

KACD320001972019



Presented on : 29-01-2019
Registered on : 29-01-2019
Decided on : 10.07.2026
Duration : 07years.05 months 12days

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & J.M.F.C, AT
HIRIYURU**

Dated 10th day of July 2026

:: P R E S E N T ::

**Sri. RAGHU.M.,
B.A.L,LL.B
Additional Civil Judge & JMFC
Hiriyur.**

Original Suit No.18/2019

Plaintiffs	:	1. Sri.H. Mahalingappa S/o Late Hanumanthappa, Since dead by his Lrs. 1(a). H.M. Parthasarathi S/o Mahalingappa H, Aged about 36 years. 1(b). Jayamma W/o Mahalingappa H, Aged about 60 years. 1(c). H.M.Vasthsalyavani D/o Mahalingappa H. Aged about 38 years. 1(d). Manjula P. D/o Mahalingappa H, Aged about 31 years. 1(e). Bharathavani D/o Mahalingappa H.
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		Aged about 34 years. 1(f). H.M.Amruthavani D/o Mahalingappa H. Aged about 31 years. All are R/at. Chillahalli Village, Dharmapura Hobli, Hiriyur Taluk. (Rep by Sri H.P, advocate)
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-Vs-

Defendant	:	Sri.Nagendrappa S/o. Kariyappa, Aged about 62 years, R/at.Chillahalli village, Abbinahole Post, Dharmapura Hobli, Hiriyur Taluk, Chitradurga District.
		(By Sri.G.C.P.Advocate)

Date of Institution of suit	:	29/01/2019
Nature of suit	:	Declaration and Permanent and mandatory Injunction.
Date of commencement of Recording of evidence	:	15/06/2023
Date on which the judgment was pronounced	:	10/07/2026
Total duration	:	Years : Months : Days
		07 05 12

(Sri. Raghu.M.)
Addl., Civil Judge and JMFC,
Hiriyur.

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

This is the suit filed by the plaintiff against the defendant for seeking the relief of declaration, mandatory and permanent injunction over the suit schedule property.

2. THE BRIEF FACTS OF THE CASE OF THE PLAINTIFF IN NUTSHELL AS FOLLOWS:-

(a) The plaintiffs submits that, the suit schedule property is ancestral property of plaintiff and it was granted by the abbinahole grama panchayath to grandfather-great grandfather. Since then, they were in possession and enjoyment of suit schedule property. Since then the plaintiff is in possession and enjoyment of suit schedule property. That the plaintiff had built a old mud house and it was demolished by him to construct new house. As such, when the plaintiff went to another village for work, defendant without anyone knowing has build compound by night encroaching 3 feet on east side in the plaintiff's property and constructing first floor building adjoining to compound. When the same was questioned by the plaintiff, defendant made quarrel with the plaintiff. In this regard, the plaintiff went to police to lodge complaint, police has issued endorsement that,

matter is civil in nature. That the defendant is having money and political power. Hence the plaintiff has filed the suit.

3. Summons:- In spite of service of summons, the defendant has appeared and filed written statement.

4. THE BRIEF FACTS OF THE CASE OF THE DEFENDANT IN NUTSHELL AS FOLLOWS:-

(a) The defendant in his written statement has denied the plaint averments and contended that, the boundaries given to the property are false and defendant has vacant site towards western side of plaintiff's property and the defendant on 28.12.2025 was purchased two sites khatha number 116, assessment No.158, measuring 25 x 50 and khatha number 209, assessment No.253, measuring 22 x 34 from M Ramalingaiah resident of Chillahalli village for a sum of Rs.30,000/-. Since then the defendant is in peaceful possession and enjoyment of said two sites by putting up compound around them by leaving 2 feet space on east side and left one and half feet canopy from the compound on north side of house and it is known to the plaintiff also and defendant has not encroached. Whereas the plaintiff has filed the false suit against defendant. Hence prayed to dismiss the suit.

5. Issues:- To reach definite conclusion, predecessor has framed following issues for the consideration of this Court;

::I S S U E S::

- 1. Whether the plaintiff prove that, he is in peaceful possession and enjoyment of the suit schedule property?**
- 2. Whether the plaintiff proves that, the defendant has illegally encroached western portion of suit schedule property and is interfering with the possession of the plaintiff?**
- 3. Whether the plaintiff is entitle for the reliefs claimed?**
- 4. What Order or decree?**

_:RECASTED ISSUE:

- 1. Whether plaintiff proves that, he is absolute owner in possession and enjoyment of suit schedule property?**

6. Plaintiff evidence:- In order to prove the case of the plaintiff, Lr's of plaintiff No.1(a) has examined as PW.1 and got marked Ex.P-1 to 7.

7. Defendant evidence:- In order to disprove the case of the plaintiff, defendant has examined as Dw.1 and one witness has examined as Dw.2 and got marked Ex.D.1 to 10.

8. Arguments:- Heard the arguments of learned counsel for the plaintiff and defendant and perused the entire material available on record. The answer to the above Issues are as follows:

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

::REASONS::

9. Recasted issue No.1: The plaintiff has filed this suit against defendants for the relief of declaration, mandatory and permanent injunction with respect to suit schedule properties. However, burden of proof lies on the plaintiff to prove the case. During pendency of the suit, plaintiff was died and his Lrs have been brought on record. As such, to establish case, the LR's of plaintiff No.1(a) has examined as PW.1 and filed affidavit in lieu of his examination-in-chief and reiterated the facts stated in the

plaint and got marked Ex.P.1 to 7. Ex.P.1 is the Tax paid receipt in two numbers, Ex.P.2 is the form No.9 and 11A, Exs.P.3 and 4 are the demand registers, Ex.P.5 is the endorsement, Ex.P.6 and 6(a) are the photos, Ex.P.7 is the Aadhaar card of deceased plaintiff.

10. The defendant has examined as Dw.1 and got Ex.D.1 to 10 are marked and one witness by name linganna has examined as D.W.2. Ex.D.1 is the original sale deed dated 28.12.2005, Exs.D.2 and 3 are the Tax paid receipts, Ex.D.4 is the forum No.9 and 11A in 3 numbers, Ex.D.5 is the Tax paid receipt, Ex.D.6 is the E.C, Exs.D-7 to 9 are the photos, Ex.D-10 is the broken C.D.

11. The plaintiff in his plaint has stated that, suit schedule property was granted by the abbinahole grama panchayath in favor of grandfather-great grand father of plaintiff. Since then, they were in possession and enjoyment and after their demise, plaintiff put in possession and enjoyment of suit schedule property. In this prsesnt suit, the plaintiff has sought declaration of title. But the plaintiff has not produced any title deed to show that, suit schedule property was granted by the Abbinahole Grama Panchayath in favor of grandfather-great grand father and

Pw.1 in his cross examination has clearly stated that, “ನನ್ನ ತಾತನ ಮಾಲೀಕತ್ವ ತೋರಿಸಲು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ”. It can be seen from the deposition that, no title deed has been produced before the court. However, the plaintiff has produced tax paid receipts, form No.9, demand register extracts and photos. Hence, the said documents do not create any right over suit schedule property unless and until title deed is produced. **Hence issue No.1 is answered in the negative.**

12. Issue No.2:- The plaintiff in his plaint has alleged that, the defendant has encroached 3 feet and constructed compound and first floor building. But the defendant in his written statement has denied the same and stated that, he did not encroach any vacant space in plaintiff's property. With regard to, the plaintiff has not produced any document to show that, defendant has encroached 3 feet vacant space in his property. Except pleading and deposition, no single documents has been produced by the plaintiff and not explained, how he got to know of encroachment. The Pw.1 in his cross examination has stated that, “ದಾವಾ ಸ್ವತ್ತನ್ನು ಅಳತೆ ಮಾಡಿಸಿರುತ್ತೇನೆ. ಅಳತೆ ಮಾಡಿದ ಬಗ್ಗೆ ದಾಖಲೆಗಳನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ. ಸದರಿ ದಾಖಲೆಗಳಲ್ಲಿ ಒತ್ತುವರಿ ಆಗಿರುವ ಬಗ್ಗೆ

ದಾಖಲಿಸಲಾಗಿದೆ. ನಾನು ದಾವಾ ಸ್ವತ್ತನ್ನು ಅಳತೆ ಮಾಡಿಸಿದ ಬಗ್ಗೆ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಸ್ವತ್ತನ್ನು ಪಿ.ಡಿ.ಓ ರವರು ಅಳತೆ ಮಾಡಿ ನನ್ನ ತಂದೆಗೆ ನೀಡಿರುತ್ತಾರೆ. ನನ್ನ ತಂದೆಯವರು ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ”. It can be seen from the depositions that, suit schedule property was measured by the P.D.O and he has given documents as to encroachment and said documents have been produced by the father of pw.1. If the property was got measured, pw.1 could have produced such documents before the court or examined the P.D.O who measured the property or sought to appoint court commissioner. Such an attempts have not made by the Lrs of plaintiff. Hence without proper documents pertains to encroachment, it cannot be stated that, defendant has encroached the plaintiff's property.

Therefore issue No.2 is answered in the negative.

13. Issue No.3:- The plaintiff has filed this suit against defendant for the relief of declaration, mandatory and permanent injunction with respect to suit schedule property. The plaintiff in his plaint has not clearly stated that, in which date, defendant has constructed compound and when he got to know about encroachment. Moreover, if the defendant has encroched the vacant space, plaintiff along with declaration and mandatory injuction has to seek relief of possession and without seeking

relief of possession, declaration cannot be sought in the cases of encroachment alleged to have been taken place. Therefore, the plaintiff has failed to establish his valid title over the suit schedule property and oral evidence of Pw.1 is not coupled with documentary evidence. **Therefore issue No.4 is answered in the negative.**

14. Issue No.4:- for the foregoing reasons, court proceeds to pass the following;

: O R D E R :

The Suit is hereby dismissed with costs.

Draw decree accordingly.

(Dictated to the stenographer directly on to the computer typed by his, transcript revised, corrected and then pronounced by me in the open court this the 10th day of July 2026)

(Sri.Raghu.M)
Addl Civil Judge and JMFC
Hiriyur.

::ANNEXURES::

LIST OF WITNESS EXAMINED BY THE PLAINTIFF:

P.W. 1	H.M. Parthasarathi S/o Mahalingappa H
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LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:

Ex.P.1	Tax paid receipts in two numbers.
Ex.P.2	Form No.9 and 11A,
Exs.P.3 & 4	Demand registers

Ex.P.5	Endorsement.
Exs.P.6 & 6(a)	Two Photos
Ex.P.7	Notarized copy of Aadhaar card of deceased plaintiff.

LIST OF WITNESS EXAMINED BY THE DEFENDANTS:

Dw.1	Sri. Nagendrappa H.K. S/o Kariyappa.
Dw.2	Sri. Linganna S/o Siddaiah.

LIST OF DOCUMENTS MARKED FOR THE DEFENDANTS:

Ex.D.1	Original sale deed dated 28.12.2005
Exs.D.2 & 3	Tax paid receipts
Ex.D.4	Form No.9 and 11A.
Ex.D.5	Tax paid receipts
Ex.D.6	E.C.
Exs.D.7 to 9	3 Photos.
Ex.D.10	Broken C.D

(Sri. Raghu.M.)
 Addl. Civil Judge and JMFC
 Hiriyur.