



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1703 OF 2023 (DEC/INJ)

BETWEEN:

KEMPAIAH (DEAD)
BY LEGAL HEIRS

1. CHIKKADRAIAH
S/O LATE KEMPAIAH,
AGED ABOUT 68 YEARS,
2. MUNIYAPPA
S/O LATE KEMPAIAH,
DEAD BY HIS LRS
- 2(a) MAHALAKSHMAMMA @ MALLAMMA
W/O LATE MUNIYAPPA,
AGED ABOUT 50 YEARS,
(NEAR NATIONAL SCHOOL)
KASABA HOBLI,
ANATHARASANAHALI,
ARAKERE POST,
TUMAKURU TALUK AND
DISTRICT - 572 101.
- 2(b) SUMITRA @ SHOBHA
W/O LATE SANJEEVA RAJ,
D/O LATE MUNIYAPPA,
AGED ABOUT 30 YEARS,
R/A YELLAPURA,
(NEAR NATIONAL SCHOOL)
KASABA HOBLI,
ANATHARASANAHALI,
ARAKERE POST, TUMAKURU TALUK
TUMAKURU DISTRICT - 572 101.





2(c) KAVITHA
W/O SHIVARAJ,
D/O LATE MUNIYAPPA,
AGED ABOUT 27 YEARS,
R/AT GONDHIHALLI
AT POST : PURAVARA HALLI,
MADHUGIRI TALUK,
TUMAKURU DISTRICT - 572 101.

3. HANUMANTHARAJU B K.,
S/O LATE KEMPAIAH,
AGED ABOUT 42 YEARS,

ALL ARE R/O BRAHMASANDRA,
BRAHMASANDRA POST,
KORA HOBLI,
TUMAKURU TALUK - 572 101.

...APPELLANTS

[BY SRI RAGHAVENDRA DESAI RAMRAO, ADVOCATE (PH)]

AND:

1. DASAPPA
DEAD BY HIS LRS

1(a) HATTINARASAMMA
W/O LATE DASAPPA,
DEAD BY LRS VOD 18.12.2025

1(b) DEVARAJU
S/O LATE NARASHIYAPPA,
AGED ABOUT 34 YEARS,

1(c) HANUMANTHA
S/O LATE NARASEEYAPPA,
AGED ABOUT 31YEARS,

ALL ARE R/AT BRAHMASANDRA,
KORA HOBLI, TUMAKURU TALUK - 572 101.



2. NANJIAIH,
S/O DASAPPA,
AGED ABOUT 60 YEARS,
- 3 . RANGAMMA
W/O LATE HANUMANARASIAH,
SINCE DEAD BY HER LRS.,
- 3(a) PUTTANANJAMMA
D/O LATE HANUMANARASIAH,
AGED ABOUT 45 YEARS,
R/O BELADHARA VILLAGE,
KORA HOBLI,
TUMAKURU TALUK,
SINCE DEAD BY LRS.,
- 3(a)1 HANUMANTHARAYAPPA,
S/O LATE BATTCHIKKANNA,
AGED ABOUT 60 YEARS,
- 3(a)2 MANJAMMA
D/O HANUMANTHARAYAPPA AND
LATE PUTTANANJAMMA,
AGED ABOUT 28 YEARS,
- 3(a)3 ANNAPOORNAMMA
D/O HANUMANTHARAYAPPA AND
LATE PUTTANANJAMMA,
W/O NARASIMHAMURTHY,
AGED ABOUT 26 YEARS,
- 3(a)4 SHIVANNA
S/O HANUMANTHARAYAPPA AND
LATE PUTTANANJAMMA,
AGED ABOUT 24 YEARS,

R3(a-1) TO R3 (a-4) ARE ALL
R/AT A K COLONY,BELADHARA,
KORA HOBLI,
TUMAKURU TALUK - 572 101.



LRs OF R3(a) PUTTANANJAMMA,

- 3(b) CHIKKANARASAMMA
D/O LATE HANUMANARASIAH,
AGED ABOUT 43 YEARS,
R/O SWANDENAHALLI,
KASABA HOBLI,
TUMAKURU TALUK - 572 101.
- 3(c) JAYAMMA
DEAD BY HER LRS
- 3(c)1 NETHRAVATHI @ NETHRAMMA
D/O LATE JAYAMMA,
W/O GANGADHARA,
AGED ABOUT 26 YEARS,
R/AT SOREKUNTE VILLAGE,
BELLAVI HOBLI,
TUMAKURU TALUK - 572 101.
- PROPOSED LR OF 3(a) JAYAMMA
- 3(d) NARASIMHAIAH
S/O LATE HANUMANARASIAH,
AGED ABOUT 39 YEARS,
R/O BRAHMASANDRA VILLAGE,
KORA HOBLI,
TUMAKURU TALUK - 572 101.
- 3(e) GANGARAJU
S/O LATE HANUMANARASIAH,
AGED ABOUT 37 YEARS,
R/O BRAHMASANDRA VILLAGE,
KORA HOBLI,
TUMAKURU TALUK - 572 101.
4. CHIKKADODDAIAH
S/O LATE NARASIMHAIAH
DEAD ON 23.06.2023,
DELETED VOD 18.12.2025,



R4's SEVEN LR's BROUGHT ON RECORD
V/O DATED 18.12.2025, AS UNDER:

- i. SMT.KADURAMMA - WIFE,
- ii. NARASIMHAMURTHY - SON,
- iii. LAKSHMIPATHI - SON,
- iv. MALLESHA - SON,
- v. SMT.SHIVANANJAMMA - DAUGHTER,
- vi. VEERESH - SON,
- vii. MANJUNATH - SON.

ALL THE ABOVE REFERRED SEVEN PERSONS ARE
MAJOR BY AGE AND THEY ARE THE LRS OF THE
SAID RESPONDENT NO.4, STAYING AT THE
ADDRESS: BRAHMASANDRA VILLAGE, KORA
HOBOLI, TUMAKURU TALUK - 572 101.

5 . KEMPAIAH
DEAD BY LR's

5(a) KEMPAMMA,
W/O LATE KEMPAIAH,
AGED ABOUT 68 YEARS,

5(b) RAJU,
S/O LATE KEMPAIAH,
AGED ABOUT 35 YEARS,

5(a) AND 5(b) ARE R/A
BRAHMASANDRA VILLAGE,
KORA HOBOLI,
TUMAKURU TALUK - 572 101.

...RESPONDENTS



(BY SRI ANKIT S. REDDY, ADVOCATE FOR R2, R3 (b, d & e)
R5 (a & b), R4 (1 TO 7) (PH);
NOTICE TO R3(a-1)-R3(a-4) & R3(c)(1) - SERVED &
UNREPRESENTED;
V/O/D 07.02.2025 NOTICE TO R1 (b & c) IS HELD
SUFFICIENT;
V/O/D 18.12.2025 R1(b & c) & R2 ARE TREATED AS LR_s
OF R1(a)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 27.06.2023 PASSED IN
RA NO.141/2020 ON THE FILE OF II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, TUMAKURU, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGMENT AND DECREE DATED
10.01.2018 PASSED IN OS NO.14/2003 ON THE FILE OF I
ADDITIONAL CIVIL JUDGE AND JMFC, TUMAKURU.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 20.02.2026, THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



CAV JUDGMENT

Challenging judgment and decree dated 27.06.2023 passed by II Additional District and Sessions Judge, Tumakuru, in RA no.141/2020 confirming judgment and decree dated 10.01.2018 passed by I Additional Civil Judge and JMFC., Tumakuru, in OS no.14/2023, this appeal is filed.

2. Though matter was listed for admission, since records were received and both learned counsel consented for final disposal of appeal on proposed substantial question of law, matter was heard affording opportunity to both counsel.

3. Sri Raghavendra Desai Ramrao, learned Counsel for appellants submitted, appeal was by plaintiff in OS no.14/2003 filed seeking for declaration of plaintiff as absolute owner and for permanent injunction restraining defendants from interfering with his possession and enjoyment of dry land bearing Sy.no.21/1B measuring 01 Acre 27 guntas of Brahmasandra, Kora Hobli, Tumkur Taluk (**'Suit Property'**, for short).



4. In plaint, it was stated, plaintiff was absolute owner in lawful possession of suit property having purchased it under registered Sale Deed dated 09.11.1960 from one Nanjundaradhya son of Channaveeradevaru of Brahmasandra village. And since then he was in continuous peaceful possession and enjoyment of suit property, his name was entered in revenue records and he was paying land revenue regularly. Even, mortgage of property to local Co-operative Society by him evidenced his possession.

5. That, suit property originally belonged to his mother, Chikkadaramma, who got it in family partition and thereafter initially on 24.09.1932 mortgaged it in favour of Nanjundaradhya and thereafter sold it to him under registered Sale Deed dated 19.05.1948. But, due to *bonafide* clerical mistake in sale deeds of 1948 and 1960, there was error in mentioning survey number and extent, Sy.no.40/1 was mentioned instead of Sy.no.21/1B, but, boundaries of property were correctly described. RTC extracts correctly reflected Sy.no.21/1B, as measuring 1 acre 27 guntas and identity of property sold was never in doubt despite above errors.



6. It was further stated, plaintiff had raised *hurali* crop in suit property and was in settled possession. But, about one month prior to filing of suit, defendants taking advantage of above errors and old age of plaintiff attempted to interfere with his peaceful possession and harvest *hurali* crop without any right, title or interest over suit property, giving rise to cause of action for suit.

7. On entering appearance, defendants no.3 and 4 filed written statement denying plaint averments in *toto*. They denied plaintiff's claim about suit property belonging to Chikkadaramma, who mortgaged and later sold it to Nanjundaradhya and his claim of purchasing it from Nanjundaradhya under registered Sale Deed on 09.11.1960. Contention about sale deeds suffering from clerical mistakes was specifically denied as false. Even plaintiff's claim of being in continuous possession, entry of name in revenue records, payment of land revenue, cultivating *hurali* crop and mortgage of suit property to Co-operative Society were also denied.

8. They asserted that suit property was ancestral joint family property of defendants no.3 and 4. That it belonged to



their ancestor - Chikkanarasimhaiah (also called Narasimhaiah), who was in physical possession and enjoyment of same. That revenue records stood in his name and therefore it was Undivided Hindu Joint Family property of defendants. They denied plaintiff having any right, title or interest over suit property. They also contended suit was not maintainable and Court fee paid was insufficient and prayed for its dismissal.

9. Based on pleadings, trial Court framed following:

ISSUES

1. *Whether the plaintiff proves his title over the suit schedule property?*
2. *Whether the plaintiff proves that he is in possession over the suit schedule property as on the date of suit?*
3. *Whether the plaintiff proves the interference by the defendant over the peaceful possession and enjoyment of the suit schedule property by the plaintiff?*
4. *Whether the plaintiff is entitled for the reliefs as sought for?*
5. *What Order or Decree?*

10. In trial, plaintiff examined himself and two others as PWs.1 to 3 and got marked Exhibits-P1 to P35. On other hand,



defendants examined five witness as DWs.1 to 5 and got marked Exhibits-D1 to D14.

11. On consideration, trial Court answered issues no.1 to 4 in negative and answering issue no.5 dismissed suit with costs. Aggrieved, plaintiffs filed RA no.141/2020 on various grounds, based on which, first appellate Court framed following:

POINTS:

- 1) Whether judgment and decree passed in OS no.14/2003 dated 10.01.2018 on the file of 1st Additional Civil Judge and JMFC, Tumakuru calls for interference by this Court?*
- 2) What order?*

12. On consideration, point no.1 was answered in negative and point no.2 by dismissing appeal. Aggrieved by concurrent findings, plaintiff was in appeal.

13. It was submitted, both Courts concurrently erred in ignoring mandate of Section 90 of Indian Evidence Act, 1872 ('Evidence Act', for short) insofar as Ex.P2 - Registered Mortgage Deed dated 24.09.1932 and Ex.P3 - Registered Sale



Deed dated 19.05.1948, which were more than thirty years old and produced from proper custody. They ought to have drawn presumption about due execution and genuineness of Exs.P2 & P3. Failure had resulted in miscarriage of justice. Especially when said contention was specifically urged before first appellate Court supported by binding precedents. Despite same, same was not adjudicated.

14. Further, reliance on incorrect Survey number was wholly misplaced as boundary description of suit property remained consistent in Exs.P2, P3 and P4. It was submitted, in case of conflict between extent and boundaries, boundaries would prevail, relying upon decisions in **Sheodhyan Singh and Ors. v. Sanichara Kuer and Ors.**, reported in **AIR 1963 SC 1879** and in **Narasimha Shastry v. Mangesha Devaru**, reported in **ILR 1988 KAR 554**. And that both Courts failed to apply said ratio.

15. Apart from above, Sy.no.40/1 was geographically distinct and situated away from Sy.no.21/1B and that their description, extent and boundaries were entirely different. Thus, oral evidence of PW-2 consistent with documentary



evidence established mis-description was clerical error and identity of property stood proved by referring to boundaries.

16. It was further contended first appellate Court being final Court on facts was duty bound to re-appreciate evidence independently. It had instead mechanically affirmed findings of trial Court. Therefore, impugned judgments suffered from perversity giving rise to substantial question of law. On said ground, sought for answering appeal on proposed substantial question of law and allow same by decreeing suit. Further fact that even defendant failed to prove his possession, would establish that first appellate Court failed to re-appreciate oral and documentary evidence in proper perspective. On said ground, prayed for allowing appeal.

17. Substantial questions of law proposed in memorandum of appeal herein are:

- "1. Whether first appellate Court erred in not re-appreciating evidence on record?*
- 2. Whether both Courts erred in ignoring Exs.P2, P3 and P4 – title deeds attracted presumption under Section 90 of Evidence Act?*



3. *Whether both Courts erred in not applying law declared in **AIR 1963 SC 1879** and in **ILR 1988 KAR 554?**"*

18. On other hand, Sri Ankit S. Reddy, learned counsel for **respondents no.2, 3 (B, D and E), 5 (A and B) and 4 (1 to 7)** - defendants opposed appeal. It was submitted, in a suit for declaration of title based on title deeds, vendor would be necessary party, but omitted herein which was fatal. Further, there was categorical admission about mistake in title deed about mis-description of demised property i.e. Sy.no.40/1 instead of 21/1B and instead of 1 Acres 27 guntas mentioning 00-02 Acres. It was submitted, subsequent revenue entries cannot be relied upon as documents of title/ownership. Moreso, when as per plaintiff in 1932 total extent of Sy.no.21 was 1 Acres 97 guntas and if so, it would be highly unlikely that plaintiff's mother would be granted share of 1 Acres 20 guntas in partition. Moreover, when mistake was in deed of year 1960, suit filed in year 2003 would be highly belated and untenable without rectification deed, that too without examining Deed writer. Both Courts had examined same and arrived at concurrent conclusion. Further, in para-13 of its judgment, trial Court noted admission about mistakes in Sale Deed, without



prayer for rectification. Learned counsel relied on decision of this Court in **Arjun Togu Lamani and Ors. v. Nagappa (Dead) by LRs and Ors. [2024:KHC-K:4308]**, in support of his submission and submitted no substantial question of law arose for consideration and prayed for dismissal of appeal.

19. Heard learned counsel, perused impugned judgment and decree and records.

20. This second appeal filed under Section 100 of CPC by unsuccessful plaintiff in suit for declaration of title and permanent injunction. As noted above, suit claim is based on assertions that suit property earlier belonged to plaintiff's mother, which she got in a family partition and thereafter, it was mortgaged in favour of Nanjundaradhya as per Ex.P2. It is stated description of property in mortgage deed was correct. It is further stated, plaintiff's mother later sold mortgaged property to Nanjundaradhya – mortgagee under Ex.P3 – registered sale deed, but though due to inadvertence survey number and extent were erroneous, boundary description was correct and referred to suit property. It is further claimed that even in Ex.P4 - sale deed whereunder it was purchased by



plaintiff, mistake in description as in Ex.P3 - sale deed continued, but boundary description correctly referred to land bearing Sy.no.21/1B i.e. suit property. Since defendant attempted to interfere with plaintiff's peaceful possession, suit was filed.

21. In trial, plaintiff's son deposed as attorney of plaintiff as PW.1 and stated boundary description in Ex.P2 - Mortgage deed dated 24.09.1932 was as follows:

East: 1/4th share of elder brother – Narasimha in same survey number;
West: Half share of Sibaiah in same survey number.
North: By Kariyappa's land and
South: By Karikere road.

Likewise, boundary description of land sold in Ex.P3 – sale deed dated 19.05.1948 was:

East: By land of Narasimha (defendant),
West: By land of Chikkamariyappa (purchased from Sibaiah)
North: By Land of Gangaiah (Son of Kariyappa) and
South: By Karikere road.

And boundaries mentioned in Ex.P4 - sale deed dated 01.11.1960 was:

East: By land of Narasimha (Defendant),
West: By land of Chikkamariyappa (purchased from Sibaiah)
North: By land of Gangaiah (Son of Kariyappa) and
South: By Karikere road.



Further, as property was mortgaged immediately after partition even Narasimha also signed Ex.P2 - Mortgage deed.

22. In cross-examination, partition between Nanjundaradhya and Chikkadaramma is denied. However, an admission that prior to suit, plaintiff did not make any efforts for having mortgage deed/sale deed rectified is elicited, with explanation that it was due to illiteracy of plaintiff. Suggestion that in mortgage deed and both sale deeds, survey number of property is mentioned as Sy.no.40/1, measuring 2 Acres 2 guntas is denied stating that Sy.no.21/1B was correctly mentioned in mortgage deed, but there was error in extent.

23. While passing impugned judgment, trial Court referred to rival contentions and observed documentary evidence of plaintiff i.e. revenue records would not be of assistance on question of title. It noted though suit was filed for declaration on ground that there was mistake in survey number and extent of land in title deeds, there was no prayer for rectification of sale deeds. While referring to evidence of defendants, it noted in Ex.D2 – RoR of Sy.no.21/1B name of Chikkanarasimhaiah was mentioned in Column no.9 and extent mentioned was 1



Acre and 27 guntas. And in Exs.D6 to D8 – RoRs, name of Chikkanarasimhaiah was mentioned in Column no.9, while name of Kempaiah was mentioned in Column no.12 of RoRs. It noted nothing worthwhile was elicited in cross-examination of DWs.1 to 5, whereas in cross-examination of PW-1, an admission was elicited that no efforts were made for rectification of mistakes in sale deeds, which would run counter to case of plaintiff. It noted though plaintiff pleaded that suit property was given to Chikkadamma in family partition, there was no material to establish same and drew adverse inference for non-examination of witnesses or deed writer about mistake in survey number and extent stated in sale deeds. On said observations, it answered issues no.1 to 3 in negative against plaintiff and dismissed suit.

24. And, first appellate Court dismissed appeal on following reasoning:

*“12. **Point No.1:-** I have carefully gone through the entire judgment passed by the trial Court and the entire records. The trial Court has properly appreciated the case and evidence of both the parties and has come to the proper conclusion. Based on the pleadings of the parties, the trial Court framed proper issues*



and has also answered the said issues correctly. The findings recorded by the trial Court are based on the facts and the evidence on record. By no stretch of imagination, the findings recorded by the trial Court can be termed as illegal or perverse or capricious. The trial Court has reached to such conclusion only after appreciating the entire oral and documentary evidence on record. The reasons assigned by the trial Court to arrive such a finding are based on the evidence on record and they deserve acceptance.

13. Even on re-appreciation of the entire evidence on record, I do not find any factual or legal error committed by the trial Court. When the judgment of the trial Court is legal and valid in all aspects, there is no question of this Court interfering with the judgment passed by the trial Court. Hence, I answer Point No.1 in the negative."

25. Thus, first appellate Court disposed of appeal by recording general concurrence with findings of trial Court. It is contended that same gave rise to substantial question of law about failure of appellate Court to exercise jurisdiction vested in it under Section 96 read with Order XLI Rule 31 of CPC. But, same is no more res-integra. Hon'ble Supreme Court in case of **U. Manjunath Rao v. U. Chandrasekhar**, reported in **(2017) 15 SCC 309**, held:



"13. On a perusal of the said Rule, it is quite clear that the judgment of the appellate court has to state the reasons for the decision. It is necessary to make it clear that the approach of the first appellate court while affirming the judgment of the trial court and reversing the same is founded on different parameters as per the judgments of this Court. In *Girijanandini Devi* [*Girijanandini Devi v. Bijendra Narain Choudhary*, AIR 1967 SC 1124], the Court ruled that while agreeing with the view of the trial court on the evidence, it is not necessary to restate the effect of the evidence or reiterate the reasons given by the trial court. Expression of general agreement with reasons given in the trial court judgment which is under appeal should ordinarily suffice. The same has been accepted by another three-Judge Bench in *Santosh Hazari* [*Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179]. **However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it. We are disposed to think, the expression of the said opinion has to be understood in proper perspective. By no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial court judgment.** That is not the statement of law expressed by the Court. The statement of law made in *Santosh Hazari* [*Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179] has to be borne in mind.



14. *In this regard, a three-Judge Bench decision in Asha Devi v. Dukhi Sao [Asha Devi v. Dukhi Sao, (1974) 2 SCC 492 : AIR 1974 SC 2048] is worthy of noticing, although the context was different. In the said case, the question arose with regard to power of the Division Bench hearing a letters patent appeal from the judgment of the Single Judge in a first appeal. The Court held that the letters patent appeal lies both on questions of fact and law. The purpose of referring to the said decision is only to show that when the letters patent appeal did lie, it was not restricted to the questions of law. The appellant could raise issues pertaining to facts and appreciation of evidence. **This is indicative of the fact that the first appellate court has a defined role and its judgment should show application of mind and reflect the reasons on the basis of which it agrees with the trial court. There has to be an "expression of opinion" in the proper sense of the said phrase. It cannot be said that mere concurrence meets the requirement of law. Needless to say, it is one thing to state that the appeal is without any substance and it is another thing to elucidate, analyze and arrive at the conclusion that the appeal is devoid of merit.***

15. *In the case at hand, as we have noted earlier, the learned Judge has really not ascribed any reason. There has been no analysis of facts or law. There is no discussion with regard to the points urged. While agreeing with the general approval of reasons to support the conclusions of the judgment in appeal, the High Court has to keep in view the language employed in Order 41 Rule 31 CPC and the view expressed*



in Santosh Hazari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179].
Analysis and reason are to be manifest. When that is not done, needless to say, the judgment of the High Court becomes indefensible.

(emphasis supplied)

26. In view of above ratio, expression of general concurrence with findings that reasoning of trial Court by first appellate Court cannot be held to meet requirements of law. *Substantial question of law no.1 is answered in **affirmative**.*

27. Insofar as contention about Exs.P2, 3 and 4 attracting presumption under Section 90 of Evidence Act, a reference to provision would be necessary. Section 90 reads as follows:

"90. Presumption as to documents thirty years old. – *Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. ..."*



28. On scope of presumption under above provision, Hon'ble Supreme Court in case of **Tehsildar, Urban Improvement Trust and Anr. v. Ganga Bai Menariya (Dead) Through Lrs and Ors.**, reported in **2024 SCC OnLine SC 169**, held:

*"18. On one side, the plea sought to be taken by the respondents is that the document being more than 30 years old, there was presumption of truth in terms of Section 90 of the 1872 Act. This section provides that if the document is more than 30 years old and is being produced from proper custody, a presumption is available to the effect that signatures and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting and in case a document is executed or attested, the same was executed and attested by the persons by whom it purports to be executed and attested. **This does not lead to a presumption that recitals therein are correct.** (Reference can be made to the judgment of this Court in *Union of India v. Brahim Uddin*)."*

(emphasis supplied)

29. In instant case, defendants have not challenged Exs.P2, P3 and P4 on ground that they were not duly executed and attested or about handwriting. Defendants disputes that they pertain to property bearing Sy.no.21/1B i.e. suit property.



30. In case, said deeds suffered from any mistake or error, two courses would be available. If, mistake or error was material/fatal to have sought for rectification and in case mistake was not fatal to offer explanation and seek for declaration. From tenor of pleadings and evidence led, case of plaintiff appears to be the latter. In this regard, presumption available under Section 90 of Evidence Act, would be inconsequential. *Hence, substantial question of law no.2 is answered in **negative**.*

31. Last contention is, in case of conflict between property number, it's extent mentioned in sale deed and its boundary description, which would prevail, relying upon decisions in **Sheodhyan Singh** and **Narasimha Shastry's cases (supra)**.

32. In **Sheodhyan Singh's** case (supra), Hon'ble Supreme Court observed when description of suit property - plot was by Tauzi number, Khasra number, Thana number, Survey number with area and boundaries, mentioning of plot no.1060 as plot no.160 would be a case of mis-description and not of disputed identity which would be non-fatal. And **Narasimha Shastry's** case (supra) was about a suit for



permanent injunction, wherein plaintiff had stated that at time of purchase of suit property, extent of property purchased was not known and therefore approximate extent was mentioned, but with definite boundary description. And defendant did not dispute purchase of property by plaintiff, accepted other three boundaries, disputed only eastern boundary of plaintiff's land mentioned as stretching upto rain-water channel and areca garden of defendant. But, plaintiff's specific pleading and fact that defendant had contended that he had not trespassed into plaintiff's property and cut two areca trees as alleged, it was held, boundary description of property by plaintiff prevail over approximate area mentioned and restored judgment and decree of trial Court decreeing plaintiff's suit. Thus, both decisions are distinguishable on facts. *Therefore, substantial question of law no.3 has to be answered in **negative**.*

33. Even on merits, when it is plaintiff's specific case that suit property was allotted to his mother in partition, who initially mortgaged it to third person, later sold it to him and thereafter plaintiff purchased it from said person, plaintiff admits that in Ex.P2 - mortgage deed, though correct survey



number and boundary description were mentioned, there was error in measurement. Plaintiff accepts that in subsequent sale deeds as Exs.P3 and P4, property sold was with same boundary description, but with incorrect survey number and extent, due to mistake of deed writer. But, as rightly contended, there is no effort by plaintiff to establish partition, even when party seeking declaration of title on basis of registered sale deed, would require to establish that his vendor conveyed valid title.

34. Moreso, said assertion is denied/disputed by defendants. As noted, plaintiff did not lead evidence about partition between Chikkadamma and Narasimha nor produced any documents to establish same. Except its reference in Ex.P2 – Mortgage deed and its certified copy marked as Ex.P28. Narasiyappa, a 60 year old, resident of Bramahasandra, examined as PW-2 stated Chikkadamma was in possession of Sy.no.21/1B after it was allotted to her in partition with her brother Narasimha in 1932 as well as its mortgage and later sale to Nanjundaradhya and repurchase by Kempaiah. He also stated that Sy.no.40/1 belonged to him and situated about 700 to 750 feet away from suit property. In cross-examination, he



denied suggestions that Chikkadamma and Narasimha were not related, there was no partition between them, that he did not have personal knowledge and Chikkadamma or her brother were not in possession of suit property. PW.2, admits that legal representatives of defendant no.5 were in possession of suit property.

35. Even Gangaiah, 74 year old, resident of Bramahasandra, examined as PW-3 merely stated suit property was adjacent to his land bearing Sy.no.21/2 and plaintiff was in possession and cultivating it. He also stated that Sy.no.40/1 was about 700 to 800 feet away from his land. Thus, there is virtually no material to establish Chikkadamma got suit property in partition with her brother Narasimha. Neither partition deed nor witness to partition were examined. There is no corroboration even in revenue records. Ex.P1 is Spl. Power of Attorney authorizing plaintiff's son to depose on his behalf; Ex.P2 - is Mortgage Deed; Ex.P3 - Sale deed in favour of Mortgagee; Ex.P4 - Sale deed in favour of plaintiff by Mortgagee/purchaser; Ex.P5 to P23 are RTCs (except P9, which is ME no.105/92-93), while Ex.P24 to P27 are certified copies of



Tippani, Encumbrance Certificate, Aakaar Band, Ex.P28 - certified copy of Ex.P2 Mortgage deed, Ex.P29 – Khata Extract, Ex.P30 to 33 being Survey Sketch, Survey Report, Survey Notice and village map, while Ex.P34-35 are RTCs of Sy.no.40/1. Thus, there is sufficient justification for trial Court to draw adverse inference against plaintiff for failure to examine any witness to establish partition.

36. In view of above, even though, substantial question of law no.1 is answered in favour of plaintiff, in view of answers to substantial questions of law no.2 and 3, it would be futile to remit matter back to first appellate Court. Hence, following:

ORDER

Appeal is ***dismissed***. No order as to costs.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD
List No.: 1 Sl No.: 1