

KABR030015162022



IN THE COURT OF THE II ADDL.CIVIL JUDGE,
BENGALURU RURAL DISTRICT, BENGALURU

Present: Smt. Hamsa.V B.Sc(Seri)., LL.B.
II Additional Civil Judge,
Bengaluru Rural District,
Bengaluru.

Dated this the 29th day of January 2025.

O.S.No.1340/2022

Plaintiff/s :1. Mrs. Kenchamarakka,
W/o Late Rangappa,
Aged about 95 years,

2. Mr. Srinivasaiah,
S/o Late Rangappa,
Aged about 69 years,

3. Mr. Rangaswamy,
S/o Late Rangappa,
Aged about 60 years,

All are R/at Kullegowdanapalya Village,
K. Golahalli Post,
Kengeri Hobli,
Bengaluru South Taluk-56 074.

(By Sri. A.F., Advocate)

-V/s-

- Defendant/s:**
1. Mr. Hanumaiah,
S/o Late Busnagappa @ Chikkabusappa,
Aged about 70 years,
 2. Mr. H. Shiva,
S/o Hanumaiah,
Aged about 38 years,
 3. Mr. Mahesh,
S/o Hanumaiah,
Aged about 36 years,
 4. Mr. Mahalingappa,
S/o Late Busnagappa @ Chikkabusappa,
Aged about 67 years,
 5. Mr. Santhosh,
S/o Mahalingappa,
Aged about 34 years,
 6. Mr. Mohan,
S/o Mahalingappa,
Aged about 25 years,
 7. Mr. H. Narayanappa,
S/o Late Kunta Hanumanthaiah,
Aged about 55 years,
 8. Mr. H. Muniraju,
S/o Late Kunta Hanumanthaiah,
Aged about 54 years,
 9. Mr. Ashoka,
S/o H. Muniraju,
Aged about 24 years,

10. Mr. H. Mallesh,
S/o Late Kunta Hanumanthaiah,
Aged about 50 years,

All are residing at
K. Golahalli Village,
K. Golahalli Post,
Kengeri Hobli,
Bengaluru South Taluk-56 074.

(Def No.1 & 3 to 10 by Sri. P.Y.R., Advocate)
(Def No.2 placed exparte)

Date of institution of the suit : 31.10.2022

Nature of the suit : Injunction suit

Date of commencement of
recording of evidence : 16.01.2024

Date on which the Judgment is
Pronounced : 29.01.2025

	Year/s	Months	Day/s
--	--------	--------	-------

Total duration	-02-	-02-	-29-
----------------	------	------	------

(Smt.Hamsa.V.)
II Addl. Civil Judge,
Bengaluru Rural District,
Bengaluru.

J U D G M E N T

The plaintiffs have filed this suit seeking the relief of permanent injunction to restrain the defendants, their agents, servants, henchmen or anybody claiming through or under them from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule A and B properties and such other reliefs.

SUIT SCHEDULE 'A' PROPERTY:-

All that piece and parcel of property bearing Sy.No.40, measuring 4 acres, situated at Kumbalagodu Gollahalli Village, Kengeri Hobli, Bengaluru East Taluk and bounded on;

East by : Mr. Kivuda Yellappa's land,
West by : Mr. Anantharamaiah's Land and
Road,
North by : Road,
South by : Pemanahalli Nagappa's Land

SUIT SCHEDULE 'B' PROPERTY:-

All that piece and parcel of property bearing New Sy.No.90 (Old Sy.No.40), measuring 2 acres including 5 guntas karab land, situated at Kumbalagodu Gollahalli Village, Kengeri Hobli, Bengaluru East Taluk and bounded on;

East by : Road,
West by : Land in Sy.No.105 belong to the
2nd plaintiff
North by : Halla,
South by : Mr. Anantharamaiah's Land and
Road

The case of the plaintiff in brief is as under:

According to the plaintiff, plaintiffs are the absolute owners in possession and enjoyment of the land bearing Sy.No.40, measuring 4 acres, situated at Kumbalagodu Gollahalli Village, Kengeri Hobli, Bengaluru East Taluk (hereinafter referred to as suit schedule 'A' property). It is further submitted that, plaintiffs are the joint owners in possession and enjoyment of the land bearing New Sy.No.90 (Old Sy.No.40), measuring 2 acres including 5 guntas karab land, situated at Kumbalagodu Gollahalli Village, Kengeri Hobli, Bengaluru East Taluk, (hereinafter referred to as suit schedule 'B' property). It is further submitted that, the 1st plaintiff husband and the 2nd and 3rd plaintiff's father Mr. Rangappa, had acquired the suit schedule A property under the sale deed dated 27.03.1954 executed by Mr. Chinnaswamy Naidu. After purchasing the aforesaid land, the katha for the same was mutated in the name of Mr. Rangappa and revenue records also mutated in his name. It is further

submitted that land in old Sy.No.40 was granted to the 1st plaintiff's husband and 2nd and 3rd plaintiff's father through grant proceedings in No.D.D. LND.323-6903/62-63 and necessary grant certificate was issued in favour of the said Mr.Rangappa on 06.06.1963. Subsequently the land in Sy.No.40 is sub divided and the land measuring 02 acres including 05 guntas karab land owned by Mr.Rangappa is re-numbered as Sy.No.90. Mr.Rangappa name is updated in RTC for the above said new survey number and Mr.Rangappa has been in possession and enjoyment of the schedule B property as the absolute owner. It is further submitted that, Mr.Rangappa died on 15.08.1985 leaving behind the plaintiffs as his legal heirs. The plaintiffs continued in possession and enjoyment of the schedule A and B properties as the absolute owners. The plaintiffs have put barbed wire fencing around the schedule A and B properties. The schedule A property is consisting of coconut trees. The plaintiffs are paying the taxes to the concerned authority. It is further submitted that the 1st plaintiff filed an appeal in RA(S) No.292/2017-18 on the file of the Assistant Commissioner, Bengaluru for mutation of the katha and to continue her name in the RTC per the schedule A property. As a result the Assistant Commissioner, Bengaluru, the village accountant, Kumbalagodu Gollahalli Village and Revenue Inspector, Kengeri Hobli, Bengaluru South Taluk jointly submitted their

report dated 29.03.2022 in respect of the schedule A property in aforesaid appeal. The report of the Village Accountant and Revenue Inspector specifically observes and reports that the plaintiffs and their father have been in continuous possession and enjoyment of the same. It is further submitted that the Assistant Commissioner was pleased to allow the said appeal vide order dated 10.02.2021 and further directed the Special Tahsildar, Bengaluru South Taluk to mutate the katha for the schedule A property in the name of the 1st plaintiff, which is still under process. It is further submitted that on 18.10.2022 the defendants who have no manner of right, title or interest in the schedule A and B properties, along with their agents and henchmen came near the schedule A and B properties, and tried to forcefully enter into the suit schedule A and B properties and the plaintiffs with the help of neighbors and friends resisted the efforts made by the defendants. The defendants have also threatened that they will come again with more men and machinery and dispossess the plaintiffs from the schedule A and B properties. The plaintiffs approached the jurisdictional police. But police advised as the dispute is in civil in nature and to approach the civil court. Hence, plaintiff has filed this suit.

2. On receipt of summons, the counsel for defendant No.1 and 3 to 10 filed vakalath but didn't file written statement,

hence written statement is taken as not filed. Defendant No.2 placed exparte.

3. On the basis of the pleadings, the points that arise for my consideration are :

1. Whether the plaintiffs prove that, they are in possession over the suit schedule properties as on the date of suit?

2. Whether the plaintiffs prove that, there is interference by the defendants into their peaceful possession ?

3. What order or decree?

4. In order to prove the case, plaintiff No. 2 himself got examined as PW-1 and got marked 15 documents as Ex-P1 to Ex-P15 and 15(a). On the contra, in order to disprove the case of the plaintiffs, though defendant No.1 and 3 to 10 have appeared before the court they have not filed written statement and have not cross examined PW-1.

5. In spite of sufficient opportunities plaintiffs have not canvassed their arguments.

6. On perusal of the records, oral as well as documentary evidence placed before the Court, my findings on the above issues are as under:

Point No.1 : **In the Affirmative.**

Point No.2 : **In the Affirmative.**

Point No.3 : As per final order
for the following:

REASONS

7. **Point No.1** : The Plaintiff has knocked the doors of justice praying for the relief of permanent injunction, restraining the defendants, their agents and servants or anybody claiming on their behalf from interfering with the peaceful possession and enjoyment of the suit property and for such other relief's.

8. In a suit for permanent prohibitory injunction, the court has to consider only two aspects. The first aspect to be considered by the court is, possession of the plaintiff as on the date of suit over the suit property and also interference caused by the defendants. **As per Section 101 to 103 of Indian Evidence Act**, the burden is on the plaintiff to establish that he is in actual possession and enjoyment over suit property and defendants are trying to interfere with his peaceful possession.

9. In order to prove the case, the Plaintiff stepped into the witness box and filed his affidavit evidence in lieu of examination-in-chief, wherein he has almost reiterated the entire gist of the plaint averments. The PW.1 in support of his oral testimony got marked 15 documents as Ex.P.1 to P.15. Ex.P-1 is the grant certificate, Ex.P-2 is the RTC, Ex.P-3 is the mutation register extract, Ex.P-4 are the report issued by the Revenue Inspector and Village Accountant, Ex.P-5 is the report issued by the Tahsildar, Ex.P-6 is the sale deed, Ex.P-7 and 8 are the RTCs, Ex.P-9 is the phodi sketch, Ex.P-10 is the RTCs, Ex.P-11 and 12 are the tax paid receipts, Ex.P-13 is the order of RA(S)292/2017-18, Ex.P-14 is the tax paid receipt, Ex.P-15 and 15(a) are the photographs and CD.

10. On perusal of Ex.P-1 the husband of 1st plaintiff was allotted with land in Sy.No.40 to an extent of 2 acres on 06.06.1963. In order to prove that the said land in Sy.No.40 was resurveyed and allotted with new Sy.No the P.W-1 has got marked Ex.P-9. In the said document the allotment of kharab land is also mentioned to the new Sy.No.90. On perusal of Ex.P-2 and 10 which are the RTCs for the year 2001-02 to 2023-24 and from 1979-80 to 1999-2000 the name of husband of plaintiff No.1 is reflected and is having possession to an extent of 2 acres including 6 guntas of kharab land in new Sy.No.90. On perusal of Ex.P-11 and 12 the tax paid

receipts the taxes has been remitted to the authority in respect of suit schedule properties. The contention of the plaintiff is that his father had purchased the suit schedule A property from his vendor Chinnaswamy Naidu. To substantiate the same P.W-1 has got marked Ex.P-6 which is the certified copy of the sale deed dated 27.03.1954. In the same the property has been sold to the father of P.W-1 and possession was delivered on the same day. Further P.W-1 in order to prove that after the death of Rangappa the name of the 1st plaintiff was not entered in the revenue documents pertaining to SY.No.40 in respect of 4acres of land has got marked Ex.P-13 which is the revenue appeal in R.A(S) 292/2017-18. In the said document the Assistant Commissioner has ordered to mutate the name of the 1st plaintiff in the revenue documents pertaining to land in Sy.No.40 to an extent of 4acres. Based on the said order revenue document is mutated as per Ex.P-3. Ex.P-4 and 5 are the reports submitted by the Revenue Inspector and village accountant and the special Tahsildar with regard to the existence of land in Sy.No.40 in the name of 1st plaintiff. The contention of the P.W-1 is that the name of his father was entered in RTC for the year 1979-80 till 1988-89 and then the same was missing. To prove the same P.W-1 has got marked Ex.P-7 and 8. On perusal of the same the name of father of P.W-1 is forthcoming. Further on perusal of the

representation and the orders of the Assistant Commissioner it is crystal clear that the name of father of P.W-1 was left out in the RTCs and as per the orders of Assistant Commissioner the name of 1st plaintiff was entered. Ex.P-14 is the tax paid receipt for the year 2023-24 in respect of land in Sy.No.40. To show the possession over the suit schedule property P.W-1 has got marked the photographs and the CD at Ex.P-15 and 15(a) which goes to prove that the plaintiffs are in possession over the suit schedule properties.

11. The learned counsel for the Plaintiff vehemently argued before the Court that the Plaintiff is in possession and enjoyment over the suit schedule properties , but the Defendants are interfering with his peaceful possession and enjoyment over the suit schedule properties, hence the equitable relief of Permanent Injunction has to be granted in favour of the Plaintiff.

12. In light of the arguments canvassed by the learned counsel for the plaintiff, this Court has carefully perused the oral as well as documentary evidence on record. The moot question arise before this court is that, whether the plaintiff is in possession and enjoyment of the suit property as on the date of the suit. The plaintiff has proved the mode of acquisition of the suit schedule properties. In order to

disprove the case of the plaintiff the defendants have not appeared before the court. The documents produced by the plaintiff clearly established that, plaintiff is in possession and enjoyment of suit schedule properties as on the date of the suit. There is no reason to disbelieve the documents produced by the plaintiff, because there is no contest from the defendants side. Accordingly, I answered Point No.1 in the Affirmative.

13. **Point No.2:** This issue pertains to alleged interference from the defendants to the peaceful possession and enjoyment of the plaint schedule property of the plaintiff. It is specifically pleaded by the plaintiff that, the defendants have absolutely no manner of right title or interest whatsoever much less possession over the suit property and they are not an adjacent owners of the suit property and never in possession of the same at any point of time. In-spite of it the defendants have interfered into his peaceful possession over the suit schedule properties In this regard I rely upon the decisions reported as under:

***1991(1) K.L.J. 536 between Lakshamma
V/s. M.P. Krishnappa, wherein it is specifically
stated that "SRA 1963- S.36 Injunctory decree-Basis
for grant of -Threatened invasion of it can be basis
no need for binding whether threat is real or not-***

where party seeking preventive relief of injunction on the basis of possession has established fact of his possession, he is entitled to relief” and it is further held in Para 3 of the aforesaid decision is that “ An aggrieved person comes to the court complaining of interference of the defendant may be at a particular point of time has not caused interference, but once the fear stores heavily in the mind of the aggrieved person there shall be no difficulties for court to grant injunction especially when it is found that particular person is in possession.”

14. Applying the same principle herein where the plaintiff has successfully demonstrated his possession over the suit schedule properties. Merely because the interference is not proved, it would not be a ground to refuse the order of injunction. But in this case, after evaluation of the evidence, it clearly depicts that there is a certainly interference by the defendants.

*In a decision reported in **1998(5) Kar.L.J. 168 Romeo M.F. Aquinas and Others V/s. Florina Mothias and Another**, wherein it is held that “ The right is not disputed by both the parties. Now the plaintiffs’ allegation was that there was an interference or at least apprehended that there is likelihood of interference. For a man to live in peace*

he resorts to Court and seeks an order of injunction. When the defendant admits the claim of the plaintiffs, nobody will be prejudiced by granting the decree for injunction. Once the matter has been seized by the Court it is for the court to grant the relief, the parties desire to get and when the relief is available on the basis of the averments made in the plaint and grantable on the basis of the written statement there can be no impediment for granting such a relief at all. A man may not know the mind of another. When the fear is in the minds of plaintiffs the Courts must dispel the fear and when admissions are made they should be made matured into a decree. The mere fact that there is a defence raised by the defendants that he has no intention of obstruction does not dispel the threat of interference that has been caused in the mind of the plaintiff”.

15. This decision throws light to an extent that mere a mental apprehension is enough to grant the relief of permanent injunction. It is an ordinary prudence that, no prudent man will knock the doors of justice without any grievance or apprehension in mind regarding interference to peaceful enjoyment of their property. The plaintiff in order to establish that he is in possession over the suit schedule

properties has submitted Ex.P1 to Ex.P 15. Hence, I answered **Point No.2 in the Affirmative.**

16. **Point No.3** :- In view of above findings on Issue Nos.1 to 2, the following:

O R D E R

The suit of the plaintiffs are hereby decreed with costs on the following terms:

The defendants are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties by granting a decree of Permanent Injunction.

All the interim applications shall stand disposed off.

Draw decree accordingly.

(Dictated to the stenographer, typed by her, corrected and then pronounced by me in the Open Court on 29th day of January 2025).

(Smt.Hamsa.V.)
II Addl. Civil Judge,
Bengaluru Rural District,
Bengaluru.

ANNEXURE**List of witnesses examined on behalf of the plaintiff :**

P.W-1 : Mr. Srinivasaiah

List of exhibits marked on behalf of the plaintiff :

Ex.P-1 : Grant certificate

Ex.P-2 : RTC

Ex.P-3 : Mutation register extract

Ex.P-4 : Report issued by the Revenue Inspector
and Village Accountant

Ex.P-5 : Report issued by the Tahsildar

Ex.P-6 : Sale deed

Ex.P-7 and 8 : RTCs

Ex.P-9 : Phodi sketch

Ex.P-10 : RTCs

Ex.P-11 and 12 : Tax paid receipts

Ex.P-13 : Order RA(S)292/2017-18

Ex.P-14 : Tax paid receipt

Ex.P-15 & 15(a): Photographs and CD.

List of witnesses examined on behalf of the defendants:-

-NIL-

List of exhibits marked on behalf of the defendants:-

-NIL-

(Smt.Hamsa.V.)
II Addl. Civil Judge,
Bengaluru Rural District
Bengaluru.