

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE
AT: RAICHUR**

Dated this the 16th day of August, 2018

Present:- Sri Srinivasa Suvarna, **B.A., LL.M.**,
Prl. Senior Civil Judge & C.J.M.,
Raichur.

REGULAR APPEAL No.1/2018

A P P E L L A N T:

Polayya S/o Narasa, age: 70 years, occ:
agriculture, R/o Gonwar village, Raichur
Taluka.

(Defendant No.1 in the court below)

(By Sri. C.K.R. Advocate)

// **Versus** //

R E S P O N D E N T S:

1) Julumgere Thimmayya, age: 70 years, occ:
agriculture, R/o Gonwar village, Tq. Raichur.
(Plaintiff in the court below)

2) Smt. Saraswathamma W/o Mallayya, age: 71
years, occ: Household, R/o Bendarwadi, near
Ram Mandi, Gangavathi, Dist. Koppal.

(Defendant No.2 in the court below)

(Sri. C.A.R, Advocate for R-1)
(R-2 Exparte)

Date of Institution of Appeal: 02.01.2018

Nature of the Appeal : Declaration & injunction

Date of Judgment : 16.08.2018

Total Duration : Year/s Month/s Day/s
00 07 14

:: J U D G M E N T ::

This appeal is preferred by the defendant No.1 /appellant questioning the legality and correctness of the Judgment and Decree passed in OS No.189/2008 dated 30.11.2017 passed by the Addl. Civil Judge & JMFC at Raichur.

2. Both parties are referred as per their ranks in the original suit.

3. The brief facts of the plaintiff's case are as under;

The plaintiff has purchased the suit property bearing land Sy.No.119/2, measuring 2 acres 3 guntas situated at Gonwar village, Tq. Raichur from the defendant No.2 as per registered sale deed bearing document No.1263/1997-98 dated 18-8-1997 and he is enjoying the same as an absolute owner in possession. It is further contended that Sy.No.119/2 totally measuring 4 acres 6 guntas, same was belongs to one Yankanna S/o Mareppa and he has sold 2 acres 3 guntas out of 4 acres 6 guntass to defendant No.2 through registered sale deed No.506/1971-72 on 5-7-1971. The defendant No.2 sold the said 2 acres 3 guntas i.e. suit property to the plaintiff, since then the plaintiff is

enjoyment the suit property and defendant No.1 is no way concerned to the suit property. The defendant No.1 has also filed suit in OS.No.147/2006 against the defendant No.2 and obtained exparte decree. The present plaintiff is not the party to the said suit and suit decree is not binding on the plaintiff. The defendant No.1 without having right and interest over the suit property trying to interfere in the suit property. Hence this suit.

4. After filing of the suit, the trial court has issued notices to parties. In-response to notices issued by the trial court, the defendants No.1 & 2 appeared through their counsel and filed separate written statements and contested the suit. In the written statement, the defendant No.1 has denied the entire averments of the plaint and contended that he is absolute owner and possessor of the land bearing Sy.No.119/2 measuring 4 acres 6 guntas situated at Gonwar village, Tq. Raichur and plaintiff is no way concerned to the said suit property. He further contended that OS.No.147/06 is filed by him in respect of above said land against the defendant No.2, and same was decreed which is enforceable against the defendant No.2 as well as the plaintiff. There is no cause of action to file this

suit and filed the suit to harass the defendant No.1.Hence sought for dismissal of the suit.

5. The defendant No.2 also appeared through counsel and filed her written statement admitting the case of the plaintiff as well as execution of sale deed in favour of plaintiff. Hence they prayed to dismiss the suit.

6. The trial court on the basis of pleadings of both the parties has framed the following Issues & Addl. Issue:

1. Whether the plaintiff proves that he is absolute owner of the suit schedule property?
2. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit property?
3. Whether the plaintiff entitled for declaration as prayed for?
4. Whether the plaintiff is entitled for permanent injunction against the defendants as prayed?
5. What order or decree?

Addl. Issue

Whether the plaintiff proves that the decree passed in OS.No.147/2006 is not binding on him?

7. The trial court after recording the evidence of Pws-1 to 3 marked Ex.P1 to 8 documents and also recorded the

evidence of Defendant No.1 as DW-1 and examined Dws.2 & 3, marked the documents at Exs.D1 to 21 and after hearing the arguments of both the sides, the trial court has proceeded to decree the suit with costs.

8. The defendant No.1 /appellant being aggrieved by the said Judgment and Decree has preferred this appeal on the following grounds:

1. The Judgment & decree passed by the trial court is perverse, capricious and demonstrable unsustainable.
2. The respondent No.1 has failed to prove the declaration of title and inspite of same the impugned judgment and decree is erroneously passed by the trial court and court below has not properly appreciated Ex.P-9(a).
3. As per Ex.P-9 sale deed, the plaintiff is not in possession of 2 acres 3 guntas and trial court has committed error in ignoring the contents of Ex.P-9(a).
4. The appellant has specifically disputed in his written statement contention that Venkanna never alienated 2 acres 3 guntas in favour of respondent No.2. The respondent No.1 as a plaintiff relied upon Ex.P-1, which was alleged to have been executed by the respondent No.2

by contending that the respondent No.2 in turn had purchased 2 acres 3 guntas of land from Venkanna under Ex.P-9. The respondent No.2 has to prove that Ex.P-9(a) was executed by Venkanna only.

5. The case of the plaintiff is contrary to Ex.P-9. The trial court has failed to consider the contentions urged by defendants so far as validity of Ex.P-9. Ex.P-9 is not a genuine document.

6. The trial court has failed to consider contents of Ex.D-9. The plaintiff has not chosen to examine author of Ex.P-9 and Ex.D-9 is contrary to the case of the plaintiff.

7. The trial court has come to an incorrect conclusion that Venkanna had already sold an extent of 2 acres 3 guntas prior to execution of Ex.D-7 by virtue of Ex.P-9. The trial court has not properly appreciated the evidence both oral and documentary produced by the parties.

8. The respondent No.2 has not stepped into the witness box to prove Ex.P-9, hence adverse inference has to be drawn against the plaintiff.

9. The name of the appellant came to be incorporated in the ROR by virtue of Ex.D-17 i.e. order passed by the Asst. Commissioner,

Raichur on 28-2-2011. The trial court has not properly framed the issues in this regard.

10. The trial court has not properly considered the contentions of the respondent/appellant in this case and passed the impugned judgment and decree which is not sustainable under law and he has under challenge.

On these grounds they sought for allowing the appeal by dismissing the suit of the plaintiff.

9. Heard the arguments of both the sides. The LCR secured. Perused the records before the court.

10. The points that arise for my consideration are:-

// POINTS //

1. Whether the trial court is justified in holding that the plaintiff has proved the title over the suit property and thereby granting the relief of declaration?
2. Whether the trial court is justified in holding that the plaintiff is in lawful possession of the suit property as on the date of the suit and thereby granting relief of permanent injunction?
3. Whether the trial court is justified in holding that OS.No.147/06 is not binding on the plaintiff?

4. Whether impugned Judgment and decree passed by the trial court in OS No.189/17 is capricious and illegal and interference of this court is warranted?

5. What Order?

11. My findings to the above points are as under:

Point No-1 to 3: In the affirmative.

Point No-4: In the negative.

Point No-5: As per final order, for the following;

// R E A S O N S //

12. POINTS NO.1 to 3: Since all these points are inter linked and inter connected with each other I have chosen to discuss said points together.

13. This appeal is preferred by the defendant No.1/ appellant against the plaintiff & defendants No.2/ respondents being highly aggrieved by the Judgment and Decree passed by the Addl. Civil Judge & JMFC Raichur in OS No.189/2008 decreeing the suit filed by the plaintiff.

14. It is the specific contention of the plaintiff that the plaintiff has purchased the suit property as per sale deed bearing document No.1263/97-98 dated 18-8-1997. The defendant No.2 has purchased the said property from Yankanna S/o Mareppa as per sale deed bearing document

No.506/1971-72 dated 5-7-1971. The plaintiff is the absolute owner of the suit property as per the sale deed executed in favour of the plaintiff. The defendant No.1 has falsely contending that he has purchased the suit property from Yankanna. The defendant No.1 has no right, title over the suit property and no way concerned to the suit property. The defendant No.1 illegally obtained the decree in OS.No.147/06 dated 27-6-2008.

15. In order to substantiate the contention the plaintiffs have relied upon the oral evidence of Pws-1 to 3. PW-1 is the none other than the plaintiff in this case has deposed reiterating the plaint averments. Pws-2 & 3 witnesses examined on behalf of plaintiff has deposed that the plaintiff is the owner of the suit property. The plaintiff has purchased the suit property from defendant No.2 and he is in lawful possession of the suit property. While disputing the claim of the plaintiff, the defendant No.1 has contended that he has purchased Sy.No.119/2 measuring 4 acres 6 guntas purchased from Yankanna. The plaintiff is nowhere concerned to the suit property. The judgment and decree passed in OS.No.147/06 dated 27-6-2008 is binding on the plaintiff.

16. In order to substantiate the case of the defendant No.1, he has relied upon the evidence of defendants No.1 to 3. DW-1 is the defendant No.1 in this case has deposed before the court by reiterating the defence version. DW-2 has not tendered for cross-examination. Hence the evidence of DW.2 is discarded. DW-3 has deposed before the court that defendant No.1 is the owner and possessor of the suit property.

17. The learned counsel for the appellant has seriously argued that the alleged Ex.P-9 & 9(a) is of the year 1971-72. The defendant No.2 has not got mutated the RTC in her favour till 1996-97. The defendant No.2 remained silent for about 27 years. Thereafter the name of the defendant No.2 found in the RTC extract. According to counsel for the appellant the Ex.P-9 is false document and Ex.P-9(a) is created forged document and it does not tally with the original Ex.P-9. As per Ex.P-9(a) the possession is not handed over to Saraswathamma. The counsel would invited the attention of the court with regard to recitals of Ex.D-9. As per Ex.D-9, Saraswathamma has not purchased the suit property from Yankanna and she has purchased the suit property from one Narsipudi Mareppa.

The counsel would argued that the defendant has not chosen to examine Saraswathamma to prove Ex.P-9 or Ex.P-9(a) and Ex.D-9. Ex.P-1 is the sale deed for the year 1971 is not proved in accordance with law. Both the parties have produced 2 sale deeds in respect suit property. Under such circumstances, the plaintiff has to prove the sale deed of the year 1971 which is marked at Ex.P-9.

18. The counsel for the appellant has produced the rulings reported in **AIR 2009 S.C. 951 K. Laxmanan V/s Thekkayil Padmini & Ors** and **(2015) 4 S.C.C. 601 Om Prakash dead through L.Rs. V/s Shanti Devi & Ors.**

19. On the other hand, the respondents have seriously contended that the plaintiff has not challenged the mutation i.e. marked at Ex.P-2 & Ex.P-3. As per Ex.P-3 the name of the Saraswathamma is mutated in the year 1971-72, merely because, the RTC subsequent to the year is not produced by the plaintiff or defendant No.2, no inference can be drawn against the defendant as defendant is not the owner of entire 4 acres 6 guntas of the suit property. The name of Yankanna is found in the RTC as on the date of

the execution of Ex.P-9 and Ex.P-9(a). The defendant No.1 has not produced RTC for the year 1996-97 to show that Yankanna has sold the suit property to defendant No.1. According to counsel for the respondents, Ex.D-7 is forged document. Yankanna has no title, right over 4 acres 06 guntas of land. The counsel would argued that the defendant No.2 has not given any statement before the revenue authorities as per Ex.D-9 which is also forged document.

20. I have carefully considered the contentions urged by both the sides in the light of the impugned judgment and decree passed in OS.No.189/08. While decreeing the suit of the plaintiff the trial court has observed in Para No.13 of the judgment as follows:-

It is to be noted here that though the defendant No.2 stated that she purchased the suit property from the person other than the original owner of the suit property, Ex.P-9 registered sale deed itself speaks that the said Yankanna sold the suit property in favour of defendant No.2. Ex.D-9 i.e. the statement of defendant No.2 given before the revenue authority cannot over ride the registered document. Moreover, the documentary evidence prevails over the oral evidence and other statements. Therefore Ex.D-9 will not come into the aid of defendant No.1 to falsify the claim of the

plaintiff. It is significant to note here that the original owner of land Sy.No.119/2 measuring 4 acres 6 guntas by name Yankanna sold to the extent of 2 acres 3 guntas out of 4 acres 6 guntas to defendant No.2 on 5-7-1971. The sale deed got executed by the defendant No.1 from said Yankanna in respect of above said land to the extent of 4 acres 6 guntas on 8-5-1997. It is clear that the said Yankanna had already sold to the extent of 2 acres 3 guntas i.e. suit property to defendant No.2 prior to execution of Ex.D-7. The conduct of defendant No.1 shows that he has not verified the necessary documents such as encumbrance certificate, sale deed etc., before the purchase of land. Therefore, the defendant No.1 will not get any title over the suit property. It is significant to note that here that the defendant No.1 after his appearance in this case has not taken any strain to seek the relief against Ex.P-1 & 9. However, the defendant No.2 has admitted in her written statement that she sold the suit property in favour of plaintiff and he is in possession of the same. Ex.P-1 clearly discloses that the plaintiff is the absolute owner in possession of the suit property. It is relevant to note here that PWs2 & 3 are the residents of Gonwar village where the suit property situates. They have deposed in their examination in chief about the ownership and possession of the plaintiff. In short both the witnesses have fully supported the version of PW-1. On perusal of cross-examination of PW-1 to 3 it can be seen that nothing has been elicited from their mouth to disbelieve their oral evidence. Under such circumstances, the oral evidence of DW-1 & 3 and Exs.D-7, 9, 17 & 20 will not assist the first defendant to prove his case. By taking into consideration of contents of Exs.P-1 to 9 and oral evidence of PW-1 to 3 it

can be safely hold that the plaintiff has sufficiently proved his ownership and possession over the suit property. Accordingly, issues No.1 & 2 answered in the affirmative.

21. At this stage it is pertinent to mention the decision of Honble Apex Court **AIR 2001 SC Page No.965** in which the power of appellate court with regard to the confirming or reversing the judgment is clearly discussed in the case of **Santhosh Hazari V/s Puroshotama Tiwari** as under:-

The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on question of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and the issues arising along with the contentions put forth and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the court, decision of which is under appeal, would ordinarily suffice (See Girijamma Devi V/s Bijendra Narain Choudhary, AIR 1967 SC SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court, firstly the findings of fact based on conflicting the evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based

on oral evidence recorded by the same presiding judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial judge. As a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or in conjectures and surmises, the appellate court is entitled to interfere with the finding of fact (See Madhusudhan Das V/s Smt. Narayani Bai AIR 1983 SC 114). The rule is and it is nothing more than a rule of practice that when there is conflict or oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the findings of the trial judge on a question of fact (See Sarju Pershad Ramdeo Sahu V/s Jwaleshwari Pratap Narain Singh, AIR 1951 SC 120). Secondly, while reversing finding of the fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected late court had discharged the duty expect of it.

22. It is not in dispute that Yankanna was the owner of suit property bearing Sy.No.119/2 measuring 4 acres 06 guntas till disputed sale deeds are executed in favour of defendant No.2 and defendant No.1. Ex.P-1 is the sale deed alleged to have been executed in favour of plaintiff by the defendant No.2 dated 18-8-1997. Ex.P-9 is the registered

sale deed dated 5-7-1971 alleged to have been executed by Yankanna in favour of defendant No.2. Ex.P-9(a) is translated copy. Ex.D-7 is the sale deed alleged to have been executed by Yankanna in favour of defendant No.1 on 8-5-1997. Ex.P-8 is the judgment and decree passed in OS.No.147/06 which is marked at Ex.D-18 by the defendants. Ex.P-1, P-9, Ex.P-9(a) and Ex.D-7 are the disputed documents produced before the court. The plaintiff is claiming right and title over the Sy.No.119/2 measuring 2 acres 3 guntas of land on the basis of Ex.P-1, P-9, 9(a). On the other hand, the defendant No.1 claims right over the suit property to the extent of 4 acres 06 guntas as per Ex.D-7. The trial court relaying on Ex.P-1, Ex.P-9, 9(a) come to the conclusion that the plaintiff has proved his title over the suit property. Now the question is whether the findings of the trial court on this issue is capricious, illegal or whether the trial court has properly appreciated the material produced by both the parties has to be considered.

23. The counsel for the appellant in the appeal memo has seriously contended that the plaintiff has not proved Ex.P.9, 9(a) sale deeds alleged to have executed by the

Yankanna in favour of defendant No.2 Saraswathamma. The counsel further contended that the plaintiff has not examined the attester of Ex.P-9 & Ex.P-9(a) and also not examined defendant No.2 and the plaintiff has not proved the sale deeds. He has also contended that as per Ex.P9(a) the possession of the suit property is handed over to the defendant No.2. Now the question is whether the plaintiff has proved Ex.P9 & 9(a) in accordance with law. No doubt the defendant No.1 raised serious dispute with regard to execution of sale deed Ex.P-9 & 9(a).

24. It is significant to note that though the defendant No.1 has disputed execution of Ex.P.9 & 9(a) but the entire trial court records shows that the defendant No.1 has not disputed marking as Ex.P-9(a) as it is translated copy of Ex.P-9. If at all the defendant No.1 is disputing the very contents of Ex.P-9(a), the defendant No.1 ought to have objected for marking of Ex.P.9(a) before the trial court itself as it is not a true translated version. Now the counsel would contend that Ex.P-9(a) is not a true translated version, according to me, the appellant cannot take this contention before the appellate court which is not urged before the trial court. Now proof of Ex.P-9 & 9(a) is

concerned, Sec.67 of Indian Evidence Act states the mode of execution and attestation. In the evidence Act, the document must be proved by examining the executant as well as attester. Sec.68 of the Evidence Act states the mode of proof of will and gift deed. Nowhere in the Evidence Act, it is stated that registered sale deed is to be proved by examining executant and attester. Apart from this, the executant Yankanna is dead. Merely because the defendant No.1 disputed very validity of Ex.D-9 & Ex.P-9(a) it does not mean that the sale deed is not been executed in accordance with law. It is to be noted that the defendant No.2 is purchaser of the property as per Ex.D-9 has appeared and filed written statement and admitted the Ex.P-9.

25. The Ex.P-9 is the document of the year 1971 which is about 30 years old document. There is presumption U/s 90 of the Evidence Act with regard to the document of 30 years old. The learned counsel for the appellant / defendant No.1 has relied upon the ruling reported in **(2015) 4 S.C.C 601**. In the said judgment the Honble Supreme Court has discussed in detail with regard to admissibility of document of 30 years old and how to the

date has to be computed in accordance with law. In the said case, the document tendered in evidence is 5 years prior to having become 30 years. Though the learned counsel for the defendants has cross-examined PW-1, nowhere in the cross-examination this defence has been raised by the defendant No.1. On the other hand, the very document Ex.P-9 and 9(a) goes to show that as on the date of production of document, 30 years is already completed. Under such circumstances, Ex.P-9 & 9(a) is having presumption U/s 90 of the Indian Evidence Act and can be held that it has been produced from the proper custody, hence the said ruling is not applicable to the present case.

26. The learned counsel for the appellant has relied upon another ruling reported in **AIR 2009 SC 951** with regard to proof of Ex.P-9. As stated supra, the documents now produced is sale deed not the gift deed. So far as sale deed is concerned, when the said document is registered document, it can be presumed that the document is executed and attested in accordance with law. Therefore, the said ruling is also not applicable to the present case.

27. Another important aspect that has to be considered in this case is that the defendant No.1 has produced Ex.D.18 i.e. said document is marked as Ex.P-9 through the plaintiff. On perusal of Ex.D-18 it is clear that while passing the exparte judgment in OS.No.147/06 it is observed that:

Ex.P-5 ROR discloses that the name of the previous owner Yenkanna S/o Mareppa had been shown only to the extent of 2 acres 3 guntas by assigning Sy.No.119/P1/2. The Ex.P-6 ROR discloses that the name of the defendant had been shown as owner and possessor to the extent of 2 acres 3 guntas by assigning Sy.No.119/P2/2. This hissa in Sy.No.119/2 has been disputed by the present plaintiff by saying that it was got done by colluding with the revenue authorities on the basis of the forged registered sale deed.

28. Ex.P-5 & 6 which are marked in OS.No.147/06 is produced by the defendant in this case which is marked as Exs.D-4 & 5. On perusal of Exs.D-4 & 5 it is clear that RTC was mutated in the name of Saraswathamma to the extent of 2 acres 3 guntas as per MR. No.11 dated 30-4-1997.

29. It is significant to note that further Ex.D-6 shows that Yankanna is in possession of 2 acres 3 guntas of land for the year 1995-96. On the other hand, Ex.P-5 goes to

show that the name of Saraswathamma is also entered in the RTC extract for the year 1996-97 itself. Ex.P-1 is the sale deed which was alleged to have been executed by the Saraswathamma in favour of the plaintiff shows that same was executed on 18-8-1997. Ex.D-7 sale deed which was executed on 18th May 1997 in favour of Yankanna in favour of defendant No.1. It is very peculiar to mention that though the defendant No.1 claims that Yankanna has executed the sale deed as per Ex.D-7 in respect of land to the extent of 4 acres 6 guntas but the defendant No.1 has failed to produce any document to show that Yankanna was the owner of 4 acres 6 guntas of land as on the date of the Ex.D-7. The defendant No.1 has not produced the RTC extract to show that Yankanna was in possession of entire 4 acres 6 guntas of land as on the date of execution of Ex.D-7. If at all said Yankanna is in possession of 4 acres 6 guntas of the land as per Ex.D-7 why the defendant No.1 has not produced any RTC extract. Normally, when the sale deed is executed the parties must produce the RTC or encumbrance certificate. It is very doubtful that how the Sub-Registrar has registered the sale deed without having producing the RTC and E.C. before him. On the other

hand, the RTC documents produced by the plaintiff as well as the evidence of defendant No.1 goes to show that RTC were standing in the name of Saraswathamma measuring to the extent of 2 acres 3 guntas and Yankanna to the extent of 2 acres 3 guntas as on the date of execution of Ex.P-1. The conduct of the defendant No.1 goes to show that the defendant No-1 might have colluded with the revenue authorities and Sub-Registrar for executing Ex.D.7 itself, though Yanknanna has no title over entire extent of 4 acres 6 guntas. This fact is also observed by the trial court in the judgment of OS No.147/06 which is not challenged.

30. The counsel for the appellant also seriously contended that as per Ex.D-9, statement given by Saraswathamma before a Tahasildar, one Narasipudi Mareppa has executed the sale deed in favour of defendant No.2 in the year 1971 and Yenkanna has not executed the sale deed in favour of Saraswathamma. The counsel for the defendant No.1 had taken much advantage of recitals of Ex.D-9. It is very pertinent to note that the defendant No.1 who is contending that one Narasipudi Mareppa executed the sale deed in favour of Saraswathamma as per Ex.D-9

has not produced any documents to show that Narasipudi Mareppa was the owner of land bearing Sy.No.119/2. On the other hand, the RTC extract produced by the defendant No.1 goes to show that Yankanna was the owner of the Sy.No.119/2. If at all such was the case, the defendant No.1 ought to have produced some material documents pertaining to Narasipudi Mareappa to show that he was owner and possessor of Sy.No.119/2. Even assuming that she has given statement before the Tahasildar, such document is not admissible under law unless the defendant No.1 who is relying on the document has to prove the said document. Except production of document, there is no other corroborative evidence to show that she has given statement as per Ex.D-9. Mere production of Ex.D-9 do not dispense of the proof. On the other hand, the documents produced by the defendant No.1 to Sy.No.119/2 is sub divided and rephrased as Sy.No.119/P1/2 & 119/P2/2 was allotted to Saraswathamma. Apart from that, Ex.D-9 suspicious document for the reasons that PW-1 in the cross-examination has clearly stated that Saraswathamma went to the Tahasildar Office and she has not given statement

to the Tahasildar. Furthermore contrary defence is taken by the defendant No.1 during the cross-examination of PW-3. It is suggested to PW-3 like that: ದಾವಾ ಆಸ್ತಿಯ ಪಕ್ಕದಲ್ಲಿ ವೆಂಕಣ್ಣ ಅವರ ತಂದೆ ನಸಿಪುಡಿ ಮಾರೇಪ್ಪ ಅವರ ಜಮೀನು ಇತ್ತು ಎಂದರೆ ಸರಿ. ಆತನ ಹೆಂಡತಿ ನಾಗಮ್ಮ ಗಂಡ ನಸಿಪುಡಿ ಮಾರೇಪ್ಪ ಸುಮಾರು 1 ವರುಷದ ಹಿಂದೆ ವಾದಿಗೆ ಜಮೀನು ಮಾರಾಟ ಮಾಡಿದ್ದಾಳೆ ಎಂದರೆ ಸರಿ. This suggestion is admission by the defendant No-1 suggesting that wife of Narasimpudi Mareppa i.e. Gouramma has sold the suit property to the plaintiff. But very defendant No.1 has relied the Ex.D-9 stating that as per the statement given by the defendant No.2 Narasimpudi Mareppa has sold the suit property. Contrary statement given by defendant No.1 goes to show that the defendant No.1 taken contradictory defence to grab the 4 acres 6 guntas of land. The defendants cannot take advantage of Ex.D-9 to show that the defendant No.2 has not purchased the suit property from Yenkananna.

31. Ex.P-3 mutation extract which goes to show that suit property was mutated in the name of Saraswathamma as per mutation No.506/71-72 dated 5-7-1971. Thereafter RTC was also mutated in the name of said Saraswathamma. On the basis of Ex.P-9 and Ex.P-9(a) she

has executed Ex.P-1 in favour of plaintiff. Ex.D-11 is the order passed by the Asst. Commissioner which goes to show that the defendant No.1 has challenged the order passed in MR No.11 dated 7-10-1997. It is also significant to note that MR No.11/7-10-1997 mutation was effected in the name of Yenkanna and Saraswathama i.e. defendant No.2. But the defendant No.1 has not challenged this mutation which was effected as per Ex.P-3 i.e. mutation No.506/71-72. It is also to be noted that before the revenue authorities also the defendant No.1 played fraud, because Ex.D-20 order of Asst. Commissioner goes to show that son of Yanknanna was made as party and defendant No.2 is made as party. As on filing of the appeal before the Asst. Commissioner as on 20-8-2010, said Saraswathamma has already executed Ex.P-1 in favour of plaintiff and this suit was also filed. The defendant No.1 was aware of execution of Ex.P-1. The defendant No.1 who is challenged the mutation No.11 dated 7-10-1997 has not impleaded this plaintiff as party in the said proceedings and fraudulently obtained the order passed before Asst. Commissioner by colluding with the son of Yankanna. According to me, Ex.D-20 did not come to the help of

defendant No.1. The defendant No.1 has filed the suit in OS.No.147/06 in the said proceedings also though the plaintiff filed the suit for declaration claiming right over the suit property on the basis of Ex.D-7 but in the said proceedings also the defendant No.1 has not challenged the mutation which was mutated in the name of Saraswathamma or thereafter in the name of the plaintiff. The plaintiff cannot claim declaration keeping alive the sale deed and mutation extract, this amounts to fraud on the plaintiff by the defendant No.1. Accordingly, the trial court has rightly held the judgment in OS.No.147/06 on 27-6-2008 is not binding on the plaintiff.

32. On perusal of documentary evidence produced by the both the parties, it is clear that the relief of declaration is discretionary relief and the defendant No.1 has not come before the court with clean hands. In this case though the defendant No.1 has contended that Saraswathamma has no right, title to execute the Ex.P-1, but according to me, the very conduct of the defendant No.1 goes to show that he has not appeared before the court with clean hands. On the other hand, Ex.P-1, Ex.D-9 & Ex.P-9(a) are the disputed documents goes to show that Yenkantha was the

owner of the suit property in respect of 4 acres 06 guntas and he has executed Ex.P-9, Ex.P-9(a) in the year 1971 in favour of Saraswathamma. Thereafter Ex.P-1 was executed in favour of the plaintiff. Ex.P-1 being the registered documents confers the title of the plaintiff. The RTC extracts having presumptive value under Sec.133 of the Land Revenue Act confers the possession to the plaintiff. On the other hand, though the defendant No.1 has produced Ex.D-7 according to me, the Ex.D-7 was obtained by practicing fraud on the defendant No.2 and the plaintiff, as such even though a decree obtained exparte against the defendant No.2 that decree cannot be enforceable under law and which amounts to fraud on the court also. On the other hand, the material on record clearly goes to show that the plaintiff has proved his title, right over the suit property. The trial court has rightly come to conclusion that the plaintiff has proved his title over the suit property and the trial court has rightly granted the decree of declaration and injunction, hence I answer points No.1 to 3 in the affirmative.

33. POINT NO-4: While answering to Points No.1 to 3, it is held that the trial court has properly appreciated the

oral and documentary evidence placed by both the sides and rightly concluded that the plaintiff is entitled for decree of declaration and injunction. Under such circumstances, according to me, there is no illegality or perversity in the Judgment passed by the trial court and hence, interference of this court is unwarranted. Accordingly, I answer Point No.4 in the 'Negative'.

34. POINT NO-5: In view of findings given on Point No.1 to 3, I proceed to pass the following;

// O R D E R //

The Regular appeal filed U/O.XLI Rule 1 & 2 R/w Section 96 of C.P.C. by the appellant/defendant No.1 is hereby dismissed.

The Judgment and Decree passed by the Trial Court in OS No.189/2008 dated 30.11.2017 is hereby confirmed.

Draw decree accordingly.

Send back the LCRs to concerned court along with copy of this judgment.

(Dictated to stenographer, transcribed by him, corrected, initialed and then pronounced by me in the Open Court on this 16th day of August, 2018)

(Srinivasa Suvarna)
Prl. Senior Civil Judge,
Raichur.