



Presented on : 08-07-2025
Registered on : 08-07-2025
Decided on : 14-08-2026
Duration : 1 years, 1 months, 6 days

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC, AT:HAVERI.**

:: Present :

SMT.SHOBHA, B.G., M.A., LL.B.,
Addl. Senior Civil Judge & JMFC, Haveri.
Dated this 14th day of August-2026
R.A.NO.9/2025

Appellants: Sri.Basavaraj B Belavigi,
S/o late Basappa Belavigi,
Age: 70 years,
Occ: Rted.District Judge,
R/o Hombaradi,
Tq and Dist: Haveri.

(By Sri. R.M.G., Adv.,)

-Vs-

Respondents: 1 Sri. Nagappa
S/o Late Shivappa Kajjari,
Age: 55 years,
R/o Khurdakodihalli Village,
Now at Kakol, Tq: Byadgi,
Dist: Haveri.

2. Sri. Basappa
S/o Late Shivappa Kajjari,
Age: 50 years,
R/o Khurdakodihalli Village.
Now at Kakol, Tq: Byadgi,
Dist: Haveri.



3. Smt. Channavva
D/o Late Shivappa Kajjari,
Age: 50 years,
R/o Khurdakodihalli Village,
Now at Kakol, Tq: Byadgi,
Dist: Haveri.
4. Sri. Yallappa Kudri
S/o Basappa Kudri,
Age: 47 yeas,
R/o Devihosur Village,
Tq and Dist: Haveri.

**[R.1 & 4 By Sri.V.K.K.Adv.,]
[R.3 absent]
[R.2 Exparte]**

Date of presentation of Regular Appeal	08.07.2025						
Nature of the appeal	Against the Judgment and Decree dated 09.04.2025 passed in O.S.No.135/2017 by learned Civil Judge & JMFC, Haveri.						
Judgment pronounced on	14.08.2026						
Duration of the Regular Appeal	<table><tr><td><u>Year/s</u></td><td><u>Month/s</u></td><td><u>Day/s</u></td></tr><tr><td>01</td><td>01</td><td>06</td></tr></table>	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>	01	01	06
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01	01	06					

J U D G M E N T

This is an appeal filed against the Judgment and Decree passed in O.S.No.135/2017 dated 09.04.2025 by the learned Civil Judge and J.M.F.C, Haveri.

2. The appellant is the plaintiff and the respondents are the defendants in the original suit. For



the sake of convenience they are referred to as they are referred in the original suit.

3. The brief facts of the suit are as follows:-

It is specific assertion of the plaintiff/appellant that he is in possession of the suit schedule A property and late. Shivappa G Kajari was owner of schedule A and B properties. Said Shivappa executed an agreement of sale with respect to the B-schedule property for Rs.9,200/- on 25.06.1973 by receiving advance amount of Rs.2,500/-. Said Shivappa put the plaintiff in possession of B-schedule property. Since then the plaintiff has been in possession and cultivation of said property. The suit property was in actual cultivation of late. Malikarjunappa Belavigi who is elder brother of the plaintiff during his life time. After his death at present said property is being cultivated by Jayappa Belavigi who is cousin of the plaintiff. On the mistaken advise of the village accountant the plaintiff has given an application to the Land Tribunal claiming occupancy



right in respect of A schedule property and said claim was rejected by the land tribunal. However late Shivappa has given his sworn statement before Land Tribunal by admitting the execution of agreement and putting the plaintiff in the possession of A-schedule property.

4. Further it is stated that late Shivappa had mortgaged suit schedule B property to the Primary Land Development Bank Byadagi. The plaintiff agreed to discharged said loan and accordingly he discharged the loan. Late Shivappa had agreed to execute the sale deed whenever called. He received an amount of Rs.260/- on 02.08.1973 and Rs.100/- on 29.09.1975 as part consideration for his family necessity and made an endorsement on the agreement by putting his signature. Thus the plaintiff has paid entire sale consideration to him. Thereafter the plaintiff has given possession of 3 acres of suit schedule B property at the request of late Shivappa Kajari. But late Shivappa Kajari has not executed registered sale deed in his favour. Therefore, he



filed a suit for specific performance of contract in the court of Civil Judge (Jr Dn), Haveri in O.S.150/1995. In the said suit, he had obtained temporary injunction against late Shivappa Kajjari. The order of temporary injunction was in force till disposal of the suit. Unfortunately, the trial court has not granted the relief of specific performance in his favour. Being aggrieved by the judgment and decree of the trial court, he had preferred R.A No.55/2006 in the Court of Civil Judge Sr.Dn. Haveri. Again he had obtained temporary injunction against late Shivappa Kajjari in the said appeal. The order of injunction was in force till disposal of R.A.No.55/2006. Again the Civil Judge Sr.Dn. has declined to grant the relief of specific performance to him. Thereafter, he has approached the Hon'ble High Court of Karnataka (Circuit Bench Dharwad in RSA 500-4/2010 and obtained an injunction order against late Shivappa Kajjari. The order of injunction was in force till disposal of R.S.A 5994/2010. The R.S.A was dismissed



without considering the merits of the case. Therefore he has approached the Hon'ble Supreme Court of India by filling SLP (Civil) No. 9567/2017. Thus, he has been in possession and cultivation of suit A-schedule property since from the date of agreement of sale dated 25-6-1973. He is in settled possession of the suit schedule A property. His possession is protected under section 53 A of Transfer of Property Act. He cannot be dispossessed without following due process of law. The order of injunction was in force against late Shivappa Kajjari and his LRs since from the date of filing the suit in O S.150/1995 till the disposal of R.S.A No.5994/2010.

5. Further stated that after disposal of R.S.A.No. 5994/2010, the defendants have made a request to surrender possession of suit schedule A property through son-in-law of the plaintiff and the plaintiff refused to give up his claim in respect of suit schedule A property. Thereafter, at the instigation of Sri Basavaraj J Shivannavannar, the present MLA of Byadgi



constituency, the defendants have made an attempt to cultivate the suit schedule A property forcibly. Therefore there is apparent threat of interference in possession and enjoyment of suit schedule A property by the Defendants. Hence he filed the suit.

6. On the other hand the defendant No.1 was dead. In response to the summons the defendants No.2 to 5 appeared through their counsel and filed written statement, wherein they have denied the averments of plaint. Further contended that there was already a suit between the plaintiff and defendants in respect of the suit schedule property, which was carried up to Hon'ble High Court and attained finality and that the plaintiff is not in possession of suit schedule property. The plaintiff suppressed all the aforesaid orders and filed this suit once again over the same property. Hence the plaintiff cannot sought relief of permanent injunction on same property. The defendant No.1 was already dead about years ago, in-spite of aware of said fact the plaintiff filed



suit against death person which is void and nullity. There is no cause of action to the suit. The plaintiff has aware that the defendant No.1 died about several years ago, despite that he made him as party to this suit. Hence suit against dead person is void and nullity. The plaintiff has never been in possession of suit schedule A property as alleged by him he cannot sought protection under Section 53A of Transfer of Property Act,1882 and also there are observations made in earlier suit regarding the possession of the suit schedule A property, wherein he fails to prove his possession over said property. Further contended that the defendants had property measuring 6.35 acres in RS No. 101/1+2+4 at Hombaradi village, except said property they have no other property for their livelihood. The plaintiff has not come up with clean hand, he filed this suit just to harass these innocent defendants. Hence prayed to dismiss the suit with compensatory costs of Rs.50,000/-.



7. On the basis of above pleadings Trial Court had framed the following Issues:

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

2. Whether the plaintiff further proves that defendant is interfering in peaceful possession of suit property of plaintiff and trying to dispossess plaintiff illegally?

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

4. What order or decree?

8. In order to prove the case, the plaintiff examined himself as PW.1 and got marked 9 documents as Ex.P.1 to Ex.P9. On the other hand the defendant No.2 examined himself as DW.1 and 10 documents got marked as Ex.D1 to Ex.D10 and closed the evidence.

9. After hearing the arguments and perusing the materials placed on record Trial Court dismissed the suit.



**Findings of the court of the original jurisdiction
at first instance**

10. On appreciating the materials placed on record and the contentions raised by both parties, the learned Trial Court dismissed the suit. The trial court has given findings that the judgment passed in O.S. No.150/1995 by learned Civil Judge Haveri, the judgment passed by learned Senior Civil Judge, Haveri in R.A No.55/2006, the judgment passed by the Hon'ble High Court of Karnataka in RSA No.5994/2010 and judgment passed by the Hon'ble Supreme Court of India in SLP (Civil) No.15364/2017, dismisses the suit for specific performance of contract. Wherein the observations that the plaintiff is not in possession over the suit A schedule property remains intact. Thereby the plaintiff failed to prove his possession over the suit A schedule property. On failure of proving possession of the plaintiff over suit property, discussion about interference



becomes skeptic and answered issue No.1 to 3 in the Negative.

11. Being aggrieved by the judgment and decree of the Trial Court, plaintiff has preferred this appeal on the following grounds:-

- 1.The impugned Judgment and Decree passed by the Learned Trial Judge is opposed to law and probabilities of the case and hence the same is liable to be set-aside. The learned Trial Judge failed to notice that Ex.P2 and Ex.P6, which is clear about putting the appellant in possession of the Suit Schedule A Property by late Shivappa Kajjari.
- 2.The judgment and decree of the trial court is highly perverse against basic principal of law. The trial court has not appreciated facts and circumstances of the case in correct perspective, not considered basic facts of the case in adjudicating the suit and not raised proper inferences and presumptions and not given separate finding on the issues framed in the suit.



- 3.The trial court is erred in appreciating the evidence in isolation and not in entirety, committed an error in considering stray statement of P.W-1 and committed grave error in not considering entire evidence of the appellant/ plaintiff and the documents produced by the appellant.
- 4.The trial court has decided the case as if it is the sitting over the judgments of earlier judgments in respect of same property. The trial court ought to have ignored the evidence of D.W1 as has not tendered for cross examination, the trial court has committed grave error in placing reliance on the evidence of D.W1.
- 5.The trial court ought not to have gone into the fact of surrendering 3 acres of land to late Shivappa Kajjari and failed to make distinction between actual possession and ostensible possession of the property and ignored that the agreement and statement of late Shivappa Kajjari are of more than 30 years old documents and has not raised necessary presumption as per Evidence Act.



6.The trial court has failed to consider demeanor of late Shivappa Kajjari in not replying notice given before filing suit for specific performance of contract and not applied its mind that normally the owner of the property will pay land revenue to the government and any stranger can pay the tax and not properly appreciated TI granted by the courts in earlier legal proceedings.

7.The trial court has not looked into the pleadings of the case and ignored the documents produced in connection with filing of complaint given against Nagappa Kajjari, failed to notice of Ex.P7 to Ex.P9 which is clear about the interference of the Respondent No.2.

8.Viewed from any angle, the impugned Judgment and decree dated 09/04/2025 in O.S. No. 135/2017 in so far as dismissing the suit of the Appellant, passed by the Trial Court is wholly illegal, arbitrary, hence liable to be set aside.

12. In response to the notice the respondents appeared through their counsel and resisted the appeal.



13. Heard the learned counsel for the plaintiff/appellant and defendants/respondents and perused the appeal memo and materials placed on record also gone through the written argument filed by the appellant.

14. The counsel for appellant vehemently argued that in pursuance of sale agreement dated 25-06-1973 the appellant is in possession of the A- schedule property. He has filed suit in O.S.No. 150/1995 for specific performance of contract and other relief and failed to get the relief of specific performance of contract from the trial court till the conclusion of second appeal. After disposal of R.S.A No.5994/2010 the respondents have interfered in the possession of the appellant. The trial court, first appellate court and Hon'ble High court granted temporary injunction in favour of the plaintiff, it is still in force, there is nowhere mentioned about vacating said order. In Ex.P.2/agreement, there is a recital about delivery



possession of suit schedule property to the plaintiff. As per Ex.P.6 the late Shivappa made a statement before the Land Tribunal regarding handing over the possession of the suit A- schedule property to the plaintiff. Ex.P.11 also discloses possession of the plaintiff. Ex.P.13 discloses the interference of defendants. The possession of plaintiff over the suit property was protected under Sec.53A of Transfer of Property Act. In Ex.P1 in column No.12, the name of plaintiff could be seen, which discloses that he is possession of suit A-schedule property. Hence proved his possession over the suit property. The complaint given by the plaintiff against defendants as per Ex.P.7 and registering case against them as per Ex.8 and 9 disclose the interference of the defendants over the suit property. The Additional Civil Judge and JMFC, Haveri has not looked into the written argument and the submission made by the appellant counsel and dismissed the suit.



15. On the other hand the counsel for respondents also vehemently argued that this is 5th litigation between the plaintiff and defendants. In O.S.No. 150/1995, the court ordered that the plaintiff is not in possession of suit schedule property. Though there is a specific order about vacating temporary injunction order in operative portion of judgments passed in trial court, first appellate court and in R.S.A, the interim order will be merged with the final order. The plaintiff is taking shelter based on Ex.P.2 and 6, which were already considered in earlier suit. In O.S. No.150/1995, the plaintiff during his cross-examination, he was unable to depose that on which portion he is in possession of suit survey number property. He relied upon citation of the Hon'ble Supreme Court of India reported in (2012) SCCR 255 between Kanwar Singh Saini Vs High Court of Delhi, wherein it is held that: *"Application under order 39, Rule 2A CPC lies only where disobedience of an injunction or order complained of was*



one, that is granted by the Court under Order 39, Rule 1 and 2 CPC, which is naturally to ensure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merged into the final order.”

16. The points that would arise for consideration of this Court are as follows :-

- 1. Whether the plaintiff proves that he is in lawful possession and enjoyment over the suit schedule property as on the date of suit?**
- 2. Whether the plaintiff further prove the alleged interference by the defendants?**
- 3. Whether the plaintiff is entitled to relief of permanent injunction?**
- 4. Whether the findings of the Trial Court requires interference by this Court?**
- 5. What order?**

17. Perused the pleadings, facts and materials placed on record, my findings on the above Points are as follows:



Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- In the Negative

Point No.4:- In the Negative

Point No.5:- As per final order

for the following :

REASONS

18. POINT NO.1: It is the specific case of the plaintiff/appellant that one Shivappa Kajjari was the owner of agriculture land in Sy.No.101/1+2+4 measuring 6 Acres 35 Guntas of Hombardi Village of Haveri Taluk. Late Shivappa Kajjari has agreed to sell A schedule property for Rs.9,200/- and executed an agreement of sale in favour of the appellant on 25.06.1973 by receiving an advance sale consideration amount of Rs.2,500/-. Later on he failed to execute sale deed. The plaintiff filed suit for specific performance of contract and other relief against him, but said suit was dismissed for specific performance of contract. In pursuance of sale agreement the appellant is in possession of the aforesaid property, he has been in



possession and cultivation of said property from past 40 years. His possession was protected under Sec.53A of Transfer of Property Act,1882. The defendants are trying to dispossess the plaintiff from the suit A schedule property, they cannot dispossess the plaintiff from said property without due process of law.

19. In order to prove the case of the plaintiff, he examined himself as PW-1 before the trial court. In support of his case he has produced documents which were marked as Ex.P.1 to 9. I have perused the documents produced by the plaintiff. Ex.P.1 reveals that 30 guntas of land in Sy No.101/1+2+4 stands in the name of Kajjari Chandrappa Hanumappa and 6 acres 5 guntas of land in the same survey number jointly stands in the name of Muddimallanavar Channavva and 6 others. In said RTC in column No.12, the name of plaintiff is mentioned. Ex.P.2 is C/c of agreement of sale, wherein it is mentioned that on 25.06.1973 Shivappa Guddappa Kajjari who is father of defendants



executed said agreement of sale in favour of plaintiff with respect to the land measuring 6 acre 35 guntas in Sy No.101/1+2+4. Ex.P.3 is C/c of order sheet of OS No.150/1995, it reveals that the plaintiff filed said suit against Shivappa Guddappa Kajjari who is father of defendants of present suit seeking relief of specific performance of contract, in said suit exparte temporary injunction was granted in respect of only eastern portion of 3 acres 35 guntas out of the suit property. Ex.P.4 reveals that the plaintiff of this suit who is the plaintiff in OS No.150/1995 has preferred appeal against judgment and decree passed in OS No.150/1995 before the Hon'ble Sr.Civil and CJM Haveri, vide R.A No.55/2006. In said R.A, the plaintiff/appellant filed IA No.I U/o 39 rule 1 and 2 of CPC seeking grant of temporary injunction against the respondent. Said IA came to be allowed and restrained the defendant from interfering with the plaintiff's peaceful possession and enjoyment of suit land till disposal of appeal. Ex.P.5



reveals that the plaintiff preferred RSA before Hon'ble High Court of Karnataka Dharwad Bench vide RSA No.5994/2010, in said appeal the Hon'ble High Court directed the respondent not to interfere with the appellant's possession and enjoyment of the property described in the application until further orders. Ex.P.6 reveals that Shivappa Guddappa Kajjari has given statement before Land Tribunal, wherein he stated that he has executed agreement of sale on 25.06.1973 and received advance amount of Rs.2500/-and handover the possession of 3.35 acres of land to the Basavaraj Basappa Belavigi who is the plaintiff on the same day. Ex.P.7 reveals that the plaintiff lodged the complaint against Nagappa S/o Shivappa Kajjari who is the defendant No.2 for the offence punishable U/Sec.447 and 379 R/w Sec.34 of IPC. Ex.P.9 reveals that the charge sheet has been filed for the offence punishable U/Sec.447 and 427 of IPC based on the complaint given by Prabhu S/o Mahadevappa Marakatti.



20. On the other hand the contention of the defendants is that the plaintiff has never been in possession of suit schedule A property as alleged by him and also contended that there was already a suit between the plaintiff and defendants in respect of the suit schedule property, which was carried up to Hon'ble High Court and attained finality and that the plaintiff is not in possession of suit schedule property. The plaintiff suppressed all the aforesaid orders and filed this suit once again over the same property. The plaintiff has never been in possession of suit schedule A property as alleged by him he cannot sought protection under Section 53A of Transfer of Property Act,1882 and also there are observations made in earlier suit regarding the possession of the suit schedule A property, wherein he fails to prove his possession over said property. However, in order to substantiate the contention of defendants, the defendant No.2 examined himself as DW-1 before the trial Court. In support of his contention



he has produced documents which were marked as D.1 to 10. Ex.D.1 is C/c of plaint in OS No.150/1995 which reveals that the plaintiff/appellant had filed said suit against Shivappa Guddappa Kajjari who is father of defendants for specific performance of contract with respect to suit schedule property. The subject matter of said suit is the suit schedule property of present suit. Ex.D.2 is written statement of defendant in OS No.150/1995. Ex.D.3 is C/c of judgment of RA No.55/2006, which reveals that the appeal preferred by the plaintiff of OS No.150/1995 came to be dismissed and judgment and decree passed in OS No.150/1995 was confirmed. Ex.D.4 is deposition of PW-1 recorded in OS No.150/1995. Ex.D.5 reveals that 1.20 acres in Sy No.101/2 stands in the name of Kajjari Nagappa who is defendant No.2 during the year 2020-21 by virtue of partition. Ex.D.6 reveals that 1.20 acres in Sy No.101/10 stands in the name of Suresh Kajjari during the year 2020-21. Ex.D.7 reveals that 1.25 acres in Sy



No.101/11 jointly stands in the name of Jayamma and Guddappa during the year 2020-21. Ex.D.8 is C/c of judgment and decree of OS No.150/1995 which reveals that the suit filed by the plaintiff seeking specific performance of contract against Shivappa Guddappa Kajjari who is father of defendants came to be decreed in part and the suit for specific performance of contract was refused. Further ordered that the plaintiff is entitled for earnest money of Rs.2500/- at the rate of interest at 6% p.a., from the defendant from the date of agreement till realization of the said amount. Ex.D.9 is C/c of judgment of RSA No.5994/2010 which reveals that the plaintiff preferred appeal against the judgment and decree passed in RA No.55/2006 before the Hon'ble High Court of Karnataka Dharwad bench, the said appeal was dismissed on devoid of merit. Ex.D.10 reveals that 1.20 acres in Sy No.101/1+2+4 stands in the name of Basavaraj Kajjari S/o Shivappa who is defendant No.3 during the year 2022-23.



21. However on considering all the material placed before the court it disclose that there is no dispute that the suit 'A' and 'B' schedule properties were owned by one Shivappa Kajjari. It is also undisputed that there are suit between plaintiff and Shivappa Kajjari who is the father of defendants for specific performance of contract and it was decreed in part and the plaintiff preferred appeal against judgment and decree passed in OS No.150/1995 before District court which was numbered as RA No.55/2006 and said RA came to be dismissed and the plaintiff preferred appeal against said judgment and decree passed in RA No.55/2006 before the Hon'ble High Court of Karnataka Dharwad Bench in RSA No.5994/2010 and it was dismissed as devoid on merits as evident from Ex.D3 and Ex.D8 and Ex.D.9.

22. According to the plaintiff he is in actual possession of eastern portion of land in Sy No.101/1+2+4 measuring 3 acre 35 guntas Hombaradi village which is A-schedule property by virtue of



agreement of sale. However the execution of agreement of sale in favour of the plaintiff is concerned, admittedly the plaintiff already filed suit for specific performance of contract before learned Civil Judge Court Haveri, in OS No.150/1995 and said suit came to be decreed in part and dismissed specific performance of contract. It is also admitted fact that the plaintiff preferred appeal against said judgment and decree, vide as R.A.No.55/2006, said appeal came to be dismissed and confirmed the judgment passed in O.S No.150/1995. Further it is also admitted fact that the plaintiff preferred appeal against said judgment passed in R.A.No.55/2006 before Hon'ble High Court of Karnataka, Dharwad Bench, vide R.S.A.No.5994/2010, said appeal came to be dismissed as devoid on merits. The plaintiff challenged said order before Hon'ble Supreme Court of India by filing SLP (Civil) No.9567/2017, which is still pending. During arguments the counsel for defendants submitted that said SLP was also dismissed. Therefore giving finding



regarding execution of agreement of sale is concerned in this suit does not arise.

23. The possession of suit schedule property is concerned, the plaintiff stated that he is in possession and cultivation of suit A-schedule property from the date of agreement dated 25-06-1973. He has been in possession and cultivation of said property for the last more than 40 years. The the plaintiff is in settled possession of the suit A-schedule property. The possession of the plaintiff over the said property is protected under section 53A of Transfer of Property Act. On the other hand the defendants denied the assertion of plaintiff. Further contended that the plaintiff never in possession of suit A schedule property. He cannot sought protection under Sec.53-A of Transfer of Property Act. The plaintiff failed to prove his possession over the A schedule property in earlier suit and in said suit already the court has given findings that the plaintiff is not in possession of suit A schedule property.



24. During the cross examination of PW-1 at page No.11 he deposed that: "ನಾನು ಭೂ ನ್ಯಾಯ ಮಂಡಳಿಯಲ್ಲಿ ದಾವಾ ದ ಆಸ್ತಿಯಲ್ಲಿ ರೂ.2,500/-ಗಳನ್ನು ಮುಂಗಡ ಕೊಟ್ಟು ವರ್ಷಕ್ಕೆ ರೂ.400/- ರಂತೆ 20 ವರ್ಷಗಳ ಕಾಲ ಲಾವಣಿನಾತೆಯಿಂದ ಸಾಗುವಳಿ ಮಾಡಿಕೊಂಡು ಬರುತ್ತಿದ್ದೇನೆ ಎಂಬ ಹೇಳಿಕೆಯನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ." Further at page No.14 in continuation of para No.4 he deposed that: "ನಾನು ನಿಡಿ-4 ರಂತೆ ಒ.ಎಸ್ಸಂ.150/1995 ರಲ್ಲಿ ಸಾಕ್ಷಿಯನ್ನು ನುಡಿಯುವ ಸಮಯದಲ್ಲಿ "ನಿರ್ದಿಷ್ಟವಾಗಿ ಪ್ರತಿವಾದಿಗೆ ಜಮೀನನ್ನು ಯಾವಾಗ ಬಿಟ್ಟುಕೊಟ್ಟಿದ್ದೇನೆ ಅಂತಾ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. 4 ಎಕರೆ ಜಮೀನನ್ನು ಯಾವಾಗ ಸ್ವಾಧೀನತೆ ಮುಂದುವರೆಸಿದ್ದೇನೆ ಅಂತಾ ಅನುವುದು ಸಹ ನಿರ್ದಿಷ್ಟವಾಗಿ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ಯಾವ ಭಾಗದ ಜಮೀನನ್ನು ಪ್ರತಿವಾದಿಗೆ ಬಿಟ್ಟುಕೊಟ್ಟಿದ್ದೇನೆ ಅಂತಾ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ನಾನು ಯಾವ ಭಾಗದ ಜಮೀನಿನಲ್ಲಿ ಸಾಗು ಮಾಡುತ್ತಿದ್ದೇನೆ ಅಂತಾ ಹೇಳಲು ಬರುವುದಿಲ್ಲ." ಎಂದು ಸಾಕ್ಷಿಯನ್ನು ನುಡಿದಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ." Further at page No.7 in para No. 8 he deposed that: "ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಈ ವರ್ಷ ಗೋವಿನ ಜೋಳದ ಬೆಳೆಯನ್ನು ಬೆಳೆದಿದ್ದೇನೆ. ನಾನು ಜಮೀನಿಗೆ ಹೋಗಿ ಪರಿಶೀಲಿಸಿರುವುದಿಲ್ಲ. ಪ್ರಸ್ತುತ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಹತ್ತಿ ಬೆಳೆ ಮತ್ತು ಬಿಳಿಜೋಳದ ಬೆಳೆ ಇರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾನು ಅದನ್ನು ಹೋಗಿ ನೋಡಿ



ಪರಿಶೀಲಿಸಿರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ." The aforesaid testimony of PW-1 clearly discloses that he is not in actual possession of suit schedule property. During cross-examination of DW.1, nothing has been elicited to prove the assertion of plaintiff.

25. However, the plaintiff relies upon his oral evidence and Ex.P.6, which is statement of Shivappa Kajjari given before Land Tribunal. It is true that in said statement he admitted that he has executed agreement of sale on 25.06.1973 in favour of Basavaraj Basappa Belavagi by receiving advance amount of Rs.2500/- and handed over the possession of 3.35 acres to him. However, material on record disclose that in OS No.150/1995 and in RA No.55/2006 already given findings regarding possession of the suit A-schedule property. Though the plea of adverse possession was stated not to survive for consideration, the learned Civil Judge Court has clearly given findings that the plaintiff was not in possession of the suit A-schedule property.



As per Ex.D.8 in said suit the court observed at page No.14 in para No.16 of Judgment that:

“ It is come in the cross examination of PW.1 that Ex.P. 2 and 3 are entered contrary to Ex.P1. Ex.P.2 and 3 name of the plaintiff is entered a tenant for a period of 20 years on yearly rent of Rs.400/- towards eastern portion of suit property. Therefore, Ex>p.2 and 3 is contrary to Ex.P.1. In persuence of Ex.P.1 that the plaintiff name is not at all entered into the suit property.” Further at page No.15 in para No.17 it is observed that “ On perusal of documents and oral evidence of both parties, it discloses that the defendant is in possession of suit property and the plaintiff.” As per Ex.D.3, in judgment passed in R.A No.55/2006 at page No.25 the learned Additional Senior Civil judge Court, Haveri observed that “the admission made in the cross examination of PW.1 prove that he is not in possession of suit land.”

26. These findings of both Court directly affects the present suit, because relief of permanent injunction can be granted only when the plaintiff proves lawful and settled possession over the suit property. The plaintiff cannot rely upon same entry in RTC which was marked in this suit as Ex.P.1 and Ex.P.2 Agreement of sale and



Ex.P.6 statement of Shivappa Kajjari given before Tribunal to contend that he was in possession of suit A-schedule property, when the earlier judgment has already negated that claim. The oral evidence placed before the court, does not satisfactorily establish the settled possession of the plaintiff over the A-schedule property on the date of suit. The oral evidence adduced by the plaintiff also does not disclose any reason to effect the earlier findings and it is not supported by convincing independent evidence. Therefore, this court is of the opinion that the plaintiff has failed to prove that he is in possession of suit A schedule property on the date of suit.

27. The counsel for appellant vehemently argued that the temporary injunction granted in OS No.150/1995 against the defendant is in force till today. Nowhere in judgment of OS No.150/1995 and in RA No.55/2006 mentioned about vacating of temporary injunction order. In the order of RSA No.5994/2010 also



there is no order about vacating the temporary injunction. Therefore it clearly shows that the plaintiff is in possession of suit schedule property till this day.

28. However the arguments canvased by the counsel for appellant cannot be accepted as the possession of the suit schedule property is concerned, already given findings in OS No.150/1995 and RA No.55/2006 that the plaintiff is not in possession of suit A schedule property. It is true that temporary injunction was granted in favour of the plaintiff at the earlier stage in OS No.150/1995 as evident from Ex.P.3. It was granted only on considering prima facie case. Subsequently in judgment passed in OS No.150/1995 the learned Civil Judge and JMFC Haveri has given findings that the plaintiff is not in possession of suit schedule property. However, the protection under Sec.53A of Transfer of Property Act, is not automatic, the plaintiff must prove actual possession in part performance of the contract. In the instant suit as per



earlier judgment passed in O.S.No.150/1995, “the plaintiff was not in possession and Ex.P.2 and 3(marked in said suit) entries do not establish possession based on Ex.P.1(marked in said suit) agreement.” When the foundational fact of possession itself not proved, the plaintiff cannot derive any benefit under Sec.53A of Transfer of Property Act. In view of above reasons the citation relied upon by the counsel for respondents is aptly applicable to the case on hand. Accordingly point No.1 is answered in the **Negative**.

29. POINT No.2: The plaintiff stated that after disposal of R.S.A.No. 5994/2010, the defendants have requested to surrender possession of suit schedule A property through son-in-law of plaintiff and the plaintiff refused to give up his claim in respect of suit schedule A property. Thereafter, at the instigation of Sri Basavaraj J Shivannavannar, the present MLA of Byadgi constituency, the defendants have made an attempt to cultivate the suit schedule A property forcibly. Therefore



there is apparent threat of interference in possession and enjoyment of suit schedule A property by the Defendants. However, the oral evidence regarding interference is general and not supported by any independent witness evidence. No material placed before the court to show that the defendants made an attempt to dispossess the plaintiff. Moreover, when the plaintiff failed to prove his possession over the suit A schedule property, the alleged interference by the defendants do not arise at all. Accordingly point No.2 is answered in the **Negative**.

30. POINT NO.3: When the plaintiff sought relief of permanent injunction stating that he is in peaceful possession and cultivation of A schedule property, the burden lies on him to prove that he is in lawful possession over the suit A schedule property as on the date of the suit and alleged interference by the defendants. In the instant suit, the plaintiff has failed to prove the same. As per Ex.D.P2, Ex.D.3 and Ex.D.8, the



defendants are owners of said property. When the defendants are true owners of suit A schedule property, permanent injunction cannot be granted against them. Therefore the plaintiff is not entitled for any relief. Accordingly, point No.3 is answered in the **Negative**.

31. POINT No.4: The trial Court has rightly appreciated the pleadings, oral and documentary evidence and effect of the earlier litigation. The trial Court has correctly observed that the earlier judgment had already recorded findings that the plaintiff is not in possession of suit A schedule property on the date of suit. Moreover, a temporary injunction granted in earlier proceedings in O.S.No.15/1995, RA.No.55/2006 does not by itself create any permanent right in favour of the plaintiff. The plaintiff also cannot take shelter under the pendency of SLP before the Hon'ble Supreme Court in the absence of any stay. However during the course of arguments, the counsel for respondents submitted that SLP was also dismissed. Therefore, the findings given by



the trial court that the plaintiff failed to prove his possession over the A schedule property is proper and legal. An appellate court only when the judgment of the trial court is perverse, illegal an unsupported by evidence. In the instant suit, the trial court has given proper reasons to come to conclusion that the plaintiff is not in possession over the suit A schedule property. Therefore, this court is of the opinion that no material illegality or perversity is made out. Accordingly point No.4 is answered in the **Negative**.

32. POINT No.5:- In view of the above findings on Point No.1 to 4, I proceed to pass the following:-

ORDER

Regular Appeal filed by the appellant under Order XLI Rule 1 read with Section 96 of Code of Civil Procedure, 1908 is hereby DISMISSED.

Judgment and decree passed by learned Civil Judge and JMFC Court at



**Haveri in O.S.No.135/2017 dated:
09.04.2025 is hereby CONFIRMED.**

**Considering the peculiar
circumstances of the case, no order as to
costs.**

**The Office is directed to transmit
the Trial Court records to the trial court
along with the copy of this judgment
forthwith.**

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer and typed by him,
script corrected, signed and then pronounced in the open court by me on this
14th day of August-2026).

(SMT.SHOBHA B.G)
I. Addl. Senior Civil Judge
and JMFC, Haveri.