

# **Smt. Arifa Kauser vs Bengaluru Development Authority on 4 November, 2015**

IN THE COURT OF THE XI ADDL.CITY CIVIL JUDGE,

BANGALORE (C.C.H.No.8)

Dated this the 4th day of November 2015.

PRESENT: SRI.S.V.Kulkarni, B.Com., LLB(Spl).

XI Addl.City Civil Judge, B'lore city.

O.S.No.283/2011

Plaintiff

- 1 Smt. Arifa Kauser  
W/O Late Ehsan Ahmed Sheriff, aged  
about 50 years,
2. Zubair Ahmed Shariff  
S/O Late Ehsan Ahmed Sheriff, aged  
about 33 years
3. Husna Tabassum  
D/O Late Ehsan Ahmed Sheriff,  
aged about 29 years,

All are residing at No.19, Cline Road,  
Cooke Town, Bengaluru -560005

(Bt Sri. B.V.R, advocate)

: Vs :

Defendant:

- 1 Bengaluru Development Authority.  
North division, Kumar Park West,  
T.Chowdaiah Road, Bengaluru  
  
represented by its Commissioner
2. The Commissioner, Bengaluru  
Development Authority, North Division,  
Kumar park West, Bengaluru-20  
2 O.S.No.283/2011
- 3 The Executive Engineer,  
North Division,  
Bengaluru Development Authority,  
BDA Complex, R.T.Nagar,  
Bengaluru-32

(Sri. P.R. Advocate for defendant No.1 to  
3)

Date of the institution of suit:	10.1.2011
Nature of the suit:	Declaration
Date of the commencement of recording of the evidence:	16.2.2012
Date on which the judgment was pronounced :	4.11.2015
Total Duration	Year/s Month/s Day/s
	04 09 21

XI Addl.City Civil Judge,  
B'lore city.

#### JUDGMENT

This is the suit filed by the plaintiffs for the relief of declaration that plaintiffs are the absolute owners and having lawful joint owners of the suit schedule property as described in the suit schedule totally measuring 15262.5 square feet and for consequential relief of permanent injunction restraining the defendant No.1 to 3 and their agents, servants, henchmen and officials from dispossessing the plaintiffs from the schedule property or interfering with the peaceful possession and enjoyment of the suit schedule property and demolishing the existing structure /building in the schedule property and for costs of the suit.

2. The case of the plaintiffs as averred in the pleadings briefly stated as follows:-

The plaintiffs have described the suit schedule property in plaint schedule, which reads as follows:-

**SCHEDULE PROPERTY** The property bearing Municipal No.62, PID No.89-376- 62 situated in ward No. 90 of the BBMP, 4th cross, Chikkamuniyappa Reddy, Circle Road, Kacharakenahalli, Bengaluru measuring east-west 190 feet and north-south 80 feet totally measuring 15262.56 square feet including the two fully constructed buildings consisting of two floors, constructed on the property measuring 3200 square feet each and bounded on:

East by:	Mosque,
West by:	Property belonging to Ishad Amjed Shariff and Abida Kauser
North by:	Private Property
South by:	No.4th Cross, Chjikkamuniyappa Reddy circle, road

It is the case of the plaintiff that they are the absolute owners of the suit schedule property bearing No.62 PID No.89-376-62 situated in ward No. 90 of the BBMP, 4th cross, Chikkamuniyappa Reddy, Circle Road, Kacharakenahalli, Bengaluru measuring east-west 190 feet and north-south 80 feet totally measuring 15262.56 square feet including the two fully constructed buildings consisting of two floors, constructed on the property measuring 3200 square feet and this property morefully described in plaint schedule herein after referred to as schedule property for the sake of convenience and privity. It is the case of the plaintiff that the schedule property is part of land bearing Sy.No.96/3 total extent 1 acre 10 guntas , wherein this property was purchased by deceased husband of 1st plaintiff and father of plaintiff No.2 and 3 from its previous vendors one Mr. Heggappa S/o Muniyappa and Smt. Yallamma D/O Heggappa through a registered sale deed dated 15.11.1976 to the extent of 25 guntas in land bearing Sy.No.96/3 situated at Kacharakenahalli village, K.R.Puram Hobli, Bengaluru. The said sale deed executed by vendors is also registered as document No.1532 of 1976-1977 in the office of Sub Registrar, Bengaluru South Taluk on 18.11.1976. The total area of the land Sy.No.96/3 situated at Kacharakenahalli village is measuring 1 acre 10 guntas out of which, plaintiffs vendors had purchased 25 guntas of land and there is mosque belongs Muslimn community existing in an area of 4800 square feet of land and the remaining portion of property measuring 15262.5 square feet of land is in possession of plaintiffs since the husband of 1st plaintiff and father of plaintiff No.2 and 3 died intestate leaving behind the plaintiffs as his legal heirs. Thereafter, plaintiff No.1 to 3 being the legal heirs of deceased Ehsan Ahmed Sheriff have succeeded to the estate and accordingly, plaintiffs have acquired right, title and interest over the schedule property and plaintiffs are in peaceful possession of the schedule property from the date of its purchase and they are also paying property tax to BBMP and plaintiffs are paying tax to the BBMP since the assessment year 1994-1995 and they have produced tax paid receipts from the assessment year 1994-1995 up to date and plaintiffs have also produced the notice issued dated 13.8.2002 under Sec. 143 of Karnataka Municipal Corporation Act 1976 assessing the property to tax to the plaintiffs and presently katha of the schedule property is also standing in the name of plaintiff No.1 and plaintiffs have produced katha certificate and katha extract of the schedule property dated 21.6.2006. The plaintiffs have also paid betterment charges in respect of suit schedule property to BBMP on 30.6.2006 and plaintiffs have produced documents to show that they have paid betterment charges to the corporation authorities . It is alleged by the plaintiffs that the vendors of deceased Ehsan Ahmed Sheriff have put in possession of the schedule property from the date of sale deed i.e., 18.11.1976 and as such, plaintiffs predecessor in title are in possession of schedule property from the date of sale deed and plaintiffs along with deceased Ehsan Ahmed Sheriff continued to occupy the schedule property from the date of execution of sale deed . The deceased husband of 1st plaintiff and father of plaintiff No.2 and 3 was in possession of schedule property

and plaintiffs have let out the shops existed in the building to the tenants and accordingly, tenants are in occupation of the shop constructed in the schedule property and there are presently 30 tenants, who have occupied in the schedule property and 1st plaintiff has executed lease agreements in favour of tenants in respect of lease of the shops in favour of different tenants and plaintiffs are relied upon copy of lease agreements.

The plaintiffs further alleged that this being the fact that on 29.12.2010 the plaintiffs have received notice dated 27.12.2010 from the defendants addressed to late Ehsan Ahmed Sheriff under Sec. 33 of BDA Act stating that preliminary notification under Sec. 17 of BDA Act 1976 was issued on 21.3.1976 for formation of layout known as "HRBR II Block, Layout, which included land in Sy.No.96/3 of Kacharakenahalli village, measuring 1 acre 10 guntas wherein the notified kathedars as per the notification were Aswak Ahmed S/O M.J.Shariff, Irshad Ahgmed Shariff S/O M.J.Shariff and final notification came to be issued on 18.9.1986 in respect of 1 acre 10 guntas and award came to be passed on 18.9.1986 with a compensation amount of Rs.83,300-00 for an extent of 1 acre 10 guntas . Hence, the defendants have claimed the schedule property from the plaintiffs failing which, the schedule property will be resumed by demolishing the existing structure and buildings constructed in the schedule property and it is further alleged in the notice that the plaintiffs are unauthorized occupants of schedule property and as such, plaintiffs have been called upon to show cause within 7 days by producing documents in support of their possession and occupation of the schedule property. After receipt of the said notice issued by the defendants, the plaintiffs got shocked and surprised by knowing contents of the notice and plaintiffs are unaware of the alleged acquisition proceedings initiated by the defendants in respect of suit schedule property. Since the husband of the 1st plaintiff was managing the affairs of the family as well as being kartha of the family used to manage and looking after the properties and though the plaintiffs are in lawful possession and being joint owners of schedule property right from the date of sale deed. Hence, plaintiffs apprehending the demolition of schedule property by the defendants, they submitted reply on 3.1.2011 to the defendants stating that they are in occupation of the schedule property as joint owners and they have got valid title deeds to substantiate their title in respect of suit schedule property and further plaintiffs have also sought for the documents in respect of acquisition proceedings from the defendants so as to enable them to file detail reply in order to produce original title deeds and to file detail reply to the notice along with other records. The defendants refused to grant further time to the plaintiffs for further reply and on the very next day on 4.1.2011, the defendants came to the schedule property and informed the plaintiffs to vacate the schedule property, failing which, the defendants will take possession by demolishing the existing building and they will resume the schedule property. The plaintiffs apprehending the high handedness of the defendants, they have approached this court and filed this suit for declaration of title and for permanent injunction against defendants as the plaintiffs have no other alternative remedy except to file the present suit for seeking the declaration of their title and for permanent injunction relief restraining the defendants from interfering with peaceful possession and not to demolish the existing structure /building constructed in the schedule property and not to dispossess the plaintiffs from the suit schedule property without following due process of law and it is further alleged by the plaintiffs that they searched for documents pertaining to acquisition proceedings and after going thorough search of the documents, they came to know that husband of 1st plaintiff Ehsan Ahmed

Sheriff had filed writ petition before the Hon'ble High Court challenging the acquisition proceedings in respect of suit schedule property. But however, he was not successful in his attempts to overcome the acquisition proceedings, but plaintiffs were totally unaware about the writ petition filed by late Ehsan Ahmed Sheriff and in this regard plaintiffs have made enquiry and came to know that late Ehsan Ahmed Sheriff had not received the compensation and subsequently the fact remains that the defendants did not pursue the acquisition proceedings and possession of the schedule property was not taken by the defendants and possession of schedule property still continues to be with the plaintiffs and subsequently the acquisition proceedings of schedule property was also dropped by the defendants, which is evident from the notification issued by defendants dated 6.6.1983, wherein the acquisition of the land bearing Sy.No.96/3 was dropped and even in the said notification in the list of the lands shown to have been taken possession and Sy.No.96/3 has been excluded under the said notification and further the said notification clearly reflects that possession of land Sy.No.96/3 situated at Challakere village measuring 1 acre 10 guntas was not included. Therefore, the notification dated 6.6.1983 and public notice dated 7.2.1984 clearly establishes the fact that the land acquisition proceedings in respect of Sy.No.96/3 of Challakere village has been dropped and lapsed and this survey number was not acquired by the defendants in accordance with law and also possession was not taken and Sy.No.96/3 measuring 1 acre 10 guntas including the schedule property was not vested to the defendants and defendants have not completed the acquisition proceedings and the same was lapsed and as such, the alleged acquisition proceedings in respect of Sy.No.96/3 to be declared as null and void and title of the schedule property and possession continued with the plaintiffs and further in the layout plan prepared by the defendants in respect of 2nd Block of the Hennur Banasvadi, it is clearly mentioned that land Sy.No.96/3 1 acre 10 guntas is built up area and there are no sites formed in that survey number and Sy.No.96/3 was excluded from the layout plan and in order to substantiate this fact, plaintiffs have also produced the information furnished by the defendants stating that Sy.No.96/3 land was built up area in their letter dated 9.12.2009 and husband of 1st plaintiff did not receive any compensation in respect of property bearing Sy.No.96/3 and in fact he has refused to receive the compensation. The defendants have failed to take possession of schedule property and the scheme to be implemented by the defendants in respect of formation of HRBR layout has been lapsed by efflux of time and defendants failed to take possession of Sy.No.96/3 in accordance with law. Hence, defendants are entitled to take possession of the schedule property and acquisition proceedings are liable to be declared as illegal, null and void and defendants have continuously meddling with the lawful possession of the plaintiffs over the suit schedule property and also admitting the existing structure and presently the schedule property is in the hands of tenants, which is evident from lease agreements. Hence, plaintiffs alleging that they are having title by virtue of sale deed dated 18.11.1976 and also there are existing buildings constructed in an area measuring 3600 square feet and if defendants are not restrained by grant of permanent injunction, the plaintiffs will be put to irreparable loss and much hardship will be caused to them and there is every possibility of defendants dispossessing the plaintiffs from the schedule property. Hence, plaintiffs alleging cause of action in para No.9 of the plaint have filed this suit for declaratory relief and for other consequential relief of permanent injunction and for other reliefs.

3. After institution of the suit in response to suit summons issued to the defendants, wherein defendants appeared through counsel and filed their written statement on 12.1.2011, wherein

defendant No.1 to 3 contended inter- alia as follows:-

At the outset the suit filed by the plaintiffs is not maintainable for want of issuance of a requisite notice under Sec. 164 of BDA Act 1976 preceding commencement of the above proceeding against defendants. Hence, for want of statutory notice, suit is liable to be rejected and defendants contended that the plaintiffs have filed this suit in respect of schedule property, wherein it forms portion of acquired property developed and formed into residential plots by the 1st defendant authority in accordance with law and schedule property forms a part and parcel of land acquired by these defendants in Sy.No.96/2 and 96/3 of Kacharakenahalli village, K.R.Puram Hobli, Bengaluru and land bearing Sy.No.96/2 and 96/3 measuring an extent of 2 acres 5 guntas and 1 acre 10 guntas respectively were notified for acquisition under preliminary notification bearing No.HC.PR.ALAO/389/BDA/76-77 dated 21.3.1977 published in the official gazette dated 5.7.1997 for the formation of layout between Banaswadi Road and Hennur Road (HRBR) layout and final notification following the preliminary notification was issued by State Government bearing No. 49 MNJ 78 dated 14.5.1980 published in Karnataka Gazette dated 12.6.1980 and defendants also published sanction of scheme for the HRBR Layout declaring the need of the aforesaid lands for formation of this layout. Pursuant to the issuance of notification, the Additional Land Acquisition Officer of 1st defendant passed award in LAC No.616/80-81 for the extent of Sy.No.96/2 and 96/3 on 19.9.1986 and on 22.9.1986 respectively in the name of katha holders in respect of these two lands and documents in respect of passing of award are produced as per document No.3 and 4 and defendants have produced preliminary notification and final notification and gazette notification as document No.1 and 2 and copies of the award and notice issued by the kathedars namely J.I.Mckenzie, Aswak Ahmed, Irshad Ahhmed Sharieff and others and all these documents are referred as document No.5 and 6 and plaintiffs are claiming under one of the kathedars namely Ehsan Ahmed, who participated in the acquisition proceedings. After award was passed, the possession of the land has been taken as per Sec.16 of Land Acquisition Act in respect of Sy.No.96/2 and 96/3 was taken as on 24.10.1986 and 15.10.1986 respectively and in this regard, mahazar was drawn and possession mahazar dated 24.10.1986 and 15.10.1986 are produced as document No.7 and 8 and it was published under Sec. 16(2) of Land Acquisition Act under notification No.BDA/ALAO/LA3/297/81-82 dated 9.7.1992 and copy of the notification issued under Sec. 16(2) of Land Acquisition Act in respect of taking over possession of these two different dates is produced as document No.9. Hence, by virtue of land acquisition proceedings as narrated above, wherein entire Sy.No.96/2 and 96/3 vested with 1st defendant authority for formation of HRBR layout for public purpose and suit schedule property, which plaintiffs have laid their claim under the guise of fictitious municipal number, wherein these defendants have formed layout in accordance with law and defendants have also allotted many sites formed in the layout to the general public and defendants found certain unauthorized structures in the layout formed and show cause notices were issued to the unauthorized occupants. However, plaintiffs instead

of showing show cause to the notices have preferred this suit by suppressing the material facts. Hence, defendants have denied the plaintiffs' title and possession in respect of suit schedule property and also denied the plaint allegations as pleaded in para No.3 to 5 and plaintiffs have no valid and legal title and possession over the schedule property and as such, defendants contended that entire Sy.No.96/2 and 96/3 of Kacharakenahalli village have been acquired by recourse to land acquisition proceedings and award has been passed in the name of kathdars and also possession was taken over by issuance of notification as contemplated under Sec. 16(2) of Land Acquisition Act and husband of 1st plaintiff have challenged the acquisition proceedings before the Hon'ble High Court, but he has failed in the writ petition filed by him.

Hence, the suit filed by the plaintiff is not maintainable, wherein the defendants have denied the averments that acquisition proceedings were dropped, lapsed and defendants have not taken possession and defendants further denied the averments made in para no.5 to 7 and also denied the title and possession of the plaintiffs in respect of suit schedule property and defendants have denied cause of action as alleged in the plaint and this court has no jurisdiction to try the suit in view of the ratio laid down by the Hon'ble Apex Court and defendants further contended that valuation arrived is incorrect and court fee paid is insufficient and documents relied by the plaintiffs will not confirm any right, title and interest in favour of plaintiffs in respect of land in question and hence, plaintiffs are not entitled for any relief as claimed in the suit. Hence, defendants have prayed for dismissal of the suit.

4. Based upon these pleadings the following Issues are framed on 2.1.2012:-

1. Whether the plaintiffs prove that they are the absolute owners and in possession of the suit property as alleged?
2. Whether the plaintiffs further prove that defendants have illegally interfered with their lawful possession as alleged?
3. Whether defendants prove that suit is not maintainable for want of statutory notice under Sec. 64 of the BDA act as alleged?
4. Whether defendants prove that they have acquired the lands bearing Sy.No. 96/2 and 96/3 of Challakere village including suit property and the acquired land vests with them as alleged?
5. Whether defendants prove that suit is not valued properly and the court fee paid is insufficient as alleged?
6. Whether the plaintiffs are entitled to the relief of declaration and permanent injunction against defendants as prayed?

7. To what relief, if any, the parties are entitled?

5. In order to prove the above issues, plaintiff No.2 being the GPA holder has deposed before the court as P.W.1 and got marked Ex.P.1 to P.131 in this suit and also examined P.W.2 and P.W.3 as plaintiff's witnesses and with this evidence, the plaintiff's side evidence is closed. The defendant No.1 to 3 have not led any rebuttal evidence and thereafter, it is taken as defendants evidence "Nil" and suit is posted for arguments.

6. Heard the arguments of counsel for plaintiff and learned counsel appearing for defendant No.1 to 3 and counsel for plaintiff has relied upon written arguments filed in this case and citations referred in the written arguments.

In support of his the learned counsel for the plaintiff has relied upon the following decisions:-

- 1) 2013(3) KCCR 1958(K.L.Ramesh Vs. BDA, Bengaluru)
- 2) 2011(2) KLJ 142( Mrs. Poornima Girish Vs. Revenue Department and others)
- 3) 2011(5) KLJ 524( Adikeshvulu Naidu and others Vs. State of Karnataka and others)
- 4) ILR 2005 Kar 295( D.Narayanappa Vs. State of Karnataka)
- 5) ILR 2000 Karnataka 4134( John B.James and others Vs. BDA and another)
- 6) AIR 1972 SC 2299( M.Kallappa Setty Vs. M.V.Lakshminarayana Rao)
- 7) AIR 1980 Kerala 224(1) ( Karthiyayani Amma Vs. Govindan)
- 8) (1989) 4 SCC 131( Krishna Ram Mahale(Dead) by his LRs. Vs. Mrs. Shobha Venkat Rao)
- 9) AIR 1975 S.C 1764(1) ( Puran Singh and others Vs. The State of Punjab)
- 10) AIR 1963 Bombay 100( Jaiprakash Mangilal Agarwal Vs. Smt. Lilabai and another)

7. After hearing the arguments of both sides and considering the written arguments filed by the learned counsel for the plaintiff, I answer the above issues are as follows:-

Issue No.1: Partly in affirmative and partly in negative;

Issue No.2: In affirmative:



Issue No.3: In negative;

Issue No.4: In negative;

Issue No.5: In negative;

Issue No.6: Partly in affirmative and partly in negative and plaintiffs are not entitled for any declaration relief in respect of title schedule properties, but plaintiffs are entitled for permanent injunction against defendant No.1 to 3.

Issue No.7 The suit filed by the plaintiffs deserves to be decreed partly against defendant No.1 to 3 for the relief of permanent injunction and relief of declaration sought by the plaintiffs deserves to be rejected for the following:-

#### REASONS

8. Issues No.1, 2, 3, and 4: These two issues are interconnected to each other since the plaintiffs have claimed title and lawful possession in respect of suit schedule property on the basis of alleged title deed i.e., 18.11.1996 executed by original owners of Sy.No.96/3 of Challakere village in respect of 25 guntas of land and whereas defendant No.1 to 3 are contending that defendant No.1 as acquired Sy.No.96/2 and 96/3 Challakere village for the formation of HRBR layout and Sy.No.96/3 measuring 1 acre 30 guntas in entire extent has been acquired recourse to land acquisition proceedings initiated by 1st defendant authority and as such, the possession of the land Sy.No.96/2 and 96/3 was taken on 24.10.1986 and 15.10.1986 and fact of taking possession also published by publication of notification as required under Sec.

16(2) of Land Acquisition Act on 9.7.1992 and also notification was published in the official gazette in respect of acquisition of Sy.No.96/2 and 96/3 and hence, award has been passed by the Special Land Acquisition Officer and deceased husband of 1st plaintiff had challenged the acquisition proceedings before Hon'ble High Court of Karnataka and he lost in that writ petition and as such, defendants have contended that the plaintiffs are in unauthorized occupation having without any title or legal possession and hence, suit is not maintainable and plaintiffs alleged possession is that of trespasser/unauthorized occupation. Hence, defendants contended that plaintiffs suit is not maintainable in view of Apex Court decision and on the contrary, defendant No.1 being statutory authority acquired Sy.No.96//2 and 96/3 of Challakere village , Begur Hobli, Bengaluru South Taluk for formation of HRBR layout, 2nd stage for public purpose and these two lands have been acquired under due process of law by following the provision as contemplated under Land Acquisition Act and plaintiffs herein being the LR's of deceased Ehsan Ahmed Sheriff has filed this suit contending that late Ehsan Ahmed Sheriff had purchased 25 guntas of land from its previous owners one Mr. Heggappa S/O Muniyappa and his daughter Yallamma D/O Heggappa through registered sale deed dated 15.7.1996 and thereafter, they have constructed building measuring east-west 190 ft., and north-south 80 ft., totally measuring 15,262.5 square feet including two fully constructed buildings consisting of two floors in area of 3200 square feet, which is fully described in the plaint schedule

and plaintiffs have further pleaded that this property has been subjected to property tax assessed by the BDA authority and there are shops constructed in the building and it is constructed after obtaining approved sanctioned plan and presently there are 30 tenants occupied the schedule properties by taking possession of different shops from 1st plaintiff, who has executed lease agreements and hence, plaintiffs claimed that the schedule property is excluded from the acquisition by the defendants as it is already developed area raised with buildings and construction and hence, the plaintiffs contended that defendants are illegally trying to demolish the buildings/structures existed in schedule property and also threatening to their possession and as such, plaintiffs have submitted reply to the notice caused by the defendants vide reply notice dated 3.1.2011, but defendants did not stopped their threatening of dispossession to the plaintiffs possession over the schedule property and officials of 1st defendant visiting the schedule property and putting dire consequences of demolition of schedule property and interfering in their possession. Hence, plaintiffs alleging cause of action as stated in para No.9 of the plaint dated 4.11.2011 and after issuance of show cause notice by 1st defendant under Sec. 33 of BDA Act, the plaintiffs have knocked the doors of this court by maintaining this declaratory suit to declare the title and for consequential relief of permanent injunction in order to prove their case on plaintiffs side.

9. The 2nd plaintiff himself examined for himself and on behalf plaintiff No.1 and 3, who are his mother and sister respectively and P.W.1 has deposed by way of affidavit evidence filed under Order 18 Rule 4 of CPC as examination-in-chief and on perusal of the evidence of P.W.1, wherein he has deposed regarding purchase of schedule property by his late father Ehsan Ahmed Sheriff from its previous owner i.e., vendor from one Mr. Heggappa S/O Muniyappa and his daughter Yallamma D/O Mr. Heggappa through registered sale deed dated 15.11.1976 to the extent of 25 guntas in Sy.No.96/3 situated at Challakere village , K.R.Puram , Bengaluru and the sale deed is registered before the Sub Registrar , Bengaluru South Taluk and P.W.1 also deposed that this property was mutated in the name of his deceased father and katha has been changed in the name of deceased Ehsan Ahmed Sheriff and his father died leaving behind plaintiff No.1 to 3 as his legal heirs and they have succeeded to this property after demise of original owner i.e., Ehsan Ahmed Sheriff and this property has been subjected to property tax by BDA authority and they are paying tax from the assessment year 1994-1995 and katha certificate and katha extract has been issued as per the provision of K.M.C Act 1976 and they have also paid betterment charges to BBMP and vendors of the land Sy.No.96/3 after execution of sale deed have put in possession of the area sold in respect of 25 guntas in favour of purchaser and as such, deceased Ehsan Ahmed Sheriff was put in actual possession of 25 guntas of land, but defendant No.1 has issued notice dated 29.12.2010 addressed to deceased late Ehsan Ahmed Sheriff under Sec. 33 of BDA Act informing that BDA authority has issued preliminary and final notification for formation of layout known as KRBR Layout, 2nd Block, Bengaluru, which included land Sy.No.96/3 of Challakere village measuring 1 acre 10 guntas and in the said notice, it is informed that entire 1 acre 10 guntas was subject matter of final notification issued on 18.9.1980 and award has been passed on 18.9.1986 and compensation amount was awarded in favour of katha holders and as such, defendants have claimed that schedule property formed part of Sy.No.96/3 and they informed the plaintiffs to vacate the schedule property otherwise, the authority will demolish the existing structure in order to vacate the schedule property and it is deposed by P.W.1 that they have given reply on 3.11.2011 informing the defendants about their title and possession, but defendants refused to grant any time to give further reply and on the

very next day on 4.1.2011, defendants officials came to the schedule property and directed to vacate the schedule property, failing which, defendants will take possession by demolishing the existing building/structures and they will resume the schedule property and hence, apprehending the highhanded act of defendants. P.W.1 stated that they have approached this court for the relief of the declaration of their title and permanent injunction relief against defendants as they have no other alternative efficacious remedy to seek injunction relief. Hence, P.W.1 in his oral evidence deposed by reiterating the facts as stated in the pleadings and P.W.1 in his affidavit evidence stated that they are the legal heirs of late Ehsan Ahmed Sheriff, who has purchased 25 guntas of land in Sy.No.96/3 of Challakere village and hence, P.W.1 deposed that plaintiffs are in settled possession in respect of suit schedule property, wherein building of first floor and 2nd floor is constructed and it is subjected the property tax by BBMP authority and as such, P.W.1 has prayed for declaration of title by declaring that the plaintiffs are the owners of suit schedule property and for grant of consequential permanent injunction not to dispossess them and not to demolish the existing structure or building and P.W.1 relied upon documentary evidence marked through him as per Ex.P.1 to P.131.

10. The counsel appearing for defendant No.1 to 3 cross examined P.W.1, wherein P.W.1 admits that his father had purchased the property in the year 1976 after he verified the revenue documents prior to his purchase of schedule property as it is existed in Sy.No.96/3 of Challakere village. P.W.1 denied the suggestion that defendant No.1, BDA authority has acquired entire Sy.No.96/3 including the schedule property. P.W.1 admits that after purchase of schedule property in the year 1976, it was mutated in the name of his deceased father in the revenue records as per sale deed and his father had expired in the year 2005 and after his demise katha has been changed in the name of plaintiff No.1 to 3 in the year 1995. They have received notice issued by BBMP demanding to pay tax and accordingly, they are paying property tax to the corporation since 1995 as on today and P.W.1 denied the suggestion that BDA authority has no right to collect the tax in respect of suit schedule property. P.W.1 stated that in the schedule property there existed Masjid building and also another constructed building existed in the suit schedule property comprising of both the buildings measuring 3200 sq.ft. each and P.W.1 denied that there are no buildings constructed existed in the schedule property either Masjid or Mosque or another constructed building and P.W.1 denied that defendant No.1 had acquired entire extent of Sy.No.96/3 of Challakere village in response to the provision of Land Acquisition Act and P.W.1 admits that suit schedule property now comes in the 2nd Block of Kalyannagar, Bengaluru-43 and P.W.1 stated that his father had purchased the suit schedule property from its original owner one Mr. Heggappa S/O Muniyappa by way of registered sale deed dated 15.11.1976 and P.W.1 also denied that 1st defendant after acquisition of land Sy.No.96/3 in the year 1977 had issued mandatory notification required under Land Acquisition Act and also passed award for the acquired lands and P.W.1 denied that he has falsely deposed regarding obtaining of sanctioned plan from the competent authority and he further denied that the documents produced by him are all created for the purpose of this case and P.W.1 denied that they are in possession of suit schedule property and P.W.1 denied his knowledge regarding issuance of statutory notice under Sec. 64 of BDA Act 1976 prior to filing of the suit to the 1st defendant and P.W.1 denied that 1st defendant is the owner of suit schedule property and he is deposing false evidence in order to snatch away the schedule property and filed this false suit against defendants.

11. Plaintiffs have got examined P.W.2 as independent witness, wherein this witness deposed by way of filing affidavit evidence and P.W.2 in his affidavit evidence stated that he is family friend of plaintiff residing in the same area, where suit schedule property exists and as such, P.W.2 has stated by way of affidavit evidence that plaintiffs are in possession of building bearing its Municipal No.62, PID No.89-376-62 situated at ward No.89 of BBMP, 4th cross, Chikkamuniyappa Reddy Circle Road, Kacharakenahalli, Bengaluru, measuring 190 X 80 feet consisting of constructed building of two floors purchased by the father of the plaintiffs from one Ashfaq Ahmed and after purchase of schedule property, plaintiff has renovated and plaintiff No.2 and 3 and husband of 1st plaintiff in the year 1976 and in the schedule property there is Masjid building and also plaintiffs have let out shops to tenants and plaintiffs are in possession since 1976 without any interference or obstruction by anybody. Hence, P.W.2 deposed about the possession held by the plaintiffs in respect of suit schedule property and also deposed that on 4.1.2011 defendants officials came to the schedule property and threatened the possession of plaintiffs and also they threatened the plaintiffs of their enjoyment of schedule property and hence, there is threat of information and dispossession by the defendants in respect of suit schedule property.

12. The counsel for defendant No.1 to 3 cross examined to this witness, wherein he admits that he know plaintiff No.1 to 3 since about 25 years ago. P.W.2 do not know about survey number of schedule property, but he stated that schedule property situated over CMR Road as it comes within the limits of Kacharakenahalli. P.W.2 denied that schedule property comes within the limits of Sy.No.96/2 and P.W.2 do not know whether BDA authority had acquired land Sy.No.96/2 and P.W.2 denied that plaintiffs are not in possession of suit schedule property and P.W.1 further stated that in the suit schedule property, there are about 35 shops existed and also there is Mosque (Masjid) building is existed and P.W.2 denied that there are no shop premises nor Masjid building existed in the schedule property.

13. The plaintiffs have got examined another witness namely Irshad Ahmed Shariff as P.W.3, wherein this witness also deposed by way of affidavit evidence filed in lieu of examination-in-chief and on perusal of the affidavit evidence filed by P.W.3, wherein he deposed about the plaintiffs possession over the schedule property and also P.W.3 stated that the husband of 1st plaintiff had purchased schedule property in the year 1976 from its owner/vendors and as such, husband of 1st plaintiff and father of plaintiff No.2 and 3 came in possession of schedule property in Sy.No.96/3 and they have paid tax to BBMP and also obtained electricity connection and water and sanitary connection and as such, P.W.3 deposed about the possession held by the plaintiffs since 1976, the date of purchase of property in Sy.No.96/3 and also P.W. 3 further stated that the plaintiffs are in settled possession in respect of the suit schedule property and there is interference and obstruction by the defendants and P.W.3 stated that plaintiffs have got cause of action to file the suit as defendants have threatened the plaintiffs of demolish the existing structures over the schedule property on 4.1.2011. Hence, P.W.3 also deposed the evidence as similar to that of P.W.2 deposing plaintiffs possession in respect of suit schedule property as on the date of suit.

14. The counsel for the defendant No.1 to 3 cross examined P.W.2, wherein he admits that he know plaintiff No.1 to 3 since about 25 years ago. P.W.3 do not know about survey number of schedule property, but he stated that schedule property situated over CMR Road as it comes within the limits

of Kacharakenahalli. P.W.3 denied that schedule property comes within the limits of Sy.No.96/2 and P.W.3 do not know whether BDA authority had acquired land Sy.No.96/2 and P.W.3 denied that plaintiffs are not in possession of suit schedule property and P.W.1 further stated that in the suit schedule property, there are about 35 shops existed and also there is Mosque (Masjid) building is existed and P.W.3 denied that there are no shop premises nor Masjid building existed in the schedule property.

15. The defendant No.1 and 3 though they have appeared in the suit and filed written statement denying the plaint averments in toto and also denied the plaintiffs title and possession in respect of suit schedule property, but defendants 1 to 3 have not led any rebuttal evidence and on the contrary, counsel appearing for the defendants submitted that the defendants have no oral evidence in this case and his submission is made note in the order sheet dated 15.6.2015 and thereafter, suit is posted for arguments. After hearing the arguments of both sides and also perused the written arguments filed by the plaintiffs in this case, wherein the defendants though they have specifically contended that they have acquired Sy.No.96/3 of Challakere village by recourse to land acquisition proceedings and possession is also taken by the defendants for the formation of HRBR Layout, 2nd stage , Bengaluru for the formation of residential layout and for public purpose and actual possession of the land has been taken by issuance of notification as mandatory under Sec. 16(2) of Land Acquisition Act, but defendant No.1 to 3 have not filed any documents in respect of land acquisition proceedings by producing preliminary notification, final notification and also not produced the LAC proceedings in respect of passing of award by the Spl Land Acquisition Officer and defendant No.1 to 3 have not led any rebuttal evidence either oral and documentary evidence in this case and defendants have not placed on record any documents from their custody to show that the schedule property as shown by plaintiffs in this suit is part and parcel of Sy.No.96/3 measuring 1 acre 30 guntas of land and defendant No.1 to 3 except filing written statement have denied the claim of plaintiffs led in respect of suit schedule property and on perusal of the documentary evidence placed on record by the plaintiffs, wherein the plaintiffs have relied upon Ex.P.1 the sale deed dated 15.11.1976 and they claimed that the husband of 1st plaintiff and father of plaintiff No.2 and 3 has purchased 25 guntas of land in Sy.No.96/3 from its previous owners in respect of 25 guntas of land from its vendors namely Mr. Heggappa S/O Muniyappa and also from his daughter Smt.Yallamma and hence, plaintiffs have led their claim of title in respect of suit schedule property on the basis of Ex.P.1 sale deed. The other documents produced by the plaintiffs also shows that the property shows in the suit is subjected to property tax and katha has been mutated in the name of 1st plaintiff , but plaintiffs have not produced any documents to show that after purchase of schedule property under Ex.P.1 the name of deceased husband of 1st plaintiff was mutated in the Municipal records, whereas documents are mutated in the name of 1st plaintiff as per Ex.P.3 and Ex.P.:.4 dated 21.6.2006 and as per Ex.P.5, BDA has issued show cause notice to plaintiffs under Sec. 33 of BDA Act informing about acquisition of Sy.No.96/3 measuring 1acre 10 guntas . The plaintiffs have replied the notice Ex.P.6 vide reply dated 3.1.2011 and Ex.P.2 is the notice issued under Sec. 143 of Municipal Corporation Act to the deceased husband of 1st plaintiff dated 13.8.2002 regarding assessment and fixation of tax to the property from 1.10.1995 and directed the deceased husband of 1st plaintiff to pay the property tax one shown in the notice and on perusal of other documents produced by P.W.1, wherein P.W.1 got marked tax paid receipts marked as per Ex.P. 7 to P.19 , ex. P.34 to P.36 and Ex.P.89 to P.1 shows that they have paid property tax over the schedule property

and plaintiffs have also produced rental agreements marked through P.W.1 from Ex.P.22 to P.33 and these rental agreements/lease agreements proves the contention of plaintiffs that they have leased the shop premises constructed in the schedule property to various tenants and the tenants named in Ex.P.22 to P.33 are on occupation of their respective shop premises constructed in the schedule property and Ex.P.37 and P.38 shows that there is electricity connection supply to the schedule property belongs to late Ehsan Ahmed Sheriff dated 28.11.2015 and 22.7.1996 and there is also water connection given to the schedule property by BWSSB for the year 2004 as per Ex.P.39 and P.W.1 got marked electricity demand bills issued by BESCOM authority and also produced some payment vouchers in respect of electricity consumption charges, wherein these documents established that BESCOM authority has given power or electricity supply to the suit schedule property and plaintiffs have also produced "Nil" encumbrance certificates from 1.4.1997 to 31.3.2004 and 1.4.2004 to 9.2.2012 as per Ex.P.42 and P.43 and photographs of the schedule property are produced marked at Ex.P.44 P.57 along with their C.D marked at Ex.P.58 and plaintiffs have produced approved sanctioned plan and also produced original receipts and plaintiffs also got marked certified copy of newspaper dated 11.2.1984 issued by Information Center, Deccan Herald and they have produced original sanctioned plan approved by the Assistant Director of Town Planning, BDA, Bengaluru, which is marked at Ex.P.60 and Ex.P.61 to P.78 are the rent receipts marked through P.W.1 and on perusal of Ex.P.3 and P.4 i.e., katha extract and katha certificate, wherein the name of 1st plaintiff is entered in respect of schedule property situated in ward No.89 of Kacharakenahalli, wherein new No.62 situated at 4th Cross, Chikkamuniyappa Reddy, Circle road on 21.6.2006, wherein this property is assigned with PID No.89-376-62 and on perusal of Ex.P.85 and P.86, wherein as per this katha certificate, the name of 1st plaintiff is came to be entered in respect of Municipal No.63 situated at 4th Cross, Chikkamuniyappa Reddy circle, Bengaluru assigned with PID No.89-376-63 and as per katha extract, dated 18.7.2006 as per Ex.P.86 name of 1st plaintiff is shown to the extent of sital area measuring 5070 and katha certificate issued on 5.3.2015 at Ex.P.87 shows the name of 1st plaintiff as kathaholder of property New No.62 situated at 4th cross, Chikkamuniyappa Reddy Road circle, Kacharakenahalli, Bengaluru ward No.89 assigned with PID No.89-376-62 and as per katha extract Ex.P.88, the 1st plaintiff's name is appearing for the sital area measuring 15262.5 square feet and total built up area 5760 as per Ex.P. 88. Hence, from perusal of these documents produced and marked through P.W.1, wherein the plaintiffs have established their settled possession over the schedule property and plaintiffs also proved that there is construction of building consisting of shops and also there is mosque/masjid building in an area measuring 480 square feet and as such, by considering the documents placed on record coupled with P.W.1 to 3, wherein the plaintiffs have proved their settled possession in respect of suit schedule property as on the date of suit. Though plaintiffs have relied upon Ex.P.1 the sale deed alleged to have been executed by vendors/owners of schedule property namely one Mr. Heggappa S/O Muniyappa and his daughter Yallamma in favour of deceased husband of 1st plaintiff under this sale deed dated 15.11.1976/18.11.1996, wherein plaintiffs have not produced any documents to show that the name of deceased Ehsan Ahmed Sheriff name was mutated in respect of 25 guntas of land purchased by him under Ex.P.1 in Sy.No.96/3 of Challakere village and even plaintiffs have not produced any documents to show that name of husband of 1st plaintiff and father of plaintiff No.2 and 3 have been mutated on the basis of sale deed in the municipal records immediately for the year 1976-1977 after the execution of the sale deed on 15.11.1976 and plaintiffs have not produced documents to show that the name of deceased Ehsan Ahmed Sheriff was mutated in respect of

purchased property as per Ex.P.1 from 1976-1977 till the year 2006 and it is admitted fact that Ehsan Ahmed Sheriff died in the year 2005 and thereafter, plaintiff No.1 to 3, who are the LR's of the deceased Ehsan Ahmed Sheriff got entered their names in the municipal records by change of katha entries, wherein the documents relied by the plaintiffs as per Ex.P.3 and P.4 and that Ex.P.85 to P.87, wherein the name of 1st plaintiff was mutated as katha holder of schedule property after demise of her husband Ehsan Ahmed Sheriff, but there are no documents to show that the sale deed Ex.P.1 is acted upon in the revenue records in the name of deceased Ehsan Ahmed Sheriff and plaintiffs have not produced any documents by producing katha extract, katha certificate issued by the Municipal Authority to show that the name of deceased Ehsan Ahmed Sheriff was immediately mutated as per Ex.P.1. However the plaintiffs by producing Ex.P.3 and P.4 and Ex.P.86 and P.87 have proved that now the katha of the schedule property is standing in the name of 1st plaintiff, who is the wife of deceased Ehsan Ahmed Sheriff and as such, the document Ex.P.1 dated 15.11.1977, which was not acted upon into the revenue records and name of husband of 1st plaintiff was not mutated relying upon Ex.P.1. On the contrary, considering the evidence of P.W.1 and documents produced and marked through P.W.1 from Ex.P.2 to P.106, wherein the plaintiffs have proved their settled possession in respect of suit schedule property and also further they proved that the schedule property measuring in sital area to the extent of 15262.5 square feet including two fully constructed buildings consisting of two floors constructed in an area of 3200 square feet each and this fact is proved by the plaintiffs by producing photographs( 14 photographs with C.D) which are marked from Ex.P.44 to P.58 and it shows the existence of Mosque(Masjid) as per these photographs and also the schedule property consisting of shop premises, which are leased in favour of different tenants. But plaintiffs have not produced any documents to show that on the basis of Ex.P.1, the name of deceased Ehsan Ahmed Sheriff was mutated as katha holder in respect of property mentioned in Ex.P.1. Hence, considering the evidence of P.W.1 to 3 and documents produced by the plaintiffs, wherein the plaintiffs have failed to prove their absolute title in response to Ex.P.1, but plaintiffs have proved their settled possession in respect of suit schedule property as described in the plaint schedule. The defendants No.1 to 3 have relied upon their defense contending that the defendant No.1 authority has acquired Sy.No.96/2 measuring 2 acres 5 guntas and Sy.No.96/3 measuring 1 acre 30 guntas under the provision of Land Acquisition Act by following the procedure as contemplated under Land Acquisition Act and also defendant No.1 to 3 contended that defendant No.1 authority took possession of both survey numbers lands by issuance of notification issued under Sec. 16(2) of Land Acquisition Act and also publication was made in the official gazette in respect of notification issued under Sec. 16(2) of the Act. But on perusal of the suit filed, wherein defendants except issuance of Show Cause Notice to the deceased husband of 1st plaintiff as per Ex.P.5 issued under Sec. 33 of BDA Act, the defendants have not produced any documents in this suit by producing land acquisition documents to show that the defendant No.1 authority has acquired the schedule property in the acquisition proceedings initiated in the year 1977 either under preliminary notification or under final notification and there is no iota of evidence produced by defendants to show that the schedule property, which is taken possession by the defendant No.1 authority in the year 1980, but on the contrary, it appears that the plaintiffs are in settled possession and they are in actual possession of suit schedule property as on the date of suit and also the plaintiffs have inducted tenants by using the shop premises and also there exists mosque/masjid building and also there is constructed building of two floors in existence in schedule property as visible in photographs produced by the plaintiffs in this case. Hence, by appreciation of evidence of

P.W.1 to 3 and coupled with documents marked through P.W.1 , wherein plaintiffs have failed to prove their title as per Ex.P.1, the plaintiffs are held to be in actual possession over the suit schedule property and they have leased shop premises to tenants as per lease agreements and as such, it appears that plaintiffs are in possession of schedule property right from the year 1976 and also they are in possession of the schedule property as on the date of suit and as such, plaintiffs have proved their settled possession in respect of suit schedule property. The plaintiffs have filed I.A.No.2 at the time of filing the suit seeking for grant of injunction order against defendant No.1 to 3 and this I.A.No. 2 filed by the plaintiffs was contested by defendant No.1 to 3 by filing objections in the form of written statement, wherein this court decided I.A.No.2 on merits vide order dated 27.1.2011, wherein I.A.No.2 filed by the plaintiffs under Order 39 Rules 1 and 2 came to be allowed and ad-interim temporary injunction was granted restraining defendant No.1 to 3, their agents, servants, henchmen and officers are restrained from dispossessing, interfering with peaceful possession and enjoyment of the suit schedule property by the plaintiffs and defendants are also restrained not to demolish the existing buildings/structures existed in the suit schedule property. It is a fact that defendant No.1. to 3 have filed I.A.No.3 praying for rejection of the plaint and have raised maintainability of the suit by filing this application under Order 7 Rule 11(d) read with Sec.9 of CPC and this application was heard and disposed of by this court along with I.A.No.2., wherein I.A.No.3 filed by the defendants came to be dismissed by considered order passed by this court on 27.1.2011. It appears that defendant No.1 to 3 have preferred MFA against orders passed on I.A.No.2 dated 27.1.2011 before the Hon'ble High Court of Karnataka and this MFA preferred by defendants in MFA No.1871/2001(CPC) came to be decided before Hon'ble High Court on 4.2.2015, wherein the Hon'ble High Court in para No.7 of MFA judgment relied upon the Division Bench decision of Karnataka High Court reported in ILR 2011(4) KAR 460 in the case of John B.James and others Vs Bengaluru Development Authority and disposed of this MFA preferred by defendant No.1 to 3, wherein Hon'ble High Court directed this court to dispose of the suit within the time stipulation of 9 months from the date of order dated 4.2.2015. Hence, this court allowed I.A.No.2 on 27.1.2011 after considering the case made out by the plaintiffs holding that plaintiffs have got prima facie case and also balance of convenience lies in their favour and I.A.No.3 filed by the defendants already rejected. Hence, from appreciation of evidence placed on record and defendants have not adduced any rebuttal evidence and also not produced any documents in this case. Hence, at this stage plaintiffs have failed to prove their absolute ownership in respect of suit schedule property placing reliance of Ex.P.1. But on the contrary, plaintiffs have established their settled possession over the schedule property as on the date of suit and as such, the suit filed by the plaintiffs is held to be maintainable in order to protect their possession, wherein the defendants have no authority to dispossess the plaintiffs and not to interfere their possession unless following due process of law as per the Division Bench decision of our own High Court reported in ILR 2011(4) KAR

460. Hence, I hold that plaintiffs have not established their title relying upon Ex.P.1, but plaintiffs proved their settled possession in respect of suit schedule property as on the date of suit and this schedule property is subjected to property tax assessed by the local authority i.e., BBMP and as such, plaintiffs have proved the alleged interference by defendant No.1 and its officials by proving cause of action after issuance of notice under Sec. 33 of BDA Act as per Ex.P.5 and also the plaintiffs have proved that on 4.1.2011, the defendant No.1 officials visited the schedule property and threatened to vacate, otherwise they demolish the existing building/structures by giving threat of demolition and



dispossession of the plaintiffs. Hence, plaintiffs have proved cause of action as stated in para No.9 against defendants. But defendants fails to prove and to establish that the existing schedule property relied by the plaintiffs in the suit is taken possession by them by recourse to the land acquisition proceedings existed in Sy.No.96/2 and 906/3 and further the contention of defendants that the suit is not maintainable for want of statutory notice under Sec. 64 of BDA Act is not maintainable. This contention is not tenable, wherein plaintiffs have filed I.A.No.1 in this suit under Sec. 64 of BDA Act and have claimed dispensation of mandatory suit notice under Sec. 64 of BDA Act and this court entertained I.A.No.1 and permitted the plaintiffs to institute the suit without issuing the statutory notice and I.A.No.1 filed by the plaintiffs came to be allowed on 10.1.2011. Hence, the contention of defendant No.1 to 3 that suit is not maintainable for want of statutory notice under Sec. 64 of BDA Act is not tenable, whereas I.A.No.2 is allowed by this court on 10.1.2011. The plaintiffs have produced certified copy of judgment and decree by producing documents Ex.P.107 to P.127 by producing these judgments and decrees passed by various City Civil Court halls in respect of suit filed by various pas against BDA authority contending that in case of settled possession the Civil Court has got discretion to grant injunction relief as prayed by the plaintiffs and counsel for plaintiffs relied upon various citations referred in this case as referred in the written arguments, wherein the decision referred reported in ILR 2011(4) KAR 460 in the case of John B.James and others Vs Bengaluru Development Authority and another which is reported in ILR 2000 Karnataka page 3114 and in this decision, it is held that BDA was not illegally dispossessed the persons within settled possession, but whereas BDA authority shall have to take possession of property by recourse to provision of Karnataka Public Premises Act for the purpose of taking possession. Hence, the decision relied by the plaintiffs are applicable to the facts of the case on hand. The other documents relied by the plaintiffs as per Ex.P.68, wherein it is the document obtained by plaintiffs under Right to Information Act, wherein the member of Town Planning attached to BDA has issued this letter stating that in respect of Sy.No.96/3 of Challakere village in this explanation, it is built up area and in view of this letter dated 9.12.2009 annexed with map Ex.P.128 and P.129, wherein the Sy.No.96/3 is well developed area, which is consisting of buildings as per Ex.P.68. Hence, plaintiffs have proved their settled possession in respect of suit schedule property as on the date of suit and as such, the settled possession of plaintiffs will have to be protected by the court of law unless pas are evicted by the real owner of the properties by due process of law. Hence, plaintiffs are entitled for permanent injunction relief as sought for, the plaintiffs have failed to prove their title over the schedule property as per Ex.P.1 and hence, I answer Issue No.1 partly in affirmative and partly in negative, Issue No.2 in affirmative, Issue No.3 and 4 in negative against defendants by recording negative findings.

16. Issue No.5: The defendants in their written statement contended that the suit is not valued properly and court fee paid is insufficient. Though this contention is taken in the written statement by defendants, but this issue is seriously argued by the counsel for defendants at the time of addressing his arguments. On the contrary, the plaintiffs have filed valuation slip at the time of filing the suit and have valued the suit property for the purpose of court fee and jurisdiction and have paid court fee/valuing the suit under Sec. 24(b) of Karnataka Court Fee and Suit Valuation Act and plaintiffs have valued the market value of the property at Rs.3,81,575/-. Hence, I hold that the payment of court fee and valuation made by the plaintiffs appears to be just and proper and as such, defendant No.1 to 3 failed to prove Issue No.5. Accordingly, Issue no.5 is answered in negative.

17. Issue No.6: The plaintiffs have prayed for declaration relief seeking declaration of their title as absolute owners in respect of suit schedule property and permanent injunction relief against defendants in their suit filed against defendant No.1 to 3, but this court while considering Issue No.1 and 2, wherein this court has reached to the conclusion that plaintiffs have failed to prove Ex.P.1 the sale deed, wherein there are no documents to show that the name of husband of 1st plaintiff came to be entered in respect of 25 guntas of land in Sy.No.96/3 Challakere village immediately after execution of sale deed on 15.11.1976, but however, the husband of 1st plaintiff died in the year 2005 and thereafter, 1st plaintiff got mutated her name being wife of deceased Ehsan Ahmed Sheriff and mutation of 1st plaintiff's name is appearing on 21.6.2006 and from 11.7.2006 as katha holder of schedule property and plaintiffs have not produced any source of title, how the vendors namely Mr. Heggappa and his daughter Smt. Yallamma have acquired title in respect of Sy.No.96/3 of Challakere village to convey 25 guntas of land in favour of late husband of 1st plaintiff. Hence, the question of title is not proved and established by the plaintiffs, wherein this court cannot grant declaratory relief in favour of plaintiffs based upon the other revenue documents marked through P.W.1. Hence, plaintiffs have failed to prove Ex.P.1, the sale deed relied by them. However plaintiffs have established their settled possession in respect of suit schedule property and also further proved that they are in possession of area measuring 15,262.5 square feet including two fully constructed buildings consisting of two floors in an area measuring 3200 square feet each as described in the plaint schedule existed in Sy.No.96/3 of Challakere village and plaintiffs also proved that there is Mosque/Masjid building situated over the schedule property as on the date of suit and plaintiffs also proved and established regarding imminent threat of demolition of the existing buildings by defendant No.1 authority and also there is interference and obstruction by defendant No.1 to 3 over the possession of the plaintiffs and plaintiffs have proved the cause of action as narrated in para No.9 of the plaint against defendant No.1 to 3 and hence, in order to protect the settled possession of the plaintiffs and as per the law laid down by the Hon'ble Apex Court , wherein even unauthorized occupants or trespassers cannot be evicted illegally without following due process of law. Hence, relying upon the decision reported in ILR 2000 Karnataka page 4134, wherein the defendants shall have to take possession of the schedule property by due process of law until then the plaintiffs settled possession over the suit schedule property shall have to be protected by grant of permanent injunction relief against defendant No.1 to 3. Hence, with these observations I hold that plaintiffs are not entitled for the relief of declaration of title as per Ex.P.1. Hence, with these observations, I answer Issue No.6 partly in affirmative and partly in negative.

18. Point No.7: In view of my findings submitted on Issues No.1 to 3, the suit filed by the plaintiff deserves to be partly decreed against defendant No.1 to 3. Hence, I proceed to pass the following.

ORDER The suit filed by the plaintiffs is partly decreed against defendant No.1 to 3. No order as to costs.

The prayer of declaration of title prayed by the plaintiffs relying upon Ex.P.1 is rejected.

It is further ordered and decreed that defendants, their officers, men, servants or any other persons claiming under defendant No.1 are hereby restrained by grant of injunction order from interfering in the settled possession of plaintiffs and enjoyment of the suit schedule property by the plaintiffs or

from demolition of existing buildings/structures in the suit schedule property or illegally dispossessing the plaintiffs from the schedule property unless and until the defendants followed the due process of law.

Draw decree accordingly.

{Dictated to the Judgment-Writer transcribed by her, corrected and then pronounced by me in open court this the 4th day of November 2015.} (S.V.KULKARNI) XI ADDL.CITY CIVIL JUDGE BANGALORE CITY.

ANNEXUERE List of witnesses examined for plaintiff:-

PW.1	Sri. Zubair Ahmed Shariff
P.W.2	Sri.Jayaram
P.W.3:	Irshad Ahmed Shariff

List of documents exhibited for plaintiff:-

Ex.P.1 Registered sale deed dated 15.11.1976 Ex.P.2: Special Notice issued by the B.M.P dated 13.8.2002 Ex.P.3: Katha extract Ex.P.4: Katha certificate Ex.P.5: Show cause notice under Sec. 33 of BDA Act 1976 to Ahmed Shariff Ex.P.6: Reply given by plaintiff to the Executive Engineer, BDA, Bengaluru Ex.P.7 to P.18: Tax paid receipts Ex.P.19: Receipt for having paid betterment charges Ex.P.20 to P.33 Rental agreements executed by tenants of plaintiff in the occupation of the suit schedule property Ex.P.34 to P.36: Tax paid receipts Ex.P.37 Power sanctioned letter by KEB Ex.P.38 & 39: Letter given by BWSSB for water supply connection and sanitary connection Ex.P.40 Electricity Demand bills Ex.P.41: Rent receipt Ex.P.42 & P.43: Encumbrance certificates Ex.P.44 to P.57 Photographs Ex.P.58: C.D Ex.P.59: Tax paid receipt Ex.P.60: Approval plan Ex.P.61 to P.78: Rent receipts Ex.P.79 to P.84 Electricity bills Ex.P.85 and P.86 Katha certificate and katha extract issued by the corporation authority dated 18.7.2006 Ex.P.87 & P.88 Another katha certificate dated 5.3.2015 and katha extract dated 5.3.2015 Ex.P.89 to P.91 Three tax paid receipts Ex.P.92 to P.100 Electricity Receipts consumption charges Ex.P.101 to 106: Electricity receipts consumption charges Ex.P.107 & 108: Copy of judgment and decree in O.S. No.133/1992 of CCH No.12 Ex.P.109 and 110 Certified copy of judgment and decree in O.S. No. 7797/2000 of CCH12 Ex.P.111 & 112: Certified copy of judgment and decree in O.S. No. 8240/2011 Ex.P.113 & 114: Certified copy of judgment and decree in O.S. No.2764/2001 of CCH No.9 dated 31.10.2012 Ex.P.115 & P.116: Certified copy of judgment and decree in O.S. No. 15286/2004 of CCH No.22 dated 20.7.2010 Ex.P.117 & 118: Certified copy of judgment and decree in O.S. No.6725/2006 of CCH No.12 dated 13.10.2009 Ex.P.119 & 120: Certified copy of judgment and decree in O.S. No.263/2011 of CCH No.41 dated 30.7.2014 Ex.P.121 & 122: Certified copy of judgment and decree in O.S. No. 26987/2013 of CCH No.22

dated 7.2.2015 Ex.P.123 & P.124: Certified copy of judgment and decree in O.S. No.26245/2009 of CCH No.22 dated 9.7.2013 Ex.P.125: Application filed under RTI 2005 dated 25.4.2014 town planning authority, BDA Ex.P.126: Certified copy of reply given by the T.P.Act, BDA dated 9.12.2008 Ex.P.127: Certified copy of reply BDA dated 9.12.2008 Ex.P.128: Area statement approved by the Executive Engineer, BDA Ex.P.129: Certified copy of sketch map in respect of Sy.No.96/3 and 97/3 Ex.P.130: Certified copy of paper publication dated 11.2.1984 in Deccan Herald News paper Ex.P.130(a)\_ Entry in Ex.P.130 Ex.P.131: Modified Layout plan of Hennur Banasvadi dated 4.11.2011 certified by Assistant Director of Town Plannin (N) BDA Bengaluru  
List of witnesses examined and documents exhibited for defendant/s:

..Nil..

XI ADDL.CITY CIVIL JUDGE, BANGALORE CITY