

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.1231 OF 2007 (DEC)

BETWEEN:

SMT. YESHODAMMA
W/O HANUMANTHAPPA
AGED ABOUT 41 YEARS
OCC: HOUSEHOLD WORK
BETHUR ROAD, DEVRAJNAGAR
DAVANAGERE-577001

...APPELLANT

(BY SRI. ANANDA V, ADVOCATE FOR
SRI. JAGADEESH MUNDARAGI, ADVOCATE)

AND:

1. MATHIHALLY NINGAPPA
@ PUJARI NINGAPPA
AGED AOBUT 60 YEARS
ANEKONDA, A.K.HATRRY
BETHUR ROAD
DAVANAGERE-577001.

SINCE R1 IS DEAD
(HAS NO CNILDREN AND ONLY THE LR IS
HIS WIFE WHO IS ALREADY ON RECORD AS R4)

(AMENDED VIDE COURT ORDER DATED 27.02.2012)

2. SHANTHAMMA
W/O KOTRAPPA
AGED ABOUT 44 YEARS
OCC: HOUSEHOLD WORK
R/O ANEKONDA, A.K.HATTY
DAVANAGERE-577001



3. KOTRAPPA
S/O PARASAPPA
COOLIE, A.K.HATTY
ANEKONDA, BETHUR ROAD
DAVANAGERE-577001
4. SMT. HALAMMA @ BASAMMA
W/O MATHIHALLY NINGAPPA
@ PUJARI NINGAPPA
AGED ABOUT 54 YEARS
HOUSEHOLD WORK
C/O VEERANNA MESON
R/O DODDABATHI VILLAGE
DAVANAGERE TALUK
DAVANAGERE DISTRICT-577001
5. THE ASSISTANT EXECUTIVE ENGINEER
3RD PWD, PORT AND WATER RESOURCES
DEPARTMENT, SUB-DIVISION
DAVANAGERE

(AMENDED VIDE COURT ORDER DATED 09.07.2012)

...RESPONDENTS

(BY SRI. R. GURURAJ, ADVOCATE FOR
SRI. VINOD GOWDA, ADVOCATE FOR R2 AND R3;
SRI. H.R.SREEPADA, ADVOCATE FOR R4;
SRI. M. DIVAKAR MADDUR, HCGP FOR R5)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGEMENT AND DECREE DATED 11.09.2006
PASSED IN R.A.NO.257/2005 ON THE FILE OF THE PRL. CIVIL
JUDGE (SR.DN.), DAVANAGERE, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGEMENT AND DECREE DATED
29.06.2005 PASSED IN O.S.NO.90/2002 ON THE FILE OF THE
ADDL. CIVIL JUDGE (JR.DN.), DAVANAGERE, PARTLY
DECREEING THE SUIT FOR DECLARATION AND POSSESSION
AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 09.07.2026 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

This second appeal is filed against the divergent finding questioning the judgment and decree passed in R.A.No.257/2005 wherein the First Appellate Court reversed the findings passed in O.S.No.90/2002 and prayed this Court to set aside the judgment and decree passed in R.A.No.257/2005 and restore the judgment and decree passed in O.S.No.90/2002 by confirming the same.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the plaintiff/appellant before the Trial Court while seeking the relief of declaration to declare that plaintiff/appellant is the absolute owner and also sought for delivery of possession claiming that the suit schedule property was given to her about 15 years ago by Karnataka Slum Clearance Board and handed over the possession of the suit schedule property to her. It is contended by plaintiff that during 2001, she has constructed a house by demolishing the thatched shed under Rajeev Gandhi Rural Housing Corporation

Scheme by mortgaging the property and given the possession of the house in the suit schedule property to her and she is paying installments to the Corporation Bank. In the said scheme, defendant No.2 granted house No.2 and house No.3 is granted to defendant No.3. In spite of that, defendant Nos.1 to 4 have trespassed into the house of plaintiff and put their belongings in the suit scheduled property and thrown the plaintiff and her family members out of the house. The plaintiff has lodged complaint before the police and filed this suit for the relief of declaration and possession.

4. Defendant No.2 has appeared and filed written statement contending that she did not know any scheme under Rajeev Gandhi Rural Housing Corporation Scheme or sanctioning of house No.2 in her name as the wife of defendant No.1 and she has not put signature to any paper or document in respect of house No.2 or she has lived with her husband since 1976 or resided in house Nos.1 or 2 with defendant No.1 by forcefully trespassing into the house along with other defendants as stated by the plaintiff. This defendant has not seen house Nos.1, 2 or 3 and does not know to whom they belonged and who are the real owners. At any point of time, this defendant has not joined with other defendants to evict the

plaintiff. This defendant is an illiterate and innocent lady living in her parents' house and she has not left her place since from 26 years. This defendant did not know the facts stated in paragraphs 4 to 6 of the plaint. As per the information, defendant Nos.1, 3 and 4 are living in house No.2 and house No.3 allotted in the name of Shanthamma, defendant No.3 gave house No.3 to some other third party to reside illegally. She is not interested in any litigation with any persons in the proceedings and she may be compensated with exemplary costs for dragging her in this unnecessary litigation.

5. Defendant Nos.1 and 4 filed their written statement by specifically denying the entire averments of paragraphs 2 to 6 of the plaint as false and put the plaintiff to prove the same with regard to the possession of the suit schedule property by the plaintiff and constructed the shed under Rajeev Gandhi Rural Housing Corporation Scheme and also denied about the installment paid by the plaintiff to the said scheme and also denied about the mortgage under the said scheme and further denied about the sites allotted to defendant Nos.2 and 3 under the said scheme and denied about the interference of defendant Nos.1 and 4 and further denied that on 31.12.2000, defendant Nos.2 and 3 instead of taking possession of their

property were trespassed to the suit schedule property and driven out the plaintiff from the suit schedule property. These defendants have specifically contended that suit schedule property belongs to them. The Slum Clearance Board has allotted site No.1 to one Ramanna and the said site was acquired for formation of road and site No.2 converted as site No.1. The husband of plaintiff having 3 to 4 houses at Davangere and he got sanctioned one house in the name of his son and his daughter-in-law and after came to know about the said fact, these defendants have filed application to Samithi and thereafter on enquiry of the said fact, came to know that defendant No.4 is residing and document was also given to that effect. Hence, the suit is bad for non-joinder of necessary parties.

6. Based on the pleadings of the parties, the Trial Court has framed the Issues and Additional Issue which reads as follows:

1. Whether the plaintiff proves that the defendants have evicted the plaintiff from suit property illegally and high handedly without due process of law?

2. Whether the plaintiff proves that he is entitled to get the delivery of possession of suit property from defendants?
3. Whether plaintiff proves that she is entitled to get damages of Rs.500/- p.m.?

Additional Issue:

1. Whether the plaintiff proves that she is the absolute owner of schedule property under the grant certificate and she is in possession of the same since 12.10.2001?

7. The husband of the plaintiff examined as PW1 and got marked the documents at Ex.P1 to P15 and to support his evidence, examined two more witnesses as PW2 and PW3. On the other hand, defendant No.1 has examined as DW1 and three witnesses were examined as DW2 to DW4 and got marked the documents as Ex.D1 to D21. The Trial Court having considered both oral and documentary evidence placed on record, given the finding on Issue Nos.1 and 3 in the negative and Issue No.2 and Additional Issue No.1 in the affirmative and partly decreed the suit of the plaintiff and declared that the plaintiff is the absolute owner of the suit schedule property and

directed the defendants to hand over the vacant possession of the suit schedule property in 60 days to the plaintiff.

8. Being aggrieved by the judgment and decree of the Trial Court, defendants Nos.1, 3 and 4 preferred an appeal contending that reasoning given by the Trial Court is erroneous and Trial Court committed an error in taking note of the defence that site No.1 which was allotted was already allotted in favour of Ramanna and said house was acquired for formation of road. Thus, house No.1 is not at all existed as per the suit schedule. But the Trial Court having taken into consideration of all the documents produced by the defendants with respect to house Nos.2 and 3, held that house No.2 is house No.1 of plaintiff and the documents are produced for the purpose of loan and comes to the conclusion that House No.2 is House No.1 and granted the relief of declaration. Hence, the First Appellate Court having considered the material on record formulated to the point which reads as follows:

1. Whether the judgment and decree passed by the Trial Court is perverse, capricious and arbitrary and it calls for interference by this Court?

9. The First Appellate Court on re-appreciation of both oral and documentary evidence available on record comes to the conclusion that site No.1 was acquired for formation of road as per Ex.D21 and site Nos.2 and 3 were allotted to defendant Nos.4 and 1 respectively as per Ex.D2 and D1. In view of acquiring of site No.1, the contention of the plaintiff cannot be accepted and plaintiff has failed to prove her case stating that in view of acquisition, site No.2 becomes site No.1.

10. Being aggrieved by the divergent finding of reversal of judgment by the First Appellate Court, this second appeal is filed before this Court.

11. The counsel for the appellant in his arguments would vehemently contend that appellant has produced as many as 15 documents at Ex.P1 to P15. Ex.P2 is issued by the Slum Clearance Board in favour of the appellant and the appellant herein has also executed a registered mortgage deed dated 12.10.2001 in favour of Rajeev Gandhi Grameena Vasathi Nigam Limited and Ex.P5 clearly goes to show that name of the appellant was entered in the beneficiaries list announced in the above scheme. These documents clearly establish the title of the appellant over the suit schedule

property. The First Appellate Court fails to consider and appreciate the fact that defendants themselves have produced the documents as per Ex.D6 and D7 and admitted that house No.1 was allotted to the appellant herein and inspite of allotment of the same, the appellant has occupied the house and the respondents have sought for sanction in favour of respondent No.3 and further they requested the Commissioner to cancel the name of the appellant herein and sanction the same in favour of respondent No.4. These are the documents which clearly goes to show that as on the date of filing of the suit, appellant herein was in peaceful possession and enjoyment of the suit schedule property.

12. The counsel further contend that the First Appellate Court failed to consider that suit schedule house has been sanctioned in favour of the appellant/plaintiff earlier and subsequently, the same has been cancelled as per the order of the Deputy Commissioner without giving any notice to the appellant as contemplated under the provisions of law which is arbitrary and this is clear abuse of due process of law and gross violation of principles of natural justice. Hence, the order impugned passed by the First Appellate Court is required to be set aside. The First Appellate Court also fails to consider the

defendants witnesses' evidence i.e., DW3 and DW4, who clearly admitted that suit schedule property was sanctioned in the name of the appellant/plaintiff after cancelling the sanction in favour of the one Ramanna. The First Appellate Court also failed to consider that documents produced by the defendants at Ex.D6 itself goes to show that the suit schedule property has been granted in favour of the plaintiff. The counsel for the appellant contended that the First Appellate Court committed an error in reversing the judgment of the Trial Court.

13. This Court having considered the grounds urged in this appeal memo, framed the following substantial question of law:

Whether the judgment of the First Appellate Court is illegal and perverse for ignoring a material placed on record in the Trial Court?

14. The counsel for the appellant in his argument would vehemently contend that the reversal of the finding of the Trial Court by the First Appellate Court is erroneous and the same is against the material on record since House No.1 of Anekonda village was allotted in favour of the plaintiff and the same is not in dispute and the same was also allotted by the Slum Board.

Thereafter, the appellant has mortgaged the said property to the Rajeev Gandhi Rural Housing Corporation Scheme and got the benefit. But the plaintiff was dispossessed. Hence, plaintiff has filed the suit for the relief of declaration and possession.

15. The counsel for the appellant would vehemently contend that the main contention of defendant Nos.1 and 4 in the written statement that for expanding of the road, site No.1 was acquired, but nothing was placed on record to prove the said fact by them. The counsel also would submit that when the said defence was taken, an application was filed for impleading the PWD as respondent No.5 before this Court and the same was allowed. The counsel also would submit that a document of no acquisition is produced before this Court by filing an application under Order 41 Rule 27 of CPC and the same is pending. The counsel also submits that PWD also filed a memo stating that site No.1 was not acquired. The counsel also would submit that DW3 and DW4 have categorically admitted with regard to allotting the property in favour of the plaintiff and the plaintiff was in possession. The counsel also contend that document of Ex.D17 is very clear showing that no such exchange. But First Appellate Court committed an error in reversing the judgment of the Trial Court. The plaintiff also

produced tax paid receipts at Ex.P9 and P10. When there was no any acquisition, First Appellate Court committed an error in relying upon Ex.P21 and the same is not supported by any document and even not examined the officials of PWD effectively for having acquired the property. The Trial Court while considering the material available on record, particularly in paragraph 9 of the judgment, rightly held that plaintiff is the owner and also entitled for possession. The very evidence of PW3 is not considered by the First Appellate Court wherein PW3 categorically deposes with regard to allotment in favour of the plaintiff. It is also contended that site No.2 was allotted to Kottrappa and again got allotted site No.1 to daughter-in-law. It is nothing but an attempt made by defendant Nos.1 and 4 to knock off the property of the plaintiff and the same is considered by the Trial Court but First Appellate Court reversed the same without looking into the material. Hence, interference of this Court is required.

16. Per contra, the counsel appearing for respondent Nos.2 and 3 would vehemently contend that the document of Ex.P2 which plaintiff relies upon is undated document and the same was taken note of by the First Appellate Court. The counsel also would submit that Ex.D19 is very clear that site

No.1 was allotted in favour of one Ramanna and no dispute to that effect. Once site No.1 was allotted in favour of Ramanna, the question of granting the relief in favour of the plaintiff as a owner does not arise. The counsel also vehemently contend that Ex.D21-Endorsement is very clear that the said site was acquired. Thus the First Appellate Court rightly reversed the judgment of the Trial Court having reassessed the material available on record. The evidence of DW3 is also clear that the property was allotted in favour of Ramanna and not to the plaintiff. So also, the evidence of DW4 very clear that respondents are not claiming any right in respect of site No.1 since site No.1 was acquired for expansion of road and the same has been taken note of by the First Appellate Court. Hence, the judgment of the First Appellate Court does not call for interference.

17. In reply to this argument, the counsel appearing for the appellant would contend that First Appellate Court not considered the evidence of witnesses of plaintiff. Hence it requires interference.

18. While admitting this second appeal, this Court held that I.A.No.1/2012 will be considered at the time of disposal of

main appeal. Hence, the point that would arise for the consideration of this application is:

1. Whether the appellant has made out the grounds to entertain the application filed under Order 41 Rule 27 of CPC?
2. What order?

19. Before considering the main appeal, this Court would like to refer the application which is filed for production of additional document i.e., an endorsement issued by PWD dated 08.12.2009. Thus, it discloses that this document was obtained prior to the disposal of the suit. The averments made in the affidavit accompanying to the application in paragraph 3 that the said document is very clear to show that there was no any acquisition by PWD and the said letter was misplaced in the house. During 2009, she was having nervous problems in her hands and the doctor suggested for operation and she was also having weakness due to the said problem and BP. In the meanwhile, her husband was also not keeping good health due to BP and sugar problem. When removing the old articles and papers, this letter was found and the same was intimated to her counsel and hence, got prepared this application and

produced before this Court along with the application since the said document is crucial document to decide the real controversy in the case judiciously and effectively.

20. The counsel for the respondents resisted the said application by filing the objections stating that the contention of acquisition was taken up by the respondents before the Trial Court itself but no attempt was made by the appellant to produce that document before the Trial Court. Therefore, the said document is created and concocted for the purpose of disprove the case of the respondents. Hence, no ground is made out to consider the additional document. First Appellate Court already considered the document of Ex.P21 wherein it shows that site was acquired for the formation of the road. Hence, prayed to dismiss the said application.

21. Having considered the grounds urged in the application as well as the objection statement, it discloses that the specific case of the appellant that the said endorsement was obtained in the year 2009 itself but the same was misplaced and while searching, the said letter was found. Hence, non-production of said document is not intentional before the Trial Court. It is also important to note that in this

appeal, PWD is also made as respondent No.5. The counsel for the State also appeared and filed a memo stating that as per the directions of this Court respondent No.5 is furnishes the Letter dated 23.07.2012 and the Letter dated 08.12.2009 which was issued by the Assistant Executive Engineer. The letter dated 08.12.2009 discloses that the said property has not been acquired for the purpose of the road widening referring the earlier letter and also submitted that document dated 08.12.2009 was issued in favour of the plaintiff stating that there was no any acquisition and the letter dated 23.07.2012 was addressed to the Advocate General by the Assistant Executive Engineer stating that site No.1 is not acquired for road formation and there is no any land acquisition proceedings pending in respect of the said property as per the records available in the office and so also the letter dated 17.05.2013 discloses the said fact.

22. Having taken note of the endorsement issued which is produced as additional document and also the reply given by the State, it is very clear that there is no such acquisition by PWD. Even if any such acquisition is made, it should be compensated. But no such acquisition and payment of compensation is forthcoming. Hence, this Court has to take

note of this document as a clinching document to comes to the conclusion that whether the property allotted in favour of the plaintiff was acquired or not and the said document is required to consider the germane issue involved between the parties. Hence, I.A.No.1/2012 is required to be allowed.

23. Now, this Court has to consider the substantial question of law. Having considered the material available on record, it discloses that the suit was filed for the relief of possession in view of dispossession as pleaded and for declaration. On perusal of material available on record, it discloses that the very defence in the written statement that site No.1 was acquired and hence no existence of said property. The Trial Court also taken note of the said fact into consideration and also framed the issue with regard to the dispossession that whether it amounts to an illegal dispossession and whether plaintiff is entitled for possession and Additional Issue was also framed that whether plaintiff is an absolute owner of the suit property. Trial Court answered these issues accordingly and granted the relief of declaration and possession. But the said finding was reversed by the First Appellate Court.

24. Hence, this Court has to examine the material available on record. Having perused the evidence of PW1 to PW3 as well as evidence of DW1 to DW4 and also the documentary evidence of Ex.P1 to P15 and Ex.D1 to D21, this Court has to reconsider that whether the order of the First Appellate Court is perverse in ignoring the material on record. In view of divergent finding, this Court has to consider the evidence as well as documentary evidence. PW1 reiterated that it is a case of allotment. It is not in dispute that originally, site belongs to Karnataka Slum Clearance Board and allotment was made. It is also important to note that defendant Nos.1 and 4 are also beneficiaries under the said scheme. The specific case of plaintiff that she was dispossessed on 03.11.2000. The document of Ex.P1 to P2 disclose the Special Power of Attorney as well as allotment in favour of Yashodamma. No doubt, no date is found in Ex.P2 but, it found the seal of the said Board and the same is signed by the Secretary and the name of husband of plaintiff is Hanumanthappa and he also signed the said document. The document of Ex.P3 is a mortgage deed executed in favour of Rajeev Gandhi Rural Housing Scheme. Hence, it is clear that plaintiff has substantiated that property was allotted and thereafter executed a document of mortgage

in terms of Ex.P3 on 12.10.2001 and Ex.P3 also discloses the mortgage in respect of house No.1 measuring 14 x 18 that is in favour of Commissioner, City Municipality, Davanagere. Site No.1 was allotted in favour of Yashodamma under Ashreya scheme and the same is mentioned in document Ex.P5.

25. It is very clear that site No.3 was allotted in favour of Shanthamma, wife of Kottappa and so also site No.2 in favour of Halamma wife of Ningappa. Ex.P6 is Hakku Patra issued by the Government in favour of Yashodamma; tax paid receipts are at Ex.P8 to 10, Ex.P11 is the complaint with regard to dispossession; Ex.P12 is issued by the Davanagere Municipality and an application given to the Rajeev Gandhi Rural Housing Scheme is document at Ex.P13. All these documents substantiate the case of the plaintiff.

26. The main contention of the defendants that property was allotted in favour of Ramanna as per Ex.D19. No doubt, Ex.D19 clearly discloses that it was allotted in favour of Ramanna i.e., in respect of site No.1. But the Court has to take note of the evidence of Karnataka Slum Clearance Board i.e., the very witness examined by defendant i.e., defendant No.3. He categorically says that Ex.D19 was allotted in favour of

Ramanna. But in the cross examination, he categorically admits that the same was cancelled and thereafter it was given to Yashodamma i.e., plaintiff and Ex.P2 was also given in favour of the plaintiff, thus, she was in possession of the suit property. The witness who re-examined says that based on the documentary evidence he is giving the evidence.

27. The Court has to take note of the evidence of DW4-official of DC Office wherein he also says that site No.1 was allotted in favour of Yashodamma. When she was not residing, the same was allotted in favour of Poojari Kotappa and not having any information that as of now, who is in possession of the said property. This witness was also subjected to cross-examination. In the cross-examination, he admits that while allotting the house under the Ashreya scheme, there is a Committee and Committee used to sanction the same. After the allotment, there is a procedure for mortgaging the property and the same is for the purpose of construction of the house. He also admits that plaintiff had executed the mortgage deed and no information about cancellation made in respect of site allotted to the plaintiff. He admits that without cancelling the same, the same was cannot be allotted to some other person. He also admits that before cancelling the same, notice has to

give. It also admits that the notice must be compulsory before cancellation and there is no document in the office for having given the notice to the original owner - Yashodamma.

28. Having taken note of these evidences before the court, it is very clear that before cancellation and allotting the site in favour of Kottappa, no procedure was followed and the evidence of these two witnesses goes against the defendants. Even in the evidence of DW1 also he categorically admits that they have not given any application for allotment of site No.1 which was allotted in favour of the plaintiff and also he was not able to tell in whose favour electricity connection was given. He categorically admits that Ex.D14 is in respect of site No.1 and admits that in Ex.P2, the photo belongs to Yashodamma. Thus, Ex.P2 also admitted by this witness and also admits that in Ex.D4 also house number is not mentioned. He also admits that site No.3 is allotted in his favour.

29. Having taken note of all these materials, this Court is of the opinion that First Appellate Court committed an error in coming to the conclusion that site No.1 was already acquired. With regard to the acquisition of the property of site No.1, no documents are placed before the court. Even

substantiate that there was an acquisition as contended in the written statement, nothing is placed on record. The First Appellate Court also committed an error in relying Ex.D21 since nowhere in the said document it is specifically mentioned that site No.1 was acquired for road. But the document which is produced before this Court along with application under Order 41 Rule 47 of CPC, it is clear that in 2009 itself an endorsement was given that as the same was not acquired. Having made the PWD as party before this Court as respondent No.5, the State has filed the documents before this Court to show that there was no any acquisition in respect of site No.1.

30. Having perused all these materials available on record, it is very clear that the First Appellate Court committed an error in relying upon Ex.D21 and the same is erroneous since the same is also not proved by examining any of the officials. Unless the document at Ex.D21 is proved before the Trial court, the question of relying upon the said document does not arise. All these materials are discussed. It is very clear that site No.1 was allotted and thereafter executed the document in favour of the City Municipality as per Ex.P3. All these documents disclose the ownership in respect of site No.1 in favour of the plaintiff. Thus, First Appellate Court committed

an error in reversing the finding of the Trial Court since, the Trial Court considered the material on record and declared the plaintiff as owner. So also, with regard to the dispossession is concerned, considered the complaint. The fact that defendant has admitted that in site No.1, he is in possession. But the said possession is illegal. Trial Court rightly decreed the suit and ordered to deliver the possession. But the First Appellate Court committed an error in reversing the finding of the Trial Court only relying upon the document of Ex.D21 when the same is not proved. Hence, the judgment of the First Appellate Court requires interference of this Court. Thus, answered the substantial question of law that First Appellate Court ignored the material available on record and erroneously reversed the finding of the Trial Court.

31. This Court comes to the conclusion that I.A.No.1/2012 is also requires to be allowed, no need to send the application to either the First Appellate Court or Trial Court for consideration of the document. Since, the very official of the Government itself comes before this Court and stated that no such acquisition. The defendants also have not proved the document of Ex.D21. Hence, the question of remanding the matter also does not arise as the material available on record

itself is clear that suit schedule property belongs to the plaintiff and Trial Court rightly declared the plaintiff as the owner and ordered to deliver the possession in view of dispossession. Hence, I answer substantive question of law accordingly so also I.A.No.1/2012 requires to be allowed.

32. In view of the discussions made above, I pass the following:

ORDER

The regular second appeal is allowed.

Consequently, judgment and decree of the Trial Court passed in O.S.No.90/2002 dated 29.06.2005 is restored by setting aside the judgment and decree dated 11.09.2006 passed in R.A.No.257/2005 by the First Appellate Court.

So also, the application filed under Order 41 Rule 27 of CPC is allowed.

No need of remand of the matter in view of the discussions made above.

Sd/-
(H.P.SANDESH)
JUDGE

SN