

KABG010068522018



IN THE COURT OF PRL. DISTRICT JUDGE, AT BELAGAVI

DATED THIS THE 13th DAY OF AUGUST, 2026

PRESENT : SHRI MANJUNATH NAYAK
B.A.L. LL.B.
Prl. District & Sessions Judge
Belagavi.

REGULAR APPEAL No.177/2018

**APPELLANTS/
PLAINTIFFS:**

1. Smt. Khatejabi W/o Makbulsab Patel,
Age: 73 years, Occ: Household,
R/o: H.No.3889, Kaktives, Belagavi.
2. Sri Mohammadhanif
Khashimsab Budlegar,
Age: 72 years, Occ: Driver,
R/o: H.No.3879, Kaktives,
Belagavi.
3. Sri Ameerahamja
Khasimsab Budlegar,
Age: 71 years, Occ: Business,
R/o: H.No.3879, Kaktives,
Belagavi.
4. Smt. Ashabi Kashimsab Budlegar,
Age: 63 years, Occ: Household,
R/o: H.No.3879, Kaktives,
Belagavi.
5. Sri Nazirahamed Kashimsab Budlegar,
Age: 63 years, Occ: Driver,
R/o: H.No.3879, Kaktives,
Belagavi.

(By Sri A.A. Patil, Advocate)

Vs.

**RESPONDENTS/
DEFENDANTS:**

1. Smt. Sheetal Narayan Tamhankar,
Age: Major, Occ: Household work,
R/o: 1805/B, Kelkarbag, Belagavi.
2. Sri Harshal Narayan Tamhankar,
Age: Major, Occ: Household work,
R/o: 1805/B, Kelkarbag, Belagavi.
3. Sri Sameer Narayan Tamhankar,
Age: Major, Occ: Not known,
R/o: 1805/B, Kelkarbag, Belagavi.
4. Sri Prabhakar Sakharam Tamhankar,
Age: Major, Occ: Nil,
R/o: 1805/B, Kelkarbag, Belagavi.
5. Smt. Prema W/o Dattatray Tamhankar,
Age: Major, Occ: Retired,
R/o: Guruprasad Colony, Belagavi.
6. Smt. Priya D/o Dattatray Tamhankar,
Age: Major, Occ: Retired,
R/o: Guruprasad Colony, Belagavi.

(R-1 to 3 & 5 by Sri V.G. Kulkarni, Advocate)

(R-4 reported as dead)

(R-6 Absent)

1.	Date of institution of the appeal	26.07.2018						
2.	Date on which judgment was pronounced	13.08.2026						
5.	Duration	<table> <tr> <td>Year/s</td><td>Months</td><td>Day/s</td></tr> <tr> <td>08</td><td>00</td><td>17</td></tr> </table>	Year/s	Months	Day/s	08	00	17
Year/s	Months	Day/s						
08	00	17						

J U D G M E N T

This appeal is filed under Section 96 and Order XLI Rule 1 of Civil Procedure Code (for short '**CPC**') by the above named

appellants/plaintiffs challenging the legality and correctness of the judgment dated 27.07.2018 passed by the II Additional Senior Civil Judge, Belagavi in OS No.07/2011 in dismissing the suit filed by the plaintiff claiming the decree for declaration, injunction and possession. For the sake of convenience, parties are referred in this appeal as per their ranks/status before the trial court.

2. Brief Facts leading to filing of this Appeal are as follows:

The plaintiffs filed the suit in OS No.07/2011 claiming the decree to declare that they are lawful owners in possession of the suit property and further declare that the entry of the defendants name in CTS records of the suit property is without any basis, null and void and for permanent injunction restraining the defendants from disturbing the plaintiffs peaceful possession and enjoyment of the suit property and alternatively, the relief of possession, if the plaintiffs are not in possession of the suit property. The suit property described in the plaint schedule is an old dilapidated house measuring 31X98 feet, bearing CTS No.3900 situated at Kakatives Belagavi. The plaintiff No.1 is the daughter and plaintiffs No.2 to 5 are the sons of Late Kashimsab Khairulla Budlegar. The suit property is the ancestral property of the plaintiffs. The suit

property was fallen to the share of the plaintiffs father as per the decree passed in D.F.O.S No.382/1953 passed by the Civil Court, Belagavi. The plaintiffs are in actual possession and enjoyment of the property. The plaintiffs filed execution petition No.14/1980 for recovery of possession of the suit property. But, the suit property was not included in the said execution petition. The defendants tried to deprive the plaintiffs right by filing third party application in execution petition No.14/1980 claiming right over property bearing CTS No.3889/1A1A3. Said application was rejected. One Laxman Govind Tamhankar has purchased 50 square feet of land in CTS No.3889/1A/3, out of property totally measuring 70 square yards. Said Laxman Govind Tamhankar or his legal heirs are not entitled to claim for more than 50 square feet. The name of Laxman Govind Tamhankar was entered in CTS records to the extent of 50 square feet. The Belagavi Municipality has acquired 10X5 feet. The name of plaintiffs entered in CTS records as per the decree passed in D.F.O.S No.382/1953. When the plaintiffs obtained the CTS records, they came to know that the name of the defendants were entered in CTS records without any basis. The defendants, by taking advantage of their names, are claiming right

over the suit schedule property. One Abdulkhadar Khairul Budlegar has filed a suit in OS No.09/1932 claiming partition and possession in the family property and same was decreed. Said Abdulkhadar Khairul Budlegar and his brother Kashimsab filed execution petition No.218/1936 for passing final decree and same was made on 29.10.1968. The plaintiffs are not claiming the property, which was purchased by Laxman Govind Tamhankar. Said Laxman Govind Tamhankar has not derived any title in respect of the suit property. The defendants are causing obstruction for the plaintiffs possession and enjoyment of the suit property. Therefore, plaintiff constrained to file this suit. On these grounds, plaintiffs claimed decree for declaration, injunction and alternative relief of possession of the suit property.

3. In response to the summons, defendants appeared before the trial court through their counsel and filed written statement. In their written statement, defendants have categorically denied all the plaint averments, including the plaintiff's title and possession over the suit property. According to the defendants, they are having permanent leasehold right in respect of the suit property. Their rights were not challenged since

last several decades and their names are appearing the revenue records of the suit schedule property. The plaintiffs have no legal right and possession over the suit schedule property. Name of the ancestors of the defendants and thereafter name of the defendants are appearing in the CTS records as permanent leaseholders. The plaintiffs are making false claim over the suit property. On all these grounds, defendants prayed for dismissal of the suit with costs.

4. On the basis of the above pleadings of both the parties, learned trial court framed the following issues:

1. Whether the plaintiff proves that their right, title and possession over the suit properties?
2. Whether the plaintiff proves that the entry in CTS records in respect of suit property mentioning the name of defendants is null and void?
3. Whether the plaintiffs are entitled to the consequential relief of possession?
4. Whether the plaintiffs are entitled to the relief of permanent injunction?
5. Whether the suit of the plaintiffs is barred by Law of Limitation?
6. Whether the plaintiffs are entitled for the relief sought?
7. What order or decree?

5. To prove above issues and to substantiate their contentions, the plaintiff No.3 examined before the trial court as PW1 and got marked 1 to 11 documents. On the other hand, 02 witnesses examined for the defendants as DW1 and DW2 and Exs.D1 to D62 documents were marked for the defendants.

6. The learned trial court, by appreciating oral and documentary evidence of both the parties, proceeded to dismiss the suit vide impugned judgment dated 27.04.2018. Challenging the said judgment, the plaintiffs preferred this appeal on following grounds:

GROUND OF APPEAL

1. That the impugned decree and judgment of the trial court is contrary to law, facts, procedure and against the provisions of law.
2. That the trial court has not looked into the pleadings of the parties in a proper way.
3. That the trial court has not framed proper issues as required arising out of the pleadings of the parties and the one framed are not correct.
4. That the trial court has not considered the documentary evidence of plaintiff in a proper

sense to establish their case, more particularly Exhibit-P7, P8, P9, P10 and P11.

5. The trial court has not considered the oral evidence of plaintiffs in support of the case and the admission given by DW1 in the cross examination in proper way.
6. That the entire conclusion arrived by the trial court on all the issues are not correct, legal and erroneous.
7. The findings given by the trial court on all the issues are wrong and erroneous.
8. The trial court has wrongly held that the court has declared the shares of the properties entitling them to receive ground rents from the occupants of schedule 'C' properties to the extent of their respective shares under Ex-P9. But, not in the property bearing CTS No.3900.
9. The trial court has wrongly held that Ex.P9 & Ex.P10 disqualify the claim of plaintiffs title over the suit property.
10. The trial court has not considered the documents relating to FDP No.382/1953 in a proper way in the legal sense.
11. The trial court has wrongly considered the documents produced as per Ex.D54 and D53 of the defendants and wrongly further held that

the plaintiffs and ancestors have not challenged the documents.

12. The trial court has wrongly held that the suit property bearing CTS No.3900 was leased out permanently to Tamhankar Family.
13. The trial court has wrongly held that the plaintiffs were not in possession of the suit property, as it was leased out permanently, though the defendants have not produced any registered document to show that it was leased out.
14. The trial court has not looked into the provisions of Transfer of Property Act. U/s 105 & 107 in case of lease more than one year and not interpreted the legal consequences, if document is not registered.
15. The trial court has wrongly held that plaintiffs have approached the court seeking declaratory relief with regard to their title and they have to prove, in spite of proving the ownership right by producing old CTS records and court papers, court decree i.e., Hukumnama and non production of registered lease deed by the defendants as required by the provision of T.P. Act.

16. The trial court has not given much importance, though the documents as per Ex.D52 and 53 are not one and the same.
17. The trial court lost sight of the principal of law that once the ownership is proved by the plaintiffs by producing the oral and documentary evidence, then the burden shift to the defendant to rebut the case of the plaintiffs.
18. That the trial court has wrongly held that the CTS entry is not challenged by the plaintiffs or their ancestors till date and this facts indicates that suit property bearing CTS No.3900 was leased permanently to Tammankar family.
19. The trial court has wrongly held that the plaintiffs have failed to prove their right, title and interest over the suit property and wrongly held the issue No.1 and 2 in the negative.
20. The trial court has wrongly held that the plaintiffs have failed to prove their possession over the suit property and the question of granting injunction will not arise.
21. The trial court has wrongly held that the suit is time barred and not entitle the claim.

22. The trial court has not applied its mind judiciously and not considered the rulings submitted by plaintiff in proper sense.

7. In response to the notice, the respondents No.1 to 3 and 5 appeared before this court through their counsel. Whereas, other respondents were not appeared before this court.

8. This court secured the entire file relating to OS No.07/2011 from learned II Additional Senior Civil Judge, Belagavi.

9. I have heard the arguments both the parties and perused the materials on record.

10. The points that arose for my consideration are:

- 1. Whether the appellant/plaintiffs prove their absolute title and ownership over the suit schedule property?**
- 2. Whether the plaintiffs prove their actual possession and enjoyment of the suit schedule property?**
- 3. Whether the impugned judgment is against the law, facts, evidence and probability of the case and liable to be intervened by this court?**
- 4. What order or decree?**

11. My answer for the above points are in the following, because of my below discussed reasons:

Point No.1: **IN THE NEGATIVE**

Point No.2: **IN THE NEGATIVE**

Point No.3: **IN THE NEGATIVE**

Point No.4: **AS PER FINAL ORDER**

REASONS

12. **Point No.1 to 3:** To avoid the repetition of my discussion on facts, I have taken these points together for determination. The plaintiffs filed the suit in O.S. No.07/2011 claiming the decree to declare that the entry of the name of the defendants in CTS records of the suit property is illegal and null and void. Further, to declare that the plaintiffs are lawful owners in possession and exclusive in title of the suit property and for permanent injunction restraining the defendants from disturbing the plaintiffs possession and enjoyment of the property and for alternative relief of possession of the suit property, in case the plaintiffs are found not in possession.

13. The suit property described in the plaint is the property measuring 31X98 feet, bearing CTS No.3900, situated at Kakatives Belagavi. The plaintiffs claim that the suit property is their ancestral property fallen to the share of the father of plaintiffs by name Kashimsab Budlegar as per the decree passed in

D.F.O.S No.382/1953. According to the plaintiffs, they have filed execution petition No.14/1980 to get possession as per the decree passed in D.F.O.S No.382/1953. The defendants have filed third party application in the said execution petition, which was rejected. According to the plaintiffs, one Laxman Govind Tamhankar has purchased 50 square feet out of CTS No.3889/1A/3 and his legal heirs are not entitled for right over the property more than 50 square feet. According to the plaintiffs, their names have been entered in the records of the suit property and the defendants have got entered their names illegally and trying to disturb their possession, which made them to file the present suit.

14. The defendants, in their written statement, have categorically denied all the plaint averments, including the plaintiffs title and possession over the suit property. It is the case of the defendants that they are having permanent lease hold right in respect of the suit property. According to the defendants, their predecessors names and thereafter their names have appearing in the CTS records of the suit property and plaintiffs are making false claim over the suit property.

15. To prove the issues and to substantiate their contention, the plaintiff No.3 examined before the trial court as PW1 and produced sketch, CTS extract, decree passed in OS No.382/1953 and orders passed in EP No.14/1980. On the other hand, the defendant No.1 examined as DW1 and one witness on their behalf as DW2 and they produced approved plan and photos, GST challan and electricity bills. The learned trial court, by appreciating these evidence, has proceeded to dismiss the suit with costs. Challenging the said judgment, the plaintiffs are before this court with present appeal.

16. The plaintiffs claimed that they are the owners of the suit schedule property and in possession and enjoyment of the same, as it is their ancestral property. According to the plaintiffs, the suit property was fallen to the share of their father Kashimsab Budlegar as per the decree passed in D.F.O.S No.382/1953. The plaintiffs have produced the certified copy of the decree passed in D.F.O.S. No.382/1953 as per Ex.P9. Said proceedings is in between the plaintiffs family members and this suit property bearing CTS No.3900 is one of the subject matter of that suit as 'C' schedule property. If I carefully peruse the contents of Ex.P9 decree, a right

to recover the rent was assigned to the plaintiffs family as per the Ex.P9 decree. No absolute title or possession has been conferred in favour of the plaintiffs family as per Ex.P9 final decree. The learned trial court, by interpreting the recitals in Ex.P9 decree, has made specific observation that this suit schedule property is the part of said decree as 'C' schedule property and its measurement is shown as 35-4 and ground rent is mentioned as 2-8-0. The learned trial court has also observed that the plaintiffs family is receiving the ground rent from the various occupants, who are occupying the C schedule property, including the present suit property.

17. Of course, it is declared that the plaintiffs in the said suit have got $\frac{1}{5}$ th share and defendants No.1 and 3 have got $\frac{2}{3}$ share and defendants No.4 to 9 of that suit, who are the plaintiffs herein, are having $\frac{2}{5}$ th share. It is further specifically ordered in the said decree that they are entitle to receive the ground rent in respect of their share.

18. As per Ex.P9 decree, no order has been passed declaring these plaintiffs as the absolute owners, empowering them to get the possession of the suit schedule properties, including this property. It is also not held in the said decree that

the suit property was in possession of these plaintiffs. Only a right to receive rent from the occupants of the suit schedule property, to the extent of their respective shares declared in the suit, was conferred upon the plaintiffs and other family members. Under such circumstances, the contention of the plaintiffs that they have acquired absolute title over the suit schedule property and that they are in actual possession and enjoyment of the suit property on the basis of Ex.P9 decree, cannot be accepted by this court.

19. Another document relied upon by the plaintiffs is Ex.P10, which is the final decree drawn in D.F.O.S. No.382/1953. Again in page No.2 and para No.3 of the said decree, it is specifically stated that the property mentioned in C schedule property of the plaint are the properties given away on permanent lease basis, from which rent is to be recovered. It is further decreed that the ground rent derived on it is taken for basis for partition. In page No.3 of Ex.P10, the C schedule property was described and the property bearing CTS No.3900, which is the suit property herein, is one of the property. So Ex.P10 also proves that the property bearing CTS No.3900 has been leased out on permanent lease basis and it is not in possession of the plaintiffs

and their family members and only the right to recover the ground rent has been conferred upon them. Under such circumstances, the plaintiffs claim that they are the owners in possession of the suit property on the basis of Ex.P9 and P10 cannot be accepted by this court. In fact, Exs.P9 and P10 will go against them and prove that they are having only the right to recover rent from the permanent lease holders, who occupy the said property.

20. Even according to the plaintiffs, after the decree was passed in D.F.O.S. No.382/1953, they filed E.P.No.14/1980 for recovery of possession. Admittedly, the suit property was not included in the E.P.No.14/1980 filed by these plaintiffs. The plaintiffs themselves have admitted that the suit property was not included in E.P.No.14/1980, by pleading the same in para No.2 of the plaint. It is not the case of the plaintiffs that since they are in possession of the suit property, it was not included in the Execution petition. When the plaintiffs have not assigned any such explanation, an inference, which can be drawn from the factum of not including the suit property in E.P.No.14/1953 is that the plaintiffs have no right to get the possession of the suit property, due to which, they have not included the same in the Execution

petition. It appears that since in the decree of D.F.O.S. No.382/1953 it is stated that the suit property has been permanently leased out and the plaintiffs have got only a right to recover the rent, they have not included the said property in E.P.No.14/1980, which was filed to get the possession of other properties. So, the plaintiffs, not including the suit property while filing E.P.No.14/1980, also gives an indication that since it has been in possession of the occupants on permanent lease basis and they have only the right to recover the rent, the plaintiffs have not included it.

21. If I draw my attention to the khata and CTS extracts of the suit property produced by the plaintiffs, in Ex.P2 CTS extract, name of the plaintiffs family members is shown as the holders column, where a the name of one Govind Tamhankar is appearing in the lease holder column by specifying the ground rent as 2-8-0, which goes to show that the suit property was leased out on ground rent basis. In Ex.P2, there is also entry about the name of the plaintiffs family members regarding transfer of right and name of the defendants family members is also entered as the lease holders by referring the word 'L'. Ex.P5 is the property register card

of the suit property wherein the name of the plaintiff is entered as the holder.

22. The documents produced by the defendants will clearly establish that their family has got lease hold rights over the suit property. The documents produced by the defendants also reveal that the property was initially leased out to one Laxman Govind Tamhankar as it was a inam land. The witness examined for the plaintiff as PW1 specifically admitted during the course of his cross examination that lease hold rights were transferred. Ex.D52 and D53 are the registered instrument of the year 1914, which also proves the same. The name of the defendants is appearing in the CTS card of CTS No.3900. The careful assessment of these evidence will establish that the plaintiffs are having only the right to receive the rent and they are neither in possession of the property nor they have got any right to seek possession, because it was leased out to the defendants family on permanent lease basis.

23. The learned counsel for the plaintiffs, during the course of his arguments, has vehemently argued about the documents produced by the defendants and the lacuna's in their pleadings and evidence, so as to impress upon the court that the

plaintiffs are having title and possession over the suit property. Of course, there is no consistency in between the pleadings and evidence of the defendants. However, that cannot be a ground for accepting the plaintiffs version and decreeing the suit, when the plaintiffs failed to discharge their initial burden of proving that they are having absolute title and ownership over the suit property. The learned trial court, in its judgment, has referred several decisions in this regard, to hold that in a suit for declaration of title, the plaintiff cannot take the weakness of the defendants to establish his title over the suit schedule property. I have not found any reason to say that the said finding of the trial court is erroneous one.

24. The careful scrutiny of the pleadings and evidence of both the parties, demonstrate before the court that the plaintiffs have acquired a right to recover the ground rent from the suit schedule property and they were not in possession of the suit property. Under such circumstances, the first relief claimed by the plaintiffs to declare them as the lawful owner in possession and exclusive owners in title cannot be granted to the plaintiffs.

25. Let me accept for the sake of arguments, that the plaintiffs have got title and ownership over the suit property, because a right to recover rent has been conferred upon them. If the plaintiffs have no ownership, question of conferring them a right to recover the rent will not arise. Since the right to recover rent has been conferred upon the plaintiffs, a presumption can be drawn that they are having ownership over the same. However, that cannot be a ground for decreeing the suit, even for the relief of declaration, when the plaintiffs are not in possession of suit property and cannot get the possession of the suit property.

26. It is well established principle of law that a person cannot be declared as the owner of the property, if he is not in possession of the property and not sought the relief of possession. Of course, in the present suit as an alternative relief the plaintiffs have sought the relief of possession. But the plaintiffs cannot be granted with the relief of possession because the defendants are occupying the suit property as a permanent lessee. When the defendants are occupying the suit property as a permanent lessee, they cannot be evicted from the suit property. The plaintiffs can not be granted with relief of injunction, as they are not in actual

and physical possession of the suit property. Sec.34 of the specifically bar the granting the decree for declaration alone, without any consequential relief. Therefore, question of granting relief of declaration also will not arise.

27. Regarding the relief of declaration sought in respect of entry the name of the defendants in CTS records, even such a relief cannot be granted when the plaintiffs are not entitle for the main relief of declaration. Considering all these aspects, I have to say that the learned trial court has rightly dismissed the suit. I found no reason to say that the said finding of the trial court is erroneous one.

28. The learned trial court, by properly appreciating the facts, pleadings and evidence of both the parties, has arrived at a right conclusion in dismissing the suit. No grounds are made out for interference of this court with the impugned judgment. Hence, I answer the points No.1 to 3 are **in the Negative**.

29. **Point No.4:** In view of my findings on above points, the appeal filed by the appellants/plaintiffs is liable to be dismissed. Hence, I proceed to pass the following:

ORDER

The appeal filed by the appellant/plaintiff under Order 41 Rule 1 read with Section 96 of Civil Procedure Code, is dismissed.

The impugned judgment dated 27.07.2018 passed by the II Additional Senior Civil Judge, Belagavi in OS No.07/2011 is confirmed.

I direct both the parties to bear their respective costs of this appeal.

Send back the trial court records along with the copy of this judgment forthwith.

(Dictated to the Stenographer Grade-III, after transcription, computerized and print out taken by him, corrected, signed and then pronounced by me in the Open Court on this 13th day of August, 2026)

**(Manjunath Nayak),
Prl. District & Sessions Judge,
BELAGAVI.**