



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.200248 OF 2018

(DEC/INJ)

BETWEEN:

YALLAPPA S/O PARAVVA NATEKAR (HARIJAN),
AGE: 61 YRS OCC: AGRI.,
R/O. VILLAGE KHADARAPUR,
TQ. SHAHAPUR, DIST. YADGIRI-585223.

...APPELLANT

(BY SRI. SHIVANAND PATIL, ADVOCATE)

AND:

SMT. TANGAMMA W/O BASAPPA,
AGE: 64 YRS, OCC: HOUSEHOLD,
R/O. VILLAGE KHADARAPUR,
NOW R/O. KURKUNDI,
TQ. SHAHAPUR, DIST. YADGIRI-585223.

...RESPONDENT

(BY SRI SALOMON ALFRED, ADVOCATE FOR
SMT. NEEVA M. CHIMKOD, ADVOCATE)





THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CPC, PRAYING TO A) TO CALL FOR AND EXAMINE THE RECORDS IN O.S.NO.19/2012 OF THE ADDL. CIVIL JUDGE AND JMFC SHAHAPUR AND R.A.NO.18/2016 OF THE SENIOR CIVIL JUDGE AND JMFC SHAHAPUR AND ALLOW THE APPEAL BY SETTING ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 21.07.2018 IN R.A.NO.18/2016 AND CONFIRM THE JUDGMENT AND DECREE DATED 28.01.2016 IN O.S.NO.19/2012, PASSED BY ADDL. CIVIL JUDGE AND JMFC SHAHAPUR, DISMISSING THE SUIT OF THE PLAINTIFFS. B) TO GRANT ANY OTHER RELIEF OR RELIEF'S AS THE HON'BLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.10.2025, 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 appeal is by the defendant aggrieved by the judgment and decree dated 21.07.2018 passed in Regular Appeal No.18/2016 on the file of the Senior Civil Judge, Shahapur (hereinafter referred to as 'First Appellate Court') by which the First Appellate Court while setting aside the judgment and decree dated 28.01.2016 passed in O.S.No.19/2012 on the file of Additional Civil Judge and JMFC, Shahapur, (hereinafter referred to as 'Trial Court') decreed the suit declaring the plaintiff to be the absolute owner of the suit properties and has also granted decree of permanent injunction as sought for.

2. The subject matter of the suit are the following properties :-

- 1) *Land bearing Sy.No.21/2 measuring 01 acre 16 guntas,*
- 2) *Land bearing Sy.No.14/2 measuring 01 acre 18 guntas,*



- 3) *Land bearing Sy.No.57/3 measuring 01 acre 16 guntas and*
- 4) *Land bearing Sy.No.57/2 measuring 01 acre 14 guntas.*

All situated at Kadarapur village, Shahapur Taluk. (hereinafter referred to as 'the suit schedule properties' for brevity)

3. The above suit in O.S.No.19/2012 is filed by the plaintiff - Tangamma W/o late Basappa for the relief of declaration and permanent injunction, contending inter-alia that;

- 3.1) The suit schedule properties belonged to her husband Basappa, he having inherited the same through his ancestors. The said Basappa passed away during the year 1991 leaving behind the plaintiff and her son as his only legal heirs. Ever since then plaintiff and her son have been in possession and enjoyment of the suit schedule properties.
- 3.2) Since, the son of the plaintiff is suffering from psychological disorder, plaintiff after the demise of her husband had engaged the services of the defendant to cultivate the land on crop sharing basis by paying cost and expenses in that regard. That



since about 15 years, plaintiff along with her son has been residing at Bhadrawati and having the land cultivated through the defendant as above. That except the said arrangement, there has been no transaction of any nature whatsoever between the plaintiff and the defendant in respect of the suit schedule properties.

3.3) That the plaintiff being desirous of selling a portion of suit schedule properties to meet her financial constraints, obtained RTC extracts during the month of October - 2011. To her shock and dismay she discovered the name of the defendant having been entered in the revenue records. On enquiry, she met with an evasive reply by the defendant of he having purchased the suit schedule properties. That the defendant has got his name entered into revenue records claiming to be the brother of the husband of the plaintiff by giving false information.

3.4) The suit schedule properties being absolute properties of Basappa, upon his demise are succeeded by the plaintiff and her son who are his only legal heirs. That the illegality committed by the defendant in obtaining his name entered in the revenue records, has given rise to cause of action constraining the plaintiff to file the suit for declaration and injunction.



4. In response, the defendant filed written statement ;

4.1) Admitting the suit scheduled properties to be the ancestral properties of the husband of the plaintiff. However, denied the plaintiff's claim of she being in possession and cultivation of the same. It is also denied that the son of the plaintiff is suffering from psychological disorder. The claim of the plaintiff of she engaging the defendant to cultivate the suit schedule properties land on crop sharing basis by paying the cost and expenses towards the cultivation of the suit schedule properties is also denied.

4.2) It is a specific case of defendant that he had purchased land in Sy.No.14/2 measuring 01 acre 18 guntas (Item No.2 of the suit schedule properties) from the plaintiff and her son - Shivaraj on 03.02.1995 for a sum of Rs.10,000/-. Since, the defendant had already paid Rs.1,000/- towards advance, he paid Rs.4,000/- on the date of the agreement and remaining consideration of Rs.5,000/- was paid on 16.04.1995 to the son of the plaintiff. Ever since then the defendant has been in possession and enjoyment of the said land as absolute owner



thereof. Accordingly, his name has been mutated in the revenue records.

4.3) That the mother of the defendant had purchased land in Sy.No.21/2 measuring 01 acre 16 guntas and land in Sy.No.57/3 measuring 01 acre 16 guntas (Item Nos.1 and 3 of the suit schedule properties) and other suit properties from the husband of plaintiff at an immemorial point of time. Ever since then the mother of the defendant has been the owner in possession of the said lands and after her death, the defendant succeeded to the same and has continued to be in possession as owner thereof. The agreement of sale is binding on the plaintiff and her son and they are not concerned with the suit schedule properties. Hence, sought for dismissal of the suit.

5. Based on the pleading, the Trial Court framed the following issues:

1. *Whether the plaintiff proves that, she is the owner and possessor of suit schedule properties?*
2. *Whether the plaintiff further proves that, defendant is illegally mutated the suit properties in his name?*
3. *Whether the defendant proves that, his mother has purchased suit schedule properties from the plaintiff?*



4. *Whether the plaintiff is entitled relief of declaration and injunction as sought for?*

5. *What order or decree?*

6. Plaintiff examined herself as PW.1 and two witnesses as PW.2 and PW.3 and exhibited 56 documents marked as Ex.P.1 to 56. Defendant examined himself as DW.1 and two witnesses as DW.2 and DW.3 and exhibited 23 documents as Ex.D1 to 23.

7. On appreciation of the evidence, the Trial Court though having found plaintiff to have established her ownership over the suit schedule properties, however, held that it was not clear whether the plaintiff was in possession of the suit schedule properties as on the date of the institution of suit, accordingly, referring to Section 34 of the Specific Relief Act, 1963, dismissed the suit.

8. Being aggrieved, plaintiff filed regular appeal in R.A.No.18/2016 before the First Appellate Court. Considering the grounds urged, the First Appellate Court framed the following points for its consideration:



ಅಂಶಗಳು

- 1 ಕೆಳ ನ್ಯಾಯಾಲಯವು ಹೊರಡಿಸಿದಂತಹ ತೀರ್ಪು ವಾದಿಯ ಸಾಕ್ಷಾಧಾರಗಳಿಗೆ ಹಾಗೂ ಕಾನೂನಿಗೆ ವ್ಯತಿರಿಕ್ತವಾಗಿರುತ್ತದೆಯೇ?
- 2 ಕೆಳನ್ಯಾಯಾಲಯವು ಹೊರಡಿಸಿದ ತೀರ್ಪು ಮತ್ತು ಮಧ್ಯ ಡಿಕ್ರಿಯಲ್ಲಿ ಈ ನ್ಯಾಯಾಲಯದ ಪ್ರವೇಶಿಸುವ ಅವಶ್ಯ ಇರುತ್ತದೆಯೇ?
- 3 ಹಾಗಾದರೆ ಯಾವ ಆದೇಶ?

9. On re-appreciating the evidence, the First Appellate Court answered points No.1 and 2 in the affirmative and consequently, allowed the appeal, set aside the judgment and decree passed by the Trial Court and decreed the suit in its entirety, granting the relief as sought for.

10. Being aggrieved, the defendant is before this Court in this second appeal.

11. This Court by order dated 16.03.2021 admitted the appeal for consideration of following substantial question of law :-



- i) Whether under the fact and circumstances of the case, a decree of declaration can be sought regarding title, without seeking relief of possession, even as admitted by the plaintiff that the defendants are in permissible possession for more than 40 years, therefore, suit filed for seeking relief of declaration is maintainable without seeking relief of possession as per Section 34 of the Specific Relief Act.?
- ii) Whether, under the facts and circumstances of the case the suit filed by the plaintiff is barred by limitation as per Article-64 of the Limitation Act.?

12. Sri. Shivanand Patil, learned counsel appearing for the defendant reiterating the grounds urged in the memorandum of appeal, submitted that;

12.1) The First Appellate Court grossly erred in not appreciating the evidence on record in that, even according to the plaintiff, defendant has been in possession and cultivation of the suit schedule properties ever since the demise of her husband. Thus, when the plaintiff herself has admitted in the plaint regarding defendant being in possession of suit schedule properties, a suit for declaration without seeking possession is clearly not maintainable in the light of provisions of Section 34



of the Specific Relief Act, 1963 and the law laid by the Hon'ble Supreme Court in this regard.

12.2) That the First Appellate Court failed to appreciate the fact that the defendant is in possession of the property based on the agreement which he had entered into with the plaintiff and her son and also on the basis of the agreement which his mother had entered into with the husband of the plaintiff. That he has been in possession and enjoyment of property in Sy.No.21/2 and Sy.No.57/3 for about 60 years and Sy.No.14/2 for about 18 years. He refers to the deposition of the plaintiff recorded on 21.02.2015 and submits that the plaintiff has categorically admitted that defendant being in possession of the suit schedule properties.

12.3) That Even if it is assumed that the defendant is cultivating the land for and behalf of the plaintiff, she cannot claim to be in exclusive possession of properties. The First Appellate Court has not given any reasoning or finding with regard to name of the defendant being reflected in the records of right. Thus, the judgment and decree passed by the First Appellate Court suffers from perversity. He relies



upon the following judgments in support of his contentions:-

- A) ***Vasantha (Dead) their LRs vs. Rajalakshmi @ Rajam (Dead) and their LRs- 2024 SCC OnLine SC 132;***
- B) ***Anathula Sudhakar vs. P. Buchi Reddy (dead) By LRs.- 2008 SCC OnLine SC 550:AIR 2008 SC 2033;***
- C) ***Executive Officer, Arulmigu Chokkanatha Swamy Koli Trust Virudhunagar vs. Chandan and others - AIR 2017 SC 1034;***
and
- D) ***Aralappa vs. Sri. Jagannath and others - AIR 2007 Kant 91.***

13. *Per contra*, the learned counsel appearing for the plaintiff, justifying the judgment and decree passed by the First Appellate Court submitted :

13.1) That the plaintiff has never admitted that defendant being in possession of the property. He submits that the plaint averments explicitly make out a case that the plaintiff had engaged the services of the defendant to cultivate the land by paying the cost of cultivation on crop sharing basis. At the most, defendant can be considered as an agricultural laborer or the caretaker of the suit schedule



properties. Such an arrangement would not amount to plaintiff delivering and handing over of the possession of the suit schedule properties to the defendant. As such, defendant cannot claim to be in possession of the suit schedule properties. The possession being claimed by the defendant is neither exclusive nor absolute. Plaintiff and her son continued to be in the constructive possession of the suit schedule properties.

- 13.2) The basis on which the defendant is claiming his right being alleged agreements, which he claimed to have entered into with the plaintiff and her son, as well as his mother with the husband of the plaintiff and the defendant not having established and proved such transaction has no basis to contend that his possession is exclusive and lawful.
- 13.3) He refers to revenue records produced at Exs.P.11, 12, 34 and 35 and submitted that defendant has got his name illegally entered into revenue records by wrongly showing himself to be the brother of the husband of the plaintiff who is admittedly the 'pattedar' of the suit schedule properties. That such a false entry in the revenue records would not give any right, title and interest in favor of the defendant.



13.4) There is no prohibition under law, much less under Section 34 of the Specific Relief Act, 1963 for the plaintiff to maintain the suit as filed. Thus the suit as prayed and filed by the plaintiff is very well maintainable. Hence, seeks for dismissal of the appeal.

13.5) He relies upon the following judgments in support of his case:-

- A) ***Maria Margarida Sequeria Fernandes and others vs. Erasmo Jack de Sequeria (Dead) through LRs and others - AIR 2012 SC 1727:2012 SCC OnLine SC 281;***
- B) ***Anathula Sudhakar vs. Buchi Reddy (dead) by LRs and Ors.. - AIR 2008 SC 2033;***
- C) ***Akkamma and others vs. Vemavathi and others - (2021) 18 SCC 371; and***
- D) ***Rabindranath Panigrahi vs. Surendra Sahu - 2025 SCC OnLine SC 504.***

14. Heard. Perused the records.

15. As regards the ownership, plaintiff claims that the suit schedule properties absolutely belonged to her husband Basappa he having inherited the same through his ancestors. That Basappa passed away during the year



1991 leaving behind plaintiff and her son to succeed to the properties.

16. Defendant on the other hand, does not dispute that husband of the plaintiff to be the absolute owner of the suit schedule properties. However, he claimed to be in possession and enjoyment of the suit properties as owner thereof pursuant to agreement of sale alleged to have been executed by the plaintiff and her son in respect of land in Sy.No.14/2 (Item No.2 of the suit schedule properties and mother of defendant having purchased land in Sy.No.21/2 and Sy.No.57/3 (Item Nos.1 and 3 of the suit schedule properties) and other suit properties from the husband of the plaintiff.

17. The Trial Court while answering issue No.1 has found that the defendant has neither pleaded nor proved as to how his mother purchased the land bearing Sy.Nos.21/2 and 57/3 (Item Nos.1 and 3 of the suit schedule properties). Similarly, even the witnesses



examined in this regard, have not supported the case of the defendant.

18. Ex.P.3 is the RTC extract in respect of land Sy.No.21/2. Entries in the said document indicate that the name of the defendant having been mutated showing him to be the brother of Basappa, the husband of the plaintiff. Ex.P.12 is another RTC extract of the land bearing Sy.No.57/3, even in the said document name of the defendant has been shown as the brother of Basappa.

19. As rightly taken note of the Trial Court, it is not the case of the defendant that he is the brother of husband of the plaintiff and further in the absence of any pleading and proof regarding the mother of the defendant allegedly purchasing the land Sy.Nos.21/2 and 57/3 (Item Nos.1 and 3 of the suit schedule properties), defendant cannot claim to be the owner of the said land.

20. Similar is the situation in respect of land Sy.No.14/2 (Item No.2 of the suit schedule properties)



which according to the defendant he purchased the same by entering into agreement of sale with plaintiff and her son. Nothing is brought on record by the defendant proving the said alleged agreement of sale or payment of sale consideration of Rs.10,000/- to the plaintiff and her son. The revenue records relied upon by the plaintiff would support the case of the plaintiff.

21. Even as rightly taken note of the Trial Court with reference to Section 54 of the Transfer of Property Act, 1882, assuming defendant had indeed entered into agreement to purchase the suit schedule properties as claimed, the same would not create and convey any right, title and interest in the suit schedule properties in his favour without there being execution and registration of the deeds of conveyance by the plaintiff and her son in favour of the defendant in the manner known to law.

22. The Trial Court and the First Appellate Court have concurrently come to the conclusion that husband of the plaintiff being the owner of the suit schedule



properties and defendant having failed to establish his claim of he being the owner by virtue of alleged agreements of sale entered into by him and his mother.

23. The next question therefore that arises for consideration is whether the plaintiff had engaged the defendant to cultivate the suit schedule properties by paying the expenses on crop share basis as claimed in the plaint?

24. Plaintiff claimed to have entered into arrangement with the defendant, namely engaging the defendant to cultivate the suit schedule properties on crop sharing basis by paying the expenses towards cost of cultivation. Averments in this regard are made at Paragraphs 3 and 4 of the plaint, which read as under:-

“3. ಅದು ಹೇಳುವುದೇನೆಂದರೆ, ದಾವಾ ಆಸ್ತಿಗಳು ಮೃತ ಬಸಪ್ಪ ತಂದೆ ಚಂದ್ರಾಮಪ್ಪ ಇತನ ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳು ಆಗಿರುತ್ತವೆ. ಸದರಿ ಮೃತ ಬಸಪ್ಪ ತಂದೆ ಚಂದ್ರಾಮಪ್ಪ ಇವರು ವಾದಿಯ ಗಂಡನಾಗಿದ್ದು, ಆತ ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ವಾರಸು ನಾತೆಯಿಂದ ತನ್ನ ಹೆಸರಿನಲ್ಲಿ ಹಕ್ಕು ಮತ್ತು ಸ್ವಾಧೀನವನ್ನು ಸ್ಥಾಪಿಸಿಕೊಂಡು ವಾದಿ ಮತ್ತು ತನ್ನ ಮಗನೊಂದಿಗೆ ಅನುಭೋಗಿಸಿದ್ದು ಇರುತ್ತದೆ. ಈತನು 1991 ರಲ್ಲಿ ಮರಣವನ್ನು ಹೊಂದಿದ್ದು, ಆತನ ಮರಣದ ನಂತರ ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ವಾದಿಯು ತನ್ನ ಸ್ವಾಧೀನಕ್ಕೆ ತೆಗೆದುಕೊಂಡು ಅನುಭೋಗಿಸುತ್ತಾ ಬರುತ್ತಿದ್ದಾರೆ. ವಾದಿಗೆ ಒಬ್ಬ ಮಗನಿದ್ದು, ಆತ ಮಾನಸಿಕ ದುರ್ಬಲತೆಯಿಂದ ಬಳಲುತ್ತಿದ್ದಾನೆ. ವಾದಿಯು ತನ್ನ ಗಂಡನ ಮರಣದ ನಂತರ



ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ಪ್ರತಿವಾದಿ ಇವರಿಗೆ ಪ್ರತಿವರ್ಷ ಸಾಗುವಳಿಯನ್ನು ಮಾಡಿಕೊಡಲು ಕೇಳಿಕೊಂಡಿದ್ದು, ಸಾಗುವಳಿ ಮಾಡಲು ಬರುವ ಖರ್ಚನ್ನು ತಾನೇ ಕೊಡುವುದಾಗಿ ಮತ್ತು ಬರುವ ಫಸಲಿನಲ್ಲಿ ಅರ್ಧವನ್ನು ಕೊಡುವುದಾಗಿ ಹೇಳಿದ್ದು, ಅದರಂತೆ ಪ್ರತಿವಾದಿಯು ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ಸಾಗುವಳಿಯನ್ನು ಮಾಡಿಕೊಡುತ್ತಾ, ತನ್ನ ಕೆಲಸಕ್ಕೆ ಅರ್ಧ ಫಸಲನ್ನು ತೆಗೆದುಕೊಳ್ಳುತ್ತಿದ್ದನು.

4. ಅದು ಹೇಳುವುದೇನೆಂದರೆ, ವಾದಿಯು ಈ ನಡುವೆ ಅಂದರೆ ಸುಮಾರು 15 ವರ್ಷಗಳ ಹಿಂದೆ ತನ್ನ ಮಗನ ಜೊತೆ ಭದ್ರವತಿಗೆ ಹೋಗಿ ನೆಲಸಿದ್ದು, ಅಲ್ಲಿಂದ ಪ್ರತಿವರ್ಷ ಸಾಗುವಳಿಯ ವೆಚ್ಚವನ್ನು ಕೊಡುತ್ತಾ ಪ್ರತಿವಾದಿಯೊಂದಿಗೆ ಅದೇ ನಿಯಮವನ್ನು ಪಾಲಿಸಿಕೊಂಡು ಬಂದಿದು ಇರುತ್ತದೆ. ಮತ್ತು ಅತಿ ಮುಖ್ಯವಾಗಿ ವಾದಿಯು ಅತಿ ವಿಶ್ವಾಸವನ್ನು ಪ್ರತಿವಾದಿ ವಿಷಯದಲ್ಲಿ ಹೊಂದಿದ್ದು, ಆತ ಪ್ರತಿವರ್ಷ ಬಿತ್ತಿದ ಫಸಲಿನಲ್ಲಿ ತನ್ನ ಅರ್ಧ ಪಾಲನ್ನು ತೆಗೆದುಕೊಂಡು ಉಳಿದಿದ್ದನ್ನು ವಾದಿಗೆ ಕೊಡುತ್ತಾ ಬರುತ್ತಿದ್ದನ್ನು ಈ ರೀತಿಯ ವ್ಯವಹರಣೆಯು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯ ನಡುವೆ ಬಿಟ್ಟರೆ ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಇತರೆ ಯಾವುದೇ ರೀತಿಯ ವ್ಯವಹರಣೆ ಇಲ್ಲದೆ ಕರಾರು ಇದ್ದಿರುವುದಿಲ್ಲ. ಆದರೆ ಪ್ರತಿವಾದಿಯು ವಾದಿಯ ಗಮನಕ್ಕೆ ಇಲ್ಲದೆ ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕೆಲವು ಅಕ್ರಮಗಳನ್ನು ಮಾಡಿದ್ದು, ಆ ಮೂಲಕ ವಾದಿಗೆ ತುಂಬಾ ಮೋಸವನ್ನು ಮಾಡಿದ್ದು ಆ ಕಾರಣಕ್ಕಾಗಿ ವಾದಿಯು ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಈ ದಾವೆಯನ್ನು ಸಲ್ಲಿಸುತ್ತಿದ್ದಾಳೆ.”

25. Fact of plaintiff residing at Bhadrawati since 15 years after demise of her husband is admitted by the defendant. As already noted defendant has admitted the husband of the plaintiff to be the absolute owner of the suit schedule properties. Defendant having failed to prove his ownership and possession through and under the alleged agreements of sale and in the absence any other pleading set up by the defendant justifying his possession, necessary corollary and inference requires to be drawn to



accept the case of the plaintiff as pleaded above of she having engaged the service of defendant to cultivate the land. Further, plaintiff having pleaded in the plaint as extracted above has also reiterated the same in her examination-in-chief. She has withstood the cross-examination and nothing has been elicited during her cross-examination to discredit her oral testimony. She has repeatedly reiterated during the deposition of the fact of she having given the suit schedule properties to the defendant for cultivating on crop sharing basis. No other inference other than what is pleaded by the plaintiff would justify under the facts and circumstances of the case.

26. The entries in the revenue records Ex.P.1 to 11 indicate name of Basappa the husband of the plaintiff being the owner and in possession of the suit lands. Ex.P.3 is the RTC in respect of Sy.No.21/2 for the years 1988-1989 to 1992-1993. Ex.P.12 is the RTC in respect of land in Sy.No.57/3 for the year 1988-1989 to 1991-1992. In the said exhibits at column No.9 name of Basappa



husband of plaintiff has been rounded off and name of defendant - Yallappa, mother - Paramma has been shown. In column No.10 it is shown as ಪಟ್ಟಿದಾರನ ತಮ್ಮ ವರ್ಗ ನಂ.21 (brother of the pattedar) dated 09.07.1992 in respect of both the survey numbers Sy.Nos.21 and 57. Thus, the said entries reveal that the name of the defendant has been entered into showing him as the brother of the husband of the plaintiff. The said entries are not on the basis of defendant having purchased the property or he having entered into any agreement. The said documents run contrary to the very case of the defendant of he being in possession of the suit schedule properties on the basis of alleged purchase by his mother way back. Thus, from the above, it can be inferred that the plaintiff had not parted with the possession of the suit schedule properties to the defendant based on any agreement to sell or the sale transaction.

27. Apex Court in the case of **Vishwa Vijay Bharati vs. Fakhrul Hassan and others - (1976) 3**



SCC 642, dealing with the presumption of correctness of revenue entries, at paras 14 and 15 has held as under :-

"14. *It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry in to their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry is the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.*

15. In **Amba Prasad v. Abdul Noor Khan** – (1964) 7 SCC 800, it was held by this Court that Section 20 of the U.P. Act 1 of 1951 does not require proof of actual possession and that its purpose is to eliminate inquiries into disputed possession by acceptance of the entries in the Khasra or Khatauni of 1356 Fasli. While commenting on this decision, this Court observed in **Sonawati v. Sri Ram** – (1968) 1 SCR 617, 620 that the Civil Court in adjudging a claim of a person to the rights of an **adhivasi** is not called upon to make an enquiry whether the claimant was actually in possession of the land or held the right as an occupant: **cases of fraud apart**, the entry in the record alone is relevant. We have supplied the emphasis in order to show that the normal presumption of correctness attaching to entries in the revenue record, which by law constitute evidence of a legal title, is displaced by proof of fraud.

Thus, facts of the case with regard to entry of name of defendant in the revenue records read in the light of the aforesaid judgment of the Apex Court in **Vishwa Vijay Bharati** (supra) would make it clear that the defendant



cannot claim any possessory title over the suit schedule properties either.

28. Since, the title of the plaintiff over the suit properties has remained unimpeached for defendant having failed to prove his case of he having purchased the suit properties and in the absence of defendant justifying his possession by any other lawful means and manner, the assertion of the plaintiff of she engaging the service of the defendant to cultivate the land on crop share basis stands proved.

29. Defendant on the other hand, can neither be considered as a tenant nor a licensee and his possession, if any, can only be that of an agent or a servant. As held by the Hon'ble Apex Court in the case of ***Puran Singh vs. State of Punjab - (1975) 4 SCC 518*** :

"Occupation of a property by a person as an agent or servant at the instance of owner will not amount actual physical possession"



30. The Hon'ble Apex Court in the case of ***Maria Margarida Sequeira Fernandes*** (*supra*) has crystallized the principle of law in the case of this nature which is as under:-

"101. Principles of law which emerge in this case are crystallized as under:-

- 1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
- 2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
- 3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- 4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.*
- 5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession."*

31. Notwithstanding the above, since the Trial Court dismissed the suit on the premise of plaintiff not being in



possession of the properties and in view of the first substantial question of law framed as above regarding maintainability of the suit, in view of Section 34 of the Specific Relief Act, 1963, is concerned, it is necessary to advert to Section 34 of the Specific Relief Act, 1963 which reads as under:-

*"Section 34.- **Discretion of Court as to declaration of status or right.**- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested in deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.*

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

Explanation.- A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

32. The Hon'ble Supreme Court in the case of **Akkamma and others** (supra). At Para Nos.16 to 21 has held as under :-

"16. The prohibition or bar contained in proviso to Section 34 of the 1963 Act determines the maintainability of a suit and that issue has to be tested on the basis the plaint is framed. If the plaint contains claims for declaratory relief as also consequential relief in the form



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

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

17. *So far as the reliefs claimed in the suit out of which this appeal arises, prayer for declaration was anchored on two instances of interference with the possession of land of the plaintiffs and injunctive relief for restraint from interference with the property was also claimed. But possession of the said property by the original plaintiff was not established. The alternative relief sought to be introduced at a later stage of the suit was also found to be incapable of being entertained for the reason of limitation. Thus, the foundation of the case of the plaintiffs based on these two factual grounds collapsed with the fact-finding Courts rejecting both these*



assertions or allegations. But that factor ought not to be a ground for denying declaration of ownership to the plaintiffs. There is no bar in the Specific Relief Act, 1963 in granting standalone declaratory decree. The Trial Court came to a positive finding that the original plaintiff was the owner of the suit-property. But it held that in absence of declaration of relief of possession by the plaintiff, declaration of title cannot be granted. We have already expressed our disagreement with this line of reasoning. It seems to be a misconstruction of the provisions of Section 34 of the 1963 Act. The Trial Court and the High Court have proceeded on the basis that the expression "further relief" employed in that proviso must include all the reliefs that ought to have been claimed or might have been granted. But in our view, that is not the requirement of the said proviso. This takes us to the corollary question as to whether the 1987 suit could have been held to be barred under the principle contained in Order II Rule 2 of the Code of Civil Procedure, 1908. In our opinion, the said provisions of the Code would not apply in the facts of this case, as the denial of legal right in the 1987 suit is pegged on two alleged incidents of 15th and 25th February, 1987. These allegations can give rise to claims for declaration which obviously could not be made in the 1982 suit. The claim for declaratory decree could well be rejected on merit, but the suit in such a case could not be dismissed invoking the principles incorporated in Order II Rule 2 of the Code of 1908.

18. *The High Court has proceeded on the footing that in the subject-suit, the original plaintiff must have had asked for relief for recovery of possession and not having asked so, they became disentitled to decree for declaration and possession. But as we have already observed, the proviso to Section 63 of the 1963 Act requires making prayers for declaration as well as consequential relief. In this case, if the relief on second count fails on merit, for that reason alone the suit ought not to fall in view of aforesaid prohibition incorporated in Section 34 of the 1963 Act.*

19. *Having opined on the position of law incorporated in Section 34 of the 1963 Act, we shall again turn to the facts of the present case. The first suit was for perpetual injunction, in which the original plaintiff lost for*



failing to establish possession. In the second suit (the 1987 suit), reliefs were claimed for declaration based on allegation of subsequent disturbances and on that basis injunctive relief was asked for. The plaintiffs claim for being in possession however failed. Thus, no injunction could be granted restraining the defendants from disturbing or interfering with the original plaintiffs' possession of the suit land. But as the Trial Court found ownership of the original plaintiff was proved, in our view the original plaintiff was entitled to declaration that he was the absolute owner of the suit property. There is no bar in granting such decree for declaration and such declaration could not be denied on the reasoning that no purpose would be served in giving such declaration. May be such declaratory decree would be non-executable in the facts of this case, but for that reason alone such declaration cannot be denied to the plaintiff. Affirmative finding has been given by the Trial Court as regards ownership of the original plaintiff over the subject-property. That finding has not been negated by the High Court, being the Court of First Appeal. In such circumstances, in our opinion, discretion in granting declaratory decree on ownership cannot be exercised by the Court to deny such relief on the sole ground that the original plaintiff has failed to establish his case on further or consequential relief.

20. *In these circumstances, we sustain the judgment of the High Court that the plaintiffs were not entitled to injunctive relief as prayed for and also the rejection of the plaintiffs plea for introduction of relief for possession. But at the same time, we set aside that part of the judgment by which it has been held that the plaintiffs were disentitled to declaration of ownership of the property. We accordingly hold that the plaintiffs are entitled to declaration that they are owners of the suit property and there shall be a decree to that effect.*

21. *The appeal is party allowed in the above terms."*



33. Similarly, in the case of ***Union of India v. Ibrahim Uddin - (2012) 8 SCC 148***, at paragraph Nos.55 to 58 has held as under :-

55. *The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.*

56. *In Ram Saran v. Ganga Devi [(1973) 2 SCC 60] this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 and, thus, not maintainable. In Vinay Krishna v. Keshav Chandra [1993 Supp (3) SCC 129] this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also Gian Kaur v. Raghubir Singh [(2011) 4 SCC 567])*

57. *In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief*

58. *In the instant case, the suit for declaration of title of ownership, had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property Thus, the suit was barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."*



34. Thus, the trial court was not justified in dismissing the suit of the plaintiff applying the provisions of Section 34 of the Specific Relief Act to the facts and circumstances of the case as narrated hereinabove.

35. From the above discussion, the following emerges:-

- i. That the plaintiff is the absolute owner of suit schedule properties.
- ii. That the defendant though claimed to have purchased the property has failed to justify his title over the same.
- iii. Since, the pleading and evidence of the plaintiff regarding she having engaged the defendant to cultivate the land on crop share basis has not been rebutted or disproved, defendant cannot claim to be in possession of the property in any manner, other than being agent, caretaker or agricultural laborer under the plaintiff.
- iv. The revenue entries reflecting in the name of defendant not based on legally acceptable transaction obtained surreptitiously cannot confer any possessory right or title in favour of the defendant.



- v. Since, plaintiff continues to be in possession of the property, suit for declaration and injunction without seeking relief for possession in the facts and circumstances of the case, is maintainable.
- vi. The second substantial question of law regarding limitation under Article 64 of the Limitation Act 1963, would be of no consequences in view of the answer to the first substantial question of law.

Accordingly, the following:

ORDER

- i) The appeal is ***dismissed***.
- ii) Judgment and decree dated 28.01.2016 passed in O.S.No.19/2012 on the file of the Additional Civil Judge and JMFC, Shahapur and the judgment and decree dated 21.07.2018 passed in R.A.No.18/2016 on the file of Senior Civil Judge, Shahapur are confirmed.

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