

[2026 LiveLaw \(SC\) 679](#)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**DIPANKAR DATTA; J., VIPUL M. PANCHOLI; J.
SLP (CIVIL) NO. 23330 OF 2023; JULY 14, 2026**

VENKATESHA AND ANR. *versus* K.M. VENKATAMUNIYAPPA (D) THR. LRS. & ORS.

Pleadings and Reliefs – Pleadings are foundational to a claim – A court cannot grant a relief or decide a case on grounds entirely outside the pleadings of the parties without a proper amendment of the plaint – Held, no amount of evidence on a plea not put forward in the pleadings can be looked into to grant any relief. Relief premised on a case not pleaded cannot be sustained in law. [Relied on *Trojan & Co. Ltd. v. Nagappa Chettiar*, (1953) 1 SCC 456; *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491; Paras 18-22]

Specific Relief Act, 1963 – Section 26 – Rectification of Instruments – Scope and Competence of Rectification Deed – A rectification deed cannot, in the guise of correcting an error, substitute the very subject matter of a prior conveyance or alter the essential transaction itself – Held, Section 26 embodies a limited equitable jurisdiction to rectify the expression of a concluded bargain inaccurately reflected due to fraud or mutual mistake; it does not substitute one bargain for another. [Paras 30, 31]

Specific Relief Act, 1963 – Section 26 – Non-participation of original transferor – A rectification deed executed unilaterally by a subsequent vendor without the participation or consent of the original executant/transferor is legally incompetent to alter the subject matter of the original conveyance or divest the rights flowing from subsequent grants/partitions - Transferees deriving title under an instrument cannot lawfully alter the subject matter of a conveyance executed by another person without the predecessor's concurrence. [Paras 26-35]

Transfer of Property Act, 1882 – Section 43 – Doctrine of Feeding the Grant by Estoppel – Inam Lands – Applicability – The doctrine of feeding the grant by estoppel or principles relating to the re-grant of Inam lands enuring to the benefit of an earlier alienee can only be invoked when it is established as a foundational fact that the property subject to the earlier transfer and the property subsequently re-granted are one and the same - When the identity of the suit property itself is left in doubt, the legal consequences flowing from Section 43 of the ToP Act do not arise for consideration. [Distinguished *N. Venkateshappa v. Munemma*, (2016) 4 SCC 147; Para 29]

Property Law / Property Maxims – *Nemo dat quod non habet* – Derivative Title – No person can convey a better title than he himself possesses. A derivative title cannot outvalue the title from which it is derived. If the original owner never conveyed a specific survey number, subsequent purchasers cannot acquire or convey title to that distinct property merely by executing a unilateral rectification deed. [Para 33]

Evidence Act, 1872 / Civil Law – Burden of Proof – Declaration of Title – A plaintiff seeking a declaration of title must succeed strictly on the strength of their own case and not on the perceived weakness of the defense - Title over an immovable property cannot rest on surmises, probabilities, or conjectural comparisons of boundaries by courts in the absence of solid revenue records, village maps, or expert evidence. [Paras 23-42]

Code of Civil Procedure, 1908 – Section 100 – Second Appeal – Jurisdictional Error and Perversity – The High Court commits a manifest jurisdictional error and its findings are rendered perverse when, under Section 100 of the CPC, it fails to test the legality of a reversal by the First Appellate Court and instead builds a new legal edifice by *suo motu* invoking statutory provisions (like Section 43 of the ToP Act) or factual premises (like interchange of boundaries) that were never pleaded, proved, or advanced by the parties, while simultaneously ignoring material admissions made by the plaintiff. [Paras 38, 39, 40, 41]

[Arising out of impugned final judgment and order dated 06-07-2023 in RSA No. 397/2014 passed by the High Court of Karnataka at Bengaluru]

For Petitioner(s): Ms. Kiran Suri, Sr. Adv. Mr. S.j. Amith, Adv. Mr. S. Srikanth, Adv. Ms. Aishwarya Kumar, Adv. Dr. Mrs. Vipin Gupta, AOR

For Respondent(s): Mr. M. Gireesh Kumar, Adv. Mr. Ankur S. Kulkarni, Adv. Mr. Nirnimesh Dube, Adv. Mr. Debdeep Banerjee, Adv. Mr. Abhay Singh Yadav, Adv. M/s Lex Regis Law Offices, AOR Mr. Sharanagouda Patil, Adv. Ms. Supreeta Sharanagouda, AOR Mr. Kotresh A M, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. This civil appeal registers a challenge to the judgment and final order dated 6th July, 2023¹ passed by the High Court of Karnataka at Bengaluru² in RSA No. 397 of 2014, dismissing the appeal of the appellants under Section 100 of Code of Civil Procedure, 1908³. The decree of the first appellate court, which had reversed the decree of dismissal of a suit by the trial court, thereby stood affirmed.

3. The facts giving rise to the present *lis* are delineated below:

3.1. Appellants, the defendants 1 and 2 before the trial court, are the sons of late Thimmadasappa. A property measuring 1 acre and 18¼ guntas in Sy. No.1/4 originally belonged to Thimmadasappa. He executed a registered sale deed dated 17th May, 1971⁴ in favour of Venkatappa, the defendant no.3. Subsequently, the defendant no.3 conveyed the said property to Govindappa, the defendant no.4 through a registered sale deed dated 24th March, 1972⁵. Thereafter, the defendant no.4 sold the property to K.M. Venkatamuniyappa, the plaintiff (since deceased and now represented by the respondents 1 to 7, being his legal representatives) by a registered sale deed dated 31st May, 1973⁶.

3.2. Some years later, Sy. No. 162, also measuring 1 acre and 18¼ guntas and originally belonging to the Temple of Lord Desha Narayanaswamy, was re-granted to Thimmadasappa pursuant to an order dated 5th August, 1982.

3.3. Nearly a decade and a half later, on 13th March, 1997 to be precise, a rectification deed was executed between the defendant no. 4 and the plaintiff in respect of Sale Deed III, whereby the survey number mentioned therein was corrected from Sy. No. 1/4 to Sy. No. 162.

¹ impugned judgment

² High Court

³ CPC

⁴ Sale Deed I

⁵ Sale Deed II

⁶ Sale Deed III

3.4. On 17th October 2005, Thimmadasappa executed a registered partition deed whereby the property bearing Sy. No. 162 was partitioned between the appellants.

4. Aggrieved thereby, the plaintiff instituted O.S. No. 334 of 2007 out of which this appeal arises. A declaration was sought that the partition deed executed between Thimmadasappa and the appellants was not binding upon the plaintiff. A further declaration was sought that the plaintiff was the absolute owner in lawful possession of the suit schedule property⁷. Plaintiff also sought a decree of permanent injunction restraining the defendants from alienating, encumbering, creating any charge over, or otherwise interfering with the suit schedule property.

5. Before the trial court, the plaintiff contended that the rectification deed dated 13th March, 1997 had been executed solely to correct an error in Sale Deed III relating to the survey number of the property, whereby Sy. No. 1/4 was substituted with Sy. No. 162. It was further contended that since the revenue authorities had failed to mutate the plaintiff's name in the revenue records, Thimmadasappa and the appellants took advantage of such omission and proceeded to partition the property amongst themselves.

6. Appellants, on the other hand, contended that the suit schedule property bearing Sy. No. 162 was an Inam land belonging to the Temple of Lord Desha Narayanaswamy and that their father, Thimmadasappa, was merely its Barvardar (custodian). Upon abolition of the Inam, the said land was re-granted to him in the year 1982, following which he remained in possession thereof. After the partition, the appellants claimed to have continued in possession and enjoyment of the property. It was further contended by the appellants that Sale Deeds I to III pertained exclusively to Sy. No. 1/4 and not to Sy. No. 162 and, therefore, the suit schedule property was distinct from the property conveyed by Thimmadasappa by Sale Deed I to the defendant no.3.

7. The trial court dismissed the suit filed by the plaintiff on the ground that the plaintiff had failed to establish either his ownership of or possession over the suit schedule property, or that Sy. No. 162 and Sy. No. 1/4 were one and the same property. The trial court particularly noted the admission made by the plaintiff during cross-examination that the two survey numbers referred to distinct properties. It further held that Thimmadasappa and his sons were fully entitled to execute a partition deed in respect of his own property, i.e., Sy. No. 162, and that the plaintiff could not challenge the same, especially when he had failed to prove the identity of the two properties.

8. Aggrieved thereby, the plaintiff preferred an appeal under Section 96 of the CPC⁸ before the first appellate court. The first appellate court framed the following issues for determination:

1. Whether appellant/plaintiff proved that he was the absolute owner of the suit property and there was a mistake in the sale deed about survey number it was corrected by rectification deed?
2. Whether appellant/plaintiff proved before the trial court that he was in actual possession and enjoyment of the property and there was interference in his possession?

⁷ **Schedule**

"ALL THAT PIECE AND PARCEL of the property measuring 1 acre 18 % guntas, situated at Bodhigere Village, Channarayapatna Hobli, Devanahalli Taluk, Bangalore District, bounded on the; East by: Anjanappa's Land and now belonging to Venkatapathi West by: Land earlier belonging to Veknatashamappa, & now belonging to Ganeshappa North by: Anneyappa's Land now belonging to Sri. Srinivas South by: Venkatamma's land now belonging to Lakshminarayana"

⁸ Regular Appeal No. 41 of 2011

3. Whether appellant/plaintiff proved before the trial court that partition deed entered into between Thimmadasappa and defendant No. 1 & 2 dated 17.10.2005 is null and void and not binding on rights of the plaintiff?

4. Whether findings of learned trial judge is perverse, illegal, arbitrary, and erroneous and interference by this court is required?

5. What Order?

9. The court allowed the appeal, set aside the judgment and decree passed by the trial court, and decreed the suit in favour of the plaintiff by declaring him to be the absolute owner of the suit schedule property. The court further declared that the partition deed dated 17th October, 2005 was not binding upon the plaintiff and restrained the appellants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Liberty was also granted in favour of the plaintiff to approach the competent revenue authorities for mutation of his name in the revenue records.

10. While arriving at the aforesaid conclusion, the first appellate court compared Sale Deed I with the partition deed and observed that the boundaries mentioned in both documents were identical. On that basis, the court held that the property originally sold by Thimmadasappa was, in fact, Sy. No. 162.

11. Dissatisfied with the judgment and decree of the first appellate court reversing the decree of the trial court, the appellants preferred a second appeal⁹ before the High Court challenging the legality and correctness thereof. In course of admitting the appeal, the High Court framed the following substantial question of law for determination:

"When the Trial Court on the basis of the evidence placed on record dismissed the suit instituted by the respondent by appreciating the evidence on record, whether the First Appellate Court was justified in reversing the Judgment and decree of Trial Court and in doing so, did not assign appropriate and valid reasons to overcome the findings of the Trial Court and thereby committing illegality in the impugned Judgment and Decree?"

12. By the impugned judgment, the High Court dismissed the second appeal, affirmed the decree passed by the first appellate court and held that the properties in Sy. Nos. 1/4 and 162 are the same property.

13. Having failed to obtain a reversal of the decree of the first appellate court and crestfallen with dismissal of their second appeal by the impugned judgment, the appellants have carried the same in appeal before us.

14. Learned counsel for the parties have been heard. We have also perused the materials on record.

15. The following questions arise for decision:

a. Whether the first appellate court was justified in reversing the reasoned findings of the trial court despite the admitted position of the subject matter of the sale deeds being Sy. No. 1/4, and not Sy. No.162?

b. Whether the first appellate court could have decreed the suit in favour of the plaintiff upon a conjectural comparison of the boundaries of the properties, in the absence of any pleading to that effect?

c. Whether the rectification deed dated 13th March, 1997, executed by Govindappa, the defendant no.4 without the participation or consent of the original vendor, i.e.,

⁹ Regular Second Appeal No. 397 of 2014

Thimmadasappa, could alter the identity of the property earlier conveyed from Survey No.1/4 to Survey No. 162?

d. Whether the High Court was justified in declining interference with the first appellate decree?

16. The questions framed above are intertwined and overlap in material respects. The principal issue is whether the first appellate court was justified in reversing the well-reasoned findings of the trial court. The answer to that question depends upon whether the plaintiff established the identity of the suit property through proper pleadings and evidence, whether the rectification deed could legally alter the identity of the property conveyed under the earlier sale deeds, and whether the first appellate court reversed the findings of the trial court on legally sustainable grounds. We shall examine these aspects in that sequence before considering the correctness of the High Court's judgment affirming the appellate decree.

17. A brief recapitulation of the facts would reveal that the plaintiff sought declaration of title and injunction in respect of the suit schedule property situated at Boodigere village on the strength of a rectification deed dated 13th March, 1997, which was executed subsequent to three preceding sale deeds of the seventies of the last century between different transferors and transferees, i.e., Sale Deeds I, II and III. Significantly, the property was sought to be identified by boundaries and not by its number, i.e., Sy. No. 162, a course of action which is permissible under Order VII Rule 3, CPC. The trial court, upon appreciation of oral and documentary evidence, dismissed the suit holding, *inter alia*, that the plaintiff had failed to establish that Sy.No.1/4 and Sy.No.162 were one and the same property and he also failed to prove possession. The first appellate court reversed the decree and the High Court, in second appeal, affirmed such reversal.

18. At the very outset, having regard to the chain of transactions in the present case, it is noticed that Sale Deed I executed by Thimmadasappa in favour of the defendant no.3, Sale Deed II executed by the defendant no.3 in favour of the defendant no.4 and Sale Deed III executed by the defendant no.4 in favour of the plaintiff, are consistent *qua* the description of the property conveyed as Sy. No.1/4. What was required to be pleaded by the plaintiff is that Sy. No. 1/4 and Sy. No.162 denoted the same property. Unfortunately, at the heart of the matter lies the lack of pleading by the plaintiff in the plaint to that effect, that is, Sy. No. 1/4 and Sy. No.162 are the same property. Another equally important aspect is the lack of any pleading that Thimmadasappa owned no property other than Sy. No.162 and that the description in the earlier deeds suffered from a mutual mistake. In the written statement, the appellants categorically stated that the two survey numbers denote entirely different properties. Indisputably, no court can grant relief on a case which is not pleaded. The evidence on record, far from supporting the plaintiff, also evinces that in his cross examination, the plaintiff himself as PW-1 admitted that prior to purchase he had verified the mother deeds of the properties, and followingly admitted that Sy. No.1/4 and Sy. No.162 were distinct properties. This is evinced from the deposition, extracted hereinbelow:

4) It is correct to say that the Schedule Property belonged to Deshanarayanawamy Temple. It is not correct to say that the said property has been continuously enjoyed by the descendants of Deshanarayanawamy. It is correct to say that the lands in Sy. No. 1/4 & 162 of Budigere Village are totally different from each other. It is not correct to say that Sy. No. 1/4 was sold by Thimmadasappa in favour of Venkatappa. It is not correct to say that the said person thereafter sold the same property in favour of the fourth Defendant. To the suggestion that the Govindappa sold the same property to us, the witness states that he has sold Sy. No. 162. (emphasis ours)

19. The trial court was right in treating this admission as significant, militating against the plaintiff's own case. Read together with the absence of any pleading or evidence establishing the identity of Sy. No. 1/4 and Sy. No. 162, the plaintiff was not entitled to the reliefs claimed in the suit. However, the said categorical admission was discarded by the first appellate court without assigning any cogent reasons.

20. The first appellate court's reasoning was premised upon assumptions not founded either on pleadings or on evidence. The court had concluded that the boundaries mentioned in the three sale deeds corresponded to the suit schedule property and, therefore, the survey number alone was erroneously mentioned. However, a conjunctive reading of the boundaries extracted in the record shows material variations. The court had, in fact, proceeded on the footing that there had been an interchange of northern and southern boundaries, although no amendment in this regard was effected in the plaint. A relief, which is premised on a case not pleaded, cannot be sustained in law.

21. The decision in *Trojan & Co. Ltd. v. Nagappa Chettiar*¹⁰ lends credence to the afore-stated position. At the dawn of the Constitution, this Court had the occasion to declare that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; and, without an amendment of the plaint, the court is not entitled to grant the relief not asked for. For obtaining an unclaimed relief, prayer to amend the plaint has to be made so as to incorporate in it an alternative case.

22. Furthermore, the first appellate court could not have embarked upon an enquiry into the alleged interchange of the boundaries of the properties without there being a prayer or averment or even a point arising for determination to that effect. The same has been captured best in the decision in *Bachhaj Nahar v. Nilima Mandal*¹¹. We quote the instructive passage hereinbelow:

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

23. Pertinently, no attempt was made by the plaintiff to establish through any survey records, village maps, phodi sketches or any contemporaneous revenue documents that Sy. No.1/4 and Sy. No.162 represented one and the same parcel of land. Neither was any Commissioner appointed, nor any expert evidence led to demonstrate identity of the properties. In the absence of such evidence, the first appellate court proceeded to decree the suit solely on assumptions drawn from perceived similarities in boundaries. Such an approach is clearly unsustainable in law.

¹⁰ (1953) 1 SCC 456

¹¹ (2008) 17 SCC 491

24. Equally unsustainable is the conjecture drawn by the first appellate court from the testimony of DW-1, to state that Thimmadasappa had no property other than Sy. No.162. What DW-1 indeed stated was that the partition deed of 2005 referred only to Sy. No.162 and not any other property. The relevant extract of the testimony reads: It is correct to say that I have not described the devolution of title over the property in my father's favour in the partition deed produced by me. It is correct to say that excepting Sy. No. 162 measuring 1 Acre 18 Guntas, it is not written in the partition deed that my father owned any other property. It is not correct to say that as per Ex. D2 mutation extract Item No. 5, my father has in his name an extent of 20 Guntas in Sy. No. 162. The person named in Ex. D2 with respect to the said property is not my father.

25. From such statement, it was impermissible to infer that Thimmadasappa did not own Sy. No.1/4 in 1971, particularly when the very case of the appellants was that Sy. No.1/4 had already been conveyed decades earlier. The inference drawn by the first appellate court is, thus, plainly conjectural.

26. There is yet another aspect which the first appellate court, and by extension, the High Court failed to address. On the plaintiff's own showing, Sy. No.162 originally belonged to Desha Narayanaswamy Temple and occupancy rights in favour of Thimmadasappa were granted only on 5th August, 1982; yet, Sale Deed I purportedly conveyed Sy. No.1/4. The subsequent rectification deed dated 13th March, 1997 was executed only by the defendant no.4 (the plaintiff's vendor) and not by Thimmadasappa, the original executant in Sale Deed I. A rectification deed cannot, in the guise of correcting an error, substitute the very subject matter of a prior conveyance without participation of the original transferor. What was sought to be achieved through the rectification deed was not correction of a clerical mistake simpliciter but substitution of one property having a specific survey number by another altogether distinct property. Such unilateral alteration could not divest the appellants of the rights flowing from the subsequent grant and partition.

27. We may, however, note that neither the trial court nor the first appellate court invoked Section 43 of the Transfer of Property Act, 1882¹². Equally, no argument founded upon the said provision was advanced by either side before the High Court. It was the High Court which, on its own accord and for the first time, proceeded to invoke Section 43 of the ToP Act.

28. Before advertng to the applicability of Section 43 of the ToP Act, it becomes necessary to examine the legal competence of the rectification deed dated 13th March, 1997. The rights asserted by the plaintiff in respect of Sy. No.162 are founded entirely upon this document. If the rectification deed is incapable of conferring title, every subsequent transaction resting upon it must necessarily be tested in that light.

29. It is found that the High Court relied on the decision of this Court in **N. Venkateshappa v. Munemma**¹³ regarding the doctrine embodied in Section 43 of the ToP Act and for invoking the principle that a re-grant of an Inam land may enure to the benefit of an earlier alienee. In our view, the same does not advance the plaintiff's case any further. The said decision is clearly distinguishable for it proceeded on the foundational premise that the property which was the subject matter of the earlier transfer and the property which was subsequently re-granted are one and the same. It is only upon such identity being established that the doctrine of feeding the grant by estoppel or the principle

¹² ToP Act

¹³ (2016) 4 SCC 147

relating to Inam re-grants can be invoked. In the present case, however, that foundational fact itself remains unproved. Plaintiff's title deed and the earlier sale deeds consistently describe the property as Sy.No.1/4, whereas the regrant relates to Sy.No.162. Plaintiff neither pleaded nor proved that both survey numbers represented the same parcel of land; indeed, the evidence noticed above points otherwise. Once the identity of the suit schedule property itself is left in doubt, the legal consequences flowing from Section 43 of the ToP Act or from the law governing Inam re-grants do not arise for consideration at all. The High Court, by proceeding directly to apply those principles without first returning a clear finding on identity, in effect, placed the legal cart before the factual horse.

30. Does Section 26 of the Specific Relief Act, 1963¹⁴ have any application here? The said provision embodies a limited equitable jurisdiction. The provision kicks into operation on the assumption that the parties to an instrument had arrived at a common intention which, by reason of fraud or mutual mistake, was inaccurately reflected in the document executed between them. Rectification, therefore, rectifies the expression of a concluded bargain; it does not substitute one bargain for another. The provision is intended to remove an error in recording the transaction and not to alter the essential subject matter of the transaction itself.

31. The said distinction assumes pronounced significance in light of the uniqueness *writ large* in the facts of the present case. Sale Deed I executed by Thimmadasappa conveyed Sy. No.1/4. Sale Deed II conveyed the very same property. Sale Deed III again described the property as Sy. No.1/4. The rectification deed executed in 1997, however, seeks to substitute Sy. No.162 in place of Sy. No.1/4. We repeat, this is not a case where an erroneous recital is corrected while preserving the identity of the property conveyed. It is a case where the identity of the property itself stands altered. Such an exercise traverses beyond the permissible confines of Section 26 of the SR Act.

32. Equally cardinal is the fact that the original transferor, namely Thimmadasappa, was not a party to the rectification deed. If the very fulcrum of rectification is the common intention of the parties to the original transaction, the participation of the original executant assumes obvious importance. A transferee deriving title under an instrument cannot, together with his successor, lawfully alter the subject matter of a conveyance executed by another person. To hold otherwise would permit derivative holders of title to enlarge the estate conveyed by their predecessor without the predecessor's concurrence.

33. The matter may also be examined from another perspective. The principle embodied in the maxim *nemo dat quod non habet* admits of no exception in the present case. No person can convey a better title than he himself possesses. If Thimmadasappa never conveyed Sy. No.162, the defendant no.3 acquired no title thereto. The defendant no.4 too could not, therefore, acquire any such title. It necessarily follows that the defendant no.4 could not convey Sy. No.162 to the plaintiff merely by executing a rectification deed. A derivative title cannot outvalue the title from which it is derived.

34. Since Thimmadasappa continued to retain title to Survey No.162, notwithstanding the rectification deed executed by and between the plaintiff and the defendant no. 4, the inclusion of the said property in the partition deed executed between him and his sons cannot be faulted.

35. The first appellate court had proceeded on the footing that once the boundaries of both the properties had resemblance, the rectification deed necessarily validated the substitution of survey numbers. In our considered opinion, this approach runs counter to

¹⁴ SR Act

the correct legal inquiry. The question was not whether the rectification deed existed, but whether it was competent in law so as to alter the identity of the property conveyed under the earlier sale deeds itself. Unless that foundational question was answered in the affirmative, the rectification deed could not perfect the plaintiff's title to Survey No.162, nor could the partition deed be declared void at his instance.

36. Even as the very preliminary step, the plaintiff's title over Sy. No.162 is nebulous. A plaintiff seeking declaration of title must succeed on the strength of his own case and not on the perceived weakness of the defence. It is trite that title cannot rest on surmises or probabilities. The burden squarely rested on the plaintiff to establish that the property conveyed under Sale Deeds I, II and III, though described throughout as Sy. No.1/4, was in reality Sy. No.162. Such burden remained undischarged.

37. The conduct of the plaintiff is equally relevant. Although the rectification deed is of the year 1997, admittedly no effort was made to have the revenue entries changed in his favour. Even until the institution of the suit in 2007, the revenue entries consistently stood in the name of Thimmadasappa and, thereafter, in the names of the appellants. While it is trite that revenue entries themselves do not confer title, they may be seen as evidence regarding possession. A total absence of any contemporaneous assertion of right by the plaintiff over Sy. No.162 for nearly a decade after the alleged rectification deed is a circumstance which the first appellate court failed to accord due weight.

38. The infirmities canvassed in the preceding discussion are not mere tenuous errors in the appreciation of evidence. They unravel a more fundamental jurisdictional error committed by the High Court while exercising powers under Section 100 of the CPC. Upon a threadbare consideration of the impugned judgment, the findings recorded by the High Court, in our considered opinion, are rendered perverse for the reasons *ad seriatim* assigned hereafter.

39. *First*, the substantial question of law framed at the threshold required the High Court to examine whether the judgment of the first appellate court, reversing the well-reasoned findings of the trial court, did not suffer from any perversity. However, instead of testing the legality of the reversal, the High Court too proceeded to re-affirm findings founded upon assumptions and conjectures. In doing so, the High Court overlooked that the first appellate court had travelled beyond the pleadings and had discarded material admissions without assigning cogent reasons. The enquiry ought to have been whether the first appellate court had legally dislodged the trial court's findings on the identity of the property; the validity of the rectification deed; the plaintiff's admissions and proof of possession. There is not an iota of discussion in the impugned judgment addressing this enquiry. Rather, while upholding the finding that the property conveyed under Sale Deed I, the High Court embarked upon an independent factual enquiry and supplied fresh reasons to buttress the findings. In doing so, it brought an altogether new factual premise into picture that there had been an interchange of the northern and southern boundaries, although no such case was ever pleaded or proved by the plaintiff at any point of time.

40. *Secondly*, the High Court also introduced an entirely new legal edifice by invoking Section 43 of the ToP Act, although the plaintiff never pleaded the ingredients thereof nor premised any of his reliefs on the said provision. *A fortiori*, neither the trial court nor the first appellate court had anchored their conclusions on the said provision. A conclusion based on a contention never advanced, in our considered opinion, renders itself perverse.

41. *Thirdly*, the High Court failed to deal with the material admissions made by PW-1, particularly his admission that both Survey No. 1/4 and Survey No. 162 were distinct survey numbers and that he had inspected the title documents before purchasing the

property. These admissions negated the very sub-stratum of the plaintiff's case and could not have been ignored without recording reasons.

42. The impugned judgment, therefore, is indefensible.

43. For the foregoing reasons, we are of the considered opinion that the judgment and decree passed by the first appellate court reversing the decree of the trial court, since affirmed by the High Court, suffer from manifest errors of law and a complete misappreciation of the evidence on record. The trial court, we hold, was perfectly justified in dismissing the suit.

44. Consequently, the appeal succeeds and is allowed. The judgment and decree dated 6th July, 2023 of the High Court passed in RSA No.397 of 2014 affirming the judgment and decree dated 22nd February, 2014 passed by the first appellate court in R.A. No.41 of 2011, stand set aside. The decree dated 15th October, 2011 passed by the trial court in O.S. No.334 of 2007 dismissing the suit is restored.

45. In the facts and circumstances, there shall be no order as to costs.

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