

KADG210001262025



Presented on : 20-02-2025
Registered on : 20-02-2025
Decided on : 02-05-2026
Duration : 1 years, 2 months, 10 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 02nd DAY OF MAY 2026

R.A.NO.13/2025

**APPELLANTS/
PLAINTIFFS**

1. Shivaji S/o Late Sannappa, Age:64 years,
Occ: Agriculturist,
2. Shivananda S/o Late Sannappa, Age: 60
years, Occ: Agriculturist, Both are R/o:
S.B.R.Colony, Santhebennuru Hobli, Tq:
Channagiri, Dist: Davanagere.

(By Sri.Mohankumar.G.S.,Adv.,)

V/s

**RESPONDENT/
DEFENDANT**

Meenakshamma W/o Rajappa, Age: 48
years, Occ: Agriculturist, R/o: S.B.R.
Colony, Santhebennuru Hobli, Tq:
Channagiri, Dist: Davanagere.

(By Sri.R.Hanumanthappa.,Adv.,)

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|----|---|---|-------|------|
| 1. | Date & Nature of decree appealed against. | Judgment and decree passed in O.S.No.227/2015 on 30.10.2024 on the file of I Addl. Civil Judge & J.M.F.C.,Channagiri. | | |
| 2. | Date of Institution of the appeal. | 20.02.2025 | | |
| 3. | Date of Judgment. | 25.04.2026 | | |
| 4. | Duration of the Appeal. | Year | Month | Days |
| | | 01 | 02 | 10 |

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

JUDGMENT

The present appeal is preferred by the appellants/plaintiffs under order 41 Rule 1 of C.P.C., against the respondent praying to set aside the judgment and decree passed in O.S.No.227/2015 dated: 30.10.2024 on the file of I Addl. Civil Judge and J.M.F.C., Channagiri by allowing the appeal.

2. The appellants were the plaintiffs and the respondent was the defendant before the trial court. Thus, they are referred to by the same rank, in this case.

3. The summary of the suit that was filed by the plaintiffs for the reliefs of permanent injunction and mandatory injunction with respect to suit schedule property. It is averred that Korachara Sannappa S/o Nagappa is original proposer of the plaintiffs family. On 13.05.1972 vide DPC 15/DRH through this order Government granted 60X40 feet site in Sy.No.137 dated: 10.10.1974 with a condition to the father's of the plaintiffs along with grant certificate. As per the boundaries of East: site, West: Site No.20, North: Road, South: Road situated at Santhebennuru, SBR Colony and now boundaries have changed and now in the said property on East: House of Chandrappa, West: House of Rajappa, North & South: Road. After the death of Sannappa the plaintiff No.2 mutated his name in the records for 60X40 feet site No.19 wherein on Eastern side 8.70X17 mtr one Ashraya house is constructed and on the Western side remaining space of the granted site is in existence. Both the house and remaining space originally belongs to the joint family of the plaintiffs. The defendant is not having any right or interest over the suit schedule property. Further stated that the defendant is financially and politically influential person and in connivance with the members and officials of the Gram Panchayath, she created false documents in the Panchayath to construct a house on vacant site in the possession of the plaintiffs, and the defendant and her supporters illegally entered the suit property and tried to construct a house. The defendant and her supporters were prevented from constructing any building on the suit property and were evicted from the suit

property. The defendant at any time, illegally construct a house on the vacant site in the possession of the plaintiffs. Therefore the plaintiffs have constrained to file this suit for permanent injunction. Further stated that the defendant and her supporters attacked the plaintiffs and illegally occupied the property in the possession of the plaintiffs while case was still pending in court they have entered and violently constructed a house out of cement bricks in the property of the plaintiffs. Hence, the plaintiffs sought for the relief of mandatory injunction to demolish the building and handed over the vacant site to the plaintiffs.

4. The appellants have also filed IA No.1 under order 41 rule 27 R/w Section 151 of CPC., seeking permission to produced the additional evidence. This application is accompanied with the sworn affidavit of the appellant No.2. Wherein he has stated that they have filed suit in O.S No.227/2015 before the I Additional Civil Court seeking a decree of permanent injunction. Subsequently, the plaint was amended, and on 19.01.2018, he filed an application seeking relief for demolition of the unauthorized cement structure put up by the defendant on their vacant site and for delivery of vacant possession. However, during the course of trial, the title deed was not marked in evidence. Hence, the I Additional Civil Court dismissed the suit on the ground that ownership was not proved. Therefore, he prays to remand the matter and, permit fresh adjudication, by allow marking of title documents, and grant liberty to amend the plaint if necessary. Hence, he prays to allow the application.

5. In the trial court the defendant had appeared and contested the case. In the written statement she has denied the entire plaint averments. She has contended that this court is not having jurisdiction to try the case and the plaintiffs have not paid the court fee. It is specific defence of the defendant is that the plaintiffs and the defendant belong to the same community. As per the documents produced by the plaintiff before the court, the plaintiff's property is situated within the limits of Santhebennur Gram Panchayat, at S.B.R. Colony, bearing Assessment No. 3525/64, measuring 8.70×17 meters, bounded East: the property of Chandamma, West: the property of the defendant, North: Kana, South: Road. The defendant's property, situated to the West of the plaintiff's property, bears Assessment No.3524/63, measuring 5.10×17 meters, bounded East: the plaintiff's property, West: the property of Ratnamma, North: Kana and South: Road. But the plaintiffs have suppressed material facts and filed the suit based on a false boundaries. If the concerned Gram Panchayath had been made a party to the suit, the true facts would have been revealed. The plaintiffs, with an intention to conceal the truth from this court, has deliberately failed to implead the Gram Panchayath and have filed a false suit. However, the defendant has been in possession and enjoyment of the said schedule property for the past 25-30 years, having constructed the house with financial assistance under a Government Scheme through the Gram Panchayath. Further she has been residing therein, while regularly paying taxes to the Gram Panchayath. Recently, the said house

was damaged due to heavy rainfall, and when she attempted to undertake repairs, the plaintiffs, with an intention to harass the defendant, filed the present suit before this court. Furthermore, as the Gram Panchayath has not been impleaded as a necessary party, the suit is liable to be dismissed. Hence, she prays to dismissed the suit with costs.

6. On the basis of the said pleading the trial court has framed 4 issues and 3 additional issues. The Addl Issue No.3 is taken as preliminary issue and that issue already considered by the trial court. The plaintiff No.1 examined himself as PW.1 and one more independent witness examined as PW.2 and 2 documents were marked at Ex.P.1 and 2. The defendant examined herself as DW.1 and one more independent witness examined as DW.2 and 10 documents were marked at Ex.D.1 to 10. Thereafter the trial court heard arguments of both the sides and dismissed the suit by the judgment and decree dated: 30.10.2024. Being aggrieved by the same, the appellants/plaintiffs have preferred this appeal. The main grounds of appeal are that the trial court has passed the judgment and decree without proper appreciation of facts, evidence, and applicable law. The trial court has failed to properly examine the pleadings, including the plaint and written statement, the cross examination of the plaintiff and the defendant has not considered the material aspects raised by both parties. The trial court has not properly considered the documents. The trial court has not properly framed or answered the issues in accordance with law. The trial court has ignored the

documentary evidence produced by the defendant and has rendered a one-sided judgment without proper scrutiny of records and statements. The trial court has not properly considered the issues and has delivered a perverse and legal unsustainable judgment. The trial court has failed to properly consider the case of both the appellants and the respondent. The trial court has not properly analyzed the oral and documentary evidence on record. The trial court has failed to properly consider the documents produced by the appellants. However, the trial court failed to properly consider the appellant's documents and pleadings and passed a judgment contrary to the principles of natural justice, resulting in irreparable loss and injustice to the appellants. Hence, prays to allow the appeal by setting aside the judgment and decree passed by the trial court.

7. After service of notice of appeal, the respondent appeared through counsel. The trial court records were called for. After receiving Trial court records, I have heard the arguments on both sides and perused the written argument filed by the respondent and also perused the trial court records. The following points that arise for my consideration;

1. Whether the appellants have shown sufficient cause to allow IA No.1 filed under order 41 Rule 27 R/w Section 151 of C.P.C., for production of additional documents?
2. 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?

3. What order or direction?

8. My findings on the above points are as under:

Point No.1: In the Negative.

Point No.2: In the Negative.

Point No.3: As per the final order, for the following;

:REASONS:

9. POINT NO.1: The appellants have contended that the Korachara Sannappa S/o Nagappa is the original proposer of the plaintiffs family, on 13.05.1972 vide DPC 15/DRH through the order Government granted 60X40 feet site in Sy.No.137 dated: 10.10.1974 with a condition as boundaries and now the boundaries have changed and now in the said property boundaries as plaint schedule. After the death of their father's the plaintiff No.2 mutated his name in the records for 60X40 feet site No.19 wherein on Eastern side 8.70X 17 mtr one Ashraya house is constructed and on the Western side remaining space of the granted site is in existence. Both the house and remaining space originally belongs to the joint family of the plaintiffs. The defendant is not having any right or interest over the suit schedule property. Further the defendant is financially and politically influential person and in connivance with the members and officials of the Gram Panchayath, she created false documents in the panchayath to

construct a house on vacant site in the possession of the plaintiffs, and the defendant and her supporters illegally entered the suit property and tried to construct a house. The defendant and her supporters were prevented from constructing any building on the suit property and were evicted from the suit property. The defendant at any time, illegally construct a house on the vacant site in the possession of the plaintiffs. Therefore the plaintiffs have constrained to file suit for permanent injunction. Further the defendant and her supporters attacked the plaintiffs and illegally occupied the property in the possession of the plaintiffs while case was still pending in court they have entered and violently constructed a house out of cement bricks in the property of the plaintiffs. Hence, the plaintiffs sought for the relief of mandatory injunction also.

10. The defendant appeared and filed written statement by denying the plaint averments and also denied any encroachment of the plaintiffs property. Further contended that as per the documents produced by the plaintiffs before the court, the plaintiff's property is situated within the limits of Santhebennur Gram Panchayath, at S.B.R. Colony, bearing Assessment No.3525/64, measuring 8.70×17 meters, bounded East: the property of Chandramma, West: the property of the defendant, North: Kana, South: Road. The defendant's property, situated to the West of the plaintiff's property. But the plaintiffs have suppressed material facts and filed the suit based on a false boundaries. If the concerned Gram Panchayath had been made a party to the suit, the true facts

would have been revealed. The plaintiffs, with an intention to conceal the truth from court, has deliberately failed to implead the Gram Panchayath and have filed a false suit. However, the defendant has been in possession and enjoyment of the said schedule property for the past 25-30 years, having constructed the house with financial assistance under a Government scheme through the Gram Panchayath. Further she has been residing therein, while regularly paying taxes to the Gram Panchayath. Recently, the said house was damaged due to heavy rainfall, and when she attempted to undertake repairs, the plaintiffs, with an intention to harass the defendant, filed the present suit before this court. Hence, she prays to dismissed the suit with costs.

11. Now the said impugned judgement and decree are challenged mainly on grounds that the trial court is unjust, capricious, erroneous and the trial court has illegally dismissed the suit of the plaintiffs without there being the necessary and supporting oral and documentary evidence produced by the defendant. Further the trial court without appreciating the oral and documentary evidence in a proper and prospective manner and by ignoring and over looking the vital evidence adduced on their behalf has proceed to dismissed the suit of the plaintiffs on untenable grounds. Further the trial court has grossly erred in answering the issues and additional issues in the Negative. Further the appellants also seeking permission to produced additional evidence/documents in this appeal under I.A No.1.

12. The learned counsel for the respondent has filed detail objections and prays to reject the IA No.1 with costs.

13. Under Order 41 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. However, the additional evidence can be allowed when the court from which the decree is under appeal has refused to admit evidence which ought to have been admitted or the parties seeking to produce such additional evidence establishes 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 them at the time when the decree appealed against was passed or the appellants court requires such documents to be produced or witnesses to be examined to enable it to pass the judgment. Therefore, on perusing the provisions of Order 41 Rule 27 before the appellant can be permitted to produce additional evidence he has to satisfy that inspite of due diligence he could not produce the said documents in the trial court or that the trial court had refused to admit such evidence without any reason or that such evidence is required for the appellate court to pass the judgment effectively.

14. In the case on hand the plaintiffs/appellants are seeking for additional evidence for producing the notarized copies of grant certificate extracts. Further absolutely no reasons are shown as to why the documents are being filed belatedly. Merely because there is discretion it cannot be exercised in a routine manner unless it is

absolutely warranted. The appellants are the plaintiffs in the original suit and why they did not produce those documents at the trial court is not at all explained. Further the plaintiffs/appellants have not stated any thing about those documents before the trial court. Thus there are absolutely no reasons assigned and no grounds to invoke discretion. No evidence is let to show why there was delay.

15. During the argument urging on the alleged grounds of appeal as already discussed the learned counsel for the appellants contended that the trial court has held that the title deed not produced by the plaintiffs. In support of their contention they have filed the documents as per the list of documents to show that their title over the suit schedule property. Further if they are given opportunity to lead addition evidence, no hardship would be caused to the other side. On the other hand irreparable injury, hardship and inconvenience would be caused to them if they are not given an opportunity to lead additional evidence.

16. Now turning to the I.A.No.1, as mentioned by me earlier, as law is well settled to take up such I.A along-with main appeal and thereafter to decide on such application, I heard the learned advocate on the tenability of them and necessity to gather additional evidence. For this one has to refer Rule 27 of Order 41 again and again. No doubt the said rule enables the parties to adduce additional evidence at the appellate stage, but that relief cannot be sought as a matter of right. Instead it is controlled by

sub-rules (1), (a), (aa) and (b). The circumstances under which a party is permitted to adduce additional evidence are, the trial court must have refused to admit such evidence or the party seeking to produce such additional evidence could not produce that evidence in spite of their due diligence in conducting the case at the trial court or the appellate court feels that such additional evidence is required for just decision in the matter. In the instant case existence of any one such pre-requisite is not made out by the appellant. The documents produced by the appellants are public documents which could have been obtained and produced in the trial court itself. The appellants have not stated why they have not produced those documents before the trial court. If such application is allowed there will be no sanctity to the findings of trial Court. Therefore, the application is devoid of merit, so it is liable to be dismissed. For the foregoing discussion without any hesitation, I conclude that there is no merit in any of the contentions taken by the appellants. Therefore, there are no grounds to allow I.A.No.1 to produce additional evidence. Hence, point No.1 is answered in the negative.

17. POINT NO.2: If we go through the plaint averments, the suit is filed for permanent and mandatory injunction against the defendant and if we go through the pleadings it is mentioned the suit schedule property is under the ownership and possession of the plaintiffs. After the death of Sannappa the plaintiff No.2 wherein on Eastern side 8.70X 17 mtr one Ashraya house is constructed and on the western side remaining space of the granted site is in

existence. Both the house and remaining space originally belongs to the joint family of the plaintiffs. The defendant is not having any right or interest over the suit schedule property in connivance with the members and officials of the Gram Panchayath, she created false documents in the panchayath to construct a house on vacant site in the possession of the plaintiffs, and the defendant and her supporters illegally entered the suit property and tried to construct a house. The defendant at any time, illegally construct a house on the vacant site in the possession of the plaintiffs. Therefore, the plaintiffs have constrained to file this suit for permanent injunction. Further the defendant and her supporters attacked the plaintiffs and illegally occupied the property in the possession of the plaintiffs while case was still pending in court violently constructed a house out of cement bricks. In spite of request made by the plaintiffs, the defendant not removal of the encroachment and therefore they are entitled relief as against the defendant.

18. After appearance of the defendant, she has filed written statement and has specifically making contention that the plaintiffs have suppressed material facts and filed the suit based on a false boundaries. If the concerned Gram Panchayath had been made a party to the suit, the true facts would have been revealed. The plaintiffs, with an intention to conceal the truth from court, has deliberately failed to implead the Gram Panchayath and have filed a false suit. However, the defendant has been in possession and enjoyment of the said schedule property for the past 25-30 years, having constructed the house with financial assistance under a

Government scheme through the Gram Panchayath. Further she has been residing therein, while regularly paying taxes to the Gram Panchayath. Recently, the said house was damaged due to heavy rainfall, and when she attempted to undertake repairs, the plaintiffs, with an intention to harass the defendant, filed the present suit before this court. Accordingly, prays for dismissal of the suit.

19. On the basis of the said pleadings of the parties and the documents so placed, the trial court framed the following issues and additional issues;

1. Whether the plaintiffs prove that they are in possession and enjoyment of the suit schedule property?
2. Whether the plaintiffs prove that the alleged interference by the defendant?
3. Whether the plaintiffs are entitled for the relief as sought for?
4. What order or decree?

Additional Issues

1. Whether the plaintiffs prove that they are the absolute owner of suit schedule property?
2. Whether the plaintiffs prove that they have disposed from the suit schedule property as pleaded in para No.4 of amended plaint?
3. Whether the court fee paid is sufficient and the valuation made by the plaintiff is correct?

20. In the trial court, the plaintiff No.1 examined himself as PW.1. The plaintiffs had also examined one more independent witness as PW.2. PW.2 has deposed in consonance with the case of the plaintiffs and 2 documents were marked at Ex.P.1 and 2. Per contra, the defendant examined herself as DW.1 and 10 documents were marked at Ex.D.1 to 10. The defendant had also examined one more independent witness as DW.2.

21. The learned counsel for the appellants has argued that from the evidence produced by the appellants, it is clear that the father of the plaintiffs is the original proposer of the family. On 13.05.1972 vide DPC 15/DRH through this order Government granted 60X40 feet site in Sy.No.137 dated: 10.10.1974 with a condition. The father's of the plaintiffs was in possession till his death. After his death the plaintiff No.2 mutated his name in the records wherein on Eastern side 8.70X 17 mtr one Ashraya house is constructed and on the Western side remaining space of the granted site is in existence. Both the house and remaining space originally belongs to the joint family of the plaintiffs. The defendant is not having any right or interest over the suit schedule property and constructed a cement bricks house. Further argued that as per the grant certificate name of the father of the plaintiffs got mutated. After his death names of the plaintiffs got mutated and they are in possession over the same. Further argued that the defendant is claiming to be owner of the property and she constructed a house. In spite of request of the plaintiffs, the defendant failed to remove the encroachment. However the trial court has overlooked these

aspects and wrongly dismissed the suit. He further argued that the reasonings given by the trial court to rely on the boundaries and admission of PW.1. Though the defendant has not at all produced any evidence to prove her defence, the trial court wrongly observed that it was proved. So also on wrong presumption that the trial court has placed reliance on the admission of PW.1. Therefore, it was his argument that the judgment and decree of the trial court is perverse and against material on record. It was further argued that the trial court with a biased mind have proceeded to pass the judgment and decree, dismissing the suit of the plaintiffs, in as much as in the preface to returning their findings on the issues framed and without applying the mind, the trial court have made a sweeping observation that the plaintiffs have failed to prove their title and possession over the suit schedule property. This observation of the trial court has a big impact in assigning the reasons. Further the trial court have committed gross error of law and on facts which has resulted in passing the impugned judgment and decree and thereby resulted in great miscarriage of justice.

22. On the other hand the learned counsel for the respondent has supported the impugned judgment and decree passed by the trial court. He further argued that trial court after considering all the aspects has rightly dismissed the suit holding that the very claim made by the plaintiffs is not maintainable in law. Further argued that the plaintiffs have failed to prove that they are the absolute owner and the defendant has encroached the property of the plaintiffs and constructed a house. Thus, there are

no grounds to set aside the judgment or decree. It was his further argument that there are no grounds to interfere with the well reasoned judgment of the trial court. Hence, he prayed to dismiss the appeal.

23. If we go through the documents produced by the plaintiffs, they are the DCB register extract and death certificate of Sannappa. The defendant has also produced documents such as certified copy of house grant Form No.2, tax paid receipts, intimation letter, DCB register extract, certified copy of katha and deposit deed.

24. 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 them but the pertinent part is that regarding the defendant encroachment of suit schedule property and entitlement of permanent injunction and mandatory injunction of the reliefs, witness is cross-examined, wherein he has admitted that the defendant has not encroached the property in Ex.P.1. Further he has admitted that the defendant constructed Ashraya house under the Government scheme and she is residing in it. The plaintiffs have contended that the defendant encroached their property and constructed a house. Further about an encroachment cross-examination of DW.1 is also at length, but nothing has been elicited from the mouth of her.

25. It is more pertinent to note that as per the plaintiffs they have specifically pleaded that the defendant encroached the suit schedule property all her high handedness and illegal attempts. Further the defendant did encroachment in the suit schedule property and constructed a cement bricks house. The admission itself shows that PW.1 has deposed contrary to the recitals of their pleadings. The plaintiffs have stated that even after death of their father also his son was not entered in the panchayath records. Further the plaint pleadings are silent about existence of house in the suit schedule property. The contention of the plaintiffs is that the suit schedule property is vacant land. The plaintiffs counsel in the cross-examination of DW.1 nothing worth has been elicited from the mouth of DW.1 to prove the correct extent of the suit schedule property. The plaintiffs have failed to prove the correct extent of the suit schedule property through oral as well as documentary evidence. Thus, the trial court was rightly come to a conclusion that the plaintiffs are not the owners of the suit schedule property. Further it was observed that according to the plaintiffs suit schedule property is bounded on East by Chandrappa property, West: Site No.20, North: Road, South: Road. The plaintiffs in order to substantiate the said boundaries relied on Ex.P.1. As per the said document the property covered under Ex.P.1 is bounded on East: By Chandrappa house, West: By the defendant house, North: By Kana and South: By road. The plaintiffs in order to show about acquisition of the suit schedule property have not produced any registered instruments before this

court. Further it was observed that regarding the correct boundaries of the suit schedule property is concerned Ex.P.1 is not corroborated with plaint schedule. Further the trial court rightly come to the conclusion that the plaintiffs in order to prove the boundaries of the suit property concerned is he is not examined any neighbours as witness before this court. Further the plaintiffs counsel in order to prove the boundaries of the suit schedule property he has not put any suggestion to DW.1 to prove the existence of suit schedule property within the plaint boundaries.

26. The trial court it was observed that Ex.P.1 is the document to assess the tax and in the said document there is no reference regarding mutating the plaintiff name in the panchayath record. If there is any reference regarding the acquiring the suit schedule property by the plaintiff then, it will assist the plaintiff to prove its case. In the absence of such recitals the said document does not assists the plaintiff to prove the correct boundaries of the suit schedule property. In order to prove the correct boundaries of the suit schedule property said document is crucial document to the plaintiff, but he has not produced the same. The plaintiff in order to show his ownership and possession over the suit schedule property except producing panchayth records he has not produced any title documents to prove his ownership over the suit schedule property. Therefore, Ex.P.1 do not assist the plaintiff to prove their ownership and possession over the suit schedule property. Of-course the defendant in order her right, title and possession over the suit schedule property she has produced

Ex.D.1 which is the sanction from the Government for construction of the house in the suit schedule property. Though the defendant has not furnished the title document before this court that itself is not a ground to decree the suit. Under such circumstances the trial court rightly come to the conclusion that the plaintiffs have not proved the title to the suit schedule property. Further the plaintiff No.1/PW.1 in his cross-examination has admitted that the defendant not encroached the property in Ex.P.1. Hence, the trial court rightly had answered issue No.1 to 3 and additional issue No.1 and 2 are in the Negative and further here only question is regarding the entitlement of relief regarding the mandatory injunction. Regarding this aspect, PW.1 during his cross-examination has stated that the defendant not encroached the property in Ex.P.1. Further he admitted that the defendant constructed Ashraya house and she is residing in it.

27. The plaintiffs having sought for relief of permanent and mandatory injunction they have to first established that they are the owners of the suit schedule property. In this connection the plaintiffs have produced in all total 2 documents only. On perusal of Ex.P.1 the boundaries and the plaint schedule property boundaries are different. In order to prove their ownership over the suit schedule property within the boundaries mentioned in the plaint, the plaintiffs have not produced any single documents before the trial court as well as before this court. Therefore, the plaintiffs cannot claim any title over the said suit schedule property. Thus, the plaintiffs have failed to prove their title to the suit

schedule property. Hence, the trial court rightly come to the conclusion that in a suit filed under Section 38 of Specific Relief Act, possession on the date of suit is a must for grant of permanent injunction. When the plaintiffs have failed to prove that he was in actual possession of the properties on the date of suit he is not entitled for the decree for the permanent injunction. Hence, the plaintiffs is not entitled for the relief as sought.

28. It is pertinent to note that in the plaint also it is only stated that the defendant did encroachment of the suit schedule property. So, regarding which are alleged encroachment by the defendant, the plaintiffs have not given any cogent evidence as to how they are the owners of the suit schedule property. Because the defendant has successfully proved that she is in possession over the suit schedule property and she has produced Ex.D.1 which is the sanction from the Government for construction of the house in 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 defendant at length. So, when the plaintiffs are not able to prove the title over the suit schedule property the trial court has rightly come to the conclusion that the plaintiffs have not proved the same. Hence, the issue No.1 to 3 and additional issue No.1 and 2 are answered in the negative.

29. The main thing is that the plaintiffs were approached the court of law seeking the relief of permanent injunction and mandatory injunction against the defendant have to prove their

case independently by giving cogent evidence regarding the ownership and ownership over the suit schedule property. 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. Therefore, in my opinion there is no miscarriage of justice as alleged by the appellants 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.2 in the Negative.

30. POINT NO.3: For the aforesaid reasons, I proceed to pass the following;

ORDER

I.A.No.1 filed under order 41 Rule 27 R/w Section 151 of CPC., by the plaintiffs/appellants is hereby dismissed.

The appeal filed by the appellants/plaintiffs Under order 41 Rule 1 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.227/2015 dated: 30.10.2024 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.

(Directly dictated on computer script to typist, typed by him, corrected by me, signed and then pronounced in open court on 02nd day of May 2026)

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