

KADW410015602025



Presented on : 29-08-2025
Registered on : 29-08-2025
Decided on : 14-07-2026
Duration : 0 years, 10 months, 16 days

N THE COURT OF SENIOR CIVIL JUDGE AND JMFC

KUNDGOL

Present : Sri. Abdul Khadar, B.A.,LL.B.
Senior Civil Judge and JMFC.,
Kundgol.

This the 14th day of July 2026

REGULAR APPEAL No.26/2025

Appellant:

1) Iravva W/o Hanamantappa Mantur,
Age: 60 Years, Occ: Household,
R/o: Devanur, Tq: Kundgol,
Dist: Dharwad.

2) Manjunath S/o Hanmantappa Mantur,
Age: 36 Years, Occ: Agriculture,
R/o: Devanur, Tq: Kundgol,
Dist: Dharwad.

3) Basavaraj S/o Hanmantappa Mantur,
Age: 34 Years, Occ: Agriculture,
R/o: Devanur, Tq: Kundgol,
Dist: Dharwad.

4. Smt. Kavita W/o Yallappa Shantappanavar
Age: 30 Years, Occ: Household
R/o: Kundgol town, Tq: Kundgol,
Dist: Dharwad.

5. Fakkirappa S/o Mahadevappa Mantur,
Age: 61 Years, Occ: Service
R/o: Rajnagar, 2nd cross, Shivalli plot,
Dharwad.

(By Sri.UMP., Adv.)

-VS-

Respondent :

1) Ramappa S/o Mahadevappa Battur
Age: 60 years, Occ: Agriculture
R/o: Devanur village, Kundgol,
Dist: Dharwad.

2) Gundappa S/o Yallappa Battur
Age: 30 years, Occ: Agriculture
R/o: Devanur village, Kundgol,

Dist: Dharwad.

3) Smt. Girijavva W/o Yallappa Battur

Age: 57 years, Occ: Household

R/o: Devanur village, Kundgol,

Dist: Dharwad.

(By Sri.CMK, Adv.)

Date and nature of decree of appeal against	The Judgment and decree passed in OSNo.53/2018by the learned Civil Judge &JMFC, Kundgol dated:08.07.2025		
Date of institution of the appeal	23.08.2025		
Date of Judgment	14.07.2026		
Total Duration	Year/s	Month/s	Day/s
	00	10	21

JUDGMENT

The appellants/plaintiffs have preferred this appeal U/Order 41 Rule 1 R/w Sec.96 of CPC seeking to set-aside the judgment and decree passed in O.S. No.53/2018 dated 8.7.2025 on the filed of Civil Judge and JMFC Kundgol and allow the appeal and decreed the suit.

2. For the sake of convenience hereinafter/throughout this

appeal parties shall be referred by their rank as they stand in the suit.

3. The brief facts of the plaintiff case is that, the suit schedule property bearing VPC No.301 measuring 33 x 105 feet, situated at Devanur village, bounded on east by house property belongs to Kamadolli family, west by house property belonging to Agasar @ Parit family, north by Nala and South by Government road. The suit property was owned and possessed by the father of plaintiff's by name of Mahadevappa S/o Udachappa Annigeri @ Mantur and the same has been allotted to him by the Government as per Sanction order No.LBPSR-1228 dated 19.12.2960 by the Asst. Commissioner, Savaur and it was granted on 15.2.1961 under LNDSR-88, in plot No.9 measuring 90 x 33 feet out of 15 acre 22 guntas in Sy.No.132 of Devanur Village and on the very same day the possession of said property has been handed over to the father of the plaintiffs and the mutation was affected under 'D' No.1065 dated 18.03.1961, since from the date of sanction his father was in possession and enjoyment of the suit property, after the death of the father the plaintiffs, they were succeeded the suit property by inheritance and they are in possession and enjoyment of the suit property without any obstruction. The father of the plaintiffs died on 16.4.1991 leaving behind the plaintiffs as his legal heirs and they filed an application before the Tahsildar, Kundgol for mutation to effect the khata in their names in the ROR, after verification the

Tahsildar Kundgol has pleased to mutate the names of plaintiffs as per ME No.2767 dated 13.11.1998. The brother of the plaintiffs by name Udachappa died unmarried in the year 2000 and the mother of plaintiffs by name Smt. Ningavva died in the year 2004, hence the names of plaintiffs finds in the ROR in the place of his father.

4. The plaintiff's He further contended that, during the life time of Mahadevappa S/o Udachappa Annigeri @ Mantur, who was executed a sale deed in respect of suit property in favour of Mahadevappa S/o Yallappa Battur on 22.8.1977 under registered sale deed, but the possession was not delivered to the said Mahadevappa and even after execution of the said sale deed, the father of the plaintiffs was in possession and enjoyment of the suit property along with plaintiffs, his sons and his wife till the date of his demise. The defendant No.1 is the son of Mahadevappa, the defendant No.2 is grandson of said Mahadevappa and the defendant No.3 is the mother of defendant No.2 either during the life time of Mahadevappa nor even death of said Mahadevappa have obstructed to the peaceful possession and enjoyment of the suit property by the plaintiffs and hence the plaintiffs are the absolute owners of the said suit property by virtue of adverse possession. The defendants without their being any right, title and interest in the suit property are asserting their alleged rights with the knowledge that the plaintiffs are in possession and enjoyment of

the suit property and the defendants high handedly causing obstructions to the peaceful possession and enjoyment of the suit property by the plaintiffs and also giving threats of dispossessing the plaintiffs from the suit property and the same was resisted though elders requested the defendants not to do any illegal acts in respect of the suit property, but the defendants have not heeded the request of the elders of the villagers, without any alternative, the plaintiff constrained to file the suit and prayed for decreetal of the suit.

5. In pursuance of suit summons the defendants have appeared through their counsel and filed written statements and denied all the allegations made in the plaint averments and contended that from the date of execution of sale deed dated 22.8.1977 till date the father of the defendant No.1 is in possession and enjoyment of suit property, after his demise, the defendants No.1 to 3 are succeeded the same. The suit property with Gram Panchayath No.301 is a NA Plot No.9 measuring East-West 33 feet, North-South 105 feet of Devanur village, Kundgol taluk was the self-acquired property of plaintiffs father by name Mahadevappa Udachappa Mantur. The said property was in absolute ownership and possession of Mahadevappa. In turn, his family legal necessity during the year 1977, he kept the said property for sale, at that time the father of defendant No.1 came forward to purchase the same in presence of elders, and the purchase talks were held. Mahadevappa Udachappa Mantur

agreed to sell the said property to defendant No.1's father Mahadevappa Yallappa Battur for a sale consideration amount of Rs.4,500/- and thereby out of his free consent and will has executed a registered sale deed in favour of defendant No.1's father Mahadevappa on 22.8.1997. The said sale deed was registered before Sub-Registrar, Kundgol, After the execution of sale deed the possession of the property was delivered to Mahadevappa Battur. Based on sale deed, the khata effected in the name of Mahadevappa. After the purchase of, the father of defendant No.1 was absolute owner in possession of the said property. He died in the year 2001 and after the demise of defendant No.1's father, the defendants are being the LR's of Mahadevappa are succeeded the said property and their names also entered in the Panchayath documents as per law. The defendants are absolute owners in possession of the suit property. The father of defendant No.2 died in the year 2014, his wife and son they are the defendant No.2 and 3 are brought on record and they succeeded by the intermixture of Yallappa Mahadevappa Battur and his daughter Neelamma and Renuka also in joint possession and enjoyment of the said property and the same are within the knowledge of plaintiffs, in spite of that they have filed this suit. The plaintiffs are the owners of the suit property by virtue of adverse possession has been denied. The suit is not maintainable without seeking relief of declaration, they filed bare injunction and also not filed the relief of cancellation of registered sale deed dated 22.8.1977. They are

not being in possession of suit property on the date of filing of the suit. By misusing the fact that the defendants being innocent persons, recently by colluding with other persons behind the back of these defendants have got entered their names with the official of Gram Panchayath and got deleted the name of defendant No.1 and his brother from the property documents. This fact came to the knowledge of defendants only after they getting certified copy of the property extract, the entries standing in the name of plaintiffs are fraudulent and unlawful, no legal sanctity in the eye of law. The suit is bad for non-joinder of necessary parties On this ground the defendants prayed for dismissal of suit.

6. On the above rival pleadings of the parties the trial court has framed the following points for consideration:

- 1) Whether the plaintiffs proves that they were in peaceful possession and enjoyment of the suit schedule property on the date of suit?
- 2) Whether plaintiffs further proves interference from the defendants
- 3) Whether plaintiffs are entitled for the relief of permanent injunction as prayed for?
- 4) What order or decree?

7. In order to prove their case, plaintiff No.1(c) himself examined as PW.1 and got marked 7 documents at Ex.P1 to P7 and closed their side. One witness by name Laxman Myageri examined as PW.2. On the other hand defendant No.2 has examined himself as D.W.1 and got marked one document as Ex.D1 and closed their side.

8. The trial court after considering the oral and documentary evidence, answered the issue No.1 to 3, are in the negative, ultimately suit of the plaintiff is dismissed. Aggrieved by the judgment and decree passed by the trial court the plaintiffs have preferred this appeal on the following grounds:-

1) The plaintiffs are the appellants in the above appeal arising out of O.S. No. 53/2018. The learned Trial Court, by its Judgment and Decree in O.S. No. 53/2018, dismissed the suit. The Judgment and Decree passed by the learned Trial Court dismissing the suit are contrary to law, the facts and circumstances of the case, and the evidence on record. The impugned Judgment and Decree are opposed to the settled principles of law and have been passed in disregard of the applicable legal provisions. Hence, they are liable to be set aside. The findings recorded by the Trial Court on all the issues are erroneous and contrary to the oral and documentary evidence available on record. The learned Trial Court has failed to properly appreciate the facts of the case and has misapplied the law while arriving at its conclusions. The suit in O.S. No. 53/2018 was filed

seeking a decree of permanent injunction. The plaintiff had produced reliable oral and documentary evidence establishing lawful possession and enjoyment of the suit schedule property. However, the Trial Court failed to consider and appreciate the said evidence and erroneously dismissed the suit. The plaintiff produced Exhibits P-1 to P-3, which are records relating to the suit property issued by the concerned Gram Panchayat. These documents clearly establish that the plaintiff is in possession and enjoyment of the suit property. The Trial Court ignored these vital documents while dismissing the suit. Likewise, Exhibit P-7, which has been admitted by the defendants, also clearly establishes that the plaintiff is in possession and enjoyment of the suit property. The Trial Court failed to consider this material evidence and thereby committed a serious error in dismissing the suit. The plaintiff also examined P.W.2, an independent witness, who categorically deposed in both his examination-in-chief and cross-examination that the plaintiff is in actual possession and enjoyment of the suit property. The learned Trial Court failed to appreciate the testimony of P.W.2 and wrongly dismissed the suit. The present appeal has been filed within the prescribed period of limitation. However, if this Hon'ble Court is of the opinion that there is any delay, an application for condonation of delay has also been filed. The appellant craves leave of this Hon'ble Court to urge such other and further grounds at the time of hearing as may be necessary. This vital fact ignored by trial court. That the judgment and decree of the

trial court are perverse, illegal and liable to be set aside. Therefore interference of this court is required. The appeal is filed in time and also paid proper court fee, hence prays to set-aside the judgment and decree passed by the trial court and decreed the suit of the plaintiffs as prayed in plaint in the interest of justice and equity.

9. After service of notice respondents appeared through their counsel. After securing LCR from the trial court. Arguments heard from both sides and the matter is set-down for judgment.

10. On looking to the grounds of appeal, the following points that would arise for my consideration is:-

- 1) Whether judgment and decree passed by the trial court is illegal and interference of this court is necessary?
- 2) Whether trial court has failed to appreciate the oral and documentary evidence in a proper prospective manner?

3. What order?

11. Having meticulously weighed the pleadings of the parties, perused the evidence, documents as well as the relevant provision of law 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 final order for the following:-

REASONS

Point No.1 and 2:-

12. Since these points are inter-connected to each other I have taken up these points for discussion together in order to avoid repetition of facts.

13. Admittedly plaintiff's have filed this suit against the defendants for seeking permanent injunction. The claim of Permanent Injunction the plaintiff's have to demonstrate that, they are in peaceful possession & enjoyment of suit schedule property as on the date of suit. Possession means occupation or physical control of the suit schedule property. The general presumption in obtaining the permanent injunction, the plaintiff's have to prove a legal right and it's violation. Permanent Injunction is purely equitable character the plaintiff's must satisfy the Court that their conduct and dealings in the matter had been fair and honest. On the mean that who seeks equity must do equity and implies that a plaintiff's seeking an injunction must come with clean hands.

14. The say of the plaintiff's that, the suit property was owned and possessed by their father by name of Mahadevappa S/o Udachappa Annigeri @ Mantur. The Assistant Commissioner Savanur allotted Plot No.9 measuring 90 X 33 feet in Sy.No132 on 15.02.1961 under LNDSR-88 and on the very same day the possession has been handed over to the father of the plaintiffs and the mutation was affected under 'D' No.1065 dated

18.03.1961, since from the date of sanction their father was in possession and enjoyment of the suit property, after his demise the plaintiffs were succeeded the suit property and the khata mutated in their names in the ROR, as per ME No.2767 dated 13.11.1998. During the life time of their father who was executed a sale deed in respect of suit property in favour of Mahadevappa S/o Yallappa Battur on 22.8.1977 under registered sale deed, but the possession was not delivered to the said Mahadevappa and even after execution of the said sale deed, the father of the plaintiffs was in possession and enjoyment of the suit property along with plaintiffs, his sons and his wife till the date of his demise. The defendants either during the life time of Mahadevappa nor even death of said Mahadevappa have obstructed to the peaceful possession and enjoyment of the suit property by the plaintiffs and hence the plaintiffs are the absolute owners of the said suit property by virtue of adverse possession. The defendants without their being any right, title and interest in the suit property are asserting their alleged rights with the knowledge that the plaintiffs are in possession and enjoyment of the suit property and the defendants high handedly causing obstructions to the peaceful possession and enjoyment of the suit property by the plaintiffs

15. The say of the defendants are that, from the date of execution of sale deed dated 22.8.1977 till date the father of the defendant No.1 is in possession and enjoyment of suit property,

after his demise, the defendants No.1 to 3 are succeeded the same. The suit property with Gram Panchayath No.301 is a NA Plot No.9 measuring East-West 33 feet, North-South 105 feet of Devanur village, Kundgol taluk was the self-acquired property of plaintiff's father by name Mahadevappa Udachappa Mantur. The said property was in absolute ownership and possession of Mahadevappa. In turn, his family legal necessity during the year 1977, he kept the said property for sale, at that time the father of defendant No.1 came forward to purchase the same in presence of elders, and the purchase talks were held. Mahadevappa Udachappa Mantur agreed to sell the said property to defendant No.1's father Mahadevappa Yallappa Battur for a sale consideration amount of Rs.4,500/- and thereby out of his free consent and will has executed a registered sale deed in favour of defendant No.1's father Mahadevappa on 22.8.1997. The said sale deed was registered before Sub-Registrar, Kundgol, After the execution of sale deed the possession of the property was delivered to Mahadevappa Battur. Based on sale deed, the khata effected in the name of Mahadevappa. After the purchase of, the father of defendant No.1 was absolute owner in possession of the said property. He died in the year 2001 and after the demise of defendant No.1's father, the defendants are being the LR's of Mahadevappa are succeeded the said property and their names also entered in the Panchayath documents as per law. The defendants are absolute owners in possession of the suit property.

16. To prove the same, the plaintiff No.1(c) herself examined as P.W.1, filed affidavit in lieu of chief examination and reiterated the plaint averments in toto and produced 6 documents at Ex.P.1 to 6. Ex.P1 to 3 are the property extract in respect of property No.301, khata stands in the name of Yallappa, Ramappa, Mhadevappa Battur. E.x.P4 and 5 are the mutation extracts. Ex.P6 is the sale deed dated 22.8.1977 in respect of plot No.9 measuring 90x33 feet under D.No.67 varsa entered in the name of LRs of Annigeri Mahadevappa Udachappa of Devanur, he died on 16.4.1991 vide Ex.P.4. Ex.P.5 shows that 18.3.1961 in Sy. No.132 measuring 105x33 feet plot has been sanctioned to 86 persons out of which, as per the possession of the 90x33 feet has been granted in favour of father of plaintiff. In Ex.P.6 sale deed recital shows that property No.360 measuring 33 x 105 bounded on East by plot belongs to Chandrappa Kamadolli, West by house of Nabisab Agasar, by North-south by government road. The recital of the Ex.P.6 are reproduced:

ನಾನು ಹೊಸ ಮನೆಯನ್ನು ಕಟ್ಟಿಸುವುದರ ಸಲುವಾಗಿ ಜರೂರು ನನಗೆ ಹಣ ಬೇಕಾಗಿರುವುದರಿಂದ ಮೇಲ್ಕಂಡ ಆಸ್ತಿಯನ್ನು ನಾನು ಮಾರಲಿಕ್ಕೆ ಹಚ್ಚಲಾಗಿ ಎಲ್ಲರಕ್ಕಿಂತಲೂ ನೀವು ಜಾಸ್ತಿ ಕಿಮ್ಮತ್ತಿಗೆ ಅಂದರೆ ನಾಲ್ಕು ಸಾವಿರದಾ ಐದುನೂರು ರೂಪಾಯಿಗಳಿಗೆ ಬೇಡಿದ್ದರಿಂದ ಈ ಕಿಮ್ಮತ್ತಿಗೆ ಸದರಿ ನನಗೆ ಯೋಗ್ಯ ಕಿಮ್ಮತ್ತು ಬಂದಿದ್ದಕ್ಕೆ ಸದರಿ ಆಸ್ತಿಯನ್ನು ಇವತ್ತಿನ ದಿವಸ ನಾನು ನಿಮಗೆ ಖಂಡ ಮುಕ್ತಾ 4,500/- ರೂಪಾಯಿಗಳಿಗೆ ಖರೀದಿಗೆ ಕೊಟ್ಟು ಆಸ್ತಿ ನಿಮ್ಮ ಪ್ರತ್ಯಕ್ಷ ಕಬ್ಬಾಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. Ex.P.7 is the photograph, it shows there is a one shed has been

constructed in the said plot.

17. This witness cross-examined by the counsel for the defendants. Wherein P.W.1 deposed that he do not know the plot number but he know that in that plot there was a shed measuring 33 x 95 feet bounded on East by plot belongs to Chandrappa Kamadolli, West by house of Nabisab Agasar, by North-south by government road, the said property originally belongs to his grand-father, his father acquired the same through grand father. The said property has granted by government through his grand father. The Govt. Allotted vacant site to the grand father of plaintiff's. The said property is self-acquired property of Mahadevappa Mantur. He denied that his grand father sold the suit property on 22.8.1977 to the father of defendant No.1 under a registered sale deed. He do not know the VPC No.301 and the said property is the Binshetki Plot No.9 measuring East-West 33 feet, North-south 105 feet. The suit property was purchased by the Mahadevappa Battur from his grandfather for consideration of Rs.4,500/- has been denied. He admits in Ex.P6, there is a recital in page No.3 that grandfather handed over the vacant possession by executing sale deed by receiving the sale consideration amount of Rs.4500/- from the father of defendant No.1 the said portion has been admitted and the same has been marked at Ex.P.6(a). He pleads ignorance that his grand father has handed over the vacant possession to the father of 1st defendant on the date of execution of sale deed

itself. He has not produced any documents to show that suit property is in the possession of plaintiffs. He also admits that after the purchase the suit property, khata entered in the name of 1st defendant father by deleting the name of the grand father of plaintiff as per Ex.P6.

18. One witness by name Laxman Myageri examined as P.W.2, has deposed that the suit property is in possession of the plaintiffs and defendants are interfere with the peaceful possession. This witness cross-examined wherein he admits that plot No.301 measuring East-West 33 feet, North-south 105 feet and pleads ignorance that the suit property is a N.A. plot bearing No.9 and same belongs to Mahadevappa Battur, after purchase he is in possession of the said property. In 1977 Mahadevappa Mantur kept the said property for sale, the said property was purchased by the Mahadevappa Yallappa Battur i.e. father of defendant No.1. He admits the boundaries towards bounded on East by the property belongs to Chandrappa Kamadolli, West by house of Nabisab Agasar, North -South by Govt. Road. He pleads ignorance that on 22.8.1977 Mahadevappa Battur had purchased the property from Mahadevappa Mantur for sale consideration of Rs.4,500/- under registered sale deed, after that plot No.9, khata transferred in the name of Mahadevappa Yallappa Battur, now the Gram Panchyat assigned the new number to that property is 301 and name of Mahadevappa Yallappa Battur is entered by deleting the name of Mahadevappa Mantur. He denied that

defendants are stationed the tractor in that shed as shown in the photograph. The evidence of P.W.1 and 2 itself shows that suit property belongs to Mahadevappa Mantour granted by Asst. Commissioner, Savanur and thereafter he sold the said property to the father of 1st defendant. After that 1st defendant's father name is entered in VPC extract. Ex.P.6 itself shows that on the date of execution of sale deed the possession is handed over to the father of the 1st defendant by the vendor. The plaintiffs that admits that their grand father sold the said property to the father of 1st defendant, but the say of the plaintiff's that the possession of sold property is not delivered and they are in possession of the property and they perfected the title of adverse possession and the same has not at all proved by the plaintiff by adducing the evidence nor produced any documents.

19. On the other hand, defendant No.2 himself examined as D.W.1 and filed affidavit in examination in chief and reiterated the written statement averments and produced one document as Ex.D.1 VPC extract it reveals that based on sale deed dated 22.8.1977 the name of his grand father mutated in the Grampancahyath Devanur. This witness cross-examined by the counsel for the plaintiff but nothing has been elicited form his mouth to show that they are in peaceful possession of the said property and the defendants are interfering with their peaceful possession. He stated that after the demise of his father in the year 2018 they went police station and given application that the

plaintiffs are deleted the name of their father and entered their names in the VPC of the suit property. He was born in the year 1983, but sale transaction held in the year 1977. He denied that he do not know the personal particulars of the sale up to the year 1977. Witness volunteers that his uncle told about the transaction as he know the facts. It is suggested that the suit property is in the possession of defendants and on 15.7.2018 they have interfere with the possession of the plaintiff's. Witness volunteers that the plaintiffs have deleted the name of their father, has they questioned why you are deleted the name of their father in VPC extract. This evidence of D.W.1 itself shows that the plaintiffs are not in the possession of the suit property, but they entered their name by deleting the name of the father of 1st defendant without any title deeds. This evidence of D.W.1 itself shows that, the khata of suit property stands name of Mahadevappa Battur in the year 1998 in respect of property No.301, but the said khata has been changed without any title deeds by the plaintiff in the year 2017 in Panchayath when the defendants are questioned the above, plaintiffs have filed this suit in order to harass the defendants. The learned trial court has given findings about the date of execution of Ex.P6 itself the possession handed over to the purchaser by the vendor, except Ex.P7 that the plaintiffs have stand at in front of shed in the absence of defendants the said photograph nowhere proved the possession of plaintiff in the suit property and does not confirm the ownership over the suit property and also quote **Sec. 92 of**

the Indian evidence Act, about the registered sale deed dated 22.8.1977 It reads thus :-

“When the terms of any such contract, grant or other dispossession of property or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representative in interest, for the purpose of contradicting varying, adding to subtracting from, its terms.”

20. The plaintiffs also claiming that they have the owners of the suit property by virtue of adverse possession. In order to prove the adverse possession, they must admit the title of the defendants and in this case the plaintiffs have not admit the title but they are in possession hostile to the true owner. The plaintiffs have not pleaded as to the fact when their possession became hostile to the possession of true owner. They also not mentioned on which date they initially take the possession of the property. Ex.P.1 to 3 does not confirm the title and it stands in the name of plaintiffs and the said document, if at all is in the name of defendants then only they have to claim adverse possession as title claimed by the plaintiff. The plaintiffs have not challenged the sale deed 1977 which is old document, it is having presumption under law. The plaintiffs have not mentioned the reasons for they having not challenged the sale deed for such a long time. Mere pleading of adverse possession

is not sufficient, when the possession has been handed over by the vendor to the vendee under registered instrument. On perusal of entire evidence adduced by the plaintiff and document produced, it clearly establish that, the defendants are not caused any peaceful possession and enjoyment of the plaintiffs since they are not in possession of the suit property. As per Ex.P.6 the defendants are in peaceful possession in the suit property, the alleged interference by the plaintiffs not proved.

21. On perusal of document produced by defendants it shows that, the khata was standing in the name of Mahadevappa Yellppa Battur continuously till his death. After his demise, in 2018 the suit khata changed in the name of defendants. The plaintiff did not challenged the said entries. The plaintiff has not produced any tax paid receipts to prove their possession and enjoyment of schedule property as on the date of suit. When the cloud is raise over a persons title when apparent defect in his title to a property or when some prima-facie right of a third party over it is made out or shown suit for injunction simplicitor is not maintainable. On these findings the trial court dismiss the suit.

22. The above said stand of the defendants gives inclination of serious dispute with regard to the title of the plaintiff on suit property. On perusal of evidence of PW.1 and 2 and DW1, it clearly establishes the fact that, the plaintiff and defendant No.1 are claiming title and possession of VPC No.313

of Devanur village as the same is purchased by the father of defendant No.1. To prove the same plaintiff produced Ex.P6 sale deed and the recital at Ex.P6A itself shows that the plaintiff's are not in the possession of suit property, except oral say the plaintiff's have not produced any contra documents. Moreover the documents produced by the defendant shows that till demise of Mahadevappa Battur the suit property khata stands in his name after his demise khata transferred in the name of defendants.

23. No doubt it is true the defendants in order to prove their defence they have produced Ex.D1 reveals that, based on sale deed khata transferred in the name of Mahadevappa and the sale deed is acted upon and name of Mahadevappa Battur entered in the khata extract of suit property. Moreover, the plaintiff's not produced documents to show that when and on which documents the VPC No. 313 khata changed in their names in the year 2107-18 , at the same time it is necessary to consider when the plaintiff himself not discharged their burden of proving of their title and possession as on the date of suit, question of the weakness of defendants doesn't help the plaintiff's to believe their case. At this stage it is worthwhile to emphasize on the decision reported in 2004 KCCR (1) 662, wherein it had been observed that,

"B. PLEADINGS AND PROOF- Whenever a party approaches the Court for a relief, based on the

pleadings and issues, he has to prove his case. A suit has to be decided based on merits and demerits of the party who approaches the Court. Weakness of the defendant cannot be considered as a trump card for the plaintiff."

24. Though the facts and circumstances of the above case decision and the facts and circumstances of the suit under appeal are different one, but the ratio principle is clearly applicable to the suit under appeal. When the plaintiff's have failed to prove their possession as on the date of suit and interference of the defendants on their possession and enjoyment of suit property they are not entitled the relief sought in this suit. When PW.1 and 2 themselves admitted defendant No.1 father purchased the suit property in 1977 and they are in possession of suit property and they are enjoying the same under such circumstances, how the court can come to conclusion that plaintiff's are in exclusive possession of suit, itself not explained, non explanation of the said aspect the very relief sought by plaintiffs for bare injunction become infructuous without the relief of mandatory injunction seeking possession from the defendants and hence question of plaintiff's are in exclusive possession of suit schedule property only on strength of Ex.P7 photograph dose not arise. As per section of 17 Evidence Act the admission of

PW1 can be used against him since said admission is not a stray admission but it is clear, consisting and without any ambiguity. Further he has not withdrawn his own admission by giving any satisfactory explanation.

25. Whereas in the evidence of DW1 he has reiterated the written statement averments even during the course of cross examination also he has not turned up. Although DW1 admitted in view of khata he is in possession of suit property since from the date of purchase without seeking mandatory injunction how plaintiff's are entitled for relief of permanent injunction restraining the defendants from interfering in the possession of plaintiff itself not explained. Under these circumstances question of plaintiff is in exclusive possession of suit schedule property as on the date of suit can not be accepted in the eye of law.

26. Unless plaintiff has proved his exclusive possession of suit schedule property question of plaintiff's are entitle the relief as prayed in the above suit does not arise. Hence considering the oral and documentary evidence and view from any angle I am of the considering opinion that the findings of trial court is not required for any interference by this appellate court since the trial court has considered the oral and documentary evidence in a proper prospective manner. In the result the judgment and decree passed by the trial court neither capricious nor illegal in view of the above reasons. Hence, I answer point No.1 and 2 in

the **negative**.

Point No. 3 :-

27. In view of my findings given to the point No.1 to 2 in the negative, this court opines the appeal has to be dismissed. As a result I proceed to pass the following:-

ORDER

The appeal filed U/Order 41 Rule 1 R/w Sec.96 of CPC by the appellant/plaintiff is hereby dismissed with cost.

The judgment and decree of OS No.53/2018 dated 08.07.2025 passed by the Civil Judge and JMFC Kundgol is hereby confirmed.

Draw decree accordingly.

Office is hereby directed to send copy of judgment to the trial court along with LCR immediately.

(Dictated to Stenographer, transcribed and typed by the him, corrected and signed by me, then pronounced in open court on this the 14th day of July 2026).

(Abdul Khadar)
Senior Civil Judge and JMFC.,
Kundgol.

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