

KADG310004372023



Presented on : 16-06-2023
Registered on : 16-06-2023
Decided on : 19-08-2026
Duration : 03 years, 02 months, 03 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
HARIHAR, SITTING AT HONNALI**

PRESENT: Smt. Padmashri A. Munnoli,
B.A.L, LL.B.
Senior Civil Judge and JMFC,
Harihar, sitting at Honnali

Dated this the 19th day of August, 2026

R.A. No. 34/2023

Smt. K. Vijaya W/o K.G. Jayappa
Gowda, Aged about 55 years,
Housewife, Kundur village, Honnali
taluk, Davangere District.

Represented by: GPA Holder:
Jayappa Gowda S/o Patel
Mahadevappa, Aged about 63 years,
Agriculturist, R/o Kunduru village,
Honnali taluk, Davangere District.

**... Appellant
(Ori. Plaintiff)
(By Sri. S.N. Prakash, Advocate)**

Versus

1. Umapathi Kaldera S/o Hanumakka,
Aged about 62 years, Agriculturist.

2. Shantaraja S/o Odo
Hanumanthappa, Aged about 42
years, Agriculturist
3. Revanappa S/o Basappa, Aged
about 48 years, Agriculturist
4. Rajappa, S/o Nagappa, Aged about
45 Years, Agriculturist

All are residents of Kunduru village,
Honnali taluk, Davangere District.

**... Respondents
(Ori. Defendants)**

(R.1 to 4 Ex-parte)

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Nature of the appeal	:	Permanent injunction						
Judgment against which appeal is preferred.	:	Appeal against the Judgment and decree passed in O.S.No. 23/2015 dated: 12.04.2023 on the file of learned Prl. Civil Judge and JMFC, Honnali						
Date of institution	:	16.06.2023						
Judgment pronounced on	:	19.08.2026						
Total duration	:	<table> <tbody> <tr> <td>Year/s</td> <td>Month/s</td> <td>Day/s</td> </tr> <tr> <td>03</td> <td>02</td> <td>03</td> </tr> </tbody> </table>	Year/s	Month/s	Day/s	03	02	03
Year/s	Month/s	Day/s						
03	02	03						

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J U D G M E N T

The present Regular Appeal is preferred by the appellant/ plaintiff against the respondents/defendants being aggrieved by the judgment and decree passed by trial court in O.S. No. 23/2015 dated: 12.04.2023, on the file of learned Prl. Civil Judge and JMFC, Honnali, under which suit of the plaintiff for the relief of permanent injunction came to be dismissed.

2. The parties to this regular appeal, shall be referred as per their respective ranking before the trial court in the judgment for convenience.

3. Brief facts of the case leading to the present appeal are as under:-

Plaintiff instituted the suit on hand against defendants for the relief of permanent injunction in respect of the suit schedule property which is a vacant site in Janjar No 872, property No. 116, khata No. 847 measuring 80 x 132 ft. situated at Kunduru village of Honnali taluk within the boundaries described in the plaint schedule.

4. Plaintiff avers that she is the absolute owner of the suit schedule property. That the suit schedule property originally belonged to her husband K.G. Jayappa Gowda S/o

Patel Mahadevappa. In a partition this suit property was allotted to the share of husband of the plaintiff. He was in possession and enjoyment of the same. Later the husband of the plaintiff gifted this property to the plaintiff under a registered gift deed dated: 21.09.2012. The khata was changed in the name of plaintiff and since then plaintiff is the absolute owner in exclusive possession as suit schedule property.

5. The defendants have no right, title or interest over the suit schedule property. That since for about 3 to 4 months prior to institution of the suit, defendants are acting highhandedly. Defendants by influencing the members of the Grampanchayath are attempting to get deleted the name of plaintiff from the khata and hearing the rumors about attempt for change made in Panchayath records, plaintiff got caused a legal notice on the panchayath authorities. That on 28.12.2014 plaintiff was cleaning the suit schedule property with an intention to lay the foundation, at that time, defendants came to the suit schedule property and abused the plaintiff, defendants obstructed with the possession of the plaintiff stating that they will not allow the plaintiff to build in the suit schedule property. That the labourers who had come to work and son of the plaintiff pacified the defendants, while

going back defendants threatened the plaintiff with dispossession. Therefore, the present suit for the relief of permanent injunction.

6. In pursuance of the suit summons issued, defendants appeared through a counsel.

7. Defendant No.1 filed the written statement and same is adopted by the defendants No.2 to 4 by a memo.

8. Defendant No.1 in the written statement filed denied the plaint averments. The description of the suit schedule property is denied. It is denied that the plaintiff is the owner of the suit schedule property. It is contended that neither the plaintiff nor her husband have any right over the suit schedule property. That with an intention to grab property in Sy. No. 138 to an extent of 53 acres 26 gunta, plaintiff has filed this suit. That husband of the plaintiff, one Basvarajappa and K.G. Gururaj Patel are the sons of one Patel Mahadevappa. That they have got changed the khatas of the properties as per the division which was effected in their family. That amongst the properties divided, property No. 420/1+2+3 and property No. 116 are adjacent to one another. They are situated in Ward No.2 of Kunduru village. The boundaries mentioned to the suit schedule property in the plaint schedule is situated

near ward No.2 of Kunduru village. The boundaries mentioned to the suit schedule property in the plaint schedule is situated near ward No.1. That the property No. 420/1+2+3 belongs to the family of husband of the plaintiff. That out of this property No. 420/1 measures 53 x 29 ft. It consists of a house property. Property No. 420/2 is a vacant site measuring 29 x 40 ft. Property No. 420/3 measures 53 x 18 ft. and towards northern side of this property No. 116 measuring 80 x 132 ft. is used as a khana Koppalu by the husband of the plaintiff. The boundaries to this property are to the East: Primary school (presently Kunduru hostel), West: Urdu School, North: Property of Gangadharappa, Parameshwarappa in property No. 114 and south house property of K.G. Gururaju, Basavarajappa and husband of the plaintiff. But, in the plaint the plaintiff has shown the wrong boundaries to the property No. 116. That the boundaries shown by the plaintiff in the plaint schedule are that of Sy No. 138. That the plaintiff is attempting to establish her possession over the Sy No. 138 which is a Doddakere. That the property shown within the boundaries in the plaint schedule is at a distance of one kilometer from property No. 116 of husband of the plaintiff.

9. As husband of the plaintiff earlier attempted to grab this Sy. No. 138, a resolution was passed by the

Grampanchayath on 09.05.2002 and the boundaries which were wrongly shown to property No. 116 were canceled. But, however husband of the plaintiff succeeded in getting the same boundaries entered in the Grampanchayath records to property No. 116 and thereafter he has created a gift deed in favor of plaintiff. That husband of the plaintiff again gave a representation on 22.09.2014 to enter the boundaries to property No. 116. Thereafter the Grampanchayath authorities visited the spot and as per resolution dated: 03.09.2015 the details of property No. 116 were given. That husband of the plaintiff and plaintiff by playing fraud have got registered the gift deed by showing wrong boundaries. That the boundaries shown in the plaint schedule are part of Sy. No. 138. As husband of the plaintiff had no right title or interest over the Sy. No. 138 he could not have executed the gift deed. Therefore it was prayed that the suit be dismissed.

10. Based on the above pleadings, the following issues were framed by the trial court.

-:: ISSUES ::-

1. Whether the plaintiff proves the correct extent and boundaries of the suit schedule properties?

2. Whether the plaintiff proves that he is in peaceful possession and enjoyment of the suit property as on date of suit?
3. Whether the suit is maintainable?
4. Whether the plaintiff further proves interference by the defendants as averred in the plaint?
5. Whether suit is bad for non-joinder of necessary parties?
6. Whether the defendants prove that they have better title to the suit property?
7. Whether the plaintiff is entitled for relief of permanent injunction?
8. What order or decree?

11. Thereafter, before the trial court in order to prove her case, plaintiff got herself examined as PW.1, husband of the plaintiff is examined as PW.2. Two supporting witnesses are examined as PW.3 and 4. Ex.P.1 to 21 are marked for the plaintiff. No evidence lead by defendants side.

12. The trial court after appreciating the material on record dismissed the suit of the plaintiff. Therefore, now being aggrieved by the said dismissal plaintiff is in this appeal amongst the following grounds.

- It is contended that the trial court failed to appreciate the oral and documentary evidence on record.
- That no evidence was lead by defendants.
- That the title deeds and the revenue entries were standing in the name of plaintiff.
- Therefore, the trial court without appreciating the same dismissed the suit and hence it was prayed that the appeal be allowed and judgment and decree of the trial court be set aside.

13. In pursuance of the appeal notices issued, respondents though served remained absent. Hence, placed ex-parte. The trial court records are secured. There was a delay of seven months in filing of this appeal and same is condoned as per order passed on IA No.1 dated: 08.07.2026.

14. The learned counsel for plaintiff would argue that the plaintiff established that she is the absolute owner of the suit property. The gift deed establishes the title of the plaintiff and the trial court failed to consider the same. The documents of the plaintiff were not properly appreciated.

Hence, it was prayed that the appeal be allowed and the judgment and decree of the trial court be set aside.

15. Heard, perused the material on record. The following points arise for my consideration:

1. Whether the plaintiff establishes her lawful possession over the suit property?
2. Whether the judgment and decree passed by the trial court requires any interference with?
3. What Order?

16. My findings to the above points are as under....

Point No.1 : In the Negative;

Point No.2 : In the Negative;

Point No.3 : As per final order

for the following.....

: REASONS :

17. Point No.1 and 2 : These points are interlinked with each other, hence, they are taken together for common discussion in order to avoid repetition of facts and evidence.

18. The plaintiff has preferred this regular appeal being aggrieved by the judgment and decree passed by the trial

court, under which her suit for the relief of permanent injunction came to be dismissed. The trial court in its judgment has observed that Ex.P.1 to 4 do not depict the khata number and janjar number mentioned in the gift deed. That name of plaintiff is not entered to the suit schedule property. Therefore, the plaintiff has failed to establish her possession and enjoyment over the suit schedule property.

19. As this is a regular appeal, when we go through the trial court records to appreciate the grounds of appeal, as discussed above plaintiff instituted the suit on hand against defendants for the relief of permanent injunction. The suit property as described in the plaint schedule is a vacant site with Janjar No 872, property No. 116, khata No. 847 measuring 80 x 132 ft. situated at Kunduru village of Honnali taluk. The plaintiff claims right to the suit schedule property by virtue of the gift deed executed by her husband on 21.09.2012. Plaintiff avers that the suit schedule property was allotted to the share of her husband in a family partition. Later her husband executed the gift deed and accordingly plaintiff claims title to the suit schedule property. Defendant No.1 in the written statement filed at para 11 has specifically pleaded that plaintiff is claiming right to a property which is in Sy. No. 138. That wrong boundaries are mentioned by the

plaintiff in the plaint schedule and that plaintiff is not having any property within the boundaries mentioned in the plaint schedule. That she is attempting to claim right in Sy. No. 138.

20. Before the trial court plaintiff was examined as PW.1. Her husband was examined as PW.2. Two supporting witnesses were examined as PW.3 and 4. Ex.P.1 to 21 are marked for the plaintiff's side.

21. Defendants though did not contest the suit but, the burden was on the plaintiff to establish her possession and enjoyment over the suit schedule property. PW.2 in the cross-examination states that property No. 116 originally belonged to his father and in a family partition the said property was allotted to him. Later again states that on the basis of inheritance after the death of his father with consent of all his brothers his name came to be entered to the suit schedule property. PW.3 and 4 have spoken about plaintiff being in possession and enjoyment of the suit schedule property. PW.3 and 4 though are not cross-examined by defendants side, but, the burden is on the plaintiff to establish her lawful possession over the suit schedule property as claimed by her. When we come to the documentary evidence on record, Ex.P.1 is a house list extract for the year 1989-90 for property No.

116 which shows the name of husband of plaintiff. Ex.P.2 is the assessment extract for the year 2007-08 in respect of property No. 93/1, 93/2 and 116. Even Ex.P.3 is the assessment extract, Ex.P.4 is the assessment extract for the year 2006-07 showing the name of husband of plaintiff i.e., PW.2. In Ex.P.1 the house list extract the boundaries are not mentioned. Only the extent is mentioned as 80 x 132 ft. Ex.P.5 is the gift deed dated: 21.09.2012. In Ex.P.1, the Janjar number mentioned is 593, therefore if this is considered, in the plaint schedule the janjar number mentioned is 872. Also Ex.P.6 is a patta book and nowhere in this Ex.P.6 the date of issue is forthcoming. It only pertains to payment of tax. Ex.P.7 is an endorsement given by the Grampanchayath, Kunduru, dated: 22.09.2014 wherein it is resolved to mention the boundaries to property No. 116, Janjar No. 593, but, the plaintiff has not produced any material on record to establish that whether the grampanchayath gave any document to her mentioning the boundaries. The suit is instituted in the year 2015, but, the property extract produced at Ex.P.1 shows the name of husband of plaintiff and not the plaintiff. Defendants have taken up a specific defense that plaintiff is claiming right over the property which is in Sy. No. 138. Therefore, even as per

Ex.P.1 and 14, the janjar number is 593. Therefore, the description of the suit schedule property is also not satisfactorily established by the plaintiff. The plaintiff though examined PW.3 and 4 to establish her possession but, the description of the suit schedule property itself is doubtful, in my opinion the plaintiff has failed to establish her possession to the suit schedule property. Even as discussed above as per Ex.P.14 which is endorsement issued in the year 2014, it appears there was dispute about mentioning of boundaries to the property of husband of the plaintiff. Therefore, from the said fact also possession of the plaintiff over the suit schedule property becomes doubtful. Therefore, plaintiff has failed to establish her lawful possession over the suit schedule property. Therefore, for these reasons the judgment and decree passed by the trial court does not require any interference with. Accordingly, for these reasons I answer **point No.1 and 2 in the Negative.**

22. Point No.3: For my findings on the above points and for the reasons stated above, I proceed to pass the following.....

:ORDER:

The Regular Appeal preferred by the appellant/plaintiff Under Order 41 Rule 1 R/W Sec. 96 of CPC is hereby dismissed with costs.

The judgment and decree passed by the trial court in O.S.No.23/2015 dated: 12.04.2023 on the file of learned Prl. Civil Judge and JMFC, Honnali is hereby confirmed.

Draw decree accordingly.

Send back the trial court records along with copy of the judgment.

(Part of dictation dictated to the stenographer, transcribed and typed by him and part of dictation dictated to the Stenographer directly on computer, corrected and signed by me, then pronounced in the open court on this the 19th day of August 2026).

(Smt.Padmashri A. Munnoli)
Senior. Civil Judge and JMFC
Harihar, sitting at Honnali