

Shree Sharada Vidya Mandira vs Sri Lakshmiddevinagara Raja on 10 January, 2022

KABC010177262002

Form
No.9
(Civil)
Title
Sheet
for
Judgme

PRESENT: SMT. PRASHANTHI.G.

B.A (Law) LL.B.,
XXVII Additional City Civil Judge.

Dated this the 10 th day of January 2022

PLAINTIFF:

Shree Sharada Vidya Mandira
Education Society ®
(registration No. 453/1987-88)
A society registered under the
provisions of the Karnataka
Societies Registration Act, 1960,
Represented by its Hon. Secretary
B.R.Haridas, aged about 51 years,
S/o Ramaiah, No. 100,
Laggerpeenya post, Bengaluru
North Taluk, Bengaluru-560 058.

[By Pleader Showri H.R. &
Associates]

/v e r s u s/

DEFENDANTS:

1. Sri Lakshmiddevinagara Raja
Ratnam Education Society ®
Registration No. 8/1992-93,
A society registered under the
provisions of the Karnataka
Societies Registration Act, 1960
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represented by its Hon/secretary,
S.N. Manjulamma, aged about 61
years, w/o K. Kempanna @
K.Shivaprasad No.145,

c/o K. Shivaprasad L.Devinagiri,
Bengaluru -560 086.

2. The Commissioner for Public Instructions In Karnataka, New Public Offices, Nrupathunga Road, Bengaluru-560 001.
3. The Director of Public Instructions, Nrupathunga Road, Bengaluru.
4. The Deputy Director of Public Instructions, Bangalore North District, Government Central Junior College Premises, K.G.Road Bengaluru-560 009.

D1 - By Sri BBM, Advocate
D2 to D 4 - ADGP
D1 (a) - By Sri VNP,
D5 to D9 - Exparte

Date of institution of the suit	:	1/10/2002
Nature of the suit	:	For declaration and injunction
Date of commencement of recording of the evidence	:	16/7/2015
Date on which the Judgment was pronounced.	:	10/1//2022
	: Year/s	Month/s
Total duration		Day/s
	19	3 9

(Prashanthi. G)
XXVII ACCJ: B'LORE.
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Plaintiff filed this suit against the defendants for the relief of declaration and injunction for the following reliefs;

a) declaring that the Society - plaintiff "Shree Sharada Vidya Mandir Education Society (Registered)" is entitled to manage and run the School Shree

Sharada Vidya Mandir Nursery and Primary School
and High School (Kannada and English medium from
LGK, UKG, 1st to 7th and 8th to 10th standard classes)
in the premises bearing old No. 101-6/5 and 100/86
and having new No.831 and 832, situated at Laggere
Peenya post, Bengaluru North Taluk, Bengaluru-560
058 and consequently, directing the Society, first
defendant Shree Lakshmi Devinagar Rajarathnam
Education Society (Registered) No. 145, situated at
Lakshmiddevinagar, Bengaluru-96 to handover the
management of the aforesaid School together with all
the records, furniture etc., so as to enable the society
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plaintiff to run and manage the school mentioned
above in the said premises in accordance with law.

b) Grant permanent injunction restraining the
first defendant, their agents, their servant or anybody
on their behalf from shifting the school from the
premises bearing old No.101-6/5 and 100/86 and
having new No. 831 and 832, Laggere, Peenya post,
Bengaluru North taluk, Bengaluru. Fit and proper in
the facts and circumstances of the case, in the
interest of justice and equity.

c) Grant cost of this suit and issued such othe
rand further reliefs as this Hon'ble Court deem fit and
proper in the facts and circumstances of the case; and

d) Direct the defendant no.1 to produce the

books of accounts of Shree Sharada Vidyamandira School from Pre-nursery to High School both Kannada and English medium from 1998-99 to till date and award mesne profit to the plaintiff.

2. The brief facts of the plaintiff's case are as under:

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The plaintiff is a society registered under the provisions of the Karnataka Societies Registered under the provisions of the Karnataka Societies Registration Act, 1960. The main object of the plaintiff-society is to impart education to children/ students in English and Kannada medium. One C.Thimmaiah was the founder of the Hon. Secretary of the society and the Society was running a school in the name and style "Shree Sharada Vidya Mandir Nursery and Primary School", in the premises bearing No.900 A, situated at Laggerepeenya post, Bengaluru North taluk, Bengaluru-58.

The then office bearers of the Managing Committee of the plaintiff-society passed a resolution on 8/3/1991 and constituted a new Managing Committee to management of the same to the new Managing Committee.

Since the then school mentioned above could not be manage and run in the said premises bearing No.900 A, the new Managing Committee sought

permission of the concerned authorities of the
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education department on 16/06/1993 to shift the
same to the present premises bearing Sy.No. 100
belonging to one R.Nagrajappa, situated at Laggere,
Peenya Post, Bengaluru North Taluk, Bengaluru -
560 0058. The above mentioned school was started in
the year 1987-88. There were nursery, LKG, UKG and
1st standard classes in the school in English and
Kannada medium. When the school was shifted to the
new premises mentioned above bearing Sy.No. 100
there were classes bearing Sy.No. 100 was obtained
one lease from the said L.R.Nagarajappa.

The plaintiff-society has deposited a sum of
Rs.3,000/- towards stability fund for recognition of
the said school. As per the rules, the 2 nd defendant
has conducted an enquiry and made a spot inspection
regarding the management of the school and grant of
recognition to it.

When the matter stood like this, the defendant
no.1 - society sought for permission to start classes
from 5th standard and onwards in English medium in
the name and style "Shree Sharada Vidya Mandir
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English Medium School", showing that the school is
being run in the very same premises bearing Sy.No.
100 which belongs to the plaintiff-society. On the

basis of the same, the 2nd defendant gave permission.

In the meantime, the defendant no.1 - society filed a suit against the President and Hon. Secretary of the plaintiff-society and also the defendants 2 and 3 in O.S.No.4509/98 for bare permanent injunction restraining of the school being run in the premises bearing Sy.No. 100 mentioned above. The said suit was dismissed as withdrawn.

Thereafter, the defendant no.1 - society filed another suit regarding the very same cause of action in O.S.5315/1998 seeking the very reliefs mentioning a different premises bearing No.145. In the said suit, the plaintiff-society, 1st defendant therein sought for interim injunction against and defendant therein restraining them from interfering with the day to day functioning of the plaintiff-society. Though it was held that the plaintiff Society (1 st defendant) has not made out a prima facie case, interim injunction was
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granted in its favour. As against the order of interim injunction, defendants 1 and 2 in the said suit filed MFA No. 1792/1999 which was dismissed on the ground that defendants 1 and 2 (appellants) are not aggrieved parties because the injunction sought for in the suit is in respect of the premises bearing No.145. Therefore, the first defendant has prevented the plaintiff from functioning and managing the said

school and trespassed into and collected fees from the students/ children in the name of the plaintiff. In this connection, the plaintiff-society has also filed a complaint against the defendant no.1 - society and others and a case was registered against them in Cr.No.81/2000, and now after investigation the charge sheet was filed and now the case is pending trial in C.C.No.16664/2000 before the VII Addl. Chief Metropolitan Magistrate, Bengaluru. However, the plaintiff-society could not prevent the defendant no.1 -society from illegal interference. Therefore the plaintiff-society approached the second defendant to de-recognise the school in question run and managed by the defendant no.1 -society in the said premises bearing no.100 which belongs to the plaintiff-society. On the basis of the same, the authorities, concerned of Education Department conducted an enquiry held that the defendant no.1 -society is running and managing the said school suppressing the real facts as stated above. A copy of the report submitted by the competent authority, the plaintiff-society filed an application before the authorities of Education Department to give permission to it to manage and the defendant no.1 -society from running and run the school in question after de-recognise the defendant no.1 -society from running and managing the same.

In view of the fact that the defendant no.1 -society is not entitled to run and manage the school, plaintiff-society is entitled to run and manage the same and in the event, the competent authority were to give permission, the defendant no.1 -society may prevent the plaintiff-society from running and managing the same. Therefore, from 1999 to 2000, the defendant no.1 -society illegally manage and run the school and
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prevented the plaintiff-society from managing and running the same.

The cause of action for the suit arose when the plaintiff-society was formed in the year 1987-88 and subsequently when the order vide document No.13 was passed and subsequently when the plaintiff-society sought for permission to run and manage the school in question after de-recognize the defendant no.1 -society from running and managing the same as per the representation vide document no.16 and on other subsequent dates within the jurisdiction of this Court.

Accordingly, prayed to decree the suit in the ends of justice.

3. After the service of the summons, the defendant no.1 appeared through his counsel and filed written statement. The defendants no.2 to 4 did not appear and contest the case of the plaintiff.

Therefore, they are placed exparte.

4. The main contentions of the defendant no.1

in the written statement are as under:

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The suit of the plaintiff is not maintainable either in law or facts of the case.

The first defendant is an educational society registered under the provisions of Karnataka Societies Registration Act, dated 20/4/1992.

The main object of the first defendant is to impart education to the students, for that reason, it has established institution viz., Shree Sharada Vidya Mandira in the year 1992 -93 at Sy.No. 100 of Laggere village of Yeshvanthapura hobli. Immediately after the establishment of the institution, the first defendant society started the class for the first standard in the year 1992-93 itself. The first defendant submits that one Sri L.R.Nagarajappa s/o N.B.Ramanna is the owner of the property bearing Sy.No. 100. Since the 1 st defendant has established the institution he had entered into an rent agreement on 28/4/1993. The plaintiff was working as a teacher in the said institution right from the year 1992. 1 st defendant authorised the plaintiff as well as another teacher by name R.N.Somashekar to enter into an rental agreement with owner Nagarajappa in the name of the society. Eversince the date of agreement, the first

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defendant is running an institution in the said premises, now it has been numbered as 145. In the year 1996, an application was filed seeking the permission of the 4th defendant to start the 5th standard. On 2/4/1997, a report was filed by the Three Men Committee. Accordingly, permission was granted in favour of the 4th defendant.

The third defendant has issued a registration certificate on 18/12/1998 for having granted permission to start 5th standard English Medium Class. In the year 1999, an application was filed before the second defendant in order to start the 8 th standard class. After examining the documents, sanction was accorded vide order dated 3/5/1999. Further, 9th and 10th standard were also started in the year 2000-2001 and 10th standard in the year 2001-2002 after obtaining the permission from the concerned authority.

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Subsequently, 3rd defendant accorded permission to start Kannada medium 8th standard for the year 2000-01, 9th standard for the year 2001-02 and 10 th standard for the year 2002-03 as per the order dated 15/3/2001. Defendant no. 2 to 4 renewed the recognition granted to the institution which is run by the defendant no.1 -society from 1 st standard to 10th standard in both medium of instructions vide

notification dated 3/7/2002, 10/7/2002, 4/10/2002
and 25/10/2002.

The institution is now having the strength of
around 800 students from 1st standard to 10th
standard and thereby since the premises no. 100 is
not sufficient. The institution started running at
No.86, 4th cross of Laggere main road. In view of the
above facts, the plaintiff is not entitled to any reliefs.
Therefore, the suit is liable to be dismissed.

The plaintiff has tampered the rental agreement
dated 28/4/1993 which is the document no.4
mentioned in the plaint. The original rental agreement
is in the possession of the 1st defendant. The plaintiff
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has deliberately with oblique motive has inserted
Shree Sharada Vidya Mandira Shale by removing the
Raja Ratnam Education Society. The plaintiff has not
approached the Court in clean hands. The plaintiff
has no legal right, title and interest over the Raja
Ratnam Education Society which is being run in
Sy.No. 100 of Laggere village. During the pendency of
the suit, the Block Education Officer, North Range
No.1 had issued an endorsement dated 13/12/2002
to the plaintiff rejecting this application for
registration of the institution on the ground that no
school is running in the name of Shree Sharada Vidya
Mandira Kannada Primary School at No. 900A, Peenya

Post of Laggere. The defendant n. 2 to 4 recognised the defendant no.1 -society is running an institution viz Shree Sharada Vidya Mandira at Premises No.100, door no. 145 at Laggere village and it itself presupposed that, the plaintiff has not made any case before this Court in order to grant the reliefs.

This defendant has no comment with respect to the averments made in para no. 3 and 4 of the plaint.
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Further, the averments made in para no.5 of the plaint are specifically denied. At no point of time, the school has been shifted to the premises bearing no.100 situated at Laggere and on the other hand, the defendant no.1 -society is running an institution after getting permission from the Education Department and recognition also renewed from time to time to run the school in Sy.No. 100 of Laggere village. In respect of the lease deed dated 28/4/1993, the defendant no.1 submits that, plaintiff was working as a teacher under the first defendant -institution and as such the first defendant authorised the plaintiff as well as another teach in order to enter into an lease agreement. The plaintiff has signed the agreement only on behalf of the defendant no.1 -society and not an individual capacity. The averments made in para no.7 and 8 of the plaint are specifically denied. The allegation that the first defendant sought for

permission in order to start the classes from 5th standard onwards in English medium in the name and style of Shree Sharada Vidya Mandir English 16 O.S.6729/2002 Medium School showing that the school is being run in that premises. Shree Sharada Vidya Mandira which is being run in Sy.No. 100 belongs to the first defendant and when a request was made by the defendant to start the school, the same was granted in favour of the defendant.

This defendant has no comments with regard to the plaint averments stated in para no.8 of the plaint. No doubt, this defendant has filed a suit in O.S.No.5315/1998 on different cause of action, and by furnishing the new door number in Sy.No. 100 and the Court clearly found that, the plaintiff is unnecessarily interfering with the functioning of the first defendant and therefore passed the interim orders which came to be confirmed by the Hon'ble High Court of Karnataka in MFA No. 1792/1999. The first defendant did not suppress any facts before the Court and his statement is also supported by the documentary evidence, on the other the plaintiff has approached the Court with tampered documents.

Therefore, he is not entitled for any reliefs from the 17 O.S.6729/2002 hands of this Court. Whatever the permission granted

in favour of the first defendant is only in accordance with the law and institution run by the defendant no.1 is after obtaining the permission from the concerned authority. The first defendant is legally managing the institution.

The suit is barred by limitation, and there is no cause of action for the suit. Suit is not properly valued and therefore, the plaintiff is not entitled for any reliefs from the hands of this Court. The plaintiff worked as Teacher in the first defendant - institution from 1992 to 27/1/1998. Prior to leaving the employment with the first defendant, on the basis of the report of the Block Education Officer, the 4th respondent has issued a show cause notice dated 23/12/1999 regarding renewal of the recognition stating that the plaintiff and other teachers are not holding qualification in order to work in the institution.

For the above said reasons, prays to dismiss the suit with exemplary costs in the ends of the justice.

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5. After the amendment, the first defendant filed additional written statement contending that, the prayer sought by the plaintiff to amend the prayer column of the schedule property which is shifted from Sy.No. 100 to 100/6, 100/8 and also in the cause title is different from the reliefs sought by the plaintiff. The

actual prayer of the plaintiff is that, their school is entitled to manage and run the premises bearing no.100. After the orders passed by this Court, the legal right of the plaintiff is to include prayer column and cause title, but instead of mentioning the same, he has included Sy.No. 100/6 and 100/80 which eventually creates the new suit.

It is submitted that Sri Haridas was working as a teacher in the school run by the defendant no.1 -society and further at no point of time, he or the plaintiff - society was managing the school in premises no. 145. Pursuant to the changing circumstances, the school run by the defendant no.1 was shifted from premises No.145 to Sy.No. 100/6 and 100/86, new no. 831 and 832 i.e., the own
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property of the defendant no.1 -society. The same was purchased by them for a valuable consideration. From the year 1998, the defendant no.1 is running the school in the said premises from his own hard earned money and further he has invested huge amount for the purchase of the lands, constructing of the building and also for the furniture and other equipments essential for the smooth running of the school. The plaintiff has not invested a single rupee for the school of the defendant no.1 and as a result the plaintiff's claim for the mesne profits is not maintainable and

same has to be rejected in limine.

The plaintiff-society and defendant no.1 -society is altogether different and both societies are independent. Further the defendant no.1 -society in its individual capacity is running the school. Therefore, plaintiff has no right to claim the records of defendant no.1 -society. Therefore, the claim of the plaintiff is to be dismissed in limine. Accordingly, prayed to dismiss the suit in the ends of the justice.

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6. On the basis of the pleadings of the parties, my predecessor in office has framed the following issues and additional issues for consideration:

- (1) Whether the plaintiff society proves that it is entitled to manage the school as per its object to impart the education?
- (2) Whether it further proves the alleged apprehension of shifting of the school from premises No.100/6, 100/18 of Laggere, Bangalore North Taluk by the defendants? [Deleted as per the orders dated 27/8/2021 and re-framed as under:

Whether the plaintiff is entitled to the permanent injunction restraining the 1st defendants, their agents, their servants or anybody on their behalf from shifting the school from the premises bearing old No.101-6/5, and 100/86 and having new Sy.No. 831 and 832 of Laggere, Peenya Post, Bangalore North Taluk, Bangalore?

- (3) Whether defendant No.1 proves the due shifting of the school

after issuance of show cause
notice on 23/12/1998 by
DDPI?

21 (4) What decree or order? 0.S.6729/2002

ADDITIONAL ISSUE FRAMED ON
30/5/2019:

(1) Whether the plaintiff proves
that he is entitled to the mesne
profits as he claimed?

7. In order to prove the case, the plaintiff
examined PWs.1 to 5 and got marked Ex.P1 to
Ex.P125 and closed their side of evidence. On behalf
of the defendants, DWs.1 to 5 are examined and got
marked 70 documents as per Ex.D1 to Ex.D70 closed
their side of evidence.

8. Heard both sides and perused the entire
records of the case.

9. My findings on the above issues are as
under:

Issue No. 1)In the negative;

Issue No. 2)In the negative;

Issue No. 3)In the affirmative;

Issue No. 4)As per final order; for

the following:

Addl. Issue No.1

framed on 30/5/2019..... In the negative

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10. ISSUE NO.1: It is the contention of the
plaintiff that, plaintiff is a society registered under the

Karnataka Societies Registrations Act 1960. Ex.P1 is the registration certificate issued by the Registrar of Government of Bangalore District which clearly shows that, the plaintiff society is registered in the year 1987 itself. Even the defendant also does not deny the aspect of registration of the plaintiff society. As per the contentions of the plaintiff the main object of the plaintiff is to impart education to the students in English as well as Kannada Medium. The society was running the school in the name and style of Sri. Sharada Vidya Mandir Nursery and Primary High School for which a management committee was also formulated and a copy of the resolution which is marked as Ex.P2 and P3 clearly establishes that, the society is constituted consisting of the memorandum of the association, the rules and the regulations. To this effect a resolution was also passed. Even this defendant also does not deny with regard to the

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registration of the plaintiff institute. As per their own records, initially according to the document of the plaintiff, the society Sri Sharada Vidya Mandir Education Society started at 900A, Laggere Peenya Post, Bangalore north Taluk of Bangalore in 13.10.1987.

11. It is pertinent to note here that, as per the

contentions of the plaintiff, the plaintiffs school was shifted to Sy.No. No. 100, belonging to one Nagarajappa situated at Laggere of Peenya Taluk, which was earlier at 900A.

12. In support of the contentions of the plaintiff, the plaintiff has produced Ex.P5 document. On the basis of Ex.P5, the plaintiff is contending that, the same was transferred to Sy.No. 100 and the school is started in the Sy.Number.

13. However, defendant contends that, the plaintiff has not produced to show that, the permission has been granted to the plaintiff to shift the school from 900A to Sy.No. 100.

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14. I have carefully perused the document produced by the plaintiff from which the plaintiff is contending that, the school has been shifted to Sy.No.100. Ex.P5 which is the letter issued by The Secretary of Sri Sharada Vidya Mandir Education Society in favour of Assistant Educational Officer, North Zone -I, Malleshwaram, Bangalore on 16.06.1993 requesting to transfer the school from 900A to 100 of the building of L.R. Nagarajappa. In other words this is the request letter issued by the Secretary requesting the Assistant Education Officer to transfer the school building form 900A to

Sy.No.100, since Sy.No.900A building has been sold in favour of somebody else. It is pertinent to note here that, no documents are produced by the plaintiff in order to show that, the school which was situated in 900A is transferred to the Sy.No.100 as contended by the defendant. Even in the cross of PW1, this aspect is very clear.

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15. In page no. 15, para no. 4 of the cross examination of the PW1, PW1 clearly depose as follows:

"Government has not given any permission to shift our Education Institution from Sy.No. 900A to Sy.No. 100".

16. So, it is very clear that, plaintiff has got no permission in order to shift the school building from 900A to Sy.No.100. More than that, he has clearly admitted that, in page no. 12 of his deposition that,

"It is false to suggest that, we have obtained permission to shift our school from Sy.No.900A to Sy.No. 100".

17. So, whatever the document produced by the plaintiff with regard to transfer or shifting of the building from one survey number to another survey number does holds good. Even there were no

pleadings from the side of the plaintiff in order to

show that, the school is running in the premises as
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the plaintiff claimed in the relief column. This aspect is also pointed out from defendant at the time of his argument. The first relief claimed by the plaintiff is to declare that, the society plaintiff is entitled to manage the school Sri Sharada Vidya Mandir Nursery and Primary High School (Kannada and English Medium from LGK, UKG, 1st to 7, 8th to 10th Standard classes) in the premises bearing old no. 101-6/5 and 100/86 and having new number 831 and 832 situated at Laggere Peenya Post....

18. Even in the original plaint filed by the plaintiff, the plaintiff has sought for the same relief, however it has stated that, to declare that, the school is running in Sy.No.100. Of course, there are no pleadings to show that, the school is running in Sy.No. 100 at the time of the filing of the suit itself. More than that, no documents are produced by the plaintiff to show that, the plaintiff school is running in Sy.No. 100 at the time of filing of the suit. So, as rightly contended by the defendant, there were no
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pleadings in order to support the prayer of the plaintiff in the above suit.

19. Per contra it is admitted by the PW1 itself

that, in order to show that, there are school running in the plaintiff society, they have not produced attendance register of their employees before the Court. No Audit Report has been produced for the previous year of 1997 and subsequent to 1997. In order to show that, the government has accorded permission to run the school in Kannada Medium for 1st to 4th standard, they have not produced any documents, nor they have produced admission register in order to show that, they are running the school in the particular locality. No teachers list was produced, no renewal of license of the society is produced by the plaintiff to show that, the Education Department has granted permission to the plaintiff society in order to continue with the school.

20. As discussed earlier, Ex.P5 is the request letter to transfer the building from 900A to 100. Ex.P9
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is the letter issued by Block Educational Officer in order to register the plaintiff educational society. However, this does not confer any right to the plaintiff society in order to run the school, rather than shows that, there is a dispute in between the plaintiff and the defendant with regard to the running of the school.

21. All the documents produced by the plaintiff

clearly shows that, they have sought for the permission, but the same shows permission is not granted. However no documents are produced by the plaintiff to show that, the plaintiff is running the school in the Survey Number as it alleged in the plaint.

22. On the other hand, it is very clear that, from the depositing of the PW1 itself, the defendant no.1 society was running the school in Sy.No.100 during the year 1992-93. Though the plaintiff contended that, on the basis of Ex.P25, they obtained the permission in order to start the school, it is only
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with regard to Sy.No. 900A. However, there were no documents to show that, after 1992 the plaintiff is having the rights in order to run the school as he alleged in the plaint.

23. Usually, in order to run the school in a particular locality the party has to produce the permission to start the school from the competent authority, the availability of the student, teachers, building, renewal permission, the Audit Report and the license is to be registered. Except P24, the plaintiff has not produced any documents in order to show that, it has accorded permission in order to start the school. Even in Ex.P25 it has been clearly stated that,

a permission has been granted to start the school from 1989 to 1990 onwards to run the Kannada Medium Primary School in number 900A of Laggere Peenya if the school contains, the available place to run the classes, if it contains sufficient furnitures, the play ground, to adopt the roster method in order to fill the vacancies, to obtain the permission of the Department, after the appointment of the teachers to

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deposit some amount in the post office time deposit scheme, to the tune of Rs. 500/- in the name of The Assistant Director as well as Secretary of the school is to be followed and only if these conditions are fulfilled, the permission has been granted in favour of the school which is temporary in nature. So as rightly contended by the defendant if at all the plaintiff society as well as plaintiff school fulfills all these conditions, then only the plaintiff has got the right in order to run the school.

24. In this regard, the defendant has produced the document to show that, permission is not granted in favour of the plaintiff to run the school as pleaded by the plaintiff in his plaint. Ex.D29 which is the document produced by the defendant in order to show that, the department has not granted any permission to the plaintiff in order to run the school. The

document dt. 11.07.2008 produced by the defendant

clearly shows that, though initially as per the letter

number GR 1/771/permission1/89-90 dt.19.08.1989

a permission was granted in favour of the plaintiff run

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the school, no permission was granted in order to

shift the location of the school.

25. Clause II of that document clearly shows that, "as per the order dt. 19.08.1989 permission is granted only to run the Kannada medium and after words as per their information, since the school was not running its permission was not renewed". Since the school was not running and its license was not renewed, other information with regard to the running of the school such as the location, ownership, and to whose favour the rights over the property exists is does not available.

26. The learned counsel for the defendant vehemently contended that, Ex.D25 gives the clear picture with regard to the conduct of the plaintiff as well as running of the school from the side of the plaintiff society.

27. I have carefully perused Ex.D25 which is the enquiry report dt. 24.09.2012. The enquiry report clearly shows that, the plaintiff society initially

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obtained the permission in order to start the schools in the year 1989 to 1990 for only 1 st standard. No documents are produced by them show that, the school was running from 2nd standard onwards and no documents are produced to show that, the department has granted permission in order to run English Medium school from 5 th to 7th standard. More than that, the report clearly says that, the request to start the schools from 5th standard to 7th standard was returned with an endorsement and no permission was granted to start 2nd standard to 7th standard and no license was renewed from 1st standard to 7th standard and further no permission was granted to run 8th standard to 10th standard to the plaintiff society.

28. On perusal of entire document it is clear that, the plaintiff has not produced the documents with regard to the building, the permission letter, the documents for the appointment for the school employees, the documents showing receiving of the fees, the transfer of the building, the list of members of management, Audit Report, PTR Report, in order to

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show that, the plaintiff is running the school as he alleged.

29. On perusal of all the documents, the enquiry committee found that, the defendant has got

every documents in order to run the school as it took stand in the written statement. Further from the documents produced by the defendant before the Court itself, it is very clear that, the defendant has complied each and every condition in order to start the school as well as to run the school .

30. Though the suit is filed in the year 2002, the permission was granted to run the 1 st standard Kannada medium school only in the year 1989, this Court is of the opinion that, at the time of filing of the suit, the plaintiff has got no permission in order to run the school. No documents are produced in order to show that, the plaintiff has obtained the permission and running the school in the suit schedule property at the time of the filing of the suit, therefore whether the plaintiff is managing the school as per its object in
34 0.S.6729/2002
order to impart the education at the time of filing of the suit need not be discussed in detail. Since, the plaintiff has failed to prove that, it was running school at the time of filing of the suit and further it has got renewed the permission obtained in the year 1989, the Court is of the opinion that, it has fail to prove Issue No.1 in its favour. Accordingly I answer Issue No.1 in the Negative.

30. ISSUE NO.2: Though the plaintiff

contents that, initially it has started the school in 900A and later on the same was shifted to new Sy.No. 831 and 832 However, no documents were produced by them in order to show that, they have shifted the school from 900A to other Sy.Number. From the depositions of the PW1 itself, it is very clear that, plaintiff society has not obtained any permission in order to shift the school from 900A to Sy.No.100. More over, after the amendment also in order to show that, the school has been running in Sy.No.831 and 832 of Laggere no documents have been produced. Ex.D25 clearly shows that, after the permission granted in the year 1989 in favour of the plaintiff, the Department has not renewed the permission, nor documents are produced to show that, the plaintiffs school building was shifted from Sy.No. 900A to Sy.No. 100 or subsequent survey number. No documents are produced to show that, the Department has granted permission in order to run the school from 2nd standard to 7th standard or 8th standard to 10th standard either in Kannada Medium or in English Medium Therefore, when the plaintiff has not produced the document and not satisfied the Court to show that, they are running the school in new Sy.No. 831 and 832 the granting of injunction against the 1st defendant does not arise at all.

35

O.S.6729/2002

Thereby, I answer Issue No. 2 in the Negative.

31. ISSUE NO.3: From the documents produced by the defendant it is very clear that, the Government has accorded permission to the defendant no.1 to start the school in the suit schedule property. Ex.D2 is the registration certificate issued by the Registrar of co-operative Society which clearly
36 O.S.6729/2002
shows that on 20.04.1992 the defendant society was registered.

32. Ex.D3 is the rental agreement executed in between the Haridas.B.R and R.N. Somashekar and L.R Nagarajappa this clearly shows that, in order to run the school in Sy.No.100 of Laggere Village, a rental agreement was entered between the parties to run the school. It is pertinent to note here that, as per the admissions of PW1 itself, PW1 was a Hindi Teacher in the defendant no.1 school, since there were some differences of the opinion in between Haridas as well as the defendant school, he left the school. Further as per the show cause notice issued by the concerned authority he did not have the prescribed qualification in order to act as a teacher in the defendant Institute.

33. Ex.D4 is the acknowledgement issued by the Registrar of Rajajinagar District in order to show

that, from 01.04.2014 onwards till 31.03.2015, the
defendant educational Institution has submitted the
37 O.S.6729/2002
audit report and other documents. Ex.D5 is the list of
members of the defendant society. Ex.D6 is the audit
report. D7 is the letter issued by the Block
Educational Officer which renewed the permission to
the defendant society. Ex.D10 is the permission
granted to the defendant to renew the license from
1996 to 1997 which clearly shows that, the
Educational Department has granted permission to
the defendant in order to run 6th standard English
medium school, renewed the permission to the 5 th
standard etc.,

34. Ex.D11 is the committee report which
clearly shows that, the defendant society has complied
the fundamental facility such as Toilet, Water facility,
Teaching Utensils, The furnitures, play grounds and
building and further also deposited amount in the
name of the commissioner. Therefore the permission
was granted in order to continue the schools. Ex.D12
also support the same aspect. From Ex.D10 to D15
documents clearly shows that, till the year 2016 the
defendant has got renewed its permission. Ex.D16
38 O.S.6729/2002
and D17 are the original fixed deposit receipt which is
a condition president in order to run the school.

35. All the above documents clearly shows that, the defendant has got the valid permission in order to run the school in the suit schedule property. Now the real question is whether the defendant society has shifted the school after the issuance of the show cause notice on 23.12.1998 by the DDPI.

36. Ex.D20 is the show cause notice issued by the concerned department to the Secretary of Rajarathnam Society contending that, the defendant school has not deposited fixed deposit in the name of the Commissioner and not appointed the trained Teachers, not having the own building which is required under the Education Act. The letter was issued in the year 1999 in favour of the defendant Institute. After words the defendant institute transfered the same in Sy.No. 100 which is clear from the original rent receipt produced as per Ex.D3. After words the defendant society has shifted its building
39 0.S.6729/2002
from Sy.No.900A to its own building. This is much clear from Ex.D28 produced by the defendant.

37. Ex.D28 is the report issued by the Assistant Director of Educational Department clearly shows that, who are having the rights over the management of the school, the rights over the

building of the school.

38. On perusal of Ex.D28 it is clear that, plaintiff institution did not obtained any permission, the building owned by them, no documents pertaining to the management committee, so the plaintiff has not got valid authority in order to run the school in the location stated by them. However, the defendant institute has produced the documents showing they have obtained permission to run 1st standard to 10th standard, they have obtained the renewal licenses having the document to show that, they are having there own building, therefore, what ever the school run by the defendant is legal. This clearly shows that, after the issuance of the show cause notice and as per 40 O.S.6729/2002 the report of the 3 members committee the defendant institute has been shifted.

39. Further, the defendant has produced the progress report, marks cards, certified copy of the admission registrar extracts, transfer certificates, the proceedings of the government, the photographs which clearly shows that, it has complied all the conditions to run the school. Though a specific document is not produced by the defendant in support of the shifting of the school to his own building, the 3 members committee report as per

Ex.D28 clearly shows that, the defendant is having his own building in order to run the school which is the lateral development after the issuance of the show cause notice. Therefore, I answer Issue No. 3 in the Affirmative.

40. ADDITIONAL ISSUE NO.1: Since the plaintiff has not establish his rights over the suit schedule property, I need not discuss in detail with regard to additional Issue No.1. Without proving his
41 O.S.6729/2002
ownership over the suit schedule property the plaintiff cannot claim the mean profits, thereby I answer Additional Issue No.1 in the Negative.

41. ISSUE NO. 4 : One of the contention taken by the defendant is that, the suit itself is barred by the limitation. Because the cause of action stated in the suit arose on in the year 1987-88 when the plaintiff society was formed and subsequently when the order vide document no. 13 was passed and subsequently the society got the permission to run and manage the school after de recognizing the society - 1st defendant from running and managing the same as per the representation vide document no. 15 and on subsequent dates within the jurisdiction of the Court.

42. The suit is filed in the year 2002. However

as contended in the plaint, the 1st cause of action for the suit arose in the year 1987-88. Therefore, the suit for declaration which has to be filed within 3 years.

However, since plaintiff himself states that, the date of
42 O.S.6729/2002

registration itself is the cause of action for filing of the suit, the suit could have been filed in the year 1991 itself.

43. The learned counsel for the defendant vehemently contended that, earlier there was a suit was fled in the year 1998 itself, and therefore there were some disputes with regard to the ownership and management of the school or to who is having the rights to run the school. So, in the year 1998 itself the plaintiff is completely aware that, there were some denial of his title from the side of the defendant. Obviously the plaintiff has to file the suit within 2001 itself. No doubt, as rightly contended by the defendant, the suit is hopelessly barred by the time. Article 58 of the Limitation Act also clearly says 'suit for declaration is to be filed within 3 years from the date of knowledge'. Since there were litigations pending year 1998 itself, the plaintiff could have filed the suit before 2001 itself. Therefore, the suit is barred by the limitation also. Even when a suit is filed for declaration then, the market valuation of the
43 O.S.6729/2002

property is to be mentioned, however the plaintiff has valued the suit and paid Rs. 50/- only which is also barred under the law. Under the above circumstances and from the above discussions and reasoning the suit of the plaintiff is liable to be dismissed. In the result I proceed to pass the following;

The suit of plaintiff is hereby dismissed.
Under the facts and circumstances of
the case, there is no order as to costs.

Draw decree accordingly.

[Dictated to the Judgment Writer directly on computer, Script corrected, signed and then pronounced by me, in the Open Court on this the 10 th day of January 2022.] [PRASHANTHI.G]
XXVII Additional City Civil Judge. BANGALORE.

1. List of witnesses examined on behalf of the Plaintiff/s:

PW.1	Haridas B.R.
PW.2	Smt. K. Prabhavathi
PW.3	Veeranna.S.
PW.4	Nagesh. G
PW.5	Smt. Prathima

2. List of witnesses examined on behalf of the Defendant/s:

DW.1	Shivaprasad.K.
DW.2	Smt. Saheeda Begum
DW.3	Smt. Geetha
DW.4	Sri Palani
DW.5	Smt. Neelufer.A.

3. List of documents marked on behalf of the Plaintiff/s:

Ex.P1 Certified copy of the registration certificate of plaintiff society Ex.P2 Certified copy of memorandum of association Ex.P3 Certified copy of byelaws Ex.P4 Resolution dated 8/3/1991 Ex.P5 Office copy of letter dated 16/6/1993 Ex.P6 Postal

passbook Ex.P7 Vikas Cash certificate Ex.P8 Order passed by DPI dated 16/11/1999 Ex.P8(a) Certified copy of the letter. Ex.P9 Letter dated 17/1/2000 Ex.P10 Letter dated 9/12/1998 issued by plaintiff Ex.P11 Acknowledgement Ex.P12 Certified copy of deposition of defendant no.1 recorded in C.C.No.16770/99.

Ex.P13 Certified copy of deposition of Sanna Honappa recorded in the above said criminal case. Ex.P14 Certified copy of deposition of Mahesh.

Ex.P15 Certified copy of the deposition of Smt.Gowramma.

Ex.P16 Certified copy of the deposition of Smt. Jayamma.

Ex.P17 Certified copy of deposition of Somashekar.

Ex.P18 Certified copy of deposition of Rudramuniappa.

Ex.P19 Certified copy of deposition of M.Channa Rayappa.

Ex.P20 Certified copy of the audit report of defendant no.1 for the year 1.4.1997 to 31.3.1998.

Ex.P21 Acknowledgements issued by the and Registrar of Society for having Ex.P22 submitted the audit report and list of executive committee members. Ex.P23 Certified copy of the list of executive committee members of plaintiff society for the year 1998. Ex.P24 Income and expenditure account of the plaintiff-society. Ex.P25 Permission dated 19/6/1989 given to the plaintiff-society. Ex.P26 Endorsement dated 12/3/1990 issued by Deputy Secretary Education Department Ex.P27 Office copy of legal notice dated 24/5/1999 Ex.P28 and Postal acknowledgements. Ex.P29 Ex.P30 Office copy of legal notice dated 2/11/2000.

Ex.P31 Office copy of another legal notice dated 7/10/2004 Ex.P32 Letter dated 10/10/2006 along to with xerox copies of letters dated Ex.P34 30/10/2000 and 11/10/1999. Ex.P35 Report dated 11/4/1007 submitted by ECO, Bengaluru North.

Ex.P36 Letter dated 18/7/2007 Ex.P37 Copy of FIR in Cr.No. 522/08 Ex.P38 Certified copy of the order sheet in PCR No.14508/08.

Ex.P39 Original visitors book Ex.P40 Certified copy of the IA filed by the defendant no.1 - society in O.S.No.4509/98.

Ex.P41 Letter dated 21/12/1990. Ex.P42 Another letter dated 8/3/1991 Ex.P43 The result sheet for the year March 1997.

Ex.P44 Letter dated 21/8/2007 Ex.P45 Letter dated 8/8/2008. Ex.P46 Another letter dated 2/2/2009. Ex.P47 Notice of enquiry dated 18/3/2009.

Ex.P48 Office copy of the letter dated 15/4/2000.

Ex.P49 Office copy of legal notice dated 6/6/1998.

Ex.P50 Certified copy of statement given and by Block Education Officer dated Ex.P51 26/6/1998 to the police along with xerox copy of the said statement.

Ex.P52 Attested copy of letter dated 10/6/1998 issued by defendant no.1 - society to DDPI.

Ex.P53 Certified copy of the order dated 19/6/1989.

Ex.P54 Certified copy of the note sheet. Ex.P55 Certified copy of the charge sheet in C.C.No.16664/02.

Ex.P56 Office copy of the letter dated 30/6/1998.

Ex.P57 Certified copy of the deposition of defendant No.1(a) in O.S.No.5315/98.

Ex.P58 Office copy of the legal notice dated 17/6/2015.

Ex.P59 Postal acknowledgement. Ex.P60 Xerox copy of lease agreement.

Ex.P61 Letter dated 23/9/2000 issued by DPI Primary.

Ex.P62 Letter dated 4/1/2013. Ex.P63 Certified copy of the letter dated 6/6/2000.

Ex.P64 Certified copy of the letter dated 23/1/1999.

Ex.P65 Certified copy of the letter dated 17/1/2000.

Ex.P66	
to	Fee receipts
Ex.P79	
Ex.P80	
and	Two identity cards
Ex.P81	
Ex.P82	
and	Marks cards
Ex.P83	
Ex.P84	Transfer certificate
Ex.P85	SSLC marks card
Ex.P86	Photograph
Ex.P86(a)	Negative
Ex.P87	Photograph
Ex.P88	Plaint filed in O.S.5315/98
Ex.P89	Deposition
Ex.P90	Certified copy of the order in MFA

	No.1792/99.
Ex.P91	Order sheet pertaining to MFA
	No.1792/99.
Ex.P92	Study certificate
Ex.P93	Certified copy of IA under Section

151 of CPC in O.S. 5315/98. Ex.P94 Certified copy of statement of objections filed in the above I.A.
Ex.P95 Certified copy of Khata extract fro the year 2000-01.

Ex.P96 Certified copy of katha extract for the year 2000-01 in respect of premises bearing No.101-6/5. Ex.P97 Certified copy of the katha extract for the year 2016-17 with respect to premises bearing No.100/86 issued by BBMP.

Ex.P98 Certified copy of Khata extract for the year 2016-17 with respect to premises bearing No.101-6/6. Ex.P99 Audit report for the financial year to 1997-98 to 2017-18.

Ex.P123 Ex.P124 Letter dated 20/2/2017 issued by SSLC Board.

Ex.P125 Character certificate.

4. List of the documents marked for the defendants:

Ex.D1 General Power of Attorney Ex.D2 Society Registration Certificate Ex.D3 Original Rental Agreement Ex.D3(a) Signature of DW.1 Ex.D4 Society Renewal certificate Ex.D5 List of Members for the year 2015-16.

Ex.D6	
and	Audit Reports
Ex.D7	
Ex.D8	Renewal Certificate
Ex.D9	Recommendation letter
Ex.D10	Renewal Certificate
Ex.D11	Another Recommendation letter
Ex.D12	Permission letter issued by DDPI
Ex.D13	Another Permission Letter
Ex.D14	Renewal Certificates issued by
and	DDPI.
Ex.D15	
Ex.D16	
and	Fixed Deposit Receipts
Ex.D17	
Ex.D18	Copy of order dated 31/8/2002
Ex.D19	Copy of order dated 24/1/2000
Ex.D20	Show cause notice dated
	23/12/99
Ex.D21	Copy of police complaint
Ex.D22	Copy of complaint to DDPI

Ex.D23	Copy of order dated 11/7/2008
Ex.D24	Copy of RTI application
Ex.D25	Copy of Enquiry Report
Ex.D26	Copy of RTIP application
Ex.D27	Original copy of permission letter
Ex.D28	Copy of letter dated 31/10/2012
Ex.D29	Copy of Appeal No.24/2002.
Ex.D30	Police complaint

Ex.D30(a) Signature of Somashekar.

Ex.D31	Endorsement issued by police station
Ex.D32	Fee receipts
Ex.D33	
to	Fee receipts
Ex.D35	
Ex.D36	Fee receipt written in pencil
Ex.D37	
to	Fee receipts
Ex.D40	
Ex.D41	Letter dated 5/6/1998
Ex.D42	Copy of police complaint
Ex.D43	Endorsement issued by police station
Ex.D44	Certified copy of registration certificate.
Ex.D45	Staff wages payment register.
Ex.D46	7th standard marks card
Ex.D47	SSLC marks card
Ex.D48	
to	Progress reports
Ex.D55	
Ex.D56	7th standard marks card
Ex.D57	Progress report
Ex.D58	SSLC marks card
Ex.D59	Certified copy of the admission

register extract of the year 1993- 94, 1996-97, 1998-99.

Ex.D60 Certified copy of Transfer certificate of Shubha Priya.K. Ex.D61 Certified copy of Transfer certificate of Pavan Kumar.K. Ex.D62 Certified copy of Transfer certificate of Nagesh.G. Ex.D63 SSLC result sheet of Shubha Priya of the year March 2001.

Ex.D64 SSLC result sheet of Nagesh.G. of the year March 1999.

Ex.D65 Certified copy of reminder dated 19.8.1989.

Ex.D66 Certified copy of the order dated 13/12/2002 passed by BEO. Ex.D67 Certified copy of the Registration Certificate of defendant no.1. Ex.D68 Certified copy of the application made by the Shiva Prasad under RTI Act.

Ex.D69 Certificate issued by the Secretary of school Ex.D70 Certified copy of the proceedings with respect to starting of the school.

[PRASHANTHI.G] XXVII Additional City Civil Judge.

BANGALORE.

.....Judgement pronounced in the Open Court....

(Vide separate detailed judgment) The suit of plaintiff is hereby dismissed.

Under the facts and circumstances of the case, there is no order as to costs.

Draw decree accordingly.

[PRASHANTHI.G] XXVII Additional City Civil Judge.

BANGALORE.

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