



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 25<sup>TH</sup> DAY OF FEBRUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

**REGULAR FIRST APPEAL NO. 285 OF 2018 (INJ)**

**C/W**

**REGULAR FIRST APPEAL NO. 451 OF 2018 (INJ)**

**REGULAR FIRST APPEAL NO. 721 OF 2018 (INJ)**

**IN RFA No. 285/2018**

**BETWEEN:**

SRI M S SHANKAR,  
S/O SHIVALINGAIAH,  
AGED ABOUT 38 YEARS,  
R/AT NO.86/1, THALAGHATTAPURA,  
KANAKAPURA MAIN ROAD,  
UTTARAHALLI HOBLI,  
BANGLAORE SOUTH TALUK,  
BANGALORE 560 062.

...APPELLANT

(BY SRI P M GOPI, ADVOCATE)

**AND:**

1. DR B K ARUN KUMAR,  
SON OF LATE B.C. KRISHNAN,  
AGED ABOUT 70 YEARS,  
R/AT NO.642, 16<sup>TH</sup> "B" MAIN  
4<sup>TH</sup> CROSS, 3<sup>RD</sup> BLOCK, KORAMANGALA,  
BANGALORE - 560 034.
2. DR. RAMA ARUN KUMAR,  
WIFE OF B.K. ARUN KUMAR,  
AGED ABOUT 68 YEARS,  
R/AT NO.642, 16<sup>TH</sup> "B" MAIN 4<sup>TH</sup> CROSS,  
3<sup>RD</sup> BLOCK, KORAMANGALA,





BANGALORE 560 034.

3. SRI. CHANDRAMOHAN H,  
FATHER NAME NOT KNOWN,  
AGED ABOUT 42 YEARS,  
R/AT NO.51, PATEL MUNIVENKATAPPA LAYOUT,  
DODDAKALLASANDRA, UTTARAHALLI HOBLI,  
KANAKAPURA MAIN ROAD,  
BANGALORE 560 062.
  
4. SMT. R. BHARATHI,  
W/O S.H. RAJASHEKAR,  
AGED ABOUT 44 YEARS,  
R/AT NO.3, 14/1,  
SUBRAMANYAPURA MAIN ROAD,  
UTTARAHALLI, BANGALORE 560 061.

...RESPONDENTS

(BY SRI VIJAYA KUMAR K, ADVOCATE FOR C/R1 AND R2,  
SRI R S RAVI, SENIOR COUNSEL FOR  
SRI NARENDRA D V GOWDA, ADVOCATE FOR R3,  
SRI C S HIREMATH, ADVOCATE FOR R4)

THIS RFA IS FILED UNDER ORDER 41 RULE R/W SEC.96  
OF CPC., AGAINST THE JUDGMENT AND DECREE DATED  
12.01.2018 PASSED IN OS.NO.3433/2013 ON THE FILE OF THE  
XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,  
BENGALURU, CITY, DECREERING THE SUIT FOR PERMANENT  
INJUNCTION.

**IN RFA NO.451/2018**

**BETWEEN:**

SMT R BHARATHI,  
W/O S.H.RAJASHEKAR,  
AGED ABOUT 44 YEARS,  
R/AT NO.3, 14/1,  
SUBRAMANYAPURA MAIN ROAD,  
UTTARAHALLI, BANGALORE-560 061.

...APPELLANT

(BY SRI C S HIREMATH, ADVOCATE)



**AND:**

1. DR B K ARUN KUMAR,  
S/O LATE B.C.KRISHNAN,  
AGED ABOUT 70 YEARS,  
R/AT NO.642, 16<sup>TH</sup> B MAIN,  
4<sup>TH</sup> CROSS, 3<sup>RD</sup> BLOCK, KORAMANGALA,  
BANGALORE-560 034.
2. R.RAMA ARUN KUMAR,  
W/O B.K.ARUN KUMAR,  
AGED ABOUT 68 YEARS,  
R/AT NO.642, 16<sup>TH</sup> B MAIN,  
4<sup>TH</sup> CROSS, 3<sup>RD</sup> BLOCK, KORAMANGALA,  
BANGALORE-560 034.
3. SRI.M.S.SHANKAR,  
S/O SHIVALINGAIAH,  
AGED ABOUT 38 YEARS,  
R/AT NO.86/1, THALAGHATTAPURA,  
KANAKAPURA MAIN ROAD,  
UTTARAHALLI HOBLI,  
BANGALORE SOUTH TALUK,  
BANGALORE - 560 062.
4. SRI.CHANDRAMOHAN.H,  
FATHER NAME NOT KNOWN,  
AGED ABOUT 42 YEARS,  
R/AT NO.51,  
PATEL MUNIVENKATAPPA LAYOUT,  
DODDAKALLASANDRA, UTTARAHALLI HOBLI,  
KANAKAPURA MAIN ROAD,  
BANGALORE-560 062.

...RESPONDENTS

(BY SRI VIJAYA KUMAR K, ADVOCATE FOR C/R1 & R2  
NOTICE TO R3 AND R4 IS DISPENSED WITH  
VIDE ORDER DATED 16.02.2026)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W  
SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE  
DATED 12.01.2018 PASSED IN OS.NO.3433/2013 ON THE FILE  
OF THE XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,



BENGALURU CITY, DECREERING THE SUIT FOR PERMANENT INJUNCTION.

**IN RFA NO. 721/2018**

**BETWEEN:**

SRI CHANDRAMOHAN H,  
S/O LATE PANJU POOJARI,  
AGED ABOUT 43 YEARS,  
R/AT NO.51, PATEL MUNIVENKATAPPA LAYOUT,  
DODDAKALLASANDRA,  
UTTARAHALLI HOBLI,  
KANAKAPURA MAIN ROAD,  
BANGALORE-560062.

...APPELLANT

(BY SRI R S RAVI SR. COUNSEL FOR  
SRI NARENDRA D V GOWDA, ADVOCATE)

**AND:**

1. DR B K ARUN KUMAR,  
S/O LATE B C KRISHNAN,  
AGED ABOUT 71 YEARS,
2. DR RAMA ARUN KUMAR,  
W/O B K ARUN KUMAR,  
AGED ABOUT 69 YEARS,  
BOTH ARE R/AT NO.642, 16<sup>TH</sup> B MAIN,  
4<sup>TH</sup> CROSS, 3<sup>RD</sup> BLOCK, KORAMANGALA,  
BANGALORE-560034.
3. M S SHANKAR,  
S/O SHIVALINGAIAH,  
AGED ABOUT 39 YEARS,  
R/OF NO.86/1, THALAGHATTAPURA,  
KANAKAPURA MAIN ROAD,  
UTTARAHALLI HOBLI,  
BANGALORE SOUTH TALUK,  
BANGALORE-560062.
4. SMT R BHARATHI,



W/O S H RAJASHEKAR,  
AGED ABOUT 45 YEARS,  
R/AT NO.3, 14/1,  
SUBRAMANYAPURA MAIN ROAD,  
UTTARAHLLI, BANGALORE-560061.

...RESPONDENTS

(BY SRI K VIJAYA KUMAR, ADVOCATE FOR R1 AND R2,  
NOTICE TO R3 AND R4 DISPENSED WITH  
V/O/DT 16.02.2026)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST  
THE JUDGMENT AND DECREE DATED 12.01.2018 PASSED  
IN OS.NO.3433/2013 ON THE FILE OF THE XXXIX  
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,  
BENGALURU CITY, DECREERING THE SUIT FOR PERMANENT  
INJUNCTION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED  
FOR JUDGMENT ON 16<sup>TH</sup> FEBRUARY, 2026 AND COMING ON  
FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED  
THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

### **CAV JUDGMENT**

Regular First Appeal No.285/2018 is filed against the  
judgment and decree dated 12.01.2018 in O.S. No.3433/2013  
on the file of XXXIX Additional City Civil Judge, Bengaluru.

2. In terms of the said judgment and decree, the suit  
for permanent injunction is decreed. Defendant No.1 is in  
appeal in RFA 285/2018.



3. RFA No.451/2018 is filed by defendant No.3 and RFA No.721/2018 is filed by defendant No.2 of the same suit referred to above.

4. The plaintiffs filed the suit on the premise that Plaintiff No.1 purchased suit 'A' & 'C' schedule properties under the registered sale deeds dated 19.08.1991 from M. Srinivasa Reddy and his family members represented by their Power of Attorney Holder. Both sale deeds referred to above are executed by P. S. Maniyam, the power of attorney holder of the vendors. The powers of attorney in both sale deeds are different.

5. The plaintiffs claim that the possession of 'A' and 'C' schedule properties were delivered to the plaintiffs, on the date of registered sale deeds dated 19.08.1991.

6. Plaintiff No.2 claims title and possession of the property in respect of 'B' schedule property under the registered sale deed dated 24.09.2009.

7. It is alleged that, the defendants having no right over the properties have interfered with the plaintiffs' possession and thus, the suit in O.S No.3433/2013 for injunction is filed.



8. Defendant No.1 claims title and possession of the property in Site No. 49 ('A' schedule property) under the registered sale deed dated 27.02.2013 marked at Exhibit-D2. Defendant No.2 claims title and possession over the property in Site No. 51 ('B' schedule property) under the registered sale deed dated 27.02.2013 marked at Exhibit-D4. Defendant No.3 claims title and possession over the property in Site No. 50 ('C' schedule property) under the registered sale deed dated 27.02.2013 marked at Exhibit-D3.

9. All the three sale deeds are executed by M. Srinivasa Reddy and his family members. Thus, the defendants claim that the plaintiffs/respondents No.1 and 2 have no title over the suit properties.

10. The defendants/appellants also raised a contention that the plaintiffs' claim for title over 'A' and 'C' schedule properties pursuant to sale deeds executed by the general power of attorney holder is untenable. Defendants/appellants urge that, there was no valid or subsisting General Power of Attorney as on the date of the sale deeds in favour of the agent-P.S. Maniyam.

11. It is the contention of the defendants/appellants that the Power of Attorney dated 06.01.1990 at Exhibiti-P2



was cancelled vide Cancellation Deed dated 12.03.1990 at Exhibit-D15. It is also urged that, the Powers of Attorney relied on by the plaintiffs are not registered as required under law.

12. The Trial Court framed the issues relating to the possession on the premise that the suit is only for bare injunction.

13. The parties led the evidence. On appreciation of the evidence, the Trial Court has concluded that the plaintiffs are in possession of the properties and decreed the suit. The Trial Court rejected the contention that the General Power of Attorney dated 06.01.1990 at Exhibit-P1 was cancelled by the executants vide Cancellation Deed dated 12.03.1990 at Exhibit-D15.

14. As far as 'B' schedule property is concerned, the Court has come to the conclusion that the property was purchased by one Smt. Shyla Sheshadri under the registered sale deed dated 20.10.1989 and she in turn, has sold the property to the plaintiff No.2 vide a registered sale deed dated 24.09.2009 pursuant to the Court decree in favour of plaintiff No.2 against Smt. Shyla Seshadri in O.S.No.6532/2004. The



said suit was based on an Assignment Agreement dated 20.06.1990 executed in favour of plaintiff No.2.

15. Aggrieved by the aforementioned judgment and decree, the defendants have filed the appeals as referred to above.

16. Learned Senior Counsel appearing for the appellant in RFA No.721/2018 would contend that the plaintiffs have not established their title and possession. The sale deed dated 19.08.1991 executed in the name of the plaintiff No.1 in respect of 'A' schedule property is not valid as the power of attorney executed by the owners is not duly registered in accordance with law.

17. It is urged that, the combined reading of the agreement for sale, power of attorney and the affidavit executed by the erstwhile owners would lead to the conclusion that the interest is created in respect of the property in favour of the attorney, as such, the documents required registration.

18. In support of the contention, learned Senior Counsel would place reliance on the following judgments:



a) ***M. S. Ananthamurthy and Another vs. J. Manjula Etc.***<sup>1</sup>

b) ***Suraj Lamp and Industries Private Limited V. State of Haryana and Another***<sup>2</sup>

19. In addition, in the alternative, it is also urged that the Power of attorney dated 06.01.1990 marked at Exhibit-P2 is cancelled in terms of Cancellation Deed dated 12.03.1990 marked at Exhibit-D15. Thus, according to the appellants, the Power of Attorney Holder had no right to alienate the property.

20. It is further submitted that, possession of the property in Site No.51 is not established by the plaintiffs. The averments in the plaint would indicate that the defendants were in possession of the property when the suit was filed. Thus, the suit for bare injunction without a relief of possession and declaration is not tenable.

21. To substantiate the contention learned Senior counsel placed reliance on the same judgment in ***M. S. Ananthamurthy (supra)***, and would urge that, the appeal is to be allowed and the suit is to be dismissed.

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<sup>1</sup> ***2025 SCC OnLine SC 448.***

<sup>2</sup> ***(2012) 1 SCC 656***



22. It is also submitted that the sale deed dated 24.09.2009 by Smt. Shyla Sheshadri in favour of the plaintiff No.2 is not a valid sale deed and the decree for specific performance in O.S. No.6532/2004 is also not valid, as it is based on an alleged assignment deed and not on agreement for sale and the decree for specific performance does not bind the defendant No.2 (appellant in RFA No.721/2018) as he is not a party to the said proceeding.

23. The learned counsel for the appellant in RFA No 451/2018 in addition to adopting the submissions of the learned Senior counsel, would also urge that the appellant in the said RFA is in possession of the property in Site No.50 and same is established and the suit being a simple suit for injunction, the decree for injunction could to have been granted as the plaintiffs to establish their possession over the property as on the date of the suit.

24. In addition, it is also urged that the description of the property is also not established by the plaintiffs.

25. Learned Senior counsel for the appellant in RFA No.721/2018 would also urge that, there are two powers of attorneys executed by the original owners i.e. Srinivasa Reddy and family and the general power of attorney dated



17.11.1989 marked at Exhibit-P20 does not refer to any sketch and without such sketch, the property in Site No.51 could not have been sold. It is also urged that the descriptions of the property for which the general power of attorney was executed, as mentioned in the power of attorney, do not tally with the one in the sale deed.

26. Learned counsel for the respondents/plaintiffs urged that, all the three sale deeds executed in favour of the plaintiffs are prior to the sale deeds in favour of the defendants/appellants.

27. It is also further urged by the learned counsel for the respondents/plaintiffs that the Powers of Attorney in favour of P.S. Maniyam was valid and was never cancelled and those Powers of Attorney did not require registration. The sale deeds in favour of the plaintiffs were duly registered and the property records were duly changed in favour of the plaintiffs pursuant to aforementioned sale deeds.

28. The vendors never questioned the registered sale deeds in favour of the plaintiffs by filing the suit.

29. The Learned Counsel for the respondents/plaintiffs placed reliance on the following judgements:



- a) Eureka Builders and others vs Gulabchand and others<sup>3</sup>**
- b) Puran Singh and others vs State of Punjab<sup>4</sup>**
- c) Rame Gowda vs M. Varadappa Naidu and another<sup>5</sup>**
- d) Prem Singh and others vs Birbal and Others<sup>6</sup>**
- e) Kallappa Rama Londa vs Shivappa Nagappa Aparaj<sup>7</sup>**
- f) Manik Majumder and others vs Dipak Kumar Saha and others<sup>8</sup>**

30. The Court has considered the contentions raised at the Bar and perused the records. The Court has also considered the ratio laid down in the judgments cited by both sides.

31. The following points arise for consideration:

- i. "Whether the appellant in RFA.No.285/2018 has established the possession over 'A' schedule property based on the registered sale deeds dated 27/02/2013?"

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<sup>3</sup> (2018) 8 SCC 67

<sup>4</sup> (1975) 4 SCC 518

<sup>5</sup> (2004) 1 SCC 769

<sup>6</sup> (2006) 5 SCC 353

<sup>7</sup> ILR 1994 KAR 3666

<sup>8</sup> (2023) 8 SCC 410



- ii. "Whether the appellant in RFA.No.451/2018 has established the possession over 'B' schedule property based on the registered sale deeds dated 27/02/2013?"
- iii. "Whether the appellant in RFA.No.721/2018 has established the possession over 'C' schedule property based on the registered sale deeds dated 27/02/2013?"

32. There is no dispute that M. Srinivasa Reddy was the owner of the properties and the powers of attorney dated 06.01.1990 and 17.11.1989 at Ex. P2 and P20 respectively, are executed by M. Srinivasa Reddy and his family members in favour of P.S Maniyam. Though the contention is raised that, the power of attorney dated 06.01.1990 is cancelled by M. Srinivasa Reddy, vide Cancellation Deed dated 12.03.1990 at Exhibit-D15, the factum of alleged service of notice cancelling the power of attorney is not established. Exhibit-D15 the alleged Cancellation Deed does not bear the signature of the attorney/agent. No document is produced to hold that the notice cancelling the power of attorney is served on the agent.

33. Though the affidavit dated 12.03.1990 is marked at Exhibit-D75, to contend that the power of attorney dated 06.01.1990 is cancelled, what is required to be noticed is that,



the notice dated 27.02.1990 referred to in the said affidavit, said to have been issued to the power of attorney holder by the principal, cancelling the power of attorney is not produced. The Exhibit-D75 is the affidavit by the power of attorney holder, wherein, he has sworn to the affidavit stating that notice dated 27.02.1990 is served on him and the power of attorney is cancelled.

34. It is relevant to notice that, the said power of attorney holder who is said to have sworn to the affidavit on 12.03.1990 at Exhibit-D75 is not examined. Neither the notice nor the acknowledgement for having served the notice cancelling the general power of attorney is produced. A mere affidavit of the agent that the power of attorney was cancelled by issuing the notice, is not a valid proof of alleged cancellation of power of attorney, when the principal or the agent are not examined.

35. This being the position, this Court is of the view that the affidavit by the Power of Attorney marked at Exhibit-D75 is not an evidence in the eye of law to hold that power of attorney dated 06.01.1990 was duly cancelled.

36. Thus, the Court is of the view that, when the sale deeds were executed in favour of the plaintiffs, there were



valid general powers of attorney in favour of P.S Maniyam who has executed registered sale deeds in favour of the plaintiffs.

37. Next question is; "Whether the said powers of attorney executed in favour of P.S Maniyam require registration as urged by the learned Senior counsel as well as the learned counsel for other appellants?"

38. The Court has considered the ratio in **M. S. Ananthamurthy** (*supra*).

39. As can be seen from the aforementioned judgment, one Muniyappa @ Ruthappa was the owner of the property and he had developed the property and formed plots. On 04.04.1986, Muniyappa @ Ruthappa, who had executed a general power of attorney in favour of A. Saraswathi had also entered into an agreement for sale with A. Saraswathi, who was the power of attorney holder of Muniyappa @ Ruthappa. The power of attorney executed in the said case is also extracted in the said judgment. It is noticed that the said power of attorney was not a power of attorney coupled with interest.

40. The agreement for sale dated 04.04.1986 also contained a recital that the vendor has transferred the possession of the property to the purchaser/the power of



attorney holder. As noticed, the purchaser was also the power of attorney holder in the said case.

41. It is also noticed from paragraph No.7 of the said judgment that the power of attorney was duly notarised and on 30.01.1997, the original owner who had executed the power of attorney, died. After his demise, on 01.04.1998, the power of attorney holder executed a registered sale deed in respect of the property covered by the said power of attorney in favour of her son for a consideration of Rs.84,000/-. The said sale deed is duly registered apparently after the death of the principal.

42. In the background of these facts, the Apex Court has come to the conclusion that the agreement for sale dated 04.04.1986 and the power of attorney dated 04.04.1986 and the subsequent sale deed by the power of attorney holder in favour of her son after the demise of the principal do not convey valid title in favour of the purchaser.

43. While answering the contention that the power of attorney in the aforementioned case was an agency coupled with interest, the Apex Court held that such contention cannot be accepted as the power of attorney is not duly registered.



Thus, it is evident that the Apex Court did not hold that every power of attorney authorising alienation requires registration.

**44.** In ***SURAJ LAMP*** (*supra*), the Apex Court did not lay down a law that, every power of attorney authorising sale of property requires registration. In the said case, the Apex Court was dealing with a situation where the property was allegedly sold and title was allegedly conveyed based on power of attorney without a registered sale deed in favour of the purchaser. Thus, the ratio in the said judgment has no application to the present case as there are registered sale deeds in favour of the plaintiffs. The sale deeds are executed by the power of attorney holder who acted as an agent but not as an owner based on the affidavits.

**45.** Admittedly, in the instant case, the powers of attorney were executed in favour of one P.S. Maniyam who is not the purchaser of the property. The power of attorney executed in favour of P.S. Maniyam did not extinguish the principal's title and interest over the property. The powers of attorney under scrutiny did not create any interest in the property in favour of the agent. It only enabled the attorney to alienate the property in addition to manage the property. By accepting the agency, the attorney was acting as per the



instructions of the principal, on behalf of the principal. Such power of attorney cannot be construed as having created any interest in the property in favour of the attorney/agent.

46. Pursuant to the power of attorney, the agent, P.S. Maniyam has executed sale deed dated 19/08/1991 at Ex.P1 and the said sale deed is duly registered. P.S. Maniyam has not executed a sale deed in his favour. P.S. Maniyam has executed a sale deed in favour of a third parties namely the plaintiffs No.1 and 2.

47. Learned Senior Counsel referring to the affidavit marked at Ex.P.3 urged that, in the said affidavit, the original owner M.Srinivasa Reddy and his family members have made a statement on oath stating that, after executing the power of attorney, they have sold the property to the purchaser P. S. Maniyam i.e., the agent/power of attorney holder and it is also stated that the power of attorney executed by them is irrevocable.

48. It is to be noticed that the power of attorney dated 06.01.1990 marked at Ex.P.2 in respect of 'A' schedule property does not speak about any interest being created in favour of the attorney or the title being conveyed to the attorney. Likewise, the power of attorney dated 17.11.1989 in



respect of 'C' schedule property marked at Ex.P.20, does not speak about creating an interest in the immovable property in favour of the power of attorney holder P. S. Maniyam.

49. In the aforementioned facts, the Court is of the view that, the powers of attorney dated at Ex.P.2 dated 06.01.1990 and at Ex.P.20 dated 17.11.1989 do not require registration as the said powers of attorneys do not create any interest in favour of the attorney in respect of any immovable property.

50. The statement in the affidavit at Ex.P.3 that, the property sold to P. S. Maniyam does not make Maniyam the owner of the property, and said P. S. Maniyam has not sold the property to the plaintiffs in his capacity as the owner, but has sold the properties in the capacity of an agent of the owners. Hence, the sale deed in favour of the plaintiffs by P. S. Maniyam are valid sale deeds, as the power of attorney in favour of P. S. Maniyam is not disputed by the owners and as already held, the powers of attorney are not cancelled as required under law.

51. It is also noticed that as far as 'B' schedule property is concerned, there is a decree in O.S 6532/2004 for specific performance. The parties to the said decree have not assailed



the judgment and decree in the said suit. Thus, the decree has attained finality. Pursuant to the decree for specific performance, sale deed is executed on 24.09.2009. This sale is prior to the sale in favour of the defendants.

52. Though the defendants urge that they are not parties to the decree and decree does not bind them, what is required to be noticed is, the defendants are not necessary parties to the decree as they had not acquired any right over the property when the decree was passed or when the sale deed was executed in favour of the plaintiff No.2 in respect of 'B' schedule property.

53. Learned Senior counsel for the appellant in RFA No.721/2018 and learned counsel for the appellants in the remaining two appeals also urged that the suit is defective for want of appropriate relief of declaration and possession and on this count itself the suit is to be dismissed.

54. Reliance is placed on the judgment of the Apex Court in **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by L.Rs and Others**<sup>9</sup>. The Court has considered the said judgment. In paragraph No.17 the Apex Court has held as under:-

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<sup>9</sup> **AIR 2008 SC 2033**



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

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

*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

*(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question*



*of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*

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

*(Emphasis supplied)*

55. From the ratio laid down in the aforementioned judgment, it is noticed that, in case there is a cloud over the plaintiffs' title or the possession of the property, it is



necessary for the plaintiffs to file a comprehensive suit for declaration of title and injunction, or declaration and possession if the plaintiff is not in possession.

56. The aforementioned judgment does not mandate that in all circumstances the plaintiff is required to file a suit for declaration and injunction and suit for injunction without appropriate declaratory relief is not maintainable. It broadly indicates as to when the appropriate relief of declaration has to be sought and appropriate relief of possession has to be prayed by the party to the proceedings.

57. The question is; "Whether the plaintiffs in this case were required to file a suit for declaration and injunction merely because the sites were vacant when the suit was filed?" The Court is of the view that the judgment refer does not lay down the ratio that in every case when the suit is in respect of a vacant site, there has to be an appropriate relief of declaration and injunction.

58. The paragraph No.17(b) of the aforementioned judgment would clearly indicate that even in a suit for injunction, the Court may incidentally refer to the question of title, in case, the case is simple and straightforward.



59. For the aforementioned reasons, the Court is of the view that, the contentions that the plaintiffs were required to seek declaration of title and the suit is defective for the aforementioned purpose cannot be accepted. Merely because there is interference by the defendants in each and every case, the plaintiffs are not required to seek declaration of title.

60. The appellants with reference to the averments made in the plaint urged that, the possession of the appellants over the suit schedule properties is admitted by the plaintiffs. The Court does not find merit in the said contention. In the plaint, it is averred that the defendants are making attempts to put wall in the property by dividing the same into three parts. Said averment by itself cannot be interpreted to say that the possession is with the defendants. Since the major portion of the suit property is a vacant site with a small shed in one portion of the property, one cannot jump into the conclusion that the possession is not with the plaintiffs. The Court has to consider the overall evidence placed on record.

61. The suit property is by and large a vacant land and the shed is constructed in the suit property. Records would indicate that electricity connection to the said shed is in the name of the plaintiffs.



62. Though it is urged on behalf of the appellants that, the identification of the property is not established with reference to the sale deeds produced by the plaintiffs and the description of the property provided in the powers of attorney, said contention has no merit. Admittedly, both plaintiffs and defendants are claiming under same vendors. It is not the case of the defendants that the vendors have sold different properties to the plaintiffs and different properties to the defendants. Moreover, the description of the properties shown in the power of attorney and the sale deeds do match.

63. It is also relevant to notice that the plaintiffs No.1 and 2 have purchased the property under three registered sale deeds referred to above. Thus, there is no dispute relating to the identification of the property between the plaintiffs.

64. It is also relevant to notice that the boundaries mentioned in the two sale deeds pertaining to schedule 'A' and schedule 'C' do match and they clearly indicate that they are adjoining to each other.

65. As far as 'B' schedule property, the subject matter of the third sale deed is concerned, it is the sale deed executed pursuant to the decree in O.S 6532/2004 passed by



the competent Civil Court. The said sale deed is also duly registered.

66. Defendant No.3 claims title over 'B' schedule property. Admittedly, when the property was sold to defendant No.3 by M. Srinivasa Reddy and his family members, there was a sale deed in favour of Smt. Shyla Sheshadri way back in the year 1989. Though it is urged that the deed of assignment in favour of the plaintiff No.2 by Smt Shyla Sheshadri is not registered for having allegedly conveyed title and possession, pursuant to the decree based on the assignment deed, decree for specific performance is granted and the registered sale deed is duly executed on 24.09.2009. Thus, assuming that the assignment deed required registration and was not duly registered, the defect if any, is cured pursuant to the registered sale deed.

67. In addition to that, as far as identification of the property is concerned, there is no dispute that, both plaintiffs and defendants claim title over the suit schedule properties based on their respective title deeds. Thus, the contention that the sketch is not annexed along with powers of attorney to identify the property sold by the powers of attorney holder is of little consequence.



68. The next question is, "Whether the plaintiffs are able to establish possession over the properties?"

69. In the instant case, both the parties have produced the photographs to show the features of the suit schedule property. The Court is of the view that identification of the property is not in dispute, as the photographs produced before the Trial Court are the photographs pertaining to the suit schedule properties. Substantial portion of the suit schedule property is the vacant land and in one portion there is a small shed. Plaintiffs claim that they constructed the shed and got electricity connection. None of the defendants claim that he constructed the shed in the suit schedule property.

70. Though the contention is raised with reference to change of katha in the name of defendants, it is to be noticed that said documents cannot establish title and possession. The properties are already transferred in the name of the plaintiffs and there cannot be any change of katha without notice to the plaintiffs. There is no dispute that, in the portion of the suit schedule property, a shed is located. Though, the plaint averments would indicate that the defendants made attempts to make three separate parts in the suit schedule property, that by itself would not indicate that the plaintiffs



have lost possession over the schedule property. The fact that there is electricity connection to the shed in the suit schedule property would clearly demonstrate that the plaintiffs are in possession of the suit schedule property.

71. Apart from that, the suit schedule property is by and large vacant. Thus, even if it is assumed that, there is an attempt by the defendants to enter upon the property and put the wall in the property dividing the property into three parts, it appears from the overall appreciation of the evidence on record that such an attempt later did not fructify and they were not able to dispossess the plaintiffs. That being the position, the Court is of the view that the plaintiffs have established possession of the property.

72. In the light of the aforementioned findings, the Court is of the view that, the contention that the plaintiffs are not in possession of the property and the suit without relief of declaration of title and possession is not maintainable cannot be accepted.

73. It is urged on behalf of the appellants that the properties in question have been converted into non-agricultural use. And that being the position, there cannot be any reference to the Survey Number while mentioning the



Katha Number. If, for any reason the Survey Number is also mentioned in the Katha Number after conversion, that does not mean that the sale deed in favour of the plaintiffs is invalid.

74. This Court does not find any reasons to interfere with the impugned judgment and decree. The Trial Court has recorded valid reasons for holding that the plaintiffs have established the possession over the suit properties. Hence, the following:

ORDER

Appeals are ***dismissed***. No order as to costs.

**Sd/-**  
**(ANANT RAMANATH HEGDE)**  
**JUDGE**

brn/chs.