IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF OCTOBER 2001

BEFORE

THE HON'BLE MR.JUSTICE B.K.RANGALAD

MFA NO.3861/2000

Between:

M.Mariappa, S/o late Anjanappa, 60 yrs, R/o Chettiappa Compound, 80 ft road, Ashwathanagar, Bangalore 94.

APPELLANT

SRI CHANDRASHEKAR RODNAVAR, ADVOCATE)

And:

Himmanth Choudary Chellaram, Prop. Ambica Traders, 18/1, I floor, Chintal Chambers, D.K.Lane, Chickpet cross, Bangalore 53.

.. RESPONDENT

(By Sri L Govindraj, Advocate)

This appeal is filed under Order 43 R.1 @ CPC against the order dated 18-7-2000 passed in O.S.No.3825/1998 by the VII Addl. City Judge, Bangalore dismissing I.A-II filed under Order 39 R.1 and 2 of CPC and allowing I.A-IV filed under Order 39 R.4 CPC.

JUDGMENT

This appeal is filed under Order 43 Rule 189 CPC against the order dated 18-7-2000 passed in O.S.No.3825/1998 by the VII Addl. City Civil Judge, Bangalore dismissing I.A-II filed under Order 39 Rule 1 and 2 CPC and allowing I.A-IV filed under Order 39 R.4 CPC.

- 2. The ranks of the parties shall be followed as in the lower Court.
- 3. The plaintiff has filed the suit for permanent injunction praying not to evict him from the suit schedule property, interalia I.A-II was filed by the plaintiff under Order 39 Rules 1 and 2 CPC and the defendant has filed I.A-IV under Order 39 Rule 4 CPC.
- 4. According to the plaintiff, he is a permanent resident in the suit schedule property



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and he has been residing in it for the last 45 years without any disturbances or obstruction including its original one any The suit property is P-44 out of Shettiyappa. Sy.No.56/2 measuring East to West 20' and North sheeted asbestos with 2 5**a**. 30' South Ashwathanagar, in accommodation residential Shettiyappa Compound, 80 ft Road, Bangalore-94. revenue land This suit property was part of After the death of bearing Sy.No.56/2. original owner Shettiyappa, when partition took place, it has fallen to the share of his son 23-3-1983 srinivas on said The s.srinivas. gifted the suit property to the plaintiff and since then - plaintiff has been residing therein for the last 30 years. This property was given to him because he was working in the Garden of The gift deed is also produced. s.srinivas. The khatha and other is unregistered gift. necessary documents are also produced. Grama Panchayath, Geddalahalli after making necessary confirming the after verification and spot enjoyment ٥f the actual possession and property issued form No.10 in favour the

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plaintiff in the year 1992-93. He has also paid the kandayam of Rs. 102-40 for the year 1992-93 on plaintiff has obtained 10-3-1995. The electric connection as well as water connection from the concerned departments. KEB The demanding bill the issued the BWSSB have plaintiff to pay the charges towards electricity Therefore the plaintiff is in legal and water. the property. Defendant started possession of constructing the compound wall along his vacant the vacant place towards including residential house and southern side ofthe defendant's property. The the constrained to institute the plaintiff restrain present suit with a prayer to plaintiff's defendant from obstructing the possession and enjoyment over the suit property.

this defendant opposed 5. has The application stating that the documents are suit the purpose the created just to gift is denied; the plaintiff; deed the is possession denied; that there such is property called P.44 in Sy.No.56/2 and the

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not admitted. The is 23-3-1983 dated deed exists there that states also defendant any construction there was nor structure The allegations in the alleged by the plaintiff. plaint that the plaintiff is residing for more It is further stated than 45 years is false. that the suit property was purchased from one sale-deed registered under Rajavardhan In pursuance of this sale-deed, 22-7-1991. has been put in possession of the property. is further stated that he has built up an ACC building in the area of sheet roofed It is further contended that Rajavardhan got the sale deed executed in his name from S.Srinivas, Son of Shettiyappa, the owner of the property under the registered sale deed dated 4-12-1986. Therefore the plaintiff is not in possession of the property, as such, he is not entitled for any relief.

Heard Mr. Chandrashekar, learned counsel According to him, the suit for the appellant. schedule property was gifted by one S.Srinivas by gift deed dated 23-3-1983. In pursuance of this,

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he has built up a building with asbestos roof and he has also taken water and electricity connections and he has received the demand bills from the concerned departments. Since the plaintiff was working in the land of Srinivas, he has got this land from Srinivas.

7. By the contentions of both sides, now it has to be seen who is in actual possession of the Mr.Chandrashekar also relied upon two property. KARNATAKA decisions viz., C. BHASKAR V. STATE OF Relying AND ANOTHER (1995(5) KAR.L.J. 69) upon this decision he has gone to the extent of submitting that even assuming for a moment that no better title than the plaintiff has defendant, it stands established that he is in possession of the property. When one possession of the property, he should be evicted after taking recourse to the due process of law. The another decision is P.FATESH AHAMED V.SANDUR USMAN SAHEB & ORS (ILR 1997 KAR 999) wherein it is stated as follows:



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"A) SPECIFIC RELIEF ACT, 1963 (Central section 38-1963) No.47 of Act suit for title and appellant field perpetual injunction having purchased suit property from vendor who claimed to have derived title by gift from his mother, who had no absolute right and title - Trial Court decreed suit but Appellate Court dismissed - in second appeal, though claim of title failed, appellant not being a rank trespasser, held, entitled to possessory relief of perpetual injunction."

Looking to the facts that plaintiff has the water and electricity connections, produced kandayam receipts and that the khatha is goes without that saying it effected, in possession of the property. appellant is However, if the defendant can establish better title than the plaintiff, he can take recourse to such remedy as is permissible in the eye of law. Left as on this date, I am inclined to hold that the appellant has made up a case to set aside the Therefore the following order is impugned order. passed:

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In the result, the appeal is allowed. In the result, the appeal is allowed. The order passed on I.As-II and IV are set aside. The appellant is entitled for the grant of temporary injunction against the respondent pending disposal of the suit.

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The copy of the court records online. Authenticated @ https://scCourtsIndia.com/cnr/KAHC010344842000/truscopy/order-1.pdf The order passed on I.As-II and IV are set aside. The