



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 25TH DAY OF APRIL 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.



REGULAR SECOND APPEAL NO. 5098 OF 2010 (DEC/INJ)

BETWEEN:

SMT. K.G. LAXMIDEVI
W/O K.G. KUMARGOUDA,
AGE ABOUT 51 YEARS,
OCC: DOMESTIC DUTY,
R/O: KOLUR VILLAGE,
TQ AND DIST: BELLARY.

...APPELLANT

(BY SRI. S.H. MITTALKOD, ADVOCATE)

AND:

1. SMT. HAMPAMMA
SINCE DEAD REPRESENTED BY HER LR'S.
- 1A. SMT. GOURAMMA @ MALLAMMA
W/O THIPPESWAMY,
R/O. NANJAPUR VILLAGE,
BHARAMASAMUDRA (MANDALA) POST
KALEMARGA, ANANTHAPURA DIST- 515767.
- 1B. SRI. THIPEESHA
S/O LATE AYYAPANNAVAR RAMANAGOUDA,
R/O. WARD NO.4, SHIVANAGAR,
KOLUR POST, KURUGODU TQ,
BELLARY DIST- 583101.
- 1C. SRI. THIMMANAGOUDA
S/O. LATE AYYAPANNAVAR RAMANAGOUDA,
R/O. WARD NO.4, SHIVANAGAR,
KOLUR POST, KURUGODU TQ,
BELLARY DIST- 583101.





HC-KAR

- 1D. SMT. ERAMMA W/O. K. HONAREDDY,
R/O. HARAGINADONI,
KURUGODU TQ, BELLARY DIST- 583115.
- 1E. SMT. PUTTAMMA W/O M.G. LINGAREDDY,
R/O. BHARMASAMUDRA VILLAGE,
BHARAMASAMUDRA (MANDALA) POST
KALEMARGA, ANANTHAPURA DIST- 515767.
2. SRI. GADEPPA S/O LATE DODDA POMPANNA,
AGED ABOUT 61 YEARS,
OCC: AGRICULTURIST,
R/O: KAREKOPPA VILLAGE,
TQ. SANDUR, DIST. BELLARY- 583119.
3. SRI. S.B. DODDANAGOUDA
S/O LINGANAGOUDA,
OCC: AGRICULTURIST,
R/O: SREEDARAGADDA VILLAGE,
TQ AND DIST: BELLARY- 583101.

...RESPONDENTS

(BY SRI. K.L. PATIL, AND
SRI. SOURABH SONDUR, ADVOCATE FOR R1(A) TO R1(E),
R2-SERVED BUT UNREPRESENTED;
R3-APPEAL ABATED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 CPC., IS PRAYING TO THE JUDGEMENT & DECREE DATED: 30-11-2009 PASSED IN R.A.NO.08/1999 PASSED BY THE II-ADDL. DISTRICT JUDGE AT BELLARY, ALLOWING THE APPEAL, FILED AGAINST THE JUDGMENT DATED: 27-02-1999 AND THE DECREE PASSED IN O.S.NO.52/1993 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN) BELLARY, BE KINDLY SET ASIDE BY ALLOWING THIS APPEAL AND CONSEQUENTLY DISMISSING THE SUIT IN O.S. NO. 52/1993, WITH COSTS IN THE INTEREST JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FURTHER HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.



HC-KAR

ORAL JUDGMENT

Heard arguments of learned counsel for respondents Sri.Sourabh Sondur and reply arguments of learned counsel for appellant Sri S.H.Mittalkod.

2. This is the appeal filed under Section 100 of C.P.C. paying for setting aside the judgment and decree dated 30.11.1999 passed in R.A.No.8/1999 on the file of II Additional District Judge, Bellary and to confirm the judgment and decree dated 27.02.1999 OS No. 52/1993 on the file of Principal Civil Judge (Sr.Dn.) Bellary.

3. Parties would be referred with their ranks, as they were before Trial Court for sake of convenience and clarity.

4. The plaintiff has filed the suit before Trial Court paying for the relief of declaration that she is the absolute owner in possession of suit 'B' schedule property; for the relief of permanent injunction restraining defendant No.2,



her husband or persons claiming through her from interfering with her peaceful possession and enjoyment of suit schedule property; for Court costs and for such other reliefs.

5. The case of plaintiff before Trial Court in nutshell is that one Dharmasagarada Doddappa was original propositus having three sons i.e. Dodda Pampanna, Sanna Pampanna and Doddappa. Sanna Pampanna has 5 sons and 3 daughters. Doddappa has got only 1 daughter i.e. plaintiff-Hampamma. Dodda Pampanna has a son and daughter. His son is defendant No.1-Gadeppa and his daughter is not party to the suit. It is the contention of plaintiff that in the registered family partition that has taken place on 14.05.1957, suit schedule 'B' property bearing Sy.No.113 measuring 8 acres 84 cents and other two agricultural properties bearing Sy.Nos.114A measuring 4 acres 32 cents and Sy.No.167 measuring 1 acre 70 cents and a house property were allotted to the share of father of plaintiff and some other properties were allotted to the



HC-KAR

share of defendant No.1 and also to father-in-law of defendant No.2-Sanna Pampanna. It is her contention that Sanna Pampanna was residing in her wife's family at Kolur and hence, properties at Kolur were allotted to his share and thus, no house property was allotted to him. During lifetime of her father, he was not keeping good health and hence, mother of plaintiff was looking after the suit schedule property and other two properties which were fallen to the share of plaintiff's father and was paying taxes to it. Said Sy.No.113 measuring 8 acres 84 cents is the suit 'B' schedule property. Madras Agriculturists Relief Act, 1938 was in force from 1932 to 1953 in the area in which the suit schedule property is situated. Said Act came into force during 1938 and according to it, money-lenders were not permitted to impose interest more than 5-½ % p.a. Hence, to avoid provisions of said Act, money lenders were in the habit of taking sale deeds with an oral agreement to re-convey as and when the loan amount was repaid with interest which was varying from 9 to 15% per annum,



which was impermissible under the aforesaid enactment. Grandfather of plaintiff Sri Mukkannappa @ Dharmasagarada Mukkannappa has executed mortgage deed in favour of father of defendant No.3, Sri Linganaagouda, son of Doddanagouda; in the year 1941, after payment of interest, allegedly accrued till 28.04.1941 and a sum of ₹400/- towards principal amount, Mukkannappa has executed sale deed in respect of suit 'B' schedule property towards the balance amount of ₹600/- with a clear understanding that it would be reconveyed as and when the debt was repaid. It appears that earlier to partition deed dated 14.05.1957, the said loan was repaid and it was discharged and thus, Linganaagouda has delivered the original sale deed dated 28.04.1941 and thus, the said property was partitioned and allotted to the share of father of plaintiff. Even though such deed came into existence, the possession was not disturbed and it continued with Mukkannappa and after this partition deed continued with father of plaintiff and her mother and then, continued with



HC-KAR

plaintiff. In the circumstances, the plaintiff has perfected her title even by law of adverse possession. As plaintiff is married and residing at Kolur, she entrusted the property to look after the same to defendant No.1 who is her first cousin and he was looking after it. However, taking undue advantage of the situation that plaintiff is an illiterate woman, residing away from suit schedule property, revenue proceedings were initiated. It appears that defendant No.3, the son of said Linganagouda has executed the sale deed dated 11.03.1993 in favour of defendant No.2, but possession of suit schedule property was not handled over to defendant No.2 or her husband. They have created the fabricated story in respect of transfer of property. Hence, the suit for appropriate reliefs.

6. After service of summons, defendant No.1 has not appeared and not contested the suit all along. Defendant Nos.2 and 3 have filed two different written statements. However, the contention of both defendant Nos.2 and 3 is almost one and the same.



7. Defendant No.2 in her written statement has admitted the relationship between parties; but denied all other averments made in the plaint and also stated about the revenue proceedings that has taken place in respect of suit 'B' schedule property since from 1990 onwards. Defendant No.2 further took contention that defendant No.3 has executed registered sale deed in favour of defendant No.2 because there was an agreement dated 13.12.1965 in between husband of defendant Nos.2 and defendant No.3 and since from the date of said agreement, it was husband of defendant No.2 was in possession of suit schedule property. After execution of registered sale deed, defendant No.2 is in possession of it. Hence, prayed for dismissal of suit with costs.

8. From the above facts, the Trial Court has framed the following issues:

"ISSUES

1. *Whether the plaintiff proves that she is the absolute owner of the suit 'B' schedule property?*



2. *Whether she further proves that she is in lawful possession of the suit 'B' schedule property on the date of suit?*
3. *Alternatively, whether she proves that she has perfected her title to suit schedule 'B' property by adverse possession?*
4. *Whether she is entitled to the declaration and injunction prayed for?*
5. *Whether the 2nd defendant proves that she has become the owner of the schedule 'B' property by virtue of the sale deed executed by defendant No.3 in her favour?*
6. *To what relief are the parties entitled?*

Additional Issues:

1. *Does defendant No.3 prove that he was the absolute owner of the suit schedule 'B' property as on the date of execution of registered sale deed in favour of deft. 2 as contended in his WS?*
2. *Does defendant No.3 prove that his father died on 10.08.58, so the sale deed dated 16.08.67 purporting to have been executed by late father of deft. 3 in favour of D.1 is a created forged document as contended in WS?*



3. *Does deft. 3 proves that deft. 2 is the owner and possessor of the suit land as contended in WS?"*

9. After recording evidence of both sides and hearing arguments of both sides, the Trial Court came to the conclusion that plaintiff failed to prove her absolute ownership over suit 'B' schedule property and also failed to prove that she is in lawful possession and enjoyment of suit 'B' schedule property as on the date of suit and failed to prove that she perfected her title over suit schedule property by law of adverse possession. Further held that the sale deed in favour of defendant No.2 is executed by defendant No.3 as absolute owner. Further the contention of defendant No.1 that father of defendant No.3 executed sale deed on 16.08.1967 is a concocted one because father of defendant No.3 died on 10.08.1958 itself and further held that defendant No.2 is absolute owner of suit schedule property and thereby dismissed the suit of plaintiff.



10. Aggrieved by said judgment and decree, plaintiff/appellant has preferred the first appeal before First Appellate Court.

11. After hearing arguments of both sides, the First Appellate Court comes to the conclusion that plaintiff has established her title and possession over suit 'B' schedule property. First Appellate Court further made an observation in the judgment that a registered partition deed of 1957 confers title over suit 'B' schedule property in favour of plaintiff, even if defendant No.3 contends that he was absolute owner of suit 'B' schedule property, the title of plaintiff and her predecessors in title would be hostile to the real intention of defendant No.3 and thus, plaintiff has established her title over suit 'B' schedule property by law of adverse possession also and thereby decreed the suit by setting aside the judgment and decree of Trial Court.



12. Aggrieved by said judgment and decree of First Appellate Court, defendant No.2/appellant is before this Court.

13. During pendency of this appeal, plaintiff/respondent No.1 died and her legal representatives are brought on record. During pendency of this appeal, respondent No.3/defendant No.3 also died, but his legal representatives are not brought on record. Hence, appeal against respondent No.3 is abated as per order dated 10.03.2007.

14. At the time of admitting this appeal, the following substantial questions of law are framed:

- 1. Whether the First Appellate Court was right in reversing the judgment and decree of the trial court holding that Ex.P2-registered sale deed dated 28.04.1941 was a nominal and sham?*
- 2. Whether the Lower Appellate Court was right in holding the possession of the plaintiff over the suit property by way of adverse possession only on the basis production of original sale deed dated 28.04.1941 without admitting the title of appellant?*



15. Heard arguments of both sides.

16. Learned counsel for the appellant/defendant No.2 Sri S.H.Mittalkod vehemently submitted that there is no proper pleading and proof in respect of adverse possession in the plaint. There is only one sentence pleaded in the plaint that, in the circumstances, plaintiff respectfully submits that even by adverse possession she has perfected her title in the suit survey No.113. Thus, in the absence of proper pleading and without producing proper proof, finding of the First Appellate Court that plaintiff has established her title even by the law of adverse possession is incorrect. Furthermore, plaintiff never admitted the title of defendant No.3 over the suit 'B' schedule property. Without admitting the title of defendant No.3, plaintiff cannot claim adverse possession against defendant No.3. In this regard, learned counsel for the appellant places reliance on the following citations:



HC-KAR

- i. Uttam Chand (Dead) Through Legal Representatives Vs. Nathu Ram (Dead) Through Legal Representatives¹*
- ii. Dagadabai (Dead) by LRs Vs. Abbas @ Gulab Rustum Pinjari²*
- iii. T. Anjanappa Vs. Somalingappa³*

17. Learned counsel for the appellant would further submit that, plaintiff has taken contention that the sale deed was sham and not acted upon in favour of the father of defendant No.3, and it was only a mortgage transaction. After return of the mortgage loan amount, original sale deed was returned to plaintiff's grandfather by the father of defendant No.3, and thus the grandfather of defendant No.3 once again became owner of the suit schedule property and this contention is not acceptable one, without producing the registered sale deed in favour of grandfather of plaintiff.

¹ (2020) 11 SCC 263

² Laws (SC) 2017 4 80

³ Laws (SC) 2006 8 30



18. In this regard, he relied on the citations reported in, ***Hemalatha (dead) by LRs vs. Tukaram (dead) by LRs and others***⁴. He also relied upon the judgment of the Coordinate Bench of this Court in the case of ***Sri.Manjunath Shetty Vs. Bangalore Development Authority and Another***⁵.

19. Learned counsel for appellant would further submit that, the First Appellate Court has not examined the basic ingredients of adverse possession and whether those ingredients were pleaded and proved by the plaintiff, but have wrongly decreed the suit. Hence, it requires interference. Without any cogent material, the finding of the First Appellate Court that Ex.P.2 - registered sale deed dated 28.04.1941, was nominal and sham is incorrect, and hence prayed for allowing the appeal.

20. Learned counsel for legal representatives of respondent Nos. 1 to 5, Sri. Sourabh Sondur, would submit

⁴ 2026 LiveLaw(SC) 79

⁵ W.P.No.17381/2015 disposed of on 08.12.2017



that the relationship between the parties is not in dispute. The plaintiff is the granddaughter of one Mukkannappa. The registered partition deed dated 14.05.1957 is also not in dispute. Under the said document, suit 'B' schedule property fell to the share of the father of plaintiff. He further relied on the recitals of Ex.P.2 - original sale deed of 1941, and strenuously contended that the original sale deed was and is in the possession of plaintiff and has been produced by her, which clearly establishes that the transaction between Mukkannappa and the father of defendant No.3 was only a mortgage transaction. After clearance of the loan, the original sale deed was returned to the grandfather of the plaintiff. He would further contend that the recitals of the document itself establish that consideration was not at all passed under the said document, and thus it is void. Defendant No.3 never contested the suit except filing written statement, which is nothing but a replica of the written statement of defendant No.2. He has not cross-examined the plaintiff and her



witnesses and has not led any evidence. Thus, he accepts the contention of the plaintiff that the transaction under Ex.P.2 was only a nominal transaction and not an out-and-out sale. Hence, defendant No.2, who is contesting the suit and deriving rights only through defendant No.3, is estopped from contending that the said document confers ownership on the father of defendant No.3. Defendant No.2 and her husband claim that the sale deed in favour of defendant No.2 is based on an earlier agreement of 1965 between defendant No.3 and defendant No.2, who was then minor represented by his mother. However, defendant No.2 has not produced the said agreement before the Court to show whether such an agreement was in existence or not. Furthermore, defendant No.2 or her husband has not produced any iota of material to show that from 1965 till the date of execution of the sale deed, the suit 'B' schedule property was in possession of defendant No. 2 or her husband at any point of time.



HC-KAR

21. Learned counsel for Legal Representatives of respondent No.1 would further submit that defendant No.2, in her evidence, has deposed that the sale consideration amount of ₹70,000/- was paid by her to defendant No.3, which is quite contrary to the recitals in Ex.P.4 - sale deed, wherein it is stated that an amount of ₹8,000/- was earlier paid by the mother-in-law of defendant No.2 to defendant No.3. These circumstances establish that defendant No.2 does not know anything about the said transaction, which is only a sham sale deed. Furthermore, the appeal against respondent No.3 is abated because no steps were taken to bring his legal representatives on record. The appellant is claiming to be the owner of suit 'B' schedule property only through defendant No.3 and has stepped into the shoes of defendant No.3. When the appeal against defendant No.3 is abated, then appeal against the other respondents also abates. Hence, for the above reasons, learned counsel for respondent No.1 prays for dismissal of the appeal and to



confirm the judgment and decree passed by the First Appellate Court.

22. Having heard the arguments of both sides, verifying the appeal papers along with Trial Court records and First Appellate Court records, the findings of this Court on the above substantial questions of law are as follows for the following reasons:

23. At the outset, the plea of the learned counsel for lrs of respondent No.1 that the appeal abated against respondent No.3, and consequently abates against all other respondents is to be considered.

24. In the instant case, appellant claims that she has stepped into the shoes of respondent No.3. In this regard, learned counsel for legal representatives of respondent No.1 relied on the judgment of Hon'ble Apex Court in the case of ***Budh Ram and Others vs. Bansi and Others*** reported in ***2010 AIR SCW 5071***, wherein it is held as follows:



HC-KAR

"18. In *Shahazada Bi & Ors. v. Halimabi*, AIR 2004 SC 3942: (2004 AIR SCW 4389), this Court considered the same issue and held as under:-

".....That, so far as the statute is concerned, the appeal abates only qua the deceased respondent, but the question whether the partial abatement leads to an abatement of the appeal in its entirety depends upon general principles. If the case is of such a nature that the absence of the legal representative of the deceased respondent prevents the Court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same subject-matter. The Court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the Court has no alternative but to dismiss the appeal as a whole. If, on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the Court should not hear the appeal and adjudicate upon the dispute between the parties." (Emphasis added)

19. Therefore, the law on the issue stands crystallised to the effect that as to whether non-substitution of L.Rs. of the defendants/respondents would abate the appeal in toto or only qua the deceased defendants/respondents, depend upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not inter-dependent upon one or the other. nor the parties have conflicting interests inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the Court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law



HC-KAR

does not permit two contradictory decrees on the same subject-matter in the same suit. Thus, whether the judgment/decreed passed in the proceedings vis-à-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test."

25. In the aforesaid citation, the Hon'ble Apex Court clearly held that the test to be adopted to decide whether the appeal would be abated against all others when it abates one of the respondents is whether abatement against one of the respondents would lead to two contradictory decrees in the same suit in respect of the same subject matter.

26. In the instant case, the appeal against respondent No.3 is abated. Respondent No.3 is none other than the vendee of the appellant. Thus, the appellant stepped into the shoes of respondent No.3. Hence, if this appeal is allowed, then it will be against respondents No.1 and 2 alone and if appeal is dismissed, then also, there will be only one judgment and decree and there will not be contradictory judgments. Thus, there shall not be any two



contradictory decrees in the same suit in respect of the same subject matter because of abatement against respondent No.3. Even though appeal against respondent No.3 is abated, appeal against other respondents shall be continued and thus the above submission of learned counsel for legal representatives of respondent No.1 is not tenable in the present case.

27. The main dispute between the parties is regarding execution of the sale deed as per Ex.P.2 in favour of father of defendant No.3 by grandfather of plaintiff-Mukkannappa. The recitals of said document are to be looked into to say whether this is the out and out sale deed or whether any sale consideration amount is passed under this document or what is the nature of this document. Mere description of the document as sale deed cannot be called as the said document as a sale.

28. The ingredients of sale are to be found in the document to consider it as the sale deed. Hence, reading of



HC-KAR

NC: 2026:KHC-D:6231
RSA No. 5098 of 2010

entire recitals of this Ex.P.2 is very much relevant. It reads as follows:

“1) ರೂ.600/- ಆರು ನೂರು ರೂಪಾಯಿಗಳಿಗೆ ವಿಕ್ರಯ

2) 1941 ನೇಯ ಏಪ್ರಿಲ್ 28 ನೇ ತೆದಿ

3) ಬರಕೊಂಡವರು

ಬರಕೊಟ್ಟವರು

ಬಡಲಿಂಗನಗೌಡ ದೊಡ್ಡನಗೌಡನ ಮಗ

ಧರ್ಮಸಾಗರದ ದೊಡ್ಡಪ್ಪನಮಗ ಮುಕ್ಕಣಪ್ಪ,

ಲಿಂಗನಗೌಡನವರಿಗೆ, ವೀರಶೈವ ಜಿರಾಯ್ತಿ

ವೀರಶೈವ ಜಿರಾಯ್ತಿ ಕುರೆಕುಪ್ಪ

ಶ್ರೀದರಗಡ್ಡ ಬಳ್ಳಾರಿ ತಾ

4) ನಾನು ನಿಮ್ಮ ತಂದೆಯವರಿಂದ ದಿ:31-05-1932 ನೇ ತೆದಿ ದಿನದಂದು ಬಳ್ಳಾರಿ ರಿಜಿಸ್ಟರ್ ಆಫೀಸಿನಲ್ಲಿ 1ನೇ ಪುಸ್ತಕದ 357 ನೇ ವಾಲ್ಯೂಂ 288 ನತ್ತಯ 289 ಪುಟಗಳಲ್ಲಿ ನಂ. 856 ನೆಂಬರಾಗಿ ಷೆಡ್ಯೂಲ್ ದಾಖಲ ಅಸ್ತಿಗಳನ್ನು ರೂ. 1000/- ಗಳಿಗೆ (ಒಂದು ಸಾವಿರ ರೂಪಾಯಿ) ಗಳಿಗೆ ರಿಜಿಸ್ಟರ್ ಮಾಡಿಸಿ ಕೊಟ್ಟಿರುವ ಆಯಕ ಬಾಕಿಯನ್ನು ನಿಮ್ಮ ತಂದೆಯವರು ನಿಧನವಾಗಿರುವ ಕಾರಣ ನಿಮ್ಮಿಂದ ನಾನು ಮೊತ್ತವನ್ನು ಲೆಕ್ಕಮಾಡಿ ಕೇಳಲಾಗಿ ಈ ದಿನದವರೆಗೂ ಆಗುವ ಬಡ್ಡಿ ಪೂರ್ತಿಯನ್ನು ಅಸಲಿಗೆ ರೂ.405/-(ನಾಲ್ಕು ನೂರು ಐದು ರೂಪಾಯಿ) ಗಳನ್ನು ಚೆಲ್ಲು ಅಸಲು ರೂ.600/- ಮಾತ್ರ ಬಾಕಿಯಾಗಿ ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ಮೊತ್ತದಲ್ಲಿ ನನಗೆ ಸಾಧ್ಯವಾಗಿಲ್ಲದ ಕಾರಣ ಸದರಿ ಮೊತ್ತಕ್ಕೆ ನನಗೆ ಸಂಪೂರ್ಣ ಹಕ್ಕು ಇದ್ದು, ಈ ಒಳಗಾಗಿ ನಮಗೆ ಅಸಲಿಗೆ ಕೊಟ್ಟಿರುವುದಾಗಿ ಸಹ ಈ ದಿನದವರೆಗೂ ಇತರರಿಗೆ ಯಾವ ವಿಧವಾದ ಅನ್ಯಾ ಕ್ರಾಂತಗಳು ಮಾಡದಂತಹ ಹಾಲಿ ನನ್ನ ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿರುವ ಷೆಡ್ಯೂಲ್ ದಾಖಲಾ ಅಸ್ತಿಗಳು ನಿಮಗೆ ಖಂಡಿತ ವಿಕ್ರಯಕ್ಕೆ ವಿಕ್ರಯಿಸಿ ಆಸ್ತಿಗಳು ನಿಮ್ಮ ಸ್ವಾಧೀನ ಮಾಡಿ ನನ್ನ ಹಕ್ಕು ಬಿಡುಗಡೆ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ಇಂದಿನಿಂದ ಸದರಿ ಆಸ್ತಿಗಳನ್ನು ಅದರಲ್ಲಿರುವ ಜಲ, ತರ, ನಿಧಿ, ನಿಕ್ಷೇಲಪಾದಿಗಳ ಸಹಿತವಾಗಿ ದಾನ ವಿಕ್ರಯಾದಿಸರು ವಗೈರಗಳಿಂದ ಅನುಭವಿಸಲು ನಿವು ನಿಮ್ಮ ಹಕ್ಕುದಾರರು. ನನಗೂ ಮತ್ತು ನನ್ನ ವಾರಸರಿಗೂ ಈ ಷೆಡ್ಯೂಲಾಸ್ತಿಯಲ್ಲಿ ಯಾವ ವಿಧವಾದ ಹಕ್ಕುಗಳು ಇರುವುದಿಲ್ಲ. ಸದರಿ ಆಸ್ತಿಗಳ ವಿಷಯವಾಗಿ ಮುಂದೆ ತಕರಾರುಗಳು ಬಂದರೆ ನಾನು ನನ್ನ ಸ್ವಂತ ಖರ್ಚುಗಳಿಂದ ಪರಿಷ್ಕರಿಸಿ ಈ ಷೆಡ್ಯೂಲಾಸ್ತಿಯನ್ನು ನಿಮಗೆ ಸ್ಥಿರಪಡಿಸಿಕೊಡುತ್ತೇನೆಂದು ಒಪ್ಪಿ ಬರೆದು ಬರೆಸಿಕೊಟ್ಟ ವಿಕ್ರಯ ಪತ್ರ ಸಹಿ.

ಷೆಡ್ಯೂಲು

ಜಿಲ್ಲೆ	ಸಬ್ ಜಿಲ್ಲೆ	ಗ್ರಾಮ	ಬಾಬು	ಸರ್ವೆ	ಎ-ಸೆ	ತರಂ	ಕುಳ
ಬಳ್ಳಾರಿ- ಅನಂತಪುರ	ಹೊಸಪೇಟೆ	ಕುರೆಕುಂಪೆ	ಸರ್ಕಾರು ಖುಷ್ಕಿ	113	8-84	3-5-0	1 2
ಬಳ್ಳಾರಿ- ಅನಂತಪುರ	ಹೊಸಪೇಟೆ	ಕುರೆಕುಂಪೆ	ಸರ್ಕಾರು ಖುಷ್ಕಿ	118	9-07	5-2-0	1



ಪತ್ರದ ಸಂಖ್ಯೆ: 962/1941 ಪುಸ್ತಕ -1 ಒಟ್ಟು 2 ಪುಟಗಳು ಇದು 1ನೇ ಪುಟ

ಸಹಿ/- ಸಬ್-ರಿಜಿಸ್ಟ್ರಾರ್. ಬಳ್ಳಾರಿ

ನಾನು ಈ ಮೂಲಕ ದೃಢೀಕರಿಸುವುದೇನೆಂದರೆ ಮಾರ್ಚ್‌ಗೇಜ್ ಡೀಡ್ ಅನ್ನು ಇತಿವರ ಪರವಾಗಿ ಈ ಪೆಡ್ಕೂಲು ಆಸ್ತಿ ಮಾಡಿದ್ದನ್ನು ನಾನು ಸ್ವಂತವಾಗಿ ಸ್ವಾಂಪು ಡೀಡ್ ರೂ.7-8-0 ರನ್ನು ಕಟ್ಟಿರುತ್ತೇನೆ.

ಸಹಿ/- 28.04.41

ಸಿಲು

ಇದನ್ನು ಮದ್ಯಾಹ್ನ 4 ಮತ್ತು 5 ರ ಮಧ್ಯ ದಿನಾಂಕ: 28 ಏಪ್ರಿಲ್ 41 ರಲ್ಲಿ ಮುಕ್ತಾಂಗನವರು ತಂದು ಕೊಟ್ಟಿರುತ್ತಾರೆ.

ಹೆಬ್ಬಟ್ಟಿನ ಗುರುತು ಮುಕ್ತಾಂಗಪ್ಪ, ತಂದೆ ದೊಡ್ಡಪ್ಪ, ವೀರಶೈವ ಕುಲ ರೈತ ಕುರಕುಂಪೆ

ಗುರುತುಬಲ್ಲಂತವರು

ಸಹಿ/- ನರಸಿಂಹಪ್ಪ ತಂದೆ ಈರಣ್ಣ ಕಾಪು ಜಿರಾಯ್ತಿ ಆಲೂರು ತಾಲ್ಲೂಕು ಮುದ್ದನಗೇರಿ

ಸಹಿ/- ಬಸವನ ಗೌಡ ತಂದೆ ರಾಮನಗೌಡ ಬಣಜಿಗ ಜಿರಾಯ್ತಿ ಕೊರ್ಲಗುಂದಿ

28.04.41

ಸಹಿ/- ಉಪ ನೋಂದಣಾಧಿಕಾರಿ

ಠೌಂಡ್ ಸೀಲು”

29. Section 54 of Transfer of Property Act, 1882 defines 'sale' and how sale shall be made. It reads as follows:

"54. "sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion of other intangible thing, can be made only by a registered instrument.



HC-KAR

In the case of tangible immoveable property of value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."

30. The plain reading of this Section reveals that it is nothing but transfer of ownership in exchange of a price paid or promised to pay in future or part paid or part promise to pay in future. Thus, consideration/price is an important ingredient of sale transaction. There shall be price and price shall be fixed and it shall be paid or it may be agreed to be paid in future or part of it may be paid in advance and part of it may be paid in future.

31. In this regard, learned counsel for legal representatives of respondent No.1 places reliance on the judgments in the case of ***Shanti Devi vs. Jagan Devi*** reported in 2025 INSC 1105 and in the case of ***Kewal Krishan vs. Rajesh Kumar and Others*** reported in ***AIR 2022 SC 564***.



HC-KAR

32. In ***Shanti Devi's case***, the Hon'ble Apex Court relied on the earlier judgment of Hon'ble Apex Court in the case of ***Kewal Krishnan vs. Rajesh Kumar and Others*** reported in ***(2022) 18 SCC 489***, wherein it is held as follows:

*"34. We may look at the matter from one another angle. Apart from the aspect of fraud, the decision of this Court in Kewal **Krishnan v. Rajesh Kumar and Others** reported in **(2022) 18 SCC 489**, while looking into whether the defendants had paid any sale consideration to the plaintiff while purchasing the plaintiff's share in the property, held as follows:*

*i. **First**, that the sale of an immovable property would have to be for a price and such a payment of price is essential, even if it is payable in the future. If a sale deed is executed without the payment of price, it is not a sale at all in the eyes of law, specifically under Section 54 of the Transfer of Property Act, 1882. Such a sale without consideration would be void and would not affect the transfer of the immovable property.*

*ii. **Secondly**, that, in the said case, the defendants could not rebut the allegation of the plaintiff that no sale consideration was paid as no evidence was adduced to indicate - (a) the actual payment of the price mentioned in the sale deeds and, (b) that the defendants had any earning capacity at the time of the transaction such that the sale consideration could have been paid. As such the sale deed being void for want of valid consideration, could not be said to have affected the one-half share of the plaintiff in the suit properties nor have conferred any right of title on the defendants. In fact, it was held that the sale deeds were a sham and must be ignored.*



iii. **Lastly**, it was reiterated that a document that is void need not be challenged by seeking a declaration as the said pleas can be set up and proved even in collateral proceedings.

The relevant observations are thus:

"18. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:

"54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eye of the law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.



HC-KAR

19. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time, of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half-share of the appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10-4-1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

20. Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the respondents on 16-11-2021 have no relevance at all.

21. As no title was transferred under the said sale deeds, the appellant continues to have undivided half-share in the suit properties. That is how the District Court passed the decree holding that the appellant is entitled to joint possession of the suit properties along with Sudarshan Kumar. Therefore, for the reasons recorded above, by setting



aside the impugned judgment and order [Rajesh Kumar v. Kewal Krishan, 2015 SCC OnLine P&H 20782] of the High Court, the decree passed by the District Court deserves to be restored.”

(Emphasis supplied)

33. On careful perusal of the recitals of Ex.P.2, it is recited in this document that on 31.05.1932, the grandfather of plaintiff i.e. Mukkannappa has borrowed a sum of ₹1,000/- from grandfather of defendant No.3-Badalinganagoudra Doddanagoudana and he could not repay it and hence he has executed this document in favour of father of defendant No.3-Badalingangoudra Doddanagouda's son-Linganagouda. The grandfather of defendant No.3 was expired at the time of executing this document and hence plaintiff's grandfather enquired with father of defendant No.3 about the balance amount to be payable on earlier loan and about the amount already paid under the said document and accordingly, he has stated that totally ₹400/- towards principal amount and the entire interest till date of execution of that document was paid.



HC-KAR

The remaining amount is ₹600/- and executant agreed that the balance amount is ₹600/-. It was not possible to pay said amount and the executant was having complete right over the said property and said property was not encumbered with anyone and it was in possession of the executant and hence he has executed absolute sale deed in favour of father of defendant No.3 by relinquishing all his rights over the said property and possession is handed over under this document.

34. There is no mention in this Ex.P.2 that what is the sale consideration amount agreed between plaintiff's grandfather and father of defendant No.3 and how the said amount is paid to father of defendant No.3.

35. As per the recitals of this document, in the year 1932 itself ₹1,000/- was borrowed by the grandfather of plaintiff with grandfather of defendant No.3 and as per the accounts, he has repaid up to date interest and ₹400/- and the balance amount was only ₹600/-. Thus, 40% of the loan



amount was repaid and balance loan amount was only 60%. But what is the sale consideration amount, whether this balance amount of ₹600/- alone was the sale consideration amount or whether there is any adjustment regarding that loan amount and this document and it is silent on this fact. Thus, on careful perusal of this document, sale consideration amount is not at all mentioned in it. Thus, apparently, no consideration amount is passed under Ex.P.2. Only if any consideration amount is passed under the sale deed, then such document can be called as sale deed. In the absence of passing of consideration under said document, it does not confer title to the vendor.

36. The above discussion reveals sale deed as per Ex.P.2 is not a valid sale deed, as no consideration is passed under it. Hence, absolute ownership was not conveyed to father of defendant No.3 under Ex.P.2. It will not affect the transfer of immovable property. Thus, sale deed as per Ex.P.2 is void. Thus, sham document. Under



these circumstances, defendant No.3 has no absolute title to convey the same to defendant No.2.

37. In this regard, the subsequent conduct of parties is also to be looked into.

38. Even though there is the alleged sale deed in favour of father of defendant No.3, the original sale deed is with plaintiff and she has produced it from her proper and legal custody. In this regard, in her cross-examination, P.W.1 has deposed that said document was with her mother and after her death, it is in her possession and thus, she has produced it from proper custody. It is not the case of defendant No.3 that plaintiff or her predecessors have stolen this document from defendant No.3 or from his predecessors. How the plaintiff came in possession of this document is also a relevant factor in determining the nature of the transaction between the parties.

39. Plaintiff has produced certified copy of the registered partition deed dated 14.05.1957 as per Ex.P.1.



The recitals of this partition deed reveal that there was partition amongst two sons and grandson of Mukkannappa. The first son of Mukkannappa was no more and hence, his son i.e. present defendant No.1, father-in-law of present defendant No.2-Sanna Pampanna and father of plaintiff-Doddappa entered into partition and in that partition, several properties were allotted to three of them. One of the properties which was allotted to father of plaintiff is present suit 'B' schedule property bearing Sy.No.113 measuring 8 acres 84 cents situated at Kuruvekoppa Village. This allotment of property to father of plaintiff is not disputed by anyone, including defendant Nos.2, her husband or by defendant No.3 or any other person.

40. Learned counsel for appellant vehemently submits his argument that defendant No.3 was not partly to said partition deed and thus, he might not aware about it and hence, there was no question of challenging it by him. However, the said argument cannot be accepted for the simple reason that a registered document constitutes notice



to the whole world. Hence, the registered document in respect of the property which was alleged to be sold in favour of father of defendant No.3 amongst the brothers is not at all questioned either by defendant No.3 or by his father during his lifetime.

41. There is no document to show that at any point of time, defendant No.3 was in possession of suit 'B' schedule property. On the other hand, for some period, name of mother of plaintiff is shown in record of rights in cultivator's column. Only in owner's column, name of father of defendant No.3 continued. As discussed above, defendant No.3 has not contested the suit, except filing his written statement. Even though, he sold the property in favour of defendant No.2, it is his burden to prove that he was having saleable interest in suit 'B' schedule property at the time of sale and he conveyed absolute right in favour of defendant No.2 and hence, a duty cast upon him to establish his contention, which he failed to establish in the present case.



42. As far as the plea of adverse possession is concerned, it is settled proposition of law that the person who claims to be in adverse possession of the property must prove that he is in continuous, peaceful possession of the property without any obstruction for a statutory period of 12 years and the second one is *animus possidendi* i.e., his possession is hostile towards the interest of real owner.

43. In this regard, the learned counsel for appellant relied on the following three citations.

44. The judgment of Hon'ble Supreme Court in ***Uttam Chand (Dead) Through Legal Representatives Vs. Nathu Ram (Dead) Through Legal Representatives***⁶ in paragraph No.16 which reads as follows:

"16. In the present case, the defendants have not admitted the vesting of the suit property with the Managing Officer and the factum of its transfer in favour of the plaintiff. The defendants have denied the title not

⁶ (2020) 11 SCC 263



HC-KAR

only of the Managing Officer but also of the plaintiff. The plea of the defendants is one of continuous possession but there is no plea that such possession was hostile to the true owner of the suit property. The evidence of the defendants is that of continuous possession. Some of the receipts pertain to 1963 but possession since November, 1963 till the filing of the suit will not ripen into title as the defendants never admitted the plaintiff-appellant to be owner or that the land ever vested with the Managing Officer. In view of the judgments referred to above, we find that the findings recorded by the High Court that the defendants have perfected their title by adverse possession are not legally sustainable. Consequently, the judgment and decree passed by the High Court is set aside and the suit is decreed. The appeal is allowed."

45. The judgment of Hon'ble Supreme Court in **Dagadabai (Dead) by LRs Vs. Abbas @ Gulab Rustum Pinjari**⁷ in paragraph Nos.18 to 23 read as follows:

"18) Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper pleadings and evidence. The burden to prove such plea was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the burden that laid on him in accordance with law.

⁷ Laws (SC) 2017 4 80



HC-KAR

19) *When both the Courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent findings of fact was unimpeachable and binding on the High Court.*

20) *Fourth, the High Court erred fundamentally in observing in Para 7 that, "it was not necessary for him (defendant) to first admit the ownership of the plaintiff before raising such a plea".*

21) *In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.*

22) *It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion*



HC-KAR

of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

23) In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff."

46. The judgment of Hon'ble Supreme Court in **T. Anjanappa Vs. Somalingappa**⁸ in paragraph Nos.15 to 23 read as follows:

"15. "Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of

⁸ Laws (SC) 2006 8 30



HC-KAR

his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. (See Annasaheb vs. B.B. Patil (AIR 1995 SC 895 at 902).

23. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable. Therefore, the appeal which relates to OS 168/85 is allowed by setting aside the impugned judgment of the High Court to that extent. Equally, the High Court has proceeded on the basis that the plaintiff in OS.286/88 had established his plea of possession. The factual position does not appear to have been analysed by the High Court in the proper perspective. When the High Court was upsetting the findings recorded by the court below i.e. first appellate



Court it would have been proper for the High Court to analyse the factual position in detail which has not been done. No reason has been indicated to show as to why it was differing from the factual findings recorded by it. The first appellate Court had categorically found that the appellants in the present appeals had proved possession three years prior to filing of the suit. This finding has not been upset. Therefore, the High Court was not justified in setting aside the first appellate Court's order. The appeal before this Court relating to O.S. 286 of 1988 also deserves to be allowed. Therefore, both the appeals are allowed but without any order as to costs."

47. In all the aforesaid citations, it is clearly held that until and unless the ownership of real owner is admitted by the person who is in possession of the property in question, he cannot say that his possession is adverse to the interest of real owner. Hence, plaintiff has not established the plea of adverse possession.

48. In this regard, learned counsel for plaintiff vehemently submitted his arguments that the plea of adverse possession taken in the plaint is only an alternative plea and not the main plea. If two inconsistent pleas are taken, plaintiff is at liberty to opt any one of those pleas.



Plaintiff is not opting upon the plea of adverse possession. Even there is no whisper in the evidence of plaintiff about adverse possession. Hence, he contended that plaintiff is not agitating the suit on the plea of adverse possession. In this regard, learned counsel for legal representatives of respondent No.1 would rely upon the judgment of co-ordinate Bench of this Court in RSA No.7375/2011 dated 05.10.2023 wherein at paragraph No.31 held as follows:

"It is well settled that one cannot claim title, by way of unregistered sale deed and also claim adverse possession, by way of possession and enjoyment of the property over the statutory period. Even both the prayers are available, there must be doctrine of election to claim title, either by way of purchase under the un-registered sale deed or adverse possession, however, both the inconsistent pleas cannot go together. In the instant case, the plaintiff appellant has claimed title only by way of an unregistered sale deed at Ex.P.1, such claim is not legally sustainable and similarly without specific pleadings and evidence, the plaintiff appellant cannot claim title of the property by way of adverse possession, when according to the plaintiff, the property has been sold by defendant No.1 in favour of the plaintiff."



49. In the above said case, the co-ordinate Bench of this Court held that there must be doctrine of election to claim title either by way of purchase or by way of adverse possession; however both inconsistent pleas cannot go together. In the instant case, learned counsel for legal representatives of respondent No.1 would submit that, he is not pressing the plea of adverse possession. Hence, it is established that plaintiff is not claiming right over suit 'B' schedule property based on the plea of adverse possession. When plaintiff is not praying for the relief of declaration based on adverse possession; then she has to establish that her title to get the relief of declaration that she is the absolute owner of the property in question.

50. In this regard plaintiff mainly relies upon Ex.P.1, the registered partition date dated 14.05.1957. This document came into existence at undisputed point of time in the year 1957. From 1957 till 1990, no one questioned this document.



51. Only in the year 1990, the dispute arose between parties regarding revenue entries. Defendant No.1 has taken some untenable plea before revenue authorities and then, finally the Assistant Commissioner has directed parties to approach the Civil Court to decide the ownership.

52. Defendant No.2 as per Ex.P.4 claims to be owner of suit 'B' schedule property by contending that she has purchased it from defendant No.3. Recitals of this Ex.P.4 are to be verified.

53. Ex.P.4 reveals that the father of vendor handed over possession to husband of plaintiff by receiving ₹8,000/- on 13.12.1965 and thus, sold the property for ₹8,000/-. There is no specific mention in the document that the husband of defendant No.2 or mother-in-law of defendant No.2 paid ₹ 8,000 on 13.12.1965, but there is some vague averment that defendant No.3 has received ₹8,000/- towards the entire sale consideration amount from the vendee and possession was handed over on that date



and then, as per the request, as it is requested to execute document in the name of his wife, this document is being executed in favour of defendant No.2. However, husband of defendant No.2 is not the vendee under this document. Further this document does not reveal that sale consideration amount is passed under this document to say that it is a valid sale deed.

54. On careful perusal of all the above facts and points of law, this Court is of the opinion that First Appellate Court was right in reversing the judgment and decree of Trial Court holding that Ex.P.2 registered sale deed dated 28.04.1941 was a nominal and sham one because no consideration is passed under said document. However, the First Appellate Court was not right in holding that possession of plaintiff over suit 'B' schedule property is by way of adverse possession only based on a production of original sale date dated 28.04.1941. Accordingly, substantial question of law No.1 is answered in ***affirmative.***



55. As discussed above, plaintiff even though pleaded about adverse possession has not stuck to said plea in her evidence. Hence, the First Appellate Court is not right in holding that alternatively plaintiff has established her title by law of adverse possession. Accordingly, substantial question of law No.2 is answered in **negative**.

56. Before parting with the case, this Court places on record its appreciation for the valuable assistance rendered by the learned counsels appearing for appellant and respondents, Sri S.H.Mittalkod and Sri Sourabh Sondur.

57. In view of findings on substantial questions of law Nos.1 and 2, this Court proceeds to pass the following:

ORDER

- i) *Appeal filed under Section 100 of C.P.C. is **dismissed** by confirming the judgment and decree dated 30.11.2009 in R.A.No.08/1999 on the*



*file of II Additional District and
Sessions Judge, Bellary.*

ii) Draw decree accordingly.

**Sd/-
(GEETHA K.B.)
JUDGE**

SSP: upto para 13
GAB:para 14-23
SH:para 24-36,
SSP:para 37-end
CT-GTB, List No.: 1 Sl No.: 22