



IN THE COURT OF PRL. CIVIL JUDGE & JMFC, KADUR

Present : Smt. Amrin Sultana . B.A.L., LL.B.,
Prl. Civil Judge & JMFC., Kadur.

Dated : **This the 4th day April 2026**

O.S.No.59/2018

Plaintiff/s :

1. P.G.Yogesha S/o Govindappa,
Aged about 47 years, Agriculturist,
2. P.C.Sumithra W/o P.G.Yogeesha,
Aged about 45 years, Agriculturist,
Both are R/at. Pattanagere village at
post, Kasaba Hobli, Kadur taluk,
Chickkamgaluru District.

(Rep., by Sri. KNR., Advocate)

-V/s-

Defendant/s :

- 01 P.D.O., Pattanagere, Pattanagere
Grama Panchayath, Kadur Taluk,
Chikmagalur Dist.
- 02 Executive Officer, Taluk, Panchayath,
Kadur.
- 03 Chief Executive Zilla Panchayath,
Chikmagalur.
- 04 Thimmashetty S/o Late Thimmappa,
Agriculturist, Aged about 65 years,
- 05 P.C.Anjanappa S/o Late
Chinnagiriappa, Aged about 65 years,
- 06 P.H.Nagaraja S/o Late
Hanumathappa,



- (moolemane), Aged about 52 years,
- 07 P.T.Ravi S/o Late Thimmaiah,
Aged about 48 years,
- 08 P.G.Thimmaiah S/o Giriyajja,
Aged about 68 years,
- 09 P.M.Ravi, S/o late Mariyappa,
Aged about 47 years,
- 10 Rajanna S/o Puttappa, Aged about 55
years,
- 11 P.T.Raju S/o Lali Thimmanna,
Aged about 45 years,
- 12 Chandraiah P.K. S/o Late Javali
Krishnappa, Aged about 60 years
- 13 P.G.Narayanappa S/o Kokke
Govindappa, Aged about 50 years,
- 14 Puttappa S/o Late Rangajjana,
Aged about 60 years,
- 15 Ramesh P.A. S/o Anjanappa,
Aged about 40 years,
- 16 Venkatesh S/ Hanumanthappa,
Aged about 20 years,
- Defendants No.4 and 5 are the
panchayath members and
4 to 16 all are Agriculturist,
R/o Pattanagere village, Kadur taluk,
- 17 Krishnanaika, Grama Panchayathi
members, N.G.Koppalu, Pattanagere
post, Kadur taluk.

**(D.1 to 3 by Sri.CMG, D.4 to 7 by
Sri.C.B., Advocate)**



1	Date of institution of the suit	18.01.2018
2	Nature of recording of evidence	Declaration and Injunction suit
3	Date of recording of evidence	26.10.2021
4	Date on which judgment was pronounced	04.04.2026
5	Total duration	Year/s Month/s Days/ 08 02 17

(Smt. Amrin Sultana),
Prl. Civil Judge & JMFC.,
Kadur.

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

The plaintiffs have filed the present suit seeking a declaration that they are the absolute owners of the 'B' schedule property, which forms part and parcel of the 'A' schedule property. The plaintiffs have further sought a decree of mandatory injunction directing the defendants to remove the borewell, motor pump, pipes, and electrical accessories illegally installed in the suit property, along with costs and such other reliefs.



2. The brief facts of the plaintiff's case are as follows:

The plaintiffs are the absolute owners and are in peaceful possession and enjoyment of the plaint schedule property measuring 1 acre 27 guntas in Survey No. 7/3 of Pattanagere Village, Kadur Taluk. The said property was allotted to the plaintiffs in a family partition under M.R. No. 16/2002-03, and since then they have been in continuous possession and enjoyment of the same. The plaintiffs, for the benefit of the general public, have voluntarily left a portion of land measuring 16 feet × 600 feet on the North- South side of the suit schedule property to facilitate access towards Maradihalli Village. The said land was not acquired by the Government, nor was any compensation paid to the plaintiffs. After leaving the said portion, the plaintiffs have fenced the remaining property by putting up stone pillars and barbed wire fencing. They have also developed the land by digging a borewell by investing substantial amounts, including



availing a loan from Canara Bank, Kadur, and have cultivated areca nut and coconut crops for their livelihood. There is no *nakasha road* or government-recognized road existing towards the northern or eastern side of the suit schedule property leading to Maradihalli Village. The access provided by the plaintiffs was purely voluntary and not pursuant to any legal acquisition. While so, the defendants, particularly Defendant No.1 (PDO of the Grama Panchayat) and Defendant Nos. 4 to 17, in collusion with each other and with mala fide intention, attempted to interfere with the peaceful possession of the plaintiffs. On 11.01.2018, the said defendants unlawfully trespassed into the suit schedule property, demolished the stone pillars and barbed wire fencing, destroyed areca plants, and during nighttime, brought a borewell rig and illegally drilled a borewell within the plaintiffs' property. When the plaintiffs resisted such illegal acts, the defendants, being influential persons with political backing, threatened the plaintiffs



with dire consequences, abused them in filthy language, and attempted to assault them, thereby preventing the plaintiffs from protecting their property. The plaintiffs lodged a complaint before the Kadur Police, but instead of taking appropriate action, the police issued a non-cognizable report and advised the plaintiffs to get a survey conducted, thereby indirectly supporting the illegal acts of the defendants. The Defendant No.1, being a public servant (PDO), acted without issuing any notice to the plaintiffs and in abuse of official position, colluded with Defendant Nos. 4 to 17 in illegally entering the plaintiffs' land and facilitating the digging of the borewell. Due to the illegal acts of the defendants, the plaintiffs have suffered substantial financial loss and mental agony. The defendants have encroached upon approximately 5x40 feet in the north-eastern portion of the suit property and have installed a borewell along with motor pumps and electrical connections. The plaintiffs are unable to resist the unlawful acts of the defendants due to their influence



and threat to life and property, and hence are constrained to approach this Hon'ble Court seeking appropriate relief.

3. After institution of the suit and service of summons, Defendant No.1 appeared and filed written statement, which is adopted by Defendant Nos. 2 to 17. The defendants have contended that the suit of the plaintiffs is not maintainable either in law or on facts for non-compliance of the mandatory provisions under Section 80 of CPC and relevant provisions of the Karnataka Panchayat Raj Act, 1993, and hence the suit is liable to be dismissed.

4. The defendants have denied the plaint averments as false and incorrect. It is contended that though the suit property originally measured 1 acre 27 guntas as per RTC, the plaintiffs have already left a portion of land measuring 16 feet × 600 feet for formation and widening of the Pattanagere–Maradihalli road, and therefore the plaintiffs are now in possession of only 1 acre 18 guntas.



The said road is a public road having a width of about 135 feet, and the plaintiffs have no right, title, or interest over the same.

5. It is further contended that the plaintiffs are attempting to encroach upon the public road by falsely including the borewell within their property. The borewell in question was dug on 11.01.2018 by the Grama Panchayat on the road margin for the purpose of providing drinking water to the villagers, and the installation of motor and electrical connections was also done lawfully. The defendants specifically deny the allegations of trespass, damage to fencing and crops, and use of force. It is contended that Defendant No.1 has acted in discharge of official duties and there is no illegality or collusion as alleged. Hence, the defendants have prayed for dismissal of the suit with costs.

6. Based on the pleadings of the parties, this Court has framed the following issues:



ISSUES

1. Whether the plaintiffs prove that they are in possession of the suit schedule property as on the date of filing of the suit?
2. Whether the plaintiffs prove that the defendants have interfering to their peaceful possession and enjoyment of the suit schedule property?
3. Whether the plaintiffs are entitled to the reliefs sought for in the plaint?
4. What order or decree?

ADDITIONAL ISSUES

1. Whether the plaintiffs prove that they are the absolute owners of the 'B' schedule property, which is part and parcel of the 'A' schedule property?

2. Whether the plaintiffs are entitled for recovery of possession of the 'B' schedule property?

7. In order to prove their case, Plaintiff No.1 has examined himself as PW1 by filing his examination-in-chief affidavit, wherein he has reiterated the averments made in the plaint. The plaintiffs have produced



documentary evidence, which are marked as Exhibits P1 to P22.

8. On the other hand, Smt. Jayanthi, Panchayat Development Officer of Pattanagere Grama Panchayat (Defendant No.1), has been examined as DW1. She has filed her examination-in-chief affidavit reiterating the contents of the written statement, and the defendants have produced documents marked as Exhibits D1 to D17.

9. During the course of cross-examination of DW1 by the learned counsel for the plaintiffs, one photograph was confronted and the same has been marked as Exhibit P23.

10. Further, this Court had appointed the Taluk Surveyor as Court Commissioner to ascertain the location of the disputed borewell. The Commissioner executed the warrant and submitted his report. The Court Commissioner was examined as CW1, and through him, documents have been marked as Exhibits C1 to C7.



11. Heard the arguments of both sides. Perused the pleadings, oral and documentary evidence available on record. The learned counsel for the defendants has also filed written arguments along with a list of decisions, which have been duly considered.

12. Upon appreciation of the entire material on record, this Court answers the above issues as follows:

Issue No.1 : In the Affirmative,

Issue No.2 : In the Affirmative,

Issue No.3 : In the Affirmative,

Additional Issue No.1: In the Affirmative,

Additional Issue No.2: In the Affirmative,

Issue No.4 : As per the final Order for the following;

:: R E A S O N S ::

13. Issue No.1, 2 and Addl. Issue No.1 : The case of the plaintiffs is that they are the absolute owners and are in lawful possession of the suit schedule property and that the defendants have illegally interfered with their



possession by drilling a borewell within their property. On the other hand, the defendants contend that the borewell has been drilled on the road margin and not within the plaintiffs' property.

14. In order to substantiate their case, Plaintiff No.1 has examined himself as PW1 and has reiterated the averments made in the plaint. The plaintiffs have produced documentary evidence, out of which the relevant documents are considered for adjudication of the present issues.

15. Exhibit P1, being the RTC extract pertaining to Survey No. 7/3, discloses that the suit schedule property measuring 1 acre 27 guntas stands in the name of Plaintiff No.1. The said entry supports the claim of possession. Exhibit P2, the mutation extract, establishes the mode of acquisition of the property by the plaintiffs pursuant to partition. Exhibit P22, the registered partition deed dated 03.12.2002, clearly evidences that



the suit schedule property has fallen to the share of the plaintiffs.

16. Further, Exhibit P3 (Atlas), Exhibit P4 (Akarband), and Exhibit P5 (Village Map) are public documents, which corroborate the identity, location, and boundaries of the suit schedule property. Exhibit P6, being the letter issued by the competent authority for installation of an electric pump set to the borewell, indicates that the plaintiffs had developed the property and were in settled possession. Exhibits P7 to P9, being photographs, also support the existence and nature of the property.

17. On the other hand, Defendant No.1 has examined herself as DW1 by filing her examination-in-chief affidavit, wherein she has reiterated the defence that the disputed borewell has been drilled on the road margin and not within the plaintiffs' property.

18. The Court Commissioner, Sri. Srinivas H.S.,



Taluk Surveyor, has been examined as CW1. In his evidence, he has categorically deposed that the disputed borewell is situated within the boundaries of the plaintiffs' property bearing Survey No. 7/3. He has further stated that there is no nakasha road existing in the said survey number and that no acquisition proceedings have been undertaken for formation of any road or for installation of the borewell.

19. The Commissioner's report and the documents marked through him (Exhibits C1 to C7) clearly indicate the location of the borewell within the suit schedule property. Further, the sketch produced (Exhibit P6) also supports the case of the plaintiffs and demonstrates that the borewell is situated within Survey No. 7/3 and not on any legally recognized road margin.

20. The defendants have relied upon Exhibit D16, which is a proposed plan for improvement of the road from Doddapattanagire to Maradahalli in Kadur Taluk, in



order to establish the existence of a road. However, the said document only indicates a proposal for road improvement and does not confer any legal right over the plaintiffs' property. When admittedly the alleged road is stated to pass through the plaintiffs' land, no acquisition proceedings have been initiated, nor is there any nakasha road reflected in the village map. In the absence of lawful acquisition or due process, the defendants cannot claim any right over the suit schedule property. Mere proposal or improvement of a road does not authorize the defendants to enter upon the plaintiffs' land or to dig a borewell therein. Hence, the reliance placed on Exhibit D16 does not advance the case of the defendants.

21. The plaintiffs have not denied the existence of a road; however, their specific case is that the said road passes through their property and that they have voluntarily left a portion of their land for the use of villagers as a matter of convenience. It is their contention that such voluntary act does not amount to dedication or



transfer of ownership in favour of the public or the Government, and in the absence of any lawful acquisition proceedings, the plaintiffs continue to retain right, title, and interest over the said portion of land.

22. In this regard, it is relevant to note that mere permissive use of land by the public does not create any legal right, easement, or vesting of title in favour of the Government or local authority unless such use is supported by statutory acquisition or a legally recognizable process. The defendants have not produced any material to show that the said portion of land has been acquired under any law or that compensation has been paid to the plaintiffs. There is also no evidence to establish that the said road is a “nakasha road” or that it is reflected as a public road in the revenue records.

23. On the contrary, the evidence of CW1, the Court Commissioner, who is an independent technical officer, clearly establishes that:



The borewell is situated within the boundaries of Survey No. 7/3;

There is no officially recognized road passing through the said survey number;

No portion of the land has been acquired for public purpose.

24. The report of the Court Commissioner carries considerable evidentiary value, particularly when it is supported by survey records and has not been effectively discredited in cross-examination.

25. Further, the defendants have not placed any convincing documentary evidence to contradict the revenue records produced by the plaintiffs. The RTC, mutation extract, and partition deed collectively establish the title of the plaintiffs, while the oral and documentary evidence establish their possession.

26. So far as interference is concerned, the plaintiffs have specifically pleaded that the defendants have trespassed into the suit schedule property and drilled a



borewell. The very act of drilling a borewell and installing motor pumps and electrical accessories within the property of the plaintiffs clearly constitutes an act of interference and encroachment. The existence of the borewell itself is not in dispute; the only dispute is with regard to its location. Once it is established that the borewell is situated within the plaintiffs' property, the act of the defendants in installing the same without consent or lawful authority amounts to illegal interference with the peaceful possession and enjoyment of the plaintiffs.

27. Therefore, the contention of the defendants that the borewell is situated on the road margin cannot be accepted. In the absence of proof of existence of a legally recognized road or lawful acquisition, the plea of the defendants remains unsupported.

28. Accordingly, this Court is of the considered opinion that the plaintiffs have successfully proved that: They are in lawful possession of the suit schedule



property as on the date of the suit; they are the absolute owners of the 'B' schedule property forming part of 'A' schedule property; and the defendants have illegally interfered with their possession. Hence, Issue No.1, **Issue No.1 and 2 and Additional Issue No.1 are answered in the Affirmative.**

29. Issue No.3 and Addl Issue No. 2 : Issue No.3 relates to the entitlement of the plaintiffs for the reliefs sought in the plaint, namely declaration, mandatory injunction and consequential reliefs. Additional Issue No.2 pertains to whether the plaintiffs are entitled for recovery of possession of the 'B' schedule property.

30. At the outset, the defendants have contended that the suit is not maintainable for non-compliance with the mandatory provisions under Section 80 of the Code of Civil Procedure. In this regard, it is pertinent to note that the suit was instituted on 18.01.2018, this Court, upon considering the urgency of the matter, has granted



permission to the plaintiffs to institute the suit by dispensing with the statutory notice as contemplated under Section 80(2) of CPC. When such leave has been granted by the Court, the requirement of prior notice under Section 80(1) of CPC stands duly waived. Therefore, the contention of the defendants regarding non-compliance of Section 80 CPC is untenable and cannot be accepted.

31. In view of the findings recorded on Issue No.1, Issue No.2 and Additional Issue No.1, this Court has already held that the plaintiffs are the absolute owners of the 'B' schedule property forming part and parcel of the 'A' schedule property and that they were in lawful possession of the same as on the date of the suit. It is further held that the defendants have illegally interfered with the peaceful possession and enjoyment of the plaintiffs by encroaching upon a portion of the suit property and by drilling a borewell therein.



32. The material on record clearly establishes that the defendants have installed a borewell along with motor pump, pipes and electrical accessories within the suit schedule property without any lawful authority. The defence taken by the defendants that the said borewell is situated on a public road margin has already been negated by this Court based on the cogent evidence of the Court Commissioner and the revenue records.

33. Once it is established that the defendants have encroached upon the property of the plaintiffs and have put up installations therein without any legal right, the plaintiffs are entitled to seek restoration of their possession. The act of the defendants amounts to unlawful dispossession to the extent of the encroached portion measuring approximately 5 x 40 feet in the north-eastern portion of the suit schedule property.

34. Further, the installation of borewell, motor pump and other accessories by the defendants in the



plaintiffs' land constitutes a continuing wrong. So long as such illegal structures remain, the plaintiffs are deprived of full enjoyment of their property. Therefore, mere declaration of title would not afford complete relief to the plaintiffs unless the encroachment is removed.

35. In such circumstances, a decree of mandatory injunction directing the defendants to remove the borewell, motor pump, pipes and electrical accessories is necessary to restore the plaintiffs to their original position. The plaintiffs are also entitled to recovery of possession of the encroached portion of the 'B' schedule property.

36. The contention of the defendants that the acts were done in discharge of official duty cannot be accepted, as no material is placed on record to show that the defendants had any lawful authority, sanction or acquisition proceedings permitting them to enter upon the plaintiffs' land and install the borewell. Public



purpose, however laudable, cannot be achieved by violating private property rights without following due process of law.

37. Therefore, this Court is of the considered opinion that the plaintiffs are entitled for the relief of declaration, mandatory injunction and recovery of possession as prayed in the plaint. Accordingly, **Issue No.3 and Additional Issue No.2 are answered in the Affirmative.**

38. Issue No.4: in view of the discussion, made above, I proceed to pass following;

ORDER

The suit filed by the plaintiffs is hereby decreed with costs.

It is hereby declared that the plaintiffs are the absolute owners of the 'B' schedule property, which forms part and parcel of the 'A' schedule property.

The defendants, their agents, servants or anybody claiming under



them are hereby directed by way of mandatory injunction to remove the borewell, motor pump, pipes, electrical accessories and any other installations put up in the 'B' schedule property, at their own cost.

The defendants are further directed to deliver vacant possession of the encroached portion of the 'B' schedule property, measuring approximately 5 x 40 feet situated in the north-eastern portion of the suit A schedule property, to the plaintiffs.

The defendants shall comply with the above directions within 60 (sixty) days from the date of this decree.

In the event of failure on the part of the defendants to comply with the above directions within the stipulated time, the plaintiffs are at liberty to get the decree executed through due process of law, through Court, and the costs incurred for such execution shall be recoverable



Ex.C6 : instruction
Ex.C7 : Sketch
: Requisition given to the police

(Smt. Amrin Sulthana),
Prl. Civil Judge and JMFC,
Kadur.

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