

KABG210016572012



**IN THE COURT OF THE I ADDL. CIVIL JUDGE &
J.M.F.C., ATHANI,
AT : ATHANI**

PRESENT:

SRI. RAVINDRA. S. HAVARGI,

B.A.,LL.B.(HONS.),M.B.A.,LL.M.

I ADDL. CIVIL JUDGE & J.M.F.C., ATHANI.

DATED THIS THE 10th DAY OF JULY - 2026

O.S.NO. 1047/2012

BETWEEN:

1. Shri. Kakasab Kadappa Naik,
Age: 40 years, Occ: Agriculture,
R/o.Gundewadi, Tal: Athani

.....Plaintiff.

(By Sri.S.M. Patil., Advocate)

-Versus-

1. Shri. Pawadeppa Shidagonda Naik,
Age: 62 years, Occ: Agriculture,
R/o.Gundewadi, Tal: Athani.
Dead by his LR's
- 1A. Smt. Shantawwa W/o Pawadeppa Naik,
Age: 75 years, Occ: Household Work,
R/o Gundewadi, Tal: Athani.
- 1B. Shri. Bhimappa Pawadeppa Naik,
Age: 57 years, Occ: Agriculture,
R/o Gundewadi, Tal: Athani.

- 1C. Shri. Raosab Pawadeppa Naik,
Age: 53 years, Occ: Agriculture,
R/o Gundewadi, Tal: Athani.
- 1D. Shri. Shidagonda Pawadeppa Naik,
Age: 40 years, Occ: Agriculture,
R/o Gundewadi, Tal: Athani.
- 1E. Smt. Sunanda W/o Ballappa Naik,
Age: 45 years, Occ: Agriculture,
R/o Gundewadi, Tal: Athani.
- 1F. Shri. Hanamant Ballappa Naik,
Age: 26 years, Occ: Agriculture,
R/o Gundewadi, Tal: Athani.
- 1G. Kumari. Preeti D/o Ballappa Naik,
Age: 24 years, Occ: Household Work,
R/o Gundewadi, Tal: Athani.

.... Defendants

**(Defendant by Sri. A.R. Mahajan, Advocate
Defendants No.1A to 1G- Exparte)**

Date of Institution of the suit	24.07.2012		
Nature of the suit	Declaration and Permanent Injunction		
Date of commencement of recording of evidence	22.07.2015		
Date of which judgment is pronounced	10.07.2026		
Total Duration	Years 13	Months 11	Days 16

(RAVINDRA S. HAVARGI)
I ADDL. CIVIL JUDGE & JMFC.,
ATHANI.

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

The present suit is filed by the Plaintiff against the Defendant seeking the relief of declaration and consequential relief of injunction and such other reliefs.

2. The Brief Facts Of The Plaintiff's Case is As Under:

Description of the Suit property is as under;

A) The agricultural land bearing R.S.No.322/2A measuring acres 02 guntas and assessed at Rs.18-15Ps situate at Gundewadi village bounded by:

East : 1) i) Paragonda, ii) Malagonda sons of Sadashiv @Basagouda Naik and another.

West : Land of Mahesh Annappa Naik,

North : 1) i) Paragonda, ii) Malagonda sons of Sadashiv @Basagouda Naik and others,

South : Nala.

The hand sketch map is annexed to the plaint to show the topographical situation of the suit property.

3. Further it is submitted that the suit property bearing R.S.No.322/2A is of the ownership of the Plaintiff and Defendant to the extent of 1 acre 21 guntas each. It is totally measuring 3 acres 02 guntas and assessed at Rs.18-15Ps situated at Gundewadi village. The Plaintiff is in lawful possession and enjoyment of 1 Acre 21 Guntas lying on the eastern side out of R.S.No.322/2A as the absolute owner. The portion of 1 acre 21 guntas belonging to the Plaintiff in Sy.No.322/2A is shown with letters ABCD in the plaint sketch. Whereas the Defendant is the owner of 1 acre 21 guntas out of R.S.No.322/2A on the western side. The portion of 1 acre 0-21

guntas out of Sy.No.322/2A belonging to the Defendant is shown with letters CDEF in the plaint sketch. No pot hissa measurement has taken place in the land Sy.No.322/2A of Gundewadi village.

4. Further it is submitted that the father of the Plaintiff namely 1) Kadappa Pawadeppa Naik and father of the Defendant namely Shidagouda Pawadeppa Naik are read brothers. The suit property is the ancestral property of the Plaintiff and Defendant. It was originally known as R.S.No.322/2 measuring 6 acres 08 guntas less kharab of 0-04 guntas and assessed at Rs.36-30Ps. The father of the Plaintiff namely Kadappa Pawadeppa Naik and the Defendant got their respective portions of the land to the extent of 01 Acre 21 Guntas each in the partition taken place by way of family arrangement during the year 1983. In pursuance of the said partition, M.E.No.3808 came to be duly effected and certified.

5. Further it is submitted that all the sharers including the father of the Plaintiff and the Defendant himself started making separate enjoyment of their respectively strips of 1 acre 21 guntas each which were allotted to them in the said partition. The father of the became the absolute owners of 1 acre 21 guntas out of R.S.No.322/2 (which is shown with letters ABCD in the plaint sketch) since the said partition. He had started making enjoyment of his said strip of 1 acre 21 guntas i.e., shown with letters ABCD in the plaint sketch. However the said Kadappa Pawadeppa Naik i.e., the father of the Plaintiff had grown old, therefore he has given up all the lands belongs

to him including the portion of 1 acre 21 guntas out of R.S.No.322/2 to the Plaintiff in the family arrangement during 1987. Accordingly the name of the Plaintiff came to be mutated by effecting M.E.No.4192 and the same is duly certified. Since then the Plaintiff is in actual possession and enjoyment of 1 acre 21 guntas out of Sy.No.322/2 (i.e., now known as 1 acre 21 guntas out of Sy.No.322/2A) which is shown with letters ABCD in the plaint sketch till today. The Plaintiff is growing the irrigated crops like sugarcane etc., in the portion of 1 acre 21 guntas shown with letters ABCD in the plaint hand sketch map.

6. Further it is submitted that, apart from the Plaintiff and the Defendant, one Bisalappa Balappa Naik is the owner of northern 1 acre 21 guntas out of R.S.No.322/2 and 1) Paragonda, 2) Malagonda sons of Sadashiv Naik are also together the owners of 1 acre 21 guntas out of R.S.No.322/2 on the southern side. It appears the aforesaid Bisalappa Balappa Naik has sold a portion of his 1 acre 21 guntas in favour of Jayashree Shivaray Soddi @ Soddyagol. Recently the pot hissa measurement took place in R.S.No.322/2 by making four divisions therein. The portion of 1 acre 21 guntas belonging to Plaintiff and the portion of 1 acre 21 guntas belonging to the Defendant in R.S.No.322/2 came to be numbered as R.S.No.322/2A which is shown as the suit property. The portion of 1 acre 21 guntas belonging to 1) Paragonda, 2) Malagonda sons of Sadashiv Naik out of R.S.No.322/2 came to be numbered as R.S.No.322/2B. The portion of 1 acre 10.11 guntas belonging to Bisalappa Balappa Naik is numbered as R.S

No.322/2C and whereas the sold portion of 0-10.05 Guntas belonging to Jayashree Shidaray Soddi @ Soddyagol came to be numbered as RS No.322/2D.

7. Further it is submitted that the Defendant is obstructing the peaceful possession and enjoyment of 1 acre 21 Guntas shown with letters ABCD in the plaint sketch belonging to the Plaintiff. The Defendant has no manner of right, title or interest over the eastern portion of 1 acre 21 Guntas shown with letters ABCD in the plaint sketch. The Plaintiff being sober and innocent requested the Defendant not to indulge in the illegal activities of disturbing him in making enjoyment of the ABCD portion of 1 acre 21 Guntas. But the Defendant is not in a mood to hear the request of the Plaintiff He is threatening the Plaintiff with dire consequences with the help of goonda elements in the village. In the circumstances the Plaintiff is constrained to file this suit for Declaration that he is the absolute owner of the suit property and consequential relief of injunction not to disturb the peaceful possession and enjoyment of the Plaintiff over the suit property.

8. After institution of suit, suit summons was issued to the Defendant and in pursuance of the same the Defendant has appeared through his counsel and filed his written statement.

9. **In his written statement the Defendant has contended that** the averments made in the plaint all are false, frivolous, imaginary and illegal and specifically denied the same

by him. The map produced by the Plaintiff is partly admitted. Further it is admitted that originally the suit survey number was known as R.S. No.322/2 measuring 322/2 measuring 06 Acres 08 Guntas.

10. Further it is contended that all the sons of original propositus Pavadeppa namely 1) Shidagonda, 2) Bapuray, 3) Balappa and lastly 4) Kadappa got divided in their family properties prior to 1956 and subsequently R.S. No.318/2B/2 and one open space had exclusively fallen to the share of the Defendant along with other properties. Thereafter Shidagonda Pavadappa Naik, the father of the Defendant independently purchased the suit land R.S. No.322/2 for Rs.300/- on 31.01.1957 from its original owner Balappa Ishwarappa Kallolli measuring 06 Acre 06 Guntas. Accordingly the name of the father of the Defendant alone entered into the suit land was in possession of it till his alive. The M.E. No.1929 to that effect is illegally certified. In the year 28.08.1964 said Shidagonda obtained Tagai Bhoja upon it on 28.08.1966. Subsequently M.E. No.2447 was mutated in the revenue records. After the death of the Shidagonda the name of Defendant came to be entered to the suit land. So long as the father of the Defendant was alive was in possession of the land and after his death the name of the Defendant is appeared and was and is in possession of the entire survey number. Neither Plaintiff nor anybody where and are in possession of R.S. No.322/2A up to till today except Defendant and he is paying land revenue to the Government. All the sisters of the Defendant have married and well placed and

the money and gold ought to be given to them to the extent of their share has been given to them. Both M.E. No.3472 and 3651 are illegal. Recently the Defendant came to know about such illegal entry in the record of rights. It is seen from the records. This Defendant has not filed any such Varadi to effect the names of Kadappa, Bapuray and Bisalappa for effecting four divisions in R.S. No.322/2. Since the said property is independently purchased by Sidagonda Pawadeppa Naik. M.E. No.3651 and 3208 are false and illegal and without the knowledge of this Defendant is not binding on him.

11. Further it is contended that illegally and behind the back of this Defendant, Paragonda, Malagonda, Bisalappa, Kakasaheb and lastly Smt. Jayashree got their names entered to the suit property colluding with revenue officers and illegally having no concern the above said persons names are appears to the suit property. The Plaintiff has narrated much of thing about the said persons but has not made them as parties to the suit as they are necessary party to the suit.

12. Further it is contended that neither Plaintiff nor any persons whose names are appeared above were and are not in possession of any type of portions in the suit property. Right from the father, up to till today, the present Defendant was and is in possession of entire area ie. 06 Acres 04 Guntas in suit land. Therefore, the Plaintiff nor anybody have got no any kind of right, title, interest over the suit property and they cannot have any kind of seeking reliefs before the Court. No cause of

action arose to file and no proper court fee is paid as valuation of the property is not made proper.

13. Further it is contended that alternatively any person other than the Defendant is in possession of the suit property, their possession is illegal on the strength of the illegal mutation of one Smt. Jayashri has purchased the property and got her name mutated to the property. Therefore, it is submitted that the said sale is illegal, not acted upon and not binding upon this Defendant and such illegal transactions will not affect the rights of the Defendant. Therefore, the Defendant has prayed that suit of the Plaintiff be dismissed with cost.

14. On the basis of above facts and circumstances this court on 07.09.2015 has framed the following;

: ISSUES :

- 1. Whether the Plaintiff proves that he is the absolute owner of 1 acre 21 gunta towards eastern side in RS No. 322/2A to the total extent of 3acre 2 gunta as shown by letters ABCD in the hand sketch map?**
- 2. Whether the Plaintiff proves that he is in possession and enjoyment of the 1 acre 21 gunta in RS No. 322/2A to the total extent of 3acre 2 gunta of Gundewadi village?**
- 3. Whether the Plaintiff proves that the Defendant is interfering into his peaceful possession and enjoyment of the 1 acre 21 gunta in RS No. 322/2A**

to the total extent of 3 acre 2 gunta of Gundewadi village?

4. Whether the Plaintiff is entitled for the relief claimed?

5. What order or decree?

15. In order to prove the case of the Plaintiff, GPA holder of the Plaintiff by name Bisalappa A/s of Balappa Naik got examined as PW-1 and got marked documents as Ex.P.1 to P.23.

16. In the mean time, the original Defendant is reported to be dead and his LRs were brought on record as Defendants No.1A to 1G. Thereafter, the suit summons was issued to the LRs of the Defendant, in pursuance of the suit summons, they have not appeared and therefore, they have been placed exparte.

17. Heard the arguments.

18. After hearing the submissions and on perusal of the records my findings to the above issues are as under;

ISSUES NO.1 to 4:: In the Affirmative

**ISSUE NO.5 :: As per final order
for the following:**

: REASONS :

19. ISSUES NO.1 TO 4:- All these Issues are taken together for common discussion as the facts are interconnected and in order to avoid the repetition of facts.

20. The present suit is filed by the Plaintiff against the Defendant seeking the relief of declaration and permanent

injunction. In the present suit original Defendant No.1 had appeared through his counsel and filed his written statement and sought for dismissal of the suit. Later on original Defendant No.1 has been reported to be dead and therefore, his LRs are brought on records, but the LRs of Defendant No.1 have been placed exparte. This court has already narrated the brief facts of the Plaintiff case and the contentions raised by the original Defendant No.1 in the previous paragraphs. Therefore, in order to avoid the repetition of facts, this court would directly deal with the merits of the case.

21. In order to prove the case of the Plaintiff, GPA holder of the Plaintiff by name Bisalappa A/s of Balappa Naik has filed his examination-in-chief and additional examination-in-chief in the form of affidavits and got examined as **PW-1**. In his chief affidavit and additional chief affidavit he has reiterated the averments made in the plaint and he has denied the allegations of the Defendant in the written statement and also deposed certain facts which are not pleaded in the plaint. In support of his oral evidence he has produced several documents and got marked them as **Ex.P.1 to 23**.

***Ex.P.1** is unregistered general power of attorney deed dated 17.07.2015.

***Ex.P.2** is the RTC extract of land bearing R.S. No.322/2 measuring 03 Acres 02 Guntas situated Gundewadi village, Anantapur Hobali of Athani taluk for the year 2011-12. This

document denotes that 01 Acre 21 Guntas each are standing in the name of Plaintiff and Defendant No.1 separately.

* **Ex.P.3** is the certified copy of order sheet pertaining to O.S. No.1057/2010 on the file of Hon'ble I Addl. Civil Judge (Jr.Dn.) and JMFC, Athani.

* **Ex.P.4** is the certified copy of plaint with respect to said suit. **Ex.P.5** is the certified copy of written statement with respect to said suit. **Ex.P.6 to 8** are the certified copies of adoption memos with respect to said suit. **Ex.P.9** is the certified copy of compromise petition with respect to said suit. **Ex.P.10** is the certified copy of compromise decree obtained in the said suit.

* **Ex.P.11** is the certified copy of diary No.4192 dated 14.12.1987 with respect to R.S. No.319/1, 322/2, 320/A2, 318/2B/2 and 321/1 of Gundewadi village. This document denotes that said properties are mutated in the name of Plaintiff represented by the minor guardian mother Shivubai W/o Kadappa Naik.

* **Ex.P.12** is the certified copy of diary No.3808 dated 11.09.1983 with respect to R.S. No.322/2 of Gundewadi village. This document denotes that said property is divided among the Pavadeppa, Kadappa, Bisalappa and Bapuray to the extent of 1/4th share each.

* **Ex.P.13** is the certified copy of diary No.3651 dated 01.07.1982 with respect to R.S. No.322/2 out of it 3/4th share

and R.S. No.318/2B/2 out of it 1/4th share situated at Gundewadi village.

* **Ex.P.14** is the certified copy of M.R. No.128 dated 08.03.2011 with respect to R.S. No.322/*/2 of Gundewadi village.

* **Ex.P.15** is RTC extract of bearing R.S. No.322/2 totally measuring 06 Acres 08 Guntas situated at Gundewadi village, Anantapur Hobali of Athani taluk for the year 2011-12. This document denotes that 01 Acre 21 Guntas of land is standing in the name of Plaintiff, Defendant No.1, GPA holder of Plaintiff and another 1 Acre 21 Guntas is standing in the names of Paragonda and Malagaouda who are children of Sadashiv Naik separately.

* **Ex.P.16** is RTC extract of bearing R.S. No.322/2A measuring 03 Acres 02 Guntas situated at Gundewadi village, Anantapur Hobali of Athani taluk for the year 2013-14. This document denotes that 01 Acre 21 Guntas each of land is standing in the name of Plaintiff, Defendant No.1 separately.

* **Ex.P.17** is RTC extract of bearing R.S. No.322/2B measuring 01 Acre 22.08 Guntas situated at Gundewadi village, Anantapur Hobali of Athani taluk for the year 2013-14, This document is standing in the name of Paragonda and Malagouda children of Sadashiv Naik jointly.

* **Ex.P.18** is RTC extract of bearing R.S. No.322/2B measuring 01 Acre 22.08 Guntas situated at Gundewadi village, Anantapur Hobali of Athani taluk for the year 2013-14.

This document denotes that 01 Acre 10.11 Guntas is standing in the name of GPA holder of Plaintiff.

* **Ex.P.19** is RTC extract of bearing R.S. No.322/2 measuring 11 Guntas situated at Gundewadi village, Anantapur Hobali of Athani taluk for the year 2013-14. This document denotes that 3.13 Guntas and 6.08 Guntas are standing in the names Jayashree Shivaray Sodde @ Sodyagol.

* **Ex.P.20** is the certified copy of diary No.4702 dated 01.09.1994 with respect to R.S. No.319/2, 316/2, 318/2, 320/A/2, 321/1 and 322/2 of Gundewadi village.

* **Ex.P.21** is the certified copy of diary No.3651 dated 01.07.1982. This document and Ex.P13 are one and the same.

* **Ex.P.22 and 23** are the certified copies of sale deeds dated 31.01.1957.

22. This witness **PW-1** was not cross examined by the deceased Defendant. The evidence of **PW.1** was closed on 28.11.2023 and several opportunities were given to the original Defendant to cross examine the PW.1, but the same was not utilized by him. Thereafter on 20.11.2024 the death of Defendant is reported before this court. The LRs of the Defendant have remained exparte and not contested the suit. Therefore, the evidence of PW.1 has remained undisputed and unchallenged by the Defendants.

23. After hearing the submission and on perusal of the records this court observes that as per Ex.P16 the suit property to the extent of 01 Acre 21 Guntas is standing in the name of

Plaintiff and remaining 01 Acre 21 Guntas is standing in the name of Defendant. Therefore, the said document makes it clear that the Plaintiff is in peaceful possession and enjoyment of the to the extent of 01 Acre 21 Guntas.

24. Further it is observed that the Plaintiff has alleged that the father of the Plaintiff i.e. Kadappa Pavadeppa Naik and Defendant got their respective portion of the land to the extent of 01 Acre 21 Guntas each in the partition took place by way of family arrangements in the year 1983 and the same is certified in M.E. No.3808. In order to substantiate the said fact, the Plaintiff has produced the Ex.P.12 before this Court. Therefore, this court infers that the suit property was succeeded by the Plaintiff from his father Kadappa Pawadeppa Naik to the extent of 01 Acre 21 Guntas as per M.E. No.4192 which is at Ex.P.11. Therefore, the said documents makes it clear that the Plaintiff is the absolute owner in possession and enjoyment of the suit property to the extent of 01 Acre 21 Guntas which is shown in the hand sketch map as ABCD.

25. Further the Plaintiff has alleged that the Defendant is obstructing the peaceful possession and enjoyment of the Plaintiff over the suit property. In the present case, the Defendant has filed his written statement and the said fact itself makes clear that the Defendant was obstructing the peaceful possession and enjoyment of the suit property of the Plaintiff. The Defendant during his life time has not cross examined **PW.1** and LRs of Defendant have remained exparte and therefore, this court infers that due to interference made

by the Defendant, the Plaintiff was constrained to file this suit. Therefore, in the humble opinion of this court the Plaintiff is entitled for the reliefs as claimed for. Therefore, **I answer Issues No.1 to 4 in the Affirmative.**

26. ISSUES No.5:- For the foregoing reasons and discussions, I proceed to pass the following order:

:: O R D E R ::

The suit of the Plaintiff is hereby decreed with cost.

It is declared that the Plaintiff is absolute owner of the suit schedule property to the extent of 01 Acre 21 Guntas lying on the Eastern side of R.S. No.322/2A totally measuring 03 Acres 02 Guntas assessed at Rs.18-15 Ps. which is shown in the hand sketch map as ABCD situated at Gundewadi village.

The LRs of Defendant are consequently and permanently restrained from interfering with the peaceful possession and enjoyment of the suit property of the Plaintiff.

Draw decree accordingly.

[Dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in the Open Court on this the 10th Day of July -2026]

**Sd/-
(RAVINDRA S. HAVARGI)
I ADDL. CIVIL JUDGE & JMFC.,
ATHANI.**

ANNEXURE

List of witnesses examined for Plaintiff/s :-

PW.1 : Shri. Bisalappa A/s. Balappa Naik.

List of witnesses examined for Defendant/s :-

: -NIL-

List of documents exhibited for Plaintiff/s :-

- Ex.P.1 : Unregistered general power of attorney
- Ex.P.2 : Record of right R.S. No.322/2
- Ex.P.3 : C/c of order sheet in O.S. No.1057/2010
- Ex.P.4 : C/c of plaint in O.S. No.1057/2010
- Ex.P.5 : C/c of written statement in O.S. No.1057/2010
- Ex.P.6 to 8 : C/c of Memos in O.S. No.1057/2010
- Ex.P.9 : C/c of compromise petition in O.S. No.1057/2010
- Ex.P.10 : C/c of compromise decree in O.S. No.1057/2010
- Ex.P.11 : C/c of diary No.4192
- Ex.P.12 : C/c of diary No.3808
- Ex.P.13 : C/c of diary No.3651
- Ex.P.14 : Mutation register extract No.128
- Ex.P.15 : RTC extract of R.S. No.322/2
- Ex.P.16 : RTC extract of R.S. No.322/2
- Ex.P.17 : RTC extract of R.S. No.322/2
- Ex.P.18 : RTC extract of R.S. No.322/2
- Ex.P.19 : RTC extract of R.S. No.322/2
- Ex.P.20 : C/c of diary No.4702
- Ex.P.21 : C/c of diary No.3651
- Ex.P.22&23: C/c of sale deeds dated 31.01.1957.

List of documents exhibited for Defendant/s :-

: -Nil-,

Sd/-
(RAVINDRA S. HAVARGI)
I ADDL. CIVIL JUDGE & JMFC.,
ATHANI.