



**IN THE COURT OF THE PRINCIPAL JUDGE, FAMILY COURT,
CHIKKAMAGALURU**

Dated this the 17th day of July, 2026.

: PRESENT :

Sri PRAKASH V., B.A.,L, LLB.,
Principal Judge, Family Court,
(District & Session Judge),
Chikkamagaluru.

R. A. No.77/2025

Appellant:-

1. U.S.Ramegowda
S/o Late Siddegowda
(Since dead by his LRs)
- 1(a) Sarojamma
W/o Late Ramegowda,
Aged about 64 years,
House wife,
R/o Behind Planters Court,
Jayanagara,
Chikkamagaluru Town.
- 1(b) Ashwini U.R. W/o Pratheesh,
D/o Ramegowda,
Aged about 39 years,
Housewife,
R/o Baburayanakoppalu village,
Srirangapatna, Mandya District.
- 1(c) Mamatha @ Mayuru U.R.
W/o Sunigowda
D/o Ramegowda,
Aged about 35 years, Housewife,
R/o Kuduvalli village, Anoor Post,
Chikkamagaluru Taluk.

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(Rep by Sri. C.B.Rudresh, Advocate)

-V/S-

Respondent:-

S.L.Nagaraj
S/o Lakshmaiah,
Aged about 31 years,
R/o Retired Sub-Inspector,
Behind Planters Court,
Kuduvalli village, Anoor Post,
Chikkamagaluru Taluk.

(Respondent by Sri. B.M.Laxmana Gowda, Advocate)

Date & nature of the decree or order appealed against	29.06.2024 Declaration and possession		
Date of Institution of Appeal	05.08.2024		
Date of Transfer to this Court	21.03.2025		
Date of Judgment of R.A.	17.07.2026		
Duration of the Appeal	Years	Months	Days
	01	11	12

(PRAKASH V.)

Principal Judge, Family Court,
(District & Session Judge),
Chikkamagaluru.

J U D G M E N T

The Appellant/Defendant has preferred this Regular Appeal against Respondent under Order 41 Rule 1 of Code of Civil Procedure being aggrieved by the impugned Judgment and

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decree delivered by learned Prl.Senior Civil Judge and C.J.M., Chikkamagaluru in O.S.No.115/2018 dated: 29.06.2024.

2. Respondent has appeared through his counsel.
3. Trial Court records secured.
4. For the sake of convenience, rank of the parties in this Appeal is taken as referred in the Trial Court.
5. Before the Trial Court, suit was filed for declaration and possession and such other reliefs.
6. Brief facts of the plaintiff's case as per the plaint is that, the plaintiff is the absolute owner of suit "A" schedule property measuring 30 X 48 feet and the suit B schedule property is part and parcel of the suit "A" schedule property and he has purchased the suit "A" schedule property from Mallikadevi and B.Govindaraj through registered sale deed dated 30.01.1989 and by virtue of the said sale deed, the katha of the suit "A" schedule property has been mutated in his name and he was in possession of the said property. The defendant has got his property towards the eastern side of suit "A" schedule property and in his absence, the defendant has encroached the suit "B" schedule property measuring 4.6 X 48 feet and constructed a structure over it. Except plaintiff nobody got any sort of right,

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title and interest over the suit schedule property even to the defendant and he was under the impression that he is in possession of his property and whereas, the defendant has constructed his house in his title extent. In fact, the defendant has constructed his house by shifting and encroaching the property measuring 4.6 feet X 48 feet towards the western side, which is suit schedule "B" property and in turn, he had shifted his site towards the western side by encroaching an extent of 1.3 feet X 43 feet towards the western side of property, which belonging to one Sri K.R. Onkaraswamy S/o Rudregowda. The said Onkaraswamy had filed a suit in OS.No.273/2007 against him, the defendant and one Late Pandurao for the relief of declaration and mandatory injunction before the Prl. Civil Judge & JMFC., Chikkamagalur. In the said suit, the Court commissioner had reported that, the defendant herein has encroached the suit schedule "B" property to an extent of 4.6 X 48 feet towards western side of the suit "A" schedule property and vice versa, he has encroached the property belonging to one K.R. Onkaraswamy. At that time, he came to know that the defendant has encroached upon the "B" schedule property belonging to plaintiff. It is the further case of plaintiff that, the suit in O.S.No.273/2007 was ended in decreed directing him to

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handover the property to an extent of 5.9 feet X 43 feet. As against the said judgment and decree, he had preferred an appeal in R.A.No.58/2018 and in the said appeal settlement was arrived. As per terms of settlement, he had handover the portion of property and paid compensation by adjusting to the remaining obligation. He repeatedly demanded the defendant to handover the possession of encroached portion even by issuance of legal notice dated 12.09.2018 and the defendant has not handed over the possession of the "B" schedule property. As such, the plaintiff constrained to file this suit before the Trial Court.

7. After institution of the suit, the suit summons was ordered to be issued to the defendant. The defendant appeared before the Court through his Counsel and filed written statement. During the pendency of the suit, the defendant is reported to be dead and his legal representatives were brought on record. The legal representatives of deceased defendant adopted the written statement filed by the original defendant.
8. In the written statement, the defendant pleads ignorance about the ownership of plaintiff over the suit 'A' schedule property. The defendant admits that he is the owner of site situated towards eastern side of suit 'A' schedule property. The

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defendant denied the allegation of encroachment of 4.6 x 48 feet towards eastern side of suit 'A' schedule property by constructing the structure. The defendant admits about institution of suit by one K.R.Onkaraswamy in O.S.No.273/2007 and decree passed in the said suit, but denied the appointment of Court Commissioner and filing of report by the Court Commissioner regarding encroachment of property of K.R. Onkaraswamy by the plaintiff and also encroachment of suit 'A' schedule property by the defendant. The sum and substance of the defence of the defendant is that the defendant has not encroached any portion of the property belongs to the plaintiff. The suit in O.S.No.273/2007 against the defendant was got dismissed. The plaintiff has preferred appeal challenging the judgment and decree passed in O.S.No.273/2007 by making K.R.Onkaraswamy as party and they colluded together and got filed compromise petition. The defendant has purchased site through registered sale deed dated 24.10.1989 and after purchase, the defendant has obtained licence and constructed building in the year 1988. The suit is barred by limitation. Accordingly, prayed to dismiss the suit of the plaintiff.

9. On the basis of the above pleadings, Trial Court has framed the following issues for consideration;

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ISSUES

- 1) Whether the plaintiff is proves that he is the absolute owner of the suit 'A' schedule property?
 - 2) Whether the plaintiff proves that the defendant has encroached the suit 'B' schedule property as averred in the plaint?
 - 3) Whether the defendant proves that the suit is barred by law of limitation?
 - 4) Whether the plaintiff is entitle for the relief as sought for in the plaint?
 - 5) What Order or decree?
10. Before the Trial Court, the plaintiff got examined himself as P.W.1, got marked 12 documents as per Ex.P.1 to P.12 and closed his side. On the other hand, the defendant examined himself as D.W.1, got marked 10 documents as per Exs.D.1 to D.7 closed his side. The Court Commissioner is examined as D.W.2 and got marked 3 documents as per Ex.D.8 to 10.
11. After hearing the arguments on both sides and perusing the documents, the Trial Court has answered issue No.1, 2 and 4 in the affirmative and Issue No.3 in the negative and decreed the suit of the plaintiff in part.
12. Assailing from the impugned Judgment and Decree, the defendants preferred this Appeal, by setting out the grounds of Appeal as follows;

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GROUND

- 1) The judgment and decree of the Trial Court is not maintainable either in law or on facts.
- 2) The Trial Court failed to appreciate the defect in reliefs as claimed.
- 3) The Trial Court failed to appreciate the pleadings in the plaint relief and schedule and the plaintiff has not claimed in relief column that 'B' schedule property is part and parcel of 'A' schedule property.
- 4) The Trial Court ordered that the plaintiff is entitled to compensation for sum of Rs.6,50,000/- from legal representatives of defendant as alternatively without basis for calculating compensation.
- 5) The Trial Court failed to appreciate the relief column in the plaint that the plaintiff is having 'A' schedule that 'property No.35 situated behind Kountheya Hotel (Planters Court), Jayanagara extension, Chikkamagaluru measuring 30 feet x 48 feet bearing Municipal Assessment No.3090/2883 (I.D. Katha No.7-03-24-263090/2883) having the following boundaries; and the plaintiff is claiming relief column (a) to declare that the plaintiff is the full owner of the 'A' schedule property. As per the relief column and 'A' schedule of plaint, the plaintiff is having only 30 feet x 48 feet and Ex.P.1 sale deed also contained the measurement only 30 feet x 48 feet and

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Ex.P.2 Municipal Assessment Extract measurement also shows that the plaintiff is having only 30 feet x 48 feet. The Court commissioner i.e., Smt.Rashmi have visited as per the memo of instructions filed the plaintiff and defendant to the spot recently on 21.9.2022 and prepared neat sketch and submitted the report. The sketch, report and answers given by the Court commissioner to the memo of instructions filed by the plaintiff and defendant have been marked as Ex.D.8 (Answers/replies), Ex.D.9 and Ex.D.10 sketch. The Court commissioner has examined as D.W.2 and in her examination chief she stated in 2nd para last line that the measurement of plaintiff's property as per katha extract is 30 x 40 and the plaintiff building east-west measurement is 31 feet 3 inch and north-south measurement is 53 feet. More over the sketch i.e., Ex.D.8 and 9 clearly shows that the plaintiff himself have constructed his building measurement of 31.3 x 53 it shows that the plaintiff himself constructed his building in excess measurement. The plaintiff not come to the Court with clean hands and the plaintiff have himself have constructed his building in excess measurement of 31.3 feet x 53 feet more than his original measurement mentioned in Ex.P.2 i.e., 30 x 48. More over the Court commissioner is submitted report same has been marked as Ex.D.8. In Ex.D.8 Sl.No.6 the Court

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commissioner have clearly mentioned in her answer that even the plaintiff have also encroached the property measurement 5 x 9 from western side. Under those circumstance the plaintiff himself encroached the measurement of 5 x 9 from western side and the Court commissioner has also stated in her evidence that the plaintiff's existing building measurement is excess more than katha extract i.e., 31.3 x 53 instead of 30 x 48. Under those circumstance the question of encroachment does not arise at all. The Trial Court failed to appreciate the evidence of D.W.2 and the sketch and report submitted by the Court commissioner i.e., D.W.2 is also not appreciated by the Trial Court. The Trial Court could not appreciate the evidence, report and sketch produced by the expert i.e., D.W.2 Smt.Rashmi.

- 6) Further the Trial Court failed to appreciate the admissions given by the plaintiff that he has not produced building licence and the plaintiff have admitted in his cross-examination portion page 6 line 25 that the defendant have constructed his building about 22-23 years as per Ex.D.2. Under those circumstance the suit for declaration is not maintainable since the plaintiff have to file the suit for declaration within 3 years from the last possession. Since the property of the defendant was situated at beside the property of plaintiff and not anywhere. The respondent / plaintiff have

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kept quite for 22-23 years and have not taken any legal action against the appellant / defendant even during the construction he may took, but in order to take revenge the respondent / plaintiff have filed a false suit against the appellant / defendant in order to get wrongful gain. It is clearly show that the suit filed by the respondent / plaintiff is barred by limitation. The Trial Court without application of mind the suit of the plaintiff has decreed.

- 7) The Trial Court has discussed in judgment portion in respect of only about O.S.No.273/2007 which was filed by one Onkaraswamy before Prl.Civil Judge, Chikkamagaluru against the plaintiff and the defendant (appellant U.S.Ramegowda) for declaration and Mandatory injunction in respect of his property which belongs to said Onkaraswamy. The said Onkaraswamy was having property towards the property of above respondent / plaintiff from eastern side. The City Municipality has given a report on 5.10.2004 on the basis of said report the said Onkaraswamy have filed suit in O.S.No.273/2007 on showing the cause of action dt: 21.7.2007. Only the basis of said report dt: 5.10.2004 the suit came to be decreed against the respondent / plaintiff on 20.7.2018. As per the CMS report dt: 5.4.2004 and Court commissioner report dt: 23.6.2017 the appellant and respondent have been encroached some portion belongs to Onkaraswamy. After dismissing of the suit against

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this appellant got dismissed in O.S.No.273/2007 dt: 20.7.2018, there after the respondent have filed the suit before the Trial Court in O.S.No.115/2018 on 12.10.2018. On the basis of CMC Chikkamagaluru report dt: 5.10.2004, Onkaraswamy has filed the suit in O.S.No.273/2007 on 8.10.2007 and the said suit came to be dismissed on 20.7.2018 against U.S.Ramegowda who was the defendant No.2 in the said suit. Further the respondent / plaintiff has filed the suit in O.S.No.115/2018 before the Trial Court on 12.10.2018 against appellants / defendants and hence there is no cause of action to file the suit before the Trial Court. The Trial Court has decreed the suit only on the basis of CMC report dt: 5.10.2004 and commissioner report dt: 23.6.2017 submitted in O.S.No.273/2007 and the Trial Court failed to appreciate the recent commissioner report and sketch dt: 21.9.2022 submitted in respect of O.S.No.115/2018. The Trial Court failed to appreciate the evidence, report and sketch submitted by expert Court commissioner in O.S.No.115/2018. The said Onkaraswamy's case in O.S.No.273/2007 is no way concern to this case and his property was situated before the property of respondent / plaintiff and thereafter the property of appellants / defendants will comes. Under those circumstances without going through the evidence

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available on record, recent commissioner report, sketch, expert evidence the suit of the respondent / plaintiff and only available on record submitted in O.S.No.273/2007 decreed by the Trial Court without application of mind. The Court commissioner report submitted in O.S.No.273/2007 is no way concern to the commissioner report along with sketch in O.S.No.115/2018.

- 8) It is submitted that in the cross-examination of P.W.1 in O.S.No.273/2007 dt: 18.11.2012 line No.9 the Counsels for the respondent / plaintiff have suggested the P.W.1 that the defendant No.1 (respondent / plaintiff) has constructed his house and compound wall in the year 1998 in the measurement of 31 feet x 48 feet. This suggestion shows that the pleadings in O.S.No.115/2018 is entirely different in O.S.No.273/2007 and the respondent / plaintiff have totally suppressed the hidden the true facts. The respondent / plaintiff have not pleaded in O.S.No.115/2018 that he have constructed house and compound wall in existence area of 31 feet x 48 feet in the year 1998 and hence the question of encroachment does not arise at all.
- 9) Further it is submitted that the Trial Court have not discussed in its judgment about the documents with respect of the documents produced by the appellants / defendants in the above case.

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- 10) The judgment and decree passed by the Trial Court is opposed to law, facts and probabilities of the case.
- 11) The Trial Court has not taken into consideration in respect of admission given by the respondent / plaintiff in O.S.No.273/2007 and different admissions given in O.S.No.115/2018. Viewed from any angle the judgment and decree of the Trial Court is not maintainable and liable to be set aside by dismissing the suit of the respondent / plaintiff.

Therefore, on these grounds, the defendant has prayed this court to set aside the judgment dated 29.6.2024 passed by the Trial Court and allow the suit of the appellant.

13. Heard the arguments of Counsel for both sides. I have perused the available materials on record.
14. Now the points that arise for my consideration are:

POINTS

- 1) Whether the facts and circumstances involved in the case, the plaintiff proves his ownership over the suit 'A' schedule property and the defendant has encroached the portion of suit 'A' schedule property to an extent of 4.6 feet x 48 feet as described in suit 'B' schedule property?
- 2) Whether the impugned judgment and decree is illegal, perverse and opposed to

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law, facts and probabilities of the case? If so, the impugned judgment and decree needs to be interfered with by this court?

3) What Order or Decree?

15. My findings on the above Points are as under –

POINT No.1 – In the affirmative.

POINT No.2 – Partly in the affirmative.

POINT No.3 – As per final order,

for the following –

REASONS

16. **Point No.1 and 2**:- These points are interlinked with one another, hence I took up these points together for common discussion to avoid the repetition of facts.

17. The learned counsel for the Appellant / defendant would submit that the Trial Court without appreciating the pleadings of the plaint and also failure on the part of plaintiff to claim relief in respect of suit 'B' schedule property has granted the relief of compensation by molding the relief in the absence of material documents to calculate the market value of the suit property. The contents of sale deed, Municipal Assessment Extract and report of the Court Commissioner speaks different extent in respect of suit property and Trial Court has failed to consider

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the said aspect. The Trial Court has failed to appreciate the report of the Court Commissioner, which speaks that the plaintiffs himself encroached the property measuring 5 x 9 feet towards western side. The Trial Court failed to appreciate the evidence of Court Commissioner and report of the Court Commissioner in a proper manner. Further the Trial Court erred in not considering the admission of the plaintiff regarding non-production of building licence of his house property. The findings recorded by the Trial Court in respect of limitation is not in accordance with law and accordingly prayed for allow the appeal by setting aside the judgment and decree.

18. Per contra, the Counsel for respondent would submit that the Trial Court by considering the oral as well as documentary evidence produced on record by the plaintiff rightly answered the issues framed in the suit and there is absolutely no materials before this Court to interfere with the findings of the Trial Court with regard to relief of declaration of title over the suit property and the Trial Court has granted decree for recovery of compensation by molding the relief of recovery of possession only with an intention to preserve the house of the

defendant without ordering for its demolishen and prayed for dismissal of the appeal.

19. With the rival contentions urged by both sides, it is just and necessary to go through the materials available on record. Admittedly, the plaintiff has instituted suit against the defendant for the relief of declaration to declare that the plaintiff is the full owner of suit 'A' schedule property, for recovery of possession of suit 'B' schedule property with a specific direction to the defendant to remove the illegal structure raised in the suit 'B' schedule property, failing which to hand over the possession through the process of the Court. According to the plaintiff, he is the absolute owner of suit 'A' schedule property having purchased the same through registered sale deed dated 30.1.1989 measuring 30 x 48 feet. Thereafter the khata of the suit schedule property mutated in the name of plaintiff in the office of the Commissioner, City Municipality, Chikkamagaluru. Since then, the plaintiff is in possession and occupation of the said property. The defendant being the owner of property situated towards eastern side of suit 'A' schedule property has encroached the portion of suit 'A' schedule property and constructed structure to an extent of 4.6 x 48 feet, which is

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shown as suit 'B' schedule property by taking advantage of the plaintiff absence. The plaintiff was under impression that he is the owner of the property, which is situated towards western side, which was left by the defendant after construction of his house. Infact 6 x 48 feet was shifted towards the western side and in return the plaintiff had shifted his site towards western side by encroaching an extent of 4.6 x 48 feet towards the western side of property of one K.R.Onkaraswamy. The said K.R.Onkaraswamy had instituted suit in O.S.No.273/2007 against the plaintiff, defendant and one Late Pandurao for the relief of declaration and mandatory injunction before the Prl.Civil Judge and J.M.F.C. Court, Chikkamagaluru and the said report Commissioner was appointed, who filed report stating that the defendant had encroached upon extent of 4.6 x 48 feet towards western side of plaintiff's site and plaintiff had encroached property belonging to K.R.Onkaraswamy. At that time the plaintiff came to know that the defendant had encroached the property, which is mentioned as suit 'B' schedule property. By considering the report of the Court Commissioner, the suit in O.S.No.273/2007 was decreed by the Prl.Civil Judge and J.M.F.C., Chikkamagaluru directing the plaintiff to remove the illegal construction within 3 months.

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Subsequently, the plaintiff had preferred appeal in R.A.58/2018 and the plaintiff and K.R.Onkaraswamy entered into compromise and settled the dispute. As per the report of the Court Commissioner submitted in O.S.No.273/2007, the defendant had encroached 'A' schedule property. When the plaintiff demanded the defendant to handover the possession of encroached portion by issuing notice, the defendant has failed to handover the same.

20. The claim of the plaintiff is resisted by the defendant, wherein he pleads ignorance about the ownership of plaintiff over the suit 'A' schedule property. The defendant admits that he is the owner of site situated towards eastern side of suit 'A' schedule property. The defendant denied the allegation of encroachment of 4.6 x 48 feet towards eastern side of suit 'A' schedule property by constructing the structure. The defendant admits about institution of suit by one K.R.Onkaraswamy in O.S.No.273/2007 and decree passed in the said suit, but denied the appointment of Court Commissioner and filing of report by the Court Commissioner regarding encroachment of property of K.R.Onkaraswamy by the plaintiff and also encroachment of suit 'A' schedule property by the defendant. The sum and substance of the defence of the defendant is that

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the defendant has not encroached any portion of the property belongs to the plaintiff. The suit in O.S.No.273/2007 against the defendant was got dismissed. The plaintiff has preferred appeal challenging the judgment and decree passed in O.S.No.273/2007 by making K.R.Onkaraswamy as party and they colluded together and got filed compromise petition. The defendant has purchased site through registered sale deed dated 24.10.1989 and after purchase, the khata has been mutated in the name of defendant. The defendant has obtained licence from concerned authority to construct house and constructed building in the year 1988. The plaintiff has filed suit after lapse of 20 years and hence, the suit is barred by limitation.

21. From the averments made in the plaint as well as written statement of the defendant, it appears to me that the ownership of the plaintiff has not been denied by the defendant in a specific terms as he pleads ignorance. The defendant admits that he is the adjacent site owner towards eastern side of suit A schedule property. The allegation of encroachment of portion of suit 'A' schedule property, which is described in the plaint as suit 'B' schedule property is seriously disputed. Under such circumstances, the burden is heavily lies on the plaintiff to

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establish the fact that he is the absolute owner of suit 'A' schedule property and defendant being the adjacent site owner towards eastern side of suit 'A' schedule property had encroached the portion of suit 'A' schedule property measuring 4.6 x 48 feet, which is mentioned as suit 'B' schedule property. Whether plaintiff succeeded in establishing his ownership as well as encroachment of portion of suit 'A' schedule property or not is to be discussed. Hence it is just and necessary to go through the materials available on record.

22. Admittedly, the plaintiff has filed suit for declaration of his ownership over suit 'A' schedule property bearing property No.35 measuring 30 x 48 feet bearing Municipal Assessment No.3090/2883 bounded on east by property of defendant, west by property of K.R.Onkaraswamy, North by road and South by property of Pandurao and Basavaraj. The plaintiff has described the encroached portion of suit 'A' schedule property under the schedule 'B' measuring east west 4.6 feet and north south 48 feet bounded on east by property of defendant, west by remaining property of 'A' schedule, north by road and south by property of Pandurao and Basavaraj. On careful perusal of the schedule of the plaint, it is crystal clear that the plaintiff has specifically sought for the relief of declaration over the suit 'A'

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schedule property and described the encroached the portion as suit 'B' schedule property measuring 4.6 feet x 48 feet. As I have already stated above, the ownership of plaintiff is not denied by the defendant in a specific term and ignorance is the defence of the defendant. The plaintiff in order to prove his ownership over the suit 'A' schedule property has produced the certified copy of sale deed dated 30.1.1989 as per Ex.P.1, wherein it is discloses that the plaintiff had purchased the property bearing site No.35 formed in Sy.No.66 bearing khata No.9362/1963/35 measuring east-west 48 feet north-south 30 feet bounded on east by site No.34, West by site No.36, North by 30 feet road and South by site No.65 and 38 for valuable sale consideration of Rs.9,000/- from one B.Govindaraju and Mallikadevi. It is important to note that the defendant in his written statement pleads ignorance about the ownership of plaintiff over the suit 'A' schedule property, but during the course of cross-examination of plaintiff, the learned Counsel for defendant suggested to plaintiff that at the time of purchase of site, the plaintiff had obtained layout plan and verified the title documents. It is pertinent to note that, during the course of cross-examination of plaintiff, the counsel for defendant nowhere suggested to the plaintiff that the plaintiff is not the

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owner and he had not purchased the suit 'A' schedule property by virtue of Ex.P.1 sale deed. Further no cross-examination has been conducted by the Counsel for defendant in respect of Ex.P.1 sale deed produced by the plaintiff. The defendant has made an attempt to dispute the measurement of suit 'A' schedule property by relying upon the contents of EX.D1 Layout map and the contents of said Layout map is not an authenticated document and contents of of said Layout map cannot be looked in to on the background of sale deed which is a title deed. Since the defendant has failed to deny the right of the plaintiff over the suit 'A' schedule property in a specific term, it can be safely held that the plaintiff is the absolute owner of suit 'A' schedule property having purchased the same through Ex.P.1 registered sale deed. Ex.P.2 is the certified copy of khata extract standing in the name of plaintiff further discloses that after purchase of the suit 'A' schedule property the City Municipal Council changed the khata of the suit schedule property in the name of plaintiff. Ex.P.3 is the certified copy of khata extract pertains to the site property belongs to the defendant, which is situated towards eastern side of the suit 'A' schedule property. From the contents of Ex.P.1 to 3 it can be safely held that the plaintiff is the absolute

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owner of suit 'A' schedule property and defendant is the adjacent owner of the site situated towards eastern side of suit 'A' schedule property.

23. It is important to note that the plaintiff has come up with a specific claim that the defendant has encroached portion of suit 'A' schedule property to an extent of 4.6 x 48 feet towards eastern side of suit 'A' schedule property, which is described as suit 'B' schedule property in the plaint and encroachment of portion of suit 'A' schedule property by the defendant was came to the knowledge of plaintiff only when the Court Commissioner had submitted his report before the Prl.Civil Judge and J.M.F.C. Court, Chikkamagaluru on 23.6.2017 in the suit filed by one K.R.Onkaraswamy in O.S.No.273/2007 and subsequently, the plaintiff approached the defendant requested to deliver the vacant possession of the encroached portion and the defendant refused the same. It is important to note that the defendant in his written statement has admitted the suit filed by one K.R.Onkaraswamy in O.S.No.273/2007, but denied the fact that the Court Commissioner had submitted report before the Court regarding the encroachment of portion of suit 'A' schedule property by the defendant. On the background of the contention taken up by the defendant, it is

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for the plaintiff to establish the fact that the defendant has encroached 4.6 x 48 feet, which is the portion of suit 'A' schedule property. The plaintiff in order to prove the allegation of encroachment had produced certified copy of judgment and decree passed in O.S.No.273/2007 on the file of Prl.Civil Judge and J.M.F.C. at Chikkamagaluru as per Ex.P.4 and 5 and also produced the certified copies of the order sheet, appeal memo and compromise petition and decree in RA 58/2018 on the file of Prl.Senior Civil Judge and C.J.M., at Chikkamagaluru as per Ex.P.6 to 9. I have carefully gone through the contents of Ex.P.4 and 5 the judgment and decree, wherein it is clearly discloses that K.R.Onkaraswamy had instituted suit in O.S.No.273/2007 against S.L.Nagaraj, who is the plaintiff of the suit, H.S.Ramegowda, who is the defendant of the suit and one Pandurao for the relief of declaration and mandatory injunction alleging that the defendants have encroached the portion of his property to an extent of 6.43 feet. The said suit was contested by the plaintiff and defendant of the suit by filing written statements and after trial the suit filed by K.R.Onkaraswamy was decreed and plaintiff was directed to remove the illegal construction.

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24. It is important to note that being aggrieved by the judgment and decree passed in O.S.No.273/2007, the plaintiff had preferred appeal before the Senior Civil Judge at Chikkamagaluru and subsequently the plaintiff and K.R.Onkaraswamy got settled their dispute by filing compromise petition before the Court and in pursuance of compromise petition the plaintiff had paid sum of Rs.5 lakh to K.R.Onkaraswamy and also the plaintiff agreed to handover the possession of property to an extent of 37 ½ square feet in favour of K.R.Onkaraswamy. On the basis of said compromise petition, the appeal preferred by the plaintiff was disposed of and same can be seen from the contents of Ex.P.6 to 9.
25. The plaintiff has also produced the report of Court Commissioner along with sketch map as per Ex.P.10 and deposition of Court Commissioner in O.S.No.273/2007 as per Ex.P.11. On careful perusal of the same it appears to me that the Court Commissioner visited the disputed locality and measured the site No.34, 35, 36, 37 and 38A and reported that the measurement of site bearing No.34 is 49 x 30 feet, but the said site measures 56 ft 10 inch + 53/2 x 34.6 inch, the measurement of site No.35 is 48 x 30 feet, but it measures 53 + 52 + 6 inch and 31 x 3 inch, the measurement of site No.36

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is 43 x 30 feet, but it measures 43 ft 9 inch x 41 feet 10/2 inch and width is 24 x 3 feet, the measurement of site No.37 is 48 x 30 feet, but it measures 47 feet 7 inch + 48/2 feet and width 30 feet and the measurement of site No.37A is 48 x 15 feet + 38/2. As I have already stated above, the defendant disputed appointment of Court Commissioner in O.S.No.273/2007 and filing of report by the Court Commissioner. But the contents of Ex.P.10 and 11 clearly goes to show that the Court Commissioner was appointed, who visited the disputed property in the above said suit, which is also the subject matter of the present suit and after measurement submitted report. It is important to note that the contents of Ex.P.10 and 11 has not been seriously disputed by the Counsel for defendant during the course of cross-examination of plaintiff. The defendant in his written statement has taken specific contention that he had purchased the site bearing No.34. The plaintiff has produced the khata extract of the site belongs to the defendant as per Ex.P.3 and defendant has also produced original sale deed pertains to his property as per Ex.D.3. On careful perusal of contents of Ex.P.3 and D.3, it is clearly discloses that the defendant is the owner of site bearing No.34 measuring east-west 30 feet, north-south 48 + 49/2 feet. But the report of the

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Court Commissioner of the previous suit goes to show that the defendant is in possession of more extent than the extent one mentioned in the Ex.D.3 sale deed. It is pertinent to note that the plaintiff in order to prove the encroachment on the part of the defendant has also got appointed Court Commissioner in the suit and the Court Commissioner visited the disputed locality and submitted report. The report of the Court Commissioner is also produced before this Court as per Ex.D.8 along with sketch map as per Ex.D.9 and 10. Further the plaintiff has also got examined the Court Commissioner before this Court as D.W.2. The Court Commissioner was cross-examined by the defendant, but nothing has been elicited from her mouth with regard to contents of Ex.D.8 report and Ex.D.9 and 10 sketch maps annexed with the Court Commissioner *report*. On careful perusal of contents of Ex.D.8 to 10 documents, it is crystal clear that the defendant has encroached 4.6 feet x 48 feet, which is the portion of the suit 'A' schedule property belongs to the plaintiff.

26. The learned Counsel for defendant during the course of argument drawn the attention of this court towards the contents of Ex.D. 8 report of the Court Commissioner and argued that the plaintiff himself encroached the property of

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K.R.Onkaraswamy. The arguments canvassed by the defendant cannot be considered for a simple reason that the dispute regarding encroachment of land of K.R.Onkaraswamy has been attained its finality in the previous proceedings. The defendant cannot be allowed to show finger towards the plaintiff for the wrong committed by the defendant in encroaching the portion of suit 'A' schedule property belongs to the plaintiff. The encroachment of suit 'A' schedule property was proved before the court of law in a previous proceedings between the parties to this suit and also proved before the Court in the present suit filed by the plaintiff against the defendant. The learned Counsel for defendant further argued that the defendant has constructed his house about 23 years ago and plaintiff has not instituted suit immediately within 3 years from the date of construction of house by the defendant. This argument canvassed by the Counsel for defendant also not maintainable for a simple reason that the plaintiff in his plaint nowhere stated that the encroachment made by the defendant is came to his knowledge about 23 years ago when the defendant constructed his house. The plaintiff in his plaint specifically pleaded that the encroachment of portion of suit 'A' schedule property came to the knowledge of plaintiff on

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23.6.2017 only when the Court Commissioner had submitted report before the Prl.Civil Judge and J.M.F.C. Court at Chikkamagaluru in O.S.No.273/2007. The plaintiff has instituted suit before the Trial Court on 12.10.2018, which is within 3 years from the date of knowledge of encroachment. Hence the findings recorded by the Trial Court regarding question of limitation raised by the defendant is in accordance with law and there is no irregularities in the said findings given by the Trial Court. The Trial Court by considering the oral as well as documentary evidence has come to a definite conclusion that the defendant has encroached the portion of suit 'A' schedule property to an extent of 4.6 feet, but the prayer for vacant possession of encroached portion by removing the illegal structure raised by the defendant is not granted on the ground that no vacant space to an extent of 4.6 feet is available and if the structure is ordered to be demolished, the architect view of the defendant will get disfigured and by considering the said aspect, the Trial Court ordered the defendant to pay sum of Rs.6,50,000/- to the plaintiff towards compensation. As I have already stated that, the defendant has challenged the judgment decree on various grounds including the decree to pay compensation of

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Rs.6,50,000/- on the ground that, there is no basis to grant compensation and Trial Court has calculated the market value of the suit property by considering the payment of sum of Rs.5,00,000/- by the plaintiff to one K.R.Onkaraswamy and further the Trial Court come to a conclusion that the market value of the encroached area is Rs.3,000/- per square feet and arrived to conclusion that the defendant is liable to pay sum of Rs.6,50,000/-. Admittedly, the findings recorded by the Trial Court regarding the market value is based on the earlier compensation paid by the plaintiff and also on the basis of guess work of the Trial Court and the said finding is not based on the oral as well as documentary evidence. As I have already started above, the Trial Court molded the relief of possession and order to pay compensation of Rs.6,50,000/- to the defendant without any basis. Hence the said finding of the Trial Court is to be interfered by this Court. It is important to note that the plaintiff has not sought for the relief of compensation. In the absence of material evidence and also prayer in respect of compensation, the finding recorded by the Trial Court directing the defendant to pay compensation to the plaintiff is to be set aside and the suit is to be decreed in its entirety as prayed for by the plaintiff in view of the challenge on

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the part of defendant regarding grant of relief of compensation in his favour.

27. The Trial Court by considering oral as well as documentary evidence rightly held that the plaintiff is the owner of suit schedule property, but molded the relief of possession directing the defendant to pay compensation instead of decreeing the suit for recovery of vacant possession. There is absolutely no materials before this Court to interfere with the finding recorded by the Trial Court so far as relief of declaration of ownership of plaintiff over the suit 'A' schedule property. Accordingly, I answer point No.1 in the affirmative and point No.2 partly in the affirmative.
28. **Point No.3**:- In view of my foregoing reasons while answering above point, I proceed to pass the following –

ORDER

Regular Appeal preferred by the Appellant/Defendant is hereby allowed in part.

Consequently, the impugned Judgment and Decree delivered by learned Prl.Senior Civil Judge and C.J.M.,

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Chikkamagaluru in O.S.No.115/2018 dated: 29.06.2024 is set aside so far as granting of relief of compensation and modified as follows:

It is hereby declared that the plaintiff is the absolute owner of suit 'A' schedule property.

The defendant is hereby directed to remove the illegal structure raised over the suit 'B' schedule property, which is the portion of suit 'A' schedule property within 3 months, failing which the plaintiff is at liberty to get it removed through the process of the Court.

Draw decree accordingly.

Re-transmit the Trial Court records forthwith along with the copy of this Judgment.

(Judgment dictated to the Stenographer Grade II on Computer, transcript revised by me and after effecting corrections electronically, pronounced in open Court on this the 17th day of July, 2026.)

(PRAKASH V.)
Principal Judge, Family Court,
Chikkamagaluru.

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