

KAKP310007732014



**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT:
YELBURGA**

: PRESENT :

Sri Sanjukumar Pachhapure
Civil Judge & JMFC Yelburga

Dated this the 10th day of July 2026

OS No.222/2014

Plaintiff/s:

1. Sri.Dyamanna S/o Mariyappa Baddi,
Age: 61 years, Occ: Agriculture, R/o
Bevoor, Tq-Yelburga, Dist-Koppal.
2. Smt.Balamma W/o Giddappa Baddi,
Age: 50 years, Occ: Agriculture, R/o
Bevoor, Tq: Yelburga, Dist: Koppal.

[R/by Sri S.C.Shingri, Advocate]

-Versus-

Defendant/s:

1. Sri. Siddappa, S/o Mudiappa
Tuppad, Age: 45 years, Occ:
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.

2. Sri.Basavaraj S/o Mudiyyappa
Tuppad, since deceased by Lrs
- 2(a) Smt.Annakka W/o Basavaraj
Tuppad, Age: 45 years, Occ:
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
- 2(b) Smt.Maheshwari D/o Basavaraj
Tuppad, Age: 30 years, Occ:
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
- 2(c) Smt.Annapurna D/o Basavaraj
Tuppad, Age: 38 years, Occ:
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
- 2(d) Smt.Jyothi D/o Basavaraj Tuppad,
Age: 26 years, Occ: Agriculture,
R/o Bevoor, Tq-Yelburga, Dist:
Koppal.
- 2(e) Smt.Ningavva D/o Basavaraj
Tuppad, Age: 24 years, Occ:
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
- 2(f) Smt.Geeta D/o Basavaraj Tuppad,
Age: 22 years, Occ: Agriculture, R/
o Bevoor, Tq-Yelburga, Dist: Koppal.
- 2(g) Sri.Hanamesh S/o Basavaraj
Tuppad, Age: 20 years, Occ:
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
3. Sri.Mallappa S/o Mudiyyappa

4. Tuppad, Age: 35 years, Occ :
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
5. Smt.Mahesh S/o Mudiyaappa
Tuppad, Age: 27 years, Occ :
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.
- Smt. Shankrawwa W/o Shankrappa
Tuppad, Age: 30 years, Occ :
Agriculture, R/o Bevoor, Tq-
Yelburga, Dist: Koppal.

[D-1, 3 to 5 and 2(a to g) by Sri S.H.Ingaldal
Advocate]

Date of suit	:	30-05-2012		
Nature of the suit	:	Declaration and injunction and recovery of possession.		
Date of evidence	:	27-07-2017		
Date of judgment	:	10-07-2026		
Total duration	:	Year/s	Month/s	Day/s
		13	01	11

(Sri. Sanjukumar Pachhapure)
Civil Judge & JMFC Yelburga.

:-: J U D G M E N T :-:

The plaintiffs have filed the present suit against the defendants for the relief of declaration, possession and permanent injunction with respect to suit schedule property along with cost of the suit.

2. **The brief facts of the case of the plaintiffs is as under:-**

The land bearing survey number 53, measuring 14 acre and 39 gunta, situated at Bevoor village of Yelburga taluk, is the suit schedule property and boundaries is towards east, land belongs to Sri.Basavaraj Halli, towards west, land belongs to Smt.Neelawwa Tuppad, towards north, the land belongs to Sri.Chennaveerappa Jalihal and south the land belongs to Sri.Shivanna Badiger. It is averred that the suit schedule property is the ancestral property of the family of the plaintiffs and the husband of the plaintiff no.2 namely Sri.Giddappa and the plaintiff no.1 are the brothers. That after the demise of the father of the plaintiff no.1-Sri.Mariyappa, the plaintiff no.1 and Sri.Giddappa jointly succeeded to the suit land and the husband of plaintiff no.2 namely Sri.Giddappa also expired years ago. Hence, the

plaintiffs are the owners in possession of the suit schedule property.

3. It is averred that the defendants have no any right, title, interest over the suit land and the land of the defendant is not situated adjacent to the suit land. The defendants are brothers to each other. The defendants colluded together in the third week of May 2012 and have obstructed the possession of the land of the plaintiff and threatened to dispossess the plaintiff from the enjoyment of the suit schedule property. And if the defendants dispossessed the plaintiff from the suit schedule property, then they will be subject to multiplicity of proceedings and thereby plaintiffs will suffer irreparable loss and injury. It is averred that the suit land previous survey number 53 measuring 14 acre 39 gunta. And later on the suit survey number has been changed as survey number 53/6/1 measuring 7 acre 20 gunta and survey number 53/2 measuring 7 acre 19 gunta. It is averred that as per the court commissioner report, the suit property to the extent of 2 acre 4 gunta

has been encroached by the defendants in survey number 53/*1 and likewise in survey number 53/2 to the extent of 2 acre 26 gunta totally the 4 acre 30 gunta had been encroached by the defendants. Hence, the plaintiffs are entitled to recover the possession to the extent of 4 acres 30 gunta. It is averred that, the cause of action was arose in the third week of May 2012 when the defendants have obstructed the possession of the suit land by the plaintiff and also threatened to dispossess the plaintiffs. Therefore, the plaintiffs have approached the court hence have prayed for judgment and decree.

4. After registration of the suit the summons was issued to the defendants and summons is served and thereafter defendants have appeared before the court through their counsel and the defendant No.1 to 5 have filed the detail written statement.

5. **The brief facts of the case of the defendant No.1 to 5 is as under:**

The defendants have denied the case and claim of the plaintiffs in their written statement. It is contented

that the suit filed by the plaintiffs is neither sustainable in law nor on facts stated in the plaint are not true and correct and their contents are not admitted. The plaintiffs have filed the suit by suppressing the real facts and upon misrepresentation of facts, hence the suit of the plaintiff deserves to be dismissed.

6. It is contented that the plaintiffs mis-described the suit land and there is no land belongs to the defendants bearing survey number 49 to the west of the suit schedule property and the suit land is not measuring 14 acres and 39 gunta. It is contented that there is no land belongs to Smt. Neelamma Tuppad to the west of the suit land. And the land bearing survey number 49/AA measuring 3 acre and 30 gunta is the ancestral property of the defendants. The defendants jointly succeeded to the suit land bearing No.49/AA after the demise of the father of the defendants namely Sri.Mudiyappa Tuppad. That the land of Smt.Neelamma Tuppad is situated towards the west of the defendants' land and the land of the defendants is included in the

suit land hence the suit of the plaintiff is not at all maintainable for want of identification of the suit schedule property. It is contented that, there is a bund and a nala in between the land of the plaintiffs and defendants. The plaintiffs never cultivated the land to the west of nala and bund. The plaintiffs have obtained the injunction order suppressing the existence of the bund and nala in between the lands of the plaintiffs and the defendants. The defendants have grown the mainla and sajji by irrigating the land no. 49/AA and there are pipelines for irrigating the land no.49/AA belongs to the defendants. The plaintiffs after obtaining the injunction order suppressing the existence of the crops and pipelines in survey number 49/AA are trying to destroy the pipelines and also threatening to harvest the crops existing on the land bearing survey number 49/AA. And if the plaintiffs by virtue of the injunction or caused damage to the land bearing No.49/AA, the defendants will suffer irreparable loss and injury.

7. It is contented that, the plaintiffs are not entitled to the injunction as the plaintiffs have suppressed the material facts as to the existence of the pipeline and crops grown by the defendants on the land bearing No.49/AA. That the plaintiffs have not made out identification of the suit land and mis-described the suit land. Hence, the plaintiffs are not entitled to the injunction for want of proper identification of the suit land. Therefore, on other various grounds stated in the written statement, the defendants have prayed for dismissal of the suit.

8. On the bases of said pleadings, documents and on perusal of the material on record the following issues were framed :

-:: I S S U E S ::-

1. Whether the plaintiffs prove that they were in lawful possession and enjoyment of the suit property as on date of filing of the suit?
2. Whether the plaintiffs further prove the alleged interference made by the defendants?

3. Whether the plaintiffs are entitled for the relives as sought for?

4. What order or decree?

Additional issues

1. Whether the plaintiffs prove that they are the absolute owner of schedule property?

2. Whether the plaintiffs prove that the defendants have encroached to extent of 4 acre 30 guntas as contended in the plaint?

3. Whether the plaintiffs prove that they are entitled fro the recovery of possession of the encroached extent of 4 acre 30 guntas?

9. In order to substantiate his case, the GPA holder of the plaintiffs got examined as PW.1 and the PW.1 has got examined two witnesses as PW.2 & 3. The PW.1 got marked the 58 documents as Ex.P1 to P58 and close his side of evidence. And on the other hand, the defendant No.3 has got examined himself as DW.1 and got marked the documents as Ex.D.1 to 2 and closed his side of evidence. And the plaintiff has got examined the court commissioner as C.W.1 and got marked the documents Ex.C.1 to C5.

10. Heard the arguments of both sides at length in great detail and perused the material on record by way of pleadings, by oral and documentary evidence and upon going the same the answers to the above said issues.

Issue No.1 : In the Affirmative.

Issue No.2 : In the Affirmative.

Issue No.3 : In the Affirmative.

Additional Issue No.1 : In the Affirmative.

Additional Issue No.2 : In the Affirmative.

Additional Issue No.3 : In the Affirmative.

Issue No.4 : As per the final order;

11. The above said answers are supported with the following:

-:: R E A S O N S ::-

12. **Issue No.1 and additional issue No.1:** The burden of proof of the present issue is on the plaintiffs that whether they are the absolute owners and in lawful possession and enjoyment of the suit schedule property as on the date of the filing of the suit. For the sake of convenience both these two issues are taken up

together for a common consideration to avoid the repetition of facts and evidence.

13. The case of the plaintiffs and the defendants is already stated above in detail. The plaintiffs have contended that the suit schedule property is ancestral property of the plaintiffs and after the death of the father of the plaintiffs they both have succeeded the suit schedule property and they are in lawful possession and enjoyment of the suit schedule property. The defendants without having any right, title, interest and possession over the suit schedule property are trying to interfere with the possession. Therefore, the cause of action was arose to file the present suit. The records discloses that initially the present suit is filed by the plaintiffs against the defendants for the relief of permanent injunction with respect to suit schedule property and during pendency of the suit the plaintiffs have filed application and got amended the plaint and they are seeking the relief of declaration, permanent injunction and recovery of possession of the encroached

extent of 4 acre 30 gunta and also for declaration that they are the owners of the suit schedule property. And on the other hand, the defendants have denied the case and claim of the plaintiffs and have disputed the existence of the property and also have disputed the boundaries of the suit schedule property and further have contended that the plaintiffs have suppressed the material facts before this court therefore on other various grounds stated in the written statement the defendants have prayed for dismissal of the suit.

14. The plaintiffs in order to prove their case, the GPA Holder of the plaintiffs by name Sri.Devappa Giddppa Baddi has got examined as PW1. The PW1 has filed the evidence affidavit in lieu of examination in chief wherein he has reiterated the contents of the plaint averments as already stated above in detail. The PW1 in support of his oral contention, he got marked the documents as Ex.P1 to Ex.P58. Ex.P1 is the general power of attorney executed by the plaintiffs in favour of Sri Devappa for conducting the present case. Ex.P2 and 3 are the RTC extracts with respect to property bearing

survey number 53 measuring 14 acre 39 gunta, standing in the name of plaintiffs jointly. Ex.P4 is the settlement Akarbund Uttar. Ex.P5 is the map with respect to suit schedule property. Ex.P6 is the certified copy of village map. Ex.P7 is the ME No.68/2006-07. Ex.P8 to 55 are the RTC extracts with respect to suit schedule property from the year 1963-64 to 2025-26. Wherein, it shows that the suit schedule property was earlier standing in the name of the father of plaintiff no.1 and thereafter the name of plaintiff no.1&2 has been entered in the revenue records and thereafter the suit survey number is divided and now the name of the plaintiffs and defendants are appearing differently in the revenue records. Ex.P56 is the MR No. 5. Ex.P57 is the MR No.32. Ex.P58 is the memo dated 09.06.2006 issued by the Tahasildar Yelburga.

15. The PW1 has been subjected for cross-examination wherein he deposed in accordance with his case. The PW1 has deposed that, he is deposing before this court on behalf of the plaintiff no.2. The PW1 has

deposed that he has not produced the documents to show the ill-health of the plaintiffs as they are not appearing before the court. The PW1 has deposed that the suit schedule property is ancestral property and since from their ancestors they are cultivating the suit schedule property. The PW1 has deposed that the measurement of the suit schedule property is 14 acres and 39 gunta is situated at Bevoor village. The PW1 has deposed that the suit survey number has been divided in two parts and one part is allotted in favour of plaintiff no.1 and second part is allotted in favour of the plaintiff no.2. The PW1 has deposed the boundaries of the suit schedule property. The PW1 has deposed that the property belongs to Smt. Neelawwa is adjoining with the suit schedule property. The PW1 has admitted that there is a nala in between the land of the plaintiff and defendant. The PW1 has deposed that, they have not challenged the RTC and Akarbund as there is a difference in the measurement and it was not challenged before the revenue authority, as the measurement is correct. The PW1 has deposed that, the

property belongs to the defendants adjoining with the suit schedule property is measuring 3 acre. PW1 has deposed that towards west of the suit schedule property the land belongs to Sri.Siddappa is situated. The PW1 has deposed that he has produced the document with respect to Ex.P5. The PW1 has admitted that the Nala is running from north to south. The PW1 has deposed that towards west of his land, the land belongs to the defendant is situated. The PW1 has deposed that in survey number 53 he is having 7 acre 19 gunta and 7 acre 20 gunta. The PW1 has deposed that the survey number of the property belongs to the defendant is 48 and 49. The PW1 has admitted that, the survey number 48 is adjoining with the suit schedule property. The PW1 has admitted that he has filed the application on 15.11.2011 for surveying the suit schedule property. The PW1 has deposed that he do not know the boundaries of the property belongs to the defendants. The PW1 has admitted that in survey number 49 there are 3 to 4 RTC extracts and same may be standing in the name of defendants. The PW1 has admitted that the land

belongs to Smt. Nilawwa is situated adjoining with suit schedule property and she is not a party to the suit. The PW1 has deposed that he has produced the documents with respect to survey number 53, measuring 14 acres and 39 gunta and it was earlier standing in the name of Sri.Mariyappa and he do not know how the said property has been acquired by Sri.Mariyappa, but it is an ancestral property. And other suggestions were denied by the witness.

16. The PW1 in support of his oral contention, he got examined two witnesses as PW2 and PW3. The PW2 and PW3 have filed the evidence affidavit in lieu of examination-in-chief wherein they have supported the case of the plaintiffs and have deposed about the suit survey number, measurement, boundaries and also the possession of the plaintiffs, encroachment made by the defendants over the suit schedule property.

17. The PW2 has been subjected for cross-examination wherein he deposed in accordance with his case. The PW2 has deposed that he is having property in

Bevoru towards north. The PW2 has deposed that the property bearing survey number 50 and 51 belongs to him, measuring 4 acre 17 gunta and 4 acre 27 gunta. The PW2 has admitted that he is having pan shop in Bevooru cross and as such, he came to know about the plaintiff and he is having close contact with him. The PW2 has admitted that Sri.Devappa is doing the money lending business. The PW2 has deposed the boundaries of the suit schedule property. The PW2 has admitted that there is a Government nala in between the land of the plaintiffs and defendants. The PW2 has admitted that the nala will run from north to south. The PW2 has admitted that since from his ancestors he is cultivating the property belongs to him. The PW2 has admitted that there is a bund in between the land of the plaintiffs and PW2.

18. The PW3 has been subjected for cross-examination wherein he deposed in accordance with his case. The PW3 has admitted that, he know the plaintiffs and defendants and he is having the property towards

west of the suit schedule property. The PW3 has deposed the boundaries of the suit schedule property. The PW3 has deposed that the plaintiffs are cultivating the suit schedule property. And other suggestions were denied by the witness.

19. And on the other hand, in order to disprove the case of the plaintiffs and also to prove their defence, the defendant no.3 has got examined as DW1. The DW1 has filed the evidence affidavit in lieu of examination-in-chief wherein he has reiterated the defence taken in the written statement as already stated above in detail. The DW1 has in support of his oral contention he got marked the documents as Ex.D1 and Ex.D2. Ex.D1 and Ex.D2 are the boundary certificates with respect to property bearing survey number 53/2, 53/1, wherein it shows about the boundaries of the said properties.

20. The DW1 has been subjected for cross-examination wherein he deposed in accordance with his case. The DW1 has deposed that, he has studied upto 12th standard and his father is having 5 children, they

are having 18 acre agricultural land bearing survey numbers 48 and 49. The DW1 has deposed that, the 3 acre 30 gunta in survey number 49 is allotted in favour of his father. The DW1 has deposed that they have not surveyed the properties belongs to them. The DW1 has admitted the survey number 53 in the village map. The DW1 has deposed the boundaries of the suit schedule property. The DW1 has admitted that there is a government land in between the land bearing survey number 53 and 54. The DW1 has deposed that after the survey number 49 there is a Nala and thereafter the property belongs to the defendants is situated. The DW1 has deposed that 3 acre 30 gunta land has been given to them and thereafter the land belongs to Sri.Shivanna Badigera is situated and before that the Nala is situated. The DW1 has admitted that his property is situated adjoining with the Government Nala. The DW1 has admitted that the land belongs to Sri.Shivanna Badigera is situated nala and the land of the DW1 is situated adjoining with nala. The DW1 has admitted that the plaintiffs have prepared Form No.10 with respect to suit

schedule property by surveying the same. The DW1 has admitted that for obtaining Ex.D1 and Ex.D2, his brother has given application before the village accountant. The DW1 has admitted that the Village Accountant is not having any power to issue Ex.D1 and Ex.D2. The DW1 has admitted the boundary certificate and same is marked as Ex.P7. The DW1 has admitted that the Village Accountant is not having any power to issue Ex.D1 and Ex.D2. The DW1 has admitted that he do not know the measurement of the suit schedule property. The DW1 has admitted that the property bearing survey number 49 is measuring 7 acres 20 gunta, survey number 48 is measuring 25 acre. The DW1 has admitted that there are two hissa in survey number 49 as 49A and 49B with respect to same he has produced the documents before the court. The DW1 has deposed that since 200 years they are cultivating the property bearings survey number 49/☺ and earlier it was standing in the name of Smt. Gangavva and they have not surveyed the said property. And witness admitted that, the court commissioner has visited the property for surveying the

same at that time he is present. The DW1 has admitted that, he has not seen the report submitted by the court commissioner. The DW1 has denied the encroachment as contented in the plaint.

21. And on perusal of the records, wherein it shows that on the basis of the application filed by the plaintiff, the application is allowed for appointment of the court commissioner as per order dated 05.10.2021 the ADLR Yelburga is appointed as a court commissioner for identification of the encroachment if any made by the defendants over the suit schedule property. And accordingly, he has submitted the report before the court stating that the encroachment made by the defendants over the suit schedule property and thereafter the objection is filed and the commissioner is got examined as CW1. The CW1 the court commissioner has been examined and he has deposed before the court that the property bearing number 53/1 is measuring 7 acre 20 gunta, but he has wrongly shown in the report as 2 acre 14 gunta. And the witness has

identified the report and same is marked as Ex.C1 and statement is marked as Ex.C2. and notice is marked as Ex.C3, and acknowledgment is marked as Ex.C4. Postal receipt is marked as Ex.C5. The CW1 has been subjected for cross-examination wherein he deposed that he has shown in the report 2 acre 14 gunta wrongly instead of 2 acre 4 gunta.

22. It is basic law that mutation does not confer any title in the property. The title is derived through the document properly stamped and registered. The single entry in the mutation regarding the title of the vendor of the plaintiff in the absence of document of title cannot be relied upon. Reliance can be placed on the decision rendered by the Hon'ble Supreme Court of India in Balwant Singh & Another -vs- Daulat Singh 1997 (Supply) Civil Court Cases 262(SC), wherein the Hon'ble Supreme Court of India has held that mutation entries are relevant only for the purpose of collection of land revenue and does not confer or extinguish any title in the immovable property.

23. It is well settled law that mutation does not confer any title. The Hon'ble Supreme Court in Sankalchan Jayachandbhai Patel and Others -vs- Vithalbhai Jayachandbhai Patel and others has held that, the art mutation proceedings are summary in nature and are only for fiscal purpose to determine the land revenue and cannot be considered to be evidence about title. The Hon'ble Supreme Court in Smt. Sawarni - vs- Smt. Inder Kaur and others AIR 1996 SC 2823 has further held that mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is recorded to pay the land revenue in question. As per 17 of Indian Registration Act,1877, clearly suggests that document/instrument, which intends/purports to create right/title to an immovable property having value of Rs.100/- should be registered. Similarly as per Section 39 of the (Act suggests that documents, which are required to be registered under Section 17 shall not affect any immovable property; comprised therein or confer any

power to adopt or to receive any evidence to any transaction affecting the said property for b conferring power unless it has been registered.

24. It is well settled law that the following conditions are necessary for seeking the relief of declaration:

The court, however, as a rule, before granting the relief must be satisfied that the plaintiff:

- (a) has either the legal character claimed, or
- (b) the right has to any property set up by him, and
- (c) that the same are valid and subsisting.

A suit under Section 34 of Specific Relief Act cannot be maintained unless inter alia;

- (1) the plaintiff is a person entitled to some
 - (a) legal character
 - (b) right to any property
- (2) such legal character or right to any property is denied, or is in danger of being denied, or there is some person who is interested to deny such legal character or right to any property and
- (3) the declaration sought is that the plaintiff is entitled to such legal character or right to any property.

25. Therefore, on over all perusal of the oral and documentary evidence of the plaintiffs and the defendants, wherein it clearly discloses that the plaintiffs are claiming that they are the absolute owners and in lawful possession and enjoyment of the suit schedule property by way of succession. And in order to substantiate their right, title, interest and possession over the suit schedule property, the plaintiffs have produced the documents as per Ex. P1 to Ex.P58. Ex. P2, Ex.P3 and Ex.P8 to Ex.P55 are the RTC extract with respect to suit schedule property from the year 1963-1964 to 2025-26, wherein it clearly discloses that the suit schedule property was earlier standing in the name of father of the plaintiff no.1 and father-in-law of the plaintiff no.2 and after the death of the father of plaintiff no.1 the name of his two children's namely the Sri Dayamanna and Sri Giddappa has been entered in the revenue records. The husband of the plaintiff no.2 was died and thereafter the name of the plaintiff no.2 has been entered in the revenue records with respect to suit schedule property. The Ex.P57 the MR No.22/2004-05,

clearly discloses that, the plaintiffs have got entered their names in the revenue records with respect to suit schedule property by deleting the name of Sri. Mariyappa and further Ex.P56 clearly discloses that the suit schedule property bearing survey number 53 is divided in to two parts as 53/1, 53/*/1, 53/*/2 standing in the name of plaintiff no.1 and 2 measuring 7 acre 15 guntas and 7 acre 14 guntas. The Ex.P57 clearly discloses that earlier the suit schedule survey number 53 and thereafter wrongly it was changed as 52 in a computerized RTC extract and thereafter the plaintiffs have approached the Tahasildar and they have got changed the survey number as 53. And as per Ex.P58 dated 09.06.2006 the suit survey number is wrongly shown in the RTC as 52 instead of 53, therefore, accordingly, the same is corrected by the revenue authority in the name of plaintiffs. And further the revenue documents produced by the plaintiff as per Ex.P2 to P7, wherein it clearly discloses that, the suit schedule property earlier belongs to the family of the plaintiffs and now their names jointly appearing in the

revenue records. And on the contrary, the defendants have not properly disputed the right, title, interest and possession of the plaintiff over the suit schedule property just they have contented that they have not encroached upon the suit schedule property and they are in lawful possession and enjoyment of the property bearing survey number 49/AA. In order to substantiate their case, they have produced the documents as per Ex.D1 and Ex.D2 the boundary certificate issued by the village Accountant. And except Ex.D1 and Ex.D2 the defendants have not placed any relevant documents to show that the plaintiffs are not entitled for relief of declaration and permanent injunction and further they have not produced any relevant documents to show that the plaintiffs are not having the absolute right, title, interest and possession over the suit schedule property. The oral evidence of P.W.1 to 3 clearly establishes and supports the case of the plaintiffs and on perusal of the documents as per Ex.P1 to P58 coupled with the oral evidence of PW1 to 3, wherein it clearly established by the plaintiff that they have acquired the right, title,

interest and possession over the suit schedule property by way of succession and further it clearly discloses about their lawful possession and enjoyment of the suit schedule property jointly. Therefore, the above said oral and documentary evidence clearly establishes the fact that the plaintiff have succeeded the suit schedule property after the death of the propositus Sri. Mariyappa and now they are the absolute owners and in lawful possession and enjoyment of the suit schedule property as per the date of the filing of the suit. The plaintiffs have proved the above said additional issue No.1 & 2 by way of producing cogent, reliable, and probable documentary evidence. Accordingly, issue No.1 and additional issue No.1 are answered in the affirmative.

26. **Additional issue No.2 and 3:-** The burden of proof of the present issues is on the plaintiffs that whether the defendants have encroached to the extent of 4 acre 30 guntas and they are entitled for the possession of the same property. The records clearly discloses that initially the present suit is filed for relief of

permanent injunction with respect to suit schedule property and after submitting the report by the court commissioner with respect to encroachment, the plaintiffs have got amended the plaint and they have converted the suit for the relief of declaration, possession and permanent injunction. The plaintiffs have contented in the plaint that the suit land previously numbered as survey number 53 measuring 14 acre 39 gunta. Later on the suit land survey number has been changed as survey number 53/6/1 measuring 7 acre 20 gunta and survey number 53/*2 measuring 7 acre 19 guntas. It is contented that as per the court commissioner report the suit property to the extent of 2 acre 4 gunta had been encroached by the defendant in survey number 53/*1 and likewise in survey number 53/*2 to the extent of 2 acre 26 guntas in totally the defendants have encroached to the extent of 4 acre 30 guntas. Therefore, the plaintiffs are entitled to recover the possession of the said encroached land. In order to establish the above said encroachment by the defendants, the plaintiffs have got appointed the court

commissioner and he has submitted the report before this court and the commissioner has been got examined as CW1. The CW1 got marked the documents as Ex.C1 to C5. The court commissioner report clearly establishes the fact that survey No.53/1 is measuring 7 acre 20 gunta and 53/2 is measuring 7 acre 19 gunta. The measurement and identification of survey number 53 is shown in the sketch and also he has shown the adjoining survey numbers. In Ex.C1 the court commissioner has clearly shown that survey number 53/1 is in totally measuring 7 acre 20 guntas and the plaintiffs are in possession of the same property to the extent of 5 acres 16 gunta, which is shown in the sketch pink color and the encroachment made by the defendant, the owner of the survey number 49, measuring 2 acres 4 gunta is shown in maroon color. And further the court commissioner has submitted the report with respect to survey number 49 wherein it clearly he has shown that survey number 49 is measuring 7 acres 20 gunta and out of it the defendants are in possession of the property to the extent of 6 acres 37 guntas and 23

gunta has been encroached by the owner of the survey number 48 which is shown in maroon colour. Therefore, the above said CW1 has been examined before the court and he has deposed before the court stating that in survey number 53/ 1 the total measuring is 7.20 gunta, but he has wrongly shown the encroachment as 2 acre 14 gunta instead of 4 gunta. But exact encroachment is 2 acre 4 gunta as shown in Ex.C1. Therefore, on careful scrutiny of the court commissioner report and also the documents as per Ex.C1 to C5. Wherein, it clearly discloses that, the defendants have encroached upon the suit schedule property to the extent of 4 acres 30 gunta. And further it shows that the defendants have encroached in survey No.53/*/1 to the extent of 2 acre 4 gunta and in survey No.53/*/2 to the extent of 2 acre 26 guntas. In total the defendants have encroached upon the suit schedule property to the extent of 4 acre 30 guntas. The plaintiffs have proved that, the encroachment made by the defendants over the suit schedule property as contented in the plaint. The plaintiffs have proved that the defendants have

encroached upon the suit schedule property to the extent of 4 acres 30 gunta. Therefore the plaintiffs are entitled to recover the possession to the extent of 4 acres 30 gunta from the defendants as per Ex.C1 and Ex.C2 the court commissioner report. Accordingly, additional Issue No.2 & 3 are answered in the affirmative.

27. **Issue No.2:** The burden of proof of the present issue is on the plaintiffs that, whether the defendants are trying to interfere with the possession of the plaintiffs over the suit schedule property. The plaintiffs have contented in their plaint that, the defendants have no any right, title or interest over the suit land and the defendant land is not adjacent to the suit land. The defendants are brothers to each other and the defendants have colluded together in the third week of May 2012 and have obstructed the possession of the suit schedule property and threatened to dispossess the plaintiffs from the enjoyment of the suit land. And if the defendants dispossess the plaintiffs from the suit schedule property, then it will affect the right of the

plaintiffs. And in order to substantiate to said contention the plaintiffs have got examined the witnesses as PW2 and PW3. The PW2 and PW3 have filed the evidence affidavit and got examined as PW2 and PW3 and have deposed about the obstruction made by the defendants and also have deposed about the encroachment made by the defendants. And further the records as per Ex.C1 to C5 clearly establishes the fact that, the defendants are trying to interfere with the possession of the plaintiffs over the suit schedule property by way of encroachment. The above side oral and documentary evidence clearly establishes the fact that the defendants have already interfered and have encroached upon the suit schedule property to the extent of 4 acres 30 gunta. And further the defendant may again interfere with the possession of the plaintiffs over the suit schedule properties. Therefore, the above said evidence of PW1 to PW3 and also the documents as per Ex.P1 to P58 and also the evidence of CW1 documents as per Ex.C1 to C5 clearly shown the interference made by the defendants over the suit

schedule property. Accordingly, Issue No.2 is answered in the affirmative.

28. **Issue No.3:** The burden of proof of the present issue is on the plaintiffs that whether they are entitled for relief of declaration, possession and permanent injunction with respect to suit schedule property. In view of the findings on issue number 1 & 2 and Issue number 1 to 3, wherein this court has clearly held that the plaintiffs have proved that they are the absolute owners and in lawful possession and enjoyment of the suit schedule property and further the plaintiffs have proved the fact that the defendants have encroached upon the suit schedule property to the extent of 4 acres 30 gunta and further the defendants have proved the interference made by the defendants over the suit schedule property. Therefore, the plaintiffs are entitled for the relief of declaration, possession and permanent injunction with respect to suit schedule property. Accordingly, issue No.3 is answered in the affirmative.

29. **Issue No.7:-** In view of the findings on issue No.1 to 3, Additional Issue No.1 to 3 and also considering the facts and circumstances of the case the court proceed to pass the following:

-:: O R D E R ::-

The suit filed by the plaintiff is hereby decreed.

It is hereby declared that the plaintiffs are the absolute owners of the suit schedule property.

The defendants are hereby directed to hand over the vacant possession of the property to the extent of 4 acres 30 guntas as per the court commissioner reports within one month from the date of the order.

The defendants or anybody acting on their behalf are hereby restrained from interfering with the possession of the plaintiff over the suit schedule property in any manner by way of permanent injunction.

No order as to cost.

Draw decree accordingly.

(Dictated to the Stenographer Gr-III on computer typed and computerized by her, corrected, signed and then pronounced by me in the open Court on this the 10th day of July 2026)

(Sanjukumar Pachhapure)
Civil Judge & JMFC Yelburga.

:-: A N N E X U R E :-:

List of witnesses examined on behalf of plaintiff's

PW.1 : Sri.Devappa S/o Giddappa Baddi
PW2 : Sri.Channaveerappa S/o Veerappa Jalihal
PW3 : Sri.Virupayya S/o Shivayya Hiremath

List of documents marked on behalf of plaintiff's. Exhs.

Ex.P-1 : G.P.A.
Ex.P-2 & 3 : RTC Extracts
Ex.P-4 : Revision Certificate
Ex.P-5 : Tonech Map
Ex.P-6 : Village map
Ex.P-7 : Mutation register extract
Ex.P-8 to 55: RTCs
Ex.P-56 & 57: Mutation register extract
Ex.P-58 : Memo

List of witnesses examined on behalf of defendants

DW.1 : Sri. Mallappa S/o Mudiyaappa Tuppad

List of documents marked on behalf of defendants Exhs.

Ex.D-1 & 2 : Checkbandi certificate.

List of witnesses examined on behalf of Court

CW.1 : Sri.Shareefsab S/o Rajasab

List of documents marked on behalf of Court Exhs.

Ex.C-1 : Commissioner report

Ex.C-2 : Statement

Ex.C-3 & 4 : Notices

Ex.C-5 : Postal receipt.

(Sanjukumar Pachhapure)
Civil Judge & JMFC Yelburga

(Judgment is pronounced in open court)
(Vide separate sheets)

-:: O R D E R ::-

The suit filed by the plaintiff is hereby decreed.

It is hereby declared that the plaintiffs are the absolute owners of the suit schedule property.

The defendants are hereby directed to hand over the vacant possession of the property to the extent of 4 acres 30 guntas as per the court commissioner reports within one month from the date of the order.

The defendants or anybody acting on their behalf are hereby restrained from interfering with the possession of the plaintiff in the suit schedule property in any manner by way of permanent injunction.

No order as to cost.

Draw decree accordingly.

Civil Judge & JMFC Yelburga

