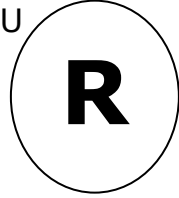


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2024

BEFORE

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



R.S.A. NO.1837/2008 (DEC)

C/W.

R.S.A. NO.1838/2008 (DEC)

IN R.S.A. NO.1837/2008:

BETWEEN:

1 . PATEL VEERAPPAIAH
S/O VEERABASIAH
AGED ABOUT 84 YEARS

SINCE DEAD BY HIS LRS

1(a) P.V.SIDDAIAH
S/O LATE PATEL VEERAPPAIAH
AGED ABOUT 40 YEARS

1(b) P.V.GANGADHARASWAMY
S/O LATE PATEL VEERAPPAIAH
AGED ABOUT 35 YEARS

BOTH ARE R/O. AVERAGOLLA VILLAGE
DAVANAGERE TALUK & DISTRICT-577589.

(AMENDED VIDE COURT ORDER DATED 14.03.2017)

2 . D. SIDDAIAH
S/O MURUGENDRAIAH
AGED ABOUT 74 YEARS
SINCE DEAD BY HIS LR

D.S.GANGADHARASWAMY
S/O LATE D.SIDDAIAH
AGED ABOUT 45 YEARS
R/O. AVERAGOLLA VILLAGE
DAVANAGERE TALUK & DISTRICT-577589.

(AMENDED VIDE COURT ORDER DATED 14.03.2017)

3 . B.M. SHANMUKHAIH
S/O EKAMBARAIAH
AGED ABOUT 54 YEARS

ALL ARE AGRICULTURISTS
R/O. AVERAGOLLA VILLAGE
DAVANAGERE TALUK AND
DISTRICT-577589.

... APPELLANTS

[BY SRI SUNIL KUMAR PATEL, ADVOCATE FOR
SRI S.K.VENKATA REDDY, ADVOCATE]

AND:

SRIMAN MAHARAJA NIRANJANA JAGADGURU
SRI SRI SHIVAMURTHY MURUGHARAJENDRA
MAHASWAMIGALU, SRI BRUHANMATH,
CHITRADURGA-577 501.
BY POWER OF ATTORNEY HOLDERA
M.PARAMESHWARAIH S/O RUDRAIAH
AGED ABOUT 56 YEARS
BRUHANMUTT
CHITRADURGA TALUK & DISTRICT.

... RESPONDENT

(BY SRI M.P.SRIKANTH, ADVOCATE)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGEMENT AND DECREE DATED 28.06.2008
PASSED IN R.A.NO.21/2006 ON THE FILE OF THE ADDL.
SESSIONS JUDGE, FAST TRACK COURT-II, DAVANAGERE,

DISMISSING THE APPEAL AND FILED AGAINST THE JUDGEMENT AND DECREE DATED 25.02.2006 PASSED IN O.S.NO.202/1995 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN.) DAVANAGERE AND ETC.

IN R.S.A. NO.1838/2008:

BETWEEN:

1 . PATEL VEERAPPAIAH
S/O VEERABASIAH
AGED ABOUT 84 YEARS

SINCE DEAD BY HIS LRS

1(a) P.V.SIDDAIAH
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SRI SRI SHIVAMURTHY MURUGHARAJENDRA
MAHASWAMIGALU, SRI BRUHANMATH,
CHITRADURGA.

BY POWER OF ATTORNEY HOLDERA
M.PARAMESHWARAIAH
S/O RUDRAIAH
AGED ABOUT 56 YEARS
BRUHANMUTT
CHITRADURGA TALUK & DISTRICT.

... RESPONDENT

(BY SRI M.P.SRIKANTH, ADVOCATE)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 28.06.2008 PASSED IN R.A.NO.20/2006 ON THE FILE OF THE ADDL. SESSIONS JUDGE, PRESIDING OFFICER, FTC-II, DAVANAGERE, DISMISSING THE APPEAL FILED AGAINST THE JUDGEMENT AND DECREE DATED 25.02.2006 PASSED IN O.S.NO.198/1994 ON THE FILE OF THE PRL. CIVIL JUDGE, (SR.DN), DAVANAGERE AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

J U D G M E N T

1. Heard the learned counsel for the appellants and also the learned counsel for the respondent in both the appeals.

2. The parties are referred to as per their original rankings before the Trial Court in order to avoid confusion and for the convenience of the Court.

3. These two appeals are filed by the defendants questioning the judgment and decree passed in O.S.No.198/1994 and also O.S.No.202/1995 and confirming the same in the Regular Appeal in R.A.No.20/2006 and R.A.No.21/2006 respectively. These two second appeals are filed against the concurrent findings.

4. The suit in O.S.No.198/1994 is filed for the relief of declaration and injunction claiming in respect of land in Sy.No.73 measuring 8 acres 12 guntas of land in Avaragolla village, Davanagere Taluk and one deceased Kotraiah was the convener of the plaintiff and plaintiff is in lawful

possession over the suit schedule property as on the date of suit and title is vested with the plaintiff. The defendants tried to interfere with the suit schedule property. Hence, the plaintiff is entitled for the relief of declaration and injunction. The defendants in pursuance of suit summons appeared before the Trial Court and filed written statement contending that suit schedule property originally belongs to 'Igalu Samastharu' and plaintiffs are not the owner of the suit schedule property and not having title to the suit schedule property. Hence, the Trial Court taking into note of the averments of the pleadings and also the contention in the written statement framed the following issues:

ISSUES IN O.S.No.198/1994

- 1) *Whether plaintiff proves its title to the suit schedule property?*
- 2) *Whether plaintiff further proves that deceased Kotraiah was convener of plaintiff?*

- 3) *Whether plaintiff further proves its lawful possession over suit property as on date of suit?*
- 4) *Whether plaintiff proves interference by defendants as alleged?*
- 5) *Whether plaintiff is entitled for declaration and injunctions as sought for?*
- 6) *Whether defendants prove that suit property originally belonged to 'Igalu Samastharu' as pleaded in the written statement?*
- 7) *To what relief/s the parties are entitled to?*
- 8) *What order or decree?*

5. The plaintiffs have also filed another suit in O.S.No.202/1995 contending that the Gaddige and the site measuring 40 x 80 belongs to the plaintiff and they are the owners of the suit schedule property and also contend that the defendants are trying to interfere with the possession of the plaintiff. Hence, sought for the relief of declaration and

injunction. In pursuance of the suit summons, defendants appeared and filed written statement contending that they are perfected their title of suit schedule property by adverse possession and also suit is bad for non-joinder of necessary parties. The suit is also barred by limitation under Article 65 of Limitation Act and the suit has to be dismissed with exemplary cost. Hence, the Trial Court taking into note of the averments of the pleadings and also the contention in the written statement framed the following issues:

ISSUES IN O.S.No.202/1995

- 1) *Whether plaintiff proves its title to the suit property?*
- 2) *Whether plaintiff proves interference by defendants as alleged?*
- 3) *Whether defendants prove that they have perfected their title to the suit property by adverse possession?*

- 4) *Whether plaintiff is entitled for declaration and injunction sought for?*
- 5) *Whether the suit is bad for non-joinder of necessary parties?*
- 6) *Whether the suit is barred under Section 65 of Limitation Act as alleged by defendants?*
- 7) *Whether defendants are entitled for exemplary costs of Rs.5,000/-?*
- 8) *What order or decree?*

6. Both the suits are clubbed together since the parties are one and the same in both the suits. The plaintiffs in order to prove their case, examined PW1 to PW8 and got marked Ex.P1 to Ex.P23. On the other hand, the defendants have also examined 5 witnesses as DW1 to DW5 and got marked Ex.D1 to Ex.D119. The Trial Court having considered both oral and documentary evidence available on record, answered issue Nos.1 to 5 in

O.S.No.198/1994 and also issue Nos.1 to 4 in O.S.No.202/1995 as affirmative. The Trial Court answered issue No.6 in O.S.No.198/1994 as negative and so also issue Nos.5 to 7 in O.S.No.202/1995 as negative and accepted the case of the plaintiff in both the suits and granted the relief as prayed in both the suits declaring that the plaintiff is the absolute owner and in possession of the suit land bearing Sy.No.73 and also the property bearing kaneshumari No.2 of Avaragolla village, Davanagere Taluk as described in the schedule. The Trial Court also granted permanent injunction restraining the defendants from interfering with the suit possession and enjoyment of the suit schedule property in O.S.No.198/1994 and O.S.No.202/1995. Being aggrieved by the judgment and decree of Trial Court, the defendants have filed Regular Appeal in R.A.No.20/2006 and R.A.No.21/2006 on the file of Addl. Sessions Judge, Fast Track Court-II, Davanagere. The Appellate Court on re-appreciation of both oral and

documentary evidence available on record, formulated the points whether the plaintiff in both the suits proved that the suit schedule property owned by "Virakta Mutt" and that, the 'Virakta Mutt ' of Avaragolla village is the Shaka Mutt of Sri.Bruhanmutt, Chitradurga, Whether the defendant have proved that the suit schedule property in both the suits formerly belonged to 'Igalu Samstharu' of Avaragolla Village. The name of 'Virakta Mutt' is misnomer. The entries in revenue records as 'Virakta Mutt' is incorrect. The same is entered by ignorance of concerned revenue officials. It is infact 'Puravargamutt' (Shaka Mutt of Sri Rambhapuri Peeta). The possession and management of the suit schedule property is vested with the five families of 'Igalu Samastharu' of Avaragolla village, who are subjected to the supervision, control and jurisdiction of Sri Rambhapuri Peeta as alleged in the written statement, whether the defendants have proved alternatively that, they have perfected the title by adverse possession, Whether the

suits are bad for non-joinder of necessary parties as contended in the written statement, whether the suit is barred by time, whether the common judgment and decree dated 25.02.2006 the granting the decree in favour of the plaintiffs requires interference by this Court.

7. The First Appellate Court having re-assessed both oral and documentary evidence placed on record answered point No.1 as affirmative in coming to the conclusion that both the suit schedule properties are owned by 'Virakta Mutt' and 'Virakta Mutt' of Avaragolla village is the Shaka Mutt of Sri Bruhanmutt, Chitradurga. The other point for considerations are answered as negative not accepting the case of the defendants/appellants.

8. Being aggrieved by the judgment and decree of Trial Court as well as the First Appellate Court, these two second appeals are filed before this Court and contended in both the appeals that both the Courts committed an error in decreeing the suit and the suit schedule land was owned

and possessed by the Paldar Patel's family and its members. There was a usufructuary mortgage deed executed by one Mahalingappa S/o of Kodihalli Rudrappa in favour of Swamiji of Veeragangadhara Rambhapuri Peetha by paying an amount of Rs.400/- for enjoying the said property for a period of 10 years. In the said process one Sri.Ganji Veerappa, who was an M.L.C, Davanagere had accepted the mortgage amount and credited to the Mutt of Rambhapuri Peethadhyaksha namely Veerasimhasanadheeshwara Shree Veeragangadhar Shivacharya Mahaswamiji of Balehonnur, Rambhapuri Peetha. The said usufructuary mortgage deed came to be registered on 11.06.1952. On the basis of said registered document, the entries in revenue records, i.e., R.R-V and R.R-VI came to be made in the name of Rambhapuri Peetha as they are the owners of the schedule land and defendants are looking after the same. The names of the defendants/appellants herein shown as actual cultivators

who are in possession and the mode of cultivation as self (swantha) as such schedule land is under the ownership of the said Sangha through the appellants/defendants who are the Moola Hiduvalidars i.e., original owners and cultivators. In order to prove the same, the counsel relied upon the document Ex.D17 i.e., notification dated 28.07.1970 wherein a portion of land measuring about 7 guntas in Sy.No.73 came to be acquired for the purpose of Bhadra canal and also for formation of road Davanagere-Kondajji, where the compensation in respect of acquired land was awarded and disbursed to the defendants/appellants and their family members.

9. It is also contended that defendants/appellants offered 20 guntas in Sy.No.73 to a co-operative society, 2G for ANM quarters and about 1 gunta for construction of water tank. It is also contended that 2 guntas was acquired for laying Kondajji-Davanagere road in terms of Ex.D48. It is also contended that there is a inscription (Shilashasana)

in the stone found in the schedule land, which discloses the origin that the land was given to Bisiaggani Channabasappa Swamy from Igalu Samstharu of Avaragolla Village which is apparent from Ex.D54 to Ex.D56. There are kandaya receipts paid by the defendants as per Ex.D52 and Ex.D53. The resolution book Ex.D46 discloses that the office bearers of Renuka Mandir headed by convener Kotraiah shows the particulars of auctioning of cultivation right which further discloses accounts. But the appreciation made by both the Courts is erroneous and registered mortgage deed dated 11.06.1952 as per Ex.D62, wherein there is a recital that the same was executed in favour of Veeragangadhara swamy of Rambhapuri Peetha. The documentary evidence before the Trial Court was not considered by both the Courts. Hence, it requires interference.

10. In second appeal R.S.A.No.1838/2008 also the counsel would vehemently contend that the property belongs to 'Paldar Patel Veerappaiah' family, the said plaint

schedule property originally belongs to 'Igalu Samstharu' and as per the inscription in the very land (Ephigraphica) carnation of Davangere number (96), it is shown that the schedule land was offered by all the said Igalu to Basaganni Channabasava Swamiji who was the head of the only Mutt in Avaragolla village, which is also called as Puravarga Mutt a holyman held in high esteem, the successors of said Igalu and the members of the Veerashaiva community are the devotees of the said Swamiji and his successors in his office. The said Mutt was popularly known as Virakta Mutt by some misnomer might be at the instance of the disciples or the revenue officers, but the said Mutt is a Shaka Mutt of one of the Pancharaya Peeta of Sri. Veerasimhasanadheeshwara of Sri Rambhapuri Mahasamsthan founded by Sri.Renukacharya. The customary traditions and practice followed by the said 5 families of 'Paldar Patel Veerappaiah' family, the swamiji of said Mutt is to adorn the Peeta. The suit schedule land was

owned and possessed by Paldar Patel family and its members. In this case also contended that there was a mortgage in the year 11.06.1952 and similar defense was taken in the written statement. It is also contended that both the Courts have committed an error in granting the relief of declaration and fails to take note of relevant document of registered mortgage i.e., Ex.D62 and other materials which have been placed before the Court and only committed an error in taking note of revenue wrong entries made in the documents and the same will not create any title. Both the Courts have committed an error in granting the relief of declaration only based on the revenue records.

11. This Court taking into note of the grounds urged in both the second appeals has framed the following substantial question of law on 15.11.2011:

1) Whether the Courts below are right and justified in law in declaring the plaintiff as owner of the suit property without the documents of title in favour of plaintiff just on

the basis of revenue entries, in contravention of Section 17(1)(b) of Registration Act and settled law by Apex Court?

2) Whether the Courts below are justified in law in granting the relief of perpetual injunction, when the plaintiff failed to prove title, through which alleged possession is claimed?

12. The counsel appearing for the appellant in his argument vehemently contend that both the Courts have committed an error in granting the relief of declaration and injunction only based on the revenue entries. The counsel would vehemently contend that when the relief is sought for the relief of declaration and ought to have produced the document of title deeds and without the document of title deed in favour of the plaintiff, on the basis of revenue entries, there cannot be granting of any relief of declaration and the same is in contravention of Section 17(b) of Registration Act. Both the Courts have committed an error

in granting the relief of permanent injunction. The counsel would vehemently contend that the said Kotraiah is appointed as Vice President of Mutt and he was the Vice President of defendant Mutt and also there was a mortgage for Rs.400/- in favour of Rambhapuri Mutt for a period of 10 years. The counsel also would vehemently contend that with regard to the said fact, there is an entry in R.R-V and R.R-VI even prior to 1952 mortgage. The counsel would vehemently contend that when the land was acquired to the extent of 7 guntas, compensation also paid to the defendants and these materials have not been considered by both the Trial Court as well as the First Appellate Court. The counsel would vehemently contend that permission was given to construction of quarters as well as water tank and also for formation of road. The counsel also would vehemently contend that Shilashasan found for giving the land and tax receipts are also produced. No title of ownership in favour of plaintiff, though examined PW1 to

PW7 and got marked the exhibit P-series of documents and the same not evidence the fact of title. The DW1 to DW5 have examined and got marked 119 documents and those documents are not considered and without any title, passed the judgment of declaration and injunction.

13. The counsel in support of his argument he relied upon the judgment reported in **2023 Live Law (SC) 999 in case of P.Kishore Kumar V/s Vittal.K.Patkar** and Apex Court categorically held that the revenue records are not documents of title. The Trial Court erred in decreeing the suit by placing on a higher probative pedestal the revenue entries.

14. The counsel in support of his argument he relied upon the judgment reported in **1993 Supp (2) Supreme Court Cases 560 in case of Sri Chand V/s Inder and others** and referring this judgment, the counsel would vehemently contend that when the plaintiff fails to establish his case, the question of whether the defendant had

lawfully acquired any sub-tenancy rights under the predecessor interest need not be gone into as even in absence thereof, weakness of defendant's case would not strengthen the plaintiff's case.

15. The counsel in support of his argument he relied upon the judgment reported in ***ILR 2014 KAR 1311 in case of Smt.Sumitra Bai V/s P.Siddesh and another*** wherein also this Court has observed that burden heavily rests on the plaintiff to prove his title, need to produce convincing and cogent evidence to the satisfaction of the Court to establish the title to the property in dispute and made an observation that weakness of the defendant's case would not strengthen plaintiff's case. The plaintiff has to prove his case to the satisfaction of the Court to means of convincing and cogent evidence not necessarily beyond reasonable doubt. If this burden is discharged, then only onus shifts on to the defendant to establish the plaintiff's case as false and on the other hand the defendant's case is

probabalized on the basis of the materials on record. The Courts cannot on the basis of distorted admission or on the basis of the disputed/not proved documents draw an inference in order to grant any remedy to any of the parties to the suit.

16. The counsel also relied upon the judgment reported in **(2014) 2 Supreme Court Cases 269 in case of Union of India and others V/s Vasavi Co-operative housing society limited and others** wherein also an observation is made when the suit is filed for a declaration of title and possession, burden is on the plaintiff to establish its case, irrespective of whether defendants prove their case or not. In the absence of establishment of his own title, the plaintiff must be non-suited even if title set up by defendants is found against them, weakness of case set up by defendants cannot be a ground to grant relief to plaintiff and discussed Section 101 to 103 of Evidence Act, 1872.

The entries in revenue records, do not confer any title and also discussed Section 35 of Evidence Act, 1872.

17. Per Contra, the counsel appearing for respondent in his argument would vehemently contend that Section 110 of Evidence Act is very clear with regard to the possession with the plaintiff and the evidence of DW1 and DW3 is very clear in admission with regard to the title of the plaintiff and when there is clear admission on the part of the defendant that the property belongs to the plaintiffs and question of disturbing concurrent finding of both the Courts cannot be done. The counsel in support of his argument he also brought to notice of this Court the very proviso of Section 110 of Evidence Act with regard to the presumption as to possession both backward and forward can be raised.

18. The counsel in support of his argument relied upon the judgment reported in **(2008) 5 SCC 25 in case of Patinhare Purayil Nabeesumma V/s Miniyatan**

Zacharias and another and brought to notice of paragraph No.24 wherein discussion was made with regard to the appellant-plaintiff has been able to prove for her title as also the possession. The counsel also would vehemently contend that when the presumption of possession when can be drawn under Section 110 of Evidence Act also discussed in the said judgment and in order to find out which party would be entitled assigned for right, title, interest and possession, it has to be found out who was the cultivating tenant within the meaning of Section 13.

19. The counsel also relied upon the judgment reported in **(2013) 9 SCC 319 in case of State of Andhra Pradesh and others v/s Star Bone Mill and Fertiliser Company** and counsel referring this judgment would vehemently contend that ownership and title and proof presumption of title in favor of possessor under Section 110 of Evidence Act and discussed Evidence Act, 1872, presumption of title as a result of possession arises

only where the fact discloses that no title vests in party, further held, where possession of plaintiff is not prima facie wrongful, and his title is not proved, it certainly does not mean that because a man has title over same land, he is necessarily in possession of it. It in fact means that, if at any time a man with title was in possession of said property, the law allows the presumption that such possession was in continuation of title vested in him. Thus, all that Section 110 of Evidence Act provides for is that where apparent title is with the plaintiffs, then in order to displace the said claim of apparent title and to establish good title in himself, it is incumbent upon defendant to establish by satisfactory evidence in the circumstances that favor defendant's version. Presumption of possession and/or continuity thereof, both forward and backward can be raised under Section 110 of Evidence Act, 1872.

20. Having considered the grounds urged in the appeal memo and also the respective submissions of both

the counsel and so also the principles laid down in the judgments referred supra and also the substantial question of law, this Court has to exercise the powers conferred under Section 100 of CPC. It is not in dispute that if findings of both the Courts are perverse and not on material on record, the Court can exercise the power under Section 103(a) and (b), the material on record also discloses that in both the suits, the plaintiff has sought for the relief of declaration and injunction. It is also not in dispute that the main contention of the appellant before this Court is that there was a mortgage for Rs.400/- in favour of Rambhapuri Mutt for a period of 10 years, the same does not convey any title in favour of the appellant also. The other contention is also that an extent of 7 guntas of land was acquired and compensation was also paid to the appellants/defendants, the same has not been considered by both the Courts. It is also the contention of the appellant's counsel that permission was given to construct

quarters, water tank and also for formation of road. The document which have relied upon by the defendants are not the title deeds. No dispute with regard to the acquisition of land to an extent of 7 guntas and gazette is also marked.

21. It is also important to note that either the defendant or the plaintiff have not produced any title deed which conveys the title in respect of any of the parties. This Court also framed the substantial question of law without the documents of title in favour of plaintiff and on the basis of revenue entries, whether the Court can grant the relief of declaration in contravention of Section 17(1)(d) of Registration Act and also settled law by the Apex Court. It is also important to note that the judgment which have been relied upon by the appellants also, in the recent judgment of P.Kishore Kumar reported in (2023) Live Law SC 999 is also clear that revenue records are not documents of title. The Trial Court erred in decreeing the suit by placing on a higher probative predestine in the

revenue entries. It is also important to note that both the Courts have taken note of revenue entries found in the documents which have been relied upon by both the plaintiffs as well as defendants. I have already pointed out that seeking for the relief of declaration, it is also settled law that revenue entries cannot be the basis for granting the relief of declaration and the same is also taken note of by the Trial Court while answering issue in favour of the plaintiffs in both the suits. However, the Trial Court taken note of Ex.P1 –Pahani for the year 1992-93 and 1993-94, it reveals that the suit schedule property stands in the name of Kotraiah who is none other than the convener of the plaintiffs Mutt as per column No.12(2). The Trial Court also taken note of column Nos.9 and 10 of the said document, it reveals that the suit property comes to the Mutt through Hiduvalidar and the said property is in the possession of 'Virakta Mutt'.

22. The Trial Court also taken note of the document Ex.P3-Local publication of Davanagere times, it has been published about the litigation of the said property. So also taken note of Ex.P5 issued by the Tahsildar, Narasimharajapura Taluk, it further reveals that the suit schedule does not belongs to Rambhapuri Mutt and the said fact is also reveals under Ex.P6. The Trial Court also taken note of the defendants have also produced RTC extracts Ex.D4 to Ex.D11 for the year 1966-67 to 1971-72, 1972-73 to 1976-77, 1977-78 to 1981-82, 1980-81 to 1984-85, 1985-86 to 1989-1990, 1990-91 to 1994-1995, 1995-96 and 1998-99. Taking into note of Ex.D4 to Ex.D11 also, suit schedule property is in the possession of the 'Viraktha Mutt' as per column No.9 of the said document. The said property came to them as Moola hiduvalidar as per column No.10 of the said document. The Ex.D12 also reveals that after the death of Kotraiah, it was mutated in the name of Veerappaiah S/o Veerabasaiah and his son name is entered

at column No.12(2) in the RTC extract. Further taken note of Ex.D13 suit schedule land bearing Sy.No.73 is in the name of the Virakta Mutt and also taken note of Ex.D14 R R extract of index of land also clearly reveals that the land bearing Sy.No.73 of the Avaragolla village measuring, measuring 8 acres 27 guntas of land stand in the name of Virakta Mutt. These are the document which have been relied upon by the Trial Court considering the possession of the plaintiff.

23. Both the Trial Court and the First Appellate Court carried away the admission given by DW1 and DW5. During the cross-examination, both of them stated that Puravarga Mutt belongs to the Panchapeeta and Peetadishwara of Bhruhan Mutt of Chitradurga is called as Shoonyapeetadhishwara and Panchapeeta is not called as Shoonyapeetadhishwara and Panchapeetadhishwara is called as Shri Shri Shri 1008 Jagadguru. Taken note of the fact that both the Panchacharyas and Shoonyapeeta are

different and distinct entities. DW1 further categorically admits that Virakta Mutt not belongs to their sect and also admitted that the suit schedule property belongs to Virakta Mutt. The admission of DW1 is extracted in paragraphs 27 to 29 of the judgment of the First Appellate Court and also taken note of the admission on the part of DW3 and the same is extracted in paragraph 32 of the judgment of the First Appellate Court that Puravarga Mutt belongs to Panchapeeta and Virakta Mutt belongs to Shoonya Mutt. Both Panchapeeta and Bhruhan Mutt are different and Bhruhan Mutt of Chitradurga belongs to Shoonyapeeta. He categorically admits that the suit schedule property belongs to Virakta Mutt and people of Panchapeeta are not belongs to Virakta Mutt and Virakta Mutt not comes under the Rambhapuri Mutt. Based on all these admissions of DW1 and DW3 and other admission on the part of DW4 and DW5, the First Appellate Court comes to the conclusion that both are separate and distinct entities. Whereas Virakta

Mutt comes under the direct control and jurisdiction of Sri Bhruhanmutt, Chitradurga. In paragraph 36, the First Appellate Court also taken note that revenue records are not title deeds. The observation is made that in the absence of title deeds, the entries found in revenue records could be used to trace the title to the disputed property. The First Appellate Court also observed that both the rival parties do not have the title deeds to prove the ownership and the dispute has to be settled on the basis of preponderance of probabilities.

24. Having considered the material available on record and also discussion made by the First Appellate Court, it discloses that there are no title deeds but considered the documents at Ex.P1, P15 and P17 wherein the entries are found in the name of Virakta Mutt and also taken note of Ex.D14 – Index of land, Ex.D17 – Land Acquisition notification which also reflects in the relevant column as 'Virakta Mutt' and considering all these revenue

entries comes to the conclusion that the plaintiff has proved the case.

25. It has to be noted that while considering the suit for the relief of declaration, only on the basis of admission, the Court cannot grant the relief of declaration. While seeking the relief of declaration, there must be a title deed when the ownership is claimed. In this regard, this Court would like to rely upon the judgment reported in **1958 SCC ONLINE SC 77** in the case of **RAZIA BEGUM vs SAHEBZADI ANWAR BEGUM AND OTHERS** wherein the Apex Court in paragraph 10 discussed with regard to the admission is concerned. The Apex Court held that no doubt, Order VIII Rule 5 of the Code, it has to be noted that the Court may in its discretion require any fact so admission to be proved otherwise than by such admission. The proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not

bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted. The Court has to insist upon the burden of the issue being fully discharged, and if the Court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the Court could not be said to have exceeded its judicial powers. In paragraph 23 of the said judgment, the Apex Court held that in a suit under Section 42 of the Specific Relief Act, it is discretionary with the Court to make or not to make the declaration asked for. The exercise of that discretion, however, has to be judicial.

26. This Court also would like to rely on the judgment reported in **(2006) 12 SCC 552** in the case of **AVTAR SINGH AND OTHERS vs GURDIAL SINGH AND OTHERS** wherein the Apex Court discussed with regard to Sections 58, 17 and 31 of the Evidence Act, 1872, that is proof by admission and held that, admission forms the best

evidence. As per Section 58 of the Evidence Act, 1872, things admitted need not be proved and also observed that though admission does not create any title, nature of land can form subject matter of admission. Hence, it is clear that the admission does not create any title. In paragraph 8 of the judgment, the Apex Court held that admission, it is well known, forms the best evidence. It may be that admission does not create any title, but the nature of the land can form subject matter of admission. Thus, this judgment is aptly applicable to the facts of the case.

27. This Court also would like to rely on the judgment reported in **(2007) 12 SCC 27** in the case of **KAMAKSHI BUILDERS vs AMBEDKAR EDUCATIONAL SOCIETY AND OTHERS** wherein the Apex Court held that denial of title of landlord, question of possession, application for mutation, presumption regarding nature of possession, held, an application for mutation of one's name in revenue records by parties, although would not by itself

confer any title, but a presumption in regard to nature of possession can be drawn. Hence, it is clear that admission will not confer any title. Even the Apex Court held that when there is a denial of title of landlord, conduct may be a relevant fact, so as to apply procedural law like estoppel, waiver or acquiescence, but thereby no title can be conferred. Acquisition of title is an inference of law arising out of certain set of facts, if any law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other. It is also held that by reason of presumption alone, the burden on the tenant to prove his title is not discharged, a title is not thereby created.

28. This Court would like to rely on the judgment reported in **(2012) 8 SCC 148** in the case of **UNION OF INDIA vs IBRAHIM UDDIN AND ANOTHER** wherein the Apex Court discussed with regard to the admission is concerned. Admission made by a party though not

conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive it may operate as an estoppel in certain circumstances. But with regard to title is concerned, there must be a title to declare as owner and mere admission cannot be a conclusive proof.

29. No doubt, the counsel for the respondent relied upon the judgment in the case of **STATE OF ANDHRA PRADESH** referred supra wherein discussed with regard to the ownership and title and proof of presumption of title in favour of possessor under Section 110 of the Evidence Act. Presumption of title as a result of possession arises only where the fact discloses that no title vests in party and where possession of plaintiff is not prima facie wrongful and his title is not proved, it certainly does not mean that because a man has title over same land, he is necessarily in possession of it. The said judgment is not applicable to the

facts of the case since the same is in respect of presumption of possession is concerned and not as title.

30. On the other hand, it has to be noted that the judgments which have been relied upon by the appellants' counsel in a case of **P KISHORE KUMAR** referred supra the Apex Court categorically held that the revenue records are not documents of title and so also in a case of **SRI CHAND** referred supra, the Apex Court held that when the plaintiff fails to establish his case, the question of whether the defendant had lawfully acquired any sub-tenancy rights under the predecessor interest need not be gone into as even in absence thereof, weakness of defendant's case would not strengthen the plaintiff's case. The other judgment relied by the appellant's counsel is in the case of **SUMITRA BAI** referred supra, wherein this Court held that the plaintiff has to prove his case to the satisfaction of the Court to means of convincing and cogent evidence not necessarily beyond reasonable doubt. The burden shifts on

the defendant when the case of the plaintiff was false and also categorically held that the Court cannot on the basis of distorted admission or on the basis of disputed/not proved documents draw an inference in order to grant any remedy to any of the parties to the suit. In a case of **UNION OF INDIA** referred supra relied by the appellant's counsel, the Apex Court discussed Section 101 to 103 of the Evidence Act, 1872 and categorically held that entries in the revenue records, do not confer any title and so also discussed Section 35 of the Evidence Act. All these materials are clear with regard to the granting of declaration is concerned that too a title and admission given by the defendant cannot create any title in favour of the plaintiff unless title deed is produced before the Court for claiming ownership over the suit schedule property. hence, both the Courts carried away taking into note of the admission as well as the entries found in column No.9 that the suit schedule property belongs to Virakta Mutt and mere entries in

column No.9, does not create any title and revenue documents cannot confer any title as held by the Apex Court and this Court in the judgments referred supra. Thus, both the Courts have committed an error in declaring that the plaintiff is the owner of the suit schedule property without the document of title in favour of the plaintiff just on the basis of entries found in the revenue records and the same is in contravention of Section 17(1)(b) of the Registration Act and law is settled by the Apex Court that based on the revenue entries, there cannot be any decree and entries found in revenue records will not create any title. Hence, I am of the opinion that both the Courts have committed an error in declaring that the plaintiff is the owner of the suit schedule property. Accordingly, I answer first substantial question of law accordingly.

31. The other substantial question of law is that whether the Courts below are justified in law in granting the relief of perpetual injunction, when the plaintiff failed to

prove title, through which alleged possession is claimed. In order to grant the relief of perpetual injunction, the plaintiff has to establish his possession as on the date of filing of the suit. Both the Courts taken note of the evidence and also the admission on the part of particularly, DW1 and DW3 as well as taken note of the fact that in column No.9 of the documents which have been relied upon by the parties even including the documents relied upon by the defendant in 'D' series wherein also there is an entry in favour of the plaintiff. Even though when the plaintiff failed to prove his title but the Court can grant the relief of permanent injunction but regarding possession is concerned, deed of title is required. In granting the relief of perpetual injunction, I do not find any error committed by the Trial Court and both the Courts are justified in law granting the relief of perpetual injunction even in the absence of title wherein the Court has to take note of the possession as on

the date of filing of the suit. Hence, the second substantial question of law is answered accordingly.

32. It is the contention of the appellants' counsel that there is an entry in the RR-V and RR-VI even prior to 1952 mortgage and mere creating of mortgage also not convey any title to the defendant also. The other contention of the counsel that the land was acquired to the extent of 7 guntas and compensation also paid and merely payment of compensation also not create any title. Another contention of the counsel that permission was given to construct quarters as well as water tank. If any person gives any consent or permission to construct quarters and water tank as well as formation of road, same also does not convey any title in favour of the defendant also and admittedly, both the plaintiffs as well as the defendant are not having any title. Hence, the very contention of the defendant that the defendant succeeds cannot be accepted. Having considered both the substantial questions of law and

answering the same, judgment and decree of both the Courts requires to be modified.

33. In view of the discussion made above, I pass the following:

ORDER

The regular second appeals are allowed in part.

The judgment and decree dated 25.02.2006 in O.S.Nos.198/1994 and 202/1995 and the judgment and decree dated 28.06.2008 in R.A.Nos.20/2006 and 21/2006 are modified setting aside granting the relief of declaration but confirmed the judgment and decree in respect of granting the relief of permanent injunction.

**Sd/-
JUDGE**

RHS/SN