

Bangalore District Court

Sri.M.Channappa vs Smt.Josalena Geetha 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

Plaintiff/s : O.S.No.7280/2003
: Sri.M.Channappa,
S/o late Sri.Mastaiah,
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,
KSTC Layout, J.P.Nagar,
Bangalore.78

2

O.S.No.7280/2003

(By Sri.Ramesh P. Kulkarni, Advocate)

- Vs -

Defendant/s : 1. Smt.Josalena Geetha,
Major,
W/o Victor Rebello,

2. Sri.Victor Rebello,
S/o John Rebello,

Both are residing at
Ganapathipura,
Konanakunte Extension,
Kanakapura Road,
Bangalore-50062.

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

Date of institution
of the suit : 08/10/2003
Nature of the suit : Declaration,
[suit on pronote, suit delivery of vacant
for declaration and possession of suit property
possession, suit and mesne profit.
for injunction] :
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
	3		0.S.No.7280/2003

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 Krishnan Achari. Later the CITB, Bangalore published Notification under Section 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 Krishnan 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 Krishnan 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 defendants have created fraudulent gift deed under which the 2nd defendant has gifted the schedule property in favour of his wife, the first defendant, the 2nd defendant has no right to execute the gift deed without having any right has executed a gift deed, as such the same is not binding on him, during February 2001, the defendants have trespassed into the schedule property with gondas and have taken possession of the entire schedule property, hence has filed this suit.

3. In pursuance of the suit summons, the defendants No.1 and 2 appeared through their counsel and filed written statement inter alia denied all the allegations against them as false, further has contended that the 2nd defendant being the rightful owner of the suit property in possession and enjoyment had lawfully executed the Gift deed in favour of first defendant and thereafter the 1st defendant had rightly approached the Corporation of the City of Bangalore for fetching khata and other entries and the Corporation of the City was pleased to transfer the khata of the said property and assessed the property for tax and the first defendant has paid the tax. Accordingly the first defendant has been exercising her lawful right and interest over the suit schedule property and they are in actual and physical possession of the suit property, 2nd defendant being the mechanic running the garage and eking out their livelihood, the plaintiff had approached the Corporation of the City of Bangalore to effect khata and other entries in his name, but corporation rightly rejected the claim of the plaintiff after conducting spot inspection and mahazar and scrutinizing the documents pertaining to the plaintiff, upon which the plaintiff approached the Hon'ble High Court of Karnataka in W.P.No.38997/2001 and 39209/1, which came to be dismissed, against which he has filed Writ appeal number 5641/2002-03 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 the gift deed dated 2.2.2000 by 2nd defendant in favour of the 1st defendant is not binding on the plaintiff?

2. Whether plaintiff is the owner of suit schedule property?
3. Whether defendants prove that they are the absolute owners of suit schedule property?
4. Whether the suit is barred by limitation?
5. Whether plaintiff is entitled for the reliefs sought?
6. 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 5, subsequently his evidence was expunged, and Lr No.3 of the plaintiff has examined as P.W.2 got document marked Ex.P6 to P15 and closed the side of the plaintiff. On the other hand 2nd defendant is examined as D.W.1 got document marked Ex.D.1 to 41, and closed the side of defendants' evidence and case is posted for arguments.

6. Heard the arguments on both sides. The learned counsel for the plaintiff and defendants have filed written arguments and counsel for plaintiff has 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 affirmative,
Issue No.4	:	Answer accordingly,
Issue No.5	:	In the negative,
Issue No. 6	:	As per final order for the following:

REASONS

8. ISSUE No.1 TO 3: 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 under the registered sale deed dated 23.7.1958, and 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 Krishnan Achari. Later the CITB, Bangalore published Notification under Section 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 had 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 Krishnan 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.

10. It is the specific case of the defendant that, the 2nd defendant being the rightful owner of the suit property in possession and enjoyment had lawfully executed the Gift deed in favour of first defendant, and first defendant has paid the tax, accordingly the first defendant has been exercising her lawful right and interest over the suit schedule property and they are in actual and physical possession of the suit property, 2nd defendant being the mechanic running the garage and eking out their livelihood, the plaintiff had approached the Corporation of the City of Bangalore to effect khata and other entries in his name, but corporation rightly rejected the claim of the plaintiff after conducting spot inspection and mahazar and scrutinizing the documents pertaining to the plaintiff, upon which the plaintiff approached the Hon'ble High Court of Karnataka in W.P.No.38997/2001 and 39209/1, which came to be dismissed, against which he has filed Writ appeal number 5641/2002-03 and same came to be dismissed.

11. In order to prove the case of the plaintiffs, L.R.No.3 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 15 documents as Ex.P-1 to Ex.P-15 for the sake of convenience, I have summarized these documents as Ex.P-1 is the certified copy of sale deed dt.14.11.2003, Ex.P-2 is the certified copy of the sale deed dt.23.7.1958, Ex.P3 is the C/C of the gift deed dt.2.2.2000, Ex.P4 is the c/c of order in HRC, Ex.P5 the c/c of delivery warrant, bailiff report, spot mahazar, Ex.P6 is the c/c of Civil Appeal No.6963/2004, Ex.P7 is the true copy of the thereafter paid receipts, Ex.P8 is the true copy of M.R.26/58-59, Ex.P9 is the true copy of the record of rights, Ex.P10 is the true copy of the Index of lands, Ex.P11 is the c/c of the tax paid receipts, Ex.P12 is the c/c of the M.R. extract, Ex.P13 c/c of the Index of lands, Ex.P14 c/c of the records of rights, Ex.P15 c/c of the sale deed dt.31.5.1974, Ex.P15 (a) c/c of the translation of Ex.P15.

12. On the other hand in order to disprove the case of the defendants, 2nd 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 41 documents as Ex.D-1 to Ex.D-41 for the sake of convenience I have summarized these documents as Ex.D1 is the C/c of deposition of P.W.2 in O.S.7281/2003 Ex.D2 Regd.gift deed, Ex.D3 is the khata certificate, Ex.D4 is the Assessment Register Extract, Ex.D5 to 13 are nine tax paid receipts, Ex.D14 is the betterment charges challan, Ex.D15 is the E.C. Ex.D16 certificate issued by BMP, Ex.D17 to 19 three tax paid receipts, Ex.D20 Licence issued by BMP, Ex.D.1 building plan, Ex.D.22 trade licence issued by BMP, Ex.D.23 Acknowledgement issued by BMP, Ex.D24 letter dated 27.05.2000 obtained under RTI, Ex.D25 letter issued to Bangalore City Corporation by the plaintiff, Ex.D26 Mahazar, Ex.D27 Sketch, Ex.D28 C/c of order passed by Deputy Commissioner, Ex.D29 C/c of the sale deed, Ex.D30 Endorsement , Ex.D31 E.C. Ex.D32 order issued in WP No.38997/2001 and 39209/2001, Ex.D33 order issued in W.A.No.564-42/2003, Ex.D34 order in Crl.CCC 32/2005, Ex.D35 to 38 Photographs, Ex.39 Negative, Ex.D40 C/c of notice, Ex.D41 c/c of orders in Ex.No.2658/2004.

13. During the cross examination of P.W.2 has stated that, he is a practicing Advocate from 1999 and he has maintain cordial relationship with remaining plaintiffs.

Before his chief examination, plaintiff No.1 (b) has filed the affidavit, it is false to suggest that he has no personal knowledge about he suit property, and only on the basis of the plaint has deposed. His father had purchased the suit schedule property in the year 1958, he don't know whether it was agricultural land or not in the year 1958, he has seen the layout and survey sketch of the said land of the year 1958, he has not produced the said documents, the suit property was converted into non agricultural land and he has not produced said conversion order. Further has stated that he don't know the total extent of Sy.No.39/2A and he has not produce the original sale deed , and has produced the certified copy, the original sale deed is in his custody, he has not produced the original sale deed as it is old document.

14. It is false to suggest that he has not produced the original document to suppress the Sy.No.39/2A. in the year 1992 his father filed application for changing the katha in his name, it is true that his father filed several applications and also filed on 24.12.1999, it is false that his father was aware about execution of gift deed of 2000 executed by 1st defendant in favour of his wife at the time of filing the application for changing the katha. It is true that his father filed application for changing the katha of site No.815/A , witness voluntarily stated that it is in Sy.No.39/2A, site No.815 was allotted by BDA, he don't know whether the BDA has issued the document regarding allotment of site No.815/A he has no idea about conducting mahazar as per Ex.D26 as he has not received any notice, it is false that site No.815/A is not existing in 24A cross as per Ex.D26, it is true Ex.D27 does not disclose site No.815/A, now he has seen the Ex.D27 which is a created document, it is false that site No.30 was allotted to the defendant and site No.2038A/167/1 was allotted to the defendant No.1 in O.S.7281/2003. Witness voluntarily states these are new numbers allotted by the Corporation to the earlier site, it is false that Corporation has not allotted the new number and has deposed falsely.

15. It is true that his father filed review petition No.1504-04-05 before BBMP, it is false that the revision was dismissed as boundaries of his sale deed and boundaries of defendant are not tallied. He has not produced any document to show that Kochu krishnan Achar is running the garage in the suit property, he has not produced to show defendant was mechanic under Kochi Krishnan Achar, the defendant was not party to the execution petition, since it was deposed in the year 1984, it is true that defendant has filed injunction suit, it is true that in that suit, his father had filed the memo not to dispossess them illegally, consequently withdraw the suit, it is true after the death of his father, defendant have filed injunction suit against himself, his brother and his sister in the said suit they have filed the memo for withdrawn the suit, not to evict due process of law. It is false that Ex.P7 to 15 are created document and not pertains to suit property, Ex.P7 does not bear the signature of Tahasildar and Village Accountant, it is false that with an intention to harass the defendant he has filed this false suit, it is false they are not in possession of the suit property, defendant are in possession of the suit property, witness voluntarily states that from 2000 onwards defendants are in possession of suit property by creating false document, it is false to suggest that he has not produced any document except certified copy of the sale deed in order show his property.

16. During cross examination of D.W.1 has stated that he had gifted the property in favour of the first defendant, he ha purchased the suit property from one Chikkanna on 2.1.1997, the sale deed in the custody of Sub Registrar, that was given at the time of gift deed, there has been GPA executed by Chikkanna in his favour, the said GPA is at Sub Register Office, the said GPA and sale agreement executed by Chikkanna is not registered, he do not know the present address of Chikkanna, and he don't have document to show that the Chikkanna whom he stated the documents is not in existence. At the time of execution of GPA Chikkanna had provided him with the registered sale deed of the site, that site was bearing No.2038A in Sy.No.39/2A measuring 15 x 35 ft sold to him, it is true that the Sy.No.39/2A belongs to Yadiyur village, he has obtained licence from Corporation for the purpose of running the garage in the suit property, that licence was obtained in the year 2000, the same is marked at Ex.D22, which bears the date for the year 2005.

17. Further stated it is false that Ex.D22 has been fabricated by colluding with the defendant in OS.7281/2003, the defendant in OS.7281/2003 was a Corporator for one term, it is false that he has trespassed the suit property in July-August 2000, it is false that he and Chikkanna have any right in the suit property, the katha certificate, GPA , gift deed, katha issued by BBMP tax paid receipts were submitted at the time of registration of gift deed in favour of Defendant No.1, it is false that the suit property never stood in the name of Chikkanna, he paid the tax for the first time in 1997 in respect of the suit schedule property, earlier to that Chikkanna had not paid the tax of the suit property, the property is bounded East by Subramani's property (defendant in OS.7281/2003) West by Udayakumar property, North by 24th B cross and South by others property, he don't know the property of Chikkanna is situated to the south of the property, he don't know whose property is situated to the west of Udayakumar's property, he is not aware of the litigation between Udayakumar and Ashok Kumar and the matter had gone up to the Hon'ble Supreme Court, further it was decided in favour of Channappa who is the original plaintiff in this case, he is not seen the sale deed Ex.P.2 he don not know that suit property is the part of the he property described in Ex.P2 he is not aware that the acquisition proceedings were initiated in respect of the suit property and they were dropped by BDA, he do not know that the western half portion of the property owned by

Channappa had given for rent to Lingaiah (father of Suresh).

18. Further stated that he worked in garage at Mangalore and then he started to work at J.C.Road, Bangalore in garage, he do not know who is Kochu Krishnan Achari , he don't know deceased Channappa given for rent the eastern half portion of his property to Kochu Krishnan Achari, it is false that the suit property is part of the eastern portion of the property rented to Kochu Krishnan Achari, he is not aware about HRC 2547/1983, were initiated for eviction against this Kochu Krishnan Achari and possession was obtained by Channappa, it is false that he has trespassed the suit property by demolishing compound wall, he has not seen Channappa, now he has seen the document i.e. certified copy of plaint in OS.4094/2000, which is marked at Ex.P7, he don't know the southern boundary shown that the property of Chikkanna, and the property of Subramani, Udayakumar and himself pertain to part of Sy.No.2038-A, in this survey number, the site property measures 18 x 35, Subramani's property is 20 x 35 and Udayakumar's property is 16 x 35 feet after commencement of the business he has obtained the licence, he has commenced the business from 1998, his parents residential address is Ganapathipura 1st cross, Kankapura road, premises No.6/7, it is false that Ex.D16 has been fabricated by colluding with the officials of the Corporation and the defendant in O.S.No.7281/2003, it is true that they have not constructed the house in accordance with plan, now there is only compound with shed, it is false that the suit property belongs to the plaintiff and that they have to hand over its possession to the plaintiff, further stated that it is true that Ex.D34 to 35 were took about 7 years, he has not remember in which camera he has obtained these photographs and he has not obtained the receipts from the photographer, it is false that he has created the photographs.

19. Since the plaintiff has produced the certified copy sale deed i.e. Ex.P1 dt.14.11.2003 executed in between wife and children of Chikkanna, Nagamma and Renuka in favour of T.Chandrashekar and Umadevi in respect of the property bearing No.39/2 in Corporation Division No.34 (present No.56 situated at Yadiyur village, presently Karesandra, K.R.Road, Bangalore with 2 Sq ACC.sheet built with mud and jungle wood constructed 40 years towards E to W: 49 ft on northern side and 24 ft on southern side, N to S: 24 feet on eastern side and 35 ft on western side totally measuring 29 sq ft bounded towards East K.R.Road, West property of Chandrashekar and Umadevi, North Channappa's property, South Channappa's property. Ex.P2 is the certified copy of the sale deed dated 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 c/c of the gift deed executed by one Victor Rebello in favour of his wife Smt.Joseline Geetha in respect of the property Bangalore City Karesandra K.R.Road, Corporation Division No. 56 (24B Cross road) property No.167/1 bounded towards E: house of Rathnamma in the said Sy.No towards W: house of Kempamma in the said survey number, towards N : 24 B cross, towards S: house of Chikkanna, Ex.P7 is true copy of tax paid receipts standing in the name of M.Channappa in respect of Sy.No.39/2A , Ex.P8 is themutation extract standing in the name of Channappa in respect of property Sy.No.39/2A , Ex.P9 is records of right standing in the name of Channappa in respect of the said property, Ex.P10 is Index of land standing in the name of Channappa in respect of Sy.No.39/2A for the year 1958-59, Ex.P11 is the c/c of the sale deed dt.31.7.1974 executed in favour

of Chikkanna from Mr.Appavoo S/o late Mr.Abbai and Narasimhaiah, Krishnappa, Kannappa, Balappa in respect of the property Sy.No.39/2, Ex.P11 is c/c of tax paid receipt, Ex.P12 is the c/c of M.R. Ex.P13 is c/c of index of land, Ex.P14 is the c/c of records of rights, Ex.P15 is the sale deed, Ex.P15(a) is the translation copy of Ex.P15. Ex.P15 clearly speaks that Mr.Appavoo S/o late Mr.Abbai and Narasimhaiah, Krishnappa, Kannappa, Balappa had executed sale deed in favour of Chikkanna on 31.5.1974 in respect of the property bearing Sy.No.39/2.

20. On perusal of the above documents which clearly goes to show that Ex.P1 to 4, 5 to 10 to 15 the Chikkanna had purchased the property under Ex.P10 and 15 in respect of Sy.No.39/2, but how the Sy.No.39/2 is demarked as Sy.No.39/2A is not established by the plaintiff. It is his duty to establish that from which authority the Sy.No.39/2 is demarked or renumbered as 39/2A and 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.P2 are tallied with Ex.P3. The P.W.1 has categorically admitted in his cross examination that, the defendant is 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.

21. 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, then how the defendant came into the possession in the same property as contended by the plaintiff is a point for consideration.

22. The plaintiff sought the relief of declaration and possession in respect of the suit schedule property, declaring that the gift deed dt.9.2.2000 is declared as not binding, 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, which has sought the relief of declaration in respect of the sale deed dt.7.10.1958. During the cross examination of P.W.2 has categorically stated that the original sale deed is with him. In spite of that he has not produced the same. In his written argument he has stated that the plaintiff has produced Ex.P2 c/c of the sale deed as the original is torn, it is first time the learned counsel for plaintiff has taken such contention in the written argument, and there is no pleading regarding the original sale 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.

23. 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 gift deed dt.2.2.2000 the plaintiff sought the relief of declaration declaring that the gift deed dt.2.2.2000 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 gift deed dt.2.2.2000 is declared as not binding on the plaintiffs.

24. 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.

25. 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 gift deed dt.2.2.2000. 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, further plaintiff has stated in his plaint that after purchase the land he was 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, but has not produced any construction permission, plan to show that he was put up building in the suit schedule property.

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's name is not entered in the concerned revenue records, the P.W.2 has categorically stated in his cross examination at page No.12 dt.8.8.2017, and it is necessary to reproduce the same as under:

"In the year 1992 my father filed application for changing the khatha in his name. it is true to suggest that, my father has filed several applications and also filed on 24.12.1999. it is false to suggest that my father was aware about the execution of gift deed od 2000 executed by the 1st defendant in favour of his wife at the time of filing the application for changing the khatha. It is true to suggest that, my father filed application for changing the khatha of site No.825/A, witness voluntarily states that it is in Sy.No.39/2A. Site No.815/A is allotted BDA. I don' know whether the BDA has issued the document regarding the allotment of site No..815/A I have no idea about

conducting the Mahazar as per Ex.D26 as I have not received any notice. it is false to suggest that the site No.815/A is not existing in 24 'B' cross, and it is existing in 24'A' cross as per Ex.D.26. it is true to suggest that, Ex.D.27 does not disclose site No.815/A. Now I see Ex.D.27 which is a created document. It is false to suggest that site No.2038/167/1 was allotted to the defendant in this case and site No.2038A/167/1 was allotted to the defendant No.1 in O.S.7281/2003. Witness voluntarily states that these are new numbers allotted by corporation to the earlier site. It is false to suggest that corporation has not allotted the new numbers and I am deposing falsely".

26. The Corporation has allotted the new number to the suit schedule property of the plaintiff, then what prevent him to produce those documents is not explained by him. On the other hand the learned counsel for the defendant has produced Ex.D32, 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".

Ex.D33 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".

27. 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.D25 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.P2 the suit schedule property is not the subject matter of Ex.P3, on the basis of the above materials, documents it clearly goes to show that, the property shown in the schedule of Ex.P2 is appears to be different property, and it cannot be said that the defendant is tried to tress pass the schedule property.

28. 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.P3. on perusal of Ex.P3 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, 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 gift deed dt.2.2.2000, 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, the gift deed dt.2.2.2000 executed by defendant No.2 in favour of defendant No.1 is not binding on him, and further fail to prove that he is the owner of the suit schedule property, on the other hand the defendants prove that they are the absolute owners of the suit schedule property, hence I answer issue No.1 and 2 are in the negative and issue No.3 is in the affirmative.

29. Issue No.4 &5: Since the plaintiff has failed to prove that, he is the owner of the suit schedule property, and also failed to prove that, the gift deed dt.2.2.2000 executed by defendant No.2 in favour of defendant No.1 is not binding on him, and further fail to prove that he is the owner of the suit schedule property, on the other hand the defendants prove that they are the absolute owners of the suit schedule property, as such the issue No.4 does not survive for consideration, and in view of the findings given in issue No.1 to 3, the plaintiff is not entitle the relief as sought for. Hence I answer issue No.4 accordingly, and issue No.5 is in the negative.

30. ISSUE No.6: 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 & 2 : C/c of sale deeds
Ex.P-3 : C/c of gift deed dt.2.2.2000

Ex.P-4 : C/c of order in HRC case
Ex.P-5 : C/c of Delivery warrant, bailiff report, Spot mahazar.
Ex.P-6 : copy of Civil Appeal No.6963/2004
Ex.P-7 : Copy of tax paid receipts
Ex.P-8 : Mutation Extract
Ex.P.-9 : Copy of records of rights
Ex.P-10 : Index of Lands
Ex.P-11 : Tax paid receipt
Ex.P-12 : Copy of Mutation Extract
Ex.P-13 : C/c of the Index of lands,
Ex.P14 : C/c of the record of rights
Ex.P15 : C/c of the sale deed dated 31.05.1974
Ex.P15(a) : C/c of the translation of Ex.P15.

List of witnesses examined on behalf of defendant/s:

D.W.1 : Victor Rebellow List of documents exhibited on behalf of defendant/s: Ex.D1 : C/c of deposition of P.W.2 in O.S.7281/2003.

Ex.D2 : Registered Gift deed, dt.02.02.2000
Ex.D3 : Khata Certificate
Ex.D4 : Assessment Register Extract

Ex.D5 to 13 : 9 Tax paid receipts
Ex.D14 : Betterment charges challan,
Ex.D15 : E.C.

Ex.D16 : Certificate issued by BMP,
Ex.D17 to 19: 3 tax paid receipts,
Ex.D20 : Licence issued by BMP,
Ex.D.1 : Building plan,
Ex.D.22 : Trade licence issued by BMP,
Ex.D.23 : Acknowledgement issued by BMP,
Ex.D24 : letter dated 27.05.2000 obtained under RTI,
Ex.D25 : Letter issued to Bangalore City Corporation
Ex.D26 : Mahazar,
Ex.D27 : Sketch,
Ex.D28 : C/c of order passed by Deputy Commissioner,
Ex.D29 : C/c of the sale deed,
Ex.D30 : Endorsement ,
Ex.D31 : E.C.
Ex.D32 : Order issued in WP No.38997/2001
and 39209/2001,
Ex.D33 : Order issued in W.A.No.564-42/2003,
Ex.D34 : Order in Crl.CCC 32/2005,
Ex.D35 to 38 : Photographs,
Ex.39 : Negative,
Ex.D40 : C/c of notice,
Ex.D41 : C/c of orders in Ex.No.2658/2004.

XIV ADDL.CITY CIVIL JUDGE
BANGALORE

GOLLALAPPA	Digitally signed by GOLLALAPPA
AYYAPPA	MULIMANI
MULIMANI	DN: cn=GOLLALAPPA AYYAPPA
	MULIMANI,ou=HIGH COURT OF
	KARNATAKA,o=GOVERNMENT OF
	KARNATAKA,st=Karnataka,c=IN
	Date: 2018.07.16 13:55:21 IST