

KAHS310023142018



Presented on : 02-11-2018
Registered on : 02-11-2018
Decided on : 24-07-2026
Duration : 7 years 8 months 22 days

IN THE COURT OF I ADDL. CIVIL JUDGE & J.M.F.C.,
AT ARAKALGUD

PRESENT : **Smt. Suma T.,** B.A.,L.L.B.,
I Addl.Civil Judge & JMFC.,
Arakalgud

Dated 24th day of July 2026

Original Suit No.328/2018

Plaintiff/s :

1. Dharma
S/o. Late. Siddegowda
Aged about 45 years
2. Srinivasa
S/o. Late. Hanumegowda
Aged about 40 years
3. Annajigowda
S/o. Late. Hanumegowda,
Aged about 49 years,

All are R/at.
Belavadi Village,
Doddamagge Hobli,
Arakalgudu Taluk,
Hassan District.

(Rep. by Sri. M.Y.P., Advocate)

-Vs-

- Defendant/s :**
1. Ningegowda
S/o Havaligowda,
Aged about 65 years,
 2. Puttegowda
S/o. Havaligowda
Aged about 55 years
 3. Ramegowda
S/o. Havaligowda,
Aged about 50 years,
 4. Santhosha
S/o. Ningegowda,
Aged about 25 years

All are R/at.
Belavadi Village,
Doddamagge Hobli,
Arakalgudu Taluk,
Hassan District.

(Rep by Sri. A.S.M, Advocate)

Date of Institution of suit	:	02-11-2018
Nature of suit	:	Permanent injunction
Date of commencement of recording of evidence	:	31-07-2019
Date on which the judgment was pronounced	:	24-07-2026
Total duration	:	Years : Months : Days
	:	07 08 22

I Addl. Civil Judge and JMFC,
Arakalgud.

:: J U D G M E N T ::

The plaintiff has filed this suit against the defendant for seeking the relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property.

2. THE PLAINTIFF CASE IN BRIEF IS THAT:-

Basically suit schedule property is a vacant site, the said vacant site was purchased by the plaintiffs grand mother Kamma W/o Sanjeevowda on 09-08-1943 from Ramegowda S/o Ningegowda of Chandigowdanakoppalu village. Since purchase of site, the plaintiff's grandmother was in rightful possession and enjoyment of suit schedule property. Thereafter their father Siddegowda and Hanumegowda were in possession of the suit schedule property and thereafter plaintiffs are in rightful possession and enjoyment of suit schedule property. The defendants have no any kind of right, title and interest over the suit schedule property interfering in to the peaceful possession and enjoyment of plaintiffs over the suit schedule property. Hence on 20.08.2018 the plaintiffs have issued a legal notice to the defendants by their advocate

through registered post stating not to interfere into the peaceful possession of plaintiffs over the suit schedule property. The said notice was served on the defendants. In spite of service of notice, the defendants have trespassed in to the plaintiffs' property and interfering into plaintiffs peaceful possession over suit property. Therefore, the plaintiffs have brought this suit against the defendants seeking permanent injunction.

3. After the institution of the suit, the suit summons served on the defendants. Defendants have appeared before the Court and filed written statement contending that suit filed by the plaintiffs is not maintainable either in law or on facts. The averments made in the plaint are all denied by the defendants. The defendants further contends that the plaintiffs are not in possession of plaintiffs. The plaintiffs with an intention to get unlawful gain filed this suit with false averments. The suit property is ancestral property of defendants. They have constructed one shed in the suit property to tie the cattle and for storage purpose. They are

rightful owners of suit schedule property and they are paying tax to the revenue department. Hence, prays to dismiss the suit with cost.

4. On the basis of the pleadings and documents on record, the following issues have been framed:-

ISSUES

1.	<i>Whether the plaintiffs prove that, they are in peaceful possession and enjoyment of suit schedule property?</i>
2.	<i>Whether the plaintiffs prove the interference by the defendants?</i>
3.	<i>Whether the plaintiffs are entitle to the relief of permanent injunction?</i>
4.	<i>What order or decree?</i>

5. In order to prove the case, the plaintiff No.1 examined as PW-1 and got marked Ex.P-1 and Ex.P-19. The defendants have marked Ex-D-1 with consent.

6. Heard learned counsel for plaintiff and defendant. Perused the entire material available on record.

7. The answer of this Court to the above issues are as follows:

Issue No.1 : In the affirmative

Issue No.2 : In the affirmative
Issue No.3 : In the affirmative
Issue No.4 : As per final order
for the following:

:: R E A S O N S ::

8. **Issue NO.1**: The burden of proving lawful possession squarely lies upon the plaintiff under Section 101 and 102 of the Indian Evidence Act.

9. In order to discharge the said burden, plaintiff No.1 has examined himself as PW-1 and has produced documentary evidence marked as Ex-P-1 to Ex-P-19. The plaintiffs have produced the original sale deed dated 09.08.1943 executed by Ramegowda S/o Ningegowda in favour of the plaintiff's grandmother Kamma W/o Sanjeevowda, along with the certified copy obtained from the office of the Sub-Registrar. The execution and genuineness of the said document have not been specifically disputed by producing any contrary title document by the defendant.

10. The genealogy tree produced by the plaintiffs establishes the relationship between the Kamma and the present

plaintiffs. The defendants have not produced any evidence disputing the genealogy. The plaintiffs have further produced the legal notice issued to the defendants, postal receipts and postal acknowledgments. These documents clearly show that even prior to the institution of the suit, the plaintiffs had asserted their possession over the scheduled property and called upon the defendants not to interfere.

11. The plaintiffs have also produced photographs and compact discs depicting the suit's vacant site. Though photographs by themselves do not conclusively establish title, they corroborate the overall evidence of PW-1 regarding the nature and existence of the suit property. The plaintiffs have further produced police complaint acknowledgment and endorsement which discloses that the plaintiffs had approached the jurisdictional police complaining about interference by the defendants. Though such complaint is not substantive proof of title, it is a relevant circumstances indicating that there existed a dispute regarding possession immediately before filing of the suit.

12. The certified copy issued by the Belvadi Grama Panchayat assumes significance. It reveals that an application was made for entering katha in respect of the vacant site. The plaintiffs objected to the proposed mutation. Pursuant to the said objection, the Panchayath Development Officer conducted a spot mahazar. During spot inspection, the PDO noticed that the property found on the spot corresponded with the description contained in the plaint schedule. Consequently, the applicant was directed to furnish proper documents before effecting katha.

13. The plaintiffs have also produced copy of legal notice issued to the Grama Panchayath requesting the panchayath not to affect katha in favour of the anybody till disposal of the present civil dispute together with the postal receipt and acknowledgment. These documents probabalise the plaintiff's consistent assertion of the possession. During cross-examination, PW-1 has consistently deposed that he and the other plaintiffs are the grand children of the Kalamma. The original purchaser under the registered sale deed dated

09.08.1943. His evidence regarding the relationship with the Kalamma has remained unshaken. PW-1 has also consistently stated the measurements of the suit schedule property. Though the learned counsel for the defendants suggested that the original sale deed mentioned katha No.333, whereas the plaint schedule does not mention the number, PW-1 clarified that the said number 333 stands in the name of his grand mother Kalamma. Merely because the katha number is omitted in the plaint schedule, when the boundaries and identity of the property are otherwise sufficiently described, such omission is not fatal to the plaintiff's case, particularly in a suit for bare injunction.

14. PW-1 has admitted the measurement of the property as 45x30 feet, which is consistent with the case pleaded by the plaintiffs and does not create any inconsistency. The defendants further suggested that they are presently in possession of the suit property. In response, PW-1 stated that the defendants are in possession by using force. The defendants have relied upon a photograph marked as Ex-D-1. This statement cannot be read

in isolation. Because, the entire evidence of PW-1 coupled with the legal notice, police complaint, Panchayath proceedings and other documents indicates that the grievance of the plaintiff is that the defendants attempted to interfere with and forcibly occupy the suit property. The defendants have not produced any independent documentary evidence, such as title deeds, katta, tax receipts, or other records to establish lawful possession. Ex-D-1 is only a photograph and by itself does not prove legal possession or title. Therefore, the stray admission made by PW-1 regarding the defendant's forcible occupation does not outweigh the documentary evidence produced by the plaintiff. The court has to appreciate the testimony as a whole and not by isolating one sentence. Consequently, the evidence of PW-1 continues to inspire confidence.

15. It is important to note that during the course of cross-examination PW-1 stated that the defendants are in possession of the suit property by forcible occupying the same. During the course of cross examination, PW-1 stated that the defendants are in possession of the suit property by forcibly occupying the

same. However, a careful reading of the plaint discloses that the plaintiffs have nowhere pleaded that they had already been dispossessed before institution of the suit. On the contrary, the specific case pleaded in the plaint is that the defendants were merely attempting to interfere with and disposes the plaintiffs from the suit schedule property. No date, month or circumstances of dispossession have been pleaded. There is also no amendment to the plaint incorporating any subsequent dispossession. Therefore, the said statement of PW-1 cannot be treated as proof of prior dispossession and appears to be inconsistent with the pleadings. It is a settled principle that oral evidence contrary to the pleadings cannot be made the foundation for deciding the rights of the parties. Consequently, the isolated statement made by PW-1 during cross-examination cannot override the pleadings and the documentary evidence placed on record. It is further important to note that during cross-examination of PW-1, the learned counsel for the defendants elicited a statement that the defendants are in possession of the suit property by force and confronted PW1

with a photograph which was marked as Ex-D-1. However, except marking Ex-D-1 during cross-examination, the defendants have neither entered the witness box nor led any oral evidence. They have also failed to produce any documentary evidence, such as title deeds, katha, tax paid receipts, revenue records or any other document to establish their lawful possession over the suit schedule property. Mere marking of a photograph through confrontation during cross-examination does not by itself prove the truth of its contents or established lawful possession. A photograph can only show the physical appearance of a property at a particular point of time. It cannot prove the nature, legality or continuity of possession in the absence of supporting evidence.

16. Further, the pleadings of the plaintiff disclose only an apprehension of interference and attempted to disposition. There is no specific pleading regarding prior dispossession before the institution of the suit. Therefore, the isolated statement made by PW-1 during cross-examination, which is inconsistent with the plaint pleadings, cannot be read in

isolation so as to defeat the entire case of the plaintiffs. The evidence has to be appreciated as a whole. The registered sale deed of 1943 genealogy, legal notices, police complaint, panchayath proceedings and other documentary evidence probabilises the plaintiff's case, whereas the defendants have failed to substantiate their defence by entering the witness box. Consequently, an adverse inference is liable to be drawn against the defendants for withholding the best evidence within their knowledge.

17. Thus, on an oral appreciation of the pleadings, oral and documentary evidence, this Court is of the considered opinion that the plaintiffs have established their lawful possession over the suit schedule property as on the date of the suit and that the defendants have failed to rebutt the same by any acceptable evidence. And it is well settled that in a suit for permanent injunction, the court is primarily concerned with the possession as on the date of the suit. Where the plaintiff's established settled possession and the defendant fails to prove a better possession right, the plaintiff is entitled to protection of

the such possession. Accordingly, Issue No.1 is answered in the affirmative.

18. Issue No.2:- The burden of proving an interference with the peaceful possession of the suit's scheduled property lies upon the plaintiffs. To establish the same, PW-1 has entered the witness box as PW-1 and reiterated the averments made in the plaint that the defendants having no manner of right, title or interest over the suit schedule property, attempted to interfere with the plaintiffs peaceful possession and enjoyment and also attempted to get the katha transferred into their favour through the Belavadi Grama Panchayath.

19. To substantiate the allegations of interference, the plaintiffs have produced the legal notice issued to the defendants, postal receipts and acknowledgments, police complaint acknowledgments and endorsement, photographs and CD relating to the suit property, certified copy of the proceedings before the Belvadi Grama Panchayath. Notice issued by the Panchayath, plaintiffs objection before the panchayath and the legal notice issued to the panchayath

requesting it not to effect katha in respect of the suit property till disposal of the present suit. The documentary evidence discloses that when an application was made before Grama Panchayath for entering the katha in respect of the vacant site, the plaintiffs raised objections. Pursuant to such objection, the Panchayath Development Officer conducted a spot mahazar. The proceedings further reveals that the PDO found that the property inspected by correspondent to the suit schedule property described by the plaintiffs and therefore directed the applicant to produce proper documents before considering the request for katha. Therefore the plaintiffs issued a legal notice to the Grama Panchayath requesting that no katha be effected till the civil dispute was adjudicated. These contemporaneous documents probabilise the plaintiff's contention that there was a real and subsisting dispute between the parties and that the defendants were asserting rights over the suit property.

20. The police complaint acknowledgment and endorsement further indicate that immediately before institution of the suit, the plaintiffs approached the jurisdictional police alleging

interference by the defendants. Though such documents do not by themselves establish title, they are relevant circumstances corroborating the plaintiff's version regarding the acts of interference. It is true that during cross examination PW-1 stated that the defendants are in possession by force while confronting him with a photograph marked as Ex-D-1. However this statement cannot be read in isolation. A careful reading of the plaint reveals that the plaintiffs have not pleaded that they had already been dispossessed prior to filing of the suit. On the contrary, the specific case pleaded is that the defendants were attempted to dispossess them. No date or particulars of the dispossession have been pleaded. Therefore, the isolated statement made by PW-1 which is inconsistent with the pleadings cannot be construed as proof that the defendants were in settled position before institution of the suit. It is a settled principle that oral evidence beyond or contrary to the pleadings cannot be made the basis for deciding the case. The evidence of PW-1 regarding interference finds substantial corroboration from the legal notice, police complaint,

panchayath proceedings and other documents produced by the plaintiff. These contemporaneous records clearly establish that the defendants attempted to assert possession over the suit property and interfere with the plaintiff's peaceful enjoyment. Thereby giving rise to a genuine cause of action for filing the present suit. Accordingly, this Court is satisfied that the plaintiffs have proved on the touchstone of preponderance of probabilities that the defendants interfered with and threatened to interfere with the plaintiffs peaceful possession and enjoyment of the suit schedule property. Hence, Issue No.2 is answered in the affirmative.

21. Issue No.3:- While answering issue No.1 and 2, this Court has already held that the plaintiffs have established their lawful possession over the suit schedule property as on the date of institution of the suit and have further proved the interference caused by the defendants. The plaintiffs have produced the original registered sale deed dated 09.08.1943 and the certified copy of the said sale deed executed by the Ramegowda S/o Ningegowda in favour of their grandmother Kamma W/o

Sanjeevegowda. The genealogy produced by the plaintiffs establishes their relationship with the original purchaser. The legal notices issued to the defendants and the Grama Panchayath, Postal receipts, acknowledgment, police complaint acknowledgment, endorsement, photographs, CD and the certified copies of the Grama Panchayath proceedings probabalises the plaintiffs continuous assertion of possession over the suit schedule property.

22. The Panchayath proceedings further disclose that when an application was submitted for effecting katha in respect of the suit schedule property, the plaintiffs objected to the same. Thereafter, the Panchayath Development Officer conducted a spot inspection and found that the property on the spot corresponded with the suit schedule property. The applicant was directed to furnish proper documents before effecting katha. Thereafter, the plaintiffs issued a legal notice requesting the Grama Panchayath not to effect any katha till disposal of the civil dispute. These circumstances supports the plaintiffs contention that there existed genuine apprehension of

interference. Though during cross-examination PW-1 made a statement that the defendants are in possession by force. The said statement cannot be read in isolation. The plaint contains no averment that the plaintiffs had already been dispossessed prior to filing of the suit. On the contrary, the specific pleadings disclose only an apprehension that the defendants were attempting to dispossess them. No amendment has been sought to plead dispossession. Therefore, the statement made during cross-examination, being inconsistent with the pleadings, cannot outweigh the documentary evidence adduced by the plaintiffs.

23. It is also pertinent to note that except confronting PW-1 with photograph marked as Ex-D-1, the defendants have neither entered the witness box nor adduced any oral or documentary evidence. No title deed, katha, certificate, tax paid receipt, panchayath records or any other material has been produced to establish their lawful possession over the suit schedule property. Mere production of a photograph does not establish legal possession. The failure of the defendants to step

into the witness box and subject themselves to cross-examination warrants drawing an adverse inference against them.

24. The relief of permanent injunction is an equitable relief governed by Section 37 and 38 of the Specific Relief Act, 1963. Where a plaintiff shows lawful possession and establishes actual or threatened interference by a person having no better legal right, the Court is justified in granting a decree of permanent injunction to protect such possession.

25. In the present case, the plaintiffs have discharged the burden cast upon them by producing both oral and documentary evidence. On the other hand, the defendants have failed to substantiate the defence pleaded in the written statement. Consequently, there is no legal impediment in granting the relief sought. Accordingly, this Court holds that plaintiffs are entitled to a decree of permanent injunction restraining the defendants, their agents, servants or anybody climbing through them from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit

schedule property. Hence, Issue No.3 is answered in the affirmative.

26. **ISSUE NO.4:-** In view of the above discussion and foregoing reasons this court is proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with costs.

The defendants, their agents, servants, supporters, representatives, or anybody climbing through or under them are hereby permanently restrained from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

Draw decree accordingly.

(Dictated to the stenographer directly through computer, corrected and then pronounced by me in the open court this the day of 24th day of July 2026)

(Smt. Suma T.)
I Addl., Civil Judge and JMFC,
Arakalgud.

ANNEXURES

LIST OF WITNESS EXAMINED BY THE PLAINTIFF:

P.W-1	Dharma
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LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:

Ex.P-1	:	Genealogical tree
Ex.P-2	:	Sale deed dated 09-08-1943

Ex.P-3	:	Legal notice RTC
Ex.P-4-6	:	3 postal receipts
Ex.P-7-9	:	3 postal acknowledgments
Ex.P-10-11	:	Photos
Ex.P-12	:	CD
Ex.P-13	:	Complaint endorsement
Ex.P-14	:	Complaint acknowledgment
Ex.P-15	:	Certificate issued by PDO
Ex.P-16	:	Notice to PDO
Ex.P-17-18	:	Postal receipt and postal acknowledgment
Ex.P-19	:	Sale deed

LIST OF WITNESS EXAMINED BY THE DEFENDANT: NIL

LIST OF DOCUMENTS MARKED FOR THE DEFENDANT:

Ex.D-1	:	Photo
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(Smt. Suma T.)

I Addl. Civil Judge and JMFC,
Arakalgud.

(Vide separate Judgment pronounced
in open court)

ORDER

***The suit of the plaintiffs is
hereby decreed with costs.***

***The defendants, their agents,
servants, supporters, representatives,
or anybody climbing through or
under them are hereby permanently
restrained from interfering with the
peaceful possession and enjoyment of
the plaintiffs over the suit schedule
property.***

Draw decree accordingly.

I Addl. Civil Judge and JMFC,
Arakalgud.