

**IN THE COURT OF THE PRL CIVIL JUDGE, CHIKODI.
AT: CHIKODI.**

**Present: Sri.Vijaykumar.S.Hiremath
B.Sc.LL.B.,
Prl. Civil Judge, Chikodi.**

Dated this the 30th day of August -2018

O.S.NO.205/2013

Between:

- 1. Sri.Yankappa S/o.Narayan Waddar,**
Age: 50 years, Occ: Coolie,
R/o.Kerur, Tq:Chikodi,
Dist:Belagavi.

(By Shri.**R.A.Khot**, Advocate)

..... Plaintiff

And:

- 1. Sri.Bhima S/o.Dundappa Waddar,**
Since deceased by his LRS.
- 1A) Durgappa S/oBhima Waddar,**
Age: 45 years, Occ:Coolie Work,
R/o.Kerur, Tq:Chikodi.
- 1B) Siddu S/o.Bhima Waddar,**
Age: 35 years, Occ:Coolie Work,
R/o.Kerur, Tq:Chikodi.
- 1C) Timmanna S/o.Bhima Waddar,**
Since deceased by his LRS.
- 1C1) Parashuram S/o.Timmanna Waddar,**
Age: 30 years, Occ:Coolie Work,
R/o.Kerur, Tq:Chikodi.
- 1C2) Maruti S/o.Timmanna Waddar,**
Age: 23 years, Occ:Coolie Work,
R/o.Kerur, Tq:Chikodi.

2. Sri.Laxman S/o.Dundappa Waddar,

Age: 50 years, Occ: Coolie,
R/o.Kerur, Tq:Chikodi.

.....Defendants

(D1(a) & 2 By **Sri.R.D.P.**, Advocate
D1(b) & D1(C1) and C2 Ex-parte)

Date of institution of Suit 30-04-2013

Nature of Suit Permanent Injunction &
Mandatory Injunction

Date of pronouncement of
judgment 30-08-2018

Total duration	Year/s	Month/s	Day/s
	05	04	00

JUDGMENT

The plaintiff has instituted this suit against the defendants for permanent injunction by restraining the defendants, their agents, servants or anybody acting on their behalf from making any illegal construction over the suit property and for the relief of mandatory injunction to direct the defendants to demolish and remove the illegal construction carried-out by them over the suit property and to handover actual and vacant possession to the plaintiff.

2) The suit property is property bearing G.P.No.478 bounded by towards East:Temple Diety Margubai, West:by the house belonging to plaintiff, North:open space belonging to plaintiff and thereafter public (Gram Panchayat) road and South: Open

space belonging to the temple Diety Margubai, wherein the northern-open space measuring East-West:20'X18' North-South is the property wherein the defendant illegally by encroaching upon the portion of said open space to the extent of 18'X20' which is bounded as under.

Towards East:by property -G.P.476 of defendants

Towards West: Property of G.P.No.478 and thereafter
G.P.No.477 belonging to plaintiff.

Towards North: By public road

Towards South: By G.P.No.478 belonging to plaintiff.

3) The brief facts of the plaintiff's case is as under.

The plaintiff has pleaded that, he is the owner of G.P.Nos.477 and 478 and was and is in actual physical possession use and enjoyment of the same including the suit property since more than three decades without interference by anybody till today. This being the fact, the plaintiff with an intention to erect a structure, put foundation by leaving an open space upto the main road towards North I.e the suit property with an intention to make the front portion by plating some flower and other trees. The plaintiff was making arrangements for constructing his house but in the meantime the defendants who are the owners of G.P.No.476 abutting the suit property only with an intention to erect a structure of their own, have trespassed over the suit property and have started to make structure have trespassed over the suit property exclusively belonging to the plaintiff and by digging the foundation, started to erect a structure in the first week of April 2013 and

immediately he approached the defendants and requested him to stop his illegal construction over the suit property for which the defendant neither showed any document in support of his title nor stopped the illegal construction without obtaining due for the same from the competent authority. Even the plaintiff approached the jurisdictional police with a complaint for which the Ankali police expressed their inability and directed the plaintiff to approach the civil court. Hence he constrained to file this suit.

4) After due service of summons, the defendant No.2 filed his written statement. In spite of sufficient opportunities given to remaining defendants remained absent, hence they have been placed Ex-parte as service held to be sufficient.

5) The sum and substance of the written statement of defendant No.2 is as under;

a) The defendant No.2 has contended in his written statement that, the defendants are absolute owner in possession of the house property bearing VPC.No.476 of Kerur village and they are residing along with their family members. Previously Jattappa Jinnappa Wddar was the owner of the house property bearing VPC.No.476 of Kerur village. The father of the defendant by name Doodhappa Bhima Waddar was residing along with Jattappa in the said house property and taking care of the Jattappa as he has no legal heirs. Accordingly his name has been appeared in the property extract as a occupant with the knowledge of true owner and entire public. After death of Jattappa Jinnappa Waddar the name of the father of the

Doodhappa Bhima Wadar become the absolute owner in possession of the property bearing VPC.No.476 of Kerur village by way of adverse possession. After his death the present defendant become the absolute owner in actual possession and enjoyment over the house property bearing VPC.No.476 of Kerur village as legal heirs of their deceased father Doodhappa Bhima Waddar. The house property bearing VPC.No.476 is the ancestral property of the defendant is paying tax in respect of above house property to the panchayat.

The house property bearing VPC.No.476 total measuring East-West:29 ft, North South:30 ft, which is bounded as under.

East: Temple of Deity Margubai

West: Bol road and thereafter house belonging to plaintiff bearing VPC.No.477.

South: Open space of Deity Margubai and open space of plaintiff.

North: Panchayat Road.

b) Further contended that, plaintiff is no way concern to the property of the defendants bearing VPC.No.476 of Kerur village and he has no right, title, interest over the property of the defendant. In the year 1990 the defendant reconstructed the house by taking due permission from the panchayat authority. This being the actual state of affairs the defendant no.2 filed an application before the Gram Panchayat in the name of daughter-in-law to grant funds under Indira Awas Yojane accordingly funds have granted by the Government and the defendant had taken up the construction of the house and same is completed in the

month of April and now the defendant and their family members are residing in the said house.

c) Further contended that only with a malafide intention to grab the house property of the defendant the plaintiff tried to come in the way of construction of the defendants and he has also filed false complaint before the police and so also before the panchayat authority. After filing the complaint the police and panchayat authority have visited to the spot and after enquiry they have warn to the plaintiff not to do any such illegal activity. Thereafter the plaintiff has filed this suit against the defendant without any reason by making false allegation against the defendants. The defendants are never trespassed over the suit property of the plaintiff and nor they have make any encroachment over the property of the plaintiff. Hence the suit filed by the plaintiff is not maintainable. On these grounds sought for dismissal of the suit with cost.

6) On the basis of the above pleadings, My predecessor in office has framed the following;

ISSUES

1. Whether the plaintiff proves his lawful possession and enjoyment over the suit schedule property as on the date of filing the suit?
2. Whether the plaintiff proves the alleged interference of the defendants over the suit schedule property?
3. Whether the plaintiff is entitled for the relief of permanent injunction as sought for in the plaint?

4. Whether the plaintiff is entitled for the relief of mandatory injunction as sought for in the plaint?
5. What order or decree?

Addl.Issues dtd:26-07-2018

1. Whether the plaintiff prove that, the defendants have encroached the suit property and constructed building over the same?
2. Whether the plaintiff is entitled for the recovery of possession of the alleged encroached area?

7) To prove the case, the GPA holder of the plaintiff examined as PW.1 and got marked documents as Ex.P-1 to P-26. On behalf of defendants the defendant No.2 examined himself as DW.1 and examined another witness by name Sri.Kumar Nilappa Sanadi as PW.2 and got marked documents as Ex.D.1 to Ex.D.13 and closed their side.

8) I have heard the arguments on both sides, perused the pleadings, oral and documentary evidence.

9) Learned Counsel for plaintiff relied upon the following decisions of Hon'ble Apex Court reported in;

- a) ILR 1988 KAR P.1919 Between Thimamma Vs.Siddarangaiah.
- b) AIR 1972 S.C.2299 Between M.Kallappa Setty Vs.M.V.Lakshminarayana Rao.

- c) AIR 2012 S.C.2010 Between Shanmugam Vs.Ariya Kshatriay Rajkula Vamsathu Madalaya Nandhavana Paripalanai Sangam, represented by its President.
- d) AIR 2014 PATNA 221, Between Chandrashekhar Rai Vs.Prabhu Nandan Kunwar
- e) AIR 2008 SC.901, between Gurunath Manohar Pavaskar & Ors Vs.Nagesh Siddappa Navalgund & Ors.
- f) AIR 2013 Madhya Pradesh 180, between Sohan Yadav Vs.Smt.Mehmuda and Anr.
- g) AIR 2013 Himachal Pradesh 37, Between Smt.Indira Wati Vs.Kumari Ranjana and others.

10) Learned Counsel for defendants relied upon the following decision of Hon'ble Apex Court reported in;

- a) AIR 2007 ORISSA 24 Between Bandhu Das and Anr Vs.Uttam Charan Pattanaik.

11) My answer to the above Issues are as under ;

- Issue No.1 : **Does not survive for consideration**
- Issue No.2 : **Does not survive for consideration**
- Issue No.3 : **Does not survive for consideration**
- Issue No.4 : **Does not survive for consideration**
- Addl.Issue No.1: **In the negative**
- Addl.Issue No.2: **Does not survive for consideration**
- Issue No.6 : **As per final order
for the following reasons**

REASONS

12) **Addl.Issue No.1:-** I have already narrated in brief as to what the case of the plaintiffs and as to what the defenses of the defendants. A person who approaches the court for relief of permanent and mandatory must always effectively discharge initial burden cost upon him. If the person not discharge his duty, onours won't shifts upon the defendants as per the Sec 101 to 103 of Indian Evidence Act.

13) The GPA holder of the plaintiff examined himself as PW.1 in respect of encroachment, who has filed affidavit in lieu of examination in chief in which he asserted gist of his claim. The plaintiff has produced 26 documents got marked as Ex.P.1 to Ex.P.26. It is the case of plaintiff that, defendants without any right or title over the suit property illegally encroached upon the portion of said open space to the extent of 18x20 feet.

14) Ex-P1 is the General power of attorney executed by the plaintiff in favour of his son by name Sri.Tanaji S/o.Yankappa Waddar. Ex.P.2 is the Assessment extract in respect of property bearing GPC.No.476 of Kerur village for the year 1949-50, Ex.P.3 is the assessment extract of GPC.No.476 of Kerur village for the year 1957-58, wherein the name of Jatteppa Jinnappa Vaddar shown as owner, Ex.P.4 and Ex.P.5 are the assessment extracts of GPC.No.476 for the year 1969-1970 and 1979-80 to 1980-81, wherein the name of Doodappa Bhima Vaddar shown as possessor of the suit property. Ex.P.6 is the copy of resolution passed by Gram Panchayat Kerur on 26-06-2001. Ex.P.7 is the

boundary certificate issued by the Secretary, Gram-panchayat, Kerur in respect of GPC.No.476. Ex.P.8 is the reply issued by the Secretary Gram panchayat, Kerur to Tanaji Vaddar in respect of construction of house under Indira Avas scheme in GPC.No.476. Ex.P.9 is the letter issued by the Secretary Grampanchayat, Kerur in respect of GPC.No.476, Ex.P.10 and P.11 are the sale deeds in respect of properties GPC.No.478 and 477. Ex.P.12 is the assessment extract of property bearing VPC.No.477 situated at Kerur village, Ex.P.13 is the assessment extract bearing GPC.No.478 situated at Kerur village. Ex.P.14 is the assessment extract of GPC.No.476, situated at Kerur village pertaining to the year 2000-01. Ex.P.15 is the boundary certificate issued by the secretary Gram-panchayat, Kerur in respect of GPC.No.478, Ex.P.16 is the receipt issued by the SHO, Ankali police station, Ex.P.17 is the endorsement issued by the SHO, Ankali Police station, Ex.P.18 to Ex.P.25 are the photos, Ex.P.26 is the C.D.

15) Like wise, defendant no.2 examined himself as DW-1 and also examined another witness by name Kumar Nilappa Sanadi as DW.2 and got marked 13 documents. Ex.D.1 is the assessment extract bearing GPC.No.476 of Kerur village for the year 2000-01. Ex.D.2 is the assessment extract of GPC.No.476 of Kerur village for the year 1979-80 to 1981. Ex.D.3 is the assessment extract bearing GPC.No.476 of Kerur village for the year 1957-58, Ex.D.4 is the copy of resolution passed by the Gram Panchayat, Kerur on 23-08-1986, Ex.D.5 is the permission letter given by the Gram panchayat, Kerur in respect of construction of house GPC.No.476, Ex.D.6 is the tax paid

receipt in respect of GPC.No.476. Ex.D.7 and D.8 are the election identity card and Adhar card. Ex.D.9 to Ex.D.12 are the tax paid receipts. Ex.D.13 is the boundary certificate issued by the secretary Gram panchayat, Kerur in respect of 476.

16) The learned counsel for the plaintiff has placed much reliance on Ex. P-11 and admission given by the DW-1 during cross examination in respect of boundaries of GPC No.478 and also the boundaries certificate issued by Gram Panchayat which is got marked as EX-P 15 in order to show the existence of property.

17) Learned advocate for plaintiff submitted that, defendants have encroached the suit property to the extent of 18x20 feet in the northern portion. Ex-P12 and Ex-P13 are the assessment records in respect of GPC.No.477 and 478 respectively situated at Kerur village, wherein the plaintiff's name appear in the ownership column. On perusal of the said extracts nowhere measurements of properties is mentioned. At para no.1 plaintiff contended that, northern open space measuring East-West 20'x18' South -North is the suit property wherein the defendant illegally encroaching the said open space to the extent of 18'X20'. Plaintiff contended in his plaint that , open space measuring is 20X18 East-West. But on perusal of entire pleading no where plaintiff pleaded that on which side defendant encroached the suit property, he pleaded in his plaint that only defendant encroached the portion of the suit property to the extent of 18X20 feet. On the other hand defendants denied the contents of the plaint as well as boundaries of the suit property.

However in cross examination of DW-1, when the learned Counsel for the plaintiff suggest about the boundaries in respect of suit property bearing GPC No.478 he admits that,

ದಾವಾ ಆಸ್ತಿ ನಂ:478 ರ ಪೂರ್ವಕ್ಕೆ ಆಸ್ತಿ ನಂ:476 ಬರುತ್ತದೆ ಅಂದರೆ ಸರಿ. ದಾವಾ ಆಸ್ತಿ ನಂ:478 ರ ಪಶ್ಚಿಮಕ್ಕೆ ಬೋಳ ರಸ್ತೆ ಆದ ನಂತರ ಆಸ್ತಿ ನಂ:477 ಬರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಆಸ್ತಿ ನಂ:478 ರ ಉತ್ತರದ ಬದಿಗೆ ಪಂಚಾಯಿತಿ ಬರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಆಸ್ತಿ ನಂ:478 ರ ದಕ್ಷಿಣಕ್ಕೆ ಮರುಗುಬಾಯಿ ದೇವಸ್ಥಾನದ ಆಸ್ತಿ ಬರುತ್ತದೆ ಎಂದರೆ ಸರಿ.

So on comparing the suggestion posed to the DW-1 and in turn he admitting the situation of the property bearing GPC No.478 and boundaries mentioned in the Ex-P11 sale deed in respect of 478 it is clear that abutting to the property bearing GPC No.478 towards east property bearing GPC No.476 is situated. It is the case of plaintiff that, defendants without any right or title over the suit property illegally encroached upon the portion of said open space to the extent of 18'x20'. But on perusal of the pleadings and hand sketch map plaintiff has not mentioned total extent of the suit property.

18) It is very much material to show the extent of total property and also measurement of the encroached property in the cases like encroachment of land. The plaintiff has not produced any survey department records and any public record to show the alleged encroachment and also not pleaded on which side defendants have encroached the suit property. He pleaded in his plaint that, defendants encroached the northern portion of open space to the extent of 18X 20 feet. Even on comparing the measurements of norther open space of suit

property and alleged encroached measurement, does not tally with each other. Plaintiff pleaded in his plaint that, norther open space is measuring 20X18 feet and defendants encroached the portion of open space to the extent of 18X20 feet. So how is it possible for defendants to encroach the property more than the availability of property in the hands of plaintiff. Because plaintiff himself pleaded in his plaint that defendants encroached portion of said open space. But by comparing the measurement of open space of suit property with the alleged encroached area as per pleading of plaint both measurement does not tally with each other. If we accept the contention of the plaint in toto in respect of encroachment only how can it is possible to defendants to encroached the property which is not available at the hands of plaintiff only. On perusal of the pleading as well as hand sketch map plaintiff not pleaded on which side defendants have encroached the suit property, he pleaded only that portion of the northern open space to the extent of 18X20 feet defendants have encroached. So, it is clear that, plaintiff not given any measurement of either in respect of suit property GPC No.478 or open space. So, it is well settled law of principle that, without giving the measurement of encroached area it is not possible for anyone to say about the encroachment.

19) The Order VII Rule 3 of the Code of Civil Procedure, 1908 is very important and which reads as follow :-

Order VII Rule 3. *Where the subject matter of the suit is immovable property:- Where the subject matter of the suit is immovable property, the plaint shall*

contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

In the case on hand this Court has perused the schedule annexed i.e. hand sketch map to the plaint which is described as suit schedule property and it does not have boundaries. Interestingly, the plaintiff has averred in the plaint about the description of the property bearing GPC No.478 but not given the measurement of suit property and open space and also not described on which side defendants encroached the suit property he pleaded only portion of the northern open space to the extent of 18X20 feet is encroached. But not pleaded about on which side in the northern open space defendants have encroached his properties.

20) On perusal of pleading, plaintiff pleaded that, on northern side of property bearing GPC No.478 open space belongs to plaintiff is situated thereafter Panchayat Road situated. Admittedly, defendants are not having any land towards northern side of plaintiff property. Such being the case, they encroached the plaintiff property on northern side does not arise at all.

21) In page NO.6 at para NO.10 of cross of DW.1 i.e. defendant No.2 deposed as follows.

ಕೆರೂರು ಗ್ರಾ.ಪಂ.ಆಸ್ತಿ ನಂ:476 ಪೂರ್ವ-ಪಶ್ಚಿಮವಾಗಿ 29 ಪೂಟು, ಉತ್ತರ -ದಕ್ಷಿಣ

30 ಪೂಟು ಇರುತ್ತದೆ. ಸದರಿ ಆಸ್ತಿಯಲ್ಲಿ ನನ್ನ ಸಹೋದರ ಭೀಮಾ ಹಾಗೂ ನನ್ನ 2 ಮನೆಗಳನ್ನು ಕಟ್ಟಿರುತ್ತೇವೆ. ಸದರಿ ಜಾಗೆಯಲ್ಲಿ ಪೂರ್ವದ ದಿಕ್ಕಿನ ಕಡೆ ನನ್ನ ಸಹೋದರನ ಮನೆ ಇರುತ್ತದೆ ಮತ್ತು ಪಶ್ಚಿಮಕ್ಕೆ ನನ್ನ ಮನೆ ಇರುತ್ತದೆ. ನನ್ನ ಮನೆಯ ಪಶ್ಚಿಮ ದಿಕ್ಕಿಗೆ 6 ಪೂಟು ಮಿಲ್ಲಾ ಜಾಗೆಯನ್ನು ಬಿಟ್ಟಿರುತ್ತೇವೆ. ನನ್ನ ಸಹೋದರನ ಮನೆಯ ಪೂರ್ವ ದಿಕ್ಕಿಗೆ ನಾವು ಯಾವುದೇ ಮಿಲ್ಲಾ ಜಾಗೆಯನ್ನು ಬಿಟ್ಟಿರುವುದಿಲ್ಲ. ಅಲ್ಲಿ ಮರಗುಬಾಯಿ ದೇವಸ್ಥಾನದ ಕಂಪೌಂಡ್ ಇರುತ್ತದೆ ಅಂತ ನುಡಿಯುತ್ತಾನೆ.

so on going through above deposition it is clear that there is gap between the property bearing VPC.No.476 and 478 to the extent of 6 feet. As such the encroachment by the defendants by trespassing the suit property is not arise at all. Because even the learned counsel for plaintiff not denied the statement made by the DW.1 in respect of gap of "6" feet between GPC No. 478 and GPC No.476. Such being the case the alleged encroachment by the defendants on "Eastern" side also not arise at all.

22) Admittedly, the cause of the action for plaintiff is that defendants encroached the portion of northern side of suit property. So, plaintiff has to prove the encroachment.

Proof of Encroachment:

I) **The fact of encroachment is matter** of 3 aspects together namely i) seen, ii) perceived by sense by taking aid of measurement devise, and iii) an information based thereon.

II). If their be undisputed boundaries, encroachment can be question or a matter of fact, which can be seen by person where encroachment was witnessed. Fact of encroachment could be matter of oral evidence, if the admitted boundaries are destroyed, and have been destroyed in presence of witness by party making the encroachment. Such fact of encroachment may be proved by oral evidence.

III) The proof of extent of encroachment- Extent of encroachment i.e. area, is not matter to the adjudicate upon oral evidence of any number of witness, who have witnesses the act of encroachment.

IV), Witnesses who may be presence should have measured the land allegedly encroachment with reference to public records in relation to the Sy.Numbers or Pot Hissa survey numbers or plots on application by parties or under order of Courts, can certainly prove the fact of encroachment in terms of length, breadth, are etc.

23) In the case on hand this court has perused schedule annexed with plaint i.e. hand sketch map has not shown which side of the property in VPC.No.478 the defendants encroached his property. Plaintiff contended that, defendants encroached northern open space to the extent of 18X20 feet. The learned counsel for plaintiff submitted that defendants have no right or title over VPC.No.476 of Kerur village, inspite of that they have constructed their building in VPC.No.476 as well as they have constructed building by encroaching the suit property also. But

on perusal of entire records it is noticed that, except handsketch map and oral evidence of PW.1 no public documents produced in order to prove the encroachment of the suit property. Because public report is very much essential and also it is well established principle of law that, the extent of encroachment cannot be proved in the absence of public records and procedure of emerging from Sec.36 and 60 of Evidence Act. In this case plaintiff did not carryout any measurement through Government authority. Because in this case defendants denied the encroachment as well as disputed the boundaries. When the defendants denied the encroachment it is bounden duty of plaintiff to prove the alleged encroachment by the defendants by leading cogent evidence. But in this case plaintiff has not produced any documents. So in the absence of said material this court is not accepted the case of alleged encroachment by the defendants only on the basis of oral evidence.

24) Learned advocate for defendant relied upon a ruling reported in;

AIR 2007 ORISSA 24

Bandhu Das and Anr V.Uttam Charan Pattanaik

O.7.R.3-Description of immovable property-
Absence of -Effect-Suit of declaration of title-
Absence of proper description of suit land-Neither
measurement in relation to settlement map given
nor sketch map drawn to scale-Even, no
boundaries or extent of suit land mentioned-
plaintiff failed to give plot number and
boundaries, when he was asked for, in his cross-

examination-Suit held incomplete for want of proper description and sufficient identification.

Where in it is Held that, A bare reading of the above provision makes it is crystal clear that what exactly the land or the area over which the dispute exists is a question which goes into the root of the matter relating to subsistence of the case. In absence of such description in the plaint or supply of the map by annexing the same to the plaint and the evidence to the above effect, no Court would pass a decree, as such a decree would be inexecutable or would be rendered otiose. Even if the Court finds that the plaintiff had title and possession in respect of the suit land. In absence of proper description, as mentioned in Order 7 Rule 3 CPC., the decree cannot be executed. The defendants in the written statement took a specific objection that the suit is bad for lack of identification. Even then, plaintiff not averred in the plaint about on which side defendants encroached the suit property. As such the above citation squarely applicable to the facts of the case in hand.

25) The counsel for plaintiff placed his reliance on several citations as mentioned in para no.9 of this Judgment. I have gone through the above decisions. The facts of the said case is different from the present case in hand. Hence, the said decision is not aptly applicable to the present case in hand.

26) Further, in this Case plaintiff at least in order to prove encroachment he has not examined the neighbor owner or any independent witness, who seen the alleged encroachment.

Though the counsel for plaintiff cross-examined DW-1 and DW-2, nothing has been elicited from their mouth to prove the allegation of encroachment. As such, this Court is of the considered opinion that the plaintiff has failed to prove the alleged encroachment by the defendants and therefore this issue answered in the negative.

27) **Issue no. 1 to 4 and additional issue no.2:** When the plaintiff failed to prove the alleged assertion of encroachment by the defendants, the question of discussion about interference , recovery of possession and other reliefs dies not survive for consideration. As such plaintiff is not entitle any reliefs by this Court. As such above issue does not survive for consideration.

28. **Issue No. 5 :** In view of above above discussion and findings , this Court proceeds to pass the following ;

ORDER

The suit of the plaintiff is dismissed.

Looking to the facts and circumstances of the case both parties have to bear their own cost.

Draw decree accordingly.

(Dictated to the Stenographer directly on the Laptop, typed by her, corrected and then pronounced by me in the Open Court on this the 30th day of August 2018).

**(Vijaykumar.S.Hiremath)
Prl.Civil Judge,Chikodi.**

Annexures**List of Witnesses examined on behalf of the Plaintiff**

PW.1) Sri.Tanaji Yankappa Waddar

List of Documents exhibited on behalf of the Plaintiff

- Ex.P1) General power of attorney
- Ex.P2) Assessment extract of GPC.No.476 of Kerur village for the year 1949-50
- Ex.P.3) Assessment extract of GPC.No.476 of Kerur village for the year 1957-58
- Ex.P.4 &
Ex.P.5 Assessment extracts of GPC.No.476 for the year 1969-1970 and 1979-80 to 1980-81
- Ex.P.6) Copy of resolution passed by Gram Panchayat Kerur on 26-06-2001.
- Ex.P.7) Boundary certificate
- Ex.P.8) Reply issued by the Secretary Gram panchayat, Kerur to Tanaji Vaddar.
- Ex.P.9) Letter issued by the Secretary Grampanchayat, Kerur in respect of GPC.No.476
- Ex.P.10 &
Ex.P.11) Sale deeds in respect of properties GPC.No.478 and 477.
- Ex.P.12) Assessment extract of property bearing VPC.No.477 situated at Kerur village.
- Ex.P.13) Assessment extract bearing GPC.No.478 situated at Kerur village.
- Ex.P.14) Assessment extract of GPC.No.476, situated at Kerur village pertaining to the year 2000-01.
- Ex.P.15) Boundary certificate issued by the secretary Gram-panchayat, Kerur in respect of GPC.No.478

- Ex.P.16) Receipt issued by the SHO, Ankali police station
Ex.P.17) Endorsement issued by the SHO, Ankali P.S.
Ex.P.18 to
Ex.P.25) Photos,
Ex.P.26) C.D.

List of Witnesses examined on behalf of the Defendants

DW.1) Sri.Laxman Dundappa Waddar

DW.2) Sri.Kumar Nilappa Sanadi

List of Documents exhibited on behalf of the Defendants

- Ex.D.1) Assessment extract bearing GPC.No.476 of Kerur village for the year 2000-01.
Ex.D.2) Assessment extract of GPC.No.476 of Kerur village for the year 1979-80 to 1981.
Ex.D.3) Assessment extract bearing GPC.No.476 of Kerur village for the year 1957-58,
Ex.D.4) Copy of resolution passed by the Gram Panchayat, Kerur on 23-08-1986,
Ex.D.5) Permission letter
Ex.D.6) Tax paid receipt in respect of GPC.No.476
Ex.D.7 Election identity card
Ex.D.8 Adhar card
Ex.D.9 to
Ex.D.12 Tax paid receipts
Ex.D.13 Boundary certificate issued by the secretary Gram panchayat, Kerur in respect of 476.

(Vijaykumar.S.Hiremath)
Prl.Civil Judge,Chikodi.