



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C. N.R.PURA, ITINERATE AT KOPPA**

Present: Sri. Raghunatha Gowda K.T., B.Com., L.L.B.,
Senior Civil Judge and J.M.F.C. N.R.Pura, Itinerate
At Koppa

Dated this the 7th day of March, 2026

REGULAR APPEAL No.16/2025

Appellant: Smt. Savithri N. Rao,
W/o. K.G. Nagesh Rao,
Aged about 68 years,
R/o. Balaga, Belagola Village,
Narve post, Koppa Taluk,
Present R/o. Vinobha Nagara,
2nd Cross, 1st Stage,
Shivamogga City.
Represented by her GPA Holder.

(By: Sri. G.M.V., Advocate)

-V/s-

Respondents: Sri. Vijendra,
S/o. Thamme Gowda,
Aged about 47 years,
R/o. Balaga, Belagola Village,
Narve Post, Koppa Taluk.

(Represented by Sri. P.T.D., Advocate)



3. The G.P.A. holder of plaintiff filed the suit against defendant for a relief of permanent injunction.

4. **Brief facts of the plaintiff's case before the trial court as under:**

a) It is the case of the plaintiff that, the plaintiff is the absolute owner in possession and enjoyment of the suit property, she purchase the same under registered sale deed vide document No.398/2012-13 from One Smt. Mahalakshmi and her children's, who are none other than the own brothers of the G.P.A. Holder of plaintiff. Further she contended that she is in peaceful possession and enjoyment of the suit property by growing areca in the suit property, except herself no other person have any right, title or interest over the suit property and she has fence the suit property by barbed wires.

b). Further she contended that the defendant is having his land towards the Northern side of the suit property, he has no manner of right, title or interest over the suit property, but he has always give pin-pricks to herself to grab the suit property for one or other way.



Further she contended that on 05.04.2021 and 17.04.2021 the defendant is illegally try to remove the fence around the suit property so that reason she lodge a complaint to the Koppa Police Station and the police warned to the defendant.

c). Further she contended that One K.G. Anathamurthy has filed a suit against defendant father by name Thammayya Gowda in O.S. No.36/2003 before this Court with regard to schedule property and the said suit was decreed. Further she contended that defendant is not party to the said suit and decree is not binding on him. Hence she constrain to file this suit to restrain his illegal act. Hence she constrain to file the suit.

5. In response to the summons, the defendant appear through his counsel and filed the written statement.

6. The written statement of defendant before the trial court as under:

a) In the written statement defendant No.1 admitted that the plaintiff is in possession of some properties i.e.,



surrounded by barbed wire fence. Further he admitted that he is having the landed property to the Northern side of plaintiff property. Further he denied the entire contents of plaintiff averments. Further he contended that the boundaries shown to the schedule properties are imaginary and created by the plaintiff for the suit. Further he contended that he is having property in Sy. No.167/2 of Belagola Village, by the Southern side of his land the Sy. No.107 of plaintiff land is situated.

b). Further he contended that the barbed wire fence clearly bifurcate the property of plaintiff and himself, since from many years without interruption from each other. Even though the greedy of plaintiff to grab the his land to created false story in the plaint and filed this suit. Further plaintiff has no right to defendant agricultural activities in Sy. No.167/2 of Belagola Village. Hence he prays to dismiss the suit of the plaintiff with cost.

7. Based on the above pleadings the trial court framed the following;



ISSUES

1. Whether the plaintiff proves that she is in possession and enjoyment of the suit schedule properties as on the date of filing of this suit?
2. Whether the plaintiff proves that the defendant has interfered with her peaceful possession and enjoyment over the suit schedule properties as stated in the plaint?
3. Whether the plaintiff is entitled for the reliefs as sought for?
4. What order or decree?

8. In order to prove the case, the G.P.A. Holder of plaintiff examined himself as PW1 and got marked 15 documents as Ex. P1 to P15 and close his side. Per contra defendant examined himself as DW1 and no documents were marked and close his side.

9. After the trial court hearing arguments and answered the issue No.1 to 3 in the negative and dismiss the suit of the plaintiff. Being aggrieved by the said judgment and decree, the plaintiff / appellant has preferred an appeal on the following common grounds;



a) *The Hon'ble lower court has not appreciated the pleadings and evidence of the plaintiff and for away from the sound principals of law.*

b) *The plaintiff has proved his case and also the previous injunction order issued by the court is also produced and the court is failed to appreciate the plaintiff case as per law.*

c) *The court is not known with respect to the kharab land, the kharab land is the part and parcel of the survey number and at the time of sale deed no one is right the sale the kharab land which is reserved for the particular purpose, accordingly said kharab land in not included the sale deed. Hence the Hon'ble lower court not appreciated that the kharab land in the part and parcel of the plaintiff property and he is in peaceful possession and enjoyment of the property and it is no way concerned to the defendant property, since the court has no preliminary knowledge with respect to kharab land hence dismissal of the suit is against to the sound principles of law.*

d) *The court has not appreciated the evidence of the plaintiff and the cross-examination of the defendant and the defendant has stated in the cross-examination survey number. "ಸರ್ವೆ ನಂ.107/3 ಮತ್ತು ಸರ್ವೆ ನಂ.107/4 ರಲ್ಲಿ ವಾದಿಯವರಿಗೆ ಹೊರತುಪಡಿಸಿ ನನಗೆ*



ಅವುಗಳಲ್ಲಿ ಯಾವುದೇ ಹಕ್ಕು ಅಧಿಕಾರ ಇರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ”. *It is clearly shows that he is interfering with the peaceful possession and enjoyment of the plaintiff property. Further he is admitted that “ಶ್ರೀ ಅನಂತಮೂರ್ತಿಯವರ ಜಮೀನು ನಮ್ಮ ತಂದೆಯವರ ಜಮೀನಿನ ದಕ್ಷಿಣ ದಿಕ್ಕಿನಲ್ಲಿರುವುದು ಸರಿ. ಸರ್ವೆ ನಂ.107ರಲ್ಲಿ ಅತಿಕ್ರಮವಾಗಿ ಪ್ರವೇಶಿಸಲು ನನಗೆ ಯಾವುದೇ ರೀತಿಯ ಹಕ್ಕು ಮತ್ತು ಅಧಿಕಾರ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ”.*

e) “ನಾಗರಬನ ನಮ್ಮ ಸರ್ವೆ ನಂ.167ರಲ್ಲಿದ್ದು ಸರ್ವೆ ನಂ.107ರಲ್ಲಿ ಬರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ”. *This shows is claiming a portion of a property of Sy. No.107 belongs to him, in the W/S filed by the defendant in no where he has stated that Nagarabana is situated in Sy. No.167 and the plaintiff is claiming Nagarabana a portion as 107 as his property. The lower court has previously granted an injunction order against the defendant and the lower court was not verified with respect to the previous judgment produced by the plaintiff and not stated / it is for the different property and not accepted the judgment without any reason.*

f) *The appellant begs to submit that he has proved the case and the lower court has come to the wrong conclusion as the plaintiff has not proved the case and possession over the property with respect to pot/kharab and the court has stated he cannot decided the who is in possession of the suit*



schedule property on the date of filing of suit and interference caused by the defendant further the court has stated that the suit schedule property measurement stated in the plaint which is including the kharab the plaintiff has failed to prove the defendant interference which is wrong assumption of the lower court and the question of law with respect to kharab land is not verified and appreciated.

Hence, on all these grounds he prays to allow the appeal and to set aside the impugned judgment and decree passed by the trial court and to decree the suit of the plaintiff.

10. The G.P.A Holder of appellant filed IA No.III to V Under Order XLI Rule 27 of C.P.C. with prayer to permit him to produce the additional documents and lead further evidence. These applications are supported with an affidavit duly sworn by the G.P.A. Holder of appellant contended that in order to prove the case the production of said documents are very much necessary, the said documents are not produce before the Trial Court. Further if these applications are allowed no loss or hardship



caused to the other side. Hence, prays to allow the IA No.III to V.

11. The respondent counsel filed common objection to the said applications contended that the applications filed by the appellant is not maintainable either in law or facts. Further he contended that the appellant has not examine the said Ananthamurthy as her witness before the Trial Court and if the injunction order obtained by K.G. Ananthamurthy against the father of defendant is not binding to the respondent and the production of documents sought by the appellant is not relevant to adjudicate the appeal and in order to drag on the proceedings the present applications are filed. Hence he prays to reject these applications.

12. Notice served to the respondent, respondent appear before the court through his counsel.

13. The trial court records have been secured.

14. Heard the arguments on both side, appellant counsel filed a memo with decision and perused materials placed on record.



15. The following points would arise for my consideration;

- 1) Whether the appellant has made out grounds to produce the additional documents and those documents are very much necessary to determine the fact in issue between the parties?
- 2) Whether the trial court has come to wrong conclusion that the plaintiff / appellant failure to prove that she was in possession and enjoyment of the suit property?
- 3) Whether the trial court has come to wrong conclusion that plaintiff has failure to prove that defendant caused interference with her peaceful possession and enjoyment of the suit property?
- 4) Whether the trial court has committed an error in dismissing the suit of the plaintiff?
- 5) Whether the judgment and decree passed by the trial court is perverse, capricious and it requires interference by this Court?
- 6) What order?



16. My answer to the above points are as under:

Point No.1 to 5 : In the Negative.

Point No.6 : As per the final order
for the following:

REASONS

17. **Point No.1:** The G.P.A. Holder of appellant filed IA No.III to V Under Order XLI Rule 27 of C.P.C prayer to permit the appellant to adduce additional evidence by production of documents i.e., rectification of sale deed dated 06.06.2024 and certified copy of the judgment in O.S. No.36/2003.

18. Further appellant has contended that in the trial Court he has not produce those documents and said documents are very much required to proper adjudicate of the appeal. Further in order to proper adjudicate of the matter the marking of said documents are very much necessary. In support of his argument he relied on decision reported in **2025(1) KCCR 601 (DB) in between the Secretary of Paddy and Rice Production, Special A.P.M.C., Karatagi V/s. The Land Acquisition Officer**



and Assistant Commissioner, Koppala and others. I have gone through the above said judgment the Hon'ble High Court held that in relation to quantum of compensation to be fixed for the subject land it would be necessary to provide an opportunity to the claimant to adduce oral evidence along with documentary evidence and such circumstances the additional evidence can be taken.

19. As per Order XLI Rule 27 of C.P.C. the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the appellate court the appellant has show the court from whose decree the appeal is preferred as refused to admit evidence which but even admitted or the party to produce additional evidence establish that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not after the exercise of due diligence be produced by him at the time when decree the appeal against was passed or the appellate court requires any documents to be produced or any witness to be examined to enable it to produce judgment or any other substantial cause.



20. According to above provisions, the plaintiff has show due diligence for non production of documents in the trial court and even though the documents produced by the appellant before the trial court but the trial court without any sufficient cause refused to take on the such documents or the documents are going to produced by the plaintiffs are very much necessary for other substantial cause. Admittedly the appellant has produce the documents i.e., copy of the rectification of sale deed and certified copy of the Judgment in O.S. No.36/2003. Further in the plaint at para No.6(a) plaintiff pleaded that one K.G. Ananthamurthy obtained the decree of permanent injunction against father of defendant by name Thammayya Gowda, but the appellant has not produce the said document before the trial court and moreover the said suit was disposed on 01.04.2004. Further the plaintiff produce the rectification of sale deed dated 06.06.2024 that after disposal of the suit before the trial court, plaintiff had entered into rectification of sale deed by its previous owner.

21. Further I relied on the decision reported in **2009(3) K.L.J 333 in between Vasanta rao Bapusaheb**



V/s. Ramachandra @ Ramanathasa, the above said judgment at Para No 14 held with respect to Order XLI Rule 27 of C.P.C for production of additional evidence, the documents sought to be produced have no reference before the trial court and there was no pleadings or evidence which form a base for production of document, ordinarily the court should exercise for production of additional evidence only in exceptional cases to avoid failure of justice. The ratio laid down in the said judgment is applicable to the facts and circumstances of this case, in the present case there is no due diligence on the part of appellant to produce the said documents before the trial court and there is no pleading or evidence which form base for production of documents.

22. Further G.P.A. Holder of appellant has not stated in his affidavit that what was the hurdle to the appellant to produce those documents before the trial court. Therefore it is very clear that the documents obtained by the appellant before the disposal of the suit by the trial court and they are obtain the other documents in the year 2025. In the affidavit G.P.A. Holder of appellant stated that the said documents are required to adjudicate the appeal. The



reasons assigned by the appellant cannot be brushed aside. In this regard respondent has specifically taken contention that appellant has given false reasons. Appellant has not made efforts to place the alleged document in the trial court even though sufficient occasion in the trial court. Except that there is no specific reasons contrary to the reasons given by the appellant. So the reason given by the appellant is not proper and reasonable one for non production of document in the trial court. Now the question is whether document is going to produce the document is necessary and assist appellate court to determine the ground urged by the appellant. Therefore, to above documents are not required to determine the grounds urged by the appellant. Hence, for the above said reason **Point No.1 answered in the negative.**

23. **Point No.2 to 5:** These points are taken up together for common discussion in order to avoid repetition of facts and these points are interlinked with each other.

24. The main contention of the plaintiff that she was in possession and enjoyment of the suit property, the defendant has no manner of right, title or interest over the



suit property he has caused interference with her peaceful possession and enjoyment of the suit property. In order to prove the case the G.P.A. Holder of plaintiff examined himself as PW1, he has reiterate the contents of plaint avernment in his examination in chief and 15 documents were marked as Ex. P1 to P15. Ex. P1 is the copy of the general power of attorney. Ex. P2 and P3 are the record of rights pertaining to suit properties, Ex. P4 is the copy of the mutation register in M.R. No.H1/2012-13, Ex. P5 and P6 are the endorsement and acknowledgment issued by the Koppa Police, Ex. P7 is the copy of the complaint, Ex. P8 to P12 are the photos and compact disk, Ex.P13 is the copy of the sale deed dated 04.06.2012, Ex. P14 is the certified copy of atlas and Ex. P15 is the certified copy of the Pakka book / form No.5. The learned counsel for defendant cross-examine the said witness.

25. Further in order to prove the defence, defendant examined himself as DW1 and he has reiterate the contents of written statement in his examination in chief and no documents were marked. The learned counsel for plaintiff cross-examine the said witness.



26. On careful perusal of the record plaintiff filed the suit against defendant for relief of permanent injunction. In a suit for injunction the court should consider that as on date of filing the suit plaintiff was in possession and enjoyment of the suit schedule properties as boundaries mentioned in the plaint schedule and defendant caused interference over the suit property. The burden lies on the plaintiff to prove that the boundaries shown in the plaint schedule she was in possession and enjoyment of the suit property, but in the written statement defendant admitted that some portion of property plaintiff was in possession and enjoyment of the suit property, but defendant has specifically denial the boundaries of the suit schedule property and plaintiff wrongly mentioned the boundaries of the suit properties to file the suit.

27. Further when the defendant has specifically denial of the boundaries mentioned by the plaintiff to the suit schedule property, the plaintiff must establish before the Court that within the boundaries mentioned in the plaint schedule she was in possession and enjoyment of the suit property. In this background this Court carefully perusal of the boundaries mentioned in the plaint schedule



that plaintiff claiming permanent injunction in respect of the suit schedule properties including kharab land. On perusal of Ex. P13 on 04.06.2012 the plaintiff purchase the property from one Smt. Mahalakshmi, W/o. Late. K.J. Ananthamurthy, on perusal of the schedule in the sale deed I,e Ex.P13 the vendor of the plaintiff sold the property in Sy. No.107/4 to extent of 31 guntas excluding 2 guntas of kharab land and in Sy. No.107/3 to extent of 31 guntas excluding 1 gunta of kharab land.

28. On careful perusal of the plaint schedule, the plaintiff mentioned the extent in Sy. No.107/3 to extent of 32 guntas and in Sy. No.107/4 to extent of 33 guntas including 1 gunta and 2 guntas of kharab land, what she has purchase the property as per Ex. P13 she has claimed excess of land in the plaint schedule. On careful perusal of the boundaries shown in the plaint schedule as well as the boundaries mentioned in sale deed (Ex. P13) are not tailed with each other and plaintiff has wrongly mentioned the boundaries in the plaint schedule to claiming permanent injunction against the defendant.



29. On perusal of the cross-examination of PW1, he has denied the suggestion that plaintiff purchase the property excluding the kharab land. Further PW1, admitted in his cross-examination that the boundaries mentioned in the sale deed are correct but in the plaint schedule plaintiff wrongly mentioned the boundaries. Further he has categorically deposed before the Court the boundaries of the suit schedule property.

30. Further as per say of the plaintiff in the plaint that defendant caused interference by removing the barbed wire fence, but in the cross-examination of PW1, he admitted that his property is 15 to 20 feet height the property belongs to defendant. When the plaintiff property is height of the property of defendant, he cannot caused interference by removing the barbed wire. Further he admitted that he has fence around his property and PW1 deposed that he do not know that the depicts in photos produce before the Court as per Ex. P8 and P9.

31. On perusal of the entire cross-examination of PW1, he has not lodge a complaint against the defendant that on 05.04.2021 towards northern side of the suit



property the defendant removal of 40 stone slabs. The only dispute between the parties with regard to boundaries is concern only, when the defendant specifically suggest the PW1, during the course of cross-examination that if the surveyor appointed to conduct the pakka phodi in respect of suit property, but PW1 deposed that he has objected to conduct the survey as per pakka phodi. When the dispute with regard to identity of the property and boundaries the surveyor is competent person to measure and identity of the properties then the lis between parties will resolve. Further at the time of purchasing the property the plaintiff has not made survey to the suit property and plaintiff has not made any efforts for appointment of surveyor for identification of her property.

32. On careful perusal of the entire cross-examination of DW1, during the course of cross-examination he admitted that in the suit property the plaintiff growing the crops. Further he admitted that in the year 2002-03 the Sy. No.107 was sub-phoded in 3 portion. Further DW1 categorically stated that in Ex. P8 and P9 there is no fence are shown. Admittedly the defendant property situated Northern side of the plaintiff property,



both the properties are bifurcated by fence this fact admitted by both the parties.

33. On careful perusal of the records, plaintiff pleaded in the plaint that the previous vendor of the plaintiff filed a suit against father of defendant in respect of suit property for relief of permanent injunction in O.S. No.36/2003 and on 01.04.2004 the suit was decreed. Now the defendant caused interference over the suit property. On perusal of the document produce by the plaintiff in O.S. No.36/2003 this Court take the said document as a judicial notice, on perusal of the said document in earlier the husband of vendor of the plaintiff filed a suit against defendant for relief of permanent injunction and to obtain the decree entire property i.e., Sy. No.107/P3 to extent of 32 guntas and Sy. No.107/P to extent of 33 guntas. But the boundaries mentioned in the said judgment and the boundaries mentioned in the Ex. P13 are totally different and not tailed with sale deed(Ex.P13).

34. Further on perusal of the record admittedly if the injunction order was granted same to be enforced against the legal heirs of judgment debtor / defendant. But in the



present case the previous vendor of the plaintiff obtain the injunction order is in personam and not judgment in rem. When a person obtain the judgment against the person the said judgment is in personam.

35. Further learned counsel for appellant argued that the injunction order can be enforced against the legal heirs. In support of his argument he relied on the judgment reported in **2017(3) KCCR 2289(SC) in between Prabhakar Adiga V/s. Gowri and others**. I have gone through the above said judgment with regard to Section 50 of C.P.C. legal representatives, Section 146 of C.P.C. proceeding by or against representatives and Order 21 Rule 32 of C.P.C. for execution of decree against legal representatives. As per the Hon'ble Apex Court held that the decree for permanent injunction can be enforced against legal representatives of judgment debtor. With great respect to the said judgment and the present facts and circumstances of this case not applicable, because the boundaries mentioned in the plaint schedule as well as the boundaries and extent mentioned in the Ex. P13 are not tailed with each other.



36. Further on careful perusal of the entire records as per the sale deed i.e., Ex. P13 plaintiff is owned property in Sy. No.107/3 to extent of 31 guntas and Sy. No.107/4 to extent of 32 guntas only. Further after disposal of the suit before the Trial Court on 06.06.2024 the plaintiff and his previous vendor and her children's are entered into rectification of the sale deed, on perusal of the said sale deed the plaintiff and its previous vendor are rectified only the extent, but they have not changed the boundaries in the schedule and as per the boundaries mentioned in the Ex. P13 same was mentioned in the rectification of sale deed. This fact clearly discloses that plaintiff is enter into rectification of sale deed with regard to extent only and not the boundaries. Further even though the boundaries mentioned in the rectification of sale deed is not tailed with the plaint schedule boundaries.

37. Further on careful perusal of the record as well as evidence of both the parties in between the suit property of the plaintiff and defendant property the Nagarabana is in existence, plaintiff has wrongly mentioned the boundaries she has intended to grab the Nagarabana to file this suit by



showing wrong boundaries to the suit property. Further when the defendant specifically denial the boundaries, subsequently after dismissal of the suit by the trial Court the plaintiff had entered into rectification of sale deed with regard to extent, but she has not rectification the boundaries and plaintiff has not filing amendment application before this Court to rectification of the extent and boundaries in the plaint schedule.

38. On perusal of the entire record and it is well settled principle of law that when there is an ambiguity the extent and the boundaries of the property, the boundaries will prevail over the extent. In the present case defendant has very disputed the boundaries of the plaint schedule and boundaries mentioned in the sale deed as well as rectification of sale deed are not tailed with the plaint schedule. Further plaintiff has failure to prove her possession within the boundaries mentioned in the plaint schedule. Further in an injunction suit the plaintiff must establish the possession as on date of filing the suit within the boundaries mentioned the plaint schedule, but plaintiff failure to prove the same before the trial court and the



trial Court consider the all the facts, evidence and documents produce by the plaintiff and comes to proper conclusion that plaintiff is not in possession and enjoyment of the suit property as mentioned in the boundaries. Hence the trial court consider all the all aspects in prospective manner and rightly dismiss the suit of the plaintiff. Hence this Court is opinion that the appeal filed by the appellant is liable to be dismissed and there is no necessity to interference in the judgment and decree passed by the trial court. Hence, for the above said reason I answer to **point No.2 to 5 in the Negative.**

39. **Point No.6:-** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

The regular appeal filed by the appellant under Order XLI Rule 1 R/w, Section 96 of C.P.C is hereby dismissed with cost.

Further the judgment and decree passed in O.S. No.31/2021, dated



27.04.2024 by Civil Judge and J.M.F.C
Koppa is hereby confirmed.

Office is directed to transmit the
copy of this judgment to the trial court
with its records.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, then corrected
and pronounced by me in the open court on this date the 7th day of
March 2026)

Sd/-

(Raghunatha Gowda K.T.)

Senior Civil Judge and J.M.F.C.
N.R.Pura, Itinerate at Koppa.