

(2012) 01 KAR CK 0124

In the Karnataka High Court

Case No : Regular Second Appeal No. 5418 of 2009 (DEC and INJ)

M/s MSPL Limited

APPELLANT

Vs

M/s S.B. Minerals and The Controller General of Mines, The
Indian Bureau of Mines

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9
Mineral Concession Rules, 1960 — Rule 29 (1), 33
Mineral Conservation and Development Rules, 1988 — Rule 13
Mines and Mineral (Development and Regulation) Act, 1957 — Section 18, 4, 9

Citation : (2012) ILR (Kar) 1054

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : C.S. Vaidyanathan, for Sri. M.M. Swamy, for the Appellant; D.L.N. Rao, for Sri. Ananth Mandagi and Smt. S.R. Anuradha, for R1 and Sri. N. Devadas, Sr. CGSC for Sri. B. Papegowda, Sri. S.B. Kanvi and Sri. H.C. Sundares, CGSC for R2, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy

1. The defendant in O.S. No. 82/2006 on the file of the Prl. Civil Judge (Jr.Dn) and JMFC, Hospet, aggrieved by the Judgment and decree dt. 8.2.2008 allowing the suit, preferred RA 19/2009 whence the Addl. Civil Judge (Sr.Dn), Hospet reversed the Judgment and decree and dismissed the suit by Judgment and decree dt. 29.6.2009. Hence this second appeal by the plaintiff. Parties, hereinafter, are referred to as described in the plaint.

2. The panorama of factual position as set out in the pleadings of the parties is:

I. PLAINT ASSERTIONS:

i) The plaintiff is a limited company incorporated under the Companies Act, 1956

engaged in the business of mining and marketing all minerals including iron ore. One K. Narayanaiah was grantee of a lease by the then Government of Madras to mine iron ore for a period of 10 years in portions of land in Sy. Nos. 1, 4, 5 and 6 of Vyasanakere village, Hospet taluk together measuring 858 acres, said to be transferred to the plaintiff during the year 1962 by the erstwhile State of Mysore and renewed from time to time for block periods of 20 years each, the latest during June 2003 w.e.f. 14.11.2002, followed by the execution of the lease deed of M.L.No. 2416 in Form No. K under The Mineral concession Rules, 1960, for short "MC Rules" framed under The Mines and Minerals (Development & Regulation) Act, 1957, for short "MMRD Act of 1957".

ii) One B.N. Shankar Singh was granted a lease to mine iron ore in 200 acres in Sy. No. 1 of Vyasanakere village, for 29 years, in M.L.2068 under lease deed 13.10.1958. That area, allegedly is the northern portion of land in Sy. No. 1 while the grant of land in favour of Sri. K. Narayanaiah, is in the Southern portion.

iii) It is the allegation of the plaintiff that the said grantee encroached upon the plaintiff's mining area during the year 1976 and transferred the lease to the defendant-a Partnership Firm, which too continued to occupy the encroached area. The illegal act of the defendant, it is asserted, time and again was brought to the notice of the authorities of the Department of Mines in the State.

iv) Defendant's lease having come up for renewal during the year 1997, the State of Karnataka permitted the renewal subject to compliance with certain terms and conditions, one of which was, verification, after actual survey and demarcation of the area, under Rule 33 of the "MC Rules" before execution of the lease deed, since in law, it is held that every renewal is a fresh grant.

v) It is asserted that a common boundary between the two leasehold areas, was fixed after notice to both the parties and in their presence, whence the defendant's encroachment into the plaintiff's leased land was noticed and recorded in the Survey report dt. 3/17.07.1999, following which the Director of Mines and Geology by letter dt. 10.8.1999 directed it to stop illegal activity outside the mining area and show cause as to why the lease should not be cancelled.

vi) The Department of Mines and Geology, State of Karnataka, it is said, addressed a letter dt. 15.9.1999 to the plaintiff over the alleged encroachment by the defendant and directed it to maintain the boundary marks and pillars and carry on mining operations in M.L.1801 including the area encroached upon. According to the plaintiff, the Senior Geologist submitted a report dt. 9.9.1999 indicating that the plaintiff was in possession of the encroached area, after evicting the defendant therefrom.

vii) It is alleged that on the instructions of the Minister for Mines and Geology, the Senior Geologist addressed a letter dt. 14.10.1999 proposing re-survey of M.L.2068 the area leased to the defendant, pursuant thereto in a re-survey conducted on 3.11.1999 to 5.11.1999 and 16.11.1999 to 24.11.1999, after

notice to all parties, it was observed that the defendant was mining outside its area and in the leased area in M.L.1801 of the plaintiff as recorded in the three reports and combined sketches.

viii) Petitioner filed W.P.3759/2000 and obtained an interim stay of the letter dt. 22.1.2000 being an attempt of the Minister in the Government of Karnataka to once again resurvey the leased areas. That letter when withdrawn the petition was dismissed by order dt. 2.6.2003.

ix) The Director of Mines and Geology by communication dt. 18.12.2003 clarified that the defendant, during 1999, was found to be mining illegally in the plaintiff's leased area and was duly evicted.

x) The defendant instituted O.S. 174/2003 before the Addl. Civil Judge (Sr.Dn) arraigning the plaintiff in O.S.82/2006 as defendant, for injunction restraining the defendant from mining in any part of Sy. No. 1 and when the prayer for interim injunction was rejected, plaintiff preferred M.A.1 & 2/2004 before the District Judge, Bellary, which when allowed by recording a finding that the survey and demarcation was final and binding on the defendant, was unsuccessfully challenged in W.P.29997/2004 by the defendant.

xi) That, in view of the survey of the leased areas of the plaintiff and defendant effected during the year 1999, the sketch disclosed a common boundary line over the north of plaintiff's area which is to the south of defendant's area, marked with the alphabets "D" "C" in the suit sketch.

xii) Apprehending the defendant's threat to illegally dispossess the plaintiff from the leased area, the Suit was instituted for the following reliefs:

a) Hold that the line CD in the enclosed survey sketch of 199 and /or 2003 is the bifurcating line between the lease areas allowed to be mined between the plaintiff and defendant under ML Nos. 1801 (New-2416) and ML 2068 (New-2515) respectively and that each party has no right to trespass on the other party's area of lease as depicted in their respective lease deeds based on the concluded survey sketches.

aa) restraining the defendants, his agents, coolies, attorneys, henchmen, administrators, or anybody claiming on behalf of defendant from interfering with the peaceful possession and enjoyment of the suit schedule property of the plaintiff that includes the area from which the defendants were lawfully evicted on 1999.

II WRITTEN STATEMENT:

i) The plaintiff's averments are denied, while not admitting that K. Narayanaiah was granted lease of land by the Madras Government and a notification issued sanctioning mining lease over 858 acres without executing a lease deed under the Mines and Minerals (Development & Regulation) Act, 1947 r/w Mineral Concession Rules 1949 though the application for mining lease was for 120 acres

each in Sy. Nos. 4, 5, and 6 and 300 acres in Sy. No. 1 of Vyasanakere village totalling to 660 acres. According to the Defendant the area of 198 acres in excess of 300 acres in Sy. No. 1 would mean 498 acres in Sy. No. 1 was granted to the plaintiff though, B.L. Shankar Singh, its predecessor-in-interest, was granted 200 acres in Sy. No. 1, followed by execution of a lease deed on 13.10.1958 whereafterwards the State of Mysore executed the lease deed in favour of K. Narayanaiah on 6.7.1961 for 858 acres w.e.f. 14.11.1952. The transfer of the leasehold rights to the plaintiff and its renewal for 20 years, it is alleged was contrary to the grant since the original grant was for 10 years, while denying the renewals were in accordance with the Act and Rules. The renewal of the lease M.L.2416 in Form-J by notification dt. 9.6.2003 based on a modified map, is for the very same extent of 855 acres though the plaintiff surrendered a portion of the leased area.

ii) Plaintiff filed O.S.234/1966 before the Prl. Munisiff Court, Hospet arraigning B.H. Shankar Singh, as defendant for permanent injunction on the allegation of trespassing into the plaintiff's leased area and removing the iron ore, which fact when denied, the suit was dismissed, on merits, by Judgment and decree dt. 19.1.1968, affirmed by order dt. 21.1.1976 dismissing R.A.No. 13/1968, and having attained finality, the suit instituted by the plaintiff is hit by the principles of resjudicata.

iii) Defendant admits exercise of power u/s 24(1) of the "MMRD Act of 1957" by the State Government, while Rule 33 of the "MC Rules" is in relation to Survey and demarcation of the areas leased.

iv) Defendant admits the order dt. 25.2.1999 of the State government permitting renewal of lease subject to verification on actual survey and demarcation, though unnecessary, since demarcation was done at the time of the original lease and more particularly in the absence of an increase or decrease in the area of lease, as also since Rule 33 contemplates demarcation at the time of first lease and not for renewals.

v) The defendant denies that the State Government conducted a detailed survey of the leased area of the defendant and fixed common boundaries in the presence of plaintiff and defendants, after notice. Fixing of boundaries, it is stated, cannot be done by a survey of defendant's leased area alone and that defendant did protest the conducting of a survey in the absence of the revenue village map and forest map and to do so from the ridge of Kallahalli being its boundary on the eastern side of the leased area and therefore, the alleged survey not being in compliance with the statute has no sanctity in law.

vi) The Show cause notice dt. 10.8.1999 of the Director of Mines and Geology is alleged to be one without jurisdiction, since Section 21(3) of the Act invests a jurisdiction in the State to do so. In addition it is asserted that admittedly the State Government having neither issued notice over violation of Section 4 of the "MMRD Act of 1957" nor passed an order of eviction, the show cause notice is

not constitute valid notice and despite a reply by the defendant and did not culminate in an order of eviction.

vii) According to the defendant, the plaintiff having not placed relevant material constituting substantial legal evidence over the exact extents of land leased in Sy. Nos. 1, 4, 5 and 6 of Vyasanakere village, it cannot be presumed that the plaintiff and defendant have a common boundary, necessitating an enquiry into extent of area leased to the plaintiff in Sy. No. 1, as also the remaining area in Sy. No. 1 not leased and if not whether there is overlapping of the leased areas?

viii) Defendant denied the survey reports contending that they are one sided, vacillatory and inconsistent and not attained a finality, while one report indicates defendant's area to be in Kallahalli while the other that an extent of 200 acres is per sketch, while yet another states that survey was carried out only for 168 acres of the land leased to the defendant. In the absence of relevant material over the exact extent of land in Sy. No. 1 granted to plaintiff cannot base its claim for an injunction only on the survey report and an eviction notice. The Letter dt. 18.12.2003 which when responded by a reply having not attained a finality, is inconsequential.

ix) In the suit instituted by the defendant, the plaintiff having undertaken not to interfere with the defendant's leased area there was no necessity to challenge the order rejecting interim injunction. However the order directing both the parties to secure a survey of the leased areas, was not set-aside by the High Court in the writ petition filed by the plaintiff, but, parties were permitted to file application under Order 26 Rule 9 CPC, for appointing a commission to survey the leased areas.

x) In the written statement to the amended plaint, the defendant denied the existence of line "D" "C" as the bifurcating boundary line between the two leased areas of the parties. The survey conducted during the year 1999, it is stated, is not statutory and the alleged joint survey to fix a common boundary is one without notice to the defendant, and hence cannot constitute a legal and valid basis for the plaintiff's claim for declaration. In addition, it is stated that in the absence of the exact extent of area leased in Sy. No. 1 in favour of the plaintiff the alleged demarcation of the leased areas of both the plaintiff and defendant in the plaint sketch, delineated by alphabets "ABCD", "FEDC and "PQRS" are not admitted. It is submitted that the sketches are contrary to the sketch appended to M.L.1801 (New No. 2416). In the absence of identity of the exact extent of area in Sy. No. 1 leased to the plaintiff, is not entitled to the relief of declaring the line "DC" as the bifurcating line between the leased areas of the plaintiff and defendant.

3. The trial court in the premise of pleadings of parties framed the following issues:

1. whether the plaintiff proves that he is lawful possession over the suit schedule property as on the date of suit ?

2. whether the plaintiff proves alleged interference of the defendant over the suit schedule property ?
3. whether the suit in the present form not maintainable ?
4. whether the suit is bad for non joinder of necessary party ?
5. whether plaintiff is entitled for the relief sought for?
6. What decree or order ?

ADDITIONAL ISSUES FRAMED ON 13.7.2007:

1. Whether Plaintiff proves survey effected in the year 1999 become final and the line "DC" as per they survey sketch is the bifurcating line between the area leased to the parties ?
2. Whether Plaintiff is entitled for the relief as sought in para 23(a) of the plaint ?

ADDITIONAL ISSUES FRAMED ON 04.08.2007:

1. Whether the Plaintiff proves that the disputed area denoted by letters PQRS is within the area leased to plaintiff as per the lease deed as is being contended by the plaintiff ?
2. Whether the suit is barred by the principles of resjudicata in view of the dismissal of earlier suit in O.S.No. 234/1966 and regular appea in R.A.No. 13/1968 of the plaintiff as filed against the predecessors in interest of the defendant ?
4. Parties entered trial whence plaintiff examined one M. Venkataiah, its Executive Director of plaintiff as PW-1 and another Dr. Jarayam, retired Sr. Geologist as PW-2 and marked 40 documents as Exs. P1 to P40, while for the defendant one B.B. Anand Kumar-partner of defendant firm, was examined as DW-1 whence 17 documents were marked as Exs. D1 to D17. The trial court marked nine documents in "Q" series as Q1 to Q9.
5. The trial court by Judgment and decree dt. 8.2.2009 answered in the affirmative issues 1, 2 and 5 and additional issue Nos. 1 and 2, as also additional issue No. 1 framed on 4.8.2007, and in the negative issue Nos. 3, 4, additional issue Nos. 2 and 3 framed on 4.8.2007 while issue No. 6 was answered decreeing the suit.
6. Defendant aggrieved by the Judgment and decree filed R.A.19/2008, and obtained an order dt. 12.3.2008 directing stay of the Judgment and decree of the trial court, which when called in question in W.P.4583/2008 filed by the plaintiff, this court by order dt. 26.9.2008 though quashed the order, nevertheless directed the Director, Department of Mines and Geology, Bangalore to identify and demarcate the boundary lines.
7. The first appellate court framed the following points for consideration:

1. Whether the Trial Court has erred in appreciating the evidence on record in coming to the conclusion of Issue No. 1 regarding lawful possession over the suit property ?
2. Whether the surveys conducted in 1999/2003 could be considered as statutory surveys ? If not whether they are proved as required under law ?
3. Whether the plaintiff has established that the defendant was evicted from the encroached area of the leasehold area of the plaintiff under due process of law ?
4. Whether the Trial court fell into error by adopting the procedure of marking questioned documents as Q-1 to 3 and relying on it to arrive at conclusion ?
5. Whether the description of the property is vague and could not identified properly?
6. What Order ?

and answered points 1, 4 and 6 in the affirmative, while points 2, 3, and 5 in the negative, set-aside the Judgment and decree of the trial court and accordingly allowed the appeal. Learned Sr. counsel for the parties submit that in Special Leave to Appeal (Civil) No. 35304/2009 filed by the defendant, the Apex Court by order dt. 2.8.2010 requested the learned Judge to hear and dispose of the Second Appeal as expeditiously as possible.

8. Having heard the learned Sr. counsel for the parties, this court on 8.10.2009 framed the following substantial question of law:

i) Whether the areas delineated in the mining lease "plans" or sketches (which are drawn to scale) appended to the respective lease deeds of the parties as demarcated on the ground would take precedence over the extent of the mining lease in acres mentioned in the lease deeds of both the plaintiff and the defendant ?

ii) Whether in the light of judgment of the Judicial Committee of the Privy Council in AIR 1931 18 (Privy Council) , relied on by the Hon'ble supreme Court in Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others, , possession in the context of a mining lease ought to be determined solely by examining whether the Defendant was actually engaged in mining in the disputed area ? and

iii) Whether the results of a survey, which is said to be a statutory survey and demarcation, re-survey and re-demarcation of the mining lease area of the defendant and its renewal in the year 1999, was binding on the defendant under Rule 33 of the Mining Concession Rules, 1960?

The following additional substantial question of law was framed on 3.4.2010:

Whether the findings of first appellate Court are perverse ?

9. This court on 11.12.2009 having heard the learned Sr. counsel for the parties observed that the appeal aimed at resolution of the dispute as to whether or not

the defendant is actually occupying the mining area of the plaintiff based on survey reports, on record coupled with the fact that the lower appellate Court held that the defendant was mining outside its leased area but not within the plaintiff's mining area, being shocking and unfortunate, in order to aid the court in disposing of the appeal in accordance with the actual fact situation and rights of parties in the light of the "convoluted and verbiage pleadings and contentions" directed the Controller General of Indian Bureau of Mines to identify the area over which the mining operations are carried on by the defendant as observed by the trial court and the lower appellate court so as to ensure mining operations are carried on in accordance with mining plan, and file a report and issue orders as warranted in terms of Rule 13 of the Mineral Conservation and Development Rules, 1988. That order was carried in SLP No. 35304/2009 whence the Apex Court by order dt. 8.1.2010 recorded the undertaking of the learned counsel for the parties that they would argue the matter without seeking an adjournment and accordingly requested this court to hear this appeal on 27.1.2010. On that date counsel for the appellant/plaintiff filed an application for a direction to the India Bureau Mines to file the report in compliance with the order dt. 11.12.2009. The learned Sr. counsel having made a request to hear the appeal on its merit after the IBM files its report, this court by order dt. 27.1.2010 rejected the review of the earlier order dt. 11.12.2009 and listed the appeal for hearing on 29.1.2010. IBM having filed its report, the parties were permitted to file their respective objections. IBM having filed an Miscellaneous (Civil) 103180/2010, for permission to file a detailed report by withdrawing the earlier report submitted on 2.2.2010, was allowed by order dt. 3.4.2010.

10. Heard the learned senior counsel for the parties, perused the pleadings and examined the Judgment and decree of the courts below.

RE: RELIEFS IN THE SUIT:

11. The reliefs in the Suit are: (i) to declare the line delineated with alphabets "D" and "C" in the hand sketch, said to be the survey sketch of 1999/2003 as the bifurcating line between the two leased areas; and (ii) for an injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property including the area from which the defendant was allegedly evicted.

RE: ASSERTIONS OF THE PLAINTIFF:

12. It is the submission of Sri. Vaidyanathan, learned Sr. counsel for the appellant that the pleadings establishes a common boundary line "D" and "C" as set out in the hand sketch appended to the plaint, since the plaintiff is granted lease of portions of land in Sy. Nos. 1, 4, 5 and 6 of Vysanakere village totalling to 858 acres bounded on the north by part of Sy. No. 7 and 1; south by village No. 114 Dhanapur & Sandhur; East by Sy. Nos. 6, 5 43 & 2. While defendant is granted lease of 200 acres of land in Sy. No. 1 of Vysanakere, bounded on north by boundary limits of Jambunathahalli; South by the remaining portion of Sy. No.

1, East by U.B. Kalahalli and West by Sy. Nos. 7 and 1 of Vyasanakere.

13. The thrust of the case of the plaintiff over the identification of the southern boundary of the defendant's leased land allegedly the northern boundary of the plaintiff's leased land, is primarily on the survey sketches Ex. P6 appended to the plaintiff's lease deed Ex. P5; Copies of "combined sketch" Ex. P8 and P31 of both leases, showing "handle and knife"; composite sketches Ex. P10 and Ex. P33 indicating mineral leases of the parties showing handle and knife"; survey sketch Ex. P11 and P29 of the area leased to the defendant; Ex. P24(a) the survey and demarcation of plaintiff's lease area; Survey sketches Ex. P24(b) and Ex. P30 demarcating the area of plaintiff's leasehold and indicating in Ex. P30 the area as "handle and knife"; Ex. P35 survey sketch appended to the lease deed dt. 13.1.1958 in favour of the defendant's predecessor in interest.

14. As regards a survey in the presence of both the parties in respect of both leased areas, plaintiff places reliance upon Ex. P20 dt. 9.9.1999; Ex. P9 dt. 8.12.1999 and Ex. P29 letter dt. 8.12.1999 and Ex. P28 order dt. 6.6.2007; Ex. P31 dt. 3.7.1999/17.7.1999 in W.P.19790/2005.

15. The assertion that the defendant was winning the iron ore, by encroaching upon the petitioner's leased area, whence, duly evicted by the State government is based upon the letter dt. 10.8.1999 Ex. P18; the show cause notice Ex. P20 dt. 9.9.1999 of the Sr. Geologist for having held an inspection on 8.9.1999 without intimation to the parties; and the letter dt. 15.9.1999 Ex. P21.

16. In support of the submissions that

i) if a piece of land is shown with definite boundaries, the rule of interpretation is that the boundaries must prevail as against the measurements and;

ii) that a map referred to in a lease should be treated as incorporated in the lease and as forming part of the said document, when drawn to scale and the boundary clearly demarcated, deserve acceptance, though the question is really one of fact;

reliance is placed on the following reported opinions:

i) The Palestine K upat Am Bank Co-operative Society Ltd -v- Government of Palestine and others AIR 1948 PC 207 (From Palestine), it was observed, on facts, that the boundaries are described as such in the grant and that they are related to the points of compass in a manner appropriate to denote that they are boundaries in fact and therefore, the circumstance that they are separate rather than continuous features can have little weight having regard to the rough and uncultivated nature of most of the ground which lay between them and that the discrepancy between the area thus bounded and the area as stated is substantial. The Privy Council noticed that the errors of description appear to have been notorious in the Turkish Empire before the days of precise surveying and Article 47 of the Ottoman Land Code made provision, in the case to which it applies, to the effect that the areas stated should be ignored where boundaries

had been fixed and pointed out.

ii) K.S. Nanji and Company Vs. Jatashankar Dossa and Others, at paragraph 9 it is observed thus:

9. It is well settled that a map referred to in a lease should be treated as incorporated in the lease and as forming part of the said document. In this case the maps accepted by us are drawn to scale and the boundary is clearly demarcated. The Courts were, therefore, certainly right in accepting the boundaries drawn in the plan without embarking upon an attempt to correct them with reference to revenue records. The question really is one of fact and we accept the finding.

iii) The observation of the Apex Court in Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, at paragraph 15 reads thus:

15. xxx. The plaintiffs ought to have filed map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to promptly. The default or carelessness of the parties does not absolve the trial Court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming subject-matter of the suit being filed. This is the first error.

iv) In Raghunandan Thakur Vs. Babu Kishundeo Narain Mahta and Others, , it was observed that there can be no dispute that where a land conveyed is described by boundaries as well as by area, if there is a difference between the boundaries and the area, it is settled law that the land actually comprised within the boundaries will be treated to have been conveyed.

v) In Subbayya Chakkiliyan -v- Manjam Muthia Goundan and another 1924 MAD 493, it was held thus:

Ordinarily when a piece of land is sold with definite boundaries, unless it is very clear from the circumstances surrounding the sale that a smaller extent than what is covered by the boundaries was intended to be sold, the rule of interpretation is that boundaries must prevail as against the measurements.

vi) In Dharmakanny Nadar Siviseshamuthu and Others Vs. Mahalingam Nadar Gopalakrishna Nadar and Others, , it was held that where the boundaries in a document are vague and indefinite, the area should prevail but where the boundaries are specific and definite, the area must be taken as having been given approximately vide Bhola Nath Chattopdhyay Vs. Mrityunjoy Chattopdhyay and Others, and following the decision in Subbayya Chakkiliyan -v-Manjam Muthia Goundan and another (supra).

vii) In T. Rajlu Naidu -v- M.E.R. Malak AIR 1939 Nag 197 is that in case of a discrepancy between the dimensions and boundaries the rule is well established that the area specified within the boundaries will pass, whether it be less or more

than the quantity specified.

viii) The Madras High court in D. Kondal Rao Naidu and Another Vs. Dhanakoti Ammal, observed that if it was a sale of an exact area, but the sale deed by its verbiage would so have described it and it has not done so. It has described it actually by metes and bounds as plaintiff 2 acknowledges, and the result therefore is that the plaintiffs' claim fails and the suit is dismissed with costs.

ix) The Apex Court at paragraph 5 of its opinion in Subhaga and Others Vs. Shobha and Others, observed that a commission when issued for demarcating the plot No. 1301/1 Ba and the Commissioner showed the disputed area in the map prepared by him, the lower appellate court while considering the question of identification had referred to the description of the boundaries in the plaint, the admissions of one of the defendants as DW-1 and the report and plan submitted by the Commissioner to conclude that the disputed constructions lay in the suit land and it belonged to the plaintiff.

x) A Division Bench of this Court in Writ Appeal No. 741/2009 DD 24.4.2009 in the case of K. Ramesh -v-Director of Mines & Geology, having regard to the facts of that case held that it cannot pass an order for modification of the area as shown in the sketch appended to the notification and that Rule 55 of the Karnataka Minor Minerals Concession Rules 1969 empowers the competent authority to rectify the apparent mistakes, while Rule 56 confers power on the Government to relax in special cases and as the writ petitioner had not made application to the respondent for modification of the sketch appended to the lease deed and renewal, question of declaration as sought for in the petition was unavailable.

xi) The Apex Court in Kashi Bai Vs. Sudha Rani Ghose and Others, declined to accept the plea that for the purpose of adverse possession over a coal mine, it was not necessary that it should have been worked for 12 years continuously and sufficient if the appellant had carried out mining operations for period of 12 years even with long stoppages to conclude that during the period when there is no mining operations, no kind of possession of the appellant was proved and therefore, presumption of law is not rebutted that during the period when operations had ceased to be carried on, the possession would revert to the true owner.

xii) In Rally Churn Sahoo and others -v- The Secretary of State for India in Council ILR 1881 725 734, it was observed thus:

A man may have been in possession of cultivated land fifteen years ago, by reason of his absence from home, or from droughts or some other cause, he may have ceased to occupy it, and left the place for years. On his return he finds a wrong doer in possession, and brings a suit to eject him. It seems to me that it would be under such circumstances, a monstrous injustice to say that the burden of proving exactly when the defendant took possession should be thrown upon the plaintiff.

RE: GENERAL PRINCIPLES OF SURVEY AND MAPS:

17. Undoubtedly a map is a representation, usually on a flat surface, the whole or a part of an area shown by printing on paper or a digital map built pixel by pixel on a screen of a computer. It is trite that a map or plan is a form of statement, combining a diagram and description which ordinarily is proved by the direct oral evidence of the map maker himself. In case of landscape being mountainous terrain, the data collected with certain tools, contains errors and inaccuracies. Data or cartographic errors could result in a certain village not being exactly where the map shows or a mountain peak not being exactly as high as it appears on the map.

18. Surveying or land survey, it is needless to state is the technique and science of accurately determining the terrestrial or three dimensional position of points and distances and angles between them. These points are usually on the surface of the earth and they are often used to establish land maps and boundaries are for ownership purpose. Needless to state that the job of a land surveyor is to retrace legal descriptions from the deed belonging to the subject property by locating actual reference monumentation and verifying its correct position. A Land surveyor, in short, is an investigator of evidence, and creates evidence on and under the ground to reference/preserve/perpetuate existing evidence. In other words, the surveyor provides evidence that can be ruled on by a Judge in a court of law. It is in the circumstances the survey marker is of the highest priority as evidence of the boundary, unless evidence exist to show it was moved. References to nearby survey numbers are essential when determining the "preponderance of evidence" to set the legal boundary of lands. Surveyor's opinion is valuable as evidence for legal boundary decisions to legally set the boundary dispute.

19. Maps and surveys made in India for revenue purposes or official documents prepared by competent persons with such publicity and notice to persons interested will be admissible and are valuable evidence of the state of things at the time they are made, but are not conclusive and may be shown to be wrong.

20. A map by itself is nothing but statements made by the maker by means of lines and pictorial representation instead plaintiff by word of mouth as to the state or configuration of a particular site and the objects standing thereon. To admit any evidence a map without calling the maker thereof is the same as admitting in evidence statement made by a third party who is not called as a witness. In other words it amounts to admitting hearsay. Mere proof of the map itself is only proof of the facts that the map was prepared by the maker thereof. It is not proof of the correctness of its contents and therefore, the mere proof of the map u/s 11 cannot make it admissible in evidence as to the correctness of its contents without calling the maker thereof." These are the observations of the Calcutta High Court while making reference to Sections 35 and 11 of the Evidence Act, 1872 in the case of Dwijesh Chandra Roy Vs. Naresh Chandra Gupta, . In Ram Kishore Sen and Others Vs. Union of India and Others (UOI), at

Paragraphs 11 and 12, a Constitution Bench of the Apex Court observed thus:

(11) The question about the admissibility of the map has to be considered in the light of S.36 of the Evidence Act. The said section provides that:-

Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or places, are themselves relevant facts.

The map in question clearly does not fall under the latter category of maps; and so, before it is treated as relevant, it must be shown that it was generally offered for public sale. Since the learned Judge has rejected the statement of Mr. Gupta on this point, this requirement is not satisfied. We see no reason why the view taken by the learned Judge in regard to the credibility of Mr. Gupta's affidavit should be reversed. So, it follows that without proof of the fact that the maps of the kind produced by the appellants were generally offered for public sale, Ex. A-1 would be irrelevant.

(12) It is true that S.83 of the Evidence Act provides that the Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and accurate; but maps or plans made for the purpose of any cause must be proved to be accurate. The presumption of accuracy can thus be drawn only in favour of maps which satisfy the requirements prescribed by the first part of S.88. Exhibit A-1 obviously does not fall under the category of the said maps, and so, there can be no question of drawing any presumption in favour of the accuracy of the said map. In fact, as we have already indicated, the learned Judge has given very good reasons, for showing that the map does not appear to be accurate. Therefore, even if the map is held to be relevant, its accuracy is not at all established; that is the conclusion of the learned Judge and Mr. Mukerjee has given us no satisfactory reasons for differing from the said conclusion.

21. Section 83 of the Evidence Act lays down that Court shall presume that maps or plans purporting to be made by the Central government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Accurate means accuracy of the drawing and correctness of the measurements.

RE: PROVISIONS RELATING TO MAPS, SECTIONS AND SURVEY UNDER "MC RULES" & "MCD RULES":

22. Since the parties are recipients of mining lease of large extents of land in Bellary for mining iron ore, as demarcated in the maps enclosed to the lease deeds, it is needless to state that they have a right to carry on mining operations in the land on surface or subsoil to extract mineral form therein, to remove an appropriate that mineral as envisaged u/s 9 of the "MMRD Act, 1957". The

removing and consuming of the mineral, meaning a destruction of the estate leased and appropriation thereof on payment of consideration, is a right to enjoy immovable property within the meaning of Section 105 of the Transfer of Property Act. 1882.

23. Rule 22-A under Chapter IV of the "MC Rules" providing for grant of mining leases in respect of land in which minerals vest in the government, states that mining operations shall be undertaken in accordance with the duly approved mining plan, while, Rule 22-B requires the plan to be prepared by a qualified person duly recognised in that behalf by the Central Government. Iron ore falling under part-C of the I Schedule to the "MMRD Act of 1957" requires the submission for approval the mining plan through the authority notified by the Controller General of Indian Bureau of Mines or by the State Government, as mandatory by Rule 22(bb)(i).

24. Rule 27 provides for conditions of every mining lease whereunder clause (g) of Sub-rule (1) requires the lessee at its expense to erect and maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed to the lease, while clause (u) requires the lessee to comply with the Mineral Conservation and Development Rules, for short "MCD Rules", framed u/s 18 of the "MMRD Act of 1957".

25. The second proviso to Sub-rule (1) of Rule 29 states that when a lessee applies for surrender of the whole or a part of the lease-hold area, permission can be granted only if the State Government is satisfied that:-

- a) The lease-hold area to be surrendered has been properly surveyed and is contiguous;
- b) The lessee has paid all the dues to the Government under the lease up to the date of application and;
- c) The lessee has obtained a certificate under Rule 29-A (inserted w.e.f. 10.4.2003). Sub-rule (2) states that every application for surrender of a part of lease-hold area in accordance with provisions of sub-rule (1) shall be accompanied by a deposit of Rs. 200/- for meeting the expenditure for the purpose of survey and demarcation of the area to be surrendered.

26. Rule 29-A (inserted w.e.f. 10.4.2003) provides for closure only after a mine closure plan is duly approved by the regional controller or authorised officer of the State Government. Rule 33 provides for survey and demarcation of the area granted under lease by the State Government.

27. Chapter IV of the "MCD Rules" provides for plans and sections while Sub-rule 1 of Rule 27 stipulates the general requirement about plans and sections. Sub-rule (2) requires the plans and sections to be compliant with the conventions prescribed under the Metalliferous mines Regulations, 1961, while sub-rule (3) requires the plans and sections to be accurate within such limits of error as the Controller General may specify by a general or special order.

28. Rule 28 specifies the types of plans and sections to be kept at every mine. Sub-rule (5)(a) requires a key plan on a scale of 1: 63000 or 1: 50000 incorporating the administrative surface map showing the boundaries of the mining lease, and the adjoining area lying preferably within five kilometers thereof; contours at not more than 20 mtrs intervals; natural drainage system such as rivers, streams etc.; roadways and railways, forest with trees; boundaries of all villages and towns with their population, while, clause (g) mandates an environmental plan of the area of mining lease inclusive of the adjoining area within 500 mtrs of the boundary of a leased area in 1:5000 scale incorporating amongst others, the area occupied by the mine working area covered by the dump etc. Rule 29 requires the owner or mine engineer or manager to submit to the Controller General on or before the 30th of June of every year copies of the plans and sections.

RE: APPRECIATION OF MATERIAL ON RECORD:

29. An examination of Ex. P5 lease deed dt. 31.7.2003 executed by the Mines and Geology Department of the State of Karnataka in favour of the plaintiff discloses it to be the third renewal in respect of lands measuring 858 acres in parts of cadastral survey numbers 1, 4, 5 and 6 of Vysanakere, Hospet taluk, Bellary district bounded on the North by part of Sy. No. 7 and 1; South by village No. 114 Dhanapur and Sandur taluk; East by No. 97 of Kallahalli and West by part of sy.No. 6, 5, 4, 3 and 2, delineated in the plan annexed and coloured in red. The lease deed is in Form No. K to the "MC Rules" the covenants of which disclose compliance with the requirement of "MC Rules" and "MCD Rules". The plan Ex. P6 annexed to the lease deed indicates the marking of the magnetic north and prepared to the scale of 1"=10 chains and the boundaries delineated with the alphabets A to A1, A2 and A3, B to H, H1 and J with the junction point at "A", the area delineated with the alphabet C1, C2, C3 and C4 though shown to be on the north of Sy. No. 1 and area leased to the plaintiff, no explanation is forthcoming over its identity.

30. Medha Venkataiah, the plaintiff's Executive Director was examined as PW-1, while the Sr. Geologist since retired from Government of Karnataka was examined as PW-2. Both witnesses testified to the fact that prior to the third renewal of the lease in favour of the plaintiff an extent of 50 hectares or 125 acres from out of the leased area of 858 acres was surrendered and that the exact extent of land in each of the survey numbers leased to the plaintiff is not specifically mentioned either in the lease deed or the plan Ex. P5 and P6 respectively. In addition, PW-2 though admits in cross-examination that he has not conducted a survey or demarcation of the area leased to the plaintiff and that he has no expertise in survey of lands, nevertheless, testifies to have carried out a survey and mine working and allied infrastructure of the area leased to the plaintiff from 2.12.1999 to 7.12.1999. According to PW-2 a railway line runs within the plaintiff's leased area on the western margin and the plaintiff has maintained the lease boundary stones parallel to the railway line leaving a gap of

150 ft covered by afforestation and measures about 50 acres.

31. In the backdrop of evidence both oral and documentary, what is apparent is that the plan Ex. P6 annexed to the lease deed Ex. P5 said to represent the whole or part of the lands in cadastral survey numbers, 1, 4, 5 and 6, the areas leased under lease deed Ex. P5, in favour of the plaintiff is not rule compliant and not being accurate coupled with the maker of Ex. P6 not being examined to prove its content since made for a specific purpose of mining operations, is not proved as required by Section 83 of the Evidence Act, 1881. The plan Ex. P6 is not shown to be accurate both in drawing and correctness of measurements hence mere proof of plan u/s 11 of the Evidence Act cannot make it admissible in evidence as to correctness of its content. The observations of the High Court of Calcutta in Dwivedh Chandra's case supra is applicable on all its fours.

32. Ex. P7 notification dt. 25.2.1999 accords sanction for renewal of defendant's mining lease for a period from 13.1.1997 to 12.1.2007 subject to actual survey and demarcation. Ex. P8 is said to be a sketch describing the areas leased to the defendant and the plaintiff while Ex. P8(a) is the signature of PW-2 and Ex. P8(b) is the marking showing the defendant's encroachment into the plaintiff's leased area. Interestingly Ex. P8 does not bear a date nor is compliant with either "MC Rules" or "MCD Rules". The maker of the sketch is not examined nor relevant material produced to establish the reasons for preparation of such a sketch. In fact PW-2 in cross-examination admits that though the State Government had directed a survey and preparation of a composite sketch of the two leased areas, nevertheless was not complied with in view of an interim order of stay of this court. Yet again in the absence of separate plans demarcating the leased areas, compliant with MC Rules and MCD Rules Ex. P8 plan is inadmissible in evidence. Ex. P31 plan is said to be the very same plan Ex. P8, hence also not admissible in evidence.

33. Ex. P9 is a letter dt. 8.12.1999 of the Sr. Geologist examined as PW-2, addressed to the Director, dept of Mines and Geology Government of Karnataka in response to the HO letter dt. 30.10.1999, following which a survey of plaintiff's leased area was carried out from 2.12.1999 to 7.12.1999, whence, mine working, iron ore beneficiation plant, screening plant, office and other dwellings, iron ore stock yard, railway line, etc., are mapped and plotted on the leased sketch. The railway line though on the western margin, the plaintiff is said to have maintained boundary stones parallel to it at a distance of 100 ft, while the actual boundary is far away to the west beyond the railway line. In addition, it is stated that the plaintiff's mine working in Sy. No. 1 is in continuity with that of the defendant and extends in a south easterly direction to a length of 2640 ft. comprising an area of 40 acres. Ex. P10 is the "composite sketch" showing the mining lease of both the parties and dated "8/12", plotting the mine working and developed area in the form of "handle and knife". The sketch Ex. P33 is said to be the very same Ex. P10 sketch.

34. PW-2 having spoken to Ex. P9, P10 and P33 admits neither to be a qualified

surveyor or conducted the survey, but it was the surveyor who did the mapping and making of the "handle and knife". PW-2 admits that a mahazar was not drawn over the conducting of a survey muchless the mapping of the developed area and mine working or the "handle and knife" which are admittedly not set out in the report Ex. P9. PW-2 further admits that no notice was issued to the defendant over the survey and preparation of the composite sketch of both the leased areas and that neither MC Rules nor MCD Rules prescribe the conduct of a survey of more than one leased area or preparation of a composite sketch of two or more leased areas, together. PW-2 specifically admits not to have carried out a survey or demarcation of the defendant's leased area. Admittedly the letter dt. 30.10.1999 of the HO of which reference is made in Ex. P9 said to be instructions to PW-2 is not forthcoming.

35. In the circumstances, the sketches Exs. P10 and P33 are not worthy of acceptance as relevant material. But, what emanates from Ex. P9 report is that for the first time the department of Mines and geology, Government of Karnataka observed the railway line passing through the areas leased to the plaintiff, being portions of lands in Sy. Nos. 1, 4, 5, and 6 of Vysanakere totalling to 858 acres. An extent of 50 acres is said to cover the railway line which is more in the nature of an approximation in the absence of a survey and demarcation resulting in an inaccurate plan with incorrect measurements leaving room to doubt the veracity of the demarcated areas leased to the plaintiff for mining activity.

36. Ex. P32 letter dt. 8.12.1999 of the Sr. Geologist-PW-2 addressed to the Mines and Geology, Government of Karnataka makes reference to HO letters dt. 10.9.1999; 13.10.1999; 27.10.1999 and 30.10.1999 and states that when parties were requested, their representatives met him on 15.10.1999, in connection with survey and demarcation of the defendant's leased area, whence they were directed to submit plans, maps, documents, etc. Defendant is said to have submitted the revenue map of Sy. No. 1: forest map; notification dt. 25.9.1956 and; a ground reality map. It is further stated that defendant abstained from the survey, demarcation and plotting of mine working from 3.11.1999 onwards when it was found that the defendant's mine working in the form of open cast mine measuring 27 acres was located about 300 mtrs. South of its southern boundary and inside the plaintiff's leased area.

37. PW-2's testimony clarifies that Ex. P9 report is over the sketch Ex. P10, while Ex. P32 report is over the sketch Ex. P33. PW-2 states that he affixed his initial on Ex. P10 sketch on 8.12.1999 and affixed his full signature on Ex. P33 sketch. In addition PW-2 admits that the report Ex. P32 was signed by him as also by the Geologist of the Research and Development Head Office, bangalore, the Asst. Engineer, Research and Development Head Office, and Asst. Engineer of Dept. of Mines & Geology. Hospet on 27.11.1999.

38. The contents of the reports Ex. P9 and Ex. P32 though, of even dated 8.12.1999 are at variance. In Ex. P9. It is stated that plaintiff's mine working and developed area lies in a south easterly direction to a length of 2640 ft.

comprising approximately 40 acres, while, in the report Ex. P32 it is stated that the defendant has encroached upon the plaintiff's area of 27 acres in the form of an open cast mine located 300 mtrs away from its southern boundary, amongst other vascillatory statements. If truly the survey of both the leased areas was carried out why then the necessity for two reports Ex. P9 and P.32 and two maps Ex. P10 and P33 describing the areas differential. It is intriguing to note that though the map Ex. P9 and P33 were signed by PW-2 on 8.12.1999 nevertheless Ex. P32 is signed on 27.11.1999, the maker of the maps, admittedly, is not examined. Since PW-2 admits to have no experience in survey and demarcation and that the mapping of "handle and knife" was made by the surveyor who is not examined, neither the reports Ex. P9 and P32 or the maps Ex. P10 and P33 are admissible in evidence.

39. Ex. P29 letter dt. 8.12.1999 of the Sr. Geologist (PW-2) addressed to the Director of M&G. Government of Karnataka makes reference to HO letters dt. 10.9.1999: 13.10.1999 and 30.10.1999 said to be instructions to resurvey and demarcate the area leased to the defendant which was carried out on 3.11.1999 to 5.11.1999 and 16.11.1999 to 24.11.1999, it is further stated that survey team from the Head Office comprising of a) Basavaraj, the Geologist; (b) Saiffulla, the Asst. Engineer carried out the survey by reckoning revenue point "X", the tri-junction point and that the original lease was for 168 acres in Sy. No. 1 and not 200 acres and that the defendant's mine working was within the plaintiff's leased area.

40. This report is akin to the reports Ex. P9 and P32 and hence deserves to be rejected. Even assuming Ex. P11 sketch though dated "28/11", without disclosing the year, to be an accompaniment of Ex. P31 report, nevertheless in the absence of the evidence of the maker of the map, the contents having not been proved, does not constitute evidence as contemplated by Section 83 of the Evidence Act deserving acceptance.

41. So also Ex. P31 is said to be a report dt. 3.7.1999/17.7.1999 of PW-2 stating that resurvey work of defendant's leased area (M.L. Block No. 2068) was carried out intermittently from 21.4.1999 to 20.5.1999 by using a theod light and adopting a tacheometry method. Though the defendant sought commencement of the survey from the ridgeline diving Kallahalli and Vyasanakere village, being more accurate in ascertaining the true boundaries of the defendant's leased area, nevertheless was commenced from the definite revenue points available, since when representatives of both the parties were present "during the fixing up of the common boundary line" "no definite reserve point existed nearby M.L.No. 2068". In the absence of the surveyor who is said to have fixed the common boundary line though without a definite point existing near the defendant's leased area, the report Ex. P31 is inadmissible in evidence.

42. The letter dt. 18.7.2003 Ex. P24 of the Deputy Director addressed to the Director of Mines and Geology, Government of Karnataka, contains enclosures being a report Ex. P24 (a) and a sketch Ex. P24(b) said to be in compliance with

the letter dt. 9.7.2003 of the director. Ex. P24(a) report states that the survey of the land leased to the plaintiff as shown in the sketch Ex. P24(b) was carried out on 15.7.2003, 16.7.2003 and 17.7.2003 in the presence of one S.S. Hiremath, the Deputy Director; Medha Venkataiah (PW1); P.N. Krishnamurthy, the Mines Manager; Muralikrishna representative of the plaintiff and C. Baasavaraju, the Jr. Engineer by reckoning permanent point "A" i.e. Sandur zamindari, Vyasanakere village and Dhanapur village indicating stations and station points, bearings in angles and distance in chain. The sketch Ex. P24(b) signed by the Asst. Engineer and Deputy Director demarcates an area of 858 acres (347.22 hectares) in portions of Sy. No. 1, 4, 5 and 6 of Vyasanakere village leased to the plaintiff.

43. Apparently the Dept. of Mines and Geology of the State of Karnataka is not a party defendant in the Suit. The plaintiff being the dominus litis having chosen not to arraign the department as a defendant, nevertheless, also did not call for records from the department nor chose to examine the Deputy Director who addressed the letter Ex. P24 or the surveyor who conducted the survey of the plaintiff's leased area and prepared the sketch Ex. P24(b). In addition though Ex. P24 makes reference to a letter dt. 9.7.2003 of the director, Mines and Geology said to be the precursor for the survey and demarcation of the plaintiff's leased area, that letter too is not forthcoming from the records.

44. Although learned Sr. counsel for the plaintiff placed reliance on the reported opinions to buttress his argument that in the vent of a dispute over the extent of land leased it is the boundaries that prevail, I am afraid none of the decisions advance the case of the plaintiff. From a perusal of "M.C. Rules" and MCD Rules", it is obvious that a plan of the mining area given on lease must be accurate both the drawing and correctness of measurement. The exact measurement of lands leased in portions of cadestral survey numbers 1, 4, 5 and 6 of Vyasanakere are not forthcoming; that a railway line runs within the plaintiff's leased area is not disclosed in the plan Ex. P6; that after the surrender of 50 hectares (125 acres) of leased area the total extent of leased area ought to be reduced to 733 acres (858 acres - 125 acres). The surrender of lease area is undoubtedly regulation by Rule 29(1) of "MC Rules" calling forth a survey of the said area and making an appropriate application enclosing the certificate issued under Rule 29(A). Chapter IV of the "MCD Rules" envisages the general requirements of plans and sections, so as to ensure that mining area is clearly and correctly demarcated both on the drawing and the measurements. In that view of the matter, the observations in the reported opinions are inapplicable to the facts of the case.

45. Regard being had to well established law the sketches annexed to the lease deeds executed by the Department of Mines and Geology, Government of Karnataka, in favour of the parties, not shown to be substantiated on actual survey, accurate drawing as also correctness of measurements, coupled with the failure to produce the field book effects over survey conducted by the surveyors, who are not examined as witnesses, none of the maps or sketches were proved

in evidence. MW-2 Sr. Geologist having no knowledge of conducting the survey, his testimony is not in the direction of establishing the accuracy and correctness of the measurements in the sketches. The discrepancies between the areas bounded in the maps enclosed to the lease deeds and the survey sketches being substantial, and the boundaries when not accurate to points of compass in a manner provided to denote them as boundaries, in fact, no reliance can be placed on the sketches marked in evidence. Yet again the opinion of the Calcutta High court in Dwidish Chandra and that of the Apex Court in Ram Kishore apply on all their fours.

RE: SHOW CAUSE NOTICE:

46. Ex. P18 is a notice dt. 10.8.1999 issued by the Director of Mines and Geology, Government of Karnataka calling upon the defendant to show cause as to why the mining lease should not be cancelled for encroaching upon the plaintiff's mining area in breach of Part VII Para 2 of the lease covenants, failing which action would be initiated in accordance with rules. A copy of the notice addressed to the plaintiff for information contains a foot note warning it to maintain boundary marks and pillars according to the demarcation and a direction to the Sr. Geologist, Hospet to inspect the area and observe whether the defendant had stopped the illegal mining outside its leased area and to submit a report.

47. Ex. P37 letter dt. 4.9.1999 of the defendant addressed to the Director, Dept. of Mines and Geology is in response to the show cause notice, denying the mine working outside the leased area and in the area allegedly leased to the plaintiff.

48. Ex. P20 is the letter dt. 9.9.1999 of PW2 the Sr. Geologist addressed to the Director of Mines and Geology, Government of Karnataka stating that in an inspection on 8.9.1999 it was observed that the defendant had stopped mining activity outside its leased area and that it was the plaintiff who was working the mine in the said area using one caterpillar, one L & T poclain, one poker, one loader and one Wagon drill, with 180 workforce (80 men and 80 women). This observation is incorrect since in the report dated 8.12.99 Ex. P9, PW2 states that it is the plaintiff which is working the mine and developed area extending in a south easterly direction to a length of 2640 ft. comprised in an area of 40 acres. Hence no reliance could be placed on Ex. P20 letter to advance the case of the plaintiff.

49. The Department of Mines and Geology. Government of Karnataka abstained from proceedings in furtherance of the show cause notice and in fact addressed the letter dated 18.12.2003 Ex. P23 to the plaintiff stating that a survey and demarcation during the year 1999 of the defendants' leased area it was noticed that the defendant was not mining outside its leased area ever since then. In the circumstances, the contention that the defendant was "lawfully evicted" from the "disputed area" is illusory and unacceptable. Regard being had to the fact that neither the alleged reports nor the Survey sketches, supra, could be reckoned as

credible evidence, therefore the inevitable conclusion.

RE: RELIEFS IN THE PLAINT:

50. The hand sketch enclosed to the plaint is described in paragraph 17(a) of the plaint as the line denoted by alphabets "D" "C" bifurcating the areas leased to the plaintiff and defendant, based upon a statutory survey conducted during the year 1999 said to be final and binding on the parties. It is not in dispute and cannot be disputed that the hand sketch with the markings thereon including the delineation by alphabets "D" "C" are not made by either PW-2 or the Survey officials of the department of Mines & Geology of the State. Thus PW-2's testimony is not in the direction of establishing the case of the plaintiff that the line "D" "C" in the handsketch is the common boundary of the areas leased to the parties. More so, in the absence of evidence of the person who prepared the hand sketch.

51. The endeavour of the plaintiff to presume that out of 787.20 acres in Sy. No. 1 of Vyasanakere, as disclosed in Ex. D3 the RTC Pahani, 587.20 acres is leased to the plaintiff while the balance 200 acres is leased to the defendant and hence its northern boundary is contiguous with that of the southern boundary of the defendant's leased area is but a fallacious assumption. While being conscious of the pleading in O.S. No. 74/2003 instituted by the defendant before the Civil Judge (Sr.Dn), Hospet arraigning the plaintiff herein as defendant, stating that the parties are adjacent lessees and contiguous on the southern side, nevertheless, the relevant fact in issue is whether the line "D & C" drawn in the suit handsketch is the common boundary between the two leased areas. Had the Authorities of the Dept. of Mines & Geology, Government of Karnataka maintained the plans of leased areas as required by Rules 27 and 28 of "MCD Rules" and produced the same, would have had a presumptive value. In the absence of plans and sections in compliance with the "MC Rules" and "MCD Rules", it cannot be gainsaid that when large extents of land are leased for mining purpose under the "MMRD Act of 1957" and rules framed thereunder a presumption of a common boundary between the leased areas of the parties is permissible.

52. The decree is for permanent injunction and not a declaratory relief. Curiously PW-1 admits in cross-examination (page 549 of paper book) that sketch Ex. P6 enclosed to the lease deed Ex. P5 executed during 2003 being the third renewal of lease in favour of the plaintiff, and sketch Ex. P8 are alleged composite sketches of both the leased areas; Ex. P10, the composite sketch of both the leased areas enclosed to the report dt. 8/12/1999, Ex. P9 of PW-2 and Ex. P11, sketch of the defendant's leased area signed by PW-2 are not the sketches referred to in the prayer referred to at paragraph 23(A). It is further elicited that the sketch Ex. P30 is a minimised version of Ex. P10, Ex. P8 and Ex. P33 and that plaintiff has made the marking on the said sketch by delineating the line with alphabets D and C, for the purpose of convenience. Thus the aforesaid sketches are irrelevant as admittedly they do not form the foundation for the

relief at paragraph 23(a) in the suit, i.e., to declare the line "D" and "C" in the hand sketch said to be the survey sketch of 1999 and 2003 as the bifurcating line between the two leased areas.

53. There is no dispute that the trial Court granted an order of temporary injunction, which the defendant questioned in M.A.No. 9/2006 before the lower Appellate Court and when allowed by order dt. 19.7.2006, the plaintiff filed W.P.14706/2006. This Court by order dt. 16.1.2007 Ex. P16 allowed the petition, modified the order impugned therein by directing both the parties not to carry on mining activity in the disputed portion namely the area in the shape of "knife" in the sketch produced by the plaintiff until disposal of the suit.

54. It is also not in dispute that the defendant instituted O.S.174/2003 arraigning the plaintiff as defendant therein, for injunction and when an application under Order 26 Rule 9 CPC to appoint a Commissioner to conduct a survey of the leased area when rejected by order dt. 15.7.2005, was called in question in W.P.19790/2005, whence, a learned Single Judge by order dt. 6.6.2007 Ex. P28 dismissed the petition on the premise that no definite case was made out in the plaint nor are boundaries mentioned in the plaint schedule over the alleged encroachment or that the defendant therein (plaintiff in the present suit) was In possession of 1015 acres of land, as against 858 acres leased.

55. The submission that the orders supra, indicate the validity of the sketches Introduced in evidence as admissible cannot be countenanced, in the light of the finding that neither the contents of the sketches are proved nor their accuracy in description or accuracy in measurements established, as required by law, more appropriately in accordance with Sections 36 and 83 of the Evidence Act.

RE: REPORTS OF RESPONDENTS No. 2:

56. In compliance with the order dt. 11.12.2009 the controller General of Indian Bureau of Mines, arraigned as Respondent No. 2, filed two reports, the first on 2.2.2010 and the second on 3.4.2010. By order dt. 3.4.2010 on Misc. (Civil) 103180/2010, the 2nd respondent was permitted to withdraw the first report, and file a detailed report, which is the second part. It is pointed out that in the first report under the heading "observations" at paragraphs 7, 3, 7, 4, 7, 6 and 7, 9 read thus:

7.3 The direction north shown in the lease sketch of M/s SB Minerals and direction of north shown in the lease sketch of M/s MSPL Ltd are in variance, and thereby indicating one lease has moved into another lease (Refer plates 2 & 3 respectively).

7.4 The total extent of area granted to M/s MSPL and M/s SB Minerals in Sy. No. 1 amounts to 905 acres, whereas land records of Vyasanakere village indiate the extent of S.No. 1 being 787.2 acres only and thereby an excess area of 117.8 acres have been granted for mining lease. It calls for modification of leaseholds by the State Government (Refer report of Committee constituted by MOEF vide

O.M.No. 8-179/91/FCPT dated 22.09.2003 enclosed as annexure- XIII).

7.6 Survey work commenced in the mining lease of M/s MSPL Ltd from the tri-junction village reference point i.e. Dhanapur point, M/s MSPL Ltd had shown two tri-junction points of three villages i.e. Dhanapur point and Sandur Jamindar point (Refer photos 2 & 3). The tri-junction Dhanapur point comprises of villages Dhanapur, Vysanakere and Sandur, which is popularly known as Dhanapur point. The Sandur Jamindhar point which is also a tri-junction point of Sandur taluk and village boundaries of Vysanakere and Kalahalli. These two points are considered to be reference points as per revenue records. Authenticity of Dhanapur point and Sandur Jamindhar point shown on the ground by M/s MSPL cannot be established in the absence of latitudes and longitudes of these points mentioned in the lease sketch and village map and it is beyond the purview of Indian Bureau of Mines. Location of tri-junction point vis. Dhanapur point and Sandur Jamindar point can be authenticated by the State Land and Revenue Department.

7.9. Based on the plotting of data/readings taken during the survey it is observed that, mine pit, waste dump and stack yard of M/s SB Mineral are located within the mining lease hold claimed by M/s MSPL Ltd. But the impugned area under physical possession of M/s S.B. Minerals. The extent of area occupied by mine pit, waste dump and stack yard are of 15.89 Ha, 7.03 ha and 3.75 Ha respectively (refer lease sketch plate 1). Thus it is case of an overlapping of the leaseholds.

At paragraphs 8.1 and 8.4 recording conclusions and recommendations, it is stated thus:

8.1 As per survey records, mine pit, waste dump and stack yard of M/s S.B. Minerals falls within the claimed mining lease boundary of M/s MSPL Ltd. However in order to identify the area over which the mining operations are carried on by the respondent, as found by the Trial Court and the First Appellate Court, outside its mining area, in terms of its extent needs boundary survey to be carried out and demarcation of mining lease boundaries of both the mining leases. In the absence of boundary pillars along the common northern boundary of M/s MSPL Ltd., the extent of mining area outside the mining area of M/s S.B. Minerals could not be exactly ascertained.

8.4 In the absence of boundary pillars along the northern and eastern boundaries of the leasehold held by M/s MSPL Ltd, the committee could not identify the entire extent of mining lease area granted to the company as per lease sketch issued by the Dept. of Mines & Geology which has formed the basis for approval of mining plan and subsequent scheme of mining. Geological plan, Surface plan, Year wise development and production plan etc showing lease boundaries of the company in the northern and eastern sides are claimed by M/s MSPL Ltd but it is not under its physical possession. The company did not undertake exploration proposals in build in the approved mining scheme. Therefore, the committee recommends to invoke Rule 13 of MCDR 1988.

57. In the second report filed on 3.4.2010 at paragraph 7.3 under the heading "observations", it is stated thus:

7.3 The direction north shown in the lease sketch of M/s SB Minerals and direction of north shown in the lease sketch of M/s MSPL Ltd are in variance, (Refer plates 2 & 3 respectively). In fact, the directions of north shown in the two lease sketches is the magnetic north and not the true north in general, which can never be correctly shown in view of the presence of iron ore. Iron ore deposit makes the magnetic needle of the instrument to deflect away, depending on the iron ore mass exposed. However combined lease sketch issued DMG. Karnataka clearly shows common boundary between these two leases.

yet again the committee having recorded conclusions, paragraph 8.4 reads thus:

8.4 In the absence of boundary pillars along the northern and eastern boundaries of the leasehold held by M/s MSPL Ltd, the mining lease boundary is drawn based on angle and distance given in the combined lease sketch issued by the DMG. Lease sketch issued by DMG has formed the basis for approval of mining plan and subsequent scheme of mining. Geological plan. Surface plan. Yearwise development and production plan etc showing lease boundaries of the company in the northern and eastern sides as granted to M/s MSPL Ltd but it is not under its physical possession. The company did not undertake exploration proposals in built in the approved mining scheme. Therefore, the committee recommends to invoke Rule 13 of MCDR 1988.

58. Regard being had to the facts observed and the conclusions arrived at by the 2nd respondent in the two reports, it is apparent that they contain vacillatory statements. In the first report the observation that direction of north in both the lease sketches are at variance indicated that one lease moved into another in the absence of boundary pillars along the Northern boundary of the plaintiff, the extent of mining area of the defendant could not be actually ascertained, coupled with the observation that the total extent of land in sy.No. 1 leased to the parties is 905 acres as against 787.2 acres as disclosed in the land records being the total area in sy.No. 1, the tri-junction points being the reference points as per revenue records, their authenticity shown on the ground by the plaintiff was not established in the absence of latitudes and longitudes in the lease sketches and village maps, beyond the purview of IBM, to conclude that the mining area of the defendant outside its leased area could not be ascertained, is contrary to the observations and conclusions arrived at in the second report. It requires to be noticed that in the second report, the "combined sketch" issued by the Department of Mines and Geology, is the basis for the conclusions more importantly on the defendant being found to work the mine in the plaintiff's leased area.

59. In the light of the conclusion that the combined sketch produced by the plaintiff was not established to be in strict compliance with the MCR Rules and MCD Rules, the report of the 2nd respondent based on a "combined sketch" is

unacceptable. Even otherwise in the affidavit dt. 27.1.2010 of Capt. S.S. Chaudhary, Administrative Officer and Nodal Officer of 2nd respondent, it is stated that the 2nd respondent has no adequate facilities and expertise as well as manpower to carry out such type of specialised survey work for demarcation of the lease boundary and therefore, on that score too the reports are unacceptable.

RE: DEFENDANT'S CHALLENGE TO THE FINDING OF THE THE LOWER APPELLATE COURT OVER MINING OUTSIDE ITS MINING AREA:

60. Order 41 Rule 22 r/w Rule 33 of CPC invests in the respondent, in a second appeal, a right to support the decree over issues decided in his favour and also attack the findings on issues against him by asserting that the issue decided against him should have been decided in his favour, even though the decree is in his favour, without filing cross objections in writing as held by the Apex Court in Ravindra Kumar Sharma -v- State of Assam (AIR 1979 SC 1371 at paragraph 22).

61. There being no material worth the while to establish the accuracy of description and measurements of the areas leased to the parties under the lease deeds and sketches annexed thereto, there is force in the submission of the learned Sr. counsel for the defendant that the lower Appellate Court was not justified in recording a finding that the defendant was working the mine outside its mining area though correctly held that it was not in the plaintiff's lease area. The substantial questions of law (i), (ii) & (iii) are answered in the negative and against the appellant (plaintiff), while the additional substantial question of law framed on 3.4.2010, is partly answered in the affirmative, insofar as the finding that the defendant is working the mine outside its leased area.

In the result the appeal is dismissed with costs, while the cross objection under Order 41 Rule 22 CPC of the defendant is allowed, and the Judgment and decree of the lower Appellate Court is accordingly modified.