

KACN020002122025



**IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE
AND JMFC., AT CHAMARAJANAGARA.**

Dated this the 9th day of July, 2026

**Present: Sri. Sunil. R., B.Com., LL.B.,
I ADDL. SENIOR CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA.**

R.A. No:10/2025

- Appellants** : 1. Sri. Basavalingappa
S/o Late. Devappa,
Aged about 74 years,
Died on 26.05.2025.
- 1a. Smt. Devamma
W/o Late. Basavalingappa,
Aged about 61 years,
- 1b. Sri. B. Madappa
S/o Late. Basavalingappa,
Aged about 45 years,
- 1c. Sri. B. Nagarajappa
S/o Late. Basavalingappa,
Aged about 43 years,
Appellants No.1(a) to (c)
are R/at:
Katnavadi Village,
Harave Hobli,
Chamarajanagar Taluk.
2. Sri. Guruswamappa
S/o Late. Shivappa,
Aged about 50 years,

3. Sri. Shivappa
S/o Gurusiddappa,
Aged about 50 years,
4. Sri. Mahesha
S/o Mahadevappa,
Aged about 48 years,
5. Sri. Guruswamappa
S/o Gurumallappa,
Dead by his LR
- 5a. Smt. Rajamma
W/o Late. Guruswamappa,
Aged about 60 years,
6. Sri. Shekara
S/o Gurumallappa,
Aged about 53 years,
7. Sri. Mahesha
S/o Gurumallappa,
Aged about 45 years,
8. Sri. Shivappa
S/o Late. Nagappa,
Aged about 60 years,
9. Sri. Shambulingappa
S/o Late. Siddamallappa,
Aged about 45 years,

Appellants No.1 to 9 are

R/at:

Katnavadi Village,
Harave Hobli,
Chamarajanagar Taluk.

[By Sri. R.V., Adv.,]

V/s**Respondents :**

1. Smt. Shivamma
W/o Late. Siddamallappa,
Aged about 65 years,
2. Sri. Siddamallappa
S/o Late. Madappa,
Aged about 75 years,
Respondents No.1 and 2
are R/at:
Katnavadi Village,
Harave Hobli,
Chamarajanagar Taluk.
3. Panchayath Development
Officer
Kothalavdi Grama Panchayath,
Chamarajanagar Taluk.

[R-1 and 2 by Sri. M.C.S., Adv.,]**[R-3: Ex-parte]**

Nature of the Appeal : An Appeal under Sec.96 and under
order 41 rule 1 of CPC
against the order passed by Learned
Prl. Civil Judge and JMFC.,
Chamarajanagar in O.S.No.146/2014,
dated:23.10.2024.

Date of Presentation
of Appeal : 13.02.2025

Date of Judgment : 09.07.2026

Total Duration	:	Year	Month	Days
		01	04	26

J U D G M E N T

The appellants/defendant No.1 to 7, 10 and 11 have preferred this Regular Appeal under Sec.96 and order 41 Rule 1 of CPC assailing the judgment and decree dated: 23.10.2024 passed by the Learned Prl. Civil Judge and JMFC., Chamarajanagar in O.S.No.146/2014.

2. The appellants are the defendant No.1 to 7, 10 and 11 and respondent No.1 to 3 are the plaintiffs and defendant No.9 in O.S. No.146/2014. Parties are hereinafter referred with same rank as they were before the learned trial Court.

3. The facts of the case of the plaintiffs' before the learned trial court in brief are as under:

3a. The plaintiffs in the plaint have averred that the plaintiff No.2 had purchased the suit schedule property through registered sale deed dated:15.12.1976 from his uncle by name Veerathappa for a valuable consideration. Through MR No.2/1991-92, the khatha of the suit schedule property has been changed into the name of plaintiff No.1 and they are in possession and enjoyment of the suit schedule property and also paying taxes to the concerned authority regularly.

3b. The plaintiffs have further averred that towards southern portion and western portion of the suit schedule

property, their other properties are situated. The defendant No.1 to 7 are the residents of Katnavadi Village and their properties are not situated on either boundary of the suit schedule property or near by to the suit schedule property. Even though defendants have no manner of right, title, interest or possession over the suit schedule property, they have been interfering with their peaceful possession and enjoyment of the same. On 26.03.2013 and 07.04.2014, the defendants have threatened them to dispossess from the suit schedule property. Though they have lodged a complaint to the jurisdictional police, the defendants have not stopped their illegal acts. Hence, without any option, the plaintiffs have constrained to file the present suit for seeking the relief of permanent injunction.

4. In pursuance of suit summons, the defendant No.1 to 7, 9, 10 and 11 are appeared before the learned trial court through their counsel and filed their separate written statement respectively. During the pendency of the original suit, the name of the defendant No.8 was deleted from the cause title of the plaint as per order on IA No.X.

4a(i). In the written statement, the defendant No.1 to 7 have denied entire averments of the plaint. In the written statement, the defendant No.1 to 7 have contended that the plaintiffs have filed this suit by suppressing the material

facts. The plaintiffs have given wrong boundaries on the eastern side as road in the plaint schedule but, gramatana is situated on the eastern side of the suit schedule property. The plaintiffs have admitted the existence of gramtana on the eastern side of the suit schedule property in the earlier proceedings in OS No.236/2009. But, in the present suit, to make unlawful gain, they have given wrong boundary.

4a(ii). The defendant No.1 to 7 have further contended that on the eastern side of suit schedule property, gramtana is situated and in the said gramtana place, sites and sheds belongs to them are situated. Their ancestors have been in possession and enjoyment of the same for more than 100 years. On the southern side of their properties, many houses have been constructed by number of persons adjacent to the suit property. The plaintiffs are claiming the sites and sheds belongs to them and trying to dispossess from the said sites and sheds. The plaintiffs have no right over the sites and sheds belonging to them which are situated on the eastern side of the suit property. Hence, on these grounds, the defendant No.1 to 7 pray to dismiss the suit of the plaintiffs filed before the learned trial court.

4b(i). In the written statement, the defendant No.9 denied entire averments of the plaint. In the written statement, the defendant No.9 has contended that towards

eastern side of the suit schedule property, there is a gramtana property is situated and some persons have constructed the houses therein. Before filing of the present suit, the plaintiffs have not issued the statutory notice to him as per Karnataka Panchayath Raj Act. The plaintiffs have not measure and fixed the hadbath over the suit schedule property. Hence, on these grounds, the defendant No.9 prays to dismiss the suit of the plaintiffs filed before the learned trial court.

4c(i). In the written statement, the defendant No.10 and 11 have denied entire averments of the plaint. In the written statement, the defendant No.10 and 11 have contended that there are sites and houses constructed on the eastern side of the suit schedule property. Among the houses constructed, the houses belonging to them and their relative Madappa are also situated on the eastern side of the suit schedule property. The house property which was purchased by son of defendant No.10 through registered sale deed dated:15.07.2021 is belongs to Madappa which is 100 years old. The said house property is situated very adjacent to the suit schedule property on the eastern side. On the eastern side of the house of Smt. Mahadevamma, road is situated. But, the plaintiffs are claiming that there is a road on the eastern side of their property.

4c(ii). The defendant No.10 and 11 have further contended that the defendant No.11 had acquired the site property through the release deed dated:31.05.1965. There is no road in between the site of the defendant No.11 and the suit property. There is a road on the eastern side of the site belonging to defendant No.11. As such, the plaintiffs are not entitled for the relief of permanent injunction against them. Hence, on these grounds, the defendant No.10 and 11 pray to dismiss the suit of the plaintiffs filed before the learned trial court.

5. Based on the rival pleadings, the learned trial court has framed 5 Issues. After hearing the matter, on 23.10.2024 the learned trial court decreed the suit of the plaintiffs. The said decree was challenged by the appellants/defendant No.1 to 7, 10 and 11 in the present appeal. The learned trial court has framed the following;

ISSUES

1. Whether the plaintiffs prove that they were in peaceful possession and enjoyment of the suit schedule property on the date of institution of the suit?
2. Whether the plaintiffs further prove alleged interference by the defendants over their peaceful possession and enjoyment of suit schedule property?

3. Whether the defendants prove that the description of the boundary in the plaint schedule is wrong?

4. Whether the plaintiffs are entitled for permanent injunction relief as sought for?

5. What order or decree?

6. In order to prove the contention before the learned trial court, the plaintiff No.2 examined himself as PW.1 and got marked 13 documents as Ex.P1 to 13. The plaintiffs have examined two witnesses on their behalf as PW.2 and 3. On the other hand, the defendant No.10 examined himself as DW.1 and got marked 2 documents as per Ex.D1 and 2.

7. After hearing the arguments, the learned trial court decreed the suit of the plaintiffs on 23.10.2024. The said judgment and decree has been challenged by the appellants/defendant No.1 to 7, 10 and 11 in this appeal on the various grounds urged in the appeal memo as follows:

1. The intention of the plaintiffs in filing of the suit is to claim road on the eastern side of the suit property which is not at all in existence but the learned trial court has decreed the suit without considering the said aspect.

2. On the eastern side of the suit property, gramatana is situated. In the said gramatana, the defendants are having sites and plaintiffs are claiming road over the properties of the defendants.

But, the learned trial court failed to observe the same.

3. The defendants never denied the ownership and possession of the suit property except the boundary given on the eastern side of suit schedule property. The plaintiffs have not produced any material to prove the same even though it is specifically denied by the defendant.

4. In the earlier proceedings, the plaintiffs have admitted that there is gramatana on the eastern side of the suit property but the plaintiffs have intentionally suppressed the said facts in the present suit.

5. The defendants could not appear and conduct further proceedings in the present suit due to their serious financial problems and wandering for searching jobs. In the absence of evidence by the defendants, the learned trial court was passed the impugned judgment and decree.

6. The impugned judgment and decree passed by the learned trial court is perverse, capricious, vexatious and opposed to the principles of natural justice.

8. In pursuance of the notice issued by this court, the respondent No.1 and 2 are appeared through their counsel and contested the Appeal. The respondent No.3 remained absent and placed ex-parte. The records of the learned trial court are summoned for reference in this appeal.

9. The learned counsel for the appellants/defendant No.1 to 7, 10 and 11 and respondent No.1 and 2/plaintiffs have addressed their arguments. Perused the materials available on record and findings recorded by the learned trial court.

10. In view of the rival contentions raised by the parties, the points that arise for my consideration are as follows;

1. Whether the learned trial court is justified in concluding that Government road is situated on the towards eastern side of the suit schedule property?
2. Whether the learned trial court is justified in holding that the defendants are interfering with the possession and enjoyment of the suit schedule property?
3. Whether the judgment and decree passed by the learned trial court calls for any interference by this court?
4. What order or decree?

11. Now, my answers to above points are as follows:

Point No.1: **In the Negative**

Point No.2: **In the Negative**

Point No.3: **In the Affirmative**

Point No.4: **As per final order,
for the following:**

REASONS

12. Point No.1 to 3: These 3 points are inter-linked to each other. Hence, taken together for common discussion in order to avoid repetition of facts and evidence. In this appeal, the appellants/defendant No.1 to 7, 10 and 11 have urged the ground that the judgment and decree passed by the learned trial court is erroneous, vexatious and opposed to the principles of natural justice. It is already averred that the respondent No.1 and 2/plaintiffs have filed the original suit before the learned trial court against the appellants and respondent No.3 for seeking the relief of permanent injunction in respect of suit schedule property i.e., agricultural land bearing Sy. No.241 measuring 1 acre 18 guntas situated Katnavadi Village, Harave Hobli, Chamarajanagar Taluk.

13. In the plaint, the plaintiffs have stated that they have purchased the suit schedule property through the registered sale deed dated:15.12.1976 and they are in possession and enjoyment of the same by changing the khatha in the name of plaintiff No.1. Per contra, the defendants have contended that the plaintiffs have given wrong boundary on the eastern side of suit schedule property with an intention to grab their property. In the earlier proceedings, the plaintiffs have admitted the existence of

gramatana on the eastern side of the suit schedule property. Therefore, the plaintiffs are not entitled for the relief as sought for.

14. In the present suit, it is an admitted fact that the plaintiffs are the owners and in possession of the suit schedule property. However, dispute between the parties pertains to the eastern boundary of the suit schedule property. According to the plaintiffs, a 'Government road' is existed on the eastern side of the suit schedule property, whereas the defendants have contended that no Government road is situated on the eastern side and that there exists a 'Gramatana' (village site). Thus, the existence and nature of the eastern boundary of suit schedule property constitute the principal issue in dispute requiring for adjudication.

15. Upon careful perusal of the documents placed on record, it is noticed that the plaintiffs namely Sri. Siddamallappa and Smt. Shivamma had earlier instituted a original suits in O.S. No.126/2005 and O.S. No.236/2009 and against Mahadevappa and Kempalingappa respectively seeking for the relief of permanent injunction and declaration, permanent injunction in respect of agricultural land bearing Sy. No.241 measuring 3 acres 25 guntas and 2 guntas respectively. In the said earlier original suits, the plaintiffs have specifically described the eastern boundary of

the suit schedule property as 'Village sites' and 'Vacant site'. The said pleading forms part of the judicial record and has a direct bearing on the identity and location of the property claimed by the plaintiffs.

16. In the present suit, however, the very same plaintiffs have sought the relief of permanent injunction in respect of the suit schedule property by describing the eastern boundary as "Government Road." Thus, there is a material variation in the description of the eastern boundary between the earlier original suits and the present proceedings. The identity of the suit property is the foundation for granting the equitable relief of permanent injunction. When the plaintiffs themselves have furnished inconsistent boundary descriptions in respect of the same survey number and extent, the court is required to ascertain whether the eastern portion of the suit schedule property is a government road or gramatana. Unless such ambiguity is resolved, the court cannot arrive at a proper finding regarding entitlement of relief sought by the plaintiffs.

17. The learned trial court while deciding the original suit has not adverted to the earlier pleadings in OS No.126/2005 and O.S. No.236/2009 nor it has examined the effect of the contradictory boundary descriptions. No issue was framed regarding the identity of the property nor any

opportunity was afforded to the parties to explain the inconsistency by producing appropriate evidence, such as revenue records, survey sketch or commissioner's report, if necessary. The contradiction relating to the eastern boundary is not a minor discrepancy but, it goes to the root of the matter. The determination of the exact identity and location of the suit schedule property is essential before adjudicating the rights of the parties.

18. In view of the discussion made supra, the judgment and decree of the learned trial court cannot be sustained and deserve to be set aside. The learned trial court has failed to properly adjudicate the material issue relating to the identity and boundaries of the suit schedule property. Therefore, in the interest of justice and to avoid miscarriage of justice, the matter requires to be remanded to the learned trial court for fresh consideration with regard to identity of eastern portion of suit schedule property. Accordingly, the matter is liable to be remanded for fresh disposal after affording both parties an opportunity to adduce additional evidence and after recording findings on the identity and boundaries of the suit schedule property. Hence, this court answered the **Point No.1 and 2 in the Affirmative and Point No.3 in the Negative.**

19. Point No.4: For the reasons discussed above, this court proceed to pass the following :

ORDER

The Appeal filed by the appellants/defendant No.1 to 7, 9 and 10 under Sec.96 and under order 41 Rule 1 of CPC is hereby Partly allowed.

Accordingly, the Judgment and decree in O.S.No.146/2014, dated:23.10.2024 passed by the Learned Prl. Civil Judge and JMFC., Chamarajanagar is hereby set aside.

The matter is remanded to the learned Trial court for fresh disposal in accordance with law.

The learned trial court shall collect evidence regarding the identity, location and boundaries of the suit schedule property, particularly in respect of eastern boundary of suit schedule property.

The learned trial court shall dispose of the suit afresh by recording independent findings on all the issues, uninfluenced by any observations made in this judgment, after affording reasonable opportunity to both parties.

Both parties shall appear before the learned trial court on 10.08.2026 without awaiting further notice.

Both parties shall co-operate with the learned trial court for the expeditious disposal of the original suit as the matter was instituted in the year 2014.

No order as to costs.

Draw decree accordingly.

[Dictated to the Stenographer directly on the computer, typed by her and corrected by me and then pronounced in the open Court on this 9th July, 2026]

(Sunil .R)
I Addl. Sr. Civil Judge & JMFC.,
Chamarajanagara.