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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF DECEMBER, 2019

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

REGULAR FIRST APPEAL No.1736 OF 2016

BETWEEN:

D.M. Krishna,
Hindu,
Aged about 77 years,
S/o late Muthurayappa,
R/at No.3226, 6-C Main Road,
13th Cross, Indiranagar,
Bengaluru – 560 038. .. APPELLANT

(By Sri G. Balakrishna Shastry, Advocate)

AND:

N.Chandrashekariah
S/o late Nanjundaiah,
Hindu, major,
R/at No.100/1,
Ammasandrapalya HAL Post,
Bengaluru – 560 017. ..RESPONDENT

(By Sri M.R. Rajagopal, Advocate)

This Regular First Appeal is filed under Section 96 of CPC against the judgment and decree dated 18.07.2016 passed in O.S. No.4752/1993, on the file of the XXII Addl. City Civil and Sessions Judge, Bengaluru (CCH-7), dismissing the suit for mandatory injunction, etc.

This Regular First Appeal having been heard and reserved on 20-12-2019, coming on for pronouncement of judgment, this day, the Court delivered the following:

JUDGMENT

It is a plaintiff's appeal. The present plaintiff had instituted a suit against the present respondent arraying him as defendant in O.S. No.4752/1993 in the Court of learned XXII Addl. City Civil and Sessions Judge, Bengaluru (CCH-7) (for brevity, 'Trial Court') for a relief of mandatory injunction.

2. The summary of the case of the plaintiff in the Trial Court was that on 20.05.1976, a partnership between the plaintiff and the defendant was formed.

As differences arose between them, the firm was dissolved during the year 1977. In that regard a deed of dissolution also came to be executed. The plaintiff's mother was one Smt. Ramakka who had a golden Kaasinasara (a golden necklace) and it was handed over in trust to the defendant. The defendant was the owner of a site bearing document No.2324/75-76 described in the schedule to the plaint. In respect of these transactions as well as the disputes with regard to the partnership firm, a panchayat was convened, in the presence of panchayatdars namely Sri Krishnappa, Sri C.S.Naidu, Sri Deenadayal Naidu and one Sri Jayaram, Patel of Binnamangala. The matter was settled in panchayat on 16.10.1979 between the plaintiff and the defendant. It was settled therein that the plaintiff should pay a sum of ₹7,000/- to the defendant and that the defendant in turn should handover the golden Kaasinasara to the plaintiff and

should execute a sale deed in respect of the suit property in favour of the plaintiff and should pay the amounts due to Sudarshan Chit Funds. In view of this settlement before the panchayat, the plaintiff approached the defendant with requisite money and requested him to handover the golden Kaasinasara and to execute the sale deed in respect of the suit schedule property. However, the defendant went on postponing the same on one or other pretext and ultimately the defendant told the plaintiff that he had pledged the Kaasinasara with Sri Pathi and later informed the plaintiff that said Kaasinasara was with one Sri Anand. The defendant wrote a letter to Anand to deliver the Kaasinasara to the plaintiff but said Anand informed the plaintiff that he was not in custody of the said Kaasinasara and the same is with the defendant. However, the defendant postponed returning of Kaasinasara and also to execute

registered sale deed in respect of the suit property in favour of the plaintiff and also to pay the amount due to Sudarshan Chit Funds.

It is further the case of the plaintiff that in the meantime, defendant filed a case in S.C.No.8684/1980 in the Court of XVII Addl. Small Causes Judge at Bengaluru City for recovery of the amount said to be due under the partnership deed and that the said case came to be dismissed. Against the same, the present defendant who was the plaintiff in S.C.No.8684/1980, preferred a civil revision petition in CRP No.1710/1982 on the file of the High Court of Karnataka which also came to be dismissed upholding the panchayat. Thus, the defendant was liable to return the Kaasinasara which is about 35 savarans (sovereigns) in weight worth Rupees Six Lakhs and to execute registered sale deed in respect of suit

property worth Rupees Thirty Lakhs in favour of the plaintiff and to pay amount due to Sudarshan Chit Funds. It is for these reliefs the plaintiff prayed for a mandatory injunction against the defendant.

3. In response to the summons, the defendant appeared through his counsel and filed his written statement and also an additional written statement whereunder he admitted the constitution of the partnership firm between the plaintiff and himself in the year 1976 and its subsequent dissolution. However he denied the plaint averments about the

plaintiff delivering a Kaasinasara to him. He specifically contended that the plaintiff had not given any Kaasinasara belonging to his mother, to him. He also denied that he had agreed before the panchayatdars to return the said Kaasinasara and also to execute a registered sale deed with respect to the schedule property in favour of the plaintiff and also that he had agreed to pay the amount which was said to be due to Sudarshan Chit Funds and to receive in turn a sum of ₹7,000/- from the plaintiff. However, the defendant admitted that he had instituted a case in S.C.No.8684/1980 on the file of Small Causes Court, Bengaluru and also about he filing CRP No.1710/1982 before this High Court. The defendant contended that the suit property was sold by the plaintiff in favour of the mother of the defendant who in turn has bequeathed the same in favour of Smt.Netravathi who is his (defendant's) wife, under a

Will, as such said Netravathi is in possession of the suit property. With this, he prayed for dismissal of the suit.

4. Based on the pleadings of the parties, the Trial Court framed the following issues:

> "(1) Whether the plaintiff proves that, as per the panchayat decision, the defendant is liable to hand over golden kasina sara to the plaintiff and that, further he should execute a sale deed in respect of the suit schedule property by receiving sum of Rs.7,000/- from the plaintiff, as averred in para 4 of the plaint?
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> (2) Whether the plaintiff further proves that, as per panchayat settlement, the defendant is liable to pay the amount due to the Sudarshan Chit Funds, as averred in para – 4 of the plaint?
>
> (3) Whether the plaintiff is ready and willing to perform his part of contract as per panchayat settlement?

(4) Whether the plaintiff proves the alleged cause of action for filing of this suit?

(5) Whether the suit is barred by limitation?

(6) Whether the suit is properly valued and court fee paid is correct?

(7) Whether the plaintiff is entitled to the reliefs (a), (b), (c) as prayed in the prayer column of the plaint?

(8) What order or decree?"

5. In order to prove his case, the plaintiff got himself examined as PW-1 and got marked documents from Ex.P1 to Ex.P10. The defendant got himself examined as DW-1 and got marked documents from Ex.D1 to Ex.D9. After hearing both side, the Trial Court, by its impugned Judgment and Decree dated 18.07.2016, while answering issue Nos.1 to 7 in the negative, dismissed the suit of the plaintiff. It is

against the said Judgment and Decree, the plaintiff has preferred this appeal.

6. Lower Court records were called for and the same are placed before this Court.

7. Perused the materials placed before this Court including the memorandum of appeal, impugned Judgment and Decree and the entire lower Court records.

8. Heard arguments from both side. Learned counsel for the appellant in his arguments submitted that the appellant would confine the appeal only with regard to the first two prayers made in the plaint wherein he has sought for relief of mandatory injunction seeking direction to the defendant to return the Kaasinasara and a direction to the defendant to execute a sale deed in favour of the plaintiff in respect

of the site mentioned in the schedule to the plaint. However, he would not press on the prayer made for payment of money to Sudarshan Chit Funds by the defendant. Learned counsel submitted that the case in S.C.No.8684/1980 and more particularly the depositions of the present plaintiff and one C.S. Naidu in the said case have proved the present suit of the plaintiff. Therefore the question of plaintiff producing the agreement or examining panchayatdars does not arise. He further submitted that a reading of the Judgment passed in said S.C.No.8684/1980 and Order passed in CRP No.1710/1982 would clearly go to show that there had been settlement of dispute between the parties herein in a panchayat and that the said terms of the settlement are binding upon the parties including the present defendant, as such, the defendant is liable to return the Kaasinasara and to execute the registered sale deed in favour of the

plaintiff. He further submitted that the evidence led in the said S.C.No.8684/1980 goes to show that the defendant had pledged the Kaasinasara with one Sri Pathi and had given a letter to the plaintiff. Therefore the written statement of the defendant filed in the present suit is far from the truth. The defendant who had admitted the present plaint averments in the previous case has deviated from his previous stand and has taken a different version in the present suit which shows that the defendant is not trustworthy.

Learned counsel further submitted that the appellant in the Trial Court had filed an application in I.A.1/2010 seeking an alternate prayer in the form of direction to the defendant to repay Rupees Thirtysix Lakhs to the plaintiff if the defendant is unable to convey the land and return the Kaasinasara. The said application was allowed and as directed by the Trial

Court, the plaintiff had paid an additional court fee of ₹1,65,125/-. Later the defendant filed a writ petition in W.P.No.8424/2011 before this Court challenging the said order of the Trial Court in allowing the I.A. The said writ petition since came to be allowed and I.A.1/2010 came to be dismissed, the net effect is that I.A.1/2010 did not exist and there was no pleading and evidence on the additional prayer relating to return of Rupees Thirtysix Lakhs. In the said circumstance, the Trial Court ought to have allowed the application filed by the appellant on 07.08.2015 and should have directed the office to refund the additional court fee of ₹1,65,125/-. With this, he prayed for allowing of the appeal.

9. Learned counsel for the respondent in his arguments submitted that in the absence of the plaintiff establishing the existence of any agreement

of settlement between the parties, a bare suit for mandatory injunction is not maintainable. In the absence of pleading about non availability of settlement, and the Judgment in S.C.No.8684/1980 not having incorporated the alleged terms of settlement, the said Judgment cannot be used as a substitute for pleading and non production of alleged settlement. Learned counsel submitted that the defendant/respondent admits the holding of a panchayat between the parties, but the terms of the settlement as alleged by the plaintiff is not at all admitted. Therefore it is for the plaintiff to prove the alleged terms of the settlement which he has failed to establish. Learned counsel further submitted that had the terms of settlement been there as contended by the plaintiff, then, nothing had prevented him to maintain a document recording the terms of settlement which he has not maintained. He also

submitted that his wife Smt.Netravathi not being a party to the alleged settlement, the said settlement is not binding upon her. He further submitted that the mere giving of letter by the defendant either to Sri Pathi or to Sri Anand to release Kaasinasara cannot be equated that it was the defendant who had pledged the said Kaasinasara with them. He also submitted that even if such a letter is given to them it is deemed that plaintiff has got Kaasinasara released in his favour, as such, the said Kaasinasara is with the plaintiff.

With respect to refund of the additional court fee of ₹1,65,125/- to the plaintiff / appellant, the learned counsel submitted that the respondent has no objection for refund of the court fee by allowing the application filed by the plaintiff in the original suit which is not disposed off by the Trial Court.

10. In the light of the above, the points for consideration are:

(i) Whether the plaintiff has proved that a panchayat was held between him and the defendant on 16.10.1979 whereunder it was settled that the defendant to handover golden Kaasinasara to the plaintiff and further to execute a sale deed in favour of the plaintiff with respect to the suit schedule property by receiving a sum of ₹7,000/- from the plaintiff?

(ii) Whether in the absence of production of any specific agreement of settlement by the plaintiff, a bare suit for mandatory injunction is maintainable?

(iii) Whether the appellant / plaintiff is entitled for refund of court fee of ₹1,65,125/- said to have been paid by the appellant on 09.03.2011 on the prayer said to have been made on I.A.1/2010 for amendment of the plaint in the Trial Court?

(iv) Whether the Judgment and Decree under appeal deserves any interference at the hands of this Court?

11. The plaintiff as PW-1 in his examination-in-chief in the form of affidavit evidence has reiterated the contention taken up by him in his plaint. In support of his contention that the defendant had instituted a case against him in S.C.No.8684/1980, he has produced photocopies of the defendant's deposition and the depositions of one Sri C.S. Naidu, Sri Jayadev in the said case at Ex.P7, Ex.P8, Ex.P9 respectively and the deposition of himself at Ex.P10. He has also produced certified copy of the Judgment and Decree passed in S.C.No.8684/1980 at Ex.P5 and Ex.P6 respectively. He has produced Ex.P4 which is a certified copy of copy application filed by him in said S.C.No.8684/1980. He has also produced a certified copy of endorsement said to have been issued by the said Court seized with S.C.No.8684/1980 to show that the record in S.C.No.8684/1980 since having been destroyed, the documents were not available for

issuing certified copies. PW-1 also produced certified copy of the Orders dated 02.09.1987 and 11.02.1988 passed by this Court in CRP No.1710/1982 and got them marked as Ex.P1 and Ex.P2 respectively.

PW-1 was subjected to a detailed cross-examination wherein he adhered to his original version and denied the suggestions made by the defendant's side.

12. The defendant as DW-1 in his examination-in-chief in the form of affidavit evidence also has reiterated the contention taken by him in his written statement. In support of his contention to show that the suit property stands in the name of his wife Smt.G.N.Netravathi he got produced a mutation extract at Ex.D1 and RTC extracts with Ex.D2, Ex.D3, Ex.D4, Ex.D5 and Ex.D6. He produced two tax paid receipts and got them marked as Ex.D7 and Ex.D8. He

also produced a certified copy of registered sale deed dated 12.11.1975 said to have been executed by the plaintiff in favour of his (defendant's) mother Smt.Gurusiddamma and got it marked as Ex.D9.

In his cross examination, the witness adhered to his original version, however, stated that after getting the golden Kaasinasara released from the bank, the said Kaasinasara was again pledged with a pawn broker at Raja Market at Bengaluru. The said pawn broker was one Sri Pathi. The witness denied that there was any panchayat held on 16.10.1979 to resolve the dispute about the petrol bunk business. However he admitted that Sub Inspector of Police of Ulsoor Police Station had called for a meeting between them, but, still maintained that there was no settlement of any dispute on that day. He denied the several suggestions made to him by the plaintiff's side

putting forth the case of the plaintiff to him. However, the witness admitted as true that he had testified in S.C.No.8684/1980 as per Ex.P7. The witness was confronted with Ex.P5, Ex.P6 and Ex.P2 also.

The very same witness in his further cross-examination on a subsequent day i.e. on 11.08.2010, admitted a suggestion as true that there was a meeting of friends which could be styled as panchayat to resolve the dispute between himself and the plaintiff. However he denied that the dispute was resolved in the said panchayat. For several other suggestions made to him in the said further cross-examination the witness has stated that he does not know about the same.

13. It is an admitted fact that, the parties to the litigation had constituted a Partnership firm in the

year 1976. However, the said firm was dissolved subsequently in the year 1977. In that regard, a Dissolution Deed also came to be executed between them. But, what is seriously in contest is, the plaint averment that, with regard to settlement of all pending disputes between the parties, a Panchayat settlement took place between the parties in the presence of Panchayatdars on 16-10-1979, where under, it was settled that the defendant to handover a golden kaasinasara to the plaintiff and further to execute a Sale Deed in favour of the plaintiff with respect to the suit schedule property by receiving a sum of ₹7,000/- from the plaintiff. It is also in contest as to, whether the plaintiff had delivered such a kaasinasara said to be belonging to his mother to the defendant. It is in that regard, seeking a mandatory injunction, the plaintiff has instituted this suit.

14. Admittedly, no document strictly evidencing the alleged Panchayat settlement dated 16-10-1979 has been produced in the suit. However, the defendant as DW-1 in his cross-examination, though has initially denied the alleged Panchayat settlement, but later in his further cross-examination dated 11-08-2010 admitted a suggestion as true that, there was a meeting of friends, which could be styled as a Panchayat to resolve the dispute between the plaintiff and himself. Despite making such an admission, he continued to adhere to his stand that in the said Panchayat, it was settled that the defendant should handover the golden kaasinasara to the plaintiff and also should execute a Sale Deed with respect to suit schedule property in favour of the plaintiff by receiving a sum of ₹7,000/- from the plaintiff.

15. In order to prove that those were the terms of settlement, the plaintiff has relied upon the deposition of the witnesses, more particularly, that of the evidence of the defendant – Sri.N. Chandrashekariah, who was the plaintiff in S.C.No.8684/1980 and that of Sri.C.S. Naidu, Jayadev and D.M. Krishna in S.C.No.8684/1980, the photocopies of which he has produced at Ex.P-7, Ex.P-8, Ex.P-9 and Ex.P-10 respectively. He has also relied upon the judgment and decree passed in S.C.No.8684/1980, the certified copies of which he has produced at Exs.P-5 and P-6 respectively. It is his contention that in the said evidence as PW-1, in S.C.No.8684/1980, the present defendant has admitted the Panchayat settlement, as such, the plaintiff in the instant case, can be taken, as established the terms of the settlement as contended in the plaint.

16. A perusal of Ex.P-7 which is a photo copy of the deposition of the present defendant as PW-1 in S.C.No.8684/1980 would go to show that, at one particular place, in his cross-examination, the present defendant as PW-1 has stated as below:-

> *"I agreed to see that the kaasinasara was returned if the amount was paid. I have not returned the kaasinasara."*

It is this statement, the learned counsel for the appellant is vehemently pressing into service and submitting that, the said admission establishes the holding of Panchayat settlement and the commitment by the present defendant to return the kaasinasara.

17. In that regard, learned counsel for the appellant also relied upon two judgments of the Hon'ble Apex Court in his support.

In the first judgment, which is in the case of ***Nathoo Lal Vs. Durga Prasad*** reported in ***AIR 1954 Supreme Court 355,*** the Hon'ble Apex Court, while discussing Section 18 of the Indian Evidence Act, 1872, was pleased to observe that, what is admitted by a party to be true, must be presumed to be true unless the contrary is shown.

In the second judgment, which is in the case of ***Damu Ganu Bendale Vs. Arvinda Dhondu Talekar and others*** reported in ***AIR 1994 Supreme Court 1303***, in a tenant's appeal under Bombay Tenancy and Agricultural Lands Act, the Hon'ble Apex Court while analysing the scope of burden of proof regarding issue of tenancy was pleased to observe that, when the appellant has filed the certified copy of the statement made in a Civil Suit, it was for the respondent to explain it and the adverse inference drawn by the Revising Authority against the appellant due to failure

of filing any application for summoning the deponent does not appear to be well founded in law.

18. In the instant case, the alleged admission said to have been made by the present defendant as PW-1 in S.C.No.8684/1980, the copy of which is at Ex.P-7, even if it is taken as an admission, which binds the maker of the same, it cannot be accepted as an acknowledgment of the receipt of kaasinasara by the present defendant from the present plaintiff. Though the admissions if true and clear, are by far the best proof of the facts admitted, but to which class of admission it falls under is a matter to be considered.

19. As observed by the Hon'ble Apex Court in the case of ***Nagindas Ramdas Vs. Dalpatram Iccharam alias Brijram and others*** reported in ***AIR 1974 Supreme Court 471*** at paragraph 26 of the

judgment, the Hon'ble Apex Court was pleased to observe that, the admissions in pleadings or judicial admissions, admissible under Section 58 of the Indian Evidence Act, 1872, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, the evidentiary admissions which are receivable at the trial as evidence, are by themselves not conclusive. They can be shown to be wrong.

20. In the instant case, the admission made by the present defendant in his Written Statement about constitution of a Partnership firm by the parties to this suit in the year 1976 and dissolution of the same in the very next year is an admission in pleading or a

judicial admission, which is admissible under Section 58 of the Evidence Act. However, the alleged admission by the present defendant as PW-1 in a different case i.e. S.C.No.8684/1980 as PW-1, even if it is taken as an admission, still, it is an evidentiary admission, which, by itself, is not conclusive and the same can be shown to be wrong.

21. However, a reading of the evidence of the defendant as PW-1 under Ex.P-7 would clearly go to show that, the witness has nowhere admitted that the alleged kaasinasara was given to him by the plaintiff herein at any point of time and that it was the present defendant's liability to return the kaasinasara to the present plaintiff. In the preceding portion of the very same cross-examination of PW-1 under Ex.P-7, it goes to show that, after referring to an alleged settlement said to have been made in the presence of a Sub-

Inspector of Police, the witness has stated that, it was through him the jewellery was pledged with one Palani. The witness has also stated that, it was for him to see that the jewellery was returned to the defendant (present plaintiff) if the amount was paid. The witness has also stated that he cannot say whether Palani had returned the jewellery or not. Identifying a document at Ex.P-2, he has stated that it was a copy of the letter written by him for Palny for handing over the kaasinasara belonged to D.M. Krishna the defendant (plaintiff herein).

22. A reading of these statements made by the very same witness would go to show that the alleged jewellery was pledged with a third party and getting the said jewellery released to the present plaintiff was the responsibility of the present defendant in which

regard he had also written a letter to the said Sri. Palani for handing over the kaasinasara.

In this background, the stray statement made by the witness that he agreed to see that the kaasinasara would be returned if the amount was paid cannot be construed as that, the said kaasinasara was given by the present plaintiff to the present defendant and that the same was retained by the present defendant.

As such, the said statement even if it is considered as an admission, made by the witness would in no way, show that he has admitted the present plaint averment that the plaintiff had given the said kaasinasara to him. It is in that regard, the witness has stated that he has not returned the kaasinasara. Therefore, even after relying upon the cross-examination of DW-1 in the present suit, wherein he has stated that, he had only given a letter

to Palani and Pati stating that, if the plaintiff pays the principal amount and interest, he may be handed over the golden chain, by the same, it cannot be construed that, the present plaintiff had given the kaasinasara to the present defendant and that the present defendant had pledged the kaasinasara with Palani or Pati. The same is the case with respect to one Sri. Anand also and reference about whom is made by the plaintiff that the said kaasinasara was subsequently stated to be in possession of said Sri. Anand. Therefore, when the present defendant as PW-1 in S.C.No.8684/1980 as well as DW-1 in the present suit has given the details as to, under what circumstance, he had to issue a letter to Palani or Pati to release the kaasinasara in favour of the plaintiff, makes it very clear that, the alleged admission in Ex.P-7 is not at all an admission in its strict sense evidencing that the kaasinasara alleged to be

belonging to the plaintiff was at any point of time given to the present defendant and that the present defendant was under an obligation to return the same to the plaintiff as per the alleged terms of Panchayat settlement dated 16-10-1979.

23. Learned counsel for the appellant relying upon the judgment and decree passed in the said S.C.No.8684/1980, the copies of which are at Exs.P-5 and P-6 respectively, and also the order dated 11-02-1988 passed by this Court in C.R.P.No.1710/1982, the copy of which is at Ex.P-2 submitted that, the finding given by the competent Court between the same parties, in the previous litigation, binds the present defendant.

24. Per contra, learned counsel for the respondent in his argument submitted that, the judgment in a previous civil case may be binding in a

subsequent suit between the same parties, provided, the previous case was for the same cause and with respect to the same subject matter. He submitted that in the instant case, the previous case i.e. S.C.No.8684/1980 was totally for a different relief and different cause though it was between the same parties. As such, when the question of alleged delivery of kaasinasara or alleged Panchayat settlement was not the question involved in the previous case, the said judgment cannot be said to be binding upon the parties in the instant case.

25. In that regard, he relied upon a judgment of the Hon'ble Apex Court in the case of ***K.G. Premshankar Vs. Inspector of Police and another*** reported in ***AIR 2002 Supreme Court 3372.***

In the said case, the Hon'ble Apex Court had an occasion to analyse the scope of Sections 40, 41, 42 and 43 of the Indian Evidence Act, 1872. In

paragraphs 30 and 31 of the judgment, the Hon'ble Apex Court was pleased to observe as below:-

> *"30. What emerges from the aforesaid discussion is – (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act, (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.*
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> *31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, Court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged*

trespass by 'A' on 'B's property. 'B' filed a suit for declaration of its title and to recover possession from 'A' and suit is decreed. Thereafter, in a criminal prosecution by 'B' against 'A' for trespass, judgment passed between the parties in civil proceedings would be relevant and Court may hold that it conclusively establishes the title as well as possession of 'B' over the property. In such case, 'A' may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, first question which would require consideration is – whether judgment, order or decree is relevant? If relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon facts of each case."

26. In the instant case, a careful study of the judgment and decree passed in S.C.No.8684/1980, copies of which are at Exs.P-5 and P-6 respectively and also revision filed against the said judgment before this Court in C.R.P.No.1710/1982, copy of the order passed in which revision is at Ex.P-2, would clearly go to show that, the said case was with respect

to recovery of a sum of ₹9,500/- towards the alleged interest said to be payable by the defendant therein (plaintiff herein) at the rate of ₹500/- per month on a sum of ₹30,000/-. The said suit was instituted by the present defendant as a plaintiff. As could be noticed in the judgment, the present defendant as a plaintiff had relied upon an agreement between them which he has marked at Ex.P-1 (in S.C.No.8684/1980).

It is further contended by the plaintiff therein that in the said agreement, the plaintiff therein (defendant herein) was entitled to ₹30,000/- which the defendant (the present plaintiff) was liable to pay to him. Under the said agreement, it was agreed that, the defendant therein to pay the interest at the rate of ₹500/- per month and to pay the principal amount in two to three years' time or to continue to pay interest till it is paid. However, the present plaintiff as a

defendant denied of he entering into any such agreement as per Ex.P-1 with the plaintiff therein.

27. On the other hand, he contended that an agreement was entered into by them as per Ex.D-1 (in S.C.No.8684/1980) whereunder the plaintiff therein had agreed to re-convey the property on payment of ₹22,000/- by the defendant therein to him. The said agreement which is said to be marked at Ex.D-1 was said to be dated 15-10-1979.

28. Admittedly, the alleged agreement either at Ex.P-1 or Ex.D-1 in the said S.C.No.8684/1980 has not been produced in the present suit. Though the present plaintiff has produced the certified copy of the copy application made by him in the said case and marked it at Ex.P-4, and also a copy of an endorsement said to have been given by the Court of Small Causes at Ex.P-3 stating that, the entire records

in S.C.No.8684/1980 have been destroyed, and therefore the copies of documents are not available for issuing their certified copies, but, by those two documents themselves, it cannot be concluded that the alleged agreement at Ex.D-1, in any way mentioned about the plaintiff's (in that case) undertaking that, he would return the alleged kaasinasara to the defendant therein and also re-convey the immovable property on receipt of the alleged amount alleged to have been shown in the agreement. Except mentioning about the alleged agreement dated 15-10-1979 as the document at Ex.D-1, one more agreement at Ex.P-1, nowhere the Court in its judgment in S.C.No.8684/1980 has recorded the terms of either of those two agreements i.e. either of Ex.P-1 or of Ex.D-1. Therefore, by a mere reference to the alleged two agreements at Ex.P-1 and Ex.D-1, by that itself, it cannot be inferred

that, the present defendant as a plaintiff in the said suit, and also as a party to the alleged agreement at Ex.D-1 therein, had agreed and undertaken to deliver the kaasinasara and to re-convey the immovable property in favour of the plaintiff.

29. The order passed by this Court in C.R.P.No.1710/1982, which is at Ex.P-2, would go to show that, the said Revision Petition was filed against the judgment and decree passed in S.C.No.8684/1980. Even in the said order passed in Civil Revision Petition also, this Court had nowhere mentioned as to, what were the terms of the alleged settlement, whether under Ex.D-1 or under Ex.P-1. The only portion which the present plaintiff contends would support him in the order of the Revision Petition is the following portion:-

> *"The minutes of the said Panchayat which is attested by the parties as well as their mutual*

friends, some of whom have been examined, on behalf of plaintiff, refers to certain transactions between the parties including sale of a land and pledging of certain jewellary belonging to the defendant at the instance of the plaintiff."

"Further, he says that he had agreed to see that the defendant's property is re-conveyed and his jewellary is returned, indicating that the settlement was implemented by him."

Even the above portions of the order passed by this Court in the said Civil Revision Petition or a reading of the entire order passed in Civil Revision Petition also nowhere go to show that, which was that agreement that was binding the parties to the litigation, whether it was Ex.P-1 or Ex.D-1. Further, the said order also nowhere goes to show as to, what were the terms of the alleged settlement said to have been entered into between the parties. In the absence of the same and also considering the fact that, the said judgment passed in S.C.No.8684/1980

was for a different cause of action, for a different relief, with respect to a different subject matter, though between the same parties, cannot be said to be the relevant judgment evidencing as a conclusive proof of a disputed fact between the parties in the present suit.

30. Therefore, in such a case, when the plaintiff could not able to produce the alleged agreement or the alleged Panchayat settlement document in the instant case, for whatever reasons, still, nothing had prevented him to summon and examine the alleged Panchayatdars, whose names the plaintiff had spelt in his plaint as Krishnappa, C.S. Naidu, Deendayal Naidu, and Jayaram, Patel of Binnamangala.

31. Added to that, had really any settlement with respect to the said matter of the present dispute i.e. kaasinasara and re-convey of the suit schedule

property had taken place in the presence of the Police Sub-Inspector, about whom a reference is made in the evidence of the parties in both S.C.No.8684/1980 as well in the present suit, then, at least, the said witness should have been summoned and examined. The plaintiff has not made any such effort in that regard.

Further, according to the plaintiff herein, the alleged Panchayat settlement was dated 16-10-1979, whereas, as could be noticed in the judgment copy in S.C.No.8684/1980, which is at Ex.P-5, the agreement canvassed by the defendant therein (the plaintiff herein) through Ex.D-1 was dated 15-10-1979. Thus, there is disparity in the alleged date of the alleged agreement or the alleged Panchayat settlement also.

32. From all these aspects, it has to be held that, the plaintiff could not able to prove that a

Panchayat was held between him and the defendant on 16-10-1979, whereunder, it was settled that, the defendant to handover the golden kaasinasara to the plaintiff and further to execute a Sale Deed in favour of the plaintiff with respect to the suit schedule property by receiving a sum of ₹7,000/- from the plaintiff.

33. Since the Trial Court has arrived at the same finding, it cannot be held that the finding given by the Trial Court on issue No.1 is erroneous.

34. The plaintiff in the present suit has sought for the relief of mandatory injunction, seeking a direction to the defendant to deliver the kaasinasara to him and to execute a Sale Deed with respect to the suit schedule property by receiving a sum of ₹7,000/- from him. Even according to the plaintiff, the alleged obligation of returning the kaasinasara and executing

a Sale Deed by the defendant is solely based upon an alleged settlement said to have been made by the Panchayatdars in an alleged Panchayat dated 16-10-1979. According to the plaintiff, the said Panchayat is documented which he claims to have produced as Ex.D-1 in S.C.No.8684/1980. The present plaintiff as a defendant in the said case has termed the said document as an agreement. Therefore, even according to the present plaintiff, the alleged Panchayat settlement was not any award or a judgment or a decree passed by any competent Authority/Court to pass such type of orders. Therefore, the present plaintiff, in the guise of seeking a direction in the form of a mandatory injunction, is impliedly seeking specific performance of a contract. For such a relief, the plaintiff was invariably required to establish the existence of an alleged contract (which according to him is a Panchayat settlement or

an agreement at Ex.D-1 in S.C.No.8684/1980). Therefore, the appropriate suit which the plaintiff was required to institute in the case on hand was, a suit for specific performance, rather than a suit for mandatory injunction. However, even otherwise also, as already observed above, the plaintiff since could not even able to establish that, such an agreement was in existence or could not able to establish the alleged terms of the Panchayat settlement, he is not entitled even for the relief of a mandatory injunction.

Therefore, the Trial Court has rightly held that, the plaintiff's suit does not deserve to be decreed as prayed.

35. The last point of argument of the learned counsel for the appellant was that, the plaintiff was entitled for refund of the Court Fee of ₹1,65,125/-

paid by him in the Trial Court when he amended the plaint.

It is not disputed that, after allowing I.A.No.1/2010 filed by the plaintiff seeking amendment of the prayer in his plaint and allowing him to pray an alternate relief of recovery of a sum of ₹36.00 lakhs from the defendant, the Trial Court by its order dated 26-02-2011 had directed the plaintiff to pay a Court Fee of ₹1,65,125/-. Accordingly, on 09-03-2011, the plaintiff had paid an additional Court Fee of ₹1,65,125/- which is recorded in the order sheet of the Trial Court.

36. Admittedly, the said order of the Trial Court allowing the I.A.No.1/2010, was challenged by the defendant before this Court in a writ petition bearing Writ Petition No.8424/2011. The said writ petition came to be allowed by this Court on 25-03-2013 and

I.A.No.1/2010 came to be dismissed. In the very same order dated 25-03-2013, this Court had also observed that, the Court fee, if has been paid pursuant to the order passed on 13-01-2011, be refunded to the plaintiff and the amended pleading be struck off.

According to the plaintiff, subsequently, he has filed an interlocutory application, seeking refund of the Court Fee, however, the Trial court without passing any order on the said interlocutory application, has disposed of the main suit itself.

The present respondent/defendant has filed a memo dated 28-11-2019 in this appeal, wherein, he has admitted that the plaintiff has paid the deficit Court Fee and also has stated that, he is entitled for refund of the same by allowing the pending application filed by the plaintiff in the Trial Court.

37. Learned counsels from both side made their submissions uniformly towards refund of the deficit Court Fee of ₹1,65,125/- to the plaintiff/appellant. In view of the same and considering the fact that, this Court in Writ Petition No.8424/2011 (GM-CPC) dated 25-03-2013 had ordered for refund of the Court Fee, which, according to the parties, has not yet been refunded by the Court below, this Court now repeats the order made by this Court in Writ Petition No.8424/2011 on 25-03-2013 and finds it necessary to allow the application filed by the plaintiff in the Original Suit for refund by the Court below.

38. Barring this, the judgment and decree under appeal does not deserve to be interfered in any manner.

Accordingly, I proceed to pass the following:

O R D E R

[i] The appeal is ***dismissed***;

[ii] The judgment and decree dated 18-07-2016 passed in O.S.No.4752/1993 by the learned XXII Additional City Civil & Sessions Judge, Bengaluru (C.C.H.No.7), is hereby ***confirmed***;

[iii] However, the interlocutory application said to be pending in the Trial Court filed by the plaintiff seeking refund of the additional Court Fee of ₹1,65,125/- paid by him, is directed to be paid to the plaintiff, for which purpose, the interlocutory application filed by him, which is pending in the Court below, stands allowed.

Registry to transmit a copy of this judgment along with the Lower Court records to the concerned Trial Court, without delay.

Sd/-
JUDGE

sac*/BMV*