

KABI600012362016



TITLE SHEET FOR JUDGMENT IN SUIT
IN THE COURT OF THE CIVIL JUDGE & JMFC, SANDUR
:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 12th day of August, 2026

O.S. No. 94/2016

Plaintiff/s : Smt. C. Radhamadhavi W/o C. Hanumanthappa,
Aged about 50 years, Occ: Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District.
By her power of attorney holder,
C. Hanumanthappa S/o Late C. Hulikunta Rao,
Aged about 58 years, Occ: Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District.

(By Sri. G.M., Advocate)

V/S

- Defendant/s** : 1. T. Anjinappa S/o Late T. Hulukuntappa,
Aged about 48 years,
Occ: Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District.
2. T. Venkatesha S/o Late Mukanna,
Aged about 45 years,
Occ: Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District.
3. T. Mareppa S/o Late Hulugappa,
Since dead by his LRs
- 3(a). Smt. Sharadamma W/o Late T. Mareppa,
Aged about 55 years,
R/o 1st ward, Choranur village,
Sandur Taluk, Ballari District.
- 3(b). Smt. Latha W/o Anjinamurthy,
D/o Late T. Mareppa,
Aged about 35 years,
R/o 1st ward, Choranur village,
Sandur Taluk, Ballari District.
- 3(c). Smt. Nagarathna W/o Pennappa,
D/o Late T. Mareppa,
Aged about 33 years,
R/o 4th ward, Choranur village,
Sandur Taluk, Ballari District.
- 3(d). Smt. Uma W/o Nagaraj,
D/o Late T. Mareppa,
Aged about 31 years,
R/o 3rd ward, Choranur village,

Sandur Taluk, Ballari District.

- 3(e). Smt. Suma W/o Raja,
D/o Late T. Mareppa,
Aged about 29 years,
R/o 3rd ward, Choranur village,
Sandur Taluk, Ballari District.
- 3(f). Smt. Karibasamma W/o Manjunatha,
D/o Late T. Mareppa,
Aged about 27 years,
R/o 1st ward, Choranur village,
Sandur Taluk, Ballari District.
- 3(g). Kumari Anu D/o Late T. Mareppa,
Aged about 25 years,
R/o 1st ward, Choranur village,
Sandur Taluk, Ballari District.
4. T. Hanumanthappa,
S/o Late Dodda Bheemappa,
Aged about 52 years,
Occ: Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District.
5. Akkannanavara Mareppa,
S/o Late Akkanna,
Aged about 45 years,
Occ: Agriculturist,
R/o Choranur village,
Sandur Taluk, Ballari District.
6. Hulikunteppa S/o Late Ajjappa,
Aged about 62 years,
Occ: Agriculturist,

R/o Choranur village,
Sandur Taluk, Ballari District.

***(D-1, 2, 4 to 6 by Sri. A.V.K. Advocate)
(D-3(a) to 3(g) Exparte)***

Date of Institution of the Suit	25.08.2016		
Nature of the Suit	Suit for Permanent Injunction		
Date of Commencement of Recording of Evidence	14.12.2017		
Date on which the Judgment was pronounced	12.08.2026		
Duration	<u>Years</u> 09	<u>Months</u> 11	<u>Days</u> 18

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.

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

This is a suit instituted by the plaintiff through her husband who is her power of attorney holder for the relief of permanent injunction against the defendant No.1 to 6. Defendant No.3 died during the pendency of the suit and his LRs are brought on record as defendant No.3(a) to defendant No.3(g).

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

It is contended that the plaintiff is the absolute owner and in possession of the plaint schedule property bearing Sy. No.629D/1, measuring 5.15 acres, situated at Choranur village, Sandur taluk, since several decades. She is paying property tax in respect of suit land. According to plaintiff, out of total extent of 5.15 acres, an extent of 3.00 acres is converted for non-agricultural purpose *vide* order of the Deputy Commissioner, Ballari Dt. 17.11.2012. The rest of the portion of the land to the extent of 2.00 acres is still an agricultural land.

3. It is the case of the plaintiff that there are 51 tamarind trees in the entire portion of the suit land measuring 5.15 acres. The plaintiff is enjoying the fruits of the tamarind trees for several years without any interference and disturbance. On the western side of the suit property, there are 7 tamarind trees which fall on the boundary of the suit land.

4. According to plaintiff, the defendants are unrelated to the suit land but they trespassed and occupied and land bearing Sy. No.629A, 629B and 629C of Choranur village which fall on the western side of the suit land. The defendants are illegally claiming the 7 tamarind trees which fall on the western side of the suit land and thereby causing nuisance and falsely asserting those 7 tamarind trees. In order to avoid any litigation, the plaintiff and her husband requested the revenue officials to conduct survey and demarcate the suit land. On her request, the revenue officials conducted survey and fixed boundaries of the suit land and located tamarind trees in the suit land. The defendants however threatened the plaintiff and her husband that the tamarind trees falling on the western side will be utilized by them. On 17.08.2016, the defendants once again threatened the plaintiff and her husband while claiming those 7 tamarind trees. This interference again continued in the month of January 2015. The interference and future apprehension is continuing. As such, the plaintiff instituted this suit for permanent injunction and prays to

decree the suit.

5. After filing of the suit, summons were issued to defendant No.1 to 6. In response to the summons the defendant No.1 to 6 appeared through their learned counsel. Defendant No.1 filed written statement which is adopted by defendant No.2 to 6. On the demise of defendant No.3 during the pendency of the suit, his legal heirs are brought on record as defendant No.3(a) to defendant No.3(g). When the summons was issued and served on them, defendant No.3(a) to 3(g) have remained absent.

6. **The contentions of defendant No.1 to 6 are as under :**

The defendants have denied the entire case of the plaintiff in respect of the possession and also the allegation of interference. According to defendants, the plaintiff is not the owner nor in possession and enjoyment of the suit property within the boundaries mentioned in the plaint schedule.

7. It is submitted that an extent of 3.00 acres of the suit land is converted for non-agricultural purpose which is sold to some other persons. The persons who have purchased the plots are in possession and enjoyment of the said properties. The suit is bad for non-joinder of necessary parties.

8. It is further contended that there are no tamarind trees in the suit land nor the plaintiff is in enjoyment of the fruits of tamarind trees. The defendants have also denied about the existence of 7 tamarind trees on the western boundary of the suit land. Therefore, the question of interfering in the enjoyment of those tamarind trees does not arise. The seven tamarind trees are situated in the property of the defendants. The plaintiff has encroached the property of the defendants. The survey authorities have not conducted any survey as alleged in the plaint. No notice was given to the defendants before the alleged survey. The documents furnished by the plaintiff are fabricated.

9. Further, after the order of Deputy Commissioner,

Ballari converting 3.00 acres of suit land, some piece of land is reserved for roads and for other purpose. Such piece of land vest with the Government. The land reserved for roads and for other purpose is owned by the Government. It is further contended that towards western side of the suit land, there are house properties bearing door No.381/31, 139, 639/319 which are standing in the name of T.Sarojamma W/o Maresh and T. Rajamma W/o Lakkappa. Likewise, one T. Uma W/o Anjinappa also owned house property bearing door No.629. There is also poultry farm on the western side of the suit land. According to defendants, they are the joint owners of the land bearing Sy. No.629/C, measuring 0.63 acres which fall on the western side of the suit land. The said property is standing jointly in the name of T. Hulemma and T. Umakka. The plaintiff is rich and powerful person having support of political leaders and thereby harassing the defendants by filing this false suit. Amongst other grounds, these defendants pray to dismiss the suit of the plaintiff.

10. On the basis of the above pleadings and other

materials, this court framed following;

ISSUES

- 1) Whether plaintiff proves that she is the absolute owner and in peaceful possession and enjoyment of the suit schedule property as on the date of the suit ?
- 2) Whether the plaintiff further proves that, the defendants have trespassed into the portion of the Sy. No.629A, B and C and interfered into the possession and enjoyment of the plaintiff over the suit schedule property ?
- 3) Whether the defendant No.1 proves that, the suit is bad for non-joinder of other purchases of the plots in the suit schedule property ?
- 4) Whether the plaintiff is entitled for the relief of permanent injunction as sought for ?
- 5) What order or decree ?

11. The power of attorney holder of plaintiff got himself examined as PW1 and other two witnesses as PW2 and PW3 and relied upon 8 documents from Ex.P1 to Ex.P8 and closed his side. On the other hand, the defendant No.3 during his lifetime got

examined himself as DW1 and relied upon 6 documents from Ex.P1 to Ex.P6.

12. Heard the arguments of learned counsel for plaintiff and defendants. Perused the records.

13. My answer to the above said issues are as under:

Issue No.1	: In the Affirmative;
Issue No.2	: In the Negative;
Issue No.3	: In the Negative;
Issue No.4	: In the Affirmative;
Issue No.5	: As per final order for the following:-

:: R E A S O N S ::

14. **ISSUE NO.1:** According to the plaintiff, she is the absolute owner and in possession of the suit land bearing Sy. No. 629D/1, measuring a total of 05.15 acres, situated at Chorapur village, Taluk: Sandur. On the application filed by the plaintiff, the Deputy Commissioner, Bellary, vide order No. Kandaya/bhuparivarthane:99:2012-13, dated 17.11.2012, which is marked as Ex.P7, converted the land bearing Sy. No. 629D/1 to the extent of 03.00 acres (out of 05.15 acres) for non-agricultural use,

specifically for residential purposes. This fact was undisputed by the defendants during the evidence.

15. This suit is for the relief of a bare permanent injunction. There are no concrete materials which create a cloud on the ownership of the plaintiff over the suit property. Therefore, the only thing to be evaluated is whether the plaintiff is in possession of the suit land. This court will not go into deciding the ownership of the plaintiff or inquiring into the flow of title vesting in the plaintiff.

16. Nonetheless, the SPA holder for the plaintiff / PW1 deposed that the suit land previously stood in the name of his grandmother. She is said to have bequeathed the property to him. In turn, PW1 transferred the land in favour of his wife—the plaintiff. The validity of the will alleged to have been executed in favour of PW1 by his grandmother cannot be adjudicated in the present suit for permanent injunction. A suit for permanent injunction has a very limited scope, and title cannot be decided

unless the defendants are able to create a cloud on the ownership of the plaintiff. In the instant case, there are no materials which have the tendency to create a cloud on the ownership of the plaintiff over the suit property. Though there is no document executed by PW1 in favour of his wife—the plaintiff—to change mutation, it appears from the evidence of PW1 that on his mere application, the plaintiff's name was mutated in the revenue records. Such a mode of transfer can only be questioned by a family member of the plaintiff or anyone who claims a better title than the plaintiff. Here, in the present case, the defendants are not claiming a better title to the suit land, but instead claim to be the joint owners of land Sy. No. 629/C, measuring 0.63 acres (or cents, as per records), situated towards the western side of the suit land. The defendants do not allege that the plaintiff has encroached upon their land.

17. In order to prove possession, the plaintiff has relied upon both oral and documentary evidence. The SPA holder for the plaintiff / PW1 is consistent throughout his evidence to the

fact that he is in possession of the suit land. The testimony of PW1 in this regard is uncontroverted. The ROR of the suit land for the years 2016-17 and 2017-18, which are marked as Ex. P5 and Ex. P6, depict that the suit land stands in the name of the plaintiff, which is bifurcated into 02.15 acres and 03.00 acres. Such bifurcation is due to the conversion of land to the extent of 03.00 acres for a non-agricultural purpose. These documents, coupled with the order passed by the Deputy Commissioner, Bellary, as per Ex. P7, probalilize the case of the plaintiff in respect of her possession over the suit land.

18. Further, the documents marked as Ex. P2 and Ex. P8 sufficiently prove the boundaries of the suit land, whereas Ex. P3 proves the extent of the land. As per the said document, the total extent of land is 05.15 acres. These documents were issued by a public servant in the discharge of official duties, thus raising a presumption of their correctness. The defendants have not challenged these documents before any forum, nor did they refute the genuineness of these records. The learned counsel for the

defendants, while drawing the attention of this court to the cross-examination of PW1, argued that the witness wrongly stated the boundary towards the northern side of the suit land. According to PW1, towards the northern side of the suit land there is a road. Whereas, in the plaint schedule, the plaintiff described the boundaries towards the north as "land Sy. No. 626 and road." This stray testimony of PW1 has no effect or tendency to disprove the entire case of the plaintiff when there is documentary evidence to substantiate the correctness of the boundaries of the suit land, having regard to the fact that the defendants have not alleged that the plaintiff has encroached upon land Sy. No. 626.

19. The primary disagreement between the plaintiff and the defendants is with regard to the existence of tamarind trees on the suit land. According to the plaintiff, there are about 51 tamarind trees on the suit land, out of which 7 tamarind trees are said to be located towards the western side of the suit land. While asserting this fact, the plaintiff alleged interference by the defendants in the use and enjoyment of those 7 tamarind trees.

Whereas, the defendants claim that these 7 tamarind trees are located on their land, Sy. No. 629/C, measuring 0.63 acres.

20. PW1 admitted that there is no mention of trees in Column No. 7 of the RORs—Ex. P5 and Ex. P6. Column No. 7 of the ROR exclusively deals with details regarding the existence of trees on the land. However, a mention of the existence of trees is found in Column No. 11 of the ROR—Ex. P6. The reference to the existence of trees in Column No. 11 of Ex. P6 was made on the strength of the survey report. According to PW1, the reference to the existence of trees in Column No. 7 was not made because the land to the extent of 03.00 acres was converted for a non-agricultural use. He further deposed that on the application submitted to the Tahsildar, Sandur, a survey was conducted, and on the strength of such survey, the existence of trees was shown in Column No. 7.

21. If the entries in the ROR do not mention the existence of trees, this is not conclusive proof that there are no trees

existing. It is the responsibility of the revenue officials to update the revenue records. It was only after the plaintiff submitted an application that a survey of her land was conducted and the trees were subsequently mentioned in the ROR. Further, the sketch marked as Ex. P4 was issued by the surveyor who, after carrying out survey work, observed that there are 51 tamarind trees on the suit land.

22. In their cross-examination, PW2 and PW3 consistently deposed that the tamarind trees are on the plaintiff's land and not that of the defendants. According to them, when they were cultivating the land, they counted the number of trees on the suit land and found a total of 51 tamarind trees.

23. During the trial, the plaintiff filed an application in I.A. No. XIII under Order XXVI Rule 9 read with Section 151 of the CPC for the appointment of the Taluk Surveyor, Sandur, to survey the plaint schedule property, which was allowed by the court. As no orders were passed on the report filed by the Court

Commissioner, the plaintiff subsequently filed another application in I.A. No. XVIII under Order XXVI Rule 10(2) read with Section 151 of the CPC, seeking permission to cross-examine the Court Commissioner. This application was allowed, the Court Commissioner was summoned, and he was subjected to cross-examination by the learned counsel for the plaintiff. The defendants, however, did not cross-examine the Court Commissioner.

24. Later, this Court, *vide* order dated 12.03.2026, rejected the Court Commissioner's report. Thereafter, the Court passed an order on the pending I.A. No. XVII filed under Order XXVI Rule 9 read with Section 151 of the CPC and appointed the Taluk Surveyor, Sandur, to inspect the plaint schedule property, note the measurements, and record all features of the suit land including the number of tamarind trees located within the suit land and along its western boundary. The Court itself issued detailed instructions to the Court Commissioner to carry out the commission work. Subsequently, the Court Commissioner

submitted his report, to which the defendants filed objections. This Court, *vide* order dated 27.06.2026, rejected the objections filed by the defendants and accepted the Court Commissioner's report. The defendants did not apply for permission to cross-examine the Court Commissioner.

25. On perusal of the Commissioner Report it transpires that previously the land Sy.No.629D/1 is totally measuring 5.15 acres, which was not bifurcated into land Sy.No.629D/1 measuring 3.00 acres and Sy.No.629/1 measuring 02.15 acres. Previously, the ROR for the year 2016-17 in respect of land Sy.No.629D/1 was showing the total extent of 05.15 acres with bifurcation within as 03.00 acres and 02.15 acres without there being physical separation of ROR to such extent. During the pendency of the suit, as the ROR filed by the court commissioner depict, the land to the extent of 03.00 acres and 02.15 acres is assigned with new survey number as Sy.No.629D/1 and Sy.No.629/1 respectively. The boundaries of entire stretch of land is unaltered. The report of court commissioner clearly prove the

boundaries of suit land.

26. According to the plaintiff, at the time when the plaint was presented, there were 51 tamarind trees on the entire land measuring 0.15 acres, with 7 trees falling on its western boundary. As per the commissioner report, there are a total of 65 tamarind trees in the entire extent of 5.15 acres, with 8 trees falling on its western side. Sight cannot be lost of the fact that this suit was instituted in the year 2016, when there were 51 tamarind trees, with 7 on the western boundary. The plaintiff cannot be expected to report to the court and seek an amendment of the plaint after each fresh growth of a tree. Moreover, the current 65 trees are located within the 05.15 acre area of land. Out of the 8 tamarind trees that are found on the western side of the suit land, none of them fall within the land of the defendants. The defendants have not filed any documents to show that at least one tamarind tree is situated on their land.

27. The defendants vehemently contend that the ROR (Ex.P5) does not depict the availability of tamarind trees in the

suit land. Though it is true to this extent, the defendants have also not filed the ROR of their land to show that the 7 tamarind trees are available on their land. The plaintiff has the subsequent ROR (Ex.P6), the survey report, and the commissioner report to show the existence of tamarind trees in the suit land. That being so, it is more likely to be true that the tamarind trees are situated in the land of the plaintiff than in the land of the defendants. The defendants did not negate the truthfulness of the commissioner report or file any documents contrary to the records placed by the plaintiff and the court commissioner. There is nothing to disbelieve the report of the court commissioner.

28. The learned counsel for the defendants further argued that the land to the extent of 3.00 acres having converted into non-agricultural use, there are road and public parks the ownership of which vests with the government. PW1 deposed that an extent of 46% in NA land left for public purpose is under the possession of government. It is true that the suit land to the extent of 03.00 acres is converted for non-agricultural purpose. When

the land is converted for non-agricultural purpose, as per the terms and conditions, the plaintiff is bound to leave some portion of land for construction of road and public parks. This will arise when the plaintiff forms sites after due approval of concerned authorities. At present, the plaintiff has not formed any sites in the suit land nor there are any roads or park. Even the commissioner report do not reflect the existence of any road or parks. As such, there is no question of vesting the roads and parks with the government. Since no sites, roads or public parks are formed the question of physically handing over 46% of land for public purpose does not arise. Even after conversion of land for Non-agriculture purpose, the portion of land to be left for road and public parks continues to be in constructive possession of plaintiff. The defendants have no manner of right in the suit property till actual roads and parks are formed. While taking contention about the roads and public utilities that has to be formed in the NA land, the defendants cannot claim right over the tamarind trees situated towards western side of suit land.

Moreover, the defendants have not filed any documents to show the existence of any road or public parks in the suit land.

29. Thus, upon appreciation of entire materials on record it appears that the plaintiff successfully proved her possession over the suit land within the extent and the boundaries described in the plaint schedule. The plaintiff also proved that the tamarind trees are situated on the western side of suit land. The defendants on the other hand did not place any materials before the court to show that those tamarind trees are in their land. Hence, this court answers Issue No.1 in the **AFFIRMATIVE**.

30. **ISSUE NO.2:** According to the plaintiff, the defendants after trespassing and occupying the land Sy.No.629A, B, and C of Chornur village, are causing interference towards western side of suit land while claiming seven tamarind trees. As per the boundaries described in the plaint schedule, towards western side of suit land, the land Sy.No.629A, B is situated. The land of defendants is bearing Sy.No.629/C. But, there are

absolutely no materials to prove that the defendants have occupied the land Sy.No.629A, B of Chornur village. No proof is placed before the court by the plaintiff. Even there are no instances of filing any suits against the defendants by the owners of Sy.No.629A, B. Therefore, it cannot be held that the defendants have wrongfully occupied the land Sy.No.629A, B.

31. However, the evidence led by the plaintiff through PW1 to PW3 sufficiently establish the unnecessary interference by the defendants in the use and enjoyment of the suit property by the plaintiff. Even the contention taken by the defendants in their written statement as well as in the evidence claiming seven tamarind trees located on the western side of the suit land demonstrate the illegal interference. The witnesses PW2 and PW3 have also deposed about the interference by the defendants. Their testimony in this regard is not discredited by the defendants. The plaintiff successfully proved the interference and shown apprehension of future repeated interference. Hence, this court answers Issue No.2 in the **NEGATIVE**.

32. **ISSUE NO.3:** The defendants have contended that after forming plots in the suit land to the extent of 03.00 acres, the plaintiff has sold the sites to the prospective buyers, and therefore, they are necessary parties. The plaintiff on the other hand has submitted that sites are not formed yet and it is not sold to anyone. The defendants have not placed any records before this court to show that the plaintiff has formed sites and sold it to third person. That being so, there is no question of impleading prospective buyers. Hence, this court answers Issue No.3 in the **NEGATIVE.**

33. **ISSUE NO.4:** The plaintiff has proved her possession over the suit property by both oral and documentary evidence. She also proved that, the defendants have caused interference and obstructed in her possession over the suit property and from enjoyment the fruits of tamarind trees situated on the western side of suit land. The plaintiff has shown apprehension of repeated interference. Such being the case, it is necessary to restrain the defendants from causing such interference by way of

granting permanent injunction. Accordingly, this court answers Issue No.4 in the **AFFIRMATIVE**.

34. **ISSUE NO.5:** In view of the above discussions and answers to the above issues, it is just and proper to pass the following:-

ORDER

The suit of the plaintiff is hereby decreed with cost.

The defendant No.1 to 6 are hereby permanently restrained from causing any kind of interference or obstruction in the peaceful possession and enjoyment of the plaintiff over the suit property, in any manner.

Draw Decree accordingly.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 12th day of August 2026).

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.

ANNEXURE**1. List of witnesses examined for plaintiff/s:**

PW.1 : C. Hanumanthappa S/o Late C. Hulikunta Rao
PW.2 : Lakkappa S/o D. Thippaiah
PW.3 : Khasim Sab S/o Late T. Khasim Sab

2. List of documents exhibited for plaintiff/s:

Ex.P1 : Affidavit of Special power of attorney
Ex.P2 to 4 : Survey sketch
Ex.P5 & 6 : Computerized RTC's
Ex.P7 : Order of Deputy Commissioner, Ballari Dt.
17.11.2012
Ex.P8 : Attested copy of sketch

3. List of witnesses examined for defendant/s:

DW.1 : T. Mareppa S/o Late Huleppa

4. List of documents exhibited for defendant/s:

Ex.D1 & 2 : Computerized RTC's
Ex.D3 : Certificate issued by Gram Panchayath Choranur
Ex.D4 : DCB register
Ex.D5 : Building construction license
Ex.D6 : Mutation register

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.