

Sri.M.Munikrishnappa vs Sri.G.Velmurugan on 6 December, 2017

IN THE COURT OF THE XLII ADDL., CITY CIVIL & SESSIONS
JUDGE AT BENGALURU CITY (CCH.NO.43).

PRESENT: Sri.P.SRINIVASA,
B.A.L., LL.M.,
XLII ADDL., CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.

Dated this the 6th day of December 2017.

O.S.No.2047/2015

Plaintiffs:-

1. Sri.M.Munikrishnappa
@ M.Munikrishna,
Aged about 70 years,
S/o.late Muniswamappa.
2. Sri.M.Arun Kumar,
Aged about 40 years,
S/o.M.Munikrishnappa
@ M.Munikrishna.

Both R/at No.54,
30th Cross Road,
Munikrishnappa Road,
Ejipura,
Near Ring Road Signal,
Srinivagilu Main Road,
Vivek Nagar Post,
Bangalore - 560 047.

(By Sri.V.F.Kumbar, Adv.)

v.

Defendant:-

Sri.G.Velmurugan,
Aged about 46 years,
S/o.Govindarajalu,
R/at No.4, First Floor,
22nd 'A' Cross, Ejipura,
Vivek Nagar Post,
Bangalore - 560 047.
Prop: Sri Murugan Motors.
(By Sri.T.K.Rajagopala, Adv.)

Date of institution of the suit	:	04.03.2015		
Nature of the suit	:	Ejectment and Arrears of rent.		
Date of commencement of Recording of the evidence	:	18.03.2016		
Date on which the Judgment was pronounced	:	06.12.2017		
Total Duration	:	Years	Months	Days
		02	09	02

(P.SRINIVASA)
XLII ADDL., CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

JUDGEMENT

The plaintiffs have filed the above suit for eviction, arrears of rent and costs.

2. The plaintiffs' case in brief as under:-

Initially, site no.8 and 9, V.P.No.521/B, House List No.524/5, Ejipura village gramathana, belonged to Rajappa, Papaiah and Munikrishna, children of late Muniswamappa. Said Rajappa, Papaiah and Munikrishna sold site Nos.8 and 9, V.P.No.521/B, House List No.524/5, situated at Ejipura, to one Mubarak Ahmed for sale consideration of Rs.5,00,000/- vide., registered GPA and affidavit. On the strength of said GPA, Mubarak Ahmed sold the above said properties to his wife Judgement Smt.Amtul Majid and executed registered Sale Deed in her favour. On 27.12.2001, Smt.Amtul Majid paid Rs.28,000/- as Cess to the Bangalore City Corporation and also paid taxes to the Bangalore City Corporation and got khatha of the above said property changed in her name. Smt.Amtul Majid has constructed asbestos cement sheet roofed house comprising 1000 sq. ft in the said property. The defendant was a tenant in the said cement sheet roofed house under Smt.Amtul Majid.

Smt.Amtul Majid intended to sell the above said property and Plaintiff no.1's wife namely, Smt.Vanaja @ Vanajakshi entered into Agreement of Sale on 27.06.2011 with said Smt.Amtul Majid to purchase the property bearing Municipal Khatha No.60,

PID No.68-113-60, Ejipura, site Nos.8 and 9, totally measuring 2520 square feet for sale consideration of Rs.1,52,00,000/- and paid a sum of Rs.25,00,000/- as advance and agreed to pay balance sale consideration at the time of registration of the Sale Deed. Said Smt.Amtul Majid demanded further advance amounts and Smt.Vanaja further paid sum of Rs.27,00,000/- on 27.06.2011, Rs.28,00,000/- on 20.10.2011 and Rs.29,00,000/- on 15.12.2011 and Smt.Amtul Majid acknowledged the receipt of above said amounts and executed receipts dated 18.09.2011, 20.10.2011 and 15.12.2011 in favour of Smt.Vanaja. The defendant is fully aware of Judgement Agreement of Sale and advance receipts and defendant has put his signature as witness to the said documents. On 24.11.2011, Smt.Vanaja issued paper publication in "The Hindu" and "Udayavani" calling objections from general public.

The defendant was in occupation of the said garage under plaintiffs' vendor and plaintiffs' vendor got vacated the defendant from the said premises. As per agreed terms and conditions, plaintiffs 1 and 2 being husband and son of original Agreement Holder i.e., Smt.Vanaja, purchased the property from Smt.Amtul Majid and Sale Deed dated 16.12.2011 was registered in their names. The defendant has signed the Sale Deed as a witness. After registration of Sale Deed, the defendant requested the plaintiffs 1 and 2 to re-let the said asbestos cement sheet roofed house to him. As per the request of the defendant, plaintiff no.2 executed a Rental Agreement dated 02.01.2012 in favour of the defendant, leasing the property to an extent approximately 2000 square feet in the property purchased by the plaintiffs 1 and 2 for running automobile garage by the defendant. The defendant agreed and paid a sum of Rs.3,00,000/- as advance to plaintiff no.2 and agreed to pay monthly rent of Rs.26,000/-. Rental Agreement was executed initially for a period of 11 months and in case of extension of lease defendant agreed to pay 5% more Judgement on the monthly rental amount every year. The original Rental Agreement dated 02.01.2012 is with the defendant. As on today, the defendant is liable to pay monthly rent @ Rs.28,000/- per month. On 29.09.2014, the plaintiff no.2 issued legal notice to the defendant to vacate the schedule premises and to pay arrears of rent. The defendant issued untenable reply and also corrigendum and failed to vacate the schedule premises. On 30.10.2014, plaintiff no.2 visited the suit schedule property, requested the defendant to pay arrears of rent and to vacate the schedule premises as agreed before the jurisdictional police within 31.12.2014. The defendant assaulted plaintiff no.2 and plaintiff no.2 took treatment at Bowring Hospital on 31.10.2014 and lodged complaint before Vivek Nagar Police. The police have registered a case vide., NCR.No.166/14. The police summoned the defendant and the defendant agreed to vacate the suit schedule premises on or before 31.12.2014 by receiving advance amount after deducting the arrears of rent. The plaintiffs are paying taxes and khatha stands in their names. The defendant has failed to vacate the suit property and failed to pay arrears of rents hence, plaintiffs have filed the above suit.

3. In response to the suit summons, the defendant appeared before the court through his counsel and filed the Judgement written statement. In the written statement, has contended that he came in possession of the written statement property on 10.05.2000 when it belonged to Rajappa, Papaiah and Munikrishna. The above persons never questioned defendant's possession over the suit schedule land and the defendant has put up the said structure and compound wall. The defendant has denied the averments that he has signed the Agreement of Sale dated 16.12.2011, receipts and

sale deed as a witness. The defendant has contended that he unauthorizedly got into possession of the property. The defendant has perfected his title over written statement schedule property by way of adverse possession. The plaintiffs have no knowledge of extent of land in defendant's possession. The defendant is not a tenant under the plaintiffs and denied the execution of Rental Agreement on 02.01.2012 and also payment of advance amount of Rs.3,00,000/- and monthly rent of Rs.26,000/- with the clause of enhancement. The defendant has denied that before police he agreed to vacate the suit schedule premises. Further, has stated that police pressurized him, therefore he has lodged complaint before Commissioner of Police. The defendant has denied the averments that on 30.10.2014 he assaulted plaintiff no.2. The defendant has denied the averments that he is liable to pay arrears of rent of Judgement Rs.1,96,000/- as contended in the plaint. Hence, prayed that suit may be dismissed with costs.

4. On the basis of above pleadings, below mentioned issues arise for consideration:-

ISSUES

1. Whether the plaintiffs prove that the defendant is in possession of the suit schedule property as a tenant as on the date of the suit?
2. Whether the plaintiffs prove that the defendant is liable to pay a sum of Rs.1,96,000/- as arrears of rent from July, 2014 till the end of January, 2015 to the plaintiffs?
3. Whether the defendant proves that the suit schedule property is part and parcel of the written statement schedule property as described in Para No.7(d) of the written statement?
4. Whether the defendant proves that he is in adverse possession of the suit schedule property as on the date of the suit?
5. Whether the defendant proves that he has perfected his title by way of adverse possession to the suit schedule property?
6. Whether the court fee paid is correct?

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7. Whether the plaintiffs are entitled for the reliefs sought for?

8. What order or decree?

5. To prove the case of the plaintiffs, plaintiff No.2 examined himself as PW-1 and examined two witnesses as PW- 2 and PW-3 and got marked Ex.P1 to P54. The defendant examined himself as DW-1 and got marked Ex.D1 to D43.

6. Heard arguments. The learned counsel for the plaintiffs has relied upon the following citations reported in:

1. ILR 2014 KAR 4726, in the case of Janatha Dal Party, Bangalore v. The Indian National Congress and others.
2. 2016 (1) KCCR 597, in the case of S.D.Nagaraju and others v. Sri Shivaganga Education and Charitable Trust (R), Sira Town and others.
3. AIR 2006 (NOC) 1380 (ALL.), in the case of Anwar & others v. State of U.P. and others.

The learned counsel for the defendant has relied upon the following citations reported in:

1. 2010 (4) KCCR 3061, in the case of R.Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others.

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2. AIR 2009 SC 103, in the case of Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others.
3. AIR 2004 Madras 134, in the case of Raju and Parvathi v. Muthuammal and others.
4. 2016 (1) KCCR 597, in the case of S.D.Nagaraju and others v. Sri Shivaganga Education and Charitable Trust (R), Sira Town and others.
5. 1973 (2) Mys.L.J. 207, in the case of Rukamoddia Dastagirsab v. Basawwa and others.
6. 2010 (4) KCCR 2765, in the case of M.T.Siddashetty and another v.

P.H.Gowda and another.

7. 2011 (2) KCCR 1389 (SC), in the case of H.Siddiqui (dead) by LRs v.

A.Ramalingam.

7. My findings on the above said issues are as follows:-

Issue No.1:-	In the Affirmative
Issue No.2:-	In the Affirmative
Issue No.3:-	In the Negative
Issue No.4:-	In the Negative
Issue No.5:-	In the Negative
Issue No.6:-	In the Affirmative
Issue No.7:-	In the Affirmative

Issue No.8:- As per final order.
for the following:-

Judgement

REASONS

8. Issue Nos.1 to 5:- These issues are taken up together for consideration to avoid repetition of facts, evidence and convenience.

9. PW-1 in his evidence has stated that initially site nos.8 and 9 belonged to children of late Muniswamappa namely Rajappa, Papaiah and Munikrishna. Said Rajappa, Papaiah and Munikrishna sold site Nos.8 and 9 of Ejipura, Gramathana to one Mubarak Ahmed vide., registered GPA and affidavit for valuable consideration of Rs.5,00,000/-. Further, has stated that said Mubarak Ahmed in turn sold the suit schedule property to his wife Smt.Amtul Majid vide., registered Sale Deed. Said Smt.Amtul Majid paid Rs.28,000/- as cess to the Bangalore City Corporation on 27.12.2001 and was paying taxes to the Bangalore City Corporation. Further has stated that khatha of the suit schedule property stood in the name of Smt.Amtul Majid. Smt.Amtul majid constructed 1000 sq. ft asbestos cement roofed house in the said property and defendant was a tenant in respect of said cement roofed house under Smt.Amtul majid. Said Smt.Amtul Majid entered into Agreement of Sale with wife of plaintiff no.1 namely, Smt.Vanaja and agreed to sell the suit schedule property for Rs.1,52,00,000/- and executed Agreement of Sale and also Judgement received advance amounts and executed receipts in favour of Smt.Vanaja. Further, has stated that Smt.Vanaja issued publication in English and Kannada newspapers, calling upon objections from general public. Defendant is fully aware of the said transaction and execution of above said sale agreement and receipts and defendant has signed as witness to the said documents. Defendant herein vacated the suit property prior to execution of sale deed and Smt.Amtul Majid executed regular Sale Deed in favour of the plaintiffs 1 and 2 and handed over vacant possession to the plaintiffs herein. The plaintiffs 1 and 2 are the absolute owners of the purchased property. The defendant has also signed sale Deed as a witness. DW-1 in his written statement has stated that he is not aware of the said sale transactions.

10. In order to prove the title over the suit schedule property, the plaintiffs have produced documents namely, registered GPA and affidavit executed by Rajappa, Papaiah and Munikrishna in favour of Mubarak Ahmed, Absolute Sale Deed in favour of Smt.Amtul Majid, receipt for payment of Rs.28,000/- to Bangalore City Corporation, tax paid receipts, Agreement of Sale executed by Smt.Amtul majid in favour of plaintiff no.1's wife, paper publications, three advance receipts and Absolute Sale Deed before this court at Ex.P1 to P14, P41, Judgement P42 and P44. During evidence, the defendant raised objection that Ex.P44 i.e., sale agreement dated.27.6.2011 is insufficiently stamped, hence it has to be impounded. Subsequently, the plaintiffs have paid duty and penalty on

Ex.P44. Hence, objection raised by the defendant that Ex.P44 is insufficiently stamped doesn't survive. Ex.P1 to P14, P41, P42 and P44 are original documents hence, Ex.P1 to P14, P41, P42 and P44 are admissible in evidence.

11. Ex.P1 and P2 are the registered GPA and Affidavit executed by Rajappa, Papaiah and Munikrishna in favour of Mubarak Ahmed. It is pertinent to note that, DW-1 in his pleadings and evidence admits that originally the suit schedule property belonged to children of Muniswamappa i.e., Rajappa, Papaiah and Munikrishna. As per the recitals of Ex.P1 and P2 said Rajappa, Papaiah and Munikrishna have sold the property for Rs.5,00,000/- in favour of Mubarak Ahmed.

12. In (2012) 1 Supreme Court Cases 656, in the case of Suraj Lamp and Industries Private Limited (2) through Director v. State of Haryana and another, wherein the lordships have held as under:-

"A. Transfer of Property Act, 1882 - Ss.54, 55, 53-A, 105, 107, 5 and 8 - Immovable property - Proper mode of transfer / conveyance Judgement of - General power of attorney sales (GPA sales) or sale agreement / general power of attorney / will transfers while testator is alive (SA/GP/living will transfers) - Legality - Held, immovable property can be transferred / conveyed only by deed of conveyance (sale deed) duly stamped and registered as required by law - Explaining the nature and scope of an agreement for sale, power of attorney and living will, held, GPA sales or SA/GPA/living will transfers neither convey any title nor do they amount to transfer of, or create interest in, immovable property except to the limited extent of S.53-A - Observations of Delhi High Court in Asha M.Jain case, (2001) 94 DLT 841 that attorney sale was a recognised mode of transaction held, unwarranted and unjustified"

-View taken herein, held, applicable not only to transfer of freehold property but also to transfer of leasehold property - Need to put an end to practice of SA/GPA/Living will transactions, emphasised.

- However, certain protections granted to SA/GPA/Living will transactions entered into, prior to date of present judgment.

- Further held, present judgment will not affect validity of sale agreements and powers of attorney executed in genuine transactions - Illustrations of such genuine transactions given - Registration Act, 1908 - Ss. 17 and 49 -

Judgement Consumer Protection Act, 1986, Ss.2(1)(o) &

(g)".

From the above judgment, it is clear that alienation made through GPA is protected. Therefore, alienation made by Rajappa, Papaiah and Munikrishna in favour of Mubarak Ahmed is valid and title passes from Rajappa, Papaiah and Munikrishna in favour of Mubarak Ahmed.

13. Advocate for the defendant argued that in Ex.P1 and P2, there is no recital regarding delivery of possession of suit schedule property in favour of Mubarak Ahmed. It is pertinent to note that, in Ex.P2 i.e., Affidavit, Rajappa, Papaiah and Munikrishna have categorically affirmed and stated on oath that the purchaser is at full liberty to use and occupy and enjoy the said property as he deems it necessary and they have sold the property in favour of Mubarak Ahmed. From the above recitals, it is clear that Mubarak Ahmed was put in possession of the suit schedule property. It is pertinent to note that, the vendors of Mubarak Ahmed are not disputing the delivery of possession in favour of Mubarak Ahmed. Katha and tax paid receipts produced by the subsequent purchasers also clearly goes to show that possession has been handed over from the vendors to the purchasers. Therefore, contention of Judgement defendant's counsel that possession was not delivered cannot be accepted.

14. Ex.P3 is the registered Sale Deed executed by Mubarak Ahmed in favour of Smt.Amtul Majid. From Ex.P3, it clearly goes to show that Mubarak Ahmed has sold the property to his wife - Smt.Amtul Majid and she is put in possession of the suit schedule property. Therefore, title is passed on from Mubarak Ahmed to Smt.Amtul Majid. From Ex.P4 to P10 it clearly goes to show that Smt.Amtul Majid got khatha transferred in her name and was paying necessary taxes to Bangalore City Corporation. Ex.P.3 to P10 documents clearly establishes the title and possession of Smt.Amtul Majid over the property.

15. PW-2 in her evidence has categorically stated that she intended to purchase the property from Smt.Amtul Majid and Smt.Amtul Majid agreed to sell the property for Rs.1,52,00,000/- and received advance amount of Rs.25,00,000/- and entered into Sale Agreement dated 27.06.2011. Ex.P44 is the Sale Agreement. Further, PW-2 has stated that defendant is an attesting witness to Ex.P44. PW-2 has identified the signature of executant and witnesses at Ex.P44(a) to (d). PW-2 has issued paper publications as per Judgement Ex.P42 and Ex.P43, calling upon objections from general public. Further, she paid advance amounts to Smt.Amtul Majid as per Ex.P11 to P13. Further, PW-2 has identified the signature of executant and signature of attesting witnesses in Ex.P11 to P13 before this court. PW-1 to PW-3 in their evidence have stated that Smt.Amtul majid sold the property in favour of plaintiffs herein for valuable consideration and executed sale deed as per Ex.P.14. PW-1 to PW-3 have identified the signatures of the executants and the attesting witnesses before the court. The evidence of PW-1 to PW-3 is sufficient to prove the execution of Ex.P.14. Registered Absolute Sale Deed is produced and marked at Ex.P14. Ex.P14 is the original document hence, admissible in evidence. From Ex.P14, it clearly goes to show that Smt.Amtul Majid has sold the property in favour of the plaintiffs 1 and 2 for valuable consideration and has delivered possession of the property in favour of the plaintiffs 1 and 2. Advocate for the defendant argued that the defendant has not signed Ex.P11 to P14 and P44 as a attesting witness. It is pertinent to note that, PWs.1 to 3 have clearly identified the signature of the defendant on Ex.P11 to P14 and P44 before this court. Except bald denial by the defendant, the defendant has not produced any evidence before this court to prove that signature found on Ex.P11 to P14 and P44 doesn't belong to Judgement him. Admitted signatures of defendant are marked before this court at Ex.P50(a), P51(a), P52(a), P53(a) and P54(a). This court is competent to compare the signatures of defendant found on Ex.P11 to P14 and P44 with that of admitted signature at Ex.P50(a), P51(a), P52(a), P53(a) and P54(a). On careful comparison of signatures, I am of the opinion that both the signatures are one and the same. Therefore, contention of defendant's counsel that signature found on Ex.P11 to

P14 and P44 is not that of defendant falls to ground. From Ex.P14, it is clear that the plaintiffs have purchased the property for valuable consideration and defendant is aware of the above said sale transactions.

16. PW-1 in his evidence has categorically stated after purchasing the property, defendant herein approached the plaintiffs and requested them to re-let the suit property and defendant executed Rental Agreement as per Ex.P15. The defendant is a tenant under PW-1 and has paid advance amount of Rs.3,00,000/- and agreed to pay monthly rent @ Rs.26,000/- per month and in case of extension of lease, the defendant agreed to pay 5% enhanced rent on the monthly rent for every year. The defendant has obtained the premises for running garage in the suit schedule property. Later, PW-1 issued notice terminating the tenancy and called upon the Judgement defendant to vacate and hand over possession of the suit schedule property. The said notice is duly served and the defendant has issued untenable reply and not vacated the suit schedule property. The defendant has not paid the rents from July 2014 to January 2015 and liable to pay Rs.1,96,000/- towards arrears of rent. PW-1 in his evidence has stated that on the same day garage was let out to the defendant herein and two shops were let out to N.Satish Kumar i.e., PW-3 herein to run two wheeler garage and service station. At that time, 2 separate Rental Agreements were executed, one by defendant and another by N.Satish Kumar and said N.Satish Kumar has signed Ex.P15 as a witness and defendant has signed as attesting witness to Rental Agreement of said N.Satish Kumar. Both xerox copies of Rental Agreements containing original signatures of plaintiff no.2, defendant, Satish Kumar and other attesting witnesses are produced at Ex.P15 and P43. The said legal notice is marked at Ex.D21.

17. The defendant has contended that he is in possession of the suit schedule property from 10.05.2000 when the property belonged to Rajappa, Papaiah and Munikrishna and he has perfected his title over the suit schedule property by way of adverse possession and he is not a tenant under Judgement plaintiff no.2. Further, DW-1 has stated that he has constructed structure in the suit property.

18. In order to prove the tenancy, the plaintiffs have produced xerox copy of Rental Agreement containing the original signature of plaintiff no.2, defendant and attesting witnesses at Ex.P15. During the pendency of the above suit, the defendant contended that xerox copies of the Rental Agreements are insufficiently stamped and cannot be marked in evidence. Subsequently, the plaintiffs have paid duty and penalty on the Rental Agreements i.e., Ex.P15 and Ex.P43. Hence, above argument doesn't survive. Advocate for the defendant argued that Ex.P15 and 43 are xerox copies, hence they are not admissible in evidence. It is pertinent to note that, Ex.P15 and 43 i.e., Rental Agreements are xerox copies but they contain original signatures of plaintiff no.2, defendant and attesting witnesses. Therefore, Ex.P15 and 43 cannot be construed as xerox copies. Ex.P15 and 43 are original documents and primary evidence and are admissible in evidence. Hence above argument of the defendant counsel falls to ground.

19. PWs.1 and PW-3 in their evidence have categorically stated that before entering into Sale Deed, the Judgement defendant had vacated the suit schedule property and after purchasing the suit schedule property, defendant and N.Satish Kumar approached plaintiff no.2 for rental purpose and

plaintiff no.2 agreed to let out garage portion to defendant and shop portion to N.Satish Kumar. The defendant paid advance amount of Rs.3,00,000/- and agreed to pay monthly rent of Rs.26,000/- for a period of 11 months and on extension of lease the defendant agreed to pay 5% more on the agreed rent every year. PWs.1 and 3 have categorically stated that Ex.P15 was executed by the defendant in their presence and PWs.1 and 3 have identified the signatures of defendant in Ex.P15 at Ex.P15(a) to (g) and PW-3 has identified his signature at Ex.P15(h). Advocate for the defendant argued that the defendant has not signed on Ex.P15. Except bald denial by the defendant, the defendant has not produced any evidence to show that signature found on Ex.P15 does not belong to him. On the other hand, attesting witness has categorically stated that the defendant has signed Ex.P15 in his presence and identified the signatures on Ex.P15. This court has power to compare the signatures of defendant found on Ex.P15 (a) with that of admitted signature of the defendant at Ex.50(a) to 53(a). After careful comparison, I am of the opinion that both signatures tally and they are one and the same. Therefore, Judgement contention of the defendant that he has not signed on Ex.P15 cannot be relied upon. Evidence of PW-1 and PW-3 is sufficient to prove the execution of rental agreement i.e., Ex.P.15 by defendant herein. Ex.P15 clearly goes to show that the defendant is a tenant under plaintiff no.2.

20. DW-1 has stated that he entered into the suit schedule property on 10.05.2000 when the property belonged to Rajappa, Papaiah and Munikrishna. It is pertinent to note that, in the year 2000 the property did not belong to Rajappa, Papaiah and Munikrishna, since they had sold the property in the year 1998 in favour of Mubarak Ahmed. Further, the defendant has stated that he has put up construction over the property in the year 2000. The defendant has not produced any documentary evidence before this court to show that he has put up construction over the suit schedule property as contended in his written statement. The defendant in his cross- examination admits that electricity meter bearing No.35AL18207 pertains to garage situated in the suit schedule property. The plaintiffs have produced documents pertaining to above said electricity meter to show that Smt.Amtul Majid had obtained electricity connection to the premises in the year 1999. From Ex.P47 to P49, it clearly goes to show that prior to 2000 electricity connection was provided to the premises Judgement situated in the suit schedule property. In view of electricity connection, it can be held that prior to 2000 building was in existence in the suit property. Therefore, contention of the defendant that he has constructed the building in the suit schedule property in the year 2000 falls to ground.

21. The defendant has contended that he has perfected his title over the suit schedule property by way of adverse possession. In 2016 (1) KCCR 597, in the case of S.D.Nagaraju and others v. Sri Shivaganga Education and Charitable Trust (R), Sira Town and others, wherein the lordships have held as under:-

"A. ADVERSE POSSESSION - Alternative plea - Pleading as to - Held, it is clear from the materials on record that plaintiff has established title to the suit schedule properties. The alternative plea of the defendants is that they have perfected their title by adverse possession. It is well established that plea of adverse possession is not a pure question of law but a mixed question of fact and law. Therefore, a person, who claims adverse possession should plead and establish on what date he came into

possession, what was the nature of his possession, whether factum possession was known to the other party, how long his possession has continued and his possession was open and undisturbed".

Judgement From the above judgment, it is clear that the burden is on the defendant to plead and establish on what date he came into possession, nature of his possession, factum of possession was known to the other party and how long his possession has continued and his possession was open and undisturbed. It is pertinent to note that, there is no pleading in the written statement that the defendant was in possession of suit schedule property openly, interruptedly, to the knowledge of the plaintiffs or plaintiffs' vendor. Therefore, adverse inference has to be drawn against the defendant herein. Baldly, the defendant says that he entered into the suit schedule property in the year 2000 when it belonged to Rajappa, Papaiah and Munikrishna. On the other hand, in the year 2000 Rajappa, Papaiah and Munikrishna were not owners of the suit schedule property. Further, the defendant has not examined any independent witness before this court to show that he was in possession of the suit schedule property from 2000. No documentary evidence is produced by the defendant to show that he is in possession of the suit schedule property since 2000. The documents produced by the defendant namely Ex.D4 i.e., Letter issued by Joint Director, District Industries Centre, Bangalore, goes to show that the defendant has commenced his business from 13.11.2002. Further, Judgement documents pertaining to electricity, insurance bills etc., clearly goes to show that the defendant is in possession subsequent to 2002. On the other hand, Sale deed recitals clearly goes to show that on the date of execution of sale deed the property was vacant and as per rental agreement defendant has entered into the property. Therefore, contention of the defendant that he is in possession from 2000 cannot be accepted. The defendant has failed to prove the ingredients of adverse possession.

22. Advocate for the defendant argued that plaintiff has filed the above suit for ejectment, therefore issue regarding title based on adverse possession cannot be adjudicated by this court. In the present case, the defendant has not claimed any counter claim. It is pertinent to note that, this court is a civil court and has powers to adjudicate issue regarding title to the property. Therefore, above argument is not sustainable.

23. DW-1 in his written statement and evidence has stated that written statement schedule property is part and parcel of suit schedule property. Advocate for the defendant argued that in the schedule the plaintiffs have not mentioned the extent of property specifically and baldly have stated that the defendant is in possession of approximately 2000 square feet. It is pertinent to note that, DW-1 in his evidence admits that he is running garage in the suit property and one Satish Kumar is running two double shutter shops. The defendant is aware of the extent of the property. The defendant has not produced any document to show extent of written statement property. The identification of the suit schedule property is not in dispute. The parties have understood the extent and boundaries of the suit schedule property and have led their evidence. Therefore, above contention of defendant's counsel is not sustainable under law.

24. PW-1 in his evidence has stated that the defendant had agreed to pay monthly rent at the rate of Rs.26,000/- per month and now liable to pay enhanced rent at the rate of Rs.28,000/- per month.

Further, PW-1 has stated that from July 2014 to January 2015 the defendant has not paid the rentals. Ex.P15 is the Rental Agreement. As per said Rental Agreement now the defendant is liable to pay rent @ Rs.28,000/- per month. The defendant has not produced any evidence to show that he has paid the rentals to the plaintiff herein. More over, the defendant has failed to prove adverse possession. Therefore, contention of the plaintiff that the defendant is liable to Rs.1,96,000/- towards arrears of rent from July 2014 to January 2015 has to be accepted.

Judgement

25. PW-1 in his evidence has stated that he has issued legal notice terminating the tenancy and calling upon the defendant to hand over vacant possession of the suit schedule premises. Ex.D21 is the legal notice issued by the plaintiff to the defendant. From Ex.D21 it is clear that the plaintiff has terminated the tenancy by giving 3 months time to the defendant to vacate and hand over the vacant possession to the plaintiff herein. The said notice is duly served on the defendant. The plaintiff has terminated tenancy as per law. The defendant is liable to vacate and hand over vacant possession of the suit schedule premises to the plaintiff.

26. The learned counsel for the defendant has relied upon the decisions reported in:

1. 2010 (4) KCCR 3061, in the case of R.Hanumaiah and another v. Secretary to Government of Karnataka, Revenue Department and others.
2. AIR 2009 SC 103, in the case of Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others.
3. AIR 2004 Madras 134, in the case of Raju and Parvathi v. Muthuammal and others.
4. 1973 (2) Mys.L.J. 207, in the case of Rukamoddia Dastagirsab v. Basawwa and others.

Judgement

5. 2010 (4) KCCR 2765, in the case of M.T.Siddashetty and another v. P.H.Gowda and another.

6. 2011 (2) KCCR 1389 (SC), in the case of H.Siddiqui (dead) by LRs v. A.Ramalingam. The above decisions is not applicable to the facts and circumstances of the above case. Accordingly, I answer Issue Nos.1 & 2 in the Affirmative and Issue Nos.3 to 5 in the Negative.

27. Issue No.6:-

The defendant in his written statement has contended that court fee paid by the plaintiffs is insufficient. It is pertinent to note that, the plaintiffs have valued the suit under Section 21 and 41 of Karnataka Court Fees and Suits Valuation Act. The

plaintiffs have paid court fee Rs.35,300/- on the plaint. The plaintiffs have valued the suit for total pecuniary value of Rs.5,32,000/- i.e., one year monthly rent + arrears of rent. The valuation made and court fee paid by the plaintiffs is correct. Except bald allegation, the defendant has not produced any material to show that valuation made by the plaintiffs is incorrect. Hence, I answer Issue No.6 in Affirmative.

28. Issue No.7:-

In view of my above discussion, I proceed to pass the following:

Judgement ORDER Suit of the plaintiffs is decreed with costs. The defendant is directed to vacate and hand over vacant possession of the suit schedule premises to the plaintiffs 1 and 2 within 3 months from the date of the decree.

Further, the defendant is liable to pay a sum of Rs.1,96,000/- i.e., arrears of rent from July 2014 to January 2015 to the plaintiffs 1 and 2 herein.

Draw decree accordingly.

(Dictated to the Judgement Writer, typed by her, the transcript thereof corrected and then pronounced by me, in the open court, this the 6th day of December 2017) (P.SRINIVASA) XLII Addl., City Civil & Sessions Judge, Bengaluru City.

ANNEXURE I. List of witnesses examined on behalf of:

(a) Plaintiffs' side:

PW.1 - Sri.M.Arun Kumar PW.2 - Smt.Vanaja PW.3 - Sri.N.Satish @ N.Satish Kumar

(b) Defendants' side:

DW.1 - Sri.G.Velmurugan II. List of documents exhibited on behalf of:

Judgement

(a) Plaintiffs' side:

Ex.P1 : Original General Power of Attorney dated 06.01.1998 Ex.P2 : Original Affidavit dated 06.01.1998 Ex.P3 : Original Registered Sale Deed dated 22.03.2001 Ex.P4 : Original Receipt dated 27.12.2001 Ex.P5 : Assessment Order dated 18.06.2002 Ex.P6 to 8 : Tax Paid Receipts Ex.P9 : Original Khatha Certificate Ex.P10 : Original Khatha Extract Ex.P11 : Further Receipt on Sale Agreement dated 15.09.2011 Ex.P12 : Further Receipt on Sale Agreement dated 20.10.2011 Ex.P13 : Further Advance Amount Receipt dated 15.12.2011 Ex.P14 : Absolute Sale Deed dated

16.12.2011 Ex.P15 : Rental Agreement dated 02.01.2012 Ex.P16 : Original OPD Slip of Bowring & Lady Curzon Hospitals, Bangalore dated 31.10.2014 Ex.P17 : Acknowledgement dated 31.10.2014 Ex.P18 : Copy of Complaint dated 30.10.2014 Ex.P19 : Statement of Defendant Ex.P20 : Certified copy of Plaint in O.S.8124/2014 Ex.P21 : Certified copy of Written Statement in O.S.No.8124/2014 Ex.P22 to 27 : Tax Paid Receipts Ex.P28 : Khatha Certificate Ex.P29 : Khatha Extract Ex.P30 : Tax Paid Receipt Ex.P31 : Official Memorandum of BESCO dated 25.04.2012 Ex.P32 : Original Electricity Bill Ex.P33 : Reply Notice dated 06.10.2014 Ex.P34 : Corrigendum to Reply dated 13.10.2014 Ex.P35 : Uttara Pathra Ex.P36 : Suvarna Khatha Ex.P37 : Tax Paid Receipt Ex.P38 : Letter dated 23.11.2011 Ex.P39 : Public Notice dated 23.11.2011 Ex.P40 : Letter of Desai Associates dated 12.12.2011 Ex.P41 & 42 : Paper Publications Judgement Ex.P43 : Rental Agreement dated 02.01.2012 Ex.P44 : Original Sale Agreement dated 27.06.2011 Ex.P45 : Memorandum of Plaint in O.S.No.8011/2013 Ex.P46 : Letter of BESCO dated 09.10.2017 Ex.P47 : Inspection Report of BESCO Engineer Ex.P48 : Agreement for Permanent Power Supply by Karnataka electricity Board Ex.P49 : Inspection Report of KEB Engineer Ex.P50 : Written statement of this suit Ex.P51 : Vakalath of defendant Ex.P52 : Vakalath of defendant Ex.P53 : Vakalath of defendant Ex.P54 : Original Rental Agreement dated 02.01.2012

(b) Defendants' side:

Ex.D1 : Certified copy of Plaint in
O.S.No.8124/2014
Ex.D1(a) : Sketch of suit schedule property

attached to Plaint in O.S.No.8124/2014 Ex.D2 : Certified copy of Order Sheet in O.S.No.8124/2014 Ex.D3 : Certified copy of Decree in O.S.No.8124/2014 Ex.D3(a) : Sketch of suit schedule property attached to Decree in O.S.No.8124/2014 Ex.D4 : Acknowledgement issued by Joint Director District Industries Centre, Bangalore Ex.D5 : Original Inspection Report of BESCO Ex.D6 & 7 : Electricity Bills Ex.D8 : Stencil Copy of Shriram Chits (Karnataka) Pvt. Ltd.

Ex.D9 : Carbon copy of e-Market Services Membership Form Ex.D10 : SIFY Internet Payment Details dated 03.02.2004 Ex.D11 : Premium Reminder of ING Vysya Life Insurance Ex.D12 & 13 : Renewal Premium Receipts of ING Vysya Life Insurance Ex.D14 : Letter of Bajaj Allianz Life Insurance Judgement Company Limited dated 19.03.2008 Ex.D15 : Renewal Premium Receipt & Statement of Account of ICICI Prudential Life Insurance Ex.D16 : Letter of BSNL dated 30.03.2009 Ex.D17 : Letter of The Mysore Paper Mills Limited dated 24.03.2011 Ex.D18 : Letter of The Mysore Paper Mills Limited dated 28.12.2011 Ex.D19 : Work Order of Atria Power Corporation Ltd. dated 03.11.2012 Ex.D20 : Letter of Life Insurance Corporation of India dated 31.05.2013 Ex.D21 : Legal Notice dated 29.09.2014 Ex.D22 : RPAD Cover Ex.D23 : Postal Receipt Ex.D24 : Reply Notice dated 06.10.2014 Ex.D25 : Postal Receipt Ex.D26 : Corrigendum to Reply dated 13.10.2014 Ex.D27 : Copy of Complaint dated 31.10.2014 Ex.D28 : Postal Receipt Ex.D29 : Postal Acknowledgement Ex.D30 : Copy of Complaint dated 03.11.2014 Ex.D31 : 4 Postal Receipts Ex.D32 to 41 : Photographs Ex.D42 :

CD Ex.D43 : Certified copy of Order in Writ Petition No.9344/2017 (GM-CPC) XLII ADDL., CITY CIVIL & SESSIONS JUDGE BENGALURU CITY.

Judgement