

KAHS610001102013



**IN THE COURT OF THE III ADDL. CIVIL JUDGE
AND JMFC, CHANNARAYAPATNA, HASSAN**

PRESENT: Madhushree R.M.

M.A. L.L.B.,

III Addl. Civil Judge & JMFC,
Channarayapatna.

Dated 29th day of June 2026

O.S./183/2013

Plaintiff:

Radhamma
W/o Ramesha
Aged about 47 years
R/o Sugganahalli Koppalu Village
Shravanabelagola Hobli
Channarayapatna Taluk
Hassan District.

(By Sri.CSD.,Adv)

-V/s-

Defendants:

- 1.** Krishnegowda
S/o Lakkegowda
Aged about 45 years
- 2.** Manjegowda
S/o Shivegowda
Aged about 47 years
- 3.** Devaraju S/o Shivegowda
Aged about 40 years

4. Ningegowda S/o Nanjegowda
Aged about 65 years
5. Lakkegowda S/o Nanjegowda
Aged about 45 years
All are R/o Sugganahalli Koppalu
Village, Shravanabelagola Hobli
Channarayapatna Taluk
Hassan District.

(By Sri. GVV.,Adv)

Date of institution of suit		18.03.2013
Nature of suit		<u>Declaration & Permanent Injunction</u>
Date of recording evidence		14.10.2015
Date of closing of recording of evidence		20.01.2018
Date of pronouncement of judgment		29.06.2026
Total duration		Year/s Month/s Day/s
		13 03 11

**(Madhushree R.M.)
III Addl Civil Judge & J.M.F.C.,
Channarayapatna.**

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

The plaintiff has instituted this suit against the defendants for the relief of declaration and permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment in respect of suit schedule properties or in the

alternative possession of any portion of the property in which the defendants are in possession and other reliefs.

2. The brief facts of the plaintiff's case are as under.

The plaintiff is the owner in possession of 'A' schedule property. She has purchased suit schedule property from previous owner Ningamma and Marikempegowda and their children vide sale deed dtd: 20.04.2011. Originally 'A' schedule property has been granted to Ningamma and Marikempegowda on 31.10.1979. At the time of grant the survey number of property was 17 later survey number is changed to Sy.No.40 after durasth proceedings. The measurement of suit schedule property is fixed at 5 acre 22 guntas. The plaintiff is the owner in possession of suit schedule property and all the revenue records is in the name of plaintiff. The defendants are adjacent owners of plaintiff's property in Sy.No.18. Though they have no manner of right, title or interest in respect of suit schedule property but trying to interfere with possession of western side of suit schedule property sine one year of filing the suit and trying to encroach the western portion of suit schedule property. When the plaintiff tried to survey the suit schedule property to fix boundary towards western side the defendants have alleged that 8 guntas of property is their property the same is shown as 'B' schedule property. As the defendants are denying the rights of plaintiff in respect of 'B' schedule property the plaintiff has filed this suit for the relief of declaration, permanent injunction and in the alternative possession of 'B' schedule property. Hence the plaintiff is constrained to file this suit.

3. In pursuance of suit summons, the defendants have appeared before this court and filed written statement by denying the plaint averments. It is contention of the defendants that, the defendants have 63 guntas of property in Sy.No.18 before the grant made in the name of previous owners of plaintiff. The defendants are in possession of 63 guntas of property which is well within the knowledge of plaintiff. The defendants are in possession of alleged encroached land from more than 60 years by growing 3 Neem trees and 2 Honge trees. In that property land granted to previous owners of plaintiff some portions were reserved for Sarkari Katte, without questioning the same the plaintiff has filed this suit to grab the defendants' property. As the defendants are in possession of their 63 guntas of property was in the knowledge of previous owners. The concept of interference does not arise. The plaintiff's is not entitled for possession of 'B' schedule property if the court deems that the plaintiff is entitled for possession of 'B' schedule property. The defendants are cultivating the same hence prays to declare them as owners by way of theory of talking. The suit is barred by law of limitation. Hence, prayed to dismiss the suit.

4. On the basis of rival pleadings and materials placed on record, this court has framed the following issues;

ISSUES

1. ***Whether the plaintiff proves that, herself is in lawful owner in possession of the suit schedule property as on the date of the filing of the suit ?***

2. Whether the plaintiff proves that, alleged interference by defendants over suit schedule property ?

3. Whether the plaintiff is entitled as relief sought for ?

4. What order or decree ?

5. In order to prove her contentions, the plaintiff got examined herself as PW-1 and got marked 6 documents as per Ex.P-1 to Ex.P.6. The defendant No.1 got examined himself as DW.1 and got marked 12 documents as per Ex.D.1 and D.12.

6. Heard the Counsel for plaintiff and defendants.

7. Having heard the arguments advanced by the counsel for both parties and on perusal of materials available on record, the findings of this court on the above issues are as under;

Issue No.1 : In the Partly Affirmative

Issue No.2 : In the Negative

Issue No.3 : In the Negative

Issue No.4 : As per the final order

for the following;

:: REASONS ::

8. Issue No.1:- The plaintiff has filed this suit against the defendants for the relief of partition and separate possession in respect of suit schedule property. Resisting the same the defendants have filed written statement by denying the plaintiff averments.

9. To substantiate her contentions, the plaintiff examined herself as PW.1 in lieu of examination in chief by way of affidavit by reiterating the plaint averments and got marked 6 documents as per Ex.P.1 to Ex.P.6. Per contra the defendant No.1 examined himself as DW.1 and got marked Ex.D.1 to D.12.

Ex.P.1 is the Sale deed dtd: 20.04.2011, Ex.P.2 is the RTC extract, Ex.P.3 is mutation register extract, Ex.P.4 is notice, Ex.P.5 is Mahazar, Ex.P.6 is the Hadbasth sketch.

10. To substantiate their contentions, the defendant No.1 examined himself as DW.1 and got marked Ex.D.1 to D.12. Ex.D.1 to D.4 are the computerized RTC extracts, Ex.D.5 to 8 are the hand written RTC extracts, Ex.D.9 is copy of Hakku pathra, Ex.D.10 is the hand written RTC extract, Ex.D.11 and D.12 are the copy of mutation extracts.

11. In this case the plaintiff is claiming to be owner of suit schedule property. To substantiate the same plaintiff has produced Ex.P.1 sale deed dtd: 20.04.2011 on perusal of the same it can be recited that the plaintiff has purchased the suit schedule property from one Ningamma, Marikempegowda and their children. On perusal of Ex.P.2 khata in respect of suit schedule property is in the name of plaintiff. Ex.P.3 is extract of mutation proceedings. Ex.P.4 is the notice issued by Survey Department to appear before the survey proceedings. Ex.P.5 is the spot mahazar, Ex.P.6 is the Hadbasth sketch in which it is mentioned that 0.08 gunta property has been encroached by owners of Sy.No.18.

12. On perusal of Ex.D.1 to D.4 it can be noticed that the defendants are owners of Sy.No.18. The plaintiff is not disputed the ownership of defendants in respect of their property. On perusal of Ex.P.1 to 3 it can be stated that plaintiff is the owner of suit schedule property. Though the defendant is denying the title of plaintiff but in the cross examination counsel for defendant has suggested that there is not dispute between the defendants and previous owners of suit 'A' schedule property. From Ex.P.1 to 3 it is clear that plaintiff is the owner of 'A' schedule property.

13. In this case the plaintiff has specifically averred that the defendants are interfering in respect of 'B' schedule property and claimed for alternative relief of possession. But the plaintiff failed to prove in which portion of 'A' schedule property the defendants are in possession. Though plaintiff is the absolute owner of suit schedule 'A' property, she fails to prove her possession in respect of whole extent. As the commissioner report is also showing overlap in the extent. The materials available on record are not sufficient to hold that the plaintiff is in possession of entire extent. Accordingly, **Issue No.1 answered Partly in the Affirmative.**

14. Issue No.2 :- In this case the plaintiff also alleged about the interference caused by the defendants. It is the contention of the plaintiff that the defendants are interfering with the possession of 'B' schedule property. The evidence produced by the plaintiff clearly shows that the plaintiff is the absolute owner of suit 'A' schedule property. On perusal of documents produced by both parties and commissioner report, there is overlap in resettlement. Under these circumstances the apprehension of

plaintiff about the interference cannot be presumed. Though the plaintiff has proved her ownership in respect of suit schedule property but failed to prove her possession in respect of entire extent. Accordingly, **Issue No.2 answered in the Negative.**

15. Issue No.3:- In this case the plaintiff has claimed the alternative relief of possession in respect of suit 'B' schedule property.

It is the specific contention of the plaintiff that defendants are interfering with 0.08 guntas of property towards western side of suit schedule property. The commissioner has been appointed in this case after conclusions of evidence of both parties vide order of this court dtd: 27.03.2018. The court Commissioner by name Kanthamani has been examined as CW.1. In her examination she deposed that originally survey number of suit schedule property is 17 and survey number of defendants' property is 18. She is not aware about the extent of both survey numbers. She further deposed that Sy.No.40 has been overlapped on Sy.No.18 during resettlement. She also deposed that there is no encroachment in Sy.No.17. In the sketch annexed to commissioner report CW.1 opined that tippani of Sy.No.40 has been overlapped in Sy.No.18. In that overlapped place there is one jackfruit tree, fence, 4 banyan tree, 6 neem trees and 2-3 other plants. Later on commissioner has been appointed for the second time vide order dtd: 07.09.2020.

16. The court commissioner by name Hemalatha has been examined as CW.2 wherein she has deposed that as per records there is existence of 'A' schedule property in the name of plaintiff

but there is overlap and she has not measured 0.08 guntas of land which was overlapped. In the sketch annexed to the commissioner report it also recites about overlapping. In this case the plaintiff is alleging about the encroachment but in the commissioner report submitted by both commissioners it can be seen that there is overlapping in the measurement of suit schedule property. Based on these documents produced by the plaintiff it is not possible for the court to conclude about the encroachment. As discussed above the plaintiff fails to prove encroachment of suit schedule property. Hence, the plaintiff is not entitled for the alternative relief of possession. Accordingly **Issue No.3 answered in the Negative.**

17. Issue No.4:- In view of findings to the above issues No.1 to 3, this court proceeds to pass the following:

-:: ORDER ::-

The suit filed by the plaintiff is hereby partly decreed with costs.

The plaintiff is hereby declared as the absolute owner of suit 'A' schedule property.

The relief of permanent injunction and alternative relief of possession of 'B' schedule property is dismissed.

Draw decree accordingly.

*(Dictated to stenographer, transcribed by her, transcript revised, corrected, print-out signed and then pronounced by me in the open court on this **29th day of June 2026**)*

**(MADHUSHREE R.M.)
III Addl Civil Judge & J.M.F.C.,
Channarayapatna.**

-:: ANNEXURE ::-**1. List of witnesses examined for plaintiff:-**

PW-1 : Smt. Radhamma

2. List of documents marked for plaintiff:-

Ex.P.1 : Sale deed dtd: 20.04.2011
 Ex.P.2 : RTC extract
 Ex.P.3 : Mutation register extract
 Ex.P.4 : Notice
 Ex.P.5 : Mahazar
 Ex.P.6 : Hadbasth sketch

3. List of witnesses examined for Defendants: -

DW.1 : Sri. Krishnegowda

4. List of documents marked for Defendants: -

Ex.D.1 to
 Ex.D.4 : Computerized RTC extracts
 Ex.D.5 to
 Ex.D.8 : Hand written RTC extracts
 Ex.D.9 : Copy of Hakku pathra
 Ex.D.10 : Hand written RTC extract
 Ex.D.11 &
 Ex.D.12 : Copy of mutation extracts

5. List of witnesses examined for Commissioner: -

CW.1 : Smt. Kanthamani
 CW.2 : Smt. Hemalatha M.D.

6. List of documents marked for Commissioner : -

-NIL-

**III Addl Civil Judge & J.M.F.C.,
 Channarayapatna.**

