

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF APRIL, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE K.NATARAJAN**

**REGULAR FIRST APPEAL NO.290 OF 2024**

**BETWEEN:**

M/S CANARA AUTO GARAGE  
NO.3/B, OLD NO.5,  
CUNNINGHAM ROAD,  
BENGALURU - 560 052.  
REPRESENTED BY ITS PROPRIETOR,  
MR. P. SATISH PAI.

...APPELLANT

(BY SRI. BADRI VISHAL, ADVOCATE)

**AND:**

SRI. L. E. RAMACHANDRA  
S/O LATE L. H. ESHWARA MURTHY,  
AGED ABOUT 62 YEARS,  
R/AT NO.13, I MAIN, NEHRU NAGAR,  
BENGALURU - 560 020.

...RESPONDENT

(BY SRI. UDAYA HOLLA, SENIOR ADVOCATE FOR  
SRI. R. B. ANEPANAVAR, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., AGAINST THE ORDER DATED 23.01.2024 PASSED ON IA NO.1/2023 IN OS NO.25080/2016 ON THE FILE OF THE LVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYO HALL UNIT, BANGALORE., ALLOWING THE IA NO.1/2023 FILED UNDER ORDER 7 RULE 11 OF CPC., FOR REJECTION OF PLAINT.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.03.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

|  |
|--|
| RESERVED FOR ORDERS ON: 21.03.2024<br>PRONOUNCED ON : 19.04.2024 |
|--|

### **JUDGMENT**

This appeal is filed by the appellant under Section 96 of CPC for setting aside the order dated 23.01.2024 passed by the LVII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru, on I.A. No.1/2023 filed under Order VII Rule 11 of CPC in O.S. No.25080/2016, whereby the trial Court has rejected the plaint.

2. Heard the learned counsel for the appellant and the Senior Counsel for the respondent.

3. The appellant was the plaintiff and the respondent was defendant No.2 before the trial Court. Hence, the rank of the parties is retained for convenience.

4. The case of the plaintiff before the trial Court is that the plaintiff filed the aforesaid suit for permanent

injunction restraining the defendants and their agents etc. from interfering with the peaceful possession and enjoyment of the suit schedule 'B' property bearing old No.28, measuring East-West 50 feet and North-South 250 feet, situated at Cunningham Road (Sampangi Ramaswamy Temple street), Bangalore, bounded by :

East : portion of property bearing No.3  
(M/s. Cottage Industries Exposition  
(P) Limited)  
West : property by Venkataravanappa.  
North : Garden of Papamma  
South: by Cunningham Road.

5. The case of the plaintiff is that the property bearing No.3 (old No.28), measuring 440 ft. x 250 ft., situated at Cunningham Road, Bengaluru, belonged to grand father of defendant No.2 namely K.H. Lakshmaiah which is more fully described as suit schedule A property. The said Lakshmaiah passed away on 01.04.1964 by leaving behind his wife Lakshamma and L.H. Eshwar Murthy, the father of the defendant, who succeeded the estate. During the life time of the father of defendant No.2, a portion of the suit schedule A property was allotted to Regional Transport

Authority (RTO) on 12.04.1961 and the said RTO was in arrears of rent to the father of the defendant No.2. A proceeding was initiated for eviction in HRC No.3821/1975, which came to be allowed on 04.01.1979 and the RTO was evicted.

6. It is the further case of the plaintiff that while the RTO was in occupation of the suit A schedule property, the plaintiff had set up a full fledged garage on the western side of the suit A schedule property in the year 1975-76. With consent of the RTO and with the knowledge of the father of the defendant No.2, he named the garage as 'M/s. Canara Auto Garage' measuring 50 x 250 feet, which is suit B schedule property. The plaintiff was doing repairing works within the knowledge of the father of the defendant No.2.

7. It is further contended by the plaintiff that after evicting the RTO, the Rent Control Authority allotted/notified the same to M/s.Cottage Industries Exposition (P) Ltd. in HRC/ACC/49/1979. The father of defendant No.2 entered into a lease in the year 1979 with M/s.Cottage Industries

Exposition (P) Ltd. Even at that time, the defendant's father made no efforts to evict the plaintiff and at the request of M/s.Cottage Industries Exposition (P) Ltd., the defendant's father erected a compound wall on the suit B schedule property, which is a portion of the leased out property to M/s.Cottage Industries Exposition (P) Ltd., and the plaintiff is enjoying the B schedule property till today, and the business has been also developed. The plaintiff also constructed an office measuring 10 ft. x 15 ft. to accommodate the mechanic and he is paying the telephone and electricity bills of the property and has produced the photographs.

8. It is further contended that the father of defendant No.2 was much aware of the plaintiff's activities and never attempted to claim the suit schedule B property. Due to heavy business competition, the business has fallen down and therefore, the plaintiff has used the suit schedule B property for accommodating his new staff and also using for parking of vehicles of neighbouring offices and is collecting

the nominal amount till today. It is further contended that in the first week of January 2016, the defendant tried to dispossess the plaintiff, threatened the plaintiff with dire consequences to vacate the suit schedule B property. The plaintiff approached the police station, who refused to interfere as it is a civil dispute. The cause of action arose on 05.01.2016. Hence, the suit.

9. After summons, defendant No.2 appeared through the counsel and filed written statement and also I.A. No.1/2023 under Order VII Rule 11 (a) and (b) read with Section 151 of CPC for rejection of the plaint.

10. In the affidavit accompanying the I.A. submitted by defendant No.2, it is contended that the suit filed by the plaintiff was false and frivolous, and with intention to grab the property of the defendants, the suit has been filed. The pleading of the plaintiff was inconsistent and contrary, and no cause of action arose. The plaintiff also has not paid the proper court fee and not valued the property properly. The

suit filed by the plaintiff for injunction against the defendants is the suit schedule B property, but shown incorrect description of the property. The plaintiff filed an application for amendment of the plaint, thereby, it was filed to perfect the title by adverse possession. Earlier, the law did not permit the plaintiff to seek such prayer, but due to the recent change in the law, the prayer for declaration to declare that the plaintiff is the absolute owner in possession and enjoyment of the suit schedule B property by perfecting his title by way of adverse possession, if false.

11. It is further contended by defendant No.2 that the trial Court after hearing both sides rejected the application on 31.07.2021 and the plaintiff challenged the said order before the High Court in W.P. No.15816/2021 and after hearing both sides, this Court dismissed the writ petition holding that when the original plea does not have the necessary plea as regards the petitioner's open, continuous and hostile possession of the schedule 'B' property. The

petitioner cannot be permitted to introduce a new case by way of an amendment.

12. It is further contended the 1<sup>st</sup> defendant, B.E. Ramakrishna, died during the pendency of the suit had filed O.S. No.5003/2012 against the former lessee M/s.Cottage Industries Exposition (P) Ltd., for ejection of the suit schedule B property and the said judgment and decree was challenged before the High Court in RFA Nos.2038-2054/2019 which came to be dismissed on 26.08.2021. Thereafter, M/s.Cottage Industries Exposition (P) Ltd. preferred an SLP before the Hon'ble Supreme Court, which also came to be dismissed on 22.11.2021.

13. It is further alleged that subsequent to the judgment of the Hon'ble Supreme Court, the execution petition was filed by the defendants in Ex. No.95/2022 to execute the judgment and decree in O.S. No.5003/2012. Accordingly, an order was passed on 17.01.2022. Multiple suits were filed seeking possession of suit schedule A



property from M/s.Cottage Industries Exposition (P) Ltd., and after the judgment of the Hon'ble Supreme Court, it clearly reveals that defendant No.2 and the family members are in possession of the family property and there is no cause of action for the suit to survive for consideration and hence, it is not maintainable.

14. It is further contended by defendant No.2 that the plaintiff filed an application under Section 151 of CPC seeking direction to High Grounds police for enforcement and implementation ad interim order of temporary injunction granted on 21.01.2016 and the Court after hearing both sides dismissed the application by considering the dismissal of SLP.

15. It is further contended by defendant No.2 that the plaintiff also filed an application under Order XXI Rule 97 of CPC read with Section 47 and 151 of CPC in Ex.No.95/2022 and has entered appearance as an objector. The plaintiff has amended the plaint several times in order to change the

property number and measurement. The description in the cause title and the schedule are also different. The High Court did not permit the plaintiff to amend the plaint. The suit was filed by the plaintiff seeking ownership of the suit schedule B property by way of adverse possession and has filed multiple suits describing same cause of action and showing different numbers of property. After having failed to get reliefs directly in the suit, The plaintiff cannot get indirectly what he could not get directly.

16. It is further contended by defendant No.2 that the plaintiff has not paid any sale consideration or any consideration to the defendant No.2 or predecessor. He is fraudulently laying claim over the property measuring 12,500 sq. ft. situated at Cunningham Road, Bengaluru, in order to grab the property. The plaintiff has no manner of right, title or interest over the Suit Schedule B Property. The taxes for the Suit Schedule A Property has been paid by the defendants and by suppressing the material fact, the

suit came to be filed by the plaintiff. Hence, prayed for rejecting the plaint.

17. After hearing the arguments, the trial Court passed the impugned order dated 23.01.2024 by allowing the application under Order VII Rule 11 of CPC and rejected the plaint, which is under challenge.

18. The learned counsel for the appellant-plaintiff has contended that the father of the defendant No.2 let out the Suit Schedule A Property to the RTO and Subsequently, it was let out to the some other tenants. With the consent of the earlier RTO, the plaintiff put up the garage and he was running the garage and it was in the knowledge of the defendant No.1. The plaintiff is paying the electricity bills towards usage of the garage. The suit was filed by the plaintiff in the year 2016, the issues were framed on 31.07.2021. At that stage, the I.A. filed by defendant No.2 was allowed. The matter is required for trial. Therefore, rejecting the plaint, is not correct and hence, prayed for

allowing the appeal and remanding the matter back to the trial Court.

19. Per contra, learned Senior Counsel for the respondent-defendant No.2 contended that the plaintiff has not produced any document to show that on what capacity he is in possession of the property and no injunction can be granted against the lawful owner. That plaintiff is also claiming ownership by adverse possession perfecting the title, but he has not produced any document, therefore, the question of conducting trial does not arise. No cause of action arose for filing the suit and hence, prayed for dismissing the appeal.

20. Having heard the arguments of learned counsel for the parties, perused the records.

21. The points that arise for consideration in this appeal are :

(i) *Whether the trial Court has committed error in allowing the I.A. filed the respondent-defendant No.2 and rejecting the plaint under Order VII Rule 11 of CPC ?*

(ii) *Whether the impugned order calls for interference ?*

22. The learned counsel for the appellant during the course of the arguments relied upon the judgment of the Co-ordinate Bench in the case of the **SENIOR ASST. DIRECTOR OF HORTICULTURE, KADUR AND OTHERS VS. C.D. KIRAN AND OTHERS** reported in MANU/KA/2859/2022 in RSA No.860/2014 dated 15.06.2022. The Co-ordinate Bench vide its judgment, at paragraph 24, has held as under:

*24. Hon'ble Supreme Court in the case of Premji Ratansey Shah and Others Vs. Union of India & Others, reported in MANU/SC/0819/1994: (1994) 5 SCC 547, has held that injunction cannot be issued against true owner. However, Hon'ble Supreme Court in Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others,*

*reported in MANU/SC/0071/2004: (2004) 3 SCC 137, referring to earlier decisions on point in paragraph no. 24 to 26 has held as under:*

*24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that,*

*"If any person is dispossessed without his consent from immovable property other wise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other*

*title that may be set up in such suit."*

*That a person without title but in "settled" possession as against mere fugitive possession can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Lallu Yashwant Singh v. Rao Jagdish Singh (MANU/SC/0425/1967: AIR 1968 SC 620), Krishna Ram Mahale v. Mrs. Shobha Venkata Rao, (MANU/SC/0278/1989: 1989 (4) SCC 131, at p. 136), Ram Rattan v. State of U.P. (MANU/SC/0160/1976: 1977 (1) SCC 188), and State of U.P. v. Maharaja Dharmender Prasad Singh (MANU/SC/0563/1989 : 1989 (2) SCC 505). The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma v. Union of India (MANU/MH/0102/1954: AIR 1954 Bom. 358).*

23. The learned Counsel for the appellant has further relied upon the judgment of the Hon'ble Supreme Court in the case of **BEHRAM TEJANI AND OTHERS VS. AZEEM JAGANI** reported in **(2017)2 SCC 759**, the Hon'ble Apex Court has held at paragraphs 12 and 13 of the judgment as under:

**12.** *Rame Gowda [Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769]* was a case in which two adjoining owners were claiming independent right of ownership in respect of a strip of land in between their holdings. That piece of land was in possession of the plaintiff and as such while dealing with the controversy, this Court held that a person in peaceful possession is entitled to retain his possession. However, while dealing with the concept of "settled possession" it was observed in para 9 as under: (SCC p. 776)

"9. ... The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor



*is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession."*

**13.** *The matter was further elaborated in subsequent decision of this Court in Maria Margarida [Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] as under: (SCC pp. 396-97, para 97)*

*"97. Principles of law which emerge in this case are crystallised as under:*

*(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*

*(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant*

*has to give possession forthwith on demand.*

*(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*

*(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.*

*(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession."*

24. In another judgment of the Hon'ble Supreme Court in the case of **RAME GOWDA (DEAD) BY L.RS. VS. M. VARADAPPA NAIDU (DEAD) BY L.RS. AND ANOTHER** reported in **(2004)1 SCC 769**, the Hon'ble

Supreme Court at paragraphs 8 and 9 of the judgment has held as under:

**8.** *It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title,*

*possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.*

**9.** *It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] *Puran Singh v. State of Punjab* [(1975) 4*

*SCC 518 : 1975 SCC (Cri) 608] and Ram Rattan v. State of U.P. [(1977) 1 SCC 188 : 1977 SCC (Cri) 85] The authorities need not be multiplied. In Munshi Ram case [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been*

*lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh case [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession" (SCC p. 527, para 12):*

*(Emphasis supplied)*

*(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;*

*(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;*

*(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and*

*(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.*

25. Whereas, the learned Senior Counsel for respondent-defendant No.2 has relied upon the judgment of the Hon'ble Supreme Court in the case of **MAHADEO SAVLARAM SHELKE AND OTHERS VS. PUNE MUNICIPAL CORPORATION AND ANOTHER** reported in **(1995)3 SCC 33**, wherein the Hon'ble Supreme Court, at paragraph 9 of the judgment, has held as under:

*9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession. It is true that the appellants placed reliance in their plaint on resolutions passed by the Municipality on 11-11-1972 and 29-11-1972. A reading of those resolutions would prima facie show that possession would be taken where the acquisition proceedings have become final and land acquisition proceedings would not be pursued where award has not been made as on the date of the resolutions. In this case, since the acquisition proceedings have become final, then necessarily possession has to be taken by the Corporation for the*



*public purpose for which the acquisition was made. In that context the question arises whether the appellants can seek reliance on two resolutions. They furnish no prima facie right or title to the appellants to have perpetual injunction restraining the Corporation from taking possession of the building. The orders of eviction were passed by due process of law and had become final. Thereafter no right was created in favour of the appellants to remain in possession. Their possession is unlawful and that therefore, they cannot seek any injunction against the rightful owner for evicting them. There is thus neither balance of convenience nor irreparable injury would be caused to the appellants.*

26. In another judgment of the Hon'ble Supreme Court in the case of **SOPAN SUKHDEO SABLE AND OTHERS VS. ASSISTANT CHARITY COMMISSIONER AND OTHERS** reported in **(2004)3 SCC 137**, in a similar situation, while considering the provisions Order VII Rule 11

of CPC, the Hon'ble Supreme Court at paragraphs 17 and 26, has held as under:

**17.** *Keeping in view the aforesaid principles, the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.*

**26.** *Reference was also made to Dalpat Kumar v. Prahlad Singh [(1992) 1 SCC 719] in regard to the meaning of the words "prima facie case" and "balance of convenience" and observed in Mahadeo case [(1995) 3 SCC 33] that : (SCC p. 39, para 9)*

*"9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession."*

27. Further, the Hon'ble Supreme Court in the said case directed the trial Court to dispose of the suit within six months.

28. On perusal of the entire judgments relied on by both the learned counsels, it is well settled that even a trespasser cannot be evicted without due process of law if he is owner of the property and eviction cannot be also against the true owner, at the instance of the persons in unlawful possession. But, here, in this case, though issues were framed by the trial Court and posted the matter for evidence, at that stage, the respondent-defendant No.2 filed application for rejecting the plaint. Even the trial Court while passing the impugned order has not stated as to whether the suit is barred by law or whether no cause of action arose for filing the present suit. But, the trial Court has is plainly

stated and allowed the application under Order VII Rule 11 of CPC and rejected the plaint.

29. In order to invoke the provisions under Order VII Rule 11 of CPC, there are grounds mentioned in the CPC, which are as under:

**Order VII Rule 11 of CPC:**

*11. Rejection of plaint.-The plaint shall be rejected in the following cases:-*

*(a) where it does not disclose a cause of action;*

*(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

*(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law;*

*(e) where it is not filed in duplicate;]*

*[(f) where the plaintiff fails to comply with the provisions of rule 9:] [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]*

30. The trial Court has not specifically mentioned on what the provision, it has rejected the plaint. Merely, the plaintiff admits the ownership of the defendants, that itself is not a ground to reject the plaint and the Court cannot

pass an order on merits of the case without giving the reasons after the evidence.

31. Once the issues were framed, the trial Court could have allowed the appellant-plaintiff to lead evidence and permit the respondent-defendant No.2 to cross examine the witnesses and could have passed the judgment. Merely the appellant-plaintiff has failed to get any order in the interlocutory application or on objector application in Ex. No.95/2022, that it self is not a ground to reject the plaint. That apart, he has produced variously electricity bills for having possession over the suit schedule B property. Such being the case, without going to the trial, the plaint cannot be rejected, at the threshold. The same issue was considered by the Hon'ble Supreme Court in *Rame Gowda's case, cited supra*, and the Co-ordinate Bench of this Court in the case of the *Senior Asst. Director of Horticulture, cited supra*. This Court cannot give any findings and it would prejudice case of the appellant-plaintiff. Therefore, the plaintiff shall be allowed to prove his case in the trial.

Therefore, the order of the trial Court is required to be set aside.

32. Accordingly, the appeal is allowed. The order dated 23.01.2024 passed by the LVII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru, on I.A. No.1/2023 filed under Order VII Rule 11 of CPC in O.S. No.25080/2016, rejecting the plaint is hereby set aside. The matter is remitted to the trial Court for conducting the trial.

33. However, the trial Court is directed to dispose of the matter within nine months from the date of receipt of copy of this judgment. Without seeking any further time.

**Sd/-  
JUDGE**

CS  
CT:SK