

(1995) 07 KAR CK 0054

In the Karnataka High Court

Case No : Regular Second Appeal No's. 132 and 162 of 1985

Hanumappa Bhimappa Koujageri

APPELLANT

Vs

Bhimappa Sangappa Asari

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Evidence Act, 1872 — Section 90
Registration Act, 1908 — Section 58, 59, 60

Citation : (1996) ILR (Kar) 1517 : (1996) 5 KarLJ 67

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K.I. Bhatta, for the Appellant; V.T. Rayareddy, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—These two Second Appeals, that is, R.S.A. No. 132/85 and R.S.A. No. 162/1985 respectively arise out of the common Judgment and decree dated 10.10.1984, delivered by Civil Judge, Gadag in R.C.A. Nos. 62 of 81 and 63/81 which had been filed by the original defendant, allowing the appeal and dismissing the suit of the plaintiff after setting aside the common Judgment delivered by the Munsiff, Ron, on 31.7.1981, in O.S. No. 96/79 and Original Suit No. 57/1980, whereby the learned Munsiff, Ron, had decreed the present plaintiff-appellant's claim for declaration and injunction and also for rectification of record of rights, which claim had been made in Original Suit No. 96/79, "that is, claim of rectification only.

2. As per pleadings in both the Suits, the subject matter of dispute is R.S. No. 244/2A. According to the plaintiff's case, originally the land was R.S.No. 244, totally measuring 12 Acres 8 guntas and the same had been partitioned between Bharamappa and Sangappa, and the original land bearing No. 244/2A was equally divided into two portions, one bearing R.S.No. 244/1 and the another bearing R.S.No. 244/2, measuring 6 acres 4 guntas each. That R.S.No. 244/1,

fell to the share of Bharamappa and R.S.No. 244/2, fell to the share of defendant's father-Sangappa. Further, according to the plaintiff's case, on 13.7.1926, Sangappa the father of the defendant sold 3 acres of land of R.S.No. 244/2, in favour of the plaintiff's father by a registered deed. The plaintiff's further case is that Sangappa the father of defendant-respondent, on 7th of August, 1941, made a transfer by selling one more acre of land, by registered Sale Deed, from the land R.S.No. 244/2, in favour of the plaintiff-appellant and this was adjoining the 3 acres of land which had already been sold in favour of the plaintiff's father or plaintiff. According to the plaintiff under the two Sale Deeds dated 13.7.1926 and 7.8.1941, a total area of 4 acres southern land out of R.S.No. 244/2, had been transferred by sale and on the basis of those Sale Deeds, the plaintiff's father and plaintiff got the actual possession of the land and have been enjoying the same as such. So, then 2 acres 4 guntas out of 6 acres 4 guntas of land in R.S.No. 244/2 of the defendant or defendant's father remained with defendant. The plaintiff claimed to be in possession and enjoyment of that 4 acres. That in Record of Rights, the extent of the land R.S.No. 244/2A is shown as measuring 2 acres 30 guntas standing in the name of plaintiff and 3 acres 14 guntas has been shown wrongly as standing in the defendant's name. It is because of the wrong extent of land having been shown in the Record of Rights, defendant started attempting to encroach upon the land of the plaintiff which plaintiff purchased as mentioned above. That in view of the facts and circumstances, the cause of action arose to the plaintiff for filing the suit for declaration and permanent injunction as well as to file suit O.S. No. 96/1979, seeking relief for rectification of revenue record entries. That defendant respondent filed written statement in both the suits and the pleas raised therein are almost one and the same. The defendant in his written statement admitted that his father sold 3 acres of land to the father of the plaintiff-appellant by executing registered Sale Deed in respect thereof on July 13th, 1926. The defendant denied that plaintiff's ownership and possession over 4 acres of land, as according to the defendant, there has been no discrepancy or mistake in the description of the extents of the land belonging to defendant-respondent and plaintiff-appellant in the revenue record entries. Further, it is contended by defendant that the plaintiff is the owner of the land to the extent of 2 acres 30 guntas only. He further asserted that though Sale Deed dated 13.7.1926, was executed for 3 acres of land, but, 10 guntas out of 3 acres of land was never given possession to the plaintiff's father or plaintiff. That the Sale Deed dated 7.8.1941 was executed by defendant's father, but, it was only for security of loan obtained from the plaintiff and plaintiff did not come into possession of one acre of land. That loan was discharged by father of defendant. The plea of the defendant further has been to the effect that if however, Sale Deed dated 7.8.1941 is established and it is held by the Court that the plaintiff had purchased one acre of land, but, plaintiff is not entitled to get the declaration of his rights thereunder as rights had been extinguished. That the suit of the plaintiff was barred by limitation. That no cause of action accrued to the plaintiff to file the present Suits and that both the Suits were asserted to be not

maintainable and were liable to be dismissed.

3. On the basis of the pleadings of the parties, the learned Munsiff framed the following issues in O.S.No. 96/1979:

1. Whether plaintiff proves that he is the actual owner and in possession of 4 acres of land in suit R.S. No. 244/2?
2. If so, is plaintiff entitled for declaration and injunction sought for?
3. Whether plaintiff is further entitled to the rectification in the R/R as prayed for?
4. Whether defendant proves that the suit of plaintiff is barred by time?
5. Whether defendant further proves that this Court has no jurisdiction for rectification of R/R entries and, as such present suit cannot be entertained?
6. Whether defendant proves that the valuation made and Court fee paid under the plaint is not proper?
7. What order or decree?

Whereas, in O.S. No. 57/1980, the Trial Court framed the following issues:

1. Whether plaintiff proves that under the two sale-deeds by the deceased Sangappa, he has become the owner of 4 acres of land in possession?
2. If so, is plaintiff entitled for declaration and injunction sought for?
3. Whether defendant proves that the present suit is barred by time?
4. Whether defendant proves that Court fee paid & valuation made is not proper?
5. What order or decree?

4. The learned Trial Court (learned Munsiff) decreed both the Suits after having held that the plaintiff is the owner in possession of 4 acres of land R.S. No. 244/2. It decreed the suit for declaration as well as permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff, thereby as well ordered for rectification of revenue record entries.

5. Having felt aggrieved from the Trial Court's decree, passed in the two suits, the defendant, who is the present respondent in this Second Appeal, preferred the two Regular Appeals Nos. 62 and 63 of 1981. These two Regular Appeals as involved common questions of law and fact and were related to the same property in dispute between the same set of parties, were decided by a common Judgment by the Lower Appellate Court allowing the two appeals and setting aside the common Judgment and decree of the Trial Court in the two Suits and dismissed the (a) plaintiff's claims in regard to the property in dispute for declaration, injunction and (b) for rectification in toto. That the Lower Appellate Court, while dismissing the appeals recorded the following findings:

That plaintiff has failed to prove that he purchased 4 acres of land and is in possession of the lands of 4 acres in the land R.S.No. 244/2 or he was in possession of such land on the date of suit. It further held that plaintiff has proved this much only that his father purchased 3 acres of land from the father of defendant through Ex. P4 and after his father's death, he became the owner of southern 3 acres of land in R.S.No. 244/2. That the plaintiff failed to prove that he purchased 1 acre of land through Ex. P5, as out and out sale and became the owner of it. That the suit was barred by limitation u/s 28 of the Limitation Act read with Article 65. The Court below held that the plaintiff is not entitled for relief or rectification. That though, the plaintiff could file two suits in respect of same subject matter, but, the Court below i.e., the Trial Court failed to follow the procedure prescribed u/s 10 C.P.C., though, it ought to have stayed the proceeding under and Suit No, 67 of 80. The Lower Appellate Court did not record its specific finding that whether the decree of the Court below as such has been illegal and without jurisdiction. Thus, after having recorded the findings to the above effect, the learned Lower Appellate Court allowed both the appeals filed by the present defendant-respondent and dismissed both the Suits after having set aside the common decree passed therein. After having felt aggrieved from the common Judgment and decree of the learned Lower Appellate Court, the plaintiff-appellant has filed these two Regular Second Appeals Nos. 162/85 & 132/1985. That both these Second Appeals as involve common questions of law and fact, properties as in the two Suits as well as parties as in the two Suits are common so are being herewith disposed of by the following Common Judgment.

6. The learned Counsel for the appellant Sri K.I. Bhatta, submitted before this Court that the Lower Appellate Court committed substantial error of law in dismissing the plaintiff's claim and setting aside the Trial Court's decree as well as by allowing the Regular First Appeals filed by the defendant-respondent in these Second Appeals. Elaborating his contentions, the learned Counsel for the Appellant submitted that finding of the Lower Appellate Court that plaintiff has failed to prove the transaction of sale of one acre of land vide the Deed dated 7.8.1941, suffers from substantial error of law. That in respect to the transactions dated 13.7.1926 and 7.8.1941, the plaintiff had filed the certified copy of the Registered Sale Deed issued by the Registration Department which was marked as Ex. P4 and Ex. P5 and also certified copy of the Registered Sale Deed dated 13.7.1926 and at the time these certified copies of two Sale Deeds had been filed, the defendant did not object to their being admitted as Ex. P4 and P5, the Courts below admitted the same in evidence. Sri Bhat, the learned Counsel for appellant urged that once the certified copies of the registered Sale Deeds have been admitted in evidence, they cannot be questioned at all. The Deed Ex.P4 dated 13.7.1926 is a document which is 50 years old and admission of its certified copy in evidence to prove the transaction cannot be questioned, it ought to have held the transaction under that Deed to be established. That as regards transaction of sale held in 1941, being 37 years old, was also proved by production of certified copy of the Sale Deed and its certified copy of Sale Deed

hereinafter taken in evidence as in proof thereof. So, Sri Bhatta, very fairly submitted that in the present case, the vendor, who executed the Sale Deed and who was the father of the defendant-respondent has died long back. That the plaintiff's vendor of that Deed of 1926, died almost 40 or 50 years ago and that the attesting witnesses etc. of the Deed are also not alive. In such circumstances, the statement of plaintiff should have been accepted along with certified copies of aforesaid Deeds of Sale. Once the Deeds had been admitted without objection to the mode of proof of transaction at the stage of trial of the suit by the defendant-respondent, and it was not open to them to agitate that point or objection before the Lower Appellate Court, regarding mode of proof of transaction and that the Lower Appellate Court having entered into that question of mode of proof of transaction acted quite contrary to the well settled principles of law as laid down by Their Lordships in the Supreme Court in many Cases referred by him which I will consider at the appropriate stages. Sri Bhatta, learned Counsel for appellant very fairly submitted that had the provision u/s 90 of Indian Evidence Act regarding presumption applicable to old (thirty years old) documents been applicable to the certified copies thereof, there would have been no difficulty, Making reference to the provisions of Sections 74 and 77 of the Indian Evidence Act and Sections 57(5) & 60(2) of the Registration Act, the learned Counsel Sri Bhatta urged that the endorsements made by Registrar on those Deeds and along with the certified copies furnished in proof of due execution of those Sale Deeds, but, that aspect of the matter had not been considered by the Lower Appellate Court. That the learned Lower Appellate Court has erred in observing that the plaintiff has nowhere stated that the original Deed of Sale dated 7.8.1941 was not available and that aspect of the matter has not been considered by the Trial Court. That the learned Counsel Sri Bhatta, invited my attention to the statement of PW.1 to the effect that his vendor-Sangappa of the Sale Deeds and attesting witnesses are now dead. That once the Sale Deeds are taken on record and admitted in evidence and marked as exhibits, the contents of those Deeds could also be the evidence of delivery of possession as, when the vendor admits to have delivered the possession of the land mentioned therein to the vendee. That such a term in the Sale Deeds could be read as admission of the vendor, Sri Bhatta urged that once the Sale Deed exhibited that conveyance and transferring of the title and possession had been made thereunder, the burden was on the defendant to prove that he dispossessed the plaintiff and perfected his title by adverse possession. That really, the plaintiff's evidence is there to the effect that the plaintiff and plaintiff's father got the possession of the land through the transactions of sale. That it is also well settled principle of law that when there is conflicting oral evidence, one that finds support from the documentary evidence, is to be accepted and that had been done by the Trial Court, but, the learned Lower Appellate Court having ignored the contents of the Sale Deed and the evidence furnished by the endorsement made by Sub-Registrar at the time of registration, illegally recorded the findings against the plaintiff and did illegally set aside the findings recorded by the Trial Court Lastly, it has been submitted by Sri Bhatta,

the learned Counsel for the plaintiff-appellant that the learned Lower Appellate Court wrongly held the suit to be barred by limitation.

7. On behalf of the respondent, that is, the defendant-respondent in these Second Appeals, it has been contended by the learned Counsel Sri Rayareddy before this Court that the finding on the question of possession recorded by the Lower Appellate Court is a finding of fact need not be interfered with. Sri Rayareddy, learned Counsel submitted that a finding of fact howsoever grossly erroneous, it may be the same cannot be interfered with in the Second Appeal. That the learned Counsel further submitted that the Lower Appellate Court taking into consideration the conduct of the parties recorded that on the date when the Suits were filed, plaintiff was not in possession for the last 12 years or more, so the Court below rightly held the suit to be barred by limitation. Sri Rayareddy, further submitted that mere marking of the documents as exhibits does not result in the proof of execution or proof of the document. In this connection, Sri Rayareddy, made reference to certain Supreme Court Decisions, which I will refer at the appropriate stage. Sri Rayareddy, further submitted that the plaintiff did not file any documentary proof of his possession, like the Revenue Record entries and Record of Rights to show that he is in possession of only two 2 acres 30 guntas and not four acres. That when the plaintiff had moved application for rectifying the discrepancy or the mistake in the Revenue Record entries, it was long delayed as it had been moved after 35 to 40 years and further the plaintiff did not file any such suit earlier, as such, the plaintiff's present suit is barred by time. That the suit has not been maintainable even for rectification, in view of Section 135 of the Land Revenue Act Sri Rayareddy, learned Counsel for respondent urged, and therefore, the Lower:.. Appellate Court was right in dismissing the plaintiff -appellant's suit and allowing the present defendant-respondent's Regular Appeals. Sri Rayareddy, learned Counsel in support of the plaintiff's case submitted that even if that Sale Deed is proved, that Sale Deed of 1926 was for 3 acres of land, but, as possession on the date of Suit was not established, so neither the relief for injunction nor declaration could be granted in favour of the plaintiff, as plaintiff had not claimed any relief for possession. No other contention has been raised on behalf of either of the parties.

8. I have gone through the record of the case with the valuable assistance of the learned Counsel for both the parties. I have also applied my mind to the contentions made by the learned Counsel on behalf of both the sides and to the facts of the case. The learned Lower Appellate Court has held as regards Ex.P4-Sale Deed dated 13.7.1926, that its execution has been admitted without objection by Sri S.S. Neelagund, Counsel for the appellant in the Lower Court and he did not advance any argument on the exhibiting of Ex.P4 and the sale of 3 acres of land through Ex.P4, by the defendant's father, that is, the present respondent's father. The learned Lower Appellate Court further observed that it is proved by the plaintiff that his father purchased southern 3 acres of land out of land of R.S.No. 244/2 of Karamadi village through Ex.P4 and became owner thereof and after the death of plaintiff's father, plaintiff became the owner of 3

acres of land out of land R.S.No. 244/2 and thus the sale of 3 acres by the father of defendant-respondent is established as a fact and this fact is not disputed by the learned Counsel for the respondent here. As regards transfer of one acre of land, the learned Lower Appellate Court has taken the view that plaintiff has failed to prove that he is the owner of one acre of land purchased through Ex.P5. So, the dispute firstly to be considered is, whether purchase of one acre of land has been proved by the plaintiff-appellant and whether possession of land had been delivered by vendor to vendee. It is one of the well settled principles of law that best evidence is to be produced namely, if a transaction is entered by way of written document, the document itself may be produced if it is available, but, in cases which are covered by Sections 65, 66 of the Evidence Act, a secondary evidence can be produced in the form of certified copy of that document.

9. In the present case, plaintiff - PW.1 has stated :

"I have lost my original sale deeds, so, I have filed certified copies of my two sale deeds as per Exs.P4 and P5."

The certified copy of the Sale Deeds i.e., Exs.P4 and P5, have been filed as such in the circumstances covered by Section 65 of the Indian Evidence Act. The two Sale Deeds mentioned above had been registered under the Indian Registration Act and u/s 57 (Sub-section 5) of the Registration Act, the certified copies of the documents registered with the Registrar under the Registration Act have been made admissible for the purpose of proving the contents of the original documents. Section 57 of the Registration Act reads as under:

57. (1) subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of Section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provision, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this Section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this Section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

10. In view of the provisions of Section 57 of the Registration Act, the certified copies have been made and declared to be admissible for the purpose of proving the contents of the original documents. Section 65 of the Indian Evidence Act provides in what circumstances and conditions the secondary evidence may be given of the existence, condition and contents of a document. As per Clause (f) of Section 65, a certified copy of the original document is permitted to be given in evidence. A reading of Section 65 Clause (f) of the Indian Evidence Act along with Section 57 of the Indian Registration Act, the certified copies had been admissible in the present case to prove the contents of the original Sale Deeds as according to the plaintiff's statement, original Sale Deeds had been lost.

11. It has been contended by the learned Counsel for the respondent that certified copies of Sale Deeds having been filed, the presumption u/s 90 could not be raised regarding the execution etc., as the Section is confined in its application only to the original documents which purported or proved to be 30 years old and which are produced from the proper custody. The law in this regard has been well settled by the Supreme Court in HARIHAR PRASAD SINGH v. DEONARAIN PRASAD AIR 1956 SC 305, as per observations contained in Paragraph-8 of the Judgment which read as under:

"But Exhibits A-1 and A-1(1) are merely certified copies of the objection petitions filed before the Survey Officer and not the originals, and it was held in - AIR 1935 132 (Privy Council) that the presumption enacted in the section can be raised only with reference to original documents and not to copies thereof."

12. This is also admitted position among the Counsel that there had been no amendment in Section 90 nor there is any other Section providing for such a presumption to be applicable in case of certified copies. Sri Rayareddy, learned Counsel for the respondent submitted that no doubt, in some states the provision had been amended, such as the State of Uttar Pradesh, whereunder, U.P. case laws Amendment Act 1954 Section 90 of Evidence Act has been amended and a new Section 90-A has also been enacted and added, which provides for presumption in respect of cases, where, certified copy of the document has been filed making the presumption thereunder to be available to transactions to prove which certified copy being admissible has been filed. Sri Rayareddy very fairly submitted that had there been any such amendment as in U.P. introducing Section 90-A, in the State of Karnataka also, the plaintiffs' difficulty might have been solved, because there is no dispute that the documents are more than 30 years old. Lastly, the learned Counsel for the respondent submitted that the procedure prescribed by law has to be followed by the Courts and the Lower Appellate Court could not raise any such presumption as provided u/s 90 of Evidence Act, unless Legislature had so enacted to provide a provision, as plaintiff had filed only the certified copies of Sale Deeds concerned.

13. The learned Counsel for the respondent is correct in making such a submission, but, that problem does not stand here in the present case, because here that Exs.P4 and P5 had been filed at the trial stage and those Sale Deeds

had been admitted and marked as Exhibits in the evidence. According to the Rules of CPC prevailing in Karnataka, the documents that are admitted in evidence are marked as Exhibits. Once documents have been admitted in evidence as per Rule as proved, then, the question is whether it was open to take an objection to their admissibility in evidence on the ground of the mode of their proof, in the case of Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, it is held that:

"The admissibility of evidence is no doubt a point of law, but, once it is shown that the evidence on which Courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the Courts of fact to contend before the High Court in Second Appeal that the said evidence is not sufficient to justify the findings of fact in question."

14. In the case of P.C. Purushothama Reddiar Vs. S. Perumal, , Their Lordships observed at Page 613 as under:

"Before leaving this case it is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the respondent. He contended that the Police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility - their Lordships in support of their view also made a reference to the decision of their Lordship of Privy Council see BHAGAT RAM v. KHETU RAM AIR 1929 PC 110. "

15. The proposition of law as appears, from these Decisions of Their Lordships of the Supreme Court, to emerge is that once the documents, particularly in this case, i.e. the certified copies of the two Sale Deeds had been filed and admitted in evidence and marked as Exs.P5 and P4, without any objection being taken to their admissibility or to the mode of their proof, it was not open then to the respondents to raise the question about their admissibility on the ground of mode of proof. Further, the endorsement which has been made by the Registrar in the two Sale Deeds at the time of registration to the effect that the vendor had admitted the execution of sale deeds and his thumb impression and the vendor in both the Sale Deeds admitted the passing of sale consideration from vendee to the vendor and he (vendor) was identified by certain persons. According to Section 60(2) of the Indian Registration Act, the certificate endorsed shall be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Act and the facts mentioned in the endorsement as required in Section 59, have occurred as in the endorsement. Section 59 of the Registration Act provides:

"59. The registering officer shall affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day."

Section 58 of the Registration Act provides the particulars which are to be

endorsed on the documents admitted to registration. Section 58 of the Registration Act reads as under:

"58(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer u/s 89, there shall be endorsed from time to time the following particulars, namely:-

(a) the signature and addition of every person admitting the execution of the document, and if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register, it, but shall at the same time endorse a note of such refusal."

16. A perusal of Section 58 indicates that among the particulars to be endorsed in the endorsement are that the signature and addition of every person admitting execution of document shall be given. He shall also enter the payment after the execution has been admitted by the executant in the endorsement. In case, execution has been admitted by himself, by the representative, assign or agent of any person, then also, he shall get the signature of such person, representative, assign or agent. Section further provides for the endorsement of payment of money or delivery of goods made in presence of the Registering Officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution. In case, a person admitting the execution of document, refuses to endorse the same, the Registering Officer shall nevertheless register it, but, at the same time, he shall endorse such refusal.

17. That, under Sections 58, 59 & 60, it is clearly provided that the endorsement certificate including those facts shall be admissible piece of evidence with the affixture of the date and signature for the purpose of proving that the document has been duly registered and all that has happened in his (Registrar's or Sub-Registrar's) presence or as had been admitted before him in this way, applying these principles, I am of the opinion that the endorsement of Registrar furnished, as well is evidence on behalf of the plaintiff to prove the admission of the vendors of having executed the two sale deeds containing admissions of the vendors of having received the sale consideration mentioned in the two Sale Deeds. Once the execution of the Sale Deeds and the receipt of the sale

consideration by the vendor from the vendee has been admitted by the vendor before the Registrar, the contents of the document and the admissions contained in the deed by itself became more important piece of evidence. The certified copy of that Sale Deed is admissible piece of evidence to prove the contents of original deed which had been lost. The sale deed per se contains the admissions of the vendors that they executed the Sale Deed after having received the consideration and they transferred their title and delivered the possession of the property to the vendee and these admissions are admissible in evidence, as the evidence of execution of Sale Deeds in the form of admission before the Registrar.

18. The learned First Appellate Court did not apply its mind to this aspect of the matter, i.e. endorsement as contained therein i.e., two Sale Deeds with the words that the Sy.No. 244/2, had been sold by the defendant's father in favour of the plaintiff's father and plaintiff. When I so opine, I find support from what has been laid down by Their Lordships in the Privy Council's Decision in GOPAL DAS v. THAKURJI, ` @ 87 , therein after having referred to the endorsement of the Registrar in the deed therein, Their Lordships observed;

"The Registrar's endorsements show (see Sub-section (2) of Section 60, Registration Act, 1877) that in 1881 a person claiming to be this Parashotam Das, and to have become son of Harish Chandra by adoption made by his widow Manki Bahu, presented the receipt for registration and admitted execution. He was identified by two persons--one Sheo Prasad and the other Girja Prasad, who was the scribe of the document and was known to the Registrar. What remains to be shown is that the person admitting execution before the Registrar was this Purshotam Das and no imposter. The question is one of fact except in so far as there was as matter of law a presumption that the registration proceedings were regular and honestly carried out"

There, Their Lordships placed reliance while so observing on the earlier Decisions of the Privy Council in the case of GANGAMOYI DEBI v. TROILUCKHYA NATH (1906) 33 IA 60 and on the case of EHTISHAM ALI v. JAMNA PRASAD 1922 PC 56. After having referred the two Decisions, the Privy Council in Gopal Das's case further laid down:

"It seems clear that any objection to the sufficiency of the proof upon this point would have been idle, the circumstances being such that the evidence of due registration is itself some evidence of execution as against the plaintiff."

19. The just above quoted the observations of Their Lordships of the Privy Council appear to have laid it down that the law to the effect that evidence of due registration of a document is in itself some evidence of execution of the document. It also further lays down that once no objection to sufficient proof of execution of a document has been taken at the stage of trial, then, it is not open to be raised at the Appellate stage. In the earlier part of the Privy Council's Decision, Their Lordships in this regard laid down that endorsement "admitted" against the defendant or against the plaintiff means the document is to be taken

as "the document is admitted in evidence" as proved. When the document is in itself inadmissible, irregular or insufficient, it is essential that objection should be taken at the trial before the document is marked as exhibit and taken to record. The party cannot lie and wait until the case comes up before a Court of appeal and then complain for the first time as to the mode of proof, otherwise. It is not open to a party to raise objection on the ground of insufficiency of proof of the document. The Privy Council's Decision further lays down that endorsement of registration also by itself is evidence of execution.

20. Similar view has been laid down by the Division Bench of the Allahabad High Court in the case of *Misri Lal and Another Vs. Bhagwati Prasad*, , after having followed and relied upon the Privy Council Decision and this view further been followed in *Smt. Kulsumun-nisa Vs. Smt. Ahmadi Begum and Others*, , Hon'ble S.N. Dwivedi, as he then was in paragraph-28, had been pleased to refer to endorsement of the Registrar to the effect, as the appellant and Ajaibunnissa after hearing and understanding the nature and contents of the deed in my (Registrar) presence with their own lips from behind the pardah admitted the execution of the document and observed as under:

"The endorsement of the Sub-Registrar shows that Ajaibunnissa had executed the document after it was read over to her and that endorsement will be admissible in evidence u/s 60 of the Registration Act (*Misri Lal v. Bhagwati Prasad* -1955 Allahabad 573).

At page 287, the law to the same effect has been laid down in the case of *Ketharaju Rajeshwari Vs. Kanthamraju Varalakshamma and Another*, as under:

"A combined reading of Sections 57 & 60 of the Registration Act and Section 67 of the Evidence Act lead me to the conclusion that mere production of a certified copy of a document registered may not be enough to prove the execution of the document. But, it is sufficient to prove the contents of the document. A certificate issued "by the Registrar u/s 60 is acceptable in evidence to prove some extent the admission of execution made by the executor before the Registrar."

These Decisions thus, lead me to hold that the endorsement of the Sub-Registrar written on the document to the effect that the Vendor admitted the execution of the Deed and his thumb impression also, can well be said to be important piece of evidence to prove the execution. Now, in the present case, the own pleadings of the defendant also show that he admits the execution of the Sale Deed dated 7.8.1941, but, thereafter he alleges that the Deed was executed as a security for loan. So, this admission coupled with endorsement Certificate containing execution clearly proved the execution of Ex.P-5. This also provides a circumstance to prove execution of the document - Ex.P-5, The question is whether it was executed for security for any loan or as nominal Sale Deed or not. The nature of the document whether it was as security or operating as a Mortgage Deed, could it be determined on the basis of external evidence not

emerging from Deed itself.

21. Dealing with the principle of construction of the document that whether it was a security or not, Their Lordships of the Supreme Court in Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, , laid it down as under:

".....where a document has to be construed, it must be gathered in the first place from the document itself, if the words are express and clear, effect must be given to them and in an extraneous enquiry into what was thought or intended is ruled out. The real question in such a case was not what parties intended or meant, but, what is the legal effect of the words which they used."

It is clear from the just above observations of the Supreme Court that the intention of the parties is to be gathered from the document itself, an extraneous enquiry of what was thought is ruled out. Sometimes, there may be a cause extraneous enquiry where a claim is made that the document is void or illegal on the ground that a different document than the document which was intended was got executed. But, this is not so here in the present case. Here even in the written statement, it is admitted that the Sale Deed was executed. It was also stated that it was otherwise agreed or intended, it will operate as security.

A perusal of the Deed - Ex.P-5, itself, show that it was not intended to be a mortgage, but, its entire tenure shows that the parties i.e. vendor executed the Sale Deed as it is and it is the duty of the Court to give legal effect to the terms. As such, in my opinion, the Lower Appellate Court committed error of law when it opined that as plaintiff has not stated anything about Ex.P-5, nor has he denied the defendant's contention that it was security for some loan or it was a nominal Sale Deed, therefore, it should be taken that plaintiff failed to prove Ex.P-5 as out and out sale. Such observations of the Lower Court appear to be and are contrary to law.

As mentioned earlier, in the Sale Deed, it has been recited therein that the vendor was conveying and transferring the property for a sale consideration of Rs. 300/- and had delivered possession of the property (subject-matter of that Deed as described therein) after receipt of the sale consideration and thereafter before the Registrar also, he admitted to have executed that Deed as it is and of receiving the sale consideration, clearly establishes the execution of the Sale Deed and the Lower Appellate Court acted illegally in ignoring the evidentiary value of the endorsement of Registrar in the light of Section 60 of the Registration Act. The recital in the Sale Deed that possession has been delivered of the land to vendee is prima facie evident in the form of admission of the person, who executed the Sale Deed and admitted the execution of the Sale Deed before the Registrar. That as such really, the burden shifted on the defendant to rebut it, once prima facie evidence had been led and admission made by vendor is there, which is the best evidence on which the opposite party can rely. Therefore, the burden did and will shift on the respondent to prove that his father did not hand over possession or that the defendant - respondent

subsequently took possession of the land either by force, fraud or anything like that. That is not the case here at present and that being the position, it is well settled principle of law that possession follows title. Taking two things together in which the admission has been ignored on the frivolous ground that the plaintiff has not got the land measured at any time that by adopting double standard in assessing the evidence of the parties, the Lower Appellate Court has taken the view that plaintiff's witnesses have not stated how they have given the area in possession of the plaintiff, when the plaintiff himself stated he has not measured the land. Such an approach of the Lower Appellate Court is not understandable as to why it accepted D.Ws. evidence when they have also said that they have not measured the land. It is well settled that when the oral evidence is balanced, the question of burden of proof may play role to determine it has been discharged; it is also well settled where evidence lead by parties is balanced and it is conflicting then such oral evidence which finds support from documentary evidence should be accepted. In the present case, the Lower Appellate Court has altogether ignored the documentary evidence which was in the form of admission contained in the Sale Deeds, but, it held in an illegal manner that execution of Ex.P-5, was not proved. In my opinion, the presumption u/s 60 of Registration Act, the admission referred to above along with evidence P.W. 1 prove execution of Deed Ex.P-5.

22. Once I find that execution of the Sale Deed of 1941 has been proved as mentioned above and it has not been the defendant's case that defendant has taken possession subsequently by dispossessing the plaintiff, it has to be taken as proved that possession of land mentioned in deeds Ex.P-4 and P-5 was delivered to vendees mentioned in the Deed namely the plaintiff-appellant's father and the plaintiff-appellant and that plaintiff-appellant continued to be in possession of the land i.e. 4 acres in dispute on the date of the suit. The learned Lower Court further erred in holding that the suit of the plaintiff was barred by Article 65 of the Limitation Act read with Section 28 thereof. It has to be taken note of that the present suit is for injunction. Plaintiff's appellant's case has been that appellant-plaintiff is in possession and has been so since the date possession was delivered as in the Sale Deeds. The Articles 64 and 65 provide for limitation with respect to suits for possession. Article 64 of the Limitation Act provides that where the suit for possession of immovable property is based on previous possession and not on title, and when the plaintiff while in possession of the property has been dispossessed, then, limitation for such a suit will be 12 years from the date of dispossession. While, Article 65 deals with the suit for possession or other interest therein based on title, limitation provided is 12 years when possession of defendant becomes adverse to the plaintiff. The plea of adverse possession and whether defendant's possession was adverse or it had become adverse, it is for the defendant to first allege and to prove, because title is there, possession of the plaintiff is to follow and any person who has interfered with his possession within 12 years, will not get any title and the plaintiff's title will continue to exist. In such a case, it is as mentioned earlier that it is for the

defendant to prove. When I so observed, I find support from the view taken in a Decision of this Court in Mohammed Sab Wallad Gafar Sab Vs. Abdul Gani Wallad Mohammed Hayath and Others, . Hon"ble JUSTICE S.A. HAKEEM, had been pleased to observe as under:

"It is well settled that the law of limitation is a procedural law and the provisions existing on the date of a suit apply to it and therefore, Article 65 of the Limitation Act, 1963 is applicable, under which if a suit is brought on the basis of title and if the plaintiff proves his title, it is incumbent upon the defendant to show that his possession has become adverse to the real owner in order to maintain a plea of adverse possession."

In S.M. Karim Vs. Mst. Bibi Sakina, , Hidayatullah, J., as he then was, has observed in para-5 that:

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found."

The law as propounded by this Court as well as the Supreme Court clearly show that when assistance of Article 65 is to be taken by the defendant, it is for him - in a suit for possession or interest of property is filed by the plaintiff on the basis of his title - to raise the specific plea of adverse possession, as when his possession had become adverse and period of 12 years had been completed, then, it can be said that the title of the owner of the land had come to an end. That being so, as no such plea has been raised in this case and the learned Lower Appellate Court committed the error of law when it held that the suit to be barred by Article 65 read with Section 28 of the Limitation Act thereof.

23. The present suit is for injunction and it may be covered by a residuary Article at the most. That in a suit where no limitation is prescribed in the Schedule or elsewhere, the limitation will be 3 years and from the date when right to sue accrues. Every illegal attempt to trespass may also provide a fresh cause of action to the plaintiff to file a suit for injunction as well. Anyway, in this case, the plaintiff has alleged that the cause of action to have accrued sometimes in December 1979 and suit had been filed on 15.12.1979, therefore, the suit was within limitation of 3 years. Thus considered in my opinion, the Lower Appellate Court erred in law in holding the suit to be barred by limitation. The first appeal has further been allowed by lower appellate Court on a ground to the effect, namely, suit having been barred u/s 135 of the Karnataka Land Revenue Act. Section 135 of Limitation Act reads along with its Proviso as under:

"Bar of suits - No suits shall lie against the State Government or any Officer of the State Government in respect of a claim to have an entry made in this record or register that is maintained under this chapter or to have such entry made or amended;

Provided, if a person is aggrieved as to any right of which he is in possession by

any entry made in any record or register maintained under this chapter, he may institute a suit against any person having or interested to deny his title to such right for declaration of his right under Chapter-6 of the Specific Relief Act and the entry in record or register shall be amended in accordance with such declaration."

A reading of the Section per se shows that merely or on mere existence of an Entry on record against the interest of a party will not furnish him a complete cause of action or right to file his suit against the Government or the servants of the Government, on whom, there exists a responsibility to maintain the record to omit or to amend that Entry, no suit can be filed against the Government simply on the basis even if the Entry is adverse to the interest of the plaintiff from the earlier times, and even against the District Authorities also. Here, the Proviso operates like that, as it provides coupled with the Entry that there must be some act of a person, who is interested, in denying plaintiff's title, as holder of title of the land to entitle him to file a suit for declaration of his rights and title in accordance with the provisions of the Specific Relief Act and the Civil Court is competent to entertain such suit and in case, the Court finds that plaintiff is entitled to the declaration when there is a person who on the basis of wrong Entry is trying to deny the title of the real tenure holder i.e., of the plaintiff in the suit, the Court can direct the authorities to amend such Entry in accordance with the declaration made by the Court. This emerges from the expression used in the last para of the Proviso which reads as under:

Entry in record or register shall be amended in accordance with any such declaration.

That being the position of law, in my opinion, the learned Lower Appellate Court again committed a substantial error of law in taking the view that the Civil Court had no jurisdiction to direct the authorities, who are responsible to maintain the record, to rectify or amend the same in accordance with the declaration. In *DASAPPA SETTY v. K.N. THAMMANNA GOWDA* 1983 (2) KLJ 1991, Hon"ble Justice G.N. Sabhahit, as he then was had been pleased to lay down as per paras 17 and 18, are as follows :

"Therefore, it is dear that the plaintiff is not expected to rush to the Court at every innocuous denial; but, when he feels that title is jeopardized, he is to go to Court and his subsisting title at that time should not have been lost. Considered in that perspective, it cannot be said that the present suit is barred by time.

It is no doubt true that an entry was made by the Tahsildar in 1963, as can be seen in ex.P-2. Mere entry without more, would not give rise to a compulsory cause of action."

The underlined portion of the Decision of this Court per se shows that a mere writing of Entry whether it be with respect to the area or the name in the Revenue Records will not give cause of action or right to the owner or holder of the land to file his suit against the Government or any other person. There could be something more, namely, on the basis of that Entry, some person is denying

the title or there exist a threat or apprehension of that person that he will cause interference with the title, possession and enjoyment of the property by the holder of the land, then, the holder of the land is entitled to file a suit, otherwise, a mere Entry is no cause of action against the Government, in view of Article 135, but, at the moment, there is something more in the Proviso to Article 135, definitely, that would come to the rescue of the plaintiff. Thus, considered in my opinion, the Lower Appellate Court misread the law laid down by this Court in the case of Dasappa Setty v. K.N. Thammanna Gowda. The learned Counsel for the respondent contended that though in the plaint, the cause of action has been alleged that the defendant threatened to interfere with the plaintiff's possession sometimes in December, 1979, but, there is no evidence to that effect. The contention of learned Counsel for the respondent is either misconceived or his argument is based on technicalities. In the evidence, P.W.1, has deposed as under:

"Since the date of purchase, the enjoyment is of 4 acres. As the defendant started to encroach my area, I filed the suits."

This statement of P.W.1 per se shows that he claims that he all along been in possession of the entire 4 acres of land in dispute, but, the moment or time since, the defendant started or attempted to encroach upon the land in possession of the plaintiff, the plaintiff did not waste the time, but filed the suit at the earliest. It is very much clear that since the encroachments were started or attempted to be made, the plaintiff did not waste his time and filed the suit, it appears within the reasonable time of two months from the date of alleged accrual of cause of action. In this view of the matter, it cannot be said that there is no evidence on record with respect to accrual of cause of action. Having thus considered, in my opinion, the Judgment and decree passed by the learned Lower Appellate Court suffers from the error of law of substantial nature and the Second Appeals deserve to be allowed. The Second Appeals as such, are hereby allowed. The Judgment and decree of the Lower Appellate Court setting aside the Judgment of the Trial Court is hereby set aside and the common Judgment and decree passed in the two Suits by the Trial Court are hereby restored and the Suits are decreed for the reliefs as claimed.

24. It is expected that the authorities will follow the law under Proviso to Article 135 and will correct the Revenue Records and Record of Right Entries in the light of the findings given in the Suits. Accordingly, the Appeals are allowed with costs thereon .