

(2010) 12 KAR CK 0026

In the Karnataka High Court

Case No : Regular First Appeal No. 765 of 2005

K. Jagadishwar and Others

APPELLANT

Vs

Sharada (Since Deceased) by Her L.Rs. and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 133
Specific Relief Act, 1963 — Section 34

Citation : AIR 2011 Kar 148 : (2011) 4 KarLJ 18 : (2011) 6 RCR(Civil) 2352

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : G.S. Bhat and Associates, Sriyuths C. Sadashiva and P.T. Muralidhar, for the Appellant; Sriyuths Vyasa Rao Y.K., A. Anandashetty, N. Rajashekar and M.R. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This appeal is by Defendants 1, 2, 3 and 5 against the judgment and decree passed in O.S. No. 2 of 2000, dated 5-3-2005 on the file of the Civil Judge (Senior Division), Kundapur.

2. Parties would be referred as per their ranking before the Trial Court.

3. Respondents 1(a) to (e) are the L. Rs of the original Plaintiff. Respondents 2(a) to (c) are Defendants 4(a) to (c).

4. Suit is one for declaration, declaring that the Plaintiffs are the absolute owner of the suit schedule property by virtue of moolageni agreement dated 1-10-1946 and consequential relief of permanent injunction restraining the Defendants or their persons claiming under them from interfering with the peaceful possession and enjoyment of the suit schedule property bearing Sy. No. 134/3 measuring 17 cents of Kundapura, Kasaba Village, Kundapura Taluk excluding the land covered by registered document bearing Nos. 581/1927 and 648/1942.

5. Case of the Plaintiffs is that An and Bhandari was the owner of the suit

schedule property and now it is devolved on his children. Portion of survey number was held on moolageni by Karthi Subba. It is a non-agricultural and is covered by non-residential building. It is being used for commercial purpose. The suit properties are situated in Kundapura Town Municipality. It is owned by Religious Institution by name Sri Siddapeetha Kodashadri Halwari Mutt of Yadamog Village and Mattadhikari Peer Aithwarnath Bavaji granted the schedule property on moolageni permanently in favour of the husband of Plaintiff 1 and father of Plaintiffs 2 to 6. The name of 1st Plaintiffs husband is Narayana and moolageni was registered in his name on 1-10-1946. It was on yearly rent of Rs. 20/- per year for a period of twenty years commencing from 30-3-1947 ending with 30-3-1956. Thereafter, moolageni rent was to be paid at Rs. 60/- per year. The moolageni year to commence from 1st of April up to 31st March of the next year. The deceased Narayana during his lifetime was paying moolageni rent regularly to the lessor. After construction of the building, he was paying tax to the erstwhile Town Panchayat, Kundapur and later to Town Municipality, Kundapur. Out of the Southern portion, 4 cents was granted on moolageni to one Subba, father of Narayana under a separate document registration No. 581 of 1927 by the aforesaid Mutt and 12 cents was granted in favour of Nagi Hengsu w/o Subba under a registered document No. 648 of 1942. After the death of Subba and Nagi Hengsu, their heirs Annappa and Narayana have inherited the southern portion of Sy. No. 134/3 and are in joint possession of the said 18 cents in the southern portion of Sy. No. 134/3. The Defendants in collusion with the Village Accountant, Kundapura got entered their names in respect of the suit schedule property in the revenue records. The said entries were made without any notice to the Plaintiffs. The entries are made without even following the procedure contemplated. As against the said entries, Plaintiffs preferred an appeal before the Assistant Commissioner, Kundapur. However, the Assistant Commissioner dismissed the appeal on the ground that O.S. No. 432 of 1997 is pending before the Civil Court and parties can get their disputes settled before the Competent Civil Court. Defendant 5 made an attempt to evict the tenants from the schedule property in collusion with the local police by misleading the police by stating that the Plaintiffs have no title to the suit schedule property by showing the order passed by the Assistant Commissioner. Therefore, the Plaintiffs were constrained to file a suit for declaration and consequently for permanent injunction.

6. On service of summons, Defendant 5 filed written statement. Defendants 4 and 12 adopted the same by filing a memo. Defendant 3 did not appear and he was placed ex parte. Defendants admits that the Plaintiffs are governed by Hindu Mitakshara Law of inheritance and the suit schedule property is a non-agricultural land situated within the limits of Kundapura Town Municipality. They also admit the suit schedule property belongs to religious institution-the Mutt referred to above. They admit the Defendant 3 has filed O.S. No. 432 of 1997, which is pending. However, they denied that the appeal filed before the Assistant Commissioner was dismissed on the ground that the civil suit is pending, but the Assistant Commissioner dismissed the appeal on the ground that the names of

the Plaintiffs are not appearing in respect of the suit schedule property and existence of moolageni under document dated 1-10-1946 is existed or not is not proved by the parties. Defendants further contended that moolageni dated 1-10-1946 has not come into force at any time. Suit schedule property does not show the western boundary in the moolageni lease. It is not identifiable, that Plaintiffs were never in possession of the suit schedule property and they are not entitled for declaration without seeking possession to the suit schedule property and the valuation made for the purpose of jurisdiction is also in correct.

7. Defendant 4(c) filed a separate written statement alleging moolageni agreement is void and has not come into force at any time and contended Annappayya had filed a declaration in respect of entire 35 cents in Sy. No. 134/3 and father of Plaintiffs 2 to 6 Narayana himself represented Annappayya and gave a statement that the entire property belongs to Annappayya.

8. During the pendency of the suit, the 1st Plaintiff who was the wife of Narayana died and since Plaintiffs 2 to 6 who are the children were already on record, Plaintiff 1 was deleted. Defendant 4 died during the pendency of the suit and his L. Rs were brought on records as Defendants 4(a) to 4(c).

9. On the basis of these pleadings, the Trial Court has framed the following issues.--

(i) Whether Plaintiff proves that Narayana who is the husband of Plaintiff 1 and father of Plaintiffs 2 to 6 had acquired valid title over the plaint schedule property?

(ii) Whether Annappayya-the brother of Narayana was the moolageni tenant of the entire plaint schedule property and the land adjoining the same on the southern side thereof meaning in all 35 cents as contended by the Defendants?

(iii) Whether Defendants prove that the Plaintiffs are estopped from contending at they are the owners of the plaint schedule property for the reasons detailed in para 7 of the written statement and whether the same amounts to estoppel under law?

(iv) Whether Plaintiff proves that they were in lawful possession of the plaint schedule property as on the date of the institution of the suit?

(v) Whether Plaintiffs prove that the entries in the record of rights in Col. Nos. (3), (4), (9) and (10) of the plaint schedule property are wrong and whether the Plaintiffs are entitled to get the same rectified?

(vi) Whether the suit for prohibitory injunction is not maintainable and whether the Plaintiffs should have prayed for the relief of possession?

(vii) Whether the suit has not been properly valued for the purpose of Court fees and jurisdiction?

(viii) Whether Plaintiffs are entitled to the reliefs prayed in the plaint?

(ix) What order or decree?

10. Before the Trial Court, Plaintiff 2 got himself examined as P.W. 1 and in his evidence, he produced Exs. P. 1 to P. 50. On behalf of the Defendants, GPA holder of Defendants 1 and 5 was examined as D.W. 1 and he produced Exs. D. 1 to D. 5. The Trial Court on appreciation of the evidence held that, the Plaintiffs have proved that Narayana, husband of deceased Plaintiff 1 and father of Plaintiffs 2 to 6 has acquired his title to the suit schedule property under the moolageni lease and Defendants have failed to prove that Annappayya and his brother Narayana were the moolageni tenants of entire suit schedule property and the adjoining of the southern side in all 35 cents. It also further held that Defendants have also failed to prove that Plaintiffs are estopped from contending that they are the owners of the suit schedule property for the reason stated in plaint paras 3 and 7. However, on the basis of the evidence of the Plaintiffs, the Trial Court held that Plaintiffs have proved that they are in possession of the suit schedule property and the suit is not barred for not seeking the relief of possession. Accordingly, the Trial Court decreed the suit for declaration and also consequently for injunction. It is against this judgment and decree, Defendants 1 to 3 and 5 have filed this appeal. Defendant 4(c) who has contested the suit by filing a separate written statement, has not filed any appeal.

11. Learned Counsel Sri G.S. Bhat, appearing for Defendants 1 to 3 and 5 submitted that the suit schedule property is a southern portion of Sy. No. 134/3. It is a non-agricultural land and it belongs to Siddapeetha Kodashadri Halwari Mutt. The Husband of the deceased Plaintiff 1 claimed that he has been granted moolageni rights under Ex. P. 1. However, by moolageni lease dated 27-5-1927 to the extent of 5 cents, moolageni lease was granted in favour of Kartha Subba. Ex. D. 5, the right to collect the moolageni rent was given to one Shanbog Gowda Saraswathi in respect of entire extent of 35 cents, which was in possession of Karthi Subba. On 23-5-1942, the Mutt executed the moolageni in favour of Nagi Hengsu s/o. Karthi Subba to the extent of 12 cents and on 1-10-1946, the moolageni lease was granted to the extent of 17 cents in favour of Narayana, husband of 1st Plaintiff. As per Ex. D. 3, on 23-8-1974, the elder brother of Narayana i.e., Karthi Annappayya, father of Defendants had filed an application for grant of occupancy rights. However, the application was rejected on the ground that the land is not an agricultural land. He relied on Ex. D. 1, the RTC for the period from 1967-68 and 1978-79 to show that the land was cultivated by Annappayya of Kundapur and in the proceedings before the Land Tribunal, husband of the 1st Plaintiff-Narayan gave evidence stating that Sy. No. 134/3 has been developed and buildings have been constructed and it is not a agricultural land. Relying on Ex. D. 3, learned Counsel submitted that, Exs. D. 1 and D. 3 prove that Annappayya, the brother of Narayan was cultivating the land and his possession is proved by the evidence of husband of 1st Plaintiff-Narayan. Though the application was rejected, the fact remains that the evidence given by Narayana shows that it is Annappayya, who was in possession.

12. He further contended that the Mutt had filed HRC No. 6/89 as per Ex. P. 7 in which Annappayya and Plaintiffs were parties. Filing of HRC petition against Annappayya as well as against the Plaintiffs, establishes that both of them were in possession of the suit schedule property. The objection statement filed by the Respondent therein i.e., Annappayya and others as per Ex. P. 8 also shows that moolageni was granted and lessee was permitted to put up construction. In the said objection statement, it is stated that moolageni tenants have been in possession of the properties granted. This also proves the possession of the Defendants. No doubt, the said HRC was dismissed by order dated 30-11-1996 as abated since Annappayya died in 1995. The 3rd Plaintiff thereafter had filed O.S. No. 432 of 1997 for partition against the Plaintiffs and the Defendants herein treating the properties as a joint family properties. He also stated that the said suit was dismissed only in respect of Sy. No. 134/3 holding southern portion is not a joint family property. Against which, R.A No. 84/02 was filed that was also dismissed, against which, RSA is filed and the said appeal is pending.

13. Relying on these documents, learned Counsel submitted that, husband of the 1st Plaintiff having appeared before the Tribunal had not claimed that he is in possession of the suit schedule property. He further submitted that the documents and the evidence and dealing of these properties by the parties, establishes that the suit schedule property was treated as joint family property/family property and it also proves that Plaintiffs and Defendants are in joint possession. As such, suit for declaration and injunction is not maintainable in view of the provisions of Section 34 of the Specific Relief Act, 1963 i.e., when the Plaintiffs are not in exclusive possession and they have sought only decree for declaration without seeking relief of possession, hence, the suit is liable to be dismissed on the said ground. To support the same, he also relied on the evidence of P.W. 1, wherein P.W. 1 has admitted that they had not made any claim for grant of occupancy rights on the ground that the suit property was not a agricultural land. Further, he has admitted that the suit property consists of buildings and tenants are in possession. Further has admitted the name of Narayan was rounded of and the names of Defendants were entered as per Exs. P. 5 and P. 6. Filing the HRC against the Plaintiffs and Defendants is also admitted. He strongly relied on the admission at para 16 of P.W. 1 that Plaintiffs had not raised any objection while construction of RCC buildings in Sy. No. 134/3. This admission and the admission that Annappayya's name was entered in the revenue records and not raising any objection by the Plaintiffs, is a clear case of the admission of the possession of the Defendants.

14. To support this contention, he relied on the judgment of the Apex Court in the matter of Narasamma and Others Vs. State of Karnataka and Others, . Relying on para 27, he submitted that entries in the revenue records cannot create any title in respect of the land in dispute, but it certainly reflects as to who was in possession of the land in dispute on the date of the name of the person had been entered in the revenue records. He also relied on another judgment of this Court in the matter of K.A. Subba Rao (Deceased) By L.Rs. Vs.

Balaram Gowda and Others, Relying on para 6 and submitted that if the person is claiming his possession definitely his names should have been entered in the revenue records and he should have paid the revenue. In this regard, referring to the document-Ex. D. 1, the evidence of P.W. 1, Ex. P. 8, Ex. D. 3 and Ex. D. 4, learned Counsel submitted that these material documents and the admission in the oral evidence has been neither considered nor appreciated by the Trial Court and the Trial Court has erroneously proceeded to hold that the Plaintiffs have established their possession.

15. He further submitted that D. W. 1, no doubt is a power of attorney holder. However, his evidence cannot be discarded only on the ground that he is a power of attorney. When D. W. 1 has deposed on the basis of his personal knowledge and as such, the evidence cannot be discarded. The Trial Court has ignored the said evidence while giving the findings. On these submissions, learned Counsel prays that the judgment and decree of the Trial Court required to be set aside.

16. On the other hand, Sri Vyasa Rao, learned Counsel for the Plaintiffs submitted that moolageni leasehold rights claimed by the Plaintiffs is only in respect of 17 cents on the southern portion of Sy. No. 134/3. Issue 1 is as to "whether the Plaintiffs proves that Narayan, husband of 1st Plaintiff and father of Plaintiffs 2 to 6 had acquired valid title to the suit schedule property", the moolageni registered documents establishes his title. Once the title is proved, the possession follows. Even otherwise, the evidence on record proves the possession of not only the deceased Narayan but also by the Plaintiffs. He referred to Ex. P. 7, the petition copy in HRC No. 6/89. He referred to Ex. P. 8, objection statement to the said petition and pointed out that in the objection statement filed by the Respondents therein, wherein Annappayya was also the Respondent, has categorically admitted the grant of moolageni lease by the Mutt on 1-10-1946 and the said lease is valid, legal and binding and also admitted that Respondents 8 to 12 therein are the sub-tenants and the moolageni tenants are entitled to sublet the leasehold rights or grant or induct monthly tenants and on this ground the HRC petition was opposed as not maintainable. Though, the objections are filed by the Plaintiffs as well as the Defendants in the said proceedings, but in the said objection it is admitted that, the lease-hold rights are granted to deceased Narayan and his right of enjoyment and also sub-leasing the said property. In the said objection at para 6 it is admitted that moolageni tenants are in possession vis-a-vis it is only the lessees under the moolageni lease are in possession. Even if the Defendants claim their right under the moolageni tenants and not otherwise, insofar as the entry in the record of rights he submitted that the said entry has been disputed and in this regard he refers to para 3 of the plaint and submitted that an entry made without notice to the interested party, is not binding and cannot be held that it creates any presumption of possession in favour of Defendants.

17. To support his contention he relied on the decision of this Court in the matter of Papegowda v. Land Tribunal, Pandavapura and Ors. 1980 (2) Kar. L.J. 162,

wherein, this Court on interpretation of provision to Section 133 of the Karnataka Land Revenue Act, 1964 (for short referred to as "Act") has held that presumption arising u/s 133 of the Act is only regarding the entry that it is true until the contrary is proved. It does not raise any further presumption that person in possession is a tenant. He also relied on another decision in the matter of Venkataramanappa Vs. B.N. Narashimhachar and another, , wherein, it is held that an entry without notice to the interested party is not a binding, it is a rebuttal entry. When the Defendants had admitted possession of the Plaintiffs in their objection statement as per Ex. P. 8, the alleged presumption also got rebutted. Ex. P. 3, the entries in the Municipal Register shows the name of the husband of first Plaintiff-Narayana. So also Exs. P. 6 and P. 9-demand register clearly show the name of the father the husband of the first Plaintiff. The property being non-agricultural property used for non-residential purpose and that entries in Exs. P. 3, P. 6 and P. 9 categorically establish that the property was in possession and enjoyment of Narayana and after his death it is in the possession of his heirs. He has also relied upon the finding of Trial Court and submitted that the Trial Court has found that the Plaintiffs have paid the property tax and it demonstrates that the Plaintiffs are in possession and enjoyment of the suit schedule property right from undisputed point of time.

18. With reference to Ex. D. 1, the learned Counsel submitted that it is not in dispute between the parties that the property is non-agricultural property and it is used for commercial purposes. The entry referred to in Ex. D. 1 relates to the agricultural land. Admittedly the application filed by Annappayya for grant of occupancy rights has been rejected as it is not an agricultural land and as such it does not prove his possession nor Ex. D. 4-the statement of deceased Narayana establishes the possession of Annappayya.

19. He also relied on another decision in the matter of Vidhyadhar Vs. Manikrao and Another, , and submitted that where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself for cross-examination, the presumption would be that the case set up by him is not correct. In this case also the Defendants have not entered the witness-box and it is the power of attorney of Defendants 1 and 5 has entered the witness-box. He cannot speak on behalf of Defendants 1 and 5 nor he has the knowledge of the case. His evidence cannot be accepted as evidence of the Defendants and as such the suit has been properly decreed and does not call for interference.

20. By way of reply, learned Counsel for Defendants 1, 2, 3 and 5 submitted that admission of construction made by the Defendants and as on the date of filing of the suit the name of Defendant 5 was entered in the records and as such in view of the Plaintiffs not being in possession, seeking only declaratory relief without seeking the relief of possession, the suit is not maintainable. He further relied on the decision of the Division Bench of this Court in the matter of Subba Rao and submitted that the entries in the revenue records create a presumption and the said entries are continuous and prove the possession of the Defendants.

21. In the light of the above submissions, the points that arise for consideration is as to:

1. Whether the judgment and decree of the Trial Court is liable to be set aside on the ground that the Plaintiffs have not sought the relief of possession?
2. Whether the finding of the Trial Court that, the Plaintiffs have proved their title and possession, requires to be interfered?

22. The facts which are not in dispute are that the deceased Narayana and Annappayya are brothers. From the evidence it is also not in dispute that on 1-10-1946 moolageni lease was granted in favour of deceased Narayana. Plaintiffs and Defendants both admit that suit schedule property measuring 17 cents in Sy. No. 134/3 and is a non-agricultural land. This fact is evidenced from the proceeding in HRC No. 6 of 1989. It is also not in dispute that Mutt the namely Sri Siddapeeta Kodashadri Halwari Mutt, Yadamoge Village, Kundapura is a lessor/owner. The Plaintiffs allege that by virtue of grant of moolageni rights Narayana was put in possession and thereafter the Plaintiffs i.e., deceased Plaintiffs 1, 2 to 6 succeeded to the estate of Narayana as survivors and they have been in possession and enjoyment of the suit schedule property. The cause of action for the suit according to the Plaintiffs was when the Defendants attempted to interfere with the possession of the Plaintiffs on the basis of rejection of their appeal before the Assistant Commissioner filed against the entries made in the name of Defendants. The suit is filed on 16th July, 2003 and the Plaintiffs claim that they are in possession and enjoyment of the suit schedule property. The Defendants apart from denying the Plaintiffs' right, they claim that they are in possession of the suit schedule property and as such the suit is not maintainable.

23. It is in this regard the material produced by the Plaintiffs and Defendants is required to be appreciated. Ex. P. 1 is a moolageni right granted under a registered document. It is undisputedly granted only in favour of Narayana. However, Ex. D. 1 relied upon by the Defendants is a record of rights for a period from 1967-68 and 1978-79 in respect of 35 cents of land in Sy. No. 134/3. As against the entire land the name of Annappayya is shown as a cultivator, but it is not the case of both parties that the suit property is cultivated by the Annappayya. But it is admitted that the suit property is a non-agricultural non-residential building. Thus, it cannot be disputed that the suit property was not cultivated. However, the name of Annappayya is also shown in column (9), but on the other column it is shown as per moolageni right. Whether Annappayya continued in exclusive possession or he continued in possession along with Plaintiffs or his possession was under the Plaintiffs, is a matter which requires to be considered. Ex. D. 1 by itself will not prove that the Annappayya was in possession of non-agricultural land consisting of buildings, entry is the period from 1967-68 to 1978-79. It is also evident from Ex. D. 3, Form 7, where Annappayya claims occupancy rights in respect of entire 35 cents and it is also not in dispute the Land Tribunal by its order at Ex. D. 4 has rejected the claim

holding that the land is not an agricultural land. To carry presumption u/s 133 of the Act, in pursuance of Ex. D. 1 that he was cultivating, is negated by Ex. D. 3 and Ex. D. 4 as it is held that the suit properties were not an agricultural land and it is also not the claim of Annappayya in Form 7 that excluding 17 guntas, remaining land is cultivated by him or claimed tenancy over the non-residential building. In these circumstances, these entries do not assist the case of the Defendant. Presumption of entries u/s 133 of the Act in respect of entries for which they are made, however admitted case of the parties is that the land is not agricultural land hence such entries will have any help to prove the possession on the bases of such entries.

24. The Plaintiffs have produced Exs. P. 3, P. 6 and P. 9. The demand register in respect of commercial building bearing Nos. 161, 162, which are assessed for building tax. Ex. P. 3 is for the year 1985-86. Similarly for the other buildings, Ex. P. 4 for the same year also shows the name of Narayana. Exs. P. 5 and P. 6 are for the period from 1991-92. Ex. P. 9 is for the period from 1991-92. These documents show that in respect of the property numbers mentioned therein, name of Narayan has been shown as the owner. The parties in their evidence having not disputed the property numbers shown in Exs. P. 3, P. 4, P. 5, P. 6 and P. 9. It is the consistent case of both the parties that non-residential buildings are constructed over the suit schedule property and it is within the municipal town limit. In this context Exs. P. 7 and P. 8 which were relied upon by the learned Counsel for Defendants shows that the Mutt had filed eviction petition not only against Annappayya, but also against the Plaintiffs and the tenants therein. But, what is pertinent to note from Ex. P. 7 is the description of the property "A" schedule. The Mutt has claimed eviction of tenants from Sy. No. 134/3 measuring 35 cents. It is not in dispute that Plaintiffs are claiming moolageni rights only in respect of 17 cents. It is also on record that the Mutt had granted moolageni rights in favour of Karthik Subba to the extent of 5 cents and Nagi Hengsu to the extent of 12 cents. The schedule of Ex. P. 7 includes the entire extent including the extent of land granted to others. Plaintiffs are not claiming either entire 35 cents nor they are claiming as the heirs of Karthik Subba or Nagi Hengsu. It is in the evidence of P.W. 1 also that apart from 17 cents of lease granted to Narayan, there are other grants also and P.W. 1 admits that in 1942 Nagi Hengsu was granted 12 cents and he has given the boundaries also. Further, the 17 cents granted to the deceased Narayana falls on the southern side of the said grant. It is in this context the objection statement filed by the Defendants includes the property of Plaintiffs also. It is in this context common objection statement is filed in the said case.

25. Even in the objection statement, Ex. P. 8 it is admitted that the moolageni lease granted by Peer Aithwamath Bawaji on 1-10-1946 as valid, legal and binding. This statement approves that the grant made in favour of Narayana is admitted and its effect is also admitted it is also admitted that the moolageni lease is entitle to sub-lease. The main defence of the Defendants in the written statement is that the moolageni lease though granted in favour of Narayana it

had become unenforceable or not in force. In the cross-examination of P.W. 1 which is relied by the learned Counsel for Defendants at para 16 to show that Plaintiffs had not raised any objection while constructing RCC buildings. However, the next sentence of the P.W. 1 clarifies that it was in respect of 35 cents in Sy. No. 134/3. It does not amount to admission by the Plaintiffs regarding possession of the Defendants. It is also not elicited in the evidence as to which portion of Sy. No. 134/3 the buildings were constructed for which Plaintiffs had not objected.

26. No doubt, the Plaintiffs claimed declaration if it is shown that they are not in possession or if it is proved that they are not in possession then, without seeking relief of possession only the relief of declaration cannot be granted. The Trial Court on the basis of the evidence has come to the conclusion that the Plaintiffs have established possession and has held that the suit maintainable. Consideration of the entire evidence, more so the entries till 1991-92 and relating to the buildings which undisputably existing on the land shows that at undisputed point of time the name of Narayana had been continued in the property register and in the assessment register.

27. Per contra, the document relied upon by the Defendants to show their possession is Ex. D. 1. As discussed above Ex. D. 1 being record of rights relating to 35 cents and showing Annappayya's name as cultivator which fact has been negated by the Competent Land Tribunal and the statement alleged to have been made before the Tribunal by Narayana referred to in Ex. D. 4 shows that, it is not an agricultural land. As far as the existing nature of the land is concerned, undisputedly it is a non-agricultural land and it is a commercial building. Physical possession of commercial building is required to be verified and from the records produced by both the parties, the evidence shows possession and enjoyment, either symbolic or actual shown by Narayana enjoyed the suit properties. The entry of his name shown in Exs. P. 3 to P. 6 and P. 9, coupled with these, the Plaintiffs have also produced the tax paid receipts at Exs. P. 22 to P. 49. No doubt they relate from 1960 to 1987. However, it is not the case of the Defendants that subsequently, they came in possession of the suit property. The documents relied by the Defendants mainly refers to the entire extent of 35 cents, when the claim of the Plaintiffs is very specific, lease deed being only in respect of 17 cents and parties having understood that land is occupied by building. The records shows that Narayana was in possession. It clearly establish that, Narayana was in possession and thereafter the Plaintiffs are in possession. There is no contra evidence produced by the Defendants to prove their possession, much less for the non-agricultural property, i.e., suit properties.

28. It is in these circumstances, the Trial Court on proper appreciation of the evidence has found that the Plaintiffs have established possession. If the Plaintiffs have established their possession, the question of Plaintiffs seeking possession as a consequential relief does not arise. It is in this regard, the judgment referred to by the learned Counsel for Plaintiffs even they are

considered, in my opinion, the legal position referred to in these decisions cannot be disputed, however, on the facts and evidence the Plaintiffs have shown their possession, hence these decisions will not be of any assistance.

29. Insofar as the contention of the learned Counsel for Plaintiffs that the evidence of D.W. 1 is not evidence in law. In my opinion, power of attorney having no personal knowledge of the things, if he deposes before the Court, it cannot be treated as a evidence of a party. However, D.W. 1 has stated that he has knowledge. It is in these circumstances, the evidences of D.W. 1 is acceptable. But even on consideration of his evidence, it will not alter the findings of the Trial Court; as the oral and documentary evidence led by the Plaintiffs prove the case of Plaintiffs.

30. For the reasons stated above, I find no merit in the appeal. Appeal fails and the same is dismissed. Since the parties are related and the circumstances shows that no cost should be awarded. No cost in this appeal.