

KACN220009342015



**IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
JMFC., GUNDLUPET.**

Present :

**Sri. Girisha.R.B. B.A.L, LLB,
I Addl. Civil Judge & JMFC
Gundlupet**

Dated this the 10th day of July 2026

O.S. No.114/2015

Plaintiff:-

Renukambha

D/o Late. Channabasappa

Aged about 58 years,

R/at : Kodagapura village,

Begur Hobli, Gundlupet Taluk.

Since dead, represented by her LRs :

a. Akkamahadevamma

D/o Late. Renukambha

Aged about 50 years,

b. Rajeshwari

D/o Late. Renukambha

Aged about 48 years,

c. Mahadevaswamy

S/o Late. Renukambha

Aged about 45 years,

All are R/at : Kodgapura village,
Begur Hobli, Gundlupet Taluk.(By **Sri. H.V.R** - Advocate)**V/s****Defendant : Basavarajappa**

S/o Late. Siddalingappa

Aged about 60 years,

R/at : Kodgapura village,
Begur Hobli, Gundlupet Taluk.(By **Sri. H.S.P.** -Advocate)**TABULATION OF EVENTS :**Date of institution of the suit: **30.05.2015**Nature of the suit : **Mandatory Injunction &
Permanent injunction**Date of commencement of
Recording evidence : **27.06.2025**Date on which the judgment
Was pronounced : **10.07.2026**

Year/s Month/s Day/s

Total duration : 11 01 11

**I Addl.Civil Judge & JMFC.,
Gundlupet.**

J U D G M E N T

This is a suit filed by the Plaintiff against the Defendant for the relief of Mandatory Injunction and permanent injunction in respect of suit schedule property and also to grant such other reliefs, which deems fit to grant in the circumstances of the case.

2. The brief facts of the Plaintiff case is that

That the plaintiff is the daughter of One Channabasappa and Gumallamma and the said Channabasappa died on 06.06.1994 and Gurumallamma was also dead way back. It is submitted by the plaintiff that on 12.08.1972, the Maralapura grama panchayath has passed a resolution to allot the sites

measuring 50x40 feet and 40x40 feet formed in Sy. No. 87/1A, Sy. No. 87/1B, Sy. No. 88/1, Sy. No. 88/1, Sy. No.88/2, Sy. No. 88/3, Sy. No. 89 and Sy No. 90/1, Sy. No. 90/2 of Sheegevadi Village, which was acquired for Kodakapura extension granted to different beneficiaries of Kodakapura Village by obtaining Rs.140/- from each beneficiaries. It is submitted by the plaintiff that as per the said resolution, the plaintiff's father by name Channabasappa S/o Puttappa, had also got a site measuring 50x40 feet in Survey No. 87/1B of Sheegevadi Village, bearing Site No.12. It is submitted by the plaintiff that there exist 12 sites to the Northern side, bearing Site No.1 to 11 and 20 to 20 and 6 sties towards Southern side bearing Site No.12 to 16 and 22. It is submitted by the plaintiff that in between the said two lines of the sites there exists 20 feet wide road runs East to West which was formed at the time of formation of the sites for the benefit and usage of the beneficiaries.

3. It is submitted by the plaintiff that the plaintiff's father had got changed the katha of the said Site No. 12 to his name as per the allotment and since then he was in possession and enjoyment of the same. After his demise the plaintiff is in possession and enjoyment of the said Site No.12. It is submitted by the plaintiff that the site allotted to the plaintiff's father comes on the Southern line and site No.5 allotted to the Puttabassappa S/o Mallappa comes on the Northern line. It is submitted by the plaintiff that the said Puttabassappa had sold the site No.5 to the defendant vide registered sale deed. It is submitted by the plaintiff that in the year 1994 even though the defendant had obtained construction license to construct a house in Site No. 5, but had not constructed it at any portion. It is submitted by the plaintiff that since 6 months he has started to construct a basement in Site No.5 by leaving vacant space towards Northern side.

4. It is submitted by the plaintiff that later since 3 months the plaintiff has come to know that the defendant had constructed the basement in Site No.5 by encroaching the portion of East to West 30 feet North to South 5 feet in the 20 feet wide road i.e., suit schedule property and thereby caused nuisance to the plaintiff's right of usage over the said road to reach her property. It is submitted by the plaintiff that the plaintiff had given complaint about the illegal construction over the suit schedule property by the defendant to the Secretary and the President of Somahalli Village Panchayath, Executive Officer of Taluk Panchayath, Gundlupet and Chief Executive Officer of Zilla Panchayath, Chamarajanagara, but the Secretary had orally stated that the defendant is not known to him and he had also not obtained any construction licence. It is submitted by the plaintiff that the Executive Officer and the Chief Executive Officer have simply directed

the Secretary and President to take legal action. But they have not taken any further action.

5. It is submitted by the plaintiff that the defendant on 04.05.2015 has dumped brick, stone and sand on the Site No.5 for further construction including the suit schedule property by standing he has Got a Government scheme, wherein if he has not constructed, he will lose the scheme. At that time, the plaintiff, with the help of her relatives, tried to stop the defendant from putting up construction, but which was went in vain. It is submitted by the plaintiff that defendant is a very strong person, monetarily as well as politically, and without the aid of this Hon'ble Court, the plaintiff cannot avoid the said act of the defendant from putting up illegal construction on suit schedule property, thereby causing nuisance to the plaintiff right way on the same. Hence the plaintiff has filed above suit for relief of

mandatory injunction and permanent injunction. The plaintiff submits that the cause of action has arose when the plaintiff came to know the encroachment of the suit proeprty and on 04.05.15 and subsequently within the jurisdiction of this Hon'ble court. With these averments plaintiff prays to decree the suit.

6. Upon service of summons defendant has entered appearance through his counsel and he has filed written statement wherein he has denied the averments made in plaint. It is submitted by the defendant that suit of the plaintiff is not maintainable either in law or on facts and same is liable to be dismissed. It is submitted by the defendant that there is no cause of action in the above suit and the cause of action shown in the above suit is created for the purpose of this suit. It is submitted by the defendant that the plaintiff has not properly valued the suit and the Court fee

paid by the plaintiff is insufficient. It is submitted by the defendant that property Sy. No. 87/1A, Sy. No. 87/1B, Sy. No.87/2, Sy. No. 88/1, Sy. No. 88/2, Sy. No. 88/3, Sy. No. 89 and Sy No. 90/1, Sy. No. 90/2, totally measuring 3 acre 8 guntas, situated at Sheegevadi Village, Gundlupet Taluk have been acquired by Karnataka Government under The Rajiv Gandhi Rural Housing Corporation Limited scheme and the said lands have been converted into 50X40 feet sites and the same have been distributed by the Kodagapura Grama Panchayath.

7. It is submitted by the defendant that the defendant has purchased the site No.5 from one Puttbasappa S/o Mallappa through registered sale deed dated 22.01.1990 and from the date of purchase, he is in peaceful possession and enjoyment of the same by paying the tax. It is submitted by the defendant that in the year 2014-15, the defendant has

mutated the said site in the name of her daughter Guruthayamma. It is submitted by the defendant that her daughter is beneficiary under the Rajiv Gandhi Rural Housing Corporation Limited and she is got financial subsidies to construct house. It is submitted by the defendant that the said financial subsidy has to finished withing six months from the grant, as per the said order, the daughter of the defendant has constructed house in site No.5 by obtaining licence from the concerned authorities. It is submitted by the defendant that she has constructed house in the site No.5 and she has not encroached the 5 feet in the road. It is submitted by the defendant that on the Southern side of the site No.5, there is a 20 feet road is situated and after the said raod, the site No.22 is situated and the site No.12 which belongs to the plaintiff is situated on the South-Eastern side of the defendant's property. It is submitted by the defendant that the 20 feet road is situated in between the properties of the plaintiff and

defendant and there is no any encroachment by the defendant on the said road.

8. It is submitted by the defendant that the plaintiff has to file the said suit against the daughter of the defendant by name Guruthayamma, but the plaintiff has filed the above suit against the defendant and as such the suit of the plaintiff is liable to dismissed for non joinder of necessary parties. It is submitted by the defendant that plaintiff has filed the said suit by the instigation of one K.C.Basavanna S/o Late. Chennabasappa in order to harass the defendant with a mala-fide intention. It is submitted by the defendant that the plaintiff has not approached this Hon'ble Court with clean hands. With these averments defendant prays to dismiss the suit.

NOTE : During the pendency of the suit, plaintiff has died and LRs of plaintiff have been brought on record as per order of this Court dated 04.02.2025.

9. On basis of the above pleadings the following issues are framed.

I S S U E S

1. Whether plaintiff proves that he is in actual and lawful possession of the suit property at the time of filing the suit?
2. Whether any interference by defendants?
3. Whether plaintiff is entitled relief as claimed in the suit?
4. What order or decree?

10. To substantiate his case, the Plaintiff No.1(c) by name Mahadevaswamy has examined himself as PW-1 and got Exhibited 3 documents as per Ex.P-1 to Ex.P-3 and also

examined one witness by name Basavanna as PW-2. In support of her contention the defendant by name Basavarajappa has examined himself as DW-1 and got exhibited 6 documents as per Ex.D-1 to Ex.D-6 and also examined one witness by name Shambhulingappa.

11. Heard the arguments of plaintiff and defendants.

12. Now, my answers to above issues are as follows:

Issue No.1	:	In the Negative
Issue No.2	:	In the Negative
Issue No.3	:	In the Negative
Issue No.4	:	As per the final order

for the following :

REASONS

13. ISSUE NOS.1 to 3 : These issues are interlinked with each other, hence they are taken up for common discussion to avoid the reputation of fact.

14. The present suit is filed for relief of mandatory injunction and permanent injunction against the defendant herein. That, in order to prove their case the plaintiff No.1(c) by name Mahadevaswamy is examined as PW-1 and produced as many as three documents which were marked as Ex.P-1 to Ex.P-3. On the other hand the defendant himself examined DW-1 and produced as many as six documents which were marked as Ex.D-1 to Ex.D-6. That, before adverting to the materials available on record, it is better to go through the arguments canvassed by Learned counsels for the parties. Wherein during the course of arguments Learned counsel for the plaintiff has vehemently argued that the plaintiff is absolute owner and in possession of Site No.12 and it was originally allotted to his father by name Chennabassappa S/o Puttappa. That, towards Northern side of Site No.12, the defendant has purchased Site No.5 through his previous

vendor through registered sale deed dated 22.01.1990. That, the defendant is trying to put up construction by encroaching the road which has passed between the plaintiff and defendant side. That, regarding the illegal encroachment of the defendant the plaintiff has approached the concerned authorities and has given complaint. But the concerned authorities including the Chief Executive Officer of Taluk Panchayath has not taken any action against the illegal act of the defendant. In support of his arguments, Learned counsel for the plaintiff has strongly relied upon the documentary evidence that is Ex.P-1 to Ex.P-3 as well as the cross examination portion of DW-1 and DW-2. Hence it is prayed to decree the suit with costs.

15. On the other hand Learned counsel for the defendant has strongly argued that the suit of the plaintiff itself is not maintainable and it is devoid of merit. It is further argued that the plaintiff has no knowledge about the filing of the present

suit. It is PW-2 i.e., K.C.Basavannamanna, one who has pressurised the plaintiff to file this suit in order to take revenge against the defendant herein. It is further argued that it is the bond and duty of the plaintiff to produce title document to show his title over the suit property. But in the case on hand the plaintiffs have not produced any allotment letter or other correspondent revenue records which reflected the plaintiff's name in respect of Site No.12. It is further argued that the defendant has transferred his Site No.5 in favour of her daughter by the name Gurummallamma, but the plaintiff has filed the present suit against the defendant who has nothing to do with the suit property. During the course of arguments, Learned counsel for the defendant has drew attention of this court to Ex.D-3 i.e., registered sale deed dated 22.01.1990. Further has drawn attention of this court to the Cross examination portion of PW-1, thereby strongly argued that as per the admission made by PW-1 during the course of

cross examination it is very apparent that as on the date of filing of the suit, the Site No.5 is not standing in the name of the defendant, therefore when the defendant is not owner and in possession of the Site No. 5, the question of granting the present relief does not arise. It is further argued that the suit suffers for non-joinder of necessary parties. Mainly on these grounds prays to dismiss the suit with costs.

16. In the above said light of arguments it is better to go through the oral as well as documentary evidence adduced by the parties to the suit. Wherein the plaintiff has produced as many as three documents which were marked as Ex.P-1 to Ex.P-3. On perusal of Ex.P-1 and Ex.P-2, it appears that the plaintiff has produced certified copy of the sketch. Ex.P-3 is the assessment register. On perusal of Ex.P-1 and Ex.P-2, it does not reflected the name of the plaintiff. Further those documents are silent about from which survey number the

sites were curved. Further as per Ex.P-3, The name of the plaintiff neither his father was not appeared. Further more importantly the plaintiff has not produced any title document to show that the Site No.12 was originally allotted to his father by name Chennabasappa. Thus it is very apparent that the plaintiff has not produced any title document to show his title over Site No.12. On the other hand i.e., Defendant one who has produced the title document i.e., Ex.D-3 i.e., registered sale deed dated 22.01.1990 wherein it reveals that the defendant has purchased Site No.5 through his previous vendor by name Puttabasappa S/o Mallappa. Further as per Ex.D-4 the competent authority has granted the financial assistance to the daughter of the defendant to carry out the construction of house. That, it is to be noted that if the defendant has encroached upon the public road then the concerned authority should not have granted any financial assistance to the daughter of the defendant to proceed with

the construction. Further in order to demonstrate that the plaintiff has encroached upon the road which passes through the plaintiff's property, there is no iota of documentary evidence. No doubt. As per the record, court commissioner has appointed. But the court commissioner has reported that he is not in position to measure the property since the land is not suitable for any measurement. That, if the defendant has really encroached upon the public road and proceeded to construct his house, then plaintiff could have certainly taken proper steps to appoint ADLR or other competent person to measure alleged encroachment if any. But interestingly in the case on hand the plaintiffs have not made any effort to do that act.

17. Further for better appreciation it is better to go through the oral evidence adduced by the parties. Wherein

during the course of cross examination the PW-1 has categorically stated as under :

“ದಾವೆ ಹೂಡುವ ಮುನ್ನಾ ಸದರಿ ರಸ್ತೆ ಒತ್ತುವರಿಯಾಗಿರುವ ಬಗ್ಗೆ ಅಳತೆ ಮಾಡಿಸಿದ್ದೇನೆ. ಸದರಿ ಅಳತೆಯ ವರದಿಯನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ. 5 ಅಡಿ ಜಾಗ ನಿಖರವಾಗಿ ಒತ್ತುವರಿಯಾಗಿದೆ ಎಂಬ ಬಗ್ಗೆ ದಾಖಲೆಯನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ”

18. From the above said evidence, it is very apparent that there is no documentary evidence to show that the defendant has encroached upon the suit property and has proceeded to construct his house. Further during the course of cross examination the PW-1 has categorically stated as under :

“ಸದರಿ ಯೋಜನೆಯಡಿ ಪ್ರತಿವಾದಿಯ ಮಗಳು ನಿವೇಶನ ಪಡೆದುಕೊಳ್ಳಲು ಆಯ್ಕೆಯಾಗಿದ್ದಳು ಎಂದರೆ ಸರಿ. ಸದರಿ ನಿವೇಶನದ ಖಾತೆ ಗುರುತಾಯಮ್ಮ ಅಂದರೆ ಪ್ರತಿವಾದಿಯ ಮಗಳ ಹೆಸರಿನಲ್ಲಿ ಇದೆ ಎಂದರೆ ಸರಿ. ಈ ದಾವೆ ಹೂಡುವ ಕಾಲಕ್ಕೆ ಸದರಿ ಖಾತಾ ಆಕೆಯ ಹೆಸರಿನಲ್ಲಿ ನಮೂದು ಇತ್ತು ಎಂದರೆ ಸರಿ. ಸದರಿ ಗುರುತಾಯಮ್ಮರವರನ್ನು ಈ ದಾವೆಗೆ ಪಕ್ಷಗಾರಳನ್ನಾಗಿ ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ನಿವೇಶನ ಸಂಖ್ಯೆ: 5 ಕ್ಕೂ ಪ್ರತಿವಾದಿಗೂ ಯಾವುದೇ ಸಂಬಂಧ ಇಲ್ಲ ಎಂದರೆ ಸರಿ. ”

19. From the above said evidence of PW-1 it is very clear that the Site No.5 is standing in the name of the daughter of defendant. Therefore when the defendant is not owner of the site No.5, the question of granting the present relief against defendant herein does not arises. Further the plaintiff has not properly explained as to why he has not made the said Gurumallamma to the party to the present suit. Therefore looking into any angle this Court itself has considered opinion that the plaintiff has utterly failed to prove that the Site No.12 was allotted to his father and he was in possession of the said property. Further there are no Documentary evidence to show that the defendant has encroached upon the suit schedule property and has proceeded to put up construction over the same. It is very important to note that in order to know the alleged encroachment the documentary evidences are placed vital role. But in the case on hand the plaintiff himself has not

produced any single document to show his title over Site No.12.

20. It is to be noted that the weakness of the defendant is not the trump card to the plaintiff to grant decree as sought for. On the other hand it is the plaintiff who has to produce sufficient documentary evidence and oral evidence to prove his title over Site No.12 and further he has to prove that the defendant has put up his construction by encroaching the road which runs through the plaintiff's site. Therefore in the absence of any material documentary as well as oral evidence, this Court declined to accept the version of the plaintiff herein. Therefore, at the cost of repetition, it is to be noted that as per the cross-examination portion of PW-1, the Site No.5 is standing in the name of the daughter of defendant i.e. Gurumallamma. Thus, it is very apparent that the defendant is not at all in possession and owner of the said property.

Therefore, the suit is suffers from non-joinder necessary parties. On this count also the suit of the plaintiff is not maintainable. Therefore looking into any angle this Court is of the considered opinion that the plaintiff has not produced any cogent title record to show his title over Site No.12. Further plaintiff has utterly failed to prove that alleged encroachment as pleaded in the plaint. Therefore in the absence of those material documents, when the plaintiff has failed to prove the alleged encroachment the question of granting the present relief including the mandatory injunction does not arises. **As such, this Court has answered issue No.1 to 3 in the Negative.**

21. ISSUE NO.4: In view of the discussions referred above this Court proceed to pass the following

ORDER

The suit of the Plaintiff for the relief of mandatory injunction and permanent injunction and other reliefs in respect of suit schedule property is dismissed with cost.

Draw decree accordingly.

(Dictated to the Stenographer, computerized by him, revised and corrected by me, and then pronounced in the open Court on this the 10th day of July 2026)

(Girisha.R.B)
I Addl. Civil Judge & JMFC,
Gundlupet
ANNEXURE

**I: LIST OF WITNESSES EXAMINED ON BEHALF OF
PLAINTIFF/S:**

PW-1 : Mahadevaswamy
PW-2 : Basavanna

**II:LIST OF DOCUMENTS MARKED ON BEHALF OF
PLAINTIFF/S:**

Ex.P-1 & 2: Copy of the sketch
Ex.P-3 : Copy of the assessment register

III: LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT/S:

DW-1 : Basavarajappa
DW-2 : Shambhulingappa

IV: LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT/S:

Ex.D-1 : Funeral invitation card
Ex.D-2 : Copy of the assessment register
Ex.P-3 : Sale deed
Ex.D-4 : Grant order
Ex.D-5 : Electricity bill
Ex.P-6 : Demand register extract

**I Addl. Civil Judge & JMFC,
Gundlupet.**

SK