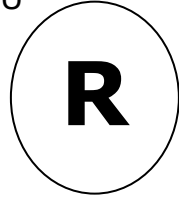


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH



R.S.A. NO.2397/2006 (INJ)

C/W.

R.S.A. NO.2396/2006 (DEC/INJ)

IN R.S.A. NO.2397/2006:

BETWEEN:

SRI B.N.DEVARAJU
S/O LATE B.NANJAPPA
AGED ABOUT 82 YEARS
R/AT KAMADENU NILAYA
2ND MAIN, 2ND CROSS,
HEMAVATHI NAGAR
HASSAN-573 201.

ALSO R/AT NO.575/1, 4TH CROSS,
MALLIKARJUNA NAGAR
SAKALESH PURA,
HASSAN DISTRICT.

... APPELLANT

[BY SRI S.P.SHANKAR, SENIOR COUNSEL FOR
SRI JAYAKUMAR, ADVOCATE]

AND:

1 . SMT. SHAKEELA S. SHETTY
C/O. K. PADMANABHA SHETTY
AGED ABOUT 45 YEARS
R/AT HEMAVATHY ESTATE
UDEYAR POST,

SAKALESHPUR TALUK
HASSAN DISTRICT-573201.

- 2 . DR. H.A.GANGAPPA
DEAD BY LRS
- 2(a) DR. RAGHUNANDAN HANBAL GANGAPPA
NO.186, 38TH CROSS
9TH MAIN, 5TH BLOCK,
JAYANAGAR
BANGALORE – 560 041.

ALSO AT POST BOX NO.1790
WOODS CENTER
CENT JOHN'S ANTIGUA.

- 2(b) RAMYA BHAGAVAN
NO.11147,
YELLOW LEAFWAY
JERMAN TOWN
M.D.20876, MERY LAND
USA.

- 2(c) RATHI GANGAPPA
NO.186, 38TH CROSS
9TH MAIN, 5TH Block
JAYANAGAR
BANGALORE-560 041.

(AMENDED VIDE COURT ORDER DATED 02.01.2024)

- 3 . SRI B.N. CHANDRALEKHA
W/O N.C. DAYANANDA
AGED ABOUT 56 YEARS
LAND LARD,
NAGRALI VILLAGE
NANJANGUDU TALUK
MYSORE DISTRICT-570 001.

- 4 . SRI S.C.SIDDAGANGAMMA
DEAD BY LRS
- 4(a) N.C.BASAVARAJU
S/O LATE N.E.CHANNABASAPPA
NO.161, 1ST MAIN
JAYALAKSHMIPURAM
MYSORE-570 001.
- 4(b) SMT. N.C.NAGARATHNA
W/O H.S.MALLIKARJUNAPPA
NO.225, GANESH KUTEERA
9TH MAIN, HRBR LAYOUT
1ST BLOCK, KALYANANAGAR
BANGALORE-560 043.
- 4(c) N.C.SARVAMANGALA
W/O S.M.SIDDALINGASWAMY
NO.86, GROUND FLOOR
NHCS ALYOUT, 1ST MAIN
3RD STAGE, 4TH BLOCK
BASAVESHWARNAGAR
BANGALORE-560 079.
- 4(d) SRI N.C.DAYANAND
S/O LATE N.E.CHANNABASAPPA
R/AT NAGRALE VILLAGE
NANJANAGUDU TALUK
MYSORE DISTRICT-570 001.
- 4(e) SMT.N.C.SHARADA
W/O C. VEERAIHAH
NO.38, NEAR GVEI SCHOOL
3RD BLOCK, 5TH MAIN
JAYALAKSHMIPURAM
MYSORE-570001.
- 4(f) SMT. N.C.INDIRA
W/O K.B.SIDDAPPA

A-03380, VANIVILASA ROAD
NEAR DOUBLE TANK
LAKSHMIPURAM
MYSORE-570001.

- 4(g) SMT. LATHA
W/O N.C.KUMAR
DODDA INDUVADI VILLAGE
KOLLEGALA TALUK
CHAMRAJNAGAR DISTRICT-571313.

(AMENDED VIDE COURT ORDER DATED 16.12.2016)

- 5 . SRI B.N.VASANTHA
W/O B.N.SHIVA MURTHY
MAJOR, HOUSE NO.878,
LAKSHMIPURAM
MYSORE-570 001.

... RESPONDENTS

[BY SRI R.B.SADASHIVAPPA, ADVOCATE FOR
SRI PRAKYATH SHETTY K., ADVOCATE FOR R1;
SMT. KAVYA ANILKUMAR, ADVOCATE FOR R4(a, c, e & f);
VIDE ORDER DATED 23.08.2016,
NOTICE TO R4(g) HELD SUFFICIENT;
R3, R4(d), R5, R2(a), R2(b) AND R2(c) ARE
SERVED BUT UNREPRESENTED]

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGEMENT AND DECREE DATED 22.04.2006
PASSED IN R.A.NO.173/2004 (OLD NO.20/2000) ON THE FILE
OF THE PRESIDING OFFICER AND ADDL.DISTRICT JUDGE, FAST
TRACK COURT-I, HASSAN, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGEMENT AND DECREE DATED 13.04.2000
PASSED IN O.S.NO.8/1992 ON THE FILE OF THE CIVIL JUDGE
(JR.DN.) AND JMFC, SAKLESHPUR AND ETC.

R.S.A. NO.2396/2006:

BETWEEN:

SRI B.N.DEVARAJU
S/O LATE B.NANJAPPA
AGED ABOUT 59 YEARS
R/AT TATADAGADDE ESTATE
SAKALESH PURA
HASSAN

... APPELLANT

(BY SRI S.P.SHANKAR, SENIOR COUNSEL FOR
SRI JAYAKUMAR, ADVOCATE)

AND:

- 1 . SMT. SHAKEELA S. SHETTY
@ SHASHIKALA K. SHETTY
AGED ABOUT 45 YEARS
HEMAVATHY ESTATE,
UNDVAR POST
SAKLESHPUR TALUK
HASSAN DISTRICT
- 2 . SRI B. NANJAPPA
DEAD BY LRS
- 2(a) SMT.CHANDRAMATHI
W/O LATE B.NANJAPPA
C/O. KOMALATHA RAJEGOWDA
BEHIND SAHYADRI THEATRE,
ARALEPET, HASSAN – 573 201.
- 2(b) SMT.B.N.SRIDEVI
D/O LATE B.NANJAPPA
AGED ABOUT 24 YEARS
C/O KOMALATHA RAJEGOWDA
BEHIND SAHYADRI THEATRE,
ARALEPET, HASSAN – 573 201.

2(c) SRI B.N.SACHIN
AGED ABOUT 21 YEARS
S/O LATE NANJAPPA
C/O KOMALLATHA RAJEGOWDA
BEHIND SAHYADRI THEATRE,
ARALEPET, HASSAN - 573 201.

2(d) SMT.VANAJAKSHI
W/O N.S.GURUSIDDAPPA
AGED ABOUT 76 YEARS
R/AT NAGARALE VILLAGE
NANJANGUD TALUK
MYSORE DISTRICT

2(E) SMT. B N VASANTHA
W/O SHIVAMURTHY
AGED ABOUT 67 YEARS
R/AT NO.876/1C,
JHANSI LAKSHMI BAI ROAD
MYSORE.

2(f) SMT.CHANDRALEKHA
W/O DAYANANDA
AGED ABOUT 63 YEARS
R/AT NAGARALE VILLAGE
NANJANGUD TALUK
MYSORE DISTRICT

3 . SMT. B.C. JAYAMMA
W/O LATE B.S.CHANDRASHEKAR
AGED ABOUT 50 YEARS
TOTADAGUDA ESTATE
SAKALESH PURA
HASSAN DISTRICT

THE 3RD RESPONDENT DIED,
THE APPELLANT AND RESPONDENT NO.2(a to f)
ARE THE LRS OF RESPONDENT NO.3

(AMENDED VIDE COURT ORDER DATED 10.03.2021)

... RESPONDENTS

(BY SRI R.B.SADASHIVAPPA, ADVOCATE FOR
SRI PRAKYATH SHETTY K., ADVOCATE FOR R1;
VIDE ORDER DATED 22.08.2017,
APPEAL IS DISMISSED AGAINST R2(d);
VIDE ORDER DATED 10.03.2021,
R2(a to f) ARE LRS OF DECEASED R3;
R2(a to f) ARE SERVED]

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 22.04.2006 PASSED IN R.A.NO.7/2002 ON THE FILE OF THE PRESIDING OFFICER AND ADDL. DISTRICT JUDGE, FAST TRACK COURT-I, HASSAN AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

J U D G M E N T

These two appeals are filed challenging the judgment and decree dated 13.04.2000 passed in O.S.No.8/1992 and the judgment and decree dated 22.04.2006 passed in R.A.No.173/2004 and also the judgment and decree of reversal order dated 22.04.2006 passed in R.A. No.7/2002 as against the judgment and decree dated 16.01.2002 passed in O.S.No.22/1993.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the plaintiff in O.S.No.22/1993 that she has filed the suit for the relief of declaration and permanent injunction contending that the property originally belonged to one Nanjappa D/o Devappagowda. The said property is an undivided Hindu Joint Family property. The said Nanjappa had gifted the said property in favour of his daughter – B N Chandralekha under a registered gift deed dated 30.09.1976. One Dr. S Surendra Shetty has purchased the said property from B N Chandralekha for valuable consideration of Rs.18,000/- under a registered sale deed dated 06.10.1980. Dr. Surendra Shetty inturn sold the said property to the plaintiff (Smt. Shakheela Shetty) who is his sister under a registered sale deed dated 08.05.1985 for valuable consideration of Rs.20,000/-. The plaintiff had acquired the title and possession of the suit schedule property from his brother Dr.Srendra Shetty. Ever since then, she is in possession and enjoyment of the same without interference from anybody. That

on 01.12.1991, defendant No.1, who is the appellant in both the appeals, with his followers tried to trespass into the suit schedule property and damaged the fence by removing the same. The father of the plaintiff who is the GPA holder of the plaintiff lodged a complaint in the police station, Sakaleshapura and subsequently, the plaintiff instituted the present suit for the relief of declaration of title and permanent injunction.

4. Defendant No.1 who is the present appellant contends that the gift deed will not convey any title in favour of Chandralekha on whose favour the gift deed was executed as well as the property was purchased by one Dr.Srendra Shetty who in turn sold the said property in favour of the plaintiff, hence, the plaintiff also did not derive title to the suit schedule property since the said Nanjappa had no authority in law to gift the property in favour of his daughter-Chandralekha, thus, the alleged gift transaction is void *ab initio* in nature. When the said Chandralekha did not get valid title to the suit schedule property, the subsequent purchaser also will not get any title and they are

not at all the owner of the suit schedule property as well as they are not in lawful possession of the said property.

5. The Trial Court having taken note of the pleadings of the respective parties, framed the following Issues:

1. Whether the 2nd defendant was the owner of suit property?
2. Whether Chandralekha became the owner of the suit property by virtue of Gift deed dated 30.09.1976?
3. Whether Surendra Shetty became the owner of the suit property having purchased the same from Chandralekha under sale deed dated 06.10.1980?
4. Whether plaintiff is the owner of suit property having purchased the same from Surendra Shetty under sale deed dated 08.05.1985?
5. Whether plaintiff is in lawful possession of suit property?

6. Whether plaintiff proves the existence of suit property?
7. Whether first defendant is the owner of Sy.No.164?
8. To what relief the plaintiff is entitled?
9. What order?

6. In order to prove the case of the plaintiff, she examined four witnesses as PW1 to PW4 and got marked the documents at Ex.P1 to P48. On the other hand, defendant No.2 is examined as DW1 and defendant No.1 is examined as DW2 and a witness is examined as DW3 and got marked the documents at Ex.D1 to D123. The Trial Court having considered the material available on record comes to the conclusion that defendant No.2 had no exclusive right to dispose of the coparcenary property and answered Issue Nos.2 to 6 as negative and answered Issue No.7 as affirmative in coming to the conclusion that defendant No.1 is the owner of Sy.No.164 and the plaintiff is not entitled for any relief and dismissed the suit.

7. Being aggrieved by the judgment and decree of the Trial Court, an appeal was preferred in R.A.No.7/2002 and the First Appellate Court having considered the grounds urged in the appeal memo, formulated the points as under:

1. Whether the Trial Court erred in not upholding the gift deed, Ex.D2?
2. Whether appellant/plaintiff proves the identity and location of the suit property?
3. Whether appellant/plaintiff proves her title to the suit property?
4. Whether appellant/plaintiff proves her lawful possession?
5. Whether appellant/plaintiff is entitled for relief of declaration of title and permanent injunction, as sought?
6. Whether judgment and decree of the Trial Court, dismissing the suit needs any interference?
7. What order?

8. The First Appellate Court having reassessed the material available on record, answered all the points as affirmative in coming to the conclusion that the Trial Court erred in not upholding the gift deed at Ex.D2 under which the plaintiff claims the title inspite of plaintiff had proved the title and possession of the suit schedule property. Hence, reversed the judgment and decree of the Trial Court. Being aggrieved by the said judgment and decree of the First Appellate Court, the present second appeal in R.S.A.No.2396/2006 is filed by the appellant/defendant No.1 before this Court.

9. In R.S.A.No.2396/2006, the counsel for the appellant would vehemently contend that the appellant who is defendant No.1 in O.S.No.22/1993, also filed a separate suit in O.S.No.8/1992 seeking the relief of permanent injunction wherein the said appellant/plaintiff has contended that the suit schedule property is the ancestral property of joint Hindu family and no one coparcener has right to gift his undivided share without consent of others and he is in peaceful possession and enjoyment of the same without any interruption along with other

members of the family. It is contended that the plaintiff with bonafide intention to improve and develop the suit schedule property has filed a suit in O.S.No.8/1985 and same came to be decreed as against defendant Nos.1 and 2 who were signatories to the compromise petition and suit was dismissed against defendant Nos.3 to 32 in that suit who are not signatories to the compromise petition. Subsequently, the suit property was converted for non-agricultural purpose and residential sites were formed on the same. Thus, the plaintiff is in possession of the same. The details of the proceedings pertaining to conversion of the same to non-agricultural purpose are furnished in the plaint. When the things stood thus, the defendants made an attempt to interfere with the plaintiff's possession over the suit property and also made an attempt to remove the fence erected on the sites fixing the boundaries. Being aggrieved by the act of the defendants without other alternative, filed the suit for permanent injunction.

10. The defendants contested the suit contending that the suit is bad for non-joinder of necessary parties. B.Nanjappa

who is the father of the plaintiff had gifted the property in favour of his daughter that is defendant No.3 on 30.09.1976 and defendant No.3, who was in possession of the property, by virtue of the gift, sold the property in favour of one Dr.Surendra Shetty and the said Dr.Surendra Shetty in turn sold the property in favour of this defendant under a sale deed. The said properties are bearing municipal katha No.887/708 measuring 60 x 40 feet subsequently changed as 1545/733 site No.8 and khatha No.1546/734 bearing site No.9. The compromise decree passed in O.S.No.8/1985 is not binding on this defendant as there was no compromise arrived between her since the compromise was arrived between defendant No.3 herein and the present plaintiff herein. This defendant has been in lawful possession and enjoyment of the site Nos.7. 8 and 9 as an absolute owner. It is also contended that this defendant has filed the suit in O.S.No.22/1993 for the relief of declaration and injunction.

11. Defendant No.2 in his written statement also denied the allegations made in the plaint and he contended that the said Nanjappa gifted certain properties to defendant No.3 on

18.09.1976 and defendant No.3 herein in turn has sold khatha No.876 i.e., site No.7, khata No.879 i.e., site No.10 on 07.08.1980. Afterwards, this defendant has been in lawful possession and enjoyment of the said site Nos.7 and 10. The defendant also filed a suit in O.S.No.340/1991 against the plaintiff in respect of said sites. It is also contended that decree passed in O.S.No.8/1985 is not binding on this defendant since the defendant is not a party to the said proceedings.

12. Defendant No.3 also filed written statement denying the averments made in the plaint contending that the father of defendant No.3 namely B Nanjappa who had gifted the property after converting the land into sites or layouts. The site Nos.6, 7, 8 and 9 as well as 17, 18, 25 and 26 have been gifted to defendant No.3 by a registered gift deed. Defendant No.3 has been the owner of the suit schedule property and out of the said sites, site Nos.6 and 7 were sold to this defendant and site Nos.8 and 9 were sold to defendant No.1 and site Nos.17, 18, 25 and 26 remained with defendant No.3 and she is the owner in lawful possession of the said sites. The said Nanjappa who is also the

brother of defendant No.5 alienated the site Nos.14 and 15 to third person and from the third person, defendant No.5 purchased site Nos.3 and 35 and he is the owner in possession of the same. Compromise decree passed in O.S.No.8/1985 is not binding on the 3rd as well as 5th defendants. As per the said layout sketch, the sites are situating in both Sy.Nos.164 and 165 and thereafter, katha was transferred and even houses are being constructed there. Hence, prayed to dismiss the suit.

13. The Trial Court having considered the pleadings of the respective parties, framed the following Issues:

1. Whether the plaintiff proves that he was in lawful possession of the suit schedule property as on the date of filing the suit?
2. Whether the plaintiff further proves that the alleged interference by the defendants?
3. What order or decree?

14. On behalf of the plaintiff, he himself examined as PW1 and got marked the documents at Ex.P1 to P10. On the

other hand, defendant No.2 has stepped into the witness box and examined as DW1 and no document has been marked. The Trial Court having considered both oral and documentary evidence placed on record answered the Issues as negative and dismissed the suit. Being aggrieved by the judgment and decree of the Trial Court, an appeal was preferred in R.A.No.173/2004. The First Appellate Court having considered the grounds urged in the appeal memo, formulated the points as follows:

1. Whether appellant/plaintiff proves his lawful possession?
2. Whether appellant/plaintiff proves alleged interference?
3. Whether appellant/plaintiff is entitled for permanent injunction?
4. Whether the judgment and decree of the Trial Court, dismissing the suit needs any interference?
5. What order?

15. Having considered both oral and documentary evidence placed on record confirmed the judgment and decree of

the Trial Court answering all the points as negative. Being aggrieved by the said judgment and decree of the First Appellate Court, the present second appeal in R.S.A.No.2397/2006 is filed before this Court.

16. Having considered the grounds urged R.S.A.No.2396/2006, on 02.12.2010, this Court has framed the following substantial questions of law:

1. Whether the father of the vendor of the plaintiff, as the karta of the family, could made a gift of the undivided extent of the property in respect of his daughter?
2. Whether the father, as karta could, within a reasonable limit, gift a property in favour of his daughter to secure her maintenance or for such other pious purposes, notwithstanding that it is the undivided interest of the family?

17. This Court also in R.S.A.No.2397/200, having considered the grounds urged in the appeal memo, on

28.06.2013, additional substantial question of law has been framed by recasting the same which reads thus:

Whether the Trial Court and appellate Court have committed an error on facts or law in dismissing the suit and confirmation by the appellate Court, on the ground that the plaintiff has failed to prove factum of possession?

18. The counsel for the appellant in his argument would vehemently contend that the respondent No.1 who had filed the suit in O.S.No.335/1991 has sought for the relief of declaration and injunction and the same is filed through a GPA holder. The contention of respondent No.1 who is the plaintiff in the said suit which was renumbered as O.S.No.22/1993 that there was a gift deed dated 30.09.1976 in favour of one Chandralekha who is the daughter of B.Nanjappa. The counsel for the appellant would vehemently contend that the father cannot gift the property out of undivided coparcenary property. Though defendant No.2 who is the executant of gift deed supported the case of defendant No.1 who denied the plaint averments and also denied the gift

and title of the plaintiff and contended that suit itself is not maintainable. The Trial Court rightly dismissed the suit on the ground that undivided interest cannot be gifted in favour of the plaintiff. The counsel also in his arguments would vehemently contend that the First Appellate Court committed an error in reversing the finding of the Trial Court and there must be a reasoned order while reversing the judgment of the Trial Court. The counsel also would vehemently contend that identity of the property is doubtful. It is the contention of the plaintiff that sites are formed in Sy.No.164 as well as in Sy.No.165 and both the survey numbers also allotted in favour of the appellant herein. The counsel and also brought to notice of this Court to Section 130(a) and (b) of CPC. The counsel also in his arguments would vehemently contend that when the appellant had filed the suit for the relief of injunction claiming that he is the owner in respect of the suit schedule property based on the compromise decree entered into between the parties and produced Ex.P1, the Trial Court failed to consider the same and erroneously dismissed the suit even though possession has not been proved. The First Appellate Court also committed an error

in confirming the judgment and decree of the Trial Court. Hence, the very approach of both the Courts are erroneous.

19. The counsel for the appellant in support of his arguments also filed written submission reiterating the contentions urged in both the appeals. The counsel also would vehemently contend that title on the basis of which injunction was sought by the appellant in view of the compromise decree passed in O.S.No.8/1985 and the said suit was filed for the relief partition and separate possession wherein land of 6 acres 19 guntas in Sy.No.164 that is the suit schedule property was allotted in favour of this appellant and he was put in possession of the same. The Trial Court also dismissed the suit in O.S.No.8/1992 on technical ground stating that 1 acres 1 gunta of land carved out of 6 acres 19 guntas in Sy.No.164 was acquired by the National Highway Authority which has altered the schedule of the land and further that the compromise decree for partition in O.S.No.8/1985 does not bind the defendants as they were not parties to the same. The very approach of both the Courts is erroneous.

20. The counsel also in support of his arguments relied upon the judgment reported in **AIR 1987 SC 1775** in the case of **THAMMA VENKATA SUBBAMMA (DEAD) BY L.R. vs THAMMA RATTAMMA AND OTHERS** and contend that alienation of undivided interest in joint family property by karta or any member is void and unenforceable and held that although the gift ostensibly in favour of brother, but really the donor meant to relinquish his interest in the coparcenary in favour of the brother and his sons. A gift by a coparcener of his undivided interest in the coparcenary property is void. The reason as to why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift is that an individual member of the joint Hindu family has not definite share in the coparcenary property and hence, does not convey any title.

21. The counsel also relied upon the judgment reported in **AIR 1999 SC 1441** in the case of **VIDHYADHAR vs MANKIKRAO AND ANOTHER** and contend that non-examination of party is fatal and the evidence is not to be looked

into and plaintiff not submitting to cross-examination vitiates plaintiff's case.

22. The counsel also relied upon the judgment reported in **AIR 1972 SC 2299** in the case of **M KALLAPPA SETTY vs M V LAKSHMINARAYANA RAO** and brought to notice of this Court paragraphs 5 and 6 of the said judgment and referring this judgment contended that Shakeela Shetty cannot seek decree against true owner who is in possession of land allotted to him in terms of the judgment and decree passed in O.S.No.8/1985.

23. The counsel also relied upon the judgment reported in **(2019) 6 SCC 409** in the case of **THULASIDHARA AND ANOTHER vs NARAYANAPPA AND OTHERS** and the counsel referring this judgment would vehemently contend that the scope of Section 100 of CPC in case of reversing the judgment by the First Appellate Court or even concurrent finding if very limited. The scope of Section 100 of CPC that is formulation of substantial question of law (including as to perversity of findings of fact, if any) sine qua non for exercise of jurisdiction by High Court in second appeal, in absence thereof, concurrent findings

of fact cannot be reversed in second appeal and interference with concurrent findings of fact by High Court in second appeal permissible when material or relevant evidence not considered or when findings arrived at by relying on inadmissible evidence by First Appellate Court. The counsel would vehemently contend that the Court can exercise the power conferred under Section 100 of CPC.

24. The counsel also brought to notice of this Court Section 103 (a) and (b) of CPC wherein it is held that High Court can interfere if there is misreading of document or faulty inference from proved facts, notwithstanding the bar under Section 100 of CPC. The counsel referring this Section also contend that this Court can exercise the powers under Section 100 of CPC when the material has not been discussed.

25. Per contra, the counsel appearing for the respondents in his arguments would vehemently contend that it is not in dispute that one Devappagowda who is the common ancestor had two sons by name B.Nanjappa and B. Shivappa. He held and possessed joint family properties inherited from his

ancestors. Said two sons of Devappagowda effected a registered deed of partition bearing No.221 of Book I, Vol.394, pages 88 onwards dated 18.05.1953 brining about severance between B Nanjappa and B Shivappa and properties that fell to their share were held for benefit of their families. It is contended that the said B Nanjappa derived the title in terms of the said partition. The counsel in his argument would vehemently contend that the suit filed by Shakeela Shetty in O.S.No.335/1991 which is renumbered as O.S.No.22/1993 for the relief of declaration and injunction in respect of site Nos.8 and 9 measuring east to west 60 feet and north to south 80 feet. The counsel also would vehemently contend that O.S.No.8/1992 was filed by the present appellant for the relief of bare injunction in respect of Sy.No.164 totally measuring 6 acres 19 guntas. The counsel also would vehemently contend that the concurrent finding given by both the Courts is based on the material available on record hence, it does not require any interference. The counsel also would vehemently contend that the Trial Court committed an error in O.S.No.8/1992 in dismissing the suit but the First Appellate Court rightly appreciated both oral and

documentary evidence placed on record. It is also contended that the suit is not maintainable since land was converted and formed layout as per plan at Ex.D109 and sites are formed and sold. Based on the compromise decree at Ex.P35, claim is made by the appellant and Ex.P1 is the decree passed in O.S.No.8/1985. No doubt, as per compromise decree, Sl.No.3 to the extent of 6 acres 19 guntas in respect of Sy.No.164 was allotted in favour of the plaintiff. However, the fact that before allotting and compromising the suit in O.S.No.8/1985 in terms of Ex.P1 and P35, already gift was made and sale transaction was taken place. When such being the case, both the Courts have not committed any error in appreciating both oral and documentary evidence placed on record. The counsel would vehemently contend that, the question was arised before this Court that the father cannot gift the property of undivided share and the same has been answered by the First Appellate Court considering the Hindu Law as well as the judgment of the Apex Court and rightly comes to the conclusion that it can be gifted.

26. The counsel in support of his argument he relied upon the judgment reported in **(2004) 1 SCC 295** in the case of **R KUPPAYEE AND ANOTHER vs RAJA GOUNDER** wherein the Apex Court held that a father can make gift of ancestral immovable property within reasonable limits in favour of his daughter at the time of her marriage or even long thereafter. Reasonable limits would depend upon factors such as status of the family, extent and value of the property gifted. Where respondent father himself takes the stand that the gift made by him in favour of his daughters was not valid, he must plead and prove that the gift was excessive and unreasonable. The counsel would vehemently contend that father had not disputed the execution of the gift. The gift was also made in the year 1976 prior to her marriage and her marriage was performed in the year 1979 and said fact is also well within the knowledge of the present appellant and the appellant also admitted the same. Having the knowledge of earlier gift made by his father, the appellant has filed the suit and compromise was also entered in the said suit excluding other defendants and the same is not binding on the parties who are not the parties to the said

compromise and the said fact has been considered by both the Courts. The counsel would vehemently contend that both the Courts have not committed any error and it does not require any interference.

27. In reply to the arguments, the counsel for the appellant filed further submission in addition to and in continuation of written submission of 18.03.2024 contending that the Court can invoke Section 103 (a) and (b) of CPC and relied upon the judgment of the Apex Court reported in **AIR 2021 SC 2438** in the case of **NARAYAN SITARAMJI BADWAIK (DEAD) THROUGH LRS vs BISARAM AND OTHERS** and brought to notice of this Court paragraphs 10 and 11 with regard to the scope of Section 100 of CPC wherein discussed Section 103(a) and (b) of CPC and observation made in paragraph 11 that a bare perusal of this section clearly indicates that it provides for the High Court to decide an issue of fact, provided there is sufficient evidence on record before it, in two circumstances. First, when an issue necessary for the disposal of the appeal has not been determined by the lower

appellate Court or by both the Courts below. And second, when an issue of fact has been wrongly determined by the Court(s) below by virtue of the decision on the question of law under Section 100 of CPC.

28. The counsel also relied upon the judgment reported in **AIR 2000 KAR 27** in the case of **BABU MOTHER SAVAVVA NAVELGUND AND OTHERS vs GOPINATH** with regard to coparcenary property, sale of undivided property by a coparcener, validity, no legal necessity proved, sale would be bad and not binding on plaintiff to the extent of his share in the property and brought to notice of this Court to the discussion made in Article 258 of Mulla's Hindu Law, gift of undivided interest. Article 267 and interpretation clause with regard to void agreement wherein it is held that void document being a nullity in the eye of law, does not require to be challenged while the voidable document can be challenged by the person aggrieved or who has executed. The counsel would vehemently contend that when the void document is executed and need not to be challenged and hence, prayed this Court to allow both the

second appeals and set aside the judgment and decree of the Trial Court.

29. Having considered the grounds urged in these appeals as well as the submissions of the learned counsel appearing for the respective parties and also in keeping the substantial question of law framed by this Court on 02.12.2010 referred above and also recasting of substantial question of law on 28.06.2013 by this Court, this Court have to consider all the substantial questions of law together and also consider the pleadings of both the parties in their respective suits.

30. The suit is filed for the relief of declaration and injunction by the subsequent purchaser from the daughter of the father of the appellant herein. No dispute with regard to the fact that the property is derived to the father in terms of the partition deed of the year 1953. Though it is mentioned that it is a self acquired property of the father B.Nanjappa, the material discloses that the property is a coparcenary property. It is also important to note that firstly, this Court framed the substantial question of law with regard to that whether the father of the

vendor of the plaintiff, as the karta of the family, could make a gift of the undivided extent of the property in favour of his daughter within a reasonable limit to secure her maintenance and other substantial question of law is with regard to possession of the plaintiff is concerned. All these questions involved between the parties and the same has to be considered reanalysing the material available on record within the scope of Section 100 of CPC. The counsel for the appellant mainly relies upon Section 103 (a) and (b) of CPC as well as the power of father in gifting the property of undivided interest in the coparcenary property.

31. Having considered the material available on record, it is not in dispute that the property is belongs to the family of Nanjappa and the appellant is also the son of said Nanjappa. It is not in dispute that gift was made in favour of the daughter of Nanjappa that is Chandralekha in the year 1976 and the same is also through a registered document. It is also important to note that the First Appellate Court also having considered the grounds urged in the appeal taken note of the fact that a kartha of the

family can gift the property in favour of the daughter. The counsel for the respondents also relied upon the case of **KUPPAYEE** referred supra and as against the said judgment, the counsel for the appellant also relied upon the judgment reported in the case of **THAMMA VENKATA SUBBAMMA** referred supra wherein it is held that gift of undivided share of coparcener is void. But in the subsequent judgment of the Apex Court, it is held that the father can make gift of ancestor immovable property within reasonable limits in favour of his daughter at the time of her marriage or even long thereafter. Reasonable limits would depend upon factors such as status of the family, extent and value of the property gifted, where respondent father himself takes the stand that the property gift made by him in favour of his daughters was not valid, he must plead and prove that the gift was excessive and unreasonable. Having considered this judgment, it is clear that the father can gift the ancestors property within reasonable limits in favour of his daughter. The First Appellate Court also in paragraph 25 taken note of the legal position with regard to gift and Section 226 of Mulla's Hindu Law wherein it says that

“The Hindu father or other managing member has power to make gift, within reasonable limits of ancestral immovable properties, for pious purpose. But the alienation must be made by an act intervivoce and not by will.”

32. The First Appellate Court also taken note that at page 295 of Mulla in his principles of Hindu Law, 15th Edition, in a commentary under Section 226, observes with reference to **AIR 1964 SC 5 AND 10** in **GURAMMA vs MALLAPPA** wherein it is held that in the mentioned case, Supreme Court examined the whole question and hold that it was open to a father to make a gift to immovable property to daughter, if the gift is of reasonable extent, having regard to the properties hold by the family.

33. The First Appellate Court also taken note of the judgment which was relied upon by the counsel for the respondents in the case of **KUPPAYEE** referred supra. Having taken note of the principles laid down in the judgments referred supra by the appellant counsel that coparcener is void in respect of the coparcenary property but **KUPPAYEE's** case referred supra is aptly applicable to the case on hand. In the case on

hand, it is emerged during the course of evidence that the gift deed was executed in the year 1976 that is prior to the marriage of a daughter and admittedly marriage of the daughter was performed in the year 1979. It is also important to note that the said daughter also sold the property in the year 1980 i.e., after 4 years of gift made to her and on the very next year of her marriage. It is disputed by the appellant with regard to gift is concerned and also the subsequent sale made in favour of the plaintiff. But admitted in the cross-examination that property was converted in the year 1967 itself by his father and the father was also a kartha of the joint family. It is also case of the plaintiff that she has filed a suit for the relief of declaration and injunction when the registered document was conveyed in favour of daughter who in turn had executed the sale deed and the appellant is also having the knowledge of the said sale deed even prior to filing of the suit by him in O.S.No.8/1985. The First Appellate Court also taken note of admission on his part in the cross-examination of DW2 who is the appellant wherein he categorically admitted that the father was cordial with him till

1985 and only when his father started selling the sites, the differences was arisen between both of them.

34. It is also important to note that DW2 categorically admitted that he did not take any steps for challenging the gift made in favour of his sister - Chandralekha and Vasantha and Siddagangamma who is the sister of his father because he got a share in the family property. It is also important to note that the appellant did not object for gifting of property and he had the knowledge of gift, it is nothing but a tacit consent for gifting the property and when differences was arises between father and son, in 1985, he had filed the suit. It is also important to note that he claims that site Nos.8 and 9 comes in Sy.No.165 and he categorically admits that in terms of Ex.D109, his father had gifted site Nos.8 and 9 in favour of his sister. Hence, it is clear that DW2 is also having got marked Ex.D109 and relying upon the same admitted the correctness of the said sketch hence, the appellant has indirectly admitting the allotment of site Nos.8 and 9 in favour of Chandralekha by way of gift. The said fact is also taken note of by the First Appellate Court. The

appellant has not only admitted with regard to the execution of gift deed but also admitted the document of Ex.D109 produced by himself and the same also issued under the seal and signature of TMC which shows that the land is also converted and there is nothing to disbelieve the document at Ex.D109. All these factors are also taken note of by the First Appellate Court.

35. I have already pointed out that when the appellant categorically admits that his father had converted the land in the year 1967 itself and he was got married subsequent to the execution of the gift deed in favour of his sister and also admitted fact that sites which have been formed in the said property were also sold to the different prospective purchasers and only he relies upon the document of Ex.P1, compromise decree. It is important to note that the said compromise is also between the family members and subsequent purchasers are also not parties to the said compromise. It is the fact that sites are also given to the daughter - Chandralekha as well as the Vasantha and those sites are also formed in the said layout and the same is also evident from the document at Ex.D109 with

regard to showing of formation of sites. When such material is available before the Court and answer is also elicited from the mouth of DW2 who is the appellant, now, he cannot contend that no title conveys in favour of his sister by execution of the gift deed made by his father. It is also important to note that differences were also arisen between himself and his father after his marriage. The judgment relied by the respondents' counsel is very clear that the father can made the gift of ancestor's immovable property within reasonable limits in favour of his daughter at the time of her marriage or even long thereafter. The said gift was made prior to her marriage and reasonable limits would depend upon factors such as status of the family, extent and value of the property owned by the family.

36. In the case on hand, it is also clear that family is having more properties i.e., to the extent of 6 acres 19 guntas allotted to the appellant in terms of compromise which was entered between the father and son in the suit in O.S.No.8/1985 and prior to that compromise, already gift was made as well as sale was also taken place based on the said gift deed. Though

there was a compromise between his father and son, the same will not bind on the other parties, though the suit was filed against other defendants also they are not parties to the compromise, hence, the Court has given finding that the compromise is not binding on the earlier purchasers when they are not parties to the compromise. The records also reveals that the family was having larger extent of properties and share was given to the present plaintiff to the extent of 6 acres 19 guntas. It is also evident from the records that a land of 1 acre 1 gunta was also acquired for national highway and the same is also noticed by the Trial Court while rejecting the relief of bare injunction when the suit is filed to the extent of 6 acres 19 guntas.

37. The recasting of substantial question of law by this Court in other connected R.S.A.No.2397/2006 is with regard to the possession is concerned. The fact is that the suit is filed for the larger extent and the same is also taken note of by the Trial Court while dismissing the suit for permanent injunction and even extracted the admission given by the appellant in

paragraph 11 and taken note of said compromise petition which is filed only on behalf of plaintiff, defendant Nos.1 and 2 therein and the said suit was decreed only against defendant Nos.1 and 2 therein, hence, the Trial Court comes to the conclusion that compromise decree is not binding on the defendants in this suit wherein five defendants were arrived as parties in the suit for bare injunction. In paragraph 11, it is also taken note of admission given by the appellant that before filing the suit in O.S.No.8/1985, he had seen the gift deed and he also categorically admits that he came to know about the same in the year 1985 itself and he also categorically admitted that in the said suit, he had sought the relief in respect of the sites which have been shown in the gift deed and sought the relief but he denies only the fact that when the father had executed the gift deed and possession was given to her saying that he is not aware of the same and not specifically denied with regard to the possession is handed over to his sister. It is also important to note that when the suggestion was made that when his sister - Chandralekha had sold the site in favour of the purchaser and she has given the possession of the same and the said

suggestion was denied stating that he has not aware of the same and not specifically denied that possession was delivered. He also categorically admits that when the sites were given as per the gift deed and khatha was changed in favour of defendant no..3 who is his sister - Chandralekha.

38. It is also important to note that in respect of site Nos.7 and 10, sale deed was executed in favour of defendant No.2 through registered sale deed dated 07.06.1980 and the same also denied by the appellant stating that he is not aware of the same but he admits that defendant No.3 got the site Nos.7 and 10 from his father and also denies the sale deed executed by defendant No.3 in favour of defendant No.2 in respect of site Nos.7 and 10 and also denied that he is not aware of the same and not specifically denied the said transaction also. But he had filed the suit for the relief of permanent injunction in respect of entire land.

39. The Trial Court also while dismissing the suit, in paragraph 13, taken note of Ex.P2, P3, P4, P6 and P7 and taken note of the evidence given by the appellant in O.S.No.22/1993

and judicial notice was taken under Section 56 of the Indian Evidence Act and his admission is also extracted in paragraph 13 and taken note of the fact that the land has been converted as non-agricultural land in view of admission that in the year 1967 itself the property was converted and katha also changed. The Trial Court in detail discussed the material available on record and comes to the conclusion that the plaintiff has not come to the Court with clean hands when he is seeking the discretionary relief of permanent injunction and he has suppressed the material facts and hence, the Trial Court rightly comes to the conclusion that the plaintiff is not in lawful possession of the entire suit schedule property and also taken note of acquisition of property for national highway and answered the issue as negative while answering Issue No.1. When such reasons are given by the Trial Court and the same is also accepted by the First Appellate Court, the re-casted substantial question of law is answered accordingly that the plaintiff has failed to prove factum of possession.

40. Having considered the material available on record and also the substantial question of law framed by this Court, it is very clear that father of the vendor of the plaintiff as the kartha of the family made a gift of undivided extent of the property in favour of his daughter even though the same is an undivided interest of the family, as per the judgment of the Apex Court relied upon by the respondents' counsel in the case of **KUPPAYEE** referred supra and same was also within the knowledge of the appellant. Accordingly, I answer said substantial question of law. In view of the reasoning given by the Trial Court as well as the First Appellate Court in a suit for permanent injunction have not committed any error and so also in respect of suit for declaration and injunction, the Trial Court committed an error and same has been reversed by the First Appellate Court considering the material available on record and also taken note of the scope of gifting of the property by the kartha of the family for reasonable extent and also he was having a share in the coparcenary property and for the pious purposes that too performing the marriage of his daughter who is also a daughter of joint family made such gift. The answer

elicited from the mouth of the appellant himself that he admitted the earlier gift and had knowledge even prior to filing of the suit in O.S.No.8/1985 for partition and he had seen the gift deed and aware of the same. Apart from that the appellant's sister who got the property by way of gift also executed the sale deed on the very next year of her marriage i.e., in the year 1980. When such all these aspects has been considered by the First Appellate Court while reversing the finding of the Trial Court, this Court does not find any error in granting the relief in favour of the plaintiff/respondent No.1 herein since the appellant got compromised the suit including the property already gifted and sold when the same is not in the possession of the family as on the date of compromise.

41. In view of the discussions made above, I pass the following:

ORDER

Both the second appeals are dismissed.

**Sd/-
JUDGE**