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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF NOVEMBER, 2017

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

R.S.A.No.100446/2015

BETWEEN:

SRI. RAGHAVENDRA SWAMY MUTT
REP. BY ITS PEETADHIPATHI
H.H. SRI. SUBUDHENDRA TEERTHA SWAMIJI
SRI. RAGHAVENDRA SWAMY MUTT
MANTRALAYA, KURNOOL DISTRICT
ANDHRA PRADESH-510003
REP. BY APTHAKARYADARSHI
S.N. SYAMINDRA ACHAR.

.... APPELLANT

(BY SRI.K.SUMAN & SRI PHANIRAJ KASHYAP, ADVOCATES)

AND:

SRI. UTTARADI MUTT
REP. BY ITS PEETADHIPATHI
SRI. SATYATMA TEERTHA SWAMIJI
UTARADI MUTT BASVANGUDI
NEAR NATIONAL COLLEGE, BANGALORE-560085
REP. BY GENERAL POWER OF ATTORNEY HOLDER
SRI. AYODHYA RAMACHAR, ADVOCATE
NEAR RAGHAVENDRA SWAMY MUTT
GANGAVATHI, KOPPAL DISTRICT.

.... RESPONDENT

(BY SRI.JAYAVITTAL RAO KOLAR, SR. COUNSEL FOR
SRI HARISH DESAI ADV., FOR C/RESPONDENT)

THIS RSA IS FILED UNDER SECTION 100 OF THE CPC.,
AGAINST THE JUDGMENT & DECREE DTD:22-04-2015 PASSED

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IN R.A.No.123/2014 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE, DHARWAD, PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DTD:18-06-2011 AND THE DECREE PASSED IN O.S.No.74/2010 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE, GANGAVATHI, DISMISSING THE SUIT FILED FOR PERMANENT INJUNCTION.

THIS RSA HAVING BEEN RESERVED FOR ORDERS ON **10/11/2017**, COMING ON FOR PRONOUNCEMENT, THIS DAY, **DR VINEET KOTHARI J.**, DELIVERED THE FOLLOWING:

JUDGMENT

**SRI.K.SUMAN & SRI PHANIRAJ KASHYAP, ADVOCATES
SRI.JAYAVITTAL RAO KOLAR, SR. COUNSEL FOR
SRI HARISH DESAI ADV., FOR C/RESPONDENT)**

The long litigative battle between the religious sects-plaintiff/respondent-Sri Uttradi Mutt (UM) and defendant/appellant-Sri Raghavendra Swamy Mutt (RSM) involved in the present Regular Second Appeal (RSA) was taken up for hearing for expeditious disposal under the directions of the Hon'ble Supreme Court. The appeal was admitted on 13.04.2016 and following substantial questions of law were framed by coordinate bench for consideration:

- i) *"Whether the lower appellate court is justified in setting aside the judgment and decree passed by the trial Court without taking into consideration the relevant materials?"*
- ii) *The lower appellate court, having held that the defendant-Mutt is entitled to perform Aradhanas and Pooja of Vrindavanas in the suit schedule property, justified in restraining the defendant by way of perpetual injunction from interfering with the suit schedule property?*
- iii) *Whether the lower appellate court committed an error of law in having framed point No.1 for consideration without taking into consideration the fact that the issue relating to performance of Aradhanas in the Nava Vrindavanas is inter-linked with the issue of lawful possession of the plaintiff over the suit schedule property?*
- iv) *Whether the appellate Court erred in partly allowing the suit and in granting the relief which is mutually irreconcilable and conflicting and thus it renders the judgment*

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null and void since it does not resolve the crux of the issue namely the religious right to perform Aradhanas?

v) *Any other substantial of law that may be cropped up during the course of the appeal?."*

2. Though the present **Suit No.74/2010** (filed in 1992) by **Uttaradi Mutt vs. Raghvendra Swamy Mutt** was originally dismissed on **18.06.2011** by the learned Trial Court, the First Appellate Court (FAC) in the **RA No.123/2014** partly decreed the suit of the plaintiff/respondent-(UM) on **22.04.2015** and while doing so the FAC also rejected the **three applications** filed under **Order 41 Rule 27 CPC** filed by the defendant/appellant-(RSM) and during the course of arguments of the present second appeal along with connected W.P.No.111125/2014, Mr.K.Suman, the learned counsel for the appellant/defendant-RSM emphatically submitted that by rejection of the three applications under

Order 41 Rule 27 of the CPC filed by the appellant/defendant-RSM, there has been a serious miscarriage of justice and the learned FAC has grossly erred in rejecting the said three applications under Order 41 Rule 27 of the CPC and that has prevented a fraud played upon the plaintiff/respondent-UM upon the State Government and the Court be brought to the light before the Court and the said applications deserve to be allowed by this Court, because the entire foundation of the plaintiff's case can be unraveled and upset, if such fraud played by plaintiff upon the authorities of the Revenue Department, Land Survey Department and the Court, is brought to the notice of the Court and such additional evidences are allowed to be led and proved in accordance with law.

3. Mr.K.Suman, learned counsel for the appellant/defendant-RSM, further submitted that notwithstanding the impugned order of Superintendent of

Land Records dated **07.09.1974** which was upheld by the Karnataka Appellate Tribunal (KAT) in its order dated **18.07.1981** filed by yet another sect Vyasaraja Mutt in **Appeal No.356/77**, to which the present appellant/defendant-RSM was not a party and the present appellant/defendant-RSM has only now challenged the said order dated **07.09.1974** in **W.P.No.111125/2014** filed by the appellant/defendant-RSM, the learned FAC court below could not have rejected the said application under Order 41 Rule 27 of the CPC and other two similar Applications by its order dated **22.04.2015** in **R.A.No.123/2014** (Shri Uttaradi Mutt -vs- Sri Raghavendra Swamy Mutt) out of which the present second appeal arises.

4. The brief of three applications under Order 41 Rule 27 is as under:

(a) **Application under Order 41 Rule 27 of CPC dated 07.01.2012** – The defendant-appellant sought to

produce 31 documents as Additional Evidence before the FAC mostly pertaining to Survey of Land of Sy.No.192 in 1973-74 which according to defendant-appellant was a fraud played upon the Government and the Court by the plaintiff-UM seeking to increase its re-granted land of only 14 Acres and 07 Guntas to 27 Acres and 30 Guntas.

(b) **Application under Order 41 Rule 27 of CPC dated 05.01.2015** - The defendant-appellant sought to produce Additional Evidence in the form of Survey Sketch prepared by Hampi Development Authority, Exs.P-16 from Head of Department of Telugu Language and Dravidian University and Endorsement dated 03.01.2015 of Tahsildar Gangavati regarding Survey of Anegundi village.

(c) **Application under Order 41 Rule 27 dated 20.01.2015** - The defendant/appellant sought to produce Additional Evidence in the form of Reply dated 13.01.2015 and 20.01.2015 given by Sub-Registrar, Gangavati, under Right to Information Act, 2005, certified copies of Sale

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Deed obtained in 1979 and 1989, Tippani Documents, Akarband Record, Reports of Language Department of Dravidian University and Reply dated 03.01.2015 of Sub-Registrar, Gangavati, under the Right to Information Act.

5. The reasons assigned by the learned FAC (Principal Senior Civil Judge and CJM, Dharwad), for rejecting all the said three Applications Under Order 41 Rule 27 of the CPC and operative portion of the Order dated 22.04.2015 are quoted below for ready reference:

"Additional evidence sought to be adduced by the Respondent

(A) Application filed on 07-01-2012:

*70. By filing an Application under Order 41 Rule 27 of CPC on 07-01-2012, the Respondent is seeking production of **as many as 31 documents**. Except very few documents, the rest of the documents produced by the Respondent through this Application **pertain to survey of land in Sy.No.192 of Anegundi village**. It is vigorously*

*argued by the learned Counsel for the Respondent that the said survey documents would demonstrate that the **extent of land in Sy.No.192 was changed from 14 acres 7 guntas to 27 acres 30 guntas on account of fraud** played by the Appellant Mutt.*

71. *At this juncture itself, it may be noted that the Respondent has filed a **Writ Petition in W.P.No.111125/2014** before the Hon'ble High Court of Karnataka, Dharwad Bench praying for quashing the survey proceedings and survey Report dated 18-04-1974 of the Assistant Superintendent of Land Records (ASLR) and for quashing of the **Order dated 07-09-1974** passed by the Superintendent of Land Records, Bellary. On 15-04-2015, by getting the case advanced, the learned Counsel for the Respondent produced a certified copy of the **Order dated 08-04-2015** passed by the Hon'ble High Court of Karnataka in **W.P.No.111125/2014**. In the said Order, the Hon'ble High Court of Karnataka has sought for clarification from the concerned authorities of the Revenue Department. The Hon'ble High Court has formulated as may as **8 questions** in this regard. In its Order, the Hon'ble High Court has clarified that the said Order passed by it **will not come in***

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the way of this Appellate Court to pass Judgment independently in accordance with law in the present Appeal between the private parties.

72. ***As the survey proceedings are challenged in the said Writ Petition before the Hon'ble High Court of Karnataka, I am of the opinion that the Respondent cannot be permitted to lead additional evidence regarding the said documents in this Appeal.*** Unless the said proceedings are set aside and unless the revenue entries showing the extent of land in ***Sy.No.192 as 27 acres 30 guntas are set aside by a competent Authority, this Court cannot hold that the extent of land in Sy.No.192 belonging to the Plaintiff Mutt is only 14 acres 7 guntas.*** It may be noted that it is not the case of the Defendant Mutt that excluding 14 acres 7 guntas, the remaining extent of land in the island belongs to it and that the same is in its possession. That is not at all the case of the Defendant. At any rate, as the survey proceedings are the ***subject matter of challenge before the Hon'ble High Court of Karnataka*** and as the Hon'ble High Court has sought for clarification from the concerned Department regarding survey conducted in respect of

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*Sy.No.192, the Respondent **cannot be permitted to lead additional evidence in respect of the said documents in this Appeal.***

73. *It is argued by the learned Counsel for the Respondent that the deposition of P.W.3 in **O.S. No.65/1/1959-60**, a copy of which is sought to be produced as additional evidence in this Appeal, would go to show that the said witness for the Plaintiff himself has stated in his evidence that **the Navavrindavanas are situated outside the extent of 14 acres 7 guntas land** and that in order to substantiate the same, the said document is now produced. The Respondent/Defendant was party to that Suit in **O.S.No.65/1/1959-60**. It is not the case of the Respondent that the said deposition of P.W.3 was not available with it. Nothing prevented the Respondent from producing the said document before the trial Court. **No ground is made out by the Respondent for producing the said document in this Appeal.** As discussed above, in the Application as per Ex.P-5 submitted by the agent of the Defendant Mutt to the Revenue Officer, Anegundi, the said agent of the Defendant Mutt himself has stated to the effect that the **Navavrindavanas are situated in 14 acres 7***

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guntas land in Sy.No.192. No ground is made out by the Respondent for producing the said document in this Appeal. I am of the opinion that the reason assigned by the Respondent does not fall under any of the conditions provided in Order 41 Rule 27 CPC for leading additional evidence.”

(B) Application filed on 05.01.2015:

74. On 05.01.2015, the Respondent has filed an Application under Order 41 Rule 27 R/w Section 151 of CPC seeking production of the true representation of Ex.P-16 from the Head of Department of Telugu Language of Dravidian University, Endorsement dated 03-01-2015 issued by Tahsildar, Gangavathi regarding survey in Anegundi village, and Survey sketch prepared by Hampi Development Authority as additional evidence.

75. According to the Respondent, the said true representation of Ex.P-16 issued by the Head of Department of Telugu Language of Dravidian University would demonstrate that in the Kannada translation of Ex.P-16 document as per Ex.P-16(a), the year of Saka is tampered as 1768 in the place of 1368. On the face, it reveals that there is no

such tampering in the mentioning of numerals in Ex.P-16(a) Kannada Translation as now alleged by the Respondent. On the face, it appears that using of Telugu vernacular numerals in Ex.P-16 [as 2] has confused the translator of Ex.P-16 document to initially type the year as 1368 and then overwrite the numeral '3' by correcting it as '7'. Using of Telugu numerals '3' in Ex.P-16 clarifies the same. The Telugu true representation of Ex.P-16 now sought to be produced by the Respondent, in the opinion of the Court, does not depict the clear picture of the document. At any rate, I opine that no malafides can be attributed to the Appellant in this regard. No ground is made out by the Respondent to produce the said document as additional evidence in this Appeal.

76. *The other documents sought to be produced by the Respondent as additional evidence are Endorsement dated 03-01-2015 issued by Tahsildar, Gangavathi regarding survey in Anegundi village, and Survey sketch prepared by Hampi Development Authority. For the reasons stated by the Court while discussing about the Application dated 07-01-2012 filed by the Respondent (i.e., Writ Petition pending on the file of the Hon'ble High Court of Karnataka), I am of*

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the opinion that the Respondent cannot be permitted to produce the said documents as additional evidence in this Appeal. In view of the said Writ Petition pending before the Hon'ble High Court, I am of the opinion that, it is not proper on the part of this Court to discuss regarding the flow of Tungabhadra river and regarding the sketches showing the direction of flow of water.

(C) Application filed on 20-01-2015:

77. *By filing an Application under Order 41 Rule 27 R/w Section 151 of CPC on 20-01-2015, the respondent is seeking permission to produce replies dated 13-01-2015 and 20-01-2015 given by Sub-Registrar, Gangavathi under RTI Act, certified copies of Sale Deed obtained in the years 1979 and 1989 containing Kannada translation, Tippani documents, Akarband record, Reports of Department of Telugu language of Dravidian University and Reply dated 03-01-2015 given by the Sub-Registrar, Gangavathi under RTI Act, as additional evidence.*

78. ***In view of the Writ Petition pending before the Hon'ble High Court of Karnataka in which the survey proceedings are challenged, I opine that the Respondent***

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cannot be permitted to lead additional evidence in respect of the said Tippani documents, Akarband record and Reports of Department of Telugu language of Dravidian University.

79. In the present Appeal, now the Respondent is trying to propel a new theory that no such Sale Deed (with the volume Number and Register Number mentioned therein) alleged by the Plaintiff was registered in the Office of the Sub-Registrar, Gangavathi on 04-01-1325 Fasli and that the Volume Number and Register number furnished by the Plaintiff pertain Sy.Nos.314 and 598 of Chickajantakal village and do not pertain to Sy.No.239 of Anegundi village. By producing an endorsement dated 13-01-2015 issued in this regard by the Sub-Registrar, Gangavathi, the Respondent is seeking permission to lead additional evidence with respect to the said document. As answer to this, the learned Counsel for the Appellant argued that the said Sale Deed pertaining to the landed properties in Survey Nos.495, 496, 497, 578 and 579 and a house property of Chickkaljantakal village was registered in the office of Sub-Registrar, Gangavathi, whereas the Sale Deed of the Plaintiff was registered in the then existing office of the Sub-Registrar, Anegundi. On

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09-03-2015, the learned Counsel for the Appellant has produced a memo to the Court along with copies of the Application dated 09-01-2015 filed by one Sri. Alabanur Raghavendra Rao to the Sub-Registrar, Gangavathi, Application dated 03-01-2015 submitted by the GPA Holder of the Plaintiff to the Sub-Registrar, Gangavathi for issuing certified copy of Ex.P-3 Sale Deed, Application filed by the GPA Holder of the Plaintiff to the Sub-Registrar, Gangavathi praying for issuing copy of the said Application given by the said Sri Alabanur Raghavendra Rao and certified copy of the Sale Deed executed by Vakil Krishna Rao in favour of the plaintiff Mutt, issued by the Sub-Registrar on 20-02-2015.

80. *The records reveal that in answer to the Application submitted by the GPA Holder of the Appellant Mutt, on 20-02-2015, the Sub-Registrar, Gangavathi has issued certified copy of the Sale Deed executed by Vakil Krishna Rao in favour of the Plaintiff Mutt. **If really Ex.P-3 Sale Deed was not executed by Krishna Rao in favour of the Plaintiff Mutt as now contended by the Respondent,** certainly the Sub-Registrar would not have furnished certified copy of the very same Sale Deed. The very fact that even in the year*

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2015, the Sub-Registrar has issued certified copy of the **Ex.P-3 Sale Deed goes to show that Peshkar Krishna Rao has executed Sale Deed in respect of Sy.No.239 (new Sy.No.192) of Anegundi village in favour of the Plaintiff Mutt. (sic!)(Why FAC has commented upon the Additional Evidence, without it being first taken on record!)**

81. On the face, it appears to the Court that by making mis-description of the registering authority in the Application filed, an endorsement regarding the Sale Deed of the even date registered in the Office of Sub-Registrar, Gangavathi has been obtained. **May be** that in respect of Survey Nos.495, 496, 497, 578 and 579 and a house property of Chickkaljantakal village, Sale Deed was registered in the office of Sub-Registrar, Gangavathi. But, according to the Appellant, the Sale Deed as per Ex.P-3 was registered in the office of Sub-Registrar of erstwhile Anegundi Samsthana. They very fact that even in the year 2015, a copy of Ex.P-3 Sale Deed was supplied by the Office of the Sub-Registrar, Gangavathi, **goes to show that such a Sale Deed was executed by the said Krishna Rao.** By producing an endorsement relating to Sale Deed

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pertaining to Chickkjanthakal village, the Respondent is trying to divert the matter. Absolutely, no ground is there to entertain the Application filed by the Respondent seeking permission to lead additional evidence in this regard. Through the Application, the Respondent is also seeking permission to produce copies of revenue and survey documents as additional evidence. For the reasons stated while discussing about the other Applications filed by the Respondent under Order 41 Rule 27 of CPC, I am of the view that the Respondent cannot be permitted to produce the said documents as additional evidence.

Fresh Survey

82. By filing an Application under Section 151 of CPC, the Respondent is praying for direction to the concerned survey authorities to conduct survey of Sy.No.192 of Anegundi village. As the Respondent Mutt has challenged the survey proceedings before the Hon'ble High Court of Karnataka and as the Hon'ble High Court has sought for clarification from the concerned Department regarding survey conducted in respect of Sy.No.192, this Court cannot order for any fresh survey in respect of the very same property.

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General

83. *Appreciation of evidence in a civil case is not of the standard expected in a criminal case. If the Plaintiff is able to probabalise his case by placing acceptable evidence, nothing more requires to be done by him. In the instant case, I am of the opinion that by producing Sale Deed, Judgment in the earlier proceedings and other documents and by adducing oral evidence, the Plaintiff has proved its possession of the Suit property as on the date of the Suit. None of the Applications filed in this Appeal by the Appellant and the Respondents deserves to be allowed. For the above reasons, I answer Point No.1 in the Affirmative and Points No.3 to 7 in the Negative."*

ORDER

The Application filed by the Appellant under Order 41 Rule 27 R/w Section 151 of the Code of Civil Procedure is dismissed.

The Application filed by the Appellant under Order 14 Rule 5 R/w Section 151 of the Code of Civil Procedure is dismissed.

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The Application filed by the Respondent under Order 14 Rule 5 R/w Section 151 of the Code of Civil Procedure is dismissed.

The Applications filed by the Respondent under Order 41 Rule 27 R/w Section 151 of the Code of Civil Procedure are dismissed.

The Application filed by the Respondent under Section 151 of the Code of Civil Procedure seeking survey of Sy.No.192 of Anegundi Village is dismissed.

The Application filed by the Respondent under Section 340 of the Code of Criminal Procedure is dismissed.

*The Appeal filed by the Appellant under Order 41 Rule 1 of the Code of Civil Procedure is allowed in part. **The Judgment and Decree dated 18-06-2011 passed by the Court of the Addl. Civil Judge, Gangavathi in O.S.No.74/2010 are set-aside.***

*The Suit of the Plaintiff is **decreed in part.** Subject to the right, if any, of the Defendant Mutt to perform Aradhanas and Poojas of the Vrindavanas in the Suit property, the Defendant is*

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restrained by way of Perpetual Injunction from interfering with the Plaintiff Mutt's possession and enjoyment of the Suit property. It is hereby clarified that the above said rider shall not be construed as declaring the right of the Defendant Mutt to perform Aradhanas and Poojas."

Costs are made easy.

The Office is directed to transmit a copy of the Judgment and Decree to the trial Court along with LCR.

*Sd/-
(A.V.Srinath)
Principal Senior Civil Judge &
CJM., Dharwad."*

6. All these three applications were filed by the defendant/appellant-RSM under Order 41 Rule 27 of the CPC on 07.01.2012, 05.01.2015 and 20.01.2015, but all the three applications came to be rejected by the learned trial Court mainly on the ground that the W.P.No.111125/2014 against the order passed by the

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Superintendent of Land Records dated 07.09.1974 is pending before the High Court.

7. Mr.Suman, learned counsel for the appellant/defendant-RSM, has urged before the Court that the land bearing Sy.No.192 of Anegundi (erstwhile Sy.No.239) is an island covered on all four sides by Tungabhadra River and the said land claimed by the plaintiff/respondent-UM was forfeited by the State way back in 1941 and upon the application of the Pontiff of plaintiff-UM, the same was re-granted to its Head in 1945 only to the extent of 14 Acres and 7 Guntas of land subject to certain conditions, *inter alia*, allowing right of 'Aradhana' to all, including the appellant/defendant-RSM. The claim of the plaintiff/respondent-UM for which the defendant/appellant has been denied the 'Aradhana' rights by the impugned judgment of the FAC, under the guise of injunction against peaceful possession of Plaintiff-UM of entire 27 Acres and 30 Guntas of land whereas

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Navbrindavan was not even located in the said 14 Acres and 7 Guntas of land of Sy.No.192 and therefore, the said plaintiff-UM initiated the proceedings for getting the impugned survey of the said land done by Land Survey Department of State and not the Revenue Department by its petition dated 30.04.1973 which was however rejected by the Director of Survey Settlement in the first instance who vide his communication Annexure-F dated **08.05.1973** in the writ petition and the said Director of Survey Settlement informed Sri Gopalacharya of Sri Uttardi Mutt that the authority of correction of wrong entry in the Record of Rights in respect of old Sy.No.239 (New No.192) of Anegundi village vests with the Revenue Authorities and therefore they may approach the concerned Revenue authorities in this behalf.

8. Mr.Suman, also urged that again the Superintendent of Land Records, Bellary, himself vide Annexure-N dated **15.10.1978** in his communication to

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the Assistant Superintendent of Land Records, Raichur, stated that for such correction of wrong entry, the matter may be referred to the Revenue authorities. But, despite such rebuff and rejection, the respondent/plaintiff-UM managed to fraudulently secure the Order from the Superintendent of Land Records, Bellary (Camp, Raichur) on **07.09.1974** increasing and raising the measurement of the land of **Sy.No.192** and changing the revenue entries to the extent of 27 Acres and 30 Guntas of land against 14 Acres 17 Guntas only re-granted to it and thus, giving the increased area of the land to the plaintiff/respondent-UM, the plaintiff/respondent-UM has succeeded in seeking the injunction from the FAC below on the basis of such fraudulent document namely the order dated 07.09.1974, which was also admittedly without the jurisdiction of the Superintendent of Land Records and the defendant/appellant had sought to produce all these various Government documents as additional evidence and

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which could not come in the possession of defendant-RSM earlier and were thus produced before the FAC below along with the applications under Order 41 Rule 27 of the CPC which has been rejected, resulting into the miscarriage of justice and thus, the impugned order of the FAC deserves to be set aside and all the three applications filed under 41 Rule 27 of the CPC deserves to be allowed by this Court.

9. On the other hand, learned counsel for the plaintiff/respondent Mr.Jayavittal Rao Kolar, learned Senior counsel, has vehemently opposed these submissions and has urged before the Court that the order of the Superintendent of Land Records dated **07.09.1974** and other Orders of State authorities were already upheld by the KAT, Bengaluru, in **Appeal No.356/77** filed by another sect known as Vysaraja Mutt and therefore, the FAC was justified in rejecting the applications of the appellant under Order 41 Rule 27 of the CPC, unless those orders were set aside by Competent Authority or Court and

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all these documents in the form of additional evidences were already within the knowledge of the defendant/appellant-RSM, right from beginning in the proceedings before the said Superintendent of the Land Records Department as well as next higher authorities and the KAT and therefore, such belated applications filed by the defendant/appellant under Order 41 Rule 27 of the CPC did not deserve to be entertained by the Appellate Court below and they have been rightly rejected by the said Court.

10. Mr.Kolar also drew the attention of the Court towards the order passed by the learned Single Judge of this Court (Hon'ble K.J.Swamy, J.) in **W.P.No.18017/1987** filed by Vyasaraja Mutt dated **28.11.1988**, in the writ petition filed by His Holiness Sri Vidyapayanidhi representing Vysaraja Mutt against the same order of KAT (though only the order dated 17.02.1989 of Special Deputy Commissioner was

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challenged but Annexure-D order of KAT dated 18.07.1981 is also referred in para-3 of the said judgment) and the order of the learned Single Judge of this Court clearly held in favour of the plaintiff/respondent-UM that once the petitioner-Vysaraj Mutt had lost in the civil suit i.e., **O.S.No.65/ 1 of 1959-60**, it had no *locus standi* to challenge the said order of Superintendent of Land Records. The relevant portion of the said order of learned Single Judge dated 28.11.1988 is also quoted below for ready reference:

10. It was not at all permissible for the petitioner to challenge the proceedings in relation to measurement of the land and determination of the extent and the change of entries in the Record of Rights pursuant to the determination of the extent of the land. In fact, after the decree of civil Court, there was no lis between the petitioner and the Uttaradhi Mutt. The Joint Director of Land Records and the Tribunal are right in holding that the petitioner had not locus standi to challenge the same.

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11. *The only interested party in the proceeding relating to determination of the extent of land in question and the change to be effected in the Records of Rights in accordance with the determination of the extent made by the Survey Settlement Department, was the State Government. **Even to this day, the stand of the State Government as submitted by the learned Government Pleader is that whatever finding recorded by the Superintendent of Land Records and the Joint Director of Land Records is accepted as correct,** because at no point of time remaining extent of land was considered to be outside the boundaries of survey No.192 and nor it was claimed or shown in the revenue records as belonging to the State Government. In fact, a reading of the sale deed would make it clear that the land in question at the time when the sale deed was executed, measured more than 27 acres. It appears to me that floods in the river appears to have changed its course every now and then and as a result thereof there was a reduction in the total extent of 100 acres and in course of time, it appears to have reduced to 27 acres 30 guntas as it measures today. Before the civil Court, the plaintiff-Uttaradhi Mutt had not claimed that the land measured only 14*

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*acres, but it had depended upon the sale deed and gave the boundaries as found in the sale deed. Under these circumstances, **I am of the view that the petitioner has no locus standi to challenge the order of the Superintendent of Land Records and the Joint Director of Land Records.***

12. *Once this conclusion is reached, the petitioner will not have any right to challenge the correctness of the entries in the Record of Rights which are made in conformity with the measurement made by Survey Settlement Department and as per the measurement recorded by the Superintendent of Land Records and the Joint Director of Land Records. This is sufficient to dismiss these two writ petitions.*

13. *From the findings recorded in the orders of the Superintendent of Land Records, the Joint Director of Land Records and the Tribunal and also of the Assistant Commissioner in Appeal No.SR/RRT/10-75-76 it emerges that originally the land in question must have measured 100 acres and because of alluvion it must have been reduced. Whatever the land available in the island belongs to survey No.192 since there is no other survey*

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*number therein. When there is no kharab numbered or unnumbered the entire land must belong to survey number 192 and the Survey Department might have committed an error while conducting survey in 1925 knowingly or unknowingly. **Hence, the petitioner's argument that the area other than 14 acres 7 guntas in the island belongs to Government has been rightly rejected.***

11. He, thus, emphatically opposed the submissions and submitted that the said applications under Order 41 Rule 27 of the CPC were rightly rejected by the learned FAC below.

12. Having heard learned counsels for the parties, this Court is of the opinion that the rejection of the applications under Order 41 Rule 27 of the CPC by the learned FAC below has resulted in serious miscarriage of justice, as the additional evidence sought to be brought on record and then proved in accordance with law definitely could have a material bearing on the issues involved in the

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present suit and the right of the plaintiff/respondent to claim injunction against the defendant/appellant on the basis of the total land being in their ownership or possession, whether it was 14 Acres 07 Guntas or 27 Acres 30 Guntas or not could change the entire basis of the respective rights of the parties claimed in the present case and therefore such an evidence could not have been shut out at the door by rejecting these applications. The learned FAC below could not have delivered a correct judgment without analyzing such additional evidences and otherwise also it was a substantial cause for reaching just conclusions and right evaluation of the respective rights of the parties; satisfying the parameters of Order 41 Rule 27 of CPC.

13. Moreover, this Court is of the opinion that the ground given by the FAC for rejecting these applications that since W.P.No.111125/2014 is pending before High Court against the order of the KAT and therefore such

applications under Order 41 Rule 27 of CPC cannot be considered or allowed is a ground not sustainable in law.

14. Order 41 Rule 27 of the CPC reads as under:

"27. Production of additional evidence in Appellate Court. – (1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court.*

But if -

(a) *the Court from whose decree the appeal is preferred has **refused to admit evidence which ought to have been admitted, or***

*[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of **due diligence**, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]*

(b) *the Appellate Court requires any document to be produced or any witness to be examined **to enable it to pronounce***

judgment, or for any other substantial cause,

The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

*(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court **shall record the reason for its admission.***"

15. The relevant consideration for allowing such application under Order 41 Rule 27 of CPC is to see whether additional evidence is relevant and has a material bearing on the issues involved before the Court and secondly, whether the applicant was prevented by sufficient cause in not producing such additional evidence despite due diligence at earlier point of time. The tenets of Order 41 Rule 27 are relevance, due diligence, enable it to pronounce judgment or any substantial cause. None of these considerations relevant for considering the

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applications under Order 41 Rule 27 of CPC have been adverted to by the learned FAC below.

16. In **Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148**, the Apex Court had held as under:-

*"49. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced **have any relevance/bearing on the issues involved.** The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to **enable it to pronounce judgment or for any other substantial cause.** The **true test**, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the*

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conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh & Ors., AIR 1951 SC 193; and Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors., AIR 1976 SC 1053)."

17. *Prima facie*, this Court finds that the additional evidence mostly in the form of Government letters and Orders could have a major impact on the issues involved before the Courts below and therefore deserved to be considered by the Court after being led and proved in accordance with law by the concerned party. Merely because the order dated **07.09.1974** passed by Superintendent of Land Records became the subject matter of order by the KAT and even this Court, it does not prevent the trial Court or the FAC to allow such additional evidence taken on record and allow it to be proved in accordance with law and then consider and weigh such evidence and then decide the issues in accordance with law. Most of these documents were Government

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communication and Orders and were not in the control and possession of the defendant-RSM and defendant-RSM being not a party before KAT in the appeal filed by Vyasraja Mutt, the FAC should have allowed these Additional evidence which could have helped it in completing the quest for truth and meet the ends of justice and deliver a correct judgment. The failure to do so has resulted in serious miscarriage of justice. Without the title and peaceful possession of the entire land of 27 Acres and 30 Guntas proved by the plaintiff/respondent-UM, in the face of such contradicting Additional Evidence, the self contradictory and vague injunction granted by FAC cannot be sustained.

18. In the connected writ petition namely **W.P.No.111125/2014**, the learned Single Judge of this Court on **08.04.2105** framing certain questions (8 in No.), passed an interim order and called upon the Principal Secretary of the State to take the stand of the Government

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about the ownership of the land existed in Sy.No.192 of Anegundi village and in pursuance of the same the Principal Secretary Dr.B.Basavaraaju has filed an Affidavit in the said writ petition on **27.06.2015** in which the State took a clear and categoric stand vide para-8 of the said Affidavit that "**the land bearing Sy.No.192 measuring only 14 Acres and 7 Guntas only belongs to Uttaradhi Mutt and the remaining area in the said Navbrindavana belongs to the State Government**". Both the order of the learned Single Judge dated **08.04.2015** and affidavit of Principal Secretary dated **27.06.2015** are quoted in extenso for ready reference:

***Order dated 08.04.2015 in W.P.No.111125/2014
of Hon'ble Justice B.Veerappa J.***

"In the light of the rival contentions urged by Sri. S. Vijayashankar, learned Senior Counsel along with Sri. Harsh Desai, appearing for respondent No.5 and Sri. C.V. Nagesh, learned Senior Counsel along with Sri. S.S. Bawakhan, appearing for the petitioner, and in view of the statement made by

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*the State Government in paragraphs 7, 8, 10 and 11 in the Statement of Objections to the effect that, the Deputy Commissioner of Land Records, Gulbarga, on the basis of objection wrote letter to the Assistant Superintendent of Land Records, Raichur, to submit a detailed report on the objection raised by Hanumanthachar Sarjoshi, along with relevant survey records. The Superintendent of Land Records, Bellary, communicated by the letter dated 15-10-1973 to the Assistant Superintendent of Land Records, Raichur that the correction of wrong entry in the record of rights **is concerned with the revenue authorities and the matter may be referred to the revenue authorities.** The Superintendent of Land Records, Bellary, holds that the survey authority has no jurisdiction to correct the entries in the record of rights. The Assistant Superintendent of Land Records, Raichur, by letter dated 28-10-1973 informed the Deputy Commissioner of Land Records, Gulbarga, that as per the direction of the Superintendent of Land Records, Bellary, **he has been directed to refer the matter to the Tahasildar, Gangavathi, for further action.***

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2. In para-10 of the Statement of Objections it is stated that Superintendent of Land Records, Bellary, passed an order directing the correction of survey sketch and also to correct the extent of Sy.No.192 of Anegundi measuring 27 acres 30 guntas instead of 14 acres 07 guntas, **though the re-grant was made to an extent of 14 acres 07 guntas in favour of Uttaradi Mutt** but without her re-grant order for remaining area which was un-assessed, Government land was included in the land Sy.No.192 measuring 27 acres 30 guntas, by the Superintendent of Land Records, Bellary, without any authority of law, and also stated the **said excess land to an extent of 13 acres 23 guntas is an un-assessed Government land.** Therefore, the inclusion of excess land of 13 acres 23 guntas in extent of land Sy.No.192 of Anegundi is not correct.

3. In view of the aforesaid contentions urged and the specific averments made in the statement of Objections by the Government, this Court feels the following clarifications shall be filed by way of **affidavit by the competent authority of not less than the rank of Principal Secretary** of the Revenue Department for effective adjudication of the matter between the parties:

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1. *What is the action taken by the State Government to protect the Government Land as stated in the Statement of Objections?*

2. *What is the action initiated against the Assistant Superintendent of Land Records, Raichur, who determined the extent of land i.e. 27 acres 30 guntas in Sy.No.192 inspite of refrain order/direction issued by the Deputy Commissioner of Land Records, Gulbarga Division, dated 6-12-1973?*

3. *What is the basis for the Superintendent of Land Records, Bellary to correct the survey sketch and also to correct the extent of Sy.No.192 measuring 27 acres 30 guntas instead of 14 acres 07 guntas as per regrant order?*

4. *What is the correct topography of the land in question as stated by the Government in the Statement of Objections?*

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5. *Whether the entire extent of land in Sy.No.192 measuring 75 acres situated in Anegundi village was restored to respondent No.5 in view of categorical statement made by Sri. S. Vijayashankar, learned Senior Counsel appearing for respondent No.5 that the entire 75 acres of forfeited land was restored to the respondent No.5?*

6. *What is the extent in the original survey sketch at the time of vesting the land in the Government?*

7. *What is the land existed in Sy.No.192 of Anegundi village as on the date of filing if the present writ petition?*

8. *What is the definite stand of the State Government in the present writ petition with regard to whether the land in question belongs to State Government or not, in view of the inconsistent stand taken in the earlier proceedings and in the present writ petition?*

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It is made clear that this order will not come in the way of the learned Civil Judge to pass orders independently in accordance with law in the pending appeal R.A.No.123/2014 between the very private parties in the present writ petition.

Copy of this order shall be furnished to the learned Additional Government Advocate to take necessary steps immediately.

Call the matter on 24-04-2015."

19. Affidavit of Principal Secretary of State Government dated:27.06.2015

*"I Dr. B. Basavaraaju S/o Late Basavaiah presently working as **Principal Secretary to Government, Revenue Department** do here by state on oath regarding the clarification sought by the Hon'ble High Court of Karnataka at Dharwad Bench in Writ petition No.111125/2014 as follows:- as per the information furnished by Deputy Commissioner, Koppal & the same has been verified with reference to records.*

1. Since 1959 there has been a litigation between Uttaradimutt and Vyasaraymutt with regard to land Sy.No.192 of Anegundi village situated in Navabrundavan Gaddi, and the litigation

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are still pending. Both parties claiming their rights over the said property, as such after the final disposal of all the litigations pending in different courts, the state government will take necessary steps to protect its property.

2. After going through the entire records it is seen that the predecessors of the office of Deputy Commissioner of Land Records, Gulbarga have not taken any action against the Assistant Superintendent of Land Records Raichur who determined the extent of the land i.e. 27 acres 30 guntas in Sy.No.192 in spite of refrain order/direction, issued by the Deputy Commissioner of Land Records Gulbarga division dated:06-12-1973.

3. Perusal of the records shows that Superintendent of Land Records Bellary has visited the spot and prepared the sketch on 29-04-1974. In the said sketch, excess land (unsurveyed land) which has been shown by red line which was intended to be included in Sy.No.192 of Anegundi village, the said survey sketch and the letter of Joint Director of Land Records Gulbarga dated 28-06-1974 are the basis to correct survey sketch and also to correct the extent of the Sy.No.192

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measuring 27 acres 30 guntas instead of 14 acres 7 guntas.

4. *Recently, on 16-05-2015 the entire Brundavana Gaddi was surveyed by surveyors, survey supervisors in the presence of ADLR, DDLR, AC-Koppal and Tahsildar-Gangavathi and prepared the sketch to know the exact topography of the land in question and the sketch is enclosed herewith.*

5. *The entire extent of land **Sy.No.192 of Anegundi village was forfeited to the government of Sansthan of Anegundi for nonpayment of the land revenue.** Thereafter on the **application of pontiff of Uttardimutt, the then government, i.e. Anegundi Sansthan,** on the basis of the report of the patwari **re-granted the land measuring 14 acres 7 guntas** only in favour of Respondent No.5 as per the re-grant order.*

6. *At the time of vesting the land in the government as per the **original pakka book the extent of the land was 14 acres 7 guntas.***

7. *As on the date of filing of the present writ petition, **27 acres 30 guntas existed in***

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Sy.No.192 of Anegundi village as per the map
of the SSLR Bellary.

8. The **definite stand of the state government** in the present writ petition is that land **Sy.No.192 measuring 14 acres 7 guntas is belongs to Uttaradimutt, the remaining area in the said Brundavan Gaddi is belongs to the state government.**

Place:Bengaluru

Date:27-06-2015

Sd/-

Dr. B. Basavaraaju, I.A.S
Principal Secretary to Government
Revenue Department"

20. This Court is of the view that ultimately, the quest for truth has to be pursued by the Judicial Courts and the length of litigation and time period taken and the earlier non-production of relevant evidence which goes to the root of the issues, cannot be a good ground to reject the additional evidence.

21. "**SATYAMEV JAYTE**" (Truth alone Triumphs) is the quote from Mundaka Upanishad, the concluding part of

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the sacred Hindu Vedas and it is the North Star of our Judicial System inscripted at the bottom of our National Emblem, Ashok Stambh and Dharm Chakra.

It tells us that, the 'truth' should be the Guiding Star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

Truth being the cherished ideal and ethos of India, pursuit of Truth should be the guiding star of the entire justice system. For justice to be done, truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the

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ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system. Concern for and duty to seek the Truth should not become the limited concern of the courts but should percolate down in other wings of the State as well.

'Truth' has a strange but a firm character of finding its way and coming out and revealing itself even though embedded at the bottoms of time periods and piles of papers bound through the chain of litigation in the Courts of law and the quest for truth should not get bogged-down merely because a long period has lapsed.

22. In view of aforesaid categoric stand of the State Government before this Court, the earlier vague stand taken in W.P.No.18017/1987 filed by Vysaraja Mutt decided on 28.11.1988 by this Court (Justice K.J.Swamy), which almost amounted to a concession without any

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supporting evidence, cannot be accepted at its face value. The entire issue of title and possession of plaintiff-UM thus deserves a re-look by the Courts below.

23. This Court would not like to comment at this stage upon the merit or otherwise of the additional evidence, lest it affects the trial, but this Court is of the opinion that the learned FAC below has certainly erred in rejecting all the three applications under Order 41 Rule 27 of the CPC preventing the additional evidence to be brought on record and then proceed further in the matter. After all the present suit was only of the year 1992 (renumbered upon transfer as O.S.No.74/2010) and it is not that a very old suit would have undergone a trial for a further long period because of this reason.

24. The reliance placed by learned counsel for respondent/plaintiff-UM Mr.Kolar in **Govindaraja Setty – vs- K.L.Puttaswamiah & Sons (1970)2 Mys.L.J. 549**

and **Shivalingawwa -vs- Sanganna and another (AIR 1975 Karnataka 100)** that Appellate Court should not remand the case back to Trial Court, are not applicable here because in the present case Trial Court has already dismissed the suit, but remand is required to undertake the exercise of taking on record the additional evidence and allow the parties to prove and disprove them. No additional issue is being framed by this Appellate Court. The exercise of additional evidence can be undertaken by the Trial Court more properly than the FAC. Therefore, remand to Trial Court is necessary and this contention of Respondent/plaintiff cannot be accepted.

25. Therefore, this Court cannot decide the substantial questions of law on which the said present second appeal was admitted on 13.04.2016 at this stage and the matter deserves to go back to the trial Court by allowing the three applications filed under Order 41 Rule 27 of the CPC. All the three applications filed by the

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Defendant/Appellant-RSM under Order 41 Rule 27 of the CPC therefore, are allowed and setting aside the order dated 22.04.2015 passed by the FAC in its entirety, because even otherwise it appears to be self contradictory and vague partial injunction granted by FAC, the matter is restored back to the learned trial Court to allow the said additional evidences to be placed on record and allow the parties to prove and disprove the same in accordance with law and then re-decide the suit giving its findings in the light of such additional evidence.

In view of the long lapse of time, the trial Court is requested to expedite the matter and decide the suit again expeditiously.

The present appeal is accordingly **disposed of**. No costs. All I.As. are also disposed of.

**Sd/-
JUDGE**

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