

KABG040013682009



Presented on : 24.10.2009

Registered on : 24.10.2009

Decided on : 16.06.2026

Duration: 16 years, 07 months, 23 days

IN THE COURT OF IV ADDL. CIVIL JUDGE AND JMFC, BELAGAVI

**PRESENT: Bhuvaneshwari D. BA, LLB (Hon's), LLM
IV Addl. Civil Judge & JMFC.,
Belagavi**

Dated on this 16th day of June, 2026

ORIGINAL SUIT No.1061/2009

PLAINTIFFS:	1. The United Co-operative Housing Society, R/by its Secretary S. D. Mumin Having Office, At CTS 3056 Khade Bazar - Belagavi. 2. Mr. Mohammed Aasif, S/o. Abdulghani Athaani Age: 38 years, Occ: Business, R/o: H.No.3056, Khade Bazar, Belagavi-590002.
(By Shri J. K. Modgekar, Advocate)	

V/s.

DEFENDANTS:	1. Shri Ram Krishnagi Haval Being deceased, represented by his LRs- 1a) Sou. Chaya W/o. Dilip Bongade, D/o. Late Ram Haval Age: Major, Occ: Household, R/o: C/o. Dr Arun K. Killekar, Nucleus Mall (old Kapil Theater), Kirloskar Road, Belagavi
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	1b) Sou. Ambika W/o. Anil Mirajkar, D/o. Late Ram Haval, Age: Major, Occ: Household, R/o: C/o. Dr. Arun K. Killekar, Nucleus Mall (old Kapil Theater) Kirloskar Road, Belagavi. 1c) Sou. Divya W/o. Anil Kakade, D/o. Late Ram Haval Age: Major, Occ: Household, R/o: C/o. Dr. Arun K. Killekar, Nucleus Mall (old Kapil Theater), Kirloskar Road, Belagavi. 2. Shri Deeepak Ram Haval, Age: 30 years Occ: Business, Having its Office at 3 floor, R/o: C/o. Dr. Arun K. Killekar, Nucleus Mall (old Kapil Theater), Kirloskar Road, Belagavi. 3. Dr. Arun K. Killekar, Age: Major, Occ: Builder And Developer, Having its office at 3rd floor, Nucleus Mall (old Kapil theater), Kirloskar Road, Belagavi. 4. Abul kasim S/o. Abdul Rashid Mujawar, Age: 65 years, Occ: Landlord, 5. Mohammed Idrus S/o. Abdul Rashid Mujawar, Age: 45 years, Occ: Landlord, 6. Abdul Hadi S/o. Abdul Rashid Mujawar, Age: 38 Years, Occ: Service, 7. Abdul Rauf S/o. Abdul Rashid Mujawar, Age: 32 years, Occ: Service,
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	8. Abdul Majid Alias Wajid, S/o. Abdul Rashid Mujawar, Age: 28 years, Occ: Business, Defendants No.4 to 8 are R/o: H.No.326, Belagavi – 590 001. 9. Shaikh Aaman S/o. Shaikh Abbas, Age: 43 years Occ: Service, R/o: H.No.4298/B1, Jalgar Galli, Belagavi – 590002.
(By Shri V. G. Kulkarni, Advocate for D-1 to 3) (By Shri K. M. Mulla, Advocate for D-4 to 8) (By Shri R. I. Garag, Advocate for D-9)	

Date of institution of the suit	24.10.2009		
Nature of the suit	Declaration and Injunction		
Date of commencement of recording of the evidence	30.06.2018		
Date on which judgment was pronounced	16.06.2026		
Total duration	Years	Months	Days
	16	07	23

Sd/-
(Bhuvaneshwari D.),
IV Addl. Civil Judge & JMFC,
Belagavi.

JUDGMENT

This suit is filed seeking the relief of Declaration and consequential relief of perpetual injunction.

2. Description of the suit property:

A portion of CTS No. 9784/B1 and CTS No. 9784/A/1/A1 comprising out of R.S. No. 1001/4, measuring East-West = 33 ft and north-south = 80 ft' totaling 2640 Sq. ft. situated at 1st main 3rd cross Shivaji Nagar, Belagavi. (Now the defendant No. 1 to 3 are claiming as CTS No. 9784/A1/A2) which is bounded as under;

East	:	Remaining property belonging to the plaintiff society
West	:	Property bearing CTS No. 9784/A/1/A1
North	:	Road
South	:	1 st main road, 3 rd cross Shivaji Nagar, Belagavi.

3. The facts elucidated in the plaint are summarized in brief as under::

It is the case of the plaintiffs that suit property is part of R.S.No.1001/4 situated at Shivaji Nagar, Belagavi which is stated to be in the joint possession of the deceased Abdul Rashid Hassansab Mujawar and defendants No.4 to 8. The plaintiffs contended that the said property is not partitioned by metes and bounds among the family of the deceased Abdul Rashid Hassansab Mujawar. The plaintiff No.1 claiming it to be Registered Society submits to have acquired right, title and interest over R.S. No. 1001/4 measuring to the extent of 2 acres 8 guntas of land. It is further submitted that society has formed plots in CTS No. 9784/B which is now renumbered as 9784/B1. The plaintiffs Society contends to have

authority and management over the said land including suit property from the year 1983, having acquired the rights through the deceased Abdul Rashid Hassansab Mujawar and defendants No. 4 to 8 who are contended to be the owners. It is the contention of the plaintiffs that suit property and entire CTS No. 9784/B1 and 9784/A/1/A1 were curved out of R.S. No.1001/4. It is the allegation of the plaintiffs that defendants No.1 and 2 are trying to put construction of multi-storeyed apartment over the suit property by showing CTS No. 9784/A1/A2. The defendants No. 1 and 2 are claiming to have purchased the open site through registered Sale Deed dated 24.04.1993 from Mohammed Shoukat Hussain Abdul Sattar Attar in respect of plot bearing CTS No. 9784/A measuring 33 feet x 85 feet measuring 2805 situated at Shivaji Nagar, Belagavi which is bounded with the boundaries depicted below:

To the East	:	Property belonging to a Society
To the West	:	Property belonging to the Avalakki
To the North	:	Bhangi road
To the South	:	Main road

4. The plaintiffs contends that Shoukat Abdul Sattar Attar has derived ownership on the basis of document of title dated 20.03.1989. It is further contended that documents of title do not tally with the original document which is Sale Deed through which he has purchased the property from Vittal Ningappa Patil. Vittal Ningappa Patil is said to have created Nirantar Patta through Abdul Rashid Mujawar in respect of R.S. No. 1001/4 in which it is shown that only 24 feet 9 inch x 110 feet out of R.S. No. 1001/4 is depicted to have the below enunciated boundaries:

To the East : Property belonging to the Avalakki
To the West : 30 feet road,
To the North : Bhangi road,
To the South : Main Road

5. Further according to the plaintiffs the Correction Deed have been executed on 12.11.1987 in respect of Nirantar Patta without consent and knowledge of the co-owners so as to bring the said description mentioned below, North-South 85 feet and East- West 33 feet and boundaries are as under:

To the East : Property belonging to the Avalakki
To the West : Pathan plot
To the North : Bhangi road,
To the South : Road

6. It is contended by the plaintiffs that said documents created by defendants No. 1 and 2 is colourable document which do not give them any right, title and interest over the suit property as the same is created without consent of the other co-owners of R.S. No. 1001/4. It is further submitted that sub-divisions of CTS No.9784/A1/A2 is illegal as it is made without the knowledge of the plaintiffs and other co-owners of the property acting in collusion with the city survey authorities. According to the plaintiffs, the defendants No.4 to 8's father had made an oral Gift dated 12.05.1974 to the extent of 78 guntas out of R.S. No. 1001/4 in favour of his sons Shri. Abdulkasim S/o. Abdulrashid Mujawar to the extent of 16 guntas, Md.Idrus S/o. Abdulrashid Mujawar to the extent of 16 guntas, Md. Hadi S/o. Abdulrashid Mujawar to the extent of 16 guntas and his daughter Zulekhabi D/o. Abdulrashid Mujawar to the extent of 16 guntas and his wife Smt. Sarabi W/o Abdulrashid Mujawar to the extent of

14 guntas, as he had property measuring to the extent of 78 guntas standing in his name. Stating these facts the plaintiffs contends that the Abdulrashid Mujawar being the owner to the extent of 78 guntas executed Nirantar Patta in respect of plot measuring 24 feet 9 inch x 110 feet in favour of Vithal Ningappa Patil on 06.09.1977. The plaintiff alleges that the transaction of Vithal Ningappa Patil based on Nirantar Patta dated 06.09.1977 do not confer him any right, title or interest over the suit property. The plaintiffs further contended that defendants No. 1 and 2 cannot claim rights over the suit property on the basis of documents as they do not hold any legal sanctity. On this pretext they claim that Sale Deed dated 09.12.1995 in which portion of R.S. No. 1001/4 is said to have been transferred is not binding the plaintiffs. It is further contended that a portion of 60 feet East- West and 80 feet North-South which belongs to plaintiff No.2 is bounded as under:

East	:	House property formed in CTS No.9784/A1/A1
West	:	Plots formed by the plaintiff No.1 society
North	:	Road
South	:	Road

7. The plaintiff contended that on 17.10.2009 the defendants have visited that suit property stating that they are intending to put up construction in the suit property. By paying Court Fee under Section 24 (c) of the Karnataka Court Fee and Suit Valuation Act the present suit is instituted seeking the relief of Declaration to declare sub-division bearing CTS No. 9784/A1/A2 measuring 33 feet East-West and 85 feet North-South is illegal and not binding upon the plaintiff. It is also sought to be declared that the plaintiff No.1 is the owner and in possession of portion measuring

60 feet East-West and 80 feet North-South and to restrain the defendants No. 1 to 3 from putting up further construction in the suit property.

8. The learned counsel for defendants No. 1 to 3 have filed written statement thereby denying the averments taken by the plaintiffs in the plaint. The defendants No.1 to 3 further submit that there is no proper description of the suit property with definite boundaries. It is contended by the defendants No. 1 and 2 that suit property at CTS NO. 9784/B1 and CTS No.9784/A/1/A1 has no relation with property bearing CTS No.9784/A which is in the possession of the defendants No.1 and 2. Further it is submitted that plaintiffs being society has not passed resolution and without obtaining leave from the competent authority to institute the suit of this nature and has not produced registration certificate. The defendants No. 1 and 2 further submitted that property at CTS No. 9784/A measuring 33 feet x 85 feet was purchased through sale deed dated 24.04.1993. Accordingly, they submitted that there was subsequent mutation entry made in the revenue records. The defendants further submits that their vendors had valid title to sell the suit property and they also assert title Deed of the defendants No.1 and 2 vendors is also not challenged nor set aside by any competent court of law till this date. The defendants No. 1 and 2 contended that name of the plaintiff was mutated in the CTS records vide mutation entry dated 05.06.1993 after following due procedure. Further it is submitted that the said sub-division cannot be challenged after certain period of time. The defendants No.1 and 2 also submit suit challenging the mutation entries and seeking declaration in respect of the sub-division given by revenue authorities is not maintainable without exhausting available remedy provided under

Karnataka Land Revenue Act. Contending these grounds the defendants' No. 1 and 2 submits that suit of the plaintiffs is not maintainable and is liable to be dismissed.

9. The learned counsel for defendants No.4 to 8 has filed written statement contending that defendant No.4 and other co-owners of the property bearing CTS No. 9784/A1/A comprising out of R.S. No. 9784/A/1/A1 orally gifted the property in favour of Mohammed Asif S/o Abdul Gani Athani who was put in possession of the portion of the CTS No.9784/A1/A2. They further contended that defendants No.1 and 2 by colluding with authorities have got mutated certain entries. Further they submits that Mohammed Aasif who is the plaintiff No.2 is the owner of the property which is described as under :

All that piece and parcel of a open plot measuring 60 feet East-West, 80 feet North-South formed in CTS No.9784/A1/A out of R.S. No. 1001/4 in Shivaji Nagar, Belagavi which is bounded as under ;

East : The remaining portion of 9784/A1/A
West : CTS No. 9784/B belonging to united
Co-operative housing society.
North : Road
South : Road

Contending these facts they have sought for decreeing the suit of the plaintiffs.

10. The learned counsel for defendant No.9 has filed written statement contending to be the member of the plaintiffs society. It is submitted that payment of entire consideration amount of the plot

bearing No.40 and 41 each measuring 29 feet East-West and 78 feet North-South out of CTS No. 9784/B was sold under registered sale deed dated 28.12.1994 in favour of Ramesh Wamanrao Modgekar and Plot No. 41 measuring 29 feet East-West and 69 feet North-South was sold to Mohan Wamanrao Modgekar under registered sale deed dated 29.12.1994. The defendant No.9 claims to have purchased the plot No.40 and 41 from lawful owner through registered sale deed dated 31.08.2010. The defendant No.9 is also said to have purchased plot No.40A formed out of CTS No. 9784/B1. The description of the property owned and possessed by defendant No. 9 is mentioned as under :

“All that Piece and parcel joint plots No.40+41+41/A together measuring 58 feet East-West and 80 feet North-South, equivalent to 4640 Square feet formed in CTS No. 9784/B1 (Old No. 9784/B) Corresponding to R.S. No. 1001/4, situated at 1st main, 3rd cross, Shivaji Nagar, Belagavi” and bounded as under :

East : House built on Plot No. 39
West : Plot measuring 60 feet East-West and 80 feet North-South owned and possessed by plaintiff
North : Road
South : Road”

11. The defendant No.9 further submits that plaintiff No.1 acquired rights from its lawful owners Abdulrashid Hasansab Mujawar and others to the extent of 2 acres 8 guntas comprised in R.S. No. 1001/4 thereby being in the possession of the said property. The defendant No.9 states that the city survey was extended to R.S.No:1001/4 by conducting the measurement thereto and fixing the boundaries by preparing the city

survey map. According to the defendant No.9 after finalization of the city survey map 5 plots were laid in the land of plaintiff No.1 of width size 29 feet totally measuring 145 feet in length running from east to west on 1st Main, 3rd Cross, Shivaji Nagar, Belagavi. The defendant No.9 states that he is the owner of Plot No.40 and 41 which is measuring 29-2-58 feet in length. According to defendant No.9 three other plots are situated towards eastern side of their property which measures 29 feet in width and 3=87 feet. The plaintiff No.2 is admitted to be owning the property situated at eastern side of the defendant No.9's property measuring east west 60 feet and North South 80 feet. There is further allegation made against the defendant No.1 and 2 by defendant no.9 contending they do not have ownership over the plot measuring 33 feet in width and 80 feet in length claimed under CTS No:9784/A1/A2. The defendant No.9 is stated to have constructed building over his plots. He contends that the subdivision was made without issuing notice to all the parties concerned without following due procedure contemplated under law. The defendant No.1 and 2 are alleged to have created new CTS No:9784/A1/A2 overlapping the property owned by defendant No.9 to the extent of East-West 16 feet and North-South 18 feet and overlapping the property owned by plaintiff No.2. The act of defendant No.1 and 2 is stated to have been agitated by the plaintiff and other members. The defendant No.9 states that the property claimed to be in the ownership of defendant No.1 and 2 is not in existence. It is also alleged that the building permission is obtained illegally without giving notice to the plaintiffs and defendant No.9. The defendant no.9 contends that the defendants No.1 and 2 are interfering in the possession of the plaintiffs over the suit property. The

defendant No.9 admitting the contentions taken by the plaintiffs in their plaint averments sought for decreeing the suit.

12. Heard Counsel for plaintiff who reiterated the plaint averments and drew the attention of the court to the documentary evidence to substantiate their claim in the suit. The counsel also emphasized that their claim over the suit property is admitted by defendant No.1 and 2 by not taking up any specific defense. He also submitted that the defendants have not led any evidence on their behalf and defendants No.5 to 9 have admitted the claim of the plaintiff.

13. The counsel for plaintiff has also filed written arguments in which it is submitted that Ex.P 18 to EX.P28 which are the tax paid receipts, electricity bill would prove that the subdivision made by the CTS Authorities is illegal. There is also mention about the other documents marked in exhibit through which the plaintiffs have claimed their title. It is also contended that the unchallenged evidence of the plaintiff establishes their title and ownership of the suit property. They claim that the title of defendant No.1 and 2 is under cloud. Contending that the defendants are putting up unauthorized construction the plaintiffs have sought for decreeing the sought in consonance with the prayer sought by them in the plaint.

14. Heard Shri RUP for VGK Counsel for defendant No.1 to 3 who submitted that the suit of the plaintiff is not maintainable in accordance with the provisions of the Karnataka Land Revenue Act,1961 and non seeking of the relief of declaration of title. The counsel also emphasized that subdivision was made in the year 1993 but till this date the same is

not challenged thereby contended that the suit is barred by law of limitation. He also emphasized that joint compromise decree is drawn between the plaintiffs and defendants No.4 to 8 during the pendency of suit proceedings. Further it is submitted by the counsel that the plaintiffs have not exhausted their remedy to challenge the subdivision made by the CTS Authorities. The counsel emphasized that no resolution is passed in the Annual General Body meeting. He also contended that the description of the suit property is improper. The said contentions are reiterated in the written arguments filed by the defendant No.1 to 3's counsel.

15. The counsel for defendants No.4 to 8 have filed their written arguments admitting the claim of the plaintiffs and they have also contended that as per Ex.P18 the plaintiff No.2 is the owner of the property described in paragraph No.7(a) of the plaint. They further submit that the defendant No.1 and 2 have admitted that the alleged suit property has no relation with the property owned and possessed by defendants No.1 and 2. In view of the admissions of defendants No.1 to 8 they have sought for decreeing the suit in terms of the prayer sought by the plaintiffs by restraining the defendants No.1 to 3 from interfering in the possession of the plaintiffs over the suit property.

16. The counsel for defendant NO.9 has filed written arguments admitting the claim of the plaintiffs and has emphasized that the judgment be passed acting under Order XII Rule 6 of CPC in view of the admissions made by the parties. It is also contended that the defendants No.1 to 3 have not specifically denied the ownership of the plaintiffs over the suit property and have not led any evidence to rebut the claim of the plaintiffs. The defendant No.9 has sought for decreeing the suit.

17. The counsel for defendant No.1 to 3 has relied on the decision reported in *ILR 1996 KAR 715, Ramajois Vs. Chief Secretary* to emphasize on the proposition that the rightful recourse to challenge the subdivision entries made by the city survey authorities is not exhausted by the plaintiffs.

18. On the basis of pleadings of the parties and documents produced at the initial stage, considering the material propositions that are affirmed by one party and are denied by other party by laying emphasis on the statutory provision laid down in Order XIV Rule 1 of CPC the predecessor in office has framed following;

ISSUES

- 1) *Whether plaintiff proves that, the sub-divisions bearing CTS No.9784/A1/A2 measuring 33' East-West and 85' North-South is illegal and not binding on it?*
- 2) Whether the plaintiff proves that, it is in possession of the suit schedule property as on the date of suit?
- 3) Whether the plaintiff proves that, the defendant No.1 to 3 are trying to put up illegal construction in the suit schedule property?
- 4) Whether the plaintiff is entitled for the reliefs sought by it?
- 5) What order or decree?

Additional issues framed on 17.12.2024

- 1) Whether plaintiffs prove that plaintiff No. 2 is the owner in possession of the portion measuring 60 x 80 feet as shown in Para No. 7B of plaint?

2) Whether plaintiffs are entitled for relief of Declaration as sought in the plaint?

19. In order to prove the case, the General Power of Attorney holder of plaintiff No.2 was examined as PW-1 and he furnished affidavit in lieu of the examination-in-chief and has got marked documents as Ex.P1 to Ex.P19. The plaintiff No.2 examined as PW-2 and furnished affidavit in lieu of the examination-in-chief and has got marked documents as Ex.P18 to Ex.P31.

20. Upon placing emphasis on the material on record with special reference to oral testimony and documentary evidence adduced by the plaintiffs and defendants, this Court answers the aforementioned issues in the following;

Issue No.1:	In the Negative,
Issue No.2:	In the Negative ,
Issue No.3:	In the Negative,
Issue No.4:	In the Negative,
Addl. Issue No.1:	In the Negative,
Addl. Issue No.2:	In the Negative,
Issue No.5:	As per final Order, for the following;

REASONS

21. Issue No.1:- Whether plaintiff proves that, the sub-divisions bearing CTS No.9784/A1/A2 measuring 33' East-West and 85' North-South is illegal and not binding on it?

The present suit is filed by the plaintiffs contending that the suit property is comprised out of R.S.No.1001/4 and it is submitted by them

that they are portions of CTS No.9784/B1 and CTS No.9784/A/1/A1. It is the contention of the plaintiffs that defendants No.1 to 3 are claiming it as CTS No.9784/A1/A2 which they are seeking to declare as illegal and not binding upon them. In respect of the ownership of the said property, plaintiffs submit that it was originally held in the joint ownership of Abdul Rashid Hassansab Mujawar and defendants No.4 to 8. R.S.No.1001/4 is said to have been measuring 8 acres 35 guntas. The plaintiffs submit that the defendants No.1 and 2 are claiming to have derived their title over the suit property from their vendor. They further submit that the vendor of defendants No.1 to 3 has acquired the right over the suit property from Vital Ningappa Patil. They further contend that Vital Ningappa Patil has got the said deed registered without the consent of the other co-owners on the basis of Nirantara Patta Card issued to the Abdul Rashid Mujawar. The plaintiff contended Abdul Rashid Mujawar had transferred land only to the extent of 24 feet 0.9 inch x 110 feet to Vital Ningappa Patil. It is contended that Correction Deed dated 12.11.1987 was made which described the property measures to the extent of 85 feet north-south and east-west 33 feet. Further it is contention of the plaintiff that the father of defendant No. 4 to 8 had transferred by way of oral gift land measuring to the extent of 78 guntas out of which defendant No. 2 to 6 are said to have acquired right over the extent of 16 guntas each in R.S.No.1001/4. Accordingly the plaintiff submits that wife of Abdul Rashid Mujawar had acquired title over the property to the extent of 14 guntas. Contending these facts, the plaintiffs submit that the Abdul Rashid Mujawar was not left with any portion of land after transferring the land by way of oral gift made in favour of his family members so as to execute Nirandar Patta Card in favour of Vital Ningappa Patil. The plaintiffs allege that the

transaction made by Vithal Ningappa Patil based on Nirantara Patta is illegal and do not confer any right, title or interest over the property so as to entail defendants No. 1 to 3 to accrue rights from their owner Shoukat Hussain Abdul Sattar Attar as per sale deed dated 24.04.1993. The plaintiffs allege that the defendants No.1 and 2 had created these subdivisions colluding with the city survey authorities.

22. BEFORE PROCEEDING TO GIVE FINDINGS, THE COURT DEEMS IT APPROPRIATE TO MENTION THE ADMITTED FACTS BY THE PLAINTIFF AND DEFENDANTS NO.4 TO 9:

- The defendants No.4 to 9 have admitted the claim of the plaintiffs in their written statement and they have stated that plaintiff No.2 is the owner of the suit property as it has accrued rights from the co-owners of CTS No.9874/A1/A.
- They have contended that CTS subdivision is not binding on the plaintiffs and they have pleaded in consonance with the pleadings of the plaintiff that the subdivision entries have been made by the defendant No.1 and 2 in collusion with the city survey authorities.
- They admit the ownership of the plaintiff No.1 society over the suit property.

23. On the contrary defendants No.1 to 3 submit that the suit property is not properly described in the plaint averments and they further submitted that they have purchased the property at the CTS No.9784/A measuring 33 feet x 85 feet from their owner Mohammed Aslam Khatahsaheb Attar through sale deed dated 24.04.1993. They

contend that their vendor had lawful title to sell the property and deny all the other allegations made by the plaintiff. They contend that the subdivisions had taken place in the year 1993 and the same cannot be challenged by the plaintiff now as it is barred by limitation.

A) Appreciation of documentary evidence to adjudicate upon issue No.1:

The power of attorney holder of plaintiff No.2 got examined as PW-1 by producing copy of original General Power of Attorney executed by plaintiff No.2 in his favour. Ex.P3 is the mutation entry dated 12.06.1990. This assumes relevance as in the said mutation entry the following recitals can be found;

12-06-1990	ವಾರಿಸಾ	1) ಸಾರಾಬಿ ಅಬ್ದುಲರಶೀದ ವರ್ದಿ,
ಅಬ್ದುಲರಶೀದ ಹಸನಸಾಬ ಮುಜಾವರ		ಮುಜಾವರ ವಾರ್ಸಾ
ಇವರು ದಿನಾಂಕ 02.02.88 ರಂದು		2) ಅಬ್ದುಲ ಕಾಶೀಮ ಸರ್ತಿಫಿಕ್ಟೆಟ
ಮೃತರಾಗಿದ್ದು ವಾರಸದಾರ ಹೆಂಡತಿ		3) ಮಹ್ಮದ್‌ಇದ್ರಿಸ್ ವಜವಾಬ
ಸಾರಾಬಿ ಅಬ್ದುಲರಶೀದ ಮುಜಾವರ		4) ಮಹ್ಮದ ಹಾದಿ
ವರ್ದಿ ವಜವಾಬ ದಿ.11.6.90 ರ		5) ಅಬ್ದುಲ ರವೂಫ
ಪ್ರಕಾರ ವಾರದಾರ ಮಕ್ಕಳು 6 ಜನರ		6) ಅಬ್ದುಲ ಮಜೀದ
ಹೆಸರು ದಾಖಲ		ತಂದಿ ಅಬ್ದುಲರಶೀದ
		ಮುಜಾವರ
		7) ಜುಲೇಬಾಬಿ. ಕೋಂ.
		ಅಬ್ದುಲಮಜಿದ ಮುಲ್ಲಾ

24. In entry dated 18.04.1996 the following recitals can be found;

“18-04-96 ಸಬ್ ಡಿವಿಜನ್ ಈ ನಂಬರದಲ್ಲಿಯ ಕುಬೆದಾರರ ಅರ್ಜಿ ವ ಪ್ರತ್ಯಕ್ಷ ವಹಿವಾಟಿ ಪ್ರಕಾರ ಸಬ್ ಡಿವಿಜನ್ ಅಲ್ಲಿ ಕೆಲಸ ಪೂರೈಸಿ ಆ ಉಪವಿಭಾಗಗಳಿಗೆ 9784/A1/B, 9784/A1/C ಮತ್ತು 9784/A1/D ಅಂತಾ ಹೊಸ ಕಾರ್ಡ್ ತಯಾರಿಸಿ ಮೂಲ ಕಾರ್ಡ್‌ನ್ನು 9784/A1/A ಅಂತಾ ದುರಸ್ತು ಪಡಿಸಿ ಉಪವಿಭಾಗದಿಂದ ಬೇರೆ ಆದ ಕ್ಷೇತ್ರ ವಜಾ ಮಾಡಿದೆ.

25. Ex.P5 is the wardi dated 25.08.2008 mentioning about oral Gift of Abdulkasim S/o. Abdulrashid Mujawar and his joint owners who are defendant No.4 to 9 submitted by Mohammed Asif S/o. Abdulghani Athani who is the plaintiff No.2 to the city survey officer officer. In the said document description of the suit property reads as follows;

"All the piece & parcel of open site measuring 60 gt east west & 80ft north south formed out of CTS No.9784/A/A1 (part of R.S No.1001/4) situated at Shivaji Nagar, Belgaum & same is bounded by;

*East : CTS No.9784/B plot No.41 +41 of Mutgekar
West : Remaining part of CTS No.9784/A/1A
North : Road
South : Road"*

26. Ex.P6 is the Rule Card pertaining to CTS No.9784/B1. Ex.P7 is the CTS map depicting the sub-divisions of the property. Ex.P8 is the property register card pertaining to CTS No.9784/A/1/A2 wherein the name of defendants No.1 and 2 are shown as lessee on 07.12.2007 in respect of CTS No.9784/A1/A1, the following recitals can be found;

"07.12.2007 ಉಪವಿಭಾಗ 1) ಶ್ರೀರಾಮ ಕೃಷ್ಣಾಜಿ ಹಾವಳಿ 2) ದೀಪಕ ರಾಜು ಹಾವಳಿ ವೈಕಿ ಖರೀದಿಯಂತೆ ಉಪವಿಭಾಗ ಮಾಡಿತು. ವಿವರ ಸಿ.ಸ.ನಂ.9784/A1/A1 ಕ್ಕೆ ಬರೆದಂತೆ"

27. Ex.P9 is the CTS map of Sy.No.9784/A1/A2. Ex.P12, Ex.P14, Ex.P15, Ex.P16 and Ex.P17 are the certified copies of sale deed. For ease of reference the said sale transactions are depicted in tabular column;

Exhibit No.	Date of execution of sale deed	Vendor	Buyer	Description of the Suit property	Sale consideration
Ex.P 2	24.04.1993	Mohammed Aslam Khatahsheb Attar	Ram Krishnaji Haval	All that piece and parcel of plot CTS No.9784/A, measuring 33' x 85' = 2805.00 sq/fts. Situated at Shivaji Nagar, Belgaum, within the limits of Corporation of the City of Belgaum, and within the jurisdiction of Sub-Registrar, Belgaum and bounded by to the East: Property belonging to society, To the West: property belonging to Shri Avalakki To the North: Bhangi Road, To the South: Main Road	1,20,000/-
Ex.P 12	17.11.1995	Vitthal Ningappa Patil	Sou. Sunanda bai Krishna Mannurkar	House property in CTS No.9784/A/1 measuring East-West 16'6" and North South 85' out of total measuring 10832 ⁸ / ₉ sq yards, situated at Shivaji Nagar, Belgaum within the limits of City Corporation Belgaum and with the jurisdiction of Sub Registrar, Belgaum	Rs.31,500/-
Ex.P 14	20.03.1989	Vitthal Ningappa Patil	1) Shoukat Hussain Abdul Sattar Attar 2) Mohammed	Property measuring 33 ft x 85 ft bearing City Survey No.9784/A and boundaries of the plot is as under; East: Land of Society, West: Plot of Avalakki, South: Main Road, North: Bhangi Road	Rs.55,000/-

			Aslam Khattals aheb Attar		
Ex.P 15	31.08. 2010	Ramesh Vamanrao Modagekar	Shaikh Amman Shaikh Abbas	All the piece and partial of N.A Open plot No. No.41, in CTS No.9784/B-I, total area 10425.7/9 paiki East-West: 29' x North-South: 69' = 2000 sq. ft. situated at Shivaji Nagar Belgaum, which is within the jurisdiction of Sub-Registrar Belgaum and within the limits of City Corporation of Belgaum and bounded by East: Plot No.39 in CTS No.9784/B-I West: Plot No.41 in CTS No.9784/B-I North: Bhangi Road, South: Road	Rs.11,50,39 3/-
Ex.P 16	31.08. 2010	Mohan Vamanrao Madagekar	Shaikh Amman Shaikh Abbas (Defend ant No.9)	All the piece and partial of N.A Open plot No. No.41, in CTS No.9784/B-I, total area 10425.7/9 paiki East-West: 29' x North-South: 69' = 2000 sq. ft. situated at Shivaji Nagar Belgaum, which is within the jurisdiction of Sub-Registrar Belgaum and within the limits of City Corporation of Belgaum and bounded by East: Plot No.40 in CTS No.9784/B-I West: CTS No.9784/A North: Bhangi Road, South: Road	Rs.11,50,39 3/-

Ex.P10 is the copy of the lease deed executed by Vithal Ningappa Patil and Abdul Rashid Mujawar in respect of the land bearing R.S No.1001/4 totally measuring 2 acre 8 guntas which has been declared as non agricultural land under the order of deputy commissioner. Ex.P11 is the rectification deed dated 12.11.1987 executed by the same parties as in Ex.P10 in which property bearing R.S No.1001/4 measuring 8 acre 35 guntas which is shown to be converted into non-agricultural purpose by effecting the following rectification;

Incorrect	Corrected
1. Open site measuring 24'9" X 110' East : Property of Awallakki, West : 30 ft Road, South : Main Road, North : Bhangi Road,	1. Open site east west measuring east 33 ft & north south length 85 ft which is bounded by East: property of Awallakki, West: Plot of Pathan South: Main Road North: Bhangi Road
2. Out of the said Sy.No. Open land measuring 24'9" X 110' bounded by East : Remaining land belonging to party no.2 West: land of Bade Saab Abdulsab Savnoor South: Main Road North: Bhandi Bol	2. Open land measuring east west 33 ft & north south in length 85 ft which is bounded by East: Remaining land belonging to party No.2 West: Land of Bade Saab Savnoor, South: Main Road, North: Bhangi Bol

Ex.P18 is the compromise decree drawn between plaintiff No.2 and defendants No.4 to 8 and Julekha on 21.12.2018 in PLC No.1066/2018 in respect of an open plot admeasuring east west 60 feet and south North 80

feet out of CTS No.9784/A/1/A1 out of R.S No.1001/4 situated at Shivaji Nagar Belagavi bounded as under:

East :	House built upon plots belonging to Shaikh Aman Shaikh Abbas
West :	House property of Mannurkar
North :	Service road
South :	1 st main road, 3 rd Cross, Shivaji Nagar.

In the said compromise decree it is mentioned that defendants No.4 to 8 along with Julekha have consented to give the possession of the above described property as per the gift deed.

28. Ocular evidence adduced by the plaintiffs:

PW-1 during the course of his chief examination has reiterated the contentions taken by them in their plaint averments and has contended that the defendants No.1 and 2 have given developmental contract to defendant No.3 for the purpose of construction over the suit property. During the course of his chief examination he has got marked Ex.P1 to Ex.P19 which are elaborately discussed as above. PW1 was not cross examined during the course of the trial by the defendants. Hence this court on 16.10.2019 has taken the cross examination of PW1 as NIL.

29. Appreciation of evidence adduced by the parties to the suit in relation to this issue;

This suit is filed by the plaintiff seeking to declare the sub-division bearing CTS No.9784/A1/A2 measuring 33 feet east-west and 85 feet North-South as illegal. The plaintiff contends that CTS No.9784/A1/A2 is

claimed by defendant No.1 to 3. The description of the suit property is shown as 9784/B1 and CTS No.9784/A/1/A1. The mutation entry which is produced and marked at Ex.P3 do not in specific give the description of the suit property. Plaintiff No.2 has clearly admitted that he has no right over the suit property. The documents marked at Ex.P2, Ex.P10, Ex.P11 which is the sale deed executed in favour of defendants No.1 and 2 Nirantar Patta executed by Vithal Ningappa Patil and the rectification deed entered into aftermath as mentioned above based on which the plaintiffs are seeking the declaration of subdivision bearing CTS No.9874/A1/A2 as illegal are not under challenge. As it is settled proposition of law that the documentary evidence will prevail over the oral evidence as held in the judicial pronouncements rendered by Higher Courts, in this suit if the said principle is made applicable hitherto it can be noted that the plaintiffs have filed this suit without challenging the validity of the registered sale deed and Nirantar Patta based on which they are claiming the subdivision is illegal. The documents that have remained unchallenged and their contents thereof would have to be considered by the court as the documentary evidence tendered by the plaintiffs themselves is contrary to their own pleadings because though the plaintiffs contend that only one of the co-owner of the property has created Nirantara Patta without obtaining consent from other co-owners of R.S.No.1001/4 neither Ex.P10 which is Nirantara Patta which is of the year 1977 is challenged before the competent Court of law and the subdivision is made in the year 1990 . On the other hand, the documents speak of the title and ownership of Abdul Rashid Mujawar and his family members over property bearing R.S. No.1001/4. It is to be noted that the sale deed marked at Ex.P2 is registered instrument which has conferred

title to the defendants No.1 has remained unchallenged. The documents of title which are the registered deeds of sale are not pertaining to the suit property and the tabular column aforementioned would depict that the property described in the schedules of the sale deeds are different and the CTS numbers are also different as the entire extent of R.S No:1001/4 measures to the extent of 8 acres 35 guntas. Ex.P7 is the certified copy of Joint CTS map. The map if perused would not prima facie act as corroborative piece of evidence to prove that sub-division bearing CTS No. 9784/A1/A2 is illegal. Ex.P9 is the CTS map of CTS No. 9784/A1/A2 issued by City Survey authority in which 9784/A1/A2 is said to be bounded by properties bearing CTS No. 9784/A1/A1 and CTS No. 9784/B. It is to be noted that the plaintiffs have not proved in what manner the CTS sub-division is illegal. The plaint pleading would depict that Abdul Rashid Mujawar had no land left with him to execute Nirantar Patta as he had transferred land measuring to the extent of 78 guntas in favour of his family members. If the entire documentary evidence is perused by the court coupled with the oral testimony of the plaintiff it is evident to infer that the documents produced by the plaintiff in the form of their evidence do not ipso- facto serve as conclusive proof to substantiate their pleadings to show that the subdivision entry bearing CTS No.9784/A1/A2 is illegal. Though the defendants have not led any evidence, it was for the plaintiffs to discharge their burden of proof to prove that the sub-division bearing CTS No.9784/A1/A2 is illegal which is not proved by producing sufficient documentary evidence on record. **Hence, issue No.1 is answered in the Negative holding that plaintiffs have failed to prove that the sub-divisions bearing CTS No.9784/A1/A2 measuring 33' East-West and 85' North-South is illegal and not binding on them.**

30. Issue No.2: Whether the plaintiff proves that, it is in possession of the suit schedule property as on the date of suit ?

This issue has cast burden on the plaintiff No.1 to prove that it is in the possession of the suit property.

31. EXTRACTION OF RELEVANT DOCUMENTARY EVIDENCE IN RELATION TO THIS ISSUE;

Ex.P2 is the sale deed pertaining to the defendant No.1 in respect of CTS No.9784/A, measuring 33' x 85' = 2805.00 sq executed on 24.04.1993. Ex.P3 is the mutation entry dated 12.06.1990 in which there is no mention about the plaintiff No.1 being in the possession of the suit property. Ex.P 5 is the wardi submitted by the plaintiff No.2 to City Survey officer claiming that they have acquired ownership from Abdulrashid Mujawar and their sons who are defendants No.4 to 8 through oral gift. Ex.P6 is rule card pertaining to CTS No:9784/B1 in which the name of plaintiff No.1 society is appearing but there is no specific mention of the plaintiffs possession over the suit property. Ex.P8 is the property register card of CTS No.9784/A/1/A2 which is standing in the name of defendant No.1.

32. APPRECIATION OF ORAL AND DOCUMENTARY EVIDENCE IN RESPECT TO THE FACTUM OF POSSESSION

The factum of possession of the plaintiff No.1 in respect of property bearing CTS No.9784/B1 is not forthcoming in the documentary evidence adduced by the plaintiffs. Though Ex.P6 is produced to show the entries in respect of plaintiff No.1 society from 28.02.1994 to 01.06.2009 there is no

specific mention in the plain card attributing possession of the plaintiff No.1 in relation to the property described in the schedule of plaint over which the plaintiff No.1 is claiming his possession and ownership. It is to be noted that the plaintiff No.1 society is claiming possession and ownership over the property on the basis of the oral gift made by Abdulrashid Mujawar and defendants No.4 to 8. There is no single pleading in the plaint mentioning the date on which the oral gift is made and in whose presence it was made which makes the case of the plaintiffs improbable. There are no documents placed on record to show that plaintiff No.1 is in the possession of the property as on the date of institution of the suit.

33. It is necessary at this stage to place emphasis on **Section 53 of Bharatiya Sakshya Adhiniyam** which reads as follows:

“53. Facts admitted need not be proved:- No fact needs to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings;

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

34. The proviso to this Section is made applicable in this suit as the facts admitted by the plaintiffs and defendants No.4 to 9 ought to have been proved otherwise than by those admissions as the defendants

No.1 to 3 have contested the case of the plaintiff and this court had cast burden on the plaintiff by virtue of framing this issue to prove the factum of possession otherwise than by those admissions. Primarily the plaintiffs have failed to establish their manner of accrual of right over the suit property to be placed in its possession thereof. The pleadings of the plaintiffs has not been proved by tendering in reliable documentary proof, PW-2 in his cross examination has admitted that he has no right over the suit property which further weakens the case of the plaintiffs.

35. This Court deems it relevant to refer the decision reported in **AIR 2014 SC 937, Union Of India & Ors vs Vasavi Co-Op. Housing Society Ltd. & Ors** wherein the Hon'ble Apex Court has held that

"15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited"

If the ratio laid down in the aforementioned dictum is made applicable it can be inferred that the plaintiffs have not discharged the onus cast on it hitherto in relation to factum of possession. **Hence, Issue No.2 is answered in the Negative holding that plaintiffs have not proved to the satisfaction of the Court that they are in the possession of the suit schedule property as on the date of suit.**

36. Issue No.3: Whether the plaintiff proves that, the defendant Nos.1 to 3 are trying to put up illegal construction in the suit schedule property?

This issue casts burden on the plaintiff to prove that defendants are trying to put illegal construction in the suit schedule property. Before proving that the defendants No.1 to 3 are putting up illegal construction in the suit schedule property, it was for the plaintiffs to prove possession over the suit schedule property by placing cogent evidence which is not proved based on the findings given on issue No.2.

37. The defendants No.1 to 3 on the other hand are shown to be owners of the property bearing CTS No.9784/A measuring 85 feet x 33 feet after having purchased the said property for valuable consideration of Rs.1,20,000/- which is evident from the registered deed of sale marked at Ex.P2. As per the settled proposition of law and in the decision reported in **Prem Singh and Ors Vs. Birbal and Ors, (2006) 5 SCC 353 the Hon'ble Apex Court** has in explicit terms has stated about the presumption in respect of registered instruments. The relevant extract is reproduced as under:

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

38. In this suit the presumption that registered document is validly executed is not rebutted by the plaintiff due to which Ex.P2 would be valid document. The photographs marked at Ex.P18 to Ex.P22 depicts that the construction is being undertaken but it do not serve as conclusive

proof to show that it is being constructed in the property of the plaintiffs as in the course of cross examination the PW2 has deposed that he has no ownership rights over the suit property and he has also admitted that in the photographs produced the building of the defendant is not there. The defendants No.4 to 9 have admitted that the defendants No.1 to 3 are putting up illegal construction. The said admission cannot be serve as credible piece of evidence to prove the factum of interference as alleged by the plaintiff in their plaint averments as in the absence of these admissions there is no proof adduced to show that the construction is made in the suit property by the defendants No.1 to 3 and PW2 himself has deposed contrary to his own pleadings. The possession of the plaintiffs over the suit property is not established which makes further discussion on the factum of interference as a futile exercise, hence the same is not adverted to by this court. **Based on these observations Issue No.3 is answered in the negative holding that plaintiffs have failed to prove that the defendants No.1 to 3 are trying to put up illegal construction in the suit schedule property.**

39. Additional Issue No.1: Whether plaintiffs prove that plaintiff No.2 is the owner in possession of the portion measuring 60 x 80 feet as shown in Para No.7b of plaint?

Plaintiff No.2 is casted with the burden to prove that he is the owner in possession of the portion measuring 60 x 80 feet as described in para No.7b of the plaint. PW-2 who is the plaintiff No.2 in his chief examination has contended that the defendants are trying to encroach upon east west 16 ft and North-South 80 ft of the part of the property owned and possessed by defendant No.9. Further, he has taken the

contention that CTS No.9784/A1/A2 is not mentioned by the defendants in their written statement and abandonment of the claim over the said CTS number shows that CTS No.9784/A1/A2 do not exist. In his cross-examination of PW-2 he has admitted that he do not possess ownership rights over the suit property and he admits that in the photographs produced the building of the defendant is not there and he has further deposed that it is in their property. He also admitted that at the documents marked at Ex.P25 and Ex.P30 there is no mention of CTS No.9784/A/A1. He deposed that the number mentioned at Ex.P29 and CTS Number mentioned in his chief examination are different. The electricity connection receipts and the bore-well receipts cannot be considered as sole piece of evidence to substantiate the claim of the plaintiff No.2 in proving his ownership in the absence of any registered deed conferring him ownership and placing him in possession of the portion measuring 60 x 80 feet as shown in Para No.7b of plaint. The documents marked at Ex.P28 and Ex.P29 are the tax assessment receipts in which CTS number is shown as CTS No. 9784/A/A1 to which plaintiff is shown as the owner of the property. It is settled proposition of law that the tax paid receipts are not the documents of title. The admission of PW2 made during the course of his cross examination falsifies his claim over the property mentioned at Para No.7b of the plaint. The photographs would only assist the court to assess the position and status of the suit property and they cannot be considered as evidence to prove possession over the suit property. **Hence, additional issue No.1 is answered in the Negative holding that plaintiff No.2 is not the owner in possession of the portion measuring 60 x 80 feet as shown in Para No. 7b of plaint.**

40. Additional Issue No.2 and Issue No.4: Whether plaintiffs are entitled for relief of Declaration as sought in the plaint and Whether the plaintiff is entitled for the reliefs sought by it?

These issues are taken up together for common discussion as they are encompassing around entitlement of relief by the plaintiffs in consonance with the plaint prayer to declare subdivision bearing CTS NO.9784/A1/A2 as illegal and to grant the relief of perpetual injunction. The suit originally came to be instituted by the plaintiff which is United Co-operative Housing Society represented by its Secretary. The plaintiff have not produced any letter of authorization which has empowered its secretary to represent in the suit proceedings and also it is pertinent to note that no meeting resolution has been placed before the Court conferring authority to the secretary to represent in the suit proceedings. It is matter of record that the plaintiff No.1 being housing society is claiming that it is in the possession of CTS No.9784/B .

41. The findings on these issues are bifurcated under two heads in respect of distinct relief sought.

A) FINDINGS OF THIS COURT ON ENTITLEMENT OF RELIEF OF DECLARATION IN RESPECT OF SUBDIVISION BEARING CTS 9784/A1/A2 MEASURING 33 EAST –WEST AND 85 NORTH – SOUTH IS ILLEGAL AND NOT BINDING

The Court deems it appropriate to place emphasis on these provisions envisaged under the Karnataka Land Revenue Act of 1964 which are extracted below for ease of reference:

1. Section 18 of the Karnataka Land Revenue Act, 1964 reads as follows:

1) For purposes of survey, assessments and settlements of land revenue and the settlements of boundaries and connected matters provided for in this Act, the State Government may, by notification, appoint such officers as it may deem necessary. Such officers shall be designated "Commissioner of Survey, Settlement and Land Records", "Deputy Commissioner of Land Records", "Deputy Commissioner for Settlement", "Superintendent of land records", "Assistant Superintendent of land records", "Settlement Officers and Assistant Settlement Officers", or otherwise as the State Government may deem fit. Each such officer shall be subordinate to such officer or officers as the State Government directs.

(2) Subject to the orders of the State Government, the officers appointed under sub-section (1) shall have the power to take cognizance of all matters connected with survey and settlement and shall exercise all such powers and perform all such duties as may be prescribed by or under this Act or any other law for the time being in force.

2. Section 61 of the Karnataka Land Revenue Act, 1964 reads as follows:

"61. Exclusive Jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts. —

(1) Save as otherwise provided in this Act, or any other law for the time being in force, a Revenue Court shall have jurisdiction to determine, decide or dispose of, any matter which it is, by or under this Act, empowered to determine,

decide or dispose of and no Civil Court shall exercise jurisdiction as to any of such matters.

(2) Subject to the exceptions hereinafter specified, no Civil Court shall exercise jurisdiction as to any of the following matters, namely:—

(a) claims against the Government relating to any property appertaining to any office or for any service whatsoever;

(b) objections, —

(i) to the amount or incidence of any assessment of land revenue under this Act, or

(ii) to the mode of assessment or levy, or to the principle on which such assessment or levy is fixed, or

(iii) to the validity or effect of the notification of survey or settlement;

(c) claims connected with or arising out of any proceedings for the realisation of land revenue or other demands recoverable as arrears of land revenue under this Act, or any other law for the time being in force;

(d) claims to set aside, on account of irregularity, mistake, or any other ground, except fraud, sales for arrears of land revenue;

(e) claims against the Government, —

(i) to be entered in the revenue survey or settlement records or any land record as liable for the revenue or as superior holder, inferior holder, occupant, mortgagee, landlord or tenant;

(ii) to have any entry made in any record of a revenue survey or settlement, or

(iii) to have any such entry either omitted or amended;

(f) the distribution of land or allotment of land revenue on partition of any estate under this Act or any other law for the time being in force;

(g) claims against the Government,—

(i) to hold land wholly or partly free from payment of land revenue; or

(ii) to receive payments charged on or payable out of the land revenue; or

(iii) to set aside any cess or rate payable under the provisions of any law for the time being in force; or

(iv) respecting the occupation of waste or vacant land belonging to Government;

(h) claims regarding boundaries fixed under this Act or under any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks or survey marks:

Provided that if any person claims to hold land wholly or partially exempt from payment of revenue under,—

(a) any law for the time being in force expressly creating an exemption not before existing in favour of an individual, or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(b) any written grant from the Government expressly creating or confirming such exemption, -such claim shall be cognizable by a Civil Court.”

3. Section 63 of Karnataka Land Revenue Act, 1964:

“63. Plaintiff to exhaust his right of appeal before instituting a suit or other proceeding against Government.—No Civil

Court shall entertain any suit or other proceeding against the State Government on account of any act or omission of the State Government or any Revenue Officer, unless the plaintiff first proves that previously to the institution of the suit or other proceeding, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit or proceeding, it was possible to present”.

42. If the said statutory provisions as aforementioned from the Karnataka Land Revenue Act , 1964 are perused it is evident to note that CTS subdivisions are made by officer mentioned under Section 18 of the Act and as per section 61(h) of Act the jurisdiction of Civil Court is barred from entertaining claims regarding boundaries fixed under the Karnataka Land Revenue Act or under any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks or survey marks. It is imperative to note that as per Section 63 of Karnataka Land Revenue Act of 1964 the Civil Court has no jurisdiction to entertain suit to proceed against any Revenue officer unless the plaintiff proves before the institution of suit he has preferred appeals provided thereto under law within prescribed period of limitation. In this suit there is no dispute that subdivision is sought to be declared as illegal, the plaintiffs have not proved that they have approached the competent authority challenging the said subdivision before filing the suit before this Court. Section 9 of CPC clearly stipulates that this Court is not bound to try suits in the presence of express statutory bar.

43. The findings given on issue No.1 and in view of the explicit bar under Section 61 and Section 63 of Karnataka Land Revenue Act, 1964

the relief seeking to declare the subdivision bearing CTS No.9784/A1/A2 cannot be granted by this Court acting within the realm of powers exercisable by this Court within the statutory framework of law.

44. To substantiate this finding this Court considers it is imperative to cite the decisions enunciated hereinunder which supplements the legal position in light of factual matrix of this suit in relation to the relief of declaration

45. In the decision of **The State of Karnataka V. Smt. H. J. Shakunthamma 2008(1) KARLJ79** wherein it is held as below by the Hon'ble High Court of Karnataka while the same issue was in consideration;

"18. In the case of Saraswatibai Trimbak Gaiwad v. Damodhar D Motiwale and Ors. , the Apex Court has held that the trial Court passed a decree barring the jurisdiction of Civil Court must be subject to the orders of the appropriate authority in proceeding under the statute concerned. In the case of Irawwa and Ors. v. Krishnaji Venkatesh Naik and Ors. 1996 (2) KLJ 285 this Court has held that in respect of boundary dispute under the Karnataka Land Revenue Act, 1964, if a dispute arises, the same will have to be decided by the Survey Officer and the Tahsildar and not by the Civil Court.

19. Whether the Civil Court has got the jurisdiction to go into the issue concerning fixing of boundaries, maintenance of boundaries of lands or sub-division of lands came up for consideration in the case of Patel Doddakempegowda v. Chikkeeregowda and dealing with the said question, this Court has laid down the following provisions of law:

Section 61(e)(ii) of the Act not only lays down that the exclusive jurisdiction is of Revenue Court, but also bars the jurisdiction of Civil Courts...when the Civil Court has no

jurisdiction to hold that an entry made in any record of revenue survey or settlement is wrong, it cannot, in law proceed to grant the relief prayed for by the plaintiff because that relief is based on such a finding to be recorded by the Civil Court. The object behind Section 61 is to provide finality for the acts covered by it and the other provisions Page 2282 of the Act viz., Sections 109 and 140. It has been left to the exclusive jurisdiction of the Revenue Courts to fix the boundaries and maintain the boundaries of lands or subdivision of lands, to fix the revenue and re-assess the revenue and so on. Civil Courts are not permitted to have a hand in any of these matters.”

The extract of the dictum as aforementioned would also provide that the jurisdiction of this court to entertain the relief sought by the plaintiff No.1 in respect of declaration of subdivision entries as illegal cannot be granted as the plaintiffs have not exhausted their rightful remedy before the competent authority in accordance with the provisions of Karnataka Land Revenue Act of 1964.

B) Entitlement of relief of perpetual injunction as sought by plaintiffs against defendants No.1 to 3;

This Court while deciding the factum of possession of the plaintiffs over the suit property has held that the plaintiffs are not in the possession of the suit property and it is also pertinent to note that the alleged interference as averred by the plaintiffs at the behest of defendants No.1 to 2 is not proved. Section 38 of Specific Relief provides that the perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour. In this suit the plaintiffs have proved invasion of their right by the defendants No.1 to 3 in respect of the suit property which do not thereby entitle them to obtain the relief of perpetual injunction as sought for in the plaint.

C) Entitlement of relief of declaration to declare plaintiff No.2 as the owner and thereby is placed in the possession of the property described at para No.7(b) of the plaint.

In this suit plaintiff No.2 was cast with the burden to prove that he is the owner and in possession of the property described at para No.7(b) of the plaint. In order to get declaration of his right of ownership the plaintiff No.2 has not been produced sufficient documentary evidence. Section 34 of the Specific Relief Act provides that any person entitled to any legal right as to any property may institute a suit against any person denying or interested to deny his title to such character or right. In this suit as per the elaborative findings given on additional issue No.1, the possession and ownership of plaintiff No.2 is not proved. Hence, the Court cannot exercise its discretion to grant the relief as sought for by the plaintiff No.2.

46. The very suit instituted by the plaintiffs is not maintainable in view of the explicit bar under Section 63 of Karnataka Land Revenue Act, 1964 in respect of the relief of perpetual injunction they have not proved alleged interference and possession as on the date of institution of the suit, which are Sine qua non to obtain order of prohibitory injunction.

47. In this suit the plaintiffs have sought to declare the subdivisions present in possession of the suit property though defendants No.4 to 9 have admitted the title of the plaintiff, there is specific defense raised by the defendants No.1 and 2 over the title of the plaintiff in respect of the suit property. It is also pertinent to note that plaintiff No.1 has claimed his possession over CTS No.9784/B comprised in R.S No.1001/4 measuring to the extent of 8 acre 9 guntas. On the other hand

the defendants have not adduced any evidence. It is to be noted that as per the settled proposition of law laid down in the landmark decision of the Hon'ble Apex Court in Anathula Sudhakar vs P. Buchi Reddy (Dead) AIR 2008 SUPREME COURT 2033 whenever there is cloud over the title of the plaintiff, the rightful remedy available to the plaintiff is to seek the relief of declaration which is not sought by the plaintiffs in this suit. It is also to be noted that the identification of the suit property is inconsistent through out the pleadings and the evidence produced by the plaintiffs. It is settled proposition of law that if the property is not clearly identifiable then granting of relief of perpetual injunction would not serve any purpose without there being clear demarcation of property. Hence, this Court answers **Additional Issue No.2 and Issue No.4 in the Negative holding that plaintiffs are not entitled for the reliefs sought by them.**

48. Issue No.5:- Based on the findings at Issue No.1 to 4 and additional issue No.1 and 2, this Court proceeds to pass the following;

ORDER

The suit filed by the plaintiffs for the relief of declaration and perpetual injunction is hereby dismissed.

No order as to costs keeping in view the nature of the suit.

Draw decree accordingly.

(Dictated to the Stenographer Grade-III transcribed and typed by her and corrected by me and pronounced in the open Court, on this 16th day of June, 2026).

**Sd/-
(Bhuvaneshwari D.),
IV Addl. Civil Judge & JMFC,
Belagavi.**

ANNEXURES

WITNESSES EXAMINED FOR PLAINTIFFS:	
PW-1	Abdulghani Khawjasab Athani
PW-2	Mohammed Aasif S/o Abdulghani Athaani
<u>DOCUMENTS MARKED FOR PLAINTIFFS:</u>	
Ex.P1	Original General Power of Attorney
Ex.P2	Certified copy of sale deed
Ex.P3 & 4	Mutation Entry
Ex.P5	Certified copy of oral gift
Ex.P6	Certified copy of property extract
Ex.P7	Certified copy of Joint CTS map
Ex.P8	Property extract of CTS No. 9784/A/1/A2
Ex.P9	City Survey map of CTS No.9784/A/1/A2
Ex.P10	Certified copy of Perpetual Lease Deed
Ex.P10(a)	True translation of Ex.P10
Ex.P11	Certified copy of Correction Deed
Ex.P11(a)	True translation of Ex.P11
Ex.P12	Certified copy of sale deed dt.17-11-1995
Ex.P12(a)	True Translation of Ex.P12
Ex.P13	Diary Extract dt. 12-05-1974
Ex.P14	Certified copy of sale deed dt.20-03-1989
Ex.P14(a)	True translation of Ex.P14

Ex.P15 to 17	Certified copy of sale deeds dt. 31-08-2010
Ex.P18	Certified copy of Decree dt. 21-12-2018
Ex.P19	Blue Print map of suit property
Ex.P18 to 24	5 photos, CD and receipt, <i>(Photographs are also exhibited as EX.P18 and EX.P19 in addition to certified copy of decree and blueprint map).</i>
Ex.P25	Borewell quotation
Ex.P26 & 27	Electricity bill and receipt
Ex.P28 & 29	2 Property tax paid receipt
Ex.P30 & 31	2 Tax Invoices
<u>WITNESSES EXAMINED FOR DEFENDANTS:</u>	
-None-	
DOCUMENTS MARKED FOR DEFENDANTS:	
-NIL-	

Sd/-
(Bhuvaneshwari D.),
IV Addl. Civil Judge & JMFC,
Belagavi.