

KADG210012812016



Presented on : 18-10-2016
Registered on : 18-10-2016
Decided on : 15-04-2026
Duration : 9 years, 5 months, 28 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 15th DAY OF APRIL-2026

O.S.NO.62/2016

PLAINTIFF

Girish T.S. S/o Late T.S. Janardhana,
Age: 45 years, R/o: No.150/1, Shiva
Building, 12th Cross, K.T.J. Nagar,
Davangere.

(By Sri.D.T.Nagaraj.,Adv.,)

V/s

DEFENDANTS

1. T.H.Shivamurthayappa S/o Thuraputti
Halappa, Age: 60 years, Occ: Proprietor
of Wine Shop, R/o:Thyavanige village,
Tq:Channagiri.
2. Channamalleshwara.S.J S/o Late
Janardhana, Age: 72 years, Occ:
Agriculturist

3. Smt. B.Sujatha W/o Late Pruthviraj, Age: 65 years, Occ: Retired Teacher.
4. Santhoshkumar S/o Late Pruthviraj, Age: 40 years.
5. J.P. Mallesh S/o Late Pruthviraj, Age: 38 years.
6. J.K.Swamy S/o Late Janardhana, Age: 70 years, Occ: Agriculturist, All are R/o: Thyavanige village, Tq:Channagiri.
7. Smt.Sunandamma W/o Dharakesha, Age: 65 years, R/o: No.568, 4th Cross, K.B. Extension, Davanagere.
8. Gnanachandra.S.J S/o Late Janardhana, Age: 63 years, R/o: No.2946/47, 5th Main, Near Police Chowki, Swamy Vinayaka Extension, Davanagere.
9. S.J.Shivaraj S/o Late Janardhana, Age: 60 years, R/o: No.568, 4th Cross, K.B. Extension, Davanagere.
10. Smt.Sujatha W/o Umesh Chandrababu, Age: 58 years, R/o: Benkikere Road, Hodigere village, Tq:Channagiri, Dist: Davanagere.
11. Smt.Anitha.S.J W/o Shivashankar, Age: 55 years, R/o: No.568, 4th Cross, K.B. Extension, Davanagere.

(D.1 by Sri.Y.M.Ramachandra Rao.,Adv.,)

(D.2 to 6 Ex-parte)

(D.7 to 11 by Sri.M.Thippeswamy.,Adv.,)

Date of Institution of Suit.	18.10.2016		
Nature of Suit.	Declaration, Possession, Mesne Profit and Permanent Injunction		
Evidence commencement date.	14.09.2017		
Date of Judgment.	15.04.2026		
Total Duration.	Year	Month	Days
	09	05	28

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

JUDGMENT

The present suit is filed by the plaintiff against the defendants for the relief of declaration, possession, future mense profit, permanent injunction and such other reliefs.

2. Lacking expatiation of version of the parties, a vignette of facts as unveiled is as under:

The suit schedule property is an agricultural land bearing Sy.No.153/7, old Sy.No.153/P1 measuring 5 acres 38 guntas situated at Thyavanige village, Tq:Channagiri. The detail description of the property is mentioned in the plaint suit schedule. It is averred that one Channappa Sahukar had 5 sons

namely Murigeppa, Malleshappa, Rohithaksha, Janardhana and Nageshappa. The plaintiff is the son of the Janardhana. Rohithaksha is happens to be elder uncle of the plaintiff. Further stated that now the dispute with regard to the suit schedule agricultural land in Sy.No.153/7 measuring 5 acres 38 guntas out of 6 acres 38 guntas which belong to Rohithaksha and he got the same in partition which took place between his brothers. Even though there was a partition Rohithaksha living with his younger brother Janardhana and the plaintiff under one roof till his death. The said Rohithaksha is unmarried and he died on 06.05.2005 intestate leaving behind the suit schedule property. After the death of Rohithaksha the suit schedule property devolve upon the Janardhana since he was only living brother among the four brothers at the time of his death. All the brothers of Rohithaksha predeceased him except the father of the plaintiff. As per Hindu Law, after the death of Rohithaksha his property was to be devolved on his younger brother Janardhana since he was only brother survived at the time of his death. Further stated that after the death of Rohithaksha his younger brother Janardhana had been in possession and enjoyment of the suit schedule property and he was successfully resisting the interference of the defendant No.1 over suit schedule property till his death i.e., on 06.09.2010. The defendant No.1 is no way concerned to the suit schedule property, besides he is stranger to the family of the plaintiff. Even though the defendant No.1 has no title, interest over the suit schedule property, he was making

hectic effort to dispossess the plaintiff's father from the suit schedule property. But the plaintiff's father successfully resisted the illegal activities of the defendant No.1 until he breathed his last. After the death of his father the suit schedule property came in possession and enjoyment of the plaintiff.

3. It is further stated that after the death of the plaintiff's father the defendant No.1 once again continued his illegal interference over the suit schedule property against the title, interest and possession of this plaintiff. The plaintiff has put his all efforts to resist the defendant No.1, but his efforts have become very weak against the defendant's political, money and mighty power. The plaintiff has become unable to resist the illegal dispossession from suit schedule property and gradually the defendant No.1 took over the possession of suit schedule property by dispossessing the plaintiff from suit schedule property. It is further stated that the defendant No.1 has succeeded in June 2016 in illegally dispossessing the plaintiff from suit schedule property. In the first week of June 2016 the plaintiff came near the suit schedule property for cultivating the land for sowing paddy but he was surprised on seeing a standing paddy crop on suit schedule land even though the plaintiff did not sow anything on the suit schedule property, but there was a standing paddy crop on it. By that time the defendant No.1 with his men came near suit schedule property and admitted that the paddy was sown by him and further the defendant No.1 and his men stopped the plaintiff from entering on suit land. The plaintiff has

questioned the defendant No.1 assertion of right over the suit schedule property. The defendant No.1 said abruptly to the plaintiff that the revenue documents show his name. The plaintiff is stumbled on hearing the words of the defendant No.1 and he did not believe the words of the defendant No.1. The plaintiff in order to make sure himself obtained the RTC then only, he came to know that the RTC in Sy.No.153/7 measuring 5 acres 38 guntas shows the defendant No.1 name. The defendant No.1 colluding with the Revenue Officials got the khata changed in his name. The Revenue Official changed the khata in favour of the defendant No.1 without calling an objection from the plaintiff, even though the plaintiff had an objection for khata in favour of defendant No. 1. Further stated that the plaintiff has tried to lodge complaint to the jurisdictional police in connection with his illegal dispossession from the suit schedule property. But the jurisdictional police expressed their inability to face the defendant No.1 since he is very strong in the locality by having political power, money and mighty power at his disposal. Further stated that the plaintiff has got reliable information that the defendant No.1 is trying to alienate the suit schedule property to the prospective purchaser in order to defeat the right, title and interest of the plaintiff. Hence, the plaintiff has constrained to file this suit.

4. On service of summons the defendant No.1 has appeared through his advocate and filed a written statement. In the written statement he has denied the entire allegations plaint

paras. He admits the plaint para No.2 but he denied that they are joint family members. It is contended that there is no cause of action for the suit, the cause of action mentioned in para 7 of the plaint is an imaginary one only for the purpose of the suit and on the score alone suit of the plaintiff is liable to be dismissed with exemplary cost. The relief sought by the plaintiff is not entitled and suit filed by the plaintiff is not maintainable under law as well as on facts, and on that score alone the suit of the plaintiff liable to dismissed. He has contended that the land bearing Sy.No.153 measuring 6 acres 38 guntas situated at Thyavanige village, Tq:Channagiri originally belongs to Rohithaksha and he was not cultivating the said land and he had agreed to gave the said land on guttige (lease) basis to this defendant, and this defendant was started for cultivating the said land on guttige basis since 1992 and immediately the said Rohithaksha had expressed to sell the said land, and this defendant willing to purchase the same and at that time the brother-in-law of the said Rohithaksha Dr.Nagaraj was the mediator and also other witnesses were present and at that time the said Rohithaksha had agreed to sell the said land for Rs.16,000/- per acre and in all Rs.1,08,000/- out of the said sale consideration Rs.1,05,000/- was paid by this defendant to the said Rohithaksha and the said Dr.Nagaraj and Smt.Nagaraj and witnesses were present at the time of receiving the said amount. The possession of the said property was already delivered in favour of this defendant, and on that day it was not written any agreement and it was oral.

5. Further contended that as per oral agreement during 1992 the defendant continued to be in possession of the said land and on 02.07.2001 the said Late T.S.Rohithaksha S/o Channappa had executed the sale agreement agreeing to sell the said land for valuable sale consideration of Rs 16,000/- per acre in the presence of the witnesses, in the said agreement it was recited that during 1992 a sum of Rs.1,05,000/- was received and the possession was also delivered to the defendant during the said year, and further it was recited the remaining balance sale consideration of Rs.3,000/- should be paid by this defendant to the said Rohithaksha at the time of registration and registration should be done as and when called by this defendant the said Rohithaksha should come and execute the regular registered sale deed in respect of the said land. At that time the land belongs to the Rohithaksha when to sarkari pada and subsequently the said Rohithaksha got restored the his land from sarkari pada. In the said agreement he had also recited that as per the said agreement during his lifetime would not executed the sale deed after his death as per said sale agreement the defendant should get the khata and pahani of the said land as per said agreement. Since it was in the sarkari pada it was not possible to execute the sale deed in favour of this defendant. In fact this defendant was also paid the balance sale consideration of Rs.3,000/- to the government which was due by the said Rohithaksha while restoring the said land into his name and in the meantime this defendant wanted to get the registered sale

deed in the meantime he was dead. Subsequently the said Rohithaksha had filed suit in O.S.No.307/2001 before the Civil Judge Junior Division, Channagiri against this defendant and other 6 defendants on 14.09.2001 and the said suit was dismissed on 19.04.2003.

6. Further contended that the plaintiff and his brother Channamalleshwara had instituted the suit against this defendant and others for the relief of the declaration declaring that the compromise judgment and decree passed in O.S.No.410/2006 dated: 06.09.2010 is void ab-intio, illegal and not binding on the plaintiffs rights and for declaring the plaintiff and the defendant No.6 to 12 were the owners of the said land on 18.04.2011 before this court and the said suit was got dismissed by the plaintiffs and his brother on 05.07.2013. Further one T.S.Jayadevappa who was the elder brother of this plaintiff was instituted the suit against this defendant before the III Addl. Senior Civil Judge, Davanagere in O.S. No.410/2006 and in the said suit the plaintiff of the said suit and this defendant had entered into the compromise petition and as per earlier sale agreement was knowledge with the said Jayadevappa and also to the plaintiffs it was ended in compromise and in the said compromise an extent of 6 acres was declared this defendant was the absolute owner was and is in possession of the said land and accordingly said suit was decreed. As per said decree khata and pahani of the said land was accepted into the name of the defendant as per M.R.No.13/2011-12 and since then he

became the absolute owner, kathedar in possession, enjoyment and personal cultivation of the suit schedule property in which the either the plaintiff or his other family members no right, title interest in and over the suit schedule property and on that score alone the suit of the plaintiff is liable to be dismissed. The suit is barred by law of limitation and on that score alone the suit is liable to be dismissed. The suit is hit by res-judicate and on that score also suit is not tenable and same is liable to be dismissed. The suit of the plaintiff is not maintainable as per doctorin of esttopal and on that score also the suit is not tenable and same is liable to be dismissed. Further stated that this defendant has mortgaging the said land to the corporation bank Thyavanige and also co-operative society Nalkudure and improve the land and the plaintiff has not tolerating the development of this defendant and on the said jealous eye the plaintiff has filed this false suit. Hence, he prays to dismiss the suit with exemplary costs.

7. On the strength of rival contentions in pleadings and documents placed on record by the parties, my predecessor has been framed the following;

ISSUES

1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property?
2. Whether the plaintiff proves that he is entitled for the possession of the suit schedule property?

3. Whether the plaintiff proves that he is entitled for mesne profits?

4. Whether the defendants prove that late T.S. Rohithaksha S/o Channappa had executed the sale agreement on 20.07.2001 agreeing to sell the suit schedule property for valuable sale consideration of Rs.16,000/- per acre and possession was delivered to the defendant during 1992 as per the oral agreement by receiving part of sale consideration?

5. Whether the plaintiff proves that he is entitled for the reliefs claimed in this suit?

6. To what order or decree?

8. Trial consisted of examination of the plaintiff himself examined as PW.1 and 04 documents were marked at Ex.P.1 to 4 and closed his side.

9. On the contrary, the defendant No.1 is examined himself as DW.1 and 8 documents were marked at Ex.D.1 to 8 and closed his side

10. At this juncture only, it is relevant to mentioned that this court after full-pledge trial, by its judgment dated: 28.04.2018 had dismissed the suit of the plaintiff. The plaintiff had challenged the judgment passed by this court before the Hon'ble High Court of Karnataka, Bengaluru in RSA No.616/2021 (DEC), in which the said appeal came to be allowed and impugned

judgment of this court is hereby set aside. In the said judgment the Hon'ble High Court of Karnataka having consider the suit of the year 2016 almost 9 years has been elapsed and in both the suit as well as in the appeal, the brother is not made as party and when such being the case, it is appropriate to direct the appellant to make an application within 1 month from the date of 28.08.2025 and then the trial court is directed to issue notice on the proposed respondent and dispose off the same within a period of 6 months. The plaintiff is directed to pay the cost of Rs.10,000/- on the defendant and the same is payable on the next of hearing when the respondent appears before the trial court.

11. After receiving the records from the appellate court/Hon'ble High Court of Karnataka, Bengaluru, the plaintiff has filed an IA No.2 under order 1 Rule 10(2) R/w Section 151 of C.P.C, seeking permission to implead the proposed defendant No.2 to 11. After filing of this application, this court got issued notice to the proposed defendant No.2 to 11. The same were duly served on the proposed defendants. The proposed defendant No.3 to 5 were appeared through their counsel. The proposed defendant No.6 to 11 not appeared. Thereafter, the learned counsel for the proposed defendant No.3 to 5 has submitted no objection to allow the I.A No.2. Accordingly, I.A No.2 was allowed and thereby the proposed defendant No.2 to 11 ordered to be arrayed the defendant No.2 to 11 in the cause title. Accordingly, the amendment carried out and amended plaint

filed.

12. Thereafter summons were issued to the defendant No.2 to 11. The defendant No.7 to 11 have appeared through their counsel and failed to file their written statement. The defendant No.2 to 6 remained absent inspite of due service of the summons. Hence, they have been placed exparte.

13. Thereafter, the learned counsel for the plaintiff has filed an IA No.4 under order 14 Rule 5(1) R/w Section 151 of C.P.C., seeking re-cast of issues and framing of additional issues. Thereafter, the said IA No.4 is partly allowed. Accordingly, issue No.1 to 4 re-casted is as follows;

1. Whether the plaintiff proves that himself and the defendant No.2 to 11 are the absolute owners of the suit schedule property?
2. Whether the plaintiff proves that himself and the defendant No.2 to 11 are entitled for the possession of the suit schedule property?
3. Whether the plaintiff proves that himself and the defendant No.2 to 11 are entitled for mesne profit?
4. Whether the defendant No.1 proves that late T.S.Rohithaksha S/o Channappa had executed the sale agreement on 02.07.2001 agreeing to sell the suit schedule property for valuable sale consideration of Rs.16,000/- per acre and possession was delivered to him during 1992

as per the oral agreement by receiving the part of sale consideration?

14. Thereafter, the plaintiff/PW.1 fully examined and 9 documents were marked at Ex.P.5 to 14 and PW.1 is fully examined by the defendant No.1.

15. The learned counsel for the defendant No.1 has submitted no further defendant evidence. Hence, the further defendant evidence taken as nil.

16. Heard the arguments on both the sides and perused written arguments filed by the plaintiff and also perused the material placed on record. My findings to the above issues are as under;

Re-casted Issue No.1:In the Affirmative.

Re-casted Issue No.2:In the Affirmative.

Re-casted Issue No.3: Separate enquiry is to be held.

Re-casted Issue No.4:In the Negative.

Issue No.5: Partly In the Affirmative.

Issue No.6:As per the final order, for the following;

:REASONS:

17.RE-CASTED ISSUE NO.1 AND 4: These issues are interrelated to each other and finding on issue No.1 will have bearing on the another. Hence, to avoid repetition of facts and evidence, these issues are taken together for common consideration. It is the case of the plaintiff is that the suit

schedule property is an agricultural land measuring 5 acres 38 guntas in Sy.No.153/7. This property original belonged to the plaintiff grandfather, Channappa Sahukar. During the family partition among 5 brothers i.e., Murigeppa, Malleshappa, Rohithaksha, Nageshappa and Janardhana, this specific property fell to the portion of Rohithaksha. The said Rohithaksha remained unmarried and died intestate on 06.05.2005. The plaintiff contended that because of all other brothers had predeceased Rohithaksha, the plaintiff's father was the sole surviving brother and thus he legally succeeded to the property. The plaintiff claims his father was in possession of the suit schedule property until his death on 06.09.2010. The plaintiff asserts the defendant No.1 is a stranger to the family with no right or title to the suit land. In 2016, the defendant No.1 allegedly used political and money power to take possession of the suit schedule property and began sowing paddy. The plaintiff claims the defendant No.1 colluding with revenue authorities to get the khata transferred into his name without following proper legal procedures or calling for objections. Hence, he has constrained to file this suit.

18. The defendant No.1 has appeared and filed written statement. In the written statement he denies the relationship between the plaintiff, Janardhana and Rohithaksha and disputes that they lived together. The defendant No.1 claims he has been cultivating the land on a guttige (lease/tenancy) basis on behalf of Rohithaksha since 1992. He asserts that the said Rohithaksha

agreed to sale him the land for Rs.16,000/- per acre. A sale agreement was allegedly entered into on 02.07.2001. The defendant No.1 claims he paid Rs.1,05,000/- in the presence of a mediator, Dr.Nagaraja the Rohithaksha's brother-in-law. The remaining Rs.3,000/- was reportedly paid to the Government to restore the land from sarakari pada status to Rohithaksha's name. Further contended that O.S No.307/2001 Rohithaksha filed against this defendant and 6 others, which was dismissed in 2003. The defendant No.1 compromise in O.S.No.410/2006 decree dated: 06.09.2010. The defendant No.1 is in possession over the suit schedule property. The plaintiff in order to grab the property has filed this suit. Hence, he prays to dismissed the suit with costs.

19. In order to prove his case, the plaintiff examined himself as PW.1 by reiterating the plaint contents in his examination-in-chief. He also marked 14 documents at Ex.P.1 to 14. Ex.P.1 to 3 are the Record of Rights. Ex.P.4 is the death certificate of T.S.Rohithaksha. Ex.P.5 to 7 are the certified copies of plaint, compromise petition in O.S No.73/1969. Ex.P.8 is the Aadhar card of the plaintiff. Ex.P.9 is the death certificate of the father of the plaintiff. Ex.P.10 is the death certificate of the Nageshappa. Ex.P.13 is the death certificate of the T.S.Murigeppa. Ex.P.11 is the certified copy of the FIR in Crime No.151/2025. Ex.P.12 is the certified copy of the complaint. Ex.P.14 is the certified copy of IHC No.02/1990-91.

20. Per contra, the defendant No.1 was examined himself as DW.1 and 8 documents were marked at Ex.D.1 to 8. Ex.D.1 is the certified copy of the plaint in O.S No.48/2011. Ex.D.2 is the certified copy of not press memo. Ex.D.2(a) and (b) are the signatures of T.G.Girish and Channamalleshwara. Ex.D.3 is the certified copy of order in O.S No.48/2011. Ex.D.3(a) and (b) are the signatures of T.G.Girish and Channamalleshwara. Ex.D.4 is the mutation register. Ex.D.5 is the compromise petition in O.S No.410/06. Ex.D.5(a) is the signature. Ex.D.6 is the MR No.T86/14-15. Ex.D.7 is the encumbrance certificate. Ex.D.8 is the RTC.

21. Now let me consider, whether the defendant No.1 is able to rebut the presumption arising in favour of the sale agreement dated: 02.07.2001 and compromise is O.S.No.410/06. As already noticed, the defendant No.1 in unequivocal terms has admitted the execution of the said agreement had executed by late T.S.Rohithaksha in his favour. Thereafter, he had paid the amount of Rs.1,05,000/- to the said Rohithaksha and remaining amount of Rs.3,000/- to the government which was due by the said Rohithaksha while restoring the said land into his name. DW.1 in his cross-examination has admitted as under;

"ದಿನಾಂಕ: **02.07.2001** ರಂದು ಕ್ರಯ ಕರಾರು ಆಗಿದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಕ್ರಯದ ಕರಾರನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿದಾರರು ಕೊಟ್ಟಿದ್ದೇನೆ ಎನ್ನುತ್ತಾರೆ. ಸಾಕ್ಷಿಗೆ ತಾವು ಹಾಜರುಪಡಿಸಿದ ದಾಖಲೆಗಳನ್ನು ಕೊಟ್ಟು ಅದರಲ್ಲಿ ಎಲ್ಲಿದೆ ಎಂದು ತೋರಿಸುವಂತೆ ಕೇಳಿದಾಗ

ಸಾಕ್ಷಿದಾರರು ಇಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಅದನ್ನು ಹಾಜರುಪಡಿಸಲು ತೊಂದರೆ ಇಲ್ಲ. ಕ್ರಯದ ಕರಾರು ನನ್ನ ಬಳಿ ಇದೆ”.

22. On perusal of the documents, evidently, he has not at all produced the said documents before the Court. The defendant No.1 has not at all made any efforts to call for that documents. Under such circumstances, adverse inference is to be drawn against the defendant No.1 for withholding the material evidence before the Court. In this connection, it is beneficial to place reliance on the decision of Hon'ble Supreme Court of India reported in (2004) 1 SCC 12 (Citi Bank N.A V/s Standard Chartered Bank and Others), which reads as under:

“36. Illustration (g) of Section 114 of the Indian Evidence Act provides that the Court may presume “that evidence which could be and is not produced would, if produced, be unfavourable to the person who holds it”. The Privy Council in T.S. Murugesam Pillai V.s M.D. Ghana Sambandha Pandara Sannadhi” held:

“A practice has grown up in Indian Procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing accordingly to furnish to the courts the best material for its decision. With regard to third parties, this may be right enough; they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is in Their Lordship’s opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the court to written evidence in

their possession which would throw light upon the proposition.”

37. This passage was cited with approval of this Court in Biltu Ram V Jainandan Prasad CA No. 941 of 1965 decided on 15.4.1968 and again in Gopal Krishnaji Ketkar V/s Mohd. Haji Latif” in which it was held (AIR 1968 SC 1416 Para 5),

“Even if the burden of proof does not lie on a party the court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.”

23. In the wake of principles emerging from the above-referred decision, adverse inference is to be drawn against the defendant No.1 for non-production of documents through which, Rohithaksha had handed over the suit property to the defendant No.1. The above extracted elicitation in the cross-examination, manifest that DW.1 was aware about the non production of that agreement of sale and compromise decree/order. But till today he has not produce the same before the court.

24. It is also significant to consider that when the right is created in favour of any party, the same right can be extinguished by the procedure known to law. As already noticed the case of the plaintiff is the suit property has devolved upon his father because he is only surviving brother of deceased Rohithakasha at the time his death. Extinction of the share of the defendant No.1 in the suit property must be as per the law. The defendant No.1 has not at all produced any evidence, muchless relevant evidence for agreeing to sell the suit property by the T.S.Rohithaksha and execution of agreement in his favour and possession was delivered. Apart from this, it is needless to state that as per Section 17 of Registration Act, relinquishment of any right in the suit property, which is admittedly valuing more than Rs.100/- must be through registered deed only. In this reference, it is beneficial to place reliance on the decision Hon'ble Supreme Court of India in (1990) 1 SCC 1 (Dinaji and others V/s Daddi and others), which runs thus:

“10. Section 17(1)(b) of Registration Act clearly provides that such a document where any right in immovable property is either assigned or extinguished will require registration. It could not be disputed that this part of the deed which refers to creation of an immediate right in the adopted son and divesting of the right adoptive mother in the property will squarely fall within the ambit of S. 17(1) (b) and therefore under Section 49 of the Registration Act, this could not be admitted if it is not registered document.

Unfortunately, the Hon'ble Judge of the High Court did not notice this aspect of the matter and felt that what could not be done because of the proviso (c) to Sec. 12 has been specifically provided in the document itself but this part of the document could not be read in evidence as it could not be admitted."

25. Again same view has been reiterated by the Hon'ble Supreme Court of India in the decision (2009) 6 SCC 194 (Sneh Gupta V/s Devisarup and others), which reads thus:

"32. Title to a property must be determined in terms of statutory provision. If by reason of the provisions of the Hindu Succession Act, 1956 the appellant herein had derived title to the property along with her brothers and sisters, she cannot be deprived thereof by reason of an agreement entered into by and between the original plaintiff and the contesting defendants. If a party furthermore relinquishes his or her right in a property, the same must be done by a registered instrument in terms of the provisions of the Registration Act."

26. Admittedly in the case on hand, there is no registered sale deed executed by the Rohithaksha by executing his property by taking sale consideration. Therefore the defendant No.1 has failed to prove that the deceased Rohithaksha had executed sale agreement in his favour and handed over the possession of the suit property. The defendant No.1 has claimed that, he is the absolute owner in possession of the suit schedule property on the basis of agreement of sale dated: 02.07.2001 and the compromise decree in O.S.No.410/06. The defendant

No.1 having contended so, has not brought such document on record. Further the defendant No.1 has not produced compromise decree or order before this court. It is needless to point out that as per Section 54 of the Transfer of Property Act, the agreement of sale cannot pass any title to holder of that agreement. It is only a creation of interest in the property. In the case on hand, the defendant No.1 has claimed possession and it has been admitted by the plaintiff also. However, the plaintiff has not admitted the agreement sale but he has set up a case of unauthorized possession by the defendant No.1. Moreover, the defendant No.1 having set up the agreement of sale and compromise decree and the possession through those documents has failed to bring those documents on record. Under such circumstances, the defendant No.1 has failed to prove the very ownership and possession in and over the suit schedule property on the basis of agreement of sale dated: 02.07.2001.

27. It is an undisputed fact by both the parties that the suit schedule property, measuring 5 acres 38 guntas in Sy.No.153/7, situated at Thyavanagi village, Tq:Channagiri, originally belonged to the joint family of Channappa Sahukar. Furthermore, both the parties admit that in a subsequent partition, this specific suit schedule property fell to the share of late T.S.Rohithaksha. Therefore, root of title starts with Rohithaksha. The plaintiff has produced the death certificate of T.S.Rohithaksha as per Ex.P.4, confirming his demise on 06.05.2005. The plaintiff contends, and

the defendant No.1 has not effectively rebutted with evidence, that Rohithaksha died unmarried and intestate. Under Section 8 of Hindu Succession Act, when a male Hindu dies intestate, his property devolves upon his heirs. Since Rohithaksha died unmarried, he has no class-I legal heirs i.e., son, daughter, widow or mother. In the absence of class-I heirs, the property devolves upon class-II heirs under Section 9 of Hindu Succession Act. The plaintiff's father, Janardhana, being the brother of deceased, falls under category-2 of class-II heirs.

28. The plaintiff has successfully placed on record relevant death certificates showing that the other brothers Murigeppa, Malleshappa and Nageshappa predeceased Rohithaksha as per Ex.P.10, 13 and Ex.P.14. Ex.P.14 is the IHC No.2/90-91 for confirming the death of T.S.Malleshappa. Subsequently, Janardhana became the sole surviving legal heir and succeeded to the absolute ownership of the suit property by operation of law immediately upon Rohithaksha's death in 2005. As per Ex.P.9 the Janardhana died on 06.09.2010. It clearly shows that the Janardhana died after the death of all his brothers including Rohithaksha. Hence, the Janardhana became the sole surviving legal heir and succeeded to the absolute ownership of the suit property.

29. While the defendant No.1 claims the property changed hands via a sale agreement dated: 02.07.2001 and a compromise decree in 2010, he has failed to produce those

documents before this court. Those documents are best evidence. Under Section 114(g) of Indian Evidence Act, the court draws an adverse inference against the defendant No.1 for withholding these documents. In the absence of a registered sale deed or a validly executed decree proven in court, the paper title remains with the legal heirs of the original owner. The plaintiff being the son of Janardhana, has stepped into shoes of his father. Having proved the lineage and the death of the original owner without class-I heirs, the plaintiff has discharged the burden of proof. The court, therefore holds that the plaintiff has established absolute ownership over the suit schedule property along-with the defendant No.2 to 11. With these reasons, I answered the re-casted Issue No.1 in the Affirmative and the re-casted issue No.4 held in the Negative.

30. RE-CASTED ISSUE NO.3: Admittedly, the possession of the defendant No.1 is not authoritative and is not with the permission of the plaintiff and the defendant No.2 to 11. Moreover, the defendant No.1 is having pleaded so that he is in possession of the suit schedule property on the basis of agreement of the sale dated: 02.07.2001 and compromise decree has failed to prove the same. Under such circumstances the possession held by the defendant No.1 in suit schedule property is absolutely illegal possession. Except contending that the plaintiff is entitled for mesne profits for wrongful possession by the defendant No.1 over the suit property, the plaintiff has not at all adduced any evidence so as to enable the Court to

determine the actual quantum of mesne profit. Order XX Rule 12 of Code of Civil Procedure, 1908 lays down the procedure for conducting the enquiry to determine the mesne profits. As per the said provision, a separate enquiry is to be held to determine the quantum of mesne profits. The Hon'ble High Court of Karnataka in a decision reported in **ILR 2005 KAR. 4534 (Revanna Vs Byregowda and Others)**, has held as under:

“In so far as the 3rd substantial question of law is concerned, a perusal of the order of the Trial Court and the Lower appellate Court has no foundation to direct the 2nd defendant to pay mesne profits from 1976-77 till payment as per 3/4th share at the rate of Rs.5,000/- per year. The Trial Court or the Lower Appellate Court ought to have resorted an enquiry as per Order 20 Rule 12, CPC or in the alternative, there should have been cogent evidence made available on record. Having regard to the facts and circumstances of the case of any cogent evidence in that regard and it is also does not call for interference to determine the mesne profits as per Order 20 Rule 12, CPC and the finding of the Trial Court as well as the Lower Appellate Court in this regard has to be reversed.”

31. In the light of principles emerging from this decision, a separate inquiry is to be held to determine the mesne profits. Therefore, this re-casted issue No.3 is answered accordingly.

32.RE-CASTED ISSUE NO.2 AND ISSUE NO.5: These issues are interrelated to each other and finding on re-casted issue No.2 will have bearing on the another. Hence, to avoid

repetition of facts and evidence, these issues are taken together for common consideration. The plaintiff has proved that himself and the defendant No.2 to 11 are the owners of the suit schedule property and has also proved that the suit schedule property originally belonged to his joint family and the said property came to the portion of Rohithaksha when partition took place among his brothers. Further he has proved that the said Rohithaksha was unmarried. Further the plaintiff has proved that the Rohithaksha's above mentioned brothers predeceased him, except the plaintiff's father. Hence, the suit schedule property has devolved upon his brother Janardhana because he was only surviving brother at the time of his death. The plaintiff has also proved that the defendant No.1 has unauthorizedly is in possession over the suit schedule property and in that regard he has brought positive evidence on record. However, the defendant No.1 having set up a claim of adverse possession on the basis of agreement of sale dated: 02.07.2001 and court compromise decree has not brought the very agreement of sale and compromise decree on record. Furthermore, it is already held that the adverse possession cannot be laid on the basis of agreement of sale. Since such possession is always be treated as permissive possession. Further, the claim of the plaintiff is within time as there is no time limit for claiming of the possession of the property. Moreover, the defendant No.1 has failed to prove that he is in possession of the suit schedule since the year 1992 or since the year 2001.

33. Under such circumstances, the plaintiff has successfully established that in the recent past the defendant No.1 came into possession of the suit schedule property that to by means of illegal interference or trespassing act. The plaintiff has also prove that the possession of the defendant No.1 in the suit schedule property is illegal one and as such the mesne profit is appropriate relief for such illegal holding of the land for several years. Thus, the plaintiff is entitled for the possession of the suit schedule property from the defendant No.1 and he is entitled relief of recovery of possession. With these reasons, the re-casted issue No.2 is held in the Affirmative and issue No.5 held partly in the Affirmative.

34. ISSUE NO.6: In view of the discussion made in detail while answering the re-casted issue No.1 to 4 and Issue No.5, I proceed to pass the following;

:ORDER:

The suit of the plaintiff is hereby decreed in the following manner;

It is ordered and decreed that the plaintiff and the defendant No.2 to 11 are the absolute owners of the suit schedule property.

It is further ordered and decreed that the defendant No.1 shall vacate and hand over the possession of the suit schedule property within 2 months from the date of this

judgment. In case the defendant No.1 fails to handover the actual possession of the suit schedule property within stipulated time, then the plaintiff can get the possession of the suit schedule property due process of law.

It is hereby ordered that a separate enquiry is to be held for ascertainment the mesne profits.

Facts and circumstances of the case there is no order as to costs.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by her, the transcript revised by me and then pronounced in the open court on this the 15th day of April 2026)

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

ANNEXURE

LIST OF WITNESS EXAMINED BY THE PLAINTIFF:

PW.1 : Girish.T.S.

LIST OF DOCUMENTS MARKED BY THE PLAINTIFF:

Ex.P.1 to 3 : Record of Rights.

Ex.P.4 : Death certificate of T.S.Rohitaksha.

Ex.P.5 to 7 : Certified copies of plaint, compromise petition in OS No.73/1969.

Ex.P.8 : Adhar card of the plaintiff.

Ex.P.9, 10 & 13 : Death certificates.

- Ex.P.11 : Certified copy of the FIR.
Ex.P.12 : Certified copy of the complaint.
Ex.P.14 : Certified copy of IHC No.02/90-91.

LIST OF WITNESS EXAMINED BY THE DEFENDANTS:

- DW.1 : T.S.Shivamurthayappa.

LIST OF DOCUMENTS MARKED BY THE DEFENDANTS:

- Ex.D.1 : Certified copy of plaint in OS No.48/2011.
Ex.D.2 : Certified copy of not press memo.
Ex.D.2(a) & (b) : Signatures.
Ex.D.3 : Certified copy of order in OS No.48/2011.
Ex.D.3(a) & (b) : Signatures.
Ex.D.4 : Certified copy of Mutation register.
Ex.D.5 : Certified copy of Compromise petition in OS No.410/06.

Ex.D.5(a) : Signature.
Ex.D.6 : Certified copy of MR No.T86/14-15.
Ex.D.7 : Certified copy of encumbrance certificate.
Ex.D.8 : RTC.

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