HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR SECOND APPEAL NO. 2290 OF 2007 (DEC/INJ)

BETWEEN:

GURAPPA VEERAPPA MENASINKAI
(SINCE DECEASED BY HIS LRS)

BASAMMA W/O GURAPPA
MENASINKAI
(SINCE DECEASED)

1. BALCHANDRA @ CHANDRANNA
GURAPPA MENASINKAI
AGED ABOUT 64 YEARS
OCC: BUSINESS
(SINCE DECEASED)

1A SMT. GIRIJA
W/O BALACHANDRA MENASINAKAI
AGE: 71 YEARS, OCC: HOUSEHOLD
R/O:- PLOT NO.14, PATIL LAYOUT
LINGARAJ NAGAR
NORTH UNKAL, HUBLI – 580 031.

1B SMT. ANITHA
W/O SHANKARGOUDA PATIL
AGE: 51 YEARS, OCC: HOUSEHOLD
R/O:- #35, NEAR SAMUDAY BHAVAN
LINGARAJ NAGAR NORTH, HUBLI – 580 031.

1C MR. SOMASHEKAR
S/O BALACHANDRA MENASINAKAI
AGE:49 YEARS, OCC: BUSINESS

Digitally signed by THEJAS KUMAR N
Location: HIGH COURT OF KARNATAKA

R/O:- PLOT NO.14, PATIL LAYOUT
LINGARAJ NAGAR, NORTH UNKAL
HUBLI – 580 031.

1D MR. VIJAYKUMAR S/O BALACHANDRA MENASINAKAI
AGE: 49 YEARS, OCC: PRIVATE SERVICE
R/O: #110-115, DAYANANDA SLUM
1ST BLOCK, JAYANAGAR-BENGALURU SOUTH
BENGALURU – 560 011.

1E MR. RAJKIRAN
S/O BALACHANDRA MENASINAKAI
AGE: 45 YEARS, OCC: BUSINESS
R/O: PLOT NO.14, PATIL LAYOUT
LINGARAJ NAGAR, NORTH UNKAL
HUBLI – 580 031.

2. MALLIKARJUN GURAPPA MENASINKAI
AGED ABOUT 58 YEARS
OCC: BUSINESS

3. KUSHALKUMAR GURAPPA MENASINKAI
AGED ABOUT 55 YEARS
OCC: BUSINESS

ALL ARE R/O CHOLANAVAR ONI
SIDDANPET, VEERAPUR ROAD, HUBLI – 580 013.

[NOTE: APPELLANTS NO.1 TO 3 ARE LR's OF
GURAPPA AND BASAMMA

…APPELLANTS

(BY SRI. C S SHETTAR, ADVOCATE)

AND:

SHESHAGIRI GURANATH HALYAL
(SINCE DECEASED BY HIS LRS)

1. RAMABAI
   W/O SHESHAGIRI HALYAL
   AGE: 50 YEARS, OCC: HOUSEHOLD WORK
   R/AT HUBLI – 24.

2. SHARADA
   W/O GANAPATRAO PATIL
   AGE: 52 YEARS
   OCC: HOUSEHOLD WORK
   R/AT CHAITANYA NIVAS
   OPP: NAVANIT APARTMENT
   RAJATAGIRI, DHARWARD – 580 021.

3. RAMADEVI SHRIPATIRAO MADLUR
   AGE: 59 YEARS,
   OCC: GOVT. SERVANT
   R/AT TEACHERS COLONY
   KHASBAG, BELGAUM – 580 018.

4. SHARADA
   W/O BALLABHARAO NARGUND
   AGED ABOUT 53 YEARS
   OCC: GOVT. SERVANT
   R/AT GANESH APARTMENT
   RAJATAGIRI, DHARWAD – 580 018.

5. BALABHIM SHESHAGIRIRAO
   HAYAL
   AGED ABOUT 68 YEARS
   OCC: ADVOCATE, R/AT OLD HUBLI
   HUBLI – 580 013.

6. NAGENDRA SHESHAGIRIRAO HAYAL
   AGED ABOUT 51 YEARS
   OCC: BANK EMPLOYEE
   R/AT OLD HUBLI, HUBLI – 580 013.

7. ANANT SHESHAGIRIRAO
   HAYAL, AGED ABOUT 52 YEARS
   OCC: BANK EMPLOYEE
   R/AT OLD HUBLI – 580 024.

8. ASHWINI W/O AJAY DESHAPANDE
AGED ABOUT 49 YEARS
OCC: HOUSEHOLD WORK
R/AT C/O B.S. HAYAL
OLD HUBLI – 580 024.

9. KRISHNENDRA GURUNATHA HAYAL
AGED ABOUT 69 YEARS
OCC: PENSIONER
R/AT OLD HUBLI – 580 024.

10. SHIVAKKA MOTHER
SHIVAKKA CHALAWADI
AGED ABOUT 39 YEARS
OCC: HOUSEHOLD WORK
R/AT OLD HUBLI – 580 024.

11. MALLAPPA BHIMAPPA CHALLAWADI
AGED ABOUT 42 YEARS
OCC: COOLIE
R/AT OLD HUBLI – 580 024.

12. MADAKKA MOTHER SHIVAKKA CHALAWADI
AGED ABOUT 42 YEARS
OCC: COOLIE
R/AT OLD HUBLI – 580 024.

13. RANGAVVA DURGAPPA CHALAWADI
AGED ABOUT 48 YEARS
RESIDING AT OLD HUBLI – 580 024.

14. FAKIRAWWA
W/O GANGAPPA CHALAWADI
AGED ABOUT 60 YEARS
R/AT OLD HUBLI – 580 024.

15. HUCHAPPA BHIMAPPA CHALAWADI
AGED ABOUT 60 YEARS
R/AT OLD HUBLI – 580 024.

…RESPONDENTS

(BY SRI. ATUL K ALUR, SRI. B.P.VIVEKMEHTA &
SRI. S.D. DESAI, ADVOCATES FOR R1 & R5;
SRI. M.S.SANKOLI, SRI. SAIPRAKASH DESAI,
SRI. ABHIJEET R. NAIK, SRI. NAYANKUMAR &
SRI. B.V. HEBBAL, ADVOCATES FOR R2-R4 & R6-R8;
SRI. M.S. SANKOLLI, SRI. S.D.DESAI &
SRI. B.V.HEBBAL, ADVOCATES FOR R5;
R9 TO R15 & R4 DISMISSED AS ABATED;
R2 TO R8 ARE LR's OF DECEASED R1)

THIS RSA IS FILED U/S 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 27.07.2007 PASSED IN REGULAR APPEAL NO.153/1980 ON THE FILE OF THE PRL.CIVIL JUDGE (SR.DN.) HUBLI AND ETC.,

THIS APPEAL IS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07.04.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

CAV JUDGMENT

The Regular Second Appeal is filed by the defendants challenging the judgment and decree dated 27.07.2007 passed by the Principal Civil Judge (Sr.Dn) at Hubli in R.A.No.153/1980 (hereinafter referred as to 'the First Appellate Court') reversing the judgment and decree dated 01.10.1989 passed by the Principal Munisiff, Hubli in

O.S.No.146/1969 (hereinafter referred to as 'the Trial Court').

2. The ranks of the parties are referred to as per the trial Court for easy reference and convenience.

3. The plaintiffs have filed a suit for declaration that they have got lease hold rights in the suit properties and for cancellation of the order passed by the City Survey Authorities on 06.05.1968 and also suit for recovery of possession of the suit property if the Court comes to the conclusion that the plaintiffs are not in possession of the suit property.

4. It is the case of the plaintiffs that one Gurunath Narsimha Halyal was the father of plaintiffs No.1 and 2 and the husband of plaintiff No.3. The suit property originally belonged to one Shiddappa Chalavadi and Shivakka Chalavadi and plots were formed. The suit property was leased out by the said owners for 99 years on a ground-rent of Rs.35/- per year to one

Narayanaswamy Gurushiddalingaswamy Ujjayanamath. The said Narayanaswamy Gurushiddalingaswamy Ujjayanamath was in possession of the suit schedule property and filed a suit in O.S.L.D 274/53 against the said Gurunath Narasimha Halyal before the Munsiff, Halyal. The said suit came to be dismissed granting costs to the said Gurunath Narasimha Halyal. The said Gurunath Narasimha Halyal filed an execution petition in Execution No.93/56 for recovery of costs against the said Narayanaswamy.

5. In the execution proceedings, the lease hold rights of Narayanaswamy Gurushiddalingaswamy Ujjayanamath in the suit were brought to sale and Gurunath Narasimha Halyal with permission of the Court purchased the lease hold rights on 03.12.1956 in the Court auction. The said sale was confirmed on 11.01.1957 and the sale certificate was issued on 22.07.1957. Gurunath Narasimha Halyal took possession of the suit plot through Court on 20.10.1957.

6. Further, the case of the plaintiffs is that Gurunath Narasimha Halyal was in possession of the suit property till his death and after his death the plaintiffs are in possession over the suit property. The defendant No.1 has taken suit property on lease from the original owners under lease deed dated 28.01.1963 for a period of 99 years on an annual ground rent of Rs.25/- and on that strength he filed an application the before the City Survey Officer to enter his name in the C.T.S records of the suit property. The plaintiffs filed objections. The C.T.S officer passed an order dated 06.05.1968 directing to enter the name of the defendant No.1 in the C.T.S register pertaining to the suit property. Therefore, on these pleadings, the plaintiffs have filed suit for declaration and possession.

7. The defendant No.1 has filed written statement specifically contending that the description of the suit property is not correct and it does not relate to the plot in

his possession. The defendant No.1 denied that Narayanaswamy Gurushiddalingaswamy Ujjayanamath was in possession of the suit property and contends that Narayanaswamy Gurushiddalingaswamy Ujjayanamath has committed default in payment of ground rent and therefore his rights were forfeited and he surrendered the possession of suit property to the original owners on 13.12.1956. Thereafter, the original owners leased the suit plot to him under registered lease deed dated 28.01.1963 for a period of 99 years on annual rent of Rs.25/-. Since then, defendant No.1 has been in possession of the suit property.

8. Further, it is contended that Narayanaswamy Gurushiddalingaswamy Ujjayanamath has no right, title or interest in the suit property on the date of attachment in Darkhast and therefore, no title has passed to Gurunath. The plaintiffs who claim title through him, acquired no right in the suit property. Further, it is contended that he

has perfected his title by adverse possession and the suit is barred by limitation.

9. The defendant No.3 has filed a written statement and contended that originally, the land belonged to Shiddappa and Shivakka Chalavadi and they leased it to Narayanaswamy Gurushiddalingaswamy Ujjayanamath. He further contended that Narayanaswamy Gurushiddalingaswamy Ujjayanamath committed default in the payment of rent. Therefore, his tenancy rights were forfeited and Narayanaswamy Gurushiddalingaswamy Ujjayanamath had surrendered possession of the suit property to the owners. It is further denied that Gurunath purchased lease hold rights from Narayanswamy Gurushiddalingaswamy Ujjayanamath and contended that the plaintiffs were never in possession of suit property. Further, it is contended that Narayanaswamy Gurushiddalingaswamy Ujjayanamath has no right or title in the property on the date of sale. Further, it is contended that suit property was Maharki Vatan property

assigned for remuneration of the officiators under the Bombay Hereditary Offices Act, 1984 (for short 'BHO Act'). The purchase of the suit property in execution of the decree by plaintiffs is null and void under Section 7 of the Act. Therefore, the defendant No.3 prayed to dismiss the suit.

10. The other defendants were absent and therefore, they were placed exparte.

11. Based on the pleadings of the plaintiffs and defendants, the trial Court had framed the following issues:

> *"1. Whether the description of the suit property is correct?*
>
> *2. Whether the Plaintiff proves his title to the suit property?*
>
> *3. Whether the first defendant proves that Narayanaswamy had no right in the suit property at the time of attachment of the suit property and sale in L. D. No.93/56?*
>
> *4. Whether the sale is null and void under section 7 of the Bombay Hereditary Offices Act?*

5. *Whether Plaintiff proves his possession of the suit property on the date of suit?*

6. *Whether the first defendant has perfected his title to the suit property by adverse possession?*

7. *Whether the suit is barred by time?*

8. *Whether the Plaintiff is entitled to declaration?*

9. *Whether the Plaintiff is entitled to cancellation? Or whether the Plaintiff is entitled to possession?*

10. *Whether the Plaintiff is entitled to mesne profits?*

11. *What Order and Decree?"*

12. The trial Court has dismissed the suit on the ground that the land is vatanki land and the alienation has taken place prior to 01.02.1963 before the commencement of the Karnataka Village Officers Abolition Act, 1961 (for short 'KVOA Act'), therefore, alienation has taken place by creation of lease hold rights in favour of Narayanaswamy Gurushiddalingaswamy Ujjayanamath in the year 1953. The alienation of land is governed by the BHO Act. It is relevant that the land is Maharki Vatan land and the said land was assigned by way of remuneration. Therefore, the suit property which is bound

by the BHO Act, the alienation is hit by Sections 5 and 7 of the BHO Act and therefore dismissed the suit.

13. Further, it is stated that any alienation by lease holds good only during the lifetime of the joint alienors. Thus, the title of the property comes to an end on the death of the survivor of the joint alienors.

14. It is further submitted that Section 5 of the BHO Act says that if alienation is to be done under the BHO Act for a period of more than 30 years, the sanction of the Government is necessary. The alienation in favour of Narayanaswamy Gurushiddalingaswamy Ujjayanamath was for a period exceeding 30 years and was executed without obtaining the requisite government sanction. Therefore, the alienation is hit by the provisions of Sections 5 and 7 of the BHO Act, rendering it null and void, and it is thus held that Narayanaswamy Gurushiddalingaswamy Ujjayanamath was not in lawful possession. Thus, the plaintiffs have not acquired

any right or interest through Narayanaswamy Gurushiddalingaswamy Ujjayanamath. Thus, dismissed the suit.

15. Further, Ex.D38 is the legal notice sent by Shiddappa and Shivakka Chelavady calling upon Narayanaswamy Gurushiddalingaswamy Ujjayanamath to pay ground rent of Rs.126/- for the period 1954-55 and 1955-56, failing which, steps would be taken for recovery of the money. Narayanaswamy Gurushiddalingaswamy Ujjayanamath received the notice dated 11.12.1956 and on 13.12.1956, made an endorsement on Ex.D38 stating that the plot may be leased to others. Therefore, Narayanaswamy Gurushiddalingaswamy Ujjayanamath was paying rent amount and therefore, his alienation by way of lease is terminated and Shidappa and Shivakka has leased out the property in favour of defendant No.1 . Therefore, the claim made by plaintiffs through Narayanaswamy Gurushiddalingaswamy Ujjayanamath in

Court sale is not binding on the defendants. Therefore, assigning these reasons the trial Court dismissed the suit.

16. Being aggrieved by dismissal of the suit, the plaintiffs have preferred the regular appeal in RA No.153/1980 by raising various grounds. The First Appellate Court has reversed the judgment and decree passed by the trial Court and decreed the suit declaring that the plaintiffs are owners of the suit property. The First Appellate Court has assigned the reasons that on the enactment of the Karnataka Village Offices Abolition Act, 1961 (for short 'KVOA Act'), the Bombay Hereditary Offices Act (for short 'BHO Act') stands repealed.

17. The First Appellant Court has assigned the reasons that on the enactment of Karnataka Village Officers Abolition Act, 1961 (hereinafter referred to as "KVOA Act" for short), the Bombay Hereditary Offices Act (hereinafter referred to as "BHO Act" for short) stands repealed. Hence, in view of Section 4(3) of the KVOA Act,

all the lands stood vested with the State as on date of coming into force of the said Act. Therefore, on 01.02.1963, the day on which the KVOA Act came into force, the suit property stands resumed to the State and whatever right the plaintiffs or the first defendant through the second and third defendants stood extinguished. Either of the parties ought to have filed an application for re-grant of the said land to the Competent Authority but the applications were not filed. Therefore, the parties in the suit have not availed the benefit of re-grant of the suit schedule properties. Thus, when this being the legal position of law, by virtue of the Court sale, the plaintiffs acquired lease hold rights, which Narayanaswamy Gurushiddalignaswamy Ujjainimath was having by executing the decree, which he obtained for recovery of the cost in L.D.No.93/1956. As per Section 8 of the KVOA Act, if any land granted or continued in respect of or annexed to the Village Offices by the State has been lawfully leased, such lease is subsisting on the appointed

date and provision of tenancy law for the time being in force in that area in which the land is situated shall apply to the said lease and the rights and the liabilities of person to whom such land is granted under Sections 5, 6 and 7 of the KVOA Act, the tenancy shall continue subject to the provisions of the Act. Therefore, in the present case, the land is agricultural land though on which the plots have been formed, of which the plaintiff has acquired lease hold rights, which was held earlier by Narayanaswamy Gurushiddalignaswamy Ujjainimath by executing the decree and by getting the sale certificate in his favour. Hence, Section 8 of the KVOA Act applies. Thus, the plaintiffs have become a lawful lessees, which continues on the appointed date on which the KVOA Act came into force. Therefore, it is observed that the trial Court has committed an error and hence the findings of the trial Court are not acceptable.

18. Further, the First Appellant Court has assigned the reasons that there is no material in the suit that the

original lessors namely Shivakka and Siddappa Chalavadi have been re-granted. Hence, Shivakka and Siddappa Chalavadi were not in possession of the same. Also, it is held that when Ex.D1 came into force, the lessors i.e., Shivakka and Siddappa Chalavadi had no right to alienate by way of lease in favour of first defendant as they have lost their right over the said property of creating lease, since the said lease made in favour of Narayanaswamy Gurushiddalignaswamy Ujjainimath by them was subsisting and the same has not been surrendered by way of valid transfer through a registered document. Further, the lessors have no right to create lease since the said lease hold right and the property as well have been attached in favour of the plaintiffs and already sold in their favour. Therefore, when the lessors Shivakka and Siddappa Chalavadi have lost their title by virtue of the vesting with State then they had no power or title to execute the lease in favour of the first defendant.

19. Further, the First Appellate Court assigned the reasons that the description of the property is found to be identifiable one and correct. Further, it is held that the lease hold rights purchased by Narayanaswamy Gurushiddalignaswamy Ujjainimath has been sold in favour of the plaintiffs. Though sanction or permission was not obtained from the Competent authority or Deputy Commissioner or Deputy Collector but unless and until the Deputy Collector cancels or nullifies the said lease, the civil Court cannot declare that the said lease even though without the sanction of the Government concerned as void, the Court has no such power to declare in this regard. Therefore, found fault with the observations made by the trial Court. Further, observed that Sections 5 and 7 of the KVOA Act, the transfer of lease hold rights does not *ipso facto* render the alienation void, unless the same is cancelled by the Deputy Collector and further Section 10 of KVOA Act applies where Watan is attached and sold by the Court. Further, Section 11 of the KVOA Act when an

alienation of the nature described in Section 10 shall take place other than by virtue of or in execution of decree, the Collector shall after recording his reasons, in writing declare such alienation to be null and void. Section 11(A) of the Act provides that the Deputy Collector Shall either summarily resume possession of the property to which an order of Court passed on his declaration under Section 11. In respect of that if there is any violation, it is for the Deputy Collector to take necessary action but not the Civil Court. Therefore, found fault with the order of the trial Court holding that lease in favour of Narayanaswamy Gurushiddalignaswamy Ujjainimath is error.

20. Further, it is observed that as per Ex.D3, the lease hold rights has been attached on 13.08.1956 itself and hence, Narayanaswamy Gurushiddalignaswamy Ujjainimath had no right to surrender his lease hold right over the suit property in favour of the lessors i.e., Shivakka and Siddappa Chalavadi. Further, it is observed that as per Ex.D1, the rent note executed by the first

defendant in favour of Shivakka and Siddappa Chalavadi was in the year 1963 and till then they were alive and alienation under Section 5 was valid till their death and since the attachment has taken place on 13.08.1956 and the sale certificate was issued on 22.07.1956, Narayanaswamy Gurushiddalignaswamy Ujjainimath had right on the date of the attachment. Therefore, the trial Court finding that the lease in favour of Narayanaswamy Gurushiddalignaswamy Ujjainimath was not valid, is not proper. Further, it is assigned reasons that first defendant had purported his title by his possession is not accepted. Further, the First Appellate Court has set-aside the findings of the trial Court that the suit is barred by limitation.

21. With these reasons, the First Appellate Court has allowed the appeal and set-aside the judgment and decree passed by the trial Court and decreed the suit as prayed for.

22. Being aggrieved by reversal of the judgment and decree of the trial Court by the First Appellate Court, the first defendant has preferred the second appeal before this Court by raising various grounds and on 22.04.2009, this Court while admitting the appeal, has framed the following Substantial Questions of Law:

> *1. When the leasehold right of the disputed property was sold by the Court in public auction in favour of Gurunath Hallyal, can the original lessee Narayanaswamy surrender possession of the leasehold property to the original landlords, viz. Shivakka and Siddappa Chalavadi?*
>
> *2. When the leasehold right of disputed property is already sold by public auction, can the original landlord sell the same without taking steps to get the court sale set aside?*
>
> *3. Can the appellant and respondent claim that they are in possession of the disputed land which is vacant site, after the Karnataka Village Offices Act coming into force under which all grant lands shall automatically vest with Government?*
>
> *4. After Karnataka Village Offices Act coming into force who is entitled to take re-grant from the Government, whether appellant or respondent?*

23. Learned counsel for the defendant No.1/appellant submitted that defendant Nos.2 to 9 are the original owners of the suit property. Admittedly, the

plaintiff and defendant No.1 are not the owners but they are claiming their right being lease holders by contending that they have acquired lease hold rights. It is submitted that DW.3 who is owner of the land admitted that defendant No.1 was lessee as lease deed was executed in favour defendant No.1. Therefore, defendant No.1 has acquired the lease hold rights from his owner. Thus entitled decree of declaration that defendant No.1 is lessee under defendant No.2/owner. Initially, defendant No.2 has executed the lease in favour of Narayanaswamy Gurushiddaligaswamy Ujjainimath but he has failed to pay the ground rent of Rs.35/- per year. Therefore, he has surrendered the lease on 03.12.1956 which is not disputed by the plaintiff. Therefore, before auctioning the lease hold rights in the Court auction the said Narayanaswamy Gurushiddaligaswamy Ujjainimath had surrendered his lease hold rights in favour of owner/defendant No.2. Therefore, defendant No.1 has acquired the lease hold rights and this is correctly appreciated by the trial Court

but the First Appellate Court upon erroneous appreciation of evidence on record, has given wrong finding. Thus, prays to interfere with the judgment and decree passed by the First Appellate Court by confirming the judgment and decree of the trial Court. Hence, prays to allow the appeal.

24. On the other hand, learned counsel for the plaintiff/respondent submitted that the plaintiff has acquired the lease hold rights through Court auction. Thus, the plaintiff is entitled for relief of declaration. Further, it is submitted that due to enactment of KVOA Act, all the lands stood vested as on 01.02.1963 on which date, the KVOA Act came into force by repealing the BHO Act. Admittedly, defendant Nos.2 to 9 who are the erstwhile owners of the land on which the suit schedule plot was formed had lost ownership due to vesting of the land with the State. Furthermore, the plaintiff has acquired the lease hold rights in Court auction in LD No.93/1956 for recovery of the costs against Narayanaswamy Gurushiddaligaswamy Ujjainimath. Therefore, the plaintiff

has acquired lease hold rights. Hence, justified the judgment and decree passed by the First Appellate Court and prays to dismiss the appeal.

25. Upon considering the admitted facts in the case that the plaintiff and defendant No.1 were not the original owners and whatever their right is the only claiming of lease hold rights. Admittedly, defendant Nos.2 to 9 are the erstwhile owners of the land and the property on which, the suit property was formed. The plaintiff is claiming his right of lease hold through Court auction in LD No.93/1956 and not more than that. Narayanaswamy Gurushiddaligaswamy Ujjainimath had filed the case in L.C.No.274/1954 against Gurunath Halyal who is the father of the plaintiff in the Court of Munciff, Hubli. The said suit came to be dismissed awarding costs to Gurunath Halyal. Then Gurunath Halyal had filed an execution petition in Exe.No.93/1956 for recovery of the costs against the said Narayanaswamy Gurushiddaligaswamy Ujjainimath. In the said execution proceedings, the lease

hold rights of the Narayanaswamy Gurushiddaligaswamy Ujjainimath in the suit were brought to sale and Gurunath Halyal with the permission of the Court purchased the lease hold rights on 03.12.1956 in the Court sale. The said Court auction sale was confirmed on 11.01.1957 and sale certificate was issued on 22.07.1957. Therefore, whatever claim of the plaintiff is from the date of Court auction that is on and from 13.12.1956 onwards. When this being the fact, it is undisputed that defendant Nos.2 and 3 initially have executed the lease deed in favour of Narayanaswamy Gurushiddaligaswamy Ujjainimath in the year 1953-54 for ground rent of Rs.35/- per year. The said Narayanaswamy Gurushiddaligaswamy Ujjainimath being lessee has not paid the ground rent and thus the lease granted in favour of Narayanaswamy Gurushiddaligaswamy Ujjainimath was terminated as the said Narayanaswamy Gurushiddaligaswamy Ujjainimath had surrendered the lease on 13.12.1956. These dates are crucial for deciding the issue involved in the case. It is not disputed by the

plaintiff also that Narayanaswamy Gurushiddaligaswamy Ujjainimath had surrendered lease hold rights to its original owners defendant Nos.2 and 3 on 13.12.1956 which is evident from Ex.D4 which is proceeding before the Shirestedar and City Survey Officer, Hubli. The proceeding as per Ex.D4 is between the first defendant and the plaintiffs. The defendant No.1 was the applicant in the said proceedings and the plaintiffs are the opponents. Ex.D4 is the order, in which it is observed upon recording statement of Narayanaswamy Gurushiddaligaswamy Ujjainimath that he has given a statement before the authority that he gave up possession of the site to the owners on 13.12.1956 only owing to his inability to make payment of the rent to the owners. Also in the said Ex.D4 order, it is recorded that after surrendering the lease in favour of defendant Nos.2 and 3, they are in possession over the property and plaintiffs' father never took the possession of the suit property. Therefore, it is order in Ex.D4 that the objections of the opponents in the said

proceedings at Ex.D4 (plaintiffs herein) was rejected and accordingly the name of the applicant (defendant No.1 in the present case) is entered in the records. However, the opponent therein (father of the plaintiffs) was given liberty to establish his right in a proper Court of law, if he is so advised. But there is no evidence that thereafter the father of the plaintiffs had established his right in any Court of law. Therefore, as per Ex.D4, it is proved that Narayanaswamy Gurushiddaligaswamy Ujjainimath had surrendered his lease hold rights in favour of defendant Nos.2 and 3 way-back on 13.12.1956 and also defendant Nos.2 and 3 have taken possession of the land. When this being the fact is proved, the question for consideration is how the plaintiff acquired the lease hold rights through Court auction on 03.12.1956. It is the only event that having purchased the same, but without making payment of full sale consideration of lease hold rights. The said sale was confirmed on 11.01.1957 and the sale certificate was issued on 22.07.1957 much subsequent to the date of

surrender of lease hold rights by Narayanaswamy Gurushiddaligaswamy Ujjainimath. Therefore, just because through Court sale on 03.12.1956, the plaintiff cannot establish his lease hold rights over the suit property. The confirmation of sale of lease hold rights was on 11.01.1957 and sale certificate was issued on 22.07.1957. These events are after the date of surrender of lease i.e., on 13.12.1956. Therefore, at the most what the father of the plaintiff acquired the right of lease through sale but at that time, the Narayanaswamy Gurushiddaligaswamy Ujjainimath was not having any lease hold rights and it was already surrendered to defendant Nos.2 and 3 who are the owners of the property. Therefore, the purchase made by father of the plaintiff on purchasing lease hold right in Court auction, by that time, Narayanaswamy Gurushiddaligaswamy Ujjainimath was no more lease holder. Whatever the action is taken by the plaintiff is only against Narayanaswamy Gurushiddaligaswamy Ujjainimath, but not against defendant Nos.2 and 3.

Therefore, it must be construed that the purchase of lease hold rights by the father of the plaintiff is of nonexistent of lease hold rights of Narayanaswamy Gurushiddaligaswamy Ujjainimath. In this regard, the First Appellate Court has committed an error and findings given by the First Appellate Court is contrary to the evidence on record and is perverse as it against the finding given in Ex.D4.

26. It is written statement of defendant No.3 that they have given lease in favour of defendant No.1 on 28.6.1963 as per Ex.D1. Therefore, it is evidence of defendant No.3 who is the owner that he had executed a lease deed in favour of defendant No.1. Therefore, defendant No.1 acquired the property as lease holder.

27. PW.1 in his evidence has admitted that the plaintiff never in possession over the property. It is the admission of PW.1/plaintiff that he has not paid the rent as they are not living there. PW.1 admitted that defendant No.2 and 3 are the owners and the owners have not demanded the rent amount. Further, it is admitted that

the plaintiff has not paid the municipal tax. Therefore, upon analyzing the entire facts and circumstance in the background of the evidence adduced and also the admitted facts of the plaintiff, it is emerged that defendant No.3 is the owner of the property. The plaintiff is claiming his right only being lease hold rights having purchased in Court auction on 03.12.1956. Furthermore, the said sale was confirmed on 11.01.1957 and sale certificate was issued on 22.07.1957. But by this time, Narayanaswamy Gurushiddaligaswamy Ujjainimath had surrendered his lease hold rights on 13.12.1956. Therefore, the plaintiff cannot establish his right over the property mere acquisition of lease hold rights through Court auction. Narayanaswamy Gurushiddaligaswamy Ujjainimath was not lease holder as on the date of the Court auction then whatever purchase made by the plaintiff of lease hold right through nonexistent right and possession by the Narayanaswamy Gurushiddaligaswamy Ujjainimath was

departed. This evidence is not correctly appreciated by the First Appellate Court.

28. Admittedly, defendant Nos.2 to 9 are the Watandars and have recognized under the BHO Act. Due to enactment of the KVOA Act 1963, the said BHO Act came to be repealed and the land stood vested with the State w.e.f. 01.02.1963. But before that, defendant Nos.2 and 3 have given lease over the property on 28.01.1963 and till 31.1.1963, the defendant Nos.2 and 3 were the owners and on that date, the land was not vested with the Government. The land was vested with the Govt. only on 01.02.1963 due to enactment of the KVOA Act. Therefore, the said KVOA Act is not applicable so as to say that defendant Nos.2 and 3 did not have right to lease the land in favour of defendant No.1. Before vesting the land with the State, the defendant Nos.2 and 3 have executed lease in favour of defendant No.1 and defendant No.1 is in continuous possession over the land and defendant No.1 had produced tax receipts as per Exs.D5 to D36 that

defendant No.1 is in continuous possession over the property. Therefore, in this regard, the findings given by the First Appellate Court are only much discussing on the position of law of the KVOA Act, but has not advented on the facts and circumstances pleaded and appreciating the evidence on record. Accordingly, I answered Substantial Question of Law No.1 that when purported purchase of lease hold rights by the plaintiff in Court auction by that time Narayanaswamy Gurushiddaligaswamy Ujjainimath had already surrendered his lease hold right and parted with possession and has handed a possession in favour of defendant No.3. As Narayanaswamy Gurushiddaligaswamy Ujjainimath had surrendered his lease hold rights on 03.12.1956 as per Ex.D4. Accordingly, Substantial Question of Law No.1 is answered.

29. Substantial Question of Law No.2 is answered to the effect that there is no need for defendant Nos.2 and 3 to get the Court auction sale set-aside as the said Court auction sale is not binding on the defendant Nos.2 and 3,

the erstwhile owners of the property. Whatever the case in L.D. No.274/1954 and L.D. No.93/1956 on the file of the Court of Munciff, Hubli is only between father of the plaintiff – Gurunath Halyal and Narayanaswamy Gurushiddaligaswamy Ujjainimath and the owners defendant Nos.2 and 3 were not parties to the said proceedings. Therefore, when the said Court auction is not binding on the owners of defendant Nos.2 and 3, it is not for them to get the sale auction set-aside by filing another case. Accordingly, Substantial Question of Law No.2 is answered.

30. Substantial Question of Law Nos.3 and 4 are answered to the effect that defendant No.1 proved that after surrender of lease hold right by Narayanaswamy Gurushiddaligaswamy Ujjainimath in favour of defendant No.3 before sale confirmation of the Court auction. Therefore, defendant Nos.2 and 3 were in possession of the property and also being owners and the KVOA Act came into force on 01.02.1963 and thus, re-grant ought to

have been made by defendant No.1 as he has acquired lease on 28.01.1963. Therefore, re-grant ought to have been made by defendant No.1 by taking recourse for application for re-grant. Accordingly, I answered substantial question of law Nos.3 and 4.

31. Therefore, the findings given by the First Appellate Court are contrary to the evidence on record and found to be perverse one and thus, the order of the First Appellate Court is liable to be set aside by confirming the judgment and decree passed by the Trial Court. In the result, the Regular Second Appeal is liable to be allowed. Hence, I proceed to pass the following:

ORDER

1. Regular Second Appeal is ***allowed***.

2. The judgment and decree dated 27.07.2007 passed in R.A.No.153/1980 by the Court of the Principal Civil Judge (Sr.Dn.), Hubli, is ***set aside***. Consequently, the judgment and decree dated 01.10.1980 passed in O.S.No.146/1969

by the Court of the Principal Munsiff, Hubli, is hereby ***confirmed***.

3. Draw decree accordingly.

4. No order as to costs.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

UN/KA
List No.: 19 Sl No.: 1