

KADW400005822022



Presented on : 15-03-2022
Registered on : 15-03-2022
Decided on : 16-07-2026
Duration : 4 years 4 months 2 days

**IN THE COURT OF THE CIVIL JUDGE &
JMFC., KUNDGOL**

Present : Sri. Sachinkumar Shivapuji., BA L. LL.B.
C/c Civil Judge & JMFC,
Kundgol.

Dated this the 16th day of July 2026

O.S.No.27/2022

PLAINTIFF : **...**
Sri.Mehabubpeera S/o. Modinsab
Darga, Age: 70 years, R/o.Agriculture,
R/o.Betadur, Tq:Kundgol.Dist: Dharwad.

(By Sri.U.M.P, Advocate)

DEFENDANT Vs.
1. Mabusab S/o.Nabisab Nadaf,
Age: 60 years, Occ: Agriculture,
R/o.Betadur, Kundgol,Dist: Dharwad.
2. Tajapeer S/o. Modinsab Darga,
Age: 85 years, Occ: Agriculture,
R/o.Betadur, Tq: Kundgol, Dist:
Dharwad.

(D-1 Sri.M.M..G, Advocate)

(D-2 Sri.P.S.P., advocate)

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1. Nature of the suit : Injunction
2. Date of Institution of the Suit : 15.03.2022
3. Date of commencement of evidence : 28.08.2024
4. Date of Judgment pronounced on : 16.07.2026
5. Total duration : Year/s Month/s Day/s
04 04 02 days

(Sri. Sachinkumar Shivapuji)
C/c Civil Judge and JMFC,
Kundgol.

J U D G M E N T

Plaintiff has filed this suit against defendants for the relief of permanent injunction restraining the defendants their agents, servants or anybody acting on their behalf from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

2. Brief facts of the plaintiff case is as follows:

It is the case of the plaintiff that, the plaintiff and his brothers are the owners and in possession of suit property which is the family property of plaintiff and his brothers. Defendants have no manner of right title interest

unnecessary cause interfere with the plaintiff possession over the suit property and also misuse the old age of plaintiff trying to grab the suit property and putting up construction over the suit property on 2-02-2022, the defendants threatened the plaintiff and also trying to interfere with the plaintiff possession in order grab the suit property by putting up construction. Hence, plaintiff has constrained to file the suit.

3. In spite of service of summons the defendant no.1 filed his written statement stating that suit of the plaintiff is not maintainable either under law or facts. Further he denied entire averment of plaint as well as the possession over the suit property by the plaintiff. Further stated that the suit of the plaintiff is not maintainable without seeking relief of declaration and also the suit is hit by non-joinder of necessary party. Further defendant contended that the plaintiff is not only owner and in possession of the suit property. The plaintiff and his brother Walipasha Babajan and Tajavuddin are jointly owners and in possession of suit property. The said Walipasha and Babajan were died

leaving behind their wife and children. The brother of the plaintiff by name Tajavuddin Peera S/o.Modinsab Darga @ Peerjade has filed suit in O.S.No.34/2002 in respect of their family property including suit property the same has been decree, thereafter the elder brother of plaintiff by name Walipasha filed R.A.No.54/2016 by challenging the decree of O.S.No.34/2002. The same has been dismissed. Thereafter the said Tajvuddinpeera Darga filed FDP 7/2015 which was finally decreed on 7-6-2019. Therefore the plaintiff is not only in possession of suit property which is belong to the plaintiff as well as his brothers. Further contended that house no.336/A of Betadur village is the family property of defendant which is originally belongs to his propositus by name Husensab Nadaf. The said Husensab Nadaf died leaving behind his children. Thereafter the children of Husensab Nadaf wherein possession of the said property. The son of Husensab Nadaf by name Nabisab died who having children by name Mehaboobsab the defendant no.1, Imamsab Muktumsab and their uncle Allabaksh have divided their property

bearing No.336/A towards northern side property taken by the defendant and his brothers and toward southern side has taken by Allabaksh. Since the date of partition they were in possession of the said property. Since the wall of towards norther side is in dilapidated in position . The defendant moved application before Betadur gram panchayath from construction of the said wall at that time the plaintiff unnecessary cause interfere with the construction of defendant. Further the plaintiff has not filed the suit with clean hand and he suppressed the material facts in order grab the defendant property and also the plaintiff filed the suit by creating boundaries of suit property. Therefore, he prays to dismiss the suit.

4. On perusal of the pleadings and materials on record the following issues are framed by predecessor in the office:

ISSUES

1. Whether plaintiff proves that he was in peaceful possession and enjoyment of suit schedule property as on the date of suit ?
2. Whether plaintiff further proves interference from the defendant ?

3. Whether plaintiff is entitled for the relief of permanent injunction as prayed for ?

4. What order or decree?

5. In order to prove his case, the plaintiff himself got examined as P.W.1 and reiterated the averments made in plaint in his affidavit filed in lieu of his examination- in - chief and got exhibited Ex.P.1. The defendant no.1 got examined as DW1 and got exhibited Exs.D1 to 14 and also other witnesses examined as D.W.2 and 3.

6. Plaintiff and defendant no.1 filed their written argument.

7. My answers to the above issues are as under:

<i>Issue No.1</i>	<i>:</i>	<i>In the affirmative</i>
<i>Issue No.2</i>	<i>:</i>	<i>In the affirmative</i>
<i>Issue No.3</i>	<i>:</i>	<i>In the partly affirmative</i>
<i>Issue No.4</i>	<i>:</i>	<i>As per the final order for the following:</i>

REASONS

8.ISSUE Nos.1 and 2: Since these issues are interconnected with each other I have taken up together for common discussion to avoid the repetition of facts and evidence on record.

9. In order to prove the case the plaintiff himself examined as PW1 and got marked Ex.P1. Ex.P.1 is the RTC extract in respect of suit property which reveals that suit property stand in the name of plaintiff and his brothers jointly through Varsa. Further the name of plaintiff and his brothers reflects as a owner and possessor as well as cultivator of suit property. Per contra the defendant no.1 denied the plaintiff rights as well as possession over the suit property. In order to disproved the case of the plaintiff the P.W.1 has been cross examined by defendant no.1 counsel. During course of cross examination the P.W.1 denied entire suggestion put forth by defendant counsel. Further P.W.1 admits the proceeding the O.S.No.34/2002. In order to substantiate the defence and disprove the case of the plaintiff. Defendant no.1 examined as D.W.1 his chief examination irritated his written statement. D.W.1 got marked Ex.D.1 to 13. Ex.D.1 is the certified copy of sale deed, Ex.D.2 is the certificate issued by Betadur gram panchayat, Ex.D.3 is the tax paid receipt, Ex.D.4 is the endorsement issued by secretary of Begadur gram

panchayat, Ex.D.5 is the online information, Ex.D.6 and 7 are the judgment and decree of O.S.No.34/2002, Ex.D.8 and 9 are the judgment and decree of RA No.54/2016, Ex.D.10 is the order copy of FDP 7/2015, Ex.D.11 certified copy of final decree, Ex.D.12 is the plaint in O.S.No.41/2018, Ex.D.13 and 14 are the tax paid receipt. On perusal of documentary evidence of Ex.D.1 to 14 which are reveals the plaintiffs and their family members have sold the property no.16/2 toward eastern side in favour of Ningappa Yallappa Hadimani. Further Ex.D.6 to 11 are the judgment and decree copies of O.S.No.34/2002, RA No.54/2016 and FDP No.7/2015 which reveals the brother of plaintiff filed suit for partition against plaintiff and others in respect of their family property which include suit property the same has been decreed. Aggrieved by the judgment R.A.No.54/2016 has been filed the same has been dismissed by confirming the judgment and decree of Ex.D.6 and 7. thereafter the properties have been allotted as per the Ex.D.10 and 11. It is admitted fact there was suit have been filed in the family of plaintiffs. Moreover the P.W.1

admitted the proceeding of Ex.D.6 to 11 during course of cross examination. In order substantiate the case the D.W.1 has been cross examination during of cross examination nothing has been elicited but the D.W.1 clearly admits ದಾವಾ ಆಸ್ತಿ ನಂ:16/1 ಕ್ಷೇತ್ರ 1 ಗುಂಟೆ 6 ಅಣೆ ಎಂದರೆ ಸರಿ . ಈ ಆಸ್ತಿಯಲ್ಲಿ ನನಗೆ ಹಕ್ಕು ಇರುವುದಿಲ್ಲಎಂದರೆ ಸರಿ. It is clear the defendant no.1 Have no manner of rights over the suit property.

10. In order disprove the case of the plaintiff the defendant no.1 examined two witnesses as D.w.2 and 3 who were deposed in their chief examination they known the plaintiff and defendants and also suit the D.W.1 residing VPC 336/A toward southern side and defendant no.1 is residing toward northern side of the said property. Which was divided by children of Husensab Nadaf. The plaintiff not only owner of property no.16/1 and the deceased brother of plaintiff children also joint owners of suit property. D.w.2 and 3 have been cross examination during course of cross examination D.W.2 deposed ವಿಪಿ ಸಿ ನಂ.16/1 ಯಾರಿಗೂ ಸೇರಿದ್ದು ಎಂದರೆ ಸಾಕ್ಷಿ ವಾದಿ ಮೆಹಬೂಬ ಪೀರಾ ಇವರಿಗೆ ಸಂಬಂಧಪಟ್ಟಿದ್ದು

ಎಂದು ನುಡಿದಿರುತ್ತಾರೆ. ವಾದಿಗೆ ಸಂಬಂಧ ಪಟ್ಟ ಆಸ್ತಿಯಲ್ಲಿ ನನಗಾಗಲಿ ಉಳಿದ ಪ್ರತಿವಾದಿಯವರಿಗೆ ಯಾಗಲಿ ಯಾವುದೇ ಹಿತ್ತಾಸಕ್ತಿ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. It is clear the D.W.2 who is the brother of defendant no.1 who now the plaintiff and defendant and also saw the suit property he stating accept the plaintiff himself and defendant no.1 have no manner of rights of the suit property.

11. On gone through the oral and documentary evidence as well as the pleadings of the parties it is admitted by defendant no.1, the plaintiff is the owner and in possession of the suit property along with his brothers. It is admitted fact that there was partition suit have been decided in the family of plaintiff filed by one of the plaintiff brother including the suit property. It is said that the plaintiff is the one of the co-owner of suit property. During the pendency the defendant no.2 has been impleaded but he has not filed written statement to resist the claim of plaintiff. The defendant no.2 who is the none other brother of plaintiff and also the co-owner of suit property. It is case of plaintiff is that the plaintiff is in possession of the suit property along with his brothers but defendant who is the adjacent owner

threatened the plaintiffs in order to grab the suit property by putting up wall. Therefore he sought relief of permanent injunction. It is admitted by the defendant no.1 and his witnesses the plaintiff possession over the suit property. Moreover the defendant no.1 though denied the plaintiff claim in his written statement, but he admits the plaintiff possession over the suit property along with his brothers in his written statement itself. Therefore, the admitted fact need not be proved. Of course the entire burden is on plaintiff who has to prove his case on his own strength but not weakness of defendants. But it is oral evidence on record coupled with admission in the written statement clearly shows that the plaintiff possession over the suit property in respect of interfere is concerned the defendant appear and denied the claim of the plaintiff. It self shows that the defendants interfere. Therefore this court is of the opinion that the plaintiff proved his possession as well as interfere of defendants. Moreover the defendant stated that he trying to put up his house northern side of wall at the time plaintiff interfere. Therefore it is clearly demonstrate there

was dispute between the plaintiff and defendant in respect of properties to protect the plaintiff possession, it is necessary to restrained the defendant no.1 for the possession of plaintiff over the suit property. It is already stated supra the defendant no.2 is of the co-owner of suit property. Therefore, the plaintiff cannot entitled relief of injunction against co-owner. Hence, taking into consideration the Issue no.1 and 2 answer in affirmative.

12. Issue No.3: This is suit filed by plaintiff against defendants for the relief of permanent injunction. In the present case on hand the plaintiff proved his case as already stated supra. Hence plaintiff is entitled relief against defendant no.1. Hence issue no.3 is answer in the partly affirmative.

13. Issue No.4: For the reasons discussed supra I proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby decreed in part.

The defendant no.1 and his agent, servants or anybody acting on his behalf are hereby restrained by way of order of permanent injunction restraining the defendant no.1 his agent, servants or anybody acting on his behalf from interfering with possession of plaintiff over the suit property.

Suit of the plaintiff is hereby dismissed against defendant no.2.

Draw decree accordingly.

(Dictated to the stenographer directly on computer and corrected by me and then pronounced in the open court on this the 16th **day of July 2026**)

**(SRI. SACHINKUMAR SHIVAPUJI)
C/c CIVIL JUDGE AND JMFC,
KUNDGOL**

ANNEXURE

1. List of witnesses examined on behalf of plaintiff/s :

P.W.1 : Mahabubpeer Darga

2. List of documents exhibited on behalf of plaintiff/s :

Ex.P.1 : RTC

3. List of witnesses examined on behalf of defendant/s :

D.W.1 : Mehabubsab Nadaf
D.W.2 : Nabisab Nadaf
D.W.3 : Mehabubsab Adargunchi

4. List of documents exhibited on behalf of defendant/s :

Ex.D.1 : Sale deed
Ex.D.2 : Betagur gram panchayat letter
Ex.D.3 : Tax receipt
Ex.D.4 : Checkbandi letter
Ex.D.5 : Online information
Ex.D.6 : Copy of judgment O.S.No.34/2002
Ex.D.7 : Copy of decree O.S.No.34/2002
Ex.D.8 : Copy of order R.A.No.54/2016
Ex.D.9 : Copy of decree R.A.54/2016
Ex.D.10 : Copy of order FDP No.7/2015
Ex.D.11 : Copy of final decree FDP No.7/2015
Ex.D.11a : Copy of PT sheet
Ex.D.12 : Copy of order O.S.No.41/2018
Ex.D.13&14 : Receipts

**(SRI.SACHINKUMAR SHIVAPUJI)
C/c CIVIL JUDGE AND JMFC,
KUNDGOL**
