

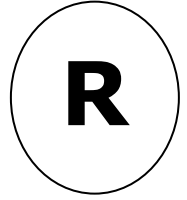
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2024

BEFORE

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

R.S.A. NO.738/2007 (DEC/INJ)



BETWEEN:

SRI DUGGATTI MATADA NAGARAJ
S/O SHANTAVEERIAH
AGED ABOUT 48 YEARS
R/O. HALEMIGALAGERI
SHIKARIPURA TALUK
SHIMOGA DISTRICT-577 427.

... APPELLANT

(BY SRI M.V.HIREMATH, ADVOCATE)

AND:

1 . SRI DANAPPA
S/O LATE SRI SIDDAPPA
AGED ABOUT 40 YEARS
R/O. HALEGONDAKAPPA
SHIKARIPURA TALUK
SHIVAMOGGA -27

SMT. NEELAMMA
W/O LATE SRI MALLANAGOWDA
SINCE DECEASED BY HER LR

2 . SIDDALINGAPPA
ADOPTED S/O MALLANAGOWDA

AGED ABOUT 45 YEARS
R/O. MADAGAHARANAHALI
SHIKARIPURA TALUK
SHIVAMOGGA -577 427.

- 3 . SMT. NEELAMMA
W/O LATE SIDDAPPA
AGED ABOUT 78 YEARS
R/O. HALEGODDANAKOPPA
SHIKARIPURA TALUK
SHIMOGA DISTRICT-577 427.

(R3 DIED LEAVING R1 AS THE SOLE LR OF R3
AS PER COURT ORDER DATED 26.02.2024)

... RESPONDENTS

(BY SRI R.V.JAYAPRAKASH, ADVOCATE FOR R1;
R2 SERVED, BUT UNREPRESENTED
VIDE ORDER DATD 26.02.2024,
R1 IS THE LR OF DECEASED R3)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGEMENT AND DECREE DATED 12.12.2006
PASSED IN R.A.NO.23/1993 ON THE FILE OF THE PRESIDING
OFFICER, FTC-I, SHIMOGA AND ETC.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 28.03.2024 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

J U D G M E N T

This regular second appeal is filed by appellant/defendant No.4 challenging the judgment and decree dated 12.12.2006 passed in R.A.No.23/1993 by the Fast Track Court-I, Shivamoaga.

2. Heard the learned counsel appearing for the respective parties. The parties are referred to as per their original rankings before the Trial Court to avoid confusion and for the convenience of the Court.

3. It is the case of the plaintiff before the Trial Court while seeking the relief of declaration that deed of cancellation dated 14.04.1971, canceling the deed of settlement dated 08.05.1969 is void and ineffective and for further declaration that the sale deeds 14.04.1971, 24.05.1971, 15.05.1978 and 28.04.1973 are void and to declare that the sale deed dated 25.04.1972 is not only void but also not binding on the plaintiff and for possession of the schedule item Nos.1 to 4 of the properties and consequential relief of permanent injunction.

4. The main contention of the plaintiff before the Trial Court that he is the son of defendant No.2-Siddappa who is the son of Basappa. The suit schedule properties were of Smt. Mannamma W/o Basappa who died somewhere in 1959. After her death, Basappa and Siddappa were continued to enjoy the suit schedule properties till 1969. In 1969, Basappa and Siddappa executed a settlement deed on 08.05.1969, under which, they gifted all the suit schedule properties to the plaintiff. Gift was accepted on behalf of minor son (plaintiff) by his mother and the natural guardian Smt.Neelamma. Subsequent to 1969, Neelamma continued to manage the properties of his minor son/plaintiff. By 1971, Basappa was infirm not only due to his old age but also due to Asthma and his son Siddappa was in vicious character. Taking advantage of the same, by practicing undue influence, fraud and misrepresentation, Mallanagowda i.e., the younger brother of Basappa and husband of defendant No.1 got executed a deed of cancellation dated 14.04.1971 canceling the above said settlement deed. On the same day, by playing fraud, got executed the sale deed in his favour in respect of suit schedule properties except item Nos.3 and 4. There was

no necessity, reason or cause for Basappa either to cancel the deed or to sell the properties in favour of Mallanagowda. Basappa, in fact, had no intention of depriving the suit schedule properties in favour of the plaintiff at any point of time. Hence, contended that the deed of cancellation is void and ineffective and also illegal. It is also contended that no consideration passed from Mallanagowda to Basappa. Mallanagowda sold schedule item No.1 to defendant No.3 on 24.05.1971 and sold item No.2 to defendant No.4 on 15.05.1978. Thus, those sales are void and ineffective since the said Mallanagowda had no saleable interest. But possession remained with the plaintiff's mother and Basappa till 1976.

5. The present appeal is filed by defendant No.4. hence, this Court has to take note the defence which had been raised by defendant No.4 though other regular second appeal was filed against the said judgment and decree and the same was compromised and disposed of.

6. The contentions urged by defendant No.4 in the written statement is that the settlement deed dated 08.05.1969

in respect of schedule item No.2 and also in respect of other properties is only nominal deed. On the date of settlement deed, the plaintiff was a minor. Neither the plaintiff nor his mother has accepted the possession of properties covered under the deed. Basappa and Siddappa did not act upon the settlement deed. Even after execution of settlement deed, it was Basappa himself continued to be the owner in possession of the schedule item No.2 and other items and started cultivation. Since Basappa, defendant No.2 and his wife Neelamma and the plaintiff were residing in joint family, it was Basappa himself was the Manager of the family. Till Basappa died, he was in sound state of mind and he was physically fit. Mallanagowda was assisting financially to his elder brother Basappa. Since Basappa continued as owner in possession of those properties and since the settlement deed was not acted upon, Basappa without influence by any one, voluntarily got cancelled the settlement deed on 14.04.1971. On that day, Mallanagowda after paying full consideration amount has purchased schedule item No.2 and other lands by executing a regular sale deed. Defendant No.4 on 15.05.1978 after paying consideration amount, purchased schedule item No.2 and got

executed a registered sale deed in which defendant No.2 is also one of the executants of schedule item No.2 as owner and has invested amount for improvement. Hence, there are no grounds to decree the suit.

7. The Trial Court having considered the pleadings of the parties, framed the several issues. The Issue Nos.2 to 7 and Additional Issue are the relevant Issues for consideration of this second appeal since in the second appeal, the scope is very limited in respect of contention of defendant No.4, which read thus:

2. Whether plaintiff proves that 2nd defendant and his father executed settlement deed dated 08.05.1969 and gifted the plaint schedule properties to plaintiff and delivered possession to plaintiff?
3. Whether plaintiff proves that the husband of 1st defendant by exercising fraud, undue influence and by misrepresentation on Basappa got executed deed of cancellation dated 14.04.1971 canceling the deed of settlement dated 08.05.1969?

4. Whether plaintiff further proves that by exercising fraud and undue influence on Basappa, the husband of defendant No.1 obtained sale deed of suit properties in his favour and that the said sale deed is void?
5. Whether plaintiff proves that the cancellation deed dated 14.04.1971 executed by Basappa is void, ineffective and illegal?
6. Whether plaintiff proves that the sale deeds dated 24.05.1971 executed by husband of defendant No.1 in favour of defendant No.3 and dated 15.05.1978 in favour of defendant No.4 are void and ineffective?
7. Whether plaintiff proves that his mother and Basappa were in possession of suit schedule properties till 1976 and that in 1976-77 defendants 3 and 4 forcibly took possession of property mentioned in item Nos.1 and 2 of the plaint schedule?

Additional Issue:

Whether defendants 3 and 4 prove that they are bonafide purchasers of items 1 and 2 of plaint schedule property respectively for value, without notice of the right of the plaintiff, if any?

8. The plaintiff in order to prove his case examined himself as PW1 and also examined two witnesses as PW2 and PW3 and got marked the documents at Ex.P1 to P31. On the other hand, defendants also examined three witnesses as DW1 to DW3 and got marked the documents at Ex.D1 to D12. The Trial Court having considered both oral and documentary evidence placed on record answered Issues No.2 to 7 as negative and Additional Issue as affirmative in coming to the conclusion that defendant Nos.3 and 4 are the bonafide purchasers of item Nos.1 and 2 of the suit schedule property. Being aggrieved by the said judgment and decree of the Trial Court, an appeal was preferred by the plaintiff in R.A.No.23/1993. The First Appellate Court considering the grounds urged in the appeal, formulated the points which read as follows:

1. Whether the Trial Court committed an error in holding that the suit is barred by limitation?
2. Whether the Trial Court committed an error in coming to the conclusion that Ex.P3-Settlement Deed is only a nominal document?

3. Whether the Trial Court committed an error in holding that P4 - cancellation of settlement deed is correct?
4. Whether the judgment and decree of the Trial Court requires interference?

9. The First Appellate Court after considering both oral and documentary evidence placed on record answered point Nos.1 to 3 as negative and point No.4 as affirmative in coming to the conclusion that the Trial Court committed an error in dismissing the suit and it requires interference and allowed the appeal holding that the cancellation of settlement deed is erroneous and sale deeds dated 14.04.1971, 24.05.1971, 15.05.1978, 28.04.1973, 25.04.1972 ordered to be cancelled and hold that the plaintiff is entitled for possession of item Nos.1 to 4. Being aggrieved by the said judgment and decree, the present second appeal is filed before this Court.

10. The main contention of the learned counsel for appellant that the First Appellate Court committed an error in coming to the conclusion that cancellation of the settlement deed

is erroneous and also the sale deed executed in favour of defendant No.4 is void since he had purchased the same for valuable consideration. The very approach of the First Appellate Court is erroneous and committed an error in proceeded to frame erroneous points for consideration and answered the same as negative. The First Appellate Court committed an error in answering point No.4 as affirmative in coming to the conclusion that it requires interference.

11. This Court having considered the grounds urged in the appeal memo, framed the substantial question of law which reads thus:

Whether the lower Court was justified in answering Issue No.6 in the negative as the suit is instituted after 17 years of the sale in favour of the vendor of defendant No.4?

12. The counsel for the appellant in his arguments would vehemently contend that the suit is filed for the relief of declaration, possession and consequential relief of permanent

injunction. The Trial Court rightly dismissed the suit considering both oral and documentary evidence placed on record. The divergent finding given by the First Appellate Court is erroneous. The appellant had purchased item No.2 on 15.05.1978 and his vendor had purchased the said property on 14.04.1971. The very approach of the First Appellate Court is erroneous. Ex.P3 and P4 are not properly considered by the First Appellate Court and failed to take note of the fact that the settlement deed was cancelled and on the same day sale deeds were executed in favour of his vendor. The First Appellate Court committed an error in reversing the finding of the Trial Court. The counsel also would vehemently contend that from the date of the purchase of the property by his vendor, he was in possession and subsequent to the purchase in the year 1978 by the appellant, he is in possession of the property. All these factors have not been considered by the First Appellate Court. Dislodging the order of the Trial Court is erroneous since appellant is the bonafide purchaser and he is in possession from last four decades. Ex.P3 to P5 are the registered documents and the witnesses were also examined to prove all those documents.

The counsel also would vehemently contend that PW1 in his cross-examination categorically admitted that defendant No.4 is cultivating in the said land. The defence of PW2 is also very clear with regard to the possession of defendant No.4 over the property and he supports the case of defendant No.4. Defendant No.4 has been examined himself as DW1 to prove his case. The Court has to take note of the recitals found in Ex.P3 to P5 wherein reasons are also given for cancellation of settlement deed and those reasons has not been considered by the First Appellate Court and committed an error in reversing the finding of the Trial Court.

13. Per contra, the learned counsel appearing for the respondents would vehemently contend that the issue is only with regard to item No.2 is concerned. He also filed synopsis on the fact that defendant No.4 had purchased the property from the husband of defendant No.1 and the said fact is not in dispute. The counsel would vehemently contend that the sale deed was made in the year 1971 in favour of the husband of defendant No.1 and on the same day, the settlement deed was

cancelled. But the fact that settlement deed was executed by Basappa and Siddappa and the said fact is also not in dispute. Hence, Basappa alone cannot unilaterally cancel the same excluding Siddappa since the document is a registered document. The counsel would vehemently contend that though suit was returned to file afresh and the same was presented on the next day itself and the First Appellate Court also taken note of the said fact and comes to the conclusion that the suit is within time. The counsel also would vehemently contend that the Trial Court ought to have invoked Section 31 of the Specific Relief Act, 1963 when already there was a registered settlement deed and the Basappa alone cannot cancelled the same unilaterally when other executant also is the party to the settlement deed. The counsel also brought to notice of this Court to Section 126 of the Transfer of Property Act wherein it is clear that only they can seek for cancellation of the document with the consent of the parties to the said document and there cannot be any unilaterally cancellation or rejection. It is not open to the Basappa to cancel the document unilaterally. The very contention of the appellant that the said settlement deed is

only a nominal document and the said contention cannot be accepted. The counsel would vehemently contend that whatever it may be, the same has to be cancelled in accordance with law and ought to have filed the suit seeking the relief of cancellation and the settlement deed but the same has not been done. The counsel would vehemently contend that the First Appellate Court thoroughly discussed with regard to the unilateral cancellation which is impermissible under law.

14. The counsel in support of his arguments relied upon the judgment reported in **1969(1) MYS. L. J. 183** in the case of **V S MANGARAJA SHETTY AND ANOTHER vs C K SUBBAIAH AND OTHERS** and brought to notice of this Court to the discussions made in paragraphs 8 to 10 of the said judgment wherein discussed with regard to the limitation is concerned. It is held that considering Order VII Rule 10(2) of CPC, it is incumbent on the judge passing the order under clause (1) of the same provisions to endorse on the plaint the date of the presentation, return of the plaint, the name of the party presenting it and the reasons for returning it. It is seen from a

perusal of the two complaints that there is no endorsement made by the learned Judge as provided under Order VII Rule 10(2) CPC. It cannot be said that under the circumstances the plaintiffs were negligent and that the plaintiffs were not entitled to deduct the time between 04.06.1955 and 29.06.1955 under Section 14 of the Limitation Act. Even without deducting this period of 25 days, the suits would be in time if the period between the dates of presentation of the complaints and 04.06.1955 is taken into account.

15. The counsel also relied upon the other judgment of the Apex Court reported in **(2010) 15 SCC 207** in the case of **THOTA GANGA LAXMI AND ANOTHER vs GOVERNMENT OF ANDHRA PRADESH AND OTHERS** and brought to notice of this Court paragraphs 3 to 5 wherein an observation is made that it is only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the parties concerned. In this case, neither is there any declaration by a competent Court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the

cancellation deed as well as registration thereof were wholly void and *non est* and meaningless transactions.

16. The counsel also relies upon the judgment reported in **(2019) 7 SCC 641** in the case of **GURNAM SINGH (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS vs LEHNA SINGH (DEAD) BY LEGAL REPRESENTATIVES**. The counsel having relied upon this judgment brought to notice of this Court paragraphs 13 and 13.1 wherein discussed with regard to the scope of Section 100 of CPC. It is held that the High Court cannot substitute its own opinion for that of the first appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being contrary to the mandatory provisions of the applicable law or contrary to the law as pronounced by the Supreme Court or based on inadmissible evidence or no evidence. It is further observed in the said judgment that if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. The counsel also brought to

notice of this Court paragraph 15 wherein also an observation is that while passing the impugned judgment and order, the High Court has exceeded in its jurisdiction while deciding the second appeal under Section 100 of CPC. The counsel also brought to notice of this Court to paragraphs 16 and 17 with regard to exercising the powers under Section 100 of CPC while allowing the second appeal. The counsel referring paragraph 19 would vehemently contend that an observation is made that it is not permissible for the High Court to reappraise the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal.

17. The counsel also relied upon the judgment of this Court reported in **ILR 2008 KAR 2245** in the case of **BINNY MILL LABOUR WELFARE HOUSE BUILDING CO-OPERATIVE SOCIETY LIMITED vs D R MRUTHYUNJAYA ARADHYA** and brought to notice of this Court to the discussion made in

paragraph 36 of the judgment wherein it is held that it is permissible for them to execute one more document to annul or cancel the earlier deed. Only if an approach is made to the Court, normally what can be done by a Court can be done by the parties to an instrument by mutual consent. Unilaterally he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property. The purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed and further observed that even by consent or agreement between the purchaser and the vendor, said sale deed cannot be annulled. If the purchaser wants to give back the property, it has to be by another deed of conveyance and discussion was made with regard to Section 31 of the Specific Relief Act. Therefore, the power to cancel a deed vests with a Court and it cannot be exercised by the vendor of a property. The counsel also brought to notice of this Court paragraph 37 of the said judgment wherein it is held that the law provides for cancellation of such

instruments which are also *non est*, but which are in existence as a fact physically to get over the effect of such instrument. Once such an instrument is registered, the said registration has the effect of informing and giving notice to the World at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property.

18. Having heard the learned counsel appearing for the respective parties and in keeping the grounds urged in this appeal as well as the contentions raised by both the parties and also the judgment of the Trial Court as well as the First Appellate Court and so also the substantial question of law framed by this Court, this Court has to examine the material available on record within the purview of Section 100 of CPC. Having perused the substantial question of law framed by this Court, it has to be noted that the Trial Court while dealing with Issue No.6 along with other Issues, discussed with regard to the material available on record. In paragraph 35 of the judgment, the Trial Court held that defendant No.4 is the bonafide purchaser of for valuable

consideration and the Trial Court taken note of the records which are standing in the name of the subsequent purchasers and an observation is made that no notice had been issued to them that not to purchase the property prior to selling the property to defendant No.4 by the husband of defendant No.1. Even an observation is made that mother of the plaintiff did not object while purchasing the said property as well as at the time of cultivation.

19. Having considered the material available on record, it is not in dispute that originally the property belongs to one Basappa. It is also not in dispute that the said Basappa and his son Siddappa have executed the settlement deed on 08.05.1969. The execution of the said settlement deed is not in dispute. It is also not in dispute that the said settlement deed was canceled by Basappa unilaterally on 14.04.1971. It is important to note that defendant No.4 had purchased the item No.2 property from one Mallanagowda on the very same day. It is also not in dispute with regard to the cancellation of settlement deed and execution of the sale deed in favour of said

Mallanagowda came into existence on the very same day. The allegation of the plaintiff is that by playing fraud, the said Mallanagowda had obtained the sale deed in his favour by canceling the settlement deed. The fact that unilaterally the said settlement deed was cancelled only by Basappa and the said fact is also not in dispute. It is also not in dispute that the said Basappa had executed the sale deed in favour of his brother Mallanagowda conveying all the suit schedule property as per Ex.P5. With regard to execution of Ex.P3 to P5, there is no dispute. The fact is that the appellant had purchased the property on 15.05.1978 in terms of Ex.P7 and Ex.D1 is his vendor's sale deed and the same is also not in dispute. It is the contention of the plaintiff that he had attained majority on 31.08.1981 and he was born on 31.08.1963 and to that effect, birth certificate is also produced at Ex.P1.

20. It is also important to note that suit was filed on 11.04.1983 before the Munsiff Court, Shikaripura. It is not in dispute that it was ordered to present before the proper Court having jurisdiction on 13.06.1988. It is also important to note

that the plaint was returned to the plaintiff for presentation before proper Court on 21.06.1988 and the same was presented before the Court of Civil Judge, Sagar on 22.06.1988 that is very next date and both the places are different places. The counsel also relied upon the judgment in the case of **V S MANGARAJA SHETTY** (referred supra) wherein discussed with regard to the proviso under Order VII Rule 10(2) of CPC for returning of plaint and presentation. In the said judgment it is discussed with regard to Section 14 of the Limitation Act. The said judgment is aptly applicable to the case on hand since there is no delay in filing the suit since only the next date, in different taluk the suit was presented.

21. Now, with regard to consideration of the legal question involved in the matter is concerned, I have already pointed out that no dispute with regard to the documents at Ex.P3 to Ex.P5 and so also Ex.P7 and Ex.D1. The title flows in favour of Basappa, thereafter, in favour of Mallanagowda who in turn sold the property in favour of defendant No.4/appellant herein. But the fact is that the Basappa and his son Siddappa

have executed the settlement deed on 08.05.1969 and the said fact is not in dispute. But the cancellation is made by only Basappa and the same cannot be done by him when two persons have executed the said document. Apart from that it is only a unilateral cancellation of settlement deed. The counsel for the respondents also relied upon the judgment of the Apex Court in the case of **THOTA GANGA LAXMI** (referred supra) wherein also it is very clear with regard to registration of the document. An observation is made that Rule does not permit to cancel the document and the cancellation must be through a registered document that too after notice to the concerned parties of the said document. In the case on hand, while canceling the settlement deed, no notice was given to the plaintiff's father in whose favour the settlement deed was executed. The First Appellate Court has taken note that under what circumstances, the document at Ex.P4-cancellation came into existence and so also Ex.P5-sale deed came into existence on the very same day in favour of Mallanagowda. The First Appellate Court in detail discussed with regard to playing of fraud on Basappa by his brother Mallanagowda. It is also held in **THOTA GANGA**

LAXMI's case (referred supra) that in the absence of notice to the concerned parties, both the cancellation deed as well as registration thereof were wholly void and *non est* and meaningless transaction.

22. This Court also in the case of **BINNY MILL LABOUR WELFARE HOUSE BUILDING CO-OPERATIVE SOCIETY LIMITED** referred supra in detail discussed while answering Point Nos.3 and 4 that when the owner of the property sells or conveys the property to the purchaser under a written document and get the same registered, the right and the title to the said property is transferred from the owner to the purchaser on registration of the said documents. After such registration, the owner of the property ceases to have any interest and all his rights in the property gets extinguished. He would not have any right to meddle with the property thereafter. The purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed. It is also observed that unilaterally he cannot execute what is styled as a deed of

cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property. It is also important to note that if he really intends to cancel the document, he cannot cancel the same unilaterally but he can approach the appropriate Court seeking cancellation of the same. It is only the Court which can cancel the deed duly executed under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act. The coordinate Bench also discussed Section 31 of the Specific Relief Act extracting the same in the judgment and held that such a person has the discretion to approach the competent Civil Court for adjudging the said instrument to be delivered up and cancelled. It is further observed that even though in law a void instrument is unenforceable, has no value in the eye of law, void *ab initio*, the very physical existence of such a document may cause a cloud on the title of the party or cause injury or one can play mischief. Therefore, the law provides for cancellation of such instruments which are also *non est*, but which are in existence as a fact physically to get over the effect of such instrument.

23. Having considered the principles laid down in the aforesaid judgment of the coordinate Bench and also considering Section 31 of the Specific Relief Act and the judgments referred supra, the only course open to seek for the relief of cancellation is through the Court, not by himself unilaterally. Hence, very cancellation of the settlement deed is not permissible and by canceling the settlement deed, the said sale deed was executed but the said sale deed does not convey any title to any person since the same is a defective title in respect of both i.e., the husband of defendant No.1 as well as defendant No.4 who is the appellant herein. Hence, the judgments which have been relied upon by the counsel for the respondents are aptly applicable to the facts of the case on hand. The case of the respondents is very clear that immediately after attaining the age of majority that means he has attained the age of majority in the year 1981 and within a span of three years, he has filed the suit that is in the year 1983. Hence, the suit is not barred by limitation as well as presented the plaint in time in view of the judgment referred supra of in the case of **V S MANGARAJA SHETTY**.

24. The other observation of the Trial Court while dealing with the Issue No.6 that the appellant is a bonafide purchaser also cannot be accepted since his title is defective title as observed above. Hence, the Trial Court committed an error in dismissing the suit of the plaintiff and the First Appellate Court has rightly reversed the finding of the Trial Court applying judicious mind in allowing the suit of the plaintiff. Hence, I do not find any merits in the appeal to come to other conclusion. Thus, the suit is belated one cannot be accepted and the reasoning of the Trial Court is not correct and First Appellate Court rightly reanalyzed both oral and documentary evidence placed on record as well as the question of law. The Section 31 of the Specific Relief Act is very clear that the person has the discretion to approach the competent Civil Court for adjudicating the said instrument to be cancelled even though in law a void instrument is unenforceable, has no value in the eye of law, *void ab initio*. The law provides for cancellation of such instrument and the same cannot be cancelled unilaterally and the very cancellation of settlement deed is without any right and the same cannot convey any title and execution of the sale deed in

favour of Mallanagowda also does not convey any title and claim that he is the bonafide purchaser cannot be accepted, the Trial Court finding is erroneous and the First Appellate Court rightly reversed the same. Hence, I answer this substantial question of law accordingly.

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

ORDER

The regular second appeal is dismissed.

**Sd/-
JUDGE**

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