

Sri Shivashankar Vs. Sri M Krishnappa

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Court : Karnataka

Decided On : Aug-06-2020

Judge : N.K.Sudhindrarao

Appeal No. : RSA 730/2008

Appellant : Sri Shivashankar

Respondent : Sri M Krishnappa

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE6H DAY OF AUGUST, 2020 BEFORE THE HONBLE MR. JUSTICE N.K. SUDHINDRARAO R.S.A.No.730/2008 BETWEEN SRI SHIVASHANKAR S/O LATE BYANNA AGED49YEARS R/O HEGGANAHALLI VILLAGE YESHWANTHPURA HOBLI BANGALORE - 560 081. APPELLANT (BY SRI K N NITISH, FOR SRI. K.V.NARASIMHAN, ADVOCATE) AND1 SRI M KRISHNAPPA S/O LATE MUNISWAMAPPA AGED55YEARS R/O No.24, 6TH CROSS SARASWATHIPURAM, MAHALAKSHMI LAYOUT BANGALORE - 560 086.

2. SRI SURESH BHANJANDAS S/O BHANJANDAS AGED ABOUT59YEARS R/O No.61,1ST FLOOR II CROSS, GANDHINAGAR2BANGALORE - 560 009. RESPONDENTS (BY SRI T SESHAGIRI RAO, ADVOCATE FOR C/R-1; VIDE COURT

ORDER

DTD.08.10.2013 SERVICE OF NOTICE TO R2 IS HELD SUFFICIENT) THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE

JUDGMENT

AND DECREE DATED 17.01.2008 PASSED IN RA.No.212/2003 ON THE FILE OF THE PRESIDING OFFICER I/C FAST TRACK COURT-III AND PRINCIPAL DISTRICT JUDGE, BANGALORE RURAL DISTRICT, BANGALORE, ALLOWING THE APPEAL FILED AGAINST THE

JUDGMENT

AND DECREE DATED 01.08.2003 PASSED IN OS.No.725/1995 ON THE FILE OF THE PRINCIPAL II CIVIL JUDGE (JR.DN) BANGALORE RURAL DISTRICT, BANGALORE. THIS RSA HAVING BEEN HEARD AND RESERVED ON 25.07.2019 AND COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

THIS DAY, THE COURT DELIVERED THE FOLLOWING.

JUDGMENT

The appeal is directed against the judgment and decree dated 17.01.2008 passed in RA.No.212/2003 by the I/C Presiding Officer, Fast Track Court-III/ Principal District Judge, Bangalore Rural District, Bangalore, wherein the appeal came to be allowed, whereby the judgment and decree dated 01.08.2003 3 passed in OS No.725/1995 by the Principal II Civil Judge (Jr.Dn) Bangalore Rural District, Bangalore, came to be set aside consequently suit of the plaintiff is decreed as prayed for.

2. Original suit No.725/1995 was filed by one M. Krishnappa against Shivashankar and Suresh Bhajandas praying to declare that he is the absolute owner of the suit schedule property and further to hold and declare that the sale deed dated 28.4.1966 and also the sale deed dated 21.6.1991 will not bind the right of the plaintiff in any way and for permanent injunction as a consequential relief permanently restraining that defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property. The said suit came to be dismissed. The operative portion of the judgment in the original suit is as under:

4. Suit is dismissed. Under the facts and circumstances of the case, parties are directed to bear their own costs.
3. In this connection, two appeals were preferred in R.A.No.212/2003 by plaintiff M.Krishnappa and R.A.No.96/2004 by 1st defendant/Shivashankar.
4. The learned first appellate judge, allowed R.A.No.212/2003 filed by the plaintiff and dismissed R.A.No.96/2004 filed by the 1st defendant and the judgment and decree passed in O.S.No.725/1995 came to be set aside and suit of the plaintiff came to be decreed. The operative portion of the judgment is as under: R.A.No.212/03 is allowed. R.A.No.96/04 is dismissed with costs. The Judgment and decree passed in O.S.725/95 by the court below is set aside. The suit is decreed as prayed for. 5 Copy of this judgment shall be placed in R.A.No.96/04. 1st defendant/appellant has come in appeal before this Court against allowing R.A.No.212/2003.
5. In order to avoid confusion and overlapping, the parties herein are referred to in accordance with their rankings as held by them before the trial court.
6. The claim of the plaintiff is that, he is the owner of the land measuring 01 acre 20 guntas in survey No.52, situate at Karivabanahall of Yeshwanthpur hobli, having purchased the same under the registered Sale Deed No.1190/78-79 dated 22-6-1978 from one Ramaswamy. Plaintiff further claims that his vendor Ramaswamy had acquired title under Sale Deed dated 05.04.1966 having purchased the same from one Muniyamma. All the revenue records pertaining to schedule property stand in his 6 name and he is in possession of the schedule property. 1st defendant claims to have purchased the property from 2nd defendant who had purchased the same under the Sale Deed dated 28-04-1966.
7. The plaintiff further claims that there is no sale deed dated 28-04-1966, it is only an agreement of sale, as such, sale in favour of 1st defendant is bad in law. 1st defendant did not acquire title over the property. 2nd defendant does not have right, title, interest and possession. During the year 2002, plaintiff got amended the plaint and included the relief of declaration that the sale deed dated 28-04-1966 and sale deed dated 21-06-1991 will not bind the plaintiff.

8. 1st defendant in his written statement contended that he acquired valid title over the schedule property. His contention is that he purchased 7 the schedule property under the absolute sale deed dated 21-6-1991 from the 2nd defendant. 2nd defendant acquired the right over the schedule property under a deed dated 28-04-1966 executed by actual owner Ramaswamy in his favour and it is a registered document. 2nd defendant was in possession of the schedule property, adverse and openly in hostile to the actual owner Ramaswamy since 1966 and thus, perfected the title through adverse possession and all the revenue records are in the name of 1st defendant.

9. 2nd defendant in his written statement contended that he is not a necessary and proper party to the suit. It is further contended that plaintiff has no right, title interest over the schedule property and Ramaswamy never executed sale deed in favour of plaintiff. He admits that Ramaswamy executed deed in his favour on 28-04-1966 which is a absolute sale 8 deed and not an agreement to sell and he is in possession of the property adverse to the interest of actual owner. He has executed sale deed in favour of 1st defendant and conveyed absolute ownership over the same.

10. The learned trial judge framed the issues on proof of title, lawful possession, interference by the defendants and asserted he has right over the schedule property which are as under: 1. Whether the plaintiff proves that he has purchased suit schedule property from Ramaswamy under Registered Sale deed dated 22.06.78 and thus became the absolute owner of the suit schedule property?.

2. Whether the plaintiff proves that he is in lawful possession of the suit schedule property as on the date of the suit?.

3. Whether the plaintiff proves that defendants unlawfully interfering with their lawful possession and enjoyment of the suit schedule property by plaintiff?. 9 4. Whether the plaintiff is entitle for the relief of declaration and permanent injunction?.

5. What decree or order?.

11. The trial court has also framed additional issues on 11.09.2002 regarding sale deed dated 28-04-1966 and 21-06-1991 are not binding on the plaintiff and the entitlement of plaintiff for the relief of declaration and also on limitation which are as under: 1. Whether plaintiff proves sale deeds dated 28.04.1966 and 21.06.1991 are not binding on him?.

2. Whether plaintiffs entitled for the relief of declaration as prayed for?.

3. Whether suit is barred by limitation?.

12. One more Additional issue was also framed by the trial court on 10-07-2003 regarding adverse possession by the 2nd defendant which is as under:

10. Whether 1st defendant proves that II defendant has perfected his title over suit schedule property by adverse possession and continued to be in possession till execution of registered sale deed dated 21.06.1991 in favour of 1st defendant?.

13. Oral and documentary evidence available in the suit on both sides are as under: Oral and documentary evidence on behalf of plaintiff: Oral evidence of: PW.1 M.Krishnappa PW.2 Puttamma PW.3 R.Chandrashekar Documentary evidence of: Ex.P1 Original sale deed Ex.P1(a-h) Signatures Ex.P2 C.C.Sale Deed Ex.P3 C.C.Index of land Ex.P4 Record of Right Ex.P5,6 R.T.C. extract Ex.P7,8 Two Encumbrance certificates Ex.P9,10 Taxes paid receipts Ex.P11 Order Sheet Ex.P12 Memo of Retirement Ex.P13 Mutation Register extract Ex.P14,15 RTC extract. 11 Oral and documentary evidence on behalf of defendants: Oral evidence of: DW.1 Y B Shivashankar DW.2 M Nanjappa Documentary evidence of: Ex.D1 Order sheet in O.S.No.504/1991 Ex.D2, 3 Sale deed Ex.D4 Mutation Register Extract Ex.D5,6 RTC extract Ex.D7 Encumbrance certificate.

14. On the basis of the above oral and documentary evidence, learned trial judge answered the above issues as under: Issue No.1:In the Affirmative Issue No.2 In the Affirmative Issue No.3 In the Affirmative Issue No.4 In the Affirmative Additional Issue No.1:In the Affirmative Additional Issue No.2:In the Negative Additional Issue No.3:In the Affirmative Additional Issue No.4:In the Negative

Issue No.5: As per the final orders

15. The learned trial judge on 01-08-2003 dismissed the original suit. Against which, both the 12 plaintiff and 1st defendant preferred Regular appeals in R.A.No.212/2003 and 96/2004 and they came to be allowed and dismissed respectively as mentioned above.

16. This Court while admitting the appeal on 10-01-2011 framed the following substantial questions of law: (1) Whether the lower appellate court is justified in law in holding that the suit filed for the relief of declaration after expiry of 3 years from the date of dismissal of the earlier suit filed by the plaintiff for injunction, in which the defendant claiming title under a document to which the plaintiff is not a party, had denied, the title of plaintiff, is not barred by law of limitation under Article 58 of the Indian Limitation Act?. (2) Whether the decree granted by the lower appellate court for the relief of permanent injunction in favour of the plaintiff without recording any finding as to the factum of possession is in accordance with law?. 13 (3) Whether the appellate court is justified in law in reversing the judgment and decree of the trial court dismissing the suit?.

17. On 25-07-2019 this court has also framed the following additional substantial questions of law: (i) Whether there was substantial denial of title of the plaintiff over the suit schedule property by the defendant?. (ii) Whether the finding of the trial Court on issue No.4 is valid and proper?.

18. Learned counsel for the appellant submits that the appellant has established his ownership and possession but the learned first appellate judge did not appreciate the same. The learned counsel also submits that the suit was clearly barred by limitation.

19. Learned counsel for appellant would submit that the title of the plaintiff is not reliable one as the 1st defendant acquired all rights, title and interest and possession over the schedule property. The plaintiff 14 never had valid source of title. He failed to establish his title and possession over the schedule property and in the circumstances, the plaintiff falls short of necessary title and possession to get the relief of declaration of title and relief of permanent injunction over the

schedule property.

20. Learned counsel for respondent would submit that the vendor (2nd defendant) of the 1st defendant had no title to sell the schedule property to the 1st defendant.

21. The plaintiff in his affidavit reiterates terms of the plaint more particularly regarding the purchase of schedule property and claims defendants have no right title over the schedule property and he has been cross examined at length and he also denied the suggestion that Ramaswamy has not sold the same 15 and affirmed the same. His deposition is in the lines of his evidence and he has been examined as PW1.

22. In the oral evidence of PW2 Puttamma she denies the claim of 1st defendant. PW3 R Chandrashekhara son of late Ramaswamy also claims that his father during his life time before executing the sale deed did not sell the property in favour of anybody much less in favour of Suresh Bhajandas.

23. 1st defendant Y.B Shivashankar denies the claims and contentions of the plaintiff and he denies possession of the plaintiff over the schedule property and the attempt of this witness to interfere. He further reiterates the suit schedule property was purchased by him on 21.6.1991 under the sale deed executed by the 2nd defendant.

24. Learned trial judge has mentioned the facts and finds the titlelessness of the plaintiff over the 16 schedule property. He discusses the fact of purchase of the schedule property by the defendant and dismissed the suit and it is clearly held that plaintiff has no legs to stand of his own to get the reliefs.

25. The learned first appellate Judge holds that there is no bar of limitation as it did not apply. In page No.12 of his judgment, he also holds that the contentions of the defendants regarding possession do not require discussion as the well established principle of law is possession follows title.

26. The schedule property in the case is as under: The land bearing sy.No.52 measuring 1 acre 20 guntas in extent and situated at Karivobanahalli village, Yeshwanthapura Hobli, Bangalore South Taluk, bounded on: East by: Property of

Muniyabovi; West by: Property of Venkataswamy; North by: Property of Mangamma; South by: Same Sy.No.held by Yellappa. 17 27. Plaintiff purchased the schedule property to the extent of 01 acre 20 guntas in survey No.52 of Karivobanahalli village, under the registered sale deed dated 22-06-1978. The vendor of the plaintiff is one Ramaswamy. Plaintiff claims that he purchased the suit schedule property from one Ramaswamy under the registered sale deed dated 22-06-1978 marked as Ex.P2.

28. The 1st defendant denies the title of the plaintiff over the schedule property and further contends that he purchased the schedule property from 2nd defendant under the registered sale deed dated 21-06-1991. Ex.D2 is the registered sale deed which is filed by 1st defendant regarding the schedule property. He claims that he purchased the same from 2nd defendant. 2nd defendant also claims that he purchased from one Ramaswamy under the registered sale deed 28.4.1966. 18

29. The schedule property purchased under the sale deed is to the extent of 1 acre 20 guntas of survey No.52 of Karivobanahalli. The source of title to Ramaswamy who is the vendor of the plaintiff is, the sale deed dated 05-04-1966 from Muniyamma. In the circumstances acquiring of title by Ramaswamy at the earlier point of time is not in dispute. With all these, what becomes one of the significant aspect is that plaintiff immediate source of title is Ramaswamy under Ex.P1.

30. In the beginning, suit for permanent injunction was filed by the plaintiff. In the year 2002 plaintiff got amended the plaint and included the relief of declaration that the sale deed dated 28-04-1966 and also the one dated 21-06-1991 will not bind the plaintiff and for permanent injunction. It is also the 19 case of the plaintiff that no title has passed on from 2nd defendant to 1st defendant.

31. It is observed in para-4 of the trial court judgment that, 1st defendant in his written statement denied the plaint averments in toto. However, admitted the filing of the suit in O.S.No.504/1991 and its dismissal on 31-1-1995.

32. It is the case of the 1st defendant that he purchased the schedule property from 2nd defendant under the sale deed dated 21-06-1991. 1st defendant

contended that his vendor/2nd defendant had purchased the property from Ramaswamy under the registered sale deed dated 28.04.1966 and the revenue records made in his favour.

33. The contention of the plaintiff is that the document marked as Ex.D2 which is claimed as registered sale deed by the 1st defendant from 2nd 20 defendant is not a registered sale deed and on the other hand, it is a sale agreement.

34. 2nd defendant contended that he executed the sale deed in favour of the 1st defendant on 21-6-1991 and conveyed the absolute ownership in favour of the 1st defendant.

35. However, it is to be noted that Ex.D2 is not a registered sale deed. The features of the said document are as under: Executed on:

28. 4-1966 by Ramaswamy s/o. Yellaboie resident of Kethamaranahalli in favour of Suresh Bhajandas; Schedule property: (1) Land in Sy.No.173, measuring 2 guntas situated in Kethamaranahalli village, Yeshvanthpur Hobli, Bangalore Taluk; (2) Sy.No.52, situated at Karivabanahalli village, Yeshvanthapur Hobli, Bangalore District bounded on: East by : Muniyaboyees land; West by: Land belonging to Venkataswamy and 21 Hanumantha; North by: Land belonging to Venkataswamy and South by: Handrahalli village border. Agreed sale consideration: Rs.2,000/- Amount paid under the agreement: Rs.1,800/- Time limit: Two months

36. Thus in the scenario, the earliest sale deed is of the year 1966 as asserted by the plaintiff. 1st defendant claims he purchased the schedule property in the year 1991 from 2nd defendant and the title deed for the 2nd defendant is in the year 1978 and it is very difficult to accept 2nd defendant conveyed the title to the 1st defendant under Ex.D2.

37. Meanwhile, it is necessary to state that Krishnappa, plaintiff herein has filed a suit in O.S. No.504/1991 against 1st defendant-Y.B. Shivashankar in respect of the schedule property which came to be 22 dismissed for non prosecution on 31-01-1995. The reliefs sought therein are as under: (a) for a permanent injunction restraining the defendant, his associates, agents, servants or any person acting

under his instructions from interfering with the peaceful possession and enjoyment of the schedule property; (b) and to pass such other order or orders as this Honble Court deems fit to grant under the circumstances of the case, together with costs of this proceedings in the interest of justice.

38. Admittedly the document dated 28.4.1966 is the Sale Agreement executed by Ramaswamy infavour of 2nd defendant. The details are as stated above. The time for performance of the agreement is two months. No sale deed was executed by Ramaswamy in favour of 2nd defendant, as such the said sale agreement dated 28.4.1966 died on 28.6.1969 i.e., 28.4.1966 + 2 month = 28.4.1966 + 3 23 years, as such no file has passed from 2nd defendant to 1st defendant.

39. When the 1st defendant cannot base and contend his claim on the registered document, dated 28.4.1966, as it is the sale agreement thus his contention fail. No cause of auction arises from a base cause so in saying as O.S.504/1991 is a suit filed by Krishnappa (who is the plaintiff in this case) on 23.9.1991 for permanent injunction against 1st defendant. In the plaint he had mentioned acquisition of the title over the schedule property as per the registered sale deed dated 28.6.1966.

40. The flow of title of the schedule property is stated to have been first passed on 05.04.1966 by Muniyamma in favour of Ramaswamy and the document is Ex.P2. Further on 28-4-1966 Ramaswamy executed the registered sale agreement 24 in favour of Suresh Bhajandas, i.e. 2nd defendant under Ex.D2. But as a matter of fact, the said document Ex.D2 is in the nature of a sale agreement wherein, total sale consideration is fixed at Rs.2,000/- and the advance amount paid is Rs.1,800/-.

41. On 22-6-1978, Ex.P1 sale deed is executed by Ramaswamy in favour of Krishnappa- plaintiff. On 21-6-1991 Ex.D3 came to be executed in favour of Shivashankar- 1st defendant by Suresh Bhajandas- 2nd defendant in respect of the schedule property. Further, on 23-9-1991 the plaintiff-Krishnappa filed a suit in O.S.No.504/1991 on the file of the II Additional Munsiff, Bangalore, for permanent injunction claiming interference and also bulldozing by 1st defendant and the cause of action on 18-9-1991. On 21-10-1991, 1st defendant Shivashankar filed written statement denying the title of Krishnappa- plaintiff over the schedule

property and also contended that he became 25 the owner of the schedule property by virtue of the sale deed executed by Suresh Bhajandas. O.S.No.504/1991 came to be dismissed for non prosecution on 31.1.1995, as per Ex.D1. It was not pursued later.

42. On 25-11-1995, the present suit O.S.No.725/1995 is filed by M. Krishnappa-plaintiff, for the relief of declaration of title and for permanent injunction. On 27-7-2002 other reliefs were got amended by the plaintiff including the relief of declaration that the sale deeds dated 28-04-1966 and 21-06-1991 are not binding on him. On 01-08-2003, suit filed by M.Krishnappa in O.S.No.725/1995 came to be dismissed. On 17-1-2008 appeal filed by plaintiff -M. Krishnappa in R.A.No.212/2003 came to be allowed and the R.A.No.96/2004 filed by 1st defendant was dismissed. On 10-1-2011 R.S.A.No.730/2008 came to be admitted.
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43. In the circumstances of the case, the important points that emerge are: That the plaintiff claims the schedule property by virtue of the sale deed executed by Ramaswamy on 22-06-1978 in his favour. Incidentally, on 28-04-1966, a registered document is executed for Rs.2,000/- in favour 2nd defendant- Suresh Bhajandas, wherein the advance amount of Rs.1,800/- was received. But the sale agreement did not transform into registered sale deed. But by 22-6-1978 Ramaswamy executed the registered sale deed in favour of plaintiff-M. Krishnappa. Thus, the document which bore substantial defect of being the sale agreement alone as per Ex.D2 never became the registered sale deed. But plaintiff became the owner of the schedule property having purchased the same under the registered sale deed Ex.P1 dated 22-6-1978. Thus, by virtue of incomplete or invalid 27 title of the document dated 28-4-1966 in favour of 2nd defendant gets sub merged because of Ex.P1 registered sale deed executed by Ramaswamy in favour of plaintiff-M.Krishnappa.

44. Before this court, on 17-02-2010 learned counsel for appellant filed Misc.Cvl.No.3599/2010 under order 41 Rule 27 read with Section 151 of CPC for production of additional documents along with 17 documents. Considering the nature of the documents produced and the reasons mentioned in the affidavit

accompanying the application, Misc.Cvl. is allowed. The appellant is permitted to produce the said documents as additional evidence. The documents produced along with Misc.Cvl., are taken on record and perused the same.

45. Learned counsel for appellant has relied on the decision reported in I.L.R. 1989 Karnataka 28 Page 993 in the case of Dada Jinnappa Khot VS. Shivalingappa Ganapati Bellanki. Head Note reads as under: LIMITATION ACT, 1963 (Central Act No.36 of 1963 - Article 58 - When right to sue first occurs connotes date when right to sue first accrued although cause of action may have arisen even on subsequent occasions - Right to sue treated as arisen when clear and unequivocal threat made giving rise to compulsory cause of action.

46. Learned counsel for respondent has relied on the decision reported in A.I.R. 1990 Orissa 64 in the case of Rankanidhi Sahu Vs. Nandakishore Sahu. Para 14 is as under: 14. The last point for consideration is whether the suit was barred by Art.59 of the Limitation Act. Art.59 is reproduced below for easy reference:- Description Period of Time from which of suit. Limitation. period begins to run.

59. To Three years. When the facts cancel or entitling the set aside plaintiff to have the an instruments or instrument decree cancelled or 29 or decree set aside or the or for the contract rescinded rescission first become known of a to him. contract. Art.59 will apply when a suit is filed for cancellation or for setting aside a document which is not void ab initio. If a document is void ab initio and is an illegal document from its very inception it is not required either to cancel or to set it aside by filing a suit, because according to law such a document does not exist. It has been held while deciding the first contention that Ext. A/5 was not a legally executed document by Baidehi and was a void document ab initio, or in other words it did not exist in law. Therefore, by applying Art.59 of the Limitation Act is was not required to cancel or set it aside. This being the position, Art.59 of the Limitation Act is not attracted to the suit. The learned appellate court has rightly observed that the said Article is inapplicable to a document which is void.

47. Learned counsel for respondent has relied on the decision reported in A.I.R. 1960 Supreme Court 335 (Full Bench) in the case of Mst.Rukhmabai Vs. Lala Laxminarayan and others. Para 32 reads as under: 32. The said principle was

restated and followed by the Judicial Committee in *Annamalai Chettiar v. Muthukaruppan Chettiar*, ILR 8 Rang 645: (AIR 301931 PC9), and in *Gobinda Narayan Singh v. Sham Lal Singh*, 58 Ind App 125: (AIR 1931 PC89). The further question is, if there are successive invasions or denials of a right, when it can be held that a person's right has been clearly and unequivocally threatened so as to compel him to institute a suit to establish that right. In *Pothukutchi Appa Rao v. Secy. Of State*, AIR 1938 Mad 193 at p. 198, a Division Bench of the Madras High Court had to consider the said question. In that case, Venkatasubba Rao, J., after considering the relevant decisions, expressed his view thus: There is nothing in law which says that the moment a person's right is denied, he is bound at his peril to bring a suit for declaration. The Government beyond passing the order did nothing to disturb the plaintiffs' possession. It would be most unreasonable to hold that a bare repudiation of a person's title, without even an overt act, would make it incumbent on him to bring a declaratory suit. He adds at p. 199: It is a more difficult question, what is the extent of the injury or infringement that gives rise to, what may be termed, a compulsory cause of action?

48. Learned counsel for respondent has relied on the decision reported in (2006) 5 Supreme Court cases 353 in the case of *Prem Singh and 31 others Vs. Birbal and others*. Head Note C is as under: C. Specific Relief Act, 1963 - Ss. 31, 5, 6 and 34 - Void deed of sale of immovable property - Party claiming interest in the property - Course open to - Limitation period applicable - Held, if plaintiff is in possession of the property, he may file for declaration that the deed is not binding upon him - However, if he is not in possession he may sue for possession and the limitation period as under Art. 65, Limitation Act would be applicable - Hence it was not true that provisions of the Limitation Act would have no application at all in the event the transaction is held to be void - Limitation Act, 1963 - Arts. 58 and 65 - Deeds and Documents - Void and Voidable transactions.

49. The legal clash between the parties is that plaintiff claims the relief of permanent injunction and declaration against the defendants. Per contra, 1st defendant contends that he purchased the schedule property from 2nd defendant under the registered sale deed dated 21-6-1991. Earlier 2nd defendant had purchased the schedule property from one Ramaswamy under the registered sale

deed dated 28- 32 04-1966. Thus, the first thing that gets clear is that on and earlier to 05.04.1966. The title over the schedule property is not disputed, either by the plaintiff or by defendants No.1 and 2. The flow of title of the property is as under: Undisputed Title of the Ramaswamy earlier to 5.4.1966 Plaintiffs side Defendants side Ramaswamy Defendant No.2 purchased purchased schedule property schedule property from Muniyamma from same on 5.4.1966 Ramaswamy on 28.4.1966. (to be read with note A) Plaintiff claims to have Defendant No.1 purchased the schedule purchased property from Ramaswamy schedule under the registered Sale property from Deed dated 22.6.1978. Defendant No.2 under the registered Sale Deed dated 21.06.1991 33 NOTE A - The document dated 28.4.1966 is a registered deed by Ramaswamy in favour of defendant No.2. (The details are typed in Para No.34). Further there was no registered sale deed in favour of the 2nd defendant and there was no further progress in this connection.

50. Here, it is necessary to mention that, Transfer of immovable property is defined under Section 5 of the Transfer of Property Act, 1882, which is as under: 5. Transfer of property defined.- In the following sections transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, [or to himself]. and one or more other living persons; and to transfer property is to perform such act. [In this section living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, association or bodied of individuals.]. 34 51. Further, Section 7 of the said Act defines the way recognized for effecting transfer which is as under: 7. Persons competent to transfer.- Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

52. Section 54 of the said Act defines Sale as under: 54. Sale defined.- Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Thus, proviso of the same has legal efficacy.

53. 1st defendant also contended that the possession of the 2nd defendant was hostile and adverse against Ramaswamy further his plea is that he acquired the title from the 2nd defendant on 21-06- 35 1991 and the latter had purchased from Ramaswamy on 28.4.1966.

54. The plea of adverse possession hostile to the owner of the property by a holder of sale agreement cannot be accepted.

55. The schedule property is a vacant land. In the circumstances and facts of the case and the stand of the parties, the defendants are not entitled for possessory reliefs over the schedule property.

56. The claim for title by the defendants No.1 and 2 is clearly barred by law of limitation as well. The claim for possession by 1st defendant is totally not tenable as he claims under the agreement that is barred by limitation. The denial of title of the plaintiff by the defendants has no basis as the Court fee paid by the plaintiff under Section 24 of the Karnataka Court Fee and Suits Valuation Act,1958 is proper. 36 Substantial questions of law raised in this appeal are answered accordingly.

57. For the foregoing reasons, appeal is dismissed. Impugned Judgment and Decree is confirmed. Sd/- JUDGE tsn*

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