



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 13<sup>TH</sup> DAY OF DECEMBER, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR**

**AND**

**THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR**

**REGULAR FIRST APPEAL NO. 719 OF 2015**

**BETWEEN:**

1. Abhiman Apartment Co-operative Housing Society Limited,  
A Society registered under  
The Karnataka Co-operative Society Act  
Having its registered office at  
Dr. Ambedkar Road,  
Opposite Civil Hospital  
Belagavi (since liquidated  
as per Karnataka State Government Gazette,  
Notification No.DRL:N:LQD 143/200  
Represented by Liquidator  
Sri. G.S.Bomme Gowda  
S/o. Late C.Shivanna  
Aged about 54 years,  
R/at Karnataka State Co-operative  
Housing Federation,  
Diwan Madhav Rao Road,  
Basavangudi, Bengaluru-560004.
2. Basavannai B.Shetti  
S/o. B.Shetti, Age:72,  
Ex-President,  
C/o. Abhiman Apartment  
Co-operative Housing Society Limited,  
R/o. Civil Hospital Road,  
Belagavi-590001.





3. Nemu G. Magadaum  
S/o. Gangappa, Age:56  
Occ: Business,  
R/o. Plot No.1/A  
Sy.No.6/2B, Mahabaleshwar Nagar,  
Double Road, Hindalga,  
Belagavi-591108.
  
  4. V.K.Patil,  
S/o. Krishnappa, Age:54  
Occ: Business,  
R/o. Plot No.6 & 7, A.I, II floor  
R/o. Abhiman Society  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590001.
  
  5. Smt. S.J.Rasalkar  
Age:67, Occ: Household Work,  
R/at. H.No.48003, Mannurkar  
Building, 4th Cross, Shivajinagar,  
Belagavi-590001.  
Presently R/at  
C/o. R.a. Jadhav, H.No.117/1,  
Shivaji Road, Belagavi-590001.
- Appellant No.5 died on 25.02.2017  
Cause title is amended vide Court  
Order dated 12.08.2021.
- 5(a). A.S.A.Rajaram  
S/o. Apparao Jadhav,  
R/o. H.No.117/1, Shivaji Road,  
Belagavi-590001.
  
  - 5(b). Smt. Snehal  
W/o. Late Surendra Parmekar,  
R/o. H.No.117/1, Shivaji Road,  
Belagavi-590001.



- 5(c). Sri. Abhay  
S/o. Rajaram Jadhav,  
R/o. H.No.117/1, Shivaji Road,  
Belagavi-590001.
6. Smt. Sushila Ullagaddi  
Age:63, Occ: House Hold Work,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590001.  
Presently R/at  
C/o. Y.S.Kagawad,  
Plot No.56/57, 5th Cross,  
Krishi Colony, Bhagya Nagar,  
Belagavi-590006.
7. V.Y.Kalasannavar  
S/o. Yallappa, Age:58  
Occ: Business,  
R/o. No.2570, Shivakrupa  
C/o. Shri S.V.Girannavar,  
Mali Galli, Belagavi-590001.
8. S.S.Girannavar  
Age: 57, Occ: Business,  
C/o. Dr. V.B.Dhaded  
Club Road, Belagavi-590001.
9. Smt. Anupama V.Dhaded  
Age: 68, Occ: Business,  
R/at C/o. Dr. V.B.Dhaded  
Club Road, Belagavi-590001.
10. P.D.Kale,  
Age:69, Occ: Business,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590001.  
Presently R/at Plot No.61/62,



Shivaneri, Jadhavnagar,  
Belagavi-590001.

11. L.S.Hongekar  
S/o. Satvaji, Age: 54  
Occ: Business,  
R/o. No.9, Anantshayan Galli,  
Belagavi-590001.
12. L.O.Bamane,  
S/o. Omanna, Age:76  
Occ: Business,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590001  
presently R/at Plot No.13, Dajiva  
Desai Colony, Hanumannagar,  
Belagavi-590001.  
  
Appellant No.12 died on 08.02.2016  
Cause title is amended vide Court  
Order dated 01.03.2016.
- 12(a). Annapurna @ Malu  
W/o. Gajanan Hindalagekar,  
Age:56 years,  
Occ: Household Work,  
R/o. Near Kisan Dairy, Hindalga Taluk,  
And District:Belagavi-591108.
- 12(b). Ashok Laxman Bamane  
Age: 54 years, Occ: Business,  
R/o. Dajiba Desai Colony,  
Double Road, Hanuman Nagar,  
Belagavi-590001.
- 12(c). Sanjay Laxman Bamane  
Age: 49 years, Occ: Business,  
R/o. Dajiba Desai Colony,  
Double Road, Hanuman Nagar,  
Belagavi-590001.



13. S.S.Swami,  
Age : 52, Occ: Business  
R/at No.27, Mahabaleshwar Nagar,  
Hindalga Road, Belagavi-591108.
  
14. V.B.Kankantri,  
D/o. Basavanni,  
Aged about 35 years,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
  
15. Smt. Malika Acharya,  
W/o. Acharya, Age:64  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road  
Opp: Civil Hospital,  
Belagavi-590001.  
Presently R/at Plot No.335,  
Scheme No.40,  
Behind Hindalga Ganapathi Temple,  
Belagavi-591108.
  
16. Narayan P.Potdar, Age:67,  
R/o. 43/10, Chougula Building,  
Mahadwar Road, Belgaum,  
presently R/at Plot No.33,  
Mahabaleshwar Nagar,  
Near Hindalga Ganapathi Temple,  
Belagavi-591108.

Since appellant No.16 has died  
Cause title is amended vide Court.  
Order dated 03.07.2023.

- 16(a) Padma, W/o. Narayan Potdar  
Age:62 years, Occ:Household Work,  
R/o. Plot No.33, Mahabaleshwar Nagar,  
Near Hindalga Ganapati Temple,  
Belagavi Taluk and District Belagavi-591108.



16(b) Yogesh, S/o. Narayan Potdar  
Age: 41 years, Occ:Private Service,  
R/o. Plot No.33, Mahabaleshwar Nagar,  
Near Hindalga Ganapati Temple,  
Belagavi Taluk and District Belagavi-591108.

16(c) Yogita, W/o. Vinayak Nannoji,  
Age:38 years, Occ:Private Service,  
R/o. Plot No.33, Mahabaleshwar Nagar,  
Near Hindalga Ganapati Temple,  
Belagavi Taluk and District Belagavi-591108.

17. D.P.Mundra, Age:60,  
R/o. Kaddannavar,  
Hindwadi, Belagavi-590 003.

Since appellant No.17 has died  
cause title is amended vide Court  
Order dated 29.07.2021.

17(a). Kanta, W/o. Durgaprasad Mundra,  
Age:79 years, Occ:Household Work,  
R/o. H.No.102, Nartiki Pride, New  
Good Shed Road, Belagavi Taluk  
And District Belagavi-590001.

17(b). Rajesh, S/o. Durgaprasad Mundra,  
Age:49 years, Occ:Household Work,  
R/o. H.No.102, Nartiki Pride, New  
Good Shed Road, Belagavi, Taluk  
And District Belagavi-590001.

17(c). Manish S/o. Durgaprasad Mundra,  
Age:44 years, Occ:Household Work,  
R/o. H.No.102, Nartiki Pride, New  
Good Shed Road, Belagavi, Taluk  
And District Belagavi-590001.

18. Balu N.Mainshale,  
Age:69,



R/o. Plot No.42,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.

19. Smt. Rajani L.Parab  
Age:59,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590 001.

Presently R/at Plot No.43  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.

20. Shanta S.Kalsanavar  
Age:62  
R/o Plot No.48,  
Mahabaleshwarnagar,  
Hindalga Road, Temple,  
Belagavi-591 108.
21. Smt. Bharati R.Hublikar,  
W/o. R.Hublikar, Age:64,  
R/o. Plot No.56,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
22. S.V.Jagtap  
Age:57,  
R/o. Plot No.73,  
Mahabaleshwaranagar,  
Hindalga Road,  
Belagavi-591 108.
23. S.G.Chavan  
Age:56,  
R/o. Plot No.84,



Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.

24. I.A.Dhaware  
Age:70  
R/o Plot No.74,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.

25. Umesh B.Dandagi  
Age:41  
R/o Plot No.68,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.

Since Appellant No.25 has died  
Cause title is amended vide Court  
Order dated 11.07.2023.

25(a). Jayashree, W/o. Umesh Dandagi  
Age:42 years, Occ: Household Work,  
R/o. Plot No.68, Mahabaleshwar Nagar,  
Near Hoidalga Ganapathi Temple,  
Belagavi Taluk and District Belagavi-591108.

25(b). Navami, D/o. Umesh Dandagi  
Age:23 years, Occ: Household Work,  
R/o. Plot No.68, Mahabaleshwar Nagar,  
Near Hoidalga Ganapathi Temple,  
Belagavi Taluk and District Belagavi-591108.

26. Smt. Lalitha L.Patil  
Age:58,  
R/o. Plot No.98,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.



27. S.G.Pattimani  
Age:56,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp:Civil Hospital  
Belagavi,  
Presently R/at  
Yamakanamardi,  
Taluk Hukkeri-571 249.
  
28. S.N.Hattarki  
Age:69,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp:Civil Hospital  
Belagavi,  
Presently R/at  
Plot No.51,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
  
29. Chandra Shekar Kamgol  
Age:62  
R/o. Ranade Road,  
Tilakwadi, Belagavi,  
Presently R/at Plot No.52  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
  
30. Smt. Satnam Khurana  
W/o. Khurana,  
Age:58  
R/o. BC No.85,  
Camp:Belagavi-590 001.  
Presently R/at  
Plot No.59/60,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.



31. Manjit Singh Khurana  
Age:65  
R/o. BC No.85,  
Camp:Belagavi,  
Presently R/at  
Plot No.59/60  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
  
32. Smt. Shaila N.Savanth  
Age:74,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi  
Presently R/at  
C/o. M.S.Salunke,  
Plot No.4/15, Vasant Vihar,  
Behind Venkateshwara  
Engineering College,  
Vidyanagar,  
Bengaluru-562 157.
  
33. Smt. Ratna D.Zond  
Age:48  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi,  
Presently R/at,  
C/o. B.V.Zond,  
CCB-171, Sharada Nilaya,  
Near 1st Bus Stop,  
Ajamnagar Main Road,  
Belagavi-590 001.
  
34. Yallappa Ganiger  
Age:55,  
R/o. Plot No.81,  
Mahabaleshwarnagar,



Hindalga Road,  
Belagavi-591 108.

35. P.M.Bellad,  
Age:82,  
R/o A-7, Staff Quarters,  
JNMC Nehrunagar,  
Belagavi,  
Presently R/at Basava Krupa,  
1st Main, 3rd Cross,  
Sadashivanagar,  
Belagavi-590 001.

36. Smt. Sumangala S.Math  
Age:67,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi,  
C/o. Somalingaiah K.M.,  
Door No.632, BDA  
B/14, 7th Main,  
Dommaluru,  
Bengaluru-560 071.

Since appellant No.36 has died  
Cause title is amended vide Court  
Order dated 29.07.2021.

36(a). K.M.Somalingayya,  
Age:74 years, Occ:Retired Employ,  
R/o. BDA-B/14, #632, 7<sup>th</sup> Main, II Stage,  
III Phase, Domlur, Bengaluru North,  
Bengaluru Taluk & District Bengaluru-560071.

36(b). Umadevi Gaveshwarmath,  
Age:47 years, Occ:Household Work,  
R/o. BDA-B/14, #632, 7<sup>th</sup> Main, II Stage,  
III Phase, Domlur, Bengaluru North,  
Bengaluru Taluk & District Bengaluru-560071.



- 36(c). Veeresh S/o. Somalingayya,  
Age:44 years, Occ:Household Work,  
R/o. BDA-B/14, #632, 7<sup>th</sup> Main, II Stage,  
III Phase, Domlur, Bengaluru North,  
Bengaluru Taluk & District Bengaluru-560071.
- 36(d). Yogish, S/o. Somalingayya,  
Age: 32 years, Occ:Household Work,  
R/o. BDA-B/14, #632, 7<sup>th</sup> Main, II Stage,  
III Phase, Domlur, Bengaluru North,  
Bengaluru Taluk & District Bengaluru-560071.
37. C.V.Muddebihal  
Age:48  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp:Civil Hospital,  
Belagavi,  
Presently R/at  
Plot No.96,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
38. Smt. Mangala S.Wali  
Age:46  
R/at C/o. Shankar S.Wali,  
Shivajigalli Chandad District,  
Kolhapur-416 509.
39. Smt. Anitha S.Muddebihal  
Age: 41  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp:Civil Hospital,  
Belagavi-590 001.
40. Smt. Rohini Acharya  
Age:62  
R/at No.134/2, 2nd Main,



Opp:Jesiya Mazine,  
Belagavi,  
Presently at: Plot No.103,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.

41. Vishwanath S.Halyal,  
Aged about 57 years,  
Occ: Govt Employee,  
R/o Pant Nagar,  
Balekundri B.K.  
Belagavi,  
Presently R/at Plot No.76,  
Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
42. Siddappa,  
S/o. Ramappa Kumar Naik,  
Age: 75 years,  
Occ: Pensioner, R/o. Belagavi,  
Now at Dadbanatti,  
Taluk Hukkeri, District Belagavi

(Respondent No.33 is transposed as  
appellant No. 42 vide court order dated  
11.04.2016)

...Appellants

(By Sri. S.S.Patil and Sri. Mahantesh R. Patil, Advocates, for  
A1, A2, A17 (a-c), A29 & A36 (a-d) and A16 (a-c) & A25 (a & b);  
Sri. G.Balakrishna Shastry, Advocate, for A3, A4, A6, A8, A10,  
A13, A24, A27, A28, A30, A31, A32, A34, A35, A40;  
Sri. N.G.Rasalkar, Advocate, for A5 (a-c);  
Sri Mrutyunjay Tata Bangi, Advocate, for A7, A9, A11, A12 (a-c),  
A15, A16, A18-A23, A26, A33, A38, A39, A41, A14, A37, A29;  
Sri. Ravi S.Balikai, Advocate, for A42)  
(Respondent No.33 is transposed as Appellant No.42))



**And:**

1. Kasim Sab Peersab Nadaf  
Since deceased by LR'S & others

Smt. Begum  
W/o. Kashim Sab Nadaf,  
Aged about 75 years,  
Occ:Household Work,  
R/o S.G.Road, Opp: Bus Stand  
Sankeshwar Taluk, Hukkeri,  
District: Belagavi-591 303.

Cause title is amended vide  
court order dated 12.08.2021  
Respondent No.1 Dead,  
Respondents No.2 to 10 are the  
Legal representatives of Respondent No.1.

2. Smt. Arifa  
W/o. Abu Bakar Nadaf,  
Aged about 60 years,  
Occ: Household Work  
R/o. Friends Colony,  
Shivaji Park, Kolhapur.
3. Sri. Mushtaq  
S/o. Kashimsab Nadaf,  
Aged about 58 years,  
Occ: Business,  
R/o. S.G.Road,  
Opp. Bus Stand Sankeswar,  
Hukkeri Taluk,  
Belgaum District-591 313.
4. Mehboob  
S/o. Kashim Sab Nadaf,  
Aged about 71 years,  
Occ:Business,  
R/o. S.G.Road,



Opp: Bus Stand Sankeswar  
Hukkeri Taluk,  
Belgaum District-591 313.

Since respondent No.4 has died  
cause title is amended vide Court  
Order dated 04.03.2018

- 4(a). Shireen, W/o. Mehboob Nadaf,  
Age: 48 years, Occ: Household,  
R/o. S.G.Road, Opp: Bus Stand,  
Sankeswar, Hukkeri Taluk,  
Belgaum District-591313.
- 4(b). Musif, S/o. Mehboob Nadaf,  
Age: 26 years, Occ: Household,  
R/o. S.G.Road, Opp: Bus Stand,  
Sankeswar, Hukkeri Taluk,  
Belgaum District-591313.
5. Smt. Kousar  
D/o. Kashimsab Nadaf,  
Since deceased by LR's & others
- Dr. Ibrahim,  
S/o. Amirali Naghnoor,  
Aged about 68 years,  
Occ: Business,  
R/o. Block No.'D' Flat No.401,  
Majestic Residency,  
Tavarekere Main Road,  
B.T.M. Layout, Bengaluru-560 029.
6. Ismail  
S/o. Ibrahim Naghnoor,  
Aged about 38 years,  
Occ: Business,  
R/o. Block No.'D' Flat No.401,  
Majestic Residency,  
Tavarekere Main Road,  
B.T.M. Layout, Bengaluru-560 029.



7. Mr. Irfan  
S/o. Ibrahim Naghnoor,  
Aged about 35 years,  
Occ: Business,  
R/o. Block No.'D' Flat No.401,  
Majestic Residency,  
Tavarekere Main Road,  
B.T.M. Layout, Bengaluru-560 029.
  
8. Javed  
S/o. Kashimsab Nadaf,  
Aged about 53 years,  
Occ: Business,  
R/o. S.G.Road, Opp: Bus Stand,  
Sankeswar Hukkeri Taluk,  
Belagavi District-591 313.
  
9. Mukthar  
S/o. Kashimsab Nadaf,  
Aged about 50 years,  
Occ: Business,  
R/o. S.G.Road, Opp: Bus Stand,  
Sankeswar Hukkeri Taluk,  
Belagavi District-591 313.
  
10. Moin  
S/o. Kashimsab Nadaf,  
Aged about 47 years,  
Occ: Business,  
R/o. S.G.Road, Opp: Bus Stand,  
Sankeswar Hukkeri Taluk,  
Belagavi District-591 313.
  
11. Mahadev Nijalingappa Kenchagar  
S/o. Nijalingappa Kenchagar,  
Major, Occ: Pensioner,  
Ex-Secretary,  
C/o. Abhiman Apartment  
Co-operative Housing Society Limited,  
R/at No.688, IV Cross,  
Bhagyanagar, Belagavi-590 006.



Since respondent No.11 has died  
cause title is amended vide Court  
Order dated 05.07.2016.

- 11(a). Smt. Sulochana  
W/o. Mahadev Kanchagar,  
Age:75 years, Occ:Household Work,  
R/o. H.No.688, Sulochana Building,  
Opp: Syndicate Bank, V Cross,  
Bhagya Nagar, Belagavi-590006.
- 11(b). Smt. Shobha, W/o. Sunil Potdar  
Age:40 years, Occ: Household Work,  
R/o: H.No.688, Sulochana Building,  
Opp: Syndicate Bank, V Cross,  
Bhagya Nagar, Belagavi-590006.
- 12 . I.S.Malagi  
Age Major, Occ: Business,  
R/o. Abhiman Society  
Dr.B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590 001.
13. Smt. Shivubai Rudrannavar  
Age Major,  
Occ:Household Work,  
Santhosh 768/1B,  
Bhagya Nagar, 10th Cross,  
Belagavi-590 006.
14. Shri. J.L.Deshpande,  
Major, Occ: Business,  
R/o. Mangesh Electrical Work  
Khade Bazaar,  
Belagavi-590 001.
15. Smt. Noorjan H.Kalburgi  
Age Major,  
Occ:Household Work,



R/o. Kotwal Galli,  
Belagavi-590 001.

16. Smt. Savita V.Shirur,  
Major, Occ: Household Work,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590 001.
17. G.P.Sawant  
Major, Occ: Service,  
R/at No.778, Seeta Nivas,  
Near Hindalga Vijaya Bank,  
Belagavi-591 108.
18. N.B.Nadgri  
Major, Occ: Service,  
H.No.10, Club Road,  
Belagavi-590 001.
19. Smt. Shobha D Rao,  
Major,  
Occ:Household Work,  
R/o. 106 Picket Road,  
Camp: Belagavi-590 001.
- 20 . Smt. Theresa D'Souza  
Major, Occ:Household Work,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590 001.
21. S.A.Dambai  
Major, Occ: Business,  
R/at: C/o. Renuka Krupa  
Maratha Colony, Tilakwadi,  
Belagavi-590 001.



22. Prakash G.Melge  
Major, Occ: Business,  
C/o. S.H.Jadhav Bhadkal Galli  
Belagavi-590 001.
23. Smt. Ushadevi Hosur,  
Major, Occ: Housework,  
R/o. C/o. Gopal B.Hosur,  
3553, Risaldar Galli,  
Belagavi-590 001.
24. Peerappa B.Kolkar  
Major, Occ: Business,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590 001.
25. C.Y.Nilajkar  
Major, Occ: Business  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital,  
Belagavi-590 001.
26. Anil A.Shirodkar  
Major, Occ: Business,  
C/o. S.K.Shirodkar, H.No.289/2,  
Harinivas, Shastri Nagar,  
Belagavi-590 001.
27. Smt. Sharada S.Balekundri  
Major, Occ:Business,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp:Civil Hospital,  
Belagavi-590 001.
28. B.P.Kapati  
Major, Occ: Business,



27, Mahabaleshwar Nagar,  
Hidalga Road,  
Belagavi-591 108.

29. B.P.Kokitkar  
Major, Occ: Business,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
30. M.N.Desai  
Major, Occ: Business,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
31. Vijay Anikanandi  
Major, Occ: Business,  
R/at: C/o. V.B.Jawoor,  
Ex-Engineer,  
Renuka Krupa Maratha Colony,  
Behind Arun Cinema,  
Belagavi-590 001.
32. Smt. Sushila S.Kore  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
33. S.R.Kumarnaik  
Major,  
R/at :C/o. R.S.Kumarnaik,  
Dadbanhatti Post,  
Yamakanmardi,  
Hukkeri Taluks-591 309.

(Respondent No.33 is transposed as



appellant No. 42 vide court order dated  
11.04.2016)

34. A.B.Girannavar  
Major,  
R/o.35, Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
35. Kalind D.Dalvi  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
36. Smt. Vinaya S.Kulkarni  
Major, C/o Type "C"Building,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
37. Gopal L.Kolekar  
Major,  
R/at:H.No.18/2, 1st Main,  
2nd Cross, Shivajinagar,  
Belagavi-590 001.
38. H.Chandragupta  
Major,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
39. Smt. Mainbai Basalingappa,  
Major, Occ:Household Work,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.



40. Sadashi S.Kore  
Major,  
R/at H.No.4824/1A/9  
Near S.P. Residence,  
Belagavi-590 016.
41. Vinay S.Chadda  
Major,  
R/o. D/33, Indal Colony,  
Aluminium Factory,  
Belagavi-590 010.
42. V.R.Kagawade  
Major, R/o.386, M.G.Road,  
Tilakwadi,  
Belagavi-590 006.
43. S.V.Kalmath  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
44. Smt. Rama K.Raj  
Major,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
45. Smt. L.G.George  
Major,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
46. Smt. Vasant Gouri  
Major ,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.



Since respondent No.46 has died  
Cause title is amended vide Court  
Order dated 27.09.2016

- 46(a). S.Vijayakumar Raghavan,  
Age 60 years, Occ:Business,  
R/o. #106, Mahabaleshwarnagar,  
Near Hindalga Ganapati Temple,  
Double Road, Belagavi-591108.
- 46(b). Vidya S.Vijayakumar Raghavan  
Age 26 years, Occ: Student,  
R/o. #106, Mahabaleshwarnagar,  
Near Hindalga Ganapati Temple,  
Double Road, Belagavi-591108.
47. A.K.Acharya  
Major ,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
48. Smt. Kumodini C.Rao  
Major ,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
49. Vimal B.Dandagi  
Major,  
R/o. Mahabaleshwarnagar,  
Hindalga Road,  
Belagavi-591 108.
50. N.G.Telganji  
Major ,  
R/o. Teachers Colony,  
Vijaynagar, Hindalga,  
Belagavi-591 108.



51. Karan Singh G.Chavan  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
52. B.S.Kotambari  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
53. M.S.Sangolli  
Major  
R/at: C/o. C-221 Staff Quarters  
JNMC Campus, Nehrunagar  
Belagavi-590 001.
54. S.S.Sangolli  
Major  
R/at: C/o. C-221 Staff Quarters  
JNMC Campus, Nehrunagar  
Belagavi-590 001.
55. Smt. Pushpalata S.Panchal  
Major  
R/at Balamkar Galli  
Guryal Chawal  
Old Hubli-580028.
56. Suresh B.Bannur  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
57. Smt. Ratnaprabha Maraguddi  
Major



R/o Vijaynagar  
Belagavi-591 108.

58. K.M.Gaokar  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
59. Smt. S.S.Shintre  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
60. Smt. Indumati R.Mudhol  
Major  
R/o. Plot No.2269  
Sector No.II,  
Mahantesh Nagar  
Belagavi-590016.
61. Ravindra P.Joshi  
Major  
R/o. Plot No.2269  
Sector No.II,  
Mahantesh Nagar  
Belagavi-590016.
62. Sangamesh Desai  
Major  
R/o. c/o. R.R.Biradar  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.



63. Smt. Vijaya S.Patil  
Major  
R/o. B.C.No.9  
Fort, Belagavi-590002.
64. Shantgouda B.Patil  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
65. Madhukar V.Deshpande  
Major  
R/o. 3546, Risaldar Galli  
Belagavi-590 001  
Presently R/at  
Plot No.75, Mahabaleshwarnagar  
Hindalga Road, Belagavi-591108.
66. Smt. Mangala R.Badkar  
Major  
R/o. 3470, Samadevi Galli  
Belagavi-590 001.
67. C.V.Inamdar  
Major  
R/o. Rajkumar Talkies Road  
Nargund Compound Extn.  
Bagalkot-587 101.
68. Smt. Prema Vidyanathan  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
69. Smt. Chaya T.Mane,  
Major



R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.

70. Smt. S.S.Javakar  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
71. V.C.Choushetty  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
72. S.S.Benavalkar  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
73. Smt. Drakshayani Hadimani  
Major,  
R/o. 1986, Koregalli,  
Shahapur, Belagavi-590 003.
74. Smt. Parvathi R.Vastrad  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
75. H.D.Patel  
Major



R/o Dutta Nivas, Khanapur Road,  
Tilakwadi, Belagavi-590 006.

76. Smt. Anjana M.Shinde  
Major  
C/o. S.S.Muchandi  
Sahadev Smriti Near Police Station  
Somvar Peth, Tilakwadi  
Belagavi-590 006.
77. Smt. Tulsi V.Patil  
Major  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
78. K.B.Odugoudar  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
79. Smt. Nirmala R.Hire Desai,  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
80. Smt. Sushila Hebbal  
Major  
R/o. 43/27, Tanaji Galli,  
Belagavi-590001.
81. Rajesh B.Kankarti  
Major,  
R/o. 585, Patil Galli,  
Belagavi-590001.



82. P.S.Nilajikar,  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
83. Smt. Yallowwa Rudrapure  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
84. K.M.Hargoli  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
85. Sri. D.B.Jadhav  
Major,  
R/o. Abhiman Society,  
Dr. B.R.Ambedkar Road,  
Opp: Civil Hospital  
Belagavi-590001.
86. Smt. C.C.Manjrekar  
Major  
R/at No.904/B Inamdar  
Building, Tanaji Galli,  
Belagavi-590001.
87. R.B.Patil  
Major,  
R/at No.1319, Tilak Chowk,  
Belagavi-590001.



88. Abhay Singh Garewal  
Major,  
R/at B.C.No.85  
Camp Belagavi-590001.
89. S.B.Somannavar  
Major,  
R/o. 2<sup>nd</sup> Floor,  
Amman Building Main Road,  
Shivajinagar, Belagavi-590001.
- Respondents No. 90 to 93  
impleaded vide  
Court Order dated 05.10.2018.
90. Jaitunabi  
W/o. Gajabarsab Nadaf,  
Age:80 years, Occ:House Wife,  
R/o. 2253, Kotagi Galli,  
Taluk:Hukkeri, District:Belagavi
91. Kulasama  
W/o. Nabisab Nadaf,  
Age:56 years, Occ: House Wife,  
R/o. Bazar Road, Ankalagi,  
Taluk:Gokak, District:Belagavi
92. Jahara @ Jahanara  
W/o. Nisarahamed Nadaf,  
Age:55 years, Occ:House wife,  
R/o. Plot No.2/2, Block No.6,  
Bauxite Road, Ajam Nagar,  
District: Belagavi.
93. Shankar Shivaputra More  
Age:46 years, Occ: Advocate,  
R/o. Scheme No.40, Plot No.120  
Hanuman Nagar,  
Taluk and District: Belagavi-591108.

...Respondents



(By Sri. V.M.Sheelvant, Advocate, for C/R1-R10 & for R4 (A & B);

R11-R89 notice dispensed with v/o dated 11.08.2015;

Sri. B.K.Malligwad, Sri. C.G.Sadare, and

Sri. P.G.Chikkanaragund, Advocates, for R11(a & b);

R46 (a & b) are served;

R33 is transposed as appellant No.42;

Sri. Sharad V.Magadam, Advocate, for R90 to R92;

Smt. Geetha K.M @ Pawar, Advocate, for R93)

This RFA is filed under section 96 of CPC against the judgment dated 29.04.2015 passed in O.S.No.160/2003 on the file of the II Additional Senior Civil Judge & CJM, Belagavi, partly decreeing the suit for declaration and for consequential relief of possession and permanent injunction.

This RFA pertaining to Dharwad Bench, having been heard and reserved on 21.09.2023, and coming on for pronouncement through video conferencing this day, **Sreenivas Harish Kumar J.,** sitting at Principal Bench, Bengaluru, pronounced the following:



## **JUDGMENT**

The judgment and decree dated 29.04.2015 in O.S.160/2003 on the file of II Additional Senior Civil Judge, Belagavi, is assailed by some of the defendants in the suit.

2. Kashimsab Peersab Nadaf, the original plaintiff, claimed the following main reliefs in the suit:

- (i) Declaration that the sale deeds dated 16.12.1998 and 19.12.1998 executed by second defendant in favour of first defendant purporting to transfer the suit lands were illegal, void ab-initio and without any legal sanctity;*
- (ii) Declaration that the allotments and transfers of the plots by the first defendant in favour of defendants 2 to 120 were illegal and invalid;*



*(iii) Possession of the suit property from defendants 1 to 120;*

*(iv) Permanent injunction restraining the defendants or anybody claiming under them from interfering with his actual physical and peaceful possession.*

2.1. The subject matter of the suit is 8 acres 12 guntas of land comprised in Sy.No.6/B situate on Hindalga Road, Taluk and District Belagavi ('suit land' for short).

2.2. The plaintiff obtained conversion of the suit land from agricultural to non-agricultural purpose and then entered into an agreement of sale on 09.06.1982 with the first defendant, a housing cooperative society ('society' for short). The total sale consideration agreed to be paid by the society was Rs.5,00,000/- and a sum of Rs.10,000/- was paid to the plaintiff towards earnest money. Defendant no.2 was the Secretary



and defendant no.3 was the President of the society. The plaintiff alleged that defendant no.2 persuaded him to execute a general power of attorney in his favour in order to carry out the formalities required to be completed by him for completion of the sale transaction in favour of the society. The plaintiff, being not aware of the mischievous, sinister and impious designs of defendants 1 to 3, executed a general power of attorney in favour of the second defendant on 26.04.1984. At that time, the second defendant was functioning as the Secretary of the society and could not have acted in dual capacity as the Secretary of the society as also the general power of attorney holder of the plaintiff. Being a businessman and resident of Sankeshwara, the plaintiff could not make himself personally available to sign the documents and papers which were to be submitted to the authorities. Further, the second defendant and the other directors



prevailed upon the plaintiff to execute power of attorney as he was one of the directors of the society. In these circumstances, the power of attorney came into existence, as stated by the plaintiff.

2.3. The terms of the agreement stipulated that the society should make payment of at least Rs.10,000/- every month to the plaintiff, the possession of the suit land would be delivered after receipt of the entire sale consideration and the sale deed would be executed within a period of one month from the date of receipt of total consideration after obtaining N.A. permission from the Deputy Commissioner. According to the plaintiff the total sum that he received towards consideration was Rs.1,20,000/-; the first and the second defendants failed to abide by the terms and conditions of the agreement in regard to payment of the sale consideration amount. The plaintiff



suspected the bona fides of the second defendant when the latter started avoiding him. Therefore he got issued a notice dated 18.08.1988 to the second defendant canceling the power of attorney. The notice was duly served on the second defendant, but there was no response to the notice. The terms of the agreement were also not complied with. In view of this development, the plaintiff had to institute a suit, O.S.1181/1989 for permanent injunction in the court of III Additional Munsiff, Belagavi, to restrain the society from alienating or distributing the plots formed in the suit land to any third person. The suit was dismissed. Challenging the same the plaintiff preferred R.A.21/1996 to the court of III Additional Civil Judge (Senior Division), Belagavi. Since the R.A. was also dismissed, he preferred a regular second appeal to the High Court. By judgment dated 09.04.1998, the second appeal was allowed and the suit was decreed reversing



the judgments of the trial court and the first appellate court. The society then approached the Supreme Court by preferring Special Leave Petition No. 10122/1999 which was allowed and the matter was remanded to the High Court for disposing of the second appeal afresh. After the remand, the plaintiff wanted to amend the plaint to seek additional reliefs of declaration and possession, but the High Court dismissed the appeal by judgment dated 24.6.2000 and also the amendment application, reserving liberty to the plaintiff to file a comprehensive suit for the reliefs that he was entitled to. Therefore the plaintiff stated that in view of the liberty given to him, the cause of action arose to claim the aforesaid reliefs in the suit.

3. Defendants 1, 3, 14, 37, 49, 56, 60, 92, 114 and 121 filed separate written statements. At a later stage, some other defendants also filed written statements. It is enough to refer to the



written statement of defendant No.1-society as the other defendants have also taken the same contentions. The first defendant does not dispute that the suit land belonged to the plaintiff and that it entered into an agreement with him for purchasing it. The first defendant also admitted its liquidation and appointment of the Deputy Registrar of Cooperative Societies as the administrator. The specific plea is that as the suit land was situated within the Corporation limit of Belagavi City, the plaintiff was found to have possessed excess land. According to section 6 of the Urban Land (Ceiling and Regulation) Act, 1976, ('the Act' for short) the plaintiff was required to file a declaration under the said provision. The plaintiff, therefore, made an application to the Government of Karnataka under section 20 of the Act seeking exemption and permission to sell the excess land. The Government held an enquiry and granted exemption with a condition that the



excess land should be sold in favour of the society alone. While granting exemption another condition was also imposed stating that the plaintiff should get the suit land converted for non-agricultural purpose before executing the sale deeds. The plaintiff was a resident of Sankeswara Town and he was unable to attend to all the offices frequently to complete the formalities of obtaining the conversion order and therefore he appointed Sri M.N.Kanchagar, the second defendant, as his power of attorney to appear before the Government and other competent authorities. Under the power of attorney, he authorized the second defendant to execute the sale deeds. After the Government granted exemption under section 20 of the Act, the plaintiff applied for conversion and it was granted. But the plaintiff challenged the conversion order by preferring an appeal to the Karnataka Appellate Tribunal and it was dismissed. Thereafter, the second defendant in



the capacity of power of attorney holder of the plaintiff executed sale deeds in favour of the society. Pursuant to the sale deeds the society formed a layout with the approval of Belgaum Urban Development Authority ('BUDA' for short). In accordance with the order of approval, the society handed over the roads, open space and the areas earmarked for civic amenities to BUDA which thereafter allotted civic amenity area to the Badminton Association for construction of a badminton hall. The plaintiff was aware of all these developments. Many of the members constructed houses in the plots allotted to them.

3.1. The society further pleaded that in the background of the above facts and circumstances, BUDA and the Badminton Association should have been made parties to the suit as in their absence the suit cannot be decided. Therefore the suit is bad for non-joinder of parties. A specific



contention pleaded by the society was that the plaintiff was aware of the sale deeds executed in its favour by the time he filed O.S.1181/1989. If at all the sale deeds were illegal in view of cancellation of power of attorney, the suit should have been filed within three years from the date of the sale deeds. Therefore the suit is barred by limitation. Another plea raised by the society was that the liberty given by the High Court while dismissing the second appeal did not give rise to cause of action. Therefore the suit has to be dismissed.

4. The trial court framed the following issues and additional issues: -

**ISSUES**

1. *Whether plaintiff proves that all four sale deeds dated 16.12.1988 and 19.12.1988 executed by second defendant in favour of 1<sup>st</sup> defendant*



*are null and void and without sanctity?*

- 2. Whether plaintiff proves that sale deeds executed by defendant No.1 in favour of defendant No.2 to 120 are invalid sale deeds and defendant No.1 has no such right to transfer and allot said property to defendant No.2 to 120?*
- 3. Whether plaintiff proves that description of suit properties are sufficient to identify suit properties?*
- 4. Whether suit is properly valued and court feed paid are proper?*
- 5. Whether suit is barred by law of limitation?*
- 6. Whether plaintiff is entitled for reliefs sought?*
- 7. What order or decree?*



***Additional issue framed on  
10.06.2013***

- 1. Does the defendant No.121 proves that he is a bonafide purchase for value?*

***Additional issue No.2 framed on  
13.02.2014***

- 1. Whether the defendant No.37 proves that she is a bonafide purchase of the property for valuable amounts?*

5. After assessing the evidence, both oral and documentary, the trial court decreed the suit of the plaintiff in terms of the reliefs claimed in the plaint.

6. Appellant No.29 has filed an application under Order 41 Rule 27 of CPC to produce three documents pertaining to the death of defendant no.2 and defendant no.89. As these documents



are not helpful to decide the appeal, the application deserves to be dismissed.

7. We have heard the arguments of the learned counsel for the appellants and learned counsel for the respondents.

7.1. Sri Ravi S Balikai, learned counsel for appellant no.42 argued that, when the plaintiff was found to have possessed excess land, he made an application under section 20 of the Act to the Government seeking permission to alienate the same. The Government accorded exemption under section 20 by order dated 21.03.1988 by imposing a condition that the plaintiff should sell the suit land to the society. Much before granting exemption, the plaintiff had entered into agreements of sale with the society on 19.6.1982, 16.10.1985, 25.06.1986 and 27.11.1987 and possession of suit land was also delivered to the society. The plaintiff received totally an amount of



Rs.4,59,229.25 from the society and the balance of Rs.40,770.75 was also paid. The plaintiff does not dispute execution of agreements of sale and obtaining exemption under section 20 of the Act. In spite of the fact that the balance consideration had been paid, the plaintiff filed O.S.1181/1989 alleging that he had cancelled the power of attorney executed in favour of the second defendant and the society started selling the plots formed in the suit land without paying the balance of sale consideration. It was the specific contention of the society and other defendants that if at all the plaintiff had cancelled the power of attorney, notice of the same was not served on defendant no.2, the power of attorney holder. Though the suit O.S.1181/1989 was for permanent injunction, the court gave a finding that there was no cancellation of GPA and possession of the suit land was not with the plaintiff. Ultimately the suit came to be dismissed. The plaintiff preferred an



appeal challenging the decree and the appeal was also dismissed. Then the plaintiff preferred a second appeal, RSA 896/1996 before the High Court, which was allowed and therefore the society approached the Supreme Court by filing Special Leave Petition 10112/1999. The Special Leave Petition was allowed, the judgment of the High Court in RSA was set aside and the matter was remanded to the High Court for disposal afresh. When the second appeal was taken up for fresh hearing, the plaintiff filed an application for amending the plaint to claim the relief of declaration of title. But the High Court dismissed the appeal as well as the application. When the second appeal was dismissed, the High Court clearly held that both the courts below had rightly come to conclusion that there was no cancellation of general power of attorney. It is a fact that defendant no.2, in the capacity of power of



attorney holder of the plaintiff executed sale deeds in favour of the society.

7.2. Sri Ravi Balikai argued further that when the finding of the High Court became final, the plaintiff could not have taken the same plea of cancellation of power of attorney in his second suit for comprehensive reliefs. In this regard he argued that the plaintiff resorted to filing the present suit because of liberty given by the High Court while dismissing RSA. The plaintiff claimed the liberty given by the High Court as cause of action for the suit, which can never be considered. This liberty did not permit the plaintiff to raise the same pleas which he had taken in O.S.1181/1989. If at all the plaintiff had any right over the suit land, he should have filed the suit based on a different cause of action. Therefore the suit is not maintainable as it is hit by principles of *res judicata*.



7.3. Sri Ravi Balikai also argued that the suit was highly time barred. When the society filed written statement in O.S.1181/1989, it was specifically contended that defendant no.2 being the power of attorney holder to the plaintiff executed the sale deeds in favour of the society. The plaintiff came to know about the sale deeds then itself. For this reason the suit should have been filed within three years from the date of knowledge. Though the defendants took up a specific plea that the suit was time barred, the trial court erroneously held that it was not time barred.

7.4. He raised another point that the suit was bad for non-joinder of necessary parties. In this regard, it was his argument that after the formation of layout in the suit land, the roads and other civic amenity areas were handed over to BUDA which in turn allotted one civic amenity site



to the Badminton Association. The suit is not only for declaration of title, but also for possession. In the absence of BUDA and Badminton Association, decree for possession cannot be granted and hence the suit is bad for non-joinder of necessary parties. The trial court has failed to notice this important aspect of the legal position while decreeing the suit, and therefore the appeal deserves to be allowed.

7.5. Sri Ravi Balikai referred to statement of objections filed in W.P.475/1989 and submitted that the said writ petition was filed by one Vasanth Ganesh Nagarkar challenging the grant of exemption to the plaintiff under section 20 of the Act; and the plaintiff being the respondent filed statement of objections as per Ex.D8 unequivocally admitting the execution of sale deeds in favour of the society through his duly authorized power of attorney holder.



8. Sri G.Balakrishna Shastry, learned counsel for appellants No. 3, 4, 6, 8, 10, 13, 24, 27, 28, 30, 31, 32, 34, 35 and 40 argued that the possession of the suit land was delivered to the society pursuant to agreements of sale, and the plaintiff has clearly admitted the formation of 120 plots in the suit land. The society made payment of Rs.4,59,229.25 to the plaintiff and was also ready to pay the balance. According to section 53A of the Transfer of Property Act, the defendant/society can defend the suit for possession and the trial court has erred in not noticing this legal aspect.

8.1. Touching the question of limitation, Sri G.Balakrishna Shastry argued that the trial court's decision to hold the suit as not time barred cannot be sustained, in as much as from the deposition of PW1 it could be very much made out that the plaintiff had the knowledge of execution of sale



deeds. Moreover as seen from the documents marked in O.S.1181/1989, BUDA issued commencement certificates to the members of the society to construct houses. The cause of action for seeking declaration arose long back, i.e., when the commencement certificates were issued. He also argued that section 14 of the Limitation Act cannot be applied because O.S.1181/1989 was not instituted in a wrong forum.

9. Sri Mruthunjay Tata Bangi, learned counsel for the appellants no. 7, 9, 11, 12(a-c), 15, 16, 18 to 23, 26, 33, 38, 39, 41, 14, 37 and 29, besides reiterating the grounds urged by Sri Ravi S Balikai, highlighted that the trial court has overreached the orders of the High Court and considered the points which estopped the plaintiff from urging them in the subsequent suit. The observations of the trial court that the judicial review is permissible as observations made in the previous round of



litigation do not amount to *res judicata* cannot be accepted at all. In this case the limitation started running when the written statement in O.S.1181/1989 was filed and once the limitation commences, it never stops and cannot be extended for any reason. The plaintiff states about fraud, but it is not pleaded and proved. He also argued another point that the plaintiff applied for exemption under section 20 of the Act to avoid vesting of excess land in the Government. While granting exemption the Government subjected the plaintiff to a condition that he should sell the land in favour of the society only. If the plaintiff had not agreed to that condition, he would have lost the land. In this view, the plaintiff cannot now take a stand that he had cancelled the power of attorney or question the validity of the sale deeds executed by the power of attorney.



10. Sri V.M.Sheelvant, learned counsel for the respondents/L.R.s of the plaintiff, argued that in order to understand as to when the cause of action arose for the suit, para 10 of the plaint in the earlier suit is to be read. For the former suit, the cause of action was non-payment of the balance of consideration amount and for the present suit, the cause of action is different. In paras 11 and 12 of the written statement in the former suit it is not stated that sale deeds had already been executed. What is seen is a kind of misleading statement and there is nothing to indicate that the sale deeds had come into existence even before the written statement was filed. Therefore for the present suit, the cause of action is to be reckoned from the date of knowledge about the sale deeds. Though it is stated in the plaint that the cause of action arose after the High Court gave liberty to file a comprehensive suit, the entire plaint is to be read to arrive at a conclusion as to when the cause of



action arose. The former suit was for a bare injunction and the issues framed therein were different from the issues framed in the present suit. There was no issue with regard to cancellation of the power of attorney by the plaintiff. In fact there is an observation by the court that there are discrepancies in the dates of receipt of notice of cancellation and therefore plaintiff was not able to prove cancellation of power of attorney. Referring to this observation, Sri V.M.Sheelvant submitted that it is not a specific finding, but it is a passing remark or observation which cannot be considered to hold that the present suit is barred by *res judicata*.

10.1. Referring to the statement of objections filed by the plaintiff in W.P.475/1989, Sri Sheelvant argued that a statement said to have been made by the plaintiff about the sale deeds cannot be treated as admission because the



statement of objections was not accompanied by a verifying affidavit and therefore the defendants cannot rely upon that statement of objections.

10.2. With regard to exemption granted by the Government under the Act, Sri Sheelvant argued that though the Government subjected the plaintiff to a condition that he should sell the land in favour of the society, this does not mean that the said condition would legalize the sales made by the power of attorney holder without payment of consideration amount. On the pretext that the excess land would have vested in the Government, the society cannot venture to do illegal acts and seek to justify the same. Thus the sale deeds executed by the power of attorney holder illegally cannot be held to be valid, specially when the second defendant could not have acted in dual capacity both as the secretary of the society and the power of attorney holder of the plaintiff.



10.3. Sri V.M.Sheelvant also pointed out that in the former suit the trial court granted an order of temporary injunction. When the said order was in force, the defendants 2 to 120 purchased the plots in violation of the injunction order and therefore the sale transactions were illegal. DW1 and DW2 are the subsequent purchasers of some plots without knowledge of cancellation of power of attorney and therefore their evidence cannot be considered. In fact their evidence discloses that they were aware of the pendency of disputes between the society and the plaintiff and thus they ran the risk of purchasing the plots. The defendants not only defrauded the plaintiff but also played fraud on the court, and their transactions should never be validated. He then submitted that in spite of the sale said to have been made by the society to its members, the City



Survey Extracts in respect of the suit land still continue in the name of the plaintiff.

10.4. Meeting the ground of allotment of civic amenity area to Badminton Association, Sri V.M.Sheelvant submitted that when the layout was formed, 50% of the land was allowed to be used for the residential purpose and the remaining land was earmarked for roads, parks, open space, etc., The plaintiff only claimed the reliefs in respect of residential plots excluding the land earmarked for civic amenity purposes. In this view, it was not necessary to implead the BUDA or the Badminton Association as parties to the suit and the suit was not bad for non-joinder of necessary parties. He therefore argued that viewed from any angle, the judgment of the trial court does not suffer from legal infirmity and there are no grounds to interfere with well reasoned judgment and hence appeal deserves to be dismissed.



11. In reply, Sri Ravi S Balikai and Sri Mruthunjay Tata Bangi submitted that the reasons given by the plaintiff for not making BUDA and the Badminton Association as parties to the suit cannot be accepted. They submitted that the layout was formed by the society and at that time plots as well as civic amenity areas were separately earmarked. The suit is filed in respect of the entire land. The plaint does not indicate that the civic amenity areas are excluded, and therefore BUDA and Badminton Association were necessary parties.

12. From the arguments, the points arising for discussion are :

*(i) Could the trial court have given a finding that the power of attorney stood cancelled contrary to specific finding in O.S. 1181/1989 that there was no evidence of communicating the cancellation of power of attorney by the plaintiff? Whether finding*



*about power of attorney in O.S.1181/1989 which attained finality falls within the meaning of section 11 of Code of Civil Procedure to apply principle of res judicata?*

- (ii) Has the trial court correctly held that the suit is not time barred?*
- (iii) Could the trial court have granted the reliefs claimed by the plaintiff in the absence of BUDA and Badminton Association as parties to the suit?*
- (iv) What order?*

**Point No. (i):**

13. The plaintiff founded the suit on the premise that since he cancelled the power of attorney dated 26.4.1984, the sale deeds executed by the second defendant in favour of society were illegal, and resultantly the sale deeds executed by the society in favour of its members became inconsequential. The suit land earlier belonged to plaintiff; he entered into agreements of sale with



the society; he applied for exemption under section 20 of the Act; and he also executed a power of attorney in favour of second defendant – these are all undisputed facts. The plaintiff himself pleaded about the suit O.S.1181/1989 instituted by him earlier, and its trajectory till the decree passed by the court of first instance attaining finality with the dismissal of RSA 896/1996 by judgment dated 24.6.2000 of this court. When RSA 896/1996 was pending before this court after remand from the Hon'ble Supreme Court, the plaintiff wanted to amend the plaint in order to seek the relief of declaration of title, but the application for amendment was dismissed, however, this court granted liberty to the plaintiff to file a comprehensive suit. The liberty thus given by this court prompted the plaintiff to institute another suit for comprehensive reliefs as aforesaid.



14. There is no doubt that if there was valid termination of power of attorney much before the second defendant executed the sale deeds in favour of the society, the society would not have acquired title over the suit land. But the finding in O.S.1181/1989 was that the power of attorney did not get cancelled or terminated because the plaintiff failed to prove that the notice of cancellation issued by him was served on defendant no.2, and resultantly the sale deeds executed by defendant no.2 in the capacity of power of attorney holder did not become invalid. As this finding became final with the dismissal of plaintiff's second appeal, RSA 896/1996, a question - whether the trial court could have decided the same aspect once again, would arise.

15. After referring to oral testimony of PW1 and a number of exhibited documents, the trial court has held that findings in an earlier injunction



suit does not operate as *res judicata* for the subsequent title suit. To arrive at this conclusion, the trial court has placed reliance on judgments of this court in ***Basamma and Others vs Devamma and Another***<sup>1</sup> and ***B.N.Jayasurya since deceased by L.Rs vs Bangalore City Corporation and Another***<sup>2</sup> where it is held that decree in an injunction suit does not operate as *res judicata* in a subsequent suit. Accepting the argument of the plaintiff's counsel that the findings in RSA 896/1996 were mere observations, the trial court proceeded to discuss the evidence and give a finding that the notice of cancellation of power of attorney was duly served on the second defendant on 20.08.1988. The trial court has noticed that neither the society nor the second defendant found it necessary to adduce evidence in

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<sup>1</sup> **2011 (3) KCCR 2139**

<sup>2</sup> **2001 (3) KCCR 1608**



order to rebut the plaintiff's case about cancellation of power of attorney.

16. At the outset, it may be stated that the findings of the trial court are misconceived, what is seen is mechanical reliance on the case law without understanding as to in what context it came to be held in **Basamma** and **Jayasurya** that decree in an injunction suit would not operate as *res-judicata*.

17. In the case of **Basamma**, the factual position was, the plaintiff first instituted a suit, O.S.361/1997 for permanent injunction against one Maranna. The subsequent suit, O.S.397/1997 was for specific performance of contract, not against Maranna, but against Siddappa and Siddamma, both being spouses. The true owner of the property in question was Siddamma, but it appears that she and her husband had executed an agreement of sale. The suit summons on



Siddamma was not served as she was dead by that time, and Siddappa also did not appear before the court. This resulted in suit being decreed ex-parte. It appears that miscellaneous proceeding was initiated for restoration of suit, and the suit was restored. The suit was dismissed after contest, and the appeal preferred thereafter was also dismissed. In the second appeal what was noticed was, the real fight of the plaintiff was not against the defendants, but against Maranna against whom a suit for injunction O.S.361/1997 had been filed, and the plaintiff tried to make use of decree in that suit in the subsequent suit for specific performance. But in the subsequent suit, Maranna was not a party, and he was not a party to the contract also. In this context, it was held by learned single Judge, while deciding the RSA that decree in injunction suit would not operate as *res-judicata*.



18. The case of ***B.N.Jayasurya*** depicts the facts that the first suit was for permanent injunction in respect of a small bit of a land against the City Corporation and it was decreed. The second or the subsequent suit was also for permanent injunction, not in respect of a bit of land, but in respect of entire land. The corporation pleaded that it was entitled to utilize the land for formation of road and other public purposes as the land vested in it according to section 174 of Karnataka Municipal Corporation Act. Therefore in the subsequent suit, which was dismissed, question of title arose, and moreover by the time second suit was filed, there was a sea change in the nature of property and title over the land. It was in this context the learned single Judge of this court held that the findings in an earlier suit for injunction did not operate as *res-judicata*. All that we need to say is that the trial court should not have come to a conclusion about



applicability of *res-judicata* without reading the text of the judgments which it has relied upon. In this case, *res judicata* cannot be applied, for the following reasons.

19. In O.S.1181/1989 the relief claimed by the plaintiff was to restrain the society, its agents, henchmen, etc., from alienating or disposing of the plots formed in the suit land. To claim this relief, the plaintiff pleaded that the society was disposing of the plots without paying the balance sale consideration; he complained of violation of terms of the agreement. He also pleaded that having noticed the society and its office bearers being defiant to the terms of the agreement, he cancelled the power of attorney in favour of second defendant and in spite of it, the society started selling the plots. The main defence was that power of attorney had not been cancelled; notice of cancellation had not been served on second



defendant and that the entire consideration had been paid. The pleaded facts were very clear that the plaintiff stated nothing about being in possession of suit land and attempted interference with his possession by the society. Very strangely issue framed was,

*"Whether the plaintiff proves that he is in lawful possession of the suit property as on the date of suit?"*

20. Order 14 Rule 1 of CPC states that issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Apparently issue framed by the trial court was wrong. However if the judgment in O.S.1181/1989 is seen, although the trial court gave a finding that the plaintiff was not in possession, it discussed the evidence and gave a finding that cancellation of power of attorney was not proved. Although the court framed the issue wrongly, the parties knew about the issue to be proved and adduced evidence



on the actual point of controversy. It is in this background, the question relating to applicability of *res judicata* has to be examined. Section 11 and its Explanation III of CPC are relevant.

*"11. **Res-judicata.**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

**Explanation I** .....

**Explanation II**.....

***Explanation III.**—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other."*



21. In the former suit here, i.e., O.S.1181/1989, the plaintiff alleged that he had cancelled the power of attorney, and the same was denied by the society. Therefore, though the trial court wrongly framed the issue based on possession, the actual controversy was about cancellation of power of attorney which had a bearing on other transactions of the society. The actual reason to dismiss O.S.1181/1989 was a finding on cancellation of power of attorney.

22. Now in the case on hand, the plaintiff has pleaded about cancellation of power of attorney. The first issue in the present suit cannot be answered in favour of plaintiff unless there is a finding on cancellation of power of attorney. The clear finding in the former suit was that there was no cancellation of power of attorney and it attained finality which aspect is not disputed. This being the factuality, the trial court should not have held



that the present suit is not hit by *res-judicata*, more so when the entire records in O.S.1181/1989 were placed before the trial court. It may be a general principle that a decree in injunction suit does not bar a subsequent suit for title, but before arriving at any conclusion, the court must examine the nature of injunctive relief sought and the material facts pleaded to claim such a relief. Framing the issue mechanically and placing reliance on decided cases without understanding the context in which observations are made, result in miscarriage of justice. The decree in O.S.1181/1989 precluded the plaintiff from raising the same pleas in the subsequent suit in the light of Section 11 of CPC. And therefore answer to point no.(i) is that the trial court could not have given a finding contrary to findings in O.S.1181/1989; the suit is hit by *res-judicata*.

**Point No.(ii)**

23. To hold that suit is not time barred, the reason given by the trial court is that the High Court, while dismissing the second appeal reserved liberty with the plaintiff to file a comprehensive suit, and that order itself presupposed that the cause of action for the suit started running from the date of order. And the High Court, while granting liberty, has nowhere observed that the plaintiff has to file the suit subject to law of limitation. Issue in regard to limitation was answered in negative in the sense that suit was not time barred.

24. The above finding is not sustainable at all. Before demonstrating as to how the suit was time barred, something about cause of action for the suit requires to be referred to. In Para 14 of the plaint, it is pleaded-



*" The cause of action for the suit arose on 24.06.2000 when the Hon'ble High Court of Karnataka while disposing of the RSA No.896/1996 observed that the plaintiff is at liberty to file a comprehensive suit for the relief sought for by the plaintiff in the amendment moved in the second appeal."*

25. Thus according to plaintiff, liberty given by High Court gave rise to cause of action and therefore according to him, suit is not time barred. The simple meaning of the term 'cause of action' is a fact or bundle of facts that enable a person to take legal action against another. Right to sue must emanate from the pleaded facts. In **DADU DAYALU MAHASABHA VS. MAHANT RAM NIWAS AND ANOTHER**<sup>3</sup> it is held that:

"19. A suit is filed on a cause of action. What would constitute a cause of action is now well settled. It would

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<sup>3</sup> (2008)11 SCC 753



mean a bundle of facts which would be necessary to be proved by the plaintiff so as to enable him to obtain a decree.  
The first respondent's suit for possession was premised on a legal entitlement. The appellant herein also claimed its right over the gaddi in question. The trial court framed several issues. Its discussion centred around the respective pleas of the parties which had fully been gone into. The suit was dismissed. The first appellate court not only went into the question of possession of the first respondent over the gaddi, as on the date of institution of the suit, but the other questions."

(emphasis supplied)

26. In case liberty is granted to a party to file a fresh suit or a comprehensive suit, the order of granting liberty will never give rise to cause of action nor can it be construed so. Once a suit is finally adjudicated, any suit instituted subsequently by any of the parties or persons



claiming title under the parties to the suit must plead independent cause of action\*. Only when the court permits a plaintiff under sub rule (3) of rule 1 of Order 23 of CPC\* to withdraw the suit, he can bring a fresh suit in respect of same subject matter\* but the fresh suit is also not immune to law of limitation. This aspect becomes clear from Order 23 Rule 2 CPC which states that the plaintiff shall be bound by the law of limitation when he files a fresh suit upon a permission granted under Rule (1) of Order 23 CPC. This being the full rigor of law of limitation, if liberty is granted at the appellate stage to the plaintiff or parties litigating under him and in case a fresh suit is instituted, the cause of action therein must be independent of the cause of action pleaded in the former suit. While confirming the decree of the trial court, if the appellate court grants liberty to the defendant or a party litigating under him to file a suit, the cause of action to be pleaded in such a suit must be

*\*Corrected vide chamber order dated 03.01.2024.*



independent and distinct, and in case cause of action is traceable to defence taken by the defendant in the former suit, such a cause of action will be hit by Explanation IV to Section 11 of CPC.

27. Now in the case on hand, we have already given a finding that the suit is hit by section 11 of CPC. That apart, the evidence discloses that the plaintiff was aware of the sale deeds executed by the second defendant. PW1 who is the son of plaintiff has clearly admitted in the cross examination that the society had taken up a contention in O.S.1181/1989 that in view of sale deeds executed by M.N.Kenchagar, the defendant no.2, it became the owner of suit property. PW1 has also admitted that he was accompanying his father when O.S.1181/1989 was pending. In the written statement filed by the society in O.S.1181/1989, it was specifically pleaded that the



defendant had rightly executed sale deed on 28.12.1988 in favour of Abhiman Apartment Co-operative Society Ltd., Belgaum. The written statement was filed on 27.09.1989. The plaintiff himself adduced evidence as PW1 in O.S.1181/1989 and his categorical admission in the cross examination dated 25.03.1992 is that when he perused Record of Rights (ROR) of the suit land he came to know that the defendant society had sold the plots to its members. More than all, the statement of objections filed by the plaintiff in W.P.475/1989 is very important. This statement was marked as Ex.D37 in O.S.1181/1989, and it is part of Ex.P8 in the present suit. In para 3 of the objection statement filed on 04.02.1989, the plaintiff has stated as below.

*".....later on for the smooth completion of the transaction and to enable the third respondent society to*



*move the competent authority such as the Deputy Commissioner, Urban Land Ceiling and the Belgaum Urban Development Authority etc., I executed a General Power of Attorney in favour of Mahadev Nijalingappa Kanchegar. Later on the registered sale deeds in respect of the said lands are executed by my duly appointed Power of Attorney with my prior permission, consent and knowledge and the sale deeds were executed and registered on 16.12.1988 and 19.12.1988”*

28. Therefore, it becomes amply clear that the plaintiff was very much aware of existence of the sale deeds by the time he filed the statement of objections in W.P.475/1989. The society contended about the sale deeds executed by the second defendant in its favour when it filed written statement on 27.09.1989 in O.S.1181/1989. As already referred, there are unequivocal admissions by P.W.1 in the present



case and also the plaintiff in O.S.1181/1989 as to having knowledge of sale of plots by the society. The cause of action for the present suit, thus, arose for the first time on 04.02.1989. According to Article 58 of the Limitation Act, suit for declaration has to be filed within 3 years from the time when the right to sue first accrues. If the right to sue accrued in the year 1989, the suit filed in the year 2003 was clearly time barred. Though the plaintiff has sought the relief of possession, unless the title over the property is declared, relief of possession which is ancillary to the main relief of declaration cannot be granted.

29. Sri Ravi S. Balikai has placed reliance on a judgment of the division bench of this court in the case of **UNION OF INDIA VS KARNATAKA ELECTRICITY BOARD**<sup>4</sup> to argue that the rules of limitation are to be strictly applied and the present

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<sup>4</sup> **ILR 1987 KAR 2552,**



suit being highly time barred should have been dismissed at the trial court. It is held :

*"8. Re: Point (a):*

*Before we proceed to examine the correctness of the findings of the Court-below on the question of limitation we must advert to two other aspects.*

*Plaintiff appears to have relied upon Exhibit P-5 urging that under that document the defendant had admitted its liability. But as rightly pointed out by the Trial-Court, this document, Exhibit P. 5, referred to in Para 9 of the plaint did not pertain to the suit transaction at all but related to some other transaction. The correctness of this finding was not, in our opinion rightly, disputed before us by the Learned Counsel for the respondent-plaintiff.*

*The second aspect is this: The Trial-Court relying on the pronouncement of the Supreme Court in the case of Madras Port Trust v. Hymanshu International [(1979) 4 SCC 176 : AIR 1979 SC 1144.]*



*has permitted itself Certain observations in regard to the morality of public authorities taking recourse to the plea of limitation. Laws of Limitation are laws of repose and peace and are founded on public-policy intended to eliminate the unsettling influence of perpetual threats of litigation. They are intended to quiet stale demands. The old view that the Rules of Limitation are infamous power created by positive law to decrease litigation and encourage dishonest defences is not regarded now as sound. All statutes of limitation have for their object the prevention of the rearing up of claims at great distances of time when evidences are lost. In Jones v. Bellgrove Properties Ltd., [(1949) 2 KB 700.] it was observed:*

*"... .... If a claim is made for payment of a debt many years after it has been incurred, there may be difficulty in proving that the debt ever was in fact incurred or that it has not already been paid and so forth. That is*



*why the law bars the right of action after a certain period has elapsed from the accrual of the cause of action.....”*

*Again in R.B. Policies at Lloyd's v. Butler [(1950) 1 KB 76.] it was said:*

*“I agree with Mr. Atkinson that it is a policy of the Limitation Acts that those who go to sleep upon their claims should not be assisted by the Courts in recovering their property, but another, and, I think, equal policy behind these Acts, is that there shall be an end of litigation, and that protection shall be afforded against stale demands.”*

*The Learned Judge, in that case, approved the statement of Best, C.J. in another case:*

*“... .... It, as I have heard it often called by great judges, an act of peace. “Long dormant claims have often more of cruelty than of justice in them.”*

*It is not therefore, permissible to say that a plea of bar of limitation is*



*either unjust or immoral despite the possibility, that in some isolated cases the Rules of Limitation might cause some hardship. When a plea of limitation is taken it is the duty of the Court to adjudicate upon its merits Indeed in the very Madras Port Trust case referred to by the Trial-Court, the Supreme Court has categorically stated that when a plea of limitation is taken it requires to be considered and pronounced upon on its merits.*

*Indeed the words of Sarkar, J. in Martin Burn Ltd. v. The Corporation of Calcutta [AIR 1966 SC 529.], though in a different context, are worth recalling:*

*"..... A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not....  
...."*



30. Section 14 of the Limitation Act cannot be invoked in this case. This section is applicable only when the plaintiff prosecutes a suit in good faith in a court which cannot entertain it for defect of jurisdiction or other causes of like nature. O.S.1181/1989 had not been filed in a court which had no jurisdiction to entertain it. The court which decided that suit did have jurisdiction. Section 14 of Limitation Act, therefore does not help the plaintiff.

31. Therefore, the finding of the trial court about limitation cannot be sustained at all. Our conclusion is that the suit was time barred.

**Point No.(iii)**

32. The argument of learned counsel for the defendants was that BUDA and the Badminton Association should have been made parties to the suit. This was specifically pleaded in the written statement. The trial court did not frame an issue



relating to this plea. It is not in dispute that the society formed a layout and then handed over the roads and the plots reserved for public purposes to BUDA. Thereafter BUDA allotted one plot to Badminton Association which is in possession of the same. Since the relief of possession is also sought the plaintiff should have impleaded BUDA and the Badminton Association as parties to the suit. They are necessary parties in the sense that in their absence even if decree for possession is granted, it cannot be executed against BUDA and Badminton Association. Therefore both should have been made parties. But Sri V.M.Sheelvant, learned counsel for the plaintiff, submitted that the plaintiff would not claim the roads and civic amenity areas and in this view, BUDA and Badminton Association were not necessary parties. This is a futile argument and also dislodges the plaintiff's suit. The plaintiff has filed the suit over the entire land including the roads and other civic



amenity areas. If the plaintiff does not claim the roads and the civic amenity areas in the layout, it implies that he accepted the formation of layout by the society subsequent to purchasing suit land. This is how the plaintiff dislodges himself. For these reasons, it is to be sated that the suit was bad for non-joinder of necessary parties.

**Point No.(iv)**

33. From the discussion on points (i), (ii) and (iii), the appeal deserves to be allowed. We may also state that the plaintiff, instead of filing a suit O.S.1181/1989 for injunction, should have filed a suit for recovery of balance of sale consideration if according to him the sale consideration was not fully paid. Based on the agreements, he could have filed a suit for specific performance against the society if he was willing to execute the sale deeds by receiving balance of sale consideration or if the second defendant executed sale deeds by



playing fraud on him or violating the terms of the agreement, he could have filed a suit for cancellation of sale deeds taking up the pleas of fraud or mis-representation etc. If the plaintiff thought that there was an eclipse on his title because of the sale deeds executed by the second defendant in favour of the society, he could have claimed the same reliefs when he filed O.S.1181/1989 as these reliefs were very much available to him at that time. He omitted to claim these reliefs. In this view the present suit is also hit by Order 2 Rule 2 of CPC.

34. Therefore, we conclude that the appeal deserves to be allowed with costs and now the following:

**ORDER:**

- (i) *The appeal is allowed with costs throughout.*



*(ii) The judgment and decree dated 29.04.2015 in O.S.No.160/2003 on the file of II Additional Senior Civil Judge, Belagavi, is set-aside.*

*(iii) Suit is dismissed.*

*(iv) I.A.No.2/2015 filed by appellant No.29 under Order 41 Rule 27 CPC does not survive for consideration. It is dismissed.*

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

CKL  
List No.: 19 Sl No.: 1