referred to as the 'Trial Court'), aggrieved by the judgment and decree dated 11.02.2002 passed therein by which the Trial Court dismissed the above suit of the plaintiff seeking relief of declaration and recovery of possession which is confirmed by the judgment and decree dated 14.02.2008 passed in R.A.No.13/2002 on the file of Civil Judge (Sr. Dn), Basavakalyan.

02. RSA.No.200429/2014 is filed by defendants No.11 and 12 in O.S.No.175/1998 on the file of Principal Civil Judge, Humnabad (hereinafter referred to as the 'Trial Court'), aggrieved by the judgment and decree dated 21.08.2014 passed therein decreeing the suit of the plaintiffs therein, which is confirmed in R.A.No.15/2012.



03. Plaintiffs in O.S.No.51/1989 are the defendants No.11 and 12 in O.S.No.175/1998. The defendants in O.S.No.51/1989 are the plaintiffs in O.S.No.175/1998. Since, the judgment and decree subject matter of these two proceedings are between the same parties, arising out of the common issues, these two appeals are taken up for common disposal.

04. The term 'plaintiffs' in this judgment shall be referred the plaintiffs in O.S.No.51/1989 who are also defendants No.11 and 12 in O.S.No.175/1998. The term 'defendants' in this judgment shall be referred to the plaintiffs in O.S.No.175/1998 who are the defendants in O.S.No.51/1989.

05. The subject matter of aforesaid two suits is the land measuring 06 acres 16 guntas in Sy.No.125 situated at Chandanahalli village Humnabad Taluka Bidar District [hereinafter referred to as the 'subject land'].



O.S.No.51/1989:

06. Suit in O.S.No.51/1989 is filed by the plaintiffs seeking following reliefs:

"A) That the declaration be made that the plaintiffs is the owner of the suit land Sy.No.125 measuring 06 acres 16 guntas R.A. of Rs.6-70 paise, as shown in red colour in the plaint sketch situate at village Chandanahalli Taluka Humnabad Dist: Bidar.

B) That a decree be passed directing to put the plaintiffs in possession of the suit land Sy.No.125, measuring 06 acres 16 guntas R.A. of Rs.6-70 paise, as shown in red colour in the plaint sketch map situated at village Chandanhalli Tq. Humnabad Dist: Bidar by dispossessing the defendants or any person found in possession.

C) Decree for mesne profit, for the past one year and future, mesne profit, at the rate of Rs.2000/- per annum be passed against the person and property of the defendants.

D) Declaration be made that the collusive compromise, decree in O.S.No.242, of 1988, Gyanoba and another /vs/ Ishwar dated 14-02-1989, is null and void, is not bind on the plaintiffs.

E) Cost of the suit be awarded against the defendants.

F) Any other equitable relief for which the plaintiffs are entitled to be granted."

Contending inter alia that:



6.1. Vithoba, Ishwar and Govind, the three sons of one Gundappa Kale were the owners of land in Sy.No.105 measuring 06 acres 16 guntas, without Well and another land in Sy.No.125 measuring 18 acres and 39 guntas with a Well, both situated at village Chandanahalli village, Humnabad Taluk and Bidar District.

6.2. The aforesaid three persons sold land in Sy.No.105 measuring 06 acres 16 guntas to the defendants under registered deed of sale dated 27.04.1970, with wrong descriptions and boundaries. The plaintiff No.1 subsequently purchased land in Sy.No.125 measuring 18 acres 39 guntas along with a dilapidated well in terms of registered deed of sale dated 06.04.1983 for a valuable sale consideration of Rs.15,000/-. Though, entire land in Sy.No.125 was purchased by them, they could not ascertain the limits and extent of the area so purchased, till recently when they obtained measurement of the said land with reference to Tippani Map through a private surveyor, wherein it was revealed that the defendants are in illegal possession of the subject land, which is shown in the red colour of the sketch enclosed to the plaint. Thereupon, the plaintiffs requested the defendants to vacate and restore the possession of the subject land to the plaintiffs with *mesne* profits at Rs.2,000/- per annum from 1987-88 which was not considered by the defendants.



6.3. Then subsequent to filing of suit, plaintiffs learnt that defendants have obtained a collusive compromise decree in O.S.No.242/1988 against Ishwar and another and had got decree for seeking relief of rectification of their deed of sale by altering Sy.No.105 into Sy.No.125. That the plaintiff No.1 after purchasing the property in Sy.No.125 obtained revenue records in his name. That since the plaintiffs are not party to the decree in O.S.No.242/1988, the same is null and void and not binding on them. Hence, the suit for declaration and possession.

7. Defendants in their written statement denying the plaint averments and allegations contented that:

7.1 They have purchased land in terms of deed of sale dated 27.04.1970, which is bounded on the East by : unsold land of the vendors, West by : land belonging to defendant No.1, North by : land of one Shankar Ingle and South by : land of one Laxman Parith. That their vendors instead of mentioning Sy.No.125, have wrongly mentioned the Sy.No.105 in the said registered deed of sale and the same has been rectified in terms of decree passed in O.S.No.242/1988. They have been in possession and enjoyment of the said portion of the land.



7.2. That they have dug up a Well in the portion of the property purchased by them. That the plaintiffs could not have purchased the entire extent of land measuring 18 acres 39 guntas in Sy.No.125. As such, they have no locus standi to file the suit.

7.3. Alternatively, it is contented that the defendants have perfected their title by way of adverse possession. Since, from the date of their purchase they have been openly and continuously enjoying their right, title and interest over the subject land to the knowledge of the plaintiffs. That the suit is not maintainable for non-joinder of original vendors, who have executed respective deeds of sale in favour of the plaintiffs as well as the defendants in respect of the suit land. Hence, sought for dismissal of the suit.

8. The Trial Court on consideration of the pleadings framed following issues:

- (i) *Whether plaintiffs prove that plaintiff No.1 purchased the land Sy.No.125 of Chandanhalli village, measuring 18 acres 39 guntas under registered sale deed executed by Ishwar and others.?*
- (ii) *Whether they further prove their ownership over the said land.?*
- (iii) *Whether they further prove that the defendants are in illegal possession over the suit land Sy.No.125*



measuring 06 acres 16 guntas as shown in red colour in the plaint sketch situated at Chandanhalli, Tq. Humnabad.?

- (iv) Whether they further prove that the plaintiffs are entitled for mesne profits at the rate of Rs.2,000/- per annum.?*
- (v) Whether the decree in O.S.No.242/83 Gyanoba and others Vs. Ishwar dated .14.2.1989 is null and void and not binding on the plaintiffs.?*
- (vi) Whether the defendants prove that they are in adverse possession of the suit land and perfected the title by adverse possession.?*
- (vii) Whether they further prove that the suit is barred by limitation and suit is not maintainable.?*
- (viii) Whether they further prove that there is a mis-joinder of cause of action.?*
- (ix) Whether they are entitled for compensatory costs.?*
- (x) Whether the plaintiffs are entitled for the reliefs as sought for.?*
- (xi) What decree or order.?*

09. The plaintiff No.1 examined himself as PW.1 and two witnesses as PW.2 and PW.3 and exhibited 62 documents as Ex.P.1 to Ex.P.62. Seven witnesses have been examined on behalf of the defendants as DW.1 to DW.7 and have exhibited 17 documents as Ex.D.1 to Ex.D.17. On appreciation of evidence, the Trial Court answered issues No.1 and 2 partly in the affirmative,



issues No.6, 7 and 8 in the affirmative and issues No.3, 4, 5, 9 and 10 in the negative and consequently, dismissed the suit.

10. Being aggrieved by the same, the plaintiffs preferred regular appeal in R.A.No.13/2012. Considering the grounds urged, the First Appellate Court framed the following points for its consideration:-

- (i) *Whether the judgment and decree under appeal are contrary to law and evidence on record?*
- (ii) *Whether there are any grounds for this Court to interfere in the judgment and decree under appeal?*
- (iii) *Whether the plaintiffs were entitled for declaration of right of ownership and recovery of possession as sought for in the suit ?*
- (iv) *What decree or order?*

11. On re-appreciation of evidence, the First Appellate Court answered points No.1, 2 and 3 in the negative and consequently, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Being aggrieved the plaintiffs are before this Court in RSA.No.887/2014.



O.S.No.175/1998:

12. The O.S.No.175/1998 is filed by the defendants seeking following reliefs:-

- A) *It be declared that the plaintiffs No.1 to 5 are the co-owners and co-possessors of land Sy.No.125/2 measuring 03 acres 08 guntas R.A. of Rs.3-36 paise, situated at village Chandanhalli Tq. Humnabad Dist Bidar. The said land corresponds Sy.No.125/A in R.O.R. along with well and trees situated therein and so also the plaintiff No.6 be declared as the exclusive owner and possessor of land Sy.No.125/1 measuring 01 acre 06 guntas R.A. of Rs.1-21 paise and Sy.No.125/3 measuring 02 acres 02 guntas R.A. of Rs.2-15 paise, both situated at village Chandanhalli Tq. Humnabad, both lands corresponds Sy.No.125/8 in R.O.R. along with well and trees situated therein, as shown in the enclosed sketch map, (as per the present R.O.Rs).*
- B) *That the defendants No.1 to 12 be perpetually restrained from causing illegal interference and obstruction into the lawful possession and enjoyment of the plaintiffs No.1 to 6, over the suit lands mentioned above.*
- C) *A decree be passed directing the Sub Registrar Humnabad, to rectify and correct the sale deed bearing document No.303/70-71 dated: 27-4-1970 by deleting the Sy.No.105 and inserting and adding substituting the land Sy.No.125 in respect of suit land, wherever it occurs in the sale deed.*
- D) *Any other relief for which the plaintiffs are entitled, be also granted.*
- E) *The costs of the suit be awarded to the plaintiffs.*

Contending inter alia:

13. That defendant No.1 – Ishwar s/o Gundappa, Vithoba father of defendants No.2 to 4, and Govindrao



Kale the father of defendant Nos.5 to 10, were the original owners of the land in R.S.No.125 was 18 acres 39 guntas out of which 06 acres 16 guntas the defendants No.11 and 12 (plaintiffs in O.S.No.51/1989) are the purchasers of portion of said land in Sy.No.125. Subject land was sold by the original owners in favour of Gyanoba (plaintiff No.1) and Shrawan (plaintiff No.6) under registered deed of sale dated 27.04.1970 with specific boundaries. Ever since the date of purchase, they have been in possession and enjoyment of the same. That there was an oral partition between Gyanoba (plaintiff No.1) and Shrawan (plaintiff No.6) in which an area measuring 03 acres 08 guntas in land bearing Sy.No.125/2 corresponding to Sy.No.125/A is fallen to the share of Gyanoba and remaining 03 acres 08 guntas bearing Sy.Nos.125/1 and 125/3 corresponding to R.S.No.125/B has fallen to the share of plaintiff No.6 – Shrawan. Whereas in the deed of sale, survey number has been wrongly mentioned as Sy.No.105 instead of Sy.No.125. That plaintiff No.6 had filed a suit in



O.S.No.242/1988 seeking relief of declaration of ownership with respect to R.S.No.125 which ended in a compromise dated 14.02.1989. Based on which plaintiff No.6 and his brother Gyanoba have obtained revenue entries mutated in their name in the RTC records of land in R.S.No.125 and their names have continued to reflect in RTC records accordingly. That the original owner Ishwar, Vithoba and Gyanoba have sold remaining land in R.S.No.125 measuring 12 acres 23 guntas in favour of defendants No.11 and 12 (plaintiffs in O.S.No.51/1989) under registered deed of sale dated 06.04.1983. As such, they are in possession of said extent of land. However, defendants No.11 and 12 have filed suit in O.S.No.51/1989 against them for possession which is pending consideration. As the defendants No.11 and 12 threatened the plaintiffs who dispossess from the subject land, taking undue advantage of the description of the land in Sy.No.105, they filed the present suit, seeking the relief as noted above.



14. The defendants No.11 and 12 (plaintiff in O.S.No.51/1989) in their written statement admitted that the land originally belonged to Ishwar, Vithoba and Govind and also admit they executed the sale deed in their favour. They also admitted filing of the suit in O.S.No.51/1989 and defendants obtaining compromise decree in O.S.No.242/1988. It is contented that Gyanoba and Shrawan are the purchasers of land in R.S.No.105 and not in R.S.No.125 and since they purchased land in R.S.No.105, their names have been mutated in the revenue records accordingly. That the defendants No.11 and 12 have purchased the entire land beyond R.S.No.125 by virtue of registered deed of sale dated 06.04.1983 and they have been in possession of entire extent of 18 acres 39 guntas of land. That their sale deed has not been challenged by the plaintiffs as well as the original owners. There was no mis-description of the sale deed as alleged. Hence, sought for dismissal of the suit.



15. Based on the pleadings, the Trial Court framed the following issues:

- A. *Whether the plaintiffs prove that they are owners and possessors of land sy.no.125/2 and Sy.No.125/B, both situated at village Chandanhalli and proves their title on the date of suit?*
- B. *Whether defendants prove that suit of the plaintiff hit by the principles of res-judicata?*
DELETED AS PER ORDER DATED 06.03.2003
- C. *Whether the defendants are entitle for costs of Rs.3000/- as claimed in their W.S.?*
- D. *Whether the plaintiffs are entitled for a declaration as prayed for?*
- E. *Whether the plaintiffs are entitled for injunction as sought for?*
- F. *What decree or order?*

Addl. Issue No.1:

Whether defendants prove that suit of the plaintiff hit by the principles of res-judicata? deleted as per order dated 09.03.2005.

16. On appreciation of the evidence led by the parties, the Trial Court decreed the suit as under:-

Suit of the plaintiffs is decreed with costs.



The plaintiff no.1 to 5 are declared as owners of R.S.No.125/2 corresponds to R.S.No.125-A to the extent of 03-Acres 08-Guntas, and L.Rs. no.(1) to (8) of deceased plaintiff no.6 Srawan are declared as owners of R.S.No.125/1 and 125/3 corresponds to 125-B to the extent of 03-Acares 08-Guntas.

The defendants or anybody on their behalf are restrained from causing interference to the peaceful possession and enjoyment of the plaintiffs over the suit property by granting decree of perpetual injunction.

The plaintiffs are entitle for correction of Sale Deed i.e., Rectification of Sale Deed and the Sub Registrar Humnabad is directed to rectify the mistake of mentioning R.S.No.105 in Ex.P14 registered Sale Deed bearing document no.303/70-71, dated 27.04.1970, and delete said sy.no.105 wherever it appears and insert the sy.no.125 in its place.

Draw a decree accordingly.

17. Being aggrieved, plaintiffs preferred a regular appeal in R.A.No.15/2012. Considering the grounds urged therein, the First Appellate Court framed the following points for consideration :-

- A. *Whether the appellants / defendants No.11 and 12 prove that the judgment and decree passed by the Trial Court is perverse, arbitrary and this Court interference is necessary ?*
- B. *To what order or relief ?*



18. On re-appreciation of the evidence on record, the First Appellate Court answered the same in the negative and consequently, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Being aggrieved, the plaintiffs are before this Court in R.S.A.No.200429/2014.

19. This Court by an order dated 08.01.2016, admitted the appeal in RSA.No.887/2008 to consider the following substantial questions of law:-

Whether the Trial Court was justified in ignoring the fact that judgment and decree passed in O.S.No.242/1988 dated 14.02.1989 was based on a compromise entered into between defendants and Sri. Ishwar (one of the vendor of plaintiffs and defendants) which was subsequent to the sale of suit land bearing Sy.No.125 in favour of plaintiffs and as such said Sri.Ishwar having lost right, title and interest over the property in question could not have entered into such compromise?

OR

Whether judgment and decree passed in O.S.No.242/1988 dated 14.02.1989 would be binding on plaintiffs though they were not parties to said judgment and decree?

2. *Whether trial Court was justified in arriving at a conclusion that defendants have become owners of suit property by adverse possession?*



3. *Whether the Court below was correct in arriving at a conclusion that the suit is bad for non-joinder of necessary parties?*

20. Learned counsel for the parties jointly submitted that the substantial question No.1 framed in RSA.No.887/2008 shall be treated and considered as substantial question of law in RSA.No.200429/2014 as well. The said submission is taken on record. Accordingly, the same is treated as substantial question of law in RSA.No.200429/2014.

21. Sri. Deepak V. Barad, learned counsel appearing for the plaintiffs / appellants submitted;

21.1. That once the original owners executed deed of sale in favour of the plaintiffs, conveying entire extent of 18 acres 39 guntas of land in Sy.No.125, they could not have conveyed any portion of the said land in favour of the defendants.

21.2. The compromise decree entered into in O.S.No.242/1988, apart from not binding on the plaintiffs', is also unenforceable inasmuch as the said compromise decree has been entered into between the defendants and Ishwar who is only one of the three owners. The other two



original owners namely Vithoba and Govind have not been parties to the said proceedings.

21.3. The Trial Court and the First Appellate Court have grossly erred in dismissing the suit of the plaintiffs and decreeing the suit of the defendants, without appreciating the fact that the previous owners did not have any right, title and interest in the subject land, as the same stood extinguished in view of they executing the deed of sale dated 06.04.1983 in favour of the plaintiffs.

21.4. The Trial Court and the First Appellate Court have grossly erred in not appreciating the facts that the defendants have not sought any relief seeking to set-aside the deed of sale dated 06.04.1983 executed by the original owners in favour of the plaintiffs.

21.5. The Trial Court and the First Appellate Court grossly erred in applying the principles namely "*boundaries prevail over the survey numbers*". The said principles are not applicable to the facts and circumstances of the case on hand inasmuch as there is neither any ambiguity with regard to survey number nor to the extent of the property nor even the boundaries mentioned in the deed of sale. The Trial Court and the First Appellate Court thus erred in decreeing the suit by applying the aforesaid principles without adverting to the factual aspect of the matter.



22. *Per contra*, Sri. Sachin M. Mahajan, learned counsel appearing for the respondents, justifying the judgment and decree passed by the Trial Court and confirmed by the First Appellate Court submitted that;

22.1. The boundaries and the descriptions of property as given in the deed of sale dated 27.04.1970 tallies with the description of the suit property given by the plaintiff himself in the sketch enclosed to the plaint.

22.2. That the perusal of the recitals of the deed of sale dated 06.04.1983 under which the plaintiffs claim to have purchased the property makes it clear that the sale consideration was not on acreage basis, but it was in respect of the entire extent of land which was available within the boundaries mentioned therein.

22.3. That even according to the plaint averment, plaintiffs has neither measured nor surveyed the land before the purchase and it is only years later plaintiffs got the land surveyed and measured through a private surveyor. Only then they learnt that 06 acres 16 guntas of land out of 18 acres 39 guntas of land being in possession of the defendants.



22.4. The boundaries and the description given in the deed of sale dated 27.04.1970 as well as in the deed of sale dated 06.04.1983, explicitly makes it clear that the land was sold to the plaintiffs was indeed forming part of 18 acres 36 guntas of land in Sy.No.125 and not land in Sy.No.105 as sought to be contended.

22.5. Merely there was a wrong description of survey number in the deed of sale, wherein instead of mentioning Sy.No.105, there is mention of Sy.No.125, the same cannot be construed to defeat the substantive rights of the defendants. Hence, he submits that substantial questions of law needs to be answered in favour of the respondents. Hence, seeks for dismissal of the appeal.

23. Heard. Perused the records.

24. Case of the plaintiffs is that Vithoba, Ishwar and Govind, all being sons of Gundappa Kale, were the owners of land bearing Sy.No.105 measuring 6 acres 16 guntas without well and another land in Sy.No.125 measuring 18 acres and 39 guntas with a well, all situated at Chandanahalli. The said persons had sold 6 acres 16 guntas of land in Sy.No.105 to the defendants in terms of Ex.D15 and had subsequently sold 18 acres 39 guntas of



land in Sy.No.125 in favour of plaintiff No.1 under a deed of sale dated 06.04.1983 as per Ex.P1.

25. It is the further specific case of the plaintiffs that though the entire extent of land in Sy.No.125 was purchased by them, they could not ascertain the extent and limits of the area purchased by them till it was surveyed and measured with reference to Tippani map through the private surveyor. After such survey, they found defendants being in illegal possession over the suit land to an extent of 6 acres 16 guntas as shown in red colour in the enclosed sketch map. Hence, suit for declaration and possession.

26. From the records, following undisputed facts emerge:

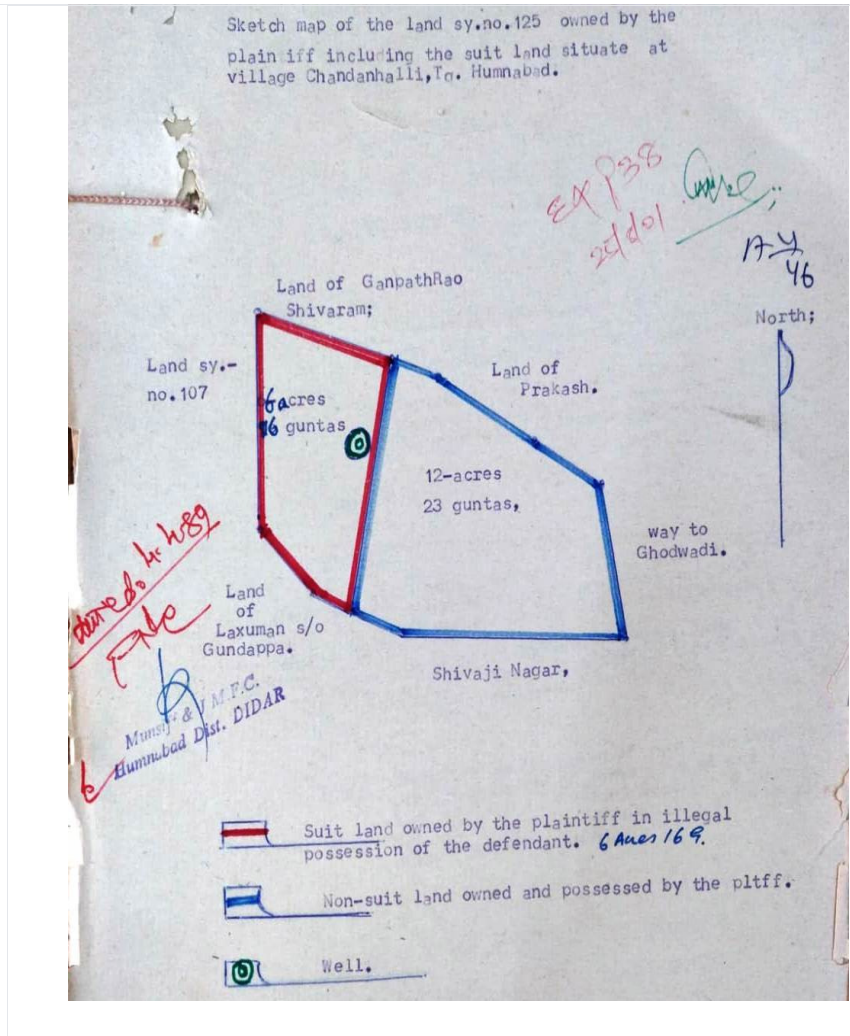
26.1. That plaintiff No.1 - Chandrakant in O.S.No. 51/1989, had purchased land bearing Sy.No.125 of Chandanahalli Village, measuring 18 acres 39 guntas in terms of registered deed of sale dated 06.04.1983 produced at Ex.P-1. The boundaries given in the said deed of sale are as under:

On the East	: Way leading to Ghodwadi
On the West	: lands of Shrawan Mahdba and Gyanba Mhadba.
On the North	: land of Prakash Kishan Rao and Manikrao Kishanrao, and



On the South : land of Laxman Gundappa and locality of Shivajinagar, in Gairan.

26.2. Plaintiffs have produced a sketch along with the plaint, which is marked as Ex.P.38, demarcating the area measuring 6 acres 16 guntas of land, which according to the plaintiffs has been encroached upon by the defendants. The said sketch is scanned hereunder for immediate perusal:





26.2. Defendants namely Gyanoba and Shravan purchased an extent of 6 acres 16 guntas of land which is shown to be forming part of Sy.No.105 in terms of deed of sale dated 27.04.1970 produced as Ex.D15. The boundaries mentioned in the said deed of sale is as under:

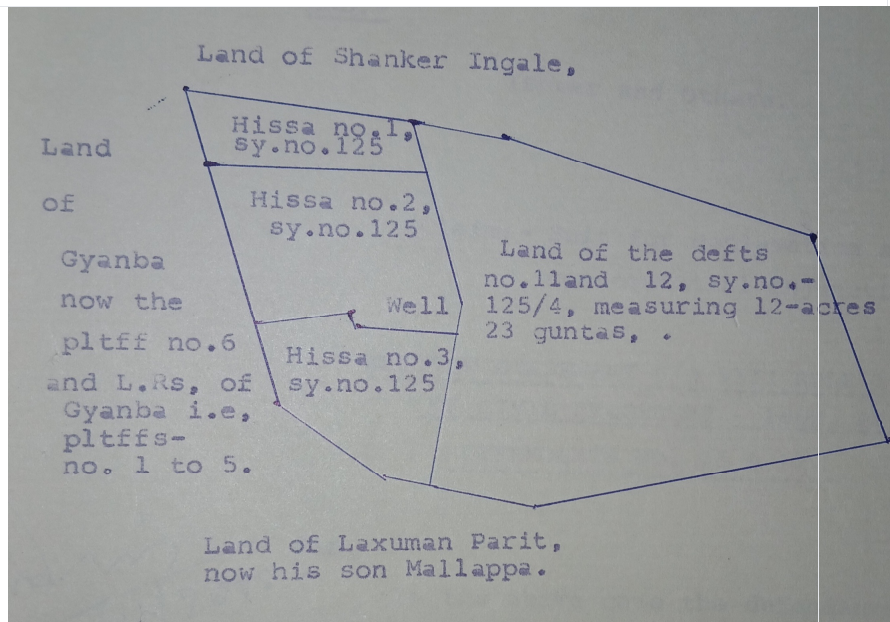
East by : remaining land of the executants
(unsold)

West by : land of Gyanoba

North by : the land of Shankar Imde

South by : the land of Laxuman Parit

26.3. Sketch enclosed by the defendants, plaint in O.S.No.175/1998 is scanned hereunder for perusal :





27. The Trial Court and the First Appellate Court have declined to accept the case of the plaintiffs on the premise that the vendors of the plaintiffs had indeed sold the subject land being an extent of 6 acres 16 guntas forming part 18 acres 39 guntas of Sy.No.125 in favour of the defendants in terms of the deed of sale on 27.04.1970 at Ex.D15. That there was an error in mentioning the survey number in which instead of mentioning the Sy.No.125, the said deed had mentioned only Sy.No.105 and consequently held that the common vendors had indeed conveyed subject land in favour of the defendants and only the remaining extent of land was purchased by plaintiff No.1.

28. Learned counsel for the plaintiffs/appellants herein, vehemently submitted that there was no ambiguity of any nature whatsoever in the deed of sale dated 27.04.1970 at Ex.D15 which specifically referred to Sy.No.105 measuring 6 acres 16 guntas having been conveyed in favour of the defendants. Similarly, there



was no ambiguity with regard to the survey number and extent of boundaries of the land conveyed in favour of the plaintiffs by the very same vendors. Thus, the issue of controversy is with regard to whether or not the land sold in favour of the defendants in terms of deed of sale dated 27.04.1970 formed part of Sy.No.125 or the same is different and distinct from land bearing Sy.No.105.

29. The Trial Court and the First Appellate Court have, apart from juxtaposing the deed of sale dated 06.04.1983 at Ex.P1 and deed of sale dated 27.04.1970 at Ex.D15 and comparing the boundaries and descriptions given therein, have also referred to Ex.D5 which is a Hissa Map of land in Sy.No.125 with Hissa Nos.125/1, 125/2, 125/3 and 125/4. On such comparison the Trial Court and the First Appellate Court have found following boundaries to the land Sy.No.125:-

On the east : land in Sy.No.124
On the west : land in Sy.No.107 which is referred to as
the ancestral property of the defendant.
On the north : land in Sy.No.109 and
On the south : land in Sy.No.126.



30. In O.S.No.175/1998 a tonch map is produced at Ex.D.20 which pertains to land in Sy.No.105, 106, 107 and 125. Perusal of the said tonch map, as taken note by the First Appellate Court in R.A.No.15/2012 at Para No.18, towards the west of land in Sy.No.125 there is land in R.S.No.107. Towards the west of said land in Sy.No.107, there is land in Sy.No.106. Towards the west of said land in Sy.No.106 there is land in Sy.No.105.

31. The Trial Court has also appreciated the fact that the description of the property in Ex.P14 also marked as Ex.D.15 which is a deed of sale dated 27.04.1970 under which the defendants have purchased the land, to be more probable and proper in which towards the west there is a specific mention of land to be belonging to Gyanoba who is the purchaser under the said deed of sale. That the said land on west is the land bearing Sy.No.107 which admittedly belonged to the ancestors of Gyanoba and Shravan. The Trial Court and the First Appellate Court have found that if really the said land in



R.S.No.105 was sold to Gyanoba and Shravan, the boundaries of the said land would have been different. That as per Ex.D20 tonch map, the boundaries of land in R.S.No.105 would be as under:

Towards east : Land in R.S.Nos.104 and 106
Towards west : Land in R.S.Nos.93 and 94
Towards north : Land in R.S.No.108 and
Towards south : land in R.S.No.104.

32. Thus, comparing the boundaries given in deed of sale dated 06.04.1983 produced at Ex.P.1 and the deed of sale dated 27.04.1970 produced at Ex.D.15 and Hissa Tippani at Ex.D.5 and the tonch map at Ex.D20, the Trial Court and the First Appellate have come to the conclusion that the land which was subject matter of the deed of sale dated 27.04.1970, Ex.D15, is indeed the land forming part of Sy.No.125 which is the subject land wrongly mentioning the survey number as 105.

33. Section 95 of the Indian Evidence Act,1872, reads as under:-

"Section 95 :- Evidence as to document unmeaning in reference to existing facts- when language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a (peculiar) sense."



34. The above provision of Indian Evidence Act, provides for admissibility of extrinsic evidence when the language of document applies in part correctly and in part incorrectly to an existing fact to show whether it was intended to apply to it. Maxim "***falsa demonstratio non nocet cum de corpore consteant***" – A false description does not vitiate. That an instrument does not necessarily fail or become inoperative because it contain an inaccurate or false description. If after rejection of inaccurate description, there is sufficient evidence to identify person or property, affect will be given to it. (Refer ***Sarakar's Law*** of Evidence 19th Edition, Page 1969-1973).

35. Thus, from the aforesaid facts and provision of law it is clear that mere wrong mentioning of the survey No.105 instead of mentioning survey No.125 would not takeaway the right, title and interest created in favour of the defendants in respect of subject land in terms of deed of sale dated 27.04.1970 produced at Ex.D.15 and Ex.P.14.



36. Reliance placed on by the learned counsel for the defendants to the judgment of the Division Bench of this Court in the case of **Dr. Jayashila Venu and another vs. AJF D'souza and others**, reported in **2021 SCC OnLine KAR 165**, is of assistance to the case of the defendants, wherein at Para No.25 and 27, the Division Bench of this Court has held as under:-

"25. It is also trite that description by boundaries prevail over all other descriptions. The reliance placed by the learned Senior Counsel on decision rendered by this Court in Narasimha Shastry v. Mangesha Devaru [Narasimha Shastry v. Mangesha Devaru, 1987 SCC OnLine Kar 278 : ILR 1988 Kar 554] . and the judgment rendered by the High Court of Kerala in Savithri Ammal Vilasini Ammal v. Jayaram Pillai Padmavathi Ammaa [Savithri Ammal Vilasini Ammal v. Jayaram Pillai Padmavathi Ammaa, 1989 SCC OnLine Ker 278 : (1989) 2 KLJ 709] are squarely applicable to the present case on hand. The dispute is in respect of site which is part and parcel of an approved layout. The approved layout comprises of 12 plots and the same are identified by their respective boundaries on all four sides of the plots. The properties are clearly identified by their boundaries and the actual measurement would not be that significant and cannot be a leading description. What is agreed to be sold under Exts. P-3 and P-4 is the property which is in compact and bounded by specific boundaries on all four sides. Admittedly the layout is formed in 1962 and there is every possibility of there being error in measuring the plots. The same gets strengthened by the fact that city survey authorities measured the suit



site property in 1974 and as per Ext. P-7 which is survey sketch, the boundaries and measurements of CTS 326, 327, 329 and 330 are mentioned. As per Ext. P-7 (survey sketch) there is inconsistency in the measurement shown at the time of approval of the layout and subsequent survey conducted by the city survey authorities in 1974.

27. When there is ambiguity in regard to measurement and the fact that the controversy is in respect of a plot, we are of the view that the principle that description by boundaries would prevail over all other descriptions has to be made applicable to the present case on hand. The survey sketch of Site No. 22/9 which has corresponding CTS No. 327 also indicates that northern boundary of suit schedule Site No. 22/9 extends till 20 ft road. When sanctioned layout as per Ext. P-2 is compared with Ext. P-7-survey sketch of five CTS properties and also individual sketch of Site No. 22/9 as per Ext. P-8, there is no ambiguity insofar as boundaries are concerned."

37. It is appropriate to refer judgment and decree dated 14.02.1989 passed in O.S.No.242/1988 based on a compromise which the plaintiffs are disputing as not enforceable on the premise of same having been entered into by Sri. Ishwar, he having sold the property in favour of the plaintiffs and he not having right to enter into compromise.



38. Perusal of the compromise decree produced at Ex.P.17 indicate that a confirmation is made by Ishwar one of the owners of the subject land in favour of defendants confirming that plaintiffs indeed purchase and are the owners of land in Sy.No.125 wrongly mentioning Sy.No.105.

39. As already noted above, wrong description of the property would not vitiate a transaction. Thus, even in the absence of such a compromise decree defendants would still be the owners of the subject land. Therefore, the Trial Court and the First Appellate Court were justified in passing the judgment and decree impugned in this appeal.

40. The substantial question of law No.1 having answered as above, this Court do not find any need or necessity to delve into other substantial question of law regarding adverse possession and suit being bad for non-joinder of necessary party. Accordingly, the following:



ORDER

- (i) Both the appeals are ***dismissed***.
- (ii) The judgment and decree dated 11.02.2002 passed in O.S.No.51/1989 by the Prl. Civil Judge (Jr.Dn.) Humnabad, and judgment and decree dated 14.02.2008 passed in R.A.No.13/2002 by the Civil Judge (Sr.Dn.), Basavakalyan are confirmed.
- (iii) The judgment and decree dated 21.08.2014 passed in O.S.No.175/1998 by the Prl. Civil Judge (Jr.Dn.) Humnabad, and judgment and decree dated 21.08.2014 passed in R.A.No.15/2012 by the Senior Civil Judge, Humnabad are confirmed.

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

KJJ,SWK
List No.: 1 Sl No.: 17
CT:PK