

Bangalore District Court

Sri.M.Channappa vs E.Subramanyam on 7 July, 2018

[C.R.P. 67]

Govt. of Karnataka

Form No.9 (Civil)

Title Sheet for

Judgment in Suits

(R.P.91)

IN THE COURT OF THE XIV ADDL. CITY CIVIL JUDGE

AT BANGALORE [CCH.No.28]

Present: Sri.G.A.Mulimani, M.A., LL.B. (Spl.)

XIV ADDL. CITY CIVIL JUDGE

Dated this the 7th day of July, 2018

O.S.No.7281/2003

Plaintiff/s : Sri.M.Channappa,
Since dead by his Lrs.

1(a) Smt.C.Shakuntala,
Aged 49 years,
W/o Sri.Lingaiah,
& D/o Late Sri.M.Channappa,
No.44, 1st cross, 1st stage,
Kumaraswamy layout,
Bangalore.78.

1(b) Sri.Chandrashekar,C.
S/o Late Sri.M.Channappa,
15/A, 10th main, 3rd block,
Jayanagar,
Bangalore-560011

1(c) Sri.Vijaya Krishna Murthy.C.
S/o Sri.M.Channappa,
No.119, 2nd main, 2nd phase,
KSRTC Layout, J.P.Nagar,
Bangalore.78

(By Sri.Ramesh P. Kulakarni, Advocate)

2

O.S.No.7281/2003

Defendant/s : - Vs -
E.Subramanyam,
S/o E.Siddaiah, Major,
R/at No.76/E, 24th cross,
Kerasandra BSK II stage,
Bangalore-560070

(By Sri.A.M.C. Advocate)

Date of institution
of the suit : 08/10/2003
Nature of the suit : Declaration,

[suit on pronote, suit for declaration and possession, suit for injunction]	delivery of vacant possession of suit property and mesne profit.
Date of the commencement of recording of the evidence:	16-08.2014
Date on which the Judgment was pronounced :	07-07-2018

	Year/s	Month/s	Day/s
Total Duration	14	08	29

JUDGMENT

This suit is filed by the plaintiff against the defendant for the relief of declaration, possession and other reliefs.

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

The plaintiff is the absolute owner of the suit schedule property having purchased the same from its previous owners under the registered sale deed dated 23.7.1958, the said property was part of outskirts at Bangalore City at the time of its purchase, after purchase he put up some building and let out western portion of the said property to Mr.P.V.Lingaiah on a monthly rent of Rs.100/-, the remaining eastern portion of the property being vacant land was let out to one Mr.K.Kochu Krishanan Achari. Later the CITB, Bangalore published Notification under Sec.4 of the Land acquisition Act intending to acquire the said property for the formation of Banashankari III stage, subsequently 6 (1) notification was issued, however CITB did not proceed further in the matter neither comply the Section 11 and 16 of the L.A. Act. Therefore the proceedings deemed to have been dropped, and still plaintiff continued to be owner of the said property. Both the tenants paid the rent for a number of years, later on they did not paid and hence the plaintiff filed H.R.C.No.2547/83 before the Small Cause Court, Bangalore, by that time the said property comes within the limits of Corporation City of Bangalore and was numbered as 2038A (815A) 24th B cross, BSK II stage, KR Road, Bangalore, and in the eviction petition the changed number and address was indicated, the tenant Mr.K.Kochu Krishna Achari took up the contention that he is not the owner of the said property, the court of Small Cause, after enquiry, gave a categorical finding that plaintiff is the owner of aforesaid property, thereafter the plaintiff filed execution and took possession of the said property which abut K.R.Road, thereafter plaintiff put up compound wall and around the said property and also put up a small watchmen shed, thereafter katha stands in his name. The defendant is a local politician, he had eye on this property as it become a valuable property by passage time, during July-August 2000 the defendant tried to tress pass into a portion of property that was occupied earlier by Mr.K.Kochu Krishna Achari, i.e. schedule property, hence he approached the local police, but they have not taken any action, in the meanwhile he received summons from court in O.S.4109/2000 during July 23rd 2000. The plaintiff studied up to 3rd standard in Kannada language, as such he could make out what it was, then he approached the Advocate and participate in the proceeding, on perusal of the sale deed the plaintiff was shocked to notice that defendant have created fraudulent sale deed under which one Smt. Rathamma and

Mr.Sampangi who appear to be fictitious persons have sold the schedule property in favour of the defendant without having any right as such the same is not binding on him, during February 2001, the defendant has trespassed into the schedule property with gondas and has taken possession of the entire schedule property, hence has filed this suit.

3. In pursuance of the suit summons, the defendant appeared through his counsel and filed written statement inter-alia denied all the allegations against them as false, further has contended that the defendant being the absolute owner in lawful possession and enjoyment of the property purchased the same by virtue of sale deed dt.7.10.1998 from his vendor and ever since then he is in possession and enjoyment of putting up construction, on the basis of the ownership. Corporation of the City, Bangalore effected the katha of the said property and collected the taxes, except the suit property the defendant do not own any other property and his vendors are the rightful owners and who have lawfully transferred the suit property in his favour, the plaintiff without any manner of right title, interest and much less possession over the suit property had approached the corporation of City of Bangalore to effect katha in his name, the Corporation of City of Bangalore after scrutiny of the document rejected the application for katha against him plaintiff filed W.P.No.38997/01 and 39209/01 on the file of the Hon'ble High Court of Karnataka, which came to be dismissed, against which he has filed Writ appeal number 5641/2002- 03 on the file of this court and same came to be dismissed. When the plaintiff has miserably failed in his futile attempt to swallow the property, had now come up with this false theory by suppressing the true facts, all these facts have not been stated in the plaint, hence the plaintiff is guilty of suppressio Vari and Suggestio -false on this ground the suit is not maintainable, and also the suit is bad for non joinder of necessary parties as the vendor of the defendant are necessary parties to the suit and the suit is hopelessly barred by law of limitation, hence he prayed for dismiss the suit.

4. On the basis of the above pleadings, materials and documents, my predecessor in office has framed the following issues:

ISSUES

1. Whether plaintiff proves that he is the owner of suit schedule property?
2. Whether plaintiff proves that the defendant tried to trespass into the plaintiff's property?
3. Whether plaintiff proves that the sale deed dated 7.10.1998 executed by Smt.Rathnamma and Sampangi in favour of defendant is not binding and does not create any right to the defendant?
4. Whether defendant proves that he is the absolute owner in possession of the suit schedule property as contended in paragraph 13 of the written statement?
5. Whether the suit is bad for non joinder of necessary parties?

6. Whether the suit is bared by time?

7. Whether the court fee paid by the plaintiff is proper?

8. Whether plaintiff is entitled for declaration, possession, mesne profits and other reliefs?

9. What order or decree?

5. In order to prove these issues, the Lr No.2 of the plaintiff was examined as P.W.1 got marked the documents Ex.P1 to 6, subsequently his evidence was expunged, and Lr No.3 of the plaintiff has examined as P.W.2 got document marked Ex.P7 to P12 and Ex.P6 marked twice hence it is renumbered as Ex.P7 as per the deposition dated 2.6.2017 by my predecessor and closed the side of the plaintiff. On the other hand the defendant is examined as D.W.1 got document marked Ex.D.1 to 40 out of which Ex.D.1 to 9 were marked by way of confrontation, and closed the side of defendant evidence and case is posted for arguments.

6. Heard both sides. The learned counsel for the plaintiff and defendants have filed written arguments and learned counsel for plaintiff relied the following decisions:

1. AIR 1963 S.C. 1879 (From Patna: AIR 1956 Pat 349)

2. 554 Indian Law Reports 1988 Kar.

3. AIR 1976 Orissa 43

4. (2012)2 Supreme Court Case 294

7. My answers on the above issues are as follows :

Issue No.1	:	In the negative,
Issue No.2	:	In the negative,
Issue No.3	:	In the negative,
Issue No.4	:	In the affirmative,
Issue No.5	:	Answer accordingly,
Issue No. 6	:	Answer accordingly,
Issue No.7	:	Answer accordingly,
Issue No.8	:	In the negative,
Issue No.9	:	As per final order for the following:

REASONS

8. ISSUE No.1 TO 4: These issues are interlinked, hence, to avoid the repetition of the same facts, I have discussed these issues simultaneously for my common consideration.

9. It is the specific case of the plaintiff that, he is the absolute owner of the suit schedule property having purchased the same from its previous owners under the registered sale deed dated 23.7.1958, thereafter he put up some building and let out western portion of the said property to Mr.P.V.Lingaiah on a monthly rent of Rs.100/-, the remaining eastern portion of the property being vacant land was let out to one Mr.K.Kochu Krishanan Achari. Later the CITB, Bangalore published Notification under Sec.4 of the Land acquisition Act intending to acquire the said property for the formation of Banashankari III stage, subsequently 6 (1) notification was issued, however CITB did not proceed further in the matter neither comply the Section 11 and 16 of the L.A. Act. Therefore the proceedings deemed to have been dropped, and still plaintiff continued to be owner of the said property. Both the tenants paid the rent for a number of years, later on they did not paid and hence the plaintiff filed H.R.C.No.2547/83, by that time the said property comes within the limits of Corporation City of Bangalore and was numbered as 2038A (815A) 24th B cross, BSK II stage, KR Road, Bangalore, and in the eviction petition the changed number and address was indicated, the tenant Mr.K.Kochu Krishna Achari took up the contention that he is not the owner of the said property, the court of Small Cause, after enquiry, gave a categorical finding that plaintiff is the owner of aforesaid property, thereafter the plaintiff filed execution and took possession of the said property which abut K.R.Road, thereafter plaintiff put up compound wall and around the said property and also put up a small watchmen shed, thereafter katha stands in his name. The defendant is a local politician, he had eye on this property as it become a valuable property by passage time, during July-August 2000 the defendant tried to tress pass into a portion of property by virtue of alleged and created fraudulent sale deed under which one Smt. Rathamma and Mr.Sampangi who appear to be fictitious persons have sold the schedule property in favour of the defendant without having any right as such the same is not binding on him, during February 2001, the defendant has trespassed into the schedule property with gondas and has taken possession of the entire schedule property.

10. It is the specific case of the defendant that, defendant being the absolute owner in lawful possession and enjoyment of the property purchased the same by virtue of sale deed dt.7.10.1998 from his vendor and ever since then he is in possession and enjoyment of putting up construction, and katha stands in his name, the plaintiff without any manner of right title, interest and much less possession over the suit property had approached the corporation of City of Bangalore to effect katha in his name, the Corporation of City of Bangalore after scrutiny of the document rejected the application for katha against him plaintiff filed W.P.No.38997/01 and 39209/01 on the file of the Hon'ble High Court of Karnataka, which came to be dismissed, against which he has filed Writ appeal number 5641/2002-03 on the file of this court and same came to be dismissed.

11. In order to prove the case of the plaintiff, Lr No.3 of plaintiff has filed his sworn affidavit in lieu of the chief-examination as P.W.2, wherein he has reiterated the same contents, which he has narrated in his plaint, hence, in order to avoid repetition of the same facts, I have not discussed once again. In support of his oral evidence he has produced 12 documents as Ex.P-1 to Ex.P-12 for the sake of convenience I have summarized these documents as Ex.P-1 is the certified copy of sale deed dt.23.7.58, Ex.P- 2 is the certified copy of sale deed dt.14.11.2003, Ex.P-3 is the certified copy of Sale deed dt.7.10.93, Ex.P-4 is the certified copy of orders in HRC case, Ex.P-5 is the certified copy of order sheet in execution petition, Ex.P6 is the certified copy of Execution Petition, Ex.P7 is the

certified copy of Civil appeal No.696/2004, Ex.P8 is the Tax paid receipt, Ex.P9 is the Mutation, Ex.P10 is the records of Rights, Ex.P11 is the Index of Land, Ex.P12 is the xerox certified copy of Sale deed, Ex.P12(a) typed copy of Ex.P12.

12. On the other hand in order to disprove the case of the defendant, defendant has filed his sworn affidavit in lieu of the chief-examination as D.W.1, wherein he has reiterated the same contents, which he has narrated in his written statement, hence, in order to avoid repetition of the same facts, I have not discussed once again. In support of his oral evidence he has produced 40 documents as Ex.D-1 to Ex.D-40 for the sake of convenience I have summarized these documents as Ex.D1 is the E.C. Ex.D2 is the c/c Tiluvalikepatra, Ex.D3 is the c/c of Endorsement issued by BBMP, Ex.D4 is the c/c copy of WP No.38997/2001, Ex.D5 is the c/c of Writ Appeal No.5641-42 of 2003, Ex.D6 is the c/c copy of Revision application, Ex.D7 is the c/c of CCC No.32/2005, Ex.D7 is the c/c copy of letter, EX.D8 is the c/c of Letter issued by BBMP, Ex.D9 is the c/c of Ex.No.2658/2004, Ex.D10 is the c/c of sale deed dt.7.10.1998, Ex.D11 &12 are the betterment charges receipt along with another receipt, Ex.D13 is the Notice issued by BMP, Ex.D14 is the tax paid receipt, Ex.D15 is the Khata endorsement, Ex.D16 is the Khata certificate Ex.D.17 is the Khata extract, Ex.D18 & 19 is the ECs, Ex.D20 to 23 are Four sketches pertaining to water Connection, Ex.D24 is the Sanction plan, Ex.D25 is the Khata certificate, Ex.D26 is the Khata Extract, Ex.D27 to 33 are the Tax paid receipts from the year 2010-11, Ex.D34 to 40 are Five photographs, photo bill and C.D.

13. During the cross examination of P.W.2 has stated that, he is Advocate by profession, he don't remember the name of the vendor from whom his father had purchased the property, and also who applied immediately after the sale deed, to transfer the khata to his name, but concerned authority has given endorsement, and he has not produced the said endorsement of the khata, he don't remember in which year the application for katha was submitted, the sale deed is the only document to show that he is in possession of the suit schedule property, from the previous owner only they taken possession, it is false that nobody was deliver the possession of the suit schedule property and Ex.P1 is sham document. He don't know the entire extent of Sy.No.39/2A of Yedyur village, he don't have any documents in regard to the title pertaining to the vendor in Ex.P1. the original Ex.P1 is with him, and there is no layout plan of Sy.No.39/2A with him, he is having the survey sketch pertaining to the suit schedule property, he don't know the owner given the said sketch, he don't know the what are documents existing to the suit schedule property in the revenue department prior to Ex.P1. The suit schedule property was purchased as site not an agricultural land, he don't know when it was converted into non agricultural land.

14. Further has stated that, at present Corporation allotted the property No.2038A, 167, 24th B Cross, K.R.Road, Bangalore, when the BBMP had allotted this number. His father was purchased the site as per Ex.P1 they have the layout plan pertaining to the said property, it is false to suggest that it was agricultural land when his father was purchased, he don't know if there was a conversion order or assessment number at the time of purchase from the vendor in Ex.P.1, he don't know his father was obtained the assessment extract, but they have been paying tax from 2000, as per his knowledge there was no building and it was a vacant site at the time of Ex.P1, again has stated that he has paid the tax for the year 2000, thereafter the property comes within the BBMP limits, his father had submitted the application to get his name entered in the City Corporation,

Mahanagarapalike and BBMP records, they have not constructed the building in the schedule property, they have put up a shed in 1993, at that time he was aged about 10 years, he don't know the measurement of said site, suit property measures 20 x 35 feet bounded towards East -K.R.Road, West -portion of plaintiff property , North by road 24th B cross, South property of Chikkanna, the word Karasandra used is appropriate, it is true that the same is not found in Ex.P1, the E.C. for the period 1.10.66 to 31.10.1975 was identified by the P.W.2 hence the same is marked as Ex.D1, the detailed mentioned as 815/A pertains to the suit property, the BDA has allotted the No.815/A, if he have the said document he can produce the same.

15. Further has stated that, it is true that as the BDA had given the number as 815/A, he assumed that said number is pertain to the suit property. The endorsement now shown to him issued by the BDA to his father, which is marked at Ex.D2, he has not aware if his father had approached the BDA after 1987, the said document is issued after 1987 to his father stating that the BDA cannot allot or reconvey, the witness identified the said document dt.26.10.95 same is marked as Ex.D.3, it is true that his father filed a suit against one Mr.P.V.Lingaiah, he cannot say the document shown to him is the notice issued by his father to Lingaiah, it is false that in the said legal notice his father claimed 39/2 to the extent 45 x 85 feet, it is true that in the affidavit for chief examination filed by his brother the Sy.No.39/2A that site No.2038 instead of 2038A there is no reference of said No.2038A and 24B in the Ex.P1, witness voluntarily states that his father was purchased in 1958, and his brother is missing from 3-4 years, he has not lodged complaint in that regard, it is false to suggest that deliberately he has subjected his brother for cross examination, it is false that the premises stated by him is neither located in 24A cross or 24B cross.

16. Further has stated that Corporation has allotted 2038A in 2000 he don't know there are document to show about the said allotment number from corporation, his father has issued a notice on 24.12.1999, but he don't know if the document now shown to him is the copy of the said legal notice, he has not aware of the proceedings pertaining to the katha transfer, it is true that his father had filed petition against BBMP, defendant about the transfer of katha as the witness is identified the order passed in WP No.38997/2001 clubbed with WP No.39209/2001, it is marked at Ex.P4 , it is true that Ex.D4 was challenged in Writ Appeal No.5641-42 of 2003, witness identified the order copy, hence marked at Ex.D5, he is aware of the proceedings before D.C. Bangalore and identified the document R.A.No.1504/2004-05, hence it is marked at Ex.D6 , he has not aware if his father had obtained the certified copy of Ex.P1 and produced before the Corporation. In H.R.C.No.2547/1983 they have taken possession of the property through the court.

17. Prior to the suit his father has not challenged the sale deed dt.7.10.1998, he came to know about the sale deed only after filing the suit, his father was filed suit against Subramanya for injunction was withdrawn, the said suit No.is O.S.4109/2000 was with drawn, in that suit they had given undertaking not to take the possession illegally suit was withdrawn and it is true that as per the sale deed dt.7.10.98 defendant is in possession of the suit property on 7.10.98 and from 1982 till 7.10.1998 Koche Krishnachari was in possession of the suit property against him they have filed H.R.C. petition and they have taken the possession as per Ex.P6 of the property they were only in possession of the property till 2000. On account of created sale deed dt.7.10.98 they lost the possession of the property, he has not aware if Koche Krishna Achari has sold any property in and

around the property described in Ex.P6. the area shown in Ex.P6 is 35 x 40 feet and it is true that in his affidavit it is mentioned as North-South 35 ft and East- West 20 ft, witness state that it is the half portion of Ex.P6, the half portion is the subject matter of the suit and another half portion is subject matter of O.S.7280/2003, it is false that Ex.P1 pertains to Sy.No.39/2 and not 39/2A, it is false that he has not produced the original of Ex.P1 as it would be against him, the property not at all been acquired, acquisition proceedings dropped, hence there is no acquisition. The BDA has issued endorsement that property has not been acquired, they have that document. It is true that there is no reference of this Sy.No.39/2A in para No.6 of his affidavit, he do not have any survey sketch and tippani of Sy.No.39/2A.

18. During the cross examination of D.W.1 has stated that he was acquainted with his vendor Rathnamma and Sampangi from 1975, the negotiations for the sale transaction had taken place in 1998, he had taken the legal opinion prior to purchase the property from one Ananthrao at Sub Registrar Office. The revenue records stood in the name of Bande Muniyappa and tax paid receipts stood in the name of Rathnamma and Sampangi, prior to the registration the khata stands in the name of Rathnamma and Sampangi, it is false to suggest that no person of the name Rathnamma and Sampangi and it is fiction name, the suit property bounded on west - property of Geetha Rebello, towards west of Geetha Rebbello property Udayakumar property is situated. the property of Suresh is to the west to the property of Udayakumar the suit property is bounded south property of Chikkanna who is no more and his children sold that property, it is true that Jayamma is the wife of Chikkanna who had 3 children by name Srinivas, Manjunath and Ramachandra, he has been residing in his house from 1968,

19. Further has stated that, it is true that Chikkanna was residing in his property prior to him, he don't know that property of Chikkanna was sold in the year 2003 by his wife and children, he has not seen the document pertaining to the sale transaction, there is no enmity between him and plaintiff, it is false that in the sale deed the northern boundary is shown as property of deceased plaintiff. The suit property is Sy.No.39/2A of Yeralapura village, property of Geetha also is in Sy.No.no.39/2A, it is false to suggest that he is the occupation of portion of Kouchu Krishna Achari, there are no documents to show that Rathnamma and Sampangi were in possession of the property, it is true that the suit property was notified for acquisition, witness voluntarily states that it was subsequently cancelled, it is false to suggest that he has trespassed the suit property and has been in its possession from August 2000, he has purchased the suit property for 3,55,000/-, the said amount is paid in the presence of Sub Register, he don't remember the witnesses who were present for sale transaction, he has not shown the sale consideration amount in his I.T. returns, he don't remember the age of Rathnamma and Sampangi at the time of his sale deed, at the time of sale deed Rathnamma and Sampangi residing in the village of Karesandra.

20. In pursuance of the suit summons, the defendant appeared through his counsel and filed written statement inter-alia denied all the allegations against them as false, further has contended that the defendant being the absolute owner in lawful possession and enjoyment of the property purchased the same by virtue of sale deed dt.7.10.1998 from his vendor and ever since then he is in possession and enjoyment of putting up construction, on the basis of the ownership. Corporation of the City, Bangalore effected the katha of the said property and collected the taxes, except the suit property the

defendant do not own any other property and his vendors are the rightful owners and who have lawfully transferred the suit property in his favour, the plaintiff without any manner of right title, interest and much less possession over the suit property had approached the corporation of City of Bangalore to effect katha in his name, the Corporation of City of Bangalore after scrutiny of the document rejected the application for katha against him plaintiff filed W.P.No.38997/01 and 39209/01 on the file of the Hon'ble High Court of Karnataka, which came to be dismissed, against which he has filed Writ appeal number 5641/2002- 03 on the file of this court and same came to be dismissed. When the plaintiff has miserably failed in his futile attempt to swallow the property, had now come up with this false theory by suppressing the true facts, all these facts have not been stated in the plaint, hence the plaintiff is guilty of suppressio Vari and Suggestio -false on this ground the suit is not maintainable, and also the suit is bad for non joinder of necessary parties as the vendor of the defendant are necessary parties to the suit and the suit is hopelessly barred by law of limitation, hence he prayed for dismiss the suit.

21. Further it is true that the building shown in Ex.D24 is not existence as on today, and that there are only two shops in the suit property, those 2 shops are in his possession where he is running service station and two wheeler repair, the license of the shop in the name of his younger sister's son, it is false that Ex.D20 and 24 have created, when he applied the khata to the Corporation Authorities he submitted sale deed, rough sketch, water and electrical documents, the sketch was given by the water board, it is false that at the matter pertaining to the dispute had gone up to Hon'ble Supreme Court, he asked plaintiff for the suit property stating to pay the amount, it is true that he had issued 3 cheques each for Rs.4 ½ lakhs to Lrs Chennappa, witness voluntarily stated that they were issued on behalf of Lingaiah, it is false that he is deposing falsely those cheques issued on behalf of Lingaiah, those cheques are with the LRs of plaintiff, it is false that Lrs of plaintiff did not encashed those cheques on account of his request he has not issued any notice to them for not returning those cheques.

22. Since the plaintiff has produced the certified copy of Ex.P1 which is Sale Deed dt.23.7.1958, wherein the Munivenkatappa and his children had executed the sale deed in favour of Channappa S/o Mastaiah in respect of the agricultural land bearing Sy.No. 39/2A measuring East, West towards North - 95 feet, and towards south 84 feet, and South North towards East 35 feet, and towards west;

45 feet and handed over the possession on the date of the sale deed. Ex.P3 is the certified copy of Sale deed dt.7.10.1998, wherein it speaks that one Smt.Rathnamma and Sampangi had executed registered sale deed in favour of Subramanya the defendant in respect of the property bearing old Sy.No.39/2A New No.2038A measuring 20 x 35 ft bounded towards East - K.R.Road, West: Victor Rebellow property, North : 24 B cross road, South: property of Chikkanna.

23. On perusal of the boundary description of Sy.No.39/2A and Sy.No.39/2A new No.2038A which are clearly speaks that none of the boundaries of Ex.P1 are tallied with Ex.P3. The P.W.1 has categorically admitted in his cross examination that, the defendant was in possession of the suit schedule property by virtue of the Ex.P3. On perusal of Ex.P3 which clearly speaks that the defendant is in possession of the suit schedule property from the date of execution of Ex.P3 as the possession was handed over to him by his vendors Smt.Rathnamma and Sampangi.

24. It is pertinent to note that the plaintiff has not stated about last of his possession over the suit schedule property or dispossess by the defendant or when the defendant came in possession of the said property under which mode. The only contention of the plaintiff is that by virtue of the Ex.P3 the defendant is in possession of the suit schedule property. When the plaintiff has sought the relief of declaration and possession in respect of the suit schedule property, the burden incumbent upon him to prove that how and when the defendant was came in possession of the suit schedule property. When there is no specific pleading that on so and so date the defendant came into possession of the suit schedule property, by way of tress pass or illegal possession or whatever the mode. If the plaintiff was in possession of the suit schedule property by virtue of Ex.P1 as contended by him, inspite of that how the defendant came into the possession in the same property as contended by him is a point for consideration.

25. The plaintiff sought the relief of declaration and possession in respect of the suit schedule property, declaring that the sale deed dt.7.10.1998 executed between Rathnamma and Sampagi infavour of the defendant is declared as not binding and does not create any right, as he was purchased the suit schedule property by virtue of the sale deed dt.23.7.1958, but the plaintiff has not produced the original sale deed of him or has not produce the original sale deed of defendant, which has sought the relief of declaration in respect of the sale deed dt.7.10.1958.

26. During the cross examination of P.W.2 has categorically stated that the original sale deed is with him. Inspite of that he has not produced the same. In his written argument he has stated that the plaintiff has produced Ex.P1 c/c of the sale deed as the original is torn, it is first time the learned counsel for plaintiff has taken such contentin in the written argument, and there is no pleading regarding the original sal deed is torn , and PW2 has categorically admitted in his cross examination that the original is with him, and he has not stated that the same is torn, further the P.W.2 has admitted that the original sale deed dt.23.7.1958 is in his possession at one breath, and in another breath he stated that same is torn, therefore it clearly goes to show that, P.W.2 is avoid to produce the original sale deed dt.23.7.1958, therefore the reasons best known to them that why they are not produced the original sale deed.

27. The learned counsel for the defendant while arguing the matter, has raised a point that the P.W.1 whose evidence was expunged, has not stated the survey number of the suit schedule property is 39/2A, therefore the learned counsel for plaintiff had succeeded to expunged his evidence by not keeping the P.W.1 present. However the evidence of P.W.1 is expunged by this court. On perusal of Ex.P3 is a sale deed dt.7.10.1998 which the plaintiff sought the relief of declaration declaring that the sale deed dt.7.10.98 executed by Rathnamma and Sampangi executed in favour defendant is not binding on him and direct the defendant to deliver the possession, then it is the duty of the plaintiff to establish why the Ex.P3 is not binding on him, on perusal of the plaint, the plaintiff has not at all assigned any reasons why the sale deed dt.7.10.1998 is declared as not binding on the plaintiffs, and the

28. Admittedly the plaintiff has not produced the original sale deed dt.23.7.1958 though it is in the custody of P.W.2. the Lr No.2 of the original plaintiff was filed his sworn affidavit in lieu of his chief examination as P.W.1. The said evidence was expunged. The learned counsel for the defendant has

vehemently argued and also taken contention in his written arguments that in paragraph No.6 of chief examination of P.W.1 he never stated the Sy.No.39/2A in respect of the property purchased under Ex.P1, therefore he has expunged the evidence of P.W.1 purposely.

29. On perusal of Ex.P1 and Ex.P3 the boundaries of the both schedules are not tallied, which shows that both properties are different. Since the plaintiff has admitted that the defendant is in possession of the suit schedule property by virtue of the sale deed dt.7.10.1998. The learned counsel for defendant has argued that, since the children's of the Bande Muniyappa and his daughter in law i.e. Rathnamma and Sampangi sold the property bearing Sy.No.39/2A to the extent of 18 x 35 feet as per Ex.P3. and the plaintiff has shown the schedule in the suit is all that piece and parcel of the property bearing Sy.No.39/2A , 2038(167/1) 24th B cross, K.R.Road, old yadiyur village, Banashankari 2nd stage, measuring E to W: 18 ft and N to S: 35 ft. But the plaintiff has not produced any document to show that his name is stands in the property bearing Sy.No.39/2A, 2038 (167/1) 24th B cross, etc., unless and until the property number is not assigned by any competent authority, it cannot be considered that the said property bearing Sy.No.39/2A, 2038 (167/1) 24th B cross, etc. is belongs to the plaintiff, unless and until the sale deed is not acted upon it cannot be come to the conclusion that plaintiff is the absolute owner and possessor of the said property. Admittedly the plaintiff is name is not entered in the concerned revenue records, the P.W.2 has categorically stated in his cross examination at page No.15 dt.8.2.2016, and it is necessary to reproduce the same as under:

"The Corporation has allotted 2038/A in 2000, I don't know if there are documents to show about the said allotment number from Corporation, indeed my father had issued a notice on 24.12.1999, but I don't know if the document now shown to me is the copy of the said legal notice. I am not aware of the proceedings pertaining to the khatha Transfer. It is true to suggest that, my father had filed the writ petition against BBMP, defendant about the transfer of khatha. As the witness is identified the order passed in W.P.No.38997/2001 c/w W.P.39209/2001. hence it is marked as Ex.D4. it is true to suggest that, Ex.D.4 was challenge in Writ Appeal No.5641-42 of 2003. witness identifies the order copy same is marked as Ex.D.5"..

I am aware of the proceedings before the Deputy Commissioner, Bengaluru South. Witness states tht it has been disposed off. Witness identified the document R.A.No.1504/2004-05 before the D.C. Hence it is marked at Ex.D6. I am not aware if my father had obtained the certified copy of Ex.P1a and produce before thhe corporation. It is false to suggest that the Sy.No.39/2 is shown in corporation records. It is false to suggest that I am not sure if my father purchased in Sy.No.39/2 or 39/2A. the original of Ex.P1 is with us. There is no impediment for me to produce the same before the court."

30. On the other hand the learned counsel for defendant has produced Ex.D4, wherein the W.P.No.38997/2001 and WP No.39209/2001 filed by M.Channappa against the Commissioner, BMP and Asst.Revenue Officer, BMP, and this defendant along with Josalene Geetha. The said W.P. was came to be rejected on 26.6.2003 with observation that " However, liberty is reserved to the petitioner to file appeal as against the impugned orders effecting katha in favour of the contesting

respondents within 4 weeks from today. In the event such appeal is filed the Appellate authority is directed to consider the same on merits.

And this is one more case against Corporation where the Advocate for petitioner has not bother to appear before the court to represent interest of the corporation therefore a copy of this order be sent to the commissioner of Corporation".

31. Ex.D5 is the certified copy of the judgment passed by the Hon'ble High Court of Karnataka in WP No.5641-42/2003 (LB-RES) wherein the Hon'ble High Court of Karnataka has held:

" On consideration we find no error or illegality in the order passed by the learned Single Judge, so as to call for interference.

Though we find that the appeal is not maintainable, as this is a revisable order, the appellant can avail the alternative remedy and he is free to agitate all points in the review petition. However, he wants time to approach the authorities concerned. The appellant is given 15 days time to approach the authorities and he is free to make an application under Section 14 of the Limitation Act to exclude the time spent in this Court. With this observation these appeals are dismissed".

32. On perusal of the said appeals the plaintiff was filed against the Commissioner, BMP and its Asst. Revenue Officer , and this defendant and one Josalene Geetha, Ex.D7 is the application filed by the plaintiff before the Commissioner, B.C.C.C. J.C.Road, Bangalore, regarding making katha of the property bearing No.815/A , K.R.Road, Banashankari 2nd stage, Basavanagudi, Bangalore , old Sy.No.39/2A, all these documents clearly goes to show that the name of the plaintiff is not entered in the katha in respect of the suit schedule property. When the katha is not stands in the name of plaintiff in pursuance of his sale deed dt.23.7.1958 it clearly speaks that said sale deed is not acted upon. And the P.W.2 categorically stated that how the property No.2038(167/1) is demarcated, in order to prove the property No. the plaintiff has not produced any documents and as per the Ex.P1 the suit schedule property is not the subject matter of Ex.P1, on the basis of the above materials, documents it clearly goes to show t3hat, the property shown in the schedule of Ex.P1 is appears to be different property, and it cannot be said that the defendant is tried to tress pass the schedule property.

33. Further the plaintiff has claiming the ownership of the suit schedule property by virtue of the order passed by the Small cause court, Bangalore in HRC.No.2541/1983 which is marked at Ex.P4. on perusal of Ex.P4 which clearly speaks that, it is a order passed in IA.No.4 and 5. further it is settled law that the ownership of the property is to be decided by the civil court, and not by the H.R.C. Tribunal. Unless and until the title of the parties is to be decided in the civil court, then only it can be taken into consideration, in HRC petition there is a relation between landlord and tenant, as per the definition of landlord need not necessarily the owner, therefore the declaration of title in respect of immovable property is to be declared by the civil court and not other proceedings like HRC, therefore the contention taken by the learned counsel for plaintiff that, he is the absolute owner and possessor of the suit schedule property by virtue of the order passed in HRC 2547/1983

is not acceptable.

34. Moreover the very P.W.2 has categorically admitted that he is not in possession of the suit schedule property, and the defendant is in possession of the suit schedule property by virtue of the sale deed dt.7.10.1998, and I have carefully gone through the citation cited by the learned counsel for plaintiff 1. AIR 1963 S.C. 1879,

2. 554 Indian Law Reports 1988 Kar. 3. AIR 1976 Orissa 43, 4. (2012)2 Supreme Court Case 294, since the facts and circumstances involved in this case, and the principles involved in the supra decisions are not one and same, hence with give due respect to the above citations which are not applicable to the present case in hand. Under these circumstances and foregoing reasons I am of the plaintiff has failed to prove that he is the owner of the suit schedule property, and also failed to prove that he defendant is tried to tress pass into the plaintiffs property, and further failed to prove that the sale deed dt.4.10.98 executed by Smt.Rathnamma and Sampangi in favour of defendant is not binding and does not create any right to the defendant, on the other hand the defendant proves that he is the absolute owner and in possession of the suit schedule property, hence I answer issue No.1 to 3 are in the negative and issue No.4 is in the affirmative.

35. Issue No.5 to 8: Since the plaintiff has failed to prove that he is the owner of the suit schedule property, and also failed to prove that he defendant is tried to tress pass into the plaintiffs property, and further failed to prove that the sale deed dt.4.10.98 executed by Smt.Rathnamma and Sampangi in favour of defendant is not binding and does not create any right to the defendant, on the other hand the defendant proves that he is the absolute owner and in possession of the suit schedule property as discussed in the supra paras and answers the issue No.1 to 3 in the negative and issue No.4 in the affirmative, hence these issues are not survival for consideration, thereby the plaintiff is not entitled the relief of declaration, possession accordingly, and issue No.8 is in the negative.

36. ISSUE No.9: In the result, I proceed to pass the following:

ORDER The suit of the plaintiff is hereby dismissed with cost.

Draw the decree accordingly.

(Dictated to the judgment writer directly on computer, corrected by me and then pronounced by me in the open court, on this 7th day of July, 2018).

(G.A.MULIMANI) XIV Addl. City Civil Judge Bangalore.

ANNEXURE List of witnesses examined on behalf of plaintiff/s:

P.W. 1	:	C.Chandrashekar
P.W. 2	:	C.Vijaya Krishna Murthy

List of documents exhibited on behalf of plaintiff/s:

Ex.P-1	:	C/c of sale deed dt.23.7.58
Ex.P-2	:	C/c of sale deed dt.14.11.2003
Ex.P-3	:	C/c of sale deed dt.7.10.93
Ex.P-4	:	C/c of Orders in HRC case
Ex.P-5	:	C/c of the order sheet in execution petn.
Ex.P6	:	C/C of EX.Petition
Ex.P7	:	C/C of Civil Appeal No.696/2004

Ex.P8	:	Tax paid receipt
Ex.P9	:	Mutation
Ex.P10	:	Records of Rights
Ex.P11	:	Index of Land
Ex.P12	:	Xerox c/c of sale deed
Ex.P12(a)	:	Typed copy of Ex.P12

List of witnesses examined on behalf of defendant/s:

D.W.1 : E.Subramanyam List of documents exhibited on behalf of defendant/s:

Ex.D1	:	E.C.
Ex.D2	:	C/c Tiluvalikepatra
Ex.D3	:	C/c of Endorsement issued by BBMP
Ex.D4	:	C/c copy of WP No.38997/2001
Ex.D5	:	C/c of Writ Appeal No.5641-42 of 2003
Ex.D6	:	C/c copy of Revision appln
Ex.D7	:	C/c of CCC No.32/2005
Ex.D7	:	C/c copy of letter
EX.D8	:	C/c of Letter issued by BBMP
Ex.D9	:	C/c of Ex.No.2658/2004
Ex.D10	:	C/c of sale deed dt.7.10.1998
Ex.D11 &12 :		Betterment charges receipt along with another receipt
Ex.D13	:	Notice issued by BMP
Ex.D14	:	Tax paid receipt
Ex.D15	:	Khata endorsement
Ex.D16	:	Khata certificate

Ex.D.17	:	Khata extract
Ex.D18 & 19	:	ECs

Ex.D20 to 23 : Four sketches pertaining to water connection.

Ex.D24	:	Sanction plan
Ex.D25	:	Khata certificate
Ex.D26	:	Khata Extract

Ex.D27 to 33 : Tax paid receipts from the year 2010-11 Ex.D34 to 40 : Five photographs, photo bill and C.D.

XIV ADDL.CITY CIVIL JUDGE BANGALORE Digitally signed by GOLLALAPPA AYYAPPA MULIMANI DN:

GOLLALAPPA	cn=GOLLALAPPA
AYYAPPA	AYYAPPA
MULIMANI	MULIMANI,ou=HIGH COURT OF
	KARNATAKA,o=GOVERNMENT OF
	KARNATAKA,st=Karnataka,c=IN
	Date: 2018.07.16
	13:44:50 IST