

KADG210002322025



Presented on : 03-04-2025  
Registered on : 03-04-2025  
Decided on : 14-07-2026  
Duration : 1 years, 3 months, 11 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.  
AT: CHANNAGIRI**

**Present:**  
**Soubhagya.B.Bhusher**  
**B.A.,LL.M**  
**Senior Civil Judge & J.M.F.C.,**  
**Channagiri**

**DATED; THIS THE 14<sup>th</sup> DAY OF JULY 2026**

**R.A.NO.25/2025**

**APPELLANT/  
PLAINTIFF NO.3**

A.R.Rajappa S/o Late M.Rudrappa, Age:  
63 years, Occ: Agriculturist, R/o:  
Thyavanige village, Basavapattana 2<sup>nd</sup>  
Hobli, Tq: Channagiri, Dist: Davanagere.

**(By Sri.G.E.Shivakumar.,Adv.,)**

**V/s**

**RESPONDENT**

1. M.H.Anjaneyappa S/o Late Honnateppa,  
Age: 66 years, Occ: Agriculturist, R/o:  
Tyavanige village, Tq: Channagiri, Dist:  
Davanagere.
2. M.P.Kuberappa S/o Puttappa, Age: 62  
years, Occ: Agriculturist, R/o: Tyavanige  
village, Tq: Channagiri, Dist: Davanagere.

3. A.R.Gangadharappa S/o Late M.Rudrappa, Age: 64 years, Occ: Agriculturist, R/o: Tyavanige village, Tq: Channagiri, Dist: Davanagere.
4. A.R.Ramachandrappa S/o Late M.Rudrappa, Age: 62 years, Occ: Agriculturist, C/o: Krishnappa Timber Merchant, Shivamogga (Sulebailu), Post: Urabaduru, Shivamogga City.
5. Smt.Geetha W/o Late M.R.Nijaguna, Age: 54 years, House No.3683/1, Anjaneya Extension, Davanagere City, Dist: Davanagere.

**(R.1 & 2 By Sri.M.Thippeswamy.,Adv.,)**  
**(R.3 to 5 Ex-Parte)**

|    |                                           |                                                                                                                            |       |      |
|----|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------|------|
| 1. | Date & Nature of decree appealed against. | Judgment and decree passed in O.S.No.252/2018 dated: 29.01.2025 on the file of I Addl. Civil Judge & J.M.F.C., Channagiri. |       |      |
| 2. | Date of Institution of the appeal.        | 03.04.2025                                                                                                                 |       |      |
| 3. | Date of Judgment.                         | 14.07.2026                                                                                                                 |       |      |
| 4. | Duration of the Appeal.                   | Year                                                                                                                       | Month | Days |
|    |                                           | 01                                                                                                                         | 03    | 11   |

**(Soubhagya.B.Bhusher)**  
**Senior Civil Judge & J.M.F.C.,**  
**Channagiri**

**JUDGMENT**

The present appeal is preferred by the appellant/plaintiff No.3 under order 41 Rule 1 and 2 and section 96 of C.P.C., against the respondents/plaintiff No.1, 2, 4 and the defendants praying to set aside the impugned judgment and decree passed in O.S.No.252/2018 dated: 29.01.2025 on the file of I Addl. Civil Judge & J.M.F.C., Channagiri.

2. The appellant was the plaintiff No.3 and the respondents were the plaintiff No.1, 2 and 4 and the defendants before the trial court. Thus, they are referred to by the same rank, in this appeal.

3. The plaintiffs have filed this suit against the defendants for the relief of declaration and consequently relief of permanent injunction. According to the family tree of the plaintiffs and the defendants, original propositus Mantappa had 3 children namely Late Ramappa, Late Dodda Kariyappa and Late Sanna Kariyappa. As shown in the genealogical tree the plaintiffs and the defendants are the members of a Hindu undivided joint family, and earlier the grandfather of the plaintiff No.2 and his brothers had a share, in the suit schedule property and the plaintiff's are in possession over the suit schedule property. The plaintiffs alone have the right and interest in the suit schedule property. Further stated that the defendant No.1 without the knowledge of the plaintiffs got mutated his name in M.R No.29/2014-15. Further stated that the defendant No.1 without the knowledge of the plaintiffs illegally executed the sale deed in favour of the defendant No.2 in SR No.CNG.1-

03900/2017-18 dated: 30.10.2017 in respect of the suit schedule property. Hence, the said sale deed is not binding on the plaintiffs. The suit schedule property is in actual possession of the plaintiffs. Further the defendant No.2 without having right over the property on 30.11.2018 had illegally constructed basement for his house. Hence, the plaintiffs have constrained to file this suit.

4. In the trial court the defendant No.1 and 2 have appeared through their counsel and contest the suit. In the written statement the defendants have admitted the para No.2 of the plaint. But denied the entire plaint allegation averments. It is contended that the cause of action shown in para-8 of the plaint is fictitious and has been created by the plaintiffs with a malafied intention of filing this suit. Therefore, the plaintiffs have no cause of action to file this suit. Further contended that during the lifetime of 3 brothers Doddakaryappa, Ramappa and Sanna Kariyappa as mentioned in the plaint the family properties were divided by orally and khata were changed as per the said partitioned. Thus, at the time of division of oral partition, 1 acre 24 guntas of land in Sy.No.84/3 of Tyavanagi village and other lands came into share of Doddakariyappa and the said property came into khata of Doddakariyappa, similarly the properties that came into the name of Ramappa and Sannakariyappa were changed to their names. Thus, after the death of above mentioned shareholders, the share of those 3 persons were changed to the names of their heirs as per inheritance. Further after the death of Doddakariyappa Sy.No.84/3 measuring 1 acre 24 guntas land khata was changed in the name of Honnetappa. After the death of Honnetappa in 1985

the transfer was made to the name of his eldest son Manteshappa by inheritance. The said Manteshappa died 2002 and the transfer of this property was made to the name Honnamma, the wife of Honnetappa. Since the said Honnamma died in 2013, the transfer of the said property was made to the name of his younger son, the defendant No.1, by legal transfer in M.R No.29/2014-15, and at that time entire area of Sy.No.84/3 was in the possession of the family of the defendant No.1. Thus, at the time khata transfer to the name of the defendant No.1 in 2014-15, the head of the family, with the consent of the heirs of Manteshappa, the brother of the defendant No.1.

5. Further contended that the heirs of Manteshappa and the defendant No.1 are in a joint family and the defendant No.1 is the owner of the said joint family, on 30.10.2017, the said Sy.No.84/3 measuring 1 acre 2 guntas land was sold to Kariyappa, the 2<sup>nd</sup> son of Sanna Kariyappa S/o Tippanna, and on the same day the suit schedule property was sold to the defendant No.2 for a sale consideration and possession was handed over to them. After the said sale deeds, the purchasers are the ones who have right and enjoyment and are in possession. The defendants have contended the plaintiffs have stated in their plaint that 3 children of the original propositus Mantappa have divided the properties, but the plaintiffs have not intentionally given any details regarding the said division in this suit and that the property measuring 1 acre 24 guntas in Sy.No.84/3 was enjoyed by Doddakariyappa as a separate right when he was alive, and after his Honnetappa, his children enjoyed

the entire area in Sy.No.84/3 in their names. Neither Ramappa nor Sanna Kariyappa nor their heirs after their death have ever filed an objection regarding the changes in the khata made from time to time and even though the right and enjoyment of Sy.No.84/3 had continued to be carried forward to their heirs through Doddakariyappa, no one has questioned this until the filing of this suit. Therefore the plaintiffs were fully aware that entire area of Sy.No.84/3 belonged to Doddakariyappa and that it belonged to his heirs after him, but they did file this suit only with the intention of causing trouble to the defendants. Further the suit of the plaintiffs is barred by law of limitation. Hence, prays to dismiss the suit with cost.

6. On the basis of the said pleadings the trial court has framed 4 issues. The plaintiff No.3 examined himself as PW.1 and 7 documents were marked at Ex.P.1 to 7. The defendant No.1 examined himself as DW.1 and 5 documents were marked at Ex.D.1 to 5. The defendants also examined one more witness as DW.2. Thereafter, the trial court heard arguments on both the sides and dismissed the suit by the judgment and decree dated: 29.01.2025. Being aggrieved by the same, the appellant/plaintiff No.3 has preferred this appeal before this court.

7. The main grounds of appeal are that the trial court erred the question of law and fact in concluding the suit. The trial court without looking to the primary evidence only relied upon oral evidence and not at all considered total evidence as a whole to come to proper conclusion. Further the trial court not at all

considered the evidence of the plaintiffs and documents properly. The trial court ignore this aspect. Further the trial court not at all discussed the veracity of the pleadings and proof and primary and secondary evidence. The trial court not at considered the question of law regarding the defence is within limitation or not which is question of law. Further viewed from the any angle the impugned judgment and decree is not sustainable under law and the same is liable to be set a side.

8. After service of notice of appeal, the respondent No.1 and 2 appeared through their counsel. The respondent No.3 to 5 remained absent. Hence, the appeal against the respondent No.3 to 5 proceeded as exparte. The trial court records were called for. After receiving Trial court records, I have heard the arguments on both the sides and perused the written argument filed by the appellant and also perused the trial court records. The following points that arise for my consideration;

1. Whether the judgment and decree passed by the trial court suffers from illegality which has caused miscarriage of justice, hence the interference of this court is required for setting aside the judgment and decree of the trial court?

2. What order or direction?

9. On careful re-evaluation of the pleadings, evidence and on hearing the learned counsels for the appellant and the respondents, my findings on the above points are as under:

Point No.1: In the Negative.

Point No.2: As per the final order, for the following;

**:REASONS:**

**10. POINT NO.1:** If we go through the plaint averments, the suit is filed for declaration and permanent injunction against the defendants and if we go through the pleadings it is mentioned the plaintiffs have setup the claim of ownership and possession in and over the suit property. Further the defendant No.1 without the knowledge of the plaintiffs have got mutated the suit schedule property vide MR No.29/2014-15. Subsequently the defendant No.1 sold out the suit schedule property in favour of the defendant No.2 on 30.10.2017. Further on 30.11.2018 the defendant No.2 had constructed basement for his house without having any right and interest over the suit schedule property. Hence, the plaintiffs have constrained to file this suit against the defendants.

**11.** After appearance of the defendants, they have filed written statement and denied the entire plaint allegation and it is alleged that Sy.No.84/3 measuring 1 acre 24 guntas belongs to his grandfather by name Doddakariyappa. After his demises his only son Honnetappa got mutated the suit schedule property on pouthi. In the year 1985 Honnethappa died and his elder son Manteshappa mutated suit schedule property in his name. In 2002 Manteshappa died suit schedule property got in the name of Honnamma who is none other than the mother of the Manteshappa. In the year 2013 after demises of Honnamma her elder son the defendant No.1 got mutated suit schedule property

vide MR No.29/2014-15. At the time of mutation the entire suit schedule property comprising in Sy.No.84/3 measuring 1 acre 24 guntas was in possession of the defendant No.1. On 30.10.2017 the suit schedule property was sold to the defendant No.2 through a registered sale deed. The plaintiffs asserted original propositors Mahanthappa had 3 sons wherein these sons partitioned their joint family property and these facts were not corroborated and even depicted the plaint averments. After the mutation either Ramappa or Sannakariyappa's sons original propositors Mahanthappa were questioned these mutation before any appropriate authority. Thus, suit is not tenable and prays for dismissal of the suit with costs.

**12.** On the basis of the above pleadings the trial court has framed the following;

**ISSUES**

1. Whether the plaintiff proves that he is in possession of the suit schedule property as on the date of the suit?
2. Whether the plaintiff proves the alleged interference by the defendant?
3. Whether the plaintiff is entitled for the relief as sought for?
4. What order or decree?

**13.** In order to prove their case, the plaintiff No.3 got examined himself as PW.1 and 7 documents were marked at Ex.P.1 to 7. The defendant No.1 has got examined himself as DW.1 and 5 documents were marked at Ex.D.1 to 5. Further the

defendants also examined one more witness as DW.2. After hearing the counsels on both the sides, the trial court has answered issue No.1 to 3 in the negative and dismissed the suit of the plaintiffs.

**14.** If we go through the documents produced by the plaintiffs, they are the RTC's, mutation extracts, sale deed. The defendants also placed the sale deed and mutation extracts.

**15.** If we go through the deposition of PW.1, his chief examination is that of their plaint averments and there is lengthy cross-examination of this witness in respect of the documents produced by him. On perusal of the documents placed by the plaintiffs it is clearly reveals that on the basis of pouthi suit schedule property got mutated in the name of the defendant No.1. Further the defendant No.1 was sold out the same in favour of the defendant No.2 for valuable sale consideration. Further the plaintiffs have contended that the defendant No.1 without their knowledge sold out the suit schedule property to the defendant No.2. In order to substantiate their right over the suit schedule property the plaintiffs have not furnished any documents before the trial court. Further the plaintiffs have not furnished any documents to shows that as on the date of sale they were in joint possession along-with the defendant No.1 family. Thus the plaintiffs have failed to prove that they were in possession of the suit schedule property. Further the defendant No.2 on the basis of registered sale deed got mutated his name in the revenue records and his name is appearing as owner, possessor and cultivator.

**16.** The plaintiffs have contended that they are owners and in possession of the suit schedule property and the defendant No.2 is interfering in the enjoyment of the suit schedule property. The trial court it was observed that the documents produced by the parties it reveals that the suit property is standing in the name of the defendant No.2 on the basis of sale deed. The plaintiffs have failed to prove the joint possession of the suit schedule property. Further the plaintiffs have not placed any title document to show their ownership and possession in and over the suit schedule property. Thus, the plaintiffs have failed to prove the ownership and possession over the suit schedule property. Hence, the plaintiffs have not made out a case of interference by the defendants in the suit property. The plaintiffs have not made out any case as regards the alleged interference in their possession. However, in that connection the defendants have successfully established that the suit schedule property was mutated on the basis of pouthi in the name of the defendant No.1 and thereafter the defendant No.1 sold out the same to the defendant No.2 through a registered sale deed. Further on the basis of the sale deed name of the defendant No.2 got mutated and he is the absolute owner and possession over the same. Thus, the plaintiffs have failed to prove the ownership and interference.

**17.** It is more pertinent to note that the plaintiffs have specifically pleaded that the defendant No.2 had constructed basement for his house without having right over the suit property. These documentary evidence and oral evidence suggests that the

suit schedule property was purchased by the defendant No.2 through a registered sale deed and his name got mutated. But in the case on hand, the plaintiffs have not pleaded anything regarding the exclusive ownership and possession. Further the plaintiffs have not produced any documents. Hence, the trial court had answered issue No.1 in the Negative and that is also not being disputed by them but only question is regarding interference by the defendants for enjoyment of the suit schedule. Regarding this aspect, the plaintiffs have not stated and not produced any documents to prove their ownership and joint possession along-with the defendant No.1 as on the date of suit. Moreover, in that connection the defendants have successfully established that the suit schedule property was purchased by the defendant No.2 through a registered sale deed. Under such circumstances, act of the defendants in claiming the ownership, possession and enjoying the suit property not amount to interference and it cannot be aground to apprehend that the defendants are interfering in the enjoyment of the suit schedule property by the plaintiffs.

**18.** The defendants have successfully established that the defendant No.2 is the absolute owner and possession over the suit schedule property. So, under that circumstances, no doubt the trial court has discussed all the documentary evidence produced by the plaintiffs and the defendants at length. The plaintiffs are claiming permanent injunctive relief against the defendant No.2. So, when the plaintiffs are not able to prove the said fact the trial court has come to the conclusion that the interference is not proved, hence

the said issues are answered in the negative. The main thing is that the plaintiffs approached the court of law seeking the relief of permanent injunction against the defendants have to prove their case independently by giving cogent evidence regarding the alleged interference by the defendants. As the plaintiffs have failed to produce the cogent evidence in this regard. Hence, the trial court has rightly come to the conclusion that it has dismissed the suit of the plaintiffs. The trial court has rightly appreciated the entire oral as well as documentary evidence on record. No substantial evidence is brought in appeal to show the trial court overlooked material facts or misapplied the law. No new evidence shown to overturn trial court's factual findings and there is no scope for interference warranted. Further the appellant/plaintiff No.3 has not made out any grounds to set aside the judgment and decree. So also no miscarriage of justice has been caused to interfere with the judgment by this court. Therefore, in my opinion there is no miscarriage of justice as alleged by the appellant and interference of this court is not required for setting aside the judgment and decree passed by the trial court. Accordingly, I have answered point No.1 in the Negative.

**19. POINT NO.2:** For the aforesaid reasons, I proceed to pass the following:

**ORDER**

The appeal filed by the appellant/plaintiff  
No.3 under order 41 Rule 1 and 2 and section

96 of C.P.C., is hereby dismissed with costs throughout.

Consequently, the judgment and decree passed by the I Addl. Civil Judge & J.M.F.C., Channagiri in O.S.No.252/2018 dated: 29.01.2025 is hereby confirmed.

Office is directed to draw decree accordingly.

The office is hereby directed to send back the Trial Court Records along with copy of this judgment and decree.

**(Dictated to the typist directly on computer, typed by her, corrected by me and then pronounced in the open court on this the 14<sup>th</sup> day of July 2026)**

**(Soubhagya.B.Bhusher)  
Senior Civil Judge & J.M.F.C.,  
Channagiri**

(vide separate order pronounced in the  
open court)

**ORDER**

The appeal filed by the  
appellant/plaintiff No.3 under order 41  
Rule 1 and 2 and section 96 of C.P.C.,  
is hereby dismissed with costs  
throughout.

Consequently, the judgment  
and decree passed by the I Addl. Civil  
Judge & J.M.F.C., Channagiri in

O.S.No.252/2018 dated: 29.01.2025 is hereby confirmed.

Office is directed to draw decree accordingly.

The office is hereby directed to send back the Trial Court Records along with copy of this judgment and decree.

**Senior Civil Judge & J.M.F.C.,  
Channagiri**